

5. Governance, regulation and accountability

What people think

- There are calls from both the public and broadcasters for reform of the arrangements for governance and regulation. Particular concerns are raised over: the appointment, make-up, skills and experience of the Governors; the precise remits of the BBC's services; and the regulation of the commercial services
- The public would like the BBC to become more accountable to licence fee payers
- A variety of proposals for greater public accountability were put forward – including some developing the concept of the licence fee payer as “shareholder”
- People think that the BBC should be more independent of the Government and Parliament for what it delivers
- There are calls for greater financial accountability and transparency

Our policy

The public interest must be represented at the heart of the BBC. But it has proved difficult for the existing Board of Governors to represent both the public interest and the BBC executive at the same time. Reform is needed.

The BBC has taken steps to increase the independence of the Governors and to provide a new framework for more rigorous and transparent scrutiny of BBC performance. These measures are welcome but do not go far enough. A clearer separation of functions is needed between the part of the BBC that devises and delivers strategy and whatever body is given the task of holding it to account for performance.

The answer is not to establish a separate new regulator for the BBC, nor to give full responsibility for its regulation to Ofcom, although Ofcom should retain its current powers to regulate the BBC on competition issues and to apply industry standards on harm and offence, privacy and fair treatment. A new system is required which provides direct accountability to licence fee payers and upholds the public interest in spending their money.

We propose to replace the Board of Governors with a new BBC Trust (a working title), with ultimate responsibility for the licence fee and for upholding the public interest in the BBC. The Trust would assess the performance of the BBC's services, and approve high-level strategy and budgets. It would devolve issues of day-to-day management and delivery to a separately-constituted Executive Board.

The BBC's Trust needs to be an effective representative for licence fee payers. It needs to face outwards towards the public and the rest of the media market. It will need to adopt new standards of openness and transparency. It should ground all key decisions in a careful assessment of viewer and listener opinion and needs. It should offer commercial interests a formal route of consultation and should engage Ofcom in making assessments of market impact.

It will also need to use more rigorous tools of performance management, of the sort the BBC are now starting to develop, in dealing with the executive.

Overview of this chapter

5.1 Governance is the central issue for this Charter Review. To maintain public support and to avoid Government intervention, the BBC must be held to its public purposes through a powerful governing body. It also needs rigorous systems of performance management and accountability. This chapter consists of three sections:

Context

- the existing governance arrangements;
- the case for reform;
- the principles that we think should guide reform;
- a range of options.

Our proposal for a new BBC Trust

- the proposal in outline;
- the operational changes that go with it.

Upholding the public interest

- the public interest remit for a BBC Trust;
- options for increasing the accountability of the BBC to its licence fee-payers.

Context

The existing arrangements

5.2 The BBC Governors have a large number of specific duties, which are set out in more detail in Annex B. In summary:

- the Governors constitute the Corporation itself and are responsible for the provision of programmes, the determination of strategy and key management appointments, including that of the Director General. They publish the BBC Annual Report and Accounts.
- The Governors are also required to set objectives and promises for BBC services, and to review the BBC's performance against these.

5.3 The Governors set, and monitor BBC compliance with, guidelines on taste and decency, and accuracy and impartiality, as well as quotas on news, regional programming, regional production and original production. But the BBC also has to comply with Ofcom's fairness code and much of its cross-industry programme standards code (including matters of taste and decency but notably not accuracy and impartiality). Ofcom are able to monitor the BBC's compliance and to deal with complaints in these areas. In cases of breach, Ofcom can fine the BBC or direct the BBC to broadcast a correction or statement of findings. Ofcom also has power to enforce the BBC's obligations relating to independent production quotas, and it monitors compliance against other production quotas.

5.4 The Governors have an Audit Committee that is responsible for ensuring the BBC is properly audited and for appointing an external auditor. The Governors are also responsible for ensuring the BBC honours its Fair Trading Commitment – a mix of external competition law requirements and internal governance commitments – although under competition law the BBC is also regulated externally by Ofcom, the OFT and the European Commission.

5.5 The Government also has a role in BBC governance – it conducts Charter Review every ten years or so, signs the Agreement and can propose occasional amendments to it. Any launch of a new publicly-funded service requires the approval of the Secretary of State for Culture, Media and Sport, following public consultation and formal advice from Ofcom on the likely market impact. The Secretary of State can impose conditions on such approvals.

The need for reform

5.6 The system needs reform. It is complicated and difficult to understand. It is not widely trusted by the BBC's commercial rivals. Nor is it widely understood by licence fee payers. 55% of people we surveyed did not know who was responsible for the day-to-day running of the BBC. But our deliberative research suggested that the public would like to know more – particularly about how Governors are chosen and what their responsibilities are.

5.7 It is inherently difficult for one group of people to be convincing both as cheerleaders for the BBC and as objective assessors of its performance. Different groups of Governors will strike a different balance between these two objectives but rarely will they be able to pursue them both with the same vigour. Doing so would be likely to place severe pressures on the relationship between the Chair of the Governors and the BBC Director General.

5.8 The Governors themselves recognise that the system lacks transparency, accountability and openness. They have also accepted that there is some tension between the two broad roles that they are being asked to fulfil:

- devising strategy and delivering services; and
- scrutinising strategy and measuring the performance of services.

5.9 As the section above makes clear, the Governors are also being asked to perform different sorts of regulatory roles. In some areas they have a parallel responsibility with Ofcom for ensuring compliance with codes and quotas. In other areas they have sole responsibility for ensuring compliance.

5.10 The expectations placed on Governors have also increased significantly in the last decade. The BBC needs a governing body with sufficient resources and expertise to oversee the operation of the country's largest media organisation in the 21st century. That suggests that the criteria for appointments may need to be redefined, in order to put that expertise on the board.

5.11 The Independent Panel, in considering the question of governance, pointed to the major changes in private sector corporate governance structures in the last decade, which have resulted from pressure for:

- increased accountability and external scrutiny;
- greater openness and more consultation in handling major decisions;
- a move away from self-regulation where regulation is required;
- processes and structures that minimise conflicts of interest.

The BBC needs to address concerns in all of these areas, as well as questions about the impact of publicly-funded services on private sector businesses.

Principles for reform

5.12 The central principle behind any new governance structure should be increased differentiation and separation of two different sets of functions – those relating to oversight and those relating to delivery. These could be divided up in a number of different ways. Box 5.1 illustrates the sort of separation of functions that we think is necessary. Any governance system needs to have structures in place to support both roles.

Box 5.1 Different functions of delivery and oversight in the BBC system

Delivery	Oversight
Day-to-day operational management	Setting overall objectives for the BBC
Ensuring delivery of remit	Scrutinising, challenging the executive’s strategies and spending proposals
Detailed allocation of resources	Reviewing performance against remit Monitoring compliance with quotas and standards
Appointing/dismissing top executives	Setting budgetary framework
Handling complaints in the first instance	Appointing/dismissing Director-General
Preparing and auditing accounts	Establishing an independent system for considering significant complaints and appeals
Ensuring efficiency	Commissioning independent reviews of value for money and efficiency
Determining pay for executives	Ensuring accountability to and engagement with licence fee payers
	Analysing the market impact of changes to BBC services

5.13 Two further principles should underpin any proposal for reform:

- First, that the BBC is unique. It is a public service and therefore not directly comparable to the private sector. But its direct link to licence fee payers, and its role in supporting our democracy, make it an independent entity unlike other public bodies.
- Secondly, that the BBC’s system of governance and regulation needs to recognise and celebrate that unique position. The system needs to be directed towards the BBC’s constituency – the public – and the reason for its existence: the creation of public value.

5.14 All proposals also need to be tested against the other points in the checklist drawn up by the Independent Panel that has advised us on Charter Review. We have refined that checklist into a list of 11 principles for the reform of governance structures, summarised in box 5.2.

Box 5.2 Principles of good governance

The aim should be to find a system that:

1. Is founded unequivocally in the public interest
2. Is appropriate for an organisation built on creativity
3. Strengthens and protects the independence of the BBC

4. Is genuinely open, transparent and objective
5. Ensures appropriate accountability for the public's money
6. Commands public confidence, and involves the public adequately in decision-making
7. Provides adequate protection for those outside the corporation who may be affected by the BBC's activities (principally, although not confined to, its private sector competitors)
8. When conducting assessments of impact, uses criteria that allow direct comparisons with the rest of the broadcasting market
9. Is clear about the distinction between governance and regulation and has structures which support both
10. Is clear about the respective roles of executives and non-executives and embodies this in ways of working
11. Incorporates adequate mechanisms for audit, complaints etc

Broad options for reform

5.15 To fulfil the central aim of increased separation between leadership and regulatory functions, the Independent Panel has suggested that reform could be undertaken in two ways:

- **Structural reform.** Placing the responsibility for different functions with different bodies. These might both be inside a BBC structure. Or one of them could be an external body – Ofcom or another regulator.
- **Behavioural reform.** Increasing the distinction between the different powers and responsibilities of the Board of Governors and the BBC Executive. The BBC have already put forward proposals of this sort in *Building Public Value*.

Box 5.3 BBC proposals for reform

Building Public Value proposed that the Governors should remain as trustees of the public interest, but that the following key changes should be implemented in order to:

Underline their independence from Management:

- establish a separate Governance Unit
- independently commission external research
- tap into specialist broadcasting knowledge from the Governance Unit rather than the Executive

Improve transparency:

- publish Service Licences and Statements of Programme Policy for every channel and service
- apply public value tests to new services and any major changes to existing ones

Increase accountability and responsiveness:

- publish results of public value tests and external research

- establish communication via the internet between the Governors and licence fee payers
- strengthen the Advisory Councils
- appoint a new Head of Complaints reporting directly to the Governors

The BBC have since proposed the development of ‘protocols’ that would specify the processes through which the Governors would conduct their business, to help cement their independence.

5.16 We welcome the moves that the BBC Governors have made towards increasing their independence from management, and the transparency and openness of their decision-making. However, we agree with the views of both the Select Committee and our Independent Panel that the version of behavioural reform set out in *Building Public Value* does not go far enough towards clear separation between the functions of delivery on the one hand and oversight on the other. It also relies to too great an extent on behavioural change to ensure that Governors act independently from management. Given the low degree of confidence in the existing system, and the failure of previous attempts at piecemeal reform, this is not sufficient. The new system must provide clarity and certainty about exactly where the division between delivery and oversight functions is drawn. Even with the BBC’s proposed addition of ‘protocols’ to specify how the Governors would handle their business, the *Building Public Value* model does not provide sufficient clarity – it gives the Governors too much flexibility to involve themselves in almost any area of management. A new structure is needed that makes formal the division of responsibilities and excludes the oversight body from engagement in some of the detailed matters of delivery. As far as possible, such a structure should be immune to any future changes in personnel.

5.17 We also want to rule out both models of external regulation, either:

- regulation through Ofcom; or
- the creation of a new regulator specific to the BBC (‘OfBeeb’).

Ofcom

5.18 It could be argued that Ofcom regulation might better insulate the BBC from Government intervention – by providing an intermediary, ‘buffering’ layer between the two. But others argue that an external Government-appointed regulator such as Ofcom may in fact be more inclined than the Governors to act in a way that it imagines Government would wish.

We do not think Ofcom should be given a role of oversight or scrutiny in relation to the BBC as a whole, for a number of reasons. Given its range of responsibilities across the commercial sector, it may be difficult for Ofcom to devote itself fully to upholding the public interest in BBC services and programmes, in defending the independence of the BBC itself or in satisfying the need for direct accountability to licence fee payers. It might not be obvious to the licence fee payer how Ofcom was going to resolve any conflict between what was good for the BBC and what was good for the commercial sector. Significant organisational change would be needed were it to be entrusted with the guardianship of the

BBC – Ofcom is not at present responsible for the direct oversight of public spending on the scale represented by the licence fee. Such a change would be likely to lead to greater confusion of responsibilities rather than clarity. We note that Ofcom agrees with this view in its PSB Phase 3 report.

'OfBeeb'

5.19 We are convinced that the function of maintaining the BBC's unique position and focus on public purposes needs to be given to an organisation dedicated to the purpose. But there might also be problems if that organisation was a newly created 'Ofbeeb' – a wholly separate regulator. If the BBC governing body has responsibility for spending the licence fee, and through that a direct link to the public who pay the licence fee, it also needs to be given the responsibility for upholding the public interest. The creation of a separate OfBeeb to represent the public interest, with no control over the distribution of the licence fee, might blur lines of accountability and loosen the direct link between the public and the BBC. In addition, the effective oversight of the BBC at the highest level – beyond the particular obligations regulated by Ofcom and others – requires an understanding of, and ability to influence, the culture of the organisation. It is difficult to see how an entirely separate external regulator (either OfBeeb or Ofcom), with no budgetary controls, could fulfil this sort of role. An OfBeeb in this position might risk being 'captured' by the BBC – it would have no other client.

The Independent Panel's proposal

5.20 The Independent Panel has proposed the creation of a Public Service Broadcasting Commission to oversee the BBC. Their proposal includes a suggestion that the Commission might at some future point be given the power to allocate licence fee funding to broadcasters other than the BBC, as a means of encouraging the BBC to perform better. The proposal is summarised in box 5.4.

Box 5.4 The Independent Panel proposal for a Public Service Broadcasting Commission

BBC Board plus Public Service Broadcasting Commission:

- 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).
- 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 have a non-executive Chair, appointed by Government. It 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 have 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, independent of Government, would be responsible for oversight of public money invested in broadcasting and for recommending to Government the level of the licence fee.
- The Government would give up its powers of prior approval for BBC services TV, radio, ancillary and commercial services and for commissioning 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.

In addition, although the panel makes clear it is not a necessary part of the structure, the PSBC would be empowered to award part of the licence fee to other public service broadcasters, at some point in the foreseeable future, depending on the level and quality of PSB on the BBC and other channels. Full details of the panel's preferred model can be found at www.bbcharterreview.org.uk.

- 5.21 No governance system should close off the possibility of contestable funding, or a wider distribution of funding, in future – flexibility is essential. We recognise that, within the next ten years, we may need to consider whether other broadcasters will need public funding if we are to maintain a degree of healthy competition in public service broadcasting. We have decided that, towards the end of the switchover process, there should be a review to consider whether there is a case for the wider distribution of public funding (including licence fee income) to recipients beyond the BBC. The key decisions about the future of public service broadcasting will need further, detailed consideration over the coming years as the implications of digital change become more apparent. Chapter 10 considers the range of options in more detail.
- 5.22 Given the need to see how public service broadcasting develops and what wider funding options might then be appropriate, we will not adopt the recommendation to establish a Public Service Broadcasting Commission. Instead we will establish a BBC-specific solution that addresses the weaknesses of the present governance structure.
- 5.23 Other aspects of the Independent Panel's proposal are attractive, and consistent with the principles for reform. It would provide for a very clear separation of functions between two different bodies. Our concern, however, is that this degree of separation might actually put too much distance between the licence fee payer (as represented by some form of Commission) and the delivery of BBC services, which would be overseen by a strengthened unitary Board. In this sense, we consider the proposal veers too close to becoming a version of 'OfBeeb'. Lacking a direct relationship with the BBC executive, the Commission might be too weak to effect real change. And giving the Government, rather than the Commission, power to appoint the Chair of the executive risks compromising the BBC's independence.

Our proposal

- 5.24 We will create a new 'BBC Trust'²⁹ which embodies the public interest, reflects the views of licence fee payers and safeguards the independence of the BBC. Members of the Trust would be appointed by the Crown (as the Governors are now) and subject to the full Nolan procedures for public appointments.
- 5.25 The new Charter will also establish a formally constituted Executive Board responsible for the delivery of all of the BBC's activities and accountable to the Trust for its performance.
- 5.26 The Trust will act as the sovereign body in relation to the BBC and have ultimate responsibility for the licence fee. It will be responsible for setting the BBC's performance framework and assessing performance against it; approving strategies and high level budgets; and holding the Executive Board to account for delivery. The Trust will have access to all the information it requires in order to carry out its functions.
- 5.27 The Executive Board will contain a significant minority of non-executives, reflecting its level of autonomy on strategic matters. The role of the non-executives on the Executive Board is to support the executive members as "critical friends", by bringing wider perspectives and expertise to their decision-making.
- 5.28 The Executive Board will be chaired by the Director General or, at the discretion of the Trust, a non-executive.
- 5.29 There will be a clear structural separation between the functions of the two bodies, which are summarised below in box 5.5. In particular, the boundaries of the Trust's involvement in strategic and financial decisions will be clearly set out.
- 5.30 The two boards will be required to work to explicit protocols, detailing the processes for interaction between them, with a view to ensuring clarity, openness and transparency. The Trust will subject decisions to public engagement and objective evidence-based assessment and the presumption will be that its decisions are made public, together with the evidence and other inputs which have informed them.

Box 5.5 Principal functions of a BBC Trust and Executive Board

Functions of the Trust

The key responsibilities of the BBC Trust will be to:

- Establish and implement a published framework for ensuring that the public interest is brought to bear on all of its considerations. This will be expected to include specific commitments to communication and consultation with licence fee payers.
- Set the overall objectives for the BBC, within the framework set by the Charter.
- Define the performance criteria and measures against which the delivery of those objectives will be judged.
- Hold the Executive Board to account for its performance in delivering the BBC's services and other activities.

²⁹ We have given the new governing body a working title of 'BBC Trust' to signify its responsibility for spending the licence fee and its close relationship to licence fee payers, but its legal nature would be somewhat different to that of a conventional Trust

- Investigate where it has concerns that the Executive Board is in danger of breaching its requirements and require problems to be addressed.
- Issue service licences for BBC services.
- Approve multi-year strategies and annual plans, including high-level budgetary allocations. The Trustees' role would be to accept, reject or require further development of proposals developed by the Executive Board.
- Approve specific financial and strategic proposals from the Executive Board where they stand to have significant implications for the fulfillment of the BBC's overall objectives.
- Regulate programme standards and quotas (without altering Ofcom's current responsibilities in this area).
- Appoint a Chair to the Executive Board – the Director General or, at the discretion of the Trust, a non-executive – and approve that board's nominations for its non-executive members.
- Set the framework for handling complaints and act as final arbiter.
- Commission value for money investigations into specific areas of BBC activity.
- Comment on the Executive Board's report and accounts and lay them, together with its own commentary, before Parliament.
- Determine the remuneration of the Chair of the Executive Board and play a role in setting the remuneration of the other members (for example by setting overall parameters or approving individual decisions).
- Assess proposals from the Executive Board for new services, with the involvement of Ofcom on market impact issues, and public consultation, and submit recommendations to Government for final sign-off. Undertake subsequent reviews of new services once approved.

Functions of the Executive Board

The key functions of the Executive Board will be to:

- Deliver the BBC's services within the framework set by the trustees and account to the Trust for its performance.
- Develop, cost and (once they have been approved) implement strategies for the delivery of the overall purposes and objectives set by the Trust.
- Take all financial and strategic decisions in relation to the BBC's activities, except where there are significant implications for the overall objectives set by the Trust (in which case decisions will be referred to the Trust for approval).
- Develop and put forward service licence applications.
- Prepare and sign off the annual report and accounts for the BBC and present them to the Trust.
- Nominate its own non-executive and executive members (via a nominations committee). Non-executive appointments will be made in accordance with Nolan procedures for public appointments and will be subject to the Trust's approval.
- Determine the remuneration of executive members (via a remuneration committee), and with the appropriate involvement of the Trust.

- 5.31 Our proposal is the best model for the BBC. It accepts the Burns panel's key recommendation that there should be clear separation of different responsibilities, to avoid confusion or capture. As Burns recommended, the Trust will have only high-level powers of approval over BBC budgets and strategy. Day-to-day management will be carried out by the Executive Board, which will be strengthened by a significant number of non-executive members. Dealings between the two boards will be open and transparent – it will be clearer to everyone how and why decisions are taken.
- 5.32 But the Trust model is also consistent with the best elements of the BBC's own proposals to reform the Board of Governors – it makes sure there is only one, clear sovereign body and only one Government-appointed Chair. That will make the Trust a powerful advocate for the public interest, able to safeguard the BBC's independence, with ultimate power over the licence fee.
- 5.33 The reforms we are proposing will take a number of very important steps forward from the existing system:
- There will be clear structural separation between two different, formally constituted bodies – the Executive concerned with delivery, the Trust with oversight.
 - The Executive Board will have greater freedom, at a detailed level, to develop strategy and make programmes without any interference from the Trust. Executive Board members will also benefit from the experience and advice of a significant number of new non-executive members.
 - Since the Trust will approve only high level budgets and strategies – and will not be involved in their development – it will be able to make objective judgements about the BBC's day-to-day performance.
 - It will be clear to everyone outside the BBC how the two boards relate to one another – formal protocols will ensure there is a presumption that what passes between them should do so publicly where possible.
 - BBC services will be held to specific, detailed service licences.
 - The Trust will be a powerful body at the head of the BBC, with expert support staff. And it will gain its real power from the open face it presents to commercial competitors and its proximity to its shareholders – the licence fee payers. (The ways in which it might guarantee this proximity are discussed in more detail in the sections below.)

Relationship with Ofcom

- 5.34 There are two areas in which the current relationship between Ofcom and the BBC might be re-examined. The first is the regulation of basic production quotas and programme standards – characteristics by Ofcom as 'cross-industry regulation'. At present, some standards and quotas are regulated by Ofcom, some are regulated by the BBC Governors and some responsibilities are shared between the two (see Annex B for full details). Some people argue that these responsibilities should all be handed to Ofcom to regulate rather than being shared with the BBC's governing body, since they are basic public service broadcasting requirements that Ofcom also apply to commercial channels. Others consider that such a move would threaten the BBC's editorial and strategic independence and its direct accountability for the way that licence fee income is spent – they argue instead that the BBC's own governing body is best placed to regulate

it in all these areas. We want to give both Ofcom and the new BBC governance structure time to bed in before considering again the distribution of responsibilities for this sort of ‘negative regulation’ of standards and quotas. We will review the position five years into the new Charter.

- 5.35 The second issue relates to competition regulation. Ofcom is the sectoral competition regulator for broadcasting and has the same Competition Act powers over the BBC as it does over any other broadcaster. The OFT, similarly, is involved in competition issues relating to non-broadcasting activities (eg. online activity, rights issues). We fully support this position – it makes no sense to duplicate expertise in this area. We also think Ofcom’s expertise should be used to help assess the market impact of BBC activities and services – by conducting impact tests themselves for new services and agreeing the method by which tests will be carried out in other areas (such as changes to existing services).
- 5.36 We do not think Ofcom should be given an additional, open-ended ‘ex ante’ power to ensure the BBC acts fairly – we believe that, as proposed, this would cut across the BBC Trust’s overriding duty to uphold the public interest in this area. But if evidence is put forward of a need for more tightly-defined powers, in specific areas, we would be prepared to consider it. Ofcom will retain its ex post Competition Act powers to intervene if it considers the BBC has abused its position.
- 5.37 There is an outstanding question relating to the Fair Trading Commitment that the BBC Governors apply to BBC commercial services and we return to that point in Chapter 9.

Operational arrangements

- 5.38 The BBC Trust will need to be given additional space and resources to do its job. It should be separated completely from the Executive and given its own staff. In response to our public consultation, numerous calls were made for the Governors themselves to have greater expertise in broadcasting, new media, competition and corporate regulation. We think a new appointments policy needs to be drawn up to make sure the Trust contains people who have, or have the opportunity to acquire, the appropriate skills and experience in these areas. It will also need to be given a clear framework against which to measure the performance and proposals of the Executive, and some levers to ensure the Executive respect their judgements.

Performance measurement – service licences and cross-cutting strategies

- 5.39 We support the view put forward by the BBC, in *Building Public Value*, that new tools are required for setting the BBC’s detailed remit and measuring the Corporation’s performance. We agree in particular that every BBC service should have a detailed service licence. This would be set by the Trust in negotiation with the Executive, against which performance would be measured. Alongside individual service licences, the Trust should also publish detailed strategies for the fulfilment of each of the BBC’s public purposes – incorporating activity within and beyond broadcasting services.
- 5.40 For such service licences and strategies to be effective tools, they need to be accompanied by a comprehensive system of performance measurement. That system needs to be able to judge the performance of each service against each of the BBC’s public purposes. It needs to consider:
- The output of each service – its content and how it is scheduled
 - The impact of all BBC activity – how many different people it has reached and how often

- The value given to it by audiences and participants – whether people found it enjoyable or worthwhile
- The value given to it by outside experts (eg through peer review and benchmarking)

5.41 In making judgements based on these criteria, the Trust will need to track and consider the thoughts and opinions of audiences as well as the hard facts of audience share or reach. The value that viewers attach to programmes can be as important as the number of people who watch. Our qualitative research suggests people agree that ratings are not sufficient to judge performance and that some more subjective forms of measurement are required³⁰. We expect the BBC to work closely with Ofcom and with other public service broadcasters in putting together its measurement system.

Public value tests and market impact assessment

5.42 We also support the BBC proposal for the development of a public value test. Whenever a proposal is put together for a new service, or the extension of an existing one, it should be submitted to the Trust for a rigorous test of its public value. Part of the test should be a market impact assessment, to be conducted according to a standard formula agreed between Ofcom and the BBC Trust, and to be conducted by Ofcom itself in the case of a new service. Only if the public value added by the service outweighs any negative market impact should the proposal be given further consideration.

5.43 We welcome and endorse the idea of a public value test but would like to see it developed further. We would particularly welcome a wider debate on the ways in which it will be possible to measure public value (beyond the simple popularity of a proposal, which may be a crude and misleading indicator). We would also want to consider whether the test should set a threshold beyond which the market impact of a service might be deemed completely unacceptable – for instance if it risked foreclosing a new market or significantly lessening competition.

Handling proposals for new services

5.44 The Trust should have the most substantial role in the process of approving or rejecting BBC proposals for new services. At present, the Government is responsible for this process. In future, the Trust should be able to carry out the detailed, public work of analysing proposals on the basis of Ofcom's market impact assessments, audience opinion and other evidence. The Trust would then make a recommendation to the Government if it wanted to approve a new service, and the Secretary of State would only be able to veto such a recommendation on the grounds that due process had not been observed.

5.45 The Trust will also need to be given some other levers over the Executive, to use if things go wrong with an existing service. Its easiest and most direct weapon will be simply to name and shame – to publish an assessment of what has gone wrong and to demand proposals from the Executive to rectify the problem. Beyond that, it will also hold the ultimate power to dismiss the Director General or Chair at the top of the Executive Board. It would also be able, through the budgeting process, to insist on money being moved away from some services towards others, depending on its judgement of performance.

³⁰ Cragg Ross Dawson, *Qualitative research on key issues*, 2005

Upholding the public interest

- 5.46 We are proposing to separate delivery functions, which relate mainly to the management and delivery of BBC services, from an oversight function that we think should aim to uphold the ‘public interest’. To do its job properly, the BBC Trust will need to have clarity about what constitutes the public interest in this case. That requires a definition of:
- its fundamental aims and aspirations – its remit
 - the regulatory tools it is given, its powers and the processes it needs to have in place
- 5.47 A public interest remit needs to reflect the three ways in which the new body would be responsible to the public:
- its direct responsibility to the licence fee payers who pay for it;
 - its responsibility to fulfil the purposes set for it by Government on behalf of the public as a whole; and
 - its responsibility to UK consumers to ensure that BBC services do not unduly inhibit choice and competition in the wider market.
- 5.48 However, such a remit should not be defined by outside interests alone. Ultimately, the Trust will still be responsible for upholding the strength and independence of the BBC itself. It must not be driven by any other commercial or political agenda. It will therefore need to have sufficient space to consider these components of the public interest objectively, and to use them as a prism through which to judge the BBC’s activities.
- 5.49 The public interest might be defined through a set of general aims or duties for the BBC Trust, to make sure that the BBC:
- fulfils its public purposes;
 - sets benchmarks for other broadcasters;
 - is editorially independent of Government and commercial interests;
 - doesn’t unfairly or unduly damage commercial media businesses;
 - is efficient and provides value for money to licence fee-payers;
 - communicates with licence fee-payers and takes account of their opinions.
- 5.50 To fulfil each of these duties, however, the Trust will need to operate in a certain way. It will be able to use a system of service licences and performance measurement to ensure that public purposes are met and that the BBC sets a benchmark for competitors. Its structure should establish it as the guardian of the BBC’s strength and independence – a buffer between the Executive and any external Government or commercial pressure. Public value tests will enable it to measure and mitigate market impact, with Ofcom’s assistance. An audit function and a programme of value for money reviews should sustain efficiency.
- 5.51 Finally, if the Trust is truly to embody the public interest, it will need to be more accountable to the public. We agree with the Select Committee’s suggestion that this is a central issue.

Public involvement and engagement with how the BBC is run

- 5.52 The BBC's governing body needs to be re-oriented. Rather than sitting in the BBC facing inwards towards its management, as the Governors have tended to, the Trust needs to sit at the top of the Corporation facing out towards the public and the rest of the broadcasting industry. It should display some of the characteristics of the 'Ourbeeb' model put forward recently in a paper commissioned by the Commercial Radio Companies Association (CRCA)³¹.
- 5.53 All public services need to be accountable. The BBC is no exception. Licence fee payers want to know more about how the BBC is run and feel that it needs to be more responsive to the people who pay for it. 34% of respondents to our quantitative survey thought the BBC paid no attention, or not very much, to the views of viewers and listeners.³² The BBC Trust must demonstrate through its actions that its principal obligation is to the public, not to the Government or to the BBC itself. At present, the public sees the Governors as too remote and bureaucratic, not genuinely listening or responsive.
- 5.54 Licence fee payers are effectively the shareholders in the BBC. In a limited company, shareholders play a powerful role and the entire board's primary purpose is to safeguard their interests (non-executive directors play a particularly important role in this). In theory, the BBC Governors should represent licence fee payers in the same way. Historically, it has not been clear from the outside that they have done this. The new BBC Trust needs better, clearer structures of accountability and engagement – to give licence fee payers some rights of ownership.
- 5.55 The protocols that govern the behaviour of Trust members should include a requirement to maintain a 'contract' with licence fee payers, setting out the ways in which the Trust promises to measure and respond to public opinion. The sections below set out some options for inclusion in such a contract, and we would welcome views on how effective they might be.

Responsiveness – reviewing performance and revising strategies

- 5.56 The BBC's performance measurement system should take account of the thoughts and opinions of those who pay for the BBC – in every household:
- There should be a rolling programme of quantitative and qualitative research designed to track audience opinions about the BBC's performance, and to measure the impact of its programming.
 - Such research should be accompanied by open consultation of viewers and listeners through a number of different forums. One way of doing this would be to enlarge or reconstitute the existing national Broadcasting Councils and the English National Forum, which might be elected by local licence fee payers and given a role in formally advising the Trust. New e-forums and open meetings or AGMs could also be set up.
 - When key decisions have to be taken by the governing body, they should be informed by deliberative research among representative groups of viewers and listeners.

Transparency – explaining decisions

- 5.57 To promote trust in this system, the governing body must be open and transparent in everything that it does. Some options would be:
- For the Trust to meet in public

³¹ Stilpon Nestor, *An owner for the BBC: An outsider's look at BBC governance*

³² MORI, Quantitative research to inform the preparation of the BBC Charter Review, 2004

- To webcast its meetings and any open meetings or AGMs that it holds
- To publish the minutes of every meeting and the results of every piece of research
- To publish the voting records of each Trust member

Appraisal

5.58 If a combination of these options can de-mystify the processes and decisions of the BBC's governing body, then its members might also be made subject to greater public influence. One additional option would be for Trust members to be put through an external, independent appraisal process. Licence fee payers might also be given the opportunity to offer views on Trust members' performance as part of this process. Any member with a particularly poor appraisal might be replaced.

Complaints – getting redress

5.59 Finally, an important part of the accountability framework for the BBC is its complaints handling process. The BBC Governors have themselves stated that this process could be improved, and we agree. In future, complainants need to have fair and equal access to a transparent, objective process, with the BBC Trust acting as final arbiters (except in those areas where Ofcom is already the final arbiter – harm and offence, privacy and fair treatment).

Financial accountability

5.60 The Trust should also demand the highest standards of financial transparency from the BBC in its annual reporting to ensure that the BBC complies with best practice in other public and commercial bodies.

5.61 Following the Communications Act 2003, the BBC Governors began to conduct an annual series of published value for money studies that are agreed with (and in some cases conducted by) the National Audit Office (NAO). Ultimately, increased powers of access could be passed to the NAO. We will consider such options further in the course of Charter Review, once it is clearer how well the current arrangement is working. However we are mindful that the public do not want to see Parliament given any increased power over the BBC.

Parliamentary accountability – a 'legislative function'

5.62 At present, the BBC is ultimately accountable to Government and Parliament through the Charter, and Charter Review provides an opportunity for Government reform. In addition the Government sets the level of the licence fee, the Queen appoints the Chair and Governors on the advice of the Prime Minister, and the BBC's Annual Report is laid before Parliament for scrutiny by the Culture, Media and Sport Select Committee. These 'legislative' elements of the BBC's governance structure are important, given the amount of public money involved, and they should remain in place. However, the public say they do not want any increased Parliamentary involvement – only 9% say that Government should hold the BBC to account when things go wrong and only 4% say the same about Parliament³³. We therefore do not propose to add to these arrangements.

³³ DCMS Review of the BBC's Royal Charter, What you said about the BBC, p. 45