

## **Extract on Governing the BBC from 'Building Public Value: Renewing the BBC for a digital world'**

### **PART II: Governing the BBC**

The BBC has a unique constitution. Based on a Royal Charter and with an independent Board of Governors at its heart, it is designed to ensure that the BBC is driven only by serving the public interest. Its role in the BBC's success for 80 years has been vital. However, the changing environment for corporate governance now requires higher levels of scrutiny and accountability. Clear and bold reforms are needed.

In Part II of our paper, we turn to one of the most crucial issues of this Charter Review process – the BBC's constitution and how it is governed. This section is, appropriately, the work only of the BBC's Board of Governors, and not of the BBC's management.

The BBC was established in 1927 with a constitution based on a Royal Charter and an independent Board of Governors, as recommended by the Crawford Committee. This constitution was expressly designed to guarantee the BBC's independence and enable it to focus only on the public interest. It has enabled the BBC to develop throughout its history as a trusted public service broadcaster, capable of transforming itself in response to revolutions in radio, television and, more recently, digital technology.

Over the years, the BBC's constitution has evolved on many occasions in response to the changing environment. For example, in 1972, the Board of Governors began to meet independently of management. In 1997, its precise functions and duties were set out in the Charter for the first time.

Now further changes are necessary. Evolving technology, audience expectations and the commercial market, together with the creation last year of Ofcom as a new regulator for the whole communications industry, must all be important considerations. So too must be the findings of the recent Hutton Inquiry. The review of the BBC's Charter provides the right context for a wide-ranging debate about the best way forward. We welcome this debate and want to engage fully in considering possible reforms, both radical and evolutionary. This chapter sets out the contribution of the BBC's current Board of Governors to this important debate.

We begin by identifying the strengths and weaknesses of the current system. We conclude that, although there is a pressing need for reform, the concept of an independent Board of Governors as trustee of the public interest retains important advantages: safeguarding the BBC's independence, exercising effective stewardship of public money in the public interest, and preserving of plurality in UK content regulation. The Board of Governors stands for a BBC that is a public, and not a state, broadcaster.

We go on to propose a set of bold reforms of the current system designed to deliver clear and indisputable independence of the Board of Governors from management, a new framework of rigorous and transparent scrutiny rooted in public value, and a properly resourced plan for demonstrating greater accountability to the British public. Many of these changes can and will be implemented immediately. Our view is that these reforms will lead to a strengthened and empowered Board of Governors capable of preserving the advantages of the current system while dealing decisively with its weaknesses. As a constitution for serving the needs of the British public in the future, we believe it will be better than alternatives that remove the Board of Governors as trustee of the public interest.

### **8.1 The BBC's current constitution**

The BBC's current constitution has important strengths across all three of its primary functions: effective governance, meaningful accountability to the British public and fair regulation and compliance.

**Effective governance** is about ensuring that the BBC properly fulfils its public service remit. Are its programmes good enough? Do they deliver sufficient public value? Is the BBC acting impartially? In these areas, it is crucial that the BBC can act only in the public interest, independent of commercial and political interests.

Under the BBC's current constitution, this independence is secured through a Board of Governors which acts as trustee of the public interest. The Board is made up of 12 independent-minded people with a wide variety of skills and expertise, able to act without fear or favour. The BBC's management is fully accountable to the Board of Governors for all aspects of the BBC's strategic direction and for the successful implementation of strategies once they have been approved. Governors can call on specialist expertise in a range of business and public service disciplines to support and, when necessary, challenge management. The Board of Governors is constitutionally part of the BBC, but independent of management. Each governor is

recommended for appointment by the Secretary of State for Culture, Media and Sport under Nolan principles.

The purpose of the Board of Governors is to ensure that the BBC is single-minded in its approach to serving the public. In 2000, the Board approved the long-term strategic and financial plan for the BBC to carry the Corporation through to the end of its current Charter. Since then, it has overseen changes to strategies for eight services and genres: BBC Two, Radio 1, bbc.co.uk, news, global news, the arts, religion, and political programmes.

The Governors themselves are held accountable for their actions through a range of checks and balances – including appearing before the House of Commons Select Committee for Culture, Media and Sport; the requirement that the Secretary of State approve all new BBC services; and, of course, the periodic root and branch review of the BBC's Charter. Furthermore, following a requirement set out in the new Agreement which accompanied the 2003 Communications Act, the National Audit Office has begun a series of 'value for money audits' of BBC activities for the Governors' Audit Committee. These audits are aimed at assessing the BBC's effectiveness and efficiency in a range of areas. They will first be presented to the Board of Governors, then subsequently published and laid before Parliament.

**Accountability to the British public** is about ensuring that the BBC is responsive and accountable to the people who pay for it. It is through consultation and discussion with audiences that the BBC can understand and respond to their concerns and needs. Currently, the BBC has one of the widest networks for public consultation of any broadcaster in the world. Over 500 people from across the UK regularly contribute their views on the BBC as part of a network of advice, including the Broadcasting Councils for Scotland, Wales and Northern Ireland, and the Regional Advisory Councils for England.

#### **The BBC's network for public accountability**

The Board of Governors draws on the support of a broad network of external advisory bodies to provide advice on the BBC's services for different parts of the UK.

**The Broadcasting Councils for Scotland, Wales and Northern Ireland** each have 12 members, chaired by the relevant BBC national Governor, and meet monthly. Places on the Councils are advertised and members selected by an appointments committee

including independent external advisers. The principal role of the Councils, set out in the Charter, is to advise the Board of Governors on what audiences in the nations think of BBC programmes and services, and how best the BBC can serve their interests. The Councils hold regular public meetings to gather the views of audiences and the Board consults them on proposals affecting the nations and on objectives to be set for the BBC.

**The Regional Advisory Councils (RACs)** represent each of the regional television areas in England. Each RAC has around 12 members, representing a cross-section of the viewing and listening public across the region. They provide advice via the English National Forum (ENF) on BBC programmes and services in their regions. In particular, they are asked by the Governors to assess how well the BBC reflects the regional and cultural diversity of England. The ENF is made up of the chairs of each RAC, and is itself chaired by the BBC's Governor for England.

**The Local Advisory Councils (LACs)** represent the areas covered by each of the BBC's local radio stations in England. Members are selected from the audience for each station, and the chair of each LAC sits on the relevant RAC, so providing a link through to the Board of Governors. The LACs offer advice and feedback on the quality and range of programmes and services in their areas, review the BBC's performance and objectives, share their views directly with the local radio station editor, and take part in public events which allow them to keep in touch with the views of the wider audience.

**The Central Religious Advisory Committee (CRAC)** has 16 members representing different faith communities in the UK, and provides advice both to the BBC's Governors and to Ofcom, who jointly appoint the members. The Board of Governors routinely seeks CRAC's views on the BBC's performance in delivering its commitments on religious programmes.

Each of the national, regional and local councils makes a significant ongoing contribution towards ensuring that the views of audiences throughout the UK are reflected in the BBC's objectives, and that the BBC is accountable to those audiences for its performance. Their role is particularly important in reflecting the devolved nature of the UK. In total, members freely contribute some 4,000 days of their time each year to representing the public interest.

This network is directly involved in shaping the development of BBC services. Recent examples include the launch of BBC 2W, a tailored version of BBC Two for Wales developed in response to proposals by the Broadcasting Council for Wales; changes to BBC's Scotland's news and current affairs strategy, drawing heavily on the contribution of the Broadcasting Council for Scotland; a new business programme in Northern Ireland, *Business Day*, was broadcast after the Broadcasting Council for Northern Ireland identified weaknesses; and changes to local news coverage in the English regions, which came out of recommendations by the Regional Advisory Councils (RACs) and Local Advisory Councils (LACs).

**Fair regulation and compliance** is concerned with ensuring that the BBC abides by the laws and rules of the land – such as competition law, production quotas that apply to other broadcasters and legal standards of taste and decency. It is very different from governance, which is concerned with how money is allocated to deliver goals that are often complex, long-term and, in the case of public organisations, involve judgements about public interest and public value.

A surprise to some is that much of the regulation of the BBC already lies outside the BBC. For example, all the BBC's activities are governed by competition law and policed by the UK competition authorities and the European Commission. In addition, Ofcom regulates the BBC on issues of taste and decency, privacy, fairness and other programme standards. It can consider complaints from members of the public about BBC programme standards, and monitors the BBC's adherence to around 60 individual targets and quotas each year – including levels of independent and regional production and volumes of news, current affairs and original programmes on BBC channels.

In some aspects of BBC regulation, such as audit and fair trading, where the BBC is subject to more stringent requirements than other bodies, the Charter confers responsibility for overseeing these on the Board of Governors. One area where the Board of Governors has primary regulatory responsibility is for accuracy and impartiality. This is entirely appropriate, as the BBC's independence is crucial in this area.

In areas where the Governors have regulatory responsibility, they obtain external advice to ensure compliance. For example, the Governors' Programme Complaints Committee, which acts as a 'court of appeal' on complaints from audiences, draws on the expertise of an external editorial adviser who attends all their meetings and advises them both on the handling of individual appeals and on general strategic issues. The Audit Committee is supported by

independent external auditors whose appointment is approved by the Secretary of State. The system has worked well. No complaint of unfair trading practices has been upheld against the BBC in the last ten years and the BBC's fair trading systems have been independently verified by a government-appointed reviewer. The Board of Governors reviews its processes for regulation and compliance each year, using specialist outside advice.

We hope this clarity in defining the differences between governance, accountability and regulation will help in the forthcoming debate. It is particularly important to recognise that the Board of Governors is not simply one of the BBC's regulators. It is the trustee of the public interest, responsible for strong and effective governance.

## **8.2 The need for change**

The world is changing fast and the BBC's constitution needs to adapt with it. Three changes are particularly relevant to any future constitutional reform.

The first is the explosion of commercial media services over the past ten years, which will accelerate in the next decade. As a consequence, the BBC will need to be clearer than ever before about the public value of what it does and about its impact on the rest of the media industry. Second, people are demanding ever-higher standards of openness and accountability from their public services – whether the NHS, their local school or BBC One. The BBC's standards of responsiveness and accountability must be exemplary. Third, best practice in good governance has evolved in recent years, highlighting the importance of clear roles, transparency of performance criteria, and effective and well-publicised scrutiny, particularly of public organisations.

We have looked hard at the BBC's constitution in the light of these changes, and see five main areas for improvement.

- The Board of Governors needs to be able to act more independently of management. Currently, the two bodies draw on the same sources of skills and expertise, with the exception of a small group of people within the BBC who work uniquely for the Governors. The perception created is that Governors can become captives of management.

- The outside world needs to be able to understand better what kind of scrutiny the Governors are applying to the BBC's past performance and its future strategy, and the criteria that are being used. The processes by which the Governors make their strategic input in the public interest are not easily visible, and the BBC's Annual Report does not currently offer sufficient insight and clarity. It has sometimes appeared to emphasise marketing the BBC's successes over accounting for its performance.
- The BBC's complaints procedures need to be strengthened. How an organisation responds when someone complains is an important determinant of how people feel about its openness and responsiveness. It is still too difficult to find out how to complain about the BBC, and complainants can feel that they have not been listened to properly.
- As trustees of the public interest, the Governors have more to do to raise their own level of engagement with audiences. In particular, they have yet to tap the huge opportunities brought by the internet and digital television to involve the public more closely in shaping the BBC of the future.
- The role and function of the Board of Governors needs to be more clearly explained and communicated.

We believe the answer to these concerns is to reform the BBC's current constitution, rather than to tear it up and risk losing many of the strengths that have underpinned the BBC's success over so many years. We have therefore developed a range of proposals intended to strengthen fundamentally the BBC's current system of governance and accountability. They fall into three areas: establishing clear and indisputable independence of the Board of Governors from management; a new framework of rigorous and transparent scrutiny rooted in public value; and increased accountability and responsiveness to the British people.

### **8.3 Clear independence of BBC Governors from management**

The Governors in future will act – and be seen to act – fully independently of the BBC's management and will be resourced properly in order to make informed and independent judgements.

- **The Board of Governors will be supported by a dedicated and strengthened Governance Unit, independent of management.**
  - The Head of the Governance Unit, appointed by the Board and reporting directly to the Chairman, will be a senior figure of weight and authority, with the skills and experience to provide reliable and independent support to the Board of Governors.
  - The Governance Unit will contain staff providing a range of expertise and experience – covering broadcasting industry knowledge, journalistic capability, economics and legal advice. This will enable the Unit to advise Governors on the conduct of their duties and to scrutinise proposals coming from management.
  - The Governance Unit's staff will report solely to the Chairman and Governors, underpinning the independence of their advice. This is a major change from today, where the staff dedicated to serving the Board have reporting lines both to the Director-General and to the Chairman.
  - All issues concerning the pay, conditions and career progression of staff while they are within the Governance Unit will rest entirely with the Board.
  
- **To support its performance reviews and well in advance of any new service launch, the Governors will in future commission and publish external research, advice and assessments.**
  - The Governors will make greater and more systematic use of independent external advisers, while retaining free and ready access to internal BBC sources of information.
  - They will routinely use external advice and analysis to supplement information from senior managers within the BBC. For example, the Governors could commission reports on the effectiveness of the BBC's internal compliance systems – as the Government did when it asked Professor Richard Whish to review the BBC's fair trading systems – or into service areas, along the lines of Philip Graf's recent review of the BBC's online services for the DCMS.

- **Though the choice of BBC Governors is for the DCMS and not for the BBC, our view is that the Board of Governors should continue to be comprised of people with a wide range of different experiences and skills, supported with specialist broadcasting knowledge from the Governance Unit.** The broad range of skills and expertise brought by Governors with strong records of achievements outside broadcasting is a strength of the current system and worth retaining – though in the context of strengthened input in specialist broadcasting areas from the new Governance Unit. Their contribution to the effective running of the Governors’ Audit, Fair Trading and Property Committees is particularly valuable. Given the challenges of the modern news era, we would recommend that at least one member of the Board has a strong editorial background, preferably in journalism.
- **The Board of Governors and the Governance Unit will be located apart from senior management,** to underpin their different roles and independence from management.

As a result of these changes, we believe the Board of Governors will be better equipped to act – and be seen to act – independently of management. At the same time it will remain sufficiently involved in the complex challenges and opportunities facing the organisation to be able to act proactively and decisively in the public interest.

#### **8.4 A new framework of rigorous and transparent scrutiny**

The BBC is owned by the British public. The Board of Governors’ overriding objective must be to ensure that the BBC acts solely in their interests and that it pursues the public goals set for it with energy and effectiveness. In future, the Governors will put public value at the centre of a new framework for scrutinising the BBC’s activities, with a stronger and more systematic link to the views of the public.

- **Every BBC channel and service will be given a Service Licence by the Board of Governors that sets out the budget, remit and performance targets that the Governors expect to be met.**
  - The Service Licences, which will be published, will be based on a mix of measurable and judgemental factors that Governors believe drive the public

value of the service, based on the public value measurement framework set out in Chapter 4.

- The Statements of Programme Policy will set out the annual commitments of each service within the framework of its Service Licence.
- If a service wishes to deviate from its Service Licence, it will need approval from the Board of Governors.
- **The Board of Governors will lead a cycle of transparent independent reviews of the performance of BBC services and other activities.**
  - All BBC services will be comprehensively reviewed on a rolling basis using the public value framework outlined in Chapter 4. We would expect all services to be reviewed within a given five year period.
  - Each review will be informed by in-depth audience research and consultation and take account of public value and market impact.
  - Additional reviews will be held of issues raised by audiences, based on a programme of consultation and listening run by Governors to identify issues of most concern to audiences. These reviews may be service-based or on other topics, such as impartiality or how well the BBC is serving particular sections of society. This research will be published.
  - If the Governors choose not to act on audience views expressed during these consultations, they will explain clearly the reasons for that choice.
  - A senior external figure will be appointed to lead each major review on behalf of the Governors, supported by the Governance Unit.
  - Each year's Annual Report will report on the review cycle, the key findings of each review, and the impact of action taken in response to previous reviews.
  - Our recommendation is that the independent nature of these reviews should enable them to stand in place of external reviews of the BBC's services.

- **The Governors will apply a public value test to all new service proposals and to major changes to existing services.**
  - The Governors will apply the public value test described in Chapter 4 to any new BBC service.
  - The Board of Governors will require a clear demonstration that any proposal passes this test. It will commission external advice and research to inform this process, including an economic assessment of the market impact of any new service. No service that fails the public value test will be launched.
  - The results of the public value test will be published.
  
- **The BBC's Annual Report will in future be owned solely by the Board of Governors, enabling it to give its own assessment of the management's performance over the past year.**
  - The Annual Report will explicitly be the Governors' report. While it might contain information from BBC management, the document will be owned by the Governors and will primarily be concerned with assessing performance and holding management to account.
  - This year's Annual Report will represent a step-change in this respect. It will continue to evolve in the light of experience, to ensure that it properly underpins the Governors' independence from management.

### **8.5 Increased accountability and responsiveness**

The Board of Governors will put effective engagement with the British public and responsiveness to their concerns at the heart of its role as trustee of the public interest. In particular:

- **BBC Governors will launch a range of initiatives to engage the British public more directly in shaping the BBC of the future.**

- One of the biggest steps forward will be the proposal (described in 8.4 above) to base the Governors' new programme of reviews of BBC services on those issues that audiences most care about. For the first time, there will be a systematic link between the Governors' scrutiny, past and future, and audiences' needs and concerns. These links will be expressed clearly in all reports and publications by the Board of Governors.
- In addition, every three to five years the Governors will commission a regular, independent Public Value Review of the BBC, based on a largescale survey of 10,000 people. The Governors will take professional advice on how to structure the review to get as full an assessment as possible of the public's views of the BBC.
- The BBC will offer new opportunities for people to use the internet and digital technologies to contribute their views on a wide range of topics directly to the BBC's Board of Governors. Building on the recent *Viewpoint* pilot, people will be invited to feed back on individual programmes and services.
- The BBC will make it easier for people to contact the Board of Governors, through the introduction of online 'surgeries' where people can engage directly with Governors, particularly around the topics selected for review each year.
- **The BBC's network of Broadcasting, Regional and Local Advisory Councils will be strengthened and used more effectively to help influence the BBC of the future.** All Broadcasting Councils and the English National Forum will continue to be chaired by the relevant national Governor. In future, they will also be supported by a secretariat and be able to commission research and access advice from the resources available to the Governors. A wider programme of open meetings between the public and the Councils will be introduced, supported by improved online and on-air promotion. The Governors will meet regularly with the Broadcasting Councils and will have a specific duty to consult them as part of their annual cycle of reviews, giving the Councils a direct role in monitoring the performance of the BBC's UK-wide services as well as local and regional output. We also recommend that the English National Forum should be granted the same constitutional status as the Broadcasting Councils for Scotland, Wales and Northern Ireland.

- **The BBC will shortly introduce a new system for dealing with complaints from licence payers, to ensure objectivity, fairness and transparency.** The BBC will begin with the presumption that the licence payer is right. A new Head of Complaints will report directly to the Board of Governors. We will make it much easier to make complaints about BBC programmes and services and will publicise the procedures more widely on TV, radio and online. We will publish all errors, clarifications and corrections promptly on the BBC's website. We will also set out for complainants – and for serious upheld complaints, for the public at large – the actions the BBC will take to correct the error and minimise the risk of it recurring. We considered carefully the case for establishing an independent ombudsman to handle complaints, as some newspapers have done. However, we concluded that this role would duplicate that of the Board of Governors, which itself represents the public interest. Our proposals will shortly be laid out within a new Code of Practice and implemented as soon as possible. The BBC will be a stronger organisation for recognising where it is wrong and taking clear steps to put things right.

## **8.6 Alternatives to the Board of Governors**

Some believe that the Board of Governors is no longer the right model for the BBC and that it should be replaced with a new constitutional model. Two options are most often raised as potential alternatives: governance and regulation of the BBC by Ofcom; and creating a new external regulator for the BBC 'outside the walls'.

We have given careful consideration to these alternative models, starting with a perspective on what they need to achieve. In our view, any successful governance system of the BBC must satisfy at least four tests. It must:

- Guarantee the BBC's independence from commercial and political interests;
- Ensure that public money is spent in line with the public interest to maximize public value;
- Ensure that BBC services and any proposed changes to them are subject to proper scrutiny on behalf of the British people;

- Secure sufficient plurality and range of voice within the overall regulatory environment for UK broadcasting.

Turning first to the option of placing regulation and governance of the BBC under Ofcom, there are clearly superficial advantages. It would create a single regulatory body for the whole communications industry, bringing efficiency and eliminating a degree of complexity and duplication. However, applying the four tests highlights a number of significant drawbacks.

First, Ofcom is an economic regulator first and foremost. It is not suited to the governance of a public service organisation with cultural and democratic purposes and would therefore find it difficult to replicate the role that the Board of Governors plays in ensuring that money is spent in line with these purposes. Its power is necessarily more retrospective.

Second, though Ofcom could scrutinise the BBC's services and any proposed changes, its accountability to the British people would not be clear, as it has a wide set of conflicting obligations, including to the commercial media sector from which it would face intense pressure to limit the BBC's role.

Finally, there would be a loss of plurality in the UK broadcasting system. Under this proposal, all regulation of content and service development for the British broadcasting industry would rest with one regulator. Its power would be unprecedented in UK media history. Ofcom's views on the needs, values and tastes of the British people would be the only ones that counted. In many respects, plurality in broadcast regulation is as important as plurality in broadcast content.

Could these concerns be mitigated if a separate regulator for the BBC were to be set up, instead of the Board of Governors, outside the BBC? Some have raised the idea of a separate PSB regulator, responsible also for Channel 4.

In terms of the BBC's independence, we believe risks would remain under this option. External regulators in the UK are government bodies, and part of a wider hierarchy of government institutions. They lack the constitutional independence of the BBC's Governors. Moreover, the new external regulator would not have control over the budget and spending priorities of the BBC, as the Board of Governors does now, so would not be able to act as stewards of public money. It could punish retrospectively, but that is a very different role – a role of regulation and not of governance. As a consequence of the full separation, physical and constitutional, of the new body from the BBC, it would find it difficult to change the BBC's organization and its

services for the better. Patricia Hodgson, the former Chief Executive of the Independent Television Commission, has made this point powerfully on several occasions, arguing that regulators have only limited power to change organizations for the good.

In comparison, we believe that the BBC's Board of Governors, once reformed in the ways described in this chapter, can meet these goals effectively and transparently. It is able to guarantee the BBC's independence, as evident from 80 years of success in the face of at times relentless pressure. It is steward of the BBC's public money, and close enough to the organisation to ensure it is spent in line with public priorities. As a result of the changes proposed above, we believe the Governors will be able to undertake effective and independent scrutiny of the BBC's services on behalf of the British people. And, finally, the separate constitution of the BBC preserves the vital principle of plurality of regulation in British broadcasting.

### **8.7 The BBC's Royal Charter**

The BBC has operated on the basis of a Royal Charter since 1927. It has stood the test of time remarkably well. However, we recognise that the concept of a Royal Charter can seem old-fashioned for a modern media organisation. The BBC would welcome a broad public debate on whether other models might be better. For example, further consideration could be given to models such as mutualisation, trust status or establishing the BBC as a public interest company.

Any other model chosen would have to be at least as effective as the current Charter model in underpinning the BBC's independence and public role. For example, it would need to be able to guarantee the BBC's independence by establishing it for a set period (the BBC cannot be abolished under the Royal Charter). It would need to provide for regular parliamentary scrutiny of the BBC's role. It would need to provide sufficient flexibility for the BBC to develop its services in the public interest, in the face of external changes. And it would need to provide the necessary checks and balances to ensure that proposed changes to BBC services are subject to proper scrutiny. The BBC looks forward to engaging with this debate.

In this final chapter, we have outlined a bold set of plans for reforming the BBC's constitution, and, most particularly, for strengthening scrutiny and accountability. We recommend that an independent Board of Governors remains at the heart of this constitution, acting solely as trustee of the public interest and guardian of the BBC's independence.

As a result of these reforms, the Board of Governors will become a stronger body, with independent expertise, greater transparency, and a rigorous framework for holding the BBC's management to account. Its role will be to ensure that the BBC fulfils with imagination, flair and ambition its goal of building public value for the British people over the coming decade.