

# PROPOSALS FOR REFORM OF THE BBC

*A discussion paper by Rob Wilson MP*

## EXECUTIVE SUMMARY

The BBC was set up as a public corporation under a Conservative-led Government in 1927. It has been an essential part of the national fabric for as long as most of us can remember. It makes an enormous contribution to British political, social and cultural life, and has played an instrumental role in leading the switchover to digital television and pioneering new technologies, such as the iPlayer.

At the same time, the BBC has often been a source of resentment and public frustration. It is obviously unrealistic to expect BBC to keep everybody equally happy all the time. Nonetheless, in there have been alarming signs that the BBC appears to have lost its moral compass in certain respects. While members of the public are given little choice whether or not to pay the licence fee that funds the BBC at whatever the level imposed on them, the BBC has indulged its bloated layers of senior management and “talent” with lavish perks and payoffs beyond the dreams of its audiences. Its approach to transparency, audit and democratic accountability are way behind those of other public institutions. For a broadcaster that supposed to be proudly impartial, there have long been suspicions of a metropolitan, left-wing bias. Even its staunchest allies admit to a sense of “smugness”. More recently, the failure of its management to take act on several warnings about child sex abuse against the late Jimmy Savile, and the disastrous collapse of journalistic standards in a Newsnight report on sex abuse against a former Conservative politician, have led to a rapid erosion of trust in the BBC amongst its audience.

Underlying many of these issues is the BBC’s secretive, unaccountable and undemocratic set of arrangements. The public who pay the licence fee have little ability to scrutinise what the BBC does, let alone any say in how the BBC spends their money. Despite the efforts of the Government in freezing the licence fee and the establishment of the BBC with the aim of protecting the public interest, the current arrangements are still a case of “taxation without representation”.

The reform proposals set out below present a series of practical steps to deliver licence fee payers ultimate control of how much money is spent, better regulation of the accuracy and impartiality of BBC output, and far greater openness and scrutiny of the BBC’s actions, appointments and spending.

### **THIS DISCUSSION PAPER PROPOSES:**

- **Licence fee payers be given the right of veto over excessive increases to the licence fee, just as they have in the case of Council Tax**
- **The BBC be asked to publish all invoices over £500 online, as local councils and fire authorities have been asked to do**
- **Review the arrangements with the National Audit Office (“NAO”) to ensure that the NAO truly can choose which areas of the BBC it investigates and actually does have the right to full access to BBC information in a timely fashion**
- **Transfer of responsibility for regulation of the accuracy and impartiality of the BBC’s public service broadcasting from the BBC Trust to OFCOM**
- **A commitment by the BBC Trust to annual reviews of “left v right” political impartiality for the foreseeable future**
- **Greater openness of senior appointments, including pre-appointment hearings for Director-Generals and all members of the BBC Trust**
- **Ending the virtual immunity for the BBC under the Freedom of Information Act**
- **Free access to past content for licence fee payers**
- **Greater use of “top-slicing” to support public service broadcasting, such as local news, on other channels**

## 1. FUNDING AND VALUE-FOR-MONEY

### THE LICENCE FEE

The BBC's main form of income, the licence fee, has been described as "a tax on television usage"<sup>1</sup> and even a "poll tax" on those who watch television. Although the licence fee was frozen for six years in 2010, it had previously increased by 15% in real terms since 1997.<sup>2</sup> Polling data in recent years have indicated that the public is divided on whether the BBC provides value-for-money (56% thought it does), but a large majority of the public (67%) want to see spending on the BBC reduced.<sup>3</sup>

Late last year, a Private Member's Bill was introduced into the House of Commons that sought to give every licence fee payer a vote on the level of the licence fee. While most people would agree with the principle of "no taxation without representation" behind the Bill, low turnouts in recent Parliamentary by-elections and in the first elections of the new Police Commissioners, and the budgetary and legislative chaos experienced in California as a result of its system of direct democracy, suggest that the frequent use of referenda on every major decision affecting the BBC would not be the best solution at this point in time.

Nonetheless, questions of public representation, and accountability for what the BBC does with licence-fee payers' money will not go away. As a House of Lords Select Committee has admitted, although the BBC Trust is meant to be the guardian of the licence fee, "*it is clear that in reality the BBC Trust cannot be directly accountable to individual licence-fee payers*".<sup>4</sup> During the last licence fee negotiations, such was the pace of the negotiations and the secrecy surrounding them that licence fee payers were not even aware of the options being considered until after they had been decided between the Government and the BBC. The House of Lords Select Committee concluded that "*there was no opportunity for licence fee payers or anyone else for that matter to put their views to the Trust before the settlement was agreed.*"<sup>5</sup>

This lack of openness and democratic control is unacceptable. When the licence fee for the post 2016/17 comes to be decided, **the BBC should, prior to the negotiations with the Government, present to the public its proposal for the level of the licence fee and what it intends to do with the money.** It would be then be up to the BBC Trust to defend the proposal in public and in private. This would give the public the chance to make their views known, both to the BBC itself and to their elected Members of Parliament.

Once the Government and the BBC have concluded their negotiations on the level of the licence fee, **the proposal should be available for scrutiny both by the Culture, Media and Sport and the Public Accounts Committees of the House of Commons.** Ultimately, licence fee payers should be afforded the same degree of democratic control over BBC spending that they hold over other parts of the public sector. **As is the case for local councils under the Localism Act, if the BBC wishes to make excessive, above-inflation increases to the licence fee, it should have to hold a binding referendum of licence fee payers.** This would provide a powerful incentive for the BBC to keep its costs under control, in the likelihood that it would find excessive increases in the licence fee difficult to justify. It would also provide licence fee payers with a real sense of control over the licence fee, but without damaging the BBC's ability to plan its resources sensibly.

### PUBLICATION OF EXPENSES

Recent events have highlighted longstanding concerns about how prudent and careful the BBC is when spending licence fee payers' money. Revelations that the BBC spent £4.2 million – the equivalent of 28,866 annual licence fees - on severance packages for just 10 executives in the space of the last two years, were followed by revelations that the BBC was paying for private healthcare for 574 senior managers in addition to

<sup>1</sup> House of Lords Communications Committee, "The Governance and Regulation of the BBC", HL Paper 166, 29 June 2011, paragraph 140

<sup>2</sup> <http://conservativehome.blogs.com/platform/2011/11/from-halfon4harlowmp-the-bbc-cannot-continue-as-a-kleptocracy-we-need-to-put-licence-fee-payers-in-c.html>

<sup>3</sup> Mark Oliver "Changing the Channel: A case for radical reform of the Public Service Broadcasting in the UK" (London: Policy Exchange), p 7

<sup>4</sup> House of Lords Communications Committee, op cit, paragraph 148

<sup>5</sup> House of Lords Communications Committee, op cit, paragraph 141

their salaries, and that the former Director-General George Entwistle was given £20,000 towards legal and public relations advice he received in relation to his resignation. Margaret Hodge MP, Chair of the House of Commons Public Accounts Committee, described the details of Mr Entwistle's payoff as demonstrating "a complete lack of understanding [by the BBC] of how this is viewed in the public domain given that it's licence fee money."<sup>6</sup>

The limitations of the BBC's financial management were recently exposed in a report by the National Audit Office. While noting that the BBC had improved its financial management, the report stated that "limitations" in the BBC's financial systems made it difficult to monitor how efficient the BBC's spending was in terms of delivering its strategic objectives for licence fee payers. The report also raised doubts that the BBC had made effective use of even basic methods such as benchmarking of costs as it sought to bring its costs down.

Shortly after taking office in 2010, the Government asked all local councils and fire and rescue authorities in England to publish spending information over £500 online. As others, such as Alun Cairns MP, have noted, applying the same standards to the BBC would enable the public to be better informed as to how the BBC spends their money,<sup>7</sup> and significantly help the BBC to benchmark its costs and direct its spending towards its strategic objectives.

#### SCRUTINY BY THE NATIONAL AUDIT OFFICE

The Government announced in September last year that the National Audit Office (NAO) would gain the right to choose which areas of the BBC it investigates, together with the right to full access to BBC information.<sup>8</sup>

However, the limitations of this agreement have been exposed by recent events. The Chairman of the BBC Trust blocked an NAO request to investigate whether the £450,000 pay-off to former Director-General George Entwistle represented value-for-money, amidst concern in the media and in Parliament that Mr Entwistle's pay-off was double his contractual entitlement.<sup>9</sup> In the past, the NAO has complained that the BBC had been slow in providing information requested, and that it regularly argued that information was commercially sensitive or related to areas of editorial judgement. On two occasions, the BBC delayed giving the information needed for eight months and for ten weeks respectively.<sup>10</sup>

The current Chairman of the BBC Trust Lord Patten and the former Chairman of the BBC Governors – Sir Christopher Bland have raised concerns, respectively, that in launching its studies the NAO may be too reactive "to whatever is in the public print" and that the NAO's investigation may provide a means by which the House of Commons can realise its ambition to get its hand on the BBC.<sup>11</sup> In this context, the decision by the BBC Trust to block an NAO investigation into the Entwistle payoff highlights the need **to review the arrangements agreed in September 2011**. The Government was clear in its announcement that the NAO would gain the right to choose which areas of the BBC it investigates. This does not appear to have happened.

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<sup>6</sup> "MPs attack Entwistle demands for BBC pay-off", *Evening Standard*, 22 November 2012

<sup>7</sup> *Hansard*, 21 November 2012, Col. 582

<sup>8</sup> Department for Culture, Media and Sport, News Release 082/11 "Update to BBC Agreement", 15 September 2011

<sup>9</sup> *The Times*, 16 November 2011

<sup>10</sup> House of Lords Communications Committee, *op cit*, paragraph 115

<sup>11</sup> *Ibid.*, paragraph 110-111

## 2. GOVERNANCE, REGULATION AND STANDARDS

### REGULATION AND STANDARDS

Even Tessa Jowell, the Secretary of State who presided over the establishment of the BBC Trust, admits that the Trust has “not yet been a strong enough or assertive enough voice on behalf of the licence-fee payer.”<sup>12</sup> At the heart of the problem is the continuation of the decades-long debate about whether the BBC’s sovereign body can be both ‘cheerleader/champion’ and a ‘regulator’. This was recently highlighted by the crisis over the Jimmy Savile allegations. As the extent of allegations against Jimmy Savile grew in early October, and as questions mounted as to why a *Newsnight* expose of Savile was suppressed, the Chairman of the BBC Trust made a series of bullish comments defending the BBC’s response to the growing crisis, which included statements about the *Newsnight* investigation that were soon shown to be false. It would surely have been more appropriate for the Chairman of a body supposed to be in charge of regulating the BBC’s conduct to have said nothing at all until the facts were known.

Defenders of the “hybrid” model on which the Trust is based, such as the former chairman of the BBC Trust, Sir Michael Lyons, have argued that the cheerleader/regulator dichotomy “misses the point”. In a valedictory speech, Sir Michael said that “*The Trust is not here to be a cheerleader, or even a regulator in the traditional sense. It exists to represent the interest of the public. So, after our first four years, the right question to ask is: ‘How well have we done in representing that public interest?’*”<sup>13</sup>

If this argument is to be accepted, it is important that the Trust makes clear that its role at all times is to represent the public interest, even at the expense of the interests of the BBC Executive or the Corporations employees. Defending the independence of the BBC is part of the Trust’s broader role of representing the public interest; it does not and should not mean defending the BBC Executive or the BBC’s employees against all criticism.

Nonetheless, Sir Michael’s description of the Trust as “*not a traditional regulator, in fact not really a regulator at all*”<sup>14</sup> will do little to give the public confidence after the debacle of the bungled *Newsnight* investigation into allegations of child abuse against a “*senior public figure*” that the Trust is the right body to regulate standards of the BBC’s public service output. Prior to the financial crisis, it has been argued that the Financial Services Authority failed to achieve an “equilibrium of focus” between its prudential and consumer-based regulatory activities. It will inevitably be difficult for the BBC Trust to maintain an equilibrium of focus between its strategic, supervisory, political and regulatory functions.

**The transfer of responsibility for regulating the accuracy and impartiality of BBC public service broadcasting from the BBC Trust to OFCOM would boost public confidence in the independence and effectiveness of the regulation of the BBC’s public service output.** This would still leave the BBC Trust with a number of hugely important functions such as agreeing the BBC’s strategy with the Executive, carrying out Public Value Tests, and holding the Executive to account in terms of value for money, impartiality, distinctiveness, and better serving the BBC’s many different audiences across the UK.

Giving OFCOM’s responsibility for regulating the accuracy and impartiality of the BBC’s public service must not prejudice its ability to launch investigations on its own initiative prior to the completion of the BBC’s own complaints process, where there is clear evidence that something has gone wrong. Following *Newsnight*’s inaccurate report of child sex abuse allegations against a senior Conservative in November 2012, OFCOM took the unusual step of launching an immediate investigation into both *Newsnight* and an incident on ITV’s *This Morning*.<sup>15</sup> However, when similar concerns were put to the BBC Trust, the Trust, which is the last stage of the BBC complaints process, refused to launch its own investigation and referred the to the BBC Executive. This approach was not only inconsistent with the Trust’s handling of the Ross-Brand affair, where it ordered an urgent report to be submitted to it. The BBC Trust’s refusal to pro-actively look into the circumstances

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<sup>12</sup> “BBC crisis: let the public run our national broadcaster”, The Daily Telegraph, 13 November 2012

<sup>13</sup> Sir Michael Lyons, “The BBC Trust – Past Reflections, Continuing Challenges”, 9 November 2011

<sup>14</sup> *ibid*

<sup>15</sup> OFCOM, “*OFOM response to Rob Wilson MP*”, 15 November 2011

surrounding the *Newsnight* report of 2 November 2012 created the impression of a reluctant regulator slow off the mark in dealing with public concern about the BBC.

## IMPARTIALITY

Since its creation in 2007, the BBC Trust has commissioned five impartiality reviews, on topics such as the BBC's coverage of business; network news and current affairs coverage of the UK nations; science and the events known as the 'Arab Spring'. However, a 2007 report commissioned by the Trust rejected the notion of a "left-right" bias, concluding instead that technological and social change had led to a spread of opinion which went beyond the traditional divide of left versus right. The BBC Trust now appears to interpret the BBC's impartiality obligations in terms of whether the BBC provides a "full breadth of views in its reporting". This was reflected in the BBC Trust's choice of subject for its impartiality review commissioned in 2012, to be led by former ITV Chief Executive Stuart Prebble.<sup>16</sup>

The decision to downplay the notion of a "left-right" bias ignores long-held, widely-held, and sometimes admitted<sup>17</sup> suspicions of a liberal, metropolitan and anti-Tory bias in the BBC's broadcasting. It is the wrong approach. The BBC Trust should respond to the credible accusations of bias that exist in the public domain, not the issues which it feels are important. It should start with a **commitment by OFCOM and the BBC Trust to reviewing and investigating the accusations of "left-right" bias on an annual basis until OFCOM and the Trust conclude, and are able to demonstrate to the public that the issue of "left-right" bias has been tackled successfully.**

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<sup>16</sup> BBC Trust press release, "Trust sets out planned approach for review of BBC's "breadth of opinion"", 10 October 2012

<sup>17</sup> "BBC reporting scrutinised after accusations of liberal bias", *The Guardian*, 10 October 2012

### 3. GREATER OPENNESS IN SENIOR APPOINTMENTS

Strengthening the independence of the BBC's regulator is not enough by itself. The leadership and governance of the BBC must become more open and transparent. The appointment of Tony Hall as Director-General has been widely welcomed in response to the Savile and McAlpine crises, but the process by which Lord Hall was appointed must be regarded as a response to the exceptional circumstances and cannot be allowed to become a model for future Director-General appointments. Having conducted a rapid appointment process in secret and having only approached one candidate, the BBC Trust has presided over a process even less open and transparent than that used to appoint a new Governor of the Bank of England. Nor is it acceptable that George Entwistle's first appearance in front of the relevant Parliamentary Select Committee following his appointment as Director-General was during a special hearing in the wake of the *Savile* scandal.

The campaign group OpenDemocracy.net has urged a more open and transparent process for the appointment of a new Director-General by asking prospective candidates to publish a public statement of their vision for the organisation. This proposal is certainly worthy of consideration. At the very least, future Director-Generals must be appointed by "fair and open competition" involving pre-appointment scrutiny of the chosen candidate by the relevant Parliamentary select committee.

More pressing, as it is the BBC Trust that is the guardian of the public interest, is the need to open up and make more transparent the appointment of Trustees. The House of Commons Select Committee on Culture, Media and Sport already conducts pre-appointment hearings with the Chairman of the Trust prior to him or her taking office. This is a useful means by which candidates can be scrutinised in public and by which elected Parliamentarians can comment on, and express any concerns about the suitability of those candidates. **Legislative pre-appointment hearings, held in public, should be extended to all members of the BBC Trust. Where a Trustee is to represent one of the four nations of the United Kingdom, the pre-appointment hearing could be undertaken by a committee of the relevant devolved legislature.** Following recent concerns in the media about the independence of those in charge of Government appointments, this element of public scrutiny would help to restore confidence in the process.

## 4. TRANSPARENCY

### FREEDOM OF INFORMATION

In February 2012 a majority of the Supreme Court held in the *Sugar* case were of the view that even if the BBC holds information *only partly* for the purposes of “journalism, art or literature”, such information is exempt from disclosure under the Freedom of Information Act 2000.<sup>18</sup> The Court confirmed that the term “journalism” (let alone “art” or “literature”) covers for this purpose the whole range of activities from collecting, writing and verifying of material prior to publication or broadcast; the editing, selection and arrangement of material; and post-transmission reviews and analysis of the quality and standards of its broadcast output, irrespective of the level at which the material is held. As one of the Supreme Court justices admitted, this limitation could be seen as conferring on the BBC an immunity so wide as to leave it almost free of obligations under the Freedom of Information Act.<sup>19</sup> The courts have actually granted the BBC a bigger exemption than the Corporation itself had asked for.<sup>20</sup>

There is good reason for the BBC to be protected from some of the disclosure obligations under the Freedom of Information Act where this would prevent interference in the BBC’s broadcasting of journalism, art or literature. However, the Freedom of Information Act 2000 exists to promote a public interest in access to information about public bodies. Where information can no longer be thought of as “work in progress” and is not being held by the BBC directly for the purpose of producing its broadcasting output, there is arguably less justification in keeping the information from the public. This would cover, for example, compliance documents such as compliance checklists and “managed programme risk lists”, as well as reviews and analysis of the quality and impartiality of output, particularly those held at the higher levels of the BBC. **At least, consideration should be given to making information held by the BBC only partly for journalistic purposes but predominantly for other reasons subject to the disclosure obligations under the Act. The impact of disclosure on editorial independence and openness within the BBC should also be considered on a case-by-case basis, not as a blanket presumption against disclosure.**

### PARLIAMENTARY QUESTIONS

Consideration should be given as to whether the BBC could be expected to respond to written parliamentary questions, as other non-departmental bodies such as JobCentre Plus have done, without impacting excessively on the editorial or journalistic independence of the BBC. Former Secretaries of State have recalled finding written questions a useful means of establishing the facts about what is going on within their Departments. Given recent accusations that the BBC’s leadership has lacked “a grip” of the Corporation, and criticism by the National Audit Office of the BBC’s financial systems and its benchmarking of costs, written parliamentary questions could be a useful complement to an improved Freedom of Information regime – and an innovation that could be useful to the BBC Executive itself.

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<sup>18</sup> *Sugar (Deceased) (Represented by Fiona Paveley) (Appellant) v British Broadcasting Corporation and another (Respondents)*, [2012] UKSC 4, 15 February 2012

<sup>19</sup> *ibid*, paragraph 84

<sup>20</sup> *ibid*, paragraphs 73 and 74

## 5. DELIVERING MAXIMUM VALUE FOR LICENCE FEE PAYERS

Keeping costs down, being more open and transparent, and a rigorous commitment to impartiality and broadcasting standards are important elements of restoring a culture of public service throughout everything the BBC does. But there is one final piece in the jigsaw – ensuring that licence fee payers get the maximum benefit for what they pay.

Currently, for example, content produced by the BBC in-house, and thus paid for by the licence fee payer, is available on the BBC's iPlayer website for a limited time after the original broadcast. Some of the BBC's more popular drama, entertainment and comedy series are then made available for purchase later as DVDs – leaving the licence fee payer forced to pay twice over if he or she wishes to continue to enjoy the content. As the technology develops, **the BBC should demonstrate its commitment to delivering for the licence fee payer by making as much as possible of its home-grown content available permanently to licence-fee payers free of charge.** This would demonstrate to licence fee payers that the BBC and its output really is for them.

Finally, the BBC should consider whether or not its dominance of certain media markets, in particular that of news consumption, is in the best interests of the public. Analysis conducted for Ofcom's review of media plurality revealed that the BBC accounts for a staggering 47 per cent of all news consumption in the UK.<sup>21</sup> If the BBC Trust is genuinely committed to a full breadth of views and reporting, **it should arguably be prepared to allow licence fee funding to be used to fund public service broadcasting on other channels, or to allow some external contestability for licence fee-funded public service broadcasting of services such as local news.**

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<sup>21</sup> Ofcom, Measuring media plurality – Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport, Annex 4, 19 June 2012, A4.60