

Digital, Culture, Media and Sport Committee

Oral evidence: Disinformation and 'fake news', HC 363

Wednesday 31 October 2018

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Watch the meeting

Members present: Damian Collins (Chair); Clive Efford; Julie Elliott; Paul Farrelly; Simon Hart; Ian C. Lucas; Brendan O'Hara; Jo Stevens; Giles Watling.

Questions 3781 - 3893

Witnesses

Sharon White, Chief Executive, Ofcom, and Lord Burns, Chair, Ofcom



Examination of witnesses

Sharon White and Lord Burns

Q3781 Chair: Good afternoon. I welcome Lord Burns and Sharon White to this special session of the Select Committee. Today we are combining our annual hearing with Ofcom with Ofcom's response to the issues raised in our Select Committee report on disinformation and fake news. The way we would like to structure the session this afternoon is to deal with most of the issues relating to the disinformation interim report first and then we will come on to discuss and raise questions about other matters relating to Ofcom's work.

Paul Farrelly: As a declaration of interest, as Ofcom is BBC's regulator and there will be questions about the BBC I want to declare, as I did in Salford, that I am currently pursuing a number of complaints against BBC "Newsnight", which are going through the BBC's procedure.

Chair: I have not been notified of any other declarations so we can make a start. I want to start off, Sharon White, by asking you about your speech at the Royal Television Society and in particular where I think for the first time Ofcom was starting to sketch what a content regulatory regime for the internet might look like as opposed to broadcasting. Could you tell us a bit more about that? In particular, do you believe that Ofcom could be, if asked, an effective regulator for not just content online but also the behaviour of social media platforms in the manner in which they serve that content to their customers?

Sharon White: We have read with interest your interim report and one of the recommendations from the Committee was that the current broadcasting code could be a possible template in thinking about content and conduct online. We have tried to look very carefully at where we think the synergies are but also maybe some of the obstacles for a cut and paste broad applicability. It struck us that there are two or three areas that might be applicable online, and obviously all of this is up to the Government and ultimately to Parliament to legislate. The fact that Parliament has set standards, set quite high level objectives, has felt to us very important but also very enduring with key objectives, whether that is around the protection of children or concerns about harm and offence. You can see that reading across to a democratic process about what are the harms that we believe as a society may be prevalent online.

The other thing that is very important in the broadcasting code is that it sets out explicitly the fact that these things adapt over time as concerns about harm adapt and concerns among consumers adapt. It then delegates the job to an independent regulator to work through in practice how those so-called standards objectives are carried forward. There is transparency, the fact that we publish our decisions when we breach, and that is all very open to the public. There is scrutiny of our decisions and there is independence around the judgment.



But at the same time, as you have set out in your report, these are not straightforward matters to think about in an online arena for lots of reasons. It is partly the volume. We get 45,000 complaints a year and the volume of material on the internet is of a completely different order. We deal with complaints in respect of programming done by traditional broadcasters and other providers. The sorts of content online range from tweets to lots of self-generated content and there are the differences among platforms. Reddit is different from Twitter, is different from Facebook, is different from Google. There are some principles that could be generally applicable—parliamentary objectives, transparency, independence—but I don't think you could read across directly how it is taken forward in practice.

On your second question, which is whether Ofcom could take on the job or not, as I said in the speech and we said in the document, we are not seeking any new responsibilities in this area. What is interesting about the debate is that at the moment there is a very broad set of harms being discussed, issues such as mental health, addictive behaviour among teenagers, which are completely outwith our responsibilities. There are some areas, particularly around material that looks very much like a TV programme or very much like video content that we already oversee, where one can start to see some of the synergies a little bit more readily. As you know, it is not a hard and fast rule as it is already because we already regulate, albeit to a lighter degree, programming that is on catch-up services. If Amazon Prime is going to show live premier league or tennis they have to have a licence from Ofcom. We already have some responsibilities online.

It is not a job we are looking for. You can see, hopefully, that there is experience on the TV where we might be useful as the Government and the Committee take forward the debate but there are some areas that are a long distance from our current responsibilities.

Q3782 Chair: Has the Secretary of State asked your opinion about this, about whether this is a role Ofcom can undertake, and asked your view on the principles that could underpin a good system of regulation?

Sharon White: The discussions with the Secretary of State and his officials working on it have been very open and positive. What the Secretary of State said at his last Committee hearing with you is a similar conversation to what we have had directly. He is wanting to start from what are the harms, what is the optionality, and then to look at the question about institutional responsibilities right at the end, not least because there is a lot of regulators—ourselves, the ASA, ICO and others—who are already in this space. We are talking and I am satisfied that the level of engagement has been very open and positive.

Q3783 Chair: One approach could be for the Government, through the Online Harms White Paper, to suggest an approach whereby you designate the content that one considers to be harmful and something that is already illegal and you place a responsibility there on the tech companies to



HOUSE OF COMMONS

remove that content. If Parliament decided that was the approach it wanted to take, do you feel that Ofcom could act as a regulator to oversee whether or not the companies were meeting their obligations?

Sharon White: If the Government and Parliament asked us to take on responsibility for the set of issues around content and conduct that looks quite akin to the broadcasting areas that we have already, we would have to look very carefully at how we could take that forward in a competent way. There are different models. There is one model that is not a million miles away from where we are with the BBC, which is that Ofcom essentially has responsibility for the overall performance framework. The BBC has an initial go, particularly on standards, at trying to deal with as many complaints as possible and Ofcom then comes as a bit of a backstop appeals body. What we would have to look at in those circumstances is how we could competently make a judgment that the companies were fulfilling their duty of care, were fulfilling the community guidelines that they have already set themselves, and that they were doing that not just in a transparent way but in a way that one could compare across platforms. Some aspects of that job feel quite akin to what we are doing already.

There are other aspects that are about data analytics, getting hold of the information from the platforms in a way that is digestible, and then one can put that out to the public in a way that you can judge: is Facebook doing better than Google, is Google doing better than Twitter at the moment? We would have to think through very carefully about how we would have the expertise to do that.

Q3784 **Chair:** When you spoke at the RTS conference I thought you suggested an approach that sounded slightly different from a live approach that already exists in Germany where the German Government have said hate speech is illegal, it is illegal offline, it is illegal online, and the companies are responsible, when they are notified about it, for taking it down. That is quite clear and it seems that there is no leeway. If the company gets it wrong, they face being fined. What you seemed to be suggesting was something more similar to the way that Ofcom regulates broadcasting, which is taken more in the round, not looking for 100% compliance but do they have systems in place that look like they can largely comply.

Sharon White: That is it exactly. As I say, these are ideas that we hope are helpful to the debate but that is it exactly. Rather than looking at it content by content, one approach would be to say do the companies have the systems and the processes and the governance in place with transparency that brings public accountability and accountability to Parliament, that the country could be satisfied of a duty of care or that the harms are being addressed in a consistent and effective manner.

Q3785 **Chair:** What do you think would be an acceptable level of compliance in such a system?



Sharon White: It is the million dollar question. For me the real starting point is—and I know it sounds very prosaic—can we get the data and the information that allows us to put sunshine on this area. In other parts of our work, which we may come on to later, we have been producing data on telecoms companies and how well they are doing with customer service and so on. In some cases, it has taken us four or five years, even where we have statutory information-gathering powers, to get data that we believe is the right quality and the right consistency to put out to the public. I think a starting point for compliance would be the transparency of the data and the systems and the principles that lie behind the algorithms and so on that one can be confident that when one makes that assessment the data is accurate and there is confidence in the information.

Q3786 **Chair:** If Ofcom was asked to do this by Parliament, do you believe that in whatever legislation we pass you would need those statutory powers so that you have the right to go in and gather evidence for your investigations from the tech companies themselves?

Sharon White: It would be absolutely fundamental to have statutory information-gathering powers on a broad area.

Q3787 **Chair:** Do you feel that this is something that Ofcom, if asked to do it, could do jointly with the Information Commissioner where Ofcom may have a bias towards content and ICO is the data policeman or do you feel that there should be one regulator that is responsible for all of it?

Sharon White: It comes back to my question about what the “it” is. If there are issues to do with data and privacy alongside conduct and content, those currently fall between ourselves and the ICO and to some degree the Competition and Markets Authority with whom we have concurrent powers. We are open in the sense that we will aim to work effectively with whatever system. We are not the body that you would think about giving new responsibilities on privacy to. It is not our track record; it is not our area of expertise but it is certainly ICO’s.

Q3788 **Chair:** You could have a split system where ICO continues to do what it does on data protection, data privacy within its remit, and Ofcom effectively deals with other issues related to the performance of the platforms?

Sharon White: That is right. In fact, we are already working very closely with the ICO. Elizabeth and I have set up a new joint steering group just to make sure we do the joint research together. Even within the current statutory framework, we are joined at the hip.

Q3789 **Chair:** One of the debates that we have had throughout the inquiry is whether we should regard social media companies as publishers or platforms. They don’t conform to be publishers in the normal way because even though they design the systems through which content is served, they are not making the content themselves. I am interested in your views on the thrust of the Committee’s recommendation that we



HOUSE OF COMMONS

should regard them as somewhere between the two where they have a limited liability for the content even though they are not the producers of it.

Sharon White: I thought where the Committee came out was very neat because it has become a slightly false distinction, platform or publisher, when the fact is that the platforms do have responsibility, even if they are not the content generator, for what they host on their platforms and what they advertise on the back of.

Q3790 Paul Farrelly: There has traditionally been a clear demarcation between content and advertising in our print and broadcast sectors but that becomes increasingly blurred online. For the benefit of the Committee, could you explain which platforms, which broadcasters are subject to your co-regulatory partnership with the ASA and which are not?

Sharon White: On traditional TV, TV broadcast, political advertising is completely banned, so that is an absolute ban. By law political parties, political entities cannot hold a broadcast licence, cannot run a channel, cannot run a broadcaster. That is separate from party political broadcasts where the provenance is clear and that is subject to rules that we also oversee specific to election times. On the online side, all online advertising, including political advertising, is done by the Advertising Standards Authority and their online responsibilities are not statutory. This is done essentially through a voluntary arrangement. As you know, the ASA is a very different body from Ofcom in that it is essentially a body with the industry. That is the system as it works today.

Q3791 Paul Farrelly: We are going to have the ASA in so these are questions for them in many respects. How far does your remit go on advertising on outside public service broadcasters?

Sharon White: Political advertising or—

Paul Farrelly: No, just general advertising.

Sharon White: There are European rules that we implement, which are around the number of minutes you can advertise for, the number of breaks within programmes. It also gets us into advertising for high fat, sugar and salty foods where we have introduced rules that we oversee. We do have responsibilities for advertising on the broadcast side.

Q3792 Paul Farrelly: But wider than that, beyond the traditional broadcasters, online broadcasters?

Sharon White: We have no responsibilities at all online.

Q3793 Paul Farrelly: If you were to encroach into the space in the way you were describing in Damian's questioning, advertising on social media would fall into that remit to the extent that companies had or did not have effective reporting systems for fraudulent advertising, for example, or where they have potentially committed, like Facebook, to insisting that people flag the origin of political advertising, that those systems are



effective. I don't think they are very effective at the moment from my experiments with them. What are your thoughts on how you might approach the provenance and content of advertising in that sort of role?

Sharon White: The starting point is that one assumes in this world that Parliament has set out that one of its objectives for ensuring that we are safe online is that political advertising is regulated and there is more transparency. It comes to the conversation with the Chairman, which is what are the systems and the processes and the transparency that the companies have put in place, one assumes not to ban political advertising but to make clear the provenance of that advertising and that that provenance as set out and indicated is accurate and providing effective information to users.

Q3794 **Paul Farrelly:** My question was about general advertising, that it is not fraudulent.

A final question on this, because a lot of questions are for the ASA and for Parliament. During the referendum one set of adverts two or three weeks beforehand changed the conversations that I was having and this was replicated across the country. It was the big banner posters, "Turkey (population 76 million) is joining the EU. Vote Leave". It is an advert in a different category from "Britain isn't working" or the pictures of Ed Miliband in Alex Salmond's pocket that led in 2015 to people to ask, "What are you going to do about the Scots maths?" because this was actually not true. We have seen through the cache of adverts from the Vote Leave group that went on Facebook that that was amplified on social media. But of course if you complained, as I did, to the ASA about that set of advertising the response was predictable, "Political advertising is just not part of our remit because politicians have decided to keep it out of our remit". If we are to regulate effectively online, surely the same principles have to apply offline and that brings into question how political advertising generally should be regulated. Do you have any thoughts on that?

Sharon White: I think it is very much a question for Parliament ultimately as you think about what the regime should look like online and whether that then has implications. Broadcast is the area that we have a track record on and there the rules are abundantly clear. It is an issue for Parliament as to whether you want to broaden the rules in print advertising and billboard advertising. That is not something we have any—

Q3795 **Paul Farrelly:** Do you have any thoughts for consistency's sake?

Sharon White: I don't, no.

Q3796 **Chair:** Can I follow up on one of Paul's questions to clarify? Ofcom's role in broadcast advertising is to make sure that the stations are complying with the code. Do you think that we should treat YouTube as an advertising broadcast channel?

Sharon White: With the same advertising rules applied?



HOUSE OF COMMONS

Chair: The reason I ask is that the Government are consulting on new advertising rules on high sugar, fat, salt foods based on a watershed. The watershed does not exist online. Should there be a role for someone to oversee how YouTube goes about enforcing those rules?

Sharon White: Terry may want to say more. In this context advertising is one of a number of areas where there are big questions about the level playing field between particularly public service broadcasters and their online competitors. Advertising's provenance, which is an area we worry about a lot, is another area. We have been watching the debate very closely and we have spoken to the commercial PSBs, but if there are tighter rules to be applied that we would enforce on broadcast television, surely that makes sense to apply where most children are now viewing. All our data suggests that if you ask children who do they recognise between YouTube, the BBC and other channels, YouTube is their home. There is certainly an argument that stricter advertising in that context, which is about protecting children, to be effective needs to be where children are viewing.

Q3797 **Chair:** Otherwise we could bring advertising restrictions in for broadcast television, which is media that on the whole children don't watch, and the consequence would be that the advertisers will just move that spend on to online platforms where the young people are. Perversely, if you believe there is a problem, it could make it worse rather than better.

Sharon White: Agreed.

Lord Burns: This must be a case where the platforms do have a lot of responsibility. After all, they are the people who are carrying the adverts and they are the people who are benefiting from the adverts. Surely it is their responsibility to make it absolutely clear what are adverts and what are not adverts and where they are coming from and who is responsible for them. If there is a code, if there are requirements, it is a matter of enforcement, as Sharon mentioned earlier, in ensuring that people have the systems to be able to deal with that and backup systems to check on those occasions when it goes wrong and find out why it has gone wrong.

Q3798 **Ian C. Lucas:** This is clearly an area where online you need to have a role in supervising the regulation, say on fatty foods or sugar content, all the things that are live issues at the present time. Your remit needs to be extended into that area.

Sharon White: I would flip it by saying that if Parliament decides that there needs to be a level playing field with the same rules applicable on advertising online as there are currently on the traditional broadcast TV, we would have to have our role extended by legislation.

Q3799 **Ian C. Lucas:** But in a world where I sit on my sofa and view the internet on the same television on a different switch to the TV—and we are coming round to the same issue again—it makes no sense not to have the same rules applying.



Sharon White: We see exactly the same issue when you talk about the standards. If a programme is on live TV it is subject to the full belt and braces of the broadcast code. If it is on catch-up or on demand service it is a lighter set of rules. If it is YouTube, beyond meeting the law of the land, there are no rules at all. If you are viewer, particularly if you are a young person, it is incredibly confusing.

Q3800 **Simon Hart:** We seem to be separating the sort of content that you might find on YouTube from the sort of advertising content that you might find on YouTube. For the advertising to work, clearly it is in the interests of the platform to produce the most addictive content possible. We might argue that that is potentially damaging, particularly to children. That is quite a big issue for the advertisers. It is the length of time people spend on their platform not the number of people who go on there, so it is in their interests to produce very addictive stuff that keeps particularly kids on for a very long period of time to shore up the advertising income. Surely we can't separate those things, so in a sense if you accept responsibility for one you are going to have to accept responsibility for both, aren't you?

Sharon White: As you know, when we discuss the responsibilities around the BBC we are always extremely cautious about new responsibilities. In your question there is how much of this is about the concerns over addictive behaviour and there are broader issues about mental health. The Secretary of State for Health has asked the Chief Medical Officer to look at those issues specifically and the question about how much guidance to provide to parents on safe viewing online. If your question is can one separate responsibilities and the remit for online advertising from content and conduct in a way in which we have a semi separation offline because Ofcom has bigger responsibilities for broadcast than for online advertising, it is clearly a set of issues the Committee and the Government will need to work through. As the regulator, I am very conscious that if we are asked to do new work we have to feel confident that we can do that competently.

Q3801 **Giles Watling:** To expand slightly further on the issues of publishing and whether they should be regulated, Lord Burns, you said to us last December that you would not take a firm decision on whether digital platforms that publish news and media should be regulated. Has anything in the last 12 months changed your mind on that? I specifically think of the regulation in terms of perhaps the journalistic tenets of truth, balance, public interest and so on.

Lord Burns: We live in a world where we are seeing an emergence of a certain amount of regulation in this area. As the conversation has gone on this afternoon, what we have seen is that there are clearly some areas where there is a very close connection between traditional forms of doing things and those things that are being carried on the internet. The question rightly raised by lots of people is: where is the level playing field; can one group be dealt with in one way and another group dealt with in another? The only way that we can see of dealing with this is to



HOUSE OF COMMONS

go through partly the process that the Committee has been going through, which is identifying the harms and seeing to what extent there is a problem in the way in which these are now sitting very close to each other and how far you can carry over the lessons that we have from the broadcasting world into other areas.

What I have observed over the past few months since I was last here is that any issues that there were about this very close connection have become closer. In all ways in which things are being delivered, it is now becoming more and more difficult to distinguish between one type of content and another type of content. It seems to me inescapable that that is an issue that Government and Parliament have to address. But as Sharon has been careful to point out, the regulatory activity requires a legislative underpinning. It has to be quite clear what the harms are, what the powers are and with a certain degree of flexibility so that you can keep up to date with things as they move on and standards change. That process has to be worked through first. It is very difficult to decide what can be a regulatory framework until you have decided what the harms are and what it is that you want to address.

Q3802 Giles Watling: This is why we ask you the questions so that we can understand how to inform any legislation.

Lord Burns: Overall to me it is now inescapable that there are large areas where there are issues of content and conduct that are being carried online that have now come full face up against the traditional forms of things that Ofcom has responsibilities for.

Q3803 Giles Watling: As you quite rightly say, it is all about harm and quantifying that. There was a statement somewhere that four out of five adults think that there is harm on the internet. Sharon White, I think you gave the wonderful example of somebody watching "Absolutely Fabulous" and if they watch it on ordinary broadcast television all is well and good because those regulations are in place and if they watch it on Netflix there are fewer regulations but they are still in place and if they watch it on the internet then suddenly, as you put it, "Patsy's off the leash", she can say what she likes. What tools would you need if it were in legislation that we could regulate online content in some way? How would you begin to go about formulating that? You did say that you didn't want the job but, having said that, if the job were pushed your way, what would you need to do?

Sharon White: If Parliament was able to set out very clearly what the ambitions were in this area, that would be an essential, to be clear whether it is mapping across protection of children, advertising, harm and offence. Giving the regulator a degree of discretion, which means that as the platforms change over time, technology and viewing changes over time, there is enough flexibility in the way in which the regulator can go about the job, would be really important. As we have discussed already, very clear statutory information-gathering powers would be absolutely key. Underlining the independence of the regulator would be also be



important and, allied to that, enforcement powers. I would see that in outline as the key essentials, seeing where the broadcasting code has broadly worked pretty effectively for the last 50 years.

Lord Burns: On enforcement powers, Ofcom has had a great deal of mileage out of the fact that broadcasters are licensed and the fact that they have to have a licence to do what they do gives you a great deal of weight when it comes to dealing with transgressions and for the areas where people are required to have licences, such as people wanting to put tennis on the internet. Enforcement powers require that you have some levers against which you can operate. Of course, with many of these things being conducted on a worldwide basis that becomes more complicated than it is under the present licensing system.

Q3804 **Giles Watling:** What levers would you imagine we could use?

Lord Burns: I don't have an answer to that at this stage because it depends how far you wish to go. There is a number of things that it seems to me are not going to happen. It is very difficult to imagine that Facebook or a similar type of platform would have to be licensed in order to be able to provide its service within the UK, the idea that all of the social media providers would be licensed. On the other hand, particularly when it comes to their income side and their finances, there are ways of intervening in that that would bring powers. As we have seen in the case of Germany where requirements have been put upon companies that they have the takedown, they have been able to use their powers to insist on it.

Q3805 **Brendan O'Hara:** Keeping on this theme, Ofcom's own research has recognised there is a problem and public surveys have recognised there is a problem. Even the Secretary of State last week, when he talked about the spectrum of online harm, recognises that there is a problem. What we are trying to do is we really need to start looking for an answer to that problem. If the Government were to move towards making Ofcom responsible for online content, similar to the 2003 Broadcasting Act, could you do it? Would you welcome it? What challenges would have to be overcome and, realistically, what additional powers would you require in order to do that?

Sharon White: They are all very good questions. As I said in a previous exchange, it is having a very clear framework set by Parliament as to what the job is, given, as the Committee is suggesting, regulation of the internet is as broad as you could make it, so I think a very clearly defined role. I am thinking organisationally about resources and structures and so on. We would then need to work out whether the job that we would be doing is overseeing that framework, the transparency of the systems, compliance, enforcement, accountability, and where the job is actually done, the data analytics. It is a big important job, the information requests, sifting through the data, understanding what information you are getting from the companies, understanding the quality of that, the effectiveness of that.



HOUSE OF COMMONS

I can see how overseeing the framework is pretty akin to what we are currently doing overseeing the whole of the broadcast system with the BBC. What I am less clear about, to be frank, is how one would organise that data gathering, that very forensic work. We have some data analysts and we are more generally growing that team because we need it for other work that we are doing, not least on cybersecurity, and we have a lot of people who have media expertise. But that really core forensic work, which then allows you to take forward an enforcement action and to win it and it does not take five, six, seven years for these things to be prosecuted, is the area that we would have to think through very carefully about the resourcing and how we would organise ourselves.

Q3806 Brendan O'Hara: This is perhaps a question for Lord Burns about contingency planning by the board. If the Government did decide that this is the road they wanted to go down, have you done any contingency planning so you could go back to Government and say, "This is what it would cost, this is what Ofcom would have to grow to size wise in order to do what you are asking it to do"? Is there any work being done by Ofcom on that?

Lord Burns: Of course we have done work, as we have seen in Sharon's speech and in the paper that accompanied. We have thought quite a lot about the issues that we have been discussing here. What we have not done is to go much deeper because that depends upon just what the nature of the job would be. That is subsequent. We have spent quite a lot of time as a board discussing how far some of these responsibilities might come our way and how we would deal with them. Sharon's speech is part of the product of that work. I think it is too early. I wouldn't want to get very far into the more detailed work without a much stronger indication of just what the nature of it is going to be. Typically, as you know, most of these things, if they are going to be based upon legislation, take some time to come into effect. I suspect we won't be short of time to do planning on some of the things that you mention.

Q3807 Chair: Sharon White, do you consider RT to be a responsible broadcaster?

Sharon White: The Committee knows that this has been a point of focus for Ofcom this year. In April, in light of the Salisbury attacks, we did a dedicated piece on whether RT remains fit and proper to be a broadcaster in the UK and we deemed that it was. We deemed that it was, because there are a number of state-sponsored broadcasters, looking very carefully at how much weight we should give to the actions of the state, quite apart from the quality of their broadcasts on the screen, irrespective of whether they are breaching or not breaching the broadcast code. We have said that the thing that really matters is their broadcast record. We are in the middle of a very large number of investigations. There are 10 investigations running. Nine out of the 10 cover foreign policy issues and foreign policy reporting on their news and current affairs from Ukraine, Syria, Skripal, Saudi Arabia and we are working



HOUSE OF COMMONS

those through very carefully. We have not yet reached a decision but we are working that through as quickly as we can.

Q3808 Chair: When do you think you will be in a position to complete the current investigations?

Sharon White: I am slightly reluctant to give a date because we have to go through due process, not least giving the broadcaster an opportunity to respond and make submissions, but I am hopeful that we can complete the process as quickly as possible.

Q3809 Chair: Without wishing to presume what decision you will make on the open investigations, this is not the first time you have been asked to adjudicate on RT's coverage. There is a number of findings against it, largely on the grounds of balance and partiality. Some people would ask what more does it take for stronger action to be required, including potentially it losing its licence?

Sharon White: What is interesting is when we went back on RT's broadcast record over the last two, three, four years it had a period two or three years ago when there were a lot of breaches. We then had a period where its record was rather better. Following events this year, we had a spate of concerns, which is why we are now in this process of having a number of investigations. Depending on the outcome, there is a wide range of potential sanctions right the way through to deeming a broadcaster no longer fit and proper to hold a licence. That is a very high threshold because there are concerns about freedom of expression and freedom of speech. It has been confirmed in a High Court judgment this year that you have to be clear that the issues are very serious indeed. We will go through this process in a careful and evidence-based way as we take those decisions.

Q3810 Chair: Some of these questions are matters of RT propagating conspiracy theories, messages designed to deliberately confuse people as to what has really happened. No UK broadcaster would be allowed, without challenge, to make those assertions. The concern might be that this has become a very political issue and it is not merely a question of the broadcaster.

Sharon White: As I say, I am slightly cautious about getting into the details of the cases directly. I would say the comparison is between RT, as you say, as a traditional public service broadcaster. When we think about due impartiality, we are thinking about impartiality that is partly conditioned on the expectations and the size of audiences. It is one of reasons why for a number of years we licensed Fox News and we license a number of smaller channels. We hold the BBC, Channel 4 News, Sky News and ITV News to a higher standard than we do a number of the smaller channels that are not necessarily even directed to a principal UK audience. But obviously there are limits to that and that is why we are now in the middle of a number of investigations.

Q3811 Chair: I know this is not what you are saying but I think a lot of people



HOUSE OF COMMONS

would find it unacceptable if there was a view that because if you watch RT you expect it to be full of Russian conspiracy theories, it is okay if it is.

Sharon White: I am not quite saying that, otherwise they would never have breached and we would never be in the process that we are in with RT, which is to go into a series of cases in detail.

Q3812 **Chair:** Have Government Ministers ever spoken to you about your investigations into RT?

Sharon White: No. I was a civil servant for a very long time and one of the very positive things about this job is that I have never had a call from any Government Minister on any media issue.

Q3813 **Chair:** Or senior officials in Departments?

Sharon White: No, none at all.

Q3814 **Paul Farrelly:** You have just alluded, Sharon, to the question I wanted to ask. In your approach, how do you define due impartiality?

Sharon White: It is judgmental but we do take into account if this a broadcaster that looms large for the UK audience, which is that we have a higher standard for the news broadcast by public service broadcasters, the BBC in particular. We do take into account context and audience expectations. As we think about this in the round, we are also conscious about freedom of speech and freedom of expression, the fact that being open to different viewpoints and different broadcasters who may approach the same news story but from different angles is ultimately good for media plurality.

Lord Burns: I have raised this question with a number of legal colleagues and the word "due" litters legislation in these kinds of circumstances. It is a very common phrase to use.

Q3815 **Paul Farrelly:** Yes. Isn't there the danger, particularly for public comprehension, that you get into a Humpty Dumpty sort of situation where due impartiality means what I say it means?

Sharon White: I guess I disagree with that. What is positive about the regime that Parliament has put in place is that there is flexibility. With flexibility there has also to be clarity and transparency about how the rules work and how the rules apply. What is interesting is if you look at the breaches over the last year, relatively few are from the public service broadcasters. The vast majority of channels and broadcasters who have breached the broadcasting code on impartiality and other areas have tended to be the longer tail of smaller channels. Personally I think the process works well.

Q3816 **Paul Farrelly:** The definition is not infinitely elastic?

Sharon White: Exactly. I think that is a much better way of putting it—it is not infinitely elastic.



HOUSE OF COMMONS

Q3817 **Chair:** Before we move on from this, can I ask about the complaints that have been made about REN TV and NTV, both part of the Baltic Media Alliance? The Latvian ambassador in particular has been quite vocal on this subject. Is this something that Ofcom is looking into?

Sharon White: We are considering that as we speak.

Q3818 **Chair:** The complaints that have been made against those broadcasters?

Sharon White: That is right.

Q3819 **Jo Stevens:** A quick one to follow up on something that you just said, Sharon. You said that the majority of the complaints relate to smaller broadcasters.

Sharon White: The majority of complaints we get in are for the PSBs because it is all about "Celebrity", "Big Brother" and "Loose Women", but the proportion that we investigate and subsequently find against are the non-PSBs. They are the smaller channels.

Q3820 **Jo Stevens:** You have also said that you hold them to a lower standard. Isn't that a reason to hold them to raise the standard so it is level with what you speak of as the larger broadcasters?

Sharon White: Different individuals will have different perspectives on this. When we weigh this up we place a lot of weight on having a large range of different broadcasters and choice. To be frank, if we held every broadcast news to the same standards as the BBC the UK viewers would have the choice of a rather small number of channels. That is part of the judgment, which is based on audience size and context and expectations but also within mind that there is a premium on having a lot of choice of different broadcasters for the viewer.

Q3821 **Jo Stevens:** I understand that, but that isn't it the smaller broadcasters that are making the lion's share of contribution to radicalising viewers on the margins? I understand the logic of your argument but there comes a point when that balance tips over.

Sharon White: Maybe I am not being clear enough. I completely agree with you and that is why we have found breaches have typically tended to be in this area. Two or three years ago we were so concerned that a number of broadcasters were breaching on incitement and extremism that we tightened the code but also had lots of direct meetings with the broadcasters concerned. We talked about fit and proper and it is a high threshold. We have removed licences where we have been so concerned about incitement to hatred. We did this last year.

Q3822 **Paul Farrelly:** Isn't there potential danger here with that amount of elasticity that what you might call a reputable public service broadcaster might come to you and say or it might be in the mindset of Ofcom that, "You are holding us to a higher standard than somebody else and, therefore, you are not being even-handed" and that may tend to chip away at the standards expected at the top?



HOUSE OF COMMONS

Sharon White: I don't see that. I think the Committee will have seen the report we have done recently on the BBC where we have done a lot of research among audiences about trusting news, how informative news is, how impartial news is. As you would expect, the audiences for the public service broadcasters—it is not to their comparative advantage—find and trust the news with huge value. I don't see that and I don't see that behaviour. What I do see is the public broadcasters, and Sky and Sky News, to be frank, desiring to set themselves apart for the trust and the informative nature of their news broadcasts.

Lord Burns: I think I said to the Committee when I was here a few months ago that when I was at Channel 4 an enormous amount of weight was given to any adverse findings by Ofcom on the news programme and it had a big effect. In no sense at all were people thinking that, "Because some of these smaller broadcasters are getting away with it, we can play fast and loose". It was a very important issue, and I am sure it still is, within the organisation to avoid breaches and to make sure that you did not find yourself on the wrong side of them.

Q3823 **Ian C. Lucas:** I am still concerned about the impact of online stories going viral from small news organisations. Don't you think that completely undermines your argument that we should be holding one set of broadcasters to a different standard to another?

Sharon White: That gets into our earlier conversation about the different regime between broadcast news and online. Broadcast news is full bells and whistles. I know we have got a debate about whether "due" gives too much flexibility on impartiality and accuracy. The websites of newspapers are regulated if you are a member of IPSO or IMPRESS; if you are not a member you are not regulated. There is no regulation at all for newspapers that come through the platforms. A bit like the discussion we had about the standards lottery for programming and for video, it applies similarly on news. As the Committee considers what additional oversight to give to online, there is a question about better education but also better navigation and better understanding about the source of news stories and the provenance and the accuracy of news stories beyond some of the voluntary action being taken by the platforms.

Q3824 **Ian C. Lucas:** What concerns me about this is that I think there is much more urgency in this issue than I detected last week from the Secretary of State and also, with respect, from you today. The evidence that we have heard, particularly in the disinformation and fake news inquiry, was that very substantial impacts were made on historic events because of use of what is now pretty much an unregulated space. Do you agree with that? Doesn't that concern you?

Sharon White: It does. I don't want to confuse the fact that we are not asking for the job with the urgency of the issue. From our research, particularly for young people who are getting the majority of their news from social media, who have not come through a public service broadcasting background, we know that they have huge concerns about



HOUSE OF COMMONS

being able to navigate what is and isn't trusted news. If the question is do we organisationally believe the issue is urgent, absolutely. If you pick up any hesitancy it is a natural hesitancy about wanting to jump into the role. I think this is a huge issue.

Q3825 Giles Watling: The pace of change, technologically speaking, has been just breath-taking. So-called bad actors have taken advantage of platforms whose business model is that of unfettered freedom of speech. There is a massive argument to protect freedom of speech. We seem to be forever behind the curve on this. We seem to be two steps behind and we are always playing catch-up. Does Ofcom, in your opinion, need to change fundamentally? I don't want to be rude, but is Ofcom fit for purpose or do we need another entity altogether?

Sharon White: What is interesting about the debate on online is that as an organisation we don't see online as being—there is a current debate about where new powers go. Regardless of the discussion and where the Committee comes out, we feel as an organisation it is necessary to build on and accelerate our understanding of the platforms of the technology. I was in the west coast a couple of weeks ago. We have colleagues who are there more regularly. We already have cybersecurity responsibilities online. All our research shows that regardless of where the legislation runs we, as an organisation, have to understand this world.

It is for others to judge whether we are doing that job competently, but if you look at our work on the media this year, our report on the BBC we have tried to root that fundamentally in the fact that we are regulating the BBC for an online world. In our review of children's this year, Parliament gave us new responsibilities to introduce quotas and we decided not to because all their viewing is on YouTube and we are doing a lot of research to understand the quality of what children are watching on YouTube. On provenance, we said we think it is really important for the health of public service broadcasters that the provenance regime is now translated into the online world and we are going to come up with—I hope—some practical pointers to how that can be done.

Do we have all the digital skills and understanding that we will need for this new world? I would say not yet. Would I say that we are getting more into this space and training our own people and bringing in more people who have this understanding? I would say definitely yes. Whether our remit is expanded or not, we can't do the current day job without these skills.

Giles Watling: You have brilliantly answered all my supplementary questions. Thank you so much.

Q3826 Clive Efford: Just following on from that, in that case do you have the resources you need to expand?

Sharon White: I think for the job we have today. It is also a question for the board.



Q3827 Clive Efford: What about the job that you need to prepare for in the future?

Sharon White: Today as we are setting up a new data analytics unit we are shifting the way we think about media literacy, I am content that we have enough resource ahead of any big shift in responsibility. To be frank, on the cybersecurity side I have been pleasantly surprised by the people we have been able to recruit. We have got some great people coming in. It will be interesting to see on other digital areas. I know Elizabeth Denham had the same issue with pay flexibility. It is not a budget question but just whether those sorts of experts want to work for a regulator rather than working for one of the platforms.

Q3828 Clive Efford: Interesting, yes. Can I take you back to the answers about what happens in other countries like Germany, so that I understand? I would describe Germany's regime as quite strict. It is 24 hours if something that is clearly illegal has to be taken down and seven days if it is not so obvious and time to determine, up to €15 million of fines if the platform does not comply, and a named individual has to be responsible. That seems a very strict regime. Is that something that you would advocate? Do you think that works?

Sharon White: As we discussed earlier, when we have been thinking about what are the elements of the broadcast regime that could translate we have been thinking less about very strict takedowns and more about have standards been set about what the platform should do, how it is protecting children, how quickly it is taking down extremist material. You can imagine a list: are the platforms complying with those rules; do they have the systems in place; are they able with confidence to meet the objectives and the job that Parliament has set? That is more the role we have thought about, less literally checking as to whether individual elements of content have been taken down. We have been thinking more as to are the systems in place that would give you confidence, give Parliament, the public users, children confidence that illegal content or offensive content, however it is defined, is being dealt with adequately.

Q3829 Clive Efford: We put the barriers in place, the algorithms and things to take the stuff down as people are trying to upload it, but wouldn't we expect one to follow the other? We would want that system in place as a wall of protection. When it gets breached, shouldn't there be regulations about how quickly platform providers take it down?

Sharon White: That would certainly be one way to deal with it. As I say, how we have been thinking is that if you don't have the systems in place to ensure protection, what is the sanction, what is the enforcement? Is it a fine? Are there other ways to demonstrate failure to protect? We have looked at the German model closely. One option would be to have fast takedowns.

Q3830 Clive Efford: Would you advocate it being quite clear who is responsible for responding so that you can deal with perhaps individuals where you



would say, "You are not a fit and proper person to work in this field"?

Sharon White: This comes back to the point about information powers. The legislation would need to make very clear what the responsible entity was for us to be able to then regulate in an effective way. There is obviously a debate. Some people argue for a duty of care model with named directors and named individuals and I think there is a debate as to how one operationalises that. But from our perspective what would be key, given one assumes they are not going to be licensed, is that there is a clearly accountable entity.

Q3831 **Clive Efford:** When you see companies like Facebook, for instance, complying in Germany with the strict regulations they have there, do you see any inclination from companies like them to level up, to apply the same standards here and in other countries?

Sharon White: What I pick up from the discussions and as they have evolved over the last year is the platforms are expecting regulation and they are expecting legislation in Europe in a way in which perhaps even 12 months ago they weren't. You can see some starting elements of this in community guidelines and some voluntary initiatives. Whether they are themselves going to come forward with a set of proposals that replicates the German model elsewhere in Europe is much less clear.

Q3832 **Clive Efford:** I understand from gambling legislation in states in America that if someone has a licence, say in Nevada, and they breach Nevada state regulations standards in another jurisdiction, they can take that into consideration when deciding whether that person is a fit and proper person to operate in Nevada. I think I have got that right. It certainly used to be the case if it is not now. Shouldn't we apply something similar on the internet? If you comply with certain standards somewhere else, we don't expect you to apply lesser standards here and if you do we will take you down?

Sharon White: There is a very clear comparator in the broadcasting regime where within Europe, while we are a member of the EU, we respect each other and broadly speaking set the same standards of broadcast content and respect each other's standards. We have taken the standards applied by broadcasters in other countries when we have thought about whether a broadcaster is fit and proper. In the Fox-Sky case we looked at Fox's record across Europe where the standards are comparable but also outside Europe as part of our consideration. On your principle I think there seems a huge amount of merit and to some degree is already present in the broadcasting regime.

Q3833 **Clive Efford:** Can I ask you about your role in promoting media literacy? Can you explain what your duty is in that regard at the moment?

Sharon White: The duty as set out by Parliament is quite broad. How we take it forward is principally through research and disseminating that research. We have been looking, for example, over a number of years about how children use and understand the internet and similarly with



HOUSE OF COMMONS

adults. That is the basis for some of the work you have seen from us this year about online harms and different groups' understanding of the internet, changing viewing habits. But it has principally been a research focus.

Q3834 Clive Efford: In response to the survey that was done by you and ICO, would you say that the online users are even aware that you and ICO exist?

Sharon White: What is really interesting is that we have been doing some research asking the public about what they think Ofcom's job is. About half of those who responded think that we already regulate the internet. I don't know whether that is because we don't do a very good job of explaining our current role.

Clive Efford: I must say I thought you had more powers.

Sharon White: It is really interesting. Quite a significant proportion of the public already believe the internet is regulated in the way in which the Committee is describing and believe Ofcom is responsible.

Q3835 Clive Efford: Do you think people are aware enough of the dangers that are out there on the internet but also of how their data is stored and used?

Sharon White: I think there is a huge amount of confusion. I have to say, particularly as a parent of teenagers, some of the findings in the research are particularly from young teenagers who have been approached by strangers online, are concerned about bullying online but don't have the resources or the wherewithal to deal with it, to report some of the issues. You have a question of some really quite serious, difficult material and conduct online and a real lack of understanding about how you can then respond to that but also lots of confusion about what is and isn't regulated and who is and isn't responsible.

Q3836 Clive Efford: Would you say that there is one place that you can go as an internet user to find out what my rights are about my data so that I can challenge a company—I keep going back to Facebook but let's say Facebook again. If I do a credit check, everyone has got information on me and I can check all that out. Why can't I do a data check and say, "What have you got on me and you've got 28 days to tell how much information you've got me on me"?

Sharon White: Personally I think this is absolutely the way we should go. That is not where we are currently. The ICO has responsibility on data and privacy but at the moment there is not a single place where you, as a member of the public, could find out the data that is held by the plethora and multitudes of companies, websites that one has been in, internet shopping that has happened.

Q3837 Clive Efford: Is that a power that you would want in future legislation?



HOUSE OF COMMONS

Sharon White: That would not be us. That would be the Information Commissioner.

Q3838 **Clive Efford:** The Information Commissioner, yes, okay. Do you have a role in highlighting to users how to spot misinformation and disinformation?

Sharon White: The way in which we have done our media literacy responsibilities has been very much research, working with the research community but also working with others who have more direct work with children and the public. What we haven't done recently—and I don't think we have got a lot of expertise—is direct education of the public. In the past we had a specific branch in DCMS to do this, which was phased out a few years ago, and I think other organisations are probably better placed to have that direct supporting role.

Q3839 **Clive Efford:** Doesn't that add to the plethora of organisations that are out there dealing with this area? Don't people just need one clear focus where they can find out what their rights are and who to go to if they feel that they have been wronged?

Sharon White: Yes, I agree. I think that Ofcom is not best placed to be that body.

Q3840 **Clive Efford:** Do you think that a levy should be placed on social media companies to have a more comprehensive digital literacy campaign to inform people?

Sharon White: The Chancellor has just announced that there is going to be a new levy and I guess it will be up to the Government to decide how it is used.

Q3841 **Clive Efford:** Do you think there should be?

Sharon White: I have learnt from the days I used to be the lead official on tax and spending policy at the Treasury never to comment.

Q3842 **Clive Efford:** Do you see that as a way forward? Do you think that would work?

Sharon White: I think more the question is given that there is such a deficit of understanding about the internet and how it works with data and so on, if more is to be done that is going to have to be resourced. How that is done is an issue for Ministers rather than for the regulator.

Q3843 **Clive Efford:** Do social media companies do enough to promote literacy among their users and make them aware of what their rights are?

Sharon White: No, absolutely not.

Q3844 **Clive Efford:** Do you have any ideas on how we should tackle that?

Sharon White: At the moment you can see some moves but it is very reactive. You have YouTube that for some very narrow areas like climate change or flat-earth theories is now using the Wikipedia and



HOUSE OF COMMONS

Encyclopaedia Britannica links in order to demonstrate whether a story is accurate or not. I think at the moment the companies are not seeing this as their core responsibility. That is where Parliament does have a really important role.

Q3845 Clive Efford: Part of your remit at the moment in terms of broadcast provision is plurality of providers. Is that a big challenge for you if you were to move into the internet?

Sharon White: It is interesting because we have tried to track—which we did partly because we have had two recent mergers that we have had to look at, Sky-Fox and Reach and Express newspapers, so we have been looking specifically at how much plurality there is, taking into account online. We found that most of the online news sources are still traditional broadcasters and newspapers. That may change but at the moment what seems to be happening is that online is essentially supercharging or giving a multiplier effect to traditional news sources, not always well indicated or kitemarked or the provenance given, but that seems to be the current situation. The growth of tweeting and blogging, all of that we would see as a positive but subject to Mr Lucas's point, which is people do not quite know what to trust in that new landscape.

Q3846 Clive Efford: Fake news is where we are at and there is a lot of that going on there. If I paraphrase Donald Rumsfeld, there are unknown knowns out there. We do not know who they are but we know they are out there and they are promoting fake news and a lot of seditious information, if I can put it that way. Do you feel that you have the capacity or will have the capacity to be able to delve into that and find out who those people are or shut them down if they are not going to identify themselves?

Sharon White: It comes again to if there is a system of regulation on news, is that system of regulation, a bit like the German model, where with particular pieces of content the regulator is checking the content piece by piece by piece, if it is fake. I do not like the term "fake news" but disinformation. Is it being taken down or is it more a system where you have a commitment with legislative backing from the platforms that they will tackle disinformation and they will find a way to help users navigate news from so-called official sources or more authoritative areas? I think if we were asked to do more in this area, I can see ourselves being more in that space of, "Are you following the rules with some checking and compliance and enforcement?" Given the volume of material and the number of platforms and the very different ways in which they source news and spread news, it would be quite hard for a regulator to do this by individual content by content.

Q3847 Clive Efford: I understand that, but if you found someone was in breach, what action would you recommend should be taken?

Sharon White: The first thing is you want the harm to be addressed. If it is fake or false in some way, you would want to be satisfied that the



HOUSE OF COMMONS

material is off and users are not being affected by it. Then you would absolutely want to understand that the systems are in place or being shored up so that for the future you have better navigation and better signposting alongside better education for users, which I think is key.

Chair: Thank you. We want to make a little bit of progress at this point.

Q3848 **Paul Farrelly:** I am sorry I have to leave for another meeting at 4.00 pm upstairs. We are coming on to the BBC now and the Ofcom report that was published last week. You are now, as you said, the backstop court of appeal for the BBC, long resisted by the BBC, long recommended by others, including this Committee. I have a few quick questions on your role in the complaints process and with respect to the editorial guidelines.

When we were in Salford with Lord Hall, I asked some questions about the Sir Cliff Richard case. He did not complain to the BBC under the guidelines, as far as I am aware he has not complained to you, but he went to court. I asked the BBC whether, as part of its consideration afterwards, it considered the reporting of the case internally with respect to its guidelines. Surprisingly, it said it had not. When that sort of case happens, do you as the ultimate body take an interest actively or are you a passive recipient of complaints?

Sharon White: In the particular case of Cliff Richard, you will know that it predates our responsibility. Terry may want to say more. Principally we respond to complaints made after broadcast. The BBC First process means, as you know, that the BBC has the opportunity to deal with complaints in the first instance, and anybody who is not satisfied that the BBC has dealt with their complaint adequately then has the ability to come to Ofcom. The BBC gets more than 200,000 complaints a year. In the last year or so we had about 1,700 come into Ofcom. Most of those had not completed the BBC First process, so we have looked at about 139 or 140.

Under the charter and agreement, we have the opportunity to step in. We do not have to be, in your terms, passive and sit back. If there is an issue that we consider to be material or egregious in some way and we believe that the BBC is not dealing with it adequately, we do have step-in rights.

Q3849 **Paul Farrelly:** With Sir Cliff Richard did you exercise those or rely on it being before you?

Sharon White: It predates us.

Q3850 **Paul Farrelly:** The BBC at that session also said it was going to produce a new set of guidelines because the existing guidelines go back to 2010. Do you have a role in agreeing any changes or is it purely for the BBC?

Sharon White: It is purely for the BBC. The BBC obviously has to ensure that its editorial guidelines are consistent with our broadcasting code that we updated when we took on the BBC. The Committee will know that we have a particular issue with the guidelines, which is that we have responsibility for overseeing the BBC's website, for its written material,



HOUSE OF COMMONS

which is the first time for us as a regulator. The job is to ensure that it is compliant with the BBC's own editorial guidelines and standards. It is obviously very relevant for us but it is for the BBC to set out.

Q3851 Paul Farrelly: I have two more questions on the subject. When we were seeing the BBC over its annual report, on page 118 of the 266-page report it did its report of what had happened to complaints: editorial complaints within remit referred to Ofcom, 140; number of complaints upheld, zero. It gave itself a clean bill of health. Your report was 138 to one, so I assume there is a timing difference in whether it will be reporting on the Nigel Lawson—

Sharon White: Yes, exactly, the Nigel Lawson complaint.

Paul Farrelly: You go further into online, but its report ignores online totally. How does it explain that?

Sharon White: I think it is the advantage of having an external regulator. As you will see from the report, one of the issues that has worked less well in the last year than one would have hoped is around transparency. We had quite a heated debate in the early period of the BBC on complaints and we issued a direction on the BBC that it had to be transparent with its complaints data on a fortnightly basis, as with other public service broadcasters. I think it continues to be a work in progress and I would expect, as our regulatory relationship with the BBC evolves, that transparency needs to improve.

Q3852 Paul Farrelly: Finally, when people come to you, you judge it with respect to the broadcasting code, and your definition of serious might be different from other people's definition of serious. It is the editorial guidelines. In the process so far, has anyone fallen into the gap where they may be rightly dissatisfied but it is not for you to decide or arbitrate under the broadcasting code? Are there any gaps or is it seamless?

Sharon White: I would say it has worked pretty well so far. The only issue we have had so far, which you would expect from it being only the first year, is still a lack of confusion about when the BBC process ends and when Ofcom begins, even though so far we have had not had to step in.

If your question is whether in a sense the complaint has not been sufficiently material for the broadcast code, we consider all complaints that are in our remit. We may then decide not to investigate because we do not think there is a case to be taken forward. That is all recorded and that is all very transparent on our side.

Q3853 Paul Farrelly: Should a case like Sir Cliff Richard appear in the future, you would not adopt the old Press Complaints Commission, or possibly present IPSO stance, that, "They did not complain to us. Even though we have a proactive remit, we are not going to bother to do it"?



Sharon White: You would expect me to say you would have to look at the circumstances at the time but we do have the ability to come in.

Q3854 **Jo Stevens:** In your first annual report on the BBC, you have some content analysis and you found that men appeared on screen much more frequently than women in BBC programming. In the sample that I read about 62% of appearances were men and 38% were women. Once you got into older age groups, that imbalance was even more pronounced. Women aged 55 and over only accounted for 7% of onscreen appearances. Why do you think that particular group of women are so grossly under represented, especially on peak-time programming?

Sharon White: It is a good question when you think about the BBC audience, which is typically over 55, with women and men broadly represented. What we were trying to do in the report—and you will see it is probably the most comprehensive study into diversity at the BBC because we did a lot of focus-group research and a lot of content analysis. That to me and to us as an organisation was a very surprising result, as well as some of the issues on portrayal. More positively what I am hoping is now that this is transparent and public, we will see the BBC starting to act on older women, which has been a theme for a long time.

Q3855 **Jo Stevens:** Do you think it recognises the issue and, if it does, why has it not done anything about it before now?

Sharon White: The Committee will know that last year was the first year we did a report on diversity in broadcasting for all the broadcasters and we did a second report this year. Last year I had lots of conversations with broadcasters, who were essentially debating the numbers and had we counted them correctly and we had the wrong sample size and so on. This year there has been less debate about whether there is a problem and I see that as being an absolutely necessary first step to seeing movement.

We have seen better representation outside for older women but we still have real issues in portrayal, not least outside London in the nations and regions. To be frank, what we want to do with the report is now say to the BBC, "Here is the evidence". It is not a debate about the evidence because hopefully this is incredibly comprehensive.

Q3856 **Jo Stevens:** This is part of my worry because I think the BBC has known about this problem for a very long time, like it has known about other problems that this Committee has investigated, but it has not tackled it and on this has not started to tackle it, when you got back and look at that 7% figure. What is Ofcom going to do, working with the BBC, to ensure that, for that group, visibility of older women improves, never mind other under-represented groups.

Sharon White: Part of the dialogue with the BBC over the next year on portrayal and representation on young people and all the areas that we have identified is our expectation is that the BBC now needs to come forward with what is its remedial plan.



HOUSE OF COMMONS

On diversity specifically, we have statutory conditions. We have conditions that we set out last autumn for the BBC on diversity, both reflecting offscreen and onscreen. They have not been in place a year, which is why we have not decided to reconsider them in this annual report, but next autumn we will be looking at whether we need in some areas to adjust or tighten those conditions if we do not see the changes. Audiences and older women are saying, "We do not see ourselves on screen". It is core delivery in a public service broadcaster to its audience. There will be a lot of discussions over the next number of months. Then, as I say, our backstop is we can tighten the conditions if progress is not made.

Q3857 Simon Hart: Can I jump in on the back of Paul Farrelly's question? I think you mentioned that you dealt with about 1,700 complaints, or you had received 1,700 complaints, and that a relatively small proportion of those had gone through the BBC First process. Is that not the problem? I have been involved in a case that has taken a year and still has not gone anywhere, because nobody really knows how to navigate their way through that impossibly complicated system. It is unsurprising that these large numbers are getting to you, only for you to be able to have to say, "We can't deal with it either". That is the problem, surely.

Sharon White: We would welcome your views because one of the areas that we will be looking at is that the BBC has an effective complaints process in place.

Simon Hart: It is effectively protecting the BBC.

Sharon White: If there are concerns and—

Q3858 Simon Hart: Sorry to interrupt you but do you have a role in saying to it, "This is ludicrous, there are a lot of members of the public who are trying to make legitimate complaints or observations and they cannot. Sort yourselves out"? Is it not your job to say that?

Sharon White: Yes. We certainly have a role to ensure that the BBC has an efficient process that delivers on time for the public. We will need to understand if there are—so far we have not seen this as a big concern outside these bigger issues around the transparency of the process. If, Mr Hart, your concern is that the process is too slow in delivering, we will take that and it is something we can pick up in our next report.

Q3859 Simon Hart: That is helpful. Earlier on when we were talking about online material, you were explaining how your understanding of the problem was ongoing. Have you put a timescale on that? I think Giles Watling's comment was we are always going to be behind because the technical change of the last 10 years is going to be just the same in the next 10 years. At what stage do you think you could tell us that you will be up to date and therefore able to take the action that seems to be your ambition? Is there a date in the diary when you think you will be in that position?



Sharon White: What I have in my head is certainly over the next year the particular area where I think we have a gap at the moment is on the data analytics side. We have some outside help to work through exactly what the gaps are and who we need to recruit. I would hope over the next 12 months that at the next annual session I would be able to report back that I feel more satisfied in that area.

Q3860 **Chair:** Can I pick up on one or two of those points on the BBC? With regards to complaints, are you satisfied that the BBC board is acting as an effective first-stop regulator, which is what it was supposed to be?

Sharon White: I would say that the area that we have had the biggest concern about the board has been competition. This is particularly where the BBC wants to make a change in a service or, say, the iPlayer, that has potential consequences for its domestic competitors, ITV, Channel 4. We have found instances where the BBC is not sufficiently open enough about its intent and bringing in the stakeholders so that they can understand what this means for their businesses and their programmes and their audiences. That so far has been the area we have felt—and Terry will say—that the board has not been strong enough.

Lord Burns: The board of the BBC is a new board, just as Ofcom's responsibility for the BBC is a new thing. Moving forward, both in this area of transparency and in the area of being ready to commit quite quickly to doing the sorts of tests that we would expect it to in this area, it is something that it is still having to get to grips with. The old traditions of where it tried to do as much as possible and settle it before other people get to know about it I am afraid still lives there to some extent.

Q3861 **Chair:** Is this a concern?

Lord Burns: It is both with regard to data, as Sharon said earlier, and we have this case with regards to doing public interest tests. I am reasonably confident that once we have raised these issues and pressed back on them that it will have to make progress because we will be sitting there and watching it and rating it.

Q3862 **Chair:** Is your concern that independent members of the board are behaving more like the independent members of the board of a plc rather than what should effectively be a first-stage internal regulator?

Lord Burns: I am slightly more concerned that it is still operating in a world whereby it thinks that the BBC should not have an independent regulator and it should be doing the job itself. That is all part of the learning experience. We do not want to go overboard on it at this stage, because our relationship is very good and we are having a lot of very good exchanges. For some time, I expect there will be this process of trying to nudge forward and reminding it that in a lot of these cases the more that we have the information, the less that we are going to be trying to second guess what it is up to. The more it does the thing in a formal way and carries out these kinds of exercises and lets us know



HOUSE OF COMMONS

about them, the more that everyone will have their say and it will move forward at greater speed.

Q3863 **Chair:** Has the board been able to demonstrate to you areas where it has effectively challenged the policies of the executive directors?

Lord Burns: We do not have that insight at this stage. It is an interesting question that you raise and maybe at some point that should be one of the themes that we look at but it is not something that we have been concerned about yet.

Q3864 **Chair:** Would that apply in all issues, from competition through to complaints handling?

Lord Burns: Yes. Built in here is a very good question. Now that the BBC has a board for the first time, how is that board functioning? Is it doing the job that we would expect of it?

Q3865 **Chair:** Or indeed what is it doing beyond what the executive board of the BBC is doing.

Lord Burns: Yes, exactly.

Q3866 **Chair:** That does not appear to be clear at all, from what you have said to us today.

Lord Burns: I do not know that we have sufficient information to be able to go that far.

Q3867 **Chair:** You are the Chairman of Ofcom, so if you do not have the information, I do not know who else would have it.

Lord Burns: Exactly. We will keep pressing on this.

Q3868 **Chair:** I am sure we will pick this up with the BBC as well next time we see them.

Related to the BBC, and it also relates to the competition issue you brought up on iPlayer, there seems to be increasing discussion between the PSBs about creating a common platform for distributing and selling programmes to UK customers. Sharon, you touched on this a bit in your speech to the Royal Television Society that you thought maybe the decisions previously made about Project Kangaroo had been a mistake. Do you support the principle of a converged platform for selling content to UK customers?

Sharon White: Yes, in a nutshell. I think we will look back on Kangaroo—it is always easy to have the benefit of hindsight—as a lost opportunity. Coming back to the BBC, I think a way to square the circle of being in a position where it can compete effectively with the new global players but doing that in a way that does not do damage to its domestic competitors would be a common platform, whether that is building on the Britbox in the US. Carolyn McCall has already talked about her plans on ITV. We would be very supportive.



HOUSE OF COMMONS

Lord Burns: I am not sure the signs are terribly good just at the moment,

Q3869 **Chair:** Will it be successful in creating this UK Britbox?

Lord Burns: I am looking at various comments I see from some of the other broadcasters that suggest to me that they are having difficulty in moving this idea forward.

Q3870 **Chair:** I suppose there are problems that some programmes will have advertising and some will not.

Lord Burns: Yes. The BBC tends of course, as we know, to think, "It is fine if you want to join our game. We will be very happy to let you join our game".

Q3871 **Chair:** If the BBC's view is, "You can all join iPlayer on our terms and conditions rather than create something bespoke", is that something Ofcom would take a view on? Would you take a view on whether that was a reasonable position?

Lord Burns: If we see that there are obstacles arising and we think that the BBC is being unreasonable in this, of course we will try to smooth those discussions.

Sharon White: The BBC is developing iPlayer currently and it is an area in which we are planning to say something. Distribution is probably the biggest issue for the BBC in this charter period.

Q3872 **Chair:** Looking at Ofcom's most recent studies on TV consumption, there is a rapidly accelerating trend to people watching television on internet-enabled devices. When do you think we will reach the tipping point, or maybe we are already there, where the distinction between linear TV and TV on demand is not one that can be satisfactorily drawn?

Sharon White: I think we are there. When I first joined Ofcom it was a few months before we did our last public service broadcast review. There was a lot of debate at the time about tipping points and looking into crystal balls and so on. If you look at the viewing, particularly for younger people, we are there already. It is less a debate about when this is going to happen and more a discussion about how there is then adaptability and success to a world that is already here today.

Q3873 **Chair:** I suppose this goes back to some of the things we spoke about earlier about advertising. Do you think that there should be a new form of licensing regime for the most popular channels that are internet based and on demand? Do you think that is a route that we will need to go down or start considering?

Sharon White: It does come back to the earlier conversation, which is that if we are all watching content on everything—on the TV in the front room or on iPad, catch-up, laptops—does there need to be a single regime that is level across what is the same content but watched in



HOUSE OF COMMONS

different ways? I think we would argue there should be. Whether and how that captures advertisers is part of the conversation, but at the moment it cannot be right that the same content is subject to completely different standards depending on when and how any of us watches the content.

Chair: Particularly when the most vulnerable audiences are in the most unregulated space.

Sharon White: Completely unregulated space.

Q3874 **Chair:** You maybe were hinting at this earlier on when we spoke about advertising, but it is not just advertising. Are you concerned about the way things like product-placement rules apply to YouTube channels and things like that in a way that seem to be much more liberal than they would be on a regulated television channel?

Lord Burns: Indeed. The whole of that advertising market is a very competitive one. For commercial public service broadcasters, their advertising revenue is key to their success and feeds into the programmes that they are able to make, which in turn provides the base for future advertising income. As this moves forward it is going to be very important that we manage to maintain some kind of level playing field between people as far as advertising is concerned.

There is a different set of issues, of course, where some people are worried that advertising, particularly on the internet, has become dominated by too few platforms and that this in turn is going to create complications, particularly for the people who want to use the online method. This is an issue that I do not think is going to go away, particularly if you look at the remit that we have to maintain a prosperous or a successful public service broadcasting operation. To avoid having a very distorted advertising market I think is in every likelihood going to become an important issue.

Q3875 **Chair:** Unless we move to a common regime, do you think the PSB model as we know it today will break up?

Lord Burns: The PSB model has a lot of strengths, partly because of its history, partly because of the focus that it has upon UK content. People like to watch UK content. In the end, you get good and high-quality content only if you can fund it. It is an expensive business and indeed some are arguing that it has become a more expensive business because the other organisations are bidding up the price of the talent. It all works on the basis that people have their income that generates the programmes that people want to watch, which then generates the eyeballs from which you continue to receive the income.

I am not too worried at this point because when I look at the numbers, which I do on a regular basis, the PSBs continue to do pretty well as far as particularly peak-time viewing is concerned. But I do not think we



HOUSE OF COMMONS

should ever lose focus that this is a process and an issue that can easily become unbalanced.

Q3876 **Chair:** What I was thinking of as well is whether some PSBs, the ones that are not publicly owned, would say, "If there is not a common regime and more and more people are in the unregulated space, why do I not give my licence back and just make the stuff I want to make?"

Lord Burns: No, and then of course will go their news coverage and many of the things that we actually value very highly.

Q3877 **Ian C. Lucas:** What do you think of the legislative approach to retaining public sector broadcasting on streaming sticks, setup boxes to protect them in this new environment?

Sharon White: Prominence?

Ian C. Lucas: Yes.

Sharon White: Yes, we are very supportive. It is obviously up to Parliament, but if we believe in a healthy public service broadcasting, then I think it is really important that the prominence that is guaranteed on linear TV extends online.

Q3878 **Ian C. Lucas:** Where is the resistance to that coming from?

Sharon White: The question is legislation. We are now doing a review of the Digital Economy Act of last year and I am hoping that in the first part of next year, from our part, we can at least set out for Parliament how one can make this work, given that technology is changing constantly and how this all works in a voice-recognition world.

Lord Burns: There obviously is pushback from the platforms because they want to control the material themselves.

Q3879 **Ian C. Lucas:** But if we value public sector broadcasting, we have to take steps.

Sharon White: To be frank, it is legislation that now needs to take it forward, but we hope to at least inform how that might be done.

Q3880 **Ian C. Lucas:** Much though I value public sector broadcasting, I am interested in free TV licences for the over 75s. Lord Burns, I want your sage advice as a former independent adviser to the Secretary of State on BBC Charter Review. That went from 2004 to 2006, I believe.

Lord Burns: It was a long time ago.

Ian C. Lucas: Yes, but that means you have had even more time to reflect and develop your wisdom.

Lord Burns: I can only respond to this as an individual because this is not an issue for us. I said to this Committee before that I thought it was a very bad piece of public policy that ended up with the BBC having this responsibility. It is not in a very strong position to be able to make



HOUSE OF COMMONS

sensible decisions on this and it is going to find it very hard. It is going to find it very hard.

I spent 20 years of my life in the Treasury doing budgets. I think there were more than 20 budget rounds and this kind of decision is extraordinarily difficult: how you get the balance between the different types of people who are affected, how it is that you take out those people who are really vulnerable and how it is that you deal with them. This is a complicated business and I fear that tears will be shed.

Q3881 **Ian C. Lucas:** So you do not think Ofcom is playing a role in this?

Sharon White: We do not have a role.

Lord Burns: No.

Ian C. Lucas: Let's see if we can do something about that. Thank you very much.

Q3882 **Brendan O'Hara:** Before my major question, in the last hour Channel 4 has announced that Leeds is going to be the national UK HQ and that Bristol and Glasgow will be its creative hubs. I put on record my congratulations to Stuart Cosgrove and his team and the leader of Glasgow City Council, Susan Aitken—

Chair: I wondered who would be the first to mention it and I did think it might be you, Brendan.

Brendan O'Hara: Grizzled veteran that I am of Glasgow's television team, I am sure that Channel 4 will not be disappointed in its choice and I am absolutely delighted for it.

On something completely different, the further options on improving mobile coverage report that you published last month—

Chair: Good segue.

Brendan O'Hara: That was an excellent segue, thank you. You say that there is a lot being done but it is still not good enough. I absolutely agree with you. There is 7% of the UK landmass that is still not able to receive voice or data service. As MP for Argyll and Bute, I could probably take you to most of them, so I know how difficult a situation this is for people who do not get it. I was very interested in your suggestions on public subsidy, on rural wholesale access and this idea of infrastructure sharing between the companies. What indications have you had from both Government and the providers, the industry itself, that they are reacting favourably or not to what you suggested?

Sharon White: I think the Government and the new Secretary of State are very interested in mobile coverage. One of the elements that we set out in the paper, which will hopefully take things forward, is that we have some new spectrums at auction, the airwaves that power wireless. It is a piece of spectrum that is particularly suited to coverage in rural areas. It is complicated but we are working through at the moment how we can



HOUSE OF COMMONS

require the mobile network operators, if they want to bid for this spectrum, to make a commitment to build masts and provide coverage in some of the more rural areas. Terry and I were in a meeting recently with the Secretary of State to consider talking about roaming, which again has complicated issues because you are piggybacking on somebody else's investment, but it is an area that we want to take forward in discussions with the operators.

On the question about public subsidy, we were trying to set out in the paper if we do what we can as a regulator, what is the gap. We think it is about £3 billion to £6 billion. Obviously it is for the Government to decide what more they do. In Scotland there is already a procurement programme and so on.

Terry may want to talk a bit more about the operators because we are not sure that the operators have really grasped that this is a utility and it is an essential service to everybody wherever they live or happen to be travelling. I think the operators have probably been less responsive than we might have hoped.

Lord Burns: It has been one of the issues that I have noticed in the last few months. I am not sure that the operators have really grasped the extent that this has moved from being a great luxury to being a necessity in life. We do need their co-operation to find solutions to these hard-to-reach areas. When we make proposals such as coverage obligations, there tends to be pushback. When we raise the issue of roaming, it is pushed back. Even when the issue comes of other way of extending the masts, to say there is a lack of enthusiasm is probably as good as can be said about it.

At some point we need to engage the operators so it is more in recognising that this is quite complicated and quite a difficult thing to deliver and it requires everybody putting their heads together to find a way of doing it that is fair to all of the operators as well as achieving what it is that we want to see.

It is an industry that has grown so rapidly. It is very much in the competition area and there is ferocious competition between the operators. A natural instinct is to think, "Why should I want to go somewhere where there are not very many people and that is not going to pay for itself?" If we are to solve this, I think both Government and Ofcom and the operators have to be able to contribute something to finding a way through, because it is going to involve sharing. The economics of this are such that you cannot reproduce this to the extent of all of the operators having their own infrastructure.

Q3883 **Brendan O'Hara:** Is there anything you can do, as Ofcom, other than advise what would be best practice, in your opinion? Is there anything that you can do to persuade the operators that this is in everybody's interest?



Lord Burns: Sharon has mentioned that we are having discussions as to whether some of this spectrum that should be sold should have some coverage obligations, but that complicates the whole thing enormously. It leads you into a path that could easily end up with difficulties and even litigation if some of the companies thought that they were being unfairly treated in this process. Similarly, it is the case with roaming.

The Government are very conscious of this. I have no doubt it would be the Secretary of State's desire to increase coverage, and he made that very clear to us. The job now is to find the way through it. One of the outstanding questions is how far we can persuade the mobile operators to come together with these bodies in order to find a way forward and one that is equitable to people. Those that build the infrastructure have to be properly rewarded for it and it needs to be built in the most efficient fashion, but we have no doubt that it is necessary.

Q3884 **Brendan O'Hara:** I know it is early days and it was only September it was published, but have you had dialogue with the mobile companies or with the providers since September and do you feel there is an understanding—without giving anything away confidentially—on their part of how important this is?

Sharon White: We are constantly in dialogue with the mobile operators and the other companies we regulate. As Terry says, what has not yet shifted, and this maybe is true on the telecom side for broadband, is what an urgent necessity this is. When you are talking to an operator, it is very much thinking, "How is this investment going to cover my costs?" rather than, "Part of my contribution or the brand value is cultural". We have reached the stage as the economy, as a country, where there needs to be universal access.

I am reasonably optimistic. I think the auction of the new spectrum could have potentially quite a material impact. On the back of that, I want us to try now, particularly with the Secretary of State being very supportive, to start to drill down to more focused discussions. If the question is: are the mobile operators now desirous of increasing coverage in rural areas where they can't see a huge profit to be made, unfortunately not yet.

Brendan O'Hara: I can imagine. Thank you.

Q3885 **Ian C. Lucas:** Can I ask a question on that point? It is a hugely profitable industry. Can we not just make them do it? I think the Secretary of State said last week we should start the rollout in the areas that are not currently covered. I think he suggested that. I may have heard him wrong. Should we not just say, "If you guys want to make this money, get out there and do it"?

Sharon White: We have a version of that, which is, "If you want to own this spectrum, you have to now build your masts in areas of the countries that are not covered" because, as Terry says, it is a competitive market. We have four operators. We worked very hard recently to ensure we had four operators when there were plans to move down to three. In terms of



what we can do as a regulator, we have quite strong powers with BT because in a number of areas it is essentially still a monopoly. The mobile operators are essentially operating in a competitive environment and your powers to direct are not there. I think we do have to find some other routes. We have to find some other routes into this with Government.

Lord Burns: It has to be said, of course, that many of these powers are excluded from some of the European agreements, even roaming. It is difficult to impose roaming after the licences have been issued. It is only with respect to new licences that you can put roaming obligations on. This is why some kind of co-operative approach seems to me to be a very necessary part of this. If we are going to rely on the legal system and enforce, that could run into quite a lot of difficulties.

Q3886 **Simon Hart:** It is about carrot and stick, is it not? I am quite sympathetic to Clive's view because it already happens in the housing market. In my part of the world you have the affordable housing subsidy. If you want to build, there as a developer you have to make a contribution. If not, you do not get planning, end of story. That is it. We are dancing around the issue here a bit. I understand your desire for a bit of collaboration and co-operation, but in the end what has changed the culture in Wales is the fact that the planning system came into play and you cannot do it in the way you want to. You have to make a contribution. The developers whinge like hell but they do it.

Sharon White: The planning system is key here. If you talk to the operators, planning is probably top of their list.

Simon Hart: In which case it might as well stay there and you use the problems productively.

Q3887 **Ian C. Lucas:** An observation I would make, and I have made this before, is I was the Business Minister and worked with the Automotive Council for 2010, which is a very competitive industry. But the Automotive Council worked within itself to create the best environment, co-chaired by the Minister. I have suggested before that we should have a communications council in a similar way. I agree with you that this is an industry—we have had evidence relentlessly over years—that is incredibly competitive and there does need to be the element of co-operation. Why has that not been taken forward?

Sharon White: On a number of occasions we have aimed to bring the operators around the table on these issues. I think we have not yet observed enough of a cultural shift to make those conversations productive. The Committee will know in the last two to three years we have had a situation where there has been proposed merger between two of the operators and I think that has dominated the market in the last few years. Now is the time to try to get some material progress.

Ian C. Lucas: I think it is a job for the new Secretary of State.



Q3888 **Chair:** A final question from me on that. In broadband the Government have introduced a universal service obligation. Should we have a universal service obligation, say, for 3G mobile? I know the Government have spoken about this before but it seems to have disappeared as an idea.

Sharon White: Personally I think we would be very supportive of a standard safety net service on mobile as on fixed.

Lord Burns: The Government will probably find that they have quite an important role to play themselves in achieving that.

Q3889 **Chair:** In what way?

Lord Burns: In the question of how to build out the masts into those areas that are uncommercial to provide. It is difficult to see a way through this without some public money in one shape or form going into that. They would have to take it on with the knowledge that they were going to have to play an important role in it.

Clive Efford: I want to change the subject but were you going to finish?

Chair: I was about to end the session.

Q3890 **Clive Efford:** There is one thing I want to get off my chest. Earlier on you were talking about the cost of talent being forced out because of other people moving in. Why is that an issue for the BBC? I watch these Scandinavian programmes. I do not know who the actors are on them but they are brilliant. Why is the BBC, which is always a place that nurtures talent, so obsessed with paying huge salaries to established actors and performers when it is a place where talent comes through historically?

Lord Burns: I am told it is not just the payment to the actors, it is the whole cost of production. The cost per hour of production has risen enormously since the Netflixs and so on of this world have arrived, because it takes a long time to train all the people to be able to make television programmes of that quality.

Q3891 **Clive Efford:** Do we do enough of training people? Is there enough of it going on?

Lord Burns: That just means it is a long pipeline to have the resources, the places and so on. I have had people coming to me to explain the degree of inflation that seems to be taking place in this market.

Q3892 **Brendan O'Hara:** Ofcom has set a target for 8% of eligible network spend for television production. Would Ofcom or has Ofcom ever considered a similar network spend for radio production from the nations? If not, why not?

Sharon White: It is a good question. Radio, as you know, is a slightly different market because the BBC is bigger within the market. The commercial players are doing very well. They have a more distributive model, both global and Bauer. Certainly when we have done research



HOUSE OF COMMONS

among listeners as to whether there were concerns about nations or regionality, we have not seen those. In fact, as you probably saw at the end of last week, we are recommending more deregulation, local production, local content, but not necessarily quite as fixedly produced within the local area.

Q3893 Brendan O'Hara: Do you not think there would be anything to be gained by replicating the television spend into radio, or is there not the need for it that you can see?

Sharon White: If we were to see a concern that listeners were seeing a London-centric radio sector—if you look at the Bauer model, which is essentially about amalgamating and buying local radio stations with local content, we have not seen the necessity, but these are issues that we always keep under review.

Chair: We have completed our session now. Sharon White and Lord Burns, thank you very much. It has been a really interesting evidence session.