

**BBC CHARTER REVIEW SEMINAR: PRINCIPLES OF  
GOVERNANCE & REGULATION  
16 SEPTEMBER 2004**

**Lord Burns:** Good morning everyone. If I could begin with just a few brief housekeeping notices. The BBC have kindly provided the cameras in the room, which will be providing a live screen or footage via a link on the Charter Review site and directed on the BBC's website. I therefore have to ask if you will check that your mobiles and particularly your blackberries are turned off, that they're not just on 'silent' because they do cause chaos with the microphones and the sound quality on the web cast. We'll get some sniffer dogs in if we get a lot of feedback coming round I think to identify the sinners but it is very important I'm afraid. The loos are located opposite this meeting room and the fire exits are all clearly marked. If you have any queries, there are officials on both sides of the room. And I would also ask if you could keep your security badges and name badges on at all times and please don't go into other areas of the building without a DCMS official. This is quite a topical subject at the moment and I'd quite like to avoid an incident here this morning if we can, although I haven't seen very many people with tights around. Today is the third in the independent panel series of seminars, which will run throughout the autumn. These seminars provide a forum for the independent panel to hear a range of arguments, try to test the evidence and to draw out the key issues and our work is intended to inform and shape the government thinking as they work towards a Green Paper in the New Year. I'd firstly like to say who the members of the panel that we, the permanent members of the panel that we have here today – Tim Gardam, Alan Budd, Alice Rawsthorn, Janet Finch and Howard Davis – and in order to add to our full and lively debates, I am delighted to welcome a number of very distinguished guests who have accepted our invitation to join us today – Michael Grade, Richard Tait, Patricia Hodgson, Bob Phillis, Alan McDougall, Paul Myners and Ruth Evans. The governors' regulation of the BBC raises of course some very key questions about the BBC that I think in many ways frame a large part of the debate about Charter Review and to reflect the breadth and complexity of these issues we are holding this autumn two seminars – today on the whole issue of governance and regulation. Today's is the first and we are trying to focus on best practice principles, which might act as the foundations for any future structures. And by the time we get to the end of this programme of seminars, we are planning a second seminar on governance where we will seek to apply some of the principles to a variety of models, including the current one of course, to examine the benefits or weaknesses of each in a bit more detail. But as the issue of governance dominates so much of the debate that we've been having, we thought we should also begin by trying to deal with this in general terms as well. We will try and start, although I realise that these topics lead, you know they sort of merge into one another in a way that's not easy to compartmentalise between the sessions, we have suggested we will try with the opening session to concentrate on the principles underlying the current structures so that we're all clear where the starting point is. In the second session move on to look at general best practice principles and how they apply to the BBC. I would like to take some questions from the audience but as with previous seminars, because we're under quite a lot of time pressure, I would like to get the first round of questions if I could via cards and in your delegate pack you should have cards which give you the opportunity to put some questions to the panel and if you hand them in at the registration desk at the interval or at any stage in the morning, we will try and organise them and make sure that we're addressing the issues that are raised. Then in the final session we're planning to also touch on the issues of the BBC's accountability structures and the extent to which they are robust. However, to get things started, I am going to hand over the Howard Davis to introduce the debate and the discussion, follow that with some remarks from Michael Grade and then I will ask the other of our invited guests to comment on the issues that have been raised and we'll use that as a way of getting started. So if I can hand over to you, Howard.

**Howard Davies:** Thank you, chairman. I think this is the most difficult topic or group of topics for the panel to address in this Charter Review and that's for two reasons. First, because the issues of governance and regulation are closely linked with a lot of others in the

Charter Review and therefore quite hard to disentangle. For example, they're clearly closely linked with the issue of public value and also with the issue of how to control the BBC's commercial services. And second, it's an area in which the environment has changed a lot since the last Charter and indeed even in the last 12 months because the Hutton Review and its aftermath was a kind of destruction test for any governance system and the arrival of Ofcom has also altered the landscape and I'm sure we've not seen the full impact of that. No doubt influenced by this change in the environment, the governors have now themselves proposed significant changes to their own role. In the BBC's Paper, the governors argue that there was a pressing need for reform and indeed in his first public interview, Richard Tate has put this in more demotic form, saying that in its present form the system of governance is not appropriate for the future, though he has not come to the BBC to help consign the governors to the dustbin of history, which I am sure his colleagues were pleased to hear. But the governors have therefore now proposed significant changes to their own role and broadly those changes have the effect of establishing a greater distance between the governors and the management of the BBC both physically and metaphorically. And in the public value document, the system of bidding for and receiving internal licences built around the concept of public value will clearly establish a new relationship between the governors and the BBC Executive. We also of course need to take account of the considerable changes there have been in the approach to corporate governance in the private sector and indeed elsewhere in the public sector. The theology of corporate governance if you like has changed radically in the last decade and even in the last year or so and we have one or two people on the panel today who are particularly expert in that. Now the kinds of approach which are now recommended to quoted companies do not necessarily read across straightforwardly to the BBC but they do nonetheless have some relevance. Now partly as a result of this complexity, the panel has decided to have two goes at this set of issues, the first today and the second in early December, and the agenda we have set out for today attempts to chart a course through this complexity. We've taken the useful taxonomy in Philip Graft's recent report on BBC Online services as a useful starting point. In the first session we attempt to unpick the different elements of the regulatory and corporate governance roles which the governors are supposed to play and in the second we try to look at the evolving principles of good governance and of good regulatory regimes and we ask whether the governors can embody all of those principles in one entity. And the third session looks at the accountability framework of the BBC and asks how that might influence the way in which we think about the different roles the governors can play. And we hope that this agenda will allow us to identify the key issues the government needs to focus on in its Green Paper next year, which of course is the focus of all the panel's work. But to help to sharpen the discussion today we thought it might be useful to give an indication of the types of question, which have most interested the panel as we have reviewed the material already put in front of us. Firstly, if the governors, as the latest BBC proposals envisage, move to a more regulatory role, what does that mean for the management of the BBC itself? Who plays the critical friend role, which non-executive directors in public companies take on? If the governors are fully independent – a phrase the BBC uses – then it's more difficult to see the existing full Board, including the Executive, as anything like a corporate Board, which takes collective responsibility for decisions. How far is it possible therefore to emphasise and strengthen the governors' regulatory role without simultaneously creating a corporate governance deficit in the BBC itself? The BBC Paper says that regulation is very different from governance, though it defines governance as being all about allocation of money, which in other respects looks to be part of the governors' regulatory role in the public value statement. As the governors become more regulatory, which is a clear direction of change, what consequences does this have for their relationship with Ofcom? Is there a risk that Ofcom and the BBC governors have got different and potentially conflicting definitions of public service broadcasting and, if so, how would that conflict be resolved? Thirdly, what are the consequences of changing the focus of the governors' role for the composition of the governing body? Are different types of people then required if the role is shifting? Also related to that, what does this mean for the appropriate corporate structure if you like? The BBC is structured as it is with a Board of governors as a sort of public corporation, a kind of nationalised industry, but if the governors were separate then what would they be? Typically regulators are not constructed in that way and would the BBC then be constructed differently itself perhaps as a company? Fourthly, what is the impact on accountability? If the governors are holding management to account on an arms-length basis, which is the term used in a number of the documents for the delivery of public

value, can the governors simultaneously be accountable to ministers and parliament for that performance or are two routes of accountability somehow implied in here? And lastly, what sanctions are available to the governors in performance of their regulatory role? For example, if a BBC service fails to demonstrate its delivery of public value, could the governors then direct the relevant funding elsewhere? Now that's not an exhaustive list but it's perhaps enough to be going on with. Other questions will certainly arise during the discussion and indeed the purpose of holding these seminars is for the panel to identify issues which they haven't thought of but we thought it helpful to give you an idea of our current concerns. Now it's hard to know where to start and, as we've suggested here, we might look first at the distinction between the governors' regulatory and governing responsibilities and how those can be separated, how far those can be separated and whether it's possible for the governors to fulfil both sets of roles. But, as the chairman said, I think Michael Grade wants to respond to start with.

**Michael Grade:** I'm not going to respond but I'll set some kind of a context from the BBC's point of view for the debate, which we're going to have today. But a few very brief remarks and in order to be brief I've written them out. As I hope I have made clear during the first few months of my chairmanship, the BBC has to change and it has to change radically if it is to maintain public support into the digital age. There is no aspect of the BBC for which that is more true than its system of governance. Even without the dramatic and sometimes traumatic events of the last year, I don't believe that the status quo was ever going to be an option. I say this for two reasons – firstly, clearly the competitive landscape is changing so quickly that the BBC can no longer take its privileged position for granted and responsibility for making the case for its continued existence must lie ultimately with the governing body. Secondly, there is a proper demand for greater accountability in the public sector as much as in the private sector and the BBC must willingly and urgently embrace this requirement. That process has begun in earnest inside the boardroom of the BBC. Over the last years the BBC has been subject to some harsh criticism and in my view this has sometimes been justified and the criticism has been about its system of governance. Before my arrival, the governors had begun to act already. For instance, this year's Annual Report marked a significant change from previous years', striking the first notes of constructive criticism rather than a selling document for the management of the BBC. And no one should be in any doubt in future that the Annual Report is the governors' Annual Report, an objective public evaluation of the BBC's performance. Then of course we set out, as Howard has said, a comprehensive programme of radical reform in part two of Building Public Value, our first and major contribution to the debate of Charter Review. I'm not going to go into the detail here but I think it's worth saying that in drawing up our plans, we were guided by three overall principles. Firstly, the need for greater independence of the Governing Body from management when reviewing both strategy and performance. Secondly, the need for greater transparency and openness in the Board's decision making. One of the criticisms of the BBC over the years is a very inward-looking and secretive organisation. And thirdly, the need for greater accountability to the public, and that obviously follows from the first two. Underpinning all of this must be a commitment - and this is absolutely key – to greater objectivity in our approach to governance. That means making sure that the governors have ready access to independent advice and support and that we have the right mix and skills and expertise on the Board to realise the vision that we set out in Building Public Value. A Director of the new Governance Unit has just been appointed, so the reform of BBC governance, which we have already begun, will now gather pace. Let me state nevertheless that the governors welcome further debate and we are very open to any ideas or proposals that will help to build public confidence that the BBC is meeting the needs of all licence fee payers. Charter Review is absolutely the right moment to hold this debate and to make lasting improvements. Finally, any system of governance for the BBC has to be judged on its ability to maintain and sustain two fundamental principles. Firstly, it must promote the most effective possible stewardship of the public's money. We firmly believe that a properly reformed system of governance rather than external regulation is by far the best means of doing this. Secondly, it must be able to guarantee that the BBC's continued independence as a public broadcaster, free from political pressure or interference or any risk of outside capture. Without the first, public support on which the licence fee depends would be eroded and without independence there really would be no point in having a BBC. And these are the vital tests against which any reform of BBC governance must be tested. Thank you.

**Lord Burns:** Howard, do you want to respond to that at all or should we ask....?

**Howard Davies:** No, I think we should probably begin the panel.

**Lord Burns:** Patricia, would you like to, you have a very...

**Dame Patricia Hodgson:** I feel like the oldest inhabitant. I think until the recent changes that Michael has just been talking about, the governors have over the last four or five years been the architects of their own misfortune. They were – I don't think succoured is too strong a word – they were tempted by management to start to describe themselves as regulators. This was because the BBC feared Ofcom, feared the loss of managing its own affairs. This is an intellectual confusion that has devilled the debate over the last four or five years and handed a very obvious debating point to some of the BBC's competitors, who quite rightly say you can't be your own regulator. The governors are not and never have been regulators. They are a strategic and supervisory board. That's to say they translate the framework of the Charter and Agreement into a strategy by putting management's proposals and drive through the filter of what parliament has told them the BBC is for. They set standards within the requirements of the Charter and Agreement informed by public opinion. They monitor performance. They appoint and reward and sanction management and, like any board, they of course ensure that the BBC meets the standards that are required by external regulation. All these things should be done as part of normal business planning and the annual round of decision-making. That is to say they are a board and these are board and not regulatory activities. Of course any board reviews performance, sanctions poor performance, entertains complaints. They do that albeit with an external regulatory pressure that is there. Because they carry out all these activities in the public interest, they are not like a normal Plc board and this is why they are not a united single board. This is why there is distance and there should be an independence of board decisions separate from the kind of united decision that would be made in an integrated board. It's why it's necessary for there to be as many as 12 governors, i.e. the kind of jury principle that lies behind so many public interest decisions. Now of course the governors, as a supervisory board, may choose to create an ethos that goes beyond regulation. The editorial guidelines of the BBC go well beyond anything that has been a matter for regulation either with the ITC or I think is likely when Ofcom comes up with its new editorial standards. The distinction is that regulators apply legislation post facto to the behaviour of the organisation that they regulate, including the behaviour of the governors. So Ofcom does this in relation to standards, to statutory targets, and the OFT, together with Ofcom, does it in relation to competition and it is very important to maintain this distinction in our minds, important because Ofcom must not and cannot be drawn into BBC planning. Ofcom cannot be accountable for the strategic and planning decisions that are taken within the BBC in the same way that the governors can't be accountable for regulation because they are *parti pris* as far as the BBC is concerned. And there is no reason for the BBC to be exempt from normal regulation. That little spasm about accuracy and impartiality was I think the last spasm of the governors saying don't touch. And that's extremely important. That brings us I think to the final conundrum that Howard identified which is in the competition area vis what is the balance between the public purpose of the BBC, what forms of broadcasting that should translate into, and creating an unlevel playing field because of the BBC's privileges in areas that competitors think should be theirs. And of course the rationale is, the logic is that public purpose.... these are apples and pears. There is no body that can decide between public purpose and competition law except the elected representatives of the people. Parliament is the only place that can decide what the public interest is in broadcasting. And so while Ofcom as a regulator, along with the OFT, will make decisions about specific abuses of a dominant position and so on, just the scale and the broad terms of reference for the BBC can only be determined in parliament and the accountability of the governors for ensuring that the BBC delivers that public value must be through parliament to the voters, who after all are also the licence fee payers. It's not actually terrible complex.

**Lord Burns:** Well it's the first time I've heard that. Any other contributions at this stage? Alan, do you want to, I mean you...

**Alan McDougall:** There's a couple of points I'd like to make.

**Lord Burns:** ..get on the backs of people like me in other respects in terms of how we conduct our corporate governance. How does this all strike you?

**Alan McDougall:** I think the Board's in a very difficult position because, as Patricia said, I think you've got to recognise that it doesn't have Executives on the Board who are actually running the business on a day-to-day basis, managing the BBC on a day-to-day basis. So that puts it in a different position in terms of promoting the interests of the organisation at the same time as effectively overseeing and scrutinising how the management is running it. Now I don't know whether the debate would usefully go in the direction of considering what the relationship between the senior executives and the Board should be in terms of bringing joint scrutiny to bear on the day-to-day operations. I don't think anybody's proposed that but that is a fundamental missing link to the private sector structure of corporate governance. It's certainly outlined in best practice. I mean one of our problems in the UK market is that, public fund market, is that the problem of the way a Board supervises its own members is at the heart of the dilemma of corporate governance. So the BBC Board of Governors in a sense is free from that problem but it does mean that, I mean it's interesting the statement about the Annual Report and Accounts or the Annual Report rather of the BBC. Now in a public company that is clearly the stuff of reporting to shareholders formally but also to all stakeholders and I want to come back to the issue of stakeholders in terms of the BBC government structure later on this morning. It does represent the views of the senior management about how the business obviously has gone over the past 12 months and to a very limited extent what the prospects are for the future. But if the Board is the owner of the Annual Report, then it's in a different position in relation to the senior management's perspective on how the business is running. So that's one issue and one might want to explore what the implications of that are. I think the second issue is the whole question of the relationship with the Regulator and it is tough. I mean those of you who know anything about serving on a public company or being a senior manager in a private sector business which is in a regulated sector will know that it is very difficult to get the balance right and I think some of the previous comments are well made. I think the clarity though or the need for clarity here is about what accountabilities are at stake because in governance I think the principles of accountability are probably more important than the principles of transparency in some ways and often, certainly in a public company Board, when things start to go wrong, one of the principal reasons that one can trace back when one's reviewing what happened as it were in a corporate crisis is when lines of accountability became blurred. So I think probably that's more important in lots of ways to a public company. Now is it the same for the BBC? It's more difficult because accountability is multi-dimensional. I still haven't read in any of the material for today's meeting a clear exposition of how anybody is going to represent the public interest. Now that doesn't mean to say that we shouldn't keep trying to figure it out and I am not a particular fan of shock jocks but you can see that there are all sorts of new mechanisms that technology has now brought forward for public participations of various kinds to express more direct views about the way in which institutions run, particularly in broadcasting, and I think that's something that I'm sure the Governing Body and the debate will focus on as we go forward and something the government has got to take into account as well. But that is a big issue and I started off thinking in the cab on the way here that there's a triumvirate of governance here between the Regulator, the Board and the management. Actually, I don't think that's right. I think there's a four-dimensional model of governance and it has to include the public. And I think in a sense the BBC has got to begin, and the Regulators and certainly the senior management of BBC governors have got to begin to conceive of the public interest as a kind of fourth stakeholder interest in moving forward in the governance debate. And I think the real challenge is going to be how you engage the stakeholder alimony if you like from the public in the debate.

**Lord Burns:** Thank you very much. Paul?

**Paul Myners:** Thank you, Terrence. The learning opportunities from the private sector in our emerging protocols on governance are relevant but limited because private sector corporations are simply easier to define a focus of achievement and success. There is a bottom line which is easier to identify and measure and there is an external stimulus through the economic incentive of the ultimate owners of the business to ensure that a governance process operates successfully. But I think there are one or two areas where we can take

some interesting direction. Firstly, it's clear where governance failures have occurred. They have been less about architecture and more about behaviour. There is no solution to governance which can be crafted on a white board and drawn and guaranteed to be successful. It's about the behaviours of the people within the building rather than the structure of the building, which matters. That begs questions therefore about appointment processes. Secondly, where governance failures have occurred in private sector entities it is because of a lack of clarity of roles between the role of the manager and the role of the party to whom the manager accounts. We've seen supine non-executive directors easily captured by management often associated with forceful individuals, lack of tenacity on the part of the non-executive directors, lack of comfort at times with a need for an invasive and maybe uncomfortable relationship from time to time with management. So I think there are messages there for the governors in the form of their style and engagement. And we've also seen weaknesses where the non-executive directors simply have not known what is going on and that's because of the control of the information flow lying in the hands of the management. So it seems to me that a number of the proposals that have been brought forward by the governors recognise that. Clearly in the past the governors have been confused about their role, confused about their accountabilities and singularly unsuited for many of the roles that they had to perform. As a result of that vacuums have emerged. The DCMS for instance has been required it seems to me from a distance to become more engaged with the BBC than should have been necessary had the governors shown more initiative in instituting reviews of themselves, reviews of their own behaviour, reviews of the BBC. So I think the steps to separate the role of the governors from the management are generally to be supported. I think giving the governors more independent support in the form of a Secretariat and a budget and a resource to ensure that that Secretariat can operate effectively are wholly commendable and constructive steps to greater clarity between these different levels of governance and to ensure greater accountability. Addressing the issue of the appointment process to ensure that we achieve more than political correctness but people who are honed in the skills necessary to challenge the Director General and his team seem to be to be another important area, which needs to be addressed. And that in conclusion, I think Terrence, draws me to the view that in the UK governance protocols we have tended to regard the unitary board combining both the executive and non-executive element as being superior. It's interesting for instance that neither Higgs or Cadbury seriously challenged alternatives. There is an alternative widely used in continental Europe of a two-tier board where you get a clearer segregation of responsibilities and I think that that model is one, which the BBC should seek to learn from.

**Howard Davies:** Can I just pursue that slightly because you point out, Paul, the difference with public and private sector companies. You don't have a straightforward bottom line and I suppose you might regard the governors' formalisation if you like of the licensing process internally with a definition attached to each channel or whatever of what its public value is as being in some sense an attempt to create a kind of proxy for that. Then the question is how do you monitor that? Now shareholders, who are looking at the bottom line, are typically not involved in implementation. They typically don't want to, they don't like the sight of blood, they don't like to get involved terribly much and you can see why they don't really because they want to hold people to account for that and they don't want to be implicated on both sides. So the question here then is how far are the governors then actually involved in the implementation? If they are involved in the implementation, then the process of them at the end coming back and reviewing performance against the test is a little bit forced because they are on both sides of it. If they're not involved in the implementation, then the management are on their own and you might then argue that what you've created is a kind of governance deficit within the BBC in terms of its Executive with the Executive entirely left to implement without the normal assistance that you would have in a company of non-executive directors and a chairman who are there as a continuing source of advice and a sounding board. So on your two-tier Board model, would you be envisaging that the second Board is purely Executive and would that really meet the accountability requirements of the BBC?

**Paul Myners:** Well I think, Howard, if the governors become too involved in implementation they become compromised.

**Howard Davies:** Yes.

**Paul Myners:** They lack the capacity to be objective. You used the phrase in your introductory comment, which I thought was extremely good, that the role of the governor is to be a critical friend but the critical friend at some point will cease to have the capacity to be independent and objective in the exercise of criticism if they have become too closely involved in implementation. And certainly it seems to me it cannot have been envisaged that the governors as presently constituted should have been actively involved in implementation because these are seen to be remarkably poorly skilled to have done that if that was contemplated.

**Howard Davies:** So implementation is just left to the Executive?

**Paul Myners:** The implementation is left to the Executive who have had to agree a plan with the governors, a plan where there has been a real effort to determine and quantify the liveable objectives and then the management is accountable to delivery against those objectives. And quite simply, if the management fails to deliver and those objectives continue to be held to be correct, then the governors need to be able to take necessary action to change management. They can't do that if they become involved in implementation.

**Lord Burns:** Ruth?

**Ruth Evans:** Yes, I think that the Ofcom's Consumer Panel, which I am here to represent today, provides a useful model as a way forward in terms of offering partial solutions. We've only been going for 9 months or so, so it may not have really unrolled to the extent that we can see how effective it will be but we were set up, exactly as Howard Davis says, as a critical friend. I mean that was the role of the Panel. It has a statutory duty to advise Ofcom, the Regulator, to keep it on its toes in relation to consumers not citizens, the distinction of which perhaps we could talk about at another point this morning. But I was very interested in Michael Grade talking about the future for the BBC in terms of independence, transparency and accountability and openness because that is indeed the job of Ofcom's Consumer Panel in relation to economic regulation, telecoms and broadcasting. That is precisely what the Consumer Panel is there to do, to ensure that Ofcom as a Regulator offers an independent, transparent, open and accountable view. And that brings in our particular role in relation to what Alan said in terms of public accountability, where the culture of an organisation isn't easily remedied by individuals. And I agree with you, that is a very important pillar but it takes a long time to change the culture of organisations. Public involvement is critical and here the Consumer Panel is in the earliest stages of undertaking benchmarking surveys. I know the BBC has done this a lot too but we're trying to involve the public in imaginative ways on an on-going basis in assessing the products, services, markets out there. Is there choice in competition which meets consumers' requirements and what are those consumers and what are their requirements? And the extent of this obviously is unfolding and potentially limitless but I think public involvement, as Alan said, has to be a bedrock. We have to, public institutions now have to prove and demonstrate ways in which they are actively engaging the public, not just one-off surveys but on a rolling programme basis because only in that way are you going to get public appointments. You know, that said, you're going to get the real accountability interchange between those who use the services and those who provide them.

**Lord Burns:** Could I press you on this issue of in a sense one-tier Board, two-tier Board model, Michael, in the sense, and ask you to...I don't know how far you can do this but in a sense compare how you see the job that you do now with the job in terms of when you were with Camelot both in relation to your Chief Executive and the tasks that you do? At Camelot you had a Regulator in the form of the National Lottery Commission, of which I was privileged to be chairman at one stage for a while but not overlapping with you and you had a Board and the non-executive directors, some of whom of course were shareholders in your case, and now you move to a different model. And I'd be quite interested in just exploring with you what you think, you know the difference between the two models in terms of your relationship with the Chief Executive, your relationship with the other non-executive directors, or in this case the governors, and to what extent in a sense the different tasks are being allocated differently because you have, you know, you are moving from one in a sense regulated body to another and I think some of these issues as to where we are questioning about how it is that it might work and how it works differently, would be quite addressing your reflections on that.

**Michael Grade:** There's sort of similarities with Camelot. Camelot, as Chairman of Camelot at that time, you had shareholders, you had the public interest in the outcome of the success of the Lottery, you had the management, you had the players, the public who play the Lottery. So a lot of interest that you had to balance. As Chairman you held the ring in having to balance those interests and it's quite an interesting conundrum. So far as a relationship with the Chief Executive is concerned, I don't see any difference in terms of the requirement of a, like myself, a non-executive chairman with the Director General of the BBC or the Chief Executive of Camelot. You know you have a, it is desperately important in any organisation – public or private – that the chairman and the chief executive can work together. If you have, we've seen in the past at the BBC there has been friction shall we say between the odd Director General and the odd Chairman and some of the chairmen have been very odd, including myself. There has been friction and that is incredibly damaging to an organisation. It trickles down right through the organisation if there's a split at the top. So everybody in the organisation has to understand that the directives of the Chief Executive, the Director General and the Chairman are shared. They're agreed, they're debated, they're argued. The responsibility finally for those objectives lies with the governors but you have to get signed off from the Executive and the Director General leads the Executive side and so you have to work with the Director General. I don't feel any difference. I don't recognise the Howard Davis model of kind of this governance deficit. It's just now how it works in practise because we're all human beings, you know warm-blooded hopefully some of us human beings. You have an interaction. You have shared objectives. There's no, the objective of the Executive and the governors is exactly the same. It's to deliver public value, spend the money wisely and deliver services to the public. At the end of the day, the Director General is in no doubt in his mind or her mind that I'm there to hire and fire them on behalf of the governors. So it's no different to a private company.

**Lord Burns:** But as you move your role to a more regulatory role and if you are then, if the report that you produce is the report of the governors and presumably you envisage in this, you know, that you may be criticising the management as to the extent to which they have fulfilled their task or not, you know, in terms of the licensing system, that is not, I would put to you that in a sense that kind of public criticism of your management team and of your Chief Executive would not be something that you would be doing in your role in a private company because in a sense the National Lottery Commission had the job of telling you when you...

**Michael Grade:** In a private company the Annual Report obviously is a statement of record of the accounts, the balance sheet and so on but inevitably in the private sector, you know, there is a small 'c' conspiracy between the management and the board to put the best face on the business because the shareholders are going to read it, the fund managers who are not shareholders in your business are going to read it you hope, the press are going to read the remuneration committee reform if nothing else. But by and large it's a selling document. All annual reports of companies are selling and until this year the BBC's Annual Report has been a selling document in which the BBC is admitting no failings virtually whatsoever. This year's Annual Report and future years will be evidence that the governors, who are the BBC and are responsible for the BBC, are taking an objective view and if the management don't like it I'm sorry, that's tough. There's £3 billion of public money at stake here and they are not beyond criticism and if they can't take it they shouldn't be working in the public sector.

**Lord Burns:** I mean I understand that, the only question, what I am trying to tease out of you is to what extent though that then changes your relationship with the Chief Executive and with the other senior management by comparison with an arrangement where this is being, in a sense this debate takes place in private and where you have an external regulator who is a different body altogether who are making some of these criticisms of the performance.

**Michael Grade:** But an external Regulator at the end of the day in the private sector – the ITC, Patricia has good experience of that, and Ofcom – they are really only checking that you have met the minimum requirements that they have laid down. The governors of the BBC have a much greater role, which is to set the strategy. It's not a matter of box ticking and saying, you know, the management, they've complied with x hours of this and y hours of that, and the tension is not between, in the commercially regulated sector the tension is between in the interest of the shareholders, the licensees, the broadcasters trying to get away with the

minimum they possibly can. They're just trying to squeeze over the benchmark hurdle of what they're required to comply with and the Regulator is there to make sure they just do the minimum, at least the minimum. The BBC is a completely different, it's a completely different set of relationships and responsibilities. You know we are, I think Patricia used the phrase once, you know, the governors are a force, hopefully a force for good on behalf of the public.

**Howard Davies:** I must say I'm left a bit more puzzled than I was when I started because I'll ignore politely Michael your criticism of box ticking regulators. I've spent the last 6½ years ticking boxes in a very constructive and forward looking way I would say. But coming back to the moment the governors, you said that you think it's exactly the same as in a private company. In passing you criticise all....

**Michael Grade:** The relationship between the, the specific was the chairman, the regulatory chairman and the chief executive.

**Howard Davies:** But that is at the centre of the issue undoubtedly but the whole description of the public value and the licences that will be given and the internal processes really describe something which to my mind is very different from what takes place in most private companies, has a greater degree of transparency and exposure, has a greater degree of distance, and you and Richard recently have talked much more about the distance and the separation, the governors actually being in a different body. I am not aware of a private company where the Board meets somewhere else, you know, deliberately in order to establish that difference. So I find it very difficult to see how all of that, which has Paul says you know rather interestingly reflects the particular pressures on the BBC, but I can't see how you can do all of that and then say nothing else has changed and that otherwise it just looks, operates like a private company. That I find puzzling.

**Michael Grade:** No, that's not quite what I'm saying. It comes back to funding. You know the funding of the BBC is from the licence fee and the governors ultimately have to be trusted to spend, somebody has to be trusted to spend that and be responsible for spending that roughly £3 billion. And I disagree with the gentleman from Perk (?) who was not saying that it's not clear where the accountability lines are. It's very clear. The governors are responsible for the money. They're responsible for the governance of the BBC, not the management. The governors delegate to the management all kinds of tasks, including editorial judgements and so on. So I think that's very, very clear where the buck stops. The buck does stop with the governors. But there are some issues of corporate governance that have developed tools and protocols that have developed in the private sector which are very applicable to the BBC and our Annual Report, you know there's a Remuneration Committee Report, there's an Audit Report and so on and so on, you know that's very, very, very good but at the end of the day the comparison stops the minute you get to the source of funding and that's where the responsibilities of the governors changes dramatically from that of the non-executive board in the private sector.

**Lord Burns:** Alice?

**Alice Rawsthorn:** Yes, at the risk of pinioning Michael yet again, I too am rather more puzzled than I began with. You began by explaining the present pressures and dynamics facing the governors and saying that this of all areas of the BBC was the one that needed change most. What I'm not clear from your subsequent comments, or indeed the BBC's proposals in building public value, is whether that will pertain to the structure and composition of the Board. I would be interested to know your response to Paul Miners' suggestion that the BBC adopts a continental dual structure but also whether you feel, given the questions over public confidence in the BBC's governance and the very practical and logistical issues to be addressed, the Board as it's currently structured with its particular process of appointment and the specific roles that individual governors play is actually sustainable in the future?

**Michael Grade:** I think I'll have to go at the moment of history really. When the BBC was invented and it was decided to fund it through the licence fee, it was a very patrician age and the notion quite rightly was that the BBC should be at arms-length from the government and it should be independent and manage its own affairs and therefore the Board of Governors was

invented to stand between political interference and editorial freedom, which was a very clever notion that has indeed stood the test of time. The BBC, a bit like China, has been invaded many times but never conquered and that is a function of that early constitution which has stood the test of time. But it was a patrician age and parliament in those days was quite content to ring up a few chums and "Well he's a sound chap, he'll look after the money, it will all be fine" you know and they could be trusted. Well that's not the age we live in today. That's not adequate. That's not fit for the purpose today given the BBC's dominant position, the privileged position the BBC holds, its effect on the private sector and so on and so on. It's not fit for purpose and I think some of the recent appointments, my own in particular, have brought some sector specialism into the boardroom of the BBC which enables the governors to meet an urgent requirement now to move from that patrician age to an age where the governors' decisions are transparent, the governors explain their decisions and the governors make, introduce a level of objectivity which has hitherto been invisible inside the BBC because the boards, as they have been appointed, didn't have the skills and the knowledge to really question the management. You know if you put you know a few pig farmers and you know the odd – I've nothing against pig farmers but you know some of the appointments to the BBC, you look back over the years at the appointments of the governors of the BBC, they were patty in the hands of the Exec. You know absolute, you know they didn't know a transmitter from a valve, you know. I mean it was hopeless in the old days. That is changing and I think that will have a dramatic effect. You don't want to populate the whole of the Board of Governors with ex-broadcasters. God forbid because lunch would never end. You'd need a good mix but the governors; the key word I keep coming back to is delivering objectivity. And you may need to codify that in some way. The BBC, I think in the Agreement, the Licence Agreement it talks about the BBC managing its own affairs, being editorially independent and managing its own affairs. Well that's fine but it may be a little too much of a hangover of that old patrician and we do need to, this word 'objectivity' which is really the heart of the criticism of the governors, that they've been captive by management over the years and the poor DCMS have had to come in, you know, after the accident has happened and say "What happened? Well we'll have to get Lambert to look at this or we'll have to get Philip Graff to look at this." You know, it's not an effective way to do it and that really points to the fact the governors have not really understood the need to deliver objective decisions informed by management but tested objectively. And that's what we're trying to get to and I think that will have a remarkably constructive effect on the way our decisions are....

**Lord Burns:** I mean we are moving to the point where we're going to have a break but just before we do that, because the other person at least who we have here who has worked both in the BBC and has also been on other Boards, Bob. Do you have anything to say about the difference between the two models and how different it feels to you and whether the direction that Michael was now proposing or in now proposing because he's implemented, causes any tensions?

**Sir Bob Phillis:** Yes, I do Terry. I think a number of points. A lot of people in this room were at the Westminster Forum in February where this issue was touched upon you will recall and I have to say I think the BBC document takes it a long way further forward into addressing some of the issues that were expressed there. But there are still I think a number of observations that I'll make at this stage. We can pick them up later. I don't want to repeat the points that Patricia and Paul in particular have made with which I would agree. I think the first point is the function of governance and the function of regulation are different functions. They require different experience, different skill sets and they actually have, as Patricia pointed out, a different time focus. Although the governance function is going to look at performance, historically it's also about setting strategies, setting objectives and indeed that key path, key task of holding management to account. The regulatory function is primarily one that is ex-post. One's looking back at what's happened and certainly I feel very strongly that the sort of mix that one found almost by accident as governors of the BBC need to recognise the difference between governance and regulation nor ensure that it had the necessary skills and experience let alone the question of resources to address it. But I think there is a difference between if you like the internal process of regulation, which the governors clearly have to do and should perform, and regulation in the external context where the BBC has to be held accountable or operate within other frameworks and there's one in particular I'd want to mention when we get to that. But the internal process of regulation is perhaps - we shouldn't

confuse it – is an aspect of compliance, compliance with the rules and the procedures which the BBC have established and that can only be done I think by the governors but that's different from some of the competition or economic issues which I think lie outside. There's some discussion about how similar or not to external forms of corporate governance. Looking and thinking about the responsibilities that the BBC has set down themselves, I would argue that four out of the five stated functions are exactly that that you would expect of a corporation in the outside world and I think one needs to ask whether the BBC has in the past and will in the future apply those same standards of governance which the City and the private sector expects of their organisations. The one crucial difference is of course the governors' role in ensuring public accountability and being held accountable to the public. That's the difference and that's the thing, which makes it an additional responsibility of the governors, which a board of a company wouldn't otherwise have and I know we're going to come back to that in one of the later sessions. A couple of points on structure. I guess most people in the room know that actually the governors do meet with the Executive on a monthly basis, usually around a, what was in my day a particularly large table and with far too many people around it. The problem and the difference with the way in which a public company board would operate is it was extraordinarily structured and the executives were there to report on their area of responsibility but virtually no constructive debate amongst themselves and with the governors on the issues concerned. People were, in my day people knew exactly what they were supposed to speak on and say, they knew everything that they were not supposed to speak on and say and they never engaged in the sort of debate that you would actually find in the private sector where you marry the skills of the executives with the skills and the experience of the non-execs. Maybe it's changed in the 7 years since I last attended but it was not always a particularly meaningful part of a governance process. In terms of how one addresses these issues, one wonders whether, having properly defined what the governance role of the governors is and the regulatory role might be, rather than the two-tier Board structure that we've been kicking around Terry, does it help as a minimum if the business, the agenda, of the governors' meeting were very clearly delineated into the governance role that the Board actually pays as opposed to the regulatory role because certainly, when I sat around the table, it was very, very confused. One could go further and in looking at the composition of the Board, could you split the Board in terms of its governance role and its regulatory role with people clearly designated to one function or the other? The confusion comes when it all gets wrapped up into the same sort of general debate around the governors' table. And the final point I'd just like to make at this point is Michael has recognised and I think in the Paper addressed the questions of skills and experience, absolutely vital in the selection as to who is invited to be a governor of the BBC. And in the old days, perhaps they have long since passed, I'm not convinced, where someone would come up with the names of the great and the good and somehow they were going to absorb not only the complexity of the BBC, the complexity of the broadcasting and media sector, the huge volume of work which stems from the Director General and his Executive to make a meaningful contribution was absolutely absurd. So selection it seems to me to be vital but so is training. And I think anyone who takes on the responsibility as a governor of the BBC needs to be put through a very intensive preparation and training and not simply visit the odd radio station and studio here and trip around the country and hail fellow, well met. There's a massive amount of information, which needs to be absorbed and got to grips with if the governors are going to perform adequately. So whilst Michael in separating the governors' function which I applaud, I would urge that in terms of financial resources and in terms of staffing, it's sufficiently well resourced to be able to address some of this issues if you want an effective Board of Governors and an effective relationship with the Executive.

**Lord Burns:** Thank you very much, Bob. I suggest we have a 15-minute break now and when we come back maybe look a little more closely at this issue of what one might think are regulatory functions, what are broader governance functions and just see if we can tease this out a little more. Thank you very much.

### ***Coffee Break***

**Lord Burns:** Okay, thank you. Thank you all very much and if we could now move on to our second session. As I said at the beginning, these all move into each other and it's not easy to distinguish between them but if we could try to move the debate on into some of the issues of

principles of good regulation and corporate governance and their fit with a public sector broadcaster is the general title given to this. And I'd like to ask Howard again to start seeing if we can begin to develop some agreement about those types of functions that we think may be regulatory functions and those that are governance functions and whether we agree with which lies on which side of the lines.

**Howard Davies:** Thank you, Terry. Yes. We spent a bit of time before the coffee break in the patrician age so pulling us back to present day, I did think for a while you meant the time when Patricia Hodgson was in charge. Apparently not. The exhibit in the Graff Report, and I guess the only thing that we probably agreed before coffee was that there shouldn't be such things like the Graff Report in the future, if you can get the governance regulation right, I mean I think which the Panel would probably be quite comfortable with. Whether the DCMS would be, I'm not sure. But the exhibit in that, and I think we've tabled this, Exhibit 9 in the Graff Report tries to produce a taxonomy of the BBC's regulatory and governance activities and responsibilities and in two straightforward little boxes really – one marked 'regulation' and one marked 'governance'. And I guess the questions are really whether – perhaps one might put this to Michael or Richard to start with – is whether that looks to be an appropriate dividing line and whether it's possible for the governors to do all of the things on both sides of it or whether they in some senses conflict with each other, which is then the kind of underlying issue that we've been trying to address and that might be another way into the debate that we were having beforehand. So I don't know if you'd like to comment on that or Richard might like...

**Richard Tait:** Well I think it's a pretty good statement of what the BBC does at present but I think one of the reasons why this is such a complex issue is that we are trying to look at private sector models, different private sector models, to see quite properly what we can learn from them but we're then trying to apply them to really a one-off organisation. And I think that I've got a couple of areas which occur to me looking at both Philip Graff's table but also the discussion we had in the first session. I mean the BBC is a very unusual organisation. It's got a lot of money, public money. It has a very ambitious remit. It has for 80 years preserved its independence from political or commercial influences. And we therefore do need to test these different structures against the two objectives we set ourselves, Michael set out at the beginning of value for money and independence. To just give you one example, the issue of if you like editorial independence. It's a regulatory requirement you know on Philip's list, safeguard the BBC's independence and political and commercial pressures. Now if you look at the commercial model, when I joined ITN in 1987 I was amazed to find that the Board of ITN did not safeguard the independence of ITN. They were shareholders and they were interested in the success of the company but the independence of ITN was guaranteed by the Regulator because the Regulator was the final arbiter of the impartiality and accuracy of the output, which was the core of what ITN did. And I think that sort of shows you what the problem is in terms of at some point in whatever governmental structure we come up with the buck has to stop and wherever it stops those people are effectively responsible for the BBC's independence. So I think there's a difficulty with looking at, if you like, a commercial model and trying to apply it, a commercial television model and trying to apply it directly to the BBC. In terms of the context in which we are talking, we haven't really talked much about the environment in which these changes are taking place. We have come now to the parting of the ways between the two bits of public service broadcasting. The world I worked in for 15 years in commercial television where commercial television aimed to model and excel at quality has gone. It's changed because of digital technology, it's changed because of the market conditions. There's no point in worrying about or bemoaning it. It just is a fact that we've come to a parting of the ways and therefore you have in the commercial sector a model which works pretty well and works in the context of the models we've talked about pretty well where you have basically boards of shareholders ensuring shareholder value and you have a Regulator with a backstop representing the public interest. That's not a model, which I recognise as being able to deliver independence and accountability and therefore it seems to me that when we look at putting these two into different boxes, we have to accept that the BBC may be a bit messier than a commercial organisation. Parliament and society have given it a range of obligations which don't necessarily fit neatly into the boxes of any form of commercial regulation. We can say learn from the different models but I don't think that we can say for example if the BBC is going to allocate resources, which are a key element of

value for money, therefore it mustn't safeguard the BBC's independence, political and commercial pressures by being responsible for impartiality and accuracy. So it seems to me we do have to look at the overall context in which television has changed and see that if it is the case that the BBC ends up looking a bit different in regulatory structure from other commercial broadcasters or indeed other commercial organisations, well perhaps if it's the best structure of the BBC so be it.

**Howard Davies:** Patricia?

**Dame Patricia Hodgson:** I remain worried about language. If you look at the regulatory column, I would suggest that words like 'supervision', 'compliance' and 'accountability' are more appropriate to the functions that are listed on that side. I mean obviously words mean what you want them to mean but we've begun to develop a professionalism about regulation which certainly in broadcasting has been post facto, has as far as possible been quantifiable and obviously it has judgemental aspects in relation to things like accuracy or impartiality standards issues. But issues that are about the purpose of services that will be carried out on an iterative basis as services develop the Board looks at them as they do develop don't seem to me to be regulatory. They seem to be supervisory. And consulting with the BBC's audience and undertaking research into their needs seems to me to be accountability rather than regulation. And it may sound nit-picking but I do think it's important because otherwise we start getting, as I think the governors have been in an earlier life, confused about their role with the equal danger that Ofcom gets confused about its role. And I don't actually think that, well I know from experience as a Regulator, the Regulator cannot guarantee the independence of the body. The independence of the body can only be determined by funds flow and the behaviour of the Board of the body.

**Lord Burns:** I don't think this distinction, as I understand it in reading the document, was meant to in a sense imply that the things on the left-hand side were the functions of Ofcom necessarily or of the ITC type of model. I think it was doing it in a more generic sense, saying you know what are those tasks that you can say are attempting to ensure that the organisation is meeting the responsibilities that it has been given as opposed to which of those tasks are about how well the company runs, how effective it is, how it monitors performance.

**Dame Patricia Hodgson:** But the reason I pick at the words is that if we could get some clarity about the labels we put on certain activities, it might help us and things like accountability – I thought Bob using internal regulation and saying actually it's compliance was a very important point.

**Tim Gardam:** Terry, could I pick this up?

**Lord Burns:** Yes.

**Tim Gardam:** I want to go back to what Paul said about the difference between architecture and behaviour and what I'm trying to work out when I first read Building Public Value I thought it pertained to the architecture. I'm not sure whether Michael has so changed the architecture that he's done one of two things. Either he's saying that the behaviour of governors will change, in other words they'll wake up a bit more, or their role has changed but I don't think that's clear to me. It seems to me that the fundamental difference is a Regulator has no vested interest in the health of any of the institutions it's regulating. Whether the key to a governor, governance is about ensuring that the institution of which you're a governor....

**Lord Burns:** I don't think that's right because I think the financial regulator is jolly interested in the health of the companies that he's regulating because they've got jobs to...

**Tim Gardam:** But the fundamental difference is the survival of the, the governors' role is, it's this closeness issue, which I'm trying to pick up on there, and for instance I think what I don't quite understand is whether Michael is saying essentially the relationship between the Chairman and the Director General is going to change, is exactly the same as it ever was. For instance I'd be interested to know how Michael would compare his relationship as Chief

Executive of Channel 4 with Michael Bishop as Chairman of Channel 4 with the relationship with the BBC Chairman, where there was a regulator over and above Channel 4 with a relationship that he as Chairman of the BBC should have with the Director General because that goes to Howard's point about is there a gap because, and I think the thing that is different is this introduction of the Service Licence Agreement because I think that must lead to a distance between the Chairman and the Executive or the governors and the Executive, which does change the relationship quite fundamentally. And I wondered if Michael could pick up on that.

**Michael Grade:** I think it will actually bring us closer together because there will be on a piece of paper a very clear sense of what job has been delegated to the Director General and it won't be a completely amorphous, ambiguous, unexplained, unaccountable, osmotic relationship which was had in the past. All we're trying to do here is two things. The accusations, there are two accusations against the way the BBC has been governed. One is that the BBC basically is so independent that public service broadcasting is whatever the BBC does. Any news service is justified because the BBC wants to do it. That's on the kind of service provision. That's not an acceptable. We have to answer that. The second bit parliament has asked the BBC to help itself and to return to the licence payers, to give the licence payers a return on the investment they have made in the intellectual properties that they have created and that's led to commercial activities, which the BBC has got into. Now the BBC was required to do that, happily did it, have a duty to the licence payer to raise revenues on the intellectual properties that the licence payers have paid for. What the BBC has been very slow to realise and take account of is the fact that that has a very serious impact on the private sector and it has not hitherto but that's changing. It has always thought that it was enough to have its own processes internally and actually in a very, you know, sort of secretive way say "Well we've looked at this and we're happy and that's the end of the matter." That's not acceptable today. So the whole point about the public value test, the whole point about separation, is to bring in a measure, a real recognised tangible measure of objectivity to the decisions that the BBC makes about its strategy, how it spends its money. And the service licences bring us more into line with the private sector. You know I operated at Channel 4 with a licence from the ITC. Carlton, Granada, all those companies all operate with a licence and it's very clear what their job was. Why should the BBC not create its own clear, transparent Licence Agreement for its services.

**Lord Burns:** Can I just press though Tim's point? When you were at Channel 4, you got your licence from ITC. You then worked as Chairman with the Chief Executive in order to make that work. You however, now as Chairman of the BBC, you are both giving the licence and you are then going to be working with the Chief Executive to deliver that licence. And so, you know, in that sense the argument goes you are still, you are sitting on both sides of the...

**Michael Grade:** No because the Chief Executive, the Director General understands perfectly well that the governors are responsible in the end for that delivery. We take that responsibility. He knows where the responsibility lies.

**Richard Tait:** Can I just say, the history of regulation of commercial television in the last 10 years does not give us a great confidence of a system of external scrutiny of licences is going to deliver what (INNAUDABLE) and I think Patricia fought very much the good fight in the ITC against a system, a commercial system, a commercial interest that did not want to continue with many of the licence.

**Dame Patricia Hodgson:** It can't be done basically. It can't be done.

**Richard Tait:** It can't be done and I'll give you a pressing example. The starter night of the decade, the ITC ruled that commercial television, ITV, should spend £78 million at current prices on news and they should run their main news at 10 o'clock. By the end of the decade they'd halved that in real terms and the news bulletin was getting, was at a marginal time. It was getting half its audience. Now that is an area where actually there was quite a strong regulatory framework. It as laid down, the various minimum requirements for news. As we know in the Communications Bill it's the same. So I think that's a good example of the difference between arms-length regulation and the sort of engagement which I think we're

arguing for of the governors, where there is a common purpose but there's also the ability independently to audit what the management are doing about news, what it's doing about its impartiality, what it's doing about its budgets, what it's doing about its scheduling.

**Howard Davies:** You're responding there to a point that we haven't actually made. I mean we haven't in fact argued here or teased out the arguments for external regulation. Maybe we should come to that. The point that was being made by me and by Tim most recently was whether in establishing a greater arms-length - and you've talked yourself about the greater separation between the management and the Board - and yet Michael has talked about a closer relationship between the Chairman and the Director General and then just said that it's actually the governors who are responsible for the delivery of the licence, which had not been my understanding of what the new structure was designed to achieve, that you are responsible for setting the terms of it but that the Executive are responsible for the delivery of it.

**Michael Grade:** Delivery is the wrong word. If I used 'delivery' it's the wrong word. Delivery is delegated to the management and the governors at the end of the day are the arbiters of whether it's been successfully delivered or not. But the other key function of the licence is, the service licence is, is to ensure that major shifts in strategy during the course of the year or the course of the two or three year period, BBC1 suddenly wants to do something completely different to what it said, in the old days BBC1 would just do it. It would be reported to the governors and you know at 5 to 1 they'd slip it in before we had lunch and we were all hungry, well I think we'll take that on the nod, yes fine, and go on and have lunch. What the service licence does means that the Executive to whom that implementation has been delegated, had got to come back to the governors. Look, there's a very, very good case here for moving the news from 10 o'clock back to 9 o'clock - I'm making this up now - and at that point the governors can look at it, discuss it, hear the arguments and if necessary and in most cases of something like that would seek outside research, information, consultation before reaching a decision. So the governors' decision would be informed by some objective...

**Howard Davies:** Which is not what a company board would do because it wouldn't normally...

**Michael Grade:** Yes, it would. It would go and consult its shareholders on a major issue. You know the night before the R & S you'd go and talk to your 6 leading shareholders and see which way the wind was blowing.

**Lord Burns:** I hope you'd look carefully at the licence abuse guidelines before you did that. Janet, you've been very patient.

**Janet Finch:** It seems to me that I've been listening very carefully to what everybody has been saying and I think there's a question on which there is certainly no agreement and in which actually I think very contradictory things have been said by a number of people, which is the question are the governors part of the BBC or are they in some way separate from it? And this bears very much on the distinction between governors and regulation I think because there must be, one of the principles of regulation must be that a Regulator is not in any way identified with the actions and decisions of the body that they're regulating. Now that seems to me to be a fundamental principle of regulation. Governance I think is quite different from that and in all other organisations that I've ever been involved in of which are mostly in the public sector, some of which, and I work in a university, have a number of similarities of the debates that we are having this morning about governance but all other organisations that I've been involved with have had governing bodies that felt that they were part of the organisation and in some way, strongly very often, identified the decisions taken. Now it's a separate issue to say whether the governors have the capacity to do that and whether they do it effectively but I think the fundamental difference between governance and regulation has to be around this question of whether the governors are a part of the BBC or in some sense separate from it and, if the latter, in what sense? And I have heard completely contradictory comments this morning relating to what I'd see as a central question.

**Ruth Evans:** Exactly, yes. Could I just follow on from that because I was going to pick up what Patricia said about regulation and getting definitions right because I think we're talking to different definitions of what regulation is. In my experience, and I've done a lot of work with professional bodies – the General Medical Council and the Law Society – where we are trying to create some effective regulatory framework. Quite clearly in those professional bodies regulation is about standard setting. It is not post facto and indeed with the FSA it was standard setting. It's reviewing, implementing, going out there to see what should, what policy frameworks are and whether the existing policy frameworks are appropriate and what new framework is required. Standard setting, whether it's through the FSA or the General Medical Council or the Law Society is the absolute bedrock of a regulatory authority and it is very difficult to reconcile that with governance because they are separate corporate functions. And indeed just taking it a step further with the professional bodies, the General Medical Council and the Law Society, you set standards. You then enforce it. If a member of the profession is up for serious professional misconduct, that goes to a third body because of human rights legislation. There is now a separation between investigation and adjudication and the FSA is the same experience. Setting strategies is a fundamental important prerequisite of providing that regulatory framework. And I think if we think, believe that it isn't, that's where the boxes get muddled. I think this model is absolutely right and the natural development from this is to create different institutional arrangements to ensure their effective administration.

**Sir Bob Phillis:** Actually I don't accept Philip's distinction at face value. I think that the majority of the things under the regulatory box are questions of internal regulation or compliance and of course the most important of those is the first – the independence from political and commercial pressures. I think many of the other things there on the list are more about compliance and internal regulation but I actually would take, make two other points. The notion of setting the service licence and the service remit that you have explained in your documentation is perfectly proper, I think extremely helpful and that's relating to existing services where the governors are going to hold the Exec to account. That's good governance. That's good management. I would argue when the BBC is considering launching a new service, whether that be television or radio or online or wherever, and it has an economic impact on the external market, then I think a body such as Ofcom does have a role to play. Because of the strength and because of the power and the excellence of the BBC in the media market, anything that the BBC decides to do in that broadly defined media sector will have impact on the market and on its commercial competitors. And I think the shift that we've seen say over the last 10 years where, arbitrarily say 10 years ago there was very broad support from the commercial sector to the BBC as the cornerstone of British broadcasting and public service broadcasting has moved increasingly to where the commercial operators in various necks of the wood have found themselves reacting to what is seen as a BBC incursion into the market in which they are operating. BBC online is a classic case. The new digital services on television and radio are classical cases. Now when you're talking about that aspect of economic and market regulation, then I think Ofcom certainly has a role. Whether that's in conjunction with the BBC, whether it's separate from the BBC is something to debate but I don't think in this sort of matrix the governors can make that assessment of the impact on the market-place of any new service proposals in the same objective way that the competition regulator, be it Ofcom or OFT or whoever it is, could. And interestingly I wouldn't call the National Audit Office a regulatory function. Actually I think the National Audit Office is an extension, a very important extension of the governance function of the BBC and I have always been surprised at the strength and depth of the resistance from within the BBC to involvement of the National Audit Office. The National Audit Office is responsible for the World Service because the World Service is funded by the Foreign and Commonwealth Office and ultimately the Treasury behind that. And when I was responsible for the World Service, we went through our regular reviews of the NAO and it was a perfectly proper and extremely helpful exercise, tedious sometimes and it took a lot of effort on occasions but in terms of the question of financial accountability, the aspect of the governance process, actually I would put the NAO's involvement – and I welcome the fact the BBC has made some small steps towards involving the NAO – as part of the governance function not a regulatory function.

**Lord Burns:** Could I press on because I should emphasise we are here genuinely, you know, interesting in trying to tease out in terms of what some of the implications are of the changes that are being proposed and Richard mentioned the case of ITV. It was told to spend £78

million on the News at 10 o'clock. Now you could, you might have, you know in a sense you could have an equivalent role in your new version with the governors. In a sense you've given the management a licence. You say we will give you x million pounds to do news and current affairs and we want it put on at these times of day and, you know, the quality must be high, etc. and you will do that. Now they, in your case you have the money which you are providing with them and therefore if they don't spend the money on that, then they're in some difficulty because you now have a weapon to use against them. But if the management suddenly decide well, you know, we don't like this business of news at 10 o'clock, we'd rather have it at half past 11 because it enables us to produce some better schedules, what then becomes the process by which the management come to you because, you know, I would have thought in a normal relationship between a Chief Executive and a Chairman, once they've sorted out, the management have decided what it was it wanted to do, it wanted to make its case, they'll then come to the Chairman and say "We would like your support for this because you know we've been through it in some detail, we think it's very sensible" but now you are not only now the advisor to the Chief Executive in telling him whether to bring this proposal forward to change the new schedule, you are also going to be the arbiter of the end of the line because your job is in a sense to scrutinise it and with your other governors you are going to no doubt be very tough about this. And I think it's that kind of, you know, questioning about what are different roles you know between in a sense the critical friend when the Executive come to you to say that they are thinking of making certain types of changes and they want to run things in a different way as opposed to the role at the end of the line where you've got to decide whether you are going to let them off the hook in this way and spend a bit less on news and maybe spend a bit more on the Olympic Games or whatever.

**Michael Grade:** Well the role of the Chairman in that situation, let's assume that what the Director General is proposing is contentious, is likely to be contentious, I don't want to prejudge the outcome but you try as you do in any company. The Chief Executive comes forward and says "I want to buy this company" and all the non-execs put their hands up in horror and say "Oh that all sounds a bit expensive and how does it fit with our strategy and we've just told the shareholders we're not going to buy any companies" and you end up with endless board meetings where you try and reach a consensus and I don't see how the BBC is going to be any different. At the end of the day, at the end of the day in any company – and it's true of the BBC – in the end the buck stops somewhere and in the BBC it stops with the governors...

**Lord Burns:** Yes.

**Michael Grade:** ...but provided you have a full and proper debate with mature people arguing their case, you reach a resolution and if you can't reach a resolution, and this has happened in private companies where I've been Chairman and we've had to in the end say to the Chief Executive "I'm sorry. You know you haven't carried the shareholders' representatives on the Board and you can't do it." Now the Chief Executive either resigns at that point because it's such a big issue for him or her or they, you know, send the file to the archives. I don't see it's any different. I don't see a problem.

**Dame Patricia Hodgson:** You ask yourself who else would do it? And the only candidates are the Regulator, Ofcom, or the government...

**Michael Grade:** Or a new Regulator.

**Lord Burns:** Patricia, I'm not saying, I mean I can see very clearly in this model how the governors do it and it seems to me, you know, that it has a great of strengths in that they have a much more arms-length in a sense agreement with the management about what it is that they are going to deliver for the money and it's arranged quite clearly what money they will have, what they're going to produce with it and they will be held for account. But it is this intermediate stage of then who is it who helps the Executive in the process when they want to bring forward some changes or some proposals or they want to tentatively suggest things? You know do they have another group of people who are helping them to do that before they come to the governors as the Regulator or is this all compressed into one organisation? I am

not disputing, it wasn't to say that the governors shouldn't do the task. I mean my question is more the other way, which is to say if the governors are doing that task, can they also be there as the critical friend who are helping people to come forward with...

**Michael Grade:** Can I just very quickly, I'm talking too much as you know...the Chief Executive comes to me, the Director General comes to me and they say we want to start, BBC12! And I say, well, that's an interesting idea, he sketches out the broad idea of what it is. My role at that point is to say "Well have you thought of this? Have you thought of that? You'll need an answer to that. I suspect the governors will be very, where are you going to find the money from? You're going to take the money from there. Well that's a big issue." And I would raise with him all the problems that he is going, all the questions that I can think of that he is going to have to answer as he prepares the case. Now the case at that point will either collapse or he will have the answers and he will come forward to the Board and it will be tested in the full context of a Board discussion and the Board at that point will say "We actually think this is a very good idea but it's going to have an impact on Classic FM, it's going to have an impact on ITN, it's going to have an impact...we need, you know, hold everything. You know we think in principle this is worth exploring much further" and this is a radical for the governors of the BBC. We will then go to Bob Phillis or somebody and say "Look, this is what's being proposed. We think there's a public interest in putting resources into this. Could you please go away and road test this outside with all the stakeholders who might be affected and come back and make a recommendation to us and that's how it will work." And it's simply bringing in objectivity to the governors' decisions which hitherto have been very private, very closed and very incestuous.

**Sir Bob Phillis:** Wouldn't it make sense therefore to have a closer relationship with Ofcom in making those decisions on where the BBC sits?

**Michael Grade:** Ofcom will certainly be consulted where it's relevant. Happy to do that. Absolutely happy to do that. It's very important that, on an issue of where they may have some locus that they understand what the issue is and they have some input. In the end, in the end the governors will be then, all these things will be a judgement call at the end of the day but at least the governors are going to be making a judgement that is, weighs the outside stakeholders interest with the public interest and we say actually we find in favour of the public interest and we're going to do this. We had arguments from Ofcom that said we shouldn't do that. The reason – and we will say all this publicly – the reason we, we can state exactly what the reasons are, why we give either accepted either objections and turn the management down or rejected outside. So the thing is transparent and it's objective. I keep coming back to this word 'objective'. This is the greatest accusation against the governance of the BBC in the past. It's never been objective. And once you bring in objectivity, which I think should be codified in some way, then I think a lot of the problems go away. What I'm not clear about, other than kind of theoretical worries that people have around this table, which I can understand, about the conflicts between regulation, governance and how do you judge a jury in your own, in your own case and so on, what you've got to look at is what are the practical effects of what the BBC, the way the BBC has hitherto behaved? What are the damaging effects outside? Certainly in the commercial private sector the BBC has been very clumsy in its understanding of the effect that it is having on the private sector with some of its growth initiatives and so on. That's a very clear, tangible evidence of where it's gone wrong. The other evidence is that there has been so little explanation of how the BBC governors have reached policy decisions. It's all been done and it's a rah-rah Annual Report which says everything we're doing is wonderful and those are the two tangible, practical ways in which you, I would have to agree with the criticism and this is what we are trying to address.

**Lord Burns:** Thank you. Alan, could you...?

**Alan Budd:** Yes, it's the general policy, more general than the recent discussion and I don't want to reopen the question of what is or what is not public service broadcasting, though it really does hang over all of this. I want to ask the following question: Is the following a fantasy? I think after hearing Bob Phillis' discussion of the way governors' meetings went, it probably is. At the September meeting of the governors, somebody says when looking at the broadcasting record "This is terrible. You're not showing the programmes that the public

wants to watch.” That’s in September. In October, when we have the governors’ meeting in October, somebody – and it may well be the same person – says “This is terrible. You are showing programmes that the public wants to watch.” And so the question behind this is in relation to the governors’ regulatory role, is the reason we have governors because the BBC doesn’t have paying customers, it just has a compulsory levy, therefore the role of the governors is to represent the viewers, which is language you often find in this document, or is it because the BBC has a public service remit, which may mean of course that it has to form an independent view of what sorts of programmes and activities are appropriate to be broadcast out of the licence fee? Now is it one or the other or is it both? I mean it may well be both and, if it is both, does this affect the nature of the role and the structure of the Governing Body in relation to that particular activity? Matters of independence from political pressures I think are easier to cope with. I was in fact interested in Michael’s presentation. He emphasised independence from political pressures much, much more than he emphasised independence from commercial pressures. Actually I have some sympathy with that.

**Michael Grade:** It’s topical.

**Alan Budd:** Okay, it’s because it’s topical. Yes. So, and it may be that this is related to Ruth’s made a point about customers and citizens. It may be that what the Governing Body does, the governors do do is sometimes think about customers and sometimes think about citizens. So this is a general question but it does, it seems to me it raises questions about the way in which the governors go about their job.

**Lord Burns:** Ruth, you were going to...

**Ruth Evans:** I mean just, I was thinking before Alan you talked how we were both on this funding of the licence fee panel in 1999 where we touched upon some of these subjects and the BBC, particularly led by Patricia I think at the time, a sterling persuasive effort that the relation of the BBC should largely remain intact because it worked and it was reforming and we brought the NAO in I think, which was in itself quite a difficult move at that time. This was only what, 5 years ago? The same arguments are being replayed now and I find it, I mean one of the interesting things is how, Michael, are you going to guarantee to the external world that objectivity is met? I mean what is your evidence base? How are you system, you have to systematically prove, you have to gather the evidence to demonstrate that accountability, independence, all the things that you as a Regulator should be can be because it’s a matter of public perception. And I can’t see how in those 5 years we are much further down the road. And the arguments put forward, although it wasn’t within the remit, we touched upon it, obviously we touched upon it because it wasn’t your review but all these arguments were raised at the time and we were told. So there is some feeling of retrenchment, which is endemic within the organisation. Is that a fair criticism or not? I don’t know but if it isn’t then you’ve got to show what the evidence base is for objectivity and planning.

**Michael Grade:** The BBC has got a double first in confessing and avoiding. It’s been extraordinarily good at that over the years but the game’s up. The fact is that the changes that were talked about, that were promised in ’99 and weren’t delivered have been promised now and they’re actually in the process of being implemented, you know having a properly resourced independent governance unit whose pay and rations and enhancement does not depend on the management but depends entirely and they’re employed by the governors and their salary reviews will be conducted by the governors and not by management, etc., etc. They are beholden entirely. This is a huge change inside the BBC and not much, you know, not entirely unanimously embraced by the management. The Director General certainly understands the reason for it.

**Lord Burns:** The two, there are two practical things that I observe in this debate. One is in a sense the challenge to the government that says that all of a sudden one would come up to Charter Review. We see a schedule, a set of schedules that are much more what we all think of as public service broadcasting. There are less repeats. There is less of the stuff that people complain about and that whole thing appears to be a great deal more serious and it’s aimed at Charter renewal. And I mean I interpret from what you say that your intention would be in a sense that you would be almost in, that you would be exercising this role on a year-by-year

basis to make sure this was happening rather than it should be left to this 10-year process. The second thing that several people have raised and which I've raised myself is that the BBC seems to be in endless review from the world outside and particularly in terms of via DCMS, who appoint a range of people to do these tasks. That again is now something that you would anticipate that the governors took upon themselves and they would commission work. They would run the place so that there was no need for that kind of external scrutiny and in a sense the regulatory role the DCMS have been working towards it. So that you wrap up these, as I understand it your aim in a sense is to wrap up these two things which have been so far in a sense been done by an external process and to make it on-going and to make it as part of the job of the...

**Michael Grade:** That's why I think it might be helpful, and it all depends on the drafting, to codify some of this in the Agreement so that the responsibilities and the way that the governors are expected to behave in future, based on what comes out of this debate and so on, is there clearly as a model. After I've gone, you know, I may have to resign in a week's time over Panorama or something you never know, these things happen but we want something that's going to last and is going to ensure that the culture –and it is a cultural thing inside the BBC – that the culture changes. Everybody in the BBC realises it's no longer good enough to make our own decisions in the privacy of our own boardroom.

**Tim Gardam:** Does that mean that you'll be driven inexorably to sort of distinguish between the governors as custodians of the licence fee and the governors as the custodians of the BBC because it seems to me that if in your service licence mechanism things come up which you as governors are not satisfied with, that could mean you decide that money should not be spent on those things so you then are going to decide that the licence fee, maybe you don't need it all? I mean maybe there will be a position whereby, as you look at the value for money of this chunk of cash which you've been entrusted with and the delivery of what it's being used for don't match up. Isn't that going to inevitably happen?

**Michael Grade:** That all depends. I mean that all depends in the end on if the licence fee is renewed what the settlement is, what the incentives are to efficiency inside the organisation. As you know, as you well know, Tim, there's never a shortage of ambition, creative ambition to increase and improve the services to viewers and listeners and online users. It's always going to be a matter of moving money around.

**Tim Gardam:** But pushing slightly more the distinction of roles, you're custodians of this universal licence, you are identifying the ideas the management are bringing to you and licensing those. It's always been up to the BBC, you know, that just as the BBC defines as public service broadcasting what it does, so the amount of money it has will always be sucked up to do that. It seems to me as you push towards transparency in this way, you will be getting, you will be forced to actually have a clearer relationship between the money you're getting and what you're spending it on. You have to make judgements about whether that money should indeed be spent and as much of it should be spent in the way it's being spent.

**Michael Grade:** Yes but that's a judgement, a judgement that will be informed through all the consultative groups, through the broadcasting councils, through the whole matrix of kind of statutory and systematic taking of the public's mind through these bodies. We intend to do a huge rolling survey every 3-5 years. It depends on the methodology and the cost which we haven't determined yet but we are going to do a massive, massive survey every minimum, between 3 and 5, every 3 and 5 years to help inform the governors on how what we've been doing has been received by the licence payers. We are the custodians of the money. We are in a sense, if you call the licence payers shareholders, we are their representatives.

**Tim Gardam:** You wouldn't actually hand any of it back?

**Michael Grade:** Sorry?

**Tim Gardam:** You wouldn't actually hand any of it back?

**Michael Grade:** Well if any other public institutions are in that mood, we might follow suit.

**Lord Burns:** You first and then Howard.

**Paul Myners:** Terry, I am sure my experience is so limited to the subtleties of language around whether one's a custodian of the heritage or a custodian of the licence fee. I come from a much simpler school. I am trying in my mind to imagine what it must be like to be a governor and to attend your first meeting. I can see the beginning and the end. I can see myself arriving and having a pre-allocated car parking space, an executive lift reserved for me, many people guiding me to the lift and a good lunch at the end. In between, and like many organisations most of the most significant decisions made immediately prior to lunch. What I have great difficulty doing is understanding what we do in between. And what I think the governors need to be able to say is we can define success. We know what success looks like and we know what failure feels like. And we go from our Charter and we go from our public service obligations and our accountabilities to the providers of the licence fees and we get into a series of granular statements about what evidence we would bring forward to support our contention at the end of a period that we had been reasonably successful in the objectives that were set for us. So a lack of clarity in that area is going to lead to unstructured discussions, a general lack of satisfaction about the outcome of the meetings and probably a significant degree of cynicism amongst the employees of the organisation about the effectiveness and the role of the governors and their meetings. So press to get clarity on that first of all. Secondly, it seems to me that the process that Michael is introducing to give an independent Secretariat to the governors to support them in that process and a budget which is theirs and theirs alone to support research, to support audit, not just in an accounting sense but in a performance extent, would seem to be a wholly sensible set of steps to take. Thirdly, we get the issues about whether in some way the management, the Director General and his team, might in some way be limited now by the fact that the governors are keeping a degree of distance, which seems to me that it's entirely open to the Director General to create organisational structures which have friends and supporters to whom he or she can draw for input. Howard and I were talking earlier on. We're both Trustees of the Tate. The Tate Trustees have certain statutory obligations but within the Tate structure we have a Council for Tate Modern and a Council for Tate Britain. They don't have statutory powers but they certainly provide a very effective support and challenge and a greater diversity of experience and input for the work of the Directors of those galleries than they get from the governance structure at the very top of the organisation. And finally we come to in my mind this issue of closeness and it's a very difficult one. The role in relationship between the Chairman and the Chief Executive is absolutely critical to the success of any organisation. If the Chairman and Chief Executive do not have mutual respect and agreement on the agenda and a capacity to have open and constructive dialogue then the governance structure will creak and may well fail. But at the same time it doesn't mean that they have to spend every hour of the day with each other. It doesn't mean that they should be so close that it is not possible for the Chairman to form an independent view because in the end the most important decision that Michael has to make is whether he has confidence in the Director General. That is the top of Michael's agenda every day, every week. Do I feel confident that the Director General understands the wishes and ambitions and expectations of the governors? And if he doesn't, we need to help him because clearly we've not been clear enough. And do I feel that he's adopting actions that will take us towards me at the end of the year being able to say "On the whole, we've been pretty successful"?

**Lord Burns:** Very good.

**Howard Davies:** I think following on from Paul, I think we have hopefully clarified the ambitions inherent in the new reformed structure, partly by Michael's criticisms of the way things were done in the past. I have to say Richard's dustbin of history is filling up quite rapidly. If he were alive today, Lord Burt would be turning in his grave I think. But the ambition...yes. I do know how to make a joke if nothing else. But the ambition is a very broad one it seems to me and it is that the governors if you like sort of integrate upwards into regulation and perform some of the functions that Ofcom might otherwise perform and Bob's raised one or two questions about whether they can effectively assess the impact on the private sector, etc. but clearly that's the ambition and certainly one couldn't possibly disagree with the notion that someone should do that. And also to emphasise a greater degree of discipline within the BBC with the licences, etc. but Michael is arguing that that can be done

and this clear and indisputable independence of the Board of Governors from management can be done without removing the possibility of the critical friend role. And you will know from where I started that's the bit that I have a question-mark about and I think some of Paul's thoughts are relevant to that. But the one bit that Tim was raising which we haven't discussed at all, which is the last bit in this section, second session, is the bit about sanctions and rewards and this is where we link into questions of funding because Michael, as you know, one of the propositions put forward by the Commission on the future of the BBC that the Conservatives set up was the notion of a separate sort of public broadcasting funding council or whatever, which would, to which you would bid. And some of the processes in that would be rather similar to the ones you're envisaging except there would be a possibility of someone else getting the money. I mean is, to pursue Tim's question a little bit further, would you conceive that that could happen in this structure or, if the BBC's proposals....

**Michael Grade:** What could happen?

**Howard Davies:** Well let me try to be clear. Supposing the BBC put forward this putative BBC12, which you suggested, about which I'm sure there will be a lot written tomorrow, and you the governors then said "Well in spite of the pre-discussions the Chairman has had with the Director General about what he should put in it, that we're not satisfied with this. We don't think it meets our test" is the answer then that the BBC goes away and has another think and puts forward BBC13 or is there any possibility that some other organisation might come forward and say "Well actually we think we've got an idea for something which is a little bit like your idea you had on BBC12 and we will do it instead" and the governors would fund them? That was really what the point was or it is simply just that you know the BBC management keeps on trying until they satisfy the governors?

**Michael Grade:** On the issue of somebody else wants to do it, would we give them the money, I think that flies in the face of what I think we're all trying to achieve, which is that there needs to be a much closer sense from all the licence payers, 24½ million of them, that they're very clear where their money goes, why it's been spent the way it has and that they can have some clear understanding of who's to blame if it's not properly spent. So once you start using the licence fee to dish out to other people outside of the BBC, then you start to create a huge confusion in the licence payer's mind about what they're paying for and what they're putting this money in for. I think that's, you know I think you have to define at the beginning of the Charter, if let's assume that the argument for the licence fee is made, the BBC sets out its store, this is what we want to do. There's an agreement out of all this debate that comes to a consensus to what the purpose of the BBC will be for the next X years. There is a price put on that with incentives for efficiency and all the rest of it and we all know where we are. If that money is then still up for grabs, I think you create an enormous amount of confusion. There may well be arguments for having a separate pot of money or a supplement to the licence fee or something that sits out there outside of the licence fee which can be up for grabs but I think to start interfering with, you know, parts of, parts of the licence fee are up for grabs, I think you create an awful confusion and I think it goes completely against accountability to the licence payer.

**Lord Burns:** I think we're billed to have another break. I think that was very helpful. Could I ask people if they have got questions, if there are issues that they think we haven't touched on, if they could write something on their cards and hand them to people and we will have a look at this afterwards, after the break. I've got two already. And if we could come back in 10 minutes please and we will go through the last session. Thank you.

### ***Short Break***

**Lord Burns:** All right. We will now start the third session. I've got quite a lot of questions in which I will come to later but if we could just start the last session, which is I think many of the questions indeed are about, it's on this general heading of building confidence, assuring accountability. And in the light of the discussion that we have had so far there are a number of issues of accountability which begin to come to mind. One is the question of the construction of the Charter and the Letter of Agreement. At the moment there is a very general Charter. There is a reasonably detailed Agreement. I think if the governors are going to take on the

kind of role that we've been discussing, one of the questions that obviously emerges is how specific should the Charter be and indeed over what period of time it should lay down the responsibilities upon the governors. Does the Charter process itself become a slightly curious one in terms of...if it's going to last 10 years, it has to be rather general. If it is rather general, it becomes that much more difficult to hold the governors to account. I think that would be the way I would put it and therefore, you know, what's the best way of doing that? I think the second question that comes to my mind is what is parliament's role in this? Parliament then becomes the body which holds the BBC to account for delivering the Charter. Under the model that we're talking about, is it the governors who should always be appearing before parliament or is it the management? Because after all the management become responsible to the governors. The governors have taken on the challenge of saying they will be the custodians of this. So is it not the governors who then under this model who should be really going to defend what it is that has happened? Issues of punishment and reward. You know we have seen in the last period we have arrangements whereby so much production should be done by independent companies. What happens – I think this is a question which I think Howard or someone raised earlier – what happens in the cases where these things are not met? What is the appropriate system of punishment? Is it that the money should go elsewhere? Whose head is then on the block? You talked about the whole kind of customer/citizen feedback of course and ways in which during the Charter period have seen to what extent people are content with the way things are moving. And I think also in this general area of accountability I think would become the issue related to that, the issue about the licence fee. Can you really set a licence fee under this kind of arrangement for 10 years or should there be a rolling process whereby the licence fee is fixed on a shorter period, taking into account both what the views of the governors are in terms of the resources they think they need, what they think they're getting in terms of value for money and people's feedback as to whether or not the job is being done well? As so, you know, there are some other issues of accountability we've mentioned about the whole issue of public interest, etc. but you know they are some of the things that come to my mind that come out of the type of discussion that we've had and particularly some of the issues about shifting the role of the governors and where they become more responsible for things like independent reviews and they are more responsible for delivering the Charter but what are some of the implications of that for some of these other relationships and not only Michael but I'd be interested in everybody's views on the panel as to you know whether they think that to go down this direction begins to change some of the ways in which the accountability process should be set up? Patricia?

**Dame Patricia Hodgson:** I think, as we were saying earlier, nobody but parliament can really effectively hold the deliverer of a public interest to account. I think the practical, as soon as you say who should account to, who should appear before the Committee of the House it really concentrates the mind doesn't it? Now why has the Director General always gone? Because the Chairman hasn't actually been sufficiently across the issues to be able to. And what it tells you is if it was the Chairman and the Deputy Chairman or whoever who had to account and they've only got the Director General and the Director of Finance in the row behind them, by golly wouldn't it concentrate the mind on your selection of your chairman and how he did his job and how he framed up? I think also if we're talking, you know, real brute politics, Mark Thompson said revealingly when he was at Channel 4, well of course Charter Renewal on the BBC has got old time religion, and anybody who's been in the sector or inside the BBC knows that however decent your chairman is, however good the structures, I mean you know I became Secretary in the sort of last Gilligan affair in the mid-eighties and it was pretty dramatic. You know it was not unlike today. And there were very significant changes that were made and a change in the balance between the power of the Board and the power of the management that lasted 5 or 6 years before it began to rebalance. So you might think that you don't want something as fundamental as pulling the whole lot up by its roots every 5 years, you know the Charter only 5 years, that feels excessive and I can't quite see how the BBC could function in a world which was too short. But you might want to say renew the Agreement every 5 years you know on a, you know rather like you have one process before the House that's not as fundamental as this but it just keeps the sort of cosh raised behind all the changes that are being proposed here and make sure that after 5 or 6 years you can't sink back into...I mean that's just one thing to consider. There are plenty of others no doubt.

**Lord Burns:** Any other observations?

**Sir Bob Phillis:** I find it difficult to see that the Charter could be much less than a period of 10 years in terms of the long-term strategic planning and development of the organisation. More frequently it doesn't make sense at all. But equally I think it's impossible to set the licence fee for a 10-year period. There has to be a more frequent review of the licence fee and that actually takes me back to the question you posed about sanction and reward. I think sanction and reward is a hugely difficult area for the BBC. I mean clearly there's internal sanction and reward. If a particular service or a particular area does well, they're going to be in a strong position for a bigger slice of the budget and, if they do badly, it's the governors' job to sanction them in that sense it seems to me. Outside of that it's terribly difficult. Clearly the DCMS has a very crude sanction and reward. It's in setting the level of the licence fee from time to time, whatever period that might be. But there are one or two areas, and you mention it yourself Terry, where is that enough? I am not much persuaded by the notion of top-slicing the licence fee or putting it elsewhere but I think the question of what happens when the BBC doesn't perform, whether there's any financial sanction at all. So for example, you mention an independent production and the independent quota. The BBC took on an obligation to meet a quote. For two, or was it three, years they failed to do so and we get excuses and we get apologies and we get told "Well we'll do better next time" and hopefully we'll see that sort of movement. But is that where it should end or is there a financial penalty of some sort? How one might structure that in terms of fine or holding back a proportion of the licence fee or something but clearly that won't arise if Michael and the new government structure actually requires the organisation to perform and delivers its promises but it's what happens when it doesn't is the issue and I don't have any solutions to it but I think it's perhaps worth putting on the table.

**Michael Grade:** I'll just throw in the thought that if you fine the BBC and reduce its licence fee by half a million or whatever, the losers in that are the viewers and listeners, not the management.

**Sir Bob Phillis:** Yes.

**Janet Finch:** Sorry, I wanted to raise a slightly different issue. Did you want to take a...

**Lord Burns:** Yes, go on.

**Janet Finch:** A different issue. In the world that I move in, in Education, the common wisdom about accountability is that the best forms of accountability are where the organisation is capable of criticising itself on a very regular basis. And so the ability of the BBC to be self-critical and to do that as part of its routine, management and governors, seems to me to be quite fundamental to understanding how accountability might be built in. So this is certainly not something that happens once every 10 years or even once every 5 years. It's something that's actually happening all the time. And in the systems that work best, it's the organisation itself that spots the problems before somebody else tells them about it. And that's to my mind one of the tests of a really in a sense well-functioning and mature organisation. Now I guess my question, if we accept that – I'm glad to see that Michael's nodding his head – if we accept that then there's a very interesting conundrum about the BBC which is at what point does that self-criticism stop or not because the ability to be self-critical in the end means that an organisation has to be able to say to itself "We got that wrong, you know. We did our best, we did it for all the right reasons, but that decision was wrong." Now in the context of the BBC, certainly the management of the BBC ought to be doing that and ought to be capable of saying we got that wrong. Can we imagine circumstances in which the governors also say we got that wrong or do the governors have to stand outside this self-critical process within the organisation and always have to be the ones who say "You got it wrong but we are not party to that"?

**Alan McDougall:** Can I just add a point here about accountability too? It seems to me that the notion of reviewing things on a 5 or a 10-year basis is very old world. I mean we are pressing and, you know, some of the largest, most sophisticated companies have annual elections of all their directors and people have said "Well wouldn't that breach short-termism?"

Well it doesn't seem to have done because there are very few changes because they are permanently accountable. And if they're not doing the right job, they're very easy to get rid of. Well actually that's not technically true in the US but in principle they're easy to get rid of. And I think you just need to think far more sensitively about much more immediate forms of accountability. For example, some thinking might be worth doing on making every licence payer some kind of quasi shareholder, having an annual meeting of licence payers. I mean okay, how do you get x million people into a room? You don't.

**Michael Grade:** (INAUDIBLE)

**Alan McDougall:** But the most accountable meeting I've ever seen was a British Gas AGM in 1995 when 3,500 shareholders piled into the Excel Centre...

**Howard Davies:** And one pig.

**Alan McDougall:** And one pig. And...

**Michael Grade:** It wasn't a pig, it was a governor.

**Alan McDougall:** ...and what was extraordinary – actually it was a representative of the GMB – but what was extraordinary was – talking about pig farmers – was the fact that for the first time somebody from the floor, a shareholder from the floor, proposed that each of the directors seeking re-election at that meeting, leave aside the pay issue, should say a few words about why they should be re-elected by the shareholders. So in turn each one of them stood up and said a few words. Now interestingly enough the person who was the most articulate in describing what he did and what contribution he had made in the previous 12 months happened to have been an American Board member who had been working in the very difficult environmental circumstances of Alaska. And his Board vote shot up dramatically as opposed to a lot of the others, which tells you about what kind of abilities those directors had to respond very quickly and immediately to a very direct challenge as to why they should continue getting paid for doing their job. Now I think the BBC is in a fundamental problem here. I just don't see at the end of the day and the last line of accountability how you can both manage a business and be responsible for seeing it do its best at the same time as you're being asked to make critical reviews of what your senior management or your commissioning editors are doing. I think there are fundamental conflicts here. Now I can't see us resolving those in the short-term and this review isn't going to do that I don't think. What we might have to do though is to begin a process, a long process, of maybe 3 to 5 years of shifting the alignments amongst the different interests at stake. And I think the last contribution from Janet was very good because one of the issues I would have thought when you were reviewing BBC12 might be have we got any conflicts of interest here in determining whether or not we should consider a proposal from our management...our management, the management about Channel 12. And that's one of the tests I think. Conflicts of interest, resolving conflicts of interest is one of the tests of the strength of a governance system because in the main those most close to it often can't see it. And so when we say to companies "Hold on, your Remuneration Committee is composed of executive directors in part. Isn't there a conflict for them sitting down and deciding what their own pay should be? Shouldn't it be done more independently from a shareholder point of view? "

**Lord Burns:** Paul?

**Paul Myners:** Terrence, I'm remaining in my greatest area of comfort, which is to try to be practical, picking up on two points that have been raised in this session. Firstly, the sanction and let's stick with the example that Bob gave us of independent production. It would seem to me that the right procedure would have the following elements. The governors have determined that they want to set an independent production target. They have engaged with the management and the former Director General and his staff and have agreed that target. The Director General has been clear as to the impediments that he sees between where he is at achieving the goal. He said "I may not be able to do it for the following three or four reasons" and he's been required to expand to his best ability on how he would mitigate or address those possible reasons for not achieving his target. And right at the bottom of the

piece of paper is an agreed statement that failure to achieve the target will lead to the following sanctions, which may be a review of leadership in a particular area, it may be budgetary, but let's have agreement up front, then I think you might get the actions and outcomes that you're seeking. On the issue of the governors and their own performance, it would seem to me that a modern model would include elements of internal appraisal of the performance of each member of the governing group, 360-degree appraisal. It's an appraisal by the chairman and the deputy chairman of the performance of members of the Board and a very clear route to address under-performance either through encouragement and facilitation to help improve the performance of a governor but absolutely clear that a governor who is occupying a seat round the table and not making an effective contribution in the end can be removed.

**Ruth Evans:** Could I just follow that up because I was going to say something on sanctions slightly differently, which is picking up what Michael said? If you applied the same methodology to the NHS, the patients would lose their beds and I really think that perhaps we ought to look at that. I mean you know it's only the consumer at the end of the day who's going to lose out and maybe we ought to start thinking about incentives rather than sanctions in financial resource terms at least, and perhaps there is a way forward of introducing KPIs with incentives.

**Lord Burns:** Michael?

**Michael Grade:** I just want to pick up a quick point on the 10-year review point that you made. There is a sense in which the Charter Review process is more, much more than an examination of the BBC. It is the moment when there is a big public policy debate about whether we want this kind of public intervention in the broadcasting world. So there is a kind of national debate about and beneath that is then kind of is the BBC in the right shape to, once we've made that policy decision is the BBC in the right shape to deliver it? So I think the 10-year thing is much more than simply picking the BBC up by the roots and examining it. It's part of it obviously.

**Tim Gardam:** But isn't it also the point, Michael, that Ofcom now does the 5-year review of public service television at any rate, which is going to be that moment whether it's a far more detailed examination of that data and the performance of the range of public service television which is happening at the moment, which is actually much more detailed than anything the BBC has ever done and so maybe there will be a 5-year break point in the course of the next 10-year Charter which will be a moment at which one can review again where the BBC sits in the emerging market.

**Michael Grade:** Certainly Alan and obviously the work that Ofcom is doing, that it's required to do on public service broadcasting – we're waiting for Part 2 aren't we at the moment – undoubtedly will have, will inform what the governors think and you know it is an important and again objective input into the judgements that the governors will have to make. There is a complication. Let's not get distracted on this but in terms of talking about the term and when you review the BBC, if it is going to be reviewed, there is the complication of digital switchover and the time-table of all that and who is going to pay for it and all the rest of it. So I don't think we should get distracted by that today but that is a complication.

**Richard Tait:** I think there's certainly going to be because of the Ofcom review a moment 5 years on when there will be a lot of important issues will be discussed. I'd be nervous about quoting a break point because I can remember in the commercial environment what always happened at break point was the entire contract was re-negotiated and I do think the BBC and its staff need a decent length of time to plan. I think the delivery of digital switchover is a huge project and that is a long-term project not a 5-year project. And therefore I think there's a sensible balance between being able halfway through a 10-year Charter to say, "Look, there's all these inputs. There will be work that the governors will be doing; there will be work that Ofcom will be doing; there will be the feedback from the stakeholders; it's a good time to have a look at how it's all going rather than say that it's saved. I think to have that as a moment where there's a fresh look is one thing but I think to have a break point in the Charter

would be a recipe for us all being basically in conference from now till the end of 2009 and I think that wouldn't be in the best interest of the BBC or indeed of...

**Michael Grade:** Try and recruit some key staff on a 5-year, you know I saw it at Camelot on a 7-year licence 3 years before the end of the licence. All the key people left.

**Alice Rawsthorn:** Given the complexity of the matrix of relationship that the BBC needs to navigate with regard to accountability, I'd like to know from Michael how you would prioritise the very clear problems in terms of public accountability. One of the more bizarre findings of DCMS's public consultation on this was that when the public were asked who governs the BBC, the largest single group seemed to think that it was Ofcom. The question 'What was Ofcom?' might have elicited an even more bizarre response. But to what degree is the lack of public confidence in the BBC's governance, which obviously has come to a point over the last 6 months? Is that complicated by the sort of mystification of the governance structure and how urgently do you need to demystify that?

**Michael Grade:** I don't think it's a quick fix. I think there is a big process. Once we're through this there is a big process to be done of creating much greater public awareness of how the BBC is accountable, how it works, where the input points are for members of the public, the licence payers, to get their views in and so on. There is a big job to be done there. The BBC has again relied on a rather patrician system which goes back in time, is you know, little bodies of the great and the good who are very genuine and well-motivated people who, you know, meet in secret you know agreed quarterly or whatever. It's not good enough, you know. They are good for a debate and input. People just don't know about them, so there's a huge education process and awareness process that we have to undertake. We can do it through the web. We can do it through our own airtime and so on, very, very important and very much part of enhancing the accountability. I agree, I absolutely agree with your starting point that there's a lot to be done. I think it's doable but it's not a quick fix.

**Lord Burns:** Some of the questions that I've had are very much directed towards the issue about the governors. One says "How should the governors be viewed by rank and file staff? As a helpful uncle or as a strict father?" "How useful is it for the governors to understand underlying technologies and their development and implications?" I think we touched on that earlier about just how specialist the governors should be. "Who will evaluate the performance of the chairman and Board of governors and how often?" I think Paul has raised, in a sense has described there who he knows. What happens in best, you know, in good Boards in terms of regular evaluation and from within the organisation amongst people who are members of the Board and the issue that has also been raised by Alan is, you know, whether the licence fee payers should have any input into that. Someone also asks the question of the relationship between service licences and Charter and parliament, which I raised. There's also a couple of questions about is there some danger in terms of all of this emphasis about governance, licences, etc.? What impact does this all have on the creative process and, you know, is this going to become something which, you know, how far are people going to really understand technical and creative issues and the issue about interpreting public trust or is it going to be people whose focus I guess is on governance? Is it upon finance, etc.? I don't know if there are any of those questions that are there that spark anyone to respond?

**Michael Grade:** I'm happy to take one. I don't know if Richard wants to take one.

**Richard Tait:** Well I mean I think what programme makers want is space and resources and support. They don't need governors leaning over their shoulder telling them which edit to make. So I think it's clear that we've talked about a way in which the governors create a creative space for excellent programmes to be made. If you go back to what Mark Thompson said in his speech at Edinburgh. He defined the BBC's purpose as excellence, which I think is a very good definition of what the BBC programme making department should be in the digital age. So I think the first issue is that, as Michael says, first of all there's an internal as well as an external public relations job to explain to the staff what the governance structure is. Also why it's changing and how it's changing. But I think certainly when I was a BBC editor I regarded the governors as people I only came across when I was in a lot of trouble and I didn't always find them particularly supportive when I was. So I think that we can't not create

a more positive environment than that and I think that the governors need to be seen as people who are enablers, who protect the programme makers from unfair criticism but ensure that they maintain the standards which they as well as the BBC governors have signed up to. And I think second, on the issue of technology and implementation, I speak as a terrible anorak on digital technology and I spent a fortune of Michael's money when I worked with him at the BBC on computer technology. I think that the governors need to have a broad range of experience. They need people to understand who know about the Arts, who have good roots in the nations and regions and also some people who do understand how digital technology is changing the world. You need a mix of people but again you certainly don't need me to go into a newsroom and tell people how to make a service system work. I think it's a combination of being well informed and keeping yourself well-informed and I absolutely take the point that the governors' performance needs to be monitored and evaluated just as everybody else's should be in the BBC.

**Lord Burns:** How far does the new Governance Unit have some kind of creative understanding in terms of the demands in a sense the licences that it is doing or how far are they managers, administrators?

**Michael Grade:** There needs to be in the population of the Governance Unit, which is about to be recruited, there needs to be a levelling of some staff who would carry instant respect from programme makers, that they're not, you know, not making it up as they go along or that understand the vocabulary of the sector and I have no doubt that such people will be recruited into the department. They don't all have to but there needs to be some people. I mean somebody for example who's working on the service licences in the Governance Unit really needs to understand how prescription, for example, is the enemy of innovation and simple stuff like that. But actually if you come to it with no knowledge at all, you could easily fall into that trap and start to be so prescriptive that you omit, you eliminate any chance of exciting new programming.

**Lord Burns:** Well the issue about whether you can challenge well without being an expert is one which of course...

**Michael Grade:** Well you have to know face in all sorts of walks of life. One of the key lessons in life, at the age of 60, one thing I've come very late to learn is that you need to know what you don't know and then you need to know somebody who does know and then you're well on the way to solving the problem.

**Lord Burns:** Now is there any something at all for the notion that the licence fee payers are in some way, you know can be seen as the shareholders and they should have some opportunity to vote on performance of governors or, you know..?

**Alan McDougall:** The point I was trying to make really was to sharpen the accountability.

**Lord Burns:** Yes but I've also had a question which raises this as well.

**Alan McDougall:** That wasn't from me.

**Lord Burns:** No but you know if public involvement, how do you, you know we go through surveys, we look at what people say about all kinds of questions but you know should there be a model of this which says that in the end it is the licence fee payers who are the shareholders and one thing the shareholders do get the opportunity to do in other walks of life is to...they don't get a chance to propose I don't think who are the directors but they do get a chance to..

**Alan McDougall:** Well they do.

**Lord Burns:** ...to vote on them.

**Alan McDougall:** They rarely do but they do have the right to do it, yes.

**Lord Burns:** But they certainly get the chance to vote?

**Alan McDougall:** That's right and I think the interesting thing about it is the, I don't want to be confrontational but the confrontation between shareholders and Board of directors face to face usually across a crowded room but not always is a unique dynamic.

**Lord Burns:** The difference between my Abbey Board meetings who I chair for 3 hours. I stand there asking questions about the directors and from a customer perspective is a very, very salutatory experience.

**Michael Grade:** A growth experience.

**Lord Burns:** It is a growth experience.

**Michael Grade:** I think the difference for the BBC – and I'm not arguing against it, it's a matter of practicality – but the fact is at a shareholders' meeting everyone's got one thing, all the shareholders are going to comment "How do I make more money out of this company?" You have, if you have a shareholders' meeting of the BBC, you will have all kinds of special interest groups who think the BBC should be doing more of this or they should be putting their point of view across on the air. You will...

**Alan McDougall:** I think that's a naïve view of shareholders today. I don't think shareholders are like that. I mean a lot of our clients are more concerned about what the sustainability effects of a company's operations are to their long-term returns because they want to...

**Michael Grade:** Yes but it's still about returns, whether it's short-term, mid-term, long-term. Are you investing enough? Are you investing enough in R & D and so on and so on? But in the end it comes down to money. The common theme there is money.

**Lord Burns:** Well when I, Michael, when I do the Abbey shareholders' meeting there are almost no questions on this. It is about why is the branch in Ruislip now closed? Why is the sign above it very tatty? Why have you failed to deal with my complaint properly? And that is because with both utilities and banks of course you get this combination of between customers and shareholders who... and they tend to be the longest I think AGMs of any.

**Michael Grade:** I don't see why we can't, I don't see why we can't, why the governors cannot make themselves more available than they presently are using the web, using an Annual General Meeting or something to have, you know, have a face to face conversation with licence payers. I mean there are practicalities when we have licence payers throughout all the nations and regions so do you do it in London or you only do it in Glasgow? But then you know you can web cast it on bbc.co, you could put it on BBC12, all kinds of things you can do. You know we have the distribution mechanism. We ought to be using it better to reach out. Where I think you have a problem is if you start trying to corral 24½ million people to vote on things. In the end that's impractical and leaves the BBC open to capture, which is kind of one of the tests that you have.

**Sir Bob Phillis:** Michael, you could do all these things but the fact is you don't. The governors don't have a website of their own. The governors don't have a correct communication with the public. They're supposed to be representing the public interest but how? They various regional councils and so on are perhaps useful but they're hardly representative because when you hold public meetings, you clearly get a self-selecting group that are not representative of the whole of the licence fee payers or your audiences and I think that's quite ineffective. What I would hope that the new Governance Unit will do will commission more actively and more frequently meaningful research about what the general public and the licence fee payer actually think about the services that are existing or indeed, if you are considering Channel 12 or 13, that there's some sort of research from the public perspective whether there's any demand or appetite or interest in it. But the resources you give to your Governance Unit, particularly in the area of research, if they're going to inform the governors separately, is something I hope you will make sufficient money available to but I actually don't think it's done very effectively now. We're told the governors represent the public and the

public interest because it's publicly funded. Question: How well do they do it and what are the mechanisms through which they do it? I'm not aware of much beyond, as your paper describes, the system of National Broadcasting Councils and Regional Councils.

**Ruth Evans:** Can I just support that and say that this was something that I think I raised at the beginning, that you need to have a systematic approach to public consultation. It is a really difficult thing to do. Once a year AGMs with the public isn't the answer for the governors. You need to have a process in which you are engaged in a manageable way and you don't raise public expectations too much. It's not a democracy, who wants which programmes. What it is is trying to work out what it is that, are you representing what the country as a whole needs, which will be a diverse range of products and programmes and in levels of interactivity according to ability and disability and language and all the rest of it. It's a very, very difficult area but it needs some level of engagement that doesn't appear to be there at the moment and the Ofcom consumer panel could share its market experience with you. I mean in all seriousness we are going to do year-on-year benchmarking surveys so it demonstrates to the public and to those out there who have a particular, perhaps some would say unhealthy, interest in survey results as to how patterns change over time and what the Regulator, in your case the governors, are doing to reflect these trends. But as a public service broadcaster you can't just simply dish out what it is the public wants but you need to know what isn't being provided.

**Richard Tait:** I agree on that. I mean I think that that goes back to the principle we've referred to a number of times this morning with objectivity. That if your research is subjective, we have all in the broadcast business seen the survey that came up magically with the result which the management wanted it to, which was a tremendous, I remember there was a survey once that said "Would you like to get rid of News at Ten and have lots of fantastic Hollywood films, in-depth documentaries" and of course they said "Yes, of course." Then people saw what had taken over from news and they weren't quite so happy. So I mean we all know that's a game that people can play. We've said we will be an objective body and that means objective research and that will mean sometimes research that doesn't give us the answer we expected or welcomed but we've said that we will work on the basis of the evidence that we get. And having an independent Governance Unit to manage that process and having access to all the research that's going on, whether it be Ofcom or other bodies that are looking at it, will allow us to create a body of research on which we can then base our judgements and people will feel this is not research supporting a decision that's already been made. This is research informing the sorts of decisions which are in the public interest.

**Tim Gardam:** Doesn't this go to a slightly wider point, which goes back to the issue of who the governors are? Michael mentioned just now nations and regions. Do you think as you re-conceive the governors' role, it will be necessarily still to have essentially stakeholder governors, the Scotland, Wales and Northern Ireland, and if you don't...

**Lord Burns:** And what about England?

**Tim Gardam:** Well bits of. But if you don't have that, that the issue of former accountability will be questioned, particularly since broadcasting is I think a reserved thing for Whitehall. And I think it's a problem though because the issue really is are your governors there as stakeholder representatives or are you trying to create a structure of accountability whereby those stakeholders will be heard? And it seems to me quite a difficult choice which way you'll go.

**Michael Grade:** Could I pick that up? I don't think we're at the point yet where it's politically or acceptable or indeed editorially desirable to drop the interests, the vested interests of the national governors on the Board of governors. Now we're in transition. The BBC used to be the national broadcasting, broadcasting basically out of London, and if you recall ITV when it was created in 1955 was designed to compliment the BBC and was therefore created as a federal regional system because the BBC was the national broadcaster. And in that scenario the interests of Scotland, Wales, Northern Ireland and to a lesser extent the English regions would have been severely ignored unless they had that representation on the Board of governors. I think we are going through a transition at the moment where ITV is retrenching to

Upper Ground, London SE1, known at ITV, and the BBC is committed to much greater regional national presence and that is a policy which is beginning to be implemented. Once that's in place then I think you can look at the desirability of having vested interests on the Board of governors, who are representing one narrow interest which, if you want to move money around the BBC, is very, very difficult. If you want to move money out of Scotland, it's difficult. They don't get enough money as it is but, you know, in that world I think those concerns will disappear. I think we're some way away from it but that's kind of another historical context to it. But I'm very happy to have, I think it's very important that in an age of devolution, national identity and so on, that the nations are represented because London is a very, very powerful force in the BBC.

**Lord Burns:** Okay. I think that I've got a number of questions, some of which we have tried to answer and I think some of which have actually been answered during the session so far but I mean I would now invite questions really from the floor for those people who have got questions to put or which they've given me which they don't think have been answered and which they still regard as a priority.

**John Reading:** Yes, I'm John Reading. I work with the Public Rights Television Voluntary Task Organisation and I did post a question but it must have gone second class which was about where else the panel may look for both the government and regulation other than, most of what we've heard this morning has been about comparison with the private sector. Bob Phillis did make a point of there is a distinctly different hat for the BBC governors known as looking out for the public interest and pursuing public values and, you know, there are other bodies, maybe the BBC is unique, but there are other bodies charged with maintaining the public interest or the trust of the community in some way and I just hope that the panel will look at what can be learned from other sectors with regard to how you lead an organisation that's driven by values not profit?

**Howard Davies:** Could I? Yes, I think it's a very good point and in our discussions we have taken account of other models. There are actually four of us who are in somewhat different ways in the Education sector and there are some interesting analogies there. Not every bit of governance, I think we would all admit, in the Education sector is precisely as it might be but nevertheless there are some interesting examples. Janet has on several occasions reminded us that the NHS is something that needs to be looked at which has similar challenges of sort of conflicting demands and also we have thought about other arts organisations. As it happens, as Paul mentioned, I sit as a Trustee of the Tate but through the DCMS. Of course within the DCMS empire there are quite a number of other bodies which also have a combination of commercial elements and public interest and I think you might like to call it public value spends in them, so we are very conscious of those other models and we are looking at them.

**Lord Burns:** And I would hope you'd think though that, I mean if you look at the issues which are raised in Philip Graff's Grid, you know the Exhibit 9 we were looking at earlier, I mean I think I would argue that most of the things that are there actually are, they're not just private sector issues these. These are aspects of both regulation and governance which I think apply in a generic sense to most organisations. How you then actually package them together I think is what you're getting at is the issue, which has to take account of the nature of the organisation and the extent of its public purpose.

**Tim Wilson:** Tim Wilson from PACT, the Trade Association for Independent Film and TV Producers. I'd just like to clarify something on the discussion about the, I know it was only an example but people were talking about the independent production quota. As a matter of fact, because of the failure of the governors to make the BBC meet the quota for 3 years running, that responsibility has now been given to Ofcom and BBC2. And it's quite interesting that there are two different sanctions that Ofcom can bring into effect if the quota isn't met in the future, the first of which is a fine, which as you rightly said can have some detrimental effects but the other one, which I think is a far more appropriate measure, is the quota can be rolled over by the amount by which it was missed. So if it 23% one year, it would have to be 27% next year, which obviously makes up for the failure to invest in the sector the previous year. Notwithstanding that, Michael said that prescription is the enemy of innovation and we would

agree with that. So we've always been a bit surprised that the BBC seems to prescribe that 70% of its production needs to be made in-house. And over and above what comes out of the BBC Charter Review from DCMS and also Ofcom's PSB Review and also the BBC's own internal review of production, I think we would look at the governors to not only look at something like the quota is met but ask very deep questions about, you know, what does this mean in terms of is there a proper meritorious commissioning in the BBC? Shouldn't the independence be commissioned far more than simply dragging along what they use as a sealing of a quota?

**Michael Grade:** Can I, very quickly. I agree. You know the notion of rolling over a shortfall from the following year seems to me absolutely appropriate and one of the great failings of the governance of the BBC in the last year was failure to meet the independent quota. I know there was some question about Endemol being taken over and losing its qualification status. It shouldn't be that close to the quota in the first place. The duty of the governors is to ensure that the best possible programmes are being commissioned from whatever source ultimately. Now the quota is necessary in my view because there is an innate conflict inside the BBC between in-house and independent production but in the end our role seems to me to be absolutely clear, that we need to be sure that the best programmes for our licence payers are being commissioned from whatever source. The BBC has to manage its internal resources and I believe passionately that the BBC has to continue to have its own in-house production. That's for all kinds of reasons which are irrelevant today but I'm happy to discuss with you on another occasion. It has to do with casualisation of the industry and so on, rather arcane stuff but very important for the creative process. There is an internal review, which the management is conducting about the level of internal production and I can assure you that the governors will be taking a very, very keen interest in the outcome of that.

**Colin Shaw:** My name's Colin Shaw and I was Chief Secretary of the BBC in I think the long twilight of the patrician years. My question really is what happens to the editorial responsibility of the BBC? If I now am libelled by the BBC, I sue the governors. If the governors get so far away from the management, the management then, do they assume the editorial responsibility and do they get sued? I mean this is unlikely to happen but I'd like to know the answer in 5 years' time if you decide to libel me.

**Michael Grade:** I'm not sure that the governors are sued. I think if Panorama were to libel you or to mount a suit for defamation, it would be against the BBC wouldn't it?

**Richard Tait:** I think the ultimate, I mean on our basis that the buck has to stop somewhere and we argue that it should stop as far as possible in as many areas as possible with the governors. We think that in the end the editorial responsibility for the accuracy and the impartiality and the honesty of BBC journalism has to be a governors' responsibility. That's one of the things that people pay their licence fee, for honest and impartial journalism, and the governors have to be ultimately responsible for that but the management is in charge of the day-to-day running of the output and that's a division which is well understood. So I hope you won't sue me personally but I think in the end if it goes wrong the ultimate arbiters of it's gone wrong and the people who are ultimately accountable to the public for it going wrong must be the governors.

**Howard Davies:** After what Michael said today about previous regimes, we may have a test case emerging from....

**Michael Grade:** A class action suit, yes.

**Lord Burns:** Are there any other questions from the floor?

**Gina Fegan:** I represent both the regions and the film sector of one of the regional screen agencies for the South East, so one of the English regions, and my question is two-fold. One is in terms of film, we're looking at a substantial subsidy being made available through (INNAUDABLE) and the schemes are now changing and so on and so forth but actually it pares into insignificance with the amount the licence fee that goes towards the BBC. Should there be something which is more of a collaboration between the film sector and the television

sector where we're looking at really British talent because certainly in the regions the talent that we're developing I would say 1% to 10% will end up in the film industry, the rest of them will end up somewhere in television or interactive or in the media. So perhaps we should have a wider view. And the other is how do we engage with you? Is it going to be through the governors or is it going to be through the management in terms of that type of broad collaboration because we are after all looking at the same aims of looking for the best talent, the best programming and how to support it.

**Michael Grade:** Many of the world's leading cinematographers, directors, writers, art directors, etc. you will find were trained at the BBC. By and large the British Film Industry to a large extent has been trained by the BBC. Ridley Scott, one of the world's greatest film directors, was an assistant art director on Z Cars. That's how he was on the BBC staff. That's how he started his life. He's now one of the world's greatest film directors, most successful. So the BBC makes an enormous contribution on the training side. So far as investment in film is concerned, I think, you know I'm obviously wearing lots of different hats, very pro British film and you know we were very successful, Film On 4 was very successful when I was at Channel 4. Nothing to do with me. The reason we were successful because I never read any scripts. But to the extent to which the BBC should be investing in high risk theatrical movies is a matter for the management to decide on their policy and make the recommendation to the governors but it's a very high risk use of licence payers' money and we should be very cautious. And the film industry gets tremendous help. It not only gets fiscal help through Section 42 and Section 48 of the Finance Act, soon to be replaced, but it also gets Lottery money and so it's not doing too badly.

**Gina Fegan:** Really the point that I wanted to make was exactly that. Stephen Frears, Ken Loach, they all came out of BBC and fantastically. They themselves have said that opportunity isn't there at the moment, that there is less opportunity for their type of programme making or risk taking in collaboration so it's more that shouldn't we be pooling resources and shouldn't we be making sure that it's more effective as it goes through, you know that we're not doing it only at high risk but we are actually saying shouldn't we be sharing risk, shouldn't we be doing this hand in hand?

**Lord Burns:** Okay. A couple back here and then we'll have a final run along the...

**Robert Beveridge:** Thank you. Robert Beveridge, Napier University and Voice of the Listener and Viewer. If the BBC governors are custodians of the public interest and the public interest is wider than the interests of the government of the day, is there a case for the BBC governors being appointed by parliament and not by DCMS or the government?

**Man:** How does that square with maintaining the independence of the BBC? I mean there was a time when I worked as an executive, a humble, below the salt Controller of BBC1. The governors were handpicked by the government of the day with one honourable exception but you know the governors were all one of us and they were, the governors were captured by the political ideology of the day. And I think Patricia will remember, it was a very, very...

**Howard Davies:** She can't.

**Michael Grade:** Oh I can be even more frank then. It was a very, very difficult time for the BBC so I think the further away from government that appointments are made I think the better in the interest of the independence and the public interest is served, best served by the independence of the BBC.

**Dominic McGonigal:** Dominic McGonigal from PPL. We do the licensing for the record companies, the artists, session musicians, etc. etc. so the BBC is a customer of ours. And in many years of dealing with the BBC and negotiating with the BBC in a number of different roles and knowing a number of other people who have had similar experience, and this you know is perhaps more of a commercial issue but actually when you look at the root of it I think it's about the structure that what happens is that you negotiate for months and months and months and never get anywhere because of the internal bureaucracy. Everybody in the BBC is sort of tied up in internal knots. And you always get the wonderful poverty speech, which is that you know "We're the BBC, we're public service so you know you'll give us a charitable

discount won't you" when you know really the BBC is a major player. It's a huge, huge force in all of our industries and should be paying market rates. I'm not quite sure where the root of it is but almost everyone has the same experience of never being able to close a deal and yet we can always get a deal with some of the most tough sort of commercial operators that are out there.

**Michael Grade:** The words of Sam Chisholm, who was the great genius behind Sky, come to mind. I was discussing something with him one day when I was at Channel 4. I said "Well why don't you talk to the BBC about it, Sam?" "Michael," he said "dealing with the BBC is like dealing with the laundry. Nothing ever comes back." I know how you feel. I think the BBC has to pay the market rate for services that it acquires. I don't see, you know, that we can plead poverty. You know we need your services and the services that you supply. We have to pay the market rate. We don't want to pay above the market rate but we must pay, we have to pay the market rate. But the bureaucracy of the BBC I suspect is something that is with us for some time but I wish we could address it. But the lines of command are very, very long and too long.

**Sir Bob Phillis:** Do you pay market rates to the governors and the chairman?

**Michael Grade:** I can't speak for the chairman but for the governors I think for the amount of work and responsibility that they carry, I think they are grossly, I mean if you doubled their fees they would still be underpaid. I mean I've got governors doing 3 or 4 days a week, you know a huge responsibility which they do willingly and very, very professionally and very committedly and I think it's, the case is well made but leave the chairman out of it as I'm not in it for the money.

**Lord Burns:** Could we, having a very useful discussion I'd like to wrap it up now and ask the people who are sitting here if they have any last comments or summary points or wish to say to what extent their views have been affected by what they've heard this morning. I'll start over this side with you.

**Alan Budd:** Well very briefly, one of the many irritating things that economists say is that everything depends on everything else and one thing I do realise in this discussion and from the previous one and obviously from the first one, which I didn't attend, is all these things go together. The way in which the BBC is governed does depend amongst other matters on the way in which it's funded and that in turn depends on what the BBC is for. So we're not going to answer any of these questions until we know where all those bits fit together.

**Lord Burns:** Tim?

**Alan McDougall:** Yes, I just want to say one thing which is that advanced capitalist democracies are driven by conflicts over transparency and accountability now in all sorts of ways and it's not surprising that the pendulum has swung towards the BBC in this regard, which I think is going to be positive for the long term and I hope it's going to be around for my retirement whenever that comes. And it's the challenge of managing a mission business and that's not easy. And I think I've heard today a) I've learnt an awful lot and I knew nothing about how the organisation worked relatively, so I've learnt a lot today so thank you for the opportunity for learning that. But also I think I'm beginning to get the impression that the messages are getting through as far as I can see from the people round the table in the room so that we can look forward to a more productive debate over the coming Green Paper and what transpires in terms of government thinking for the medium term.

**Lord Burns:** Thank you very much. Alice?

**Alice Rawsthorn:** Well Paul Miners began by saying that for an intelligent, well functioning, mature organisation it's actually the personalities that define it rather than the architecture. In the BBC clearly the architecture has got to mitigate perhaps the potential extremities of those personalities but also the political and public accountability dynamics that come to bear upon the organisation. Now Michael has very clearly said that there's a recognition within the BBC that the current government structure perhaps doesn't deal with all these pressures as

efficiently as it could and that there is a willingness to change and the BBC indicated some proposals for change and building public value. What we obviously now have to access is whether those proposals go far enough or whether given the future pressures on the BBC, they do need to go a little further.

**Lord Burns:** Yes.

Ruth Evans: Yes well I think that, as Alice has said, it has to be tested and in 5 years' time we'll know better but I do think that the tone actually of today's discussion and the transparency with which the proceedings have been conducted here and Michael's contribution and his passion for reform has made me feel that there is some promise.

**Paul Myners:** Ditto.

**Howard Davies:** Yes, I think it's been a very interesting discussion for me and has helped to clarify some things. I think the one area which we haven't fully investigated today and which we may have to look at a bit later in the process is the relationship, the Ofcom relationship which we haven't gone into in any great detail and I think probably it's better that we do that after we've seen their Phase 2, which I think is fairly imminent, and then we can look at the extent to which what they're talking about, public service broadcasting, and what the BBC is going to be compatible or are there going to be any practical conflicts there.

**Lord Burns:** Richard, do you...?

**Richard Tait:** Well I take away from this, I think this has been a fascinating morning because in fact there is common ground on the need for radical change. I don't think I hope you haven't heard anything from the governors' side which suggests that we don't accept the need for radical change. The discussion is about what form that should take and how it's managed and I think that the organisation as a whole is also ready for radical change. It has a Director General who wants that agenda as well and therefore I think it's been in my experience a unique event where people have pressed on the BBC change and we've said "Yes but let's discuss about the form of it rather than argue about the need for it." I think there's absolute common ground in the rule about the need of the BBC to change to maintain some values which are eternal and which go back, as you've said, independence and value for money and excellence in programme making is how you achieve those rather than the structure, which is what we need to debate.

**Lord Burns:** Janet?

**Janet Finch:** Yes, I think I agree with everybody else that it's been a really excellent morning. I think one of the things that I would take away and think about a little bit more in the context of our panel is a point about hard cases making bad law I think. A lot of the debate, particularly in the earlier part of the morning, was against a background of questions about how you handle some cataclysmic crisis when it happens and if you take that as your starting point and your template, you end up with this system of governance and regulation which may not serve the normal situations so very well. And I think, well I certainly want to think about that point a bit more but I think it's a fairly important one.

**Sir Bob Phillis:** I think that Building Public Value and the debate today is a huge step forward from where we were at the beginning of the year. I think the questions of structure are capable of being resolved. If one concentrates on the differences between the governance role, the compliance role and the regulatory role, it's then simply a question of deciding who meets with whom to do what and that's something which I'm sure this panel and the BBC itself is capable of working through. I welcome the Governance Unit. I hope it's going to be properly resourced and funded. The area which I feel least happy with today is having worked through how the governors fulfil their obligations and responsibilities to the public because ultimately it is the public who are being served by the provision of quality programmes and services across the board and I think there's a lot of work to do in that area and I'll throw in that my final plea, selection training and, as Paul said, assessment for the governors has got

to be vital. This can't be conducted by well-meaning amateurs. It needs another level of professional to match the organisation itself.

**Lord Burns:** Michael?

**Michael Grade:** Just to say I think it's been very constructive. At the end of this process, if there is a good consensus about what needs to be done and the consensus view of the reforms that we are implementing now, I hope that there will be some means by which that can be codified to ensure that it survives you know the present regime if we get it right. If we get it wrong, you don't want it to survive but I don't think it's enough anymore to, not to address the issue of how the governors should behave in the pursuance of their responsibilities in an agreement or in a charter or wherever is the appropriate place. And it's not beyond the wit of Treasury draftsmen to come up with something which is neither too prescriptive nor too generic to be meaningless or too prescriptive. So I hope this is the beginning of a quick process of implementation of radical change that will serve us well.

**Lord Burns:** Well thank you very much for being quite so open about it because I think it has been very helpful. I mean I take it from the discussion that in a sense from your introductory remarks and the direction you want to take and the things that you want to do that there is very broad agreement that those tasks need to be done and that there are tasks which have not been done but which now do need to be done in the future. And quite a lot of the probing has been about whether if you go in that direction whether there are other things that need to be done and does it then affect the relationship with the management or does there have to be some other things added to that? Does it affect the way that the Charter is drafted? Does it affect the way that the governors are recruited, the type of governors that you have? And these are all things I think that we need to think more about because, as we know with all organisations, when you change something, particularly when you change something that is substantial, it does have an awful lot of knock-on effects to..

**Michael Grade:** It's part of the constitution isn't it?

**Lord Burns:** ...exactly, other things that need to be thought about. On the point of whether you have governance for in a sense cataclysmic events or not, I mean this has often intrigued me because my observation of governance that I have been involved in is that when life is easy and things are going well, most form of governance actually works reasonably well and people manage to get along. But you know the issue is what, that's almost the reverse of Janet's thing. I think the real test of governance is what happens when something awful happens or when you've got a really difficult decision to take. Something suddenly comes at you from a direction you weren't expecting and whether or not your processes actually can survive under that. I think when Paul described earlier some of the cases of bad governance, you know they are things you know typically which caught people by surprise and the question is could the people who were involved cope with it? And similarly, you know, architect, you know is it architecture or is it behaviour? Well much of it is about behaviour but I think my own view is that architecture does affect behaviour and indeed much of what governance is about is whether or not you put it in a way that causes people to behave better or to behave more appropriately in difficult circumstances than they otherwise would. And I think a lot of corporate governance - and I do think there have been some substantial improvements of corporate governance - are that they have put in place mechanisms which have forced people to address things in a different way when life has got tough than they otherwise might have done and that that has been helpful and I think that does carry over. But I think we are in the, you know we've made a lot of progress I think. You know don't find those areas where people see beneath the change and I think are very sympathetic with what you want to do. And what we have to look at I think much more clearly is what the knock-on effects of all of that are and how it affects other aspects of both governance and management regulation and indeed the whole way in which the government sets the Charter and the objectives for you. So thank you all very much. Thanks for coming and see some of you again. Thank you.