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Better protecting BBC financial independence

An exploratory report for the
BBC Trust

Martin Moore

King's College London

January 2016

About the Policy Institute at King's

The Policy Institute at King's College London acts as a hub, linking insightful research with rapid, relevant policy analysis to stimulate debate, inform and shape future policy agendas. Building on King's central London location at the heart of the global policy conversation, our vision is to enable the translation of academic research into policy and practice by facilitating engagement between academic, business and policy communities around current and future policy needs. We combine the academic excellence of King's with connectedness of a think tank and the professionalism of a consultancy.

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Preface

This report was commissioned by the BBC Trust in order to explore ways to better protect the BBC's financial independence beyond Charter Renewal. The ideas presented in the report are derived from ten interviews with expert sources conducted for the study in October and November 2015, supplemented by relevant publicly available information. The study was completed in six weeks. The results presented here are intended to invite further debate and exploration of questions regarding the future of BBC financial independence.

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Executive summary

This report from the Policy Institute at King's was commissioned by the BBC Trust in October 2015 in order to better understand how the BBC's financial independence can be enhanced, particularly in light of the manner in which financial settlements were agreed in 2010 and 2015.

Through a series of ten interviews with individuals who had experience of previous Charter Renewal and licence fee negotiations, or who were familiar with the process of financial settlement in other areas of the public sector, the Policy Institute identified five issues that had a bearing on the BBC's financial independence, and eight possible ways to address them. The author supplemented the interviews with information drawn from publicly available sources. The report was completed in December 2015.

Five issues were considered – through the interviews and supplementary research – to have a particular bearing on the BBC's financial independence:

1. Use of the licence fee beyond the public purposes of the BBC.
2. Ad hoc process of settlement, without Parliamentary oversight.
3. Limited independent measures of BBC success in achieving outcomes.
4. Lack of public involvement or consultation.
5. Limited written commitment to BBC financial independence.

The eight ideas that emerged through interviews that may help to address these five issues were:

1. Greater ring-fencing of the license fee, for example, by:

A. Further separating licence fee funding from central government accounts such that it is more clearly distinguished and is therefore less liable to be used for other purposes (such as payment of licence fees for over-75s).

B. Independent economic regulation of the BBC, as with the Office of Rail and Road (ORR) or Ofwat, such that an independent regulator has responsibility for assessing the affordability, value and budgetary needs of the BBC.

2. Formalising the process of licence fee settlement, for example through:

A. Agreeing a fixed year cycle for funding settlements, as for Network Rail (5 years), the Office for Budget Responsibility (OBR) (4 years) or the Pharmaceutical Price Regulation Scheme (5 years).

B. Introduce a BBC Charter Renewal (Procedure) Act 2015 for the process of Charter and licence fee renewal, as proposed by Lord Birt and Lord Inglewood in the House of Lords in July 2015. Or set out a process for licence fee settlement within the Charter itself.

3. Enhancing accountability to provide greater confidence in BBC financial probity, for example by:

A. Strengthening links between funding and annual outcomes using an approach closer to Channel 4 as regards to meeting clearly set outcomes that are then catalogued in a published annual report.

B. Enabling independent scrutiny by encouraging the development of an independent body capable of scrutinizing the BBC/public service broadcasting – similar to the oversight role of the OBR with the economy or the independent analysis done by the Institute for Fiscal Studies.

4. Increasing public participation, for example by:

A. Obliging public justification for the settlement by the BBC, or by the government, to show how the settlement will benefit the licence fee payer (as proposed in the 2011 Culture, Media and Sport Select Committee report). This may include the structural integration of the public to licence fee renewal and settlement.

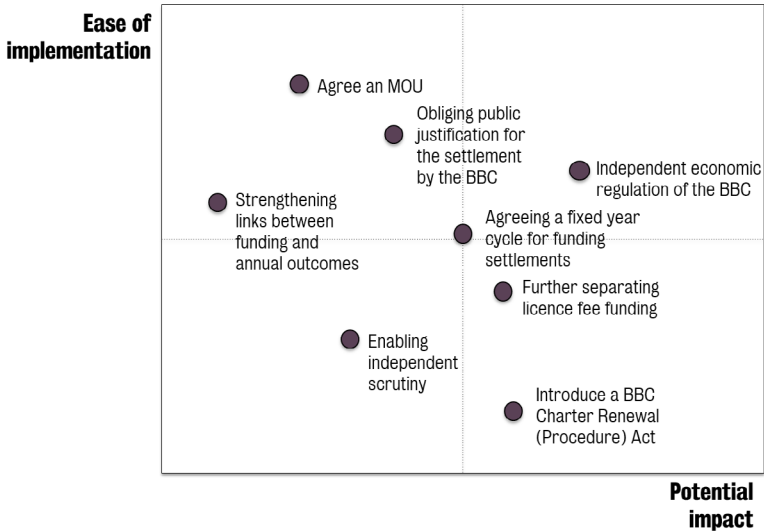
5. Contractual commitment, such as:

A. Agreeing a Memorandum of Understanding regarding independence, with respect to finance, between the BBC and the government (see, for example, the OBR's Memorandum of Understanding with Treasury, Department for Work and Pensions and HM Revenue and Customs).

The ideas suggested by interviewees and outlined in this report are not alternatives to one another. They could, for example, be deployed in combination as they address different issues. They are not intended as recommendations, but as ideas that may merit further assessment if they are found to be of interest in addressing the BBC Trust’s concerns.

Certain ideas are more straightforward to implement than others, but may have less impact. The illustrative chart below plots the ease with which each idea may be implemented against the impact each might have. The chart is purely indicative and is not based on data.

Options: Potential Impact and Ease of Implementation (Illustrative)



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1 | Introduction

Introduction

This study was commissioned by the BBC Trust in October 2015 and published in January 2016.

The BBC Trust asked the Policy Institute at King's to explore ways in which the BBC's financial independence might be better protected, particularly in light of the manner in which financial settlements were agreed in 2010 and 2015. 2010 was a 'tough settlement' made in 'exceptional circumstances' the then Chair and DG said. Of the 2015 settlement the Chair of the Trust said that though it would not oppose the changes made by the government it could not 'endorse the process by which it [the funding agreement] has been reached'. The Trust was also 'disappointed that they [licence fee payers] have not been given any say in the major decisions about the BBC's future funding'.

The BBC Trust was keen to explore possible ways in which to address these – and related – issues, and therefore better protect its financial independence in future. It commissioned the Policy Institute to write a short study, within a six-week time frame, identifying possible ways to do so. This is, therefore, an exploratory think piece, not a systematic review nor a comprehensive analysis.

Methodology

The Institute and the BBC Trust agreed to identify ideas through a series of interviews with those who had been closely involved in previous Charter Renewal and licence fee negotiations, or who were familiar with the process of financial settlement in other areas of the public sector. A list of the interviewees is included in the Appendix. These interviews generated a conceptual framework for understanding the issues facing BBC financial independence. This framework in turn informed targeted research on potential ways in which to address those issues.

The ideas in the study emerged from the interviews, supplemented with information drawn from publicly available sources. The ideas are not mutually exclusive, nor are they meant as alternatives to one another. They are not intended as recommendations, but as ideas that may merit further assessment if they are found to be of interest in addressing the BBC Trust's concerns.

Defining BBC independence

Independence, in the context of the BBC, is a highly contested term that has been explored extensively in academic literature, in contemporary political debate, and in the press, whether over the Corporation's coverage of Northern Ireland during the *Troubles*, or the way in which it reports elections.

For the purposes of this study, the Policy Institute was asked to consider the issue of BBC financial independence, rather than constitutional independence more broadly, editorial independence, or independence of appointments. In this context financial independence is defined as the freedom of the BBC to make decisions as to how best to use its funding to fulfill its public purposes, as set out in the

Royal Charter, supported by the licence fee.^a Such freedom includes having the confidence to be able to make future spending commitments on the basis of predictable funding.

The report considers ways in which financial independence – as defined here – might be enhanced, in the context of ways it is felt to have been compromised in the past.

The purpose of BBC independence

According to research from the Department for Culture, Media and Sport to inform the renewal of the previous BBC Royal Charter, the British public believe the BBC's independence to be one of its most important assets:

‘We asked people what they particularly valued about the BBC, through quantitative surveys, qualitative research and wide consultation. There was very strong support for what respondents felt were two particularly distinctive characteristics: its independence and its lack of advertising’.¹

The public's responses to other questions helped indicate why people believe independence to be such an important asset to the BBC. Eighty five per cent thought the BBC ‘has an important role in keeping the public well informed’, and 84 per cent claimed that they listened to, or watched, BBC news ‘every week’.¹

The BBC is also regarded internationally as a model for public service broadcasting, particularly with regard to its perceived independence from government:

^a The BBC's public purposes are set out in its Royal Charter (2006) Clause 4.

‘The idea of public service broadcasting was born in Britain. Free from political and commercial interests, its main pillar is independence and the idea of putting citizens first...Changes to the system should serve to strengthen the independence of the broadcaster, not weaken it. This is especially important in the case of the UK, as the British model is often viewed as a model for how the media should be organised in new democracies.’²

There are, as stated above, very different views as to what constitutes independence for the BBC, and on the degree of independence it should enjoy, though on the basis of opinion research and given the level of debate it evokes, there appear to be few who believe it is not an important value of the BBC.

Assumptions and caveats

The study takes as its starting point a number of assumptions in order to focus the options for better protecting financial independence:

Continuation of funding via a licence fee

The BBC’s financial independence, and protection of it, will depend on the way in which the BBC is financed in future. The options presented in this report are predicated chiefly on a licence fee model.

Changes to BBC governance: the future

Financial independence of the BBC will be partly contingent on the future governance model. Some of the examples referenced in this report may not work with particular governance models.

Personalities and culture

Interviewees emphasised that structural safeguards for financial independence would only be as strong as the people who held them. Without individuals who are strongly committed to the financial independence of the BBC, further protections will not be effective.

About this study

The study concentrates on issues related to financial independence, as opposed to constitutional independence, editorial independence or independence of appointments. However, the study recognises that these aspects, while they may not have a direct bearing on the extent or manner of BBC financial settlements, do have an indirect effect, and vice versa.

The study has been peer reviewed by one reviewer from within the Policy Institute at King's and one from a separate institution (listed in the Appendix).

2 | Identifying the issues

Identifying the issues

Based on the interviews, there are five main issues associated with the current funding process that have a bearing on the BBC's financial independence.

1. Use of the licence fee beyond the public purposes of the BBC

There is a concern, voiced by one or more interviewees, that the licence fee is increasingly being used for purposes beyond those set out in the Royal Charter. In 2006 the BBC agreed, as part of its Charter renewal, to use the licence fee to help support digital switchover. At the time the government agreed it was 'a new purpose, unique among all broadcasters'.³ In 2010 the BBC agreed to take responsibility for the majority of S4C, for supporting digital switchover and broadband; and for supporting the provision of local television, in addition to taking responsibility for the BBC World Service and BBC monitoring. In 2015 the BBC agreed to take responsibility for paying for the over-75s licence fee.

2. Ad hoc process of settlement, without Parliamentary oversight

The level of the licence fee is set by secondary legislation but the process by which a licence fee settlement is reached is, interviewees stated, ad hoc and lacks Parliamentary oversight. There is no set period, for example, for licence fee settlements. In the past there have been one year settlements (in the late 1970s) and a seven year settlement (from 1999-2006).

3. Limited independent measures of BBC success in achieving outcomes

According to some interviewees, there are limited independent measures that assess the extent to which the BBC succeeds in achieving its public purposes. Without such measures it is more difficult for the BBC, or for government, to establish whether the BBC is using its funds effectively and efficiently.

4. Lack of public involvement or consultation

The DCMS Select Committee, a number of Peers, and interviewees for this report, expressed disquiet that the public are currently excluded from participating in decisions regarding BBC funding and its effects. There is, for example, no obligation on the government or the BBC to consult the public regarding the financial settlement.

5. Limited written commitment to BBC financial independence

There is a concern, voiced by one or more interviewee, that the government's commitment to BBC financial independence is not made explicit. The written commitment is chiefly limited to Clause 6 of the Royal Charter (2006) which refers to BBC independence 'in all matters concerning the content of its output, the times and manner in which this is supplied' but, with regards to finance, is limited only to independence 'in the management of its affairs'.

3 | Advocates for reform

Advocates for reform

The negotiation of payment of the over-75s licence fee in July 2015 crystallised many of the concerns set out above, as reflected in the following extracts from the Lords debate on the Future of the BBC which immediately followed.

Lord Fowler (Conservative) criticised the unaccountability of the Charter Renewal process:

‘[T]he fact is that, at the end of the day the royal charter process means that they [the government] do not have to listen to anyone. They can draw up a new charter and agreement as they please; it does not go to Parliament or come under parliamentary scrutiny. Decisions rest with the government, and anyone who doubts that should look back to the last time’

Lord Fowler, House of Lords Debate, 14 July 2015

Lord Inglewood (Conservative) said the opaqueness of the process undermined confidence:

‘[T]his quasi-clandestine ritual [of Charter Renewal] to take place does no favours to either the Government or the BBC and does little to encourage confidence in the wider public, viewers or licence fee payers’.

Lord Inglewood, House of Lords Debate, 14 July
2015

‘We have just witnessed a smash-and-grab raid’ Lord Clement-Jones (Liberal Democrat) said of the negotiations regarding the licence fee in summer 2015. ‘The deal that was done last week was appalling’ Lord Patten (Conservative and former Chairman of the BBC) said, ‘trying to turn the BBC into a branch office of the Department for Work and Pensions is completely ridiculous’.

Lord Birt (Crossbench and former Director General of the BBC) referred to the licence fee proposals of the government as ‘opportunistic, expedient and unprincipled diktats issued to the BBC in the dead of night, a pistol to its head, absent any democratic debate’.

Nor was there much confidence amongst Peers that, were the system not reformed, it would not happen again. Lord Lipsey (Labour) suggested that ‘Next time, I expect that the BBC will start paying for the NHS’. Lord Patten said he wished ‘I could feel a bit more confident about what is going to happen in future.’³

The Peers were not alone in raising serious concerns about the manner in which the licence fee negotiation was carried out. ‘As with the setting of the licence fee last week, the government seems to have forgotten some of the basic precepts of broadcasting policy – the etiquette of broadcaster independence’ the LSE’s Dr Damian Tambini wrote with reference to the government Green Paper.⁴ Labour MP Paul Farrelly called it a ‘drive-by shooting’, and the National Union of Journalists said the Chancellor was ‘raiding licence fee payers’ money to prop up his austerity budget’.⁵

Others were less critical of the process and argued that, as a publicly funded organisation, the BBC should not be exempted from the broader need to reduce public spending, just like other areas of the public sector. The *Telegraph* view was that:

‘The BBC is part of the public realm. It is owned by the nation and funded by the nation. That nation has made, and continues to make, financial sacrifices so that the British state lives within its means. So George Osborne, the Chancellor, is quite right to suggest that the BBC should play its part in balancing Britain’s books.’⁶

The *Times* did not comment on the manner of the settlement, but was sympathetic to a reduction in the BBC’s budget to limit the range of the Corporation. In a leader column the paper agreed with the Chancellor’s comment that the BBC risked becoming ‘imperial in its ambitions’ and suggested that George Osborne was ‘right to raise the alarm’.⁷

The BBC Trust has sought to explore the concerns of those advocating reform partly by commissioning this study. Prior to setting out the potential approaches and options, the report puts BBC independence in brief historical context.

4 | Brief historical context

Brief historical context

While a detailed history of the BBC, its independence or its financing, are clearly beyond scope for this short report, it may be helpful to provide a brief overview of some of the relevant historical context.^b

There have been eight Royal Charters in the history of the BBC, the first in 1927 and the current charter that was agreed in 2006.⁸ The first Charter specified that it ran for ten years, though there was less clarity as to the regularity of funding settlements:

‘14. The Corporation is hereby authorised and empowered:- to receive all funds which may be granted annually or otherwise by the Legislature in furtherance of the purposes of this our Charter’.

The BBC is given independence ‘in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs’.⁹ After the conclusion of the financial settlement in 2010 the Secretary of State for Culture, Media and Sport, Jeremy Hunt, wrote to the BBC Chairman Michael Lyons confirming its new

^b For the history of the BBC and debates around its independence see Asa Briggs’ five volume official history of broadcasting, *The History of Broadcasting in the United Kingdom* (Oxford: OUP), Jean Seaton’s *Pinkoes and Traitors: the BBC and the Nation 1974-1987* (London: Profile Books), Alban Webb’s *London Calling Britain, the BBC World Service and the Cold War* (London: Bloomsbury Academic), articles such as Tony Shaw’s ‘Eden and the BBC During the 1956 Suez Crisis: A Myth Re-examined’, *Twentieth Century British History* (1995) and many more.

financial settlement and stating that:

‘This government will respect the BBC’s editorial and operational independence both as a matter of principle and as an obligation for the full duration of its Royal Charter to 31 December 2016’.¹⁰

However, according to the official histories of the BBC and other academic studies, the BBC’s independence has been challenged by government at numerous points in its history.^c These challenges have variously been constitutional, political, technical and financial, though all of them – when they have been significant – have had editorial or operational repercussions.

In 1926 Winston Churchill, then Chancellor, wanted the government to take over the BBC during the General Strike. In the end it did not, since John Reith was able to convince the government that the broadcaster could help to resolve the crisis and that ‘Since the BBC was a national institution and since the government was in this crisis acting for the people...the BBC was for the government in the crisis too’.¹¹

Prior to the Second World War the government again considered taking over the BBC, this time due to its anxiety that enemy bombers would use BBC transmitters to locate targets. BBC engineers managed to devise a technical solution and avoid appropriation. The following year the BBC’s independence was questioned once again, as the government considered how much freedom the national broadcaster should enjoy during wartime. The government decided BBC independence to report was more valuable than government control.^d

c For official histories see previous footnote.

d From interview with BBC official historian, November 2015.

During the Suez crisis in 1956, the Prime Minister Anthony Eden ‘did everything possible to turn the BBC into his official mouthpiece’. Or as the BBC Director General Charles Curran said in 1972, during the crisis ‘the BBC had to face pressures stronger than any which had threatened its editorial independence in the 30 years since the General Strike’.¹²

Harold Wilson ‘threatened the BBC over its reporting of the 1965 Labour Party conference’, according to Sir Robin Day, and ‘both Margaret Thatcher and John Major, when Prime Minister, rattled their sabres when vexed by BBC editorial decisions’.¹³ From the late 1960s through to the conclusion of the peace process, Northern Ireland was a source of ongoing tension between the BBC and the government. Occasionally the tension was made explicit, for example in 1979 when the Prime Minister, Margaret Thatcher, told Parliament ‘it is time the BBC put its own house in order’.¹⁴

Following the Hutton Inquiry in 2004 and resignations of the BBC’s Director General and Chairman, the then Culture Secretary Tessa Jowell stressed the importance of a ‘strong BBC, independent of government’.¹⁵ The government Green Paper that followed was then titled ‘A strong BBC, independent of government’.¹

Historically the licence fee has, many argue, been central to the BBC’s stability and standing. As the House of Lords Committee on Charter Review wrote in 2005, ‘the licence fee system has been vital to building the strong and world renowned BBC of today’.¹⁶

The BBC’s financial independence was most directly jeopardised during the late 1970s. As the official historian of the BBC, Jean Seaton, writes:

‘In 1977, as the government dealt with the indignity of IMF cuts and industrial militancy, it imposed on the BBC the first of three hand-to-mouth licence-fee settlements that were to last for one year only. No one called it grant-in-aid but in practice it was. Thus Labour came close to tying the BBC into general expenditure without a fig leaf to protect political independence’.¹⁷

At one point the Treasury even considered giving the BBC portions of its licence fee on the 15th of every month, ‘or small fractions weekly’. Instead, it decided on a one-year settlement. The BBC Governors lodged their dismay and documented the principle that ‘the licence fee should never be seen as part of annual expenditure’.¹⁷ Lengthier settlements, however, had to wait until after the next government took power.

Concerned about BBC inefficiency and keen to integrate market forces to the Corporation, the Conservative government of Margaret Thatcher set up the Peacock Committee in 1985. The Committee surprised the government of the day by rejecting the idea of advertiser funding for the BBC, and by concluding that the licence fee, with some alterations, should remain as the principal source of funding.¹⁸

The government followed the Committee’s recommendation, and in 1988 pegged the licence fee to inflation. Two years later the BBC began a decade of improving efficiency and introducing elements of market forces.¹⁹

By the time Gavyn Davies was asked to Chair an independent review of BBC funding in 1998 he was told, in his terms of reference, that the licence fee would remain the BBC’s main source of funding at least until Charter Renewal in 2006.²⁰

Following seven years of above inflation increases in the licence fee the BBC offered, in 2006, to help support the move to digital switchover and to promote media literacy, as part of its new settlement. This was, as the government's 2006 White Paper said at the time 'a new purpose, unique among all broadcasters. This is building Digital Britain'. It also created a precedent for the BBC taking on roles beyond its public purposes, as set out in its Royal Charter.³

The 2010 licence fee settlement

The Coalition government initiated discussion of the 2010 licence fee settlement without prior warning on 11 October 2010, even though the 2007 settlement had been agreed for a six year period, according to the Culture, Media and Sport Select Committee's 2011 report.²¹ The Select Committee describes how the deal was then negotiated between the DCMS and senior figures at the BBC – in private – over the next ten days. It was then announced on Wednesday 20 October.

As part of this deal, in addition to its existing programmes and services, the BBC was asked to take financial responsibility for the BBC World Service and BBC monitoring; for the majority of S4C (the Welsh-language public service channel), for funding for digital switchover and broadband; and for funding to support the provision of local television.

The Select Committee noted the Director General's comment that previous settlements had been negotiated over months, even years. This negotiation was, the Select Committee wrote, done in less than a fortnight, behind closed doors, and in the context of the closing stages of the Comprehensive Spending Review.

The Committee was particularly critical of the failure to involve licence fee payers, and the broadening of negotiation beyond the original proposal that the BBC pay for over-75s licence fee to include discussion of the whole settlement (as opposed to one aspect of it). This, they reported ‘weakened the distinction between the BBC and other publicly funded bodies’. As such it endangered ‘the singular status of the BBC as an autonomous public body, independent of government’. ‘We recommend’ the report said, ‘that this model for setting the licence fee is not used again’.^e

Mark Thompson, then Director General of the BBC, believed that the 2010 settlement, unsatisfactory though the process of negotiation was, protected the BBC from similar approaches in the future. ‘[T]ransferring both the World Service and BBC Monitoring to licence fee funding’ Thompson told the Voice of the Listener and Viewer, ‘means that, after decades in which parts of the BBC have been in scope for government spending reviews, the BBC should never again have to get involved in a C[omprehensive] S[pending] R[eview]’.²² Yet, in July 2015, negotiations with the BBC over the licence fee were conducted in a similar manner to those in 2010.

The 2015 licence fee settlement

As yet, there has been no comparable attempt to describe the manner in which the 2015 BBC financial settlement was negotiated and agreed, similar to the description published by the Culture, Media, and Sport Select Committee report in 2011. However, the settlement was discussed in the House of Lords on Tuesday 14 July and was reported by newspapers at the time.

^e See paragraph 26 of reference 21

According to the debate and newspaper reports the 2015 settlement was also initiated by the government, was conducted within a similar timeframe to the 2010 settlement, and was similarly opaque. As a consequence of the negotiations the BBC agreed to take responsibility for payment of TV licences for the over-75s (phased in – with full responsibility from 2020/21), and that the licence fee would rise in line with inflation over the next Charter Review period, subject to certain conditions.²³ The payment of TV licences for the over-75s has been estimated to cost the BBC £650 million per year.²⁴

Defending the settlement the Chancellor George Osborne said that ‘as a publicly funded body, it is right that [the BBC], like other parts of the public sector, should make savings’.²⁵ Accepting the new financial obligation the Chair of the BBC Trust said ‘We accept this decision is a legitimate one for the government to take, although we cannot endorse the process by which it has been reached’.²⁵

5 | Potential approaches and options

Potential approaches and options

Interviewees agreed that there is no magic bullet that would address all of the concerns listed above, particularly when the BBC is renegotiating its Charter and licence fee. Indeed, a number of the interviewees for this report emphasised the importance of BBC-government negotiation, given the nature of the BBC's funding and purpose. However, there are ways in which one or more of the concerns may be addressed.

The ideas suggested by interviewees and outlined here are not alternatives to one another. They could, for example, be deployed in combination as they address different issues. The ideas are grouped into five different approaches and eight options, based on a conceptual framework generated by the interviews and by the degree to which they help address one of the five issues set out above.

The potential approaches and options proposed by interviewees are summarised here and then outlined in detail.

Overview

1. Greater ring-fencing

To better protect the licence fee from being used for purposes beyond those set out in the BBC Royal Charter, and so that services funded by the licence fee remain under BBC control, the licence fee could be further ring-fenced by:

1A. Further separating licence fee funds

Greater separation of the licence fee from central government accounts such that it is more clearly distinguished and is therefore less liable to be used for other purposes (such as payment of licence fees for over-75s).

1B. Independent economic regulation of the BBC

As with the ORR or Ofwat, give responsibility for assessing the affordability, value and budgetary needs of the BBC to an independent regulator.

2. Formalise process

To address concerns about the ad hoc nature of the process of settlement, or to resolve anxieties about the lack of Parliamentary oversight, government could:

2A. Agree fixed year cycle for funding settlements

Create fixed periods of funding, as for Network Rail (5 years), the OBR (4 years) and the Pharmaceutical Price Regulation Scheme (5 years).

2B. Introduce a BBC Charter Renewal (Procedure) Act 2015

Legislate for the process of Charter and licence fee renewal, as proposed by Lord Birt and Lord Inglewood in the House of Lords in July 2015. Or set out a process for licence fee settlement within the Charter.

3. Enhance accountability

To address concerns about the limited independent measures of BBC success in achieving outcomes, one could seek to enable new methods of independent accountability. This could provide confidence in the government that the BBC is fulfilling its aims as set out in the Royal Charter and that strengthen the case for clear funding agreements by:

3A. Strengthening links between funding and annual outcomes

Develop a similar approach to Channel 4 as regards meeting clearly set outcomes as catalogued in a published annual report. In the case of Channel 4 these are set out in legislation. For the BBC they could be set out by the government in the Charter.

3B. Enabling independent scrutiny

Encourage the development of an independent body capable of scrutinizing the BBC/public service broadcasting – similar to the oversight role of the OBR in the economy or the independent analysis done by the IFS.

4. Increase public participation

To address concerns about the lack of public involvement or consultation, the government and/or the BBC could:

A. Oblige public justification for settlement

Oblige the BBC or the government to show how the settlement will benefit the Licence payer, as proposed in the 2011 Culture, Media and Sport Select Committee report. For example, integrate the public more closely to Charter and licence fee renewal by reviving a version of the BBC National Broadcasting Councils (see later for explanation of Broadcasting Councils)

5. Contractual commitment

To address concerns about the limited written commitment to BBC financial independence, the government and the BBC could:

A. Agree a Memorandum of Understanding

Draw up a Memorandum of Understanding regarding independence, with respect to finance, between the BBC and the government (see, for example, the OBR's Memorandum of Understanding with Treasury, Department for Work and Pensions and HM Revenue and Customs).

Potential approaches and options in detail

Approach 1: Greater ring-fencing

A. Further separating licence fee funds - recover greater separation of the licence fee within central government accounts.

‘The BBC is increasingly referred to as though it were part of the public sector. It is not. It is an organisation financed not from the public purse but by those who use it. The fact that many of them are also taxpayers is no more relevant than the fact that those who pay their energy bills are also taxpayers’.

Bishop of Norwich, House of Lords Debate, 14 July 2015, c526

In 2006 the Office for National Statistics (ONS) reclassified the BBC for the purposes of aligning its definition with international accounting norms.²⁶

The BBC, along with S4C, was reclassified to the central government sector, having previously been considered a Public Corporation (as Channel 4 was and remains). At the same time the licence fee was reclassified in the National Accounts as a tax. ‘Previously,’ the ONS wrote, ‘this payment had been classified in the National Accounts as a service charge’. As a tax, the funds received from the licence fee would, from that point onwards, be counted within national accounts and the BBC’s assets and liabilities would appear as part of the government sector.

At the time, the ONS said, the ‘classifications are solely for the purpose of producing National Accounts and the statistical products based on them. This has no implication for the independence of these broadcasters.’

It was the belief of a number those interviewed for this report, however, that this reclassification had a profound effect on the BBC, particularly with regards to financial settlements. From this point onwards, interviewees said, the government appeared to consider the funds derived from the licence fee in a similar manner to funds received from other forms of taxation, and to feel justified in using these funds for purposes beyond those of funding the BBC's public purposes (as defined in the Royal Charter).

In 2010, for example, the government decided to use money from the licence fee to fund the majority of S4C, digital switchover and broadband, and support for local television, in addition to making the BBC financially responsible for the World Service and BBC monitoring. With the exception of the World Service and BBC Monitoring, the BBC does not have editorial or operational control over these other services. In 2015 the government decided to use money from the licence fee to fund free licences for the over-75s (a policy introduced by the UK government in 2000).

The Culture, Media and Sport Committee also expressed concern in its 2011 report that the BBC has increasingly been seen as a government body:

‘A number of commentators have, however, pointed out that, by being drawn into the CSR process at all, the BBC risked being seen as little different to a Government Department or Agency’.

If the licence fee funds are not more clearly distinguished within national accounts and if they continue to be considered within the comprehensive spending reviews, there is no reason to believe that licence fee funds will not continue to be considered for purposes beyond those set out in the Royal Charter (such as over-75 licence fees, local TV, and broadband rollout).

B. Independent economic regulation of the BBC

In order to further separate the government from the BBC executive, funding could be overseen by the regulatory body, as at Network Rail, or as at public utilities, such as water.

The ORR is the economic regulator for railway infrastructure (Network Rail and HS1), in addition to rail health and safety, and industry competition. It regulates Network Rail and, as part of this, does five-year assessments of performance and funding:

‘At the heart of the review is our assessment of what Network Rail must achieve from 2014 to 2019, the money it needs to do so, and the incentives needed to encourage delivery and outperformance’²⁷

These five-year periodic reviews include assessing the affordability of Network Rail and its value for money. This review - which includes public events and stakeholder consultation – can lead the ORR to conclude, after consideration, that Network Rail should be given a different amount than proposed. For example after the 2013 review:

‘Based on this analysis [of Network Rail’s Strategic Business Plan and proposed performance], and after listening carefully to what Network Rail and other stakeholders have told us, we’ve asked the company to run the network for £38 billion from 2014-19 – that’s £1.7 billion less than it originally proposed. We’ve listened when Network Rail has told us it needs more money – and where this has been proved to be justified, we’ve allocated extra funds.’²⁸

Organisations that provide public utilities work to a different model again. Ofwat, the Water Services Regulation Authority sets the limit on how much individual water companies can charge customers, and regulates standards of service. Once set, the water companies are obliged to provide water within that rate to customers, and to collect payment. The money collected by the water companies is under their independent control.^{29,30}

The financial management of the BBC could be further removed from the political realm by building from the ORR-Network Rail model, or from the Ofwat model. A future independent regulator of the BBC could be an economic regulator like the ORR, in addition to its other duties. It could oversee the affordability of the BBC and its value for money, and evaluate its proposed budget on this basis. This could then mean that – following representations from the BBC and from government, and in consultation with representatives of licence fee payers - the independent regulator could be responsible for, or provide advice on, setting the level of the licence fee' required to deliver BBC services (and the BBC's consequent income), over a fixed period, with the level being approved by Parliament.

Approach 2: Formalisation of process

A. Create fixed periods for funding settlements

There has not, historically, been a fixed time period for licence fee settlements. In the late 1970s it was agreed on an annual basis. In 1999 the government agreed a seven year settlement. Such inconsistency can create instability and make planning more difficult, particularly if funding is short term or renegotiation comes unexpectedly.

Fixed periods for funding, falling outside central government spending reviews and, cyclically, shortly after each Charter renewal, could enable greater preparation and consultation, and enhance BBC independence. If, for example, Charter renewal were to take place every 11 years, each financial settlement could be for a six-year period.

Many institutions and services that involve significant public funds rely on fixed funding periods of four years and higher. This is to provide for stability, planning and independence.

Network Rail (5 Years) - Network Rail has 'control periods' for its funding. Each control period is five years:

'We receive our government funding in five-year blocks called control periods. We are currently in Control Period 5 (2014 to 2019)'.³¹

The OBR (4 Years) - The OBR has a funding allocation for four years. Its 'Delegation of Financial Responsibilities' from the Permanent Secretary makes clear how important the lengthy fixed year funding is to its independence:

‘Setting a multi-annual funding commitment supports the OBR’s independence and ability to manage its resources effectively in the medium term. This approach for financial institutions is consistent with international best practice, strengthening institutional independence through delegated budget autonomy’.³²

Pharmaceutical Price Regulation Scheme (5 Years)

The Department of Health’s Pharmaceutical Price Regulation is a non-contractual voluntary scheme that ensures that the NHS can buy safe and effective drugs at an affordable price. Stable, predictable pricing within the scheme is crucial to the functioning of the NHS, and secures long-term steady income for the pharmaceutical companies:

‘It is a fundamental condition of the [Pharmaceutical Price Regulation] scheme that it will continue to operate for five years starting from 1 January 2014.’³³

B. A BBC Charter Renewal (Procedure) Act 2015

The process for renewing the BBC Charter and licence fee could be set in legislation in a ‘BBC Charter Renewal (Procedure) Act’ or equivalent.

During the debate on ‘The Future of the BBC’ in the House of Lords in July 2015 two Peers, Lord Birt (Crossbench) and Lord Inglewood (Conservative) proposed that there ought to be legislation that provides for a more transparent process of Charter and licence fee renewal. Lord Birt said:

‘It is plain that we now need a Magna Carta for the BBC itself. We need a framework, enshrined in statute and agreed by Parliament, which ensures that nothing like this can ever happen again; which sets out the proper roles of government, the BBC’s regulators and its executive; which outlines a considered, involving and transparent process for settling the level of the licence fee or for amending the BBC’s remit; and which enshrines the independence of an institution that is never, ever perfect, but which we should all safeguard and cherish’

Lord Birt, HL Deb, 14 July 2015

Following Lord Birt, Lord Inglewood said that:

‘My suggestion to the Minister, to echo the noble Lord, Lord Birt, is that the Government should put on the statute book a BBC charter renewal (procedure) Act 2015, which would set out a road map for this process and for future occasions’

Lord Inglewood, HL Deb, 14 July 2015

If the process of renewal and settlement was set out within legislation, or within the Charter itself, then it would not be possible to agree a licence fee settlement between the government and the BBC in a fortnight. The settlement would need to go through a structured process each time it was agreed, as well as being opened for public consultation.

Historically, a number of figures have raised concerns about the use of legislation to replace the Charter, or to provide for the Charter Renewal process. These have emphasised the opportunities that legislation could give for political involvement, and lobbying on behalf of special interests. As Lord Davies said in the Upper House in 2005:

‘[An Act] would leave the BBC much more open to political intervention. Although noble Lords may argue that the legislation could be framed in such a way that it would obtain over a substantial period and that there would be no question of it being subject to change every year, it would be a brave Member at either end of the Palace of Westminster who would dare to foretell from where the challenges will come in the build-up of public pressure leading to the amendment of Acts of Parliament.’

Lord Davies, HL Deb, 9 December 2005, c922

There is not a direct analogy for legislating for the process of Charter renewal. However, state funding of the Royal Family provides a helpful comparison. The level and manner of State funding of the Royal Family is set out in the Sovereign Grant Act (2011). The Act sets out how to determine the amount of the Sovereign Grant, how this is reviewed, and how the level of the Sovereign Grant may be changed. The Royal Trustees, who review the level of the grant, are required to prepare a report of their review that they give to the Treasury and lay before Parliament.

Approach 3: Enhance accountability

A. Strengthening links between funding and annual outcomes

Channel 4 is obligated, through its remit as set out in the Digital Economy Act (2010), to provide a range of programmes and services, and perform a series of duties.³⁴ This stipulates a series of measurable outcomes that can be evaluated on a regular basis, in order to provide confidence that the public service broadcaster is meeting its objectives.

The BBC already has purposes within its Charter and service licences, but the BBC Charter could, like the remit for Channel 4, be clarified and strengthened on set outcomes, and report annually on the extent to which it has met those outcomes. This would, in the view of one interviewee, give the government more confidence in the governance and effectiveness of the BBC, and consequently allow it more financial independence.

In its annual report, Channel 4 sets out the extent to which it has succeeded in achieving the outcomes set out in its remit. In its ‘Statement of Media Content Policy’ it catalogues the ways in which it met the outcomes across all genres and services. These are in addition to ‘specific quantitative licence obligations, set and monitored by Ofcom, for news and current affairs, original production, regional production, subtitling and audiodescription services’.³⁵

Channel 4 also commissions an ‘independent limited assurance report’ from an external auditor. In 2014 this was KPMG. Channel 4 employed KPMG ‘to provide limited assurance over their key measures.’

The BBC could, an interviewee proposed, set outcomes such as:

- ♦ amount of BBC investment in original programming
- ♦ number of people trained by the BBC
- ♦ BBC investment in the creative industries
- ♦ number of BBC programmes exported
- ♦ provision of an independent, impartial news service (quantified).

If these (and other) outcomes were within the Charter and a regulator was responsible for holding the BBC to account over these then, it was suggested, it would be more difficult for governments to justify intervention.

According to the BBC Trust, the public also believe there is scope to make the BBC's public purposes 'more meaningful' by making them 'clearer and simpler'. 'The language of the [BBC's public] purposes' research by the BBC Trust found, 'is not currently clear or straightforward for licence fee payers to understand'.³⁶

A view was also expressed that such transparent annual outcomes could increase the susceptibility of the BBC to outside intervention and controversy over measurement, and therefore have the opposite effect to the one intended.

The objectives of the Bank of England are also set out in legislation, and the Bank is then left to achieve these objectives independently. The Chancellor sets the inflation targets and the Bank of England then has operational independence over monetary policy. The Bank's independence was set out in the Bank of England Act (1998). The Act has since been amended but the Bank's independence remains.

In a comparable way, were the objectives of the BBC to be more clearly set out in the Charter then the BBC could potentially be given more operational independence to achieve those objectives.

B. Encouraging development of independent scrutiny of public broadcasting

There is currently little independent scrutiny of public service broadcasting and broadcasting policy, unlike in finance, where independent organisations like the IFS examine how public policies ‘affect individuals, families, businesses and the government’s finances’ (from IFS).³⁷

There are also publicly funded bodies like the OBR that provide independent analysis of the UK’s public finances.³⁸ There are similar bodies in other countries around the world including the Netherlands Bureau for Economic Policy Analysis, the German Council of Economic Experts, the Independent Authority for Fiscal Responsibility in Spain. Equally, there are independent organisations in other areas such as pensions, like the UK Pensions Policy Institute. Such independent scrutiny and analysis enables better informed financial decision making.

Interviewees pointed out that there is no similar independent or publicly funded body that scrutinises and analyses public service broadcasting generally or the BBC specifically. The only independent civil society organisation that currently monitors broadcasting is the Voice of the Listener and Viewer. It provides an opportunity for its members to question senior figures from broadcasting at its conferences and makes regular Parliamentary submissions. Its resources are, however, constrained and its focus is on quality, diversity and editorial integrity rather than the value and affordability of the BBC.

As a consequence, it is more difficult for the public and Parliament to evaluate economic claims made by the BBC or by government. The BBC, for example, may claim it is efficient and value for money (and provide various metrics as evidence), the government may then claim the BBC is not efficient and is not value for money (and provide various metrics as evidence) and there is no independent third party with the status and expertise to evaluate the competing claims.

The IFS was established in 1969 with a view to creating ‘a kind of “shadow” Inland Revenue and Treasury’.³⁹ An independent organisation, similar to the IFS but focused on broadcasting, could provide greater understanding of the economics of broadcast, and raise confidence in the financial rigour of public service broadcasters.

It is not clear where the genesis of this organisation, or its funding, would come from. Nor is it apparent how it should be constituted to ensure its independence. For this reason it is important to caveat the practicalities of this option.

Approach 4: Increase public participation

A. Oblige public justification of settlement

‘The BBC and Government will need to demonstrate how this will benefit the licence fee payer’

CMS Select Committee Report, 2011

The BBC or the government could be obliged to show how the settlement will benefit the Licence payer before concluding an agreement.

Consultation plays an integral part in the decision-making process of most regulated industries. Ofcom has made public consultation an essential part of regulatory accountability.

‘Consultation is’ Ofcom states, ‘an essential part of regulatory accountability – the means by which those people and organisations affected by our decisions can judge what we do and why we do it’.⁴⁰

The ORR builds public consultation into its review process. For Ofgem ‘Consultations are integral to the way we carry out our regulatory duties’.⁴¹ The National Institute for Health and Care Excellence (NICE) has a ‘Citizens Council’ of thirty representative members of the public.⁴² NHS England set up a national programme – ‘NHS Citizen’ - ‘to give the public a say on healthcare matters and influence NHS England decision making’.⁴³

In 2011 the Culture, Media, Sport Select Committee said it believed that failure to properly involve licence fee payers in the 2010 settlement undermined confidence in the BBC, and recommended ‘that its [failure to involve licence fee payers] should not

become a model for the next round of licence fee negotiations for the post 2016/2017 period.’²¹

‘If the BBC is to continue to benefit from a universal licence fee then it is vitally important that both licence fee payers and Parliament should have some involvement when far reaching decisions about funding and the responsibilities are taken’ the Committee said.

It also stressed how differently the 2010 settlement was agreed to the way in which the public was consulted about financial proposals in Digital Britain:

‘the [2010] negotiation marked a notable departure from the manner in which the BBC Trust handled the previous government’s proposal (in the Digital Britain report) to allocate some of the licence fee to public service content on non-BBC services. Then Sir Michael Lyons wrote an open letter to licence fee payers, together with a rebuttal of the proposal to share the licence fee. He also commissioned research on licence payers’ views and preferences in relation to the proposals.’

There is precedent and pressure for the public to be formally included in any future licence fee agreements. In most regulated industries there are obligations on the regulator, and often the service providers, to engage in public consultation on issues that will have a substantive effect on the end user. The same could apply to financial settlements for the BBC.

The public could, for example, be more formally integrated into BBC governance and regulation through the revival of the Broadcasting Councils, or a version of them.

Other regulated industries, such as utilities, have formal structures through which the public's voice is represented. In 2005, for example, the Consumer Council for Water was established in order to represent water customers, based on the Water Act, section 35 (2003). The Council's purpose is to make sure customers' 'interests are at the heart of decision-making in the water industry'.⁴⁴ In addition to the Board of the Consumer Council there are 'local advocates' representing the different regions of England and Wales. The Council states the local advocate committees 'play a key role in ensuring the Council is aware of customers' concerns including the interests of the disabled, chronically sick, pensioners, low-income and rural customers'.⁴⁵

The BBC used to have National Broadcasting Councils for Scotland and Wales, and an Advisory Council for Northern Ireland. These were established in the 1952 Royal Charter following comments in the Beveridge report.⁴⁶ The Councils were intended to provide a degree of independence to each of the UK nations, and to represent the interests of the people in that country.⁴⁷ They were altered in the 1996 Royal Charter and then phased out entirely in 2006, replaced by Audience Councils that had a different remit and composition.^{48,49} The Audience Councils were more consultative and advisory than their predecessors and were not integrated to the regulatory process.

The Institute for Welsh Affairs (IWA) recently proposed reviving a version of the National Broadcasting Councils, though with greater executive power. The Councils, the IWA proposed, 'should be replaced by National Broadcasting Trusts, operating under the umbrella of the BBC Trust, and responsible for the policy, content and allocation of resources for all services delivered solely for audiences in their respective countries'.⁵⁰

Councils, or updated versions of them, could - as with the Consumer Council for Water, include local advocates whose purpose would be to represent the concerns of members of the public in that area.

Approach 5: Contractual commitment

A. Draw up a memorandum of understanding

A Memorandum of Understanding could be drawn up between the BBC and the DCMS – similar to that between the OBR and the Treasury/Department for Work and Pensions/HM Revenue and Customs – setting out the need for actual and perceived independence and what that means in practice.

The OBR is far smaller than the BBC, its role very different, and it is funded from the Treasury, but its particular constitutional position, and the nature of the government’s commitment to its independence, make it a helpful analogy with regard to the specific problem of the limited written commitment to BBC financial independence.

There is a Memorandum of Understanding between the OBR and the Treasury, the Department for Work and Pensions and HM Revenue and Customs. This emphasises the need for OBR independence:

‘The OBR must be independent and expert - and perceived as such - in order to provide credible fiscal and economic forecasts and scrutiny of the long term sustainability of the public finances’.⁵¹

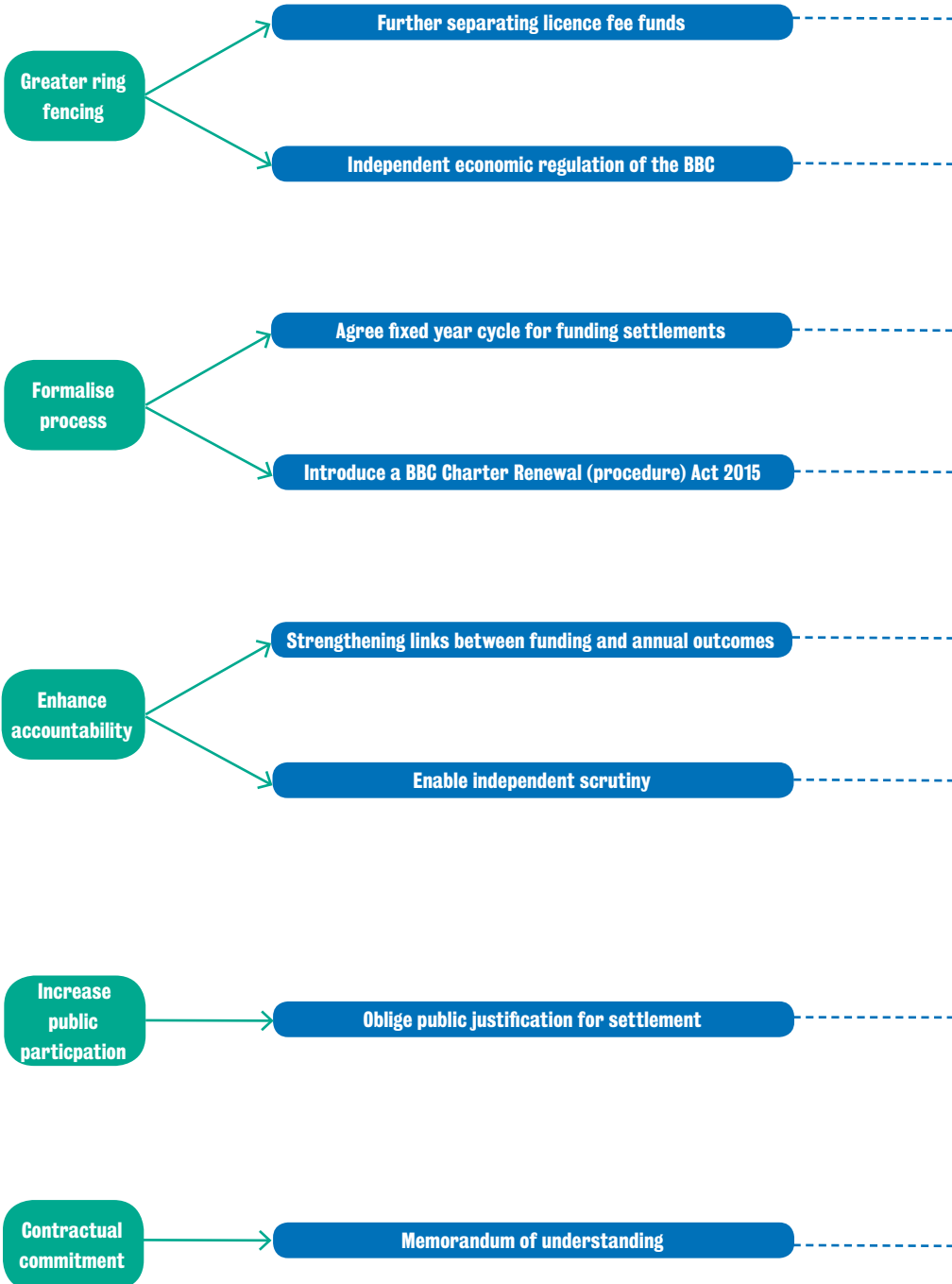
The OBR retains complete discretion in determining its work programme and the timing of analysis, subject to its statutory responsibilities and available analytical resources. The OBR may choose to consult the Chancellor in preparing these reports, but is not obliged to do so.

The National Infrastructure Commission, announced by the Chancellor in autumn 2015, will also be an independent body whose independence is set out in

writing. In his letter to Lord Adonis, the Chancellor George Osborne wrote: 'I intend to consult later this year on plans to put the Commission on a statutory footing and confirm its independence' (30 October 2015).⁵²

There could be a Memorandum of Understanding between the BBC, the Treasury and the DCMS regarding financial independence, or the parameters of financial independence and the process of financial settlement could be set out within the Charter agreement.

Strengths and weaknesses of potential approaches and options



Strengths: distinguishes BBC license fee funds in national accounts; enables more structured process for licence fee settlement

Weaknesses: reassessing ONS classification risks non-alignment with international accounting norms; other ways of distinguishing BBC funds not yet explored

Strengths: distances funding negotiations from the political realm, building off similar regulatory models like ORR or Ofwat

Weaknesses: BBC independence may be compromised by regulator rather than by central government

Strengths: allows for greater planning and consultation around licence fee settlement (compare with OBR, Network Rail and others)

Weaknesses: creates inflexibility to respond to economic circumstances

Strengths: creates a formal process with clear Parliamentary and public involvement

Weaknesses: could open the BBC and licence fee to political intervention

Strengths: measures BBC against clearer outcomes, providing rationale for budget decisions and giving greater confidence in its efficiency

Weaknesses: difficult to specify measurable outcomes, and may encourage intervention

Strengths: provides greater clarity regarding affordability and value for money of BBC, to both BBC and government

Weaknesses: currently no originator and no funding. Not apparent how it should be constituted to ensure its independence

Strengths: involves the public in the process of license fee settlement and makes rapid and opaque negotiations more difficult

Weaknesses: needs to sit within a structured settlement process and ensure public properly represented

Strengths: clarifies the nature and parameters of independence from government (compare with OBR)

Weaknesses: not as strong as legislation and does not necessarily address issues regarding process of license fee settlement

Appendix

Appendix

Interviewees (in alphabetical order)

Professor Steven Barnett

Sir Peter Bazalgette

Lord Birt

Professor Diane Coyle

Nicholas Kroll

Lord O'Donnell

Lord Patten of Barnes

Professor Richard Sambrook

Professor Jean Seaton

Caroline Thomson

Analogs

Bank of England

Channel 4

Institute for Fiscal Studies

National Infrastructure Commission

Ofcom

Office of Road and Rail

Office for Budget Responsibility

Ofgem

OfWat

Pharmaceutical Price Regulation Scheme
Sovereign Grant

Independent Reviewers

Professor Jennifer Rubin (King's College London)

Jill Rutter (Institute for Government) – the review was done independently and does not indicate endorsement of the conclusions by the Institute for Government

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