



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

**Government Response to
House of Lords Select Committee
on Communications
1st Report of Session 2006-07:
The Chairmanship of the BBC**

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
15 October 2007*



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Government Response to House of Lords Select Committee on Communications 1st Report of Session 2006-07: The Chairmanship of the BBC

Introduction

The Government is grateful for the Committee's consideration of key issues relating to the appointment of a Chairman of the BBC.

The Committee can be assured that the Government considered very carefully the evidence presented at Committee sessions and the Report recommendations in preparing this response.

As it made clear in evidence given to the Committee, the Government has – in line with the guidance and scrutiny afforded by the Office of the Commissioner for Public Appointments – placed great emphasis on an open and transparent competition with appointment based on merit.

The Select Committee's report contained a number of key conclusions and recommendations:

Recommendation 1 (paragraph 12): We recommend that efforts should be made to ensure that there is greater clarity about the role of the Chairman. It should be clear whose job it is to represent the BBC itself as distinct from the licence fee payer, what it means to represent the licence fee payer and why “the Chairman of the BBC” is only an honorary title.

The Government is satisfied that the Royal Charter properly defines the BBC's governance arrangements, including the distinctive roles of the Trust and the Executive Board and the position of the Trust Chairman. The Trust has ultimate responsibility for upholding the public interest within the BBC, particularly the interests of licence fee payers and securing the effective promotion of the Public Purposes. Its role includes, among other things, ensuring that the BBC's independence is maintained and setting the overall strategic direction of the Corporation. The Executive Board's functions include the delivery of the BBC's services, the direction of its editorial and creative output and its operational management. Accordingly, the Trust and Executive Board both have a responsibility for representing the interests of the BBC within the context of the particular functions of each body. By representing the licence fee payer, we mean taking on the role of understanding and bringing to bear the public interest on the activities of the BBC.

As regards the Trust Chairman's position, the Charter allows for him to be known as the “Chairman of the BBC” but makes clear that this is a purely honorary title. This is because, although the BBC is established as a body corporate, its component parts – the Trust as sovereign body and the Executive Board – are required at all times to act separately and never as a single body.

Recommendation 2 (paragraph 32) We recommend that there should be a duty on the Secretary of State to appoint a selection panel of at least five members including the Chairman and the independent assessor. There should be a majority of non-political members. The panel should be chaired by a non-political member who is not a civil servant. To ensure that Ministers appoint a selection panel that will have the trust of all licence fee payers we suggest that the composition of the panel should be announced to Parliament in a written ministerial statement.

The Government believes that existing arrangements for making appointments to the BBC Trust offer sufficient safeguards and independent scrutiny. The Government would like to clarify that the selection panel was not appointed by Ministers, but by officials taking account of the advice and guidance of the Office of Commissioner for Public Appointments (OCPA).

The OCPA Code recommends that the selection panel for a public appointment should normally comprise: a senior official from the department (as chair of the Panel), a representative from the public body or other interested group as appropriate, an independent assessor (who is there as an expert in the public appointments process and not necessarily as a specialist in the subject matter dealt with by the body on which there is a vacancy) and there may also be, where appropriate, a technical, medical or scientific expert when a specific area of expertise of applications needs to be tested [*OCPA Code of Practice 3.30, page 33*].

The Government does not feel it appropriate to prescribe a minimum number of members for the selection panel, although accepts it would be possible to have a panel of five. The Government accepts that the majority of the panel should be “non-political”. The Government will continue to convene selection panels in accordance with the OCPA Code, and with full regard to the need for openness, transparency and probity.

The Government notes the recommendation that the Chair of the Selection Panel should not be a civil servant, but believes that a civil servant is well placed to carry out this role. The Civil Service is an integral and key part of the government of the United Kingdom, which supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament, and civil servants are required to act with dedication and a commitment to the Civil Service and its core values of integrity, honesty, objectivity and impartiality. The Government maintains that it is appropriate for a civil servant, particularly one who is familiar with the public appointments process and regulations, to chair the selection process.

The Government agrees that, in the interest of openness and transparency, and in order to deliver public confidence in the process, that selection panel membership should be made public. However, the Government proposes that membership should be disclosed at the end of the competition, in keeping with OCPA guidance, in order to prevent lobbying of selection panel members during the process.

Recommendation 3 (para 33): We recommend that if Ministers add or subtract any names from the shortlist this should be immediately be made public through a written ministerial statement to Parliament.

The Government recognises the need for an open and transparent process for public appointments, providing it respects the right of individual applicants to confidentiality. In the interest of protecting candidates’ anonymity, and of avoiding inappropriate or damaging media speculation which could cause uncertainty for (or possible withdrawal by) candidates, we do not currently make a public statement on whether Ministers have made an addition or subtraction of names to a shortlist.

Under current departmental arrangements, any changes to the shortlist must be agreed by the OCPA-trained Independent Assessor, and will form part of the audit trail which can be scrutinised by the Commissioner for Public Appointments should there be grounds for investigation or concern. We are content that this offers a sufficient degree of independent scrutiny.

Recommendation 4 (para 34): We recommend that Ministers should no longer be able to choose between all the candidates that scored a C or above in the interview process. We therefore recommend that the independent panel should recommend only one name to Ministers and that name should be the candidate who scored highest at interview. Ministers will still have the power to be answerable for the appointment so they should retain the power to reject that name and ask the panel to think again.

The principle of Ministerial responsibility for public appointments is underpinned by the Ministerial right of choice. The OCPA Code recommends that for each appointment Ministers are offered a choice of appointable candidates (in the case of the BBC Chairman selection process, candidates scoring C or above were deemed to be appointable). This is also consistent with Cabinet

Office best practice. The Government accepts that an individual Minister could waive the right to a choice and invite the panel to make just one recommendation, (the OCPA Code advises that if a Minister states specifically that they do not want a choice of candidates, then the appointments panel need only submit one name for consideration). However, removing the Minister's right to choice carries the risk of undermining the principle of ministerial responsibility and the role of the selection panel. Of particular concern is the suggestion that Ministers would be able to 'retain the power to reject that name and ask the panel to think again'. This could lead to challenge of the role and independence of the selection panel, particularly if it is suggested that they would be asked to reconsider or amend original conclusions.

Current arrangements enable the selection panel to provide Ministers with information on the relative merits of all interviewed candidates against the published criteria, including information on how candidates have scored at interview. This is more consistent with the principle of Ministerial responsibility. A requirement to recommend only one candidate and for the Minister to appoint that person would not allow for the possible circumstance where two or more candidates might achieve the same overall score at interview, but bring very different strengths to the role. Current arrangements provide a clear audit trail of decision making (which can be challenged or subject to investigation by OCPA) and enable Ministers to take responsibility for decisions based on merit, by the well informed choice based on the abilities, experience and qualities of the individuals concerned and the needs of the body in question.

Recommendation 5 (para 42). We recommend that the House of Commons Liaison Committee and the Government agree that the Chairman of the BBC Trust should be one of the appointments that Parliament vets. This vetting should focus only on the candidate's qualifications and aptitude for the job. Both Houses should have a role in this vetting. We therefore propose that a method be found whereby a Joint Committee of both Houses of Parliament should carry out the pre-appointment hearing. The Government should undertake to respond to the report of the Joint Committee before the appointment is finalised.

The Government fully supports the principles of openness, transparency and independent scrutiny. In accordance with proposals set out in the Government Green Paper, The Governance of Britain (July 2007), we accept there are a number of positions in which Parliament has a particularly strong interest because the officeholder exercises statutory or other powers in relation to protecting the public's rights and interests. The Government believes that Parliament, through its select committees, may play a valuable role where such appointments are not subject to oversight by the Commissioner for Public Appointments or other form of independent scrutiny.

BBC Trust appointments are amongst those regulated by the Commissioner for Public Appointments. We believe the scrutiny afforded by existing arrangements, which include the involvement of an OCPA trained Independent Assessor throughout, are sufficient. We do not therefore agree that the appointment should be subject to Parliamentary vetting.

Recommendation 6 (para 44). We therefore hope that in the long term the Government will address the democratic deficit that exists over the BBC.

The Government does not consider that such a democratic deficit exists. The constitution of the BBC, including its relationship with Parliament, was fully considered over the three-year period of Charter review. The Government's conclusion at the end of this process was that the BBC should retain its existing chartered status for the reasons set out in the Green Paper and White Paper. In particular the Government noted the indications from consultation and qualitative research that the public would not favour increased Parliamentary control over the BBC. The Corporation's accountability to Parliament continues to be expressed in a number of ways, including its engagement with Select Committees and the role of the National Audit Office in assessing value for money in the use of the licence fee.

Recommendation 7 (para 52). We recommend that the Chairman of the BBC Trust should be subject to a six month notice period. This is a matter that should be dealt with by the Government and not left to the BBC Trust to self-regulate. There may be occasions when it is in the interest of the licence fee payers for the Chairman to resign with immediate effect so the Secretary of State should have the power to waive this notice period if it is in the public interest. If this power is used it should be justified to Parliament.

The Government recognises the potential benefits of a notice period in providing certainty, continuity and enabling succession planning, both for office holders and public bodies. However, the Charter provides only very limited powers for setting terms relating to the Chairman's employment, which do not extend to the setting of a notice period. Even if a notice period were to be informally agreed, the Charter would not provide any legal basis for enforcing it.

In the absence of a legal power to make such a provision, the Government accepts the need to establish a clear understanding between the department, the BBC, and the Chairman about the requirements of the role, including the expected length of term of appointment. The understanding on the length of term of appointment was set out in writing in relation to the current Chairman, and will be for future appointees.

In the event of a BBC Chairman stepping down without a notice period, there is provision in the Charter for the Vice Chairman of the Trust to assume the role of Acting Chairman, and exercise all the powers of the Chairman, in the interest of maintaining stability and continuity.

Recommendation 8 (para 55). We therefore recommend that, while we wait for the Government to act on our recommendation in paragraph 52, the non-compete clause in Annex E of the BBC Trust's Code of Practice should be amended so that the Chairman of the BBC Trust cannot take up a position with a competitor for a period of at least six months (unless the Vice-Chairman determines that a lesser period is suitable).

This is a matter for the BBC.

Recommendation 9 (para 59). We therefore recommend that the default position should be that the Director-General is the chairman of the BBC Executive Board.

This is a matter for the BBC Trust, which appoints the Chairman of the Executive Board. The Government made provision in the Charter for the Chairman to serve in either an executive or non-executive capacity with a view to ensuring sufficient flexibility to enable the Combined Code model of governance to be adopted, should the Trust consider that appropriate. The Charter makes clear, however, that of the Executive Board only the Director General can serve as an executive Chairman of the Board.



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