

Digital, Culture, Media and Sport Committee

Oral evidence: Pre-appointment hearing for Chair of Ofcom, HC 508

Wednesday 13 December 2017

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Watch the meeting

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

Questions 1-60

Witness

I: Lord Burns, Government's preferred candidate for Chair of Ofcom.

Examination of witnesses

Lord Burns, Government's preferred candidate for Chair of Ofcom.

Q1 **Chair:** Good morning, Lord Burns. Welcome to this pre-appointment hearing session of the Digital, Culture, Media and Sport Select Committee. Since you were last in front of us we have added another bit to our name. Having waved you goodbye from Channel 4, it is nice to see you back again.

Lord Burns: I am very pleased to be back again.

Q2 **Chair:** In her last session in front of the Committee, we asked the current chair, Patricia Hodgson, to reflect on the state of the media landscape and the market. Obviously, one of the big new areas of interest for us is the role of the big tech platforms, as platforms of distribution for news content and media, which sit outside of the normal realm of regulation that Ofcom oversees. What importance do you place on understanding the role and responsibility that these big companies play in our media landscape? How big a part of the work of Ofcom do you think that should be over the next few years?

Lord Burns: I think it is a very big issue. It is becoming more and more difficult to distinguish between broadcasting and what it is that one is capable of watching on the internet. However, in many ways the main issue here is in terms of legislation. It is an issue for Parliament rather than an issue for Ofcom. Ofcom's job is to implement the will of Parliament and to take account of the legislation.

There are some very tricky issues and we see them in the newspaper on a day-by-day basis. For the moment, there is a fixed position between those things that are regulated and those that are not. As one sees greater and greater convergence, it is difficult to believe that there are not going to have to be some subsequent changes, but they are changes that are probably going to have to be done by Governments collectively, but certainly by Parliament. I hope Ofcom will play a part in that in terms of giving advice, but it will then also have to make some adjustments in how it regulates them.

I have been following this issue about platforms versus publishing. There are existing definitions. Indeed, I believe there is a European directive on the question of which companies count as platforms versus publishers. There must be a question of how sustainable that is.

Q3 **Chair:** Do you agree with Patricia Hodgson that they are basically publishers?

Lord Burns: I do not want to take a position on that at this stage. As far as I am concerned, the rules under which we are working, as I



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understand it, are that they are defined as platforms. That is what we are given. It seems to me that there would be an ongoing debate about that but for the moment that is where they are. As I say, I find it difficult to believe that over time there is not going to have to be further examination of this whole distinction. I am very reluctant to, in a sense, second guess what is in the legislation at this point.

Q4 Chair: I am sure if we had asked you when you were Chair of Channel 4 you would have had a different view.

Lord Burns: Well, I have to be cautious. One of the things you obviously appreciate—because you have seen a number of people in this role—is when you are at this position you have an awful lot of work to do to catch up with all aspects of that issue. What I say, as a customer and as a viewer, is it is becoming harder and harder to distinguish between what we have customarily described as broadcasting and what are now described as internet platforms.

Q5 Chair: If you access—as many younger people do increasingly—media through the platforms, so through a platform like Facebook, you can see some content that is regulated by Ofcom and other content that looks very similar that is regulated by nobody.

Lord Burns: You can even see the same content. Since I was at Channel 4 I became a great fan of “The Big Bang Theory”. I watched that on Catch Up on the All 4 player, but I also notice that it is there on Netflix, all of the history and all of the episodes. One of them is subject to one set of rules and the other is not. As it happens, I do not think that is a particularly controversial programme but, increasingly, one is certainly going to see drama series that are available on players that are subject to regulation and platforms that are not.

Q6 Chair: Whatever label you use, the question is how responsible the platforms should be for the content that is distributed to their users.

Lord Burns: Yes. One hopes that on issues such as accuracy, privacy, taste and decency they will ultimately all be subject to the same laws. I don’t see why they should not be. Of course, some are more complicated than others because of the international dimension. If people are accessing material that is coming from overseas, that is more difficult, although I notice that they do not seem to have any difficulty in me watching football on the iPlayer when I am overseas. Obviously, there are means by which people can do it.

This becomes very complicated. I find it difficult to see that it can be done without a degree of international co-operation rather than something that one country can—

Q7 Chair: Although the platforms themselves have different rules for their services in different countries.

Lord Burns: They do.



Chair: They are quite able to divide it up by different countries.

Lord Burns: They can, and we notice their willingness to do this in some circumstances when their commercial interests are at stake. I am sure there is quite a lot of scope to also look at this internally.

My position on this is that basically this has to come through a process of Government, Parliament and Ofcom together. Ofcom's job is then to implement what it is that comes out of that debate. Ofcom cannot set the rules about that. Ofcom has to take the legislation as given, the most important vehicle around which you work.

Q8 **Chair:** Just as a principle and how you see it potentially coming into this job—

Lord Burns: I see that these challenges are going to get greater and greater and the tensions will mount. I do not see how we can avoid giving this subject increasing attention, because people will be confused about what it is and why it is that certain things are happening. It would be nice to think that the combination of the law and the commercial pressures, and indeed the general pressures upon the platforms, will lead to them being rather more nimble about all of this than they have been so far.

Q9 **Chair:** The growing pressure—just so I am clear from what you have said—would be growing pressure to regard the platforms as having an increased level of responsibility than they currently have for the content that they distribute?

Lord Burns: Yes. When you say what position would I have taken from Channel 4—and we had this discussion a number of times—from my point of view the Broadcasting Act worked extremely well. It was quite tough, but there was a very clear framework about what it was that you were required to do. If you made mistakes you would be reprimanded for it, and the companies took it very seriously. Ultimately, that has been a good thing for broadcasting and I do not see why other people who are playing in the same pool should not also wish to take the same kind of responsible actions.

Q10 **Chair:** This is the final question from me on this. The Government are currently consulting on their internet safety strategy as part of their Green Paper, which—however you want to describe it—effectively sets out a series of obligations towards protection and safety of users that the platform companies have or should have. I take the view you might consider adding things like disinformation and fake news to that list of obligations as well. Do you think there should be serious consideration of a role for Ofcom, as our media regulator, in effectively monitoring and checking whether the companies are doing all that they should be doing in order to adhere to the standards that we have asked them to meet?

Lord Burns: I don't think it can take this up on a DIY basis. It has to be asked to do it. There has to be a proper framework and there have to be



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obligations upon Ofcom to conduct the regulation with particular objectives. I don't see any reason why, if Parliament wanted Ofcom to do that, that it should not.

- Q11 **Chair:** With you coming in as Chair of Ofcom, you are having your first meeting with the Secretary of State as Chair of Ofcom and this issue comes up. I am interested in your view. It would make a lot of sense for Ofcom to have a role like that.

Lord Burns: I am not quite sure who else would do it. The thing about regulators, I have noticed—and I don't want to get into trouble with the company before I start—is that they are very hesitant about taking on new obligations. There is always the question whether the resources will be there. Is it practical? Without consultation, how is it that you would actually do it? Following the spirit of what you have said, I am sure that if there was a requirement to do this that Ofcom would certainly be a suitable vehicle.

- Q12 **Julie Elliott:** I want to go back to something you said in the argument about the platform versus publisher. You have very deftly sidestepped it by saying you are new. You have not started the job yet, which is fine. Both Sharon White and your predecessor have a very firm view on this issue, which is different. Do you think, when you have had time to get into the job in, say, six months' time, you will be publicly stating a view because you will have had time to come to a conclusion?

Lord Burns: The process by which Ofcom interacts with Government I think is something that one has to be quite cautious about. As I said at the outset, Ofcom's job as I take it is to implement what it is that is in legislation. Legislation is brought forward by Government; Parliament does it.

Julie Elliott: That is not what I am asking, Lord Burns. I am asking—

Lord Burns: Yes, but in the background to that, if there are changes that are needed or Ofcom takes a view that there should be a different way of looking at it, then, of course, it has to have discussions with Government about doing that. At what stage you go public in a position that is not the same as that, when you are having those discussions, is something that has to be judged at the time.

Regulators I do not regard as campaigning organisations. They have to work with Government, to help Government come to the right decision about the proposals it makes to Parliament and then it has to implement those decisions that are taken. Getting involved as a lobby group about changes that should be made I think one has to be quite cautious of until you have had the actual discussions themselves. I am not prepared to commit to saying I will go public on a view about whether it is a platform or a publisher at this point.

- Q13 **Julie Elliott:** Are you prepared to commit to say that you would not?



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Lord Burns: No. Sorry, I did not follow.

Q14 **Julie Elliott:** I have asked if you will have a view in six months, but you are not prepared to commit to say—

Lord Burns: I would expect to be much better informed. If this is a live issue, I would expect that those discussions would be going on with Government.

Julie Elliott: Because it is a very live issue.

Lord Burns: It is a very live issue.

Julie Elliott: This Committee is very concerned about it.

Lord Burns: It is a problem. Whether that is the source of the problem and whether that is the best way of dealing with it is also something that I am not clear about at this point. There may be other ways of handling it simply than worrying about the distinction between whether they come under the heading of a publisher or a platform.

Q15 **Chair:** Do you mean a new legal definition of what they are that is maybe somewhere between the two positions?

Lord Burns: Yes. I can certainly see the full scale of the problem, and that the whole thing should rest on this definition about which some people fall on one side of the line and some people the other does not strike me as a happy position.

Q16 **Giles Watling:** Having read through the report only two questions came to mind. Clearly, you are very well qualified and you have a massive CV that, frankly, puts mine to shame. You have many and diverse interests. It just occurred to me that the first question, I suppose, is how you see the role of Chair developing and expanding as you sit into it. The second one is: it is picked out in the report that this should be a three-day-a-week commitment. Do you see it as that? Do you see it expanding and will you have time?

Lord Burns: All non-executive chairmen jobs that I know of—certainly all those that I have done and all of those that I see in other companies in all industries—are part-time. That does not mean that you are working on Mondays, Wednesdays and Fridays or whatever. You are on parade all the time. Basically, you have to be available seven days a week at any point in that. Once you start going beyond the number of hours that is indicated by, say, around three days a week, there is a real danger that you are then getting involved in activities that are really executive activities.

It is quite difficult to measure in terms of hours, frankly, because what happens with these jobs—and I have done quite a lot of them now—is that there are periods of time when they are very busy and you may be active on a seven-day basis. There will be other periods of time where it goes relatively quiet. I have always regarded the position I should be in



with these jobs as that I should be available seven days a week at quite short notice. People are basically taking an option on your time. Whether it takes three or more depends on the circumstances.

I do not know of any non-executive chairman job that is defined as five days a week. There are executive chairmen who are five days a week, but they are basically combining the role of chief executive and chairman. One of the most important things about this type of board structure is that you have to have quite clear differences of responsibilities between the chairman and the chief executive.

Q17 Giles Watling: Going back to the earlier part of my question, how do you see the role of chairman developing?

Lord Burns: In a sense, I do not quite know what you mean by "developing". The role is as it is. That is as is customarily set out. The most important thing is to be able to run a successful board where the non-executives work alongside the executives, where you have good planning of the agenda and you manage to identify in good time those issues that need to be discussed. You are in a position of offering advice and you can support the executive team.

It is not that over time you take on different responsibilities. The job is there to guide the company, to make sure that the company has a good strategy and that it is implementing it well. As I have said, a very important part of this is how you bridge the roles of the executive team and the non-executives who are on the Board. These are things where, in a sense, you have to be alert to it all the time.

Just returning to your first point, the distinction between part-time and full-time is not really the issue. The issue is whether you are available during the times that you are needed and that you can devote sufficient time to preparation.

In the question you asked whether I have it. Indeed, I do. I would not be this far down the road on this job if I did not. I have arranged with Santander that I will reduce my commitment there to one day a week. I am presently a non-executive member and Chairman of the Oversight Committee of the Office for Budget Responsibility. My term comes to an end in the summer, but I am planning to stand down at the end of December if this goes ahead. Apart from that, I have some musical activities and charity work that I am involved with, and then there is what I do in the House of Lords. I am on the Economic Affairs Committee of the House of Lords. The last 12 months I spent an awful lot of time on trying to find a solution to reducing the size of the House of Lords, and we have a debate next Tuesday. At the moment, I think 90-something people have put their names down to comment on the report. My work on that is more or less at an end, although I may still have to try to negotiate some agreements between the party leaders if it does go ahead.



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There are quite a lot of the things I have been doing in the past 12 months that will be cleared out, and I am certainly in a position to spend the time that is needed on this.

- Q18 **Giles Watling:** That leads me neatly to the final point I would like to make. Do you see any conflicts of interest with your current activities and the role of Chair of Ofcom?

Lord Burns: No. The reason I want to stand down from the OBR at the end of the month rather than in June when my term was due to come to an end is because, of course, Sharon White's husband is the Chairman of the OBR and I thought it led to too many diary possibilities if I was to be Chair of both of them. It was not terribly onerous, but I think it is sensible that I stand down from it beforehand. Otherwise I have no conflict of interest. I did own some shares in BT and Vodafone, which I have disposed of.

- Q19 **Paul Farrelly:** I think Giles is underselling himself. His career credits I read include the phenomenal role of "man in a pub". You also have a phenomenal CV like Giles, but my question is: why did you apply for this job? Do you ever intend to retire?

Lord Burns: In a way, there is an issue. I have become rather picky about the things that I want to do at this stage in my life, but I have always been attracted by jobs that have significant public policy questions, which are interesting, challenging and at times difficult and where good governance I think is an important part of making a success of it. Does it fit with my experience at all? This is one of the very few jobs that are likely to come up that would attract me because it fills all those things.

I have had quite a lot of experience in the broadcasting world. I have been a very active and—I would like to think—intelligent consumer of all the digital and internet issues. I think there is a job for a non-executive chairman in an organisation like this. Above all, I think it has some extraordinarily important policy issues. In fact, some of the most important policy issues of our time are here in this role: sustaining the public service broadcasting system, in the face of all that is happening in the world, and making sure that everybody has the internet connections and telephone services that they need, given the extraordinary speed with which this whole world is developing. It is a very close fit and, of course, I am an economist by background and there is a certain amount of economic regulation here. It is quite a close fit with all of those things. Apart from age, it seems to be natural, one of the very few things that I would have been attracted by. Some of us were born to work, I am afraid.

- Q20 **Paul Farrelly:** I don't want to step on other colleagues' toes. Somebody else may want to come in on this. After insisting yesterday, we were allowed to go into the reading room at the Department for Exiting the European Union in your old alma mater, the Treasury, and, after our



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phones were confiscated, to read these sectoral impact reports. I think the broadcasting one ran to 17 pages and was a statement of the obvious without any commentary on the challenges that are being faced on regulatory convergence, divergence or alignment in the future. What challenges do you think Brexit poses for Ofcom?

Lord Burns: First, as I think I said earlier, a lot of the challenges that are there are international rather than simply being down to our relationship with the EU. Of course, a lot of both broadcasting issues, and indeed communications issues, are things where there has been a high degree of alignment between the UK and Europe. I hope that as much as possible of that is going to be retained. The method of exchanging television programmes is something from which we benefit a great deal. We have only just moved into this world of people being able to roam with their telephones using their domestic providers, and I certainly think that consumers and customers would be quite dismayed if they thought that that was going to move backwards.

Q21 **Christian Matheson:** Lord Burns, did anyone suggest to you that you apply for this job?

Lord Burns: The head hunters called me. I have to say, I get calls from head hunters usually to seek my advice on other people who may be suitable. They alerted me to it, which caused me to look at it. I also had a conversation with the Chief Executive, Sharon White, who reminded me that this was coming up for renewal, but nobody else. Nobody has suggested I should apply for it.

Q22 **Christian Matheson:** You knew Sharon previously?

Lord Burns: Yes. She worked for me in the Treasury. I say "worked for me"; she was in the Treasury when I was in the Treasury and, as I mentioned earlier, I have been working with her husband so I have that relationship. She has consulted me once or twice since I left the Treasury about her own career.

Q23 **Christian Matheson:** Dare I say it might come across as a bit of a cosy appointment then, somebody who knows somebody else appointing their mate?

Lord Burns: Our relationship is not—

Christian Matheson: If you think it is unfair, say so.

Lord Burns: No, it is not remotely as you describe as "cosy". Most of the jobs that I have done I have to say I have known the chief executive who was in place in one way or another. This is a world where, by and large, you have met an awful lot of people.

Q24 **Christian Matheson:** Lord Burns, that is my problem. Like Mr Watling, I have absolutely no doubt as to your intellectual capability or your managerial ability, but it strikes me that there is a small, self-perpetuating group of non-execs—quango men—who go round filling



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different posts and appointing each other to senior positions. It lacks any kind of diversity or breadth of reflection of society.

Lord Burns: I don't think I can be called a "quango man". Since I left the Treasury, I have spent almost all my time working in private sector businesses.

- Q25 **Christian Matheson:** It is a similar thing, isn't it? It is just going from one non-exec job to the other. You have a very impressive CV, but I just wonder if perhaps your appointment would not necessarily reflect the diversity that I know Sharon and your predecessor-to-be as Chair suggest is one of the main roles of Ofcom. You come from a very narrow section of society. By the way, I am a white, middle-class male as well so I have nothing to say. How will you use your position to improve the diversity of Ofcom and its outlook?

Lord Burns: I don't want to spend too long on this but, first, I do not come from a very narrow part of society at all. I have a very broad background, both from where I was born, with the university I went to and the jobs I have done. It just happens that in recent times I have had a lot of requests to do jobs, almost none of which I have applied for but which I have been asked to do. This is a very rare one, I may say, where I did apply to do it. I get asked to do them, and I presume that the fact that I get asked to do others has something to do with how well I have done them.

It would be rare in any walk of life, frankly, that somebody who is going to be chairman of a company would have no knowledge of the field of people who were either existing or who might be chief executives. It would be very rare. That is not an issue of diversity. It seems to me the issues of diversity that really affect Ofcom are to make sure that you have a board that is diverse, which comes from different backgrounds, has different skills, people with different experiences, and that the same should then permeate its way through the organisation at different levels in the organisation. That is very important. It is something that at Channel 4 we spent a lot of time trying to ensure. It can be challenging from time to time because you have to choose the best people for the jobs, but today—in most of the organisations I have been involved in recently—it is something that is very high in terms of the priorities of the senior leadership team, to try to improve diversity.

- Q26 **Christian Matheson:** A final question on that, which is slightly different. Last year, this Committee—or its predecessor committee—undertook quite an extensive inquiry into broadband rollout and the telecoms sector. It struck me at the time that it was very much a sector not at ease with itself. They were all like rats in a sack, fighting other companies. It is one thing for healthy competition, but there seemed to be a very destructive atmosphere across the telecoms sector. How do you assess that and how would you balance out the need for competition with driving forward the sector and growing it in a fashion that benefits consumers?



Lord Burns: Particularly with mobile telephones, it is a relatively new sector and it is very competitive. In fact, it was set up in order to generate competition because of people's unhappiness with the way that fixed line had previously been, with what was virtually a monopoly supplier. Over time these things do tend to even out, but it is very important to me that companies should compete but they should do it in a civilised fashion.

In most industries this happens. If you take the broadcasters, which is a recent area that I was involved with, the broadcasters are very competitive in terms of how they behave, in terms of programming, in terms of scheduling, in terms of the material that they seek to commission, in terms of the advertising that they try to attract. But they have a very easy relationship with each other in terms of non-confrontation. I don't see why that should not be the case. Of course, the telecoms world, you have one sector that is very competitive and then you have another sector, the fixed line, where it is still relatively uncompetitive by nature of the way that it has evolved over time. It does not strike me as at all monolithic.

I am not quite sure which parts of it that you are citing this poor behaviour or this uncomfortable behaviour. There is a certain amount of it in the way that they respond and I sense it. The amount of litigation that I see is slightly surprising. It is quite unusual compared to other walks of life and that probably reflects the extent of the relative costs of litigation versus the amount of money that is at stake on some of these issues. That is not an attractive aspect, whereby all decisions end up being fought out in the court, but I don't know at this stage what the solution to that is. I would like to think there was one because, to have regulators in the court on a regular basis, this is what we customarily associate with the United States.

Chair: Ian, do you have a question on this topic?

Q27 **Ian C. Lucas:** It was about diversity. I have just detected you come from County Durham, like me.

Lord Burns: I do.

Ian C. Lucas: I have just detected the trace of the accent, like Julie as well. In recent years, you have been very much part of the establishment, for want of a better word. I think you are a good thing. I think you have done a great job in public life and you should be proud of the work that you are doing. One of the great drivers in politics at the moment is a feeling right across the board that we need to have more impact in the nations and regions of the UK, on the institutions in the UK. Don't you think it would have been a good thing for a chair to come from, say, Northern Ireland or Scotland or Wales for Ofcom? Don't you think they would bring a different perspective?

Lord Burns: You do not think that coming from Durham is enough?



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Q28 **Ian C. Lucas:** That may have worked in recent years. I moved away from London 30 years ago to North Wales, which is where I represent now, because it gave me a different perspective and a better quality of life. You have a different perspective. You mentioned in your evidence the House of Lords and you have mentioned knowing Sharon White. I do not populate that world because I do not live there.

Lord Burns: I also have a house in Wales. I was Chairman of Welsh Water for 10 years. I went to Wales every month and I travelled around Wales.

Q29 **Ian C. Lucas:** But your perspective, with respect, is from London now, isn't it?

Lord Burns: It is my main home. That is where I do most of my work.

Q30 **Ian C. Lucas:** My point is that that gives you a different perspective to someone who is based in another part of the UK. Don't you think that it would be a good thing at this time, to have somebody with a different perspective for once in the type of job that you are occupying?

Lord Burns: I am not making the choice about who does this job. I am a candidate. I do spend quite a lot of my time on panels, choosing people for jobs, but on this occasion I am on the other side of the table. It is not my choice. As I say, I think you have to work quite hard here to say that I am out of a particular and simple mould. I come from a very complicated mould and background and have been through an enormous variety of experiences.

Q31 **Ian C. Lucas:** I beg to differ with you. I don't think I have to work quite hard because I think that is the way it is coming across. It is coming across that you are an insider to me.

Lord Burns: Inside what?

Q32 **Ian C. Lucas:** Inside the establishment. You know all these people already, who you are going to be dealing with. Your perspective is the same as theirs. That is what you convey to me, I am sorry.

Lord Burns: I am sorry about that.

Q33 **Ian C. Lucas:** The reason it is important is because, for example, Ofcom has just taken a new role with the BBC and Sharon White has said that the nations and regions need to be better served by the BBC. In your role as the Chair, I think it is important that you hold the feet of the BBC to the fire on this. I think it would be better for there to be a Chair with a perspective that was not from London.

Lord Burns: Nobody has ever accused me, in these roles, of not holding people's feet to the fire or being capable of being objective and impartial. It is part of the reason why I get asked to do a number of these roles. I cannot change the fact that I worked in the Treasury for 20 years or that I have been in the House of Lords for the past 18, 19 years. That is the way it is. But in the meantime, as you will see, I have done a huge



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variety of jobs and inquiries, whether it has been to do with football, fox hunting or the BBC.

- Q34 **Ian C. Lucas:** I accept that. None of this is personal because, as I say, I do think you are a good thing but, please, with your perspective from now, this nations and regions thing is a big issue for us.

Lord Burns: I do care about this a great deal. As I say, I have a house in rural Wales because that is where my wife comes from. I still go to the north-east a good deal. My sister has recently died, but my brother still lives there and nephews and nieces. I get around a lot. I know the problems. I particularly know the problems that people have with a lot of these communication issues and their concern that so much television is very much London-centric. The production companies congregate around London. That is one of those aspects of life. I share all your ambitions about nations and regions. I think it is one of those things that are quite high in people's consciousness these days. I had it in Channel 4 just the same.

- Q35 **Brendan O'Hara:** When Sharon White was here a few weeks ago, she said that her vision was to make communications work for everyone. You are taking on a huge job, particularly with the expansion now of Ofcom to regulate the BBC. Can I ask: what have you identified personally as the biggest challenges that you are going to face?

Lord Burns: With which part?

Brendan O'Hara: In terms of the role that you are about to take on, what are the biggest challenges? Because, as I say, when Sharon was here she painted a very broad picture of an organisation that is expanding hugely.

Lord Burns: On the policy side, there are a number of challenges, some of which I mentioned at the outset. Integrating the BBC into Ofcom's arrangements is a very important and challenging issue. This is a fundamental change in the way that the BBC is being operated. It is something that I have been very close to in past life, because I advocated something that was very close to this in a review I did more than 10 years ago about separating the regulatory role from the role of the Board of the BBC. Ofcom now has to make that relationship work well, and it will be challenging because the BBC is not used to having anybody else looking over its shoulder. There are bound to be times when it is concerned that Ofcom is interfering too much, and I am sure that there will be times that Ofcom say the BBC are not providing it with sufficient information in order to do its job. This has to be done successfully and I think that is quite important, because the BBC is a cornerstone of our public service broadcasting system. Then there are the other issues of making sure that that public service broadcasting system is healthy and alive and can cope with all of the threats that are now coming from other suppliers of television programmes.



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On the communications side, on the internet and mobile telephones, it seems to me there has been a lot of progress. People's consumption of data is now growing very rapidly but there are parts of the country where the availability is still terrible. Indeed, there are pockets of the country where you have both internet and mobile telephones that don't work terribly well. I see that a lot in Wales. One of the really key things over the next five years is to get to a position where everybody is able to enjoy the same kinds of services as those who have the best services. Without that, it is going to turn into quite a bitter issue because there is more and more becoming available. It is requiring faster and faster speeds. It is requiring more and more availability. For myself, I think it is very important that we do not have these pockets—they are pockets in a statistical sense, but they never seem to be to the people concerned—of places where performance is very poor. I sense a great deal of dissatisfaction with the customer experience in quite a lot of places. That is a big challenge.

The third one is this challenge that we talked about earlier, which is about the whole issue of standards, taste, decency, accuracy and privacy, where we seem to have at this stage a divergence between the way that we deal with some organisations and others.

Q36 Brendan O'Hara: Are they your strategic priorities? Have you identified them as the strategic priorities for Ofcom?

Lord Burns: Yes. I think they are aligned with what it is that Ofcom is already dealing with, but they are things that are going to be troublesome and all of which need to be successful in the period ahead. I would be very disappointed if, having done this job, the BBC relationship had not settled down well and was not working well, and if there had not been really quite significant progress on those things that people are unhappy with, with regard to both mobile and fixed-line services.

Q37 Brendan O'Hara: What criteria do you think it would be fair to judge your performance as Chair of Ofcom on?

Lord Burns: Those are the issues that I would hope to achieve. I would hope that we would have an organisation that had successfully bedded in the relationship with the BBC and was an effective and respected regulator of the BBC, that the way in which the split is now working is a success. Also, that we have quite significant progress in terms of levelling up the services people receive in different parts of the country, and making those services ever able to improve their performance to keep up with what is happening worldwide in terms of what is needed.

I have been very close to this world in a variety of ways. Over time the demands that are placed upon the system get greater and greater. A computer of five years ago would not be able to compare with a laptop of today, in terms of software or hardware, because the world has moved on. People design systems and software to cope with the best services that are available. If you don't have the best service you are not able to



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use equipment properly and I think that is the source of a lot of people's frustration. You have to be ready for that. Readiness and levelling up of people's service from the BBC I would see as things that will be quite important markers as to whether this is a successful period of not.

- Q38 **Brendan O'Hara:** Do you think there is a problem with the public perception of Ofcom and what it does? If there is a problem how would you set about improving that public perception?

Lord Burns: I am not sure there is a big public problem with it. It seems to me that it is quite a highly respected regulator and that it has done a pretty good job over the years. It has not been in operation that long but it has brought these various things together and we have seen a lot of progress.

There is probably quite a lot where people do not understand or are not fully aware of the framework in which it is operating and what its legal obligations are. It has to get on the front foot on some of that. It has to work with Government and Parliament in order to make some progress on some of these big issues, as well as industry, of course.

- Q39 **Julian Knight:** Lord Burns, where do you think effectively the strain has come from with the BBC and Ofcom relationship? Where do you read that? Where do you think there are any amber lights in terms of warnings and in terms of what needs to happen over the next few months?

Lord Burns: As I said in response to the previous question, I have been on both sides of this regulatory relationship. There is inevitably a degree of tension that is involved, particularly in the early stages when you are trying to build it up. I think it can work though. I was on the receiving end at Channel 4 when Ofcom had oversight of Channel 4's media content performance.

There have already been signs that the BBC will worry about the demands that Ofcom will make in terms of wanting to see data and the data that it wants to see published. There has already been a bit of an exchange on this with regard to complaints handling. One has to get the BBC into a position to realise that if it wants to remove any thought of second guessing that the way you deal with that is by providing full, prompt and detailed information to the regulator so it can be monitored without having to constantly go back.

- Q40 **Julian Knight:** You are talking about disclosure and it is the suspicion that they are sort of sitting on stuff.

Lord Burns: It is disclosure to the regulator, yes. I have learnt in the various occasions when I have been on the regulated side—with respect to banking, water and, indeed, with Channel 4—that you have to co-operate with the regulator with very full disclosure. Indeed, in banking the FSA had what they used to call a close and continuous relationship. The important thing was that you had to disclose to the regulator



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problems as soon as you saw them and that you had to see them as part and parcel of your everyday life.

As far as Ofcom is concerned, it is important that it has a strict line about what it is that is regarded as its role, that it does not get involved in second guessing and it does not get involved in doing the job of the Board of the BBC. The thing that will most likely get it frustrated is if it is not getting the right flow of information. Therefore, the early stages of this is being quite clear about what each is expecting from the other and getting it settled.

To some degree, a company is bound to push back and say, "Why do you want this information? What is it you are trying to do with this information? Are you trying to show this, that and other?"

Q41 **Julian Knight:** Is this pushback coming from the Board or from parts of the BBC, such as newsgathering?

Lord Burns: I don't know the detail of it. However, it has happened in every situation that I have been in that there is some degree of this tension. The important thing is finding a resolution to it.

Q42 **Julian Knight:** What if there is not a resolution? What will you actually do about it?

Lord Burns: There has to be. In the end Ofcom has the power to say what it is it actually wants from the BBC. However, it is very important it does not get pushed by anyone into second guessing the role of the Board. That is the thing people have always worried about in having this distinction between the two things. It has to involve this. I mean there is no secret in the fact that most of the banks would have said, over recent times, they are in a relationship with the financial regulator whereby they are being constantly second guessed. You might say, "They would say that, wouldn't they?" It is a delicate relationship and it is not one you can define. It is one you have to work out. The Chairman's role is quite important in making sure that both sides behave well in this way.

Q43 **Julian Knight:** Of course, one area is impartiality. As I understand it, the BBC is currently doing some internal work in its producer guidelines when it comes to impartiality. There are some elements within the BBC that are potentially looking at a new approach to it, which they would say takes on board a more digital age and more diverse communication. What are your views in terms of any fudging of impartiality by the BBC?

Lord Burns: Of course, it is a very difficult thing to measure. Furthermore, the Act talks about due impartiality which creates another little bit of greyness around the edges.

It is hugely important. One of the distinguishing features of our broadcasting world is the requirement both for accuracy and impartiality. There are issues about whether impartiality means you always have to interview somebody with an opposing view on every issue or whether it is



something you have to protect over time. There is always an issue too about whether something in issue is about impartiality or whether it is about accuracy. Sometimes these things get mixed up because one person's impartiality is sometimes another person's accuracy.

What I would say is that, over the time I have observed it—both when I was doing the BBC Charter review and with Channel 4—is that the performance of major broadcasters has been very good. There are proper investigations made. The people who are doing the work are very conscious of the requirements upon them to do it. Sometimes they get pushed too far. We have all been frustrated by this issue, about how there always has to be somebody on one side and somebody on the other side when, on many issues, of course it is—

- Q44 **Julian Knight:** Sorry to cut across you, Lord Burns. A lot of the internal conversations going on at the BBC around impartiality seem to be whether or not, in view of a more diverse media landscape, they need to have perhaps a more polemic approach by people within the BBC and a more conversational approach. Personally, I think that is fraught with danger. What do you think of that?

Lord Burns: I think it is fraught with danger. I get very nervous when I see broadcast journalists tweeting in the way they do, where they make it perfectly clear what their own personal view is and then they appear on television the following day seeking to arbitrate between two people taking opposing views where they have already expressed their own views in print. I am uncomfortable with that.

Of course, the issue is that, because of social media and because of now receiving so much material from overseas as well that does not have the same requirement for balance, we are getting feeds from elsewhere and they are far from being impartial. That, of course, is encouraging other people to respond in style. People have to be very careful about this. I am firmly of the school that says due impartiality and due accuracy are critical features of our public service broadcasting world that must be protected.

- Q45 **Julian Knight:** I am going to move on to one other area to do with the BBC. I am not going to mention disparate Brexit coverage from the BBC, although I was tempted to.

Lord Burns: I think both sides complain about it, don't they?

Julian Knight: Yes. The other day they were talking about Huntington's disease. They did the whole thing around the idea that basically this would never happen again, due to the fact that we are leaving the EU and that we can never cure another disease. I think that was a new low or a new high as you see it.

I am on your website right now. You are communicating with members of the public in relation to fairness and privacy complaints about the BBC TV or radio channel, or BBC iPlayer. I am putting myself in the shoes of



someone, for example, who would have a complaint regarding the BBC. I have to say, in terms of the parameters you draw for people, they are very, very tight indeed, for example, 20 working days since the broadcast to have the full case put before you. Also, regarding the actual sanctions in place, I know there is quite a serious sanction of potentially firing the staff member in question. It seems to me the only other thing is basically a letter of apology. I am wondering if there is detriment caused to an individual, by an invasion of privacy by the BBC, whether or not Ofcom should get them to make a subsequent and very high-profile on-air apology for said detriment.

Lord Burns: I don't have a detailed view on this at this point. I have been on the receiving end as far as complaints and charges of impartiality and so on are concerned. I have found them generally to have been done well by Ofcom.

The issue about punitive measures and so on is something I cannot comment on at this point. I have been involved in other complaint systems—in banking, water and elsewhere—and having a two-stage process, an appeals process, on these things and then having the right kind of fair and proportionate response when people get it wrong is quite important.

Q46 **Julian Knight:** Is a letter of apology enough, though?

Lord Burns: It depends what the scale of the offence is.

Q47 **Julian Knight:** You may be the last resort for certain individuals. Not everyone has recourse to barristers, with obviously the expense and risks that come with that. A letter of apology seems to be, frankly, a little bit wishy-washy in terms of the actual detriment. It is embarrassing to the producer concerned, of course, and the editorial team.

Lord Burns: I would not underestimate that second point. When I was at Channel 4 cases found against the company were taken very seriously. They were monitored by the Board. If there were areas of the company that were making repeated mistakes this was a very important issue for the company. Don't underestimate just what the effect is of the embarrassment of making mistakes, which is why the journalists in themselves often—as it is the case with newspapers—will go on and on how they did not make a mistake. For the simple reason, that being caught out and to have to say that they have made a mistake, they find it a very unhappy situation. This is an area that obviously is for the future.

Q48 **Julian Knight:** It is something you are going to look at?

Lord Burns: Yes. Put it this way: I regard the complaints system, and the complaints themselves, as a very important part of the data that tells you how the world is responding to what it is that you are doing. Companies in any activity that ignore what customers are saying to them are making a bad mistake. Indeed some of this urgency we have seen,



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about mobile telephone service and so on, would have been kicked off a bit earlier if people had taken more notice of what people's personal experience had actually been, instead of saying, "No, no, no, well, the statistics are very impressive" et cetera. The customers and those things where people complain, of course you have to distinguish between those that are lobbyist-type complaints where they get the same people to write the same letter. I think all regulatory systems have to give very high weight to what customers are saying, and viewers in this case.

Chair: Giles, did you have a quick question on this?

Q49 **Giles Watling:** Yes, a very small but, to me, a very important question having worked at the BBC for many years. The BBC has always striven to be independent and to be seen to be independent. You once said that you regarded the licence fee as an anomaly, I believe. How do you feel that could be replaced or how it should be altered and yet ensure that that present independence is maintained?

Lord Burns: Yes. In fact I gave evidence before this Committee—I think the last time was probably around about 2015—on this issue. My line was that the BBC needed to think about the future and about its future sources of revenue and not think that the licence fee was the end of the story forever, because this was going to become increasingly difficult to defend as people watched more and more television from other sources. Where you have the technical ability to turn people off who will not pay the licence fee, how are you going to justify taking people to court for not doing something that you have the power of correcting yourself? I advocated things, like using the iPlayer conditional upon people being able to demonstrate they had paid a licence fee.

It wasn't a great hostile act at all against the BBC. I argued at the time it was very important that the BBC income should be protected but, really, it should be its own. I sought to warn it that relying upon the Treasury as a source of income was not always the best thing to do in life. I had worked in the Treasury for a long time and I know how that system works.

The BBC got a bit affronted by my remarks at that stage, as if it was somehow or other wanting to harm it but, frankly, my arguments—and I have not been back to check them all—I would like to think that they would be seen as coming from someone who wanted to protect public service broadcasting rather than to handicap it.

Q50 **Jo Stevens:** Ofcom as a regulator has—I think you could describe it—like a quasi-judicial role.

Lord Burns: It does, in some respects.

Q51 **Jo Stevens:** In some ways, yes. I am just picking up on some points that we discussed earlier. The ordinary age of retirement for judges is 70 and there are good reasons for that. Therefore, in view of the fact that this is a quasi-judicial area, what is your view on appointments over the age of



70?

Lord Burns: I am very happy to say that the Chairman does not participate in those things that are—

Q52 **Jo Stevens:** No, but you oversee the governance, don't you?

Lord Burns: Yes, of course. By "participate" I mean actually do the work. I would simply say that there is a great deal of unhappiness that the age of judges has been brought down to 70 because it is making it very difficult to recruit judges.

It is not for me to judge whether I am fit and proper and capable of doing this job at 73. That is for others to choose. I am quite happy that I can take on this responsibility. I have been continuing to do a lot of quite difficult work and surviving that. I thought that, when we were looking at diversity and discrimination, that age discrimination had been abandoned and it has been almost everywhere other than for judges.

Jo Stevens: Yes. I am a former employment lawyer, so you don't need to describe it to me. I am just interested in—

Lord Burns: There is nobody more aware of my age than I am.

Q53 **Jo Stevens:** Yes. You will also be aware that there is criticism of our judiciary because it is a very narrow band of people and I think that retirement age helps break that down, so that is the only reason I raised that.

Lord Burns: I do not want to get into this in great detail—I am quickly out of my depth—but I was at a meeting last week where they were telling me all of the problems that there are of recruiting judges at the moment. This is largely because of changes to the pension scheme and other things, but I would like to leave that alone.

Chair: I think we are done with that.

Lord Burns: Yes, I will leave that alone.

Q54 **Jo Stevens:** I want to move on to something else now. In the light of the Government's failure to take Ofcom's advice about the Sky/Fox merger, do you think the current regulatory regime is fit for purpose?

Lord Burns: I do. There is no requirement that Ministers have to take the advice from regulators, anymore than they have to take the advice of their senior officials. Ministers have to receive the advice and, where the responsibility falls on Ministers, they get advice. They look at that advice and they have to balance it and then they have to make their own mind up. They are not post boxes that receive information and then just tick it off. You would like to think that they would take the advice very seriously.

If the legislation and the process that is laid down says that that decision has to be taken by Ministers, it seems to me that it is right and proper



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that they should, if they think it is right, exercise that judgment, otherwise you have moved to a mechanical system. I don't think that is any discredit to the advice that they have been given. They may have other factors they want to take into account. The question is: was the advice that Ofcom gave to the Minister good advice or could it be criticised? Had it done its job well? I must say it seems to me that it has done. I have no criticism of the job it has done, but neither do I have any criticism, in principle, of the Minister's desire to take a different position.

I spent a lot of my life—and I don't want to go back through this, excuse me—giving advice to Ministers and finding at times that they did not take that advice, but I never felt that it meant that my advice had not been worthwhile. I had given what I thought was the best advice I could and the regulator has on this occasion, but Ministers will take other decisions. I hesitate to say this but in a sense that is why they are there. Otherwise, the decisions—

Q55 Jo Stevens: Yes, but the question I asked was about the regulatory regime. This is a very complex issue. It is about to be made even more complex because of the Disney involvement. Do you think that it is not simply a question of: does the Minister take the advice or not? It is about the regulatory regime. Is it fit for purpose? Is it suitable for the current issues that come before it, the complexity of it? I am interested in what you might change.

Lord Burns: They are very complex and of course this issue has ended up going from Ofcom to the Minister, to Ofcom to the Minister, to the Competition Authorities. I think this can only be interpreted that everyone is taking a great deal of care to ensure that they are following a process that has been laid down, because everyone is very well aware that, if you don't do that, you will end up being subject to judicial review, which is very much about the process that you have followed.

Far from saying that it is not fit for purpose, I would have thought this was an example of, in a sense, where the regime is at work. I am not sure why this should suggest that it is not fit for purpose. There is advice there from highly qualified people and there will be more advice coming from the Competition Authorities.

I am not sure how you would change it. You would surely not want Ofcom to make the final decision about this?

Jo Stevens: No, I am not suggesting that.

Lord Burns: What you are absolutely right about is that there are cases like this that are exceedingly complex. They really push up against it because it is not just a technical matter. Certainly this case is not just a technical matter. This is a case that involves quite a lot of judgment. I think that is all I can say about that.

Q56 Chair: Thank you very much. I have a few short questions just to finish off. First, with regards to Channel 4. From Ofcom's point of view, is there



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any reason why Channel 4 could not be relocated outside of London?

Lord Burns: It turns out—I have asked this question—Ofcom does not have a view about that. It does not see it as falling within its responsibility.

Q57 **Chair:** From an Ofcom point of view, Channel 4 moving does not have any impact on its ability to deliver its remit?

Lord Burns: I do not think Ofcom has studied that. This issue arose after I left Channel 4 and so I have not seen any papers on the subject of what the impact would be. I am not even sure if Ofcom has seen any papers that Channel 4 has produced on this. Certainly, it is taking the position that it is not an issue. I asked about it and—

Q58 **Chair:** Ofcom looked at it and, if the decision is made that it will be moved, even if the Government imposed that on the Channel 4 board, this is not a matter that Ofcom would intervene in?

Lord Burns: No. Well, in a technical sense, I am not sure that the Government can impose this on the Channel 4 board without getting legislation.

Chair: No, it would require legislation.

Lord Burns: It would require legislation. In the recent exchange of letters with Channel 4, of course, it did look at the whole question of the stability of Channel 4, but I don't think in that exercise—I mean I did read it—that it looked at what the consequences would be of a move in terms of whether it would weaken its position.

I am sure the Channel 4 board will only come to an agreement with the Minister if they are satisfied that they can make it work. If not, and the Minister wishes to impose legislation, then that would be an occasion when I presume Channel 4 would have to explain what it believes the impact would be and then we could take a view.

Q59 **Chair:** We keep finding new things for Ofcom to do. In fact we touched on ideas of what Ofcom could do in this session. Obviously in recent years it has had the responsibility of oversight of the postal services, as well as the BBC. Do you worry that Ofcom is too big?

Lord Burns: I said earlier that this is an issue that constantly crops up. In my experience, regulators are always quite nervous about having things imposed upon them, and particularly nervous if they think they are not going to get the resources to deal with it. My impression at this point is that Ofcom has handled these responsibilities pretty well in incorporating them and, indeed, doing them with reductions in expenditure, reductions in numbers of people and the amount of space that it occupies.

There comes a limit but, as long as it is within the same category and providing the resources are there, it is not a large organisation. If I



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compare it with some other regulators, it is true it has a lot of complex issues but I think at the margins it could be stretched. I am not sure that it would welcome it.

Q60 Chair: From the view of the Chair of the Board and the Chief Executive, you have quite a big range of quite diverse, quite complex issues to be on top of and is there a danger that we are stretching people too thinly?

Lord Burns: It is about scale and it is about the extent to which they are similar issues I think. If they are contiguous issues and depending on the scale, it seems to me that is one thing. If you are suddenly required to go into a completely different set of quite complicated issues, of course you then stretch the bandwidth of the senior team who are pulling it all together. I don't see any signs of that kind of strain at this stage, but I am new to this and I have spent two days talking to them about a variety of things and it is very early days to be able to make that judgment.

Chair: That draws our evidence to a close this morning. Thank you very much, Lord Burns. The Committee now needs to go into private session in order to consider our response to the Government. Thank you.