

**Independent Panel on Charter Review
Governance and Regulation Seminar
3rd December 2004**

Lord Burns: Well, good morning, good morning, everyone. I now would like to welcome everyone to this which is our final seminar on the issue of the BBC Charter renewal. The series started back in July and we've covered a lot of ground from the BBC's purposes and funding through to culture and sport. We've looked at the arguments and the evidence that will help to contribute and inform the government's thinking as it works towards a Green Paper in the New Year. The debate today has been very helpful, I think, in helping us to concentrate on those issues. I think we have been able to really investigate quite a lot of the things and expose the arguments to scrutiny. We have tried to reflect some of these in the paper we published this week called 'Emerging Themes', a copy of which is in your delegate's pack. As our paper outlines, we believe establishing an appropriate system of governance and regulation did assume considerable importance and significance across the seminars. We started with this subject way back in July and it is that that we now want to wind up with today. I've got some housekeeping issues before we get into the main subject. We have cameras in the room which are providing a live stream of footage via a link on the Charter Review site and direct to the BBC's website, and as those of you who have been here before will know, that means that we have to turn off our blackberries and mobile phones, and so if I could ask you to do that, please, and the loos are located just opposite the seminar room and all of the emergency exits are marked. And finally, will you please keep the security badges and name badges on at all times, please. In terms of the people we have here, Howard Davies, a colleague from the independent panel, is going to help us to facilitate today's debate. Also from the independent panel Tim Gardam, Janet Finch and Alice Rawsthorn. Alan Budd was also supposed to be here but he seems to have come across an urgent problem about visa applications in the Home Office, and so I'm afraid it turned out, he wasn't able to make it. In order that we can have a full and rounded debate, we're delighted to welcome Michael Grade, Ronnie Hampel, Patricia Hodgson and Clive Jones, Anthony Salz, Richard Tait, and Philip Graf will be joining us after the coffee break. The purpose of today, as I say, is to discuss and to debate the BBC system of governance and regulation, and what we propose to do is to use the first session to take up some of the themes that we try to set out in our paper this week in terms of the changing context and principles, and then to provide that as a sort of anchor, then to look at the wider context, well, for that to become the wider context in which we look in rather more detail in the second session at some of the three broad models we've set out and any other options people wish to raise. We'll have a coffee break at about 10.20 and after the break, we're going to look, as I say, in a bit more detail at each of them. We want to look at the strengths and the weaknesses, what if any problems there are with any of them. I don't see this as a kind of jury process whereby we're going to vote on each of these

options and come to a decision as to which one to back, as tempting as that may be, so the real, what I want to do and be able to get through today is to make sure that we have looked as far as we can at the strengths and weaknesses of each of them and how it is that they would work and what the problems might be. So if I can, I will just say a few introductory remarks to the first session on the changing context and principles. In June, *Building Public Value* was published, and of course Michael at that stage acknowledged that the old model needed some reform and at the seminar we had in July, we discussed some of the general principles that came out of that, and as I said, we planned all along that we would come back to this issue at the end of the seminar series, and that is because we see the issue of governance and regulation as being quite, well, throughout the series it's been a very important issue which cropped up at a variety of positions, with regard to most of the issues, and we want to try and wrap that up. The starting point that we have taken throughout this has been that we wanted to maintain a strong and independent BBC. That was a remit that we had from the Secretary of State, and we've approached it in that way rather than in a sense on a wide canvas about the whole merits of the BBC at all, so we begin with that as an important starting point. We then in the paper that we produced on Wednesday, we tried to deal with three broad themes, which were of course linked. The first was looking at the changing media landscape, mainly brought about by the digital revolution, very familiar to most of the people who watch this industry, but we thought it was worth setting out some of these things because they do have, we believe, an impact on some of the issues about governance and regulation. The point that in the multi-channel world there are going to be more of some types of programming, films and sport for example, and there are likely to be less of other types and particularly of PSB-type programming. The expectation that we will see a declining audience there for some of the main channels that are now free to air, the pressures upon ITV, Channel 4 and 5 to become more competitive and possibly unwilling to continue to cross-subsidise PSB programming, and also the growing importance of intellectual property and people's ability to time-shift through the use of PVRs, etc. And the general conclusion which, of course, Ofcom reached which was that in the future it's likely to mean less PSB in total and also probably that the BBC is going to have a larger share of that, and as far as we're concerned, that pushed us to the conclusion that there should be greater clarity about the BBC's purposes and remit, particularly with respect to PSB broadcasting, that is of course not original. The same ideas are in Ofcom's work, the BBC's Building Public Value, but we do think that it involves more focus on core PSB purposes that are distinctive from the commercial market's provision, that there should be limits to what it is that the BBC should be seeking to do, and that it should be defined in a way where there are some chance of measuring this independently and verifying the process. We've stressed in the paper we don't believe this means, and there was a big discussion of this at the television seminar, in the sense that the BBC should only be involved in what some people think of us, worthy television and radio, but that we want to see high-quality television and radio, and the important role of the BBC has got to

play as a trusted provider in leading people through this world. We also felt a theme that had come out of many of the seminars was that the BBC had to see itself more firmly placed within the wider market-place in this world as we move forward. We do want to continue to see competition in the wider sense, because plurality and competition does raise standards, but to try and distinguish that from some of the notions of head-to-head competition and sort of narrow competition, cross-scheduling, imitation of programmes, etc., and this has also of course implications for commercial activities. And as we discussed at the first seminar, one of the challenges that this all leads to is how you get from the high level purposes to the ability to make objective judgments about performance and how it is that one designs a range of measures and measures that can be applied, and some of the tests that we set ourselves, and we discussed them last time, was, you know, can you begin to say and define in advance what type of programming could be commissioned? Can you do it better than has been done before? The whole business of testing afterwards whether or not that's been achieved. You know, can we through this process say a little bit more about how the successes and mistakes of the past have taken place. And a theme that has also come out of a lot of these discussions is how we keep pressure on the BBC throughout the charter period and not just on the period leading up to the renewal of the charter, which is, you know, may sound a cynical comment but it's actually a comment which people make quite frequently in this context. Now, this all led us to believe that these changes, these pressures actually sharpen the task of the functions of the governors, both in relation to what we've described as their governance function and in a sense their regulatory functions. We thought it had implications for funding and for governance and regulation. I don't want to get into funding issues today. We had a seminar on that and although there is some impatient and there are some issues about contestability of funding, etc., I don't think that is central to this morning's discussion, but what we did conclude from our own experience of being at these seminars was that on governance, the issues about remit and some of the points I've raised, you know, did point to the sharper role for governance to make sure that the BBC is properly positioned in this new world, that it does have a very clear view about what it is that it should be doing, and that it has the capacity to ensure that the BBC delivers on this throughout the period. We did raise also some issues about how the world of governance and regulation generally has been changing in terms of demands for accountability and scrutiny, about greater openness, about the move away from self-regulation, concerns about handling conflicts of interest, the requirements for clearer definitions between the roles of executives and non-executives, and indeed a closer distinction between governance and regulation functions, and many of those things are going on in the world at large and we feel that they also have to be taken into account when we look at this in the context of the BBC. Now, with that sort of general introduction, I would like to spend the first part of the session not getting into the detail of the particular options or models that we have presented or any other models, but to have a discussion about some of these wider themes and issues, and the extent to which there is a changing landscape, a changing environment

which does move us towards pressures to change the arrangements from what they have been over the last 10, 20, 30 years. Michael, do you want to

...

Michael Grade: Thank you very much, Terry. Good morning, everyone. Well, as you have made very clear in your paper, Terry, the BBC's system of governance is an important, if not *the* important element of this particular charter review process. I absolutely agree. It is pivotal to our own shared objective of a strong and independent BBC, but in debating the principles of best or good governance and what might be the right model for the BBC, we should not lose sight of the key objective here. It is to fulfil the BBC's primary purpose, to deliver something of value to everyone, but before tearing up the existing model by the roots, we must remember that over 80 years after its creation, the BBC does still enjoy widespread support from the licence fee payers. This would suggest that in terms of outcomes, the current structure, for all its faults, does actually deliver. For licence payers, the key question is, are we getting value for our money? Quite rightly, they want quality programmes that inform, educate and entertain in return for the licence fee, programmes that are efficiently made and delivered. However they might wish, in other countries, nowhere else in the world is there a BBC equivalent. Where a public service broadcaster exists in other countries, they're limited either by lack of scale and scope, dictated by little or no public funding, or by government control that removes any notion of independence. So what is it about the BBC's system of governance that needs to be changed, if the governors are to deliver the best value to licence fee payers, and safeguard the BBC's independence from political interference. The criticisms include the following: lack of accountability to licence fee payers; lack of real independence from management; and confusion between the roles of governing and regulating. The Board of Governors, current Board of Governors, readily agrees it needs to change, and change radically to meet these valid criticisms. That is why we put forward our radical ideas in building public value, to which, if I may say, your document doesn't quite do justice, but we can probably fix that today, I'm sure, because you did actually publish in advance of this opportunity to hear about them. But if we keep in mind throughout today and the debate that will ensue, what is in the best interests of the licence fee payers. I'd like to suggest there are actually five fundamental principles of governance that any model must deliver: political independence; rigorous stewardship of public money; accountability to licence fee payers; clarity of roles; and equally important and very little discussed yet, practicality. Will what is proposed actually deliver, will it work? In building public value, the governors proposed radical reforms to establish effective independence from management. Not so detached that we couldn't exercise close scrutiny over management's activities, but distant enough to increase our objectivity on behalf of the licence fee payers. I'll say more about the BPV model later and significant changes we are developing to increase that accountability, and indeed awareness of what is happening in the sector around us, particularly in the private sector. This will also include the governors' complaints system, an AGM, systematic consultation party

inter-actively with licence fee payers about the BBC's annual objectives, a code of conduct for the governors, and an independent annual appraisal of the Board itself, an independent annual appraisal of the Board's behaviour and performance. I do hope the BPV model receives equal time during this debate in the interests of impartiality. It is radical, but it is also simple, economic and effective, and it builds on the bits that actually work and are already making a difference. These changes are already making a difference to the way that the Board is operating. It is, we believe, one model that meets all the pre-requisite principles of governance. I think the onus today is on others to prove why deconstructing and replacing our revised model will meet all of these five principles. Thank you.

Lord Burns: Thank you very much. Patricia.

Patricia Hodgson: Could I first of all say how helpful I thought the analysis is. I mean, it really gives you tools for prioritizing outcomes, but I think we should really heed that 'will it work' point and beware of the delusion that any system will be perfect. I mean, if you think about all the debate that's gone on in relation to corporate governance in the private sector, clearly what's come out of subsequent reviews ending with Higgs have been improvements but they've got nowhere near to a nirvana of perfect corporate governance, otherwise we wouldn't be buttressing the normal corporate model with Sarbanes Oxley in the States and increasingly rigorous legislation and regulation to try and meet continued perceived difficulties. So in practical terms, what we're seeking to do here is to improve the present situation in relation to the BBC and governance, and I think we should acknowledge that whatever emerges will have some flaws, so the crucial thing is, what flaws can we live with and what are non-negotiable, and the criteria that the panel came up with you can divide into two halves really. They are outcome-type criteria and there are process-type criteria, and I think that distinction is very important because outcome criteria should be non-negotiable, should take priority, whereas processes are susceptible to being tweaked and being delivered in a number of ways, and I think the non-negotiable outcomes – I've got a sort of overlapping list, not quite Michael's list – in the order in which the panel came up with them, certainly serves the public interest and should be independent. I would add something about programmes being, you know, whatever formulation, creative, innovative, informative, inspiring, because while that sort of criteria for programmes could be covered by the public interest criteria, actually they're so important that they deserve a separate heading. I mean, the public interest could be narrow and dull if we're not careful. Clearly the BBC should also be accountable for public money, command public confidence, and co-exist on equitable terms with the commercial sector. Now, the rest of the criteria are actually secondary process points, you know, involving the public in decisions, using particular assessment criteria, distinctions between regulation and governance, execs, non-exec, good audit mechanisms, transparency, whatever that means in the current fashion. They're important but they're not ends in themselves, so I would suggest that when we get on to Part 2, we kind of give two points to

outcome criteria and one point to process criteria, and once we interrogate the models in relation to outcome criteria, then we may be able to think how preferred process models can be moved between, and with the crucial, crucial test, will it work.

Lord Burns: I think that's very interesting. Ronnie.

Ronnie Hampel: Perhaps I should say at the outset that I have two interests here, first because I chaired a governance committee in the mid-90s in the corporate field, and secondly I was chairman of the United News and Media in the early part of the 2000s, and at the time when they owned a third of commercial television, so I've seen the thing to some extent from both ends. I have a real dilemma with the word 'governance', because it appears to have crept into our language in the last ten years, and it means anything to anybody. To me it's in a sense good management, in a total sense, and I'm very seized with the point that Michael made that at the end of the day, what the BBC is about is delivering its purpose, and whilst the accountability is critical, the accountability diverts executive management from its primary task of delivering the purposes, therefore accountability has got to be appropriate and streamlined, and in reading the papers that I've done over the last week, I'm very struck with the fact that the BBC finds itself accountable to innumerable bodies, all in their own way worthy: DCMS, Commons committees, Ofcom, Competition Commission, National Audit Office, you can go on and on. All of those are a diversion in one sense from running the BBC's public policy obligations, producing good broadcasting as a national service. Now, it seems to me that whatever is ultimately decided has got to recognise the practicality of the point. You made the point that Michael made, that in the sense of public accountability which is of far great emphasis today than it was 20 years ago, that public accountability must be appropriate, streamlined and recognised to be wholly efficient and independent, but it mustn't be done by a whole series of bodies which divert the management and effectively make it impossible to do their primary task.

Clive Jones: I find it interesting that Michael started from a position that, because there's general support for the licence fee and I'm very firmly in the camp that supports the licence fee, there therefore is a general support for the present system of governance. I don't think that's necessarily true. I think there is a fundamental problem here, and it's picking up Ronnie's point in part, about this distinction between governance and regulation. Governance in a normal sense I guess is what I would regard non-executive directors as doing within a commercial company, or indeed to some extent within Channel 4. They're there to keep the management good and honest and deal with general issues of that type, but you know, there is a great difference between governance and regulation, and you know, Michael used the phrase that, you know, the governors should be detached from the management, but not so detached. You know, you can't be in two camps, and either the governors become non-executive supporters, scrutineers, overseers of the management, but effectively part of that management, as

non-executive directors would do as a commercial company, and if they do, then there has to be another outside regulator. Now, whether that's Ofcom which is what I would prefer, because I think across the ecology of British Broadcasting regulation should apply equally to, whether they're commercial public service broadcasters or state-funded public service broadcasters, or it's Ofgov or Ofbeeb, I don't mind. But I think there has to be a sharp differentiation between the two, because I think governance is very different from regulation.

Michael Grade: Regulation of the private sector in broadcasting, and most regulation, if not almost all, I haven't done my research but most regulation is required because there is a need to hold the balance between competing interests, the interests of the shareholders in your case versus the interests of the viewers and the advertisers. Somebody has to hold that rein to make sure that your company, whatever it's called these days, I've forgotten, your company, forget who you work for, Clive, your company has a primary objective which is to deliver value for shareholders. Advertisers have a say, the viewers, there's a public interest in the outcome of what you do. Somebody has to hold the ring between those competing interests, if there is a conflict, which quite often there is, moving the news, what have you, and that's where a regulator comes into their own. The BBC's slightly different, because there aren't competing interests. There are people that have an interest in what the BBC does, the private sector and so on, whose interests have to be taken account of and haven't been sufficiently in the past, but actually the Board of Governors and the management are not in conflict. They have a single purpose which is to deliver the purposes of the BBC, whatever the national debate produces by way of a consensus. There isn't a role for a regulator in the traditional sense that you understand and I understand from the private sector, what a regulator does. So I think it's not quite as simple.

Lord Burns: Howard has spent some of his life as a regulator, of course.

Howard Davies: Yeah. I'm not sure it's the issue between the need for a regulator because the governors' and the management's interests are potentially different, but the licence fee payer and the management's interests are potentially different.

Michael Grade: Why?

Howard Davies: Because the management might rationally think that the larger the licence fee, the better. The licence fee payer might rationally think something else.

Michael Grade: Yeah, but the governors don't decide the level of the licence fee.

Patricia Hodgson: That properly should be a matter for government ... (overlap)

Howard Davies: No, but they decide how it should be used.

Patricia Hodgson: ... because it's a hypothecated tax, only government can decide that.

Michael Grade: There's no conflict there.

Howard Davies: No, but they decide how it should be used.

Michael Grade: That's a different point to the size of it. I don't see a conflict there.

Howard Davies: But the size of it and how it should be used and how you define public sector broadcasting is something that somebody needs to do.

Michael Grade: But that's governance, that's not regulation, that's governance.

Howard Davies: Not necessarily.

Michael Grade: Regulation in that case is to make sure that what has been agreed has been delivered.

Lord Burns: I have some problems with this. If I ask myself, you know, where are some of the problems, you know, in terms of whether the present system is working, it seems to me that, you know, if you have a company which may increasingly be playing a monopoly role in terms of public service broadcasting, it is receiving a large amount of public money, it doesn't have to persuade people to pay this money, it actually is in receipt of this money, it seems to me that there is an inevitable tension that then takes place between the people who are given this money and whose job it is to use it to the best of their purpose in terms of delivering public service broadcasting, and the customers, and you have to have a process in there which ensures that the people who've paid the licence fee, who have no choice about paying it, are receiving value for money, and of course much of this in a sense you've recognised this yourself. It then comes down to the question of how specific one is about defining what it is the BBC is going to do for the money, the process by which it is held accountable for that, even within the organisation in terms of ensuring then that it delivers what it says that it will deliver. The evidence that I've mentioned many times before, and again I think you agree with it, the evidence that there have been some questions about whether the present system does this very effectively, I've always pointed to this extraordinary range of reviews that the DCMS keep conducting. The fact that the DCMS are all over the BBC conducting things seems to me to be itself quite strong evidence that there is some question as to whether the

processes which are ensuring the delivery of what is expected, you know, is satisfying all of the parties, to say nothing of the, you know, the issues that you yourself have raised about complaints, etc. and whether or not many of these other feedback processes, which again regulators often have a role in doing, so the fact that there isn't a shareholder management conflict seems to me that there still is quite a lot of tension between the management of the BBC and a number of other stakeholders in this process. The question is, can that all be handled by the governors or does it require some greater separation of what we loosely call the governance role which we think of as being the management part of it, and the process by which we ensure that the remit is properly designed and is then delivered.

Michael Grade: I'm just going to ask Anthony to respond, if I may. I just want to say that there is no disagreement between us and what needs fixing. What we need to get to is the point where we can agree how's the best way to fix it without, you know, building on the best bits ... (overlap)

Lord Burns: I agree. Maybe the words governance and regulation in a sense become a slight distraction given this ... (overlap)

Michael Grade: It is a distraction, I think.

Lord Burns: ... because they don't quite capture what we have in mind, but I think most of the people who've been engaged in this debate do have a view in a sense as to where the problems are and where some of the tensions are in this.

Michael Grade: Yes, but I don't think it's helpful to keep describing the BBC's behaviour in the past tense, because the behaviour was currently changing quite ... (overlap)

Lord Burns: I know, I know.

Michael Grade: ... quite dramatically and it implies that we're trying to hang on to a system of governance that is outmoded. It was effective for X number of years but it's in desperate need of modernisation, desperately need to acknowledge how the world has changed around the BBC, the impact of the BBC on the private sector, etc., the requirement for accountability. We're absolutely at one with you on that. The question is ... (overlap)

Lord Burns: How far do you ... (overlap)

Michael Grade: ... how far do we go and please don't anybody use the old BBC style of governance as a stick to beat us with, because it's changing as we speak.

Lord Burns: We don't want to do that, Michael. I mean, I hope we make clear in the paper, you know, that we would say there is widespread agreement that the existing system ... (overlap)

Michael Grade: Yes.

Lord Burns: ... have problems ... (overlap)

Michael Grade: Yeah.

Lord Burns: ... some of which I have mentioned. The debate then has really become one of how far down a line towards some greater separation ... (overlap)

Michael Grade: Yes.

Lord Burns: ... between the management and the government as one goes and in a sense you're putting forward a position at one point and we're just simply putting forward some other possibilities ... (overlap)

Michael Grade: Absolutely.

Lord Burns: ... which go separately down that road.

Michael Grade: Absolutely.

Lord Burns: So I mean, I don't want us, you know, we none of us have any interest in setting up the old system as being the benchmark necessarily but I have to use it to point out that tensions can exist ... (overlap)

Michael Grade: Absolutely.

Lord Burns: ... in this world, even though it is not a private sector.

Michael Grade: Absolutely.

Lord Burns: It's not the same as the tensions that you get in the private sector.

Michael Grade: Absolutely.

Lord Burns: I mean, Anthony, could I just ask Janet to ...

Janet Finch: One very big point which is supplementary to that. We could get distracted in drawing parallels on regulation by all the other examples that I think we have used or possibly could use, involve the regulation of an industry where there is more than one independent organisation being regulated, whereas what we're talking here about is a model for the

governance and regulation if we can't get away from that language of the BBC, which actually is about a single organisation, and I think that in talking the language of regulation, it's quite difficult to distance oneself from the imagery of the regulation of a whole industry, but we have to try and do that in order to get something that's appropriate for the BBC.

Lord Burns: Anthony.

Anthony Salz: Terry, I confess that I fall into the trap potentially of coming at this from a corporate model, from a sort of value-to-shareholders model, but it's been the easiest way in which I can myself look at it. I suspect Howard comes at it from the excellence-of-regulation viewpoint, but he will attack me on that in due course. So when I, and I've only been here a short period of time, so I've clearly bought into, in agreeing to perform this role, a belief that I can make a contribution to delivering value in terms of value to the owners of the BBC. I have not myself thought that there is a tension involved in that with the executive team that it's an impossible task to perform, otherwise I would not have undertaken it, so I sort of have a self-interest in that sense. So, I have been bemused somewhat by all this debate about governance and regulations, try and understand, in the way that lawyers can do for hours and hours. What actually this really means, and I think I've inevitably come to a bit of a conclusion that if you look at the corporate model, what we're in the business of doing as governors is delivering value to the public, so whereas if you're in a commercial organisation with shareholders, you're very focused on value for shareholders. We're also focused on exactly the same sort of thing, dynamic of value to 24 million licence fee payers, and as Michael says, I don't think we feel there is any sort of conflict in that, so it's a governance role in my mind. The particularity of the BBC looking at it in these terms is that whereas in the corporate shareholder model, you have various accepted measures of value and they're quite mathematical and you can see them in accounts or you can see them in the share price. In the case of the BBC you have enormous difficulty of defining what we really mean by public value, and there will be a range of views about that and you'll get a number of reviews carried out which will reflect individuals or panel views, but across 24 million licence fee payers, you will get a fantastic range of views. And what building public value has been about was trying to put a better framework around, actually measuring, it's difficult, but measuring public value. So I think on that sense, we are very focused ...We've had all sorts of reviews around trying to deliver value, so, Ronnie Hampel, etc. etc., and they have all concluded that the unitary board in terms of delivering value, is a good model. It seems to me in the case of the BBC there is a good case for having a supervisory model with interaction with the management team because of the difficulties around public value, and we have felt as a group of governors that there are a whole range of tasks that we have to perform which require us in this essence of value to take external advice and to seek public views in various forms. The range of reviews that have recently been undertaken on behalf of DCMS have been the response in a sense to new activities being undertaken by the BBC which, according to the grant of the

permission, has required a review to take place, but we would feel that those are reviews that we as governors could commission and act with the benefit of that. So the stuff about building public value, the governance unit is critical to us in a sense of our ability to perform our role as governors in delivering public value. I'll stop very soon.

Lord Burns: No, it's fine.

Anthony Salz: The bit about regulation that interests me is, what is regulation, and Howard has his view. To me, the lawyer, regulation is indeed about those cases where we have to look after interests, well, the BBC has to look after interests, or someone has to look after interests, which are not the licence fee payer interests. They are interests of the individual who feels they have been damaged in some way by programmes, or the commercial interests where it has a right or interest in being treated fairly, as has been explained. So I think we do have a interest, Richard and I in particular, Richard more on programmes, me on fair trading, we have a interest in finding processes which satisfy the public desire to see objectivity and impartiality, and I think we do accept that there is room for more debate about how we do that in a way which satisfies the perceptions of this different interest, this real conflict of interest. So that is where I have seen regulation. And one last thought, a defect of my argument is around accountability, because in the shareholder model, these guys out there, shareholders, however many there may be in different companies, who have the ability to remove the directors. It's not very effective actually in terms of individual shareholders but collectively or through institutions, they can do that. In this particular structure, and tied to the independence of the BBC, there is a bit of a difficulty around the removal of the governors if they're not doing their job, and so I put that in the accountability box and it's why I'm building public value. We've also tried to spend a bit of time on ramping up the accountability stuff, so, and we can talk about that more later, much more transparency, much more availability, and then it's a question of whether we actually take account of that, and if we really don't, what happens. I think, for my own part I would say this, wouldn't I, but I think with the amount of opportunities that there are in accountability terms, to obtain views, to undertake reviews, to publish reviews, etc., it is a little difficult to contemplate, although the governors may have different views about it, a little bit difficult to contemplate, they will ignore the range of views out there. It will be their responsibility to judge which views to follow, and so, you know, the various structures I think people are looking at, are looking at in a sense putting another structure on to make sure the governors behave themselves.

Lord Burns: Could I just say that on this issue about looking at the shareholder models, and I can see that obviously shows a different kind of tension, I mean, but there are other activities where it is still seen that you need a greater degree of separation. I mean, for example we have lots of mutual financial service companies, you know, in the days when we had building societies, they were mutuals, it was still felt that there had to be a

regulatory structure that looked at them because the conflict there was between the management still, you know, and whether the management were doing all of the right things with the right time horizons, and the customers and the people who were buying the products. Higher education is another area which is now, you know, it's not a shareholder issue but it is subject to considerable amount of regulation, as Janet and Howard know only too well, because again the issue that concerns people is not about shareholders, it is about the tension between the extent which the management are doing those things that they want to do and they're doing the things which they enjoy doing, the people who work there, and again the customers because you were involved in rather more complex processes, and so, you know, there is, you know, clearly you can draw separation in terms of say the shareholder type system but I don't think, you know, in my view, that is not enough. The fact that you don't have shareholders to me is not enough to say therefore that you do not need a degree of separation, and as I now repeat, I regard this as being a debate about how far you need a separation between the management and the governors or whatever the body is who are taking on the responsibility from the government to deliver the value for money from ... (overlap)

Michael Grade: I think it's absolutely fair to say that there has been little or no separation, and that the governors have been very vulnerable for all kinds of reasons which we don't need to go into, but have been very vulnerable to being captured by the management. That's happened, you know, that's why the DCMS police have to come in after the crime's been committed and clean up the mess, because the governors have signed off on something purely on the say-so of the management. I absolutely agree with you. The question is, how far do you take separation and if you take separation so far to the point that the elastic actually snaps, are you then still able to influence outcomes in the way that the present system actually allows, so it's the engagement and it's making sure that if you have a system which allows that intimacy and engagement, that you then, it's absolutely enshrined that there is as a certain point, there is disengagement while the governors go off and work out whether what the management is saying is actually valid.

Lord Burns: Ronnie.

Ronnie Hampel: Can I make what's a very obvious point? We have to recognise, as Michael has said, that things have moved on and the requirements today are wholly different from the requirements before. Dame Patricia talked about Sarbanes Oxley a moment ago. It is the view in the United States that Enron could happen again even with Sarbanes Oxley in place, so what is critical is that the people who are charged with the roles, whether it be at governor level or at some supervisory level, are competent for the task for the next ten years and not related to history. So to me, structure is important, but people choice is even more important.

Patricia Hodgson: I think that is absolutely right and the reason I mentioned Sarbanes Oxley was exactly your point which you put much better, that it is clear that Enron could happen again with a corporate board, and when we look at, an integrated corporate model board, when we look at what is required in a publicly-funded public interest organisation, by golly, you've got to have something better than that.

Ronnie Hampel: I accept that entirely, but you see, what Sarbane Oxley and others have done, and indeed in my view the new corporate governance regulation in the UK, is increase the accountability element of boards' responsibility with a commensurate time requirement, and not necessarily radically improve it.

Patricia Hodgson: Yes.

Lord Burns: Richard.

Richard Tait: I think without getting into the issue of structures, I think following up on what both Michael and Ronnie have said, I think we do need to focus on the, if you like, the cultural issue of separation between regulators and the management, that in particular if you apply these arguments to what's happened in commercial public service broadcasting, the evidence there would seem to be that regulators, and Patricia put it much better than I could, regulators can't affect, you know, create a business like broadcasting which is very much like value judgments and decisions rather than easily measurable financial or strategic decisions. It's about the way a place is run and that's what, as Ronnie says, the purpose of the BBC is to produce great programmes. That's about how you run it, what the values of the people are, how effectively they fulfil their obligations. The evidence of the external or the separate regulation, let's make it separate rather than external, of public service broadcasting in the last 15 years has been pretty bleak, I would say, in that the purposes which parliament set for public service broadcasting have basically fallen away, in terms of news or regional programmes, and you've then got to ask yourself, 'Is that inevitable or is that partly the result of the inability of an external regulator,' and certainly in my experience in commercial television, the external regulator was not able to engage with the culture of the organisations it was dealing with. It was looking from the outside at outcomes and had some fairly limited forms of measurement and control. And that's a very different model from a model which says that the governors of the BBC have to engage intensely with the way in which the management approaches the delivery of the public service outcomes which the public have decided it should deliver. And that's not arguing for any particular structure, but I think it shows that on that continuum, there is a point where if regulation becomes too distant from the management of the organisation, you may get the opposite of what you want, which is the management are actually freer to act than you would like, and it's arguable that the management of commercial television over the last 15 years has really been able to do more or less what it wanted, without very much

intervention from the regulators. Is there very much regulatory input into the changes that are happening in Channel 4 at present, for example? There's a great political argument currently about regional programmes. Is the regulator playing the central role in this? No, there's a political debate about it but it's not really evidence of the regulator being deeply engaged in the culture of the organisations it is regulating. That's the nature of having separate regulation, but it's just an area where you try and work out what the fight relationship between the two functions is. You have to be careful that greater separation brings dangers with it.

Lord Burns: Tim.

Tim Gardam: I agree with what Richard says. I agree a lot with what Richard was saying, but I think there are some other cultural questions which have to be taken, if you like, from the other side of the fence, and I put them in the context in which this whole debate is going on, which is the context of fundamental change in the nature of broadcasting that digital brings with it. I was surprised in a way at what I saw as listening, the logic of the BBC's argument that the interests of the governors, the management and the licence fee payers are all necessarily the same, and the whole issue therefore of the BBC's relationship to the rest of the broadcasting market was a secondary issue, because it seemed to be almost the BBC was beginning once again to accrue to itself a monopoly of purpose which nobody else could share. The BBC had a set of values which set it apart. Now, of course, the BBC's values are very specific, but I would say two things. The first is that the licence fee payer obviously has access to all broadcast media, and it's government policy that public service competition should remain a key part of the overall cultural make-up of broadcasting in this country, and therefore I think there is that point of relationship between what the BBC does and what other broadcasters do in terms of their public value. Public value is not just a monopoly of the BBC, which has to be taken into account, because I think the issues of the BBC are not just those of market impact. They're also those of public service impact, and the question, and of course, the question of balance, is how far an external perspective is necessary to judge the BBC's actions in those regards. And so if, as is right, I think we've all agreed that the BBC's role is not just to produce market failure, stuffily boring programmes you don't want to watch, but to produce programmes which have a vibrancy in the culture. It means a key defining cultural context of a BBC programme is its distinctiveness, and that immediately leads to the question, distinctive from what? And if you accept that in this digital market there are going to be many more points of collision of what the BBC does with what other media providers are doing, you come to the question of how is the BBC's distinctiveness to be clearly defined? In order to do that, I would argue that you need as common terms, common currency with which to assess that distinctiveness, and if the BBC is going to be convincing in showing what added value it does provide in that distinctiveness, it does need to work with some independent co-ordinates which cannot solely come from the BBC. So that does lead to an issue, how far can the governors,

even with the role, this is when the reforms were being outlined, be the locus where that independent judgment of which those co-ordinates should be, whereby the BBC's distinctiveness should be judged, how far can the governors provide that? And that I think has to be taken into account in terms of what is actually going to happen in the digital world if public service competition is going to be maintained.

Michael Grade: Terry, can I just very briefly, I think Tim has very, very eloquently just described the public value test.

Tim Gardam: But the public value test is coming from co-ordinates that the BBC ... (overlap)

Michael Grade: No, the public value test will be put up for consultation and discussion. It'll be, before it's implemented, we will discuss it with every conceivable stakeholder from the DCMS to the licence fee payers to the private sector, other PSB's, to Ofcom. You know, it will have no value unless everybody buys into it and has confidence and trust in it.

Tim Gardam: But who makes the judgment in the end on the public value test? The governors do.

Michael Grade: The governors cannot, I mean, the buck's got to stop somewhere, Tim. The governors cannot apply, put so much emphasis and importance on the public value test unless it enjoys a consensus. There will be some who argue at the edges. There has to be a consensus. We have to build a consensus amongst all the stakeholders that you have described, so that there is public confidence across the industry, the public and everybody, that the public value test will actually be as objective as it's possible to create it, and we're committed to do that, so you know, I think your intervention has been terribly helpful, if I may say so.

Lord Burns: Why do you seem so surprised at that?

Michael Grade: Because, I'm not sure that Tim believes there's a long-term future for the BBC.

Tim Gardam: Why on earth do you think that?

Michael Grade: Well, I don't think you're fundamentally a believer in the licence fee. I think you believe in subscription.

Tim Gardam: I'm a fundamental believer in public service competition.

Michael Grade: Yes, but that's not in the gift of the BBC ... (overlap)

Tim Gardam: No, but ... (overlap)

Michael Grade: ... to provide that.

Tim Gardam: But I think the BBC can be very influential in the way it behaves, whether there are incentives for other broadcasters, provide public value in what they make.

Howard Davies: I think he who is not with us is against us line is not going to be very helpful in clarifying ..

Michael Grade: I was provoked.

Lord Burns: Well, maybe Clive will provoke you even more.

Clive Jones: No, I won't. I'll actually start from the position that I am a long-term supporter of the BBC and a long-term supporter of the licence fee. Tim I think has brought in one of the key issues, and I actually partially disagree with Richard about the failure of the regulator over the last ten years. I think the world has been changing over the last ten years, and the key issue is that the model that brought the best public service broadcasting system in the world, the best television in the world, is broken, and by the point of analogue switch-off, it's bust. You know, the system that had ITV as a commercial public service broadcaster supported by advertising, a state-owned corporation like Channel 4 also supported by advertising, the BBC supported by a licence fee, it doesn't work any more. You know, that valuable spectrum for which we made lots of public service broadcasting and had a licence to print money, by the time of analogue switch-off, that spectrum is worth to ITV about £25 million. Yet, even though we live in a changing world, ITV is still the principal regional broadcaster in the UK. You know, we're about to have a new licence which puts on us 50% of network production outside London. We'll still make more regional news, deeper regional news, more non-news regional programmes than the BBC, even if there is a reduction in those areas. However, the key issue here is, are we going to try and manage public service broadcasting across the whole ecology of British television or not? One of the recommendations in the Ofcom interim PSB review is that as non-news regional programmes produced on ITV because our ability potentially to fund those might diminish, they should be transferred to the BBC. Now, Ofcom can't require that. Now whether, you know, that is a good thing or a bad thing, whether that builds public value or diminishes public value, you have commercial public service broadcasters regulated by Ofcom and the BBC regulated by the Board of Governors, but also managed by the board of Governors. There's a crucial issue here also of complaints, you know. The governors decide on complaints, yet they're also part of the management and supervise the management that, you know, might originate those complaints. So I don't think you can deal with the BBC in isolation. Do we want a competitive supply of public service broadcasting? I think we do. I think it would be a terrible thing for British democracy if it became a monopoly of the BBC, and how are we going to fund and how are we going

to regulate it across the piece going forward, as we move to this crucial point of analogue switch-off.

Michael Grade: Just make a quick point about Ofcom. I'm sure we're going to come on to that, but I would just say that I think the issue about whether Ofcom would be, which was your proposal, you're a supporter of the BBC coming under Ofcom, do you not as an ex-TV journalist and news person yourself, do you not have a concern that so much regulatory power over the whole of the media of the UK would be concentrated in so few hands in one single body? Does that not give you some cause for concern?

Clive Jones: No.

Michael Grade: You don't think that Ofcom would be too powerful?

Clive Jones: No.

Tim Gardam: Michael, isn't there one argument there though, which is slightly on the same point but of governance, that if Ofcom, I'm not saying I agree that it should be, were the sole regulator, it would mean that all BBC editorial judgments would be framed within those of the overall broadcasting universe, which would make it more difficult for the government for instance to put a different set of anti-bias criteria into the controls of BBC journalism other than in the rest of the broadcast markets. It might give you greater protection.

Michael Grade: I think we're well past the point where the BBC thinks that its own programme codes and guidelines should be at odds with any that exist. We are working and have worked very hard to create a common standard.

Tim Gardam: But I'm saying, it gives you protection, it seems to me that.

Michael Grade: Yeah, but we're already regulated by Ofcom on a number of issue anyway, so I think, you know, I think that point's been covered.

Lord Burns: We're in danger here of getting into one of the models which I want to do after the coffee break, and I would like to see if there are any points that people in the audience want to raise which have not been raised so far, so I will take points if they're in a sense general points but not ones which are now getting, you know, too far into specific options at this stage, because I want to do that after.

Patricia Hodgson: Can I just make a general point about Clive's comments? You don't have to see everything as either/or. I mean, of the three things you particularly expressed concern about, complaints, equity with the commercial sector, and then what is public value and how is it delivered, they don't have to be, and probably it's not necessarily appropriate

for them to be delivered by the same mechanism. I couldn't agree with you more that complaints should all be dealt with by Ofcom and there's a proper appeals mechanism. Ofcom has new powers on abusive, a dominant position and so on, which we've not yet seen exercised, and I suspect will make a very great deal of difference to some of the problems that have been genuine problems in relation to the BBC over the last few years, but those are things that are very distinct from what is the nature of good programmes and public value, and the idea that, I mean, going back to the points that we've made several times, the idea that people completely divorced from the broadcaster and the creative process, however good they are, they're bureaucrats, should make those judgments, and should make those judgments across the whole of British broadcasting is extremely concerning, and that's where too much power as distinct from the regulatory, single regulatory for a sector but not creative and editorial.

Lord Burns: Does anyone out in the audience have any strong views that they wish to put forward on the range of issues we've been talking about so far?

Audience Question: There's one point bringing you sort of back to earth and we're very much in the stratosphere of management. We're in the stratosphere of management, to bring it back to its sort of really basic level which seems to address a lot of the concerns of consultation and public input to the BBC. It always surprises me, there's really no vehicle, no programme for public feedback. There is a programme of course on Radio 4 called *Feedback* and there's another more jokey on the television called *Points of View*, but it seems extraordinary that the BBC at all levels doesn't make specific provision for the public to input in a really interesting way and make a critique of the BBC itself. I mean, it could even be done possibly by an outside organisation, I mean, the nuts and bolts are neither here nor there, but the BBC seems to shy away from that and I think that's something when television is being advocated to go into the courtrooms. Why the BBC won't point a camera back at itself with more relish I mean is something that I think ought to be considered.

Lord Burns: OK.

Audience Question: Dominic McGonigal: Just a sort of observation really, that there's been an awful lot of focus on the separation between governors and management, when I think actually the real point of debate should be separation between what the governors, as governors of the BBC, can do and what they can't do, and I think, it seems pretty clear to me that, I mean, the governors' role is to deliver that public value, to deliver for the licence fee payer, you know, good public service broadcasting, pretty straightforward, very similar to any corporate function. What it can't do is balance the interests of other stakeholders, contributors, competitors, etc., so it's the fair trading and the sort of commercial impact which I think then has to be taken

out of the governors and put somewhere else, wherever's appropriate in an economic regulator.

Audience Question: Robert Beveridge: I'm Robert Beveridge, Napier University in VLV. I myself fail to see how putting the BBC entirely under Ofcom would square with Ofcom's policies of light touch regulation and leaving it to the organisation to carry out as much independent internal monitoring and regulation as possible.

Lord Burns: I mean, we will look at this in more detail when we look at that model. OK, Richard.

Richard Tait: No, just to say on the point of the lessons from history, I absolutely agree with Clive that the motor for change was multi-channel television, technological change and economic pressure. What I was saying is that certainly in my experience as an executive in commercial broadcasting, the regulator was not able to have much input into that process and that that is the danger. It might well have been the same if the regulator had not engaged. I'm simply saying that despite the good efforts of the regulator, the structure of greater separation meant the regulator, in my experience, was not engaged either in the detail of what was going on or whether there were any alternative ways in which the problem could be dealt with, because that was not what an external distant regulator could do, and therefore it's not a question about whether the outcome would have been different, the process certainly would have been different with a more engaged regulator.

Lord Burns: Ronnie.

Ronnie Hampel: I was slightly puzzled about the debate between Tim and Michael over this public value thing. I mean, to me anything, if it's going to be effective, has to operate over a period of time. It can't be short term. So I see it as perfectly logical for the BBC governors to set out what they think their public policy responsibility should be, that the public through parliament in some way, and there has to be a mechanism for this, should react as to whether that is acceptable at this point in time, and then periodically for the BBC governors to account for their stewardship, and then everybody who's interested can make their point of view, and in the ultimate, if it's unsatisfactory, you fire the governors. At a lesser level, you can do other things, but it has to have a time period, and anything under five years, for example, would make no sense to me.

Lord Burns: OK. Well, thank you very much. Let's break there, and what as said, I want to do in the second session is to look more closely at each of the options. We will start with Howard introducing the subject. We will make sure that we give ample time, Michael, to your public value test, building public value model, sorry, and yeah, at times some of the comments will again probably cut across models, but also to a degree we want to be able to

look at each of them, because my ambition at the end of this is to have out of it to ensure that we have properly considered each of them and what the strengths and weaknesses, and a test which I think we rightly put to it is, you know, which is, will it work, I mean, which after all is as important as anything else. So we'll break for 15 minutes. Thank you very much.

Lord Burns: I'm now handing over to Howard to introduce the next session where we're going to look in more detail at the three models and see if we can make sure that we have properly covered the issue of the strengths and weaknesses of each of them. Howard.

Howard Davies: Thank you, Terry. And I might just begin by saying a word or two about the approach we took to this problem, and I hope you will believe that we didn't begin with any particular prejudices, in spite of what Michael said about Tim's views, I don't believe we started from an anti-BBC posture. In spite of what Anthony said about me, I don't believe I started from a regulatory point of view. We're just half-a-dozen women and men of goodwill, and Terry. What we tried to do was to look at the changing marketplace and I think we'd hoped for a bit more discussion about that before the break, but maybe we can still manage that this afternoon, but we do feel, I think, that the changing nature of public service broadcasting, which has been well explained in the Ofcom papers, Tim referred to it this morning, is an important point to consider in looking at the BBC's governance for the future. The fact that there is a risk of it becoming a monopoly provider of public service broadcasting, and that requires you to think about the governance model. We also looked at developments in corporate governance elsewhere, in the private sector, but also importantly, and there's been less discussion about this in the public sector, because other parts of the public sector, there have been quite a lot of changes, and also in the governance in the twilight world of regulatory bodies themselves. And of course if you look at all of that, you have to acknowledge that there have been quite a lot of changes since 1927, when the BBC model was really set up. We also tried to acknowledge the impact of Ofcom. This is a point, I think, separate from whether Ofcom should be the regulator or not, but the nature of its role, it's own involvement in the definition of public service broadcasting is something that you have to look at as part of the background. That's quite tricky because, of course, it is currently in a state of evolution, and Michael's now taking his jacket off, recognising that we're starting to get to the crucial points. We also felt we needed to recognise the particular circumstances of the BBC and we certainly don't think that there is any off-the-shelf solution available for this problem from another industry or another company. And the conclusion really, which I think was probably well expressed in the BBC's own paper as anywhere, is that there is a pressing need for reform. I gather that the first draft of the BBC paper said that there was a need for a makeover, but that language has now been removed. But the question is, what? And following Michael's strictures to look at what we are trying to achieve, we did try in the paper to set out what our criteria were, and I will refer to this once or twice in my remarks, so people might like to

have paragraph 5.14 in front of them, which were the criteria we attempted to use in looking at the various options for the future, and you will see that there are, as it happens, ten commandments in there, and we felt that the old BBC scheme probably fully met only about four of them, which is maybe higher than the average score for a cabinet minister these days but not enough. We then looked at the three, or maybe four models, because model two divides into two, and in the paper we produced brief summaries of the pros and cons of each and that clearly would need more work, and we'll do more work on the detail before we give our final advice to the government, but we hope that the broad outline's sufficiently clear in this paper. Now, Michael told us off at the beginning for not showing this to the BBC in advance, but we thought it was better to set out our views and then debate them publicly rather than some cooked-up solution. Model 1 is of course the revised BBC proposal, and Michael said we need to take that rather than the old scheme, and I think we have done that. We have not attempted to put up an Aunt Sally of the old governance model. We've attempted to look at things as described in the new building public value papers, and that of course is not totally straightforward because, and I don't say this critically, it is something of a moving target, because clearly you're evolving the notion of the public value test and looking at the way in which this affects the way you handle complaints and fair trade, etc. So it was clearly an evolving thing here and I hope maybe we can hear more about how that's evolving in due course. There are lots of good things in this model, we think, and it could be evolved further. We suggest some ways in which that might be the case. The dilemma we see in it, which I think is one acknowledged generally, is that the more the governors move towards being regulators, as it were, the further they move across the street, the further they move away from the role as managers of the corporation. And Clive emphasised the problems of that. Anthony referred this morning to the governors now as a supervisory board, which is slightly different language from before, and that does raise in our view the question of whether if the governors do move to be more primarily regulators, whether you leave a corporate governance deficit within the corporation itself. Also, I think, this model does not fully resolve the question of the structure of public service broadcasting overall, and therefore on our ten commandments, we certainly think that for example our number three, the openness, transparency and objective, this is clearly a net improvement. I think it will help certainly with number seven on using assessment criteria which can be compared, Michael assured us this morning they were trying their best to do that, but there is still some question marks I think particularly about 8 and 9 and possibly also about 6 and 10, although maybe we'll hear more in due course about how those would work, and indeed we suggest some mitigation in the paper. So really the nub of the Option 1 is really whether there is sufficient clarity between governance and regulation, and whether if you move too far towards regulation, you leave a corporate governance deficit or you go back into managing the corporation, you leave a regulatory deficit. Model 2 which has two sub-options in it in the sense either Ofcom or Ofbeeb, has the benefit obviously of clarifying the regulatory issues. We think it also has the benefit of adding insulation from the

government and that would certainly help, for example, in dealing with the current problem which we think is rather a significant one of the government's tendency to launch a successive series of individual reviews about the corporation, and we are slightly skeptical, I would say, about whether Model 1, even though the governors are doing their own reviews and will prevent the government, because of the absence of a separate regulator. So we feel that a regulatory model built on a clear statutory regulator, whether it's Ofcom or a specially designed one for the BBC, would be better on that score. On the other hand, there are clearly cons. This would be a somewhat cumbersome process, and there is a tricky choice to be made between Ofcom and Ofbeeb. The arguments against Ofcom have been well explained already today, the danger of concentration, though in my view the concentration issue is not just about scope really, it is about depth. It's actually Patricia's point that's the right one here, I think, not just about the breadth of its coverage. And of course the problem with Ofbeeb, if you decide that this concentration issue is too tricky, is that you then could have a kind of regulatory capture, and we tended to move away from single statutory regulators for single corporations in other parts of the market. So, Model 2 helps on a number of our objectives. We think it probably would help certainly on 2, preserving the independence. It certainly would make sure that 7 were the case, because the assessment criteria would be comparable. It would be clearer on governance and regulation. Whether it would command public confidence is not completely sure. Whether it would be seen to give the BBC the kind of responsibility for its own affairs that is appropriate is clearly a question mark. Model 3, which I guess is perhaps a new one which has not been canvassed quite so extensively as the first two have been recently, we have dubbed 'Inbeeb' which is quite witty but not otherwise illuminating. And in this we would see the governors becoming more explicitly the regulators. In other words, it would acknowledge the direction that they are currently taking, but take them further across the street. You might think of it, if you like, as sort of making an honest woman out of Michael, because acknowledging where he's really going is being a regulator, but acknowledging that that does mean that he cannot do the same job in terms of the management that chairmen have done in the past. So this would involve two boards, a regulatory board which you might call a BBC commission perhaps, and a management board, with two chairmen. People immediately say, 'Will that be costly?' but we thought the neat thing would be simply to divide Michael's generous salary into two. It keeps the regulation close to the corporation which is something Michael's talked about as being important, and perhaps for that reason might be more effective because there would be a closer dialogue between the regulatory function and the management function than there might be with a separate statutory body, whether Ofcom or Ofbeeb. It would assist in pulling together the different regulatory functions which are currently exercised in a number of different places. That was a point that Ronnie Hampel made, which I think is an important one. It would develop, if you like, the public value test technology because there's no reason why the commission should not build on that and use that as the basis for its relationship with the management. It

could have advantages in terms of the independence. There would be an opportunity to pull down to the BBC commission some things that the government currently does such as its reviews but maybe other things as well. One would clearly need a careful exposition, however, which does not appear in sufficient detail in this paper at present, of the different roles of the commission, if you like, call it that, and the management board, and clearly there are some issues about precisely who does what on complaints, who does what on appointments, etc., which would need to be well articulated so that people understood the differences. We think this does well against most of the ten commandments in paragraph 14 or could do but clearly the issues of 7 and 9, and indeed 5, are not fully resolved at present. Now, we, as Terry said right at the beginning, we primarily looked at these options in relation to existing funding schemes, in other words with the existing framework of the licence fee. There is a question which we raise in the first part of the paper about whether there might come a time when part of the licence fee or as Ofcom has more recently recommended, a top-up to the licence fee goes to others to support public sector broadcasting, and there's a question then about how these different regulatory structures might deal with that, and clearly an Ofcom or an Ofbeeb could potentially do that and handle differential funding streams, directing some of the licence fee money to other broadcasters. Maybe Option 3 could do that too, but clearly Option 1 could not. However, we've set that issue slightly on one side at the moment, since we don't think that that's the environment that we're likely to be in in the immediate term. So the purpose of the paper as it has been constructed was to attempt to be expansive enough for people to understand what we're on about in these options, but not so long as to embed people in the detail. We hope that we can promote some debate on these options today, and then go on to clarify the pros and cons of each of them, and we will welcome I think input, whether from the BBC or from others today and indeed after today, if people have got some thoughts of issues that they think we haven't dealt with. So the basis of the next part of the discussion really is to tease out what's good and what's bad about these options preparatory to advice to the Secretary of State which we hope will be reflected in some way in the Green Paper.

Lord Burns: Thank you very much, Howard. Michael, do you want to open the first option. I mean, I think as far as possible, I would like to take them option by option and see if we can see the extent to which we agree in the list that we have put in here about the advantages and disadvantages of each of them. I know that it's often quite difficult to keep the discussion within a particular option, but I would like to try and do that ... (overlap)

Michael Grade: OK.

Lord Burns: ... if possible, and I'll give you, as I said, fair rights over the first option.

Michael Grade: Absolutely. I was having a fantasy listening to Howard. I think if John Humphries ever gets the 'flu or loses his voice, I think he'd be very good on the *Today* show, terrific.

Howard Davies: That's the rudest thing anyone's said to me.

Lord Burns: I hope you've noticed how Howard nowadays comes in his academic dress, to these gatherings, just to emphasise that he is no longer a regulator.

Michael Grade: Just a quick point before I get into my prepared piece, on the ten bullet points 5.14, which I think are excellent, I think implicit but ought to be more explicit are two points. One is, is it workable, you know, it has to be practical and workable. All this is fine, but at the end of the day, it's got to be workable, and the corollary of that is, it's got to be workable in order to ensure that the right outcome emerges at the other end, so I'm sure it's implicit in there but I think it needs greater emphasis. Anyway, let me introduce building public value. When I became the Chairman of the BBC in surprising circumstances, I did not do so as a defender of the *status quo*. My personal manifesto in getting the job was urgently to reform the whole governance system, beginning with a comprehensive appraisal of its weaknesses. I was delighted to find on my arrival that the Board was already engaged in just such a process. But with the help of friends and critics alike, we've identified a number of key weaknesses that needed to be urgently addressed as we prepared to publish the building public value document, particularly Part 2 which was owned by the governors. The weaknesses, criticisms, are that the Board's vulnerability under the old system to management capture; a lack of clarity about the governor's chief responsibilities, regulators or defenders of management; a lack of transparency particularly in complaints; poor public accountability; and finally a lack of awareness of the BBC's impact on other broadcasters, competitors in on-line or off-line activities. The strategy we set out in building public value is absolutely radical in BBC terms, and is addressing these four weaknesses. Let's deal with management capture. Up to the reforms, governors have had to rely really on almost exclusively on management as a provider of information and they've had a very limited resource to provide input in making objective decisions on the management's proposals. Well, that had changed radically and dramatically. We are now building a governance unit which works exclusively for the governors. Their pay and rations are decided by the governors, their, you know, performance reviews and so on are carried out not by the director general and his staff, but it was clear, they've clearly moved across *in toto*, there's no blurring of that line. The unit is beginning to be staffed by experts in a range of fields from performance monitoring to broadcast strategy in economics with access and resources to engage a wide range of external independent advisors as necessary, and it's having quite a dramatic impact inside the organisation. As a matter of fact, this week saw the culmination of three months of intensive work in which the governors have been scrutinising the four major reviews currently under way

by the management, which will have radical and far-reaching implications for the BBC and therefore the licence fee payers. In that process, we have taken external expert independent advice. We've challenged the management on their thinking and their assumptions, so we are now in a position to be able to support the strategy, not simply on the basis of the information provided by management. And we have now asked them to bring us more detailed plans, which again will be subject to external independent validation and audit before the governors are prepared finally to sign off the director general's proposals. Our only concern in this process has been to ensure that whatever the outcome of the reviews, the licence fee payer receives a better service, and this requires intimate engagement. This ability to be separate from management to achieve objective evidence and yet to engage in order to ensure deep understanding is what marks the BBC's unique system of governance and is the best guarantor of the right outcome. It is worth preserving for one simple reason: it is the only way that we can establish a direct link between the interests of the public and the actions of the management. Moving on to clarifying the governor's role, many people say the governors are inevitably torn between their duties as regulators and their duty as governors to defend the BBC management. I've never seen it as the job of governors to defend the BBC management. Rather it's their job to defend the BBC for the licence fee payer, but it really is a false dichotomy to see the governors' job as regulator as incompatible with that of governance. In commercial companies, there is an inevitable tension between regulation, which is in the public interest, and governance, which is in the interests of shareholders. In the case of the BBC, the public are our shareholders and there are 24 million of them, and for that reason, regulation and governance work best when they work together, and that's exactly what we have been doing this week, ensuring that the objectives we agree finally with management are effectively and efficiently delivered by management. This is what makes the BBC different. The reforms which we are putting in place are therefore focused on establishing clear distance between the governors as custodians of the public interest, and the management. To that end, we're introducing service licences next year, setting out clear objective criteria by which we and the public will be able to judge their performance. Those service licences of course will go out to public consultation before they are finalised. We'll carry out a regular cycle of reviews of services which we will publish. We will apply the public value test after we have got it approved and after the public consultation on the detail of the public value test. We will apply that test to any new service or major change to any existing service to make sure it really is in the public interest and that the public interest is not less than the damage that it might cause in the private sector. We'll say more about the details of these reforms later in the debate. That's a start, but we do need to go further. We are now drafting the idea, of what is rather heavily called a governance protocol. This protocol would set out the different ways in which the Board would be required to act independently of management, e.g. always reaching properly objective conclusions on management proposals, that we can demonstrate publicly why we have made the decision that we have made, and on the basis of evidence from

outside the management circle. This protocol, I think, is something that could well be incorporated into the new charter, to ensure that the behavioural changes that we are instigating actually become part of all future regimes who succeed me or the present board, be incorporated into the new charter, and would be backed by an annual independent performance appraisal of the Board's work. That could be published. I think that's important, the governors' need to feel that they are being scrutinised. On the really important issue of complaints, there absolutely is a lack of transparency about the complaints system within the BBC, particularly in terms of programme complaints and fair trading complaints. I can absolutely understand why outsiders believe that it is unduly loaded in favour of management. Both Richard Tait and Anthony Salz, two of our newest governors, are considering and are quite well down the path of proposing radical ideas for reform that will bring our complaints procedures more into the category of being absolutely in line with common laws of evidence, disclosure and so on, which has been lacking in the past. We hope to outline detailed plans fairly shortly, but we are committed to ensuring that the governors maintain an effective audit of the suitability of management systems for assessing complaints in the first instance, and that as ultimate arbiters of complaints, the governors operate a system that is scrupulously fair in hearing views of both complainant and management. On the issue of public accountability, I have to say it doesn't feel like we're unaccountable given the number of reviews and the amount of work that's going on inside. My heart leapt when I heard Ronnie's description of what we're going through at the moment, as it should be and it's right that every ten years or so the BBC should be picked up by the roots and had a good look at, but it doesn't feel as if we're unaccountable, but I quite understand the point. There is much more that we must do to strengthen our link with the licence fee payers. We are currently looking at the possibility of a virtual Annual General Meeting that would link up any interested licence fee payers around the country in a proper conversation with the governors. This could use interactive technology to build an element of voting into the proceedings on key issues, the results of which would feed into the annual report. We're also piloting new ways of engaging with licence fee payers that will see them for the first time have direct input into the BBC's corporate objectives. In conclusion, I think it would be a very serious mistake to underestimate the scale and effect of the radical reforms which we have introduced to deal with I think what we would all probably easily reach consensus on, which is the key complaints about what has gone wrong or what is not effective in the BBC. That is not to say that our model cannot be improved, sharpened up in various areas, and I hope that the debate that's going to ensue will produce some ideas of where we can improve things, but please, do not underestimate the dramatic impact of the changes that are going on inside the BBC presently. Thank you.

Lord Burns: Patricia.

Patricia Hodgson: Applying the ten commandments together with my eleventh about the programmes, but weighting them between outcomes and process, and applied to Model 1, it's quite difficult because obviously the jury has to be out on very significant changes that are only three months in gestation so far, and to an extent one's therefore got to also bring in historical evidence for the balance of Model 1, and it seems to me that historically it's delivered pretty well on four of my outcome-related, non-negotiable criteria, that's to say good programmes, independence, serving the public interest and commanding public confidence. It's been less convincing on accountability for public money and equity with the commercial sector, although we wait and see what Michael's suggestions will come up with, but as we were saying earlier, it's possible that those two outcome criteria could be met by changes elsewhere, that's to say Ofcom's new powers on anti-competitive behaviour, and in relation to public money, stronger processes whereby the NAO feeds into parliamentary scrutiny. One of the dogs that hasn't barked so far has I think been the weakness of the parliamentary process in relation to holding the BBC to account, and it may be part of a bigger issue about the way the Commons operates, but it's worth thinking about, whether that extremely successful joint scrutiny committee that acted on the Communications Act couldn't do an annual accountability process when the annual report comes out, which would be stronger and less *parti pris* than the select committee processes had been.

Lord Burns: Interesting.

Alice Rawsthorn: I would be interested in hearing from Michael how durable you consider this model to be. Do you see it as a solution that will last until analogue switch-off or beyond?

Michael Grade: Well, whatever is put in place now has got to last through whatever the period of the next charter is, I think. We can't start mucking about with the governance of the BBC in the middle of the charter, so I think it's got to be durable through to the end of ... We don't know, you know, if we're going to get a charter, we don't know how long it's going to be, but on present historical form, I'm not saying this is a safe assumption but let's assume that it will see us through digital switchover. Then the governance system, everybody's got to let it work and whatever framework is put in place to ensure that governance system is underpinned by something in writing. That description mustn't be too prescriptive that you can't tweak it. I'm not saying undo it but tweak it in the light of experience, but we should be able to through this process come up with a consensus that should last for let's say ten years.

Lord Burns: Philip. I know you weren't able to be with us for the first part of the morning. I mean, do you have any general comments on this in response to Howard's introduction, and do you have any views on this first option, any improvements?

Philip Graf: Sure. Well, I mean, I think that when I briefly in terms of my review, what was clear to me was that a number of changes had to be made and it would be fair to say that actually in building public value, a number of my concerns, most of my concerns were addressed in the sense of looking at the question of credibility and the question of capability, were the two areas that I was particularly concerned about in the matter, and I think when one looks at the models that are put out here and put out for discussion, I think that there's no doubt about it, the issue for me will be around, that the issue that actually Howard said, this question of balancing governance if you like, or balancing regulatory and balancing governance, I'm not sure I'm entirely convinced, to be fair, with Michael's point, but I understand the difference between BBC and a private enterprise and shareholders and public interest. The other point I think I would raise or make is the point that Patricia made and this question of both accountability and the question of relationships with the external market-place, external stakeholders, and there's no doubt about it that that then goes to the BBC, the question of how the BBC governors will manage that in a realistic process, and we don't find ourselves in sort of long-winded sort of Ofcom hearings or regulatory hearings, one finds oneself in a culture, in a style that actually deals with this in a way which is appropriate. I think those are the points I would wish to make. As I say, I think that the issue for me very much in the context of my review was a question of the governors' ability to deal, capacity or capability to deal with quite a number of the issues that we're faced with, and I still have reservations that one body, if you like, as it's put together, can actually effectively do that and keep the distance that it needs to keep from the management approach.

Michael Grade: Can I very quickly, just on the point about the BBC's relationship with the private sector, I think what the BPV delivers for the private sector is an absolute guarantee that before any new services are launched, any changes to existing services which will all be made clear through the service licences, before any changes, whatever is proposed by management in terms of new services, changes to existing services, building public value and the public value test is that private sectors guarantee that the governors will not approve any such change or new service until it has consulted with the private sector and looked and understood what the impact of those changes will be on the private sector, it is then for the governors to make a judgment and balance the impact on the private sector with the creation of public value on the other, and I can see very clearly that in some cases in the past, if we'd been applying this test, there are things that we would not have done, as indeed some of the changes we've made on line as a result of your report have happened. But the key thing is that we do this before we make the decision to do it, and so the DCMS police don't have to come in after the crime's been committed, or the alleged crime has been committed.

Lord Burns: Clive.

Clive Jones: I think we should all recognise that, you know, in a very short period of time, Michael and the existing governors and the new governors have come up with a system which is a considerable improvement on what applied before, and offers an opportunity for the BBC to be more robust and more vigorous both in terms of governance and regulation. Ultimately, however, this proposal fails because it's still a fudge. You know, you can't have the governors being the champion of the BBC, being the friend of the management, being part of the management team, and also being regulatory, continues the incestuous relationship, and I don't think that's good for the BBC going forward, both in terms of the ten criteria that Howard has described, and I'm convinced by those ten criteria, certainly a lot more convincing than Michael Howard's ten words. But also I take on board Patricia's point in terms about, you know, the integrity and the vitality of the programme service. Now, whether Ofcom is the appropriate body, and Howard makes a fair point of this, it's a body early on, it's evolving, you know, is this too big a task, or should it be Ofbeeb or should it be Inbeeb? In part I don't care. What I do care about is the BBC and what I do care about is now a logical separation of powers, and whether it's the governors who are the regulator or the governors stay with the management as non-executive directors, I think is largely irrelevant. But I think there has to be a separation between the regulation, overall regulation of the BBC and the management of the BBC.

Lord Burns: Janet.

Janet Finch: Yes, my contribution is along rather similar lines actually, but perhaps coming at it from a slightly different angle. The relationship between governors and management is clearly critical to this discussion. I think however that saying that casting the problem as a problem of management capture only actually gives half the picture. It's important but it's equally important that the governors are close enough to the management to be able to play the critical friend role, and to also be the owners of the decisions that are taken, because I mean, we all know that anybody who has been involved in running a complex organisation, the really difficult decisions are always finely balanced, and there is never a single right answer, and the point about having non-executives involved in those decisions is to be able to bring additional wisdom from a slightly different perspective, and to come out with the decision that everybody, executives and non-executives, are identified with, and I think despite its many attractions, this model loses that element of it, that positive input of non-executives into the decisions that the organisation has to take, so it would be interesting to hear whether there is another modification coming down the line as your thinking evolves, which not only distances the governors far enough to be able to play the regulatory role, but also enables that crucial non-executive input into decision-making to still be preserved.

Lord Burns: Good response. Philip.

Philip Graf: I'm sorry, I just wanted to add to that. I mean, I think if I looked at the ten points, and Patricia's point again may have covered this, the words like development or creative, creation or innovation or taking things forward, there's not words in there in those points, and in one sense, I mean, it may not be the purpose of regulation but I'm not sure it isn't the purpose of corporate governance to help take an operation, an enterprise forward. In some ways, and in some ways splitting the two allows that point that's just been made by Janet that you can use the governors in a non-executive role to help take that business forward as, if you like, non-executive directors might wish to do as being part of a strategy which encourages things, encourages and drives things forward, but at the same time, you know, you then need to separate, be able to have people who can step back from that process and look at that on a regulatory context, which is quite a different mind-set, and that's where I think I worry, is in terms of being able to make the BBC into something better and develop it, right. There's a contradiction in the mind-set between the two. I think that's really what I was struggling with.

Michael Grade: I think the reason that we've got to where we've got to, and this will come out in subsequent discussions on the other options, is that in the end you have to follow the money, because that's where the power is in the BBC, that's where the clout is, and the fact is that somebody's got to be responsible for the public's money, and if they are responsible for 2.83 billion of public money, they better be in a position to ensure that the outcome of the spending of that money is appropriate and meets the public's expectation, parliament's expectation, everybody else's. Now, with that in mind, that is the key to why we believe in the supervisory board and the BPV model suitably updated without running boards and with twin exhausts and turbo chargers and everything else, but that's why, you know, subsequently the other models in my judgment don't work. You've got to face up to the fact that there is 3 billion of public money that has to be spent wisely and be accounted for, and if you start splitting the role of who's accountable for that money, who approves the output, that's why the single model actually works, because you have to follow the money.

Lord Burns: OK. Tim.

Tim Gardam: Just picking up on that point, which I think is a very good point, a couple of Ron's specific questions, which I hope the BBC will find helpful. On the service licence agreement where, as I see it, the governors are essentially custodians of the licence fee, if the governors find some aspect of the service licence to be inadequate, what happens to the ... (overlap)

Michael Grade: Inadequate, did you say?

Tim Gardam: ... inadequate, you know, not to be up to scratch.

Michael Grade: Yeah, yeah.

Tim Gardam: Or a service not to be up to scratch.

Michael Grade: Yeah.

Tim Gardam: What happens to the allocation of money to that service when that service is seen not to be worth doing under the BBC's own objectives? Is that money held back, is it kept back or is it just reallocated around the BBC?

Anthony Salz: Maybe I can come to answer that question, if I can just do some of the earlier comments about, if you like, the integration between the governors in the sense of adding value to performance of management as distinct from as regulators, which I think is a very important function, and although Howard dwelt on this expression supervisory board, what I'd quite like to do is to give some indication and we can see how much people want to develop this, of what actually happens, because I suspect very many people don't actually know what we do, and that's probably one of the problems of the BBC, we haven't in the past been sufficiently transparent about what actually takes place. So whilst we consider ourselves a supervisory board and as I've explained, I think it's quite important in the sense of giving our objectivity and seeing ourselves as getting independent advice in the performance of our tasks, taking account of your reviews as very influential to that, we do meet with the management team and over a monthly day-and-a-half, we have our private sessions as governors and we have sessions in which the executive team are also present. I think, well, I've been in the job for about 4 months, we have something like nine internal reviews either done or announced, and that leaves aside your external reviews, and we've had at least four of those by distinguished individuals and we've had DCMS chucking stuff at us, or Ofcom chucking stuff at us as well, so it's been quite an interesting time. If I take one we have commissioned ourselves and was actually commissioned before I arrived was a review of BBC1 and its programmes and how well it was meeting public value tests in the prime time, and we produced that independently in the sense of outside the management team, we debated it with the management team, and it will in quite some detail, with an eye to public value as we could best perceive it, and trying to apply in the early phases some of the public value tests that are being developed, and that will now come back again in the form of the director general's programme strategy which he will be announcing. So I think we feel involved in, with degrees of independence, the creative side, trying to push on behalf of the public, the innovation. The issues that have actually been addressed lots of times, we're not unaware of these issues, because they are chucked at us by a variety of people so we try and do that. We then get to service licence and this is a sort of evolving idea, connected I think with the public value test, albeit the public value test is going to be applied to, or is said to be applied specifically to new services or big changes to existing services, where you take into account marketing pact in particular,

I think we're going to try and model services licences with the public value ingredients in them, and various specific or less specific criteria to be measured against. Where the management don't perform those service licences, I don't think we're in the business of fining them. It makes no sense. What we're about is producing excellent programmes, and therefore taking money away is in theory a weapon but it mustn't be at the, like at the expense of producing the right programmes and the rights results, so you have to find the right means of enforcing your service licence. I actually see the service licences as a method of internal governance. This is a sort of 'contract' between us, in our independent capacity and the management who are delivering, and we will use the various sort of tools of governance to enforce it in my mind, so you would. Clearly we're involved in remuneration, we're involved in money as a lever in an appropriate fashion but not for licence fee payers to suffer, we're involved in the right people in the right jobs to deliver the right results. But I don't see it in terms of the regulatory licence punishments.

Tim Gardam: I wasn't seeing it as punishment at all, but what I was exploring was that if you survey the overall provision of BBC services and the allocation of money to them, and regard that certain services are doing an excellent job with the money allocated to them, but there are other services which are not doing what they should be or inappropriate to the BBC to which there's money allocated, it seems to be the logic of what you're saying is that further money is then allocated to services already doing an excellent job, and that the essential, the licence fee itself and its allocation is not a direct part of monitoring the service licence.

Michael Grade: Well, can I come in here? The first thing to say is that if there is a poor performance against the requirements of the service licence, the governors will send for the director general and say, 'What has happened here, you know, XYZ, BBC service, it's very clear to us, whether you like it or not, it's very clear to us that this is not meeting the remit which is laid out in the service licence, nor is it meeting the requirements that are contained in the service licence. What has happened?' He or she will then come back with their explanation and be required to come up with remedial action, which may well be somebody gets fired, moved, new appointments are made. In the end it's a people business as you know, Tim, people, but the governors are in a position, unlike an outside regulator, to ensure outcomes and to hold the director general to account. The question of the money then is, there are so many dynamics in deciding the annual budget, but the annual budget is signed off by the governors and you know, if drama is performing badly across the whole of the television service, it isn't, but if it were, there's a huge debate then to be had about is it resourced or is it the fact we've got the wrong people in the jobs, they've got more than enough money and they're wasting it. You can only come to those judgments if you are absolutely deeply involved in the creative processes that Richard has been describing about how a television or a radio operation, a creative organisation, how it works. You've got to be inside to make those judgments. Now, in reaching

your conclusions, there is a moment when the governors actually quite regularly go into a room on their own. If that happened in a listed PLC, it's a symptom of a crisis. If the non-execs have dinner together or have lunch together, the Chief Executive, you know, starts trembling, because something's afoot. It's very exceptional in the private sector that the non-execs meet because in the end, there's no distinction in law between execs and non-execs, they all have the same fiduciary responsibilities and so on. At the BBC, the way the BBC works, the governors meet on their own without the management, and there is a moment where we look at each other and say, 'Right, thank you very much, we've heard everything you've got to say, we will go off in another room and we will start thinking about what you said and what we need to do.' It's natural, it's perfectly accepted part of the process in the BBC. Management don't resent the fact that we're, it works perfectly well.

Lord Burns: Could I ask Ronnie ...

Ronnie Hampel: I don't want to disagree with you on a trivial point, Michael, but in 1984, when I joined the ICI board, the non-executive directors met twice a year in the evening for dinner and has a debate about the competence of the chairman and the board, and it was nothing to do, there was no sensitivity about it because it had been going on forever.

Michael Grade: Right, fair enough.

Ronnie Hampel: I'm very seized with, because I'm not heavily involved with this, with the change that is taking place within the BBC, and in a way it's unfortunate that this review is having to take place before Michael's reforms have been fully exposed into the public domain, and I think much of what he is setting out to do, you can argue about bits of detail, but much of what he's setting out to do is clearly far more acceptable than the previous management of the BBC, which seemed to not have any form of objective assessment of what the director general and the executive was about. I'm also seized with the observations that Philip and Clive have made about, if you like, in today's world, the need for there to be, perceived to be something external to the BBC, which makes some form of judgment, if you like, and which therefore everybody accepts as independent, and it should in my view also be independent of government. I think there is a real dilemma here. Now, I have difficulty with Ofs, because I do not believe Ofs are publicly accountable, and I think the debate will shift in a couple of years as to whether Ofcom is adequately accountable, or whatever, whoever you set up, and so that troubles me too, and I don't think there's anything particularly significant in an Of. You know, why is it any better than anybody else, so that troubles me, if you like, in terms of a solution. I would prefer, and I'm sorry to throw another pebble into your pool, I certainly would prefer an independent body, but in a way I would prefer it to be a court of appeal, has nothing to do with the management of the day-to-day management of the BBC, or the day-to-day relationship between the governors and the BBC and the

management, or with the relationship with the governors and the outside world on an ongoing basis. They would be fully accountable for all these things, but in the event that there was a significant issue which required appeal, like for example government interference, I mean, that's the very highly significant one, then a body, three or four wise people, and I don't know what the hell you'd call them, Court of Appeal I would call them, had no on-going responsibility but they would sit in judgment and they would have the right, as it happens in the sort of supreme court of the United States, let's say, to say, 'This isn't an issue for us, it's too trivial.' You know, somebody's made a complaint and thinks they can get away with it, but they would judge on the macro things and they would only sit when required, but they would be perceived in the public domain as being wholly independent of everything. Now that would allow the BBC, it seems to me, to submit each year its account of how it had met its public value judgments and all the other things it does, and I think Patricia's idea of a joint commission, or I don't know, joint committee of the two houses which sits in judgment first on the, if you like, the policy of the BBC as espoused by the governance, and then how they achieve it, and they do that, if I might say, rather more quickly than quite a lot of parliamentary bodies do it, so that there is a proper reaction and the BBC can react to it. With this appeal in the background it's attractive. The only final point I'd make is that I said in the earlier thing, that the choice of governors is absolutely critical. At the moment, and I may have got this wrong, but it appears that the DCMS are the vehicle through which governors are appointed, but there's sort of some sensitivity about who the hell fires them, and I'm not sure who does that. I actually have no difficulty with the concept that the elected government, through whatever body, and the DCMS is appropriate, is responsible for hiring and firing, because I think if you've got a Court of Appeal of the type that I'm talking about, there is an extra dimension which would make people test this, and I find it very difficult to believe that this Court of Appeal were critical of either the Director General or the Chairman of the BBC wouldn't go. I think that's the nature of this. Sorry, Terry, it really is an elaboration I think of your wish to have something outside.

Lord Burns: OK.

Michael Grade: I think that's a really interesting notion because the only caveat, and I wouldn't want this to be interpreted as opposition to the idea because I think there's real merit in exploring that idea. I think it's got, for it to be effective, it's got to be outside of the political arena. I think it has to be people who are not ... (overlap)

Ronnie Hampel: Absolutely.

Michael Grade: ... not political, but the sense that they could, it might be that this group of people would on a regular basis, bi-annually, annually, whatever, be the people that would review the governors performance.

Ronnie Hampel: Well, the exact remit, you know ...

Michael Grade: Yeah, but I think the backstop, it would help the governors to do their job if everybody outside felt that there was some further authority other than the governors.

Ronnie Hampel: One of the difficulties that I alluded to earlier is that the management, that's the Director General and his staff, have an enormous amount on their plate running the day-to-day business.

Michael Grade: Absolutely.

Ronnie Hampel: The more accountabilities you have, the more they get embraced in this and I basically wouldn't see contact between this Court of Appeal on a regular basis, and I would hope that all these reviews you were talking about, Anthony was talking about, these would cease. I mean, yes, the BBC do its own reviews but the need for more and more external reviews which takes up time would be reduced as a result of the process, whatever you put in place.

Michael Grade: Yes. It's a really interesting idea.

Lord Burns: Well, maybe we will look at that, but could I press, before we finish on option 1, with this issue, what Howard has called, in a sense, the governance deficit. And I raised this at the first seminar and I still haven't quite got my mind round this, and that is the risk really that you become under this model more and more of a regulator, you know, that the in a sense the distance with the management does grow, and that you find that you're in a position where, you know, there are service licences and at the end of the year, you're having to assess them and you have to make some criticisms of the performance of how things are done, because if every time you come and do your review and you say, 'Well, everything is absolutely perfect,' then, you know, that by definition begins to generate a certain amount of cynicism, so you are then forced into a relationship where you are really judging the performance of the management. You're going to be, you know, ranking them in certain ways. What worries me about this process is that it then becomes quite a different relationship between the governors and the management, and it currently exists between typically non-executive directors and the executive, because the non-executive directors inevitably, in a normal corporate world, are part and parcel of the management. They're making decisions jointly. And the issue which is still I think needs to be addressed is, if you have separated yourself to an increasing extent, who is it who is going to provide this role of being, who sit there with the management, they offer them, you know, month-to-month advice, give them some perspective, say, 'Look, you know, you're getting yourself over-excited about this, you know, you're focusing too inwardly on it, there are some wider things to be taken into account,' and those things which, you know, non-executive directors spend quite a lot of their time doing with management,

and the, it's not a huge issue, this. I mean, it doesn't need to mean to be, you know, a kind of, a sort of deal breaker in terms of this approach, but it is how one is going to make sure that that advice and that supportive relationship is there, because, you know, if you get too close to them and then you come to criticise them later on, not surprisingly the Director General will say to you, 'Well, look here, Michael, I mean, I told you I was going to do this, we've made it perfectly clear how we were going to set about this. You didn't say anything to me then. How come now at the end of the year you're saying that I've done a rather poor job on this particular service?' and it is that, you know, it's almost, I worry about this which you were trying to set out in 5.19, is not that you won't get far enough apart. It is in sometimes the danger that you will take on this role to such a degree that you actually leave the management without the support that, you know, that is often really quite welcome to management when they find themselves involved in that day-to-day.

Michael Grade: The only way I can answer this, Terry, is to say I wish you'd been shadowing me and the governors for the last four months on the process of these four reviews, because you would have seen a quite sophisticated and quite complex relationship between these, and it's a new relationship, this is brand new for the management of the BBC, you would have seen it working incredibly well. You would have seen the non-executives, the governors, working with the review teams as the thing was developing. You'd have seen points of major disagreement, how those got resolved, and how out of all of this work emerged a consensus and support for the strategy. There were points of tension, points of support. It's worked extremely well, and at the end of it I think we will be able to stand up when we finally sign off on the recommendations, and be able to show two things, one that we have scrutinised the management's proposals, altered them, adjusted them, made them think again, required this, required that, but at the same time helped them all along that path to reach the conclusions because we both have entirely the same objectives. In any organisation, the relationship you're talking about is, at the end it's about the relationship between the Director General and the Chairman, and the Chairman is the bridge between the management and the non-execs. I can't do anything. My power comes from my ability to convince my colleagues that this is the right course of action, this is the right decision. My job is to work with the Director General so that we can reach consensus, and so anticipate the questions that the governors are going to have, and that's where the support comes in, and it's about the intimacy of that relationship, and no matter what structure you put in place, if the Chairman and the Director General are out of sync, the whole thing collapses, whatever structure you put in place.

Howard Davies: I think the difficulty that we have probably is encapsulated by the language in which these things are described, in that in the original building public value paper, there's a lot about how the service licence will be given by the board of governors that sets out. It will be published, it will be transparent, etc. and the reviews will be a transcycle of transparent

independent reviews. When Anthony then described the service licence, he talked about it was a method of internal governors, and then you talk about the reviews as a process of building consensus. These don't seem to be the same things to me, and seem to demonstrate the push-me pull-you dimension of this, where on the one hand you want to present this as being an external regulatory function, and on the other hand, you want to present it as being a support to management, and I find it still quite difficult to know which it is you're really ... (overlap)

Michael Grade: The creation, there's a difference between the creation of the licences and once you've reached agreement and a consensus on what should be contained in the licence, there's a kind of compliance function that kicks in after that, once you've got the licence, so there's a process, a collaborative process on which ultimately the governors have the final word, in the event of an irresolvable difference between the management and the governors would say, 'Sorry, that's the end of the debate, we've debated this long enough, it's a fine judgment, our view is this, this is how it's going to be.' OK, the management will accept that, provided there's been a proper debate. That's fine. What it won't be, what the separation does not mean is a star chamber, which is kind of the way you're kind of positioning it. It's either one thing or the other. It isn't a star chamber.

Howard Davies: No, it's a distinction between, as it were, the setting of the overall objectives and the framework and the delivery, and that is where to describe it as a method of internal governance doesn't sound like something where there is a debate about the objectives and then there's a debate about the delivery, which is what you would normally find.

Michael Grade: That results in a licence. There is then a compliance function to make sure, 'Well, look, the management and the governors have agreed. Here's the licence. This is what we agreed. We've been watching, you know, the BBC in 942 and I can't see this, I can't see that,' instead of what we have at present, which is, well, anything, you know, it's fine, you know.

Lord Burns: I don't think, you know, you misinterpret what we're saying. In a sense you're suggesting that this isn't going to be much more challenging. I mean, given where we're getting to on time, I mean, what I would like to do next is to look at our Model 2.

Richard Tait: I mean, I do think, you know, this discussion's rightly focused on will it work, because that has to be the final arbiter of whatever we end up with the governance and regulator of the BBC. I think that the test bed that's currently happening in the BBC is a pretty good way of deciding whether it is working or not. My experience, limited experience as somebody who just joined the board is that the principles of building public value are working, and they're working in the context of the most radical changes in the BBC that I can ever remember, which you're going through with a system which is

not fully worked through, but we're applying the principles of building public value to that process, and I think what it gives and it may square the circle that you've raised, Terry, which is an important one of how do you support the management at the same time as being sufficiently distant from them to make the right judgment? In my view you need to be both. You can only support, the management, if you know what you're talking about, and one of the difficulties of previous systems is that you don't have well-informed non-executive directors. You don't have access, in an area like this, to independent advice, to the sort of advice that we now have on the BBC board. You can't engage with the management in a form that when you give them their support, they appreciate it because they know you've worked through the issues with them, you understand their dilemmas.

Tim Gardam: Doesn't that in turn raise the question, the very contribution that you're making in framing these reports, and the getting them straight, the additional advice that you are giving, makes it very different for you to change your suit and your hat, and you then have to then bring a fresh judgment to whether they are adequate when they are presented back to the governors as you've been involved in writing them.

Richard Tait: Not at all, because that judgment has to be evidence-based as well, and I think if you take the contrast, I mean, the sort of change the BBC are about to go through are in some ways, not others but in some ways, similar to the process that commercial television went through. If you compare, you know, and I was a director of a commercial television company that went through huge changes, and there the structure was nothing like as supportive and as well informed as the process we're going through is. You had non-executive directors who were essentially interested in the money, you had a regulator who was interested in outcomes but could not get involved in any way in the detail, and you had the management in the middle, and I have to say, it was quite a lonely place to be. And I don't think that the management of the BBC feels that at all. I think they feel the governors are exercising a critical, well-informed supervision of what they're doing, understand the issues, are not signing a blank cheque because they have concerns of their own which need to be worked through, but are also supportive of Mark Thompson and his team in what is a tremendously complicated and ambitious project, and I think it's a good test bed. I mean, we're talking about workability. My view is that it's currently working.

Lord Burns: OK, that's very helpful. What I'd like to do is to now spend a bit of time looking at Model 2. Obviously there are two versions of this, there's the Ofcom and the Ofbeeb. I mean, I would prefer to take them in a generic sense, so that I'd like, if possible, not to spend too much time on the issue of whether this means that Ofcom, you know, would become too powerful, etc., but house it in the notion that this is an external, you know, regulator. Ronnie doesn't like the Of but it is Of simply in the fact that it is Of, you know, rather than being ... (overlap)

Ronnie Hampel: O-double-F, yes.

Lord Burns: O-double-F, and look at this. I mean, we've tried again to set out in 5.28, in 5.29, the advantages and the disadvantages and I would just like to see if anyone's got anything in addition to the points that we've made here to add.

Patricia Hodgson: I think so.

Lord Burns: Right. That's very good, it's what we're here for.

Patricia Hodgson: This ticks quite a few of the process boxes, but I actually think your assessment of whether it meets the key outcome criteria are not accurate. I don't think it ticks the independence box because if the regulator were Ofcom, Ofcom would be government-appointed, as indeed of course the governors are, but without the addition of the kick-back that forces independence up to the top of the agenda, that running programmes creates, all that push-back from the journalists within the organisation, not to mention 80 years of having to uphold independence against government, and I think that this falls on the independence criteria. I think it would be less effective on programmes for reasons that we've discussed, because bureaucrats judging creativity is always difficult, and the other thing I observe, and indeed experienced as a regulator is that inevitably you balance the interests of your constituents, and Ofcom would have to be balancing the commercial interests of those it regulated against the public interest of the tax-payers, the licence payers, and it would inevitably split the difference, because that would be the nature of its responsibilities, so I think you would neither get the totally fearless commitment to fair trading, nor a totally fearless commitment to public value, and Ofbeeb would be much less of the same.

Lord Burns: I understand the second two quite clearly. I haven't quite got the one about independence, and why this would not be so good for independence from government.

Patricia Hodgson: Well, my experience of both sides of the divide is about the appointment of people, is that if you are senior in a quango, in the bottom of your soul, however independent and honourable you are, in the bottom of your soul, you know you are appointed by the minister, and if you deviate too far from the direction of public policy, you will be out on your ear. Now, I don't think people think this. I think they are honourable but it is the context and we all know it's the context. Now, if you become a governor of the BBC, the danger is the opposite, that you immediately become so bloody independent, captured by the organisation, that you don't exercise your judgment, but I think that if we're talking about the communication of ideas that underpin our democracy, you go with that danger and find ways of pulling it back, rather than go with the danger of the direct link between governments and appointments, and supervision of the sector, and it's ... I think independence is the single most important thing, because creativity can

be recaptured, but once independence has gone, you have destroyed something that's been built up over 80 years in this country.

Lord Burns: OK. Now, Tim, you were characterised earlier as being in favour of the Ofcom solution by Michael.

Tim Gardam: I don't know why you thought that. The issue I think is the issue of externalities which we've been talking about all the way through, and it comes back to the point you were making about at what point does one take a position which whereby the BBC is seen in the overall landscape of broadcasting, and for me, and from my experience of doing the digital radio review actually, the point that came through clearly is that is that given the BBC, digital makes it impossible, as I said, for the BBC to be a place apart, to be an off-shore island. It is connected now to the overall terrain of broadcasting, and therefore the BBC's value can be conceived in itself, but it also has to be perceived as added value to the rest of the market, and that being the case, you need to be able to have a series of judgments made whereby the criteria which are used are not seen to be those selected for any one institution, but have got a validity across all the whole of the broadcast sector, and I think that one of the arguments for saying that you should have an element of independent regulation is that however effective and determined the internal governance procedures may be, in the end the governors are rightly charged with maintaining the excellence of the BBC, but there is a wider issue which is the overall excellence of public service broadcast, provision of which the BBC is by far the dominant part, but dominant parts can sometimes act to the prejudice of the whole, and so the advantage, I think of two things, one thing in particular which is Ofcom's public service television review. That has provided the data and it has provided the analysis and it has provided the fresh thinking, which has allowed us for the first time to frame the BBC's contribution to the overall public service benefit to British society, in a way that actually the BBC has not done before. I think it's quite difficult for the BBC to do that, because in the end, the BBC is there to be clear that the BBC is doing well. I think there is an extra dimension which is to make sure the BBC is there to ensure that the whole of British broadcasting is as good as it might be, and I think that is an area which needs to be addressed.

Michael Grade: I'm not clear, from what you've said, why you think that the new distribution mechanism for the signal changes anything, because in the end it's about the content, whether it reaches you analogue or digital I'm not quite sure.

Tim Gardam: What I mean is, I think you're going to find as convergence takes place, there'll be all sorts of types of content emerging, which may be taking over roles that the BBC once thought to be their own.

Michael Grade: Oh, sure.

Tim Gardam: And therefore there will be issues of market impact, and there will also be issues of public service impact. The BBC will be doing things that will be either incentivising or disincentivising others to provide public value.

Michael Grade: Two ways, there are two ways that's captured. Presently one is through Ofcom statutory requirement to review the provision of public service broadcasting which they're going to do again, I can't remember ... (overlap)

Tim Gardam: Every five years.

Michael Grade: ... five years' time, which they will do again, which will take a look at everything, and the second thing is that the public value test, you know, will incorporate, you know, a view and the views of everybody involved.

Tim Gardam: But for instance, one of my experiences looking at the digital radio review, I know this was in the previous government structures, was nonetheless the BBC wished to assess market impact, so they get one set of consultants to do an analysis of market impact. Ofcom get another ... (overlap)

Michael Grade: No, whoa, whoa, when you say the BBC, who do you mean? You actually mean the management. That's what happened in practice.

Tim Gardam: It was what happened in practice, and in fact the governors were charged to be responsible for that.

Michael Grade: Yeah.

Tim Gardam: According to the Secretary of State's conditions of granting the licences, the governors had a specific responsibility to view public market impact which they did by picking up reports from the executive.

Michael Grade: Exactly.

Tim Gardam: No, but the point I'm making is a slightly different one, which is, there was one report from one set of consultants, there was another report from another set of consultants, which is very good for the consultancy industry, but there was no I think there needs to be a formal set of co-ordinates by which everyone can steer, so when these debates take place and separate judgments may be made by whoever, they're coming from an agreed set of data. At the moment there was a danger for the BBC, I think, that the BBC is seen by being regulated as it is, to pick its own criteria and to use that criteria, that rightly you say that you will put this out to external validation, but there is an argument for saying it would be a simpler and more transparent system for there to be an external perspective on this.

Michael Grade: I don't think you can achieve that homogeneity for the simple reason of funding. You know, the criteria that the BBC has to set out and finally accept and has to be accepted, have to take account of the fact that there is huge public intervention in the support of the BBC. In the private sector, it's the shareholders' funds, it's not the public's money, it is the shareholders' funds, so the criteria are bound, you can't have a common standard across it because you have to take account of the source of the money. You have to, and therefore the BBC's standards have to be accepted by everybody because everybody pays for the BBC and they have to be set at a level that is a heck of a lot more stringent and transparent and accepted and the criteria have to be an awful lot more stringent than you would have in the private sector.

Tim Gardam: I agree, but in order to measure that difference, we ought to see where the BBC is the more distinctive, is the more stringent. It is arguable that you need to have a secure place of common data from which that difference is calculated.

Michael Grade: Fine, and the public value test will not work unless everybody accepts it as a valid currency, everybody.

Tim Gardam: So, this is going back to perhaps the previous model, but how do you see the relationship between, on a day-to-day process, between the BBC governors under your model and Ofcom developing? Will there not be inevitably some areas where there will be increasing consultation and joint enterprise in considering and reaching determinations on these matters?

Michael Grade: I think it's incumbent on the governors of the BBC to work as closely as possible with Ofcom to create common standards across the whole industry in the interests of the viewers, listeners and on-line users. That's absolutely a given. If we diverge at any time from the kind of gold standard that is common to both, we need to explain why we're doing it, and the chances are the only reason we will do that is because of the special nature of the funding.

Lord Burns: Can we move on, Janet and Clive.

Janet Finch: It seems to me that the main arguments for this model, a completely external regulator, are actually not so much to do with any failure of governance in the BBC but to do with the changed environment in which the BBC operates. The analysis that we put at the beginning of our report about the changed media environment hasn't actually received much discussion, so I assume it's not contentious, and looking at it from an entirely simplistic point of view, we've got a system of governance for the BBC which was formed in 1927 in an environment where the BBC was it, and now we've got a situation where the BBC is part of a big industry and an increasingly varied industry, and one which can only grow and diversify more in the future,

and so to my mind, the question about the completely external regulation is much more to do with that than with anything to do with the governance of the BBC and how it's actually performed. Now, in the light of that, I think that the more I've listened to the discussion this morning, the more I've come to the view that the question is not whether there should be any external regulation, because there already is some external regulation from Ofcom, and possibly one or two other bits as well. So the issue is not that, and the justification for there being some external regulation is because the BBC is part of an industry. So I think the question is actually now to my mind, around this second model is more about whether there are any other elements of the governance of the BBC that are currently within the BBC's governance structure that ought to be transferred to an external regulator, rather than whether there should be an external regulator, because there already is one.

Tim Gardam: There is one, yeah.

Janet Finch: And so I think in a way it's about where you draw the boundaries between what is counted as appropriate for an internal governance structure, and what is appropriate for the external regulator.

Lord Burns: OK. Clive.

Clive Jones: In many ways I want to build or elaborate on the arguments that Janet has just made, for very good policy reasons and policy reasons which I think across all political parties haven't changed. 49 years ago, the BBC's monopoly on the supply of public service broadcasting was ended when ITV was created, and indeed it was added when Channel 4, the place where Michael grew and extended the concept, was added to the scene. Now, as I said earlier, I'm actually a passionate supporter of a plurality supply of public service broadcasting, but we're actually into a complex debate as we move toward analogue switch-off, because Channel 4 wants to remain a public service broadcaster, but there may be a point as we move towards analogue switch-off when it moves from surplus into serious deficit. ITV wants to remain a public service broadcaster, it wants to continue to provide national regional needs. It wants to continue to provide high-quality original production, a lot of it outside London. Now, there is a buffer at the moment for ITV, it's called its licence payments, but as we get closer and closer, they diminish, and as I said, you get to the final point just before analogue switch-over, but that valuable spectrum which was once massively important to us is actually worth just £25 million or possibly less. So I think this is the key area, you know, whether it is Ofcom and I understand Patricia's arguments that it may be all too powerful and Howard's argument that it might be early in the game, but having a regulator that can look across the piece and having a regulator that might be taking a view, although I continue to support the licence fee, I think the inevitable arguments are, if we are going to have a continued commercial supply of public service broadcasting, there are going to have to be different funding models. Whether that's top-slicing, whether

there's new PSP fund, money coming from the Treasury, whether it's a different, a new tax on various broadcasters to fund it, someone's going to have to take a view across the piece.

Michael Grade: In the end it's an issue of public policy and it's an issue for parliament. It's not an issue for a regulator.

Clive Jones: I thought you said earlier that actually this is all about money within the BBC.

Michael Grade: Yes, but if you're talking about funding what is the perceived deficit in public service broadcasting going forward, OK, Ofcom have identified that and put a number on it, then it's a matter of public policy.

Clive Jones: But it's not only about funding, it's about what it is and about what public service broadcasting should be provided by the BBC, and actually what public service broadcasting do we want provided by Channel 4, and what public service broadcasting we might require from ITV and possibly from Channel 5. You can't deal with this in isolation. As Janet said, the BBC is now part of a great big broadcasting ecosystem, and we're in a position where we probably have the best broadcasting system in the world, and how do we maintain that, how do we maintain that vibrancy, how do we maintain that competitive supply, how do we ensure that the BBC is kept honest? And I don't think you can deal with the BBC in isolation.

Howard Davies: I think there is an interesting question about what is meant by regulation here, and it may be that in part the disagreements are based on people using the same word to mean different things, because Michael's recent speech to the CBI says, 'Regulation is about *depost facto* policing of rules' and that certain regulations can act but only ever after the event. That's not my conception of regulation at all actually, and indeed certainly in my previous job at the FSA, 90% of what did was prophylactic, and I think that in this case what we're talking about is, as it were, who does set the standards and the parameters of public sector broadcasting, and not just about the policing of compliance with those standards, and that seems to me to be what Clive is saying.

Ronnie Hampel: The question I would ask Clive is not why you want this, and I understand that, but how can we be satisfied that any regulator can actually provide the independence which gives the authority to what they're doing? That's the issue. I mean, to me by definition, provided you have the right governors of the BBC, and a new relationship which clearly hasn't existed historically between the governors and the managers, you get the best inter- action and, if you like, as a long experience of unitary boards, I don't have the same difficulty which some other people have in both being supportive and critical of management, in day-to-day management, and examining their performance in the wider field, whether it be audit or you know, whatever it might be, so I don't have that difficulty but set that on one

side for a moment. My bother about the external body that you're concerned about, and I understand the concern, is how can we, the general public now, be satisfied that they're better than the BBC, if I can put it that way.

Clive Jones: I think there are a number of sort of fundamental issues here. Let's just look at the sort of narrower field of journalism, I suppose, with the duty, in many ways the statutory duty which is held on the BBC, on ITV news, on Channel 4 news, to be fair, unbiased and impartial. Actually I think impartial's a dangerous word, I think. Better the phrase due impartiality rather than be drawn into the area of taking partiality. Because that is a mandatory statutory duty which is laid on the BBC, which is laid on Channel 4 news, on Channel 5 news, on ITV news, which is observed and followed by Sky News, that actually guarantees a great degree of underlying independence to our news providers in the broadcast region, and oddly enough, having a regulator like Ofcom and indeed at the moment, the BBC governors, is actually the buffer against government in terms of, you know, if they were to try and usurp it, or indeed the buffer against a commercial management saying, 'You will not do that story because actually it's not in the interest of our shareholders and not the interests of the general profitability of the company. So I think independence is buttressed in British broadcasting in a lot more ways than actually we often recognise.

Ronnie Hampel: But that implies, does it not a very detailed connection with the management of the BBC of this independent regulator, and is that practical and feasible? And it still leaves me with the discomfort of what makes it better. I mean, let me give you a specific example. I believe, but I'm one member of the general public, that the problem with the news on the BBC today is that it's become comment on the news rather than fact. Now, there'll be an enormous range of views on that. Now, you know, why am I right or wrong? I'm not. I would just put it forward and somebody would make a decision. I'm totally comfortable that the governors of the BBC have that responsibility.

Clive Jones: I would reply by posing another example, and in many ways because Greg constantly refers about Hutton, I'm sort of a little nervous about bringing Hutton into this issue.

Lord Burns: Hope you notice, we very rarely ever refer to Hutton in these seminars.

Clive Jones: I think the BBC did very, very little wrong in the area of reporting the issues around Dr. Kelly and the issues of the war. The pivotal point of failure I think was that Sunday night meeting with the governors, when they could have called an inquiry. Whether that inquiry was carried out by the governors or they called in a group of independent people like Richard or Ron Neil to do that inquiry, it would not have mattered. But that's what I'm concerned about, and there's where independence is guaranteed,

separation, separation between what the governors do as regulators and what the management do as proponents of a particular story.

Ronnie Hampel: But I would argue that's not a failure of structure, that's a failure of the governors, and you change the governors.

Lord Burns: OK.

Michael Grade: Can I just quickly say that I think ... (overlap)

Lord Burns: Just beginning to get slightly sensitive here.

Michael Grade: I have to make the distinction between Ofcom and Ofbeeb here.

Lord Burns: Yeah, OK.

Michael Grade: I have a really, really serious pathological religious objection to the ability of Ofcom to, this is Patricia's point, to fairly make decisions in the public interest, because Ofcom will find themselves reluctantly drawn into endless complaints from their commercial clients running to Ofcom saying, 'Oh, the BBC are doing this, it's killing our business, you've got to stop it,' and Ofcom then is faced with having to make a decision between the commercial and the public sector, and it's not going to be objective. If there was a whole series of those, inevitably, 'Well, we've found for the BBC the last three times, we've got to give them something this time.' It's just not, it's incapable of being objective.

Lord Burns: You've got a strong ...

Michael Grade: Ofbeeb, if we have to go down this route, Ofbeeb is the only solution because that's the only place where the public interest is not having to be shared with anybody else's interest, so it's the only one that possibly could even be considered. I think it's rubbish, but ...

Lord Burns: Could you just say what you like?

Clive Jones: You know, the one point I would make, if there is an Ofbeeb, you know, you have to ensure that it takes into account the whole ecosystem of British broadcasting, and two, it also has to recognise that the public interest is not solely delivered and defended by the BBC.

Lord Burns: I would like to press you on the issue as to why the Ofbeeb is rubbish, just I mean for the record. Do you think we haven't quite captured enough the negative aspects of this in our paragraph, or have we ...

Michael Grade: Many, many times, I only did this once with a writer, having a script conference with a writer, and I came up with some suggestions of my

own about his script, and he said, 'Yes,' he said, 'your suggestions are different, but are they better?' And Ofbeeb is definitely different. The question is, is it better.

Lord Burns: OK.

Michael Grade: And in the end, in an Ofbeeb solution, who's responsible for the money? Where does the cheque from licence fee payers go to? Does it go to Ofbeeb or does it go to the governors?

Lord Burns: Well, it could go to Ofbeeb.

Michael Grade: So it goes to Ofbeeb. So they are now allocating the money and they have to ensure positive outcomes, so you've just reinvented the governors, that's all you've done. Once you give them the money, you're reinvented the governors because they've got to be in a position to ensure that as they put the money in, the right thing comes out, and not after the fact. It's too late then, the money's been spent. They've got to be in there, inside, making sure the money is spent ...

Howard Davies: No, but you then set out, the governors then set out the service licence and the Ofbeeb funds it, just like, just on your model.

Patricia Hodgson: The governors have absolutely no power if they have no control of the budget, they might as well pack up and go home.

Michael Grade: Absolutely. There's no point in ... (overlap)

Howard Davies: Well, they do as soon as they've been given the ... (overlap)

Lord Burns: I mean, it is a temporary, when I say the Ofbeeb would be given the money, it would be a temporary resting, it would be a channel and ... (overlap)

Michael Grade: Who would the public look to if things went wrong? They'd look to Ofbeeb, wouldn't they?

Patricia Hodgson: Yes.

Michael Grade: We gave you the money, it's gone wrong, and they're powerless to ensure the outcome and the outputs from the input of that money.

Patricia Hodgson: And if there were a really big row between government and the BBC about outcomes in which, just for the sake of hypotheticals, the government was wrong, I mean, was trying to intervene, who resigns in order to protect the independence of the BBC?

Lord Burns: Ofbeeb.

Patricia Hodgson: It wouldn't work. They're never going to resign, because they're not closely engaged with the BBC's purpose.

Lord Burns: Well, that depends, I mean, I'm talking about the limited case where the government are, because if the government has set up Ofbeeb and they have given it various responsibilities, they have given it in a sense a pot of money, it seems to me that if government then comes along and seeks to interfere in that role and to say that we wanted to do something differently, then the people who are at Ofbeeb have got to think about their position.

Patricia Hodgson: Yes.

Lord Burns: I mean, I would take a different view when it comes to the question as to whether or not the BBC themselves have performed well or not, because then that seems to me to be an issue between Ofbeeb and the BBC, and Ofbeeb would be, would no doubt be critical of the BBC and would then try to find some sanctions against them in terms of how they could improve their performance. It may be partly name and shame or whatever, but the best, you know, that would not be a resignation issue for Ofbeeb. I mean, the only occasion where I think Ofbeeb would have to think about itself would be if the government sought to interfere in its job, just as any regulator I think would have to.

Michael Grade: Don't you think, Terry, that the best way of ensuring the outcome is the shortest chain between the input of money and the spending of the money, and if you start to put whole new structures between the input of the money and the output, you're asking to take a huge risk on the outcome, a massive risk on the outcome.

Lord Burns: Well?

Patricia Hodgson: And if one lot resigns and the other lot doesn't, you have got a clear message. I mean, you know, you can't actually think how it would send back the message, 'You have overstepped the line and the system has been destroyed,' which was of course that ultimate nuclear weapon that underpins the independence of the BBC. It never had, only once in my knowledge had to be threatened, the entire board would go, which was when Tony Benn wanted to introduce advertising.

Lord Burns: But look, Patricia, I mean, every regulator has got a bottom line that in terms of interference by the government, whether or not they are ... (overlap)

Patricia Hodgson: I've never known a load of regulators resign. Has anybody here got any ...

Lord Burns: Because, for the simple reason that governments have not, they have not sought to override ... (overlap)

Patricia Hodgson: They haven't needed to. Regulators know what's expected of them.

Lord Burns: Right, well I'm pleased that Patricia's got such a high opinion of regulators. It's a short list, isn't it.

Howard Davies: I mean, I think that there are some astonishing observations being made about regulators here because I mean, the key ... (overlap)

Lord Burns: Have you ever resigned?

Howard Davies: ... the key to this, the key to this is what the regulator's duty, it seems to me ... (overlap)

Lord Burns: Yeah, exactly.

Howard Davies: ... and how good the statute is, and that's really the answer to Ronnie's point. That's what the regulator will do, because it's a practical matter, as a regulator, you're accountable to parliament. That's what really matters and the question is whether you're meeting your statute. But I think we've been deflected a little bit here, I mean, but Michael's issue about the funding, I mean, the most efficient method of funding would be for the money to go direct from the licence fee payer to, you know, the editor of the *Today* programme, for which I'll shortly be working. But obviously we know that there has to be some sort of intermediation of that process and some priority setting and then some standard setting, and you're putting in place a massive architecture of that. And so I don't think that's really the question. The issue is, at what point in this process do you have some kind of, if you like, client/ contractor/commissioner/provider divide, and you're setting it up. We're in danger, in this discussion, of I think suggesting that we're disagreeing about more than we are. You're setting that up within the structure, and you're saying you can be sort of both sides of that and that there are on balance some advantages of doing that, and the argument that we're looking at on Model 2 is whether nonetheless there is a balance of separation.

Lord Burns: OK.

Tim Gardam: It's also a case, is it not, that making clearer the money goes via the Ofbeeb, that Ofbeeb is the custodian of the public money of the licence fee, which it is then handing down to the government structure, who will then be accountable for how to spend, but it is making a clear distinction

between the money for a purpose and the institution which is directing that purpose.

Michael Grade: Would that is be the first time, I'm looking hard here, will that be the first time that a regulator has been given the responsibility for dishing out public money?

Howard Davies: Well, it depends on what sort of regulator you mean, because I mean, you can argue for example say in the university sector that the Higher Education Funding Council is a funding channel and it's also clearly a regulator. It tells you a bunch of things that you've got to do with that money, and so that, but there are other models where this is clearly not the case. The services authority doesn't supply anybody any money. It takes quite a lot from them.

Lord Burns: But in a case of, the other one that I'm involved with apart from the FSA which is in the water industry, they almost do in a sense that what they do is they set the price limits that you are allowed to charge, and as you have a captive, you know, they then effectively are telling you the licence fee that you can charge households, so there is quite a lot of, yeah, it's not quite the same, it's not quite the same. It doesn't flow through their bank account.

Michael Grade: It doesn't flow through the taps either sometimes.

Lord Burns: Can we move on to the third one, which we described as a hybrid and which Howard has been through. It keeps him on the same side in effect, it keeps the governors in place I think is probably one description of this, but it seeks to strengthen some of the management processes in terms of having non-executive support, and it's a bit more clarity in terms of who it is who does which jobs, and I guess to some degree it would move further towards the separation. I mean, what it basically does it to take your proposal, maybe pushes it slightly a bit further and then drops something in to support the management on the basis that to keep your hands clean from seeming to be interfering too much in that process.

Michael Grade: In your model, where does the money go in?

Howard Davies: I think it goes to the BBC management because I don't think, if it's internal, it couldn't really be, I don't think it could be funding other people so, but the way in which that money would be spent would clearly be influenced by the BBC commission or the governors as regulators, if you see what I mean.

Michael Grade: So who's responsible if there's a mess, financial mess, like I say. Who's responsible?

Howard Davies: I would have said the Board of Management were.

Lord Burns: You mean, what kind of financial mess, people have overspent their budgets?

Michael Grade: Trying to get to the accountability issue here and accountability inevitably is tied up with where the money goes in, and I'm not quite clear in your model. The money could go to one board, it could go to the non-exec board or it could go to the Inbeeb Regulator Board, and until you solve that, you can't begin to examine the model, whether it works or not.

Patricia Hodgson: The problem we're trying to address is ineffective regulation/ governance. We're trying to get something better in the public interest, and the core of what goes wrong when the governors don't control the management in relation to public interest issues, i.e. the nature of the output or editorial decision-making is when the governors can't control the management. Now, what are their tools for controlling the management? They are the budget flows, the ability to hire and fire the executive, and to determine executive rewards, so trying to work this model out, you have to ask where those three levers lie. Now, if those levers lie with the integrated management board, then the so-called regulators will be completely ineffective and nobody of talent would want to do it, and I think you would be worse off than you are today. However, if those tools remain with the governors in order to ensure that their writs run, what is the nature of the chairman and the non-execs because they haven't got the tools that they would normally have, so this seems to me the essence of working out how this might add sometimes to your proposals, Michael.

Lord Burns: Well, I think in terms of, I mean, the way that this is characterised here, I think you would expect that the hire and fire issue, the issue of executive rewards, would be an issue for the management board. The issue of, and similarly audit and ensuring that the money had been in a sense spent correctly would also lie with them. In a sense by correctly, I mean according to, you know, to the way in which we all have to work with audit committees, and that we're doing things in a proper way. When it comes to budget flows, and as Howard said, then you have a, it's a different issue. Then you are involved in what is essentially a supplier relationship whereby the commission is specifying, you know, and a contract is agreed about what it is that is going to be produced with this money, what it is that is going to satisfy the overall remit and purpose of the BBC, what it is that was intended to be done with this money, and then it is for the supplier, the management have then got to deliver on that part of the relationship, and the commission would be the people who were judging whether or not the board had delivered. The weakness of it is ... (overlap)

Patricia Hodgson: But they haven't got the power to fire the Director General.

Lord Burns: No, they would have to, well ... (overlap)

Patricia Hodgson: Or the chairman.

Lord Burns: Well, it could well have ... (overlap)

Howard Davies: The chairman, I would have thought.

Lord Burns: Yeah, I mean, I think you would, the non-executives I think would have to be appointed by the commission.

Patricia Hodgson: So we're moving back to the money and the power to hire and fire.

Lord Burns: But not the executive, but there wouldn't be hiring and firing the executives.

Patricia Hodgson: No, but they'd be hiring and firing the majority of the board members, i.e. the non-execs.

Lord Burns: Yes, the part-time people. If they fail, it would be the chairman in reality who would be ... But you know, how can you, you know, we know that, I mean, I wouldn't like to think, mark you, that the chairman was, that his body was disappearing quite as often as the Director Generals have under the old arrangement. So maybe the standards that we have to apply here are just slightly delicate. But what you're doing is, I mean, it's in a sense the logical, it's not the logical process but it is one result of pulling apart the management. If you pull apart the management and the governors, how far does that go and what support do you have left in place for the management? Or do they just run their, do they become the contractor and just do the whole thing without any external support?

Patricia Hodgson: See, what worries me is the brutality of the pressures inside the BBC come from bottom up, from a tremendously powerful production and editorial machine with daily access to the air waves, where the real problem for the executives is to exercise authority over these people and not to feel obliged to endorse everything they do, because of the tremendous upheaval as soon as you question what happens in powerful editorial output areas, and the reality of it is that politically, by which I mean small p, accounting to licence fee payers, politically savvy Director Generals actually welcome the pressure that comes from governors that are not quite of them, because it makes it easier for them to say, 'Got to do this, old son, it's a bit tough.'

Howard Davies: But the thought is that this would strengthen that pressure precisely by having the service licences set by outsiders where there's a genuine option that if you don't actually meet that, you might not have that money next year.

Patricia Hodgson: But what worries me about it is that the non-execs would not have quite the power of normal non-execs because their budgets and their, well, the terms of the business, the nature of the budgets and the hiring and firing of them would sit somewhere else, so I think they would be more subject to capture than the governors even in the old style BBC unless one can think of a way of making them stronger, and as soon as you make them stronger, you weaken the regulatory governors. I mean, by splitting it, you've halved the power.

Lord Burns: No, no.

Howard Davies: I think that's a false premise because you don't need them to be that strong in the old regulatory sense, because they are deliverers, they are not actually setting the standards.

Patricia Hodgson: But the BBC has not been weak in terms of strategic delivery. It's been the most enormously powerful and successful institution. Where it's been weak has been in terms of public accountability, and this is splitting the public accountability.

Lord Burns: Well, is it? I mean, one of the areas that we are concerned with here about where the weaknesses may be in the future, which is I interpret that Michael feels this as well, which is why in a sense he is strengthening the regulatory side of this, is because there are, we want to be much clearer about what the role the BBC is going to play in this future period. We want to be rather more specific about the role it is going to play, and we want to ensure that it actually delivers on that, rather than wandering off, I think as you described it at an earlier seminar after chart review has finished and doing what it wants to for the next eight years, before it has to come back through this process, and Michael is building a structure, you know, to help us to do that. And that's a very important part, and I regard that as being the crucial part of these proposals. This is not, you know, I wouldn't describe this as a huge issue, this. This is trying to fill in for the extent to which that, as that goes along and particularly as problems arise and the governors get, you know, into a more difficult relationship at times with the management, how you then support the management in terms of their day-to-day activity where they have got critical friends, people who are wise counsellors, who are part of the process. They are not by definition, this group of people are not the people who are being distanced. You do tend to get captured in terms of strategy and in terms of delivery when you're on a board. After all, that is a normal activity, that is your job.

Patricia Hodgson: So I suppose what I'm wrestling with is whether in that framework as you've described it, these are genuinely chairmen and non-execs as you would think of them in a PLC. It seems to me they're not because ... (overlap)

Lord Burns: No, they're not quite the same.

Patricia Hodgson: They're not. So it may be that it needs some development to be a slightly different body, I mean, not with the expectations of being the chairman and non-execs.

Lord Burns: No.

Patricia Hodgson: But as you say, more some non-execs that are a critical friend or something.

Lord Burns: Or it's rather like being, it's rather like the experience which I'm just beginning to have myself, being the chairman of the board with a subsidiary company where you have a very similar sort of role. What it is that you are doing is that you are helping the management and you're insisting on the rights sort of behaviours and accountabilities in terms of the delivery process, but where in the end, you know, the big decisions about what it is that's going to be invested in the business, what your tasks are, what your ... (overlap)

Michael Grade: This isn't the subsidiary, Terry, this is the business.

Lord Burns: No, no.

Michael Grade: I'm trying to understand it. I'm really trying, genuinely trying to understand it because there may be something here.

Lord Burns: No, I'm saying the differences between why it's not the same, you know, there are differences. I'll make an example. There are different models where people have non-executive roles, which are not the same as being non-executive roles in a PLC.

Tim Gardam: There are analogies. I'm not saying it's direct analogy but there are analogies with the relationship between not the profit broadcast like Channel 4 and the ITC when that was working well. Now, I know, my experience, the relations with the ITC was, I think it was for retired Major Generals, but it wasn't quite what Patricia was, but I think one of the interesting things about that relationship I found was there was a transparency as an editorial manager there, and the relationship one had with the non-executive chairman was different to the relationship one had with the regulator, but on the key issues of policy determination, there was dialogue and the clarity of accountability which came through the equivalent of a service contract which stated the promises and the objectives that were laid out, which actually to my mind works incredibly well, because you knew where you stood in relationship to those two separate functions, so with executive directors you could hug them close and for instance, if there was something very tricky to go through to Channel 4, I was able to work with someone like Barry Colts as vice-chairman in a completely different way to the way that I would have to account for myself when I came to see you, but

they were both very clear functions and helped define in one's own mind how one was expected to do the job.

Michael Grade: It works very well at Channel 4, it works extremely well in my experience, nine years as a Chief Executive with some very distinguished non-execs, it worked extremely well and the management and executives, and the non-execs were united in opposing the regulator, more often than not, but the reason the Channel 4 model is completely irrelevant to the BBC is that Channel 4 earns its own money in a competitive market-place. It is not, it does not have money, public money.

Tim Gardam: That is the difference, it has a reason that's completely irrelevant.

Michael Grade: It is irrelevant, it's completely irrelevant, because the money changes everything. The money changes everything.

Patricia Hodgson: And the expectations are less, Tim. However good our relationship was, and I think it was and it worked very well, there was much less demand on it. I mean, it would never have occurred to me to even try to reduce the amount of Big Brother all over Channel 4, but if that were the BBC, that would be of the essence.

Tim Gardam: But the essence surely is this, that when you were working as a governor, go back to Richard's analogy. When you were working closely with your executives on your four key reviews which is happening at the moment, you work closely giving advice, being the trusted friend and adviser to frame those reviews, but you can't just cross the other side of the table or go down the road to a different building and then look at those reviews when they come before you in the envelope.

Michael Grade: That is a really simplistic characterisation of the process. That I don't recognise, I do not begin to recognise that.

Time Gardam: Well, we'll take it back to Terry's point, which was a very similar point, which was that it was a Director General talking to the chairman under the current system saying, 'Hang on, we've talked about this, you went along with this, how can you now turn round and say this?' That's where the ambiguity is, and these aren't, I'm not being simplistic, these are clearly, this is the management of a whole series of creative ambiguities, which is the nature of television, but it is in my experience at any rate the clearer you can get those roles, and there is a fundamental difference I think between that sense of commitment of the trusted adviser, and the necessary distance of the regulator which changes the relationship in the eyes of the executive toward those two separate people to whom you're accountable.

Lord Burns: Could I ask Philip and Clive whether they have anything to say about this third model that we put forward, for discussion I should say.

Clive Jones: I don't think it's as good as Model 2. I do believe that actually it finesses Michael's reforms and actually takes it, you know, in a better and a more definitive direction because it achieves the separation that I think both Tim and I are concerned about, indeed Janet's concerned about, between the management and the regulator.

Lord Burns: Philip, do you have anything to say?

Philip Graf: I guess that I'm instinctively more comfortable as I listen to it with this model as opposed to Clive's view of Model 2, but I am concerned that I don't quite understand, and it needs to be worked out, what the role of these non-execs, they said they'd be like the management board, how they would actually work and how they would actually relate to the commission. But I'm attracted by some degree of splitting for the reasons I stated earlier, but I certainly have, see the difficulty and in the work that I did, certainly saw the difficulty of the external issues, the Ofcom one specifically has been mentioned and I agree with those concerns, but even Ofbeeb in that distance, that distance away from the organisation and its ability to actually engage sensibly with the organisation.

Lord Burns: OK. I think if we're going to finish at all on time, we should see if there are any comments on the ... (overlap)

Michael Grade: I don't know whether Ronnie wants to say anything.

Lord Burns: Yes, Ronnie, do you want to?

Ronnie Hampel: The thing that bothers me about the debate is not the desirability or otherwise of having some independent body from the BBC. I understand that in the context of today's public concern, but the models which are being advocated seem to me to suffer from two deficiencies. One is duplication, i.e. how do you differentiate and therefore you involved the management as opposed to the governors too much. And the second is the accountability of the other body, and hence if you like, the slightly simplistic suggestion I made that you should only be having something which is an appeal body rather than a judgment body. The moment it's a judgment body, it gets embroiled in the day-to-day thing, and that troubles me.

Lord Burns: OK, well, we'll look at that as a separate option, because I think that what we want to do is to be able to, out of this, have, you know, a set of options and to be able to characterise, you know, their strengths and weaknesses.

Richard Tait: Terry, can I make a very quick point on the issue of editorial independence and complaints. One of the issues of having effectively two chairmen of two bodies like this is, I think it becomes quite confusing where the buck stops on editorial complaints, on editorial independence, and

equally important, on rectifying errors when they've been made. One of the difficulties of having the system which I think the model would be that ultimately complaints would be handled by the higher board. Dealing with complaints is very important, and the BBC's in the middle of reforming its complaints procedure, as Michael said, it needs to be reformed and modernised, and I think we can come up with proposals that will satisfy people, that we can get the robustness of external checking, together with retaining the governors' role as the custodians of the public interest. The governors should be there to protect complainants and ensure that complainants get a fair hearing. That's part of their job. That aside, if you have a two-tier, a two-board system, you do run the risk that first of all your lower board will probably in good faith have endorsed the management's view. Let's take a case, a hypothetical case, where the management believes a story is right and actually it was misinformed, and they make a stand on something they believe in good faith to be true. When it goes up, having been endorsed by the chairman of the BBC and the non-execs and the managers, it goes up to the higher board who says, 'Actually this story wasn't quite right. We've got to apologise.' There's two issues. First you have very seriously damaged the lower board, because you say, 'Well, what are those non-execs doing if they're not actually picking up on these things?' Secondly, it seems to me you then have the issue of how you ensure that it doesn't happen again, and one of the things the BBC has been doing in the last year since the events surrounding Andrew Gilligan's report, it's been looking very hard at its journalism, at impartiality, at training, at setting up a College of Journalism, at reforming its complaints procedures. All those things are currently being monitored by the governors, and if you don't have the people who work quite closely with the management on top of those things, you run the risk, as you did, I think, in the commercial sector, where the regulator could well say, 'This is a serious error and we look to the management of this company to do something about it,' they don't have the same levers as we currently have in the BBC to ensure that real change takes place, and I do think on the editorial independent side I'm very nervous of a situation where a regulator can fire the chairman of the BBC. I think that's a very being change in the political balance, that the chairman of the BBC has always up to now been somebody who resigns rather than is fired, and I think to create a situation where you can fire the chairman of the BBC has all sorts of political and other ramifications that need to be thought very hard before one goes further down this road.

Michael Grade: I agree with that.

Howard Davies: The problem, I mean, Michael's CBI speech again says, 'The final destination of ALL bucks is unmistakably my desk.' It's neat and tidy but, you know, you have to ask yourself whether that is likely to be a robust basis for the future.

Lord Burns: I think the issue about, only one point I'd say the issue is about, about complaints mechanism and obviously they vary from situation to

situation, but you know, by now there are a lot of organisations who have had to go a long way in terms of putting in good complaints systems which have got time-tables in them which have certain requirements as to how people behave, which then require reporting to various bodies, and one of the most important things about good complaints systems is, of course, that they actually change people's behaviour. You know, they don't, it's no good saying how would this system work if people continue to work the way that they previously did because they don't. I mean, they respond in a ... (overlap)

Michael Grade: I think you can judge organisations quite easily as a consumer, on the basis of the way they deal with complaints.

Richard Tait: But Terry, can I just add, I absolutely agree. I think the key point about the BBC's reforms and complaints is they address both issues. One is to ensure that complaints are dealt with more speedily and in a more independent transparent way.

Lord Burns: OK.

Richard Tait: And that's a given, you have to do that. But I think that your second point is the key one, which is how do you ensure that complaints result in good things happening in the organisation? The organisation improves, reforms, stops making mistakes, and how does that filter through to the management, and how is that monitored by whatever governance structure you have in place.

Lord Burns: And when you make them.

Richard Tait: And our reforms will, I hope, address that as well.

Lord Burns: And when you make mistakes, actually recognising that you've made a mistake is often ... (overlap)

Michael Grade: And quickly.

Lord Burns: Quickly is a large part of the challenge.

Audience Jonathan Turner: Jonathan Turner. I'm concerned that if options 1 or 3 are pursued, there is a risk that they will not be sufficiently defined. It's been my experience as someone who occasionally advises organisations when they're investigated by regulators that there's a tendency to say, 'Well, we are actually just changing this.' And the regulator is satisfied that the public interest is going to be safeguarded, and then the thing is reformed to some extent, it's not quite the same as it was before, but it is still somewhat similar to how it was before, so aren't we concerned that if options 1 or 3 are to be pursued, that they should be very carefully worked out and fully defined so that things don't carry on substantially as they were before. Regarding Sir

Ronnie's proposal of a Court of Appeal, that may deal effectively with big issues, but it doesn't deal with the quite common situation of where there are lots of little issues all tending in the same direction. This I think applies both to impartiality aspects but also as regards the competition aspects. You can have a situation where an economically powerful organisation makes life difficult for competitors or suppliers or whatever in lots of little ways, not just in one or two big ways, and that needs to be catered for as well, and a reform which doesn't address the deficiencies of the existing arrangements in dealing with those matters is not going far enough. And I think it is also worth bearing in mind in this context that Ronnie talks about a Court of Appeal. There is in a sense already a Court of Appeal in the sense that four major matters, and indeed possibly my matters as well, there is a possibility of judicial review, and I think this should be borne in mind in relation to this, that there is a possibility of judicial review. That deals with some of the problems of a regulator becoming too powerful, is that it can actually, its decisions can be reviewed, and there is a difference between an external regulator and regulation by governors in this respect, and that if the BBC management is not satisfied with the decision of the governors, it has no recourse, whereas if you have an external regulator, if the BBC management persuades the governors that they have been, the BBC has been treated unfairly, there is the possibility of raising that by way of judicial review.

Lord Burns: OK. I think that's a reasonable shot. Behind you and then across the passage.

Audience Tim Wilson: Thanks, Tim Wilson from Pact. Michael, I just wanted to go back to this, what was being discussed about the extent to which you can be separated from the decisions and the policies of the executive, and you were talking about the way that would work in terms of you setting the licences and then judging the extent to which those licences are met and delivered upon, and that was how you sort of drew the distinction, but I was also interested to hear you talk about your involvement in the reviews that have been going on, the four reviews, and I think, you know, that sounds to me like a slightly different situation where you're looking at them internally, and then once you've decided that they look good to you, and Mark Thompson's made his speech and the BBC says that's what they intend to do, then you have bought into those.

Michael Grade: No, you missed a stage. I did say very clearly that in the process of understanding and analysing and evaluating what the management proposals for the strategy should be, or through that process, through sub-committees of the governors working alongside management, we have had external independent scrutineers, that's the wrong word, but you get the drift, have been working alongside that process, and helping form the questions and the supplementaries that the governors need to ask.

Audience Tim Wilson: Well, yeah, I mean, I understand that, but I mean, at the end of the day, once you've gone through that and the reviews have been

implemented, then to what extent can you objectively say, 'Well, the review was intending to do this.' For example if I can use the obvious example of the production situation where, you know, I understand that this is a proposal for a window of creative competition and obviously we have our doubts about that. We'd rather the BBC opened the front door.

Michael Grade: Well, I should save your doubts till you've heard exactly what it is. That'd be helpful.

Audience Tim Wilson: No, well, precisely, we will see what's said and what it actually looks like.

Michael Grade: Yes.

Audience Tim Wilson: But I mean, the point I'm making is, whatever it does look like, if somewhere down the line it's not actually delivering sort of sufficient meritocracy or whatever in the market and you effectively have already bought into that review and the way it's being carried out, to what extent can you come back on it?

Michael Grade: No, you buy into the strategy after very careful consideration. The strategy is then implemented after, you know, really good due process with some independent input. You then step back and watch it implemented and if it's not having the desired outcome that you've all agreed on, then the governors step in immediately to examine why it isn't delivering what it was designed to deliver. It seems to be very straightforward.

Lord Burns: Can I have the next point because I do want to finish close to time.

Audience Sylvia Harvey: Sylvia Harvey, University of Lincoln. I wanted to pick up on a comment which Tim Gardam made when he spoke about 'a formal set of co-ordinates from which everyone can steer.' 'A formal set of co-ordinates from which everyone can steer.' Now, it was also suggested that Ofcom would be the body which would have the authority to establish those co-ordinates. Ofcom has not yet reached its first birthday, and on the evidence currently available, I can't share that confidence in that body as having the authority to do that. But more importantly the point I wanted to make is to follow through that image of the steering. Let's take the age of navigation when we steered by the stars, so the lifeboat steers by the stars, the tea-clipper steers by the stars, but the reason why they set out on their journeys, the reason why the boat leaves the beach is utterly, utterly different, and I just hope that in this debate, people will keep a balance between on the one hand the invariable nature of the principles, and on the other hand the purposes and the outcomes of the journeys.

Lord Burns: Very good, good point. And last one over here, and then Michael, maybe if you just have a couple of minutes.

Audience Paul Brown: Thank you, Paul Brown, commercial radio. However the ownership representation, the governance, the regulation and the management of the BBC are structured, and they feel to me like four separate activities really, arrangements have got to take account of the effect that a large publicly-funded cross media broadcasting corporation has on the rest of the market players, and the overall UK broadcasting ecology. Any organisation within the BBC and with the name BBC in it, is not going to achieve this, it seems to me anyway, to the satisfaction of, and from the perspective of both citizens and this is importantly the commercial broadcasting sector, and I think that has got to be taken into account.

Lord Burns: OK, thank you very much. Unless anyone else is burning to say something here on the panel, I propose that we, I ask Michael to make some sort of, any remarks you wish to ...

Michael Grade: All I would say is that, as this debate now is moving towards a climax, we're not quite there yet, all I would say it that in feeling for a consensus, we must not lose sight of the three fundamentals which are: maintaining the independence of the BBC; ensuring that there is clear accountability for the money and delivering value for money; and the last which has kind of come in today and various people have mentioned it including myself, the absolute necessity for it to be workable, and to enable the management who after all are delegated to deliver the outputs, they must have, a structure in which they can actually deliver the business of the BBC, rather than spend their lives tangled up in any number of boards and inside and outside organisations. That would interfere with the purpose and the outputs.

Lord Burns: OK, well, thanks very much. I think we all share the, you know, what you said about it, and Patricia said earlier about independence, and it is one of the enormous successes of the arrangements that we have for the BBC, that independence has been retained for quite so long when it's not evidently been the case in lots of other places, but I think we also recognise that we do have to move on for the reason you yourself have said. I was anxious today that we shouldn't in a sense get into the business of trying to pick individual things, when after all it is the judgment of the Secretary of State in the end who's going to have to decide between these things. My ambition has been that we should get the arguments sorted out and we should get them presented so that they are all in place and they have been properly looked at. And in that context I'd like to say thank you to everybody who's been involved in the seminars. The purpose of them has been to try to expose arguments. By the time the Secretary of State comes to take her decisions on the Green Paper, you know, I do want to be in a position whereby all of the arguments that are to be made on this whole area have been made, and I think we have, you know, in that sense I regard the process that we have been through as being very successful. And I'm very grateful to everybody who's participated either as a member of the panel or in

the audience. I'm particularly grateful to the BBC because they have engaged fully in this process and I think have approached it in a very positive way. We've had very good papers from you throughout the series, and I think it has enabled us to look at these issues in some depth without people being over-defensive about the position. I mean, the time to become over-defensive may be later, but at this point, we have been very anxious, you know, to see this as a process, and a process which exposes the debate. So thank you all very much and that marks the end of this stage in the process.

Michael Grade: Thank you, Terry, thank you.