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Select Committee on Communications

1st Report of Session 2006–07

The Chairmanship of the BBC

Report with Evidence

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The Select Committee on Communications

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The Chairmanship of the BBC

CHAPTER 1: INTRODUCTION

1. This is the first report of the Select Committee on Communications. It deals with the selection, terms of employment and role of the Chairman of the BBC. It follows the work of the House of Lords Select Committee on BBC Charter Review which was an ad hoc committee established in 2005 to scrutinise the Government's plans for the future of the BBC. Since then the new BBC Royal Charter has come into force, a new licence fee settlement has been agreed and a new Chairman of the BBC has been appointed.
2. The process for appointing the Chairman of the BBC was not subject to parliamentary oversight and has not been debated in Parliament or considered by any Select Committee. This is a particularly important appointment. The recent selection process followed the surprise resignation of Michael Grade who left to become chairman of ITV. At the same time the new Royal Charter has altered the responsibilities of the job very considerably. We therefore decided that we should carry out a short inquiry in this area.
3. The BBC is one of the chief guardians of public service broadcasting standards. It is an organisation that represents the United Kingdom across the world. It receives over £3 billion of annual revenue from the public. The purpose of this report is twofold. First to make sure that the selection of the Chairman is protected from any chance of political interference and has the confidence of the licence fee payers. Secondly, to clarify how the roles and responsibilities of the Chairman have been affected by the new governance arrangements at the BBC. During our inquiry the new arrangements came up against their first significant test as the BBC came under fire for having operated phone-ins in a misleading manner and for a misleading trailer for a documentary about The Queen.
4. The membership of the Committee is set out at Appendix 1. This was a short inquiry for which we did not call for written evidence. We received valuable oral evidence from the witnesses listed in Appendix 2.

CHAPTER 2: THE ROLE OF THE CHAIRMAN

5. The Chairman of the BBC is a very different job from what it was before the inception of the BBC Trust at the start of this year. Before the Trust was established the BBC was governed by a Board of Governors who were in very close contact with the managers of the BBC. The Chairman of the Governors was the Chairman of the Corporation. The BBC Trust has been given new roles and responsibilities and its separation from the Executive Board has been emphasised.
6. Article 10 of the new Royal Charter states that there is no longer a formal Chairman of the BBC “The Chairman of the Trust may also be known as the Chairman of the BBC. In view of article 8, this is an honorary title, as the members of the BBC will never act as a single corporate body, but only as members of the Trust or Board to which they belong.”
7. The fact that the BBC will never “act as a single corporate body” means that the Chairman and Director-General will no longer stand together representing one organisation (despite the seemingly contradictory statement in article 8 that “the Corporation that is the BBC shall comprise all the members of the BBC Trust and the Executive Board”). This is a radical change and one that concerns us.
8. When he gave evidence to the House of Lords Select Committee on BBC Charter Review in 2005, the former Chairman of the BBC Gavyn Davies, said that in order to protect the independence of the BBC “The people in the trenches need to know that when they get into trouble from the Government and its press officers their Directors of News, the Director-General and Chairman will support them as long as they are broadly in the right and will give them cover for their actions”.¹ He also said that “the strength of the system was that we [the Chairman and the Director-General] could stand together at a time like we saw in 2003 against Government pressure”.² We note that the new Royal Charter has been drafted in such a way as to prevent the Chairman of the BBC acting in the way that Gavyn Davies saw as vital to protecting the independence of the BBC.
9. The Chairman of the BBC Trust now has regulatory responsibilities and is much further removed from broadcasting decisions than his predecessors. These changes took shape under Michael Grade who felt they were necessary to protect the Corporation from becoming subject to outside regulation. However, it seems it was the changes he made to his own job that helped persuade Michael Grade to leave before his contract expired. In the e-mail he sent to BBC employees on the day of his resignation Mr Grade said “I was faced with the choice of getting back into programming or ‘governing’ the BBC from a distance. Those of you who know me will understand just what an effort of will it has taken for me, as Chairman of the Governors, not to look at the overnight ratings every day, not to engage in idle programming chit chat with the brilliant creatives who are currently taking BBC television, radio and on line to new heights of quality—and so on.”³ Michael Grade’s

¹ First Report of Session 2005–2006, House of Lords Select Committee on the BBC Charter Review: *The Review of the BBC’s Royal Charter*, Volume II: Evidence, HL Paper 50–II, page 84.

² *Ibid*, page 88.

³ BBC press release, 28/11/2006, *Michael Grade resigns as BBC Chairman*.

own words suggested that the new job would attract a different type of applicant and it did. The new Chairman, Sir Michael Lyons, is not a journalist or a broadcaster. His experience is in local government administration and public sector reform.

10. The new governance arrangements and the wording of article 10 of the Royal Charter bring into question who is ultimately responsible for the BBC's programming decisions. Sir Michael Lyons told us that it was not his job "to defend the BBC in all circumstances" (Q 322); and that he could not envisage a situation when he would ever ask to view any BBC output before it was transmitted (p 57). However he also stated that he was "unequivocally the Chairman of the BBC." We agree with Sir Michael's own assessment that "there is no doubt that this is a complex arrangement" (Q 322).
11. The Chairman of the BBC Trust has a specific remit to represent the licence fee payer. We wonder whose remit it is to represent the BBC's own interests when they differ from those of the licence fee payer? Would Sir Michael be able to defend the BBC as robustly as Gavyn Davies did if similar events were to occur under his watch?
12. **We recommend that efforts should be made to ensure that there is greater clarity about the role of the Chairman.** The Select Committee on BBC Charter Review recognised that the proposals for the reform of the governance of the BBC would result in confusion. The Government chose not to change them and so the problem remains. The Government and the BBC may contend that the situation is clear but for those on the outside, including the licence fee payers, more detail is needed. **It should be clear whose job it is to represent the BBC itself as distinct from the licence fee payer, what it means to represent the licence fee payer and why "the Chairman of the BBC" is only an honorary title.**
13. The changes to the role of the Chairman were brought into focus just after we finished taking evidence for this report. On 9 July the BBC received its first-ever fine for an editorial failure from Ofcom. This followed the revelation that in November 2006 Blue Peter faked a competition winner after technical problems stopped real callers getting through. On 18 July 2007, following industry-wide revelations about "faked phone-ins", the BBC revealed new details of six shows in which production staff posed as viewers or listeners, or invented fictitious winners. Also in July the BBC was heavily criticised after it was found that a trailer for a documentary about The Queen, produced for the BBC by the independent production company RDF, had been misleadingly edited and interpreted. These events combine to mean that the BBC is facing serious challenges to its trust and reputation.
14. In light of these events the Director-General, Mark Thompson, was asked to appear before the BBC Trust to explain what action management intended to take to tackle the issues raised. Sir Michael Lyons was not present at this meeting but participated by telephone because he was honouring a speaking engagement in New Zealand. Following the meeting the Trust issued a public statement in which it said:

"The primary responsibility for ensuring the culture of the BBC properly reflects the requirements of a public institution which exists on the basis of trust rests with the senior management team. We have underlined that and asked the Director-General with his Executive Board Directors to review the management structure with a view to strengthening the

BBC's editorial controls and compliance procedures to ensure these are robust in all output areas.”⁴

15. It went on to state that:

“We are not ready to draw a line under the editorial failures reported to us today. The Trust has requested detailed reports through its Editorial Standards Committee on all the editorial incidents, including those relating to the documentary programme about HM The Queen. We have also requested information on any disciplinary action undertaken by the Director-General and a full explanation as to whether any of these matters should have come to light during the Director of Vision's initial audit following the Blue Peter episode. Finally, we have requested new performance and disciplinary measures be considered for breaches of editorial standards.

“When we have received the Director-General's final report in the autumn we will consider if any additional and separate measures are necessary. Once the Director-General's action plan has been fully implemented we will carry out an independent review to satisfy ourselves of a distinct improvement in the BBC's attitude to safeguarding the public's trust.”

16. The Trust and its Chairman have thus acted very much as a regulator. The public face of the BBC in this crisis has been the Director-General. It is Mark Thompson who was made available for interviews and Mark Thompson who had to answer for the BBC's actions and defend it against attack. The BBC Trust statement (above) illustrates a profound change in responsibilities by stating that “The primary responsibility for ensuring the culture of the BBC properly reflects the requirements of a public institution ... rests with the senior management team.” This underlines the Trust's own emphasis on its role as a regulator. The effectiveness of the Trust as a regulator, and how its regulatory duties work alongside those of Ofcom, will be seen later in the year once the Director-General has given his final report. We question whether it is consistent that management are responsible for “ensuring the culture of the BBC properly reflects the requirements of a public institution” when the BBC Trust is responsible for representing the interests of the licence fee payers.

⁴ BBC Trust statement on ‘BBC Editorial Standards, Controls and Compliance’, 18 July 2007, http://www.bbc.co.uk/bbctrust/news/press_releases/2007/editorial_standards.html

CHAPTER 3: THE PROCESS OF APPOINTMENT

17. According to the new Royal Charter that took effect on 1 January 2007, the Chairman of the BBC Trust is the guardian of the licence fee revenue and the public interest in the BBC (article 22). It is therefore crucial that he is politically independent and is perceived to be so. It is also vital that he has the trust of the licence fee payers, the wider public, the media industry and parliamentarians from all backgrounds. The only way to ensure this is to have a rigorous and transparent selection process which is free from political interference.
18. The new Chairman of the BBC Trust is Sir Michael Lyons. He was appointed on 5 April 2007. We were the first parliamentary Select Committee to which he gave evidence and we would like to make it clear that, although we have concerns about the way that the selection was carried out, we are not questioning Sir Michael's abilities to carry out the job. We do not believe that the quality of the outcome validates the process.

The selection process

19. When Gavyn Davies was appointed as Chairman of the BBC in 2001 he was the first chairman in the history of the Corporation to have been chosen after an open competition that conformed to Nolan rules. There is no doubt that the current selection process is an improvement on what went before but we do not believe these improvements go far enough.
20. When we started this inquiry there were limited details in the public domain relating to the process by which Sir Michael Lyons was appointed. Those details that had been made public were quite hard to find. There was no single piece of paper, or page on either the BBC or Department of Culture Media and Sport (DCMS) website, that detailed how the job was advertised, how applications were sought, the job description, the membership of the selection panel and the role Ministers had played in the process.
21. The Nolan principles that underpin public appointments emphasise the importance of being as open as possible. Despite this we note that obtaining the information detailed above took us several public evidence sessions, follow-up correspondence with the DCMS and considerable time. If it was this difficult for a Select Committee to find out what happened then it would have been near impossible for the average licence fee payer. We also note that the then Minister for Creative Industries and Tourism, Shaun Woodward MP, approached his evidence session with us not in the spirit of being as open as possible but instead with the view that if the Government was not explicitly required to make information public then it would not. When we asked Andrew Ramsay, Director General of Culture, Creativity and Economy at DCMS whether the Secretary of State exercised her powers to change the shortlist he told us "I am not sure whether I am entitled to comment on that" (Q 208). When we pursued the Minister on this point he told us "I do not think they are required to make it public" (Q 219). It later transpired that there was no reason why the information could not be made public and the DCMS provided us with an answer.
22. This is what we understand happened. Michael Grade resigned with immediate effect on 28 November 2006. The job of Chairman of the BBC Trust was advertised in early January 2007 and the DCMS engaged a firm of

head-hunters to help them identify candidates (Q 167). The then Secretary of State for Culture, Media and Sport, Tessa Jowell, was responsible for appointing a panel to select the new Chairman. The panel she appointed was chaired by a civil servant (Andrew Ramsay, the Director General for Culture and Creativity at DCMS). The other members were Sir Quentin Thomas (President of the British Board of Film Classification and a former civil servant), Oliver Stocken (Former Finance Director of the Barclays Group and Chair of the Natural History Museum), and Dame Sheila Drew Smith (an independent assessor trained by the Office of the Commissioner for Public Appointments (OCPA)). The independent assessor's job was to "to ensure that the rules which the Commissioner lays down are stuck to, that the process is fair throughout" (Q 193). She was also a full and participatory member of the panel.

23. The selection panel drew up a shortlist of four candidates. That shortlist was put to Ministers who had the opportunity to add or subtract names. In this instance Ministers asked for one name to be added to the shortlist (not Sir Michael). It appears that there were more candidates who met the criteria than made the shortlist. The individual added to the shortlist was one such candidate (p 40).
24. The short listed candidates were all interviewed by the selection panel on 12 March 2007. Each interviewee was marked against published criteria and scored on a scale of A–D (where C and above were acceptable). The score and rank of each candidate was then put to Ministers along with an interview report. Four of the five candidates were recommended as appointable but one was more highly recommended than others (p 40). Ministers chose Sir Michael Lyons who was appointed by Her Majesty by Order in Council.
25. What is clear is that this process gives Ministers considerable opportunity to influence the selection. Ministers appointed the selection panel, Ministers were allowed to change the shortlist of candidates and ultimately Ministers were able to choose between four candidates who passed the interview process.
26. These are the things we do know. What we do not know is whether Sir Michael was the candidate most highly recommended by the selection panel and thus whether Ministers followed the recommendation of the panel. In terms of the earlier stage of the process we do not know what influence, if any, Ministers had over who the head hunters encouraged to apply.

Ministerial influence

27. The process detailed above conformed with the guidance published by the OCPA on ministerial appointments to public bodies. This was certified by the independent assessor Dame Sheila Drew Smith.
28. Our concern is that the OCPA guidelines do not do enough to limit Ministerial power over this unique appointment. The Chairman of the BBC is not like any other Ministerial public appointment. The Government have acknowledged that the BBC "is unique—in its quality, its scope, its reach and in the public trust it engenders".⁵ In fact the White Paper on the Future of the BBC argued for the unusual governance arrangements embodied by

⁵ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: A strong BBC, independent of government, March 2005, foreword.

the BBC Trust on the grounds that the BBC is unlike any other organisation and its governance structure should reflect this. We agree that the BBC is unique and we therefore believe that the appointment of the Chairman of the BBC should be subject to additional scrutiny and safeguards over and above those used for day-to-day appointments to public bodies. There should be greater separation of Ministers from the appointments process to ensure public confidence.

29. Recent history shows that it is possible for the Government of the day to come into conflict with the BBC. The political independence of the BBC was brought sharply into public focus by the events surrounding the Hutton Inquiry which led to the resignation of the then Chairman of the BBC Board of Governors Gavyn Davies and his Director-General Greg Dyke. When designing the selection process that sought to replace Gavyn Davies the Government acknowledged that something needed to be added to the standard arrangements in order to ensure public confidence. To this end a panel of privy counsellors was appointed to scrutinise the process (but not the candidates). This extra layer of scrutiny was not used for the most recent appointment. Shaun Woodward MP told us that the Commissioner for Public Appointments had thought the extra scrutiny had only been necessary last time because of “the special circumstances ... post Hutton” (Q 195).
30. Ministers have three main points of influence over the current selection process. First, in appointing the selection panel. Secondly, in being able to add and subtract names from the shortlist and finally in having a choice of four names to choose from.
31. On the first point we do not believe it is practical for anyone else to appoint the selection panel but we do believe the process should be more transparent and that Ministers should not be able to appoint a civil servant or political chairman. This was also the recommendation of the House of Lords Select Committee on BBC Charter Review two years ago. Civil servants are ultimately accountable to Ministers. They are there to serve their Minister and they are immersed in the culture and priorities of their Department. Andrew Ramsay assured us that as Chairman of the selection panel his only duty to ministers was “to provide a process which is absolutely full of integrity, and nothing else” (Q 194). We have no doubt that Mr Ramsay acted with full probity, but how does his position look to the licence fee payer? The public are clear that they want the independence of the BBC to be paramount. But it is a justifiable concern that a civil servant could act in the best interest of his Minister, rather than in the interests of the licence fee payer. For an appointment like this perception is crucial.
32. It is for these reasons that **we recommend that there should be a duty on the Secretary of State to appoint a selection panel of at least five members including the Chairman and the independent assessor. There should be a majority of non-political members. The panel should be chaired by a non-political member who is not a civil servant.** To ensure that Ministers appoint a selection panel that will have the trust of all licence fee payers we suggest that **the composition of the panel should be announced to Parliament in a written ministerial statement.** This recommendation is in line with the new Prime Minister’s plans for the Executive to become more responsive to Parliament and the public. The requirement for Ministers to justify publicly the panel’s

composition will ensure a panel that fulfils the criteria that we have recommended.

33. To address our concerns about Government influence over the shortlist **we recommended that if Ministers add or subtract any names from the shortlist this should immediately be made public through a written ministerial statement to Parliament.** The names and details of the candidate should not be made public but the fact of Ministerial involvement should be.
34. Finally **we recommend that Ministers should no longer be able to choose between all the candidates that scored a C or above in the interview process.** Allowing Ministers this choice means that the candidate considered most capable of doing the job might be passed over for a candidate Ministers consider to share their political priorities. **We therefore recommend that the independent panel should recommend only one name to Ministers and that name should be the candidate who scored highest at interview. Ministers will still have to be answerable for the appointment so they should retain the power to reject that name and ask the panel to think again.**

Should Parliament have a greater role?

35. Ensuring less Ministerial influence over the appointment of the Chairman of the BBC Trust should go some way to ensuring public trust but the appointment needs careful scrutiny. The interests of licence fee payers must be represented at some point in the process. The obvious way to achieve both these goals is to give Parliament a role. MPs are the only democratically elected representatives of the licence fee payer.
36. On 3 July this year the new Prime Minister published a Green Paper on the Governance of Britain.⁶ Through this document the Prime Minister has made clear that he too believes that Parliament should have a greater role in scrutinising public appointments “the Government believes the time is now right to go further and seek to involve Parliament in the appointment of key public officials”.⁷ The Green Paper goes on to state that “Government nominees for key positions such as those listed below should be subject to a pre-appointment hearing with the relevant select committee”.⁸ However, the Chairman of the BBC Trust is not one of the positions listed.
37. We were pleased to see Government support for parliamentary scrutiny of public appointments. This type of scrutiny may help avoid future problems with appointments.
38. However, we are concerned that the BBC is not specifically mentioned anywhere in the Green Paper. The paper does state that “The Government, in consultation with the Liaison Committee,⁹ will prepare a list of such appointments for which these hearings will apply”.¹⁰

⁶ Ministry of Justice, *The Governance of Britain*, July 2007

⁷ *Ibid*, para 74.

⁸ *Ibid*, para 76.

⁹ NB The House of Commons Liaison Committee consists of MPs who chair Select Committees.

¹⁰ Ministry of Justice, *The Governance of Britain*, July 2007, para 77.

39. The Government's proposals for pre-appointment hearings are that they "would be non-binding, but in the light of the report from the committee, Ministers would decide whether to proceed. The hearings would cover issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection".¹¹ We think that this is the right way to conduct such hearings. Hugo Swire MP (the then Opposition spokesperson for Culture, Media and Sport) gave evidence to us before the Government announced its plans. We agree with his view that the role for parliament should not be to impede the appointment, but to have a public session and make its report public. He suggested that it would be "a very brave Secretary of State" that appointed any candidate not reported on favourably by Parliament (Q 444).
40. We note that there is some concern that public hearings might deter suitable candidates. Much of this concern is based on observations about how the United States Senate holds confirmation hearings for a large number of public posts. These hearings have attracted much criticism for concentrating on issues other than the candidate's qualifications and aptitude for the job. In 1998 the House of Commons Treasury Committee advocated confirmation hearings for certain public appointments in the UK but were mindful of what has happened in the US and therefore suggested the following resolution, "when the Committee is taking evidence at a confirmation hearing ... questioning will be restricted to issues of the appointee's personal independence and professional competence, including the possession of knowledge or experience likely to be relevant ... This resolution will justify an intervention by the Chairman if questioning strays outside the areas mentioned".¹²
41. When we took evidence from Michael Grade he was concerned that public hearings would "deter a lot of very talented people from putting their names forward" (Q 65). We believe that a resolution like that outlined above would ensure that candidates were not put off. With such safeguards in place we question whether the type of person who would still be put off by the prospect of a Committee hearing is the type of person who should be chairman of the BBC. Sir Michael Lyons told the Committee that, although he did have concerns about pre-appointment hearings, post-hoc parliamentary scrutiny of his appointment would not have deterred him from applying (QQ 369–371).
42. **We recommend that the House of Commons Liaison Committee and the Government agree that the Chairman of the BBC Trust should be one of the appointments that Parliament vets. This vetting should focus only on the candidate's qualifications and aptitude for the job. Both Houses should have a role in this vetting.** We therefore propose that a method be found whereby a Joint Committee of both Houses of Parliament should carry out the pre-appointment hearing. **The Government should undertake to respond to the report of the Joint Committee before the appointment is finalised.**
43. For those members of this Committee who were previously on the House of Lords Select Committee on BBC Charter Review, it has been a long standing objective to address the democratic deficit that exists with reference

¹¹ Ibid, para 76.

¹² Third Report of the House of Commons Treasury Committee, Confirmation Hearings, 25 February 1998

to parliamentary scrutiny of the BBC. The first report of that Committee noted the process for agreeing a Royal Charter meant that the Government of the day had almost unchecked power to change the entire constitution of the BBC. The Committee therefore recommended that the BBC should be based on a statutory footing by an Act of Parliament. The second report of that Committee recommended that Parliament should have greater involvement in setting the licence fee. We support these recommendations.

44. We are pleased that the Government's attitude towards the role of Parliament seems to be changing. The Prime Minister has made it clear that he wants several powers that are currently in the hands of Ministers to transfer to Parliament. **We therefore hope that in the long term the Government will address the democratic deficit that exists over the BBC.**

CHAPTER 4: CONDITIONS OF SERVICE

45. The Chairman of the BBC is not subject to a formal contract and never has been (p 57). This is because members of the BBC Trust, including the Chairman, are considered office holders, not employees, and as such do not have employment contracts. Trust appointments are made by Order in Council which make no reference to notice periods or non-compete clauses. Therefore the Chairman of the BBC Trust is not required to give any formal notice of his intention to leave the BBC.
46. The fact that the Chairman of the BBC has never been subject to a requirement to give notice can lead to speedy departures from office, straight into the employment of companies which have close links to, or are in competition with, the BBC.
47. In 2001 Sir Christopher Bland jointly held the positions of Chairman of the BBC and Chairman of BT for four and a half months.¹³ It was claimed that there were possible conflicts of interest. The BBC was covering BT related stories and the BBC was dealing with BT as an important supplier of the technology that delivered BBC programmes and online services to the public.
48. Six years later nothing had been done to prevent this type of situation recurring. On 28 November 2006 Michael Grade resigned as Chairman of the BBC with immediate effect because he had decided to take up the job of Executive Chairman of ITV—the BBC’s main and oldest competitor. Michael Grade was under no restrictions when he left the BBC. He could have taken up his post at ITV immediately but he chose to wait eight weeks (QQ 95–99).
49. Michael Grade defended this position to the Committee. He told us that if there had been a six month non-compete clause in his contract then he “would not have accepted the BBC job ... because the BBC was not my main career” (Q 101). He emphasised that “It is a part time public appointment where you hope to make your contribution and one has a living to earn as well” (Q 101). Michael Grade was bound by a confidentiality agreement and he asserted that this was enough to protect the BBC’s interests (Q 100).
50. We question the idea that the Chairmanship of the BBC is just a part-time post, through which one could not “earn a living”. The Chairman of the BBC Trust may be a non-executive but he now earns a basic salary of around £140,000 (nearly double the salary of the Chairman of the governors—Q 25). He clearly should devote a great part of his time to the BBC.
51. We believe the BBC needs a strong chairman at all times. By resigning with immediate effect Michael Grade left the BBC without a permanent chairman for six months. During this period the final licence fee settlement had to be agreed, the old governors were abolished and the Trust established. Luckily the BBC did not run into any political crisis over this period but it could have done and would have lacked the guidance of a permanent chairman.
52. **We therefore recommend that the Chairman of the BBC Trust should be subject to a six month notice period. This is a matter that should be dealt with by the Government and not left to the BBC Trust to self-**

¹³ <http://news.bbc.co.uk/1/hi/business/1298072.stm>

regulate. The terms and conditions of the Trustees are a matter for the DCMS which has chosen to follow the standard arrangements for trustees of public bodies despite the unique position of the BBC Chairman. The Government should do more to protect the interests of the BBC and the licence fee payers. **There may be occasions when it is in the interest of licence fee payers for the Chairman to resign with immediate effect so the Secretary of State should have the power to waive this notice period if it is in the public interest. If this power is used it should be justified to Parliament.**

53. While we recommend that the Government should act, we note that the BBC Trust has introduced a degree of self regulation in this area. Since the inception of the BBC Trust at the start of this year all Trustees have been asked to sign a new Code of Practice. This Code of Practice includes the following restrictive covenant:
- “I agree that for a period of three months or such lesser period as determined by the Chairman or the Vice Chairman of the BBC following the termination of my appointment as a Trust member of the BBC howsoever arising I shall not take up another appointment with a broadcasting and/or media competitor or regulator of the BBC within the UK unless the Chairman or the Vice Chairman determines that there is no actual or perceived conflict arising from such appointment” (Annex E).
54. A restrictive covenant is quite different from a formal notice period but it does go some way to protecting the Corporation should another Chairman choose to resign in order to work for a competitor. We are therefore pleased that the BBC Trust has included a restrictive covenant in its Code of Practice but concerned that the three month period does not go far enough.
55. Three months is not a long enough restrictive covenant to protect the BBC’s interests. The Chairman of the BBC is party to very sensitive information on the plans and finances of the Corporation. He is in charge of negotiating the licence fee settlement with the Government, a process that took nearly a whole year last time. The BBC is financed by over £3 billion of public money annually and it is vital that this money is protected. **We therefore recommend that, while we wait for the Government to act on our recommendation in paragraph 52, the non-compete clause in Annex E of the BBC Trust’s Code of Practice should be amended so that the Chairman of the BBC Trust cannot take up a position with a competitor for a period of at least six months (unless the Vice-Chairman determines that a lesser period is suitable).** It should be for the Trust as a body to determine which organisations qualify as competitors.

CHAPTER 5: THE CHAIRMAN OF THE EXECUTIVE BOARD

56. One specific aspect of the new Royal Charter that adds to the confusion about the role of the BBC Chairman is the provision that allows the Executive Board to be chaired by a non-executive rather than the Director-General (article 29). This is at the discretion of the BBC Trust. If this provision were to be used the BBC would have two non-executive chairmen.
57. When the Select Committee on BBC Charter Review took evidence from Greg Dyke he described the likely relationship between the Chairman of the Trust and a non-executive Chairman of the Board as “warfare”¹⁴. The BBC Committee went on to recommend that “there should be one Chairman of the BBC, i.e. the Chairman of the BBC Board, and that the Executive Board should be chaired by the Director-General”.¹⁵
58. We took evidence from the current Director-General Mark Thompson on this matter. He told us that “it is unlikely in practice that the BBC Trust will, at any point I can foresee, wish to have a non-executive Chairman of the Executive Board, not least because ... they would then lose the ability to appoint the Chief Executive and would only be able to approve the appointment of the Chief Executive” (Q 424). This is an interesting point. If the Director-General is the chairman of the Executive Board then (under article 29 of the Royal Charter) the Trust is the appointing body. However, article 30 states that if the Director-General is not the chairman then the Executive Board is the appointing body and the Trust only has the power of approval over the appointment.
59. Given that the existence of two non-executive chairmen within the BBC is likely to cause confusion and conflict, and in light of the fact that the Trust would lose the power of appointment of the Chief Executive, it is questionable why the Government felt that provision needed to be made for a non-executive Chairman. **We therefore recommend that the default position should be that the Director-General is the chairman of the BBC Executive Board.**

¹⁴ House of Lords BBC Charter Review Committee, First Report 2005-2006, Q 378.

¹⁵ Ibid, para 80.

APPENDIX 1: SELECT COMMITTEE ON COMMUNICATIONS

The Members of the Committee which conducted this inquiry were:

The Baroness Bonham Carter of Yarnbury
 The Lord Corbett of Castle Vale
 The Baroness Eccles of Moulton
 The Rt Hon the Lord Fowler (Chairman)
 The Lord Hastings of Scarisbrick
 The Baroness Howe of Idlicote
 The Lord Inglewood
 The Rt Hon the Lord King of Bridgwater
 The Baroness McIntosh of Hudnall
 The Rt Rev the Lord Bishop of Manchester
 The Lord Maxton
 The Baroness Scott of Needham Market
 The Baroness Thornton

Declaration of Interest

BONHAM CARTER, Baroness

**12(f) Regular remunerated employment
 Television Executive, Brook Lapping Productions, a subsidiary of Ten Alps
 Communications plc
 *13(c) Financial interests of spouse or relative or friend
 I also disclose the interests disclosed by Lord Razzall
 16(b) Voluntary organisations
 RAPT—Rehabilitation of Addicted Prisoners Trust*

CORBETT OF CASTLE VALE, Lord

**12(i) Visits
 Visit to Hungary (21–23 March) with All-party EU Accession Group. Fare
 paid through Parliamentary travel scheme. Accommodation and hospitality
 provided by Hungarian Parliament
 Visit to Romania (29 May–2 June). Fare paid through Parliamentary travel
 scheme. Accommodation and hospitality provided by Romanian Parliament
 Visit to Liverpool (23–24 June 2006) with my wife, with European Capital
 of Culture 2008 All-party Parliamentary Group—accommodation and
 hospitality paid for by Liverpool Culture Company
 15(a) Membership of public bodies
 Chairman, Castle Vale Neighbourhood Partnership Board, Birmingham
 President, Josiah Mason College, Erdington, Birmingham
 15(c) Office-holder in pressure groups or trade unions
 The Member is an office-holder in various all-party parliamentary groups;
 details will be found in the register of all-parliamentary groups at
www.publications.parliament.uk/pa/cm/cmparty/memi01.htm
 15(d) Office-holder in voluntary organisations
 Patron, Training for Life
 Patron, Hospice of St. Francis, Berkhamsted, Herts
 Patron, Chilterns MS Centre, Halton, Bucks
 Patron, Hope for Children*

ECCLES OF MOULTON, Baroness

**12(e) Remunerated directorships
 Times Newspapers Holdings Ltd*

15(b) Trusteeships of cultural bodies
Director, Opera North, company limited by guarantee (unpaid)
Trustee of York Minister Trust Fund (not a company limited by guarantee)
(unpaid)
16(a) Trusteeships
London Clinic Company limited by guarantee (unpaid)

FOWLER, Lord

**12(e) Remunerated directorships*
Non executive Director, Holcim Ltd
Member Advisory Council, Electra QMC, Europe Development Capital
Fund plc (24 July 2007)
Chairman, Thomson Foundation (24 July 2007)
15(d) Office-holder in voluntary organisations
Vice Chairman, All-party Group on AIDS
16(a) Trusteeships
Trustee, Terrence Higgins Trust

HASTINGS OF SCARISBRICK, Lord

**12(e) Remunerated directorships*
British Telecom PLC
**12(f) Regular remunerated employment*
KPMG
Former BBC employee (1994–2006) in receipt of BBC Pension
15(d) Office-holder in voluntary organisations
Chairman, Crime Concern
Patron, Volunteering England
Patron, Springboard for Children
Patron, Zane
Patron, Toy Box

HOWE OF IDLICOTE, Baroness

15(b) Trusteeships of cultural bodies
Trustee, Architectural Association School of Architecture
15(d) Office-holder in voluntary organisations
Member, Council of the Institute of Business Ethics
Patron, Institute of Business Ethics
President, The Peckham Settlement
Member of the NCVO Advisory Council
Board Member, Veolia Environmental Trust plc (formerly Onyx)
16(a) Trusteeships
Trustee, Ann Driver Trust

INGLEWOOD, Lord

**12(c) Remunerated services*
Political Adviser, House of Lords (unpaid) for the Estates Business Group
**12(e) Remunerated directorships*
Chairman, CN Group (Media)
Director, Pheasant Inn (Bassenthwaite Lake) Ltd (hotel)
Chairman, Carr's Milling Industries plc (food and agriculture)
**12(f) Regular remunerated employment*
Farmer
**13(a) Significant shareholdings*
Pheasant Inn (Bassenthwaite Lake) Ltd (hotel)
**13(b) Landholdings*

Hutton-in-the-Forest Estate (farmland including residential property in Cumbria)

Wythop Estate (farmland including residential property in Cumbria)

Owner Hutton-in-the-Forest (historic house open to the public)

15(a) Membership of public bodies

Court of Lancaster University

Chairman, Reviewing Committee on the Export of Works of Art

15(c) Office-holder in pressure groups or trade unions

Friends of the Lake District (nominated by the Committee for the National Consultative Council)

President, Cumbria Tourist Board

Member, Historic Houses Association Finance & Policy Committee

16(a) Trusteeships

Trustee, Elton Estate, Cambridgeshire

Trustee, Raby Estates, Co Durham and Shropshire

Trustee, Thoresby Estate, Nottinghamshire

Trustee, Calvert Trust

Trustee, Settle-Carlisle Railway Trust

Trustee, Whitehaven Community Trust Ltd

16(b) Voluntary organisations

Member, Bar

Member, Royal Institution of Chartered Surveyors

Fellow, Society of Antiquaries of London

KING OF BRIDGWATER, Lord

**12(e) Remunerated directorships*

Director, Electra Investment Trust

Non-executive Chairman, London International Exhibition Centre plc and

London International Exhibition Centre (Holdings) Ltd

**13(b) Landholdings*

Minority partner in family farm in Wiltshire (including cottages)

Partner in woodlands in Wiltshire

15(d) Office-holder in voluntary organisations

Patron, UK Defence Forum

President, English Rural Housing Association

Board Member, Arnold Foundation, Rugby School

Vice President, Royal Bath and West Society

16(a) Trusteeships

Trustee of the Arnold Foundation of Rugby School

McINTOSH OF HUDNALL, Baroness

**12(e) Remunerated directorships*

Non-executive Director, Artis Education (unpaid)

15(b) Trusteeships of cultural bodies

Board Member, Roundhouse Trust

Board Member, Almeida Theatre

Board Member, Welsh National Opera

Trustee, South Bank Sinfonia

Board Member, National Opera Studio

15(d) Office-holder in voluntary organisations

Trustee, Art Inter-Romania

Trustee, Theatres Trust

Trustee, Foundation for Sport and the Arts

16(a) Trusteeships

Trustee, Thaxted Church Trust

MANCHESTER, Lord Bishop of

**12(f) Regular remunerated employment*

In receipt of episcopal stipend

15(a) Membership of public bodies

Chair, Sandford St Martin (Religious Broadcasting Awards) Trust

General Synod of the Church of England

Manchester Diocesan Board of Finance

Manchester Church House Co

Manchester Diocesan Council of Education

Manchester Diocesan Association of Church Schools

Life Governor, Liverpool College

Governor, Hulme Hall

15(d) Office-holder in voluntary organisations

Lord High Almoner to HM The Queen

National Chaplain, Royal British Legion

Chairman, Council of Christians and Jews

16(b) Voluntary organisations

Manchester Diocese Mothers' Union

Arches Housing

Disabled Living

Hulme Hall Trust

Wigan & Leigh Hospice

St Ann's Hospice

Manchester University of Change Ringers

MAXTON, Lord

**13(b) Landholdings*

Holiday home in the Isle of Arran

A London flat

SCOTT OF NEEDHAM MARKET, Baroness

**12(d) Non-parliamentary consultant*

Centre for Transport Studies (judging and presentation of transport awards)

Atkins (Consultancy)

**12(e) Remunerated directorships*

Non-executive Director, Entrust (landfill tax credit scheme regulator)

Non-executive Director, Lloyd's Register

**12(i) Visits*

Visit to Norway (29 August–3 September) hosted by the Norwegian

Government under the auspices of the All-Party Parliamentary Norway

Group

Visit to US (September 2005) under the auspices of BA APPG (British

American All-party Parliamentary Group)

Visit to Trinidad (May 2006) under the auspices of C.P.A

Visit to Guatemala and El Salvador (June 2006) under the auspices of I.P.U

THORNTON, Baroness

**12(d) Non-parliamentary consultant*

Chairman of Pall Mall Consult (PR, communications, policy analysis, media and events management and charity promotional work)

**12(f) Regular remunerated employment*

Director of IDEA (appointed by ODPM) (£2,400 per annum)

**12(g) Controlling shareholdings*

50% shareholder of Pall Mall Consult

15(a) Membership of public bodies
Governor of LSE
15(b) Trusteeships of cultural bodies
Fellow of RSA
Friend of Tate
Friend of Royal Academy
15(d) Office-holder in voluntary organisations
Chair, Coalition of Social Enterprise
Board Member, Social Enterprise, London
Board Member, '15' Foundation
Board Member, Training for Life
16(b) Voluntary organisations
Ramblers Association
Emily's List UK Director
British Humanists Society
English Heritage
Labour Women's Network
Member, GMB
National Trust
Cooperative Party
Labour Party
Volunteer for Crisis

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave oral evidence.

BBC management

BBC Trust

Mr Gavyn Davies

Department for Culture, Media and Sport

Don Foster MP

Mr Michael Grade

Hugo Swire MP

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON COMMUNICATIONS

WEDNESDAY 23 MAY 2007

Present	Bonham-Carter of Yarnbury, B	Inglewood, L
	Corbett of Castle Vale, L	King of Bridgwater, L
	Eccles of Moulton, B	Manchester, Bp
	Fowler, L (Chairman)	Maxton, L
	Hastings of Scarisbrick, L	McIntosh of Hudnall, B
	Howe of Idlicote, B	Thornton, B

Examination of Witness

Witness: MR MICHAEL GRADE, examined.

Q1 Chairman: Welcome. Let me explain, if I may, what we are trying to do. The Committee has, as you know, because you were here last when you were Chairman of the BBC, been looking at the BBC Charter. This is a wider committee now, the Communications Committee, and we are looking at issues surrounding communications and the media. We thought we would have a fairly short inquiry to begin with, which really followed on from our work on the BBC Charter, looking at the position of the BBC Chairman, to examine the process by which the BBC Chairman is appointed and whether that appointment should be scrutinised by Parliament—which has now become suddenly very topical. We want to look at the terms of service contract of the new Chairman and we also want to ask a fundamental question, whether the Chairman sees his role as a regulator or as head of a broadcasting organisation. In general terms, that is where we are going to. As I say, when we last saw you, you were Chairman of the BBC. Could I ask, first, how did that appointment at the BBC come about?

Mr Grade: I answered an advertisement.

Q2 Chairman: You applied yourself.

Mr Grade: I applied.

Q3 Chairman: Then what happened?

Mr Grade: I applied; I was asked to make myself available for an interview; I wrote a short paper, which I circulated to the interview panel before I got there; I was then grilled for an hour by a panel that was chaired, as I recall, by the senior civil servant at the DCMS and there were three independent members of that panel. That followed, pretty well, the same procedure as the first time I applied, unsuccessfully, when Gavyn Davies, quite correctly, was appointed ahead of me.

Q4 Chairman: That was your second application.

Mr Grade: Yes.

Q5 Chairman: That was it, was it? Just one meeting.

Mr Grade: I had one meeting, then I heard nothing. Then, eventually, I was engaged in a conversation with the permanent secretary of the DCMS to discuss what arrangements I would make about conflicts—I had a sort of plural existence in those days: I held a number of appointments—and how I would reorganise my life if—if—I were to be appointed. We got to the end of that process and eventually my appointment was confirmed.

Q6 Chairman: You knew by this stage it was getting warm.

Mr Grade: You wait until you get it in writing.

Q7 Chairman: Were you ever interviewed by the Secretary of State?

Mr Grade: No.

Q8 Chairman: The Secretary of State never contacted you at all?

Mr Grade: The first conversation I had with the Secretary of State was after my appointment. I had an informal chat with her—this was Tessa Jowell—in her office, just talking generally about how we were going to work.

Q9 Chairman: In effect, this was an appointment made, or at least recommended, by a panel headed not by the permanent secretary but by another senior—

Mr Grade: The Chair of the interview panel was the permanent secretary but I would say that 99 per cent of the interview was conducted by the independent members. I knew, obviously, that the process was that they would get to the end of their interviews and they would send a report making a single recommendation or some system whereby “Of the six

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Mr Michael Grade

candidates”—I am sorry, I do not know how many they saw, but let us say it was six—“three we think are appointable, three are not,” or whatever their report said. That, presumably, went to the Secretary of State, who would make a recommendation to the Prime Minister, and then it would go through the constitutional niceties.

Q10 Chairman: The Prime Minister made the appointment, did he, in the end or was it the Secretary of State?

Mr Grade: It is made by the Queen in Council. The appointment is confirmed on recommendation from the Prime Minister.

Q11 Chairman: What kind of questions were you asked at the interview? I do not know if you have any political allegiances at all, but were you asked that?

Mr Grade: I was not asked but I thought it important at that moment in the BBC’s history to make it clear that I was not politically active in any sense; that nobody knew how I voted. My wife does not know how I vote. I have always made it my business to keep my politics to myself in the sphere of being in public service broadcasting, handling news, current affairs and so on, but I was able to confirm that I was not a member of any political party, that I had never been politically active. I had political views but these were my own views and nobody knew what they were. I thought that was important at that moment in the BBC’s history, post Hutton and the tragedy of Kelly and so on. I think it was very important that a non-political individual was appointed at that particular time.

Q12 Chairman: Would it be fair to say that, apart from your self-evident broadcasting experience, the other thing they were interested in would be any conflict of interest.

Mr Grade: Yes, of course.

Q13 Chairman: At that stage, did you have things you had to give up?

Mr Grade: Yes, I did. I was Chairman of Camelot, the National Lottery operator. I gave up a number of other things. I cannot remember what they were but Camelot was the main one.

Q14 Chairman: Then you were appointed to the BBC as BBC Chairman. You were welcomed, I think, by the staff very much. This was a welcome appointment inside the BBC.

Mr Grade: Honeymoons do not normally last very long. Yes, I was very touched by the reception. The BBC was in a very low state of morale. It had been much battered and bruised. There had never been a moment in the BBC’s history where it had lost a Chairman and a Director-General in the course of 24

hours. It was a very, very serious position it was in and my job was to go in and stabilise things and plan for the future.

Q15 Chairman: So it needed a period of stability.

Mr Grade: Very much so, yes.

Q16 Chairman: You were appointed for four years and then you left after . . . ?

Mr Grade: Whatever it was: two years, two and a bit years.

Q17 Chairman: Did you feel at that stage you were letting the BBC down?

Mr Grade: No, I do not think I have ever left a job without having completed the task I was initially set or I had initially set myself. The job that I perceived when I arrived at the BBC was to stabilise the place, to appoint a Director-General, to secure the next Charter and to address successfully the serious governance shortfalls that had emerged in the BBC. Through the Charter Review process, it was agreed that we would have the Operating Board. The Trust had participated in every single one of the appointments to the two boards and I had really completed that task. The question was whether I wanted to go on and be the first Chairman of the Trust, which I would have enjoyed doing, unquestionably, but the opportunity that I was offered at ITV to become the Executive Chairman was irresistible.

Q18 Chairman: You saw it as a natural break in the process, did you?

Mr Grade: Yes.

Q19 Chairman: Surely the Charter process was still in being.

Mr Grade: No, the Charter process was done.

Q20 Chairman: Not announced.

Mr Grade: Yes. The licence fee had not been decided. The Charter was agreed. It had been sealed and signed by the Privy Council and so on, so the future was secure, it was just the level of the licence fee.

Q21 Chairman: You say just the level of the licence fee, that was quite an important issue, was it not?

Mr Grade: A very important issue for the Government, for the licence-fee payers and for the BBC, yes. It had dragged on and on and on. We had expected it to be concluded in the summer, but for reasons I am not privy to it just dragged on and on.

Q22 Chairman: You feel that was a responsibility of government.

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Mr Michael Grade

Mr Grade: I do not think at the point that I left there was anything more that the BBC could say or do to influence the Government in terms of the settlement, and, having in my own mind made the decision that I wanted to accept this offer from ITV, I felt it very important to say so immediately, so that I could not be accused of “riding two horses”, if you like.

Q23 Chairman: When you came to see us, you seemed very committed to the BBC and public service.

Mr Grade: I still am, Chairman.

Q24 Chairman: Did you not feel some conflict of loyalties?

Mr Grade: Conflict of loyalty? No. I remain loyal to the BBC. I would always defend the BBC. I would defend the Charter; I would defend the licence fee; I would defend the governance structure and what the BBC stands for, the interests of the licence-fee payers and so on. That does not change. But I think we are all entitled to make our own career choices.

Q25 Lord Corbett of Castle Vale: There is an enormous difference in the salaries involved in both jobs, your present job and the job you had at the BBC. I have some ball park figures here: about £110,000-odd for the BBC job and £825,000 plus bonuses and share options at ITV. Do you think the BBC has the financial strength to attract and retain the talent that it needs at the top of the organisation or are there some big differences in your present role as Executive Chairman of ITV and that of Chairman of the BBC?

Mr Grade: The two jobs are not comparable. First of all, the Chairman of the BBC and the BBC Trust is a part-time role. My job at ITV is a full-time role in the private sector. The Government made adjustments to the level of pay for the Trustees and the Chairman of the Trustees from the rates that had been paid traditionally to Governors and the Chairman of the Governors, and there was a rise. I think my salary as Chairman of the Governors was roughly £70,000, I cannot remember precisely, but the basic rate for the Chairman of the Trust is £140,000, as I recall. I do not think anybody applying to be Chairman of the BBC does it for the money. You do it because you believe in it and you want to do it, but I do not see why people should do it for nothing. You do not want to attract only the people who can afford to do it; you want to make sure that you have as wide a pool as possible from which to choose.

Q26 Lord Corbett of Castle Vale: You have given the impression that your present job is much more hands-on in terms of the management aspects of it than the Chairman of the Governors.

Mr Grade: Very much so, yes.

Q27 Lord Corbett of Castle Vale: We are still wrestling with the Director-General role.

Mr Grade: Yes. We can come on to that, if you like. In my present role, I am Chairman and Chief Executive of ITV, which means that I am involved in editorial decisions, which programmes will get made, the schedule and so on. It is delegated to some very good people but, ultimately, I am responsible and consulted and have an input into that. As Chairman of the BBC, whether Chairman of the Governors or Chairman of the Trust, that is not something in which I would get involved. It is delegated entirely, and that is a line you should not cross as Chairman. At heart, I am a broadcaster. That is my discipline.

Q28 Lord Corbett of Castle Vale: If the BBC had paid you more, would you have stayed?

Mr Grade: No. Just as I have a deep-rooted conviction that the BBC is one of the great institutions of the UK, I also have a huge emotional stake in the success of ITV. My family were amongst the families of independent television back in 1955. I learned my trade in ITV during 1973 and 1981 and it was quite painful watching ITV’s slow descent. I felt very frustrated. I felt I would love to have a chance to fix it. Just as it broke my heart seeing the BBC in the mess after Hutton and I just felt I had something to contribute to try to help put it together again, it is the same feeling.

Q29 Lord Maxton: As you rightly said, you are a broadcaster. It would appear that the new Chairman of the BBC Trust and the Trust itself is now more of a regulator than a broadcaster. Did that influence your decision to leave the BBC?

Mr Grade: Not at all. Not at all.

Q30 Lord Maxton: Do you think that is what is happening, though? Is it a regulator rather than a broadcaster?

Mr Grade: There is some regulatory responsibility certainly but there is no question that the Chairman of the BBC Trust, whoever he or she may be, is the Chairman of the BBC and represents now, very clearly and constitutionally, the interests of the licence-fee payers rather than simply the interests of the institution. It is a very clear role.

Q31 Lord Maxton: Is it a clear role?

Mr Grade: A very clear role.

Q32 Lord Maxton: Is there not a conflict between those two aspects, between being a broadcaster and a regulator?

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Mr Grade: Not at all. I think the structure copes very well with that potential conflict by separating the Trust from the day-to-day operation of the BBC. The Trust is able and required to step back from the day-to-day operation of the BBC, to take a measured view, an evidence-based view, an independently gathered evidence-based view, of what is in the best interests of the licence-fee payers. In the past, the Governors have inevitably acted in the best interests of the institution from time to time, and the interests of the institution are not always the same as the interests of the licence-fee payers. That is very clear.

Q33 Lord Maxton: There already has been some comment that the Trust is acting as a regulator to stifle some of the innovation, particularly on the BBC online services.

Mr Grade: The Trust is there. The BBC has a very difficult job. It represents £3 billion of public intervention in a dynamic market-place where there is a very exciting and excitable private sector. Whether the BBC likes it or not, every decision the BBC makes about expansion, retraction, whatever, has some impact on the private sector. Somebody has to make sure that the BBC operates in the interests of licence-fee payers as a whole and the interests of the licence-fee payers go beyond simply their interest in the BBC. They have an interest, as consumers, in having plurality of supply, choice, and so on, and the Trust has to take account of that. Constitutionally, under the old model, it would have been impossible to disentangle the Board of the BBC, the governing body of the BBC, from the day-to-day interests of the BBC, and to take that detached, objective evidence-based view of what is in the public interest. It is very clear to me.

Q34 Bishop of Manchester: You have already spoken this morning about defending the governance structure of the BBC. When you came and gave evidence to the BBC Charter Review Committee you did speak about the five principles of governance which you saw as being important and recognised that not all of them could be put into the governance proposals, yet, if I remember correctly, you did go on to say that you felt it was all workable. I think I take from that a sense that—as, I suppose, in any organisation—there are going to be some inbuilt weaknesses. I wonder if you could say something to us about what you perceive to be the main weaknesses in the roles and responsibilities in the new structures.

Mr Grade: With respect, if I may correct a slight emphasis there. I set out to the Charter Review Committee the five principles against which the Governors of the BBC would judge any model. At that time there were a number of models that were floating around. The model that emerged was one, in

my view, that did pass all five tests. Please do not ask me to name the five tests.

Q35 Chairman: We have a document here.

Mr Grade: I do not have the benefit of a BBC brief! The weaknesses? The obvious weakness is that there was still some scepticism around the place that it is going to work. I believe it is a very clever, practical solution to the historic problems of the governance of the BBC. I am absolutely confident that, over a period of time, as the Trust is tested in various issues, whatever they may be, whether they are market impact assessments, public value tests, issues of public controversy in the BBC and so on, there is nothing in the present constitution, the new constitution of the BBC, that will get in the way of the Trust acting absolutely in the public interest. I am really certain. I would not have signed up to it. The other Governors would not have signed up to a model they did not believe, with their intimate knowledge of the weaknesses and strengths of the previous system, would work. I was talking to the Director-General at an event the other night and he said that, from his perspective, the day-to-day management of the BBC had improved dramatically as a result of the high calibre of recruits, non-executive recruits, to the Operating Board; that they were tested far more effectively and the thing was working really well. He was very, very upbeat about it and very confident that it was working well.

Q36 Bishop of Manchester: You give a robust defence there but you have also just said to us that there is some scepticism around. Could you define in any way what you have picked up about that? Where are the areas where people are concerned?

Mr Grade: There were lots of other models that were floating around: the BBC should come under Ofcom, there should be Of-Beeb, there should be a unitary board, there should be this—everybody has their own ideas. It is a complex issue. The constitution of the BBC is a complex issue. We spent two years steeped in debate about how we could make the new model work better than the old model. The people who are critical of it, I suspect, are way behind the debate. They have not really understood and analysed what the problems are and why we signed up for the solutions that we now live with. Everybody has their own model. The BBC is *sui generis*. There is no off-the-shelf model for the BBC. There are business issues, editorial issues, issues of public representation, all kinds of issues. There is a whole matrix of dynamics in the BBC where you have to distil that into a governance model that will enable the BBC fundamentally to represent the licence-fee payers and, secondly, to manage its relationship with the private sector in a way that is much more measured and cautious than hitherto.

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Mr Michael Grade

Q37 Chairman: You would not run ITV in that way.

Mr Grade: We have a direct relationship with our shareholders. It is a very, very different model. A very different model. I think we have all rejected in the private sector two-tier boards of the sort that we have seen modelled on the Continent and some places. The UK model in the private sector works very well. The BBC model will work very, very well, but the BBC is one of a kind and it takes a one-of-a-kind solution.

Q38 Baroness McIntosh of Hudnall: Going back to your point about the best interests of the licence-fee payer, do you think there is any difference between the public interest as represented by the licence-fee payers, and the interests of the BBC itself?

Mr Grade: Yes.

Q39 Baroness McIntosh of Hudnall: Because you made a very clear distinction.

Mr Grade: Yes.

Q40 Baroness McIntosh of Hudnall: Could I ask you, first, since you answered yes to that, who is defending the interests of the BBC, if it has autonomous interests, if it is not the Trust? Secondly, what impact is this arrangement of the Trust and the Executive Board likely to have, in your view, on the BBC's output as a broadcaster?

Mr Grade: I do not see any conflict. The BBC Executive are very human, they want to expand, they want to grow. Everybody wants to move forward and to do new things and so on. Audiences demand that sometimes. But, in the complicated media world that we have today, everything that the BBC does will have some kind of impact on the private sector, and licence-fee payers have a huge interest in the BBC in ensuring that money is wisely spent, efficiently spent, and that the independence of the BBC is secured. That is, ultimately, the responsibility of the Trust. The Trust also has to understand that licence-fee payers have a wider interest in the plurality of choice that they presently enjoy and increasing choice, and that they must not allow the BBC's enthusiasm and excitement as an institution to expand, to do so in a way that could have the potential to reduce the overall choice available to licence-fee payers, because licence-fee payers are consumers in the private sector as well as the public sector. That is the thing that has to be policed and managed much better than hitherto. That seems to me to be the kernel of the argument.

Q41 Baroness McIntosh of Hudnall: Could I press you a little bit on that. I understand your answer and I accept what you say but you have not quite addressed this question of whether there is in fact an autonomous set of interests that belong to the BBC which itself needs to be defended. You have said that

the Governors, as previously constituted, were more concerned to defend the interests of the institution than those of the licence-fee payers, which is a perfectly clear analysis, but what are the interests of the BBC autonomously and who is defending them?

Mr Grade: The BBC's interests are to get as much money as possible, to spend it in the way that the Executive would like to spend it. They want to be totally free to spend it how they want to spend it but there is £3 billion of public money and there has to be an effective check and balance on the Executive to make sure that they are delivering value for money, that their plans are securely thought through and that they are not going to have a damaging effect on the growth of the private sector. Some of those issues are not issues that the Executive would necessarily take to its heart if it were not called to account. One must remember, also, that, under the Governors, all the evidence on which the Governors made the decisions was evidence provided by the Executive of the BBC. A preposterous state of affairs! I created the Governance Unit, which is now enshrined in the Constitution, which works entirely for the Trust. It worked for the Governors when I set it up, and they depended for their enhancement, their pay and rations, on the Governors, not on the management. You had had a secretariat, prior to my arrival, which purportedly worked for the Governors but, in fact, their advancement, their performance reviews, were conducted by the Executive, so their careers were in the hands of the Executive, not in the hands of the Governors. Inevitably, on balance, which way was the recommendation going to be skewed? It would be skewed in favour of the Executive. The Governors were in no position, until I arrived really, to get the evidence on which to question and turn the Executive down. This was all a muddle that had to be sorted out and we did sort it out. The Governance Unit now is an extremely effective unit, independent of management and the Executive, working for the Trust, providing the Trust with the objective and independent evidence it needs to come to its conclusions.

Q42 Chairman: If any Government decided to lean upon the BBC, do you think the structure that you have at the moment would make it easier for the BBC to defend themselves than it was previously?

Mr Grade: I do not think it makes it easier or harder. It is a very easy thing to do to resist that kind of pressure, if any Government was stupid enough to try to apply that pressure.

Q43 Chairman: You never found that yourself.

Mr Grade: Never. I never had any calls from anybody in government or close to the Government trying to nudge me in any direction. I think politicians are too smart to do that these days.

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Q44 Lord Hastings of Scarisbrick: Mr Grade, could I ask you to unravel a little bit more of the spider's web of the interaction between the two boards, as it were. You have the Trust Board which has a chairman (as you were) and there is the Executive Board which also has a chairman (who could be the Director-General or not the Director-General) and there are independent non-executives on the Trust Board, as well as there are independent members on the Executive Board. Could you just explain a little bit how that all affects the role and function of the Chairman of the BBC now as compared to the previous Chairman of the BBC, when he was Chairman of the Governors, and how the different Chair roles, between the Executive Board and its independent non-executives and the Trust Board and its non-executives, function.

Mr Grade: There is no doubt, there can be no doubt and there should be no doubt, that the Chairman of the BBC is the Chairman of the Trust. The fact that the Director-General is called the Chairman of the Operating Board is irrelevant. The responsibility for the money, the responsibility for the behaviour of the BBC, all of that, constitutionally, is very clear: it lies entirely in the hands of the Trust and the Chairman of the Trust. There can be no doubt about that. In many of the arguments I had during the Charter Review Period on the governance issues, many models fell down when I asked the question: "If there is a financial scandal in the BBC"—which there never will be—"under your model [whatever the model was] where does the buck stop?" Many of the models collapsed at that point because it was not clear where the responsibility for the money lay. It is very clear under the present Constitution that responsibility for the spending of the money lies ultimately with the Trust and the Chairman of the BBC, and the Trust is the sovereign body of the BBC and what the Trust says goes. The fact that the Director-General is called Chairman of the Operating Board or the Executive Board is just a nomenclature. It has no constitutional significance.

Q45 Lord Hastings of Scarisbrick: Are you suggesting then that maybe the previous Chairman Gavyn Davies or the previous Chairman but one Christopher Bland did not feel that they were responsible ultimately for the expenditure of the money of the BBC?

Mr Grade: Yes, they did. That is one of the things that we have to be sure to preserve in the new system.

Q46 Lord Hastings of Scarisbrick: If Christopher Bland re-emerged into the role of the Chairman of the BBC under the new Trust arrangement, how would he perceive the difference?

Mr Grade: He would feel very clearly that his constitutional role was to be at one remove from the day-to-day operations of the BBC and to be there to represent very clearly the interests of the licence-fee payers. That is not clear in the previous model. Not clear at all.

Q47 Lord Hastings of Scarisbrick: Although the Governors always perceived previously that they were representing the licence-fee payers.

Mr Grade: Yes, they assumed that position but there was no evidence to support it. When the Chairman of the Trust in future comes before this Committee or before Parliament in any shape or form and says, "I am representing the interests of the licence-fee payers", he or she will have evidence to support that statement. Previously, you would make that statement but there was no evidence to support it. It was just the view of 12 good men and women true that they were representing them, but they had no mandate. The Trust will now have a mandate through its own evidence gathering of how licence-fee payers are thinking.

Q48 Lord King of Bridgwater: I think that last point is pretty offensive to a lot of previous holders of your office, who certainly saw, as any board of directors do when they have to face in about three or four different directions: their shareholders, their customers, their employees, and the quality of their products is linked into that. You say there is no question who the Chairman of the BBC is and this is absolutely clear: the Chairman of the Trustees. One of the most common areas of complaint people are going to raise is content of programmes. It is nothing to do with you, in the first instance. It is the responsibility of the Chairman of the BBC, as the public will see it, who is not your successor but is actually what was the Director-General.

Mr Grade: In the first instance, if there were controversy about a programme which was either about to be transmitted or had been transmitted, the Director-General would offer a point of view that, let us say, he is going to defend the programme publicly, and say, "We were right to transmit this programme" or "We are going to transmit this programme. We see no reason why it should not be transmitted." It is ultimately the Trust who will have to make the decision as to whether they think the Director-General's decision was right or wrong. Because they are not involved in the decision, they are able to sit in judgment from a distance and say, "The Director-General was wrong. This programme should not have been transmitted for the following reasons . . .".

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Q49 Lord King of Bridgwater: Are you saying that for the day-to-day, varying qualities of debates about programmes, the Trustees are going to get involved in that?

Mr Grade: Not in day-to-day, no. They are going to set the framework.

Q50 Lord King of Bridgwater: When somebody rings up and says, “I think this was a lousy programme, I am going to write to the Chairman and complain about it,” will he be encouraged to write to the Chairman of the Trustees or the Chairman of the Executive Board?

Mr Grade: One of the things that we achieved in my time at the BBC and which I am sure the Trust will go on to develop in its own way is a much more common law, friendly complaints procedure. In the first instance, anybody who makes a complaint will be steered through to the complaints procedure at the BBC which allows for an appeal to the Trust. If they are not satisfied with the answer they get from the Executive, if they wish to appeal they can appeal to the Trust and the Trust has its own complaints procedure.

Q51 Lord King of Bridgwater: Say I want to complain about a programme yesterday and I ring up the BBC, their information desk or whatever, and say, “I want to write to the Chairman about this programme” who shall I address it to?

Mr Grade: You can write to whoever you wish to. You can write to the Chairman of the Trust. You will be directed to the BBC’s complaints procedure.

Q52 Chairman: Who is responsible for that? In the first instance, it is the Executive Board.

Mr Grade: The first port of call is the Director-General. If you wish to complain to the Chairman of the Trust, you can write to the Chairman of the Trust and say, “I think it is a shocking programme, will you please look into this for me” The Chairman will give it to the Executive; the Executive will come up with a response. If you are not satisfied with that response, you will appeal.

Q53 Lord King of Bridgwater: If I write to a Member of Parliament to complain about a programme, will I get a reply from Sir Michael Lyons?

Mr Grade: Yes, you will.

Q54 Lord King of Bridgwater: About an individual programme?

Mr Grade: Yes.

Q55 Lord King of Bridgwater: Or will I get it from Mr Thompson?

Mr Grade: I have no idea how Sir Michael will wish to deal with the matter but if he gets a personal letter from somebody he will reply to it.

Q56 Lord King of Bridgwater: It is not a question of politeness in a personal letter; it is a question of where things should be correctly addressed. I do not want to labour the point, I think we have the point pretty clearly already, but if individual members of the public want to complain about an individual programme they heard last night, it would be dealt with by the Executive Board. For something that becomes more major, something systemic, that is a different matter and the Trust might become involved. Anyway, I have made the point.

Mr Grade: No, the Trust has its own Complaints Committee which will deal with appeals from any member of the public who wishes to complain if they are not satisfied with the response they have got from the Executive.

Lord King of Bridgwater: I think I have made the point.

Q57 Baroness Thornton: That sounds a bit like a regulator, to me. It is what you do with Ofwat. I am returning to the words of the Royal Charter and the role of the Chairman, because I think we might have a problem here—and of course it will be tested as time goes forward. In the Royal Charter it says, “The Trust shall be the sovereign body within the BBC”; however it also states that the position of the Chairman of the BBC is an “honorary title”. My understanding of “honorary title” is just that. That does not accord with the description you have been giving of what you think the role of the Chairman of the BBC is as it moves forward and it certainly does not accord with what the role of the Chairman of the BBC was in the past. In a way, the question is: Where does the buck stop?

Mr Grade: It stops with the Trust. The Chairman is *primus inter pares* of the Trust.

Q58 Baroness Thornton: Is the Chairman there just to chair meetings? An honorary position is really an honorary position. It is not a leadership position, in my view.

Mr Grade: It is a leadership position. Someone has to run the Board. You have to have somebody who chairs the meetings and takes the responsibility for getting consensus amongst the Board.

Q59 Baroness Thornton: That is very important, I accept.

Mr Grade: I am not quite sure what the draftsmen were getting at when they referred to it as an “honorary position”. I have no idea what arcane legalese lies behind that phrase.

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Q60 Baroness Thornton: It is kind of important.

Mr Grade: "Honorary" always implies to me "unpaid".

Q61 Baroness Thornton: That is also true. It does not necessarily imply that this person is the person to whom the public and the licence-fee payers would look as "the BBC".

Mr Grade: I think that is a debatable point. I think the Chairman of the BBC will be the Chairman of the BBC and will have that authority. Provided the Chairman of the BBC can carry his fellow Trustees on an issue and will be able to speak authoritatively on behalf of the BBC and on behalf of the licence-fee payer, I do not see a problem.

Chairman: I think we might come back to this with the BBC. We cannot get you to reply to everything on the BBC inquiry. Let us go on to the process of your appointment.

Q62 Lord Inglewood: You said in your earlier remarks that you were of the view that it was appropriate that the split from the unitary organisation to the dual organisation occurred.

Mr Grade: Forgive me: it was not a unitary board before. The members of the Executive were not members of the Board.

Q63 Lord Inglewood: Quite, but the change that occurred was a good idea. Then you told us that you submitted a letter when you applied for the job, which was the basis, I understand, of your interview. Was it a core part of that proposition that this split that has occurred should occur or something like it?

Mr Grade: I identified a number of specific problems, as I saw it. One was that the then Constitution of the BBC meant that the Governors were unable to make objective decisions because of the fact they were relying on the Executive for the information upon which to make the decisions. I advocated two major reforms. One was to create the Governance Unit and the second was to create services licences for all the BBC services, so that the Governors would have some way of measuring performance, laying down strategy, and so on. I did not come up with this particular solution, because I was not asked to come up with a solution: we were about to embark upon a two-year debate about the Constitution, but I said that the Constitution of the BBC was in disrepair and needed fixing and that was the crucial part. In the short-term, we needed some short-term measures to stabilise things. The first thing was the creation of the Governance Unit and working directly instead of indirectly for the Governors and, also, the introduction of service licences and so on.

Q64 Lord Inglewood: When you presented this to those who were involved in the appointments process, I think you said there were three independents on the panel and the permanent secretary. Really the deal was done with a very small group of people in a smoke-filled room, or is that unfair?

Mr Grade: No. In that particular situation, I was trying to identify and analyse what had gone wrong, why it had gone wrong, what needed fixing. I certainly did not offer any governance solutions. I explained what I thought was wrong with the present structure, what we could do in the short term to fix it. Undoubtedly, governance at the BBC was going to be one of the major issues in the Charter Review debate. I felt they needed to know from me that if I was expected to go in and be Chairman of the BBC and defend the then present structure, I was not going to do it because I thought it was a model that was broken.

Q65 Lord Inglewood: The process through which you went was one which was pretty private, was it not? Was it right, do you think, that someone who is going to be appointed to a position of such significance should be assessed against others in a pretty closed manner? Is there a case for opening up the appointments process, say, to having some sort of confirmation hearings? Or do you think it is just a complete irrelevance from your perspective?

Mr Grade: You can argue it either way. The downside of public hearings, confirmation hearings and so on, is that I suspect you will deter a lot of very talented people from putting their names forward. The object of the exercise is to get the best person for the job. The process of appointment of BBC Trustees and Governors and the Chairman, when I was there, had improved dramatically from when I was Executive of the BBC in the eighties, when it was all done with a nod and a wink and a telephone call. There was no Nolan process. It was an appalling procedure. The Nolan process has brought a degree of transparency. There are people outside of government who know, in that appointments room, who they recommended and if their recommendation is turned down or turned over by Downing Street that could become public knowledge very quickly. I think we have a good system presently. I think there is a measure of transparency. There is a check and balance, because of the bringing in of people outside of government to make recommendation for the appointment, and, at the same time, there is confidentiality in the process so that you can attract the best possible field. A lot of people will not apply if it is known that their application is going to be come public.

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Q66 Lord Inglewood: Is there anything you could suggest about improving it? Or do you think that it is fit for purpose?

Mr Grade: The only thing I would do, which might stop any unscrupulous government from exploiting the present system, would be to make the decision of the independent panel binding, so that if the independent panel says on the day, “Here is the marking system, the person who came out top was X,” X is appointed. The Government could do its work on the pre-screening. When all the hundreds of applications come in and the final shortlist is agreed, they can put their input in at that point.

Q67 Lord Inglewood: Although it is arguable that the clever way to rig these things, if you want to exercise influence, is to rig the shortlist not the final appointment.

Mr Grade: Well, one step at a time!

Q68 Chairman: I can see why, if there were six or seven applicants to become Chairman of the BBC, it might deter them if all that became public. But once the Chairman has been selected by this process and is then asked to go for a confirming hearing, before parliamentarians for example, that is not going to deter anyone, is it? It would not deter you. You are not a shrinking violet.

Mr Grade: I think it would deter a lot of people, yes, putting yourself at risk of becoming some sort of political football.

Q69 Chairman: It is not a political football, it is being asked questions. I hope you do not feel like a political football at this moment.

Mr Grade: I do not know the answer to this question but my instinct would tell me that the further away Parliament is kept and politicians are kept from anything to do with the running of the BBC is something that would meet with the approval of the licence-fee payers. That is not to say that the BBC should not be fully accountable to Parliament, but, in terms of the appointments and so on, I think the licence-fee payers will feel that the further away appointments are kept from Parliament, the better.

Q70 Chairman: That is a standard BBC line, is it not, that Parliament is kept unaccountable on the Charter, on the licence fee and on the chairmanship?

Mr Grade: I think there was a lot of evidence during the Charter Review, in terms of the research done with members of the public, that confirmed it.

Q71 Baroness Bonham-Carter of Yarnbury: You said earlier that you were involved in choosing the Trustees.

Mr Grade: I was part of the process. I was one of the interviewers.

Q72 Baroness Bonham-Carter of Yarnbury: Who else was involved in that?

Mr Grade: There were so many interviews. I am trying to remember. There was a leading civil servant from the DCMS and two outside, non-BBC, non-government, non-departmental interviewers.

Q73 Baroness Bonham-Carter of Yarnbury: How were they chosen?

Mr Grade: We had a very rigorous marking system between us. At the end of each interview we would mark the individuals on a whole number of pre-determined categories.

Q74 Baroness Bonham-Carter of Yarnbury: It seemed curious at the time, and it still seems curious to me, considering you were trying to set up a body that was different from the Governing Board, that three Governors slid from one organisation to the other.

Mr Grade: We kept that to a minimum. We felt we needed some measure of continuity. To have thrown the whole board out and brought in a whole lot of new people who were starting from a blank sheet of paper would have been too big a risk. We needed to have some measure of continuity and I think the balance was absolutely right in what we achieved at the end.

Q75 Baroness Bonham-Carter of Yarnbury: You felt you needed that many.

Mr Grade: Definitely. Definitely, yes. That few!

Q76 Baroness Howe of Idlicote: I would like to follow up on this. I think you have said, as far as the licence-fee payer is concerned, the last thing they would want to have is more involvement of Parliament in the process.

Mr Grade: Political involvement.

Q77 Baroness Howe of Idlicote: I wonder, not least given the specific duty of the Trust to look after the interests of the licence-fee payer, whether they would not have perhaps preferred to have an additional independent person, perhaps the Public Appointments Commissioner, sitting in on this process. Might that not have given them more confidence and, particularly, if I may say so, on the Trustee appointments, when it must have been a pretty close decision between you and the Secretary of State.

Mr Grade: You have reminded me that on the appointments panel for the Trust was a very fierce individual who . . . I am trying to remember their role. I cannot remember precisely but there was somebody who was one of the “public appointment police”—that is the best phrase I can use—who took part in the interviews but absolutely made sure that

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the process was rigorously fair and objective and so on and so on. I cannot remember what the body is called, but there was somebody from that body at the appointments board.

Q78 Baroness Howe of Idlicote: It may well have been the Public Appointments Committee.

Mr Grade: Indeed.

Q79 Baroness Howe of Idlicote: You thought that was a good idea.

Mr Grade: I thought it was an excellent idea. Excellent idea.

Q80 Lord King of Bridgwater: Are the names of these three independent people, including you, public, or is that wrapped in impenetrable mystery?

Mr Grade: I have no idea. I would prefer not to go there in case it was confidential.

Q81 Chairman: It is public.

Mr Grade: Is it.

Lord Maxton: Surely, under the Freedom of Information—

Chairman: It is public in any event.

Q82 Lord Maxton: You on several occasions have said that the new Board/Trust is responsible to the licence-fee payer and the licence-fee payer is entitled to know—but the licence-fee payer does not know—how the BBC spends its money. I do not know how much Jeremy Paxman earns. I do not know how much John Humphrys earns. He knows exactly how much every politician whom he interviews earns. I do not know how much he earns. Should I not know?

Mr Grade: No.

Q83 Lord Maxton: Why?

Mr Grade: Because people who operate in a freelance market for talent are entitled to confidentiality.

Q84 Lord Maxton: You mean that they are entitled to ask about expenses. They are a publicly-funded body. They are entitled to know about the expenses of Members of Parliament, of Members of the House of Lords, about civil servants salaries, even about your salary.

Mr Grade: Yes.

Q85 Lord Maxton: But we are not entitled to know what they earn.

Mr Grade: No. It is a professional engagement. They are offering professional services to the BBC in a free market and it would completely destroy the BBC's ability to attract talent if people knew their contracts were going to be published. It is just unthinkable. Unthinkable.

Lord Maxton: Unbelievable.

Q86 Chairman: It is your view that it is unthinkable their earnings should be known.

Mr Grade: I think people are entitled to privacy and confidentiality if they are professionals offering services to the BBC.

Lord Maxton: You could argue that Members of Parliament are offering services to their electorate.

Q87 Chairman: What happens if with the contract with the BBC they are making £200,000 or £300,000 and then, in addition to that, they are making all kinds of sums on speaking engagements and so on? Is the public entitled to know that?

Mr Grade: No, it is for the BBC to manage those situations. It is not for the BBC to deny people earning what they are worth and what they can command in a free market. It is for the BBC to police any potential conflicts. In other words, if a presenter on the *Today* show is doing a conference for a big commercial concern and that commercial concern is then in some public controversy and the Chief Executive is being interviewed on the *Today* show, the BBC needs to know that one of its presenters has been taking the shilling from that company.

Q88 Chairman: You do not mind the idea of him taking the shilling from the company before that?

Mr Grade: Unless the BBC has an exclusive arrangement, which it would have to pay for, I do not see why the BBC should try to deny people earning what they want.

Q89 Chairman: The point of all this is the accountability.

Mr Grade: Yes, but that is an operating matter for the Executive of the BBC, to ensure that no possible journalistic conflicts or editorial conflicts can arise from any such arrangements. The BBC lost Jamie Oliver originally because he decided to do commercials for Sainsbury's. That is how the BBC lost Jamie Oliver, because there was a conflict.

Q90 Chairman: I think the point Lord Maxton was getting at was public accountability and the accountability of the organisation to the public.

Mr Grade: The accountability is more than carried out through the annual reports, which include salaries of executives: what is paid to the non-executives and to the Trust and so on. There is full disclosure in the annual report, but if the idea is that the BBC is going to have to publish all the contracts of all the artists you would just put the BBC out of business.

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Q91 Baroness Howe of Idlicote: Certainly you came with a very clear picture of exactly what the chairmanship should be of this new Trust. You worked it through, obviously, with the BBC itself and got to the point four years later when it was all set except for the licence fee. It is a little bit intriguing to think whether you perhaps yourself might have preferred the job you were setting up for the Director-General, rather than the one from which you finally escaped, as it were. Would that be a fair comment, that you had actually provided something which did not fit you and therefore did not want to stay?

Mr Grade: No. Under the new Constitution, the Chairman of the Operating Board can be either the Director-General or an independent and that is at the discretion of the Trust. I argued, with my fellow Governors, very strongly that the Director-General should chair the Operating Board, so that it was clear that it was an executive board, so that there could be no confusion that there were two Chairmen of the BBC. It is very clear: the Director-General, as Chairman of the Operating Board, is the Director-General and the Chief Executive of the organisation. If I had fancied that job myself, I would have argued differently, and might have had the choice, but I did not.

Q92 Baroness Howe of Idlicote: In the end, you did not wish to stay in either of them.

Mr Grade: No, because the Chairman of the Trust is the job where all the responsibility lies.

Q93 Baroness Howe of Idlicote: The one thing that had not been agreed was the licence fee. That could be quite contentious in the sense that you go at a moment when it could have disadvantaged quite considerably. The authority was no longer there. The sum was settled. These terms and conditions at this very high level: presumably there is some unwritten agreement of how this level of appointment behaves as well as a written agreement for what you are going to be paid, the number of years and so on. I wondered what your assumption was for how you behave under those circumstances and not least whether there might be a sensible clause that ought to be added to these things if they are not already prescribed within the contract and there should be a non-compete clause for a period of time.

Mr Grade: That is a matter for others to decide. I played by the rules. Immediately I had made up my mind, when I was offered this role, that it was something I wanted to do I told the BBC because I could not have a situation where I was “riding two horses”. That would have been unthinkable. As far as the licence fee is concerned, it stretches the imagination a bit to think that the government would have moved its licence fee number up or down, depending on whether I was there or not. At the point

at which I left there were no new arguments. All we were waiting for really was a decision from the government on what the licence fee would be. I have heard people say that the government would have been scared that I would resign if the licence fee were lower than we needed, to which I would say that that certainly for me would never have been a resignation issue. The government is perfectly within its constitutional rights to set the licence fee. It is certainly not a resignation matter. I would never threaten resignation anyway but it was not in my mind. The only resignation issue for me would have been government interference in the editorial or constitution of the BBC. The licence fee certainly was not.

Q94 Baroness Howe of Idlicote: In a more general sense these are very special appointments at Privy Council level. I am just wondering whether there ought to be rather more set out in these agreements than there appears to be.

Mr Grade: I do not have a view. It is for others to decide whether it is necessary or not. I do not think the BBC has been damaged in any way by my appointment in ITV. I think it is important for broadcasting that ITV is strong. I will try and play my part in restoring the strength of ITV. It is good competition for the BBC. I cannot see the problem.

Q95 Chairman: How long was it when you left the BBC and you joined ITV? What was the gap?

Mr Grade: About eight weeks.

Q96 Chairman: That is very unusual, is it not?

Mr Grade: I was not an executive.

Q97 Chairman: That is your distinction: that you were the non-executive chairman?

Mr Grade: Yes.

Q98 Chairman: Then you were taking up an executive role?

Mr Grade: If the BBC had said that there should be a longer period, I would have—

Q99 Chairman: They never asked you to do that?

Mr Grade: No. They asked me to leave immediately, which was perfectly proper, which I did. We agreed a starting date. I could have started the next day if I had wanted to but I did not.

Q100 Chairman: The BBC would not have objected to that?

Mr Grade: We agreed on the starting date. We felt there should be some separation. I am also bound by a confidentiality agreement of course which I was more than happy to sign about any confidential

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information about the BBC's affairs that I had gathered. That was perfectly proper.

Q101 Baroness Howe of Idlicote: If there had been a clause saying that there should be a six month gap before you took on any competing kind of role, would you have accepted the job?

Mr Grade: No. I would not have accepted the BBC job under those terms because the BBC was not my main career. It is a part time public appointment where you hope to make your contribution and one has a living to earn as well.

Q102 Lord Inglewood: When you left the BBC you said, "We agreed." I was not quite sure whether "we" was yourself and the BBC, yourself and ITV or a tripartite agreement.

Mr Grade: It was an agreement meticulously handled by the vice-chair, Anthony Saltz, who was the senior partner of Freshfields, one of the world's leading legal firms, and the governors themselves and the governance unit. I did not deal with the government on it. I obviously informed the Secretary of State before the announcement was made, that that was what I had chosen to do.

Q103 Lord Inglewood: It was yourself and the BBC who agreed a plan of action once you had announced this was going to happen. That then was presented to ITV as being what witness statement going to occur?

Mr Grade: Yes.

Q104 Chairman: What did the confidentiality agreement cover?

Mr Grade: Any information that I had stored up in my mind, stuff that might be of some conceivable use to ITV in the future.

Q105 Chairman: When you go to ITV, you hear that ITV are going to do a programme. You know that the BBC are going to—

Mr Grade: I was not privy to the editorial decisions of the director general and his team.

Q106 Chairman: Not in any way?

Mr Grade: Not in any formal way, no.

Q107 Lord King of Bridgwater: I remember when you came and talked to us before. One of the things you regretted was the previous handling by the BBC of cricket and failing to bid for the cricket.

Mr Grade: Yes.

Q108 Lord King of Bridgwater: You now go to ITV. If ITV now raise the issue—you have an executive role—"Shall we go for the cricket?" do you remove yourself from the discussion? You are privy to a lot

of the background on the BBC's position on this. What do you do?

Mr Grade: The issue is price. I have no knowledge whether the BBC is going to bid for cricket or not. I have no knowledge what money they would be prepared to pay. I would have no problem if ITV were interested in the cricket in the same way that we recently bid against the BBC for the FA Cup. The real issue is not are they going to bid or are they not going to bid. That is a useless piece of information really. The information that is important is how much they are prepared to pay.

Q109 Lord King of Bridgwater: With respect, on the last occasion that was not true because some people did not bid. The knowledge as to whether people were or were not going to bid would have been critically valuable, for instance, to Sky who were encouraged to pay a significantly larger sum than they might have paid if they had known at the time that certain people were not bidding. It is a question of what the culture is as well.

Mr Grade: Every case is different. I do not have any knowledge going forward of the BBC's bidding plans for contracts which could help me at ITV to advance our position.

Q110 Lord King of Bridgwater: But you were able to comment on it when you appeared before us before. You had obviously discussed it with BBC executives and informed yourself very well on it. I am not suggesting anything improper here; I am suggesting the challenge that you face in your new position, when the chairman says to you, "Do not worry. Just forget about everything." You are trying to make a success of ITV and knowledge of what the BBC attitude may be could be extremely valuable to ITV.

Mr Grade: If I had knowledge that ITV did not already have that I had gleaned as chairman of the BBC, I certainly would not pass it on or I would disqualify myself.

Q111 Chairman: Has that ever happened?

Mr Grade: No.

Q112 Chairman: You have never had to disqualify yourself? You have never had to leave a meeting or hold back?

Mr Grade: There are times when I have refused to answer questions in meetings at ITV and said, "Look, I cannot discuss that."

Q113 Chairman: How many times?

Mr Grade: Once or twice at the most.

Q114 Chairman: You found no difficulty in handling this situation?

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Mr Grade: Conflicts are not *per se* a bad thing. Conflicts become a bad thing if they are not transparent. You can wear as many hats as you like provided you only wear one hat at a time and everybody knows which hat you are wearing and that you respect confidentiality. At the BBC I had to manage a conflict with my chairmanship at Pinewood Studios. There were very discreet and determined processes whereby papers were redacted. I left the room on many occasions when issues relating to Manchester and plans for studios were discussed. I have no knowledge whatsoever that could help me in my role as chairman at Pinewood.

Q115 *Chairman:* The distinction you make in all this is that you were the non-executive chairman. If you had been the chief executive, different factors would apply?

Mr Grade: Very different, yes.

Q116 *Lord King of Bridgwater:* The difficulty is that you are now. If you move from non-executive to non-executive, it might be a slightly different situation. The point comes back to what Baroness Howe was saying. It is this business about intervals. ITV will not let you move on or you would not be allowed to go to Sky at a moment's notice. It is in your contract. You are not allowed to resign in your first year and you have to give a year's notice. Is that right?

Mr Grade: Yes.

Q117 *Lord King of Bridgwater:* the only alternative to managing the problem of confidentiality is at least to allow some time interval so that you are not quite so up to date with current thinking. Your advice to us is: do not worry about future appointments to the BBC. Do not worry about asking a chairman or senior trustee maybe about any conflict. Do not worry about any non-compete clause.

Mr Grade: That is not what I am saying at all, with respect. What I am saying is it is not a matter for me to decide. It is a matter for others to decide in the light of experience what protections the BBC may need in these circumstances.

Q118 *Lord King of Bridgwater:* You are a free individual in this respect. You are an experienced person. You have held a job. For reasons which it is not for us to criticise here you left earlier than your appointment proposed. I think it was just over two and a half years, if the dates are right.

Mr Grade: I was appointed as chairman of the governors.

Q119 *Lord King of Bridgwater:* Absolutely, but you took on this appointment and you are therefore very well able to advise this Committee. One of the things that does strike the Committee—and the public were surprised to find—was that there was no non-compete clause or no interval required before you took up what appeared to the general public to be a very competitive position with the BBC. Do you think on reflection that in future there ought to be?

Mr Grade: I do not think it would do any harm. I do not think it is as big an issue as you are raising. I can remember one particular chairman of the BBC who became chairman of another very big listed company which had intimate commercial arrangements with the BBC and he was chairman of both for a while.

Q120 *Chairman:* It is not unknown, is it, for non-executive chairmen to have periods of notice?

Mr Grade: I have never in the private sector—and I have been chairman of many companies—had a notice clause.

Q121 *Lord King of Bridgwater:* You are a lucky man.

Mr Grade: Not necessarily.

Q122 *Lord King of Bridgwater:* I withdraw that remark but that does exist.

Mr Grade: It is very unusual in the best corporate governance sense that non-executive chairs of listed companies do not have notice periods in their letters of engagement.

Q123 *Chairman:* Have you any other points?

Mr Grade: No.

Chairman: We look forward to seeing you at a later stage wearing your new hat at ITV. I am sure you look forward to it just as much as we do.

Examination of Witness

Witness: MR DON FOSTER, a Member of the House of Commons, Liberal Democrat Secretary for Culture, Media and Sport, examined.

Q124 *Chairman:* Don Foster, welcome again. You have been to see us before. Could we start with a general question on how you see the role of the chairman of the BBC Trust. Do you see him as a regulator? I think you used the phrase before “a flag waver”. Which role do you see him in?

Mr Foster: Can I begin by thanking you for inviting me. You will recall that when I last came I discussed with you my views on what the structure should be. I remember you gave me quite a rough time and were slightly critical of my proposal initially that there should be an independent regulator for the BBC. I

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was delighted that your own report subsequently moved more in that direction. I still hold to that view. I wish we had an independent regulatory body of the BBC and indeed of other public service broadcasters. Sadly we do not and we have the structure the government introduced in which we have a person who has two jobs. He is the chairman of the BBC and the chairman of the BBC Trust. The whole concept of the BBC Trust being a sovereign body of the BBC while at the same time having a quasi-regulatory function remains for me a significant problem. I do not believe that the new chairman of the BBC Trust is particularly now a flag waver for the BBC. It is predominantly somebody who is looking after the interests of the BBC licence fee payers. I accept that. It also has a quasi-regulatory function. It leaves still the question of who is the flag waver for the BBC and presumably that is now the chairman of the operating board. That is the executive, Mark Thomson.

Q125 Chairman: Do you see any weakness in the present arrangement?

Mr Foster: I confess that I have been quite impressed by the amount of work that the new Trust has got through in a relatively short period of time, notwithstanding the loss of the head of the operation when Michael Grade left. I have some criticisms of some of the decisions that they have made. For example, their decision to pull the plug on *BBC Jam* without even having had any complaint issued to them whatsoever. I think it was wrong of them to have agreed with the Freesat proposals without going through the full PVT test arrangements. That said, some of their other decisions and some of the processes they have put in train I think have been quite impressive. It has been a mixed picture so far. That does not alter any of my fundamental concerns about the nature of the current arrangements whereby we do not appear to have a clear role for an independent regulator of the BBC from a body that is very clearly independent of the BBC. That is what I would have wanted. We do not have it so inevitably I do see that there are problems.

Chairman: You agree with that first example, Lady Howe?

Baroness Howe of Idlicote: Yes. The first example of *BBC Jam* was an amazing decision.

Q126 Chairman: Explain to us what that was.

Mr Foster: *BBC Jam* was an online children's or educational service that was on offer. There were concerns expressed about it being anti-competitive with other possible private sector operations. Those concerns were expressed, as I understand it, to the European Commission. As I understand it, none was directed to the BBC Trust and without even seeing the nature of those complaints or even considering the content of them in any way they decided initially

to suspend *BBC Jam* and then subsequently I think—I may have this wrong—some 200 members of staff involved in it have now had their services dispensed with. That very important talent has been dispersed to the four winds at a time when it was an initiative that I very much welcomed the BBC being involved in.

Baroness Howe of Idlicote: It was also an initiative which was particularly valuable on the teaching side and tied in with helping some children, autistic and otherwise, have a direct link and learn in that way.

Q127 Lord Maxton: Is that not making it clear that the Trust is acting as a regulator? If you had an independent regulator they probably would have taken exactly the same decision because at least the BBC Trust has some interest in the licence fee payer; whereas it is my view that independent regulators are too interested in the financial interests of other organisations in competition rather than in being involved in what the BBC are doing.

Mr Foster: The premise of your question I entirely accept. The decision in relation to *BBC Jam* would have been one taken by an independent regulator in the same way it was taken by the Trust. Where I have some concern however is that it will not always be a totally independent regulator's decision that is being made that takes into account the wide range of interests, not just the commercial ones but the interests of licence fee payers and others when the BBC Trust makes some of its decisions. It can be questioned, for example, and is by some people. When the Trust made its decision on allowing the BBC to go ahead with its I Player scheme, there were certainly those who expressed concern that the BBC should not be getting into the manufacture of hardware, for example, and that that could be left to the market and it might be in the interests of the public at large if there witness statement more vigorous competition for the production of such products. We know that Ofcom carried out their own market impact assessment and the BBC Trust took that market impact assessment into account, but in addition the BBC also did their own public value test and it was the BBC that then decided how to composite those two different tests to come to their final conclusion. A body that is described as being a sovereign body of the BBC is ultimately making the decisions. The issue even of the market impact assessment does not necessarily hold sway.

Q128 Baroness Eccles of Moulton: I believe you were in the audience from the beginning of the meeting so you will have heard Michael Grade's very detailed description of how the appointing process was followed when he was appointed to the chairmanship of the BBC.

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Mr Foster: I heard it but I believe he was somewhat inaccurate with some of the information he provided you with. Perhaps we can pick that up.

Q129 Baroness Eccles of Moulton: The burden of the question is: do you believe that a privately conducted appointment to a public corporation is an appropriate and transparent method in the 21st century?

Mr Foster: No, I do not. If I could perhaps give a bit of background to the procedure, there were two procedures that were followed. The first was in relation to his initial appointment as chairman of the governors and subsequently his appointment to become the chairman of the BBC and chairman of the BBC Trust. In the first appointment the first time round, it is worth recalling as Michael Grade pointed out that the Secretary of State believed that this was such an important public appointment that the normal Nolan rules could be added to. That is when we heard that Dame Renee Fritchie served as an independent evaluator. I very much welcome that that was done. At the next stage when there was an appointment to become the chairman of the BBC and the chairman of the BBC Trust I understand there were again similar procedures but three members of the Privy Council also played an independent evaluation role in that procedure. I think that was missed out of Michael's comments. I do believe that that gives us a potential model for the future because I believe there is a role for Parliament to play in those procedures. Whether it should be a body of both Houses of Parliament that is the interviewing and appointing body—which is something my party for a number of appointments has believed is the right way forward—and whether that is quite the right model I am not entirely sure but I certainly believe, perhaps as an oversight responsibility, a committee of both Houses of Parliament should be involved in the procedure. I confess I am in two minds as to whether that should be the appointing body or whether we should have the procedure that currently exists with an oversight scrutiny body from a committee of both Houses of Parliament.

Q130 Bishop of Manchester: A moment ago you referred to inaccuracies that Mr Grade and you did make a specific reference to one in your response. Are there any other inaccuracies that you would like to develop?

Mr Foster: No. It was merely the additional because I thought it was very important that there was that additional process added when he became the chairman of the Trust. There was this panel of three privy councillors—i.e., for the first time a representation, albeit a small one, of Parliament.

Q131 Lord Hastings of Scarisbrick: Can you expand a little further on the answers you gave previously to the last questions around the role of Parliament? I am not asking you to make policy on the hoof for your party but just to think about how you would want to engage Parliament and the public possibly in the role of the chairman of the Trust, given that the role of the chairman of the Trust as defined by the new Charter is to represent the interests of the licence fee payers. Parliament can do that but how do you involve the public with Parliament? The representatives, yes, but in addition to the representatives how do you get that genuine sense of public questioning, concern and interest? What process ought to be followed over what time period?

Mr Foster: I confess that I would be developing policy on the hoof were I to give a detailed answer to your question. Let me give you a few thoughts. If you look back to the submission that the Liberal Democrat Party made on the consultation about the future of the BBC, we said very clearly in that documentation that the appointment of the chairman of the oversight body, whatever it might be called—now we know it is the Trust—would be made by a joint committee of both Houses of Parliament. We have subsequently had an opportunity to consider that in more detail and confess that one of our problems is finding the answer to the basic question: what is wrong with the current system? Has it led to us getting the wrong people in post? Was there some error of judgment in getting, for instance, Sir Michael Lyons now in post? I have some difficulty saying I can see a problem with that, other than the issue that you rightly raise of accountability and public involvement. Members of both Houses are representatives of the people and that is why I believe they should be involved but increasingly I move to a view that perhaps it is more in an oversight role rather than one of making the decision. One other thing is critically important. That oversight role or even the decision making role should not just be about the individual. It must also be about the contract that that individual signs. I think it is deeply worrying that when Michael Grade became the chairman of the BBC and the chairman of the BBC Trust he did not have a contract. It is almost unthinkable that we can repeat that exercise. If you accept my premise that there needs to be a contract, then it raises all sorts of other questions such as the one you were raising with Michael Grade about the need to incorporate within that gardening leave, whether you need to incorporate issues in relation to confidentiality clauses and so on. I do think there has to be an involvement of both Houses. That is not just about the appointment of the individual but the contract that is to be signed by that individual and indeed the very existence of a contract. I hope that it will be pushing to ensure that there is one.

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Q132 Lord Hastings of Scarisbrick: Taking your point therefore that there is a clear role for Parliament, not just for the chairman of the BBC Trust, Mr Grade said he saw himself as just the first among equals. Therefore, should not the rest of the trustees who are all meant to be representatives of the public interest also be subject to the same process? If he is only the first among equals, should they also not be individually scrutinised, questioned and contracts assessed?

Mr Foster: Whether or not he is the first among equals, those other members of the Trust play a very critical role, as we saw for example in the way Michael Grade resigned and they were without a chair of the body. They were all continuing on and a great deal of work was done in that time. However you define them, they are all important. The very simple answer to your question is yes, I do believe the same process should be applied for all of them.

Q133 Lord Hastings of Scarisbrick: In order to fulfil that process which could be cumbersome but is vital and necessary, before appointment do you think there should be a period of possibly three to six months for proper scrutiny to be conducted?

Mr Foster: There would certainly need to be a period of time. I am loath to make any suggestions to you that might be deemed cumbersome because I recall that my proposals to you last time about the structure were deemed by many of the previous Committee to be extremely cumbersome. Whether they are cumbersome or not, I think they are crucially important. During that period of time, there is an opportunity for the public to express their views about many of the issues surrounding the appointment to those people who they will know are going to be involved in that decision making process, which of course is part of the answer to your earlier question in relation to public involvement.

Q134 Chairman: Say it was a parliamentary body of some kind that asked questions rather than appointed. What kinds of questions would they be asking?

Mr Foster: I suspect they would be asking very much the questions that I imagine were asked by the people who carried out the interviews under the current and previous procedures. They would be questions in relation to the relevant expertise of the individual. They would be looking at the references that people have given and asking questions in terms of their vision for the future: how do they see themselves conducting their role? One of the questions I would always want to ask at an interview is, "If you had been making some of the decisions that have been made by your predecessor, would you have made the same decisions? If so, why? If differently, why would that have been?"

Q135 Chairman: Would political allegiance come into it?

Mr Foster: I certainly think it is important that we know what political involvement there has been but I for one am perhaps not quite so concerned about that as an issue. Anybody who is going to serve us in public life probably has some quite strong political views. How they have expressed them and what they have done in terms of their involvement, membership and activity within a political party may be somewhat relevant but most people who are going to serve us well in public life probably have strong views on a wide range of issues and long may it always be the case.

Q136 Chairman: So not a disqualification?

Mr Foster: Certainly not a disqualification.

Q137 Lord Maxton: All Nolan application forms for public appointments ask for your political affiliation.

Mr Foster: It also makes clear that it is not a disqualification.

Q138 Lord Maxton: I accept that, though I have to say with some Labour ministers it tends to be a disqualification for anybody who is a member of the Labour Party. I am not clear whether Parliament should be involved in the appointment or in the oversight because it seems to me there is a middle position between those two. One is that there is a body that does the interviews and agrees on one person and announces that is the person. At that point do you think a parliamentary body should have them before, basically on the American advise and consent procedure, so that they can interview them before the final appointment is made; or do you think it is the whole procedure and the new chairman, or whoever it is, after the appointment is made? Which one is it?

Mr Foster: I understand your question entirely. I think I was frank and honest enough to the Committee earlier in suggesting that I do not have answers to your question. Like you, I am currently stumbling around between the various models that are there and I have not formed a firm conclusion. I will therefore look with great interest at the recommendation that comes from your Committee at the end and I apologise I have not been too helpful to you in determining what the outcome would be. What I think is important is that the current procedure is inadequate, that there was a move in the right direction with the introduction of the panel of three Privy councillors within the process. I think it is important that we go beyond that. I believe there is a role for Parliament but I am not as convinced as I was, at the time I wrote the paper on behalf of my party, that it is necessarily the best way forward to say it is that committee of both Houses that makes

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the decision. Where therefore that involvement of Parliament comes in the process I confess I do not have a clear answer on and I apologise to the Committee for that.

Q139 Chairman: If you were the just appointed chairman of the BBC and we were questioning you in the way that we are now, do you think that would be a deterrent for people applying for the BBC chairmanship?

Mr Foster: I was extremely disappointed to hear Michael Grade say that that would be the case. I think the person that we want to head up the BBC Trust is somebody who would certainly not fear that and somebody who would be more than happy to take part in those sorts of public discussions. After all, if that person is to be, as the current job description describes that person, the guardian of the licence fee payers' interests, then the licence fee payers need to know a lot about that person, to have confidence in that person and to know how that person is likely to react in particular situations. The only way that that can be ascertained is by there being public hearings at which that individual has the opportunity to answer questions about those matters.

Q140 Lord Maxton: We have seen in the American advise and consent that people's private lives on matters which have no relevance whatsoever to the job which they are applying for have destroyed them as applicants. That could happen here in that sort of situation. I hope it would not but it could. That would not be right, would it?

Mr Foster: Of course it would not be right but there are ways of protecting against that: the proper chairmanship of the scrutiny committee ensuring that inappropriate questions are simply not asked or do not require answers as part of the way it is done. There is also the culture in this country where I do not think it is likely that people would ask those questions. It is not a matter for discussion now but I am very clear that issues of the type to which you refer are very often irrelevant to the person's ability to be able to conduct the job that we are hoping they are going to agree to do.

Q141 Baroness Howe of Idlicote: I was going to ask you the question which you have already answered about whether it is public interest and the chairman of the BBC being barred for a limited period but you have already answered that point. Is there anything you would like to add?

Mr Foster: The point Michael Grade made in his answer to you was very important, that there is a distinction between the chief executive role, moving from one chief executive to another, and him moving from the role he had to the one he has now gone to.

I cannot help but reflect that, for example, Stephen Carter, when he was the chief executive of Ofcom had a clear contract that barred him for 12 months—in fact it ended up being nine months because of agreements that were reached—after he left Ofcom before he could enter another job within the same sector. Indeed, I understand that all of the senior people within Ofcom have a minimum of a nine month gardening leave clause in their contracts. While it may well be the case that what Michael Grade told you earlier is true, that there is a distinction between his role that he had as chairman of governors and subsequently of the Trust and being the chief executive of the BBC and then moving to chief executive and chairman of ITV, nonetheless in the public's mind at least when questions are asked, for example, about the fact that the BBC was bidding for the FA Cup, that ITV subsequently won that bidding— I am not for a minute suggesting any dubiety whatsoever on the part of Michael Grade in that process—there will be some at least who are concerned about possible conflict of interest. For the avoidance of doubt, I think it is absolutely critical that there be a period of time within the contract in advance that is known. That may have had pretty disastrous consequences for the BBC since Michael told your Committee earlier that had there been such a contract he would not have joined the BBC. That would have been a shame, but I still believe it is important, firstly, that there is a contract which currently there is not and, secondly, that that contract includes a minimum period of perhaps six months, a separation between one job in the sector and another.

Q142 Baroness Howe of Idlicote: I think it does open up this level of "contract", not least civil servants and others, maybe one level down from this, are certainly also required to have a period before they take on a competitive type job. Would you think that it would make sense to review all this level of chairmanship to see whether they are fit for purpose in today's world?

Mr Foster: I do not think there is any question about that and I would also want to question the means by which people are appointed. In particular, I would want to look again very closely at issues of secrecy clauses. I find it quite staggering that, although the Nolan rules have an assumption of a confidentiality clause when you move from that body to another body, that is not in writing. I note with interest that it was when the announcement was made that Michael Grade was going to leave the BBC, the BBC were very insistent, as I understand it, on obtaining something in writing to give them an assurance that the confidentiality that is assumed within Nolan was agreed to by Michael Grade. I find it quite staggering that that was not part of a previously agreed arrangement and part of the contract. It is not just the

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appointment procedures; it is the contracts for this wide range of bodies, not just for that individual post.

Q143 Baroness McIntosh of Hudnall: The essence of a contract is that it should be enforceable. When we get to issues about confidentiality I do not for a moment suggest that it is not important that people should honourably observe the confidentiality that you would expect people to observe when moving from one job to another but, in all seriousness, is it possible, whatever you write down on paper, ever to enforce such a contract because the issue of evidence and so forth would be very hard to adduce, would it not?

Mr Foster: It would indeed be very difficult. I agree with you. In no way in anything I have said am I implying that I do not trust Michael Grade implicitly to stand by the agreement that he made both implicitly within the Nolan rules and in terms of any letter of undertaking he may have written. I am sure that he will abide by that but that is why I believe that it is not just the contract in terms of the confidentiality clause you have to have; it is the gardening leave, that period of time so that the information you might have is out of date, and I think the two have to be taken together. It is the combination of the two. I agree with you that in most cases it will be very difficult. Clearly, there might be situations where it is very obvious there has been a breach but I accept it is very difficult indeed. It is more difficult when you think through what information the individual might have. Is it formal information achieved from a formal meeting for instance of the BBC Trust or in the informal conversations, because you are chairman of the BBC Trust, that you have for instance with the director general? Making that distinction would, I suspect, be very difficult.

Q144 Baroness Eccles of Moulton: I wanted to think a little more about the distinction between a non-executive contract which will have a life and being a member of the fully pensionable staff of something like the BBC. So often a non-executive contract may be only a relatively small part of an individual's total job package. Therefore, when one is talking about contracts and gardening leave and all the other aspects that might go into it, it is surely very important to remember that those are two very different types of employment and that one should not fetter somebody who is perhaps occupying a fifth or a quarter of their time in one particular role to such an extent that it makes it very difficult for them to have enough flexibility in their working life and also the sort of cross impact it might have on other jobs that they might be doing.

Mr Foster: I entirely agree. Michael Grade made that point earlier. However, I think it is worth reflecting that there are non-executive jobs and non-executive jobs. In this particular case when Michael Grade was appointed as the chairman of the Trust the Secretary of State said so important was this post that we had to raise the bar for this particular appointment. She made clear so important was it that they were going to change the procedures. I think there is a distinction to be made not only between executive and non-executive but also between the level of importance of the non-executive post.

Q145 Chairman: That is an important point because the difference between being the chairman of the BBC or, say, the chairman of British Telecommunications or something like that is that that may be a non-executive post but they are big jobs.

Mr Foster: Exactly.

Q146 Baroness Eccles of Moulton: Should the salary that is being offered to the chairman of the BBC therefore reflect the fact that the bar has been raised and therefore they should be paid more?

Mr Foster: More than what? The chairman of the BBC for a part time post is being paid considerably more than a Member of Parliament. Where do you draw the line? As Michael Grade made very clear, this was a post that very many people would have been very keen to get, very senior, expert people and they would not have done it entirely for the money; but nevertheless you have to pay them. It is a complex equation to ensure that you get the very best but you do not want to just get people who want to do it for the money. I am not convinced that we have to start paying a part time chairman of the BBC Trust which is not a job I believe should exist anyway—I think there is a more important job to be done by somebody who might be paid rather more—but whether that needs to be paid anywhere near on par with the chief executive, for instance, of ITV.

Q147 Lord Inglewood: I have always understood that the only purpose a football manager's contract played was that it was the basis for compensation when his term of office came to an end. Is not the point about the contractual arrangements in a context such as this not that they provide you with a Byzantine means of enforcing some particular provision but that they clearly lay down the rules of engagement between the parties? The real problem here, it seems to me, is that in the case of Michael Grade, as he himself said, it was necessary for him to talk with the vice-chairman of the BBC board to discuss how they would handle the particular issue. All that should have been agreed in the public domain, in general terms, before it got under way.

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Mr Foster: I entirely agree with you. It does set down the rules of engagement from the outset which can have a bearing upon who is willing to accept the undertaking. It is really quite significant that Michael Grade said to you that, had that undertaking of for instance gardening leave been a requirement in advance, he would not have taken the post. I think it is important that it does set the ground rules for the relationship that is going to exist and that may have an impact on who chooses to undertake that activity.

Q148 Lord Inglewood: Michael Grade's reply was a hypothetical reply to a hypothetical question.

Mr Foster: I doubt if it was entirely.

Q149 Baroness Howe of Idlicote: Michael Grade indicated that this job is such a prestigious job and seen as so important that the salary would not put off many people. That is one view. If one looks at the arguments that were made when Ofcom was set up, the great argument was that people having the top positions in that organisation had to be paid at a fairly high level in order to be able to ensure you had the right level of competence to compete with salaries that were being paid within the broadcasting world. That surely must have some influence in deciding that it makes sense for the BBC or whoever pays the bill out of the licence fee to pay for this job. Has it some relevance for the future way of appointing people to this job?

Mr Foster: One of the debates that it would be lovely to have in some detail is whether or not we have the right organisation in the BBC Trust. I have touched on that. You know my views and anyway the issue has been decided and will be with us for some time to come. Therefore, the distinction has to be made. Yes, it is an important job but it is nowhere near as prestigious a job as I would like it to have been. I do not believe that the job of chairman of the BBC Trust with the responsibilities that post holder has is frankly comparable with the responsibility of the chief executive post of Ofcom. There is a distinction there also between the chief executive of Ofcom, to which I think you were referring in terms of the money, compared to for example the chairmanship of Ofcom which I suspect is paid at roughly the same sort of level of magnitude. That is the comparison perhaps you should make. Ofcom is a much bigger body with my wider responsibilities anyway.

Q150 Bishop of Manchester: Can we stay with Michael Grade's sudden departure but move away from the issues about competition and contracts and look at the Corporation itself and the effect that his sudden departure may or may not have had? I heard what you said about the role of the chairman of the Trust now. You were also saying earlier on that he was seen as a guardian for the licence fee payers. You

talked about somebody in whom people needed to have confidence. I think it is probably true to say that Michael Grade certainly held the post and people had that kind of confidence in him. Therefore, one might expect on his departure that there is a pretty devastating feel around the place. I wonder if you have any evidence though to suggest that the sudden departure of the chairman of the Trust really did have a significant, negative influence on the BBC. After all, this is at a time in the BBC when some major alterations were taking place. People were feeling pretty uncertain and for six months they are left without a chairman of the Trust. Did it matter or not?

Mr Foster: Michael Grade is a very special person. Michael Grades do not come along very often. Michael Grade in any organisation is worth more than the post that he occupies. Michael Grade going to the BBC at a particular time I think was critically important. He did far more in terms of not just the job he did but the morale raising that he was able to bring because people felt we had among us somebody who was very highly regarded. When he left the post itself in terms of the job he was doing, frankly it would not make any difference. He himself rightly said that the ink had already been dry on the Charter and agreement; that everything the BBC could say about the licence fee settlement, what they wanted it for, all the negotiations had been conducted. There was nothing more he could do in that post than to merely wait for a decision to be made after the dust settled in the wrangling between DCMS and the Treasury, which is why one assumes there was such a long delay. Therefore, the departure of Michael Grade was nothing to do with the departure of a particular chairman but it was to do with the departure of the particular individual. I think it did have an impact on morale within the BBC but that is very difficult to identify. It is only from conversations, discussions and articles I have read that suggest that that is the case. I do not think it was more than the individual and we should not equate that with the departure of any subsequent holder of the post, although Sir Michael Lyons may end up being as highly regarded as Michael Grade was.

Q151 Bishop of Manchester: Presumably it is rather important that this kind of situation does not happen in the future and that there is always the built in agreement that proper notice is given and that the Trust is not left in that kind of limbo, because one might then go on to argue that if the BBC can survive that kind of departure maybe it does not need a chairman of the Trust anyway.

Mr Foster: Sure. That is why it refers to the earlier conversation about the nature of the contract providing a framework and understanding for the terms of agreement. That would be part of the contract. You cannot say to somebody they cannot

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resign or leave. That happens with all jobs with a due period of notice and we note that Michael Grade with ITV has a very clear contract—at least he has one which he did not in his previous job—and that the period of notice is very clear. We heard it referred to earlier.

Q152 Lord Maxton: You heard the question I asked about the licence fee payers' right to know exactly what people are paid who they are listening to or watching. I accept some of the argument that Michael Grade made but the media is a very important part now of the whole democratic process. The BBC in particular is an important part of the democratic process. In terms of openness and accountability, should we not know exactly what these people are paid? Would you support any move towards freedom of information being used on what is after all a publicly funded body?

Mr Foster: I agree entirely with the answer you were given by Michael Grade.

Q153 Chairman: Go on.

Mr Foster: In its entirety. I think it is absolutely important that we know the salaries of those members of the executive board, the senior members of staff working within the BBC. There is public information. Those people who provide their services in the entertainment industry to the BBC under contract are entitled in the free market to have that information remain confidential. We would not be going along to Sky and saying, "Tell us how much Adam Bolton is being paid."

Q154 Lord Maxton: I would.

Mr Foster: You are entitled to ask whatever question you like but I suspect the answer that you would get would not be very helpful.

Q155 Chairman: You do not feel that the secrecy surrounding this area might have the effect of hiking up the salaries?

Mr Foster: It might have the effect of ensuring that some of the best talent available for television performances might not end up in the BBC. The public outcry about some of the assumed salaries of some of their top, most popular people would lead to the backlash which would end up meaning that the BBC would no longer be able to attract those people to perform on it.

Q156 Baroness Eccles of Moulton: There is a link here between the executive/non-executive relationship and also between the freelance and the permanent, pensionable employment relationship. It is very different. However senior you are, if you are Jim Naughtie or John Humphries or one of the very prominent presenters, you still have a contract which can be terminated and you are left with nothing. That is such an important distinction to remember when talking about the information being in the public domain.

Mr Foster: Yes. As a side issue, we could have a length discussion about the number of members of BBC staff who are now on contract rather than on permanent staff but that is beyond the remit.

Q157 Chairman: Unless there are any other questions, I would like to thank you very much for exceptionally clear evidence. Thank you very much for coming and giving evidence. We look forward to seeing you again at some future date.

Mr Foster: Thank you very much. Good luck with your deliberations.

WEDNESDAY 6 JUNE 2007

Present	Bonham-Carter of Yarnbury, B Corbett of Castle Vale, L Eccles of Moulton, B Fowler, L (Chairman) Hastings of Scarisbrick, L Howe of Idlicote, B Inglewood, L	King of Bridgwater, L Manchester, Bp Maxton, L McIntosh of Hudnall, B Scott of Needham Market, B Thornton, B
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Examination of Witnesses

Witnesses: MR SHAUN WOODWARD, a Member of the House of Commons, Creative Industries and Tourism Minister, and MR ANDREW RAMSAY, Director General, Culture, Creativity and Economy, Department for Culture, Media and Sport, examined.

Q158 Chairman: Good morning. Welcome. Thank you very much to both of you for coming. Perhaps I should explain what we are doing. As you know, this is a new Committee which has been formed, it follows the Committee which looked at the BBC Charter and what we are doing now is examining the appointment and the role of the BBC Chairman, which is perhaps a natural follow-up to our work on the Charter Review. What we will do is examine the process by which the Chairman is appointed and whether that appointment should be scrutinised by Parliament. We will want to look at the terms of the service and contract of the new Chairman and really know how the Chairman sees his role and to what extent he has become a regulator. Basically speaking, that is what we are about, and we are very grateful for you both coming. Mr Woodward, you are Minister for Creative Industries and Tourism inside the DCMS; can you tell us first what that means: what do you do?

Mr Woodward: Thank you very much indeed, Chairman, and let me start by saying thank you for asking us to appear this morning. For the benefit of the Committee, Andrew Ramsay is our senior civil servant, with responsibility for culture, creativity and economy in the Department. Andrew provides the continuity, which sometimes, I think, as you recognised yourself, Chairman, and ministers decide, is not provided by politicians, since he has been there from the beginning, as it were, and has seen this process through, so there will be moments when I will refer to him, and I have asked him to chip in, if it will be helpful to the Committee, on questions which you ask me. My title covers, as you rightly say, the creative industries and tourism. Tourism is relatively self-explanatory, worth something in the order of £85 billion a year to this economy. The creative industries, on which we are producing a Green Paper at the moment, covers the 13 industries, which include broadcasting, film, the music industry, architecture, advertising, software, video games, which represent now, as we will disclose in the report in a few months' time, 7.3 per cent of this country's

GDP, employed a few years ago a million people, employ now 1.8 million people and actually now are larger than financial services in this country. We are better at the creative industries, broadcasting, film, music, than any other European country, and we are driving this area, which is a major source of growth for the UK economy in the 21st century. This does mean that broadcasting matters a great deal. Broadcasting represents nearly one per cent of GVA of our economy, it employs 110,000 people, it is a source of major exports and, because of the digital revolution, it is going through an extraordinary period of change, but nonetheless we have the proud position in the UK of being the *primus inter pares* of the broadcasting culture throughout the world. It is a great privilege to be looking after this area; it is one of which I have some understanding, having been in the BBC for nearly a decade in the 1980s and produced and edited a programme called *That's Life*, which went out to nearly 18 million viewers a week. Which is, I think, a record, in terms of being not only the BBC's number one programme at the time but something which now, I think, broadcasters look on with envy, because, of course, we live in a culture now of 300 television channels in which 'on demand' television is the order of the future, as opposed to linear programming. It is an extraordinary moment for a politician to have charge of an area and who might know just a little bit about it.

Q159 Chairman: I remember your top media job; you were Director of Communications at Conservative Central Office?

Mr Woodward: I was; and then, My Lord Chairman, as you know, you were a different chairman as well. I will try to leave the partisan dimensions at the door.

Q160 Chairman: You say you 'drive' these industries—I think that was the word you used—what does that mean?

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Mr Woodward: What we are trying to do is create a framework for these industries to continue to be very successful. Again perhaps the recollection of my own experience in the BBC, I think in the 1980s if you went to work for the BBC you were viewed really as not having gone to do a proper job, you had gone to do something that was a craft job. Personally I did not share that view, but I was very aware of the fact that nobody thought really that the cultural industries and the creative industries were centre stage of the UK economy. If you were a 16 year old and a talented boy, or girl, at school, basically people said to you “Go and be a doctor; go and be a lawyer; go and be a banker.” What they did not say was “Why don’t you actually go and run a video games company,” yet we are the third largest video games manufacturer in the world. That position will not be maintained unless we develop the regulatory frameworks here in the UK, within the European Union, the Intellectual Property frameworks, which need to be Goldilocks frameworks, not too large, not too small, just right, that we ensure the competition environment, not only within the UK but recognising the global challenges of the Far East, is right. Therefore, what we have to do, in Government, is drive that framework, because you take nothing for granted.

Q161 *Chairman:* Let us go on to the BBC specifically. You say that, in your job, your media experience has helped you in your ministerial role, but Michael Lyons, who has been appointed Chairman of the BBC, has no executive media experience, that I know of, at all?

Mr Woodward: First of all, My Lord Chairman, as I think you have recognised rightly in your deliberations historically, and having looked back through the transcripts of your entertaining encounters with Michael Grade recently, you recognise the distinction which operates now within the BBC between the Trust and the Executive Board. Whilst Michael Lyons is Chairman of the BBC, honorary title, critically he is Chairman of the Trust, and the Chairman of the Trust is a different role from being Chairman of the Executive Board. The Executive Board deals with the editorial issues relating to the BBC.

Q162 *Chairman:* Would it not be helpful to have had executive experience in judging, as the Trust Chairman?

Mr Woodward: Unfortunately, or perhaps fortunately, it has not been my experience, in this great, august place in which we find ourselves today, that everybody has great experience of the matters on which they opine; nonetheless, I do not think that devalues their opinion. I think I would say that

actually Sir Michael is the best choice we could possibly have made for the job at this time.

Q163 *Chairman:* Just to be clear, Andrew Ramsay, I have history with your Minister, I have history also with you, because we both served in the Department of Transport, back in 1979, I think?

Mr Ramsay: Yes, indeed.

Q164 *Chairman:* You have a very impressive title and a formidable number of areas to cover. Just cutting through, ‘Director General, Culture, Creativity and Economy’, it sounds to me as though you are the Permanent Secretary, but that is not the case?

Mr Ramsay: No, I am not the Permanent Secretary. There are three people at my level in the Department. One is the Chief Operating Officer, who looks after the finance, people, and so forth; one looks after the staging of the Olympics; and I look after, have an overview of, all of the other policy areas, so all the policy areas in the Department, from broadcasting, arts, gambling, Lottery and sport, except staging the Olympics. The title is slightly opaque.

Q165 *Chairman:* Correct me if I am wrong but in the appointment of the new Chairman were you the Chairman of the committee which did the appointing?

Mr Ramsay: Yes.

Q166 *Chairman:* Tell us how that worked: you chaired it; you were an official of the DCMS chairing that committee. Did you have a number of people in front of you? What was the process?

Mr Ramsay: Essentially, as you know, we do a lot of appointments within the Department; we have a very large number of bodies to which we appoint, therefore I do a lot of appointment work. The Permanent Secretary, Jonathan Stephens, asked me to take this one on, which meant that I chaired the panel. That is in line with the arrangements which the Commissioner for Public Appointments sets out; normally you have a senior civil servant on the panel, normally they are the chair of it. You have alongside you an independent assessor, who is Commissioner-trained; we had one of those. In the case of a panel looking at a member of an organisation, normally you would have alongside you the chairman of that organisation; but in the case of choosing a chairman obviously that is not possible. In my view, it is better not to have members of a body selecting the chairman, and there are views about that but that is the view I take. In this case, I invited two other people who have had experience of chairing, who have rather different backgrounds, to join me and help assess the candidates.

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Chairman: We will come back to that, if we may. I just wanted to get that clear, what were your responsibilities.

Q167 Lord Corbett of Castle Vale: May I ask, who drew up the short list?

Mr Ramsay: The short list was drawn up by the panel. The process is that people apply, and in this case we had an advert, we have head-hunters who are operating for us, people were drawn into the net, they decided to apply, we looked at the list, that is the group of people I described, decided what our recommendation was, we put then that recommendation within the DCMS to the Secretary of State, she took a view about the short list then we got on and interviewed them.

Chairman: We will come back to this, because obviously it is a very important part. I would like to jog back, if I may, to our last session, so there is a bit of continuity, on Michael Grade.

Q168 Bishop of Manchester: Good morning, Mr Woodward. It is no exaggeration to say that when Michael Grade suddenly left the BBC people were gob-smacked by his departure. Are you able to offer any kind of credible defence for a BBC Chairman going so suddenly, right in the midst of crucial negotiations, not least about the licence fee settlement?

Mr Woodward: With respect to the question, I am not sure 'defence' is the appropriate way of looking at this, because it implies that an assault had taken place and therefore the situation was in need of defence, and, to be frank, I think that is to misunderstand the timeframe within which this had happened. I think, for example, had Michael Grade departed the BBC in the spring of last year then, looking at it in terms of the kinds of questions you put to Michael, in terms of would this have damaged the licence fee process might have been more pertinent, although, I have to say, I think the excellent work which had been done to restructure the BBC would have meant that it would have withstood that shock as well. Therefore, the critical issue here, I think, is timing, and at that stage of the licence fee negotiation I believe that, to some extent, Michael Grade had served his purpose; he had conducted those negotiations with considerable skill and aplomb. I believe that he had helped produce a far more coherent argument for the BBC's case than existed originally, in their original proposal which came in. Obviously, to the BBC his departure was regrettable but, I have to say, in the context of the broadcasting industry, it was not anything other than a good thing. By which I mean that it is not a good thing he left the BBC but it is an extremely good thing for broadcasting and ITV that he decided to take up that challenge and that job. Would it have been better if this had happened at

another point, in other words, when everything had been done and dusted; it might have been. Do I think it made any kind of substantial difference, other than the morale blow, which is not to be underestimated, I believe the answer to that is, no, it did not make any difference. There were issues to deal with though in relation to morale. Of course, when a leader of his exemplary skills departs an organisation it leads to questions of self-esteem within the organisation. I have to say, if you look at his arrival in ITV, you can see that in spades. It would be both unkind and unfair, I think, on the then Acting Chair of the Governors, who then had to take up the role until the new Trust came into effect, to suggest that the BBC suffered. I do not believe, in the negotiations that we were in the last throes of in November and December of last year, that it made a material difference to the BBC settlement, but that does not mean, as I say, that I underestimate the significance it had on the morale of the employees in the BBC.

Q169 Bishop of Manchester: Listening to Michael Grade, when he came before this Committee, it became pretty clear, in the language that he used, that he had himself become rather frustrated by the process, and the words that he used about the licence fee were about it "dragging on". That whole process about the licence fee surely needs questioning. It was very odd, for example, that the Charter effectively should be concluded before a licence fee settlement had been reached. What was it that was going on there in the background, frustrating Michael Grade and, in fact, leading people to think that there must be other reasons behind all this which caused the Government to be dragging its feet?

Mr Woodward: With respect to your question, and therefore with due deference to yourself, we do not live in a perfect world; we can have a jolly good go at trying to do our best, and I believe that is what those who were negotiating the licence fee settlement, the new Charter for the BBC, tried to do, but it is not a perfect world. The question is are the arrangements which we are putting in place ones which are better than those which went before and are we striving to make a better union, and I think the answer to that is, on both counts, yes. I looked back at what Michael Grade said to this Committee and I think, with respect again to your question, that is a slight caricature of what he said; he recognised that the process may have been drawn out but he understood the reasons why it had to be. I think that one of the lessons I would take from the process is that if you set out to have a more open and transparent process, and that is something which this Committee I know

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would like to see on an even bigger scale, if you get your wish you should prepare— -

Q170 Chairman: To correct you, if what you are referring to is the appointments system, we have not made any proposals. You will have to wait for our report.

Mr Woodward: No, but I have inferred, perhaps incorrectly, My Lord Chairman, nonetheless, from the tone of the questions, that this is a line of inquiry which obviously has attracted considerable interest by members of the Committee. It will take longer. That is not a condemnation of the system but I think one has to be realistic about the consequences. The more open, the more transparent a system you have the longer it will take, for the very simple reason that more people will want to have a view; that is not necessarily a bad thing, but equally you can end up also creating a bureaucracy. In relation to the licence fee process, we have never had a more open, a more transparent process for setting the licence fee. I am sure that there will be those critics of the current level of the licence fee and those who look at the process who say it could have been even more open and even more transparent, but we set a benchmark in this licence fee negotiation and the reason it took longer was it was important for it to be a proper consultation. If people have a view, you should take it seriously and appraise it.

Q171 Bishop of Manchester: I appreciate that point but, just as a last question, pushing on the licence fee, in your view what were the key issues about the licence fee settlement which did cause such a very long, albeit transparent, process, apart from the Manchester move, of course?

Mr Woodward: Again, let me just say, on that, I do not want to set apart the Manchester issue, because the Manchester issue is not actually a bolt-on to the licence fee settlement. The decision of the BBC to move three departments, a radio network and probably more to Manchester is not just about resettling people from London. For the creative industries in this country to be successful you have to harness the talent of everybody in this country, and it would be the biggest mistake of the BBC, spending £3 billion a year of licence fee payers' money, to think that actually it was going to have public value from being focused so critically on London and the South East. Therefore, the decision to move to Manchester, and critically not just to Manchester but to create a digital media city on the Salford site, not just for regeneration but that those 3,000 jobs will actually attract another 12,000 jobs from other creative industries, across the creative industries, would be a critical spur to this country doing well, not just in broadcasting but in film, television, video games, the whole gamut that is covered under the digital

revolution. I do not set apart the Manchester decision, apart from it was critical to it, and the discussions that we had with the BBC over Salford, in the end, we could not direct the BBC, in relation to the licence fee, to go to Manchester and to go to Salford, but it was very important that the BBC understood why we attached such huge significance to it, which then became, of course, the issue in a wider context of value for money. The BBC had a different understanding of the expectations Government would have, and the licence fee payer, we believe, should have, about value for money; they started out with a slightly different view on the amount of value for money which could be extracted from the BBC in the next ten years than we did. It was important to reconcile those views, and I say reconcile not with a nod and a wink which suggests that we had one view and they had another and our view would prevail, we had to negotiate, and we did negotiate. Also we had to look at other terms which related to the licence fee agreement. They were matters of some confidential negotiation, some were public, but what mattered was to end up with the right number, and I believe that is what the licence fee settlement number was.

Q172 Lord Inglewood: If we might go back to the first question of the Bishop of Manchester, when Michael Grade announced he was moving were you gob-smacked, or was it just another day in the life of the broadcasting Minister?

Mr Woodward: I am not quite sure what your impression of a day in the life of the broadcasting Minister is.

Q173 Lord Inglewood: I was one, once.

Mr Woodward: With respect, a bit like when I was a journalist in the 1980s. What I think amazes me is, not having been in television for 14 years, when I went back to this job, how much it has changed. I think it is absolutely right that we leave the broadcasters with editorial independence; you look at the row which is raging at the moment, for example, about the Princess of Wales and the television programme that is going out tonight. It is right that they control those things, it is right that we do not have a view on it; editorial judgments need to be made by those organisations. It is relevant, My Lord Chairman, because if you ask about a day in the life of a broadcaster, and Lord Inglewood refers to his time as the broadcasting Minister, with respect, it has changed.

Q174 Chairman: The real question was, were you gob-smacked or not?

Mr Woodward: There are a lot of things which could gob-smack you in this job. I think the trick is not to be gob-smacked but to manage a situation, and the

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situation we manage today is different from one of ten years ago.

Q175 Chairman: Let me tell you what the Minister, Bryan Davies, in the House of Lords, when asked this question, replied: he said “It’s a free country.” Are we to believe that Tessa Jowell, having lost one Chairman, and with some difficulty having found another one, now having been told that she has lost a second Chairman, actually just shrugged and said “Well, it’s a free country,” and that’s it?

Mr Woodward: With respect, I think that is a caricature of the situation again. Events happen, we know that in politics all too well. When John Major decided to resign as Leader of the Conservative Party and put himself up for election, I dare say you, My Lord Chairman, were gob-smacked on the day. The critical thing to do is manage a situation, and things happen; the question is whether or not you manage it. I think what happened when Michael resigned was an exemplary situation, because the BBC handled it very well. It was absolutely right that ministers were not pole-axed by the resignation of Michael Grade and I think it shows that the organisation is in extremely good shape. I think the fact that we have ended up with such an outstanding new appointment to succeed Michael Grade demonstrates yet again not only that the process works but that the BBC remains—

Q176 Chairman: There is not even a touch of disappointment in the fact that you have had to go through the process again; you have thought just that this is part of life, “That’s life,” you said to yourself?

Mr Woodward: My Lord Chairman, again, with respect to you, and you have been in politics for a great deal longer than I have been, you get seasoned to these things.

Q177 Baroness Bonham-Carter of Yarnbury: One of the things I noticed, after Michael Grade resigned, was the enormous numbers of people from the broadcasting industry who seemed to have been approached to take on his job who fell by the wayside, one by one, and did not seem to want to apply for the job, and, again, that did not exactly boost morale?

Mr Woodward: I dare say that, quite a lot of the reporting in the press, and it may be, Lady Bonham-Carter, you hold the fourth estate in a level of respect, in terms of them getting accuracy on every single issue, in a slightly different way from the way I do, I think they tend to come at it from a certain angle. I think many of the newspapers, for example, were rather keen to demonstrate an agenda which reflected perhaps that the organisation was in meltdown, as a result of that. That was just not our lived experience. What we saw was Acting Chairman Salz doing an

extremely good job. What we saw was, yes, of course, there was a shock to the BBC, but the question is did it withstand those shocks, at the end of the day, from the licence fee payers’ point of view, did the programmes suffer, did the news the next day look substantially different? If you think about the sectors you might be comparing this with, in some organisations, when they lose a figure like Michael Grade, actually it shows up the next day. That did not happen with the BBC, the programmes did not suffer, the commissioning of programmes did not stop, the quality of what is on the screen today is not affected by that shock, so I think we have to maintain a context here. Yes, it was a sensational event and it was an extraordinary win for ITV, but, as I say, I think we have to look at this, as a Minister, in the context of broadcasting generally as well as the BBC specifically. The BBC withstood the shock, the programmes were not affected, the commissioning was not changed and ITV gained a huge morale boost, which it needed desperately, when that announcement was made, and it had no material impact on the licence fee negotiation settlement. I think it is possible for us to over-vex ourselves into an imaginary situation in which crisis prevailed and we adduce evidence from some newspapers, which have their own agendas, that somehow this is demonstrable evidence of the crisis. There was no crisis.

Q178 Baroness Howe of Idlicote: You say that the licence fee payer did not suffer, in fact, the programmes were fantastic. Do you think the licence fee payer suffered as far as the actual amount at which the licence fee was set?

Mr Woodward: No, I do not think so at all. First of all, let us get the perspective here. We have a public broadcasting model which the licence fee payer provides £3 billion a year to fund. We have a duty to ensure that the licence fee payer gets value for money and, at the same time, we have a duty to ensure that our public service broadcasting, with the remits that we give it, can make the programmes it wants to make, and that we do so within an environment which ensures that the competition is not disproportionately affected by having the dominance of that. I believe that the figure we arrived at, which is why it took so long, was the right figure for the next ten years for the BBC.

Q179 Baroness Howe of Idlicote: Just to push you a bit on this, if, in fact, the licence fee had been fixed at that moment, because there again there is some doubt around this, and then Michael Grade went, and as a result of that, if it had not been fixed, a lesser fee was negotiated, shall we say, that would have benefited the licence fee payer, would it not?

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Mr Woodward: The licence fee payer has to be served by value for money, and there is no question that is what the licence fee payer wanted.

Q180 Baroness Howe of Idlicote: I meant, financially?

Mr Woodward: That also includes financially; a profligate BBC, which, for example, can do things which mean that inappropriately it stifles competition, does not serve the broadcasting industry or the member of the public who is also a licence fee payer. I think it is a caricature of the situation to imagine that the timing of Michael Grade's departure, in any shape or form, could have continued to influence, in any way, positively, adversely, the outcome.

Q181 Baroness Howe of Idlicote: Are you saying it was fixed at the moment he went, and it stayed like that?

Mr Woodward: The BBC's arguments which were relevant to us making a decision on what the settlement should be, had been made, and had been made effectively, and his departure made no material difference to the arguments put forward by the BBC at that stage.

Q182 Chairman: The frank answer is, the amount had not actually been decided at that time?

Mr Woodward: As is perfectly obvious, and there is nothing to be discovered in that. It is a matter of public record that the final decision had not been made.

Chairman: Let us move on, to the process of appointment.

Q183 Lord King of Bridgwater: As you know, we made a recommendation about the process of appointment that there be a majority of non-political members on the panel and that the panel should be chaired by a non-political member who was not a civil servant. Why do you think we made that recommendation?

Mr Woodward: Without wishing to second-guess the psychology of members of the Committee, I cannot say.

Q184 Lord King of Bridgwater: You can say, because we put the reasons in our Report?

Mr Woodward: Absolutely. Also, if you recall, the Government responded to it at the time by, on the one hand, recognising the integrity of the appointments process to be absolutely critical, but also we recognised that we believed the process we had, founded on Nolan Principles, actually was one which would serve the BBC efficiently and effectively. It was our view that—of course, Lord King, you are perfectly entitled to disagree—the judgments we

made were the right ones, and if we have a disagreement on those judgments I respect that, but I believe the process we have just gone through actually has served the BBC and the licence fee payer extremely well.

Q185 Lord King of Bridgwater: If, you have said, you have a panel of independent members that you thought was far enough for it to be chaired by a civil servant, which of course was Mr Ramsay, and that was your position?

Mr Woodward: It was our position.

Q186 Lord King of Bridgwater: Can I just take you through that; can you remember the background of Sir Quentin Thomas, who is down here as the President of the British Board of Film Classification?

Mr Woodward: Yes.

Mr Ramsay: A former civil servant.

Q187 Lord King of Bridgwater: A very distinguished civil servant. Can I ask you about the background of the Chair of the Natural History Museum, Oliver Stocken, who was another member of the committee?

Mr Ramsay: He was Finance Director of Barclays Bank in the nineties, I think, and he is a leading figure on various non-executive boards.

Q188 Lord King of Bridgwater: You are clear about that?

Mr Ramsay: Yes; absolutely.

Q189 Lord King of Bridgwater: The information I have is different?

Mr Ramsay: He was the Finance Director of Barclays, and the reason I asked him, as I was explaining earlier, was that he had a different set of talents.

Q190 Lord King of Bridgwater: Then can I ask you about Sheila Drew Smith?

Mr Ramsay: Sheila was appointed as the independent assessor.

Q191 Lord King of Bridgwater: Who is a civil servant?

Mr Ramsay: She is not a civil servant; she is not currently a civil servant and has not been for a time.

Q192 Lord King of Bridgwater: She has the office of Commissioner of Public Appointments?

Mr Ramsay: She was asked by that organisation to act.

Q193 Lord King of Bridgwater: What is her background?

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Mr Ramsay: She is an economist by background. The rules under which we operate the public appointments system are set by the Commissioner for Public Appointments, so the whole system which we operate operates to rules which are agreed with the Commissioner, and this process was in line with that. On each occasion that we have an appointment of this kind someone who is trained as an independent assessor sits on the panel to ensure that the rules which the Commissioner lays down are stuck to, that the process is fair throughout and Sheila's role in this context was to do that.

Q194 Lord King of Bridgwater: As you know, the appointment of Sir Michael Lyons, whom I do not know personally, I have no criticism of him at all, it has been said, in criticism, that he had close links with the Labour Party, and with Gordon Brown in particular, and was selected for this role, and that he is a former Labour councillor and carried out two major reviews for the Government for which he was paid half a million pounds. I do not know whether that is true or not. You will recall the concern of the Committee and the reason why we said that it was desirable to avoid the chairmanship being run by a civil servant. You have your duty to ministers, ministers are politicians and, as a former member of the Nolan Committee, why we set up the Nolan Committee Rules was that there should be transparency, one of the key issues of Nolan, and it should be absolutely apparent that independence is being observed and that political prejudice should be avoided. You have your duty to ministers and yet you chaired this selection committee. I accept absolutely that you did this in a completely honourable and responsible way, but it is perception which matters and that is another very important point which Nolan brought up. Would you like to comment on all of that?

Mr Ramsay: My duty, in this context, to ministers is to provide a process which is absolutely full of integrity, and nothing else, and the role of Sheila Drew Smith is to make sure that happens.

Q195 Lord King of Bridgwater: May I say this; in your case, I accept absolutely what you say. There could be, of course, just conceivably, another official in your position, anxious about the concern as to who was to be promoted to be the next Permanent Secretary in the Department shortly, a name that was of interest to a future Prime Minister. It is precisely because of those sorts of issues that the Nolan Committee, and I hope Parliament, has been concerned to try to protect the independence of these sorts of appointments, so that they can be seen to be whiter than white. It was not a frivolous comment, or some sort of hatred of civil servants, or to say do not have a civil servant as chairman, it is precisely to

observe their appointment. Can I make the point to you that it has exposed you personally to those sorts of criticisms, precisely for the reason that no-one identified, and that this committee identified, and that the Government, and really I do not want to address this to you, really I want to address this to the Minister, the Minister just ignored, and the Government has ignored, and allowed these criticisms to arise to which there is no adequate answer?

Mr Woodward: I find it quite interesting to reflect on previous appointments. When Michael Grade reminded this Committee that, historically, when he was Executive of the BBC, in the eighties, it was all done with a nod and a wink and a telephone call, there was no Nolan process. I think the Nolan process was an extremely important improvement on that. I think also we have to be careful sometimes of overbureaucratising the situation, and again caricaturing what happened, in terms of, as you said, Lord King, perception. There is perception by some that this was not an adequate process, but I think that perception rightly should be challenged and I will now defend robustly the position in which I think we found ourselves. It was of concern to the Secretary of State, at the time, that there could be a perception problem; that is what led officials to write to the Commissioner to seek views on the need for a scrutiny panel. It was the decision of the Commissioner, for example, that there would not be a scrutiny panel, because when they looked back on the appointment of Michael Grade there were very special circumstances which related, post-Hutton, to the appointment of the Chairman of the BBC. It was felt right to have an extra level of scrutiny, of three Privy Counsellors, at that time. I have to say, I have the highest respect for the Commissioner, and even though the Secretary of State was minded, precisely, Lord King, for the reasons you adduce, that there could be a problem of perception, it was the decision of the Commissioner that actually there should not be an additional level of scrutiny, because it was not necessary. In this particular case, I do not question the decision of the referee. I think the referee's integrity here, and I know you are not remotely suggesting otherwise, is actually one which also is at stake when we talk about perception. I believe this system works and I believe I have seen no evidence whatsoever, both in published and private documents to ministers, which suggests anything other than that the highest standards have been maintained.

Q196 Lord King of Bridgwater: I accept your statement entirely. It is the statement that any minister in your position would make. I have to say that, if you look at the general public view on this, and that is what you have got to protect the integrity

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of Government and Parliament from, it fails to be achieved. So far from not respecting our recommendation about a chairman of this panel not being a civil servant, actually the majority of the panel was civil servants as well. If I may say so, and I rest my case now, I think that was a grievous mistake and I think it was a great pity that it was not seen to be a much more independent panel.

Mr Woodward: With respect, I think it is terribly important, since this is a matter of record, I have just had the opportunity of reminding myself of the background of the selection panel and I do think, again, it is a little bit to caricature the position of this having been a group only of people who were civil servants. Oliver Stocken, as well as being Finance Director of Barclays from 1993-1999, held several non-executive directorships, including Great Universal Stores, Nova plc, Pilkingtons, Rank, Deputy Chairman of 3i. I think, therefore, there are people who move into public life with considerable— -

Q197 Lord King of Bridgwater: Which one?

Mr Woodward: He is one of the four. Sheila Drew Smith is an experienced OCPA independent assessor; her background is as an economist. She has worked in both the public and the private sectors. She was appointed Commissioner of the Audit Commission in May 2004. She has experience of Housing Corporations; she has worked on the South East Regional Housing Board. These are people of enormous experience.

Lord Maxton: Was the process of selection influenced in any way by the fact that there was not a Chairman in place to be replaced, if you like, there was a gap there and therefore the process was slightly faster perhaps, slightly less rigorous, than it might have been? Secondly, following on, and taking the opposite point of view, frankly, Lord King came very close to suggesting that anybody with political experience, with a political background, should not hold public appointments.

Lord King of Bridgwater: No.

Q198 Lord Maxton: I think that is a very dangerous area to go into?

Mr Woodward: If I may, I am going to make two specific comments and then ask Andrew, because he oversaw the process. I do not believe that the outcome of the process was changed materially by the circumstances which brought it about. In other words, Michael Grade's departure may have meant that at the same time as we were dealing with the licence fee negotiations we had to find ourselves searching for a new Chairman of the Trust, but I do not believe, in any shape or form, that process was compromised or that the quality of the candidate was affected, in any way. Indeed, if one looks back

historically, I think that would have been much more likely to be the case following the departure of the then Chairman and Director General of the BBC post-Hutton than it would have been at this instance, because ITV had gained a new, extremely good Executive Chairman. I do not believe that process was affected at all.

Mr Ramsay: The process was not affected in any way by the circumstances. We did absolutely what we should have done and we would have done it whether there had been a Chairman in post or not. In terms of political background, that is no bar to public appointments and I think one or two people here would be able to give evidence of that.

Q199 Lord Corbett of Castle Vale: For the record, can I make clear that I know and have worked with Michael Lyons, when I was a Birmingham MP and he was the Chief Executive of Birmingham City Council; let us get that out of the way. Minister, you had a brief exchange with My Lord Chairman earlier about opening up this process more and you said that if you were to go down that road possibly it could take longer. Can you say how long this whole process of the BBC Charter Review took from start to finish?

Mr Ramsay: The whole process was about three years. We started planning it I think about three years before.

Q200 Lord Corbett of Castle Vale: If we had a parliamentary bill we could get that through in six or nine months, including consultation, ahead of the actual bill; it must be possible, must it not?

Mr Ramsay: It would be possible to get through a bill. The thing which took time was not drafting the Charter, it was the consultation and discussions which preceded it.

Q201 Lord Corbett of Castle Vale: I understand that, My Lord Chairman, but we do have prelegislative scrutiny here. I just want to get that cleared up. The point I wanted to make, and I think you have now accepted, was that it need not necessarily extend the period if there was more parliamentary input into it, the Charter process would be done differently; is that fair?

Mr Ramsay: There was a fair degree of parliamentary input, I recall, from this Committee and the Committee in the House of Commons.

Q202 Lord Corbett of Castle Vale: Let me put this more specifically. You will know that for a long, long time there has been a feeling at both ends of the corridor here that it is time now that the Charter process was done away with, and this should be done through an Act of Parliament; you are aware of that. The only point I am putting to you is that would be, of course, a different way of doing it but it need not

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necessarily take longer than the process through which we have just been?

Mr Ramsay: I do not think it would take longer, necessarily.

Q203 Lord Corbett of Castle Vale: If we can go just to this appointment, and really it is following up some of the concerns which Lord King was airing, how do you react, Minister, to someone who has been nominated to Chair the BBC Trust then coming before a parliamentary committee not to be vetoed but to appear there and to answer any questions which the committee may have? If you do not like the idea, what are the objections?

Mr Woodward: Again, I think one of the benefits that we all have in Parliament is occasionally sitting back and listening to people who know more about the subject than we do and then reaching a view. I have to say again, I was rather struck by Michael Grade's observations to this Committee, when he came before it, on this issue. I had not considered before, although, of course, like all politicians, I had a view, what the impact might be on the kinds of candidates that might apply if they felt they had to come before a committee and answer those kinds of questions. Therefore, I think it is relevant that, whether we like it or not, and that, of course, is a separate issue, if the calibre of a Michael Grade says that it may be something which would affect adversely those who might apply, without dismissing his comments, I think we should weigh them in the balance. Therefore, without reaching a premature conclusion, I take note of that very seriously.

Q204 Lord Corbett of Castle Vale: If the upshot was that there would be more openness in a significant public appointment of that type then if it does deter candidates maybe that is a price worth paying?

Mr Woodward: We have to discuss what the point of the principle is here. If the point of the principle here is that the thing which matters more than anything is not having the best candidate to run the BBC but that actually we can show we have had such an exhaustive, open and transparent process, not as a substitute for another open and transparent process but one which takes openness and transparency to a point whereby it prevents certain candidates from applying, we have to ask whether or not we are best serving the BBC, as an example, by going down such a route. There may be a case for it, but we should be careful that we do not end up with a very poor range of candidates from whom to choose.

Q205 Lord Corbett of Castle Vale: It may be that people who reacted in that way were not ideal candidates to lead a public and publicly-funded Corporation?

Mr Woodward: That could be the case, but then I would be cautious about reaching that view, because why did ITV seek him out so ruthlessly?

Lord Corbett of Castle Vale: That is another story.

Q206 Chairman: I suppose there is a difference between the commercial sector and public service?

Mr Woodward: Yes, but I would not suggest that Michael Grade is anything other than one of the best and finest broadcasters and that he is as capable of serving the private sector as he is of being an outstanding person in the public sector.

Q207 Baroness Scott of Needham Market: I have a question for Mr Ramsay. I am well aware of the work which is carried out by the Commissioner for Public Appointments. Sheila Drew Smith is a serving member of the Audit Commission, as, of course, is Sir Michael Lyons, and, for the record, so was I. Michael Lyons was Vice Chair and Acting Chair. Were you aware of the professional link between one of the candidates and the independent assessor at the time of the interviews? If you were not, do you think you should have been, and if you were aware that there was a link would you not agree that it might give potential detractors an opportunity to say it was evidence of sort of an unhealthy cosiness in the appointments process?

Mr Ramsay: The simple answer is, yes, certainly I knew. When you get to the short-listing process you receive a lot of names, they could be anybody, at that point, and you have selected a panel, and they are another set of people and they may know people, and indeed I knew people, Sheila knew people, other members of the panel knew people, and we all declared that. Right from the very start, everybody knew whom everybody else knew and what their relationship was, and that was perfectly open amongst the panel and we all knew about it. In a sense, it could happen to anybody; it depends on who applies. As to whether you know them or you do not know them, that is a factor in the system and it would be in any system you had. We all declared it and that was perfectly known amongst us, so I think that was handled correctly.

Q208 Chairman: I think you said earlier, Mr Ramsay, that the Secretary of State "took a view" about the short list. Was the short list changed as a result of the Secretary of State's view?

Mr Ramsay: I am not sure whether I am entitled to comment on that. I can tell you, in principle, that they are entitled to change a short list; that is, if they have good reasons for doing so, they might suggest additional people to be on it. That is perfectly open to them. I should say, just for completeness at the other end of the process, the panel makes a recommendation and identifies a number of people

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probably, preferably more than one, who are appointable, and the Minister can decide from amongst those who are appointable. Clearly, if someone were more appointable than the others they need to have reasons and have to provide reasons as to why they might choose one rather than another, but there is a degree of flexibility either if they have the reasons for others to be interviewed, or indeed to make a different selection at the end of the process.

Q209 Chairman: It means also, does it, that the Secretary of State can cut out a person who might otherwise be on the short list?

Mr Ramsay: I think that almost never happens and I think there would have to be some very, very good reason indeed for doing that.

Q210 Chairman: It did not happen in this case?

Mr Ramsay: I can say it did not happen in this case.
Mr Woodward: With respect, My Lord Chairman, I think it is worth reminding the Committee of the precise terms of the Code in relation to the short list, which is that all those involved must be familiar with the Code principles, we were, and be confident that the short list has been compiled on the basis of merit, it was. No candidate can be short-listed unless they have been assessed satisfactorily, they were not, all were properly assessed against the publicised criteria; we met the criteria on every front. All decisions, including those to reject, must be fully documented; they were. We followed the principles to the letter and I have every confidence that, under the excellent chairmanship of Andrew on the committee, with both the point that was made by Baroness Scott and the concerns of this Committee about openness, transparency and whether or not these principles have been followed to the letter, they have been, and they were. Yes, ministers of course are entitled to have a view; that is what the Code lays down.

Q211 Chairman: What does that mean, have a view?

Mr Woodward: Exactly what the Code lays out, which is, as you know, your own book said, it is for ministers to decide. At the end of the day, the question is, are the principles here, which move on from the days of the 1980s when chairmen were appointed on a nod and a wink and a 'phone call, do we have a process now which stands up to robust scrutiny, the answer is yes, and we followed that.

Q212 Chairman: At the end of the day, would you check with Number 10 that this was appropriate for them?

Mr Woodward: The recommendation goes forward to the Prime Minister and then it goes forward to the Queen. We follow the principles, as you would expect, to the letter.

Mr Ramsay: I should just add that, clearly, the independent assessor is there to ensure that the process is carried out correctly at all points, and did.

Q213 Baroness Eccles of Moulton: You read out the list of criteria which had all been satisfactorily fulfilled and documented. Is that documentation in the public domain?

Mr Woodward: The documentation which relates to confidentiality obviously has to be respected, but where we are able to place information which does not breach confidentiality in the public domain it is our belief that we will do so, but it has to respect confidentiality. I think you have to recognise that some people, quite understandably and rightly, would not want details, for example, about why the committee felt that they were not actually the right candidate, to be made public. I think, if we were to reach that situation, probably we would find it impossible to find any candidates for any major job; so I think striking a balance is absolutely right. As I say, I think one of the issues that I know lies behind this, and I understand the difficulties of the Committee, because you cannot read the documents that I have got, in relation to this problem, but, hand on heart, I have to say to this Committee, where there may be examples in other areas of public life where one genuinely could say "Have we got this quite right?" I have to say, in this particular instance, I think it was exemplary. I think any suggestion, for example, that Michael Lyons' appointment might have any reference to his political affiliations historically in the UK, and I know you were not implying this but you were asking of it for reassurance, would be wholly misleading. I believe that this is an exemplary appointment of somebody who very clearly has put whatever political interests he may or may not have had historically entirely to one side in order now to serve the BBC.

Baroness Eccles of Moulton: Minister, I did not get an answer to my question. I was not aware there was anything in the list that you read out which would actually fall within the description of 'confidential'?

Q214 Lord Corbett of Castle Vale: It is the criteria?

Mr Woodward: Those are the criteria; but, in terms of publishing information about individuals as to why they have made the short list— -

Q215 Baroness Eccles of Moulton: Yes, absolutely; but is the documentation relating to the criteria in the public domain where it does not breach confidentiality?

Mr Ramsay: If the Appointment Commissioner's material, which that has been drawn from, is available, absolutely.

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Baroness Eccles of Moulton: Thank you.

Q216 Lord King of Bridgwater: I thought I heard you say that neither the Secretary of State nor the Prime Minister either added to or subtracted from the short list?

Mr Ramsay: I did not give an answer to that.

Q217 Lord King of Bridgwater: You did not give an answer?

Mr Ramsay: No.

Q218 Lord King of Bridgwater: To clarify a point, there is absolutely nothing wrong with them doing that, provided they make it public?

Mr Ramsay: That was what I was explaining.

Q219 Lord King of Bridgwater: I assume, as it was not made public, we can be clear that they did not add to or subtract from the short list?

Mr Ramsay: I do not think they are required to make it public. Can I check on that and let you know? I do not think it is required.

Q220 Lord King of Bridgwater: You do not wish to answer the question as to whether they did or did not?

Mr Ramsay: Can I just check that.

Mr Woodward: With respect, Lord King, it is not a question of whether or not my senior civil servant wishes to answer the question, it is whether or not it is appropriate, because, in doing so and by making a commitment that he might answer the question or might not answer the question, effectively you may be able, or those members of the public here, or members of the press who are here, to adduce information about the candidate and the short list. We are very happy to correspond with the Committee.

Q221 Lord King of Bridgwater: I am sorry; we are getting in a muddle. I thought that the panel produced a short list. The question I thought My Lord Chairman asked was that the Secretary of State had the power, I think Mr Ramsay made that clear, if he wants to add somebody to the short list?

Mr Woodward: That is correct.

Q222 Lord King of Bridgwater: I see nothing wrong with the Secretary of State adding somebody to the short list; they have got to take the responsibility for doing it and be prepared to do it publicly. I was not quite clear from your answer whether you said that she did or did not?

Mr Ramsay: No, that was the thing I did not answer, and I would like to take advice.

Mr Woodward: Quite rightly so, too. I think that we need to take advice.

Mr Ramsay: I must take advice, because that was a detailed part of the process and I am not sure whether I am entitled to say.

Q223 Chairman: I am not quite sure what the problem is?

Mr Woodward: I can help you, My Lord Chairman. I remember, at the time, one particular newspaper speculating about the suitability of particular candidates and whether or not they should or should not be on the short list, and I do not wish to fuel information which at the time was, by and large, inaccurate but very clearly had a political reason for being placed there. We are very happy to correspond with this Committee and provide you with all of the answers you want, but I do believe it is possible for people to take out of this line of questioning that somehow we are wishing to conceal something; we are not, we are just wishing to maintain that we follow the principles of public appointments to the letter and do not breach them.

Q224 Chairman: What I do not quite understand is do you actually know the answer to the question?

Mr Woodward: Yes, I do.

Mr Ramsay: Yes, absolutely.

Q225 Chairman: You both know the answer, so it is not that you need to check the files?

Mr Woodward: Not at all.

Mr Ramsay: No, not at all; absolutely I know the answer.

Mr Woodward: I know the precise answer to your question.

Q226 Chairman: The only issue is whether you should actually tell this Committee and tell the public?

Mr Woodward: No, My Lord Chairman; again, I would suggest to you that question is in danger of caricaturing the process. I just wish to ensure that I maintain the integrity of the process of public appointments and if, in giving you an answer now, I allow you to imply from that, or infer from that, that actually candidates were or were not added, that I want to make sure with the assessor that is appropriate for me to give you, and I would ask you to respect my position. It is not about covering my back, it is not about covering my civil servant's back, it is about preserving the integrity of the process, which I believe is important.

Q227 Lord King of Bridgwater: Can I say, Mr Woodward, that actually you have given the impression, I thought, I may be unkind, that the panel was totally responsible, and I thought this was Mr Ramsay's evidence as well, and that out of this panel process came the decision and the

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recommendation for the appointment of the Chairman. The failure now to answer this question, I may be completely misunderstanding the position, gives me the understanding that the panel process was not the whole matter, it was not in total charge, and that other influences came to bear?

Mr Woodward: With respect, Lord King, it is not a failure to answer the question, it is about ensuring whether or not it is appropriate for me to answer the question, and to confuse failure and appropriateness—

Q228 Chairman: One way or another, you are not answering the question?

Mr Ramsay: Can I be absolutely clear and just repeat what I said. The panel makes a recommendation, it goes to the Minister, the Minister has the opportunity to decide whether, in terms of the short list, that is correct and they can add, possibly, suggest, an addition, if they have good reasons for doing that. All I have not said is whether that happened in this case. Can I go away, check whether I can tell you then tell you.

Q229 Chairman: Thank you; but you see the relevance of it, because the relevance of it might be, and I do not know if this is the case or not, that the suggestion, the proposal, it may be more than one, of a Secretary of State, say there was just one, happened to be the person who actually finished up as Chairman of the BBC? I think it is important that actually we understand that.

Mr Ramsay: I understand that; absolutely.

Chairman: I do not think we are going to get much further on this particular point, so I will move on to the role of the Chairman of the BBC, where I am sure you will both be absolutely open. Lady Eccles, were you going to continue on this?

Q230 Baroness Eccles of Moulton: No; number three is coming in before number nine. I slipped down the list. Good morning, Mr Woodward, we meet again under different circumstances.

Mr Woodward: Indeed.

Q231 Baroness Eccles of Moulton: The question is, how would you evaluate the way the BBC Trust has worked over the past five months? For the first three months it was without a Chairman and for the last two months, of course, it has had a Chairman. I do not know how relevant that is to the question but it is an evaluation of how the Trust, the new body, has worked, in your opinion?

Mr Woodward: To be frank, I think it is too early to reach a conclusion. I think one has to see this across a timeframe much longer than just a few months. Having said that, do I think the new arrangements withstood well the shock of the departure of Michael

Grade, yes, I do. Do I think that impacted adversely in any way on the decisions the BBC has to make, as a programme-maker and a broadcasting organisation, no, I do not. Do I think the separation between the two Boards is working effectively; yes, I do. Do I think the early indications, and they are indications and not conclusions, simply because it is only in the first few months, are that the new system is running well; yes, I do. Again, because I do rely very heavily on looking at what people who know a great deal about the industry say about it, I was quite impressed by Michael Grade's analysis of how inadequate the former governance arrangements were, where the Governors were making decisions on evidence provided from the Executive about the Executive, and I can see now a much clearer distinction between the way that the Trust can operate and the Management Board can operate. As somebody who was a programme-maker, I have to say, I think I would have been much happier with those kinds of arrangements in the 1980s, making the programmes I did, because very often there was huge confusion as to who did what, and my anecdotal evidence from people who are broadcasters is that it is much clearer now. In terms of the decisions the Trust are making and the work they are engaged in currently, I believe, from the earlier indications, that looks extremely good as well.

Q232 Lord Hastings of Scarisbrick: We were having some discussion at the last meeting, with Michael Grade, about the number of Chairmen there seem to be, both referred to in the Charter and the Chairman of the Executive Board could or could not be the Director General or the Chairman of the Trust, and so on. I just wonder whether you can clarify a little bit the differences between those two Chairs and answer the hard question, which is, which of those Chairs ultimately is responsible for the BBC?

Mr Woodward: I believe the Chairman of the Trust ultimately is responsible for the BBC. The Executive Board, the Management Board, is responsible for the day-to-day business of the BBC.

Q233 Lord Hastings of Scarisbrick: Which includes the editorial content?

Mr Woodward: Absolutely, which includes the editorial content.

Q234 Lord Hastings of Scarisbrick: The Chairman of the Trust then is not responsible for the programme output?

Mr Woodward: I think that all those things are a distinction and I would be surprised if your recollection was different from this but the old system did not have pure distinctions. There may be imperfections in the new system which brilliantly and forensically this Committee has discovered, or is in

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the process of making the discovery. I have to say that my understanding, talking to people in the organisation, with perhaps the exception of one or two disaffected individuals who have left the organisation prematurely in the last few years, is that the experience is, working on the ground, that it is working. The distinction which has been made, and I know this Committee has deliberated over some length about the question of the honorary title of Chairman, is pretty clear. The Executive Management Board make the day-to-day editorial decisions of the organisation and commissioning programmes; the role of the Trust is different, it has a role relating to the licence fee payer, which is clearer than the previous role. Ultimately, yes, the buck will stop with the Chairman of the BBC.

Q235 Lord Hastings of Scarisbrick: If the Executive Board make decisions about editorial matters, which is in their right purview to do, but those decisions are different from the opinions of the Trust or of the Chairman of the Trust, the Chairman of the Trust needs to defend the decisions of the Executive Board, as Chairman of the BBC?

Mr Woodward: The Chairman of the Board also needs to defend the position of the licence fee payer; and, again, that is an exemplary part of the new Charter agreement that has been laid out, much clearer than the previous situation in which the Chairman had to be cheerleader and critic.

Q236 Lord Hastings of Scarisbrick: Could you unpack that just a little bit more so that your reflection is really of the role of the rest of the Trust? Michael Grade implied that he was one amongst many but he was slightly more important than the one amongst many, but essentially he was just equal to the rest; so do the rest of the Trust represent the BBC or does the Chairman represent the BBC?

Mr Woodward: The rest of the Trust also represent the licence fee payers in Northern Ireland, Scotland, Wales, they represent other constituent parts of the United Kingdom and licence fee payers. They need to be people who are across television issues, but, again, in enabling the organisation to have a Trust body which, as it were, is able effectively to look both ways, I think we make a step forward. As I said to the Bishop of Manchester earlier this morning, this is not a perfect world; we think we may have achieved a better way of organising the BBC in the interests of the licence fee payer but, the fact of the matter is, the proof will be in the pudding.

Q237 Baroness McIntosh of Hudnall: Minister, I think that some of the reasons why we are puzzling about this issue appear from the discussions which we had with Michael Grade the last time the Committee met, which I know that you have seen, but they

revolve really around what interests are being represented, by whom and to whom. It is pretty clear, from the way that the Trust has been set up, that its primary responsibility is to represent the interests of the licence fee payer, as you have said. It is not clear, at least to me, whether it is the assumption of those who imagined this structure that, in some way, the interests of the BBC and the interests of the licence fee payer are co-terminus or whether there could be interests which the BBC itself has which might need to be represented separately; and, if that is the case, could you say whose responsibility it is to represent those interests?

Mr Woodward: With respect to your question, it is possible to hypothesise into a situation of total abstraction, what would be a practical example? It would be helpful for me to answer, I think.

Q238 Baroness McIntosh of Hudnall: I will give you a practical example. In the recent, what should one say, disagreement between the BBC and the Government over what became the Hutton inquiry, there were interests being represented; in the event, the Chairman and the Chief Executive, the Director General, of the BBC both resigned as a result of that inquiry's findings. I know politicians dislike hypothetical questions, and you have just made that clear, but perhaps if you were to examine the events which gave rise to the Hutton inquiry would you be able to say what you think the outcome of that inquiry's findings would have been if the structure had been as it is now?

Mr Woodward: Politicians, in my experience, with respect, actually like hypothetical questions; they are delighted to filibuster for hours because then they can pontificate about their own examples. The value of actually going to a specific example, and the one that you draw on is useful, it is precisely because of the confusion of responsibilities, the confusion of lines of responsibility, the fact that nobody could really distinguish within the organisation between the views of the Director General and the Chairman of the BBC at the time of Hutton that this whole reason to reorganise the Trust and the Management Board came about. I believe it is now much clearer as to who should have responsibility, and in such a situation happening now I think we would be much clearer about from whom to expect decisions to be made.

Q239 Baroness McIntosh of Hudnall: Who makes decisions, fine; really I am interested in knowing who you think would have resigned?

Mr Woodward: It depends who would have made a mistake and whether or not the individual in that particular position, with those particular responsibilities—

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Q240 Baroness McIntosh of Hudnall: Leaving all the mistakes exactly as they were but changing the individuals and the structure, who would have resigned?

Mr Woodward: I do not think people should just resign, just as a way of getting through the day; you resign because you take responsibility for something. If you have clear lines of responsibility then it is possible to say who should resign. If it is a matter of editorial judgment then, very, very clearly, that is a different individual from somebody who may be taking responsibility for the overall performance of the BBC or the failure of performance within the BBC. It was the lack of clarity between those two positions which created part of the crisis following Hutton.

Q241 Baroness McIntosh of Hudnall: I understand that is your view, but if I put a slightly different question to you perhaps what I am trying to get at might become clear. In effect, who line-manages the Director General of the BBC, to whom is he responsible?

Mr Woodward: Ultimately, the Director General of the BBC is responsible to the Chairman of the Trust. As Michael Grade said, where does the buck stop? It stops there.

Q242 Baroness McIntosh of Hudnall: Therefore, to put it bluntly, the Chairman of the Trust is his employer?

Mr Woodward: As Michael Grade made perfectly clear, he had been involved in the discussions, that is where the buck stops; maybe Andrew can help, because, again, I was not involved in these negotiations. It may be helpful, My Lord Chairman, for the benefit of the Committee, also to have the reflection of somebody who has actually been through the three-year process, as well as a Minister who has been there for only 13 months.

Mr Ramsay: I was just going to draw attention to the Charter, actually, which I think is written in clearer language now and it is very clear about what the general duties of the Trust are and what their specific functions are, and I think that sets it out quite well. I would just add, in the Hutton example, I hope we have created a structure which would prevent what happened happening, because it separates the action within the Executive which caused the initial problem from the consideration of a Trust of the consequences of that action through the complaints processes, etc., etc. I think the system actually would assist in preventing the problem which occurred then as we have it now.

Q243 Lord Hastings of Scarisbrick: With respect, Mr Ramsay, a three-year process over which there was much hammering, as I am very well aware, has

not left us with really great clarity on this issue at all, and the members of this Committee are struggling to understand the differences between the operations of the Trust and the Chairman of the Management Board and the Management Board. Can you also clarify, between yourself and the Minister, one further point, which is that there are three non-executive directors who are members of the Executive Board, and the Executive Board, as the Minister stated, has final editorial responsibility, and the Trust Board represents the BBC to the public, because it represents the views to the licence fee payers. Do the three non-executive directors take editorial responsibility in line with the Executive directors, and therefore they have ownership and control of programme-making?

Mr Ramsay: The purpose of the non-execs, and I think there are five but I may be wrong there, is to act as critical friends for the Executives. The reason we placed them there, in the new set-up, was that under the old arrangements the Chairman of the Governors and the Director General related very closely, there was someone at non-exec level for the Director General to turn to in cases of difficulty. By separating out the Trust oversight role and the Executive operational role, we took the possibility of that close relationship out of the system. Therefore we thought that for the Executive operation we should provide non-execs who would give a critical friend role, not a shareholder role, or anything like that, not linked to the licence fee payer like the Trust, who would support that Executive Board in whatever it did. They are part of that group now and have the responsibilities of that group, having been appointed to that group.

Q244 Lord Hastings of Scarisbrick: So equally accountable for editorial decisions?

Mr Ramsay: No; the overall operation, they are part of the same organisation, I think you were saying, the BBC.

Q245 Lord Maxton: I have to say, the buck stops with the Chairman of the Trust, but the total editorial control is in the hands of the Management Board, and they have total editorial control, and the BBC, after all, is a producer of programmes, very largely; so how does the buck then move on to the Chairman of the Trust, if some programme is produced which very largely is shown to be incorrect? An example: that recent *Panorama* programme, a scare-mongering, unscientific programme on Wi-Fi and lap-tops; is the Chairman ultimately responsible for that, the Trust?

Mr Woodward: The Chairman of the Executive Management Board is responsible for programme content. As to whether or not the Chairman of the BBC decides to support that, or not support it, it is

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probably true he is not going to veto it, that is a matter for the relationship between the two people, but ultimately the responsibility for those running the Management Board has to be with the Chairman of the Trust.

Q246 Lord Maxton: He is a regulator and not a broadcaster?

Mr Woodward: The Chairman of the Trust is not a programme-maker.

Q247 Lord Maxton: No, but where the buck stops he must be responsible for the programmes which are produced?

Mr Woodward: I regret the Committee finds it so difficult to understand the context within which we are making these observations. I do believe it is set out quite clearly in the Charter and Agreement which we have got here, but, at the end of the day, I think the responsibility is clear, but also it is perfectly clear that this Committee has decided that it is not clear.

Q248 Chairman: No; that is unfair. I think you are getting too defensive. What we are trying to do is actually cast some light on this and understand it, and, if you do not mind me saying so, this is also vaguely insulting as well, because this Committee has spent a lot of time, in this incarnation and the previous one, trying to understand what is happening with the BBC and I do not think it does any good to anyone if ministers come and say, "Well, actually, you don't understand it; you're actually completely stupid on this." I think that is an offensive way of putting it.

Mr Woodward: With respect, My Lord Chairman, I did not say that.

Chairman: Okay; well, let us move on. Let us go to Lady Thornton.

Q249 Baroness Thornton: I do not think this is nit-picking but it is sort of following on from the discussion we have had and it is about the terms which actually are used in the Charter, which is that the Chairman is an honorary title, because in lots of courts of law 'honorary title' means something quite different from what you have been describing, which is that the buck stops there, that he or she, in this case he, is responsible for the BBC and responsible to represent the BBC to the Government, etc. That does not square with what the wording is and I just wondered who got those wrong, those words are wrong, or what does it mean, what was the intention that expresses?

Mr Woodward: I am not sure whether the arcane legalese that we have within our constitutional system which gives rise to the expression 'honorary chairman' is actually open or not. I have to say, I find it quite bewildering. That being said, it does seem to

me that, again, when you put the same question to Michael Grade, whilst, on the one hand, he also acknowledged the arcane legalese which lies behind these sorts of phrases, nonetheless, he was perfectly clear about what the role of the Chairman of the BBC actually is, which is, it is to provide leadership for the organisation. Andrew, you might be able to comment.

Mr Ramsay: It is a purely technical point. Michael Lyons is appointed as Chairman of the Trust; the Director General, although non-executive, is Chairman of the Executive Board. The BBC is a body corporate but the two bits of it never meet together. Because of that, a reference to the Chairman of the BBC overseeing the two bodies together is not appropriate, in the technical sense; therefore it is referred to as an Honorary Chairman of the BBC. It is a purely technical point. It is because the two bits of the BBC, in order to maintain the separation, do not meet to take decisions together.

Q250 Baroness McIntosh of Hudnall: Just on that point, obviously I did not make myself very clear, but this is precisely the area of anxiety in relation to where the buck stops. If these two bodies never meet together, and therefore the decisions which one takes are not impacted upon nor influenced by anything which the other does, then how is the person chairing one to be responsible for the decisions of the other?

Mr Ramsay: Essentially what the Trust does, if I can set it at its broadest, is set the framework within which the BBC Executive operates and in doing that its primary role is representing the interests of the licence fee payers. It has a number of specific functions, which are set out, to do with strategy, to do with service licences, and so forth; so the Executive presents things, the Trust decides and gives its decision to the Trust which then operates within that framework. The reason why it is necessary to have, even with this division, which is to try and make the oversight and the operation separate, a final arbiter in case of trouble, dispute, is that in any organisation you must have that. The BBC remains one BBC, there are not two BBCs, it is not as if there is an external regulator and the BBC; it is two parts of a single organisation. At the end of the day, if something goes wrong someone has to take the final decision and that is the Trust; but the primary role of the Trust is set out, is to provide the framework and that is how the daily business is done.

Q251 Baroness Bonham-Carter of Yarnbury: Does the Director General either sit on or is he not present at the Trust Board's meetings?

Mr Ramsay: He may be present to present things but he is not part of the decision-making apparatus at all; he would be there only to present things.

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Q252 Baroness Bonham-Carter of Yarnbury: He is not always present?

Mr Ramsay: No; absolutely not. He is not a member of it; absolutely not.

Q253 Baroness Bonham-Carter of Yarnbury: What is clear is that the Trust and the Board of Governors are different bodies. Do you find that there are different kinds of people, types of people, applying for chairmanship of the Trust than had applied for chairmanship of the Board of Governors?

Mr Ramsay: It is very hard to make a generalisation. I think some very similar people applied.

Mr Woodward: They were similar people. There are some familiar names which people who might have gone through this process before would have recognised.

Q254 Baroness Bonham-Carter of Yarnbury: Did you not want a different type of person?

Mr Ramsay: We set out what we wanted in the role spec and then people applied, and you see what arrives and whom you have to consider. Clearly, we had a different role spec and it is quite likely that a different sort of person would fulfil that from the role spec for the Chairman of the Governors; but people make up their own minds as to whether they are capable of fulfilling a particular spec or not and apply accordingly, and we see what we get.

Q255 Baroness Bonham-Carter of Yarnbury: Coming back to what My Lord Chairman said earlier, which is that we have ended up with someone who does not have a great deal of experience in the broadcasting world and, if I could pick up on what the Minister said to me earlier, my information was not purely from reading the newspapers. As you know, I also have a background in broadcasting and there were a number of people who decided that they did not want to apply for the job, having previously suggested that they might, David Puttnam being an example. Do you think this is because the job, as described by Michael Grade, is fundamentally uninteresting to those people?

Mr Woodward: No. I do not think that is true. I think it is different. Whether or not it is uninteresting, again, there are people who did think about applying for the job who did not apply, there are people who did apply for the job last time round who applied for it again this time round. There is no question that the job is different from the job which Michael Grade was doing, and there are some for whom, I imagine, that may make it less interesting. There are others, who will find, because there is greater clarity about what the role is, there is security in that, who will prefer to do it; but undoubtedly the job has changed.

Q256 Baroness Bonham-Carter of Yarnbury: Why do you think so many eminent names in the broadcasting world thought about it and then decided this was not for them?

Mr Woodward: I think, when any job appears, a lot of people think about it, but it does not necessarily follow through that people decide to apply for it.

Q257 Baroness Bonham-Carter of Yarnbury: This does not concern you?

Mr Woodward: I think, in a sense, what it comes down to is, if you look at the short list which was drawn up, do we think that actually we have suffered, in any shape or form, a loss of calibre or a loss of quality of candidates, I think it would be quite wrong to conclude that.

Q258 Baroness Bonham-Carter of Yarnbury: It took quite a long time though?

Mr Woodward: I have to say, I think we have emerged with an outstanding individual to take the job of Chairman of the BBC for the next few years.

Q259 Baroness Bonham-Carter of Yarnbury: You are not able to tell us who else was on the short list, I imagine?

Mr Woodward: I think we recognise that people want confidentiality about these things; but insofar as any information can be made available publicly, or it is appropriate in confidence to disclose it to this Committee, certainly we will look at it and we will make sure that whatever can be made available has been made available to the Committee. We are not, in any way, trying to conceal anything from the Committee. I am just trying to ensure that the integrity of the appointments process is preserved, even if that means I get a bit of challenge myself this morning.

Mr Ramsay: There are two reasons why we do not reveal names. One is, people have an expectation, when they go into the process as it is at the moment, that, so far as we possibly can, their names will be kept out of the public presses; we do not always succeed but most of the time we do. Secondly, there are data protection issues these days, a legal basis for not disclosing, so it is both a fairness and a legal point. I am afraid, that was what was at the back of what I was talking about in not answering earlier on.

Q260 Baroness Bonham-Carter of Yarnbury: Was it a wrong impression that it seemed to take rather a long time to find someone to take up this appointment?

Mr Woodward: It was a wrong impression.

Q261 Lord Inglewood: In the recent discussion about the relationship between the Executive Board and the Trust, we have been looking at it in terms of the legal

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relationship between the two. If we look at it in a different way and say the BBC is a broadcaster, we find that all the hardware, all the business, the delivery business, is under the direct control of the Executive Board. Disregarding exactly where responsibility for what lies, and what responsibility might entail, the reality of that physical relationship is surely that over time the only way the relationship between the parties can be sustainable is that the Trust essentially is a regulator, because it has not got any day-to-day control over what the BBC actually is doing. Is that right?

Mr Woodward: Insofar as it shares its regulatory responsibilities with other organisations, like Ofcom, yes.

Q262 Lord Inglewood: It is inevitable that the relationship is going to be one, using the word in a general sense, of a kind of quasi-regulator with an operator?

Mr Woodward: As Andrew said, I think what you have to recognise is, in crude terms, it provides the context within which the BBC can operate.

Q263 Lord Inglewood: Yes, but also, if you look at the two parties, you have got to identify where the initiative is going to come from?

Mr Woodward: The initiative of the regulator will also come from, for example, organisations like Ofcom.

Q264 Lord Inglewood: I accept that, but in terms of the way this broadcaster operates, it is likely that the initiative is going to come out of the Executive Board to the Trust?

Mr Ramsay: I think actually it is a bit more complicated than that. I think you are absolutely right that the separation has been established, but if you look at what they actually have to do in the Trust, they represent licence fee payers' interests, that means finding out what the licence fee payer thinks and reflecting it back into the BBC. That is an initiative from their side. They have to secure that the independence of the BBC is maintained, so, on behalf of the whole organisation, they are looking outwards to Government and to others to ensure that independence is maintained. As a couple of examples, if you go down the list of things that they have to do it goes beyond what one would normally classify as a regulator yet there is a strong element of the regulation.

Q265 Lord Maxton: Let me put a direct example. Let us say that there was a decision taken that BBC Three should become BBC Sport rather than BBC Three; is that a decision for the Trust or for the Management Board?

Mr Woodward: Again, I think it is a little bit more complicated than that, because also it would have to look at whether or not the BBC was fulfilling its Public Service Agreements. At all levels you would see engagement in the decision-making process but, ultimately, setting the broad parameters of the BBC providing those Public Service Agreements, the Trust would have to set those parameters, but the day-to-day decisions about what the programmes would be, how much football, how much tennis, those would be the responsibilities of the Executive.

Q266 Baroness Thornton: I have a question really about whether there could be potentially a conflict between being guardians of the licence fee and the public interest and to do with this issue about being a regulator, and it is really, for example, a decision that was taken about BBC Jam, which I think was a wrong decision by the Trust. It was taken, I suspect, on the grounds of the role that is in here about their guardianship of the competitive impact of their activities; the Executive Board had recommended that investment in a new technology, which I think would have been a very good thing for the BBC and entirely appropriate. I happen to believe it was a wrong decision. To whom do they account for the fact that in five years' time the BBC may be in a very disadvantageous position because of that wrong decision and how are we going to deal with that?

Mr Woodward: The matter of BBC Jam is a matter for the BBC.

Q267 Baroness Thornton: Do you think they were serving the licence fee payers' interests there; whose interests were they serving there?

Mr Woodward: We have created a system which enables the BBC to make programme decisions and channel decisions for itself, so long as it fulfils the agreements that we have with them.

Q268 Baroness Thornton: How many times do you think the Trust can turn down the Executive Board on those sorts of decisions before we should start to be worried?

Mr Woodward: I do not believe we have any reason to question the overall basis of the structure on the decision on BBC Jam at the moment.

Chairman: Can we move on, lastly, to conditions of service.

Q269 Baroness Howe of Idlicote: We are back, to some extent, to this question about what are the responsibilities at this level of appointment, Privy Council level, where the decision goes to the Prime Minister and then to the Queen. Is there any justification, do you think, in view of what has happened in the past, of this sort of level appointment having a rather more formal contract of employment,

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the same kind of contract that you might have in the private sector, where you would not really want the sort of rapid departure in the middle of negotiations from one job to a competitor? Would you like to comment on that?

Mr Woodward: I think there are genuine questions to be asked around this issue, and are we able to improve on it in the future should undoubtedly be something that sits in the minds of all of us, whether we are defending the current position and the status quo or we are truly, as you are, genuinely open to looking at whether we can improve it. I think one of the issues, again, looking back at the evidence that you have been taking in this Committee from those who have come before this Committee, which I find weighing strongly on my mind, in anticipation of the question, is enforceability. Again, look at the practical circumstances. For example, even if the BBC had different terms and conditions of contract with Michael Grade, once he had decided to leave the BBC, if he had been bound by a contract which had made him still come into work every day, would we really have had a better position? We might produce something which looks better on paper but, in practice, I believe Michael did the right thing, in terms of, having made the decision, he decided on the basis of his conscience that actually he should tell the BBC immediately, and the BBC, in the light of that, basically, I think, were quite right in expecting him to leave. All I think I am doing here is suggesting that if we can see practical examples which will allow us to improve it then we should look at them, and issues around producing paper contracts which might work better obviously we should look at. I think, again, let us look at the circumstances here. If he had been bound by a contract to come in every day, if ITV had been prevented from him taking up the job for three months, what would the practical consequences of that really have been; would the BBC have been in a stronger position by him being prevented from going to ITV for three months, or six months, or a year even? I do not think so. Would ITV have benefited from his delayed arrival? I do not think so either. Would morale at the BBC have been improved by seeing him imprisoned by those conditions? I am not sure it would have done. All I am saying really is I can see why you are driving this line of questions and I appreciate that, but equally I am conscious, and I think there is an onus to ask ourselves, in practice, would it have improved the situation, and I am not sure it would have done.

Q270 *Baroness Howe of Idlicote:* I think really I am asking a slightly wider question than that. For a start, if he had a contract of employment, I am not suggesting he would have had to come in every day to fulfil the full length of the contract, obviously I think that would be a rather difficult thing to enforce. The

idea, which applies in many other areas, and indeed for civil servants as well, that there should be a period where he does not go and work for a competitor, just to put the thing outside, into a different area, not thinking in terms of just this one specific area, surely that is desirable. If we have moved to a situation where the likes of Michael Grade, and I accept totally what he said, he said there were one or two times when he had to not answer certain questions when he was working for ITV, that is relying a great deal on the individual's integrity to stand by the, what shall we call them, almost 'old boy' conditions on which these types of appointments have been made in the past. I am asking really a much bigger question: is it better, in view of what has happened, to change the procedure so there is a rather more formal method for appointments in these cases, all these types of cases?

Mr Woodward: Certainly I believe it is something that we should look at, but also I believe it is something we should ask genuinely whether or not we would improve it. In this particular case, and you raise the example rightly that Michael gave about one or two issues where he had to say nothing, it is a matter of integrity; but ultimately any process we come up with is going to rely on integrity, integrity of the process and ultimately using the process to find the individuals with the highest integrity. We are going to have to rely on this rather imperfect human form.

Q271 *Baroness Howe of Idlicote:* But does it give confidence, let me put it like this, to the public that this sort of thing is going on and where you expect a completely different set-up in the— -

Mr Woodward: If the question is do I believe that the public should have confidence in this process now, I think the answer is, unequivocally, yes.

Q272 *Chairman:* Minister, Michael Lyons does not have any different contract or any different oversight.

Mr Ramsay: If I may add something, the arrangements for the appointment by the Privy Council are the same and the Secretary of State's letter to the new Chairman are the same, but the BBC themselves have put in place for their trustees and for the Chairman a confidentiality agreement which, I am told, is available for people to see on the Trust website. They have all signed up to maintaining confidentiality about BBC matters and, I believe, to a three-month period, subject to review as there may be no issues of conflict, where they would hold off moving to something else. That is there for you to have a look at, in the case of the BBC specifically, and that is something the BBC has done. More generally, we need to think about it in relation to other bodies, of which we have many.

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Q273 Chairman: It is clear that this is an issue on which you are keeping an open mind?

Mr Woodward: I think one should always, My Lord Chairman, keep an open mind on these issues.

Q274 Baroness Howe of Idlicote: Three months is what the BBC have decided upon; if that is so, is that comparable with what happens in the private sector, on the non-compete clause? Perhaps you could let us know?

Mr Woodward: I think we have to look at it sector by sector rather than describing it generically as 'the private sector'.

Q275 Baroness Howe of Idlicote: I am talking about the non-compete clause?

Mr Woodward: Yes, except each of these sectors may have limited pools of people who may be suitable, and the job of Chairman, for example, of the BBC is different from the job of being chief executive of another organisation, like Channel Four. I would not expect, for example, if Andrew Duncan were to decide to leave Channel Four next year, that he would be the obvious candidate to emerge as a future successor as Chairman of the BBC, although Director of the BBC would be very different.

Q276 Baroness Scott of Needham Market: Michael Grade's remuneration, his basic salary, at the BBC was £87,000. It is expected that at ITV he is going to earn £825,000. Can you say whether you believe that at that level of differential it is going to be possible for the BBC to continue to recruit candidates of the highest quality?

Mr Woodward: Let us remember that at ITV, in effect, he combines two roles. The Director General of the BBC, Mark Thompson, I think earns in excess of £600,000 a year. The salary for Chairman of the BBC is £140,000. If you add those two together they are only slightly short of the salary that Michael Grade is drawing at ITV. In that sense, I think they are comparable. In relation to being Chairman of the BBC, the level of remuneration of £140,000, which is twice, I think, what the Chairman of Channel Four is paid, albeit that I think Luke Johnson does one day fewer for that, again, it does not seem to affect the calibre of candidates. In the event that it did then, of course, it would be quite right for us to look at that; but I think we have arrived at, and on the best advice that we could be given, a reasonable compensation for the amount of work that we are doing. I think we would be misleading ourselves if we thought that the reason somebody applies to be Chairman of the BBC is because the salary of £140,000 is what attracts them. By the same token, although the amounts of money, for example, paid for Chairman of the BBC undoubtedly give rise to something of a sensation in some quarters, I think we have to understand that the

Director General of the BBC, Chief Executive of Channel Four, Chief Executive of ITV, need to be the kinds of sums of money which are going to attract the best people and I am afraid that is the sort of sum we have to pay.

Q277 Lord Maxton: The executive side of the BBC is covered by Freedom of Information, therefore we can find out exactly what the salaries are. Does the fact that the competitors in the media industry know and can find out exactly what these people are earning in any way affect the ability of the BBC to recruit, or do they steal people and poach people from the BBC, as a result of that?

Mr Woodward: There is a lot of stealing and poaching which goes on from both sides all the time and even if figures are not published they seem to find a way of being discussed between individuals, not least because some of them may actually have occupied the job in the first place. There is no evidence, I think, to suggest that we are seeing organisations adversely affected from this, and undoubtedly the proof is in the pudding, the levels of compensation are pretty comparable between the public and the private sectors here. I would expect the BBC to maintain its position as an outstanding broadcaster but, even though it is in the public sector, it will need to continue paying levels of remuneration for executives at the level that it does. Although artists' contracts need to remain confidential, again, it was a source of fascination to me that despite some chose to launch outstanding criticism, for example, of the amount of money that was paid to Jonathan Ross, and without making a party political point, an observation, most of that criticism was made by Her Majesty's Opposition, it was also significant that in the same breath the Leader of Her Majesty's Opposition could not wait to go on the programme.

Q278 Lord Hastings of Scarisbrick: A very small, factual point, just to follow up something you said earlier on, Mr Ramsay, which is that because the role of the Trust is to represent the interests of the licence fee payer therefore the Trust will conduct research to find out the licence fee payer's interests. Are you saying, from that, therefore, that the Executive Board, and therefore no executive function of the BBC, conducts any such equivalent research?

Mr Ramsay: No.

Q279 Lord Hastings of Scarisbrick: Therefore, the BBC editorial will have lots of licence fee payer information and the Trust will have licence fee payer information?

Mr Ramsay: Absolutely.

Q280 Lord Hastings of Scarisbrick: Which one decides the licence fee payer's view?

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Mr Ramsay: At the end of the day, the Trust has to take a view.

they can find out what their opinions are, and that is going on at the moment.

Q281 Lord Hastings of Scarisbrick: But the Executive Board are the programme-makers?

Mr Ramsay: They will have their own research, undoubtedly, but the overall view which the Trust has to take about what it has to do is influenced by what it learns from licence fee payers, and obviously it can draw on material which has been provided to the Executive in addition to material it has found itself. Currently, if you go to their website, you will find they are consulting on the way they should consult licence fee payers, so asking people how best

Q282 Chairman: Thank you very much indeed. You have been very patient; it has been a long session.

Mr Woodward: Thank you very much; and I apologise for any misunderstanding, My Lord Chairman.

Q283 Chairman: Do not worry; longer than you imagined. I am very, very grateful for you both coming, and I think there is that outstanding point?

Mr Ramsay: I am sorry for faffing on about it, but I will get the answer and then I will let you know what it is, whether it is yes or no.

Mr Woodward: We will deal with it very quickly.

Chairman: Thank you very much.

Supplementary letter from the Department for Culture, Media and Sport

At the evidence session today you asked whether Ministers had added any names to the shortlist for the BBC Chairmanship. The Minister and I agreed to respond in writing as we made clear at the meeting it would not have been appropriate to have given an answer without clarification against the appointments procedure. I am now in a position to give you that answer.

I can confirm that Ministers added one candidate to the panel's recommended shortlist, and that this was not Sir Michael Lyons. I can also confirm that the candidate whose name was added by Ministers had applied in the usual way by the agreed deadline, and was deemed by the selection panel to have met the criteria to a high degree.

The Ministerial request to add a candidate to the shortlist was agreed by the Independent Assessor and selection panel, and the Office of the Commissioner for Public Appointments was also informed.

In keeping with departmental practice, the shortlist was submitted to Ministers for consideration. This is done because the shortlist is seen to be a key part of a process for which Ministers are ultimately responsible.

As you will appreciate, I am unable to go into more detail about the individual for reasons of confidentiality, but I can assure you that the process was scrutinised by the Independent Assessor and fully documented for the audit trail.

I hope this addresses your question.

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Supplementary letter from the Department for Culture, Media and Sport

APPOINTMENT OF CHAIRMAN OF THE BBC TRUST

Thank you for your letter of 14 June about the BBC Trust appointments process.

The selection panel interviewed five candidates on 12 March 2007, and each was assessed against the published criteria and scored on a scale of A–D (where candidates scoring C and above were appointable). The scores and rank of each candidate were provided to Ministers, along with an interview report including details of the panel's assessment of each candidate against the published criteria.

On this occasion, the panel recommended that four candidates, including Sir Michael Lyons, were appointable. The panel advised that one candidate was more highly recommended than the others.

I hope this answers your questions.

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WEDNESDAY 13 JUNE 2007

Present	Bonham-Carter of Yarnbury, B Eccles of Moulton, B Fowler, L (Chairman) Hastings of Scarisbrick, L Howe of Idlicote, B	King of Bridgwater, L Manchester, Bp Maxton, L McIntosh of Hudnall, B Thornton, B
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Examination of Witness

Witness: MR GAVYN DAVIES, Former Chairman of the BBC, examined

Q284 Chairman: Welcome. Let me explain. You remember, of course, we had previously been carrying out a review on the BBC Charter and other issues and the Committee has become more general and is now doing communications generally. We are doing this particular report on the appointment of the BBC Chairman really to examine the process by which the Chairman is appointed, whether it should be scrutinised by Parliament, and we want to look at a number of other issues, like the terms of the contract and the rest. I wonder if I could start. We had Michael Grade, who gave evidence to us. Of course, he was your successor. He was asked about how the governors regarded their duty to the licence fee payers and basically his reply was (and I seek to quote from the minutes) that “the great advantage of the Trust is that the Chairman of the Trust would feel very clearly that its constitutional role was one removed from the day-to-day operations of the BBC and be there to represent very clearly the interests of the licence fee payers. That is not clear in the previous model, it is not clear at all”, and he was asked by Lord Hastings on this further and he said of the governors, “They assumed the position but there was no evidence to support it. It was just the view of 12 good men and women true that they were representing them, but they had no mandate.” I just wondered how that applied to your experience.

Mr Davies: My Lord Chairman, I definitely felt the governors had a very clear mandate. The governors under the old system were the embodiment of the BBC and, acting within the Charter, they were actually able to do, almost without limitation, anything they wanted to the organisation. As time passed and as chances came and went, the role of the governors became more clearly defined and, by the time I was operating in 2001 to 2004, there was a significant amount of definition within the Charter that I inherited. One of the first things I did, though, was publish a paper on governance which said something a little bit similar to what Michael had just said, not as specific and not as critical about the governance system, but did say that we needed to be clearer about what the mandate of the Board of Governors was and how that was distinct from the

mandate for the Executive Board. I was determined to protect a situation in which the Board of Governors were inside the BBC and were not a board of regulators, but I did think that the public was becoming confused and concerned about the lack of definition of their role and, in fact, I did define the role more clearly and would have been happy if that had been what had gone into the Charter.

Q285 Chairman: But you never found any difficulty yourself, viewing your own position, representing the licence fee payers?

Mr Davies: No, I extremely clearly thought we were representing the licence fee payers and no other public entity and, in particular, certainly not the Government or any other political entity. So, I felt that we were the embodiment of the BBC, responsible to the public and in charge of making it possible for the BBC services to be run.

Q286 Chairman: You did not feel there was any conflict between (as you once said) standing together at a time like we saw in 2003 against government pressure?

Mr Davies: Conflict between that and what, my Lord Chairman?

Q287 Chairman: Conflict between representing on the one side the licence fee payers and on the other side simply representing the BBC?

Mr Davies: No, I mean, I never saw our task as being flag-waving for the organisation, but in the pressure that we were under from Number 10 at that time in 2003 I did feel, and still do feel extremely strongly actually, that it was the duty of the Board of Governors to stand up for the right of the BBC to broadcast as it saw fit. Many people have said, “Yes, but you broadcast the wrong thing.” I personally do not happen to believe that either. The point I was making to the governors in that email was that there are only a few occasions in the BBC’s history where it is crucial to draw a line in the sand and to tell the Government that we are not the organ of the state, we are the organ of the licence payers; and I felt we were

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under pressure at that stage to act as if we were the organ of the state.

Q288 Lord Hastings of Scarisbrick: Mr Davies, good morning. If I may say so, it is a great pleasure to see you in this Committee. Do you understand the distinction between the role of the new BBC Trust and how you ran the BBC governors?

Mr Davies: Yes. I think, Lord Hastings, the distinction is one of nuance rather than a complete change. The reason that I believe that the system can be made to work, even though, in my view, it is not optimal, is that it is not all that different in some respects from the old system. The main distinction that I see is, I suppose, two things, one definitely positive and one to me not so positive. The positive one is I think that the responsibilities and powers of the Trust are better delineated in the Charter, and I think that the responsibilities of the Executive Board are also better delineated in the Charter. So, there is a lot to be said for the new system in terms of clarity and transparency, but that has come at a cost of greater separation between the Trust and the Executive Board and perhaps also at the cost of making the life of the Chairman somewhat more complicated. I believe that a great deal of good was done by having a Chairman who was not quite an executive but was in the BBC all the time. I took it as pretty much---. It was really my full-time job, I was there all the time, and when I shifted from being Vice Chairman, which is very much a non-executive position, to being Chairman, which is a full-time position, I certainly felt the difference and, in particular, I felt able to really understand a lot more about the BBC than I had previously understood from Board of Governor meetings. I was able to talk to anyone I liked. I became extremely close to many people in the BBC, as you remember. Some people saw that as me being captured by the management. I saw that as me doing my duty to understand the organisation root and branch, and we will see with the new Chairman. I am sure that it will not be a matter of black and white by any means, but my feeling is that he will have a harder time fulfilling what I thought was that part of the job now that he is outside the building (he is in Marylebone Road) and he does not have the same functions vis-à-vis the Executive Board that I had. Remember, the functions that the Chairman and the old Board of Governors had vis-à-vis the Executive Board included appointing them and paying them annually, and it was extremely difficult for the Director General or the Board of Management to ignore us when we had those powers.

Q289 Lord Hastings of Scarisbrick: Do you feel, in the light of what you have just said, that because the new trust arrangement does have a clear separation

between the role of the Trust and the role of the Executive Board, because of the way you were able to relate to the programme makers, that the licence payers' interest was better enhanced under the old system than under the new system?

Mr Davies: Lord Hastings, I believe that but I can also see the opposing points of view. Let me put the opposing points of view first. The opposing point of view was that the closer the Chairman and the Board of Governors got to the Executive the more likely it was that there would be executive capture of the Board. I have seen in many public companies in my time examples where the management basically captures the Chairman and the non-execs and there is a natural suspicion, fed by a lot of media comment on the BBC, that that is happening. It happened, for example, when we paid members of the Executive Board high salaries; it happened when the Board of Governors found in favour of the Executive rather than competition, who were lobbying or bringing cases to the Board of Governors. So, there was definitely a risk under the old system that we would be seen as being captured by the management. On the other hand (and this is the advantage), we did know, I believe, a heck of a lot more about what the BBC was up to than an external regulator. We were able to adjust the behaviour of the BBC long in advance of problems becoming public. I remember in particular one instance which has never really come to light. We made a very major decision leading to the disappearance of one of the most senior people inside the BBC without that really ever becoming a matter of public debate and consternation. That is a bit old-fashioned, that is a system that, in my opinion, works because the people making it work know that they are standing for the public interest and that is their job, but in today's world, where you need transparency, it was a system that was beginning to lose some credibility.

Q290 Lord King of Bridgwater: You had, obviously, very difficult experiences, for which I personally have very great sympathy with you, over what happened over the Hutton Inquiry and perhaps the failure of people to understand publicly the barrage of pressure that has been coming from Number 10 over a considerable period of time, and which perhaps is illustrated by some of the comments made by the Prime Minister yesterday about 24/7 news management, that resulted in the pressures which you had at the time. Asking a hypothetical question, if we had the new structure in place with the Trust, do you think the Chairman of the Trust would have had to resign over that?

Mr Davies: I think it is less likely, my Lord, but not impossible. If I may remind the Committee why I resigned, it was not actually because I agreed with the Hutton Inquiry's final verdict but because I believed

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that the fact of that verdict made my continuing in office untenable, and particularly because there was a licence fee settlement about to be negotiated between the Government and the BBC, and I still defy anyone to know how I could have negotiated that settlement believing what I believed about the *Today Programme* report. So, that is why I resigned. Lord Hutton saw fit to make absolutely no distinction between the Chairman of the BBC, the Director General (who, incidentally, he forgot to call at one point to give evidence, maybe forgetting that he was editor-in-chief), the Director of News, the producer of the *Today Programme*, the journalist who made the broadcast. He couched his report as criticising the BBC, and I thought that, since I was head of the BBC, I had no option but to resign over this.

Q291 Lord King of Bridgwater: I think you are the only person in the country who thought the Hutton Report had severe limitations, but can I just ask you this. You gave us evidence, and your predecessors gave us evidence as well, and I think I am right in saying that not one of them thought that the new structure was a good idea. The only person who thought it was a good idea was the Chairman we had, who was a Chairman who resigned shortly thereafter having told us he could make the system work. You talked about leadership as the Chairman, the need to be involved and ultimately take responsibility for the totality of the BBC, which I call leadership as the Chairman. In the future, in the public mind, when people want to complain about a programme, something that is going on in the BBC, and they write to the Chairman, who do they think is the Chairman of the BBC?

Mr Davies: My Lord, the Chairman is very clearly Michael Lyons. I do not think the Committee should be in doubt about that.

Q292 Lord King of Bridgwater: But, with respect, the most likely comment and criticism will be, as you know, programme content, editorial actions of one sort or another and actually, if you write to Sir Michael Lyons and he has no authority over that, he must transfer that. Surely it is the responsibility of the Chairman of the Executive?

Mr Davies: The Chairman of the Executive, as I understand it, is the Director General.

Lord King of Bridgwater: Certainly.

Chairman: Although not necessarily.

Q293 Lord King of Bridgwater: He is. Not necessarily, but he happens to be.

Mr Davies: Yes. I think a mistake that could have been made in the Charter and was avoided was to have another Chairman of the BBC sitting as the Chairman of the Executive Board with the Director General sitting under him. I think that would have

been really confusing then. In terms of a complaint, it was typical under the old system for most complaints to be handled by the editor-in-chief, the Director General. Only if they were very serious complaints, and I think raised somewhat wider questions than simply one programme, did the Board of Governors as a body tend to look at them, but, of course, the Board of Governors did have its own complaints process as well and you could complain to the Board of Governors complaints process. We never quite got the complaints system as transparent and clear as I would have wished, and I am not actually sure that has happened yet, because listeners and viewers often will complain to the producer, they will complain to the person whose face is on the programme, they may complain to the governors or the Chairman and they may complain to the Director General. So, complaints come in all over the place, but what everyone needs to be clear of is that the entire system is able to respond both to a specific complaint and to the wider connotations of that complaint.

Q294 Lord King of Bridgwater: So, if a member of the public comes to me and says, "I think that programme last night was an absolute disgrace; I think Panorama's treatment of this particular issue is quite wrong. I want to write to the Chairman about this", who should he write to?

Mr Davies: In that particular case, I would advise him to write to the Director General, maybe copying the Chairman, but if he has a complaint about the way that BBC One is fulfilling its public service remit, for example that Panorama is not acting in line with that remit, then it is definitely a Trust matter.

Chairman: Let us move on to the process of appointment, can we. Lord Maxton.

Q295 Lord Maxton: Obviously, with your resignation and Michael Grade going and then a period when there was no Chairman, there has been some public discussion about the Chairman and the appointment of the Chairman. Could you perhaps just tell us by what process you were selected as the Chairman? Were you asked to do the job? You were Vice Chairman, but how did you manage to get into these two positions?

Mr Davies: The Chairman at the time resigned. He had been approached to go and become the Chairman of BT, Christopher Bland, and I was Vice Chairman. I decided to apply. The process was, for the first time, a public appointments process. I think Christopher and Marmaduke Hussey and others had been appointed by a telephone call from the Home Secretary, in general, but for the first time my process was a public appointments process. The application went to the DCMS, it was vetted by a committee chaired by a DCMS official who happens to be in this

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room, Nicholas Kroll. They recommended, I believe, one name, although I am not certain, to the Secretary of State. She recommended the name to the Prime Minister and the Prime Minister made the appointment. I took the view that I had emerged from a public appointments process, and actually that was very important to me because there was much criticism about my appointment on the grounds that I was some kind of a lackey for either Gordon Brown or Tony Blair or almost anybody.

Q296 Lord Maxton: But not both!

Mr Davies: At the time I think it could have been both actually, yes.

Q297 Lord Maxton: You were not invited to apply as such?

Mr Davies: I was not invited to apply, although I must say that I think sitting there as Vice Chairman probably made it likely I was going to apply.

Q298 Bishop of Manchester: Mr Davies, you know from the previous Charter Review Committee that we spent quite a lot of time considering the process whereby future chairmen might be appointed, and if I can quote, we said, “The Chairman of the BBC should be chosen on the basis of a recommendation by a truly independent panel”, and the make up of that panel was to have been a majority of non-political members and then the balance made up by people with particular political viewpoints and allegiance. Let me say that the panel should be chaired by a non-political member who is not a civil servant. I just wondered what your own view was of that area of recommendation that the previous committee made.

Mr Davies: I completely agree with your recommendation. I believe that it is crucial to have an independent board. It may be important actually to have that board make its recommendation public, but I think that the final decision should remain with the Prime Minister. If the Prime Minister chooses to make an appointment which is not recommended to him by the Board, then that is a matter for him. So, I think your procedure is exactly right. Whether it needs to be chaired by a non-civil servant, I am open about.

Q299 Bishop of Manchester: What would your alternative to that be then as an ideal?

Mr Davies: My selection panel was chaired by a senior civil servant—because it chose me, I think it was an excellent panel—but I suppose ideally it would have been chaired by somebody with external standing and name recognition, and I think that would make the system more robust.

Q300 Bishop of Manchester: If we put the clock back to when you were appointed yourself, would you have been deterred from applying, going forward for the post, if you had known that following the nomination it would have been subjected to additional Parliamentary scrutiny?

Mr Davies: No, I would have greatly welcomed that. As I say, my appointment was somewhat controversial, not as controversial as Greg Dyke’s appointment as Director General, but given that he was already in post, my appointment, I think, became more controversial than it would otherwise have been and I would have welcomed the opportunity to give public evidence directly addressing the question of my own independence. An issue would arise as to how and where that would be given. The natural place would be one of the two select committees: presumably the House of Commons Select Committee on the DCMS. I have to say, I would not have welcomed giving evidence to that particular committee under that particular Chairman, but I would have done so.

Q301 Bishop of Manchester: Can you comment on your view about the actual process which led to the appointment of the present Chair of the BBC Trust, in the light of what you have just been saying?

Mr Davies: Bishop of Manchester, I do not think I can really comment on it. I have not followed the appointment process carefully much, so I think I should not comment except to say that I am extremely confident that any accusations that the new Chairman has which are similar to the ones that were levelled at me will prove equally false.

Chairman: Let us go on to conditions of service.

Q302 Baroness McIntosh of Hudnall: Mr Davies, the idea of a non-compete clause is fairly commonplace in certain kinds of business, with which you are no doubt very familiar. When Michael Grade stepped down from the BBC, there was a good deal of disquiet, I think it would be fair to say, both about losing him at that moment but also about the fact that he was going immediately to work for a competitor organisation. Is it your view that there would be a public interest in any Chairman of the BBC being barred for a limited period of time, let us say, from working for a competitor organisation?

Mr Davies: I think there is a lot to be said for that, yes. When I left the BBC I was very aware that I had a good deal of knowledge about what the organisation was planning to do, both in programming terms and in the nature of the services that they were about to launch and what their strategic vision was, which might have been helpful to a competitor. It never applied to me because I came from outside the industry, but I do think a period out of the business would be useful.

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Q303 Baroness McIntosh of Hudnall: If there had been such a clause in the terms and conditions that applied when you were appointed, would you have regarded that as any sort of deterrent to accepting the post?

Mr Davies: No, I would have regarded it as part of the process, which made sense and which is exactly what happens in the private sector.

Q304 Chairman: A minimum notice period for a contract. Do you there is any point in that?

Mr Davies: I think that once you have said you are going to resign, power ebbs away from you very rapidly, so it best that you leave fairly quickly, that the Vice Chairman takes over, that the appointments process is quick and that you sit it out for the necessary length of time on the beach.

Q305 Baroness Howe of Idlicote: I would like to follow up on one aspect of what you have said. If you accept that a non-compete clause would make sense in today's world, I wonder, because it is a Privy Council appointment, whether there is a case for changing, as it were, the structure in which people accept these kinds of appointments so that there is with all of them at this level something like a non-compete clause?

Mr Davies: Baroness, I do not have enough knowledge of the way the senior Civil Service works now to make a general comment of that type. The BBC, I think, is a slightly special case because the BBC is both a public service and a business and, in fact, that is why many of these issues about governance and the Trust arise, because the BBC is both things. The fact that it is a business, I think, makes it more important in the BBC's case that it has a lock-out period similar to that which applies in the business sector.

Q306 Chairman: Looking back on your period as Chairman, do you have any regrets, or do you feel actually now looking back rather vindicated?

Mr Davies: I was interested to read the Prime Minister's speech yesterday about the press and the broadcasters. I do have many regrets about things that we might have been able to do better at the BBC. A lot of what the Prime Minister said yesterday rang true to me, in the sense that I think he is right that the relationship between broadcasting and the press on the one side and government and politicians on the other side is somehow headed in the wrong direction. When I was Chairman and Greg Dyke was Director General we tried to improve the coverage of politics. We tried to make it much more widely viewed and listened to by our listeners and viewers and we tried to involve the political process in that. We had remarkably little success in getting the politicians to engage with us on how to increase news audiences

and how to increase serious interest in politics. I do regret that, but the one area where I think I would definitely disagree with the Prime Minister yesterday, apart from what he said about Lord Hutton, which I disagree with, is that I think the press and the broadcasting sector does provide a valuable check and balance in our system. In 2003, under the pressure that we were in then, we felt in dire need of a check and a balance in our system, and I think we should not underestimate the value of that.

Q307 Chairman: You feel governments (and I include any government) have an interest in simply seeing their point of view or their policies put over, as opposed to any particular interest in objective journalism?

Mr Davies: As I say, a lot of what the Prime Minister said yesterday rang true to me, especially about the way that the broadcasting industry is changing with 24-hour news and blogging, which I think is a real problem. Much of that rang true, but I do not think that we should leap to the other extreme and say that the way to deal with that is through onerous regulation. I think the BBC has an enormous role in dealing with that as being a trusted purveyor of accurate and impartial news.

Q308 Lord Maxton: Is there a reverse though, that as the political process throughout all its areas has become more open and accountable in terms of all the financial arrangements that politicians have, if the broadcasters are to be such an important part of the political process, the democratic process, should not they too be open and accountable to public scrutiny in the way that politicians are? They are part of the democratic process after all.

Mr Davies: I certainly think the BBC should be open and accountable—I do not believe there can be any debate about that—and that includes, I am afraid, the amount that the senior Executive Board members get paid. I was never happy with making that public, but I can now see that it is inevitable and has to be done.

Q309 Lord Maxton: What about senior journalists?

Mr Davies: I am less clear about either the senior journalists in the BBC or elsewhere. On the whole my judgment would be, as long as they are broadcasting and writing in line with the Code of Ethics and the Code of Practice of the organisation, that is good enough.

Q310 Bishop of Manchester: You said a moment ago that you were disappointed about the way in which the BBC in your time had been unable to emphasise the use of news and attract more people to have an interest in politics. Do you feel with the new structure of the BBC that the BBC is in a better position to be

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able to pursue those kinds of objectives, and if you do, could you briefly analyse what it is that may enable the BBC to achieve it?

Mr Davies: I think it is very clear in the remit that the Trust has and will give to BBC One and BBC Two that is part of the responsibility of those channels. It was equally true, actually we gave similar remits to the channels when we were there, so I am not sure that there is a sea-change. The problem, I think, is that people under 40, or even 45 now, do not find traditional news and traditional politics very riveting, so they just watch less of it than they did before. They are interested in public issues, there is no question about that, but they are not as interested in the political process as maybe my generation was. I think

it is the duty of the BBC to educate them about the political process and to make the information available to them, even if they do not take it up in large numbers. There may come a time when they do take it up again.

Q311 Chairman: I think we are now going into rather more general issues which we are very interested in and may well be doing in the very near future but not perhaps as part of this inquiry. Gavyn Davies, can I thank you very much indeed. It is very courteous of you to come back and give us the benefit of your experience. Thank you very much.

Mr Davies: Thank you.

Examination of Witness

Witness: SIR MICHAEL LYONS, Chairman of the BBC Trust, examined.

Q312 Chairman: Sir Michael Lyons, welcome very much to the Committee. As you have been here throughout, I will not actually go through the introduction; I think you know what we are about. One of the things that we are obviously most interested in is your role as Chairman of the BBC Trust and, in fact, the role of the Trust as well. Perhaps I could go into it this way. You have seen reports—I am sure they have actually emanated from the BBC—that the Trust is to investigate what I think is called “the star system”, the £18 million contract for Jonathan Ross and people of that kind. I assume that is true, as it has been quoted by a BBC trust spokesman.

Sir Michael Lyons: It is something that came out of a discussion that I was involved in yesterday, so it is very much my statement, and some newspapers have covered that explicitly.

Q313 Chairman: You think that that is important in view of the position of the BBC and the fact that they may be having journalistic redundancies and all the rest?

Sir Michael Lyons: I think it is important, because it has been a matter of public discussion. I am sure you are going to go on to the role and responsibilities of the Trust. This is one of the issues that the Trust has identified of public concern and has decided to investigate more fully.

Q314 Chairman: Can I put it this way. The more normal corporate way would be for the Executive Board or the Management Board to take sensitive proposals of that kind, or possibly a sensitive policy of that kind, to the main Board. You would do it in advance; you would not do it afterwards. This seems to be a double-guessing exercise.

Sir Michael Lyons: Firstly, maybe I should go straight to the heart of this issue, which is the new structure defined for the BBC which more clearly separates issues of scrutiny and the questioning of the Executive from the actual day-to-day decisions. This is not, I do not believe, a complete separation. I think it has been too simplistically described in some quarters, as turning the Trust into a regulator, and I think that folks who take that definition will find it difficult to understand the way the Trust actually does behave. There is no doubt at all that the new Charter is seeking to (1) enshrine the independence of the BBC, and that is one of the key jobs of the Trust, (2) to strengthen the voice of the public, the licence fee payers, in terms of challenge and scrutiny of executive decisions and (3) basically to set the framework and direction for the BBC as a whole, and one of the strengths of the new arrangements is that there is a set of requirements and a very clear definition of responsibilities which I think will help the Trust do that.

Q315 Chairman: Thank you. I find the difficulty in all this that there are quite a lot of happy generalisations about it, and that is why I started with a specific on pay. It does seem to me that surely there was a policy before hand on how much would be paid, or if the Director General had a kind of query about it or the editor had a query about it, or whoever, if you were thinking of paying £18 million to one performer (that kind of issue), it would either be incorporated in a Board policy or it would be an issue that went to the Board.

Sir Michael Lyons: I only wanted to set the context just to avoid any suggestion that a one-for-one comparison between the BBC and a corporate structure that might exist in a Plc would miss some of the nuance of the new arrangements, and particularly this important issue of the independence of the BBC.

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Sir Michael Lyons

That is all I say about that point. Let me answer your very specific question. Issues about how much to pay for a particular performer are not a matter for the Trust, they rest entirely with the Director General and his Executive Board. The issue of the context in which that is said, the broad policy of the BBC, and particularly the nitty-gritty question which we have seen debated publicly of, “Yes, we understand that the BBC works in a competitive way and, therefore, will have to compete with other television, radio, media companies, not only in terms of UK talent but also in worldwide terms”, the subsidiary question, is, “As the BBC is such a big and important part of the UK market, is it actually a market-maker as well as a body that has to respond to market forces?” That is the sort of issue that the Trust, I think quite properly on behalf of the licence fee payers, has not only a right to explore but also a responsibility to explore, and that is why we are looking at this area.

Q316 Chairman: Should you not actually do it the other way round? Should you not decide whether you are a market-maker and what kind of a market-maker you are and then decide on the range of salaries that you are offering?

Sir Michael Lyons: You might do, but you certainly would not make those decisions without careful research, and I think that is the field that we are in.

Q317 Chairman: At the moment what happens is that the Director General decides. He can pay what he likes.

Sir Michael Lyons: He does that. He makes the decisions. I do not think I said he can pay what he likes.

Q318 Chairman: Who is to stop him?

Sir Michael Lyons: He is constrained by the budget that he has and, of course, by the oversight of the Trust.

Q319 Chairman: Therefore, at the heart of this, you are again saying you are not a regulator, yet you are saying you are a regulator?

Sir Michael Lyons: No.

Q320 Chairman: You are not saying it. What are you saying?

Sir Michael Lyons: Thank you for giving me a chance to define it. If I was not clear the first time, then I am going to try to be much more clear the second time. I am saying it is oversimplification to talk about the Trust as a regulatory body. It is the sovereign body of the BBC. Exactly that term is used in the Charter. The new arrangements, which separate more clearly executive decisions from the overall governance and the sovereign role of the Trust, are basically to make much clearer to the public and to all observers the

different roles that are played there. It is an oversimplification to say we are a regulator. We do have regulatory powers, self-regulatory powers, within the BBC and the new structural arrangement, and I am not the architect of it, but as I understand it, as I interpret it, my job is to bring that arrangement to life.

Q321 Chairman: Who is the public face of the BBC now?

Sir Michael Lyons: Sometimes, of course, it is actually the presenter on a BBC news programme, so it is not a simple answer: “Who is the public face of the BBC?” Who is the Chairman of the BBC? Unequivocally, I am the Chairman of the BBC.

Q322 Chairman: If there is an enormous row which breaks out, do you go on to television and naturally defend the BBC?

Sir Michael Lyons: I do not think my job is to defend the BBC in all circumstances. Indeed, history shows us that that can be a very risky thing to do. My understanding of why the new governance arrangements have been put in place is to be clear about different roles. It is the role of the Director General as editor-in-chief to be the place where the buck stops for any editorial decisions. The Director General is subject to scrutiny by the Trust, and there is no doubt that this is a complex arrangement, but this is a distinctive organisation and one key part of the job of the Trust and, therefore, the Chairman is to protect the independence of the BBC, and there is quite a difference, I think, between protecting independence and being day in day out the defender of the BBC, which will not be lost on any—

Q323 Lord Hastings of Scarisbrick: Sir Michael, could you help us further in clarifying the role of the Trust as compared to the role of the governors as they were? You said in your introductory remarks that the Trust helps to set the strategy for the BBC?

Sir Michael Lyons: It does.

Q324 Lord Hastings of Scarisbrick: Is it that you approve the strategy for the BBC or do you process the strategy for the BBC? If you propose the strategy for the BBC, on what basis do you propose it, and if you approve it on what basis do you cross-check it?

Sir Michael Lyons: It is, I think, in the terms that you describe it, much more of an approving strategy but it does not do that in a sort of vacuum. If I make this concrete in terms of the discussions currently taking place about the way that the licence fee would be used over the next six years. Perhaps the biggest job in front of both Trust and Executive Boards at the moment. It is clearly a job for the Director General, his executive team and his Executive Board to shape proposals which come to the Trust, and the Trust will

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have to approve those on behalf of the licence fee payer. On a day-to-day basis that involves quite detailed discussions, indeed including a session where both boards met informally in a deliberative fashion to look at all of the research that had been gathered, both by the Trust and by the Executive Board, about what we know about the views of audiences. So, formally, it is for the Director General to propose and for us to approve, but, of course, as in any complex organisation, that is underpinned by dialogue and respective research and investigation.

Q325 Lord Hastings of Scarisbrick: So, in effect, you are significantly dependent as the Trust on the Executive Board for the strategy proposed to you and, therefore, for the intelligence contained within it, in which case, on the basis of that answer, that is no different to the previous arrangement of governance? *Sir Michael Lyons:* It is not very different, except that the roles and responsibilities are much more clearly defined, and the critical point, which I understand is one of the points that your Lords Committee is focusing on, is this clearer separation of the responsibilities of the trustees and the members of the Executive Board. So, yes, you are right, it is the same purpose of the BBC but much more clearly defined, especially in terms of who is responsible.

Q326 Lord Hastings of Scarisbrick: Therefore the Trust directorate would be responsible, I assume, for assessing the strategy the BBC has proposed as well as the Executive would have proposed the strategy. So, in effect, the BBC has two groups of officials assessing the same strategy?

Sir Michael Lyons: The very small Trust Secretariat has the job of adding to the process of scrutiny, but let me underline this again because I would not want you to end up with too artificial a view of this process. This is a continuing discussion. The origination of proposals comes from the Director General. Mark Thompson will tell you later on about some of the discussions we have already had about those. So, there is challenge and scrutiny of those, particularly by two standing committees of the Trust who are made up of experienced and competent people supported by the Trust Executive.

Q327 Lord King of Bridgwater: Did you read the report the previous committee did on the role of the Charter of the BBC?

Sir Michael Lyons: I have come with all the wisdom of just six weeks in the job, and so I have looked at it, but I have not read every page of it.

Q328 Lord King of Bridgwater: You did not read the evidence of your predecessor?

Sir Michael Lyons: I have seen much of that evidence, yes.

Q329 Lord King of Bridgwater: I think it is no secret that the previous Committee believes that you have taken on a structure that is actually one that was set up to meet one problem at a time of political tension and action had to be taken sort of situation and, in fact, have now caused another problem. You very helpfully clarified the point that any editorial issues are very much a matter for the Director General. You have also made the point to Lord Fowler that these issues about salaries, and particular salaries paid to individual parts of the management, are entirely a matter for the Director General, who, of course is also Chairman of the Executive Board, and so we are into this issue, which is quite a simple issue, that if I am asked by my former constituents or others, "Who do I write to to complain about these issues?" I shall tell them to write to the Chairman of the BBC who I shall have to explain is not actually Sir Michael Lyons but is actually Sir Mark Thompson.

Sir Michael Lyons: Can I encourage you to take a different course of action when your next constituent brings to you a complaint, because it would be better for them if they actually follow the very clear complaints procedure that the BBC has now laid down. In the first instance, the complaint goes through that complaints procedure to the Executive. There are two stages of examination. The reason that it is right that it should go there, and this is no different from any part of the public sector or private sector, is that the complaints are dealt with by the people who have the information. Otherwise, frankly, the complainant does not get a very good service. So, we have delineated this part very clearly. But the critical third part is if your constituent remains unsatisfied at the end of those two processes, then they complain to the Trust, who makes a final decision. This again underlines the role of the Trust as the sovereign body of the BBC. I know that there was controversy, and I do know your Lordship's view about the current arrangements, and I insist, again, I am not the architect of those, I am here to make them work, but I do think that they are workable and I think all of the evidence of the first six months of the Trust is that we can actually demonstrate, not only that they are working, but how they are working differently from what went before.

Q330 Lord King of Bridgwater: You have referred to the private sector. How many private sector organisations have got two chairmen?

Sir Michael Lyons: We do not have two chairmen. Again, I do not want to go into too much detail on this, but I am very happy to carry on this conversation outside. Elsewhere in Europe the notion of the supervisory board is much more firmly established than it is in the United Kingdom, but let me take a Plc on which I serve on the Board. It has one group of directors but has working to it, chaired

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by its chief executive, effectively another board which deals with executive matters. That is not a million miles away from the BBC proposition.

Q331 Chairman: We were told previously this was not a supervisory board. I remember ministers, I think, coming no less to the BBC Committee saying it was not a supervisory board at all. That was a great mistake.

Sir Michael Lyons: I do not want to find myself criticising ministers and I am not saying that it is a supervisory board, I am saying that the model of supervisory boards where you have two chairs exists elsewhere and is not outside our frame of reference. I am very clear that the Trust is the sovereign body and there is one Chairman of the BBC.

Q332 Lord Maxton: I must say I am finding some difficulty with it, because there is some difference between what you are saying about your role, particularly in view of the Director General and the Executive Board, to what the Minister said last week, where he very clearly stated the buck stopped with you on all matters of the BBC. Do you agree with him on that?

Sir Michael Lyons: I absolutely agree that I am the Chair of the sovereign body of the BBC, but I am eager not to have these things oversimplified, if you will forgive me, because there is a danger.

Q333 Lord Maxton: Can I say on the complaints thing, however, there is one other area. Of course, people write to their members of Parliament to complain about the BBC?

Sir Michael Lyons: Yes.

Q334 Lord Maxton: If I was still a Member of Parliament and I got a complaint from several constituents about a programme, I have to say, I would write to you and I would expect a reply back from you. I would not expect a reply back from anybody else. Would that be right?

Sir Michael Lyons: Yes.

Q335 Lord Maxton: Can I make one point through all this. The only elected representatives of the licence fee payers are, in fact, members of Parliament. Would I be right to think that?

Sir Michael Lyons: Whether you would be right or not, and I have already gone over the very clear pathway for complaints, your practice is shared by many, or your previous practice is shared by many members of Parliament and, indeed, part of my daily work is to sign off a set of replies to members of Parliament. In all of those letters I make clear the pathway that we have established and I, in turn, refer the matters which they have referred me to that pathway, not least to protect my position if we ever

get to the third step in this pathway where I actually have to deal with an appeal after the complaints procedure has been exhausted.

Q336 Baroness Eccles of Moulton: Sir Michael, I want to return for a minute to an aspect of the relationship between the Trust and the Board, and it is something you have already referred to. I think you told us that the decisions made by the Director General, who I presume is also the editor-in-chief—
Sir Michael Lyons: Yes.

Q337 Baroness Eccles of Moulton: ---are his decisions, but these decisions are then scrutinised by the Trust where it is necessary. The thing that interests me about this is that this scrutiny will be taking place post hoc presumably. Therefore, could you just describe to me what the value of the scrutiny is when it is applying to something that has already happened?

Sir Michael Lyons: I do not think this is peculiar to the BBC. To some extent it is the process that this Committee is going through at the moment post hoc, exploring the appointment of the Chairman of the BBC, and, indeed, I enshrined it in the term of scrutiny. I do not think there is any problem over this and, indeed, there is a long and distinguished principle from the BBC that the governors take great risks, the governors before the trustees and the trustees now, if at any time they seek to view a programme before it is broadcast, and we can look back and see some clear examples of problems that has led to. In terms of the job of the Trust, it is certainly not to prejudge matters—that is for the editor-in-chief—but, quite properly, it is there to reflect on, to gather evidence and to comment and to set the framework. Again, forgive me if I failed to underline that clearly enough. The editor-in-chief, of course, makes these decisions, but he makes them within a framework of an editorial policy which is itself approved by the Trust, once again, underlining role of the Trust in setting the framework within which the executive decisions are made.

Q338 Baroness Eccles of Moulton: That sounds absolutely fine when everything is going well, but if there is a major drama, it seems to me that the whole process is so attenuated that it is very, very difficult for the Trust, as the sovereign body of the BBC, to take action that will be immediate enough to have the desired effect?

Sir Michael Lyons: I think it depends on what action you have in mind. If the controversy is before a programme is shown, as it was in the case of the *Jerry Springer Opera*, then it seems to me really very important, whether it was the governors or the Trust, for them not to be the folks who seek to second-guess the editor-in-chief about whether that programme

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should be shown. Indeed, I understand this is exactly what did happen, that Michael Grade as the Chairman asked for an undertaking from Mark Thompson, as the editor-in-chief, that he was satisfied that he had carefully reflected before the programme was aired. That seems to me exactly the pathway and defines the relationship not only between Trust, Director General, editor-in-chief, but also between the Chairman and the Director General.

Q339 Baroness Eccles of Moulton: Could you ever see a situation where the Director General and his Board had some doubts but really wanted to do it, for all sorts of good reasons, but the relationship between that Board and the Trust was such that the Director General would ask the Trust to both preview whatever the broadcast was and give its opinion on whether the Director General was right to go ahead and put it out?

Sir Michael Lyons: That is a good question, if you will forgive me for saying that, and it is a challenging question, because the truth of the way the relationship works at the moment is that there is this dialogue and it gives life and vitality to the formal relationship between the Trust and the Executive, but not over individual programmes. I have got experience of that. I frankly think that we probably stop short of that. All sorts of discussion can take place informally in terms, for instance, as we give shape to the strategy for the future we make the decisions and the Trust make the final decisions, about how the licence fee moneys are used over the next six years. I think it is quite different for us to contemplate a future where the Trust will actually view a programme before publication. So, I think it is unlikely, even *in extremis* I could not imagine the whole Trust being involved in that, but it is difficult for me to guess the entire future.

Q340 Chairman: Presumably in quite a lot of the decisions, quite a lot of the programmes that go on, the Director General has carefully, to use your phrase, reflected on them in any event.

Sir Michael Lyons: Yes.

Q341 Chairman: So as long as the Director General carefully reflects on the programmes, everything is okay. Is that the answer?

Sir Michael Lyons: On one level, yes, it is. If he has really satisfied himself that this very large organisation which he manages has done all the appropriate research, where there is controversy, has listened carefully to those who have opinions about whether a programme should be aired, properly distilled the issues under examination, satisfied himself that those issues have been fully thought through, that seems to me just about right really. It

would not be inappropriate for the Trust to satisfy itself that he has done that given the scale of the broadcasting role of the BBC.

Q342 Baroness McIntosh of Hudnall: Can I pick that point up one stage further. Given that the Trust is now characterised predominantly as the defender of the interests of the licence fee payer, it is clear from everything that has just been said that the licence fee payers are not an homogeneous group and that therefore there will be many interests amongst that group which may be in conflict with one another? In circumstances where a particular group of licence fee payers—and you mentioned *Jerry Springer The Opera*, it is a very good example—vociferously wish to be represented by you against the BBC's decision to transmit something which does not reflect what they would like the BBC to be, where does the Trust stand in relation to the interests that it is there to protect?

Sir Michael Lyons: I think you have very skilfully put your finger on the very heart of the issue and why the Trust should not seek to become the Editor General in the place of Mark Thompson.

Q343 Baroness McIntosh of Hudnall: But this situation could arise post hoc.

Sir Michael Lyons: Yes, it could, and I hope there is nothing that I have said which for a moment suggests, in my view, any homogeneity in the views of the people of this Kingdom. I am very clear that actually one of the jobs of the Trust is to hear (and you will see this consistently underlined in my public statements) the diversity of views in this country to make sure that those voices are exposed and heard, and the job of the Trust is to seek to make some balanced judgments listening to those different views. So, I agree with you, that is part of the challenge of our role, but the new arrangements do provide for this to be done much more openly, for much more to be in the public domain about the research that we have done on audience views, and you will see that reflected in the Trust's practice even in the first five months. When we commission work, we do, wherever possible, put it into the public domain.

Chairman: Let us move on to the process of your appointment, which is one of the areas we are looking at. Lord Maxton.

Q344 Lord Maxton: Obviously there has been some controversy both about Michael Grade going and your own appointment?

Sir Michael Lyons: Yes.

Q345 Lord Maxton: Could you take us through how you came to be the Chairman of the BBC?

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Sir Michael Lyons: I applied for an open process undertaken under the auspices of the Commissioner of Public Appointments. DCMS was the department that was responsible for organising this and they in turn had retained recruitment consultants Rogers Ray Berenson to be at the front end of that process. The process started for me in a discussion with Jill Carrick who works for Rogers, Jill is very experienced in this field and, indeed, the reason that she approached me was because of a very long discussion that we had about whether I might put my name forward to be Chairman of the Royal Shakespeare Company about two years ago. At that time I decided not to, but she remembered that conversation and felt that my blend of skills would be appropriate to do this job. I then filled in the application form, I was interviewed (the date I will come back to in a moment if you need it) by a panel, and I can give you the membership of that panel.

Q346 Chairman: Who was the Chairman?

Sir Michael Lyons: The Chairman, let me remind myself, was Andrew Ramsey from the DCMS. The other members of the panel: Sir Quentin Thomas, President of the British Board of Film Control, Oliver Stockton, then Chair of the National History Museum, and Sheila Drew-Smith, who was the nominated representative of the Commission for Public Appointments. I was interviewed there and subsequently told that I was the preferred candidate and that my name would be going forward for Privy Council approval.

Q347 Chairman: Obviously there has been some comment about your own political affiliations. At no point are you telling us that you were approached by any member of the Government, minister, to apply for this job?

Sir Michael Lyons: No, and I would find that very strange.

Q348 Chairman: You were not?

Sir Michael Lyons: Categorically not. Nor did I go looking for career advice from anybody either.

Q349 Chairman: This does happen, by the way, that people are approached.

Sir Michael Lyons: Not in my experience.

Q350 Chairman: As it has been raised, what about your political background? You used to be a constituent of mine in Sutton Caulfield I see, but I do not think I would rely on your vote, would I, given your political allegiance?

Sir Michael Lyons: Well, you know, I am a reasoning man. I am always open to persuasion.

Q351 Chairman: Were you ever a determined politician? Did you ever think: "I am going to have a political career"?

Sir Michael Lyons: Nobody, I think, stands for election, even to the smallest council in the country, without doing it seriously, and so I regarded it as an interesting and exciting thing to do when, as a young man, I was elected as a councillor of Birmingham City Council. I am very proud of that experience. It ought to me a lot about working with the public and about working in large organisations. I have the distinction, I think, of the only chief executive ever appointed to a council on which they were an elected member, and that distinction is because of the impartiality that I was able to demonstrate throughout my career.

Q352 Lord King of Bridgwater: You are nodding to the first bit, not necessarily to the second.

Sir Michael Lyons: Well, we can debate that at greater length.

Q353 Chairman: So you would not feel any problem in serving under whatever government was in power?

Sir Michael Lyons: None at all. I have worked for different parties. I have relished that. I have considerable experience of working with politicians and I understand the challenges of that, so I think I have been tested in the kitchen, you might say.

Q354 Chairman: What was your broadcasting experience?

Sir Michael Lyons: Six years working first with Carlton and ITV and a short period as non executive on one of the subsidiary boards of Carlton.

Q355 Baroness Bonham-Carter of Yarnbury: Picking up on what the Lord Chairman said, why do you think so many people of experience in broadcasting seem to fall by the wayside where applying for what is now your job is concerned?

Sir Michael Lyons: It is a difficult question to answer because I have not had conversations with all of those folks. What you sometimes find in these circumstances is that people who know they are not going to get the job deal with it by telling the world they would not touch it with a barge pole. I am clear that this job does not require someone to be a broadcaster and, indeed, if you look back over the history of the BBC, you could say, although I might not go quite this far, that actually the job is better undertaken by somebody who is not a broadcaster. I have not taken it on to become a programme-maker; I am there basically because of my interest in the BBC's role in the civic, economic and cultural life of this country. To come to that conclusion, that it would be attractive to play that role, broadcasting might be an interesting part of your experience but it

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would be strange if it was the only part of your experience.

Q356 Baroness Bonham-Carter of Yarnbury: You said earlier you were approached originally to be Chair of the Royal Shakespeare Company?

Sir Michael Lyons: No, I was approached to be a candidate. Let me, please, underline that.

Q357 Baroness Bonham-Carter of Yarnbury: I am sorry. Other than that, why do you think they approached you for this?

Sir Michael Lyons: I think it is straight forward. I would be happy to share my CV with you and debate it. I have run large public organisations, indeed a very large part of an organisation successfully for seven years, 17 years in running local authorities, but seven years running Birmingham City Council, which as a business is about three-quarters of the size of the BBC, so a large public organisation, I have considerable experience in working with the public in determining what they want and exploring it more fully in the reviews that I have done recently, some limited experience in broadcasting—I do not want to overstate that—Chairmanship of a group of trustees for a major arts organisation, the CBSO, and a period as the Chair of a regulatory body at the Audit Commission. I think that is quite an interesting blend of experiences for this job.

Q358 Lord King of Bridgwater: On your CV, it is very interesting, and the press notice from Number 10 on the day of your appointment referred to your various activities, including one or two non-executive directorships and said, “Sir Michael has divested himself of any other significant responsibilities and interests”. I was particularly interested in Chairman of the City of Birmingham Symphony Orchestra and the Royal Shakespeare Company. Have you divested yourself of those?

Sir Michael Lyons: I am in the process, and this was all very clear. There was a very intense due diligence process after I had been nominated as the preferred candidate where we went over all of my activities, I disclosed everything that I do, whether it is paid or unpaid, and, of course, CBSO and the Royal Shakespeare Company responsibilities are entirely voluntary. We agreed in that process that the CBSO was a potential conflict, and I am in the process of appointing a new Chairman—that was announced on Friday of last week—who will be my successor. I will stand down at the AGM. At the moment I play no part in any discussions about the role of the BBC orchestras. In the case of the Royal Shakespeare Company, I am not on the Board, I am a governor, and there we see no conflict of interest and so I will continue in my relationship with the Royal Shakespeare Company.

Q359 Lord King of Bridgwater: It is interesting. Did the BBC commission the Royal Shakespeare? Did they transmit them?

Sir Michael Lyons: Do you know, the time that I spent on the Board of the Royal Shakespeare Company, which is a couple of years ago now, I do not remember the BBC ever looking at representing a serious line of income to the Royal Shakespeare Company.

Q360 Lord King of Bridgwater: It is the public perception in these issues that matters. I am sure the Royal Shakespeare Company would like to have income from the BBC?

Sir Michael Lyons: I do not think they see me as the route to that.

Q361 Lord King of Bridgwater: Can I say this?

Sir Michael Lyons: Please do.

Q362 Lord King of Bridgwater: You have got here the new Code of Practice?

Sir Michael Lyons: Yes, I have.

Q363 Lord King of Bridgwater: You have attached to it the Nolan principle?

Sir Michael Lyons: Yes, absolutely.

Q364 Lord King of Bridgwater: Seven principles which have governed public life?

Sir Michael Lyons: Yes.

Q365 Lord King of Bridgwater: With great respect, do you not see that, as Chairman of the BBC, you set out the Code of Practice for all the other directors of the BBC and make them all sign as a board. Is it not very important that there is simply no question about, “Gentlemen, I think it is probably all right.” You have to set a standard that is absolutely whiter than white, do you not?

Sir Michael Lyons: I agree with that. I have no intention of living on a desert island, to protect myself from any other influence or debate during my period as the Chairman of the BBC. We have been through a very careful, demanding scrutiny process, which has required me to give up a series of activities, a number of them associated with income which I had previously enjoyed. This has not been a painless exercise, therefore, but it is an absolutely proper exercise. In debating in some detail what is one side of the line and what is the other, we have come to a conclusion, which I absolutely agree with, that the CBSO is one side of the line—I should stand back from that, and that is in process—the governorship of the Royal Shakespeare Company is the other side of the line. We can take different views on it; that is not unhealthy. However, the notion that somehow

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one demonstrates one's purity by having no associations is, frankly, unrealistic in this world.

Q366 Lord King of Bridgwater: If you have to debate it—and if the late Lord Nolan were sitting here, he would not waste much time arguing—there is one action that you should take. May I just leave that thought with you?

Sir Michael Lyons: You can leave that thought with me. Thank you very much.

Q367 Baroness Howe of Idlicote: Perhaps I may go back a little way. This whole role of the interests of the licence fee payer is crucial and central to your role. You perhaps have a much smaller budget than governors would have had in the past; you have to do research, and all those types of things. Going back to the group, a very interesting group of people, who sat on the selection committee, do you think that there was really enough representation of the licence fee payer? There was of course Sheila Drew Smith on public appointments generally, but that is a wider interest.

Sir Michael Lyons: It is an interesting and debatable point. Parliament has decided on that arrangement for public appointments. You are—and I see no harm in this—debating whether you might adopt other arrangements in the future. All of these things have to be weighed, do they not? Clearly these are experienced and distinguished people in their own right, with considerable knowledge of the governance of public bodies. It seems to me that set of skills was well represented there. I think that it is a matter for Parliament to determine whether you need to reinforce that by a stronger voice on behalf of the public and licence fee payer.

Q368 Baroness Howe of Idlicote: You would therefore see it as a matter for Parliament—because of course Parliament is not really involved in this process.

Sir Michael Lyons: Parliament certainly has a strong voice in the setting of the current processes for public appointments.

Q369 Chairman: It is a very interesting point, but if there was a parliamentary process whereby whoever was nominated as the new Chairman of the BBC was put before a parliamentary committee—let us say a joint committee of the two select committees, something of that kind—would that put you off applying for the job?

Sir Michael Lyons: I think that it really depends at which stage in the process this took place. I am on record elsewhere, from other work that I have done, of being in favour of a strengthened parliamentary scrutiny: not in this area but in other areas. It would therefore be bizarre if I for a moment suggested that

there might not be a case for stronger parliamentary scrutiny. It would not have put me off. Indeed, I am sitting here in front of you today, for what is clearly post-op scrutiny of my appointment; so I would hardly find that offensive or difficult, although maybe not my chosen pastime.

Q370 Chairman: Really? I am disappointed.

Sir Michael Lyons: I am sorry to disappoint you, but I may have to!

Q371 Lord King of Bridgwater: You will have to get used to it!

Sir Michael Lyons: Although it is not new to me, of course. One thing I can be absolutely clear about is if it were pre-appointment, I would not have put my name forward.

Chairman: I do not think that anyone is suggesting that—apart from Lord King. What is being suggested is some sort of confirming arrangement.

Q372 Lord King of Bridgwater: A process which simply requires it before appointment.

Sir Michael Lyons: It is extremely successful at bringing a wide range of candidates forward, as I see it.

Q373 Chairman: Let us not misunderstand each other. I think that what you are saying is, much earlier in the process, some parliamentary scrutiny. Is that my understanding of what you are saying?

Sir Michael Lyons: I am saying, after appointment, the appointment being subject to scrutiny certainly would not have deterred me from being a candidate; but, at the stage while you are still one of a number of candidates, that would have been definitely out of the question.

Q374 Chairman: That is what I understood you to say. Scrutiny after appointment.

Sir Michael Lyons: I think that I prefer scrutiny after confirmation, but I can see the line of your argument.

Q375 Chairman: I want to move on to other issues. Let me put one other point to you which we have not covered and which I think we should. Hugo Swire, who we are interviewing later today, was quoted as saying on your appointment that we needed to be clear about the criteria, and that not only were you a former Labour councillor, but you were commissioned by Mr Gordon Brown to carry out two major reviews for the Government, “for which he was paid £500,000”. Not quite on the scale of Jonathan Ross, but nevertheless a substantial sum. Do you think that there was anything in your appointment about you being a Government trusty?

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Sir Michael Lyons: I doubt it, but there is an important word missing from Hugo Swire's statement. You have not misquoted him, but there is an important word missing. The word is "independent". Each one of the three reviews that I undertook, jointly commissioned by the Chancellor and the Deputy Prime Minister, was explicitly headed as an independent review, and that is the only basis on which I took them on. Anybody who looks through a published report of my work will have no doubts at all that the conclusions I reached in every case were independent, and in some cases challenging for Government, not least in the area of local government.

Q376 Bishop of Manchester: Sir Michael, I notice your appointment is until 30 April 2011. I am not a betting man, but let us pretend that I am and I now seek your advice. Do I put my money on your serving a full term or on a sudden, voluntary departure?

Sir Michael Lyons: A challenging question! In good Trust style, I would encourage you to look at the facts and to draw your conclusion from those. If you look at the facts about the longevity of previous chairmen, you would probably put your money against my staying very long. If you put your money on my track record, for instance as being the longest-serving chief executive in the City of Birmingham for 32 years, then you might say that I have a better prospect than others; and you might get good odds for it. You might therefore decide that was a very sensible thing to do.

Baroness Bonham-Carter of Yarnbury: You are tempting him!

Chairman: I thought that Manchester was a betting city!

Q377 Bishop of Manchester: Given your own track record and the fact that, as you have said, if one looks back on previous chairmen of the BBC, it has been a rather a rather uncertain and perhaps unfortunate record, do you feel that in any sense it is important now for you as the new Chairman of the Trust to be here for some time, because the BBC has actually suffered from sudden departures of chairmen, not least that of Michael Grade?

Sir Michael Lyons: I would not have taken the job on unless it was my intention to serve the four years. I leave open the question of a second term, which is a possibility. That is for another day, depending upon both my performance and how I feel about the job at that time. Why go through all of this wonderful experience with the prospect of giving it up in a very short period? However, the spirit of your question, that it would be in the interests of the BBC to have some stability, I absolutely agree with.

Q378 Bishop of Manchester: When you came in and you assessed the situation, and noticed that Michael Grade had gone at a time when the licence fee had not been settled, when the governors had been dissolved, when the new Trust was just being formally established, did you feel that there really was a need to produce some stability and that in fact the BBC had suffered as a result of his departure?

Sir Michael Lyons: That is a complicated question to answer. First, I do not want to speak for Michael Grade. He makes his own decisions. Secondly, I do want to acknowledge the excellent job that was done by my colleague Trustees under Chitra Bharucha in getting on and doing the job of the Trust, and putting in place things like the public value test and the instruments that we will use to do our job and, very clearly, provide the evidence for the decisions that we reach. That was excellent work. I do not want to leave the impression that somehow I have arrived to find the BBC in any way problematic. It is getting on and doing its job. Indeed, my biggest concern at the beginning was with the public debate, which seemed to suggest that the Trust was a regulatory body completely distanced from its real job of making decisions on behalf of the public about the future of the BBC.

Q379 Bishop of Manchester: Perhaps I could just explore that a bit further. You have now been in for six weeks.

Sir Michael Lyons: Yes.

Q380 Bishop of Manchester: In terms of what you have just said, what do you think the key priorities are, particularly in the way you will exercise your role?

Sir Michael Lyons: The key priority in front of us at the moment is the decision—we have used the term "re-prioritisation"—how the licence fee will be used over the coming six years. That gives me the opportunity to underline what I think was implicit in your question: that the BBC cannot look forward to a period of stability, because the world in which it operates is changing so rapidly. In terms of technology and markets, there are some very big challenges. I strongly associate myself with Mark Thompson's argument that everything we do now must be with a view of what the BBC will look like in 2012 and the debate that will then follow. This is not a period of complacency and stability, therefore; this is a period of active engagement and the wisest use of the licence fee monies over that period, and that is exactly the discussion that we are involved in at the moment.

Q381 Bishop of Manchester: Did you feel that the licence fee settlement was really rather mean on the part of government?

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Sir Michael Lyons: I am on record as saying—and I think it is the right comment to make in reply to that question—we are where we are. It could have been very different: much worse. The BBC clearly would have liked it to be better but we are where we are, and the best thing about that answer is that it concentrates us on getting the best value for the monies we have.

Q382 Lord King of Bridgwater: Could I ask a quick question, following that up? It is about the problem of Michael Grade, which has clearly been recognised now by the introduction of a new code of practice which contains a non-compete clause. The thing that surprised me about it—and I wonder whether we could have your views—is that you have stipulated that a period of three months is the absolute maximum for asking any member of the Trust to agree not to be involved in what might be some competitive organisation. That seems to me to be extraordinarily short as a maximum, because the Chairman or Vice-Chairman can waive it anyway. Would you not agree that, in other activities—you know the commercial world as well, and it is certainly true of civil servants and senior military officers—they are often put into quarantine for as much as a year or more if they are definitely believed to be in a situation in which a non-compete clause is applicable. Three months is practically just an extended holiday before you start a new job—and that is the maximum.

Sir Michael Lyons: First, let me acknowledge that this is a matter of judgment; there is room for debate about it. Secondly, let me acknowledge that there is a wide range of experience in the private sector. Non-compete clauses are not used so widely in the public sector, and there are a limited number of other public bodies which have non-compete clauses in their contracts for those who are publicly appointed. Three months is not exceptional. I think that between us we could readily name a number of companies who do not look for a longer period of gardening leave.

Q383 Lord King of Bridgwater: I am sorry to interrupt, but you have a number of qualifications here which make clear that it can be waived, after proper and sensible discussion, by the Chairman and Vice-Chairman. It says, “or the Vice-Chairman”. So it need not apply to anybody. People can go and only if it is thought necessary is there a non-compete clause. You have shackled yourself to saying, “The maximum we would ever ask of anybody for whom this would operate is three months”. I do not understand it.

Sir Michael Lyons: I do not think that it would be right to interpret it as that the non-compete clause will be regularly overridden by the Chairman. I do

not think that would be the right interpretation for this.

Q384 Lord King of Bridgwater: Why not?

Sir Michael Lyons: I hear what you say about it being short, and I am perfectly happy to take that one away to reflect on. That is, I think, what you are seeking that I should do.

Lord King of Bridgwater: Yes.

Q385 Baroness McIntosh of Hudnall: Just to follow that up a little, in general there is this provision in the code of practice that there should be a three-month period. In relation to your own post, is there a period of notice that you are obliged to give and, if so, what is it?

Sir Michael Lyons: I should know factually the answer to that question. I believe that it is exactly the same, but let me say that my intention is to serve the full four-year term. So I have not actually explored—*Chairman:* That is what Michael Grade said.

Q386 Baroness McIntosh of Hudnall: Without in any way challenging your intentions, in the event that something caused you to need to give notice, as I understand you, you are saying you believe that your notice period would be three months?

Sir Michael Lyons: Absolutely. However, just as I answered to Lord King—because you have clearly raised an issue of concern—may I take the two away together to reflect on both, personally and with my colleagues? The only point I would leave as I close my answer to that—though not for a moment to suggest that you want to close it—is that the challenge here, is it not, is not to have a set of rules which will limit the ability of the BBC to attract talented people to do these jobs, particularly in a climate where you ask the Trustees, for a relatively modest public stipend, to take on a very tough job on behalf of their fellow citizens? The more difficult you make it, the more that you will see a problem—which we certainly have in this country, and even more so in the US—of people not being willing to take on civic roles.

Q387 Lord King of Bridgwater: Notice and non-compete are two different things.

Sir Michael Lyons: Thank you.

Q388 Baroness McIntosh of Hudnall: They are indeed two different things but they are related to one another.

Sir Michael Lyons: I understand that.

Q389 Baroness McIntosh of Hudnall: In relation to the non-compete matter where it affects the chairman, do you think that there is a greater degree of necessity to protect the BBC from the possibility that any chairman—not you in particular, and

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especially not you—might depart the BBC with sensitive information which he or she could not avoid having and the BBC not be properly protected?

Sir Michael Lyons: Yes, there is a proper issue about protection. I have already expressed my concern that we should not discourage future candidates to the post.

Q390 *Baroness McIntosh of Hudnall:* And I agree with you entirely about that.

Sir Michael Lyons: I also believe that, in a complicated world, we have to recognise that sometimes we end up trusting individuals, and properly so. I think that the notion that trust has no part to play in this would be a dangerous message to send out.

Q391 *Baroness Eccles of Moulton:* A very quick point of information, if I may. Is this code of practice an addendum that the Government has added to the Charter, or has it been drawn up by the Trust itself?

Sir Michael Lyons: It is a decision of the Trust.

Q392 *Baroness Eccles of Moulton:* It is a Trust document?

Sir Michael Lyons: Yes.

Q393 *Baroness Eccles of Moulton:* So it could be signed off by you, as it were?

Sir Michael Lyons: It could be changed by me, yes.

Q394 *Baroness Howe of Idlicote:* I am slightly surprised, quite honestly, about this three-month period. It certainly does seem to me to be a very minimum period. I am particularly thinking of Michael Grade. There he is, with some sensitive information. I am sure that he will do the right thing, but nevertheless in the public mind there may be doubts about that. He has sensitive information. Do you not think that it might be more reassuring to the licence fee payers—coming back to that point again—if there was a six-month period?

Sir Michael Lyons: I have agreed to reflect on this and to take it away. There is for me a really important issue that underlies a number of areas of discussion and questioning that we have had today. I believe that we need to encourage more people to play a part in the civic life of this country. The more we make it unattractive, implying that somehow involvement in civic life is tainted and that it erodes one's trustworthiness, it just discourages people. I think that there is therefore a big issue underlying this. I am not suggesting that is where you come from, but just that we need to get the balance right.

Q395 *Baroness Howe of Idlicote:* I would slightly question the fact that this is a not very attractive job to take on.

Sir Michael Lyons: I did not say that.

Q396 *Baroness Howe of Idlicote:* No, but one you thought to have so many difficulties for people like you that they might not wish to put their names forward.

Sir Michael Lyons: I only draw the evidence there, from the number of people who have appeared in the press saying that they would not put their name forward. For me it is a very attractive job. I am delighted and privileged to have the job, and I intend to serve my full term.

Chairman: Many of them were not going to be selected in any event, so they would have to say that they were not going to be a candidate!

Q397 *Baroness Bonham-Carter of Yarnbury:* If you want to encourage more people to be involved, which I think we would all agree with, do you think that it was a sensible idea to keep on three ex-governors to automatically become members of the new Trust, which was meant to be a new body, rather than reaching out to others?

Sir Michael Lyons: I think that it was a very wise decision. On the basis of what I have seen, six weeks into post, those three individuals bring extraordinary experience. For the continuity from governors to Trust, therefore, it was a great strength. They are of course only three out of 12, and I think that it was a good call. That is my view.

Q398 *Chairman:* We really have run out of time. Perhaps we can consider this as an introductory talk and we look forward to several others over the coming months. Thank you very much indeed for coming, Sir Michael.

Sir Michael Lyons: Can I thank you for your questioning and the courtesy with which you have treated me. I look forward to those other encounters. However, could I make an offer to you—if you do not feel that is at all impertinent? Given your interest in this area, I would be very happy to arrange a short, by intent, seminar for you all on the role of the Trust; so that you have a chance to explore, a bit more fully than perhaps you have been able to so far—because I am not sure that I have been able to convey that to you as perfectly as I might have liked.

Q399 *Lord King of Bridgwater:* With all the Trustees?

Sir Michael Lyons: With all the Trustees, of course.

Chairman: Let us consider that and the timing of it. Thank you very much indeed.

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Supplementary letter from the BBC Trust

Thank you for inviting me to appear before your Committee this morning.

I have since reflected on my response to one question raised and would like to clarify the Trust's position for the record.

During several exchanges on the role of the Trust on editorial matters, I explained that we set the editorial framework within which the BBC must operate, appoint the Director-General as editor-in-chief, and are the final "court of appeal" for programme complaints. The Trust does not preview programmes prior to broadcast to safeguard the Trust's independence.

Baroness Eccles then asked me specifically how the Trust would react if the Director-General asked Trustees to preview a programme prior to broadcast. As I said this morning, this is a challenging question, not least because I believe the situation described to be highly unlikely. However, whilst the Trust would of course provide the Director-General with any appropriate advice or guidance, I cannot foresee any circumstance in which I or the Trust would go so far as to preview a programme prior to transmission for the reasons already explained.

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Supplementary letter from the BBC Trust

I would like to clarify one point of information arising out of Sir Michael Lyons' appearance in front of the House of Lords Select Committee on Communications on Wednesday 13 June. During an exchange between Sir Michael and Lady McIntosh, there was reference to notice periods and the Confidentiality Undertaking and Restrictive Covenant (annex E) contained within the Trust's Code of Practice.

I would like to clarify that the document makes the following provision:

"I agree that for a period of three months or such lesser period as determined by the Chairman or the Vice Chairman of the BBC following the termination of my appointment as a Trust member of the BBC howsoever arising I shall not take up another appointment with a broadcasting and/or media competitor or regulator of the BBC within the UK unless the Chairman or the Vice Chairman determines that there is no actual or perceived conflict arising from such appointment."

This "cooling off" period is an arrangement put in place by the Trust as part of the confidentiality undertaking required by the Trust's Code of Practice and signed by all Trustees. The arrangement allows for the Vice Chairman to consider any issues relating to the Chairman. The Chairman has confirmed he is satisfied that the current arrangements provide reasonable safeguards for the BBC in the best interests of licence fee payers, and he would not expect to vary the "three months or lesser period" position.

The "cooling off" period is a separate matter from the question of a notice period. Trustees (including the Chairman) do not have a period of notice. Trustees are office holders, not employees, and do not have employment contracts. Trust appointments are made by Order in Council, in accordance with the provisions in the Charter, which makes no reference to a notice period. Trustees' terms and conditions are a matter for DCMS, but I understand that the position on notice periods for Trustees is consistent with the Department's general public appointments policy.

Trustees have also signed an agreement to keep confidential any information they have received in the course of their duties as Trustees. This confidentiality undertaking is of indefinite duration.

I hope this clarifies the point.

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Examination of Witness

Witness: MR MARK THOMPSON, Director-General, BBC, gave evidence.

Q400 Chairman: Mr Thompson, welcome to the Committee. You have heard my introduction regarding what we are about. You came to see the former BBC Committee on at least two occasions previously, and so we know you quite well from that. Having listened to the evidence that we have just had, we now understand that you are really the man in

charge of the BBC, are you not?

Mr Thompson: Under this new system, as you know—and I will not belabour the point—the operational leadership and management of the BBC is delegated to me but I report to the BBC Trust, which is the sovereign body. In the end, the Trust is in charge. Regarding the point I heard Lady Eccles make

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earlier, if the Trust gets involved in editorial decisions before transmission, they become the editor-in-chief and they cannot then stand back and, as it were, in the fullness of time and with all the facts, hold the editor-in-chief to account. We therefore have a system where we have frameworks, editorial guidelines and other agreed strategies in place; but the reason the Trust does not get involved in operational decisions is precisely so that they are there to hold me and my colleagues on the operational side of the BBC to account. That is set out more clearly in this new system but it is not a new idea. The idea of a separation between the operations of the BBC and operational decision-making, including difficult editorial decision-making, and the governing body is an idea which began on 1 January 1927 with the first Charter and which has stood the test of time.

Q401 Baroness Eccles of Moulton: May I come back to that, as I have been directly addressed? I suppose the difference is that when the product is something that is published and is instantaneous with publication, and once it is done it is done and that is it—it has gone out to maybe millions of viewers—it is rather different to other products. If, for instance, it is 40 million tins of sardines, it can be withdrawn. That is not a very good parallel but it is the best I could think of on the spur of the moment.

Mr Thompson: I think that we should be realistic about it. Although I very much like the idea of my examining, in quiet, careful reflection and contemplation, the merits of every single programme before transmission, the reality is that for 80 years the BBC has broadcast, initially hundreds and now many thousands, live broadcasts—where, sadly, it is physically not possible for me to be, as it were, sitting shotgun over every single hour that is broadcast. We have a system, which I am absolutely in charge of and responsible for, of delegated editorial decision-making which we trust in large measure to deliver high-quality, dependable, good broadcasting to the British public. Inevitably in the system there will be times when mistakes happen. You cannot broadcast as much as we do without some mistakes happening. I have to say—disagreeing with one point that Gavyn made, though I am very impressed with what Gavyn said overall—I think that we do have a pretty clear and transparent complaints system, which begins as close to the programme as possible, then moves up to an editorial complaints unit which is separate from the editorial line management of the BBC and, if that is not satisfactory to the complainant, the Trust can step in and look carefully at the complaint. You can go on our website and see exactly how that system works. The point was made by several people this morning that they are not quite sure who to write to. We have 12 million or more interactions with the

public every year; we have many millions of comments and requests for information from the BBC; a tiny proportion of complaints relative to the total number of interactions, but still tens of thousands of complaints. I have to say that people contact almost everyone in the BBC. What we try to do, however, is to get people into this coherent, transparent system as effectively as we can, so that the complaints can be taken seriously.

Q402 Chairman: Let me go back a little bit, to where we started. We were talking about the licence fee settlement and the old BBC system and other things. How do you view that licence fee settlement? What is your reaction to it?

Mr Thompson: As I said at the time it was announced, it was manifestly less than we had asked for and in that respect was disappointing. However, I also made it clear on that day that I recognise it is a matter for the Government to set the licence fee. I think that it is a completely reasonable thing for the BBC Director-General to set out a case for what I believe the licence fee should be, in the light of what I believe the BBC could achieve in terms of its public purposes. The Government having made its decision, I would absolutely be at one with Sir Michael Lyons and say that the right thing to do is to try and make sure we use the licence fee over the next period of settlement, a six-year settlement, to deliver the best possible content for the British public and deliver our public purposes as well as we can.

Q403 Chairman: Inevitably, does it not mean that there will be changes as a result? You have bid for one; you have not got that; you got less than that. It must mean that there are going to be changes.

Mr Thompson: There is no level of funding that you could possibly give the BBC at which there would not be difficult choices between competing ideas and priorities. The business of having to make sure that you are focusing your investment and your resources is true at whatever level of licence fee there is.

Q404 Chairman: That sounds lovely and very nice in general terms, but is this one going to lead to redundancies?

Mr Thompson: In our licence fee bid—so quite apart from the eventual settlement—we recognised that the process of continuing to try and find gains of productivity, through the use of new technology, towards new ways of working—which we have been heavily engaged on in the last three years—can and must continue. Like any other enterprise in this country, it is important that the BBC continues to look hard at what it does, to see if it can drive better value out of the licence fee payer. Because of technology in particular, digital technology inside the

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BBC quite apart from digital services, we have continuing opportunities to do that.

Q405 Chairman: But journalistic redundancies?

Mr Thompson: I want to be clear about this. I believe that there is no part of the BBC where we should not be looking hard at whether we can drive better value. It is obviously absolutely critical that, in doing that, you do not diminish the quality of your services. A change which reduces the cost that leads to a diminution of quality is not an efficiency; it is simply a cut. It is a reduction or a dilution of service. The task we have across the BBC is to look at whether there are ways in which we can maintain the quality of existing services, but make changes so that you secure some resource which you can then apply to the new obligations we have under this Charter. We are some way off a formal set of proposals to the Trust, so we are still at work on this. No decisions have been taken in any part of the BBC about this. However, you cannot ask the BBC to take the concept of value for money and productivity seriously, and yet throw up your hands in horror at the idea that it might have some implications for the number of people we employ. I am afraid that an inevitable consequence of looking hard at productivity—sometimes, not always—is that it affects the number of people you employ. That is not unique to the BBC. I do not know of an enterprise in this country where it is not so.

Q406 Chairman: No, it is not unique to the BBC; but what you are saying is that inevitably the staff of the BBC will be reduced.

Mr Thompson: When I arrived as Director-General, we started a three-year programme of value-for-money savings, which has led to very substantial redundancies from the BBC: 3,800 people will have left by reason of redundancy and, through other changes and the disposal of some units of the BBC, about 7,000 people have left. I do not believe that over this next six-year period we will be talking about reductions of that scale again. None the less, I have to say that I think that part of my duty, as the Chief Executive as well as the Editor-in-Chief in the BBC, is to look hard at whether there are ways of running the BBC, absolutely to deliver high quality, but more effectively and efficiently.

Q407 Chairman: The point I am seeking to get to at the end of the day is this. You will have a look at the whole range of the BBC's services.

Mr Thompson: Yes.

Q408 Chairman: You will put forward proposals, and those proposals will go to the Trust.

Mr Thompson: Yes.

Q409 Chairman: And it will be for the Trust to approve them.

Mr Thompson: Yes.

Q410 Chairman: How does that differ from what happened in the old days?

Mr Thompson: In a number of significant ways. The Trust themselves have some experts in-house on this topic. On the issue of productivity and efficiencies they have, in-house, some experienced people who can advise them directly. Moreover, they will do something which I believe the Board of Governors would never have done. Two things will happen. First, they are going to engage the National Audit Office to look at the definitions—the baseline, if you like—for efficiencies; so that, as we go into this new programme, there is absolute clarity about exactly what is efficiency, what is not an efficiency but a movement of money from one part of the BBC to another, and so on. So that, the next time we come to talk about the level of the licence fee, there is absolute transparency and clarity about exactly what we are talking about. Each year, in our annual report and accounts, we will report back on exactly what is happening in those efficiencies. In addition, the Trust may very well seek independent, external expert advice, to look at what is being proposed. In my view, it should be challenged both ways. Is the BBC challenging itself enough in terms of what it can achieve, or are the proposals so great that they run the risk of reducing quality? I think that it is appropriate that these proposals, when they emerge, should be challenged from both directions, as it were.

Q411 Bishop of Manchester: In the light of what you have just been saying, I am aware that the BBC has now signed on the dotted line for the Media City proposals in Salford. To be realistic, however, how secure are those full proposals? I know that it is unlikely that, even now, everything will be there before 2011–12. It sounds to me from what you are saying that in your own mind it could be quite possible for very proper arguments to take place within the Trust, which could lead to a rather lesser arrival of the BBC in Salford than currently planned.

Mr Thompson: No, we are fully committed to Salford. We have to be clear about some priorities at the start of this process. We are completely committed to the digital switchover and support of the move of the United Kingdom from analogue to digital television. It is an absolute headline obligation in the White Paper and the Charter. We will do that. We are also fully committed to Salford. The reason that we are fully committed to Salford is, not least, because in the long run Salford makes very good economic sense for the BBC. Quite apart from any other merits of the

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proposal, I think that in the long run Salford will make good value-for-money sense for licence payers. We are therefore fully signed up. I will be literally signing on the dotted line later today in Manchester, and we are fully signed up to the Salford project on at least the scale that is currently announced: so at least at the level of the numbers of people that we have talked about. It is not impossible that that could grow slightly; it will not diminish.

Q412 Bishop of Manchester: Though, reading *Ariel*, your in-house magazine—

Mr Thompson: I am very impressed that you find the time!

Bishop of Manchester: . . . it is pretty clear that some people in the BBC need massive persuasion personally to make that move.

Q413 Baroness Thornton: That is because they are London-centric.

Mr Thompson: I believe that the BBC should seek to serve the whole United Kingdom, not just in its services but also in terms of its investment, from where it draws its talent, and where it is visibly present in different communities. We have a tradition in the BBC of extensive and very good local, regional and national broadcasting; but it is true that, as I think Lady Thornton was suggesting, there is a long tradition of a very big London base. One of the things we are doing is shifting the balance of spend in the BBC from London to the rest of the UK. Does that present cultural challenges for some of my colleagues or personal challenges? Of course it does. We tried to give people, in the context of the Salford move, plenty of notice—many years of notice—so that they can make a personal decision, and we will try to find, if we can, the right solution for every single one of our employees in terms of this move. However, I do not make any apology for the fact that we are making a change and trying to embed the BBC more broadly across the UK. I think that is a good thing and will lead to better services.

Q414 Baroness Thornton: I agree with that. I just wish that it had been in Yorkshire, but never mind. Your employees can live in Yorkshire and still work in Manchester if they want to. I would like to go back to what you were saying about the National Audit Office, and the relationship between the Executive Board and the Trust in terms of accountability, and how you deal with the expenditure and value-for-money issues. I do not know if you agree with me, but I do not think that this is an exact science. I am slightly worried that, if you are going down the route of the National Audit Office and that is the way that people who are working for the Trust are looking at how the BBC spends its money, there may be some problems, and I would just like your comments.

First, is flexibility going to be built into that? Secondly, how are you going to bring forward innovation? As I have said in previous sessions, I was very concerned that the Trust turned down BBC Jam, and I would like your comments on that. I thought that was not a forward-looking decision, and I would be worried that you might be building up systems which will stifle innovation. I think that your future lies in innovation.

Mr Thompson: I strongly agree with that last point. Innovation in terms of services, the kind of content we produce, and also innovation in how we make services. We will not achieve the kind of productivity gains that I believe we will need to make, and should make, without very big innovations in the way we work inside the BBC. However, let me try to deal with quite a few big points there. First, regarding the National Audit Office, the intention will be to get advice from the National Audit Office in terms of the setting of definitions and baselines for efficiencies. In the matter of at what level you set the efficiencies, in my view that is a matter of judgment. It must be right that there is a significant component of judgment. On the Executive Board we have access to some non-executive directors of really outstanding business experience. We have been able to attract very strong non-executives on the Executive Board; they will help us. We have our own teams of experts and, again, we will seek external advice from time to time ourselves. The Trust, as I have said, has some expertise in-house; they also have recourse, if they need it, to external advice; and both we in our proposals and the Trust will have to exercise judgment. That is part, it seems to me, of what these jobs are about. Do we need to be flexible? Of course we do. I believe very strongly that in the matter of efficiencies you do not want a single, salami-sliced percentage of targets across the BBC. There is an enormous difference between what one part of this organisation can achieve in efficiencies and another part. We are currently in a three-year programme of taking around 8½ per cent a year, each year, out of some of our overhead departments—the corporate centre of the BBC. We cannot keep up that rate. Many hundreds of people have left the corporate centre. I think that was the right thing to do. It is a much smaller centre to the BBC than it used to be—less bureaucracy, if you like—but we cannot carry on at that rate. We need a lot of flexibility; we also need to learn as we go along. We need to learn from our successes and from our failures. Let me turn to BBC Jam. I should first be clear that the decision of the BBC Trust to suspend BBC Jam was one that I agreed with, and indeed recommended. The reality was that the European Commission was on the very point of opening up a formal procedure, looking at Jam: a process that would have potentially lasted a number of years and would almost certainly have led

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to suspension in any event. Moreover, both the Executive Board and the Trust had come to the conclusion that the way in which Jam had been given its consent by the secretary of state under the old system had not won the confidence of the rest of the industry. As a result, the service had been the subject of constant complaint and review throughout its life. It was subject to a very complex consent. In a sense, there were two possible paths in front of BBC Jam, one of which was a process in Europe which could have lasted a very long time, and still might not have achieved consent and support for the service. The other was to use the new system, with a very clear market impact assessment done by Ofcom and the new process of the public value test, to take the BBC's formal learning proposition and debate it publicly, with public consultation, consultation with the rest of the industry and, using this new, much more transparent system, to try to build support around the proposition. The other thing to say is that BBC Jam emerged as an idea in the late 1990s and went through its consent process with the secretary of state in the early years of this decade. The reality is that in many ways the consent rather froze BBC Jam in aspic, because the nature of the consent was that you had to do exactly what was there. I believe that we were doing that. I am not sure that the complaints against it had merit. In my view, however, we need a proposition which can be developed and innovated over time.

Q415 Baroness Thornton: So you are going to do that?

Mr Thompson: I believe that the BBC, playing the right role—a complementary role—in supporting formal education in this country, supporting students, parents and teachers with the educational mission of this country, is incredibly important; but it needs to be done in a way, if it can be, which is complementary to what is provided by the market.

Q416 Lord Hastings of Scarisbrick: Sir Michael Lyons implied fairly heavily that the Trust is quite significantly dependent on the executive for advice, particularly on strategy and future process. Could you tell us, practically, do you attend every meeting of the Trust? If you do, do you attend alone or do others attend with you? Do you attend with members of the Executive Board and do you attend also with, as it were, your officials?

Mr Thompson: First, I want to distinguish. The Trust expects the management of the BBC to make proposals to them. That is the nature of the relationship. With proposals of any significant scale at all—I am not talking about major strategies but a significant proposition about, for example, something that our commercial arm might do—the Trust will seek independent advice, either from its

own experts or externally. The Trust now always relies, for decisions of any scale, on independent advice which has nothing to do with the management and which, characteristically, the management will not seek to see and will not see. I am at the disposal of the BBC Trust. I attend meetings whenever I am invited. That, by the way, means that I attend some of some meetings. Typically, I would attend a significant part of their monthly meeting, but there will also be significant parts of that meeting at which I and the rest of the management are not present. Characteristically, if other executive directors of the BBC are in the room, I will be in the room as well; but typically it is very practical, if we are going to discuss a particular topic which relates to one part of the BBC—our commercial operations, our news operation—then the appropriate director will be there. Typically, the Finance Director, the Chief Operating Officer and the Deputy Director-General will be present when I am present. In terms of the relationship between Trustees and the non-executive directors, typically these are informal; but, in my view, to get this system to work well—and I think that we have got off to a good start—it is important that there is regular independent contact between non-executive directors and Trustees, and that has been happening.

Q417 Lord Hastings of Scarisbrick: Is that regular independent contact between the two boards an informal contact? I recall that in previous years there used to be lobbying sometimes between one group of executives and the governors, and the other way round. Although you may not attend every part of every meeting, is your advice sought about the agenda of every part of a meeting?

Mr Thompson: No.

Q418 Lord Hastings of Scarisbrick: Do the Trust—both ways round, between the executives and the Trust—seek to influence the decisions of the whole of the board, of either board?

Mr Thompson: First, on the matter of agendas, the Trust agendas are absolutely a matter for the Trust. Although I may be consulted in terms of the practicalities of who turns up when and the sensible order in which to take items, to be very clear, they set out their own agenda and it is fundamentally a matter for them. The agenda of the Executive Board is a matter for me. In terms of influencing Trust decisions, the characteristic process is for the Executive Board to come to a conclusion about a particular project or strategy and then to put that proposal to the Trust. Are there conversations around that? Yes, there are. However, it is a very different world than the one even a few years ago, where a very large amount of business was done, as it were, offline. It has now become more formal and

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more transparent, and both the proceedings of the Executive Board and the proceedings of the Trust are made public.

Chairman: What are the meetings you are not there for? Do you know that? When are you excluded?

Q419 Baroness Thornton: He is not admitting to anything!

Mr Thompson: For the reasons that your questions suggests, I am not able to give you a complete answer on this, but—

Q420 Chairman: You surely must show some inquisitiveness about this?

Mr Thompson: There is a fair amount of business which is properly the Trust's. For example, and I think it is quite a good example, in the matter of the public value test, which are formal findings by the Trust on important matters, we are called from time to time—in a public value test like the iPlayer—to give evidence and to submit documents at various stages in the process. The deliberations by the Trust on whether or not to give approval are meetings at which we are absolutely not present, and we are informed about the conclusions of the Trust at the same time that everyone else is.

Q421 Lord Hastings of Scarisbrick: Gavyn Davies, in his responses, seemed to imply that in his day the relationship between the chairman of the governors and the governors, and their relationship with the BBC, was sufficiently close to allow better decision-making about prospective strategy and programming issues; whereas you are saying very clearly that that separation now has led to a more transparent system. However, would you say that it is a better decision-making process?

Mr Thompson: The sensible thing to say is that we are a few months into this process. There were some members of this Committee who took a view that the thing was never going to work. To be honest, I have to say that the early indications are that you are wrong. I think that it is going to work.

Chairman: I do not think that we did say that, actually. I think that any system can work.

Q422 Lord King of Bridgwater: Some are better than others.

Mr Thompson: For what it is worth, I think that the early practical indications on the ground are quite promising. We will all discover, over the next few years, whether it will work. I thought that there was one particular point that Gavyn made which was quite interesting, when he talked about the role of the Chairman of the Board of Governors as being not quite executive but full-time. That is quite a telling phrase. We are now very clear that we have a non-executive Chair of the BBC who chairs the Trust, and

we have a full-time Chief Executive who happens to chair the Executive Board of the BBC—which, by the way, is normal in PLCs—who is the full-time executive Chief Executive of the BBC. It seems to me that that is a rather undramatic, normal state of affairs.

Q423 Baroness McIntosh of Hudnall: There is one aspect of it that is not normal. In most respects I would agree with your analysis and that it is not particularly controversial, except for the provision that the Executive Board could be chaired by a non-executive chairman.

Mr Thompson: Yes.

Q424 Baroness McIntosh of Hudnall: Could you explain to us, so far as you are able, what the thinking was behind that provision? Secondly, could you say in what way you think the Board, were it to be chaired by a non-executive chairman, would operate differently? How would it then relate to the Trust?

Mr Thompson: It is worth saying that the system is very definitely the Government's system. It is the Government's proposal. Using a recently used phrase, I believe that it is one that can be made to work, and indeed to work better than the previous system. What I cannot do, however, is tell you definitively why this provision was made in the arrangements: except to say it seems to me that it offers flexibility in the system. I think that it is unlikely in practice that the BBC Trust will, at any point I can foresee, wish to have a non-executive Chairman of the Executive Board, not least because, if you have looked at the fine print of what is talked about, they would then lose the ability to appoint the Chief Executive and would only be able to approve the appointment of the Chief Executive. I think it is unlikely that any future BBC Trust will lose the full appointment power of the Chief Executive of the BBC. My assumption is that there was a feeling that at some point it might be desirable.

Q425 Chairman: I think you would concede that we were also critical on this particular point in our last report. From what you are saying, it sounds frankly nuts—absurd.

Mr Thompson: Can I talk about the system that we do have at the moment? I think that it is working well. We have a body of non-execs on the Executive Board who are very distinguished, led by Marcus Agius, the Chairman of Barclays PLC, who is the senior non-exec. They are in a voting minority on this Executive Board. I have to say that I have told them and the Trust that it is unthinkable that, if they were unhappy with something as a bloc, I would vote against them or allow anything to go through without their support. In my view, they are adding immense value to our decision-making. It has transformed the

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quality of debate and decision-making. The external perspectives they are bringing are, in every way, improving the debate that takes place at the highest level of the executive side of the BBC. Moreover, they are not conflicted in the way that the governors were conflicted. They can be advisers; they can be champions; supporters and, behind closed doors, very frank critics of what we are doing; but they are very definitely on the side of the management, trying to make sure that our strategies and proposals are as good as possible. The Trustees now have a different role. They are also supporters of what the BBC could be for licence payers and of the BBC's values and its ultimate public purposes, but they are there as scrutineers and overseers of what the BBC does. So that thing which was a bit confused in the role of the governors—when are they champions, when are they not; when are they advisers, when are they standing in judgment over the BBC?—has been clarified in a helpful way.

Q426 Baroness Howe of Idlicote: The criticism which perhaps the Chairman was aiming at was much more the idea that the chairman should be a non-executive, which is one which I think would worry quite a lot of us. I share the concern expressed by Lady Thornton about BBC Jam, which I had seen a little of and which was very impressive: not least in its ability to support both teachers and individual students, particularly ones who perhaps had learning difficulties. The language learning side, which we are so bad at in this country—different language learning, I am talking about—was clearly seen as a good resource. I merely throw that in. What I would really like to ask you about is the whole area of switchover. The one real hole is just how much the cost will be of supporting the vulnerable, which has landed—against our previous decision, I may say—in the hands of the BBC, to sort out the vulnerable, the elderly, and so on. There is also the black hole in terms of the cost of making some sort of provision for those who cannot get digital.

Mr Thompson: Which particular black hole was that one?

Chairman: Let us cut through this. Please give a short reply to this, but we are on to other things now.

Q427 Baroness Howe of Idlicote: What I am talking about is those who do not have the proper resources to go straight to Sky, and that type of thing. Are you sure that there is a big enough contingency fund to cover any fall-outs from the digital switchover?

Mr Thompson: The obligations of the BBC are essentially threefold. They are to provide our own services on digital platforms, notably the build-out of the DTT transmitter chain. Secondly, to support some of the wider industry costs and, for example, the marketing spend of Digital UK, to make sure that

public information about digital switchover is in place. Thirdly, to fund, and indeed to procure and manage, the so-called Targeted Help Scheme of support to these vulnerable groups. On the first two, I am very clear-cut and wholly satisfied. On the third one, I now believe that we have an agreement in place with the Government which provides adequate and appropriate safeguards; so that, for example, if demand for the Targeted Help Scheme exceeds expectations, ways will be found to ensure that it does not impact on the balance of the licence fee, and therefore does not impact on the quality and range of the BBC's services.

Q428 Baroness Bonham-Carter of Yarnbury: A very quick clarification of an answer you gave to Lord Hastings. I think that I was told by the Minister that you did not attend Trust meetings. You do attend Trust meetings.

Mr Thompson: I attend parts of Trust meetings, when I am invited to.

Q429 Baroness Bonham-Carter of Yarnbury: You have to be specifically invited?

Mr Thompson: Yes.

Q430 Baroness Bonham-Carter of Yarnbury: And that is by the chairman?

Mr Thompson: I do not want to mislead you. There is an expectation that a significant part, though in all cases not all, of the main monthly meeting of the Trust is attended by me and other members of the management.

Baroness Bonham-Carter of Yarnbury: That makes sense to me. Thank you.

Q431 Lord King of Bridgwater: You drew attention to the huge volume of issues and complaints that get raised with the BBC, and your desire for an absolutely clear and transparent system for dealing with them. In a reply to Lord Maxton, Sir Michael Lyons said that he would welcome MPs writing to him; he would expect them to write to him, and he said that he was already replying to a lot of letters. Just to be quite clear about this, if he is replying to those letters, the reply can only be, "I have passed this on to the Chairman of the Executive Board".

Mr Thompson: To be clear about it, we have a system of complaint handling, which begins with, where we can, either BBC Information or individual programmes. Typically, a letter to the Chairman of the BBC Trust or indeed to me will, in the first instance, be passed down the system.

Q432 Lord King of Bridgwater: Yes, that is what I meant. That is my point. It will be passed down to somebody who is under your responsibility.

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Mr Thompson: Yes.

Q433 Lord King of Bridgwater: He said that you had clear, total responsibility for editorial matters. He is not going to write back to somebody and say, “I have had this letter. I think that they were wrong. They shouldn’t do it”. He will not interfere in that way, will he?

Mr Thompson: Unless—

Q434 Lord King of Bridgwater: Unless it has been considered—

Mr Thompson: Once it has been through the management system, and if you were the complainant and you were unhappy, at that point the Trust gets involved in the appeal process.

Q435 Lord King of Bridgwater: So the reply will come from you or somebody in your part of the organisation. The letter will simply be passed on for somebody to reply to it in your organisation.

Mr Thompson: We are really getting into the minutiae of the bureaucracy. It may well be that Lord Maxton would get a reply, but the reply would typically say, “Thank you for your letter. I have passed your complaint on”.

Lord King of Bridgwater: Exactly.

Q436 Chairman: We will not get into the minutiae, if you do not mind! Mr Thompson, thank you very much indeed. You have been here all morning and you have got the impression of what we are about, and doubtless over the coming months we will continue discussions.

Mr Thompson: Perhaps I could extend a similar invitation to the one made by Sir Michael Lyons. If at any point you would like to meet or have a seminar, or indeed if members here wanted, with the appropriate non-disclosure agreements, to attend meetings of the Executive Board, you would be very welcome.

Chairman: That is very kind. Thank you very much indeed.

Examination of Witness

Witness: MR HUGO SWIRE, Member of the House of Commons, Conservative Shadow Secretary of State for Culture, Media and Sport, examined.

Q437 Chairman: Hugo Swire, thank you very much for coming. Could I start by asking you does the existence of this new Trust give you more confidence that the interests of the licence fee payer will be maintained?

Mr Swire: May I start by thanking you for inviting me to your Committee? It is the first Committee I have attended, and I was intrigued to catch some of it on television in my own office and to hear what the Director-General was saying. The one point with which I would completely agree is that it is very early days for the Trust. What I would also remind the Committee, My Lord Chairman, is that we, as a party, were very much against the concept of the new Trust settlement. The phrase we used was, “It’s the same people in a different room”. I think that there are still some teething problems. Of great interest were the Director-General’s last remarks about the relationship between the Trust and the Executive Board and the chairmanship of that Executive Board by the Director-General. Any of us who have a business background or continue to have business connections will realise the trend to get away from having a chairman and chief executive. I think that is something which needs looking at. The decisions that the Trust has made, be it on the iPlayer or be it on Jam—which you were talking about a little earlier—have been interesting. It was a pity that some of these decisions were made by Chitra Bharucha before Sir Michael Lyons became the Chairman. I would say that I am a happier person today than I was even

yesterday, given the news that the Trust has decided to look at the remuneration it pays to some of the BBC presenters. This has been a thorny issue for some time. I notice in the previous evidence given to the Committee by Michael Grade that this was something he came out very strongly against. Given the fact that we have always believed that there should be more transparency from the BBC and that the National Audit Office should have a greater role within the BBC, this is an initiative which I very much welcome. I would conclude by saying that I think all these tests of the Trust to date, and I concede that it is in its infancy, have been economic tests. They have involved market impact assessments and public value tests. There has been no political test of the new structure yet. There has been no crisis; there has been no Hutton. In a sense, we will only see whether or not the new structure is a good structure, a workable structure, indeed a desirable structure, when it does face a political challenge.

Q438 Bishop of Manchester: One of the things that we have been probing is the effect that the sudden departure of Michael Grade had on the BBC. The impression that I have received up to now, from the response to the questions that have been asked, is possibly the equivalent of saying that it really had no effect whatsoever. I am not sure that I wholly believe that and I wondered if you could be of any help in clarifying the situation from your point of view.

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Mr Swire: I have always been brought up to agree with bishops, and I certainly agree with you on this. I think that it did have an effect, certainly from the people in the BBC I spoke to at the time—for a couple of reasons. The first is this. We need to cast our mind back to the BBC post-Hutton. We saw the resignations within hours of the Director-General and the Chairman, and so on, and BBC morale was extremely low at that point. Then Michael Grade did wonderful things for the BBC. He has a real passion for broadcasting; he is a broadcaster's broadcaster; and I think that he did great things to restore the morale of the BBC. Also, there was this extraordinary divorce, this disconnect, which we criticised at the time, between the protracted Charter renewal process and the agreement on that, and this agreement on the new licence fee which kept being delayed again and again right through the summer. We were told that it was coming in the summer, and then it was delayed again. We all know that was largely due to infighting between the Department of Culture, Media and Sport and the Treasury. It was important that Michael Grade was there at that point. We know that originally the BBC were after something like 2.3 per cent of RPI; they got about 0.5 per cent below. These were sensitive negotiations, therefore. Although the Charter had been agreed at the time that Michael Grade left, of course the licence fee had not been. I also think that a more fundamental question is the effect of Michael Grade leaving on the establishment of the BBC Trust. Michael Grade was to a large extent the architect of the Trust, and an awful lot of what people took on trust, as it were, was because Michael Grade told them that it would work and he was going to make it work. I think that those who were supportive of the new corporate structure were in part supportive of it because of Michael Grade's assurance; but then he disappeared off before the Trust had been established. Nature abhors a vacuum. There certainly was a vacuum. I am not casting aspersions on Chitra Bharucha, who did a very good job, no doubt. However, I wrote at the time—when we knew Michael Grade was going, on Tuesday 28 November—to the secretary of state, calling it “. . . a crucial juncture—licence fee negotiations, digital switchover, and the new corporate governance due to come into effect”; asking her about the many personal assurances she was given by Michael Grade, and to respond to this hiatus. That was on 28 November. It was a very urgent thing—which is possibly why I received a reply from her on 22 February, although she did have the decency to apologise for the lateness. I think that the BBC was at a vulnerable time during these negotiations; they were on the back foot, and the Government had them pretty much where they wanted. The champion of the BBC at that point was Michael Grade, and Michael Grade then went.

Q439 *Bishop of Manchester:* Why do you think he went? Do you think that he was beginning to feel that it was not going to work? Was it because he was attracted by a better financial offer? Were you concerned by the fact that he has gone over to a competitor?

Mr Swire: There are several different questions there. I have read the transcripts of his evidence to the Committee, and it is quite clear that he felt that he had come in and set the BBC on the road to recovery. He wanted to move on; that is what he likes to do. At the time, I thought that it might be something to do with the fact that the licence fee settlement was not the licence fee settlement that he wanted and he was displeased about that, although he maintains that is not the case. It is worth pointing out that his argument is a perfectly good argument: that being Chairman of the Trust is a different job to having been Chairman of the governors. I think that, frankly, there were opportunities in independent television, not least the salary package, and that he could get his hands dirty in scheduling and programme-making, in a way that he could not if he had been Chairman of the Trust. However, I think that it was quite strange, because it was most people's assumption that Michael Grade had, as it were, given birth to the Trust and that he was going to nurture it in its infancy—neither of which he actually did in the end.

Q440 *Baroness Eccles of Moulton:* I want to go back for a moment to a comment you made at the beginning. It is a non sequitur with the discussions going on at the minute, but I did not want to lose it. When you were talking about the Chairman of the Executive Board, I thought it was quite interesting how Mark Thompson very much stressed that he was both the Chief Executive and the Editor-in-Chief and that he chaired the Executive Board meetings. I think that he was trying to move emphasis from being Chairman of the Executive Board. I wonder if this has arisen as much from the semantics used in the Charter as to how the internal workings of the BBC see the relationship between the, as it were, sovereign Chairman, who is Michael Lyons as Chairman of the Trust—and he said, “I am the Chairman”—and we have been allowed to be confused into thinking that there are two chairmen sitting in chairs, not quite side by side. Actually, it is just the fact that Mark Thompson chairs the Executive Board, which is a perfectly natural thing to happen in many different contexts.

Mr Swire: He chairs it; he is also the Director-General. It would be perfectly natural for a senior non-executive director, such as Marcus Agius, formerly at Lazard's and now at Barclays, to be the chairman. Sir Michael Lyons is clearly the Chairman of the Trust. I hope that is a chairman in a more

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regulatory sense than the day-to-day operational sense, and I think that there is a division of responsibility there. I just think that, in this drive towards trying to create a BBC which is compliant with modern ideas of corporate governance and divisions of power, as it were, it is something that should be looked at again. I do not think it helps matters that, in a sense, there is arguably a duality of role there for the Director-General.

Q441 Lord King of Bridgwater: Did you hear Mark Thompson at the end—perhaps I am the only person who was surprised to hear him say it—saying that Sir Michael Lyons was the non-executive Chairman of the BBC Trust? Nowhere in the appointment by Number 10 does it describe him as non-executive. He is supposed to do three to four days' work a week. By any standard, that makes him certainly part-time; but it seemed to be that this was a further illustration of some of the confusion that seems to exist here.

Mr Swire: Rather like Gavyn Davies, who was the Chairman of the Governors and who said his was a non-executive role. I think that it is one of these jobs, being Chairman of the BBC Trust, particularly now, which you probably cannot do in two or three days. It may be designed to do that, but it pretty much becomes a full-time role.

Q442 Lord King of Bridgwater: Regarding the way the appointment was done this time, we recommended in the previous Committee that it should be an independent panel that made the appointment and it should not be chaired by a civil servant. What emerged was that it was not independent; it was chaired by a civil servant and, in fact, there was certainly one, if not two other of the three other members, who only very recently had been senior civil servants. What are your views on that?

Mr Swire: My views are pretty much the same as yours. We would agree with what your Committee had decided on. There was a significant change in the previous appointment, when three Privy Counsellors were involved; but I do not think that to have a civil servant still chairing the selection process is very desirable. I made something of a noise at the time of Sir Michael Lyons's appointment. I congratulated him on his appointment, but pointed out his close political connections with the Labour Party. I can see that chairmen and governors of the BBC historically have had links with the Conservative Party, but I would argue that there has been a trend in the politicisation of these appointments. I made that remark at the time, based on the fact that we had just gone through Ofcom, where both the chairman and the chief executive have strong Labour links. Basically, therefore, you have both of the regulators for broadcasting with Labour links. There is also the

fact that the Chairman of Sport England, Derek Mapp, was a donor to the Labour Party and a close friend of the Deputy Prime Minister. The Board of the Big Lottery Fund, which was announced last autumn, had five out of 12 members with connections to the Labour Party. It was therefore part of this trend, with which I was uncomfortable. That is why I would agree that these selections should not be chaired by civil servants. There should be far more transparency. I also have views as to what part Parliament should play in the process.

Q443 Lord Maxton: I can take it then that, in the very unlikely event that you should win the next general election and you were the secretary of state, nobody will be appointed to a public position who has any connections with the Conservative Party?

Mr Swire: No, absolutely not. Your Lordship will be aware that, under Nolan, it is something that I would declare but it does not exclude you from being in the running. Some of you may have followed my colleague Ken Clarke's task force which has come up with some ideas, and indeed David Cameron has also made this very clear in the past, saying that there are some appointments—and I think he cited the Chairman of the BBC Trust as being one such appointment, or the Chairman of the NHS—which should in some way be subject to a hearing, if you like, by Parliament. The way I think that would happen is that a selection committee—

Q444 Chairman: And you agree with that?

Mr Swire: I do, very much so. The selection committee would be established. I do not think—and I know that others do—it is for Parliament to get involved in that initial sifting process; but I do think that there is huge merit that, regardless of the candidate's political affiliations, or none, they should come before the relevant select committee. In the case of the Chairman of the BBC Trust, that is clearly the Culture, Media and Sport Committee in the Commons, and I would have thought that your Lordships could also properly have some part in this. That person should come before the relevant select committee, and the members of that select committee should be able to ask the selected candidate the same questions that presumably he or she should have been asked during the selection process. It is quite clear that the select committees should have no role in any way to impede the appointment of the appointee, other than making their views very clear. I think that it would be a very brave secretary of state indeed who insisted on appointing a candidate who had not been signed off by the relevant select committees. Certainly, if and when I am the secretary of state, if this opportunity came up before me again—that Sir Michael Lyons's term came to an end and he did not seek to extend it, or whatever the case would be—I

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would be very happy to have the candidate whom the selection panel had appointed ratified in some way by a select committee hearing. Then, if that candidate was accused of having political affiliations which coincided with mine, I would be in a position to say, “The select committees, who are cross-party committees, ratified this appointment”, and that would put me at one distance away from the appointment. I think that it is a win/win situation.

Q445 Lord Maxton: Gavyn Davies made the point that he was the first Chairman of the BBC to be appointed under Nolan rules, where he had to give his political affiliations. All of the previous ones had been basically by a phone call from the Home Secretary, as it was then done by him, and not by any open process whatsoever. Also, Michael Lyons made it clear that he was not approached by any political figure to stand and put his name forward for that post. I assume that you would accept his word on that.

Mr Swire: I certainly do. On the latter point, I have asked him that directly. I have meetings with both the Director-General and the Chairman on a fairly regular basis, as you would expect. I totally agree with you that Nolan has introduced into the system entirely beneficial results, but I think that we can go further than Nolan. The secretary of state herself has said how important the appointment is. She said at the time of appointing Michael Grade the first time round how important this appointment was, and I think that Chairman of the Trust is even more important. Other than there being some members of Parliament in both Houses who would like to get involved in the process at an earlier stage, in the sifting process, I do not think that is a particularly fruitful way forward but I fundamentally believe that a job such as this should be looked at and signed off by the relevant select committees.

Q446 Baroness Bonham-Carter of Yarnbury: You said at the beginning of your evidence that you thought this new system would lead to the same people in a different room. Do you think that it has?

Mr Swire: It is a rather good question. It is very early days. Clearly the new Chairman is not a BBC figure. Clearly three of the Trust are ex-governors. Michael Grade, when he gave evidence to your Lordships, was clear on this matter. He was asked whether or not he thought that three was too many. He said, and I hope I am not misquoting him, that he thought three was barely enough, and that it was important that the BBC had some continuity at that time—which is interesting, coming from him. The fact is that it is a very good Trust board. It is a very good non-executive board for the BBC—the non-Trust board, as it were. They do have some good people there. However, I think that it is too early to say, first,

whether the Trust is working; secondly, whether its relationship with the Director-General and his board is working properly. As I said at the beginning, it has not been challenged at all. It has not had to decide whose side it is on: whether it is on the side of the BBC or on the side of the licence fee payer, which I would contend is its prime role. Interestingly enough, I did get one quote out. When she did the press release on Jam, Chitra Bharucha’s opening sentence was, “The BBC exists only to serve the public”. If you contrast that with what Michael Grade said when he appeared before you, he said, “The BBC’s interests are to get as much money as possible, to spend it in the way that the executive would like to spend it”. Those two are irreconcilable statements, I would suggest. The real test of the Trust is as a champion of the licence fee payer. The BBC is in a unique position. It has been guaranteed an income of £3 billion a year for the next six or seven years. That is an eye-wateringly large amount of money, particularly when you are discussing it with other broadcasters who are feeling the pinch. When the Director-General talks about making some savings here and there, it is incumbent on him to make some savings within the BBC. He was asked about the move to Salford and I was interested that the Director-General said that, if anything, there would be job gains rather than job losses. That is interesting, because I think that quite a lot of people will not move to Salford—which is probably good news for Manchester, because it means that he will be recruiting more people in Manchester. I did raise with him in a meeting last week that I hoped he was sanguine about the fact that the BBC’s sports team were due to move to Salford in 2012, when the London Olympics were taking place down here! I have always been very nervous about the BBC. I think that the BBC is now in a difficult position, funded as it is by a licence fee payer. The BBC, with a rapidly changing technological world, has to respond to that. In a sense, it has to be a pioneer in that. It has invested huge amounts of money, for instance, in its website. At the end of the day, however, the BBC must not be allowed to become an economic octopus. By that I mean that the BBC’s tentacles should not go into areas and squeeze out private endeavours. That of course, to an extent, is what happened over the Jam situation. I was interested that Lady Howe asked about the suspension of the Jam service. The figure that Jam was going to cost the BBC was about £125 million, and the amount of money they have already spent on it is in the region of £70 or £80 million or thereabouts. That is a significant amount of money. It is also my understanding that about 200 people who were involved in that project have been laid off by the BBC. I think that it is now a real challenge for the Trust: perhaps the Trust’s biggest challenge to date, given the situation in Europe over competition law

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and so forth; given the very real outcry by individual providers, small companies, to the educational establishment—none of whom, I understand, complained to the BBC, ironically enough. This is a challenge for the BBC Trust and the BBC Trust has a responsibility to the licence fee payer to ensure that the BBC is spending its money wisely and properly. Equally, however, it has a responsibility to ensure that the BBC is not becoming an economic octopus. That is why I argue the whole way through that every part of the BBC should be subject to the National Audit Office. It seemed to me that it was quite extraordinary that, when we had all the figures for the licence fee, great chunks were blacked out. It was a ridiculous document to read; you could not tell what it was. Going back to the question about Michael Grade leaving the BBC before the financial settlement had been reached, it is even more curious when you think that there was I, in the other place, debating the licence fee and, of the people involved in the discussion, I was probably the only person who had absolutely no idea on what those figures had been based. The secretary of state presumably did; the Director-General certainly did; and the new Chief Executive of ITV did, because Michael Grade had been involved in every aspect of those negotiations. That, in itself, was a most obscure and curious position to be in.

Q447 Baroness Howe of Idlicote: It was clearly a very cosy arrangement that was arrived at and, as you say, there you were, the only one who did not know. I have two things. A tiny bit on Jam, because presumably all this money that had already been spent is now pretty well down the drain, so that is a loss. Although a more slimmed-down version of what was proposed would have been useful, not least considering the fact that Britain is probably failing its children in its education system rather more than continental countries and others. That is merely a passing point. What I would really like to ask you about is the whole business of the non-compete clause, which I think you have heard discussed. This really has become quite an issue. These are of course Privy Council-type appointments and “old boy agreements”, shall we say, about how these things work. Are we in a different world today? Do you think there should be, at this sort of level of appointment, not just an understanding of honourable behaviour but something like a non-compete clause written in?

Mr Swire: On the first point about Jam, I do not want to second-guess what the Trust will finally decide. The honest truth is that I do not know how much of the money they have already expended will be lost, even if

they come up with an alternative or a watered-down version, however you want to describe it. However, 200 people have been laid off. That in itself must be a non-recoverable cost factor of some description. In respect of gardening leave or a non-compete clause, I think it was extraordinary that there was a sort of assumption, and that is all there was, with Michael Grade. I think that the new proposal is of something in the region of three months. Given the fact that the Charter renewal took as long as it did, that would not even cover the period of a Charter renewal discussion. I would like the secretary of state to look again at at least six months. It seems to me that it is extraordinary that somebody, armed with the knowledge—and I am in no way seeking to cast aspersions on Michael Grade, I am sure he is absolutely upright in every way and would never be tempted to disclose information that he had as a result of having been at the BBC, and in fact he has made that very clear—but it is extraordinary that somebody can literally go one day and then appear with a commercial rival the next day, without any kind of cooling-off period at all. There is a cooling-off period now even for ex-ministers before they go into the private sector, *particularly* if it is into the private sector, or even the public sector, connected to the ministerial portfolio that they have held. If Michael Grade had been subject to those rules, he would clearly not have been able to go straight to ITV. I think that he was very clear on that. He made it clear to your Lordships that, had there been such a clause initially in his contract, he would never have taken the job in the first place. In the words of a famous lady, “He would say that, wouldn’t he?”. I think that he would have done. Frankly, if somebody is not going to take a job of this importance, which is one of the top jobs in broadcasting or the public sector, because they are put off by a non-compete clause, I would argue that they should seriously reconsider their motives for letting their name go forward in the first place.

Q448 Lord Maxton: There is a large amount of movement between the commercial sector to the BBC. Do you know if the same sorts of clauses are operated by ITV and the commercial companies in relation to their being employed by the BBC?

Mr Swire: I would imagine that was up to the individual commercial company. They would all presumably have their own rules and regulations. There is not one across the board.

Chairman: We can do some investigation on that. I do not think that it is a very important point. There are no other questions. Mr Swire, thank you very much indeed. I apologise for keeping you waiting, but your evidence is very important and we are grateful to you for giving it in the very clear way that you have.