



BRIEFING PAPER

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BBC governance and financial accountability

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Summary

The BBC's current Royal Charter comes to an end in December 2016. As part of the process of agreeing a new Charter to replace it, the Government issued a [White Paper](#) in May 2016. The White Paper includes significant proposals on the future governance and regulation of the BBC, and on scrutiny of the Corporation's financial management.

At present, the BBC Trust is the Corporation's governing body. It sets the BBC's strategy, approves how and where the licence fee is spent, and reviews the performance of all of the BBC's services, both public service and commercial. It is independent from the BBC's Executive Board, which is led by the Director-General. The Executive Board is responsible for the operational management of the BBC and for delivering the BBC's services in accordance with strategy agreed with the BBC Trust.

Under the current arrangements, governance and regulation of the BBC are somewhat blurred responsibilities. Both the BBC Executive and BBC Trust have a role in governance; both Ofcom and the Trust have a role in regulation. The Clementi Review of BBC governance and regulation, which reported in March 2016, recommended that regulatory oversight of the BBC should pass wholly to Ofcom and the BBC should have a unitary Board, with a majority of non-executive directors.

In the White Paper the Government proposes that the new Charter enshrine a clearer division of responsibilities:

- On the new model, there would be a unitary board, responsible for governance, which would set strategy, deliver services, oversee operational delivery, measure performance and engage the public. The board would be made up of a majority of non-executive members with a non-executive chair and deputy chair. There is disagreement between Government and BBC about the composition of the board – how many members should be Government appointees and how many nominated by the BBC itself.
- Meanwhile, Ofcom, which already has some powers in relation to the BBC, would become the Corporation's regulator. Ofcom would issue licences, regulate editorial standards, arbitrate complaints, regulate commercial activity, regulate market impact, and monitor and review performance. The BBC has broadly welcomed this proposal.

In accordance with requirements in the current Charter, the BBC's Annual Report and full financial statements are formally laid in Parliament, usually in July.

The National Audit Office (NAO) already carries out value-for-money studies on the BBC's publicly funded operations. Since 2012 the NAO has had the power to decide which areas of BBC spending would form the focus of those studies. The White Paper proposes an extension of the NAO's role, with the result that, under the next Charter, the Comptroller and Auditor General would become the BBC's financial auditor. The BBC has responded that any expansion of the NAO's role must include an explicit exclusion for editorial decision-making; the Corporation also thinks it inappropriate for the NAO to assess the value-for-money of the BBC's commercial subsidiaries (another idea canvassed in the White Paper).

A separate Library paper, [BBC Charter renewal](#), looks more widely at the process of agreeing a new Charter.

1. Introduction

The BBC's constitution is set out in a [Royal Charter](#) while the rules under which it operates are set out in an [Agreement](#) between the BBC and the Secretary of State for Culture, Media and Sport. The current Royal Charter was agreed on 19 September 2006 and came into full effect on 1 January 2007, following a lengthy [review process](#). It runs until 31 December 2016. Negotiations are underway for a new Charter.¹ In May 2016 the Government published a White Paper setting out their proposals for the BBC's future.²

The BBC is a public corporation, editorially independent of Government, operating in a competitive broadcasting market. Although it generates some income from commercial activities, its primary source of revenue is the television licence fee. The BBC has held responsibility for collection of licence fees since 1991 when the processes were transferred from the Home Office. The BBC collects licence fee revenue from viewers and transfers it to the Government's Consolidated Fund. The revenue collected is then passed back to the BBC as Grant-in-Aid from the Department for Culture, Media and Sport (DCMS). The [Agreement](#), which sits alongside the BBC Charter, states that

The Secretary of State shall pay to the BBC out of money provided by Parliament sums equal to the whole of the net Licence Revenue or such lesser sums as the Secretary of State may, with the consent of the Treasury, determine. (clause 75)

The BBC Trust is the Corporation's governing body. It sets the BBC's strategy, approves how and where the licence fee is spent, and reviews the performance of all of the BBC's services, both public service and commercial. It is independent from the BBC's Executive Board, which is led by the Director-General.

Under the current arrangements, governance and regulation of the BBC are somewhat blurred responsibilities. Both the BBC Executive and BBC Trust have a role in governance; both Ofcom and the Trust have a role in regulation. The Government proposes that the new Charter enshrine a clearer division of responsibilities.³

The National Audit Office already carries out value-for-money studies on the BBC's publicly funded operations. The White Paper proposes an extension of that role, with the result that, under the next Charter, the Comptroller and Auditor General would become the BBC's financial auditor.

¹ Another Library paper, [BBC Charter renewal](#), looks at the process of agreeing a new Charter.

² Dept for Culture, Media and Sport, [A BBC for the future: a broadcaster of distinction](#), Cm 9242, May 2016

³ See [A BBC for the future: a broadcaster of distinction](#), p53, for a chart showing the current Trust model and the proposed new model.

2. Governance

2.1 The BBC Trust

History

Until the end of 2006 the BBC was overseen by a Board of Governors, which both safeguarded the BBC's independence and set its objectives, monitoring performance against these. The Board's role included appointing the Director-General and other Executive Committee members.

The position of the Board of Governors was considered as part of the review process that preceded the finalisation of the latest Royal Charter. In September 2003 the then Culture Secretary (Tessa Jowell) appointed Lord Burns as independent adviser on Charter Review.⁴ He was assisted by an independent panel which reported to the Secretary of State in January 2005.⁵ The panel's most controversial suggestions concerned the role of the Governors. Arguing that the Board of Governors' then dual role – both regulator and defender of the BBC – was "unsustainable", the panel recommended a new Public Service Broadcasting Commission to hold the BBC to account and make sure its services were in the public interest and giving value for money.

Although the then Culture Secretary rejected the Burns panel's recommendation of a Public Service Broadcasting Commission, she accepted the principle of separating the twin roles of the Board of Governors. From 1 January 2007, the Governors and the Executive Committee were replaced by the BBC Trust and a new Executive Board (including, for the first time, non-executive members) whose respective roles were defined as follows:

The Trust will act as the BBC's sovereign body and have ultimate responsibility for the licence fee. It will be responsible for outlining and monitoring the BBC's performance, in addition to approving the highest-level strategies and budgets, and holding the Executive Board to account for delivery of services.

The Executive Board will be responsible for the day-to-day management of the BBC, developing programme strategies, delivering the BBC's services and taking all detailed financial and operational decisions within the framework established by the Trust. It will be chaired by the Director General or, at the discretion of the Trust, a non-executive. It will contain a significant minority of non-executives who will support the executive members as "critical friends".

The Trust's members will be appointed by the Crown, and will in turn appoint the Chair of the Executive Board. The Trust's members will need to reflect the interests of a wide range of different UK communities, have the knowledge and expertise to understand and articulate the interests of the individual devolved nations, and have a range of expertise in areas including the

⁴ DCMS press notice 107/03, *Tessa Jowell appoints Terry Burns to advise on BBC Charter Review*, 18 September 2003

⁵ DCMS press notice 011/05, *Independent panel publishes further advice on BBC Charter Review*, 28 January 2005

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broadcasting and media industries and financial, legal and corporate matters.⁶

The new arrangements were broadly in line with the recommendations of a previous Commons Culture, Media and Sport Select Committee which had called for a formal separation of Governors and Executive Board, with non-executive directors on the latter.⁷ A Lords Select Committee on BBC Charter Review expressed strong reservations about the governance arrangements, when they were proposed, and called for greater external regulation of the BBC.⁸ The BBC would have preferred to maintain the old structure, but with reforms to ensure greater separation of governance and management. These reforms were in train, having been introduced by the former Chairman, Michael (now Lord) Grade, who nonetheless styled the then Government's solution as "workable".⁹

The Trust today

The Trust's [website](#) explains the Trust's purpose:

The BBC exists to serve the public, and its mission is to inform, educate and entertain. The BBC Trust is the governing body of the BBC, and we make sure the BBC delivers that mission.

(...)

Our job is to get the best out of the BBC for licence fee payers.

We set the strategic objectives for the BBC. We have challenged the BBC to:

Make the most creative and distinctive output;

Innovate online to create a more personal BBC;

Serve all audiences; and

Improve value for money through a simpler, more efficient, and more open BBC.

We issue a service licence to every BBC service stating what we expect it to deliver and how much it can spend. We set the BBC's editorial guidelines and protect the BBC's independence. We monitor performance to ensure that the BBC provides value for money while staying true to its public purposes.

The Trust is currently chaired by Rona Fairhead. It consists of twelve Trustees. All Trustees are appointed by the Queen on advice from Ministers after an open selection process. The process is regulated by the Office of the Commissioner for Public Appointments.¹⁰ Staff at the [Trust Unit](#) support the Chairman and Trustees in their work by providing independent advice and support.

⁶ DCMS press notice 033/05, *Green Paper is "blueprint for a strong, independent BBC"* – Jowell, 2 March 2005

⁷ Culture, Media and Sport Committee, *A public BBC*, First Report of 2004-05, HC 82

⁸ House of Lords Select Committee on the BBC's Charter Review, *The Review of the BBC's Royal Charter*, HL Paper 50 2005-06, summary

⁹ "Axe falls on BBC governors over lapses", *Financial Times*, 3 March 2005, p1

¹⁰ Specifically: "Those who apply to be Trustees are shortlisted and interviewed. The interview panel is chaired by a senior civil servant from DCMS and also includes an independent assessor and the BBC Chairman. Their recommendation goes to the Secretary of State for Culture, Media and Sport, then to the Prime Minister, and finally to the Queen" (BBC Trust website, "[How trustees are appointed](#)").

2.2 The Executive Board

The [Executive Board](#) is separate from the Trust. It is responsible for the operational management of the BBC and for delivering BBC's services in accordance with strategy agreed with the BBC Trust. The Board is made up of executive directors from within the BBC and a number of non-executive directors. The Executive Board meets most months, and a summary of the minutes is published online once they have been approved at the subsequent meeting. The appointment of non-executive directors is made by the Executive Board, following approval of their proposed candidate by the BBC Trust.¹¹ A "Nominations Committee", one of four sub-committees of the Board, oversees the process of proposing all members of the Board; membership of the Nominations Committee is dependent on whether it is dealing with executive or non-executive appointments.¹²

The Director-General is chairman of the Executive Board, in addition to being designated under the Charter as "editor-in-chief". He is appointed by the BBC Trust. Currently the post is held by (Lord) Tony Hall.

In addition to the directors who make up the Board, other BBC directors are engaged in the "Executive Team", a lower tier which looks at pan-BBC issues and ensures that all divisions are involved in delivering the BBC's objectives.

2.3 The 2013 review

In September 2013, the BBC Trust and BBC Executive launched a joint review of BBC governance, with a view to making changes to the working relationship between the Trust and Executive. The review reported in December 2013 and concluded that, while much of the current governance system worked well, there was confusion about who was responsible for what in certain key operational areas and this had undermined confidence in the governance and operation of the BBC. As a result the BBC and the Trust committed themselves to a series of actions, approved by the Trustees and the Executive Board, which would come into effect from 1 April 2014. These actions included:

Clearer roles and responsibilities – there will be greater separation between the Trust and Executive, with the Trust clearly responsible for setting the overall strategic framework for the BBC and the Executive responsible for delivering within this. The Trust will not involve itself in operational decision making. This will require a change in the working culture on both sides, with more agreement on where information should to be shared and where operational responsibilities lie. The Trust will also publish the objectives and priorities that it sets for the BBC Executive.

New three-stage performance reporting – to ensure better monitoring of how specific BBC projects are progressing and ensure that issues are identified and dealt with early, the Executive

¹¹ The most recent case is Sir Nicholas Serota, who joins for a two-year term on 1 August (BBC Media Centre, [Sir Nicholas Serota appointed to BBC Executive Board as non-executive director](#), 5 February 2016).

¹² BBC, [Annual report and accounts 2014/15](#), p99

will report to the Trust more comprehensively throughout the year. There will be new quarterly business updates from the Executive to the Trust, formal reviews by the Trust of individual projects, and – if necessary – an ‘Exceptional Business Report’ from the Executive to the Trust if a project is at serious risk.

Increase in number and role of Non-Executive Directors – the Executive will increase the number of Non-Executive Directors (NEDs) on its board from four to six, and their role to provide external expertise and challenge will be strengthened, including adopting a more prominent public-facing role and joining the Director-General to give evidence before Parliamentary Committees. This complements the work already undertaken by the Director-General to radically reform Executive decision making, removing unnecessary boards and committees. The announcement today of Sir Howard Stringer as a Non-Executive Director is the first in the series of new non-Exec appointments which will continue in the new year.

Improving transparency – a series of meetings between the Trust and Executive will be filmed and broadcast via the Trust website. It is expected that these will initially include discussions on the conclusions of the Trust’s reviews of BBC services, and end of year performance discussions. The Trust will expand its successful programme of public consultation and audience engagement, and ask licence fee payers to help set the priorities for the BBC each year, which will then be published.¹³

Lord Patten (then Chairman of the BBC Trust) admitted that there had been

... a lack of clarity between the roles of the executive and the trust. In particular it hasn't been clear enough what level of involvement the trust ought to have in decisions about the way the BBC is run, while the executive's overly complex structures have created a barrier to dealing with such issues swiftly and decisively. Taken together this has been a recipe for confusion.¹⁴

2.4 Ofcom

The formation of the Office of Communications (Ofcom) at the end of 2003 brought about some diminution of the BBC’s regulatory responsibilities:

- Ofcom took over the regulation of programming standards (including bad language under the heading of “harm and offence”), with a notable exception of impartiality and accuracy of programmes, which is the responsibility of the Trust.
- The Trust sets all quotas for BBC TV services that apply to news and current affairs and programming for the nations and regions – after consulting and having regard to any comments by Ofcom. Ofcom’s agreement is required before the Trust imposes any requirements which in effect reduce the quotas. Ofcom is responsible for monitoring compliance against these, and the Trust is also required to monitor compliance in these areas.

¹³ BBC Trust press release, [BBC publishes conclusions of governance review](#), 11 December 2013

¹⁴ [“Lord Patten: why we reviewed the BBC’s governance”](#), *Guardian Media Blog*, 11 December 2013

- The BBC Governors (and now the BBC Trust) retained regulatory responsibility over other content including matters such as the fulfilment of the broadcaster's public service remit.

Ofcom's main decision-making body is the Board, which provides strategic direction for the organisation. It has a Non-Executive Chairman, Executive Directors (including the Chief Executive), and Non-Executive Directors. The Executive runs the organisation and answers to the Board, whilst the work of both Board and Executive is informed by the contribution of a number of advisory bodies.¹⁵

The Chairman and Non-Executive Members of the Ofcom Board are appointed by the Secretary of State for Culture, Media and Sport, for periods of three to four years. Executive Members of the Board are appointed by the Chairman and all of the Non-Executive Members, with the Chief Executive's appointment requiring approval by the Culture Secretary. The Non-Executive Members comprise a majority of the Board. The Deputy Chairman is regarded as being the senior Non-Executive Member for the purposes of the UK Corporate Governance Code. Members' duties and responsibilities are set out in a Members' [Code of Conduct](#), and a [Register of Members' Interests](#) is maintained.¹⁶ The Code of Conduct bars Members from publicly expressing views that "give rise to the perception of political bias, partisanship or decision making" (para 31). It further states that "to comply with Ofcom's status as independent of government, it would be inappropriate for any Member to engage in active politics" (para 33).

Ofcom has some powers to regulate the BBC, insofar as the current Charter permits.¹⁷ A [Memorandum of Understanding](#), signed in 2007, sets out the relationship between Ofcom and the BBC Trust and the areas of interaction between the two bodies.

The interplay of the regulatory roles of the BBC Trust and Ofcom is illustrated by the following [Ofcom press release](#) (28 October 2008) on the controversy over the Russell Brand programme:

Ofcom has launched an investigation into the Russell Brand show broadcast on BBC Radio 2.

The show featured the presenter – together with guest Jonathan Ross - leaving a series of messages on the answer phone of Fawlty Towers actor Andrew Sachs.

The BBC has subsequently apologised for the 'unacceptable' calls, which were made on the show broadcast on 18 October.

The BBC Trust has also ordered an on-air apology to licence fee payers for breaches of BBC editorial guidelines, as well as other action.

Broadcasting Code

It said editorial control and compliance procedures in non-news areas of the BBC's Audio and Music department were 'inadequate and need to be strengthened'.

¹⁵ Ofcom website, [How Ofcom is run](#)

¹⁶ Ofcom, [Annual report and accounts 2014/15](#), HC 169, 2 July 2015, pp65-6

¹⁷ Defined in statute by [Communications Act 2003](#) s198

Ofcom has received 1,900 complaints about the show and these are now being investigated under the Broadcasting Code.

All UK broadcasters must adhere to this code, which sets standards for the content of television and radio broadcasting. The code also deals with issues such as fairness and privacy.

If we find a programme has broken those rules, then it will be found in breach of that code.

Complaints

We will also, in serious cases, consider further action.

Every fortnight we publish a Broadcast Bulletin which includes our latest adjudications into complaints we have received about TV and radio programmes.

The outcome of the above investigation was that Ofcom fined the BBC a total of £150,000 after two episodes of the Russell Brand radio show had been judged in breach of the Broadcasting Code.¹⁸ Ofcom has also fined the BBC in connection with false phone-in contests.¹⁹

2.5 The Clementi review

On 16 September 2015, the Culture Secretary announced a further step in the Charter review process: an independent review into the governance and regulation of the BBC. It was led by Sir David Clementi, a former Chairman of Virgin Money and Prudential, and previously a Deputy Governor of the Bank of England. Sir David was asked to make proposals, taking account of the responses to the BBC Charter Review consultation, in relation to:

- the model of governance and regulation of the BBC;
- the specific mechanisms of governance and regulation; and
- the way in which the BBC and the bodies that govern and regulate it engage with licence fee payers and industry.²⁰

The Review was published in March 2016.²¹ These are the high-level recommendations:

- regulatory oversight of the BBC should pass wholly to Ofcom;
- the BBC should have a unitary Board, with a majority of Non-Executive Directors;
- the primary responsibility for the interests of the Licence Fee payers should lie with the BBC Board;
- Ofcom should issue the BBC an Operating Framework, consistent with the revised Charter and Agreement, setting out the obligations placed on the BBC;

¹⁸ ["BBC Brand/Ross fine", Ofcom, 3 April 2009](#)

¹⁹ "BBC fined £95,000 over false radio phone-in contests", *Western Mail*, 19 December 2008

²⁰ Gov.uk press release, [Independent review into how the BBC is governed and regulated](#), 16 September 2015

²¹ [A Review of the Governance and Regulation of the BBC](#), Cm 9209, March 2016

- the Operating Framework should include Operating Licences in respect of the BBC's broadcasting content and distribution obligations; and should include Operating Licences in respect of services for the Devolved Nations;
- the Charter should place on the BBC a duty to consult with the public both as consumers and as Licence Fee payers; and
- the BBC should have a 'Broadcaster First' system of complaints; appeal above the BBC on editorial issues would be to Ofcom.

2.6 The White Paper proposals

The Clementi review reiterated what many had said before, that there existed a muddying of responsibilities in governance issues. The BBC Trust has all too often been seen as conflicted, struggling to combine the roles of regulator and "cheerleader".²² The Culture Select Committee in the current Parliament was also scathing of the present arrangements, concluding in its February 2016 report:

- The BBC Trust has lost confidence and credibility and should be abolished. However, the problem that the Trust was intended to solve remains
- The BBC's Board needs to be reformed as a unitary board and strengthened, with the addition of an independent Chair
- Wider accountability should be the task of a separate section of Ofcom
- A new complaints procedure would see all complaints handled initially by the BBC itself, with both industry and editorial issues subsequently escalated to Ofcom²³

In the public consultation exercise that preceded the White Paper, the question about governance and regulation attracted less interest than other topics: only 15% of responses from individuals indicated a view.²⁴ Just over 5% indicated that a standalone regulator was the most popular option, with Ofcom the second most popular. Ofcom was the preferred choice of many organisations for this role.

The White Paper itself proposes a clear division of governance and regulation: a unitary board in combination with an external regulator.

The Board

The proposal is for a new unitary board for the BBC, consisting of between 12 and 14 members. The BBC would be responsible for appointing at least 50% of the board members. The board would be made up of a majority of non-executive members with a non-executive

²² "[BBC Trust: a regulator – and a cheerleader](#)", *Guardian*, 11 September 2013

²³ Culture, Media and Sport Committee, [BBC Charter Review](#), HC 398, 11 February 2016

²⁴ Dept for Culture, Media and Sport, [BBC Charter Review public consultation: summary of responses](#), Cm 9215, March 2016, pp29-30

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chair and deputy chair. There would also be non-executive members designated for each of the four constituent nations of the UK. The White Paper proposes that the Government will have a role in appointing *six* members of the board:

Following the proposals and recommendations in the Clementi Review, a Public Appointments process, led by the government, will be used to appoint the Chair, Deputy Chair and members for each of the four nations of the UK (a total of six members). Both the remaining non-executive members and executive members of the board will be appointed by a nominations committee of the board. This means that for the first time the BBC itself will be empowered to appoint members to its sovereign board.²⁵

The Government has been keen to stress that these six Government appointments will be subject to public scrutiny.²⁶ It is clear that two key positions on the board, those of chair and deputy chair, will *not* be BBC appointees. On the other hand, if the board numbered 14 members in all, then the nominations committee would have influence over the composition of *more* than 50% of the membership and the Government *less* than 50%.

This remains a sticking-point and may be the subject of further negotiations. Lord Hall, the BBC's Director-General, has said:

"We have an honest disagreement with the Government on this. I do not believe that the appointments proposals for the new unitary board are yet right. We will continue to make the case to government. It is vital for the future of the BBC that its independence is fully preserved."²⁷

The White Paper envisages a range of duties for the new board:

creating an effective BBC by overseeing strategy, service delivery, operational delivery (including management structures, finance, staffing levels, audit and risk, procurement, compensation and partnerships). It will also have primary responsibility for ensuring the BBC takes account of both public and market impacts;

delivering an efficient BBC, that delivers value for money for the licence fee payer, both in its public service and commercial operations;

measuring performance, including of programmes, services and standards; and

public engagement, taking account of both consumer and citizen interests.²⁸

²⁵ Dept for Culture, Media and Sport, [A BBC for the future: a broadcaster of distinction](#), Cm 9242, May 2016, p50

²⁶ Cf John Whittingdale, Culture Secretary: "The appointments that the government will make... will be subject to the public appointments process, so they will involve the Office of the Commissioner for Public Appointments. Three of them will be made in consultation with the devolved Administrations of Wales, Scotland and Northern Ireland" ([HC Deb 12 May 2016 c737](#)).

²⁷ BBC Media Centre, [BBC response to the Government White Paper](#), 12 May 2016

²⁸ Dept for Culture, Media and Sport, [A BBC for the future: a broadcaster of distinction](#), Cm 9242, May 2016, p48

A new role for Ofcom

Under the new Charter proposals, the BBC will, for the first time, be wholly regulated by an external regulatory body. Ofcom will be responsible for assessing the performance of the BBC board in meeting its Charter obligations. The White Paper spells out what this involves:

monitoring and reviewing performance including by assessing on a periodic basis the extent to which the BBC is meeting its overall mission and its accompanying public purposes, with powers to remedy any identified failings;

establishing a licensing regime setting out regulatory requirements and expectations;

regulating editorial standards to ensure the BBC meets requirements in areas such as accuracy, impartiality, harm and offence;

holding the BBC to account for its assessment of both market impact and public value, alongside regulation of commercial activity; and

acting as the appeal body in terms of complaints.²⁹

Rona Fairhead, chair of the BBC Trust, responded positively to the new role for Ofcom:

It is right that the BBC will be independently regulated. Ofcom are an effective and independent body to do this, however, they will need to evolve their approach, so that the bespoke, qualitative regulation that Sir David Clementi's review called for is delivered. The BBC is a unique institution and its regulation is a unique challenge – the system of regulation that takes effect at the start of 2017 must be carefully tailored to addressing these challenges, as well as to maintaining a balance between robust oversight and allowing innovation and creativity to flourish.³⁰

Although the White Paper envisages the abolition of the Trust, of which Ms Fairhead is currently chair, she will remain in post for the duration of her current term, which ends in October 2018.³¹

Colette Bowe, former Chair of Ofcom, has expressed concern that the extra workload might unbalance Ofcom. The regulator's current Chief Executive, Sharon White, points out that the BBC has to deal with around 350,000 complaints a year, compared with the 25,000 that Ofcom receives concerning other broadcasters.³² However, following Clementi's recommendation, the White Paper envisages that Ofcom would function only as an *appeal* body; complaints would go in the first instance to the BBC itself.

²⁹ Dept for Culture, Media and Sport, [A BBC for the future: a broadcaster of distinction](#), Cm 9242, May 2016, p52

³⁰ BBC Trust, [Statement on Government White Paper: BBC Charter Review 2016](#), 12 May 2016

³¹ [HC Deb 12 May 2016 c731](#)

³² Raymond Snoddy, "Who should keep the BBC honest?" *Television*, May 2016, pp16-17

3. Financial accountability

In accordance with the requirements in the current Charter (article 45), the BBC's Annual Report and full financial statements are formally laid in Parliament. Usually this happens in July.³³ The accounts are audited by Ernst & Young LLP.³⁴

3.1 The BBC and the NAO

History

All public bodies are required to spend their funds in accordance with four key principles: regularity, propriety, feasibility and value for money. The body charged with scrutinising public bodies in this regard is the National Audit Office (NAO), headed by the Comptroller and Auditor General. Historically, there have been differences of opinion regarding the extent of scrutiny that there should be of the BBC by the Comptroller and Auditor General and NAO. For example, among the many reports dealing with the funding of the BBC before the last Charter review is one published in 1999 by an Independent Review Panel chaired by Gavyn Davies.³⁵ One of its recommendations referred to the National Audit Office:

It should be made clear in the terms of reference for the periodic inspections by the National Audit Office that the NAO should focus only on administrative efficiency and on proper financial management and accounting and not question policy objectives and programming issues and matters of editorial or artistic judgement.

Further consideration of the relationship between the BBC and NAO featured in the work of parliamentary select committees, including the House of Lords Select Committee on the BBC's Charter Review. Its third report of 2005-06, published on 12 June 2006, contained a letter from the Committee's chairman, Lord Fowler, to the then Secretary of State, Tessa Jowell. This letter included the following:

Second, we also believe that the NAO should have full right of access to the BBC and autonomy to choose its own topics for value for money reviews of the Corporation. The NAO already has such autonomy in relation to the BBC World Service and the World Service welcomes the work the NAO does. We note your commitment that you will consider this point further (Q 2202) and we look forward to hearing your response.³⁶

Accountability of the BBC to Parliament might arguably have been improved had the Government accepted the recommendation, made by the Culture, Media and Sport Committee in an earlier Parliament, that the Corporation be placed on a statutory basis by Act of Parliament.³⁷

³³ The most recent is [2014/15](#).

³⁴ BBC, [Full financial statements 2014/15](#), July 2015, pp15, 23

³⁵ [The Future Funding of the BBC](#), Report of the Independent Review Panel, Chairman: Gavyn Davies July 1999

³⁶ House of Lords Select Committee on the BBC's Charter Review, [Final discussions with the Secretary of State for Culture, Media and Sport](#), HL Paper 196 2005-06

³⁷ Culture, Media and Sport Committee, [A public BBC](#), HC 82 2004-05 para 246

This recommendation was endorsed by the House of Lords Select Committee on the BBC's Charter Review.³⁸ Instead, the Government of the day opted to retain the Royal Charter structure, the reasons for which were explained in the [White Paper](#) that presaged the drawing up of the present Royal Charter and Agreement:

9.10.2 The Government believes that the existing arrangements have improved the BBC's accountability to Parliament for use of the public money it receives, whilst at the same time preserving the BBC's independence on editorial policy and programming. Untrammelled extension of NAO access would, in the Government's view, risk encroaching on the BBC's editorial independence and conflict with the principle that the main line of accountability should run directly to the licence fee payer. Our public consultation showed that people do not want either Government or Parliament to have any more control over the BBC than they do now.

9.10.3 Nevertheless, under the new arrangements we believe it would be helpful to the Trust, in its job of holding the Executive to account, to strengthen its relationship with the NAO, for the following reasons:

- the separation between the Trust and the Executive means that there is greater scope (and need) for the Trust to seek expert advice from outside the BBC on a range of issues;
- the new Charter and Agreement will place specific duties on the Trust to ensure that the Executive delivers value for money.

9.10.4 In the light of this, the BBC Governors and the NAO have discussed the operation of the arrangements so far and have agreed that it is vital that the NAO should be able to play a full part in discussions with the Trust about which areas should be subjected to value for money reviews. This means that the NAO should be provided with the information about the BBC's activities which it reasonably needs in order to form judgments about the areas for examination. The Trust will ensure that this happens.

9.10.5 The Governors and the NAO have also agreed that it would be helpful for the NAO's reports to be published as soon as practicable after they are completed, rather than waiting for the publication of the BBC's annual report and accounts.

9.10.6 We propose to reflect these points in the new Agreement.

9.10.7 The Government expects these arrangements to result in a close relationship between the Trust and the NAO, with the Trust making use of the NAO's considerable expertise to help it oversee the Executive. We welcome the proposal of the current Chairman of the BBC that the Trust should ask the NAO to consider the extent to which future "self-help" targets are being met and that the results of this work will also be reported to Parliament. The Government believes that this will strengthen the relationship between the BBC and the NAO significantly.³⁹

In the [2006 Agreement](#), as originally formulated, the NAO did not have an entirely free hand. Under the original clause 79 the BBC Trust could ask the Comptroller and Auditor General and others to conduct value-

³⁸ House of Lords Select Committee on the BBC's Charter Review, *The Review of the BBC's Royal Charter*, HL Paper 50 2005-06 para 42

³⁹ DCMS, *A public service for all: the BBC in the digital age*, Cm 6763, March 2006

for-money reviews, but it had the final say as to which subjects were examined and by whom. The BBC Trust also decided what information was made available.

The Public Accounts Committee in the 2005-10 Parliament proved a strong advocate for greater parliamentary and NAO scrutiny of the BBC, and its position was summarised in a report reviewing its interactions with the BBC over the course of the Parliament:⁴⁰

38. In October 2009 the Government agreed that the National Audit Office's access to the BBC should be unrestricted, but left the BBC to discuss with the National Audit Office how this could be achieved.⁴¹ This is unsatisfactory in that the Government is willing the end without providing the necessary means to that end. Neither the National Audit Office nor the BBC can legislate to give the Comptroller and Auditor General the statutory right to audit the BBC that this Committee has been demanding, so the Government cannot be neutral in that discussion.

39. The BBC Trust has since committed to using its best endeavours to provide the Comptroller and Auditor General with improved access to the BBC's information and agreed with the Comptroller and Auditor General arrangements improving access. This is helpful but it falls short of, and is by no means a substitute for, the full statutory access rights the Committee of Public Accounts is seeking. The fact remains that the BBC retains discretion over the information the Comptroller Auditor General has access to and publishes.

40. In October 2009, the Secretary of State for Culture, Media and Sport told the Committee of Culture, Media and Sport that if the National Audit Office and the BBC were unable to arrive at satisfactory access arrangements, the next charter review, in 2016, would be the time to address the issue.⁴² Putting proper accountability to Parliament on hold for six years, is unacceptable.

41. As a matter of principle, the BBC's use of public money should be subject to the same statutory audit of its financial statements and value for money scrutiny by the Comptroller and Auditor General as is the case for other publicly funded organisations. The BBC has not accepted this, arguing that Parliament has set up the BBC Trust with an explicit duty to scrutinise the BBC's expenditure, which it has done in part by commissioning reports from the Comptroller and Auditor General and others and by appointing private sector accountancy firms as the BBC's external auditors. The BBC has offered no convincing argument as to why the Comptroller and Auditor General could not be the external auditor of the BBC.

42. In November 2009, the Chairman of this Committee wrote to the Secretary of State for Culture, Media and Sport setting out why access which is at the BBC's discretion rather than through statutory right, cannot deliver satisfactory accountability for the use of billions of pounds of public money the BBC receives and then spends each year. He did not reply.

⁴⁰ Committee of Public Accounts, *Scrutiny of value for money at the BBC*, Twenty-ninth Report of Session 2009-10 (HC 519), pp.17-18.

⁴¹ *Treasury Minutes on the Twenty-fourth to the Thirtieth, the Thirty-second to the Thirty-ninth, the Forty-fifth, and the Forty-seventh to the Forty-eighth Reports from the Committee of Public Accounts Session 2008-09* (Cm 7717), para.4, p.6

⁴² Oral evidence given on 20 October 2009 by Rt. Hon. Ben Bradshaw MP, then Secretary of State

43. At our hearing on the BBC's management of three estates renewal projects in March 2010 the Treasury confirmed that there is a very powerful case for the public audit of public resources to make sure that the public and Parliament can be assured that resources are being used as Parliament intended. The Treasury also confirmed that extending the scope of public audit to this end was the clear direction of travel. The BBC Trust's rearguard offer to allow the Comptroller and Auditor General to tender for the audit of the BBC misses the point. Public audit of public money should be a right, not a possible outcome of commercial considerations.⁴³

Current arrangements

Following the change of Government, in September 2010 the BBC and the Secretary of State agreed new access arrangements, the key change being that it should be the NAO that decided which areas of BBC spending would form the focus of their value-for-money studies.⁴⁴ The revised arrangements for the Comptroller and Auditor General to examine the BBC are set out in [amendments](#) to the 2006 Framework Agreement which supports the current Royal Charter. Clause 9 of the Amending Agreement substitutes a new clause 79 for clause 79 of the 2006 Agreement (referred to above) with effect from 1 January 2012. Clause 9 provides that:

The Trust must annually adopt an audit programme. The Trust must specify the subject matter of its own value for money reviews and must receive and respond to reports from the NAO.

The NAO must plan its own annual programme of value for money audits. The NAO must advise the Trust in advance what reviews it is planning and when they will be carried out. The NAO can amend its audit programme at prescribed intervals during the year but only if there are exceptional reasons for doing so and if the NAO provides a revised programme to the Trust together with a statement of those reasons. If the Trust is already undertaking any kind of review of a particular area of the BBC's work, the NAO cannot concurrently undertake a value for money review in that area.

The NAO is entitled to review any BBC decision but it is not entitled to question the merits of any editorial or creative judgment or policy decision about the way BBC services are made or distributed. The NAO has access to all information it reasonably requires. Factual accuracy must be agreed with the BBC but the NAO has full discretion over conclusions and recommendations.

The NAO must submit its reports to the Trust. When the Trust receives a value for money report from the NAO, or anyone else, the Trust must consider the recommendations and prepare a response. The Trust then submits the report and the response to the Secretary of State for laying in Parliament.⁴⁵

A notable example of this audit process was the NAO's report on severance payments for senior BBC managers, which was presented to

⁴³ Committee of Public Accounts, *Scrutiny of value for money at the BBC*, Twenty-ninth Report of Session 2009-10 (HC 519), Q.152-158, Ev. 20-21

⁴⁴ The correspondence between the then Culture Secretary and the then BBC Chairman relating to the negotiations on changes to the access arrangements for the NAO is available on the [BBC Trust website](#).

⁴⁵ BBC Trust, [The Amending Agreement September 2011: summary prepared by the BBC Trust](#)

the BBC Trust Finance Committee in June 2013 and then to Parliament by the Secretary of State in July.⁴⁶ The NAO found that in a number of cases the BBC paid senior managers more salary in lieu of notice than they were contractually entitled to, costing licence fee payers at least £1 million. In another report, on the BBC's failed Digital Media Initiative, the NAO concluded that there had been failings regarding the BBC's procurement process and that the financial benefits of this £100 million project had been overstated.⁴⁷ The most recent report examined the performance of the BBC's critical projects and the effectiveness of the BBC's oversight following the changes it made to project governance and reporting in 2014.⁴⁸ It concluded that the BBC had improved the way it manages its business critical projects: "Most are on course to deliver and achieve their intended benefits" but the Corporation "needs to do more to manage its critical projects as a coherent portfolio."

3.2 The White Paper proposals

As explained above, the NAO already carries out value-for-money studies on the BBC's publicly funded operations. The White Paper contends that past NAO scrutiny "has been shown to work well and to be compatible with the BBC's editorial independence". The Government therefore proposes that the next Charter establish the Comptroller and Auditor General as the BBC's financial auditor. This will, among other benefits, "allow Parliament to hold the BBC to account for whether its public resources are managed in line with the requirements of regularity and propriety". There is also a possibility of extending value-for-money reports to the BBC's commercial operations, since, in the White Paper's words, they "return profits to the BBC's public service division".⁴⁹

While the BBC accepts much of what is in the White Paper, the enhanced role for the NAO, like the composition of the unitary board, is an area where disagreement with the Government persists:

The White Paper calls for the NAO to be the BBC's auditor. The NAO is already able to conduct value-for-money studies, and any further expansion of their role must include an explicit exclusion for editorial decision-making; and nor is it appropriate for the NAO to assess the value for money of the BBC's commercial subsidiaries, as they do not spend any public money.⁵⁰

⁴⁶ BBC Trust/NAO, *Severance payments and wider benefits for senior BBC managers: report by the Comptroller and Auditor General*, July 2013

⁴⁷ BBC Trust/NAO, *Digital Media Initiative: memorandum prepared by the Comptroller and Auditor General*, January 2014

⁴⁸ BBC Trust/NAO, *Management of the BBC's critical projects*, May 2016

⁴⁹ Dept for Culture, Media and Sport, *A BBC for the future: a broadcaster of distinction*, Cm 9242, May 2016, p88

⁵⁰ BBC Media Centre, *BBC response to the Government White Paper*, 12 May 2016

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