

EVENT NOTE

Workshop

BBC Governance: Independence, innovation and accountability. 13 November 2015

The workshop was held under the Chatham House Rule. Participants were invited to include a range of academic and civil society expertise, along with senior representatives of the BBC, BBC Trust, Ofcom, DMCS and of one national commercial TV station.

This note was prepared by the LSE Media Policy Project as a record of points raised in the discussion. It is not a verbatim summary nor is it a statement of a consensus position.

General

The workshop focused on the current challenges for reform of BBC governance, including an examination of different international models of public service broadcasting (PSB) governance. The participants addressed the [questions in the Government consultation](#) that relate specifically to BBC governance:

- *How should the current model of governance and regulation for the BBC be reformed?*
- *How should Public Value Tests and Service Licences be reformed and who should have the responsibility for making these decisions?*
- *How could the BBC improve engagement with licence fee payers and the industry, including through research, transparency and complaints handling?*

Participants were generally agreed that reform of the BBC governance was necessary, but were divided on what governance model should replace the status quo.

Some have challenged the need for more detailed governance and regulation rules and emphasised the role of political culture instead. Citing several examples from Central and Eastern Europe, the effectiveness of rules and control systems was questioned. A controversial Media Bill adopted by Hungary in late 2010 was cited as an example. While the Bill was severely criticised by the European Union and other media watch organisations for its negative implications for media freedom, the text of the Bill would have been seen as not too dissimilar from Western European laws. It was maintained that the crucial difference lay in political culture of the two regions.

Principles of BBC governance and regulation

While several models of and challenges for BBC governance were explored, the participants broadly agreed on the following model of future BBC governance and regulation. A tick indicates which institution would take the lead role in regulation.

Responsibility/Body	Government	Parliament	Board	Independent Regulator*
Setting the remit		✓		
Licence fee levels	✓	✓		
Value for Money (VFM)/Audit			✓	
Public Value Tests (PVTs)/Market Impact Assessment (MIA)			✓	✓
Complaints			✓	✓
Content				✓

*Not all participants agreed that there should be a regulator independent of the BBC. In some cases, there would be overlapping roles (two ticks) or participants didn't agree. The division of functions indicates that sensitive content issues should be kept well away from government. There is more acceptance of government in licence fee setting (in contrast for example to Germany).

A regulated utility industry model?

One proposal was that the BBC should be regulated by an external independent regulator with internal governance of the BBC in the hands of a corporate Board. The Board would have duties towards licence fee payers, public purposes, and would oversee strategy and operations.

The advantages of the regulatory distance created by this model would include improved clarity and division of roles between BBC and the regulator. It would also provide more rigour in holding the BBC to account and reduce the risk of regulatory capture.

However, concerns were raised about the risk of the mutual relationship becoming one of "challenge and confrontation"/excessively confrontational whereby the informational asymmetry between the provider and regulator would intensify.

Several options for an independent regulator were considered: a stand-alone regulator ("OfBeeb"); a Public Service Broadcasting Commission (PSBC) with powers to regulate all PSBs removing the responsibility for PSBs from Ofcom; and Ofcom.

It was questioned whether a stand-alone regulator would possess enough expertise gained by regulating other broadcasters and comparative information. It was argued that these could help manage the issue of information asymmetry and prevent the relationship between the regulator and the BBC from becoming too antagonistic or too 'cosy'.

While it was suggested that the PSBC could offer higher standards than Ofcom's backstop regulation for all broadcasters; it was also pointed out that BBC regulation and funding could become diluted due to the levelling of standards and sharing of licence fee between all PSBs.

Whilst Ofcom was seen as a regulator with extensive experience and expertise in the broadcasting sector, many participants voiced their concerns about Ofcom becoming too powerful, particularly in relation to content, if all broadcasting regulation would be in its hands.

Defining the specific mandate, institutional status and duties of the regulator was considered crucial by the participants, as was the decision on who would regulate the regulator. Some questions that need to be considered:

- what or whose interests the regulator should protect; whether it should be the interest of the public;
- whether the regulator will be a statutory corporation as Ofcom or a non-ministerial government department as other utility regulators;
- the regulator's role in the oversight of BBC activities and performance in relation to quality of programming and achieving public service objectives; public value; value for money and funding requirements;
- the regulator's investigative powers and information to be given to the regulator to be able to operate effectively;
- the regulator's role in charter renewal and licence fee settlement, particularly whether setting of licence fee/levy should be removed from the Government;
- the boundary between internal governance and external regulation, in particular in relation to ex ante approval as opposed to ex post review, which might influence on the speed of decision-making;
- delineating appropriate roles of the regulator and BBC Board.

In relation to the above questions, some participants have suggested that public interest should not be regulated by a regulator. Others argued that while the quality of content also has to be regulated, since Ofcom does not have expertise in this field, a different body would have to be handed that responsibility.

Many participants agreed that safeguarding the independence of the future BBC regulator as well as the whole of PSB from the government remained a key challenge. A view was expressed that the regulated utility industry model would need to be applied to BBC governance with caution because, in many respects, broadcasting and the public service it provides were much more complicated than other regulated industries.

"Light" version of the Green Paper's "Standalone regulator model"

Another potential model is a unitary main BBC Board with a majority of non-executive members, chaired by the non-executive Chairman of the BBC, supplemented by Ofcom and a *small* 'OfBeeb'. While the Board would be responsible for operational delivery and consolidate strategy setting,¹ Ofcom would continue with its current content and economic responsibilities. In addition, it would be tasked with providing independent evidence and analysis for OfBeeb and other stakeholders. It would investigate major issues and complaints about impartiality, clarifying the accusations and assessing their validity by conducting or commissioning comparative content analyses, research on public perceptions and expert opinion. Supported by its Consumer Panel, and employing comparative data on

¹ As envisaged by the [Green Paper](#) on page 67 and the Burns Committee in 2006.

public perceptions of quality, trust, and value for money, Ofcom would also monitor how well the BBC delivers value for licence fee payers.

OfBeeb would regulate the BBC without being part of it. It would agree Service Licences and monitor performance for the BBC as a whole and for specific services. It would also advise ministers on the level of the licence fee or household levy and other aspects of charter review. As OfBeeb would have no responsibility for regulating other broadcasters the confusion between it and Ofcom would be minimized. It would comprise of a non-executive chairman and Board, supported by a small secretariat. Rather than having its own research budget or capability, it would largely rely on input from the BBC and Ofcom. If required it would invite Ofcom to conduct or commission research on specific issues, particularly to provide a second opinion on research provided by the BBC.

In relating to the above model, some participants raised concerns about OfBeeb's weak position towards Ofcom. They argued for an independent regulator with sufficient powers so that it could protect the BBC against Ofcom or the Government if required. Currently, the BBC Trust has few other tools than resignation of the trustees.

Others warned against the confusion of roles which could arise if the BBC is governed and regulated by OfBeeb, a Board and Ofcom as is often experience under the current set-up. Some participants criticised the links of the BBC Trust to the Government. It was thus proposed that all BBC governance and regulation be put under Ofcom on the same basis as the other broadcasters were.

Research

Some participants raised concerns in relation the idea that OfBeeb would commission research to Ofcom. Ofcom's research culture was questioned, and the need to conduct qualitative research as opposed to relying merely on quantitative data was highlighted.

Set-up and responsibilities of a new Board

It was stressed that BBC governance reform should first and foremost focus on a novel set-up of the Board. Once the Board had been created, the creation of a new independent regulator would follow with relative ease. The set-up of the Board was identified as the key to changing the disappointing BBC culture by some. Participants were generally agreed that further involvement of non-executive BBC Board members needs to be explored, but have not come to a consensus on the appointment procedures. While the members of the Board would be non-execs, the Board would have responsibilities, including investigating market impact and public interest issues. It was suggested that lessons can be learned from the discussion surrounding press regulation, as a potential model of regulatory independence.

Public Value Tests and Service Licences

It was argued that PVTs and SLs should not become more detailed and prescriptive as they already involve a significant bureaucratic burden, for the BBC, the Trust and Ofcom, as well as for the commercial players. It was recommended that the right data are collected to provide the body overseeing them with the necessary evidence.

The current aim of PVTs was criticised as trying to balance a BBC service's public value against its negative market impact. It was argued that PVTs should strive to maximise the BBC's net public value, having allowed for the indirect effect *on the public* of its negative *and positive* market impacts. The need for SLs to be narrower or PVTs enforcement to be tougher was questioned as lacking a convincing evince base.

Participants identified as a key issue to stipulate the details of the process of setting SLs and PVTs. The setting up of the purpose remits by an external regulator to be later applied and decided in detail by the BBC was discussed. In this way, the initial remit would be set top down, but ensuring the balance and that the service fits its purposes should be determined from bottom-up. The idea of mini PVTs was also mentioned.

Engaging with licence fee payers

It was argued that the main way in which the BBC engages with licence fee payers is through its content and services. Due to its popularity, the BBC has far more opportunities to offend or disappoint its customers than any other brand and the Corporation devotes significant resources to handling complaints from viewers and listeners. It was proposed that if the task of handling complaints from viewers were given to Ofcom, the complainants would feel that they were dealing with an impartial third party, and the volume of spurious complaints could be reduced as well. Extending Ofcom's role to include independent, evidence-based analysis of the validity of accusations of bias was also recommended.

The participants broadly agreed that the BBC, Ofcom and OfBeeb (or equivalent) should monitor the public's perceptions of, and satisfaction or dissatisfaction with, different aspects of the BBC, but were divided on the specific mechanisms. While some argued for properly conducted quantitative research based on statistically representative samples, others defended the value of qualitative research.

The effectiveness of audience councils, on- or offline public meetings, and viewer panels was questioned. These were accused of amplifying the views of unrepresentative minorities and single-issue lobbies or, of being expensive and less reliable versions of qualitative research. Others challenged the need for audience councils questioning why there should be a special system of citizen involvement in public service broadcasting and why citizens should have more direct influence on broadcasting than on other public services such as the NHS, for instance.

Nonetheless, some participants argued for new approaches to and mechanisms of involvement rather than abandoning them altogether. A growing role for large-scale direct interaction with the public as a spin off of online services, along the lines of Channel 4's All 4 was discussed. The participants recognised the danger of the BBC over-investing in personalisation, leading it to cut its content investment more than necessary.

International approaches to PSB governance and regulation

Different approaches to PSB governance and regulation adopted by other Western European countries were discussed. Accountability instruments, ex-ante tests mechanisms, funding models and responsibly relating to deciding the amount of funding for PSB were compared.

It was argued that while BBC's accountability is quite sophisticated in international comparison, the representation of audience could potentially be of more importance. It was also suggested that the decision-making procedures relating to Charter renewal and public funding of the BBC could be more detailed.

The international comparison revealed that the level of the licence fee and of public funding per capita is not very high. The European trend of broadening the licence fee to other devices, or replacing it with a household levy was also discussed.