

VLV SPRING CONFERENCE
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BBC Regulation & Accountability Panel

Panel:

Tony Close, Director of Content Standards, Licensing and Enforcement, Ofcom; member of Ofcom Standards board

Richard Ayre, former BBC Trustee

Professor Steven Barnett, University of Westminster

Chaired by: **Tim Suter**, Perspective Associates

Colin Browne, Chairman, VLV:

Now we come to the final session of the day. And I am very pleased to welcome another great panel. Once again I won't introduce the panel, I'll just introduce the Chair of the panel who is Tim Suter. And thank you for doing this Tim. He's Managing Director of Perspective Associates, a leading consultancy in this area, having of course had a distinguished career in the BBC and indeed in policy at DCMS, so thank you Tim and I'll leave you to introduce the panel.

Tim Suter:

Thank you, thank you very much indeed Colin. And thank you too for staying on for this session. I hope it will be very open and interactive. There will be a few remarks that Tony and Richard and Steve will want to make and I'll have a few questions, but I hope we'll have as much opportunity as possible for you to get in with that.

So Tony, who's going to speak first is the person in Ofcom who's actually charged, I think, with making all of this work. So he's going to kick off with telling us what the 'this' is that's got to be made to work. Richard Ayre who will go next. Richard has been Trustee of the BBC. He was on the Content Board in Ofcom and before that of course a long serving BBC News Executive.

I've had the pleasure and privilege of working with both Tony and Richard in various different guises over my career. I've never had the pleasure of working with Steve other than on various different panels that we've cropped up on together. But, you know, no introduction is needed for Steve who is one of the wisest commentators on media issues, media policy and I think, particularly, very sound and sane headed on the BBC.

I thought I'd just kick off a personal reflection. About ten years ago when I was leaving Ofcom the then Chairman of the Board of Ofcom invited me to turn up and talk to them about would be on my, not necessarily 'to do' list, but my 'watch' list of things had I been sticking around I might have expected to have to deal with.

So the BBC Trust was then only a few months old and I said that I thought one of the things Ofcom would need to do was to work out what it thought about the BBC Trust. What its relationship with the BBC Trust ought to be. Did it think it was a good idea or a bad idea? What was it going to do about it? And second I reflected that I was pleased

that over four and a half years in Ofcom nobody had ever really asked me to justify what I thought about quality television and how you should regulate for quality because I wasn't at all sure how I'd have answered the question.

So now Tony has to answer both those questions. He has to work out what being the BBC Trust means for Ofcom. And he has to work out what regulating for quality actually means and how you use your job as a regulator to promote distinctive quality broadcasting. So, I'm sure like me you'll all look forward to hearing what Tony has to say and Tony over to you.

Tony Close:

Thank you Tim. So, Tim used to be my boss at Ofcom and Richard used to chuck stones at me from the Content Board so there is a horribly familiar feel about today. And I'm hoping they're a bit kinder to me now than they were back then. But I'm mindful that one of the gentlemen in the front here confess to nodding off in the last session of Fran's, so I'm going to try and keep my comments fairly short so we can get in to an interactive session and hopefully quite a lively session.

It's a pleasure to be here today. A pleasure to be at the VLV. It's an institution who shares similar values to Ofcom and whose expertise is greatly appreciated by Ofcom. We're nearing the end of our first month being the sole regulator for broadcasting in the UK. So it's a great time to pause and to reflect, a chance to talk about our approach to regulating the BBC, holding the BBC to account, to ensure that audiences are well served by the BBC.

I don't think I have to tell many people here that the BBC has a very special place in our society. It's the most widely used media organisation. The breadth and depth of its content means that it commands, it has a particular hold, over British society. So it's understandable I think therefore that people expect a great deal of it. People expect very high standards from the BBC.

I think in Ofcom we want to see the BBC being held to very high standards but want it to be editorially independent. We want it to be free and creative. We want it to be free to educate and entertain its audiences. Our job is fairly straightforward. Our job is to hold the BBC to account. We have three broad roles within that and I'm going to talk about those briefly today.

The first is to ensure that the BBC delivers for you, that it delivers for its audiences. We need to make sure that it produces high quality, distinctive output that reflects and serves all parts of the UK. We need to make sure that that we protect competition. I'm not going to say much about that today but it's an important role. Our job is to ensure that the BBC doesn't crowd out other commercial operators in the way that harms the public interest. And thirdly the role that I care about particularly deeply, we need to ensure that the BBC upholds really high editorial standards. We want to build on our proven track record of regulating the rest of broadcasting in the UK and of protecting audiences.

I'm going to talk briefly about each of those three areas of our work starting with performance and holding the BBC to account for what it delivers.

So at the heart of our regulation of the BBC sits the operating license. It seeks to translate the public purposes, the mission of the BBC into a clear regulatory framework. It's not about Ofcom running the BBC, they've got a lovely new Board to do that. It's not about Ofcom compromising the BBC's editorial freedom or reducing its ability to take risks. Instead it's about ensuring that the BBC delivers for its audiences. It's about ensuring that each BBC service offers something different. That taken overall the BBC offers content that distinguishes itself from its commercial rivals.

Our approach to measuring the BBC's performance, to holding it to account for its delivery will be rooted in what real people think. It will be rooted in evidence. It will be rooted in audience research.

Before opening our recent consultation on the operating framework and license on how we go about judging the BBC's performance we conducted some new research in addition to the research that we carry on, on a rolling basis. It left some really clear messages in there, ones that I think you'll be familiar with. People in the UK really care about programmes made in the UK. They expect the BBC to offer original, UK content that supports writers, actors, musicians, presenters.

We're also quite concerned about some of the genres that are in decline. I want to talk about some of those briefly beginning with children's television. This is crucial for the BBC. The BBC continues to invest in children's television while everyone else spends less. It's important that we protect this valuable role that the BBC plays in children's television. So we're proposing specific quotas as part of our framework to ensure that the BBC continues to produce high levels of original UK productions for CBBC and CBeebies each year. We also want to see CBeebies provide content that supports pre-school learning and development.

Arts and religion is another important area. As the years go by certainly in recent years public service broadcasters have shown fewer and fewer arts and religion programmes. Under our plans both BBC 1 and BBC 2 will have tough requirements for showing arts and religious programmes including in peak viewing times.

Music is another important area that we want to safeguard. The BBC plays a unique role in showcasing musical talent in the UK. Our proposals mean that a significant proportion of the new music played on Radio 1 and Radio 2 will be from new and emerging artists in the UK. We also think that Radio 3 needs to continue to play a central role in supporting the UK's classical music scene.

And it's difficult to forget news and current affairs. It's crucial in fact. We plan to increase the previous requirements on the BBC for news and current affairs including BBC1 and BBC2 where to be fair the BBC have continuously exceeded their requirements. But we want to ensure that they're safeguarded when the BBC comes under pressure including financial pressure.

I want to touch on diversity. The BBC has a duty to accurately represent and portray the whole of the UK and its diverse communities including reflecting under-represented parts of our society. We think that stable, sustainable production and investment centres outside London across the nations, across the regions is vital for the UK. We plan on introducing minimum quotas for each of the UK nations to reflect their population size. We want the BBC to spend the same on programmes per head in England, Northern Ireland, Scotland and Wales. And we want there to be a strong focus on original productions in those nations.

Under our plans there's also, we hope, going to be a new diversity code of practice for the BBC to set and shape how the BBC commission programmes that authentically portray the whole of the UK. The BBC will have to report annually on how it reflects, represents and serves the diverse communities of the whole of the UK, focusing on a range of characteristics including age, gender, disability and race and others.

Now in the first instance I think it's for the BBC to tell us the BBC Board to decide how it's going to meet all of these aims and these targets. How it's going to deliver for you and for other audiences. The BBC is going to publish a creative plan shortly and we'll all get to see what that looks like. I'm looking forward to seeing it.

I said I'd talk really briefly about the BBC and competition as well and I will be brief because I know very little about competition but Ofcom has a very important role in it. Our job is to protect competition in the market, to make sure BBC services don't prevent competition. Ofcom is uniquely well placed to carry out this role. We have a wealth of competition expertise, an in-depth understanding of the markets that we regulate.

Our role isn't about preventing the BBC growing or innovating or competing with others. It's about assessing the impact of the BBC on others and deciding whether that impact is justified and serve the broader public interest.

The final think I want to talk about briefly is content standards. I think it's something that people in the UK care deeply about. We plan to uphold standards in all BBC programmes, it's our role. We've got a proven track record of regulating standards, we want to build on this in our new role.

Audiences have to be able to trust what they see and hear on the BBC. They have to feel confident that the BBC is producing content to the highest editorial standards. They have to feel like they won't be harmed by BBC content. That they know they won't be unjustifiably offended by BBC content.

We've updated the broadcasting code: the rule book for broadcasters. So that applies in full to the BBC for the first time and that it complements the BBC's own extensive editorial guidelines. It means, for example, that we will be regulating the accuracy and impartiality of BBC output for the first time. It's a big challenge. It's a challenge that we relish. I hadn't anticipated a snap election in the first couple of months of our new role. There's going to be a bit of additional scrutiny, not just for us but for the BBC and for the

impartiality of its content. But it's something that I think the BBC and Ofcom are well placed to deal with effectively.

Importantly the code is a really comprehensive set of rules. It's designed to secure the standards that everyone expects of all broadcasters in the UK but in particular the BBC. To ensure everyone can have their say about the BBC, to let us know, to let the BBC know when they have concerns that the BBC is failing to meet these standards, we've recently published new procedures, BBC specific complaints procedures. They're transparent, they're accessible. We think they serve public well.

The BBC will continue in their new system to handle complaints about its content initially. I think that's right. The idea that the BBC can resolve successfully, quickly at source, most of the complaints about its content and retain a direct relationship with audiences I think is absolutely right.

But where the BBC fails and where there's a rationale for Ofcom to intervene we will intervene. We can step in early. We have the power to do so. We won't hesitate if we think the BBC has made a mistake that needs addressing. And we'll also closely monitor how the BBC handles the complaints that it receives directly from members of the public.

But this is a really brief overview of our approach but I'm happy to answer lots of questions. We've set out some really clear requirements for the BBC, too many for me to list today actually. It's a fairly sizeable document, the operating framework license of the performance arrangement. They're currently out for consultation many of these things and before we finalise them, before we decide ultimately how we want to measure the BBC's performance we need to hear from people. People like you, people like the VLV and other stakeholders. I would encourage you to respond not just today but to our consultation. We want to hear how you think the BBC should serve, should reflect and should enhance UK society.

I think I'll hand over to the panel now. Thank you very much.

Tim Suter:

Richard, your response.

Richard Ayre:

I won't stand up if that's alright. Very briefly, first of all, it's good to be here. It's the first time in some decades that I've been able to speak as an individual rather than as a representative of one organisation or another. And since we the Trustees were all taken out rigidly at midnight three weeks ago and shot, it's fantastically liberating, because now I can tell you what I really think about the changes brought about in the current charter. And as some of you will know, because I make no secret of the fact that I argued for the last ten years or more, that the BBC Trust model was doomed from the start because I said publicly eleven years ago that you can't be a regulator and a governing body.

Oddly enough as it turned out I think the Trust was a pretty effective regulator, a very effective regulator. It was far less effective as a governing body. The irony is that in the Whittingdale Reforms because they were essentially Whittingdale, although he'd walked a plank by the time that the charter was finalised. It is the regulation which was working pretty well which has been radically overhauled and the governance which was working less well which has been overhauled and the jury is out about how a non-executive led BBC Board will function with the Editor in Chief as merely one of its members rather than as Chair of the Board.

So I should be frank that I was always against Ofcom becoming the BBC regulator for a whole multiplicity of reasons all of which were right by the way. But we went through those battles. And a bit like Brexit there's no point now in continuing to argue for what might have been. The government chose the path which was clearly the solution that John Whittingdale had in mind when he became Secretary of State.

And the good news is that in Ofcom you have people like Tony and a lot of others. In fact a very large number of additional people were recruited for this task who are very experienced, very effective in regulation. And the question for us all now must be whether the framework which they have put in place through the operating license is going to be effective in delivering all the things that Tony just talked about because I don't think anyone in the room is likely to argue with any of that, you know, guff that you said. Because it's the same guff that I would have said over the last seven years as a Trustee. We believe in finding ways of assisting the BBC in maintaining and improving its quality of programming and its range of programming. The test is whether the inevitably rather mechanistic formula which is now envisaged actually produces that result and whether it positively encourages and enables the BBC to experiment and to take more risks, or whether it means the BBC will have to devote even more time to box ticking and reporting and calculating percentages rather than commissioning great content.

It's a question we can't answer today but over the next year I think we'll start to see how well that's working. And I'm sure that colleagues in Ofcom will be willing, as I think you've said, in the consultation document to revise all of these measures in the light of learning. And it's going to be a learning experience for both parties I think.

Tim Suter:

Richard, thank you. Steve.

Steven Barnett:

I'm going to agree and disagree with Richard. I agree that Ofcom was and is entirely the wrong body to be regulating the BBC. And I have to say, more or less as Richard said, this is absolutely nothing to do with Ofcom or the personnel. In fact on the contrary I think there is a danger, a real danger in the great regulatory things that Ofcom does actually being undermined because it will inevitably be politicised. Taking on the BBC is a deeply political regulatory function. And Ofcom will now have to face the ire of not just ITV, Channel 4, Channel 5, Sky but also Associated Newspapers, News Corporation and the rest of the publishers who despise the fact that there is a publicly funded quality journalistic operation.

And I want to say a little bit more about that under the competition heading. So I think there is going to be a problem that Ofcom is going to face by virtue of taking, of being forced to take on the BBC. I disagree with Richard in that I actually think the BBC Trust model was exactly the right model. It needed tweaking, it was very young, it was less than ten years old by the time it was finally doomed. But the idea of having an organisation that is designed to be as Tessa Jowell said, "The eyes and ears of the license fee payer", to actually do a job that civil society needs with a publicly funded broadcaster and such a large cultural institution was exactly what was needed.

It needed to be tweaked, there needed to be clarity with who the Chairman was, and there was nothing that could not be re-organised and sorted with a little bit of political will and organisational clarity. So it was a political decision I'm afraid. And I think it was a decision that was antagonistic to the BBC's interests.

What we have now is not just I think a regulator that is very practised in terms of regulating commercial broadcasters and the commercial sector. But also, I do want to come back to this competition issue. A regulator which is by law has to promote competition. So the question is, I did have a look at one of the things under its competition rubric Ofcom must do is tell us all how it's going to operate when ITV or Sky or Talk Sport come to them and say we think there has been a shift in what the BBC's been doing on this particular service, we think there is a significant difference or an incremental difference over time. All of which are legitimate.

And under this new system there will be a system of competition reviews, BCRs, BBC Competition Reviews, where stakeholders will be able to go to Ofcom and say we want you to have a look at this. Now I probably don't need to remind you that, just to give you one example of where I think the dangers lies, Talk Sport was taken over a couple of years ago by News Corporation. Rebekah Brooks is on the record as saying, this is a wonderful opportunity for cross-promotion and cross-fertilisation between two very similar brands. And yet Talk Sport has been saying for many years it is utterly wrong that BBC Radio Five Live should have such a monopoly of radio sports rights.

So the first thing I am sure that Tony is going to be asked to do within the next six to twelve months will be to start a broadcasting competition review as to the extent to which Five Live should be able to have rights to live sport, radio rights to live sport. And there will be others. I've no doubt other competitors will come forward.

Now my problem is not that it is wrong for commercial competitors to be able to have an opportunity to say the BBC is crowding us out. But that the organisation that does that is also responsible for regulating the commercial sector. And to some extent making sure that the commercial sector is profitable and sustainable. I think that's a problem.

So we've lost, if you like, plurality in regulation. Let me just say one more thing on that basis and actually these are a couple of questions I think for Tony in the approach. He talked about those areas where there is a manifest or a clear lack of programmes: children's, music, arts, religion, etc. The question is this, why should it only be up to the

BBC to provide those programmes. It is partly your duty to ensure that PSB across the board, including commercial PSBs, undertake some of those responsibilities.

So how are you going to find that balance? That's the first question. The second question is when you are actually making these adjudications, and I realise that this is work in progress, to what extent are you going to be able to take in to account, for example, if you're approached by Nickelodeon about BBC children's programmes, the fact that the BBC is both universally available and free to air for the cost of the license fee. And secondly, doesn't have advertising which is something an awful lot of viewers and listeners deeply value but it never seems to be mentioned when making these comparisons.

So I think there are a number of things that Ofcom will need to take in to account. And I think you're going to be conflicted, you don't have any choice. I think there are going to be great conflicts. I do think that the role for civil society groups, in particular VLV and others who are trying to look after the license fee payer who has now lost the organisation that supported them it's going to be even more crucial over the next ten years.

Tim Suter:

So there's quite a few questions there lining up for you Tony. But before you respond to them I'd just like to push a little bit on Richard and Steve and as we bundle up their questions for you. Steve, you say we should have plurality in regulators but who would you rather answer the question about impact on competition.

Steven Barnett:

I think the regime that we had before was perfectly adequate.

Tim Suter:

But wasn't the BBC Trust parti pris in answering that question?

Steven Barnett:

It wasn't just the BBC Trust, it was the BBC Trust in co-operation with Ofcom. They had between them ...

Tim Suter:

But somebody had to take the decision and the BBC Trust took the decision.

Steven Barnett:

Absolutely.

Tim Suter:

It was parti pris.

Steven Barnett:

It was parti pris according to the values that we would want them to be parti pris to which is public value.

Richard Ayre:

And the Trust took the decision in the light of published market impact assessment from Ofcom. So in reality it would not have been possible for the Trust to take a decision in favour of the BBC which was clearly contrary to Ofcom's assessment of the market impact.

Tim Suter:

You might say something happened because of the published market assessment and someone will have to take a decision.

Steven Barnett:

I would still much rather it was in the hands of an organisation which was the eyes and ears of the licence fee payer.

Tim Suter:

Richard, you talked about in a sense Ofcom adopting a different kind of regulation of going back to a more of a sort of tick box approach, but quite a lot of the commentary about Ofcom's proposals that they're now consulting on has said, well actually what they're doing is adding a few more minutes on here, they're adding another hour of something there, they're putting some more quotas on. But actually it's not a million miles from the way that the BBC Trust sought to do things through the service license. So it's not a philosophically different thing, it's a quantitatively different rather than qualitatively different.

Richard Ayre:

Indeed. And Ofcom I think acknowledge the fact that they are building on the trust quotas in a number of areas. I think inevitably when one regulator takes over from another the temptation is to add requirements of the regulated industry rather than take any away. And I'm not clear that any have been taken away. And some of the ones that have been added are a bit odd and let's see in a year's time whether they remain so.

So the requirement which I'll say immodestly, of all the Trustees, I argued more strongly than any I think, for the BBC to do a better job of reflecting the diverse countries of the United Kingdom and serving them better. The Ofcom proposal now, not proposal, requirement, for the commissioning of television network programmes from outside London requires minimum percentages to be commissioned in Scotland, Northern Ireland and Wales, both of time and of spend. So whereas if I were, if I'd never had the skill to be a programme controller or commissioner I really would want to choose the best possible, most creative programme. I now have a team of people who will tell me not only what impact that will have on hours commissioned in particular parts of the UK but also on the proportion of spend in particular parts of the UK.

And what the BBC has done over the last few years is actually measure spend rather than hours because that way you can produce the highest quality programmes from every part of the UK if you require them to meet the same target, the same percentages

in terms of spend the risk is that that drives down the quality from parts of the UK outside London.

So it's early days but I think, you know, there are clearly more boxes to tick in the new requirements from Ofcom than there were for the Trust. But they are clearly all aimed in the right direction.

I was worried about something that Tony said but it may have been a slip of the tongue because you said, in the first instance it's for the BBC Board to decide how it's going to meet these targets. Actually in the first and last instance, because what we mustn't ever get in to a position of believing is that Ofcom is there to tell the BBC what programmes to make. Because Ofcom has fantastic regulatory expertise and some of its staff have programme making experience. But many do not regulatory experience. The people who decide what content to commission in order to fulfil the requirements of Ofcom must be the BBC and must stop at the BBC in my view.

Tim Suter:

Tony, I think your card has been marked a bit. If you just lump it in to a few headings. I think just picking up that last one there. Ofcom is very clear the programme strategy is for the BBC. Ofcom will not go anywhere near it. But the way Ofcom is going to regulate inevitably drives the strategy in certain directions, it must create boundaries within which that strategy has to operate, so how do you avoid the danger that Richard is pointing to I think of so many regulatory obligations that they in the end drive a particular programme strategy.

Tony Close:

OK, thank you Tim. I want to pick up a couple of points. It's going to start to sound like there's big disagreement between Richard and myself. I don't think there really is on this. My reference to the BBC telling us how it's going to meet these aims and targets in the first instance was simply a reference to it setting out its creative plan. At the moment in time after our consultation on what a new performance very much should look like.

The first instance that the BBC sets out publicly how it intends to meet many of the proposed aims and targets that we've laid out. It will always remain with the BBC Board, with the creative core of the BBC to decide how it's going to serve audiences and how it's going to meet these aims and targets. It's not Ofcom's job, I totally agree. I would quibble slightly with the adding lots of boxes to tick. I don't know whether it will serve anyone particularly well, but I think there were probably a couple of thousand if you count up all the individual licenses of the BBC. That the BBC Trust imposed on the BBC and we've reduced it to about 200 but added some of our own overarching boxes to tick.

I think the framework as laid out which are proposals, and they can be amended based on stakeholder response, based on responses from people in this room, based on the responses from the BBC and others. So they can be changed.

I think our proposals provide the BBC with an enormous amount of flexibility on how to hit some fairly sensible core targets, for genre provision and provision across the nations of the UK.

I recognise some of the tensions that Richard raised. There is a potential tension between targets that require both volume of output and spend. Ofcom doesn't want to impose anything that has the perverse outcome of making things worse for people. That's clearly not the intention. If people make strong responses that any of our proposals aren't going to work or need to be modified in order to get the best out of the BBC then we're going to take them in to account.

I think there's an underlying fear that Ofcom's full of economists. Well we do have a lot of economists at Ofcom and that inevitably leads to some kind of mechanistic approach to regulating the BBC's output. I don't know what I can say to reassure you today other than to try and reassure you that every day when people come in to Ofcom, certainly the people that work for me and the people that work in those aspects of Ofcom's role that relates to broadcasting and the creative sectors, understand what their purpose is. Understand that they're there to serve audiences not a calculator. Understand that their primary purpose is to serve people not the BBC's competitors.

Yeah, we have a tough role balancing the needs of the sector with the needs of members of the public, but we've done that for the last 13 years. That's an inherent part of our DNA. We've done it very successfully with hugely beneficial outcomes for consumers. That's not to suggest that we're complacent about this role. It's a massive task for Ofcom.

It links neatly to competition I think mentioning our dual role. And I want to pick up. I want to answer the first part Steve by picking up the example you raise about Nickleodeon making a complaint.

Steven Barnett:

Well Talk Sport was the main one.

Tony Close:

So look, we have been first point. We have been a component part of assessing the BBC's competitive impact on the commercial sector that we've regulated for a long time now. And I think we've done a pretty good job of it. And we've done it in tandem with the BBC and the BBC Trust. And I think it's been a successful regime. I think there is evidence there that Ofcom has demonstrated an ability and adeptness to weigh fully the public interest and value provided by BBC services whilst also being mindful of their impact on others. That's not about any impact, that's about a material impact that outweighs the public interest in the BBC's ventures, the public value that people gain from the BBC's ventures. So if people came to us and they said either BBC kids is encroaching on Nickleodeon or Radio Five Live is encroaching on Talk Sport, the ball's in our court.

The first thing is we'll push those people firstly to try and resolve their issue with the BBC in the first instance. If they are unable to, to push them to demonstrate to us that there is a material impact and there may very well not be a material impact on competition. And even if there is an impact on competition that doesn't mean Ofcom's going to decide that the BBC shouldn't be doing that any longer or shouldn't launch a new service, because the component part of it would be weighing the very value that that BBC service brings to everyone in the UK.

Steven Barnett:

Can I just respond to that?

Tim Suter:

Very briefly.

Steven Barnett:

By definition the BBC is an intervention in the market. So there will always be some kind of deleterious effect. The fact that the Radio Five Live has got sports rights is clearly deleterious to a commercial operator that wants those sports rights. So that goes without saying. What I'm saying is the second part of that equation which is around public value is not something that so far Ofcom has been asked to come to a verdict on.

In doing so now it will be both very difficult for Ofcom because it will be conflicted and it would expose you to the kind of political and public rows that so far you have been insulated from. Although the flack went to the BBC Trust instead.

Tim Suter:

Leave that hanging because we've got so many, we've got the entire audience wanting to speak.