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TAKEN BEFORE
THE SELECT COMMITTEE ON THE BBC CHARTER REVIEW

BBC CHARTER REVIEW

TUESDAY 5 JULY 2005

DR DIETER HELM, SIR DEREK HIGGS and SIR ROBERT PHILLIS

SIR JOHN BOURN

Evidence heard in Public

Questions 1263 - 1349

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Present

Bonham-Carter of Yarnbury, B.
Fowler, L. (Chairman)
Gibson of Market Rasen, B.
Holme of Cheltenham, L.
Howe of Idlicote, B.
King of Bridgwater, L.
Manchester, Bp.
Maxton, L.
O'Neill of Bengarve, B.
Peston, L.

Witnesses: **Dr Dieter Helm**, Oxford University, **Sir Derek Higgs**, Chairman Partnerships UK plc and **Sir Robert Phillis**, Chief Executive, Guardian Media Group, examined.

Q1263 Chairman: Welcome, and thank you very much for coming. As you know, what we are doing is we are looking and reviewing the Green Paper where Government have set out their plans for the BBC Charter Review. We hope to be able to give our views on this by the end of October, so we have not got too much time. One of the obviously big issues is governance as far as the BBC is concerned. I wonder if I could start in this way and take you momentarily in turn for a little and then come back to the more general. Sir Derek, those of us who are non-executive directors, chairmen in the private sector, we not only know of your work but of course we regard it totally as our bible for going forward. I wondered, first, if you could explain it very briefly and then say whether you think that the general rules of governance you set out are applicable to all organisations?

Sir Derek Higgs: I think there are some principles that are absolutely relevant to organisations, whether they are companies listed on the stock exchanges, quangos in the public sector, charitable bodies or whatever. They are principles; they are not the specifics of how you construct a particular process. The reason they are applicable is because it is about

people and behaviour - that sort of social dynamic at the end of the day – and not about prescriptive rules. I personally would point to the importance, as one of those principles, of independence in appropriate measure; to the checks and balances which sometimes naturally occur in structures, but if they are not there need to be introduced in a suitable way; and to transparency and disclosures; those three underlying principles, from which you can actually derive an awful lot of the relevant and appropriate detail for different sorts of organisations. To suggest that you can just pick up the combined code and impose it on an NHS Trust Board or the BBC I think is missing the point. It is not the gospel; it is the encouraging of a set of behaviours and a minimum of process in the listed company sector where the objective of the organisation is pretty clear to see – it is to create value for shareholders in a responsible way. The BBC context is rather more complex, and you cannot look at a single objective in the BBC context; it has got to balance a number of trade-offs.

Q1264 Chairman: Correct me if I am wrong but one of the principles that you lay down as far as a Board of Directors is concerned is that they should have an independence, and particularly non-executive directors perhaps should have an independence. It is not just a matter of supporting the management – it is also a matter of challenging the management while, at the same time, being in the same team?

Sir Derek Higgs: Absolutely. I use the phrase “constructive challenge” to try and capture that: I think the Green Paper talks about “critical friend”; it drives at the same thing. It is an important position to hold of both being supportive but also able and willing to question hard. Indeed, I would see as the overriding obligation of the non-executive in a boardroom context (and I think this would apply to the BBC Trust and to the operating board) as being willing and able in a constructive way to ask questions and keep asking questions until the Director is satisfied with the nature of the answers that are provided. It is not to just reside. It is to keep

probing, not in an abrasive or destructive way, but to keep testing, but within the framework of a collective approach to try and get the right sort of results.

Q1265 Chairman: Just one last introductory question. You looked at both the unitary board and the supervisory board system in other European countries and you came down firmly on the side of the unitary board?

Sir Derek Higgs: Personally I did; but that was not a personal position. The overwhelming feeling in this country in the corporate sector was that a unitary board had clear advantages over a supervisory board structure; part of that is, familiarity, culture and history; but that was in the context of the corporate sector with a dispersed set of shareholders.

Q1266 Chairman: We will come to you all in a moment because I am going to ask you all what your first feelings are about Government proposals and then we will open it up to the Committee, but just before I do that I will bring in the other two. Sir Robert, you as I remember, have got extensive experience both in Independent Television and in the BBC, and of course now in newspapers and the Guardian Media?

Sir Robert Phillis: Yes, indeed. There are principles and lessons to be learned from each, but I concur with Sir Derek's view that what might be appropriate in, say, the Scott Trust and Guardian Media Group, or what might be appropriate in a wholly commercial plc, is not necessarily transportable lock, stock and barrel to such an important institution as the BBC. I think it is drawing the relevant lessons and applying them in the context of the BBC as our major principle public service broadcaster.

Q1267 Chairman: Thank you. Dieter Helm, we sat next to each other on the Westminster Forum, I remember. You seem to advise the Government on a whole range of things at the

moment. Let me ask you a basic question: are you coming before us as an independent witness, or do you feel constrained that you advise the Government on so many things?

Dr Helm: Completely unconstrained and completely independent. In my capacity as a Fellow of New College, Oxford I should be independent.

Q1268 Chairman: Just tell us your experience, because governance and regulation has been one of the things you have been specialising in.

Dr Helm: If I can bring it directly to bear on the questions I think you are interested in. The design of regulation depends overwhelmingly on what is the objective you are trying to pursue, and what is the problem to which regulation is supposed to be the answer. In the case of the BBC it is not just a competition monopoly-type question, which is the sort that an Ofcom, an Ofgen or whatever might look at. The problem is that the BBC is there to provide a public good; that public good has margin costs of effectively zero. The right way to deliver that public good is to charge people a flat fee and then give them freedom of access. It is what I describe as a “club” essentially, and the licence fee is a club fee. The role of the trustees and the Trust is essentially to represent those club members, the licence fee payers, and see that their objectives are carried through to what the BBC delivers. Therefore, the idea that what they are is some kind of quasi regulator is to misconstrue what the purpose here is. Their role is to work out what Public Service Broadcasting is and to make sure that the BBC can live with that. That is quite different from the traditional regulatory functions of “make sure it doesn’t abuse its monopoly”. As Sir Derek said, this is not an organisation with a simple and single objective to maximise profits. I think the regulatory function here is actually extremely well captured in the idea of a Trust, and trustees are the representatives of the members of that club – the licence fee payers – and their job is to interpret Public Service Broadcasting. Therefore, with analogies like supervising board, this is not the same kind of

problem; this is much more like a National Trust problem, which is to represent those members.

Q1269 Chairman: Thank you. Let us go into all this now and we will come back to that last point you were making. You have all had an opportunity of looking at the proposals that the Government make: the idea of the Trust; the idea of the management board. You have a Trust with a Chairman; you have a management board with a Chairman; you have non-executives on the management board. Sir Robert, can I start with you: what do you feel about that model?

Sir Robert Phillis: I think the principles that have been encapsulated in both the White Paper and the BBC's response are workable propositions, subject to some greater clarity in a number of areas. First of all, as far as the Trust is concerned, it does seem to me that there is a legitimate regulatory function as well as a governance function within the Trust itself. I would observe simply that I think the skills and the experience that one brings to apply to the governance part of the role are actually quite different from the skills and experience required on the regulatory part of the role. I do not think that is an overriding problem. It does say something about the way governors or trustees are selected and getting the right balance of experience and mix within the Trust itself. It certainly seems to me there could be a case, in the conduct of the Trust's business, that there is quite a clear delineation between the governance role and the regulatory role - whether that takes the form of a two-part agenda (a governance agenda followed by a regulatory objective) or whether the Trust deem to organise itself with two sub-committees to address those different roles. To bring clarity amongst the governors and the trustees - so there is a clear understanding of when they are performing their governance role and when they are performing their legitimate, internal regulation role - is perhaps a refinement that might be worthy of consideration. As colleagues have mentioned, I think the regulation of a public service broadcaster is distinct and is

different from a pure commercial operation in the vast majority of its activities. I personally believe that the one area where there may be an exception to that rule is in relation to the BBC's commercial activity – BBC Worldwide. I think the commercial activities within the BBC are legitimate. Clearly it is putting licence fee funded programmes to account to the benefit of the licence fee; but if it is the case that Worldwide should remain within the BBC structure (and given the problems that are recognised about the perception of regulating the commercial activities) I believe there is a case that that very narrow aspect of regulation (BBC Worldwide and its commercial activities) could play a higher role in the activities of Ofcom in order to make the distinction between the public service purposes of the BBC, on the one hand, the legitimate commercial activities, on the other.

Q1270 Chairman: Sir Derek, what about your initial thoughts about the structure?

Sir Derek Higgs: As described in the Green Paper, it seems to me a workable structure, with the only proviso (recognised in the Green Paper) that there is some detail to get right. Like Sir Robert, I would look closely at how members of the Trust are selected and, indeed, where the residual right to appoint certainly non-executive and possibly all members of the operating board actually lies in the event of some difference of view between the Trust Board and the operating board. I would certainly want to avoid, for example, having two Chairmen and a Chief Executive which would be, in my view, a recipe for a potential muddle and some divisiveness.

Q1271 Chairman: With respect, is that not exactly what they are proposing: two Chairmen and a Chief Executive?

Sir Derek Higgs: No, because the BBC, as I understand it, is proposing that the first Chairman of the operating board should be the Director General and, therefore, you have

effectively a Chairman/CEO relationship between the Chairman of the Trust and the leader of the operating board.

Q1272 Chairman: So you see it as a management board?

Sir Derek Higgs: I see it as a management board. I see it as akin to a supervisory board/management board situation. I think one of the things which was clear to me from the work I did was that the social dynamic in an organisational structure is more important, the quality of the people creating that social dynamic is more important than the narrow definition or design of the structure. Supervisory boards can work; they can fail; but they can work.

Q1273 Lord Holme of Cheltenham: Could I just pursue this area where I think we have got a slightly different version from Dr Helm than from Sir Robert and Sir Derek. If I understand what Dr Helm was saying, the Trust has a representative function but it performs, if you like, the function of an AGM for a company. This is where the owners, the licence payers, are represented to ensure that what the BBC does is consistent with what they pay their licence fee for. I think that was the version you were giving us. If I could just build on that because if I prove to be wrong you can demolish it. If that is right, I think it is quite difficult to understand this notion that the Trust becomes, if you like, a collective chairman of a quite conventional corporation, in which the board has a collective chairman that is represented by the Trust, and then there is effectively a CEO and executive team running it. That is really rather a different version. I think a lot of the doubts about this two-tier are exactly what the top tier does and how it does it. Therefore, I wanted to ask Sir Robert in particular: the Scott Trust and the company have a not dissimilar situation. The Scott Trust represents the principles and values of the owners, and the company is operating commercially within the constraints of the principles and values of the owners. The Trust plays, in a way, the sort of role that the Helm Trust would play, and the company gets on with

its business within the constraints set. I wondered if you could just explain to us how this Scott Trust/Guardian Media Group relationship works, and whether my quick version is right, or not?

Sir Robert Phillis: The Guardian Media Group is a plc but it is not a quoted company – it is wholly owned by the Scott Trust. There is one crucial distinction between the Scott Trust, GMG and the BBC and that is: in our own case, broadly speaking, 75 per cent of our operation activities are run as pure commercial entities and strive to meet best of commercial operating standards. The exception is in relation to *The Guardian* and *The Observer* newspapers, where the normal financial criteria that might apply are offset by the values of the Scott Trust in terms of independence and integrity, both financially and editorially. There is a separate trust, as you correctly say, with a separate chairman; and there is a board which, in every other respect, operates as a plc board with a separate, independent chairman. There is cross-representation. There are four members of the Guardian Media Group Board who sit on the Trust: the Chairman, myself, the Editor and the Chair of the Trust who sits *ex officio* on the board. The distinction I think between the Scott Trust, the ownership board, and the board of the plc, is the Trust is principally concerned with the values of the organisation which permeate through not simply the national newspapers but the way we try to run the business. The operational drive comes from the board of the plc which has non-executive directors of the sort that has been suggested both in the Green Paper and in the BBC's response. It does, however, focus on the linkage between the two boards in our own case. As I have mentioned, this is done by cross-representation, not of the total board but of key elements of the board. It seems to me in the BBC context before us (and I agree with Sir Derek) that the notion of two chairs – a non-exec chair of a trust and the non-exec chair of the Executive Board or the operational board – is a difficult and confusing concept; because the Director General, the Chief Executive, must have a clear accountability to one person and

not two. I think the notion of the chair of the Executive Board, the operating board, being the Director General is the correct one. I think that the Executive Board and the operating board could be enhanced by the appointment of non-executive directors, providing one goes for quality and not quantity of those non-executives in assisting the Chief Executive, the chair of that operation. I would offer one further suggestion, because I think the linkage between the two boards is key. If the chair of the Executive Board is the Director General, and if that Director General is accountable to the chair of the Trust (which I believe to be the right organisational form) then I think (to pick up from the private sector model) the notion of a senior independent Director on the operational board, who has a specific and defined role to provide the link with the Chairman of the Trust, is something which could perhaps be built into the organisational model. That on those occasions, from time to time, when the non-executive directors on the operational board need to talk to the Trust, there is a recognised and identifiable route. I think perhaps a senior independent Director, picking up the Higgs model, could be useful in that respect.

Q1274 Lord Holme of Cheltenham: Of course the Senior Independent Director in the Higgs Combined Code does have a special responsibility to the shareholders and the owners. When Sir Robert suggests that you have a Senior Independent Director, one of the non-executives playing this role, you are back to this question of: what is the role of the Trust? Is it an outward-facing role relating to the owners of the BBC, the licence payers; or is it an inward-facing role concerned with the strategy and, at some level, the operations of the BBC? Although I very much value what Sir Robert said, I still think there is an ambiguity there and any enlightenment would help us a lot?

Sir Derek Higgs: I do not think there is a conflict and I am not sure it is ambiguity. I think there are two aspects to the role where I think one has to come to a conclusion on whether they are capable of reconciliation within a body like a BBC Trust. My own view is that they

are much more complementary facets/aspects of what that Trust is there to do, and not mutually exclusive or in conflict. We are saying different, but not competing things, I think.

Q1275 Lord King of Bridgwater: There are three models on the table at the moment – the Green Paper, the BBC’s amendments and Burns, which we have not discussed at all, or the question about: why change it? The issue that interests me is that you are grappling with the question that we might have two Senior Independent Directors at the moment: one who has the responsibilities to the shareholder or the public; and one who has the responsibility for liaison between the Executive Board and the Trust. It seems to me that all these things are getting more and more complicated. Is it not well established in the past that the unitary board would recognise fully its responsibilities in every respect and be properly charged with them (and perhaps would have them restated to them so that they knew what the objectives were) and should actually avoid a lot of internal friction and enable a lot of the success of the BBC to continue without the upheaval, point-scoring and job-seeking opportunities for people which arise otherwise?

Dr Helm: I fundamentally disagree with the spirit of the question.

Q1276 Lord King of Bridgwater: What, about Burns?

Dr Helm: No, about the idea that it would be better to have it all in one body.

Q1277 Lord King of Bridgwater: Burns is the first point.

Dr Helm: What I want then to say is that Burns and the Green Paper share a fairly common understanding that there is a regulatory problem here that has to be addressed, which is that there is no objective, methodological, empirical definition of Public Service Broadcasting; that it has to be interpreted as you go along and somebody has to do that. That is a distinct function from managing a company or overseeing the efficiency of the managers of those

companies. The difference between Burns and the Green Paper is that Burns wants it external and the Green Paper wants a Trust to do that. I happen to think the Trust is right, because I think the bit which Burns gets wrong is that he does not give full weight to the idea that licence fee payers are effectively club members. They pay their fee and they need a mechanism by which that goes. That is why I prefer the Trust rather than the external regulator. The internal, all-in-one, model bundles together the functions overseeing the management, supervising their activities and regulating a mode of what the Public Service Broadcasting objective is, and representing the consumers on the board. I think there is a fundamental difference between Burns and the Green Paper, on the one hand, and the unitary board, and quite a strong disagreement between myself and Sir Derek, in that I do not see the functions of the Trust as being supervisory. I see the supervising of the executives of the organisation, the BBC, to be the non-executive directors of the unitary board of the BBC; and that is a separate function from the trustees, whose job is to work out what Public Service Broadcasting is and critically (and this is the bit I think the Green Paper does get right) it is that the trustees issue licences for each of the main services the BBC conducts, and those licences have to demonstrate the public service broadcast is being delivered. To be as brief as I can, my own view is that that is enough for the Trustees to do. If they muddle that up with trying to work out whether it is actually being efficiently run, and whether the directors are doing their jobs properly etc, then we will get all the muddle which is the muddle between the non-executives of the Executive Board and the Trustees; and I do think that is a muddle. I like the clarity and separation. The only difference with Burns is that I would have it as a Trust representing the licence fee payers – not this Public Service Broadcasting Board or Commission he has in mind.

Q1278 Lord King of Bridgwater: What you have left out of this is that I think your comments indicated that Ofcom could only be very narrowly described as a regulator, and

there are none of the functions that you might see otherwise falling to the trust that could possibly go into the remit of Ofcom.

Dr Helm: Ofcom is an economic regulator, and I am very keen that it has competition issues, which is its expertise. I happen to think it is probably quite good at doing efficiency audits, too.

Q1279 Lord King of Bridgwater: It has taste and decency as well?

Dr Helm: I think probably not. That is a line to draw finely, but my inclination is that economic regulators are not very good at taste and decency.

Q1280 Lord King of Bridgwater: It is the present remit. There are a lot of previous governors of the BBC who certainly saw as their responsibility taste and decency as well as other issues. If I may say, I know you are an expert on governance, and I respect that – an academic expert in this field of great distinction – but the thing that interests me is there is always a tendency, I think, looking at the commercial world, to imply that anybody working for a company board of directors is only interested in the bottom line and does not actually represent not only a responsibility to the shareholders and a responsibility to their appointments but a responsibility for their customers as well. In the end, nobody actually survives – the BBC will not survive - unless the board of governors has a very clear understanding that they are serving their customers, being the public, or otherwise the licence fee will become absolutely indefensible.

Dr Helm: I could not agree more.

Q1281 Lord King of Bridgwater: That is my point. Once you start to spread the responsibility around different bodies, who are the public going to complain to? Can you not

give the public a clear idea of who, actually, is in charge and who they complain to if they do not like what they see?

Dr Helm: The distinction between us is that if there is a regulatory issue here in addition to the normal running of the business (and I want that separate, you might want to incorporate it), I think the trust is the appropriate place to do it because the regulatory job is not the narrow, economic regulatory job - but that has to be done as well - it is also deciding what public service broadcasting is.

Q1282 Lord King of Bridgwater: Ofcom has not been given the narrow economic regulatory role; we have just discussed this; it has a wider remit than just narrow economics.

Dr Helm: I was suggesting, I think, that I did not think that was a very good idea.

Q1283 Lord King of Bridgwater: So you want to change Ofcom's ----

Dr Helm: A little bit.

Q1284 Chairman: You are limiting Ofcom?

Dr Helm: A little bit, yes.

Q1285 Chairman: Robert Phillis, you try and shed a little bit of light on this. You actually worked for the BBC; you know how the BBC governors used to work. Why do we want to change it?

Sir Robert Phillis: I am absolutely certain there is a need for change. I believe the BBC governors or trust can and should be responsible both for governance and for internal regulation of their affairs. My comment on the past and past experience is that the distinction about when they were governing and when they were applying an internal regulation role was indistinct, and often muddled – hence my earlier comments, which I will not repeat. It seems to me that the trust has one special and unique purpose, in that it is concerned with the values

and standards within the organisation, and I do not see how the trustees can be responsible and accountable for values and standards unless they understand the business itself – the operational questions of the business. So I do not find a difficulty with the governors, or the trust, being responsible for those two roles. I think it does say something about the way they organise their business (and that is a change from the past), I think it does say something about the skills set which are consciously put together of those invited to be trustees, and that says something about the selection process, but I believe if they are responsible externally to the licence fee payers and to the general public for the standards of public service broadcasting - the values and the standards – then they have to understand the way in which the organisation runs and is accountable. With the exception that I made in relation to the commercial activities of the BBC worldwide and Ofcom, I believe, whether we call them governors or the trust, they can perform both those roles but they need to be clearer in terms of their responsibility, and it does pose questions on the level of detail to which they involve themselves in the operation of the organisation. I think that what the White Paper and the BBC's response are feeling their way towards is greater clarity in that distinction, but I think there is clearly a little further work to do.

Q1286 Chairman: Who speaks for the BBC? Who is the head of the BBC under this proposal?

Sir Robert Phillis: The Director General is responsible as Chief Executive for the entirety of the organisation and is ultimately responsible for its editorial output and standards, but the Director General, the Chief Executive, must be accountable – hence governors or trustees, as we call them – and of course they must have ultimate oversight in approving strategy and improving budget. That is, actually, one aspect of the Scott Trust situation that applies. It is the Board's job to develop strategy, to present budgets and proposals, but our owners (the

Scott Trust in this case) will receive and assess those in the context of the values they are accountable for. I think there is a parallel there to the BBC.

Q1287 Chairman: Before I bring in Lady Bonham-Carter and Lady Howe, do you have any further comments?

Sir Derek Higgs: One very narrow one. I did not suggest a senior independent director on the operating board and I probably would not, for just the reasons raised. There is some difference between Dr Helm and my own position. I think that the trust can span those three areas of strategic management, not detailed but strategic management, governance and appropriate regulation. I agree entirely more work has to be done. I think the BBC's response in terms of moving towards a sensible description and division of responsibilities is in the right direction, but I do not think anybody would suggest that it has reached the final level of sophistication.

Q1288 Baroness Bonham-Carter of Yarnbury: I want to pick up a point that both Sir Robert and Sir Derek made, which is about how crucial it is who actually sits on this trust and how do you ensure that you get a sufficiently diverse – to use a topical phrase – spectrum of people sitting on this trust? How would you set about ensuring that?

Sir Robert Phillis: If I refer back to my time at the BBC, which is eight years ago – so certain things have moved on – the appointment of governors was a strange and mystical process – rather like, I think, the appointment of the Pope. DCMS would pronounce and present new governors of the BBC and they were supposedly people from the great and good. I think that is totally inappropriate to such a major and important organisation like the BBC. It seems to me that it is a job variously between the trust (and, of course, DCMS will have an interest in this), but I think the chairman of the trust has to take a key role in agreeing the skills set required to have a balanced board. A balanced board is going to try to bring together

people of different but relevant and complementary experience – and, for that matter different backgrounds and personalities. I do not think that can be a random: “Here’s a great and good person, now fit them in and make them work”; it needs that analysis of the skills required. I believe the chairman of the trust has to be involved in that process in trying to ensure that the balance of skills and personalities on the board is correct. I think that is an area where, no doubt, I will be told that things have moved on in the past eight years, but I think we should be open and above board about it; you cannot leave it to chance to hope that these very committed and well-meaning people who are selected and appointed as governors in the past are necessarily going to bring the skills that make the governors or the trust work effectively. I would see the chairman with appropriate representation of DCMS and, crucially, an independent assessor.

Q1289 Chairman: Do you agree with that?

Sir Derek Higgs: Yes. I have some confidence that the Nolan process can produce sensible answers, but it is important – I absolutely agree with Sir Robert.

Q1290 Lord Holme of Cheltenham: That was really the point. At the moment all governorships are subject to open advertising in all the media and are subject to the Nolan rules, and there may be then a need to open up what actually happens after that. However, the actual process at the beginning is there. Can I ask you, given the opportunity, Scottish and Welsh – do we still have those sorts of governors?

Sir Robert Phillis: The BBC is a cultural institution and, as such, it must reflect British culture in its totality. Very clearly, the contribution of the nations – Scotland, Wales, Northern Ireland - and even the English regions are different and are distinct; the BBC is not a metropolitan organisation and never should be. So I think the notion of national representation is an important element and one that should be preserved, but I do not see that

that is inconsistent with those other criteria I would set about relevant skills and experience to contribute to the activities of the board as a whole.

Q1291 Baroness Bonham-Carter of Yarnbury: I understand the Nolan point but, as Lord Holme has just said, that is about the individual person. How do you actually get the cross-section you need, the variety you need, the team you need? I do not think you have quite answered that, really.

Sir Robert Phillis: I apologise. I will try again. I think that the trust, the governors, should have a balance of backgrounds, experience and skills which together will serve both the governance function, the proper regulatory function internally, and the supervisory function of the management team. I think in the BBC's response they refer to it in outline rather than in detail in specifying the areas of expertise. I take open advertising as an absolutely essential requirement as is the importance of independent assessors – whether that is through the civil service or other independent assessors under Nolan can easily be addressed. One of the problems, I think, is the balance and diversity amongst the governors, or the trust. I have to say that one of the problems (a strictly personal view) that the BBC has is that the workload required of its governors, or its trustees, is huge in terms of reading, in terms of meeting, in terms of contribution. I think that, combined with the level of remuneration of governors or trustees, automatically excludes many people who might otherwise be able to make a contribution because of their background or their age or wherever. I think there is an imperfection there. I am not suggesting it is purely a financial one, but to give the time that a trusteeship or a governorship required and to give so much time for a limited remuneration does exclude people who might otherwise be able to contribute. I do not have a ready answer for that but I do recognise the problem.

Chairman: Even more so if you are a non-executive on a management board which, I think, by definition is going to meet more regularly.

Q1292 Baroness Howe of Idlicote: As I listen to all this I think back to all the years of all the various reports that have been done and, can I say also, to quite a lot of controversy over each one of them as they came out. I do not think any board of governors is ever that easy. This one, of course, is particularly difficult because of the huge tradition and background to it all. Coming back, again, to the trust and the whole business about the chairman's role (I am thinking very much of Sir Derek Higgs' comments about the chairman not perhaps being too involved in the board actually selecting the non-executive members of the board). How difficult is it going to be to get a really independent process given all the background that we have had recently and complaints from government and complaints from opposition? It has gone on forever. How are we going to get confidence that the trust is properly independent? I know you say Nolan, but, frankly, is that enough? If there is a government involvement to this extent should it not be something much more dramatically in charge of Parliament itself rather than any form of government?

Sir Derek Higgs: I am not sure the alternative is Parliament. I think an independent process is just that – it is an independent process. If you think of a Nolan approach as comprising government, if you think of three people - one a representative of government, one a genuinely independent assessor and contributor to the process and the third the chairman of the trust, the chairman of the trust is a government appointment, as I understand the way it is envisaged, but hopefully, once made, is effectively an independent person – then I think there is a reasonable chance of getting a sensible outcome out of that. I think the issue that we have rather moved on from without drawing any conclusions is whether you can have a meritocratically appointed trust board or whether you have a representative board – whether it is regions or it is cross-sections of civil society, or whether the sound points are. Given that

the two do not easily reconcile as concepts, I would always go for a meritocratic, fit-for-purpose, not a representative board because that points to the importance and value of the quality of the people.

Q1293 Chairman: Are we talking about both boards there?

Sir Derek Higgs: Essentially, yes, because those concepts apply, in my view, to any organisation. As I understand it, the operating board will be rather more internal in the way that it makes appointments, obviously, in particular for management. The trust board is a more externally exposed appointment situation, but it would be important to ensure that it was not just an opaque decision of a sponsoring department.

Q1294 Baroness Howe of Idlicote: Are these specialists that are going to be chosen – I think we all agree there has to be a change in the system – these people with specific knowledge of the whole broadcasting industry, are they going to be sufficiently representative and able to respond to the licence payers, as such? I think this is very important. We go back to the National Trust concept, but at least with the National Trust you pay to be a member (there are other backings, I know), but in terms of the licence fee payers, the licence fee payers currently pay centrally and have no other means of deciding whether they want to join or not.

Dr Helm: Can I answer that one? The difference between the National Trust membership fee and the BBC licence fee is that one is voluntary and the other is not. However, there is one more difference; it is not just in the case of the BBC that we are interested in whether the people are willing and able to pay as consumers, we are also interested in their entitlement as citizens where the ability to pay is not relevant. That is what makes it different and, in a sense, adds up to a more compulsory version that emerges. It seems to me that in all this discussion we have had about where these people come from and who they are appointed for,

it is only now the word “licence fee payer” has come up, and I think one could be a bit more constructive as to how they fit into this frame. The first thing, I think, one needs to say is that if you want clear independence it is important the licence fee payer understands what the trustees do and what they do not do. That is why I like this narrow view that they are interpreting public service broadcasting and they are not involved in overseeing what, essentially, the executive board is doing. That is what I think is slightly muddled. In terms of selecting these individuals, clearly there is an advertising process, clearly there is a whittling down of the list, but in a day when everyone can do interactive voting on their television, these people’s interviews ought to be subjected to a web-cast; people ought to be able to fire questions at them; there ought to be a whole involvement of licence fee payers so they see who these individuals are and react to them. It is not to say that the members can, as they do in the National Trust example, actually select the trustees, but there is a great deal we can do to include them in the process. It would be rather good if a trustee had to field questions live from actual licence fee payers for two or three hours before they got passed for appointment.

Q1295 Bishop of Manchester: Some of our conversation this afternoon has been dealing with both the trust and the executive board. I wonder whether if we could hone in on the executive board itself for a moment. Sir Robert, earlier on, was talking about the non-executives and used the phrase about “quality rather than quantity”. I wonder – and I imagine that the three of our guests may have something to say on this - if you could deal with three brief questions. They are simply these, in terms of the non-executives: how many; how chosen and what role? I know Sir Derek has written something about the kind of role which you believe the non-executives should have. I think it would be helpful to hone in on that particular aspect of the executive board.

Sir Robert Phillis: I will answer the three questions, my Lord. However, just to hark back on how governors and the board of management used to operate, I ask you to imagine the BBC

council room with the chairman of the governors, 12 governors and 8, 9, 10 or 12 executives sitting round a table. It might have been a unitary board insofar as they all sat in the same room; whether it was a board capable of debate, discussion, analysis and challenge in that forum (and that is not to suggest that there were other fora) I leave you to imagine the situation. In answer to your first question, despite Sir Derek's very clear recommendation in his own view, I do not think it is the number of non-execs that count; it is the quality and the merit of what they bring to the table which is important. I believe that if non-executives are to be appointed to the operational board they should be in a minority, because if the Director General is to chair that board then, clearly, it has to be an effective management executive operational board in conducting business. So whether two or three is appropriate, or four, it is a small number and I have no difficulty, personally, in the concept that they are in a distinct minority on that committee, because if they have quality and experience then the Director General and the executive members of the board will turn to them for advice, guidance and expertise on relevant areas when issues arise. How they should be chosen? It does seem to me that on the operational board quite properly the Director General of the day should have a view and be consulted, but that is surely where the chair of the trust – and perhaps other trust members – should be involved in that process. If one is looking at an on-going situation where there are existing non-executive directors, then the senior non-executive director or a representative of the non-executive directors should be involved. It would seem to me (though I think it is debatable and I recognise that) that that is a matter internal to the BBC overseen by the trust, with Nolan principles, with external assessors to validate, but I do not think that should be a DCMS or a government appointment *per se*. What role should they play? I think, Lady Howe, I am certainly not arguing, either in relation to the trust or the operational board, that they need have broadcasting or media experience. Some of them might, and that would be helpful, but I think the experience of governance in large

organisations, which may have nothing to do whatsoever with broadcasting and the media, brings the wisdom, experience and skills to guide, to challenge constructively, to question and, indeed, to assist the chief executive – the Director General – and his executive colleagues as and when need be. However, I think there must be external independent assessment, which, frankly, I take for granted in any such appointment. Personally, I would not think that that has a DCMS, or whatever department of government, role. That is for the trust to oversee, and the chairman of the trust plays a key role.

Q1296 Chairman: Another phrase used to describe non-executive directors is part-time directors, is it not – or, particularly, part-time chairman is more likely? These non-executives on the executive board are going to have quite a work burden. Sir Derek, how many examples are there of executive boards with non-executives on?

Sir Derek Higgs: A unitary board is, in a real sense, an executive board with non-executives on it.

Q1297 Chairman: This is with a minority.

Sir Derek Higgs: I do not think there should be any attempt to impose a combined code. I would agree with Sir Robert that, as I think is envisaged in the relevant papers, a minority gives the right kind of sense. It also means that you can keep the overall numbers smaller because the board's committees work better with fewer rather than more members. I am not going to give you a precise number but smaller is more desirable - certainly a minority. As far as the way they are chosen, I think, it is a version of the nomination committee. It certainly, I agree, should involve the chairman of the trust. Otherwise I think it is a closed process, except to the extent that open advertising and research processes can and should be used. There is work to be done to understand what the right of approval by the BBC trust of appointments of non-executive directors to the operating board means in practice because I

think it would be important to know where the ultimate sanction lies. Indeed, I think there is work needed to understand where, ultimately, in a stand-off situation the right of broader appointments to the operating board lies. This is work in progress: it is to have clarity, to avoid it ever getting to a stand-off. The kind of role? Well, in the unitary board in the corporate sector the non-executive is there to deal with strategy, with monitoring performance, with addressing questions of risk and, fourthly, looking at succession and people issues. Strategy is, I think, rightly and clearly identified with the BBC trust under this model. Monitoring of performance is certainly part of the role of the operating board; risk is as well, and people issues in terms of the management of the corporation. So it is a recognisable version of what you might call a classic non-executive director role, but there are certain perfectly explicable, defensible and understandable differences for the particular circumstances.

Q1298 Baroness O'Neill of Bengarve: This may be just a crude way of getting to the questions you have all been addressing, but in two forms. Firstly, informally, in a situation of confrontation who speaks for the BBC? Secondly, where does the legal personality ultimately lie, with the trust or the board?

Sir Derek Higgs: I would see, as I said earlier, the relationship between the chairman of the trust and the Director General as, effectively, the chief executive of the operating entity as the combination who should, as in a corporate parallel, decide between themselves who is going to speak on what subject. That is, in a real sense, in my book, a partnership and they have to sort that out. I agree that that is related to where the legal personality lies, but I am not an expert on this subject. If the BBC remains a chartered corporation I think that that question probably recedes in terms of the difference between the trust and the operating board. Again, without specialist knowledge of this, I cannot see it as the operating board.

Dr Helm: I see the executive board speaking for the BBC and the trustees speaking for the licence fee payers. That is quite a distinction. I think it is important to recognise that the job of the non-executives is, in the unitary board of the organisation, the BBC, very similar to the job of non-executives in many corporate bodies. I think Sir Derek has described that admirably. It is when they get muddled up with the job of working out what public service broadcasting is that you then have to raise all these questions about who appoints them, do we have to have special procedures for doing this and who are they accountable to? In my model these are very separate activities; one is a regulatory function – the trustees representing the licence fee payers. This is just a normal board. If you ask, “Who speaks for Sainsbury’s?” you would say “The Chairman, Chief Executive and Board of Sainsbury’s.” That is the same kind of answer I would give here. As long as the functions are kept distinct.

Q1299 Lord Holme of Cheltenham: An observation is that if we stop regarding public service broadcasting as a mystery wrapped in a riddle, wrapped in an enigma, it might make life a lot easier for everyone. As long as it is as unclear as it is, somebody has to define it. The border between the trust and the executive board, I just want to ask a question which might illustrate the difficulty of definition. One or two of our witnesses have talked about the approval of strategy as being something for the trust rather than the way the main board of a company might approve the executive committee’s version of strategy and say, “Yes, we agree with the strategy.” The moment the trust owns the strategy is it able, for instance, to say whether a new service should be launched or not? This seems to me the hard question, because very often strategy is about: “Do we do something new?” The moment the BBC wants to do something new and launch a new service - at the moment we have, in my view, the wholly inappropriate situation where the DCMS decides that, which seems to me potentially a corrupt link between government and the BBC. However, if you say somebody

else has to do it, the obvious thing would be that the trust should approve it because it would be consistent with or not consistent with the public service broadcasting requirement.

Dr Helm: On this part I agree with the Green Paper. That is precisely thought out. How the trustees do their strategy bit is they license the services; they ensure the services pursue the public service broadcasting route. It seems to me perfectly sensible for any executive to propose a new service but it has to get a licence. That is what goes to the trust board, and the trust board decides whether it is consistent with the broader objectives and interests of the licence fee payers.

Q1300 Lord Holme of Cheltenham: My question, which I think you appreciated, is if the trust, at that point, has bought into and owns the strategy of the executive board, is it any longer in any sense objectively approving a new service?

Dr Helm: That is where I make that distinction as to what is strategy and what is licensed approval of public service broadcasting. That is why we keep the muddle separate from what is a unitary executive board, in its normal function, including strategy (all boards have that), and what is public service broadcasting and the licensing of services within that frame. I think the executive board should be proactive; they can propose all sorts of things, like a company would, to their shareholders. In this case it is for the trustees – and I keep it narrow because the job is so enormous otherwise for the trustees – to work out whether public service broadcasting is being properly pursued.

Q1301 Lord Maxton: I wonder if I can just broaden it out because I think we are in danger, in this whole debate, of talking about the past, the present and not about the future, which is a very different world in broadcasting from the one we have at the present time. If I can address this directly to you, Dr Helm, as the expert on regulation: first of all, how do you differentiate between regulation of, if you like, the structures of broadcasting and the content

of broadcasting, where some of the public are concerned? Linking to that, when - in the very near future not just now but sometime, maybe outside my lifetime but probably within the next four or five years – we will be able to download on to our mobile phones, any broadcast made anywhere in the world by any broadcaster (or indeed not even by a broadcaster but by almost any individual) who wishes to put that out for you to get – how on earth do you regulate in that situation? Can you regulate and should we be regulating?

Dr Helm: The fact that we are going to have this proliferation of services in no way undermines the idea that there is a market failure and a need for public service broadcasting. It has a different structure and different kinds of options available to people but the public service broadcasting problem does not go away because of digitalisation. That is what Ofcom claimed initially in their original document, and I think that is quite wrong. That said, digitalisation, lots of services, provide all sorts of opportunities. Regulation should be as light as possible, as it is for many internet services at present. There are some limits on that, and the normal things one would want to regulate are, first of all, competition issues – market structure issues – and we have got Ofcom and we have got OFT to look after those things, and then there is taste and decency and there is a whole set of regulatory rules which one would want to apply. So you may think this is a non-answer, but I actually do not think the regulatory problem becomes very different because of a proliferation of services. The opportunities become fabulously greater but we have still got to provide public service broadcasting in this frame because the market will not do for that (that is a fundamental argument). Secondly, we have still got the traditional competition, monopoly and public taste and decency regulatory rules to pursue.

Q1302 Lord Maxton: Do we not shackle, to some extent, the BBC if we apply standards to them which are then not applied to anybody else? The licence fee payer eventually says, “Well, what do they do for me? I can get all sorts of other things; I do not have to listen to the

BBC; I do not have to watch the BBC. I can watch an American soap directly, and not even have a broadcaster in this country putting it out; I can watch it where I like; I can watch Australian television, German television – whatever I want.” If, at the end of the day, the BBC is not providing the things that the licence fee payer wants then the licence fee payer may say, “Well, hard luck; I am not paying it.”

Dr Helm: I could not agree more. The whole point of governance is to design a structure which makes sure that the BBC does deliver to its licence fee payers because if it does not it has no right to exist. In the end, that is what people may choose. This structure is the best structure, I think, in its broadened form, with the trustees, of trying to ensure that it delivers. However, nobody has the right to endure forever.

Sir Robert Phillis: To Lord Maxton’s point, I think the question of regulation has to be considered in the context of technology. My own personal view is that after the next charter period, after the next ten years, assuming there is the switchover to digital broadcasting and the analogue broadcasting spectrum is closed down, then I think the BBC will have to prepare itself and will have to address a different financing structure to the one that we currently have, with a single manual (?) licence fee. I could envisage, taking the time-span you asked us to address, a situation where perhaps there is a lower licence fee relating to a more narrowly defined collection of public service broadcasting output and where other aspects of output are paid for by subscription even within BBC output. I think, in a sense, the regulation of what is public service broadcasting and what constitutes that core essential of a public service offering for a unitary licence fee will also then have a test which technology will bring along as to whether people wish to pay for additional services. I am talking 10, 15 years out, but that is the time-scale you asked us to address.

Lord Maxton: I must say I am more interested in the quality of what the BBC should produce in the future rather than whether it is tied to some public service broadcasting

definition. Then, in my view, if we can produce quality television in this country by the BBC or by other broadcasters, maybe driven by the quality of the BBC, then there is going to be an enormous market. It is one of the things that will allow us to remain in the marketplace in the world in a way that, perhaps, nothing else in this country will.

Q1303 Chairman: Would you envisage advertising in your ----

Sir Robert Phillis: No.

Chairman: There speaks a true newspaper man! Just a question on audit.

Q1304 Baroness Howe of Idlicote: We are about to see the Chairman of the NAO, in a moment. Can I ask you, particularly, perhaps, Sir Robert (but others may have a view), and particularly in view of what you, apparently, said on a previous occasion, that when you were editor of the World Service you went through regular reviews of the NAO and it was perfectly proper and extremely helpful, do you think that the NAO should actually have full access to the BBC? Perhaps, if you do think that, you could explain why you think that the BBC has been so reluctant about this. Is it because of the last infringement of their privacy or is it, really, because they feel that it will fetter their discretion to make the sort of investments which have paid off, mostly, so well?

Sir Robert Phillis: I am sure the Members of the Committee are aware that the BBC World Service radio is funded by the Foreign and Commonwealth Office and through grant-in-aid. In the first period of my time at the BBC I had the privilege of being Managing Director of the World Service. We were subject to regular NAO reviews and I found them valuable, in terms of the thoroughness and the detail with which an outside body scrutinised, in that case, the use of public funds as opposed to licence fee funding. It was extremely thorough, it was very searching and it certainly served to keep us, as an executive, on our toes – reminding us of our responsibilities in the use of public funds in that case. I do not believe the BBC should

have anything to fear from scrutiny by the National Audit Office. The only qualification I would make would be frequency, because it is quite a time-consuming exercise of the executive, and indeed of the National Audit Office itself. So I think a balance between the frequency and the extent and the range of such a view is the question I would pose, but as to the principle I think if you believe in transparency and openness, if the BBC and its management has nothing to fear in the way that it conducts its business, why should it be concerned about a review by the National Audit Office? Again, my qualifications are on timing, the breadth of such an exercise but not the principle. That would have to be worked out. I found, in the World Service context, that it was a very useful stimulus to the management team in addressing issues in our own custodianship of public funding.

Q1305 Baroness Howe of Idlicote: I wonder if the others have any views on this.

Sir Derek Higgs: I do not know whether Sir John is in the room yet but, whether he is or is not, I would say my own limited experience of the NAO is perfectly satisfactory, and I would echo what Sir Robert has said.

Chairman: I fear we need to bring this to an end. I think what you are saying is you are all agreed that the present system of management of the BBC can be improved – no one has actually tried to defend the status quo. You also think that the Green Paper can work, although with different ways of reporting proposals and different proposals. There is this question of regulation and where that regulation goes, and the issue of Ofcom. I suppose one of the things which I think, Sir Derek, you made in your report but you made again today is the sort of quality of the people; that, actually, whatever structure you have, unless you get the quality of the people right you are not going to make a great deal of progress. Have you anything to add to that, or is that a reasonably fair description of what you have said? Fine. In that case, thank you very much. If we have got any other questions perhaps we could write to you, but I am enormously grateful. Thank you so much.

Witness: **Sir John Bourn KCB**, Comptroller and Auditor General, National Audit Office, examined.

Q1306 Chairman: Sir John, I apologise we have kept you waiting, but we had a rather lengthy session beforehand. Welcome and thank you very much for coming. As you know, we are looking at the review of the BBC's Royal Charter and, particularly, at the proposals in the Green Paper and trying to measure those. We have had a letter from Edward Leigh, the Chairman of the Public Accounts Committee, and I suppose my first preliminary question is whether that actually represents your view and the view of your office that this is what should happen?

Sir John Bourn: My Lord Chairman, thank you. Yes, Mr Leigh's letter does represent our views as well as his own and the rest of the Members of the former Committee of Public Accounts.

Q1307 Chairman: So you look to an extended role as far as the BBC is concerned. Just putting to you what Sir Christopher Bland, the former Chairman of the BBC, said to this Committee when he gave evidence: "The NAO ought to justify what it is going to bring to the party. That is what I am not clear about. It would be a plain extension of the NAO empire to have the BBC fall within its remit." I think, basically, what he is saying is that the BBC has a thoroughly effective firm of commercial auditors doing the audit *per se* and it does not need a second audit.

Sir John Bourn: My Lord Chairman, on that, of course, the idea of the National Audit Office doing value-for-money studies on the BBC came from Lord Sharman in the report that he produced a few years ago. His argument was that the licence money coming to the BBC was public money and that, as it was public money, Parliament's auditor should have the right to look at how it was spent and to report freely to Parliament on these matters. Neither Lord

Sharman nor Mr Leigh nor myself have ambitions to be the financial auditor of the BBC; it is not that we wish to supplant the current financial auditors, KPMG – that is not the idea at all. The proposal of Lord Sharman, which Mr Leigh and I endorsed, is that we should be able to do value-for-money studies and report to Parliament on those.

Q1308 Lord Peston: I am very puzzled by this. I can understand the standard audit function, which you say is not your concern, but what I do not see, if you are going to do value-for-money studies, is how you do not involve yourself with taking a view of the programmes. To take an obvious example, would you regard it as within a possible remit of yours for you to be able to say: “The BBC spent £X million acquiring the rights to show test matches but we do not think test matches are worth £X million and think they are worth a number of estimated millions of pounds and, therefore, that is how we are going to report”? Is that what you have in mind? In other words, not simply where did the money go and all the usual audit things but actually saying: “Our estimate of the value is such-and-such and it is less than the BBC’s estimate”?

Sir John Bourn: No, that is certainly not how we see the contribution that we would make. In no sense is it the idea, as it were, to put forward our own scheme of programmes, any more than in our current audit of the Arts Council we suggest that different operas should be shown at Covent Garden than the ones that are shown. Nor do we, in our rights of access to most of the universities in this country, and further education colleges, attempt to say that physics should be taught in a different way or that all history departments should be organised in different ways. The way that we would do it is in line with the way in which we do our work in looking at government departments, where we take a policy, of course, as read, and it is no part of our responsibility to question that policy and then see how it is implemented. Therefore, as Members of the Committee will know, most of our work develops around better management of assets, better procurement arrangements and a better analysis of human

resource management and issues of that kind. So we have no ambitions to set ourselves up as working out alternative programme schedules or anything of that kind.

Q1309 Lord Peston: Just to pursue that point slightly differently so I understand what you would regard as being your remit, going back to your university example, supposing you were to argue (certainly as I used to do in my younger days) that there was, up to a point, increasing returns of scale in terms of university teaching and, therefore, some departments in universities were too small and the university system would be more efficient if not everybody said, “We have to have a physics department”, for example. That was regarded as very *outré* when I first put that but it seems to be becoming the in-view now. Would you regard that kind of concept, again, as relevant to you? You cannot draw the analogy precisely but it could be argued that the BBC is doing too many things, for example, and ought to be doing fewer. Would that come within – looking at it in terms of value for money – your remit?

Sir John Bourn: I would not think that, with the BBC any more than the universities, would play to our strengths. My concern in our work as a whole is to use the skills and developments and techniques that we have got, and I do not see them being applied to that kind of subject.

Q1310 Lord Maxton: Can I pursue that? I accept what you are saying about you are not interested in the policy of programmes. Let us take the news services provided by the BBC. It is clear policy that they will provide those services. Would you be looking, however, at whether or not they require a certain number of staff in a certain place to provide that news? I think sometimes they do over-employ, but that is another matter. For instance, they do not believe that Scottish reporters can ever cover a Scottish story down here, they have to send up someone from England who speaks with a nice accent. At the end of the day, is it your job to

say: “Look, you are employing too many people to do that particular job and you do not need it”? Once you start doing that, are you not beginning to interfere in the editorial freedom of the BBC’s news-gathering service?

Sir John Bourn: I would not do a study that took me down that road and exposed me to the very real criticism that you outline.

Q1311 Lord Maxton: I think most MPs would say that the BBC employ far too many people in this building for the service that they provide. You would not look at that? Even though it may be an inefficient use of the licence fee payers’ money?

Sir John Bourn: What I think about that is, of course, there is an enormous amount of work that I can do from my strengths. I would be very careful and cautious about embarking on a study which, although, if one presented it at first, seemed entirely about efficiency and economy, took one very quickly into the world of policy and politics. That has been my principle, really, across the work that I have done in government departments, where the same sort of question comes up; that you could think of a subject that looks pretty nitty-gritty but if you went down there you would soon find yourself engaged in major political questions. Recognising that I am the auditor and not the person in charge of policy, I would be very careful to avoid inadvertently getting into policy areas.

Q1312 Lord Maxton: Your reports, however, go to the Public Accounts Committee (and I have to admit that I am an ex-member of the Public Accounts Committee – before your time) which is of course made up of politicians who will then use your reports, whether you think they are political or not, for whatever political purpose they think they can use them. Is that right?

Sir John Bourn: They are politicians, entirely, as you say, but could I make the point, as you are remembering from your membership of the Committee, that one of the great strengths of

the PAC is that they stand together; there has never been a case, in my experience as C&AG, when there has been a division on political lines between the Members. They have always stood together in that sense and have, if you like, supported the approach that I have taken.

Q1313 Lord King of Bridgwater: Following up the point Lord Maxton has just made, it is quite interesting that Edward Leigh has written the letter and you have come to answer the questions. You are the politically acceptable face, if one might say, of this process, because you are seen as above political interference of any kind. Do you see any situation in this area where, because of the sensitivity of the BBC to its entitlement to independence and the public desire to be independent of government, the NAO might conduct value for money studies and might widen its scope without it necessarily being available to the whole of the PAC? I have in mind the arrangement that we arranged for the Intelligence and Security Committee, where you kindly assisted us with an amount of work which was, I think, only available to the Chairman of the PAC. I believe that was the arrangement. What about that?

Sir John Bourn: The arrangements, Lord King, that you describe were arrangements that you agreed with the Chairman of the PAC, it was based on a long-standing arrangement within the PAC that there were certain security matters which the Chairman alone dealt with, and this had been accepted by the Members of the Committee. Of course, the Committee which you chaired was of a very special character, so I cannot foresee that what is necessary from the viewpoint of intelligence and security would be relevant to the kind of work we did on the BBC, so I could not see myself doing for some other group what I did with the agreement of yourself and the Chairman of the PAC on intelligence and security.

Q1314 Lord King of Bridgwater: So that any value-for-money studies you did would come within the full remit of the PAC and all the members of it?

Sir John Bourn: Absolutely.

Q1315 Lord King of Bridgwater: I have one quite separate question, which I think Lord Peston was getting at. One of the issues that arises at the BBC is that some very big ticket items that they get involved in have a major impact on their budget, which compared to some of the studies that you might do on value for money would look pretty small beer. Do you think you could really do value for money without getting into some of the big issues? I think they declined to bid for further cricket tests because it would have been too big a dent in their budget. Do you have views that that was a public service broadcasting obligation that they ducked?

Sir John Bourn: I cannot see myself doing a study on that particular proposition. I would regard that there is the budget that they have, they must determine the policy of what programmes they decide to do within that budget. It is rather analogous to most government departments that do have a budget and where the Secretary of State, taking advice, reaches his own decisions on where the money is to be spent and which programmes and projects go forward. I do not question those decisions. I could not see that I would question it as far as the BBC was concerned.

Q1316 Lord King of Bridgwater: This follows on from a very interesting sentence in here which says: “... the approach of the Committee of Public Accounts and the National Audit Office is very much one of supporting well-managed risk taking ...”. In my experience from what I have read of the reports of the PAC, if they can find a bit of risk-taking that went wrong they will absolutely go for it – or you will provide the ammunition to go for whoever took the risk that went wrong, no matter how bravely it was managed. The serious point of that is that you then breed a culture of caution and, in fact, there will not be so much risk-taking because they will be nervous of the consequences?

Sir John Bourn: Lord King, that is a point that is often said but I will deny that that is our attitude or that that is our effect. When you look at the work that we have done, we have

never in the time I was C&AG criticised people for taking well-thought-out risks. What we have had so often to criticise was risks that were taken without being thought through; where programmes have been started without the department thinking: “Well, what are the obstacles in the way of achieving what we want to do?”; embarked upon without pilot studies ----

Q1317 Lord King of Bridgwater: May I say, you work entirely from hindsight; you do not give advance approval to projects that go forward; you review them afterwards. Is that right?

Sir John Bourn: We do review what has been done, but of course many of the recommendations throw forward to the future.

Q1318 Lord King of Bridgwater: Having done that, the person who is going to take the risk has to be absolutely confident that he has got it properly managed or whether others will decide with hindsight that he had not actually thought it through and, therefore, is open to criticism.

Sir John Bourn: Where he had thought it through and he had taken it but it had, nevertheless, not come off, we have not criticised him for that.

Q1319 Bishop of Manchester: Could we go a little further into the whole issue of reviews because we are interested in the fact that at the moment there are six, as I understand it, that you are doing within the BBC. Without going into too much detail, I wonder if you could tell us what the six areas of review are, how far you have got with them and whether or not you felt that in all those areas you have got the kind of co-operation that you would have hoped for from the BBC?

Sir John Bourn: I am very glad to do that. The six studies that we are doing are, first of all, the BBC investment in Freeview, which is making available 30 digital channels. The second study is the development of White City; the third one is measures of public service

broadcasting; the fourth one is the definition of overheads which the BBC use; the fifth one is outsourcing arrangements and the sixth one is the risk management processes that they use to assess their projects and programmes. Those studies are going well. One has been published already – the one on Freeview – which was published by the BBC at the same time as their annual report last July, and the BBC said in the response, which was included within the publication of our report, that they were taking active steps to address the recommendations, and they thanked the NAO for the study that we had done. I think the studies that we agreed to do, jointly between the BBC and ourselves, were useful studies, they were studies that played to our strengths and the programme is going well. The BBC intend to publish the next two, the second and third that I mentioned, when they publish their next annual report later this month.

Q1320 Bishop of Manchester: What do you do if they do not take up the recommendations that you make, particularly if you feel a recommendation you have been quite strongly pushing is rejected? What happens then?

Sir John Bourn: Under this present scheme, of course, which is an experimental scheme and is not the same as a full-scale audit, there is no purchase that I have on them to do this, but what I do hope – and certainly was the case with Freeview – is that the recommendations we make will commend themselves to the BBC. That was certainly the case in the first one that has been published, and I hope it will be with the rest.

Q1321 Bishop of Manchester: Are you saying that you would hope for a system whereby what you recommend could be regarded as being rather more prescriptive than it clearly is at the moment?

Sir John Bourn: Well, it is not as if the recommendations were saying, “You must follow this rule; you must do this, you must not do that.” That is not the kind of thing that they are.

What they are saying is: “As you take this forward these are aspects” – and a lot of them turn around knowing what you are doing, assessing the risks and managing them; they are around how to manage the activity to success. That is the thrust of them all.

Q1322 Bishop of Manchester: You can confirm that the BBC have given utter co-operation in all these areas?

Sir John Bourn: They have been absolutely fair. We agreed the six studies between us and they have co-operated and made available information that we needed.

Q1323 Chairman: What happens if you say: “I want to do this particular project” and the BBC say: “Very difficult, very sensitive, don’t think we would quite like you to do that”? What happens then?

Sir John Bourn: Under the present scheme, of course, I could not do it, and that is, of course, the difference between being a consultant who does what he is asked to do and being an auditor, who has the right to choose what he should do and what he should bring, in my case, before Parliament.

Q1324 Chairman: It is early days, is it not, in this scheme that we are doing. Have there been things that you have suggested which the BBC have deflected?

Sir John Bourn: No, there have not. The six studies came out of a first discussion I had with the BBC staff at which we went over what we thought were the kind of strengths of the office, the sort of thing that we had done before. Within that context we said: “We think that these are the sorts of areas in which we could make a useful contribution.” The BBC thought about them, and they came up with a series of studies which, essentially, lay within that framework. I was happy to agree the six subjects and set to work on them.

Q1325 Lord King of Bridgwater: Can I ask one point on this? The point is that you, under the present arrangement, have to agree with them what you do; you do not have freedom of action, and you report to the BBC and not to Parliament. Is that correct?

Sir John Bourn: It gets to ----

Q1326 Lord King of Bridgwater: The question I am actually coming to is if you have the freedom you are asking for, how many more studies would you want to do? Or is about six all you can take on?

Sir John Bourn: Given the range of activities I have got right across government - currently the PAC ask me to do 60 studies a year – if this came, maybe they would ask me to do 62 or 63, so I would not expect to do more than one or two a year for the BBC.

Q1327 Chairman: But the difference is that you would choose the studies that you were going to do rather than having to come to an agreement on what they were?

Sir John Bourn: That is exactly right, my Lord Chairman.

Q1328 Lord Holme of Cheltenham: I dare say other Members of the Committee share, to some extent, my ambivalence. On the one hand there are large sums of, ultimately, public money, although in the special form of a licence fee, and why should the BBC be sacrosanct? On the other hand, the BBC is a creative organisation, and I have to say well-considered risk means something rather different in a publishing company or a broadcasting company than it means in normal spheres of government and administration and management. From memory, when I was a publisher, something like eight out of ten novels lose money and one out of two magazines fails. Lots of programmes are made which are disasters for the ratings, and yet decisions have to be made by people. Very often flair comes into it, although of course people do consider risk and they have to consider the commercial implications of what they

are doing, but it would be quite difficult to put it into a risk-reward grid of the sort that one might conventionally operate. The question I wanted to ask you is it seems to me to come together on this issue of new services from the BBC. A new service is launched, very often, with quite a lot of criticism from potential competitors out there who do not receive public funds, that: “This new service will compete with us and it is not fair”. It is, therefore, in a sensitive area, the sort of area in which the PAC might well be interested. Do you see yourself, retrospectively, after a year of a new service for which a licence has been obtained – since this is the cutting edge of what the BBC is doing (and some people say they are doing too much of it anyhow and have too great a proliferation of new services) – would you see that as an example of the sort of thing that you might do? Perhaps you could just address the sort of creative organisation point as well. Are there any other creative organisations where your skills and services have been called on?

Sir John Bourn: If I take that last point, as I mentioned before, we are the auditors of the Arts Council and they engage, through various bodies affiliated to them, in a vast range of creative activity and they try new things out, and we have never said – and it has never been my ambition to say – “I think it was quite wrong that you decided to do Hamlet in Darlington or that you had done poetry in Bristol”, or whatever. We have never sought to stifle creativity in that way; on the whole we have tried to encourage it by saying: “When you set out to do something, by all means it is your choice, but think of how you are going to do it and how you are going to make a success of it.” That is what we think of when we talk about well-thought-out risk taking; it is not a question of, “Don’t do it if there is any risk at all”; it is a question of saying, “Think out what you are doing and do it with your eyes open.” If you do that, as I have said, we would not criticise you. I recognise the point you make and I recognise the fear that people have, that in some way what works, perhaps, for the Department of Work and Pensions is not absolutely appropriate for the BBC, but there is a methodology of addressing

uncertainty in life, and the methodology is essentially the same, I think, across the piece. So I think, from our experience, we would be able to make a real contribution to the BBC on the basis of the auditors' choice, reporting to Parliament, reporting into the public in ways that did not invade editorial independence nor act as a way of disinclining the BBC to do adventurous things; we are in favour of that, it is just thinking out what you are doing.

Q1329 Lord Holme of Cheltenham: Thank you very much for a very helpful answer, but my specific point was about new services, which, if you like, is the cockpit where a lot of these issues come together. Would you imagine that would be something where you would have an open door and that you would be wanting to look at, in retrospect - does this new service work?

Sir John Bourn: I think, certainly, one might want to look, but our experience has been on these things do not look at it after 12 months if it is a programme, a project, and it is going forward. Sometimes it is worthwhile looking at it after two or three years and seeing how it has worked. For example, with a new social security benefit you would not look at that after six months or a year; you might look at it after three years and say: "Has that achieved what the Secretary of State aimed to do?" So you might look at an initiative after a few years and say, "When the BBC did this, their aim and objective and purpose was X; were they able to achieve, in a reasonable amount of time, X?" Again, you would not want to say – it would be most unlikely – "How stupid you were to do X and what a hash you have made of it." We would say, if there were areas of possible improvement, "As you go on from years 3 to 6 bear these points in mind."

Q1330 Baroness Bonham-Carter of Yarnbury: Can I pick up on the point Lord King made earlier, that you are an organ of government? In the Green Paper the Government seems to concur with the BBC because it believes that you are seen as having a Parliamentary

involvement with the BBC which the public do not like or do not want any more of. What is your response to that?

Sir John Bourn: The first point I make is that I am not an organ of Government, I am an organ of Parliament. Certainly in the work that we have done, for example, we already do work in the overseas service, which I recognise is perhaps slightly to one side, and I have never had addressed to me a similar point to the one you mention by anyone else. So I do not, personally (this is my view) think that I am seen as some kind of acolyte of the Government, and I think that I am seen, and I certainly hope so, as a servant of Parliament.

Q1331 Baroness Howe of Idlicote: Listening to all this, Sir John, I really find it quite difficult to see why people should object to your role. I am just wondering what sort of complaints you may have had from other organisations or whether, in relation to everything that you have done with full authority, where you are able to publish it, any of that has resulted in complaints? If not, perhaps you could explain to us why you think the BBC have this particular attitude. I can see entirely why you want it fully up front because it is published, etc, etc. Is it just the fact that it would take up some of their time? Incidentally, how many years have you spread the six agreed reviews that you have done over, because that presumably all takes time, and resources too?

Sir John Bourn: Lady Howe, in terms of complaints against us, of course, the way in which we work, as with all auditors, is we will produce a report and we will show it to the auditee. We agree on the facts, so that there is no dispute about the basis of a fact on which our report rests. Of course, the recommendations that come from that are for us to make. As in the case of the one we have done, we did not have any argument or difficulty with the members of staff of the BBC. As I said before, these studies have gone forward in a spirit of co-operation and amity between us. So I think those who have dealt with us, and certainly those who deal with us in the BBC (I must not speak for them, of course) have not expressed complaints or

problems) and the BBC have commissioned a lot of people to do studies. At the same time as the six we are doing there are three others: two being done by PriceWaterhouseCoopers and one being done by Ernst & Young.

Q1332 Baroness Howe of Idlicote: You did them over one year, two years – how many years?

Sir John Bourn: Over two years. Why are people so fearful of us? It must be, I suppose - and I would say this, would I not? – because they are people who have not, perhaps, really looked at our work and not really looked at our reports and not quite understood the position we have as the Parliamentary auditor. Of course, I can absolutely see why, in a modern society, there is great concern that people should speak freely and great concern that the media should be outside government, as it is in this country, and I can see that people, if they think I am part of government, might have thought it would be very dangerous. However, as I have said, I am not part of government; I report to Parliament. So I think that those who have these reservations – and perhaps we should have done more to explain about what the National Audit Office does – have fears which are unnecessary.

Q1333 Baroness O'Neill of Bengarve: Retrospective studies can cast prospective shadows. You speak of the central demand being that risk be well thought through. All over public life, people are faced with requirements to think risk through well when they make decisions and do things, from school teachers taking children to the park and upwards. Very often the interpretation of what it is to think a risk through well is extremely formulaic and very deadening to the activity required. Do you have a formulaic way of thinking about what it is to think risk through?

Sir John Bourn: Certainly not in a formulaic way of having a sort of checklist. We do not work on the basis of saying: “There are 16 things you have got to get right and if you can tick

the 16 boxes then it is well thought out.” Our view is it depends very much on what your area is; taking risks in terms of defence procurement is a different matter from taking risks in a design of a system of taxation. So it is not a formulaic conception at all. We have produced various studies which are around with examples of areas where risks have been well taken and why they were well taken; there are some examples where they have not been well taken. So it is not formulaic, it is not inward looking; it is taking risks in the nature of the activity with which you are concerned, and sensitivity to that.

Q1334 Lord Peston: You yourself, of course, were using resources in order to do these audits. What would a Committee like ours look at, in a few years’ time, in order to say that your use of resources led to gains compared with the costs? What pluses will follow from your doing this auditing?

Sir John Bourn: Of course, my performance is surveyed every year by the Public Accounts Commission, who look at the work, who have the report from the external auditor they select to audit me, and there are various tests which they expect me to have followed through. One of them, of course, is the question of the number of recommendations that we make that the Government has accepted. They run at about 90% of acceptance by the Government of the recommendations that we make. It is very largely because the recommendations are based on facts and analysis. So, in that way, the Public Accounts Commission look at the work that we have done, look at what our auditors say about it and reach a view as to whether we ourselves are value for money. We have various external people looking at this. For example, I have a contract with Oxford University and with the London School of Economics to look at all our value-for-money reports and produce an assessment of whether they think the work was well done. These assessments are available to the Public Accounts Commission and to the PAC so there are a variety of ways of assessing whether the work that we have done is of good quality. It would certainly be possible, after a few years, for yourselves and the Commission

to say: “We would like to have a look. How good was the work that the NAO did in this field?”

Q1335 Lord Peston: The BBC field is what I am asking you about.

Sir John Bourn: Yes. You could see that that could be done, and I would welcome it, and would have no problem about it.

Q1336 Lord Peston: You would expect the PAC to be a suitable body ----

Sir John Bourn: It is the Select Committee which has responsibility for my budget, and they do it every year. I would not set my face against, because the reports that are available to the Public Accounts Commission are available to everybody else. So even if the Public Accounts Commission said: “We want to have a special analysis done on how well you have done your work on the BBC”, they would have a report and they would look at it, and quiz me on it, but it is available to your Committee or anybody else in Parliament to ask me questions about it. So it would be a public analysis available to all.

Q1337 Lord King of Bridgwater: Do you cost individual studies? You have said you have an overall budget and you do 60 value-for-money audits. Do you cost them individually?

Sir John Bourn: Yes, we do cost them individually.

Q1338 Lord King of Bridgwater: I just wondered. Could you just clear up some complete ignorance on my part? We have established the fact that what you are seeking is the independence of judgement as to what studies you do.

Sir John Bourn: Yes.

Q1339 Lord King of Bridgwater: Commonly, auditors may identify things in their audit which lead to them, perhaps, being invited to conduct a value-for-money audit. You are not

the auditors of the BBC. What would be the sources of the material that would guide you to make an independent choice as to what your value-for-money studies would be?

Sir John Bourn: The access rights we would have to the books and records and opportunities to talk to the staff of the BBC.

Q1340 Lord King of Bridgwater: Can I just stop you? So you mean that actually you would require access to all the books and documents - whatever information there was - across the whole of the range of the BBC's activities in determining which you thought were worthy of value-for-money studies?

Sir John Bourn: In the same way as I have that with government departments, yes.

Q1341 Lord King of Bridgwater: That is the point. It widens the point of you just conducting six or less studies a year; it gives you total access to the total material. You would not draw on the outside auditors' reports or other things to guide you as to which subjects to choose?

Sir John Bourn: Certainly, because this arises in other cases. If I may say, there are a number of other institutions of which we are not the external financial auditor but we have access rights. Of course, in exercising our access rights we have regard to what the external auditors said and published. So it is part of the information available. However, at the same time as we have access, as we do with government departments, that access is not used thoughtlessly; it is not used as a conduit for passing on the confidential information of the auditee to other parties. The only thing that is published is the report which they have seen and the facts of which are agreed. So the fact that we have got access to the materials does not constitute any extra risk for them.

Q1342 Lord King of Bridgwater: You cover commercial confidentiality? For instance, the bids. There is an imbalance here between the BBC, who may have their bidding processes exposed, against their commercial rivals, who might not.

Sir John Bourn: The same position arises as, for example, in the Ministry of Defence, where there may be areas where we report to Parliament in confidence for exactly that reason. If that were to arise I would see it being handled in that way.

Q1343 Chairman: The commercial auditors, presumably, also have total access?

Sir John Bourn: Yes, they do; of course.

Q1344 Chairman: They must have. You are limited but the commercial auditors have total access.

Sir John Bourn: Yes.

Q1345 Lord Maxton: This is not a question, really. Value for money, of course, is not just about cash, it is about the value of the product in relation to the money spent on it. So when you do an investigation of this nature, I assume you are employing people other than just accountants; you are employing, for instance on your Freeview one, people in the technology field who could give you expertise. Is that right?

Sir John Bourn: That is absolutely right, Lord Maxton. Pretty well all of our value-for-money studies are done by joint teams of insiders and outsiders. So, for example, in our work on the Health Service and the reports we have done on the treatment of heart disease, the provision of maternity services and the treatment of various kinds of cancers – which are reports, really, about the funding of good practice – we have had people from the Royal College of Surgeons, physicians and from universities. So it is not just accountants at all. You are absolutely right to say that value for money goes beyond financial. We have

certainly made a big thing about having the right sets of people and the right kind of expertise on the team.

Q1346 Lord Maxton: Perhaps Scottish accountants as well!

Sir John Bourn: I have Scottish accountants, but that takes us into another ----

Q1347 Chairman: Could I just ask one last question? A great amount of public money is used and devoted to the BBC. Is there any comparable organisation which is exempt from agreed review by your organisation?

Sir John Bourn: There is not now, my Lord Chairman. It was the case that when there were nationalised industries – British Airways and the railways – they were audited by commercial auditors, but of course these have now, essentially, been privatised. So the BBC is really the only public corporation of any size that remains, so it is the only organisation of that character outside our remit.

Q1348 Lord Maxton: Scottish and Caledonian Railways (?)?

Sir John Bourn: These are now the responsibilities of my colleague the Auditor General for Scotland.

Q1349 Chairman: I knew Scotland was going to have the last word! Sir John, thank you very, very much indeed. We are very grateful. I thought you answered our questions very thoroughly, as far as we are concerned. If we have got any further points perhaps we can come back to you.

Sir John Bourn: Indeed. I am very glad to help the Committee further, my Lord Chairman.

Chairman: Thank you very much for coming