



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Government Response to  
the Culture, Media and Sport Select Committee Report on  
a public BBC  
Session 2004-2005

*Presented to Parliament by the  
Secretary of State for Culture, Media and Sport  
by Command of Her Majesty  
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# **GOVERNMENT RESPONSE TO THE CULTURE, MEDIA AND SPORT SELECT COMMITTEE REPORT ON A PUBLIC BBC. SESSION 2004-05**

The Government welcomes the Committee's Report, and is grateful to the Committee for the thorough scrutiny it has made of the issue. The Government has paid close attention to the points made during the Committee's hearings and to the conclusions and recommendations set out in the subsequent Report while drafting the BBC Charter Review Green Paper, also published today.

Since the BBC was founded as a public corporation, in 1927, there have been seven reviews of its Charter. The current Charter began in 1996 and will expire in 2006, and the Government – with the assistance of the independent panel chaired by Lord Burns – has engaged in an open and transparent programme of consultation as part of the Charter review in the lead up to today's publication of the Green Paper. The Green Paper itself embodies the decisions taken on the Charter so far, and seeks views on a range of options and proposals in those areas where it is continuing to consult. It covers many of the concerns raised by the Committee during its enquiry. Its publication signals the start of a further three-month period of consultation, and the Government intends to issue a White Paper later this year.

The broadcasting landscape is changing at an unprecedented rate. Even since the start of the current Charter, the number of TV channels has more than doubled to over 400, there are nearly half as many radio stations again as there were ten years ago, and the increasing popularity of digital media means that over half of all households now have access to multi-channel viewing and listening. With the preparations also underway for full digital switchover, the review could not have come at a more apt time, and the Committee's contribution has played an important part in the Government's deliberations over the proposals and options to be contained in the Green Paper.

The Select Committee's report contained a number of key conclusions and recommendations:

**1. It should be regarded as a duty that the BBC continue to pursue practical methods to improve the enjoyment of its services by people with sensory impairments.**

## ***Government Response***

The Government agrees that the BBC should continue to promote the development of practical ways of increasing the enjoyment of its services by people with sensory impairments. The BBC has a good record of doing so and, as evidence to the Committee recognised, has been in the forefront of developing access services, but we shall consider during the next stage of Charter Review whether there is merit in translating this into a specific duty.

**2. Media Lab Europe has been an independent, not-for-profit, international research institute. It would be appropriate for both the DCMS and the BBC to take account of the work undertaken there.**

## ***Government Response***

The Government notes the announcement made by the Irish Government that Media Lab Europe was to close, which it subsequently did on 1 February. However, we will consider the results of its work.

**3. We recommend the Government gives serious consideration to the need for measures, and the timetable for their announcement and implementation, to make digital switchover affordable and practical to people on low incomes and those with special needs. Careful consideration should be given to all the recommendations of the Consumer Expert Group, chaired by Allan Williams of the Consumers Association, particularly in relation to providing assistance with the full costs of converting one TV to digital. We further note that these recommendations chime with those made by the Consumer Panel at Ofcom.**

#### *Government Response*

Digital switchover will deliver significant benefits for consumers and for the wider UK economy, both from the extension in coverage of digital terrestrial television and from new services reusing the freed up spectrum. Prices of set-top boxes and integrated digital televisions have fallen to the level that switchover is affordable for the vast majority of households.

The vast majority of citizens will need only a source of good information to help them through switchover. However, we are fully aware that some people will need more than information. They may need help to understand what they have to do, to install their boxes or check their aerials, or to use their new equipment. A few might also need financial assistance.

We made it clear in July 2004 that, although switchover would need to be led by broadcasters, final decisions on the timetable needed to balance the considerable benefits to consumers and the broadcasting industry with the interests of more vulnerable consumers. We are considering, with the BBC, the recommendations made by the Consumer Panel, the Consumer Expert Group and leading charities. We will ask the BBC to help implement and pay for schemes that will ensure no-one is left behind. An accurate assessment of how the needs of the vulnerable are to be met is essential before a switchover strategy can be finalised. We will continue to work with the BBC and others on the scope and delivery mechanism for these schemes before confirming the switchover timetable.

**4. We recommend the Government takes steps to promote more actively public awareness and understanding of digital switchover.**

#### *Government Response*

The Government agrees.

The responsibility for ensuring that everyone gets all the information they need about the digital switchover process will primarily be one for the broadcasters and the supply chain. However, the Government will continue to take responsibility for communicating its switchover policy.

In November, the Government launched a public awareness campaign that aims, through the use of mainstream media, to educate the media and the public about digital switchover. This is supporting the rollout of the digital switchover logo. The logo indicates digital ready products and services and reliable information about digital switchover. So far over 20 manufacturers and more than 200 retailers, representing more than 2300 retail outlets and a number of aerial installers, as well as Top-Up TV have signed up to use the logo. Informative leaflets are already available in main stores including Dixons and Comet.

Our digital television website ([www.digitaltelevision.gov.uk](http://www.digitaltelevision.gov.uk)) has comprehensive and regularly updated information for consumers on digital switchover. We are also working with charities on plans to ensure that everyone, including those who are harder to reach, gets the right information and support, and with shadow "Switchco", the switchover organisation being set up by broadcasters and the supply chain, to ensure that their communications and marketing plans reflect the needs of consumers. We understand that they plan a proactive information campaign, both at national and regional level.

**5. We recommend that the Government bites the bullet and sets out a clear path and timetable for digital switchover.**

*Government Response*

The Government will confirm the timetable once all the remaining issues are resolved. These include the precise coverage requirement (number of transmitters to be converted, mode and power combinations), the regional order and, most of all, consideration of the interests of the most vulnerable consumer.

On 9 February 2005, Ofcom published a consultation paper setting out options on how best to deliver substantially the same coverage with digital terrestrial as with analogue transmissions.<sup>1</sup> This includes details of benefits of particular options for availability and the trade-offs that would be needed. Ofcom has invited responses by 21 March. Ofcom also published a technical briefing paper on 9 February<sup>2</sup>, setting out the proposed regional order for switchover by 2012 as part of its wider spectrum management responsibilities. This sets out technical considerations that pre-determine the order in which individual regions convert (although the specific dates for the process remain, of course, a matter for Government).

As noted above, we will continue to work with the BBC and others on the scope and delivery mechanisms for schemes to help the most vulnerable before confirming the switchover timetable.

**6. We therefore believe that, notwithstanding the increased number of channels offered in Sky's free-to-air satellite service, it is imperative that the BBC works with other providers to create an alternative "Freesat" option.**

*Government Response*

The Government welcomes the launch by BSkyB of its "freesat" offer. As the Green Paper makes clear, it also welcomes the decision taken by the BBC to ensure all its services are available free to view on satellite and would like to see the BBC continue to promote the development of a free to view satellite service.

**7. We strongly welcome the BBC's proposals for a Creative Archive, and agree that access to this should be free for non-commercial applications. We look to the Corporation to develop, in cooperation with intellectual property owners, innovative solutions that appropriately balance the interests of rights holders with those of the wider public. Digital rights management is a key issue in the modern media environment, and we recommend the DCMS establish a forum for assessing its implications.**

*Government Response*

As explained in the Green Paper, the Government also welcomes in principle the concept of the BBC's archives being made widely available. But there are some concerns about issues of market impact and rights management. We agree that the BBC should balance the interests of rights holders with those of the wider public in developing new proposals for the distribution of archived material. Any proposal should be subjected to a public value test, including a market impact assessment, before any decision is taken to approve it.

Tim Gardam's independent review into the BBC's digital radio services included a recommendation that the BBC radio archive should also be available for commercial buyers. In their initial response, the BBC has indicated that this is an area under review and we have asked for a further update in March.

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<sup>1</sup> Ofcom: Planning Options for Digital Switchover. 9 February 2005

<sup>2</sup> Ofcom: Spectrum Management Update: Technical Planning for Digital Switchover around the UK. 9 February 2005

With respect to digital rights management in the modern media environment, we acknowledge that the issue is an important one, and it is one that we will be considering very carefully. However, we are not persuaded of the need to establish another separate forum at this stage. Digital rights management is being considered as part of the work of other Government and industry groups, such as the broadband stakeholders' group.

**8. Genres such as the arts and religion should not be shunted into digital ghettos, and with the deployment of a little funding, and more imagination, could attract greater success than hitherto.**

*Government Response*

The Government agrees.

**9. We recommend that online, interactive and multimedia services become a more prominent and explicit part of the BBC's formal public service remit. The BBC should be a public service communications provider of content across all platforms. However, the BBC's online presence must have public service parameters and we recommend that these be explicitly clarified in the next Charter (or alternative settlement).**

*Government Response*

The Government acknowledges that, if the BBC is to continue to thrive, it will have to adapt to changing circumstances, and help to shape the digital future. The Government has therefore proposed that one of the public purposes for the BBC over the next decade should be "Building Digital Britain." New BBC services are already helping to drive the take-up of digital TV and radio, but a new burst of activity will be needed if the country is to become fully digital. This purpose may also involve developing new interactive and web-based services as demand grows for broadband and other new media.

The Graf report on BBC Online made a number of recommendations around the scope, content and regulation of BBC Online. The report's recommendations included:

- a clearer remit for online services, underpinned by sound measurement systems and a commitment to public service content free at the point of delivery through new and emerging platforms;
- more partnerships and increased external production; and
- greater expertise in the area of new media within the Governance structure.

The BBC responded positively to the report in October 2004, and the Green Paper reflects a number of Graf's proposals. In particular, it makes clear that the BBC will have to continue monitoring the balance of content and services on the site to ensure that they remain in keeping with the principles and public purposes to be enshrined in the new Charter.

**10. We also believe that the BBC’s regional broadcasting commitment needs strengthening and would urge the Corporation to consider further ways of ensuring high quality local and community broadcasting. We also recognise and welcome the important role the independent community broadcasters will need to play.**

### *Government Response*

The Government recognises that the BBC’s role in the nations and regions is a key issue for Charter Review. Indeed, one of the five new public purposes for the BBC proposed in the Green Paper relates directly to the BBC’s role in representing the nations, regions and communities of the UK by:

- Reflecting and strengthening our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences;
- Making us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities within the UK.

This is supported by consultation and research undertaken by the Government as part of the Charter Review process that revealed that the public generally valued the information broadcast by the BBC about their area or region, but that many people still felt that the BBC is too London-centric. They also thought that there was a role for the BBC to reflect the lives of different communities back to the whole of the UK; not just back to those communities themselves.

We expect the BBC to provide network programming that reflects the activities and cultures of the diverse range of different communities within the UK, including bringing audiences together across the UK for shared experiences, and to reflect modern Britain’s diversity through the on-air portrayal of ethnic minorities, those with disabilities and those from other minorities in mainstream as well as specialist programmes. The BBC should provide a range of programming reflecting different religions and other beliefs appropriate to multi-faith Britain. We also expect the BBC to provide news and current affairs programmes on television at a regional level, and to maintain its network of local radio services and locally-focused internet sites. Together, these services should continue to promote community debate and localised learning.

In addition, the concept – touched on by the BBC in only the broadest terms to date – of an “ultra-local” service is one that could, in a fully digital world, bring production and programme-making within the reach of many more people. There are possible implications for commercial competitors, and the BBC should explore the possibilities with Ofcom.

In line with Ofcom’s recommendation, the BBC should consider what scope it has for expanding its contribution to regional programming. The BBC should not simply compensate for any reduction of ITV regional output.

Devolution has changed the political fabric of the UK, and the BBC should continue to provide a larger amount of dedicated programming in and for each of the devolved nations (Northern Ireland, Scotland and Wales). That should include provision in indigenous minority languages across a range of platforms.

**11. We recommend the BBC publish a strategy for promoting UK films, and should do so in concert with the UK Film Council. We further believe there is a strong case for a substantial increase in BBC funding for both feature films and short films and in the exhibition of modern UK films.**

*Government Response*

The Government agrees that, as part of its role in stimulating creativity and cultural excellence, the BBC should put together a film investment strategy to ensure that the best new UK films are shown to a wider television audience. The BBC film strategy should reflect other aspects of BBC strategy, including its commitment to original content, its contribution to skills development and training, and the way in which it reflects the UK's cultural identity and its different communities.

**12. The BBC should retain its commercial subsidiaries, but must compete on demonstrably fair terms with the profits used for the benefit of public service broadcasting.**

**29. We recommend the BBC establish a clearer and more transparent separation between its public service and commercial activities. In addition, Ofcom should be provided with powers to regulate the BBC's commercial activities along lines similar to those applying to commercial broadcasters. These powers should provide for effective ex ante competition regulation.**

*(Joint response)*

The Government generally agrees with the Committee.

Our view, backed up by consultation and research, is that the BBC should be encouraged, as now, to generate as much income as it can through commercial activity, including the sale of programme rights. However, each commercial activity must be tested to make sure it provides value for money and supports the BBC's core purposes.

We also note the broad conclusions of the BBC's own review.

We also agree that the BBC should establish transparent separation between its public service and commercial activities as set out in recommendation 29. There should be no cross-subsidy for commercial services, and all commercial businesses should be rigorously and transparently regulated.

On regulation, the Green Paper makes clear that we will consider further whether it might be simpler to clarify the separation between matters of internal BBC housekeeping and those of external regulation that could be left entirely to the competition authorities. There is a lack of confidence in the current arrangements, where the BBC's Fair Trading Commitment combines these two elements. We will consider whether, in addition to its powers of external regulation, Ofcom might also be given a power of approval over the BBC's internal rules, as a form of ex-ante regulation.

**13. We recommend that BBC World should have applied to it standards of content analogous to those justly associated with the excellent radio World Service. We recommend that the Government commences consideration and consultation on the case for a television version of the BBC World Service.**

*Government Response*

As with representation of regions, the Government recognises that the issue of international broadcasting is a key one for Charter Review, and another of the five new public purposes set out in the Green Paper proposes that all BBC activities should contribute to:

- Making UK audiences aware of international issues and of the different cultures and viewpoints of people living outside the UK;
- Bringing high-quality international news coverage to a global audience through radio, TV and new media.

The BBC's commercial services also have a role in supporting this purpose by showcasing the best of UK creativity, culture and talent for global audiences, thereby generating additional value for the BBC licence fee payer. However, it is important that all such commercial services are also linked to the other public purposes of the BBC.

We note the Committee's recommendation regarding BBC World. It is clearly right that the BBC should be required to strive for excellence in everything that it does, particularly in those services that are funded from public sources. However, BBC World is a commercial service funded largely by advertising and as such not analogous to the BBC World Service. The two services were conceived to fulfil different objectives, and different editorial standards rightly apply.

With regard to the case for a television version of the World Service, we acknowledge that increasingly widespread access to media other than short wave radio means that the question merits consideration – indeed it is raised in the Green Paper for consideration. However it is important to bear in mind that television services are, in general, considerably more expensive to set up and run than are radio services. Any move to a tri-media offering would need to be financed by a strategic reprioritisation by the World Service from within its existing funding.

**14. While both BBC Three and BBC Four could certainly be improved, it will be an increasingly important feature of public service broadcasting to cater for niche, as well as generalist, tastes. They should remain as targeted channels, and not recast as clones of BBC One and BBC Two, as recommended by the Barwise review.**

*Government Response*

The BBC's initial response supported Barwise's idea that BBC3 and BBC4 should increase their reach and share but argued that this should not be at the expense of their distinctiveness. The BBC has reservations about making the channels more mainstream and notes that, while one of the key aims of the whole package of BBC digital channels is to drive digital take-up, this should not be the overriding aim of individual channels.

We support the BBC's attempt to broaden the appeal of both BBC3 and BBC4, while agreeing that they should remain distinctive within the terms of their original approvals. We will look to the BBC Trust (described in more detail in the response to recommendation 31) to define the remit for these services more precisely in service licences, and to monitor their performance closely.

**15. We recommend that the BBC continues to seek proactively the views of the public through audience research, viewer feedback, advisory bodies and broadcasting councils. The BBC should include in its annual report the results of its consultations and dialogue with the wider public.**

**16. We recommend that the BBC formally and regularly consults teenagers and young adults about their interests as consumers of BBC services, deploying appropriate modern communications technologies to improve the process. The details and outcomes of such consultations should also be published each year in the BBC's Annual Report.**

*(Joint response)*

We expect the BBC Trust to maintain a “contract” with licence fee payers, setting out the ways in which it will measure and respond to public opinion. The Green Paper sets out some options for inclusion in such a contract, including the use of audience research, open consultation and advisory councils. It also sets out options for ensuring that the Trust is open and transparent.

**17. We recommend that the BBC renews acceptance of its duty to provide a wide range of educational and informational programming, and high quality entertainment across a diversity of genres.**

*Government Response*

The Government agrees with the Committee's recommendation.

We suggest in the Green Paper that, whilst the mission to ‘inform, educate and entertain’ is still relevant to the BBC, it is no longer sufficient. To retain a distinctive role, the BBC needs to have a more closely defined set of purposes that can be understood by the Corporation, by commercial rivals and by the public. With that in mind, we have set out in the Green Paper what we feel should be the five central purposes for the BBC over the period of the next Charter: sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; representing the UK, and its nations, regions and communities; and bringing the UK to the world and the world to the UK.

The purposes are set out and explained in more detail in the Green Paper.

**18. We recommend substantial increases in the BBC's independent production quotas for television, radio, and online services and we note the BBC's recent announcements in this area. It is not sufficient, however, for the BBC's independent production quotas simply to be increased. Fostering new, distinctive and independent voices around the UK should be a sustained requirement of the BBC and subject to effective, external and independent scrutiny.**

*Government Response*

The Government believes that the licence fee should constitute venture capital for creative production and should support a strong independent production sector. The BBC needs to make sure it broadcasts the best, most innovative programmes, and that means giving independent and external producers a fair chance to compete to get their ideas commissioned.

In the Green Paper we commit to considering two options for reform in television – the BBC's own proposals to create a new ‘window’ of fairer creative competition and an increase to the current 25% quota for independent production. In addition, we welcome the BBC's proposal to extend the 10% voluntary quota for independent production in radio to new areas of programming but would like to hear views on whether this is sufficient. The Green Paper

recognises that the BBC has a key role in fostering creativity and nurturing talent. The new governance structure will provide for rigorous transparent scrutiny of the BBC's performance.

**19. We recommend that top-slicing the licence fee to fund public service provision by any body other than the BBC should be rejected.**

#### *Government Response*

The Green Paper makes clear that the Charter Review process will guarantee licence fee funding for the BBC for the ten years of the next Charter.

Ofcom's review of public service broadcasting has raised a number of additional questions about the availability of future funding for PSB on other channels. We want to look at these questions in more detail.

We therefore suggest that there should be scope for further consideration, towards the end of the switchover process, as to whether there is a case for distributing public funding (including licence fee income) more widely to recipients beyond the BBC.

**20. We cannot support Ofcom's Public Service Publisher idea as it stands. However, this proposal merits further consideration in the future.**

#### *Government Response*

The Government welcomes the debate that Ofcom has prompted around how to maintain plurality in the provision of public service television. Various proposals have been forward, in the context of Ofcom's report, for a longer term solution to any diminishing of that plurality.

Ofcom itself has suggested that a new entrant could be needed. It has put forward a potentially exciting proposal that there should be a competition for new public funding to run a public service publisher (or PSP) that would place greater emphasis on new digital technologies in making programmes available beyond traditional broadcasting. Others would prefer to address the specific concern that Channel 4 might face significant financial threats in future by finding a way to offer the Channel a direct stream of public funding. And the Independent Panel put forward a proposal that a newly constituted Public Service Broadcasting Commission might be given power to take funding away from the BBC in poorly-performing areas and to allow other broadcasters to compete for it instead. It is also argued that, as the digital environment develops, commercial broadcasters will of their own accord increasingly produce and broadcast content that we would traditionally classify as PSB.

To provide some flexibility, we propose that there should be a review of:

- the case for plurality
- Channel 4's longer-term position;
- whether any public funding, including licence fee income, should be distributed more widely beyond the BBC, in order to sustain plurality and competition in public service broadcasting (and, consequently, whether the level of the licence fee needs to change);
- how any such distribution might take place.

We propose that the review should take place towards the end of the process of digital switchover. However, the Secretary of State would retain the power to order an earlier review of the options for maintaining plurality in public service broadcasting if he or she deemed it to be necessary at any point.

**21. The licence fee remains, as our predecessor committee stated, the least worst way of funding the BBC. While it is regressive and unfair on the disadvantaged in society, the evidence we received clearly indicates that there is no other viable and credible alternative which would ensure the current universality of access.**

### *Government Response*

The Government agrees that the licence fee remains the most appropriate way to fund the BBC. The arguments in favour and against the various methods of funding are debated in detail in the Green Paper. Having considered them all carefully, we have come to conclusion that, in the absence of better alternatives, the licence fee remains the best option for the period of the next ten year Charter.

Changes in technology will in future allow audiences to watch television programmes in a variety of different ways without needing a television set – for example over the internet or via mobile phones. The collection of a fixed charge based on television ownership may become difficult to sustain in the longer term. Planning should start ahead of time to establish whether any alternative funding models, particularly subscription, may need to be reconsidered after 2016. This should be an issue for further review as the process of digital switchover nears completion.

**22. So long as the licence fee remains the principal funding mechanism for the BBC, responsibility for setting its level should rest with the Secretary of State, subject to continued Parliamentary sanction. The process by which a funding formula is reached must be made transparent and public. We do not anticipate there being persuasive arguments in favour of above-inflation increases beyond 2006-07 when the current funding settlement ends.**

**23. We recommend that the operation of concessionary schemes, for example in relation to accommodation for residential care, be reviewed by the DCMS to ensure that they are effective and consistent and that oppressive anomalies are eliminated. Consideration should be given to extending concessions in other areas of multiple occupation such as student halls of residence, live-in staff accommodation and service barracks.**

### *(Joint response)*

The Government currently sets the level of the licence fee and there are no proposals to change this arrangement.

In the next phase of Charter Review, we want to look further at the operation of the licence fee, its level, and the way it is collected and enforced. To decide what future settlement is appropriate, in the next phase of Charter Review the Government will conduct a funding review to weigh up very carefully the overall costs to licence fee payers of the BBC's existing services and any proposals for new obligations or services. Decisions will need to balance these costs against the benefits to be gained. The funding review will be run by Government. It will take independent advice on a range of issues including the value for money of the BBC's existing services and will take account of the public's views.

We believe the current scope of licence fee concessions is about right. However, we will re-examine any anomalies in the existing licence fee concessions policy, particularly in the accommodation for residential care (ARC) scheme that applies to sheltered housing.

**24. We recommend the BBC carry out further work on the development of easier payment methods, including by credit card. People who pay by installments must not be financially penalised for doing so.**

**25. The BBC should report annually on the collection of the licence fee, providing an assessment of its equity, and the operation of concessions and proposals for their modification or extension.**

**26. While payment of the licence fee by households which actually have a TV is a legal obligation, we remind the BBC that the finances it receives from the licence are a privilege. The Corporation should use a less menacing style of advertising campaign.**

**27. We believe non-payment of the television licence should become a civil matter. In the meantime, Lord Justice Auld's recommendation that fixed penalty notices be introduced in respect of TV licence non-payment should be implemented.**

*(Joint Response)*

We will review the existing licence fee collection policy. Collection currently costs around £150 million each year and the Independent Panel noted the 'clumsiness' of the current arrangements. We will consider whether new technology allows collection to be conducted in a more cost-effective way, and whether, for example, increased use could be made of direct debit and internet payment schemes. As the Green Paper makes clear, we will also be looking further at how the licence fee is enforced.

**28. We recommend that Ofcom's regulatory role in relation to the BBC remains substantially the same, for the time being. We believe that Ofcom has too many other duties for it to be an effective regulator of the BBC in its entirety.**

*Government Response*

There are two areas in which the current relationship between Ofcom and the BBC might be re-examined. The first is the regulation of basic production quotas and programme standards – characteristics by Ofcom as 'cross-industry regulation'. At present, some standards and quotas are regulated by Ofcom, some are regulated by the BBC Governors and some responsibilities are shared between the two. Some people argue that these responsibilities should all be handed to Ofcom to regulate rather than being shared with the BBC's governing body, since they are basic public service broadcasting requirements that Ofcom also apply to commercial channels. Others consider that such a move would threaten the BBC's editorial and strategic independence and its direct accountability for the way that licence fee income is spent – they argue instead that the BBC's own governing body is best placed to regulate it in all these areas. We want to give both Ofcom and the new BBC governance structure time to bed in before considering again the distribution of responsibilities for this sort of 'negative regulation' of standards and quotas. We will review the position five years into the new Charter.

The second issue relates to competition regulation. Ofcom is the sectoral competition regulator for broadcasting and has the same Competition Act powers over the BBC as it does over any other broadcaster. The OFT, similarly, is involved in competition issues relating to non-broadcasting activities (eg. online activity, rights issues). We fully support this position – it makes no sense to duplicate expertise in this area. We also think Ofcom's expertise should be used to help assess the market impact of BBC activities and services – by conducting impact

tests themselves for new services and agreeing the method by which tests will be carried out in other areas (such as changes to existing services).

We do not think Ofcom should be given an additional, open-ended ‘ex ante’ power to ensure the BBC acts fairly – we believe that, as proposed, this would cut across the BBC Trust’s overriding duty to uphold the public interest in this area. But if evidence is put forward for more tightly defined powers, in specific areas, we would be prepared to consider it. Ofcom will retain its “ex post” Competition Act powers to intervene if it considers the BBC has abused its position.

There is an outstanding question relating to the Fair Trading Commitment that the BBC Governors apply to BBC commercial services. On regulation, the Green Paper makes clear that we will consider further whether it might be simpler to clarify the separation between matters of internal BBC housekeeping and those of external regulation that could be left entirely to the competition authorities.

**30. We recommend sittings in public by whatever the BBC’s governing body turns out to be; except where matters of commercial confidentiality are concerned.**

#### *Government Response*

The proposals for governance are set out in detail in the Green Paper.

One of the key elements of those proposals is that the BBC should become more directly accountable to licence fee payers than has previously been the case. We believe that, in order to gain the necessary trust from the public and commercial competitors, the BBC will need to display greater transparency in decision-making and greater openness to criticism and complaints than it has to date.

New e-forums, AGMs and open meetings are three of the options we have set out for consultation.

**31. We believe that a fundamental alteration to the responsibilities of the BBC Governors is required. We recommend that the governance of the BBC should be separated into its two component parts; meaning corporate governance on the one hand, and regulation and maintaining the independence of the BBC, on the other, by formally reconstituting the BBC Board of Governors as an independent body. Governors should be appointed on the basis of relevant experience – particularly in the media – and charged with the specific role of regulating the BBC and maintaining its independence. Corporate governance of the BBC should be supervised by the executive board augmented by independent non-executive directors appointed in accordance with the Combined Code on Corporate Governance for listed companies. This new management board would discharge its duties as if the BBC were a public limited company and in accordance with the principles of the Combined Code.**

#### *Government Response*

The Government’s proposal on BBC governance is consistent with many of the principles set out by the Committee.

We propose the creation of a new body that we have called the ‘BBC Trust’ (a working title) to take on the oversight role, with ultimate responsibility for the licence fee, embodying the public interest and representing the views of licence fee payers. The Trust would approve or reject broad BBC strategies and would determine top level annual budgets. It would then assess performance and hold the BBC to account.

Responsibility for delivery would be delegated to a formally constituted Executive Board, chaired by the Director General or, at the discretion of the Trust, a non-executive. The Executive Board would oversee the day-to-day management of the BBC, developing programme strategies, delivering the BBC’s services and taking all detailed financial and operational decisions within the framework established by the Trust. It would contain a significant minority of non-executive Board members, to offer support and an external perspective.

Our argument in favour of this model is set out in detail in the Green Paper.

**32. We recommend the nine o’clock watershed be retained, and remind broadcasters it permits rather than mandates the later showing of content aimed solely at adults.**

#### *Government Response*

The Government agrees that the nine o’clock watershed remains important. We welcome Ofcom’s proposals to maintain the obligation on broadcasters to observe the watershed, and to ensure that the transition at the watershed to stronger material is not abrupt and takes account of factors such as school holidays that might increase the number of children present in a given audience.

**33. We believe that it will be all the more important in the future that broadcasters develop robust and widely understood new means of signposting programmes that might cause offence to certain viewers.**

#### *Government Response*

Currently, broadcasters have a responsibility to provide viewers with as much information as possible about programmes that contain material that may cause harm and offence so they can make informed decisions about what to watch. In addition, clear and unambiguous warnings about the content of a programme should be provided where there is a significant risk that viewers may otherwise be unprepared for material that may shock or upset them.

The Communications Act requires Ofcom, in drawing up its programme standards code, to consider the extent to which broadcasters can bring to the attention of potential members of the audience the nature of a programme’s content. Ofcom proposes to maintain a requirement on broadcasters to provide appropriate information on content that may be unsuitable for under-18s or that may cause offence.

Ofcom also has a statutory duty to promote media literacy, including developing better public understanding and awareness of the technological systems available to regulate access to electronic media based material and control what is received. One objective of its strategy is to investigate, with broadcasters and other industry stakeholders, how viewers prefer to receive information about the nature of challenging content.

**34. We recommend that for online content, a self-regulatory approach by the BBC should continue, but that this be governed by considerations analogous to those applying to broadcasts. This injunction should also apply to licensed broadcasters.**

### ***Government Response***

The Communications Act does not impose regulation of Internet content. The Government has worked closely with the industry to ensure that the system of broadcasting licensing and regulation was clearly distinguished from the Internet, which had not previously been the case as the 1990 Broadcasting Act pre-dated the Internet.

The general duties of the BBC Governors apply to all their services, including online, and we expect the same to be true of the new Trust. We also believe that licensed broadcasters will maintain online standards so as not to alienate audiences, but that online users will understand that these may be different from broadcasting standards.

The BBC has made alterations to its online service in the light of Graf's conclusions and recommendations. These included a revised remit more closely aligned to public purposes and/or programme-related content; changes to commissioning processes to increase the amount of content commissioned outside the BBC; tighter, more transparent governance; and a deliberate precautionary approach to the impact of BBC investment on the wider UK market. It has made good progress in developing a more detailed remit, which is clearly linked to the aims outlined in *Building Public Value*. The new remit that it proposes has four elements: serving the Corporation's public purposes as articulated in *Building Public Value*; creating a deeper relationship with the licence fee payer and greater accountability; continuing to act as a trusted guide for users; and balancing public value against market impact.

While committing to focus resources on content that has educational and democratic value, the service must continue to cater for the tastes of all licence fee payers. It should play a key role as a benchmark of innovation and quality, developing original and engaging content to attract new users and give those with more experience the opportunity to engage creatively with the site. The BBC will also have to continue to monitor the balance of content and services on the site to ensure that they remain in keeping with the principles and purposes of the Corporation eventually enshrined in the new Charter next year. We expect the service licence developed for [bbc.co.uk](http://bbc.co.uk) to provide a high level of clarity, for all interested parties, about the boundaries of the site.

**35. We believe that the BBC, under new governance and management and with the new business plans recently announced, must grasp the nettle of the efficiency and effectiveness of its core spending on programme production and acquisition – which it seems it has courageously begun to do. It should have done so before now. If necessary it should establish a project board comprising both internal expertise and perhaps personnel seconded from the National Audit Office and the independent production sector to assist in the process of comparing BBC norms, values and practices with those from elsewhere.**

### ***Government Response***

The Government agrees that efficiency is an important consideration, and welcomes the examination that the BBC has been undertaking into its own efficiency. We believe that licence fee payers need to feel confident that waste is kept to a minimum, though detailed decisions in this area are for the BBC and not for Government.

In the next phase of Charter Review, we will assess the funding needs of the BBC in order to set the level of the licence fee. That work will include a technical assessment of value for money. The funding review will be Government-run but we will seek independent advice on a range of issues, including the value for money of the BBC's existing services, and will take account of the public's views.

**36. Our scrutiny must be matched by a new culture of openness at the BBC, and rigour among the BBC Governors, leading to a wholesale renewal of the Corporation's reporting of its performance, and added value, to the Secretary of State, to Parliament and, thereby, to the licence payer.**

**37. We regard the area of accountability, and concrete mechanisms and measures for improvement, as a crucial test for the DCMS in its development of detailed proposals for its prospective green paper.**

*(Joint response)*

The BBC Trust and Executive Board will be required to work to explicit protocols, detailing the processes for interaction between them, with a view to ensuring clarity, openness and transparency. The Trust will subject decisions to public engagement and objective evidence-based assessment and the presumption will be that its decisions are made public, together with the evidence and other inputs which have informed them.

We support the view put forward by the BBC, in *Building Public Value*, that new tools are required for setting the BBC's detailed remit and measuring the Corporation's performance. We agree in particular that every BBC service should have a detailed service licence – more details about the proposed service licences are included in the Green Paper.

We also support the BBC proposal for the development of a public value test, but would like to see it developed further. We would particularly welcome a wider debate on the ways in which it will be possible to measure public value (beyond the simple popularity of a proposal, which may be a crude and misleading indicator).

The Trust should have the most substantial role in the process of approving or rejecting BBC proposals for new services. At present, the Government is responsible for this process. In future, the Trust should be able to carry out the detailed, public work of analysing proposals on the basis of Ofcom's market impact assessments, audience opinion and other evidence. The Trust would then make a recommendation to the Government if it wanted to approve a new service, and the Secretary of State would only be able to veto such a recommendation on the grounds that due process had not been observed. We also envisage the Trust being given other levers over the Executive, to use if things go wrong with an existing service, and more details are given in the Green Paper.

We are proposing to separate delivery functions, which relate mainly to the management and delivery of BBC services, from the oversight function that we think should aim to uphold the 'public interest'. To undertake this public interest role, the BBC Trust will need to be clear about what actually constitutes the public interest, and the concept of a public interest remit and an associated set of general aims and duties to safeguard the public interest are also explored in more detail in the Green Paper.

Finally, we believe that the BBC's governing body needs to be re-oriented. Rather than sitting in the BBC facing inwards towards its management, as the Governors have tended to, the Trust needs to sit at the top of the Corporation facing out towards the public and the rest of the broadcasting industry. All public services need to be accountable, and the BBC Trust must demonstrate through its actions that its principal obligation is to the public, not to the Government or to the BBC itself. At present, the public sees the Governors as too remote and bureaucratic, not genuinely listening or responsive. Licence fee payers are effectively the shareholders in the BBC. The new BBC Trust needs better, clearer structures of accountability and engagement, to give licence fee payers some rights of ownership. The protocols that govern

the behaviour of Trust members should include a requirement to maintain a ‘contract’ with licence fee payers, setting out the ways in which the Trust promises to measure and respond to public opinion. The Green Paper includes some options for inclusion in such a contract.

**38. Our recommendation is that the BBC should be placed on a statutory basis by Act of Parliament at the earliest opportunity. However, this legislation should not be rushed and should be published in draft for pre-legislative scrutiny by a joint committee of both Houses. Given the current Charter expires at the end of 2006 – which may not leave sufficient time for these pre-legislative and legislative processes to take place – we recommend a five year Charter to cover this interim period. In the event that, at the end of this five year Charter, no Act has been passed then the Charter should be subject to expedient extension, as it has in the past, until the legislation we recommend is in place.**

### *Government Response*

The Government has carefully considered the option of establishing the BBC by statute but is not persuaded of the case for change. The Green Paper summarises the pros and cons of statutory status as opposed to chartered status. As indicated there, we are concerned that, if the BBC were to be put on a statutory basis, it could well be more, not less, vulnerable to detailed Government intervention. If an interim five-year Charter was granted, as the Committee suggests, the whole process of reviewing the BBC – this time with additional Parliamentary stages – would need to begin again after only two or three years. We have accordingly concluded that a new ten-year Charter can best provide the certainty and independence that the BBC needs during a period of rapid change in broadcasting. But the Charter will also have a clear end-date, which will ensure a further full-scale review of the BBC’s role and purpose at that stage.





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