

BBC Governance

Preferred Model – BBC Board plus Public Service Broadcasting Commission

Criteria

This model seeks to take account of:

- the rapidly changing broadcasting environment and the increasingly complex and challenging position of the BBC within this ecology;
- the continuing development of corporate governance – in both the public and private sectors;
- the importance of enabling the BBC to continue to deliver innovative, inspiring and informative programming of the highest possible standard.

The model seeks:

- to enable the BBC to be run efficiently and in accordance with best practice and to produce distinctive, high quality and innovative programming;
- to preserve and protect the independence of the BBC from Government with regard to the content, choice and the scheduling of programming. This includes ending the role of Government in licensing and reviewing channels and services;
- to clarify the regulatory role of Ofcom with respect to the BBC;
- to ensure value for money for the licence fee payer, with close scrutiny of financial decision making and accountability in an open and transparent way;
- to distinguish clearly between the management and compliance on the one hand and regulation and accountability on the other, and between the roles of executives and non-executives. This should be embodied in lines of accountability and ways of working;
- to provide adequate protection for those outside the corporation who may be affected by the BBC's activities, including adequate mechanisms for dealing with complaints;
- to be fit for the conditions of the broadcasting environment which will develop over the next decade including, but not confined to, digital switchover;
- in the light of this, to anticipate the possibility that some of the licence fee, or other forms of public funding, could be used to finance public service broadcasting other than through the BBC, at some point before the end of the next Charter in 2016.

Overview

Our preferred structure is as follows:

- through the Charter, the Government and Parliament would determine the overall objectives and purposes of public service broadcasting and have responsibility for setting the level of licence fee, the BBC's borrowing limits and any other public funds financing public service broadcasting, following advice from the Public Service Broadcasting Commission (PSBC, see below). Ofcom's periodic Statutory Reviews of Public Service Broadcasting would inform these decisions. The Government would also retain reserve powers for defence and emergencies as now;
- the BBC would be governed by a unitary board of executive and non-executive directors in line with the recommendations of the combined code on corporate governance. This board would be responsible for deciding and delivering the BBC's programming output, subject to the oversight of the PSBC, within the allocation of the licence fee and the BBC's borrowing powers. It would be required to maintain adequate systems to define and maintain editorial standards, ensure value for money for its funding and to deal with complaints;
- a new Public Service Broadcasting Commission would be established to be independent of Government with responsibility for public interest oversight of public money invested in broadcasting and for recommending to Government the level of the licence fee. It would take on the current accountability role of the Governors combined with some of the responsibilities of the Government and would ensure that the Charter objectives for PSB were met. The Government would relinquish its powers of prior approval for TV, radio, ancillary and commercial services and for commissioning ex-post reviews of services. However, together with Parliament, Government would be responsible for holding the PSBC to account;
- Ofcom would continue to be responsible for the regulation of competition, economic, spectrum and pan-broadcasting industry issues. It would be helpful to resolve some of the present areas of overlap with the BBC Governors.

In addition, although it is not a necessary part of our structure, we propose that the PSBC should be empowered to award part of the licence fee to other public service broadcasters, at some point in the foreseeable future:

- we are impressed by the case for a plurality of public service broadcasting and concerned about the danger that competitive

- pressures will continue to reduce the amount of public service broadcasting on commercial channels;
- the ability to withhold part of the licence fee from the BBC and to allocate it elsewhere would be an important aspect of the powers of the PSBC in relation to its oversight of the BBC;
 - any such allocation would be subject to the same high standards and oversight as will apply to the BBC.

The decision about whether to exercise these powers will be determined by the level and quality of PSB on the BBC and other channels.

The BBC

The BBC should be governed by a strong board that is appropriate for the size, importance, complexity and global nature of its activities.

This board should follow the best corporate governance practice of other large and complex organisations as set out in the combined code¹, whilst recognising its uniqueness and the lack of obvious parallels.

The board would have the same functions as a conventional board of an organisation of a similar size. These functions would include:

- collective responsibility for promoting the success of the BBC by directing and supervising its affairs;
- leadership of the BBC, within a framework of prudent and effective controls, which will enable risk to be assessed and managed;
- determination of the BBC's strategic aims, ensuring that the necessary financial and human resources are in place for the BBC to meet its objectives, and reviewing management performance. This would include formulating the strategic business plan with supporting detailed financial information to be approved by the PSBC and monitoring progress against that plan;

¹ Combined Code on Corporate Governance. Supersedes and replaces the Combined Code issued by the Hampel Committee on Corporate Governance in June 1998. It derives from a review of the role and effectiveness of non-executive directors by Derek Higgs and a review of audit committees² by a group led by Sir Robert Smith. Financial Services Authority July 2003

- definition of the BBC's values and standards and ensuring that they are met;
- a nominations committee to advise the board on recruitment of the Director General, and other executive directors;
- a remuneration committee to advise the board on compensation arrangements for executive directors;
- an audit committee to further the highest standards of financial accountability;
- a complaints committee to deal with complaints in the first instance, with appeals to be referred to the PSBC;
- preparation of annual report and accounts.

Following accepted best practice would lead to the constitution of the BBC Board as a unitary board along the following lines:

- a non-executive Chairman
- a majority of independent non-executive directors (NEDs)
- the NEDs should be of the type, experience and mix of skills that are necessary to discharge this role on the BBC Board, taking account of the size and activities of the BBC. That role is to:
 - challenge and contribute to the development of strategy;
 - scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
 - satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible;
 - determine appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, senior management and in succession planning.
- the Director General and a small number of executive directors would also be members of the BBC Board.

The system of appointments of NEDs for the BBC Board would need to be formulated with great care. We would advise against a role for the PSBC in appointing members of the BBC Board, because of potential conflicts that may arise when a regulator is involved in appointing people in regulated businesses for which it is responsible. We suggest that:

- the Chairman would continue to be appointed by the Government following best public appointment rules;
- apart from the Chairman, new NED appointments would be considered by a committee including the Chairman of the BBC, at least one other existing NED, and an independent person,

perhaps provided by the Civil Service Commission. This Committee would operate according to Nolan processes and make a proposal to the Secretary of State.

The terms and conditions of employment of the Chairman and NEDs should be in line with those of their peers in organisations of comparable scale and complexity.

Public Service Broadcasting Commission

A new Public Service Broadcasting Commission (PSBC), independent of Government, would be established. The PSBC would consist of a small number of Commissioners. They would be non-executive and be of the type, experience and skills we would expect to be involved in the public interest oversight of an important sector. It would be supported by a small administrative staff and professional advisers and outsource much of its research and evidence gathering, in some cases to Ofcom.

The Government, following best practice public appointment rules, would appoint the Commissioners, including the Chairman of the PSBC.

The high-level objectives of the PSBC would reflect the proposals made in the Charter and might include:

- to bring to bear the public interest on all the BBC's activities;
- to ensure that the BBC is independent from Government and Parliament in all matters concerning the content of its programming and the composition of the broadcasting schedule, and in the management of its affairs. At the same time it should ensure that systems are in place within the BBC to guarantee compliance with the highest possible editorial standards and a prompt and fair response to complaints;
- to recommend to Government (and Parliament) the overall level of the licence fee and any other public funding needed to support the BBC;
- to provide Public Interest oversight of the BBC's services, programmes and other activities, within a clear framework of value for money that sets out the BBC's purposes and the characteristics of its content – namely high-quality, distinctive, innovative, stimulating, inspiring and challenging as embodied in the Charter;
- to subject to open and transparent scrutiny the strategic plan for the BBC prepared by the BBC Board, to approve it or reject it in response to that scrutiny and to oversee its execution;

- to judge the allocation of the licence fee between the BBC and other broadcasters to achieve a continuing plurality of public service broadcasting and to maintain the desired standards and content of public service broadcasting as a whole. Any such allocation would be subject to the same high standards and monitoring process as applies to the BBC.

The PSBC would carry out the following activities, again to be embodied in the Charter and Agreement:

- approval of new and existing Service licence submissions from the BBC Board;
- setting the performance measurement framework;
- holding the BBC Board to account for performance against Public Interest tests;
- delivering an ongoing programme of public consultation and engagement;
- delivering an ongoing assessment of Value for Money. On some occasions this might possibly be in conjunction with the NAO. Alternatively it might involve scrutiny reviews commissioned from outside auditors;
- asking the BBC Board to submit proposals to meet areas of Public Interest currently being neglected;
- providing an appeals mechanism for complaints that have not been resolved by the BBC;
- producing an annual review of its activities.

The strategic plan agreed between the PSBC and the BBC would be expected to cover a number of high-level issues. It might cover such issues as:

- the number and broad objectives of television and radio channels, online and other services, including commercial services;
- the broad allocation of expenditure by service, audiences and genre to meet the needs of all licence fee payers;
- specific targets for each channel in terms of type of content and measures of success (along the lines of the proposed Service Licence arrangements set out in Building Public Value);
- arrangements for the periodic review of channels and other activities of the BBC, whether commercial or funded by the licence fee.

The PSBC and Ofcom

The creation of the PSBC, in addition to making transparent the division between governance, accountability and regulation within the

BBC, should also clarify the regulatory relationship between the BBC and Ofcom, the communications sector regulator.

There are a number of Tier 1 and Tier 2 regulatory tasks, some which are currently discharged by the Governors, and some by Ofcom, which apply equally to all broadcasters.

It is our view that the present balance of editorial regulatory responsibility between the BBC and Ofcom, as laid out under the 2004 Communications Act, is broadly correct. However, it would be more logical for Ofcom to take the determining role in the regulation of the BBC's commercial activities.

The regulation of commercial/competition issues, at present the responsibility of the BBC Governors, subject where appropriate to the FTA and Ofcom), should be brought into line with other broadcasters and regulated by Ofcom.

The regulation of, and approval for, new services, should be the responsibility of the PSBC, with analysis of market impact, and analysis of the impact on the public service provision of commercial broadcasters, being commissioned by the PSBC from Ofcom.

Ofcom should retain regulatory responsibility over the BBC for Tier 1 requirements, on harm and offence, privacy and fair treatment. It should also retain its responsibility for the BBC on quotas for hours of news and current affairs programming, for regional programming, original production and regional production.

The PSBC should retain the BBC's independent editorial responsibility. It should ensure that the BBC Board has in place systems for setting and maintaining the highest standards on issues of impartiality and editorial judgement. In our view, safeguarding the BBC's independence, as the nation's primary provider of information through its publicly funded news services, is of paramount importance. We are persuaded that decisions concerning its editorial accountability should be kept separate from the system of editorial regulation for the commercial broadcasters.

Accountability

The PSBC would be accountable to Parliament and Government for the delivery of the purposes set out in the Charter and Agreement, against

a performance management framework also set out in the Charter and Agreement.

The BBC Board would be accountable to the PSBC for delivery against strategies and service licences. It would not be directly accountable to Parliament, although Parliament would continue to take an interest in how the PSBC discharged its remit.

We would expect the PSBC, Ofcom and the BBC to appear in their respective roles before the relevant Parliamentary Select Committees to account for their performance.

Conclusions

In our view this model has a number of significant benefits:

- it meets the criteria set out at the beginning of this note, which have achieved wide assent;
- it resolves the inherent tension in the Governors' role by separating the tasks of being non-executive directors from the public interest oversight role;
- non-executive directors of the BBC will have a clear role of supporting management, providing strategic oversight, bringing experience and ensuring compliance. They can thus operate clearly as the critical friend of management and defenders of the BBC;
- the members of the PSBC have a clear Public Interest oversight role, which they can conduct at an appropriate distance from the BBC's management within a clear framework provided by the Charter and supported by powers (including financial powers) to ensure that the BBC Board delivers what it has promised throughout the Charter period;
- the management of the BBC has a clear and well understood relationship with non-executives, which will make its own role more straightforward. In addition the management will have greater operational freedom within the strategic plan agreed with the PSBC;
- it provides the BBC with a framework of governance and regulation which is in line with current expectations in both public and private sectors, yet tailored to the uniqueness of the BBC as an organisation;
- the BBC will benefit from greater independence from Government with regard to new services and monitoring of performance, thereby achieving greater editorial autonomy;
- the Government could benefit from these arrangements by making it easier for it to pursue legitimate complaints without

being vulnerable to the charge that it is seeking to undermine the BBC;

- Government and Parliament have a clear role to control the funding of public service broadcasting and set the purposes and objectives in the context of the Charter. Subject to Parliamentary scrutiny, the PSBC then has the distinctive task of ensuring that the BBC (and any other public service broadcaster in receipt of licence fee money) delivers the purposes and objectives of the Charter;
- it provides a framework for the maintenance of plurality in public service broadcasting;
- it offers commercial broadcasters an assurance that the BBC will be obliged to continue to maintain its PSB responsibilities within a structured process that is subject to explicit oversight; and where competition issues are dealt with in an even-handed way.

The one precondition of the BBC Charter Review set out by The Secretary of State was that out of it should emerge a strong BBC, independent of Government. We believe that the system of governance, accountability and regulation outlined here offers a clear, robust and efficient framework within which that strength and independence can be preserved. Above all, the BBC, with its unique public funding system, needs to demonstrate a transparent structure of accountability to its licence payers. It needs to operate within a framework that clearly defines and differentiates the roles taken by those responsible for its management, governance and regulation within the wider broadcasting environment. Within such a clear and well-defined structure, the BBC confidently can continue to do its job, independent from government pressure, and retain the public's trust.