

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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VLV RESPONSE TO CALLS FOR INPUTS

SAVE OUR BBC & CARDIFF UNIVERSITY

THE PUBLIC & THE BBC: WHAT ROLE IN OVERSIGHT & GOVERNANCE?

May 2016

INFORMATION ABOUT THE VLV

Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England No 4407712 - Charity No 1152136).

Q1: Are you satisfied with the present governance of the BBC under the 2007 Charter as it relates to the accountability of the BBC and BBC Trust to licence fee payers? Please provide reasons.

1. The VLV agrees that some reform of the present governance arrangements is needed but believe that Government should not disregard the benefits the Trust has brought such as the valuable work consulting widely on BBC services and other issues of interest to licence fee payers. This has represented a step-change on previous practice and made the BBC more accountable and responsive both to the public and competitors.
2. It is VLV's view that regulation and governance need to be clearly separated in the new model. There has never really been consensus that the current Trust model was the best option and this has made its job doubly hard. Whatever happens next, we need, if possible, a consensus that it is the right solution.
3. VLV believes that the work of the BBC Trust to engage licence fee payers and canvass their opinion on the effectiveness of BBC delivery has been a welcome development during the current Charter. We would like such work to continue during the next Charter period to inform the output of the BBC so that its delivery to these currently underserved audiences improves. This is essential if it is to provide a universal service which appeals to a range of audiences.
4. We have welcomed the Trust's work in creating a framework to assess delivery of the BBC's mission which has included consultation with the licence payers who fund the BBC. For the first time in the history of the BBC we have a publicly available evidence base by which to hold the BBC to account.

Q2: Are you satisfied with the governance arrangements suggested for the future of the BBC under a new Charter from 2017 by Sir David Clementi as they relate to the accountability of the BBC and Ofcom to licence fee payers? Please provide reasons.

5. We agreed with the Green Paper that the BBC's governance – both its internal governance and the way it is overseen and regulated – is important because the audience needs to know that the BBC is in safe hands and that someone is looking after their interests. They need to know their money is being spent wisely. They need

to know that the BBC is independent and not being run for its own interests or those of politicians or business. They need to know if something goes wrong it will be handled effectively and lessons will be learned.

6. While we welcomed and agreed with the broad thrust of Sir David's Clementi's Review, VLV has serious concerns about certain aspects of his recommendations.
7. **Transparency:** The BBC Trust conducted valuable work in terms of its research and in particular consulting with audiences to an extent and depth that had not previously taken place. We are concerned that this valuable work should be continued in whichever governance and regulatory model the Government decides to adopt. This research should be available to all licence fee payers and put in the public domain.
8. **Accountability:** Sir David's recommendation for a unitary board seems to have been largely accepted as the best model of governance. However he is not specific on how the Non-Executive Directors of such a board will ensure they are properly informed on the BBC Executive's delivery of the BBC's commitments. We would not want them to be reliant on the BBC Executive for evidence and would want the Charter to ensure that the Board is provided with adequate resources to commission their own research.
9. VLV is concerned that there is little detail in the Clementi Review or the BBC White Paper on how licence fee payers will be able to hold the BBC Board to account. VLV largely agreed with the conclusion of the CMS Select Committee published in its *Future of the BBC* Report in February 2015, namely that the BBC should have an external public interest body. VLV proposed in its response to the Green paper that such a public interest body would engage with licence fee payers, conduct public value tests of proposed new services, research to measure whether the BBC has fulfilled its public purposes, represent the interests of licence fee payers and hold the BBC Board to account. This public interest body should be involved with advising on the level of licence fee on behalf of licence fee payers. It should be specifically responsible for the BBC and not be responsible for PSB generally. We still believe there is merit in this proposal, to ensure that the BBC's accountability is maintained.
10. **Independence:** Along with others whose views have been well covered in the press, VLV is concerned that BBC independence may be at risk if members of the unitary board are Government appointees. We accept that the Government currently appoints the BBC Trustees and previously appointed the Governors. However, in a unitary board the Non-Executive board members would be much closer to the Executive than is the case with the Trust or previously with the Governors. Therefore they would potentially be closer to influencing editorial decisions. This would reduce both the reality and perception of the BBC's independence from Government and be damaging to its worldwide reputation. At the very least, there should be complete transparency in the appointments process.
11. **Regulation:** If Ofcom is to take over responsibility for all BBC regulation we would want Ofcom, as suggested by Sir David Clementi, to set up a separate unit for this

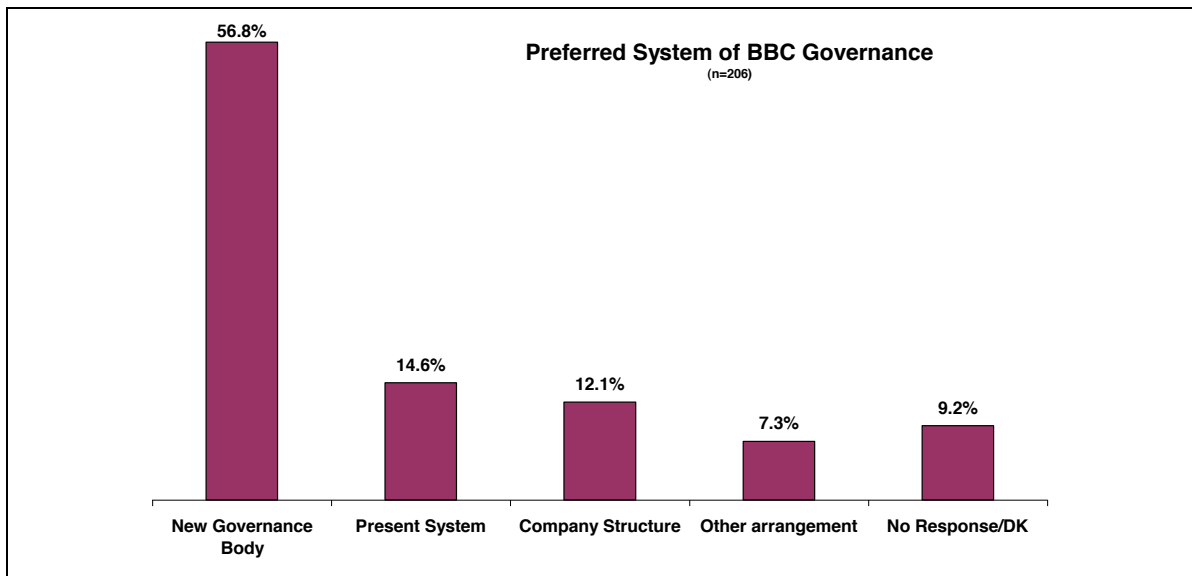
activity. We agree that those who currently work for the BBC Trust with an expertise in qualitative analysis should be employed in such a unit to ensure continuity of the research base which has been established over the past nine years by the Trust.

12. Central to the decision how to regulate the BBC is the question of how to achieve a balance between the qualitative judgements inherent in public value assessments and the quantitative judgements inherent in market impact assessments. VLV believes that Ofcom should be continue to be responsible for market impact assessments and should work with the new public interest body, which we propose above, to ensure that a balance is achieved between market impact considerations and public value considerations. This balance has been achieved under the current model where Ofcom and the BBC Trust have worked well together and VLV believes that such a model could continue to work effectively in the future.
13. Additionally, VLV believes that Ofcom should regulate all BBC content, including impartiality and accuracy issues. We note that Ofcom already regulates the BBC on content issues. The only area of BBC content regulation it doesn't regulate currently is accuracy and impartiality. We do not believe there is a strong rationale for this exclusion. However, we acknowledge fears that this extra work might overburden Ofcom in its current form. It needs to be remembered that Ofcom doesn't regulate online platforms and its work on accuracy and impartiality only apply to news whereas within the BBC they apply to all output, therefore considerable changes might be necessitated within Ofcom if it were to fulfil this role.
14. **VLV Survey:** In a survey of VLV members conducted in 2015, the majority surveyed recently¹ supported the creation of a new body to oversee the BBC as can be seen in Figure 3.

Figure 3 – BBC Governance

<p>Governance of the BBC</p> <p>Which of the following would be your choice?</p> <ol style="list-style-type: none">a. The BBC should continue to be governed by the present arrangement – the BBC Trustb. A new governance body for the BBC that represents the licence fee payer, is more successfully distanced from the BBC Executive than the present-day Trustc. A company structure for the BBC, with non-executive chairman and non-executive directors to represent the licence fee payer, no separate BBC governance body, but regulation by Ofcom or a separate regulatory bodyd. Other arrangement (please specify)

¹ VLV Membership Survey August 2015



Q3: Do you have any alternative suggestions as to how the BBC, its governors and regulators might be made accountable to licence fee payers? Please provide reasons and mechanisms.

15. VLV wants the BBC to remain independent of Government control. Currently we believe that through the setting of the licence fee especially, the Government has undue influence on the BBC's delivery of its mission. This is something for which we propose a new Licence Fee Body should be responsible and it should not be an issue for politicians to decide.

16. VLV believes that process whereby the two most recent BBC funding settlements have been reached was undemocratic and they have undermined both the perceived as well as the actual independence of the BBC from political influence. They have also undermined the BBC's ability to deliver its mission on behalf of licence fee payers.

17. In future VLV believes the setting of the licence fee and negotiation of BBC income needs to be more transparent. We would like to see any result of negotiations between the BBC and Government made public before BBC funding settlements are confirmed. This would allow time for Parliamentary debate and licence fee payers to respond.

18. There is no better articulation of how inadequate the past two licence fee negotiations have been than that expressed in the Culture, Media and Sport Committee report into the Future of the BBC published in February this year. To quote key points:

Earlier on in this Parliament we reported on the unsatisfactory nature of the 2010 licence fee settlement. The BBC appeared to be put under pressure by the Government to take on new funding commitments for local TV, S4C, rural broadband, BBC Monitoring and the World Service, with no increase in

funding, and the BBC accepted these new obligations. What was more concerning was that the settlement was agreed behind closed doors in just a few days and without any consultation with licence fee payers or Parliament.

We believe that the current means of setting the licence fee is unsatisfactory. The 2010 settlement demonstrated that the BBC's independence can be compromised by negotiations with the government of the day that lack transparency and public consultation. Irrespective of any Government pressure, the BBC Trust breached its Charter duties and often-stated commitments to reflect the interests of licence fee payers first and foremost, in agreeing the settlement in the manner it did.

No future licence fee negotiations must be conducted in the way of the 2010 settlement: the process must be open and transparent, licence fee payers must be consulted and Parliament should have an opportunity to debate the level of funding being set and any significant changes to funding responsibilities. We recommend that the independent panel and Charter Review process consider the appropriate length of licence fee settlements and the period in which they should be reviewed and changes made.

Through the setting of the licence fee, the Government of the day can, if they wish, either squeeze or boost the BBC's funding and, therefore, affect the scale of the BBC's services and ambitions, even within a secure Charter period. Moreover, the Government is not required to pay to the BBC the whole of the licence fee revenue received. Lesser sums can be paid out as the Secretary of State may, with the consent of the Treasury, determine.²

19. VLV opposed the most recent licence fee settlement because it is nonsensical to negotiate the funding of the BBC prior to deciding what its role, scope and scale should be. In future licence fee settlement negotiations VLV would strongly urge the Government to ensure that the scale and scope of the BBC are decided through public consultation prior to any negotiations on its funding. In this way the public can decide what they want from the BBC, this can be costed and then a licence fee can be set to deliver what the public says it wants.
20. The VLV believes that no such licence fee settlements should be conducted in future without a full public consultation, giving licence fee payers a say over how the funding they provide is used.
21. Therefore, VLV has taken the opportunity to have a Bill drafted which would resolve such problems in future. A full version of the Bill is attached to this submission as Appendix 1.
22. VLV proposes that a Licence Fee Body should be created to set licence fees which are designated to fund the BBC. This body would comprise a Chairman and other

² *Future of the BBC*, Culture, Media and Sport Committee, February 2015, Para 246,255, 256, 92.

members who have the requisite expertise and knowledge, are independent of government, of the BBC and other media organisations; the chair and members would be appointed by the Secretary of State who would have a duty in making these appointments to consult with the BBC, Treasury, licence fee payers (as represented by BBC Trust or its replacement body).

23. The Licence Fee Body would consult with the public and recommend a level for the licence fee. The Secretary of State would have a duty to lay this recommendation before the Parliaments of the UK.
24. If the Government wanted to impose any extra burdens on the BBC during a Charter period, the Licence Fee Body would estimate what additional funding is required to fulfil such projects.
25. The advantages to this alternative method of setting the fee is that there will be public and parliamentary consultation inherent in the process, the public would be involved and the decision would be taken independent of Government, thus removing the BBC from potential political interference.

Appendix 1: Proposed BBC Funding Bill

BBC Funding Bill

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B I L L

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Provide for BBC licence fees to be determined by an independent process; and to prevent the imposition on the BBC of non-budgeted costs.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

BBC Funding

1 Independent body to set licence fees

After section 365 of the Communications Act 2003 (TV licence fees) insert—

“365A Licence Fee Body: establishment

(1) There shall be a body corporate to be known as the Licence Fee Body, to carry out the functions conferred by section 365B.

- (2) The chair and other members of the Licence Fee Body shall be appointed by the Secretary of State; and in appointing the chair or another member of the Licence Fee Body the Secretary of State must aim—
- (a) to appoint only persons who appear to be independent (of central government, devolved government and local government, of the BBC and of other media organisations); and
 - (b) to secure an appropriate balance of experience and knowledge.
- (3) Before appointing the chair or another member the Secretary of State must consult—
- (a) the BBC;
 - (b) the Treasury;
 - (c) persons appearing to represent the interests of users of services provided by the BBC; and
 - (d) any other person the Secretary of State thinks appropriate.
- (4) The Secretary of State must make regulations about the constitution and proceedings of the Licence Fee Body; and the regulations may, in particular—
- (a) determine the number of members;
 - (b) make provision about procedure (including a quorum);
 - (c) make provision about the process to be followed in consulting on determinations under section 365B;
 - (d) provide for the payment of remuneration, allowances or other sums out of money provided by Parliament;
 - (e) confer a discretionary power on a specified person (including the Secretary of State);

- (f) amend an enactment.
- (5) Before making regulations under subsection (4) the Secretary of State must consult the persons listed in subsection (3).

365B Licence Fee Body: functions

- (1) The Licence Fee Body may publish determinations about—
 - (a) the amount of sums to be specified in regulations under section 365, and
 - (b) any other matter that may be included in regulations under section 365.
- (2) Where the Licence Fee Body publishes a determination, the Secretary of State must as soon as reasonably practicable—
 - (a) lay the determination before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and
 - (b) make regulations under section 365 to give effect to the determination.
- (3) Before publishing a determination the Licence Fee Body must consult—
 - (a) the Treasury,
 - (b) the BBC,
 - (c) persons appearing to the Licence Fee Body to represent the interests of users of services provided by the BBC, and
 - (d) any other person the Licence Fee Body thinks appropriate.
- (4) A determination of the Licence Fee Body must be accompanied by an explanation of the assumptions by reference to which it is made (which may refer to the BBC Charter and Agreement, or any other document).

(5) If in the opinion of the Licence Fee Body a new or revised requirement or expense is imposed on the BBC (whether or not by an enactment) which falsifies the assumptions on which a determination was based, the Licence Fee Body must—

(a) review the determination, and

(b) issue a revised determination, unless the review concludes that no revision is required.

(6) Regulations made in accordance with this section do not require the consent of the Treasury (despite section 365(6)).”

Technical provision

2 Commencement, extent and citation

(1) This Act comes into force at the end of the period of two months beginning with the date of Royal Assent.

(2) This Act extends to the whole of the United Kingdom.

(3) This Act may be cited as the BBC Funding Act 2015.

