

Digital, Culture, Media and Sport Committee

Oral evidence: The Work of Ofcom, HC 407

Tuesday 10 October 2017

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Watch the meeting

Members present: Damian Collins (Chair); Julie Elliott; Paul Farrelly; Simon Hart; Julian Knight; Ian C. Lucas; Chris Matheson; Brendan O'Hara; Rebecca Pow; Jo Stevens; Giles Watling.

Questions 1 - 99

Witnesses

I: Sharon White, Chief Executive, and Dame Patricia Hodgson, Chairman, Ofcom.

Examination of witnesses

Witnesses: Sharon White and Dame Patricia Hodgson.

Q1 Chair: Good morning. It is great to have you, Sharon, back in front of the Select Committee. Dame Patricia, it is wonderful to have you with us again, on what may be your last appearance before the Select Committee, certainly as Chair of Ofcom, but we may find other ways to bring you back, depending on what you do in the future, but thank you for joining us today. Obviously, this is quite near the start of the Committee's work now that the Committee has reformed and Parliament is back in full swing. We appreciate you making the time to appear today.

As you know, we have the Secretary of State giving evidence tomorrow, so we thought it was particularly timely to try to take some evidence from you both at the start of this new parliamentary session and particularly as there have been so many topical issues you have been looking at, not least the advice to the Government on the Fox/Sky merger, and other issues as well. I know members of the Committee have a range of questions we are hoping to cover with you this morning, but I wonder if I might start with Sharon, just to ask about diversity in broadcasting.

It is something quite topical, given the Government's report being published today, but also it is something you spoke about quite a lot in your interview at the Royal Television Society in Cambridge. Do you think that broadcasters are doing enough to have a fair representation of people from different personal and minority ethnic backgrounds, not just within their organisations, but at management level as well?

Sharon White: What is very striking is the report that I hope members of the Committee saw that we did a few weeks ago. It is the first time we have had consistent baseline data for the industry. For me, what is striking are two things. First is how little data most broadcasters routinely collect in terms of the make-up of their workforces, and I guess secondly those who do collect their data, there were some very challenging statistics there in terms of representation, whether it is senior women or people from ethnic minorities and so on. I think for all of us in the industry it is a bit of wake-up call.

As the regulator, we are great believers that having the data and transparency is incredibly powerful. We have the same for Ofcom. We have been publishing our data on equal pay audits for a number of years. I think broadcast chiefs now have the data and the wherewithal to tackle some of those issues. There is some good practice. I am sure the Committee is familiar with Channel 4's year of the disabled and some of the work of the BBC on the back of our report is now moving to CV blind recruitment. If the question is is there more to do, absolutely, there is a huge amount to do.

Q2 Chair: What do you think is the biggest challenge the broadcasters face if



we are to see substantial progress being made?

Sharon White: I think change only comes from the top, so the key priority is for the broadcast chiefs right across the board to take this within their boardrooms as a priority issue and then to put the plans in place. We no longer have the excuse that we do not have the data. We know now what the gap is between where we are and where the aspiration is. Tony Hall has taken up the mantle of this, but I think for the BBC, as the UK's national broadcaster, publicly funded, it would be great to see them in a position leading the pack. Also, to be frank, as the regulator, we are also keen to make more progress. Our BBC team is now 60% female, but there is more for us to do.

Q3 **Chair:** You said at Cambridge that you felt that all broadcasters should be required in law to share information with you, with Ofcom, on diversity. Do you feel you need more powers? Or do you feel that, as the issuer of the licences, Ofcom has the authority it needs?

Sharon White: The way our powers are set at the moment, we have statutory power to require information on gender, ethnicity and disability. What we are essentially asking the broadcasters to do on a voluntary basis is to provide us with data across the board—sexual orientation, social class—which I think is a big issue. We have written to the Secretary of State asking her to change our powers so that we can do that routinely and on a required basis. My guess is on the back of this report, a number of broadcasters will, off their own back, want to provide more data, but we would love to be in the position where we have the powers to require data so that we have a fuller and more comprehensive picture over time.

Q4 **Chair:** Has the Secretary of State promised you a response on that request?

Sharon White: I have not had it yet, but I think you will have seen from the Secretary of State's own speech at the RTS that this is an area that is I think very close to her heart.

Q5 **Chair:** Absolutely. Do you feel that there should be a line item of consideration when broadcasting licences are issued or renewed as to how much progress the broadcaster is making against these measures?

Sharon White: I do. Again, I think you will know as a condition of issuing the licence, broadcasters have an obligation to think about diversity. That is important, not just because if you are in a creative industry, you get the buzz of more ideas and better programming by having a range of voices and diversity of thinking in the room and also, to be frank, as the UK becomes more diverse itself, there is a risk that broadcasters miss out on the opportunities of a number of audiences who feel that they are not authentically portrayed at the moment. Absolutely, it is an area that we are putting more emphasis on. We have taken some enforcement action even this year using the powers we have, where we



HOUSE OF COMMONS

had 57 broadcasters who did not provide us any data at all. That is not acceptable.

Q6 Chair: There is diversity within the workforce. However, in terms of output and programming, do you feel that broadcasters make enough effort to make sure that the vision of Britain they represent in their programmes is reflective of the country as it is?

Sharon White: There is a gap. We have done a lot of research over the last few years, not least in the context of the BBC, asking audiences in different groups up and down the country, different nations of the UK, different minority groups, young people, older people, "Do you feel that you see people like you and stories like yours represented onscreen?" What you tend to find is that younger people, older women, some ethnic minority groups do not feel that they are seeing their stories told. I am a glass half-full person: I think for the industry it is an opportunity to reach new audiences, who at the moment do not feel particularly some of the public service broadcasters are producing programmes designed for them.

Q7 Chair: Do you feel that with younger audiences in particular that may account for a drift of younger viewers away from mainstream television to niche channels, YouTube channels, where they see people like them talking about things that they are interested in?

Sharon White: That is right. I think it is a combination. I think it is both the technology, which means young people have not grown up with switching on the TV at 6.45 pm on a Saturday night and watching "Strictly". My kids still point to the TV screen and cannot understand why they cannot pause. It is a completely different technological world, but it is also the fact that through social networks and YouTube, they can find programmes that are absolutely targeted at their niche interests. Over 11 to 12 years, I think this is probably the biggest strategic issue for the BBC. How does it continue to keep a bridge across the whole of the UK when young people do not see themselves reflected on traditional TV in quite the same way as 10, 15 years ago?

Q8 Chair: Just to conclude this for me, would it be fair to say you feel that more progress needs to be made on diversity as it is represented onscreen as opposed to where it is in the workforce at the moment?

Sharon White: You will have seen from the operating licence of the BBC that we have focused on onscreen targets because in a sense that is where the closest relationship with the audience is. We also think that every broadcaster ought to have workforce targets and that is something we have called for. Some have, some have not. The particular issue when it comes to the BBC and the debate obviously over the summer as to whether the regulator, rather than the BBC board, should set workforce targets is something that we have been looking at. But the question for us, I do not run the BBC's HR department and I am not responsible for the hiring and firing of staff, but absolutely, the BBC and all the other



HOUSE OF COMMONS

broadcasters, in our view, ought to have clear diversity workforce targets.

Chair: We have an evidence session with the BBC on 7 November, so I am sure this will be a topic we will return to with them and also Channel 4 later this month. We have a quick question from Julian Knight on this.

Q9 **Julian Knight:** Very quickly on the point that you made, I am glad that you mentioned older women in the BBC. I used to work there and I used to have a constant conversation with women that I worked with who were basically in fear that their careers were over at 40, 45. In that respect, I just wanted to ask you, do you think that the said targeting should also include older women onscreen and off-screen?

Sharon White: Yes, I think the BBC should have—and indeed, they do have—workforce targets, but also onscreen targets. In fact, some of proposals in March go further than that, because obviously there is the whole issue about BBC Studios and the fact that the BBC is increasingly commissioning with independent broadcasters. We have also said that when the BBC commissions with an independent company, before they make the commission, they need to be satisfied that that production company onscreen and off-screen has clear targets. That code they will have to agree with Ofcom and we will need to be satisfied.

On your point about older women, I have to say one of the key statistics that was striking to me in our report is that broadcasters routinely hire more older men than older women and routinely hire more younger women than younger men. That says something about the way in which women are recruited, but they are not progressing through the organisation.

Chair: I know we are going to have some questions later on the BBC and I am sure this is a topic we will return to as well. Jo Stevens.

Q10 **Jo Stevens:** I have a point on that last piece of evidence, Sharon. At the moment it is persuasion and you have said you do not feel that you should be telling the BBC specifically what to do. How long are you going to give them before you think there should be some regulation?

Sharon White: I think there has been a bit of debate and we probably should have been clear about what exactly we proposed in March. Under the current proposals—obviously it is still being finalised—we are setting some very clear targets and conditions on the BBC. At the moment, they are very much focused on onscreen targets. What we have said to the BBC is, “You need to produce programming that authentically portrays and is diverse for all the nations, regions and communities of the UK”. Indeed, because it is the first time the BBC has had that public purpose, it is the first time that they have had that condition externally set by an independent regulator. We have said, “You have to work harder in terms of the diversity of the production companies that you deal with onscreen and off-screen”.



Q11 Jo Stevens: But if they do not meet those targets, how long are you going to give before you change the approach?

Sharon White: That is an absolutely fair question. We have a very, very robust monitoring framework, very much focused on asking audiences, "Do you think the BBC is doing the right job here or not?" Our first annual monitoring report will be in about a year's time and I think that will be the first opportunity for us all to understand whether what the BBC have said they have done, whether they have lived up to that. Indeed, we have set minima, so we expect the BBC to do more, "Do audiences believe that the BBC are portraying them more effectively?" If there is a gap, then obviously we have discretion and powers to step in to tighten things up further. But a year's time will be the first open report.

Chair: Thank you very much. We may well return to these topics later in the session, but I would now like to bring in Paul Farrelly, who has some questions relating to the Fox/Sky merger.

Q12 Paul Farrelly: Thank you very much. Surprisingly, when we gathered in September, the Secretary of State decided to overrule Ofcom with respect to a reference on broadcasting standards. Sharon, can you describe how you felt about that decision?

Dame Patricia Hodgson: Before Sharon answers the question, can I just remind the Committee that the framework that we now see working through is a very wise framework that Parliament designed for this kind of issue? It is obviously enormously important to the nation as a whole, about competition, about news that is available, about broadcasting standards. The structure requires first of all Ofcom to provide advice within its statutory powers and duties and according to the evidence at its disposal, through the enforcement of its own codes and the evidence of how licensees have behaved in relation to those codes.

Then it is very important that that advice is transparent, which it is—Sharon can take you through the process, as it were, blow by blow—and then the Secretary of State can ask us for more evidence, which indeed she did, again everything published. Then under the Enterprise Act, she has a wider discretion, which is absolutely proper when you think of the strong opinions that are held in this place and elsewhere. She has exercised that discretion and she has referred to the CMA. You may have seen this morning that the CMA have, as it were, played back to her what we have said and the terms of her referral. We continue to be involved, because the Secretary of State can ask us for more evidence and the CMA indeed have an agreement with us for the data that we will supply them with. But Sharon, answer the question.

Paul Farrelly: Thank you, Dame Patricia. I am sure the chief executive can answer my question herself.

Sharon White: How do I feel? I guess it is echoing Patricia's point. We are the stage 1 regulators, so we were asked to provide advice, as you know, to the Secretary of State on the two issues of consideration, media



HOUSE OF COMMONS

plurality and broadcasting standards. As you say, the Secretary of State agreed with our advice that there was evidence that would justify further referral, ie further scrutiny by the CMA on media plurality. She decided to use the discretion that she has statutorily to take a different view, having seen our advice, and indeed having asked and seen further advice through the summer.

From my perspective, it shows the system working in practice, because of the transparency around it. The fact that the Committee, Parliament and the public can see the trail of evidence and the thinking that we went through as a regulator, taking our judgments, as always independent of political influence, but also independent of commercial influence, you can read through our reasoning on both considerations. The Secretary of State has then set out obviously in the House directly her own reasoning for deciding to take our advice on one element, and to use her discretion, as she has, under the Enterprise Act to take a different view under the second consideration. For me, the fact that that is transparent and public, as I say, is an indication that the system is working.

Q13 Paul Farrelly: No hard feelings then about being overruled?

Sharon White: No. As I say, I would not use those words, because we are not the decision-taker. We are the expert independent regulator providing advice to the Secretary of State. The Secretary of State is the ultimate decision-taker. Indeed, at the end of the CMA's process, it is the Secretary of State who will ultimately take the decision based again on the advice of the second stage regulator.

Q14 Paul Farrelly: Just as a matter of process, this is a question I genuinely do not know the answer to, before you issue important documents like this, do they go to the board of Ofcom first before they are issued?

Dame Patricia Hodgson: The structure is that the board is obviously responsible for the direction, the process having been completely focused and robust. We had over 51,000 pieces of evidence. It is not practical for non-executives on the board to read 51,000—

Q15 Paul Farrelly: That was not my question. As a matter of curiosity, does this document go to the Ofcom board before it is formally released?

Dame Patricia Hodgson: The direction of the document goes to the Ofcom board. The detail is a matter for the executive.

Q16 Paul Farrelly: Was the recommendation in the direction that went to the Ofcom board that it not be referred on broadcasting standards?

Dame Patricia Hodgson: Yes. The executive recommended to the Ofcom board that it was their decision.

Q17 Paul Farrelly: That was just genuine curiosity.

I think we all know about lots of things that have happened at Fox. We have had some trouble with the Murdochs, as people have had before I



HOUSE OF COMMONS

was even born. When you were considering this, did you feel that James and Lachlan Murdoch were full and frank in informing Ofcom about the extent of the sexual and racial harassment scandals at Fox and how then they were escalated to the full Fox board?

Sharon White: I am going to make one contextual point before answering your question, Mr Farrelly. My contextual point is simply—and I am sure the Committee is aware—that we are in a judicial process at the moment, so I am going to try to be as helpful as I can this morning without prejudicing some of those procedures. I think the Committee will know that Avaaz has already launched pre-action for a judicial review on “fit and proper” and the Committee will be aware that the CMA process is running, which is taking broadcasting standards.

Regarding the honesty of the evidence, when we gather evidence in a process like a public interest test, in a sense, whether it is a competition case or our market reviews, the basis of the gathering of the information is that if you provide false or inaccurate information to the regulator, it is almost tantamount to a criminal act. In providing the information to Ofcom, the person who is providing the evidence, whether it is the Murdoch Family Trust in this instance or in another case, in providing the response they are doing so knowing that they are essentially breaking—

Q18 **Paul Farrelly:** That was not the question. The question was did you feel that James and Lachlan Murdoch were full and frank?

Sharon White: In gathering evidence from the parties and indeed from the 51,000 pieces of evidence, we take it that in responding to an information request from the regulator, the information that is provided is accurate, because there is a penalty for providing inaccurate information.

Q19 **Paul Farrelly:** I am telling you, if we had taken that view, we would not have produced three reports on phone hacking years ago, where some of the evidence was not full and frank and the co-operation was partial, to say the least.

One of the great concerns here is that many people do not want Fox News. We rely on news to be impartial here. Can you tell me why Ofcom failed to notice Fox’s lack of compliance with UK broadcast standards until this year and then accepted a compliance policy that lasted only three months before Fox conveniently, because of this bid, withdrew from the UK?

Sharon White: As I say, I am going to try to be as full as I can. The context here is in looking at the broadcasting standards consideration in the public interest test. Again, I think as the Committee knows, we look at what we call quantitative measures, so we look at the compliance record of the parties, so that is Fox News, but also all the Fox channels, as well as Sky, and we do so looking both domestically, but also internationally. In making that review, we found—and it was a point of significant concern to us—that Fox News had not put in place adequate compliance processes.



HOUSE OF COMMONS

Now, alongside that, the Broadcasting Code that we apply to all channels that we licence in the UK, so that includes Fox News, which again the Committee knows is a piped channel from the US, we have, using our normal, robust, effective processes been applying the Broadcasting Code. There have been a number of occasions, for example, as you will know and as we have reported, where we have sanctioned or where there has been a breach in the code. But yes, it was a concern to us that the compliance processes were inadequate, then on the back of us finding that inadequacy, new satisfactory compliance processes were put in place.

Q20 Paul Farrelly: I do not want to take all the Committee's time, because lots of people have questions, but there is a separate strand of governance that I do want to explore. The public interest test document here makes fleeting reference to "past misdemeanours" at what was News Group Newspapers and News International. It mentions Leveson, breaches of the Editors' Code since 2014, and the fact that the Secretary of State asked you to consider phone hacking and illegal activities, which you did under the separate fit and proper test. Could you summarise what evidence you considered and what conclusion you reached as they affected your view of corporate governance within the Murdoch empire?

Sharon White: Again, I can provide an answer in terms of the approach, which also allows me not to—

Paul Farrelly: Just very briefly.

Sharon White: Yes. The approach, as you say, in the fit and proper assessment, is that we essentially look at two components. It is important for the Committee to know there is quite a high threshold for fit and proper, because essentially the penalty for being found unfit and improper is the immediate revocation of licences. We look at whether there has been egregious, ongoing, systematic poor compliance with broadcasting standards over a period of time. Then as you alluded to, Mr Farrelly, we also look at whether there has been, outside the broadcasting arena, relevant poor behaviour that can then be traced through to a concern in the broadcasting arena about fitness and propriety. It was in that context, the second context, ie behaviour outside, not directly related to the broadcasting arena but that could affect it, that we looked at both corporate governance issues in Fox News and we reviewed the evidence that we looked at in 2012 in the context of phone hacking.

Q21 Paul Farrelly: Let me ask you a specific question, because you say you take Sky, Fox and News Corporation together, because they are all part of the same empire. What did you make in your review of the reappointment of Rebekah Brooks as chief executive of News UK?

Sharon White: You will see from the fit and proper assessment. Again, I come back to the point about issues of corporate governance, of which this was a piece of evidence that was brought to our attention, as to



HOUSE OF COMMONS

whether this was a weakness of corporate governance in News Corp that we would then trace through to whether Sky would continue to be a fit and proper broadcaster. As you will again see from the report, because it is set out clearly, I hope, we did not find a particular concern that would have caused us to believe that Sky News particularly, but Sky as a broadcaster, post-transaction—so from 39% to 100%—would not be a fit and proper broadcaster.

- Q22 **Paul Farrelly:** You see, for many people, while seven years on, Fox is trying to take over Sky again, Rebekah Brooks is back running the newspapers and it does not seem as if much has changed except the newspapers being conveniently hived off and *News of the World* has been replaced by *The Sun on Sunday*. It is just business as usual. But that is not the only reason I am asking, because these people tend to move around, Rupert Murdoch's favourites tend to move around. His son, James, has been in various roles, and Les Hinton. Now, Rebekah Brooks was acquitted of conspiracy charges and of direct involvement in phone hacking, but if you read the transcripts of her criminal trial evidence, it has plenty to say about what she knew, when she knew it and what the judge called her role in damage limitation in the interests of the company. I think we have some issues outstanding here with evidence that she gave to us previously, which we will revisit.

Given that she is back in harness and people move around and News Corporation went through all that and said it had transformed its governance, has Ofcom taken the view, notwithstanding that everything is history, of no relevance going forward, that the stable has been sort of cleaned, even though some of the hired stablehands are back in place?

Sharon White: Mr Farrelly, all I can say is to try to explain and elaborate on the approach that we have taken, which is that in the round, we looked at all the corporate governance issues. As you will have seen from the report, particularly for Fox News we found some extremely disturbing and serious behaviour. We revisited the corporate governance issues, as you have detailed. But the consideration for us as a regulator, with the fitness and propriety of a company to hold a broadcast licence, is that we would need to demonstrate, particularly taking into account issues around freedom of expression and choice for audiences, whether those corporate governance issues that you have set out, and again from New York, were sufficiently deleterious that when you weave them into a broadcasting arena that that would justify the withdrawing of the licences.

Our judgment was that the behaviour, as I say, particularly at this time as we were looking at Fox News, was extremely serious and disturbing. We found significant corporate governance failures, but it was also our judgment that you could not, within a broadcasting arena, on a reasonable basis, take the view that Sky would not continue to be a fit and proper broadcaster. It is an ongoing duty.

- Q23 **Paul Farrelly:** I will wrap up now, but this is all about corporate



HOUSE OF COMMONS

governance. Given the history of the Murdochs, it is about what they do rather than what they say, which clearly affects any undertakings, and they have given undertakings in the past. Now, last week, in the latest court settlement, News Corporation apologised finally and paid damages to Ian Hurst, who was a former Army intelligence officer whose computer was hacked by a computer expert called Philip Smith, acting on the instructions of a private investigator, Jonathan Rees, who was acting for *News of the World*. Those are historic events, but the crucial thing is that the organisation only admitted its role and apologised and paid damages last week, six years after they were revealed, and two years after Rebekah Brooks is once again in harness as chief executive of News UK.

You have said that Ofcom will have a role during the Competition and Markets Authority investigation, so can I ask you, taking again Sky, Fox and News Corporation together, whether, should there be more revelations—because all the court cases have not finished yet—about News Corporation, present or past, or about Rebekah Brooks, that have a bearing on corporate governance and the judgment of the Murdochs, at the end of the day, in appointing these people, will you take into account and give it your advice accordingly?

Sharon White: Two points to say. On fitness and propriety, it is an ongoing duty. Sky has an obligation on an ongoing basis to be fit and proper to hold a broadcasting licence with the UK broadcasting regulator. We will review if there is relevant evidence that would cause us to question fitness and propriety. It is not a one-off decision; it is something that we keep under ongoing review.

I just want to be clear on our role in respect of the CMA's second stage scrutiny over the six-month period. As Patricia has said, the CMA, by law, can ask Ofcom to provide input. Indeed, they have set out, and it has publicly set out, the basis on which they will come to us for further input, entirely on a factual basis. I want to be very clear to the Committee that we are not advisers in the second stage; we stand ready to provide factual briefing to the CMA. That is a role that we will discharge to the best of our ability.

Q24 **Rebecca Pow:** Thank you and welcome, it is very nice to see you here. Very briefly touching on a couple of points that my colleague has raised, obviously Ofcom has highlighted some very serious breaches of the Broadcasting Code, the sexual harassment, and the financial pay-offs hidden on the payroll for the sexual harassment, which I think people would be horrified to hear about. Are you convinced that you have taken this seriously enough, just in a nutshell? Because the Secretary of State has heard what you have said, but she has moved on. Can the public be assured that this has been seriously highlighted enough and dealt with?

Sharon White: Yes. We did a very, very careful detailed consideration. As Patricia has said, we had 51,000 pieces of evidence on the public interest test and another 50,000-something pieces of evidence on fitness and propriety. I am absolutely confident that we did a professional,



HOUSE OF COMMONS

independent, expert job. At the same time, there were pieces of evidence, particularly from the corporate governance issues in Fox News, which we have set out and we have set out publicly, which were extremely disturbing and extremely serious. We certainly found issues of corporate governance failings.

As the regulator, it is really important to be clear our job is then to assess Sky, who currently has a very strong record of compliance on broadcasting, and whether those issues would cause us to believe that Sky would not continue first to have a genuine commitment to broadcasting standards, or indeed continue to be fit and proper to hold a licence. On those two judgments, our view was we thought that Sky would continue genuinely to have a commitment to broadcasting standards. The Secretary of State has the discretion and she has taken a different view, but I am absolutely confident the piece of work we did was independent and properly executed.

Q25 Rebecca Pow: Just out of interest, is any consideration in your overview given to the need for larger global operators to compete with the big players? Is that an influence at all, in that we potentially need smaller organisations to link up to compete in the market? That would not influence you at all?

Sharon White: No. There are other parts of our work where we are looking at market impacts and the impact on competition. For this particular assessment, it was very focused on the two issues, media plurality, where again I think the Committee will know we had concerns that the transaction would lead to a greater political influence that would justify further scrutiny by the CMA, and on broadcasting standards. When the Secretary of State sets out her sort of exam questions to us, they are very specifically on those two considerations. We do not look more broadly at whether for UK plc it is a positive or not to have merging bigger players to compete with the Netflixes of the world and so on.

Q26 Rebecca Pow: Ofcom's assessment was that there is a risk that the transaction would increase the political influence of the Murdoch family, touched on also by my colleague. What do you make of the Secretary's decision to refer the merger to the Competitions and Market Authority? Is this the right step?

Sharon White: On media plurality, we were very clear that we found enough evidence to justify further scrutiny by the CMA, while recognising it is not our decision to make a referral; it is the Secretary of State's. As we discussed earlier in the hearing on broadcasting standards, it was not our advice that there was a risk around genuine broadcasting standards, for some of the reasons we have discussed this morning. The Secretary of State rightly, in a transparent and clear way, has exercised her discretion. As I said earlier, I think that is an indication of the system working well.

Q27 Rebecca Pow: Obviously, as the proceedings are quite lengthy already,



HOUSE OF COMMONS

they could be carrying on for some while. Then we will come back and we will have had the views of two regulators, Ofcom and CMA. How important is it then that the Secretary of State takes the advice of the two regulators?

Sharon White: The Secretary of State has the discretion to take the judgment that she sees fit. From my point of view, what has been important is the advice that we have given has been provided in an expert, robust and evidence-based way and that we have given the advice free of political and commercial interests. In that, I am very satisfied.

Q28 **Brendan O'Hara:** Despite, as you say, there being a considerable number of serious and disturbing events at Fox, Ofcom decided that there would not be a breach of broadcasting standards. Could you, for clarity, talk me through the process of how that decision was reached and the stages it went through before you reached the decision that broadcast standards would not be breached?

Sharon White: On broadcasting standards, the framework that we use is to look at, as I mentioned earlier, quantitative measures, so we look at what the compliance record has been of the parties. We have looked at the compliance of Fox, and we have looked at the compliance of Sky over a period of time. We do that in comparison to similar broadcasters, so the Discoveries and Viacom of the world, who are also international companies who provide feeds into the UK. We also do comparisons internationally, so in a sense there is a very clear and I hope transparent check as to what the compliance records have been over the last five years. It was in doing that piece of work that we were concerned about the lack of a compliance process, which had not been put in place in Fox News.

On corporate governance, whether that is some of the corporate governance issues that we found associated with Fox News, or indeed some of the corporate governance issues around phone hacking and News Corp, the assessment we need to make is whether those corporate governance issues and the fact that they take place outside a broadcasting field, while being disturbing and serious in and of themselves, whether they are likely then to have an impact and weaken Sky's commitment to genuine broadcasting standards, Sky itself having had a very positive record. When we look at this in a fitness and propriety context where, as I say, the question is not whether we are advising the Secretary of State for a further stage review, it is an Ofcom decision as to whether Sky should retain its licences, it is a high threshold because we are also then weighing those questions against freedom of expression, effectively whether we should be withdrawing Sky from the UK audiences, from viewers and from listeners. Is that clear?

Q29 **Brendan O'Hara:** Do you think the parameters in which you were asked to work were wide enough for you to make the decision? Do you think your decision would have been different had the parameters that you



have been asked to work with been widened?

Sharon White: I guess my answer to the question would be that we are the broadcasting regulator. We are not Parliament; we are not an inquiry. For the broadcasting regulator, the question is what those issues, disturbing or serious in and of themselves, mean for the right and effective broadcasting of a particular company? There may be broader issues that the Committee has a concern with, which may be outwith the responsibilities and the duties of the broadcasting regulator. Patricia may want to say more on this.

Dame Patricia Hodgson: It was really what I began by saying, that Parliament, in its wisdom, has made sure that there is a series of processes that start with Ofcom fulfilling its own duties. It would certainly be curious for a regulator to be recast occasionally with a different set of duties or a wider role in society. You are going to get independence and focus on the issues if you keep the regulator limited to its responsibilities, but with the knowledge that issues of pluralism, of the culture of our nation, as served and reflected by licensed broadcast services, do raise issues that clearly members of this Committee feel very strongly about, that clearly are very controversial in the nation as a whole.

It is only right and proper that the Minister then has a discretion that is broader and can take into account some of the issues that you are reaching for. She explores those; she makes her decision available to the House so she can be questioned. She then moves the process to the second regulator, but she still retains discretion at the end of the process. With something as broad ranging in our society and culture as this, surely that must be right and her accountability to this place must be right.

Q30 **Brendan O'Hara:** After your detailed letter of 25 August to the Secretary of State, did you have further discussions with the Secretary of State about the issue of broadcast standards and the decision that Ofcom reached?

Sharon White: We have had no discussions with the Secretary of State at all during this process, since the point we were notified in March. That is very deliberate, because I think the Secretary of States has used the term "quasi-judicial process". On the Ofcom side, I am the decision-taker, with the steering and the input of the board. This is why I say the point about without political influence. It has been a very hermetically sealed process, so we have had no contact at all with the Secretary of State on this.

Dame Patricia Hodgson: Any exchanges or further questions she has had have all been published, as have our responses, so it has all been at that transparency and distance.

Q31 **Brendan O'Hara:** Were you surprised? Why do you think that the Secretary of State decided to send this to the second stage regulator, particularly on the broadcast standards of plurality? You could understand



HOUSE OF COMMONS

going to the CMA, but what powers would the CMA have that the independence of Ofcom does not have to judge on broadcast standards?

Sharon White: The Secretary of State is appearing tomorrow. I think it is a question to ask her.

Q32 **Chair:** Thank you. If I may, just a couple of follow-up questions on this. Dame Patricia, as this is your last appearance in front of the Committee, you keep referring to, "Parliament, in its wisdom" which is not always seen as a compliment. It usually prefaces some sort of great condemnation of the way Parliament works.

Dame Patricia Hodgson: No, I meant it as a compliment.

Q33 **Chair:** Do you feel that a broad level of discretion is appropriate? It inevitably brings politics into the process of deciding something that is very complex and very sensitive. Do you feel that where Ofcom makes a clear recommendation to the Secretary of State, unless the Secretary of State has a very, very compelling and overwhelming reason not to accept it, that the Secretary of State should be broadly bound by the official and independent advice received?

Dame Patricia Hodgson: No, I do not. I do not at all. What I described is a system that I believe that is necessary and appropriate. A regulator must act within the intentions of Parliament and Parliament sketches out what its powers and duties are. In respect of Ofcom, its powers and duties are pretty broad, they are very stretching. To go further, to have some wider responsibility for the public interest more broadly defined than in terms of broadcasting standards I think would not be right. You will describe the responsibilities and the role of this place far better than I, but I believe that this is where wider considerations should be considered, or indeed the Secretary of State could suggest other appropriate mechanisms. But the debate, the wider debate, should be here.

Q34 **Chair:** I appreciate that. The wider debate always will be here, that is unavoidable, but the reason I ask, is there a danger that you get recommendations that are always a little bit, "On the one hand, on the other hand, but on balance we think this"? That can put a Secretary of State in quite a difficult position, because it looks like there may be issues that might warrant further investigation, but on balance you have decided not to.

Dame Patricia Hodgson: That is the fate of the regulator. The regulator fulfils their responsibilities. I am sure you are going to ask more questions about the BBC or about Openreach. The regulator fulfils their responsibilities to the best of their ability with the focus and the duties that Parliament has laid upon them. Quite often in your private life, with your personal views, you might find that frustrating, but my experience over the last six years at Ofcom has been that that is absolutely right, because what it ensures happens in the boardroom is that nobody can or does bring their personal prejudices or opinions to the table. What they



HOUSE OF COMMONS

are doing is interpreting what their duties are and looking for evidence. The fact that Sharon kept referring to evidence, and whether we are talking about the BBC, as I am sure we will come on to, or telecoms or this very difficult issue, that is what we should be doing and it is what we bring to the party.

- Q35 **Chair:** I think external people might look at the process and say there is a very lengthy process involving the independent regulator and calls for evidence as well as consultation with Government and other parties, and then a decision is made, but then the decision is not acted upon as the regulator recommended, and a different course is taken. Some people may look at that and say, "Is there something wrong with the process here or should there be clear advice and should the Ministers be more bound to follow it?"

Dame Patricia Hodgson: No, I think the process is right for the reasons I have given, which is that there are many decisions in this world that are a combination of facts applied in a particular area, as Sharon has outlined with broadcasting standards, but also speak to wider moral issues. Those wider issues are not ones that should be delegated to Ofcom, they are ones that should be taken by the place that is responsible for legislation and for the framework to which everybody in the country has to conform.

- Q36 **Chair:** Can I just ask Sharon White about the consideration over the summer of further representations after the initial decision was made by the Secretary of State over where she felt there were grounds for referral or not? There seemed to be more consideration of broadcasting standards at Fox. Clearly different advice was given on that. Do you feel that those issues should have been considered upfront? Maybe Ofcom did not receive representations initially, I do not know, but most of these issues concerning corporate governance with Fox seem to be based on reasonably historic issues that maybe could have been considered upfront when Ofcom was brought in to look at the merger.

Sharon White: I do not quite see it like that. Particularly the letter of 25 August clarified the advice that we had given, both in the public interest test and fit and proper. I think given that we had predominantly considered the corporate governance issues in fit and proper, then in a sense wove those into the broadcasting standards consideration for the original PIT on 20 June, what the August letter did was essentially clarify or give greater amplification to how the corporate issues then fed into the commitment to genuine broadcasting. For example, yes, there have been some very difficult, challenging issues, but when you put those into a broadcasting arena, we do not believe that they cause a concern that would justify a further reference. Yes, the issues were fully considered in our 20 June advice. I believe the value of the further opportunity to amplify was about clarification. It was not about a change of advice at all.

- Q37 **Chair:** But do you feel it would have been possible to have given greater consideration to those issues earlier in the process?



HOUSE OF COMMONS

Sharon White: I think we considered those absolutely fully at the first stage of the process.

Q38 **Chair:** I think it was certainly felt in the way the Secretary of State presented the information to the House that there was new guidance based on a deeper consideration of issues that maybe could have been considered more fully earlier in the process.

Sharon White: As I say, from our perspective, the August advice was about amplifying and clarifying, and I think this conversation this morning has sort of indicated the value of it, how the corporate governance issues that we had particularly posited in fit and proper in the June advice, and how we had played those into the consideration of broadcasting standards. Our advice remained the same, but we gave greater detail and sort of flushed and fleshed that out, but it was not a change of advice or indeed an expansion of evidence that we had not considered at that first stage.

Q39 **Chair:** You are saying it is not a change of advice, but nevertheless, the Secretary of State changed her position.

Sharon White: Which she has every right to do.

Q40 **Chair:** Yes, and we can ask her about that tomorrow.

One final question on this. For a layman, looking at a very complex merger deal like this, there are some people who would say—certainly people that read *Private Eye*—that effectively Sky is being controlled by the Murdoch Family Trust all the way along the line. Where you have a very complex merger like this, where you have companies that already have controlling stakes in other businesses, how do you go about applying the test on issues like media plurality to an organisation like that, where it is not just a straight takeover of one company by another?

Sharon White: You are absolutely right, it is not going from 0% to 100%, it is going from 39% to 100%, so the first component of our examination on media plurality was exactly that point, is this a change of control or not? Our assessment was that it was a change of control, despite the hiving off of newspapers into a different entity. Otherwise, in a sense, we would not have moved on to stage 2, but we found absolutely there was a change of control that then led through an assessment into a concern about political influence of the bringing of the two together in a possible transaction.

Dame Patricia Hodgson: It is worth saying, if you look at the underlying evidence in the annexes to the original recommendation, that what we were also saying was that this market is moving enormously fast. We have particular measures that we use of engagement of the audiences with services, how influential particular newspapers, channels and so on are. But this is moving at the speed of light, as you talked about earlier, with certainly the younger half of the population switching their news consumption to social media. We saw the possibility of



HOUSE OF COMMONS

concerns, but we felt this requires, commonsensically, further work. It is a difficult judgment because of the moving nature of the market.

Chair: Thank you very much. We are going to move as well our topics and move on to the BBC. If I could bring in Julian Knight.

- Q41 **Julian Knight:** There has been quite a bit of noise of late pertaining to impartiality of the BBC. I think you may have read Nick Robinson's quite interesting article in this respect, very thought provoking. I am given to understand there is currently an internal review of editorial guidelines in the light of your role at Ofcom. Now, as part of this editorial guideline review, there is serious questioning as to the need and nature of impartiality. In short, we may see the BBC, for example, have more strong polemics, like we see on Channel 4, for instance. Where would Ofcom stand if in revamped BBC editorial guidelines we saw impartiality downplayed? Would you welcome or not welcome such a development?

Dame Patricia Hodgson: Can I start? I am sure Sharon will expand. Ofcom has been imposing its own Broadcasting Code on the wider broadcasting world since 2004 and the editorial guidelines at the BBC have been consistent with that code. They may have had certain areas where the BBC would argue they were tougher, but they have been consistent. Now that Ofcom has taken over responsibility for editorial standards and complaints in relation to the BBC, of course the editorial guidelines are required to be consistent with Ofcom's code. The single most important point I would make about this change of responsibility is that in relation to BBC output, the underlying standards and any complaints that are made are now considered by an independent body one step removed and with no interests in any of the internal doings, as it were, of the BBC, independent, objective, and at a distance.

Sharon White: I would add to that, if you look at trusted sources of news, unsurprisingly the BBC is right up there when you look at how viewers think about impartiality, accuracy and trust. Interestingly, Sky News is not very far behind, given our earlier discussion. When we think about the performance framework, so how we are going to hold the BBC to account in terms of distinctiveness, we are putting a much stronger emphasis on news and current affairs and our conditions will be more demanding. Yes, my response to your question would be if there were any concern that the BBC were downplaying the vitality of news and current affairs and if there were any concerns when we do our detailed research of audiences that there was a diminution in the trust and the regard that they hold the BBC News in—very much driven by accuracy, impartiality and breadth—that would be a cause of concern for us.

- Q42 **Julian Knight:** It is interesting you say that. We recently saw the Canary, for instance, which some have suggested is a sort of click-bait fake news website, which is even publishing articles that seem to effectively deliberately and incorrectly target Laura Kuenssberg, on "Question Time". Should the BBC engage or expose such websites?



HOUSE OF COMMONS

Dame Patricia Hodgson: It is an editorial matter for the BBC. The broader point that Sharon made is that we all, whether it is the viewers or the regulator, expect BBC News to address relevant issues of the day with accuracy and impartiality. Obviously, it decides itself what those issues are, but if turned away and failed to engage with key issues, that would pretty soon become apparent. We would certainly, in our accountability processes, want to ask why. But a particular question about a particular issue at a particular time must be for the BBC.

Sharon White: Maybe if I can add, just in terms of the Committee's understanding of our role on social media, the Charter and Agreement gives us a locus in terms of the BBC's website, but what we do not have an overview of, so we do not have any locus on, is the core social media, so blogging and tweeting and so on. It is worth the Committee just having that in mind.

Q43 **Julian Knight:** The reason why I am going down that particular avenue is because effectively it has provided a platform for a publisher, which has certain questions to answer probably about what it publishes and the way in which it goes about things. Obviously we will be reviewing fake news. The BBC is obviously a gold standard, recognised as such. Do you think by giving a platform on a key programme such as that that effectively it is countermanding some of the issues of impartiality? Through trying to reach out, is the danger there effectively that the BBC could also undermine what we see it to be and what it needs to be within the life of our community?

Sharon White: As Patricia says, you would not expect or want us to be commenting on shaping an individual programme, but I think the generic point is this: if over time news and current affairs within the BBC gets to a place where audiences are starting to question the accuracy and impartiality and trust starts to decline in the BBC—and we are coming back to the point about how quickly we are going to monitor—we will see that very, very quickly. We have ongoing news studies. We will be taking a much more forensic look at how news and current affairs are seen by different audiences, particularly different demographic groups and younger people. That is something that will flush through. We then have the ability, looking at the broader question, as to whether there is a need for us to do a more in-depth review.

Dame Patricia Hodgson: In relation to a particular programme, a complaint, when received, would be investigated.

Q44 **Julian Knight:** The impartiality therefore would be right at the centre of their editorial guidelines.

Dame Patricia Hodgson: Absolutely.

Q45 **Julian Knight:** So there should be no downplaying of it?

Dame Patricia Hodgson: No doubt whatsoever.



HOUSE OF COMMONS

Q46 Julian Knight: Now, in terms of sponsorship and sponsorship within the BBC, obviously there is the example of the Chelsea Flower Show, and the questions about whether or not you are going to end up with garden centres. One interesting one is the contract with the NFL, national football—I call it gridiron, and that shows my age, I am afraid. Does this sit well, this potential here with such contracts and deals, that we could have a greater degree of sponsorship on our screens broadcast through the BBC?

Sharon White: It is interesting. I think you know the Broadcasting Standards Code has some very clear guidelines around sponsorship and the commercial side. What is interesting is we have taken on the new role for the BBC. Not only have we had to look at impartiality and accuracy, we are also having to look at how the commercial side plays with the BBC, given it has a very different role and given the public-funded nature of it. It is something that does come under our purview. Then more generally with the competition side of the house, we will have an interest in ensuring that there is a clear line between what is a commercial activity and what is properly, rightly, funded through the licence fee, funded as a public service and ensuring there is not a hidden or an unintended cross-subsidy between the two. This is very much both with the Broadcasting Code, but also for our interest in ensuring that the market is fair and competitive, that is something we can look at.

Q47 Julian Knight: Are you having specific conversations on this particular issue right now pertaining to a particular broadcaster?

Sharon White: The question about commercial sponsorship, we had a very good and constructive conversation with the BBC when we were producing our new Broadcasting Code, a single Broadcasting Code for all the broadcasters, including the BBC, because the BBC is different. Then as we are finalising how we are going to look at the market impact of the BBC, particularly these sort of trading activities, that conversation about what is the right side of the line between commercial and licence fee funded, that is a conversation we are having with the BBC this autumn.

Q48 Julian Knight: One final question, Chair. There has been some talk about the potential for the likes of Amazon, Google and Facebook to buy up Premier League Football rights. Given the controversies over issues such as tax affairs and also in some instances the potential dissemination of fake news, I just wonder what your views are in terms of whether or not that would be potentially a welcome development or something that you would want to question.

Sharon White: I cannot comment on whether it is a good idea for platforms to get into Premier League. It is quite interesting to see that there have already been some baby steps with some of the tennis rights. I think our interest is probably more concerned with the Committee's historic view on fake news. We feel strongly that the platforms, as publishers, have more responsibility to ensure the right content—I do not think it is a question of regulation, which I think has a very fuzzy



HOUSE OF COMMONS

boundary with censorship—and we feel strongly that the platforms ought to be doing more to ensure that their content can be trusted.

Q49 **Julian Knight:** Can I just presume from that, let's say I am watching United versus Liverpool this weekend, I think it is on this weekend—

Sharon White: Not an Arsenal match. Given the season Arsenal is having, it is probably a good thing.

Julian Knight: So I am watching United versus Liverpool this weekend, say on my Facebook, Facebook are broadcasting and in the middle of the broadcast, we suddenly have a link to a story on Facebook, which is what we perceive to be potentially very questionable in its origin and the reasons why it is on Facebook. Is that something that you think that basically can never be acceptable, that before someone like Facebook—or a company like Facebook, Google, Amazon, whatever—have such a powerful tool, they have to get their house in order as far as fake news goes?

Dame Patricia Hodgson: It is important to say that this is a topic that I am sure you will raise with the Secretary of State of tomorrow and she has very strong views on it. Those particular distribution systems are not within Ofcom's responsibility, but as Sharon said, we feel very strongly about the integrity of news in this country and we are totally supportive of steps that need to be taken to improve matters.

Q50 **Simon Hart:** Just on that point, do you have a view on whether social media platforms ought to be redefined as publishers as opposed to platforms? Because in another inquiry I am involved with at the moment, it became very clear that social media platforms step outside what we might consider to have been their responsibilities by simply saying, "We are not a publisher. Whoever puts the material on our platforms, they are the publisher. We are not". It sounds from the conversation you have just had with Julian Knight that you might not be entirely happy with that definition.

Dame Patricia Hodgson: I make two points. First, I repeat that it is not a matter for Ofcom, then shift to my personal view, which is I see this being an issue that is finally being grasped, certainly within the EU, certainly within this country, and to my amazement and interest, being asked in the United States as a result of the Russian potential scandals. My personal view is that they are publishers, but that is only my personal view, it is not an Ofcom view. As I said, Ofcom is simply concerned about the integrity of news and very supportive of the debate on the steps that are being taken.

Q51 **Simon Hart:** I was not planning to ask that question, but it seemed to flow quite naturally from what was being said before.

I did want to raise the question of the way in which the BBC's editorial complaints are handled under your jurisdiction. I am involved in one at the moment as chairman of the Countryside Alliance, so I declare that as



HOUSE OF COMMONS

an interest, but it is quite a good example. Where you have set out the fact that the guidelines are consistent I fully accept, but I was just wondering what you do to ensure that the guidelines are consistently applied, because I would argue that in some circumstances—the one I am involved with, but others too—it is the application of the guidelines that is under question, not the guidelines themselves.

Dame Patricia Hodgson: You are engaged with that complaint with the BBC at the moment, presumably.

Simon Hart: Correct.

Dame Patricia Hodgson: Should you be dissatisfied with the response, you will no doubt refer it to Ofcom.

Q52 **Simon Hart:** Correct, but I do not want to get involved in the nitty-gritty. All I am saying, if there is an issue that is coming to your attention whereby editorial guidelines are not being consistently applied, what happens?

Dame Patricia Hodgson: Yes, but my point is that we would act on the basis of evidence, so that would either be in response to a complaint or because of sufficient build-up of complaints or controversy over time that we felt we should take a step.

Q53 **Simon Hart:** Which would be a general step in relation to the manner in which the BBC dealt with it, rather than the specifics of the individual case?

Dame Patricia Hodgson: It might be, but it would take a very great deal of evidence for us to reach that point, I think. Obviously the sort of things that you are referring to, and there are a whole range of them—I understand absolutely why you are concerned with the one you are concerned about—but I could just list the issues that we think are coming towards us over time. It is very important that those are dealt with on the basis of evidence and not with an instinctive response.

Q54 **Simon Hart:** In the evidence you receive from the general public anyway in relation to these type of issues, is it is something that features regularly, occasionally?

Sharon White: It is interesting. Since we took on regulation of the BBC, there have been about 950, 960 complaints. Interestingly, partly I think as people are getting used to the system, 95% of those have come directly to us rather than go to the BBC first. We have had a few issues about privacy and offence. Probably the single biggest set of issues, about 280, have been around impartiality and accuracy. The thing I would emphasise is that we are only six months in and I think the Committee may want a follow-up session even in six or 12 months' time once the system has had a full year to run through, because I think we are beginning to see just the very, very early stages of where, as Patricia says, we are likely to act as an appeals body.



HOUSE OF COMMONS

Dame Patricia Hodgson: Something that is tangential but important, a partial answer to your question, is that in the last week or so—and Sharon can say more—we made a determination in respect of the BBC requiring data about the number and type of complaints that they receive. It is simply parallel to the way we deal with telecoms. It is very important people in the nation know what the complaints are and what type of complaints. That of course is a basis that feeds into decisions.

Q55 **Simon Hart:** Will you be asking the manner in which those complaints were dealt with and whether they were upheld or rejected as well?

Sharon White: There are a couple of things. Broadly speaking, that. At the moment the other broadcasters produce, I think as the Committee know, fortnightly reporting, which Ofcom pulls together. We have said to the BBC we want to see the same transparency. We think audiences expect the same transparency on their side with some detail about the nature of the complaints, of a similar sort of detail as the other broadcasters.

Q56 **Simon Hart:** It is a bit like complaints against the health service. Unless you know what the outcome was, the number is a bit meaningless.

Sharon White: Yes, exactly.

Q57 **Jo Stevens:** Can I just take you back very briefly to the comments that you have been making about social media? In your RTS speech last month, Sharon, you said you thought Facebook and Google were media organisations, but you did not think they should be regulated. Isn't Ofcom in danger therefore of regulating only a very small part of media and, as we see the growth in social media, will that contract even more?

Sharon White: As Patricia says, the world is moving very quickly. I think this is one of the biggest areas of challenge. Again, probably speaking personally rather than for the organisation, I feel the debate where some people are talking about levelling up—there is a lot of debate in Europe about whether one should level up regulation of the internet to the sort of standards we have in traditional TV—I personally am extremely cautious because I think the boundary between regulations and censorship is a very fine one. Interestingly, traditional TV, despite some of the trends we have talked about this morning, is holding up extremely well, probably better than a number of us thought even five years ago.

But I think that as for the question about how one ensures that the material that one sees on social media is trusted, particularly, I think interestingly, that is what the advertisers are now doing. It is very interesting how commercially we are beginning to see a number of advertisers seeking quality content to advertise beside and starting to draw back where they have concerns about poor quality content or lack of accuracy. It is a very, very complex issue, where it is easier to identify some of the problems about the lack of trust and I think much harder to see this as a very sort of straight regulatory question.



HOUSE OF COMMONS

Q58 **Jo Stevens:** So you definitely do not think Ofcom should have any role at all in it.

Dame Patricia Hodgson: We do not have an evolved position on it, but interestingly, it was one of the sessions that the Board looked at on its annual strategy day last week. We will contribute some thinking and some work. This again is a political decision. It is a matter for Government, as Government considers what their next steps may be. What we would be concerned about, not only for the reasons of free speech, censorship and so on that Sharon outlined, but also in the area that I was referring to earlier, the sheer area of stretch, we may not be the first place to look, whatever conclusions the Government comes to about how this should be dealt with. But however it is dealt with, clearly it would have to complement and gel with it and we would have to look at how it was consistent with our responsibilities. I think that this is an area that will be discussed and thinking will develop in probably quite short order.

Q59 **Chair:** Certainly for the Committee's inquiry on combating fake news, we would be interested in any thoughts Ofcom has on that.

Dame Patricia Hodgson: Yes, thank you.

Chair: That is great.

Q60 **Brendan O'Hara:** Can I take you back to something we talked about briefly? That was the complaints procedure. You said there were 280 complaints that had come in over issues of partiality. I think you are on record previously as saying that you expected your workload to double. Has that been the case? Was that an accurate assessment and are you adequately resourced to face this avalanche?

Sharon White: Thank you so much. I would still emphasise it is early days. I think when we have been to the Committee before, and this is before the broadcaster-first principle was agreed, we were contrasting the 250,000 complaints that the BBC gets and, broadly speaking, 25,000. We had assumed we would be investigating, as the second stage appeals body, about 500 and I think I will have a better idea in about six months' time as to whether we were broadly accurate or not.

Regarding our resourcing, and the board will have a view as well, I think so far so pretty good. We had about £6.5 million posited from the DCMS. We have underspent; we think we are going to spend about £5.9 million, just under £6 million, of that in the first year. We have hired about 48 people, which is broadly in line with the numbers we talked to the Committee about last time round. Just over half of those are external hires complementing some people that we have brought into roles internally and backfilled. It is a big job and we will only really know 12 months, 18 months in whether our predictions on workloads have been broadly in line with our resourcing. So far, as chief executive I am confident we are properly resourced.



- Q61** **Brendan O'Hara:** I know from my personal experience that BBC Scotland suffered a diminishing in public trust after our particularly bruising independence referendum. I was, therefore, interested to hear what you were saying about the importance of the nations of the United Kingdom and the role that they play. I was reading that you propose to put in place a programme of annual audience research in Scotland to robustly make transparent what is going on. Can you tell me how that is going? How would you quantify that and, going back to Jo's point earlier, what sanctions regime is possibly available to you if this is not met?

Sharon White: We have done some work ahead of taking on the BBC responsibilities, which is the audience research, and it has found that people in the nations and regions but also other communities as I have mentioned, older people and so on, do not feel that their needs are being served as well as some other communities. So, we start from a place where there is a gap.

With the conditions that we are currently proposing and imposing on the BBC, we are planning to be more demanding of the BBC in terms of the nations and regions, and that partly reflects the heightened public purposes. The current proposals are that spend across the nations should be broadly in line per head of population as compared England as much as Scotland, Wales and Northern Ireland, and that feels very important.

Where we have set a quantified target, in a sense that is easier to measure the gap, but we will as part of the monitoring—I think this point about being very focused on audiences, it will be the first time an external body has measured the BBC's performance, setting our own measures, our own metrics, rooted in the audiences. If we find in 12 months' time or 18 months' time that audiences in Scotland are saying, "The BBC is not delivering for us", then we will absolutely look at how we step in.

- Q62** **Brendan O'Hara:** Will that be quantifiable through that audience research alone?

Dame Patricia Hodgson: Speaking with more years' experience of monitoring trust in broadcasting than I would own up to, I know that it is the most important measure that you can have but I also know how it moves. As you say, you can get a controversy—it could be a national controversy like the referendum; it could be an issue like Scottish independence—and you will see movements. Beneath that, you need, first of all, long-term trend data but you also need other things like how the audiences actually behave. Do they watch the programmes? What does their appreciation say? Are they enjoying them? It is obviously quite a many-layered business interpreting audience data, but that is what we will have to do because, as you rightly imply, you cannot distil qualitative judgments to a single number.

- Q63** **Giles Watling:** Brendan O'Hara just asked the question I was going to ask, so I shall move quickly on. I would just like to ask the question that



interests me because I was involved many years ago in some discussions on this: the potential regulations to require the BBC to move outside of the London area. You have had discussions with senior figures on the BBC board and I just wondered how that was going. Do you meet any resistance at all?

Sharon White: It is interesting. We have had particularly the question about more demanding conditions on hours of production and I think David Clementi was public on this at the RTS. I think the BBC have been concerned that we are being too demanding in terms of hours of production in the nations and it is an area obviously we are working through. On the other hand, we have also had lots of very positive feedback, not least from the Scottish Government and other nations' representatives, that this is the right direction to move in. We are in the last stages of finalising the conditions, so we are weighing those up. Yes, there has been concern in the BBC that we have gone too far.

Q64 **Giles Watling:** So you are having to flex your muscles gently then?

Sharon White: Gently flexing muscles is a great expression.

Q65 **Julie Elliott:** This year the BBC has come in for some very strong criticism about its position on gender pay, both in terms of its talent, which got all of the headlines, but also when they did the statutory gender pay report this year. In the top quarter of people working at the BBC, only 38% are women, which is quite a worrying number. What assessment has Ofcom made of the gender diversity policy at the BBC? What do you think you as the regulator can do about it?

Sharon White: We do not have a locus on pay issues, although I think all of us would agree that paying people for doing the same job, whatever their gender or ethnicity or background, is important. We have been doing equal pay audits ourselves for years. We will be particularly focused on making sure, first, that there is real transparency on the data. I think it is really easy to underestimate and, indeed, the gender pay audit demonstrates the power of having data and the power of having data in the public domain and how that starts to build trust. We will be very clear with the BBC and with the other broadcasters on an annual basis that there is transparency about how they are moving on diversity onscreen, as I say, in particular because of the relationship with audiences.

We will then be doing this audience research. I cannot overemphasise because it is incredibly important that women, men, ethnic minorities, people from different backgrounds—we all have a stake in the BBC—feel that their stories are told and feel that they are authentically portrayed. We will be calling out and providing that transparency about both what is happening onscreen but also whether audiences feel that they are being well served by different diverse groups.

Q66 **Julie Elliott:** The onscreen issue is one thing and it is something I have spoken about in the Chamber before, having a northern accent. You hear very few northern accents, for instance, on the BBC. In terms of their



HOUSE OF COMMONS

staffing, their staffing seems to be a problem as well. Have you done any assessment of that? What can Ofcom do in that situation bearing in mind you are not the employer? As you said, you are not the HR department.

Sharon White: We can provide the transparency. The report we have just done shows the BBC alongside the other four major UK broadcasters and, indeed, alongside all the broadcasters that we license in the UK. It shows the BBC broadly in the middle of the pack and you would expect the BBC to be leading given its particular status in the UK. We will continue to track that. As I said previously, the question that we have been asked to consider, which I think is quite a hard one for us, is whether Ofcom should set the BBC's own workforce targets. For the reasons I give, I am not the employer. The board does not run the HR department. That is something that we are quite cautious about, but it is something we are going to have to finalise over the next few days. I think the transparency about where the BBC is, what progress it is making, how it stacks up against Channel 4, Channel 5, ITV, Sky and so on, I think is incredibly important because the gender pay data has shown that with transparency you do get action.

Q67 **Chair:** Finally on the BBC, Sharon, you highlighted earlier on that in terms of Ofcom's work on distinctiveness the initial area of focus has been on news and current affairs. I would say that most of the complaints we get about BBC distinctiveness from the Committee are not on news and current affairs but on more general programming, particularly entertainment schedules, a comparison between popular music on Radio 1 versus independent stations as well. When do you feel Ofcom will have the resources in place to start looking at some of these issues?

Sharon White: Patricia may want to say something, too, but just to be clear, although we are focusing on news and current affairs, that is not to the exclusion of a number of other areas, that I think the Committee will be very interested in, and also audiences. News and current affairs, more demanding targets, absolutely. Children's programming, very important, not least given the BBC is now almost the only producer of UK commissions and we are going to be asking them to do more. We are going to be expecting a much higher proportion of UK-originated content, including and especially on the BBC's most popular channels. Then on radio we are looking at how we can set conditions to ensure that there is more clear blue water between the BBC and its comparable commercial rivals in terms of greater focus on new music or new and emerging artists. We are not very far away from publication over the next few days. I hope the Committee will see that in these four, five or six key areas we are more strongly holding the BBC to account on distinctiveness than the previous arrangements.

Q68 **Chair:** We certainly look forward to seeing that. I noticed from the BBC's draft operating framework that there has been a removal of the existing quotas for comedy and drama on Radio 4 and drama on Radio 3. Some might think those are areas that make those stations more distinctive. Why have those quotas been removed?



HOUSE OF COMMONS

Dame Patricia Hodgson: You will see when the first finalised operating licence is published reassuring underpinning quotas that we believe deliver and guarantee distinctiveness. Sharon has suggested some of the areas and also I think should have added endangered species more broadly, arts, music, religion and so on.

The important thing about those quantitative requirements is that they are a basic guarantee. I think you will be reassured that they will broadly be stronger than the inheritance from the Trust, but they must not tip over from being the framework, the underpinning, the guarantee, into a straitjacket that starts to take the scheduling and creative decisions that must be a matter, and under the charter and agreement are a matter, for the BBC. Our framework is complemented by the BBC's annual plan and what it tells us it is going to do with a strategic creative editorial drive, which we expect to improve on what we are actually requiring. You would expect us to focus particularly on areas where the temptation may be to resile a little bit because the BBC is competing with a commercial radio station or because of the shiny floorshows in the evening on the main channels. We feel that the demanding nature of Radio 4 and Radio 3 has been successful for itself and that in the first instance in those areas we can require the BBC to put forward its commitments to which we will hold them. My experience over the years is that the audiences of Radio 3 and Radio 4 do a very good job in keeping those channels distinctive.

Chair: Indeed. We look forward to seeing that work from Ofcom. I am sure it will form part of our discussions with the BBC when they are in front of the Committee. As always, I think we have always believed that there is a middle way between telling the Director-General what to run at 8.00 pm on Saturday evening versus judging the organisation on the totality of its output. There is probably some place in the middle, which gives us a better place to judge the effectiveness of its distinctiveness, if you can say that. I am afraid for today we will probably have to move on to a couple of other topics we want to cover before the end of the session, particularly next on broadband and the delivery of the USO. I know Ian Lucas wants to come in on this.

Q69 **Ian C. Lucas:** Can I just pick up one question on the BBC before I go on to broadband? In Wales we have no BBC local radio and there are no opt-outs for north Wales or, indeed, for west Wales. In north Wales there is a strong sense that we do not have the level of service among my constituents that other areas in England have. For example, there is a BBC Radio Shropshire. If a group of listeners felt that they were not being properly served and could not get an adequate response from the BBC, would that be the type of issue that Ofcom would look at?

Sharon White: We would definitely be interested to hear whether there is an area where you feel underserved. I know we have corresponded before and we have said partly these—

Ian C. Lucas: Yes, I have been doing this for 16 years.



HOUSE OF COMMONS

Sharon White: I know, and partly these are some of the technical issues to do with reception and antennae. Part of wanting to look in quite a granular way at different audiences across the country is exactly to find out if there are gaps.

Q70 **Ian C. Lucas:** Thank you for that. Moving to the very straightforward issue of broadband, in July the Government made an announcement that it was having a £600 million agreement with BT about a universal service obligation. What is your response to that and what is your view on the proposals that the Government and BT are making?

Sharon White: As a matter of principle, as an organisation we are very supportive of a USO. Anything that gets us to a place where every household, every business, has access to decent broadband—I think there are a million and a half premises that are still lacking—is a huge positive. The negotiation or the discussion that is happening on the precise terms of how this is done is a matter between the Government and BT/Openreach. We are not party to those negotiations, although obviously we will watch with interest to see how they conclude.

Q71 **Ian C. Lucas:** It sounds familiar to me in the sense that the BDUK story sounds like this arrangement. One of the issues that arises from this is: is there a danger again of one business having a dominant position and everyone else being squeezed out as did ultimately happen with the BDUK scheme?

Sharon White: It is interesting. The Committee may remember that under the previous Secretary of State we were asked to test the market a couple of years ago precisely on this point to see whether there might be some competition or some choice of providers. At that stage, we were reasonably hopeful because 10 megabits per second would allow you to bring in a mobile operator to do wireless for the last mile. As it turned out, the only interest from our expressions of interest on behalf of the Government was from BT. Because we are a competition authority and we think competition drives investment and drives better choice and lower prices for consumers, it would have been great to have been in a position where there was another operator interested. We looked at that process very carefully and the board saw the results of this, and it was only BT that said, "We are interested in delivering this for the Government".

Q72 **Ian C. Lucas:** So there is no alternative?

Dame Patricia Hodgson: I think it is a matter for Government, and you will have seen strong points of view expressed by other operators in the press.

Q73 **Ian C. Lucas:** How does this arrangement fit with investment in superfast fibre on a national basis? Is it in any sense undermining investment in fibre?



Sharon White: There are two things. Again, Karen Bradley can give you a more recent update tomorrow. I think what the Government are trying to do and where we have been supportive is ensuring that everybody has a decent level of broadband so you can do all the things as a small business or as a family that you need to do. That is the 10 megabits per second.

Where we as an organisation have been very focused on is in a sense the next generation, which is how we ensure that more of the country has some of the fastest speeds, whether that is superfast or, indeed, if you look at countries like Portugal and Spain who have fibre right to the doorstep, who have speeds that only about 2% of the UK has, you can see the universal service obligation as being the foundation. Then what we are trying to do through various means is to encourage more investment in some of the fastest networks. That is why we put so much focus on more space between Openreach and BT so there might be some co-investment between Openreach and another operator. It is one of the reasons why we have put so much emphasis on reusing BT's underground ducts and poles, which we now think could take out 50% of the cost of building a new fibre network. I would see these two things in tandem as a foundation, almost a safety net, and then the faster services, where the UK is, I think, significantly lagging behind, on top.

Q74 **Ian C. Lucas:** But the fibre investors are not very happy with your wholesale local access review. You have had a letter, haven't you, from—

Sharon White: I get lots of letters all the time.

Ian C. Lucas: Well, they say that your proposals will stall fibre infrastructure investment, and it is signed by lots of chief executives.

Sharon White: Lots of people, and I should show you the other letters—

Ian C. Lucas: Well, okay, some companies you might have heard of: Openreach, Virgin Media, Gigaclear, techUK. What is your response to that?

Sharon White: It is worth giving a little bit of background. The particular decision to take it as a proposal at this stage is how much money we allow BT to charge its wholesale customers for superfast broadband. We are balancing keeping enough money in the system to incentivise investment without, to be frank, screwing the consumer. We are taking an approach that we took with superfast broadband, which is we want to allow BT the incentive to invest in these really fast networks, the 100 megabits per second, the stuff that we are lagging behind, but on standard superfast broadband we reckon that BT has more than recouped its investment to the degree that if we did not impose what we call a charge control, ie some cap, BT would make excess profits of another billion pounds. Consumers would be worse off by about another £26. We are trying to balance, as always, how we ensure there is enough ability to flex your pricing, because it is risky for these very fast networks, without essentially ripping off the consumer. Those who depend on the BT



HOUSE OF COMMONS

network obviously like the low prices. Those who are building new networks would like us to put even more money in the system. We are weighing all those letters from a range of chief executives and lots of other comments over the next few months.

Dame Patricia Hodgson: Sharon has had letters from other operators, like Sky and TalkTalk, who say, "You are absolutely right to address the cost for the consumer of superfast" because what we need to do is to build demand, which then translates through to demand for a faster fibre connection. It is a difficult balance, isn't it?

- Q75 **Chair:** On that point, are you not concerned that a USO deal might fall foul of just those same problems there whereby a condition that a USO will be an amount of money, which BT say they need to deliver the completion of the network, that money will be recouped through people's bills, maybe even starting before the rollout itself has started, and that you as the regulator may not have the power to unpick that deal once the Government have agreed to it?

Sharon White: We will see what the nature of the deal is. Our initial estimates suggest—and we do not have absolutely firm numbers—that these are not huge sums of money for the USO in terms of additional prices because the money is spread over the lifetime of the asset, which is about 20 years. In the first instance, we are looking at the first three years of that. We will see. Once the Secretary of State and BT have reached an agreement, we can then take on board only those costs that we deem to be reasonable, so they will be our estimates, not BT's estimates.

- Q76 **Brendan O'Hara:** When you see what is happening in the rest of the world, and you mentioned it yourself, high-speed fibre broadband to the premises across Europe, across the world, did you have discussions with the Government about what I would describe as a positive ambition in going for a USO of 10 megabits per second? Did you encourage anything up towards a minimum of 30, looking at, first, increasing the competition and allowing other operators to feel that it was a viable thing to be part of, and also looking to the future as the nations of the United Kingdom have to address what they are going to be in the future, socially, digitally, economically, and how this will be the backbone of any future economy?

Sharon White: It is very much a matter for Government the choice of speed, and obviously I know in Scotland there is a different view as to whether it is 30 megabits for the whole of the country. I can only come back to at the moment there are a million and a half premises who do not even get 10 megabits per second. I think being in a position where everybody at least has access to a digital life will be a positive. The Secretary of State I am sure will have views tomorrow as to how future proofed the Government plan to make the USO.

- Q77 **Brendan O'Hara:** Given that I represent a constituency where I think the average must be about one megabit, as I say 10 would be a dream



HOUSE OF COMMONS

for my constituents. As an economic driver, surely—well, let us go back to the question. Did you have the conversation with the Government about the 10 megabits being insufficient as a platform on which to build an infrastructure and also to encourage a competitive marketplace? You are, as you said yourself, there to encourage competition.

Sharon White: There are two things. We gave advice and we have been saying for a while that 10 megabits per second as an entry into ensuring that as a family and small business you can pretty much stream what you need to stream and get access to the cloud and so on is adequate. Obviously, things may change over time, but as I said in response to Ms Elliott, it is a foundation stone. On top of that, there are definitely more levers we can use as a regulator, Government also, to try to encourage more investment in much faster, more reliable speeds for more of the country. That is why we have put a great deal of emphasis on fibre to the premise where that is feasible because we are lagging behind countries that we should not be lagging behind.

Q78 **Brendan O'Hara:** Absolutely, and at the risk of repeating it, do you have a view that a USO of 10 gives us a platform on which to compete?

Sharon White: What it does do is bring people who are outside a digital life into a digital life. Now, the decision about what is the right speed and what is the right digital future is very much for the Government, and then we have regulatory levers that we can play a part. But that policy direction, that vision, I think has to be set by the Government, not by the regulator.

Q79 **Brendan O'Hara:** You mentioned that the Scottish Government were going for a USO of 30 megabits per second. Can I ask you what discussions you have had with the Scottish Government about that part of the rollout?

Sharon White: We have had a lot of discussions with Fergus Ewing and I have spent some time, including in Langholm, looking at some interesting Community Broadband Scotland projects, which seem to involve lots of farmers and tractors and going up hills and buying wireless broadband from the internet. We are very closely involved. You may know we have a bigger operation now in Edinburgh, including some of our technology leads. They are working very, very closely with the Scottish Government again as technical advisers in helping to unlock some of the operational challenges where we can.

Q80 **Brendan O'Hara:** Finally, what is Ofcom doing to hold to account broadband providers, of whom there are unfortunately a fair few, who advertise high-speed broadband in the certain knowledge that the premise to which it is being delivered hasn't a snowball's chance in hell of receiving the advertised speeds?

Sharon White: We published on Friday—I do not know if the Committee saw—proposals for a much tougher broadband speeds code because we have been concerned about exactly the same concern. Assuming the



HOUSE OF COMMONS

proposals they announced for consultation and presuming we finalise on something close to them, it will mean that customers get a minimum guaranteed speed. There is much more information about what your speed is going to be at peak time when people actually use their service. If there is a problem, customers will be able to walk away after 30 days without having to pay a penalty. We completely agree and we are trying to take some action to address just that problem.

Q81 Giles Watling: It is so good to have you here because I have had a few complaints over a period of time that other providers outside the auspices of BT sometimes have difficulty getting the service up and running. In 2006, Ofcom entered an agreement with BT undertaking, pursuant to the Enterprise Act 2002, to ensure that rival telecom operators have equality of access to BT. I hear tales that this is not always the case. In fact, there was a case just last month that came to me where somebody was four weeks awaiting connection and was told that because Openreach, a division of BT, is not public facing, therefore pressure has to be applied in another way, and that is you. Are you holding their feet to the fire on this?

Sharon White: Yes, we are through a number of different routes. The undertakings you refer to in 2006 we have now moved on and strengthened those, which is the whole debate about Openreach being more independent from BT, not because we are interested in rearranging the deckchairs but because we think greater independence means that Openreach should be more customer facing. It now has its own board with a majority of NEDs who are independent of BT. We are now setting much tougher quality of service standards with a prospect of fines. You will have seen earlier this year the biggest ever fine we applied to BT, £42 million, because of very significant issues with its provision and its quality of service to businesses rather than to residential customers.

Transparency also matters. We talked about this in relation to the BBC. We have new powers, which we are already applying, to essentially do a league table of quality of service. We did a first report a bit earlier this year comparing quality of service so you can see very clearly where BT sits alongside Sky, Virgin, TalkTalk. We tried to do it in a way that is tractable so the consumers can really understand and then make different purchasing decisions. We are very much, very directly holding Openreach to the fire. To be frank, whether the new reform of Openreach works or not will be contingent on, first, whether we get the new investment, but secondly whether we see over time quality of service starting to improve.

Q82 Giles Watling: Are you satisfied with the direction of travel on this?

Sharon White: I would say early signs are reasonably positive. Interestingly, on this Ethernet, these fast lines to business that have been a huge problem over many years, things are turning round. If you had the chief executive of TalkTalk or Sky here, I think they would say the intention is there and some of the delivery is starting to improve.



HOUSE OF COMMONS

There are other areas that are still lagging behind. I would also say a key test over the next few months is: does Openreach manage to do a co-investment deal with another operator for some of these very fast services? I think that will be a key success criterion as to whether the new model is working in practice.

- Q83 Rebecca Pow:** Just very quickly on that note, if BT under the voluntary approach get the commission, as it were, for the USO, I gather that they will get the money upfront. If it is only a voluntary control mechanism and no regulated approach from Ofcom, how can you be sure what is happening with the money and that it is going towards the rollout and all of those questions?

Sharon White: If there is a voluntary deal, we will then in the normal very careful way we do look and examine in detail what BT claims its cost are and what we believe are appropriate costs to be recovered. We are not waiting for an envelope to arrive and to hand a cheque over. It will be a very, very careful process and we will only allow BT to recover any costs that we deem to be appropriate and reasonable. It will be a robust process.

- Q84 Rebecca Pow:** But they are getting the money before they have to roll out the service, effectively?

Sharon White: Again, the Secretary of State will give more information tomorrow on where their discussions are. If they do have a voluntary deal—

- Q85 Rebecca Pow:** Because there were concerns previously about BT and how they rolled out the broadband system, certainly in Devon and Somerset.

Sharon White: I completely understand, which is why the issue about value for money and why we had desperately hoped there might have been more competition is so important. If there is a voluntary deal, which means that we allow BT to charge a bit more in our regulated prices, it is not an upfront payment. It will be over 2018-2019 through to 2020-2021. We will have a very, very significant due diligence process to ensure that BT only charges the appropriate costs, and then obviously we will monitor in our normal way.

- Q86 Rebecca Pow:** What the public does not want is this endless catch-up trying to check up what BT did, which I feel we have all been through before, if you do not mind my saying so. We do not want a repeat of that situation, which has affected lots of people's lives.

Sharon White: We understand the concern.

Chair: Thank you. I have a final question on telecoms, just on—

Rebecca Pow: Excuse me, I have to register an interest just for the record in a small share of a phone mast. I am sorry about that. I have a big note reminding me.



Q87 Chair: Just on phone masts, I know Ofcom has done a lot of work looking at the real level of coverage of mobile phone signals by operators and whether they are meeting the coverage targets in their licence. I wondered if there is any update you could give the Committee on that work.

Sharon White: Yes. We had hoped to publish an update in the first quarter of this year and you will notice we have not. The reason is not because we have forgotten; it is because the work of ensuring that the data that we are getting from the mobile operators is accurate for the way in which we all use a mobile phone today—the right signal strength, the right smartphones, not brick phones—is taking longer than we had expected. We will not publish the data until we feel absolutely confident that the data can be trusted and reflects the user experience.

Q88 Chair: Do you have a rough idea of when you think that will be?

Sharon White: Our backstop is we have an annual publication, which is “Connected Nations”, which will be November/December. I will not promise, but if we can publish an update before that, I would love to because obviously the obligations are coming through at the end of 2017.

Chair: But if not you think by the end of this year?

Sharon White: Yes. We will definitely have an update in “Connected Nations”, so November/December.

Chair: Okay, thank you very much. Finally, we just want to cover off some questions related to Brexit. It is the final topic we want to cover. Jo Stevens is patiently waiting to come in on this topic

Q89 Jo Stevens: How does the session end without mentioning the “B” word? Sharon, you gave a speech last year at the Institute for Government and you identified access to competitive phone and broadband markets as one of the most important implications. I just have two very quick questions on that. Have you received yet any reassurance from Government that avoiding a decline in consumer choice after Brexit is a negotiating priority for them? Secondly, have you had any assurances from mobile providers that they will not seek to exploit Brexit by reintroducing data roaming charges for British travellers across the EU?

Sharon White: Can I take your second question first? On roaming, if we want to do this EU27/EU28 wide, it will be a point of negotiation. Whether individual mobile operators would decide that there is a commercial interest in them continuing roaming if it is not part of the agreement, it is too early to judge that. Obviously, some companies like Three as part of their business model had already had roaming ahead of the EU action.

On the first point about the protection of consumers, as you say we had set out three tests, consumers, competition and investment, and continued trade links and trade engagement. With Government, we have been engaging with DCMS and DECC’s view and the Treasury I think have been very positive. The biggest issue for our sector is the issue for our



broadcasters, which is the country of origin principle. I think there is absolutely a recognition of its importance. Again, it has to be negotiated because even if the UK decides to continue the principle it has to be accepted by the other 27 countries, so we have to see how that runs through the next few months.

Q90 Jo Stevens: I understand you consider it the priority, and I think quite rightly, but my question is: do you think the Government understand that it is such a priority?

Sharon White: I think they absolutely understand the importance of it. I think what is just unclear is how that then figures and gets prioritised in obviously what is a much bigger negotiation over the next few months.

Q91 Chair: We were told yesterday that the Government are actively preparing a no Brexit scenario for the country. Sorry, a no deal Brexit scenario, not a no Brexit scenario; let me clarify that point, a no Brexit deal scenario. What concerns would you have for the sectors that you oversee if there was no effective agreement? Where would that leave us?

Sharon White: Can I say a couple of things? The question about country of origin principle I think is a big one, and for consumers national roaming I think is a big one. Interestingly for us, the domestic legislation already does not 100% but it broadly matches the European framework. We have been doing a piece of work over the summer—I am afraid our lawyers did not have much of a holiday—essentially going through the gaps between the domestic legislation, the European frameworks and the European directives. Mostly the gaps are technical in nature. There are one or two that I would say are more substantive. Speaking quite parochially, the independence of the regulator is enshrined in an EU directive. That would be a question about how that might get transposed or not transposed if we have no deal.

There are also questions to do with the European Commission, which at the moment has a role in terms of harmonising the telecoms actions of all the regulators across Europe. If we are out with no deal we are assuming that that role just falls away, but there may be a question where we have what are called exceptional remedies; for example, if structural separation comes on to the table again in respect of BT and Openreach, whether one can amend the CMA's role to provide a bit of additional scrutiny. We are probably luckier than many other regulators in that there is a pretty close marriage between the Communications Act and the European framework.

Q92 Chair: There may be a requirement for us to establish Ofcom's independence in UK law through legislation if necessary?

Sharon White: Yes, that would be very welcome.

Q93 Chair: Then on those other areas you have highlighted, presumably, as you say, there might be a working assumption that Ofcom would take on the powers that currently are ultimately exercised by the Commission,



HOUSE OF COMMONS

but that may not be clear at the moment. Is that what you are saying?

Sharon White: It is to be worked through.

Q94 **Paul Farrelly:** We are already seeing very concretely in the financial services sector that certain firms, banks, are taking precautions and relocating some of their operations because of regulatory concerns for the future. That is already affecting jobs and investment in that sector. We have all been lobbied by large broadcasting companies that are based here, principally in London, because of the country of origin principle, who are warning that they may have to take similar steps. Have you seen any such steps already being taken?

Sharon White: I suspect we have had very similar conversations. I think it is clear that there are a number of companies who have contingency plans. We did a temperature check of all our stakeholders, all the companies we regulate, over the last few months to get an up to date picture of their concerns or questions or opportunities from Brexit. At the moment, my sense is that the plans are there and the question, I think a bit like financial services, is just watching to see whether the picture becomes clearer and more certain over the next few months. But some are making contingency plans.

Q95 **Paul Farrelly:** We are aware of that. You have not seen any of those plans translated into action yet?

Sharon White: No, not as yet.

Q96 **Paul Farrelly:** When a Government says it is preparing for a no deal Brexit, in terms of those contingency plans is that likely to make them crystallise sooner rather than later?

Sharon White: I think you would have to ask the broadcasters.

Q97 **Chair:** Thank you very much. Finally, we would like to ask Dame Patricia, as you are stepping down from your role as chair of Ofcom, based on the wide range of topics we have covered today and your experience at Ofcom what do you think should be the priorities for Ofcom as the independent regulator for the future and the priorities for your successor?

Dame Patricia Hodgson: I should say to my successor that it is an enormous privilege because Ofcom has responsibilities in areas that are so important to everybody in the country and because there is a very strong executive that has a very good track record.

I would emphasise one of the points you have just made, which is independence. The reason I am stepping down is I said to the confirmation hearing of this Committee that my own belief was that a chairman should only do one term so there could be no question of any ulterior motives for any decisions that were taken by the board.

Then I would simply say your lodestar is listen to the consumer, and when you listen to the consumer translate that into evidence for what the



HOUSE OF COMMONS

consumer is telling you. When I arrived at Ofcom, we had some splendid data that showed what average broadband speeds were across the country and, therefore, how wonderfully well we were doing at rolling out superfast broadband. What that did not tell you was all the people who were not getting it. We changed the way we published the data to illuminate which decile of the population was getting what, and it did not take long for that to inform the policies of Governments in the nations, for it to translate into a USO commitment from this Government, and to inform our own policies on things like automatic compensation, tightening of quality of service requirements in general conditions.

I think as Sharon and indeed you, Mr Chairman, indicated, the big next issue is mobile phones because we clearly have not yet achieved the clarity of the evidence that supports the enormous frustration that the average user of a mobile phone has. You use it inside your house, not always outside your house. You want to use it on the trains and in your car and I think the data that Sharon has undertaken to make available by the end of the year will underpin the ability of Ofcom to hold to account for their rollout commitments the mobile phone companies. This will be absolutely core to further obligations that may well be required to ensure a good service.

My third point would be one that we have also explored today, which is to get the balance right between encouragements for investment in new infrastructure and replacement of the copper network with fibre, but to do it as far as you possibly can while encouraging competition. Because it is no coincidence that the steps that were taken by our predecessors and by Ofcom at the start of this century for access to BT's networks created services that were supplied by Sky particularly but by others that then created a virtuous circle of driving demand. It benefited BT in the end who, of course, had to come in and offer their own content services. As a result of our digital communications review and our encouragement for competitive access to fibre, we have seen companies beginning to make those commitments. It is that that is making BT move. So, that balance between ensuring the investment is there but do not compromise the competition in the market will be extremely important going forward.

Q98 Chair: Finally from me, do you feel there is a limit to the amount of responsibility Ofcom can reasonably take on? You touched earlier on social media platforms being classified as publishers. I know a lot of publishers would agree with that, but then presumably there is a limit to what Ofcom can regulate.

Dame Patricia Hodgson: Yes, I think there is. You will know that we were cautious about the BBC responsibilities. I have observed that that work has been done to time and well, but it is increasingly stretching Ofcom. There are enormous issues for this Committee. We have touched upon social media. Cybersecurity is the next one. There will have to be solutions that are complementary to Ofcom's responsibilities but have other foci, really.



HOUSE OF COMMONS

Chair: Yes. As I said earlier on, as we get into our combating fake news inquiry I think the Committee will be starting to look at some of these issues in more detail. Paul Farrelly has a final question.

Q99 **Paul Farrelly:** I wanted to mention Bill Emmott, the former editor of *The Economist* and the chair of your content board, but not because I want to end this on any sour note. That seems to be an appointment that was realised to be a misjudgement. He was appointed because he was a respected journalist, non-broadcast, and then was fired because he was a very active journalist. I am not going to ask you to comment on that. Clearly, he was not too happy about his treatment, but one of the things that he did raise in a number of pieces afterwards was a concern about Ofcom's political independence. Frankly, the way Ofcom has operated so far, it is not a concern that resonates with me or, I suspect, any of the Committee, but Ofcom is becoming more important and more powerful and more relevant, particularly with taking on the BBC, so we just have to always keep an eye on the future. This is a question for you, Dame Patricia. To what extent do you think it is important as the Department goes through the process to produce the recommended name to succeed you that your successor is demonstrably independent of any political affiliation?

Dame Patricia Hodgson: I made it very clear from the comments I have made in response to your saying what is the most important thing, and I started with independence. You will forgive me, I obviously cannot comment on the particular case that you raise. There is, as you know, a disagreement going on between Mr Emmott and the Secretary of State, which is the subject of judicial review, so anything—

Paul Farrelly: I am not asking you to comment.

Dame Patricia Hodgson: Anything that I would say I clearly cannot. All I would say in general is that Ofcom not only makes independence its lodestar but it has a code of conduct that it requires members of its board to comply with so that there can be no possible perception that their personal views or activities are influencing decisions that Ofcom makes. That can be quite difficult for individuals, but it is the most important thing we can ensure.

Chair: We will, of course, be holding a pre-appointment hearing with the next chair or the chair elect of Ofcom, so I am sure we will have plenty of questions when that session comes later in the year. I would like to say on behalf of the Committee, Sharon White, Dame Patricia, thank you very much for your evidence this morning.

Dame Patricia Hodgson: Thank you.

Sharon White: Thank you.