



Select Committee on Communications

Corrected oral evidence: Public service broadcasting in the age of video on demand

Tuesday 9 July 2019

3.30 pm

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Members present: Lord Gilbert of Panteg (The Chairman); Lord Bethell; Baroness Bonham-Carter; Baroness Bull; Baroness Chisholm of Owlpen; Viscount Colville of Culross; Lord Gordon of Strathblane; Baroness Greender; Lord McInnes of Kilwinning; Baroness McIntosh of Hudnall; Baroness Quin; Lord Storey; The Lord Bishop of Chelmsford.

Evidence Session No. 22

Heard in Public

Questions 205 - 212

Witness

[I](#): Kevin Bakhurst, Group Director, Content and Media Policy, Ofcom.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Kevin Bakhurst.

Q205 **The Chairman:** Welcome to Kevin Bakhurst, who is giving evidence to our inquiry into the future of public service broadcasting. I am sure, Mr Bakhurst, that you have been following our inquiry, during which Ofcom has produced much material that we have looked at, some of which you will want to touch on. You are group director for content and media policy at Ofcom.

The session will be broadcast online and a transcript will be made available. Thank you for taking the time to give evidence, and thank you to you and your colleagues for the written evidence and engagement so far during the inquiry.

Could you start with a brief word of introduction about your role at Ofcom? To give us some background, how do you think public service broadcasting is best defined and measured? What is public service broadcasting, and how do you identify it when you see it? What are the priorities for Ofcom's upcoming review of public service broadcasting?

Kevin Bakhurst: Thank you very much, Chair and members of the Committee. It is a great pleasure to be here. I am group director at Ofcom for content and media policy. I have been there for nearly three years, and before that I used to work in public service broadcasting. I worked in Ireland for RTE for four and a half years, and before that I was at the BBC for 20-odd years. My background is in broadcasting, but I now work in regulation.

From Ofcom's perspective, it is Government and Parliament who set the framework for public service broadcasting through legislation and the BBC charter. They set out the requirements that we are responsible for making sure are delivered by the public service broadcasters. We understand that.

I have heard what was said by many of the people the Committee has invited to give evidence and would pick up some of the same things as them. However, we define PSB content as distinctive, high-quality, created in the UK and necessarily speaking to all audiences and reflecting the peoples of the UK. Importantly, it reflects the diverse peoples of the UK both on and off screen and on and off air. As has surfaced in many of your evidence sessions, we think that PSBs have a really important role to play in the coherence of society: namely, they allow the peoples of the UK to share experiences.

We have a number of ways to measure the success or otherwise of public service broadcasting. The Committee will be well aware that we carry out rolling research in this area to look at things like: spend by PSBs on particular genres and overall spend; the number of hours of output on particular content; revenues, some of which have been under pressure, as you have heard; how successful they are with audiences as seen through share and reach of viewing and listenership; audience satisfaction; and the representation and portrayal of their audiences.

Last year, we did a big piece of research about that at the BBC to see how successfully it was representing and portraying the peoples of the UK.

My personal background is in news, which is probably quite useful because the provision of independent, impartial, accurate news is at the heart of what PSBs do, whether that is national or international news, or news about the UK.

The final point is that Ofcom has an overarching responsibility for the broadcasting industry in the UK, and we see the role of PSBs in that context and as a central part of the environment that underpins much of the rest of UK broadcasting.

It is quite interesting to note that some of the people you have had here from other organisations—Netflix, Apple, Amazon and so on—introduced themselves as having worked in PSBs before. That underlines their importance to a whole range of organisations and to the success and health of UK broadcasting.

The Chairman: When you assess the health of PSB, do you take into account PSB-type content produced by non-PSBs? You talked about individual PSBs and you spoke about public service broadcasting. In the future, will you consider non-PSB-produced content?

Kevin Bakhurst: We published last week our intention to continue an important national debate, building on the work of this Committee, on the future of PSBs. One thing that we said we would necessarily look at is the role of the institutions that Parliament has decided should be PSBs and provide PSB content versus PSB-type content itself. It is quite difficult when you start to get into that area, because clearly PSB-type content is provided by a whole range of organisations, including Netflix and Amazon and others. So it will be a relatively thorny and difficult issue to look at.

At the moment, PSB organisations are a fantastic mechanism for delivering the range of content that provides the important services that I described earlier. It can sometimes be invidious to pick out one piece of content and decide whether it is PSB or not PSB. On the face of it, it might not be typically PSB. On the other hand, part of the critical importance of public service broadcasting in my view is that it attracts a very wide audience and remains relevant. Therefore, popular content has to be produced that brings in all sorts of audiences.

The Chairman: At the same time, the PSBs produce much content that is not PSB.

Kevin Bakhurst: That is debatable. By definition, content that is on a PSB channel is categorised as PSB. You can discuss how PSB it is, and I know that when representatives from ITV were here there was a discussion about "Love Island" and some of the soaps. It is not the job of PSBs simply to be niche broadcasters that cater to market failure. It is really important that they are relevant to all audiences, particularly young audiences. Ofcom has already said that tackling the demise of young audiences is really important for the future of PSBs, and we all

recognise that. Being entertaining, as we know, is also important, as well as informing and educating.

The Chairman: We might come back to that a little more when we talk about prominence.

Kevin Bakhurst: I am sure we will.

The Chairman: Prominence is an important factor.

Baroness McIntosh of Hudnall: In your opening remarks you used the word “distinctive”, which comes up quite regularly in respect of public service broadcasting. Increasingly, I find it very hard to know what “distinctive” means. Can you explain what you mean by it?

If I might, I will suggest some possibilities. One definition might be that “distinctive” means the difference between one public service broadcaster from another: for example, one should be able to recognise Channel 4 content as against BBC content. However, I get the impression that there is a feeling that there is something distinctive about public service broadcasting in its totality. That is where I struggle. Can you help us with that?

Kevin Bakhurst: I am pleased to say that you are not the only one who struggles with this. When we took on the regulation of the BBC, one thing Parliament made very clear was that the distinctiveness of the BBC was very important. We spent quite a long time wrestling with that and speaking to a range of people about how we define “distinctiveness” and whether it applies to individual content or to services provided by the PSBs.

It is tricky, because there is a whole range of things that can be put together to describe “distinction”. The BBC starts off by saying that it is its high quality and creativity that makes it distinctive, but high-quality content is produced by Sky and Netflix. It is a basket, in the end. With the BBC, we have found that often it is best to look at the services themselves rather than individual programmes or pieces of content. Individual channels will clearly have some programming or content that is not per se clearly distinctive from others.

It is often about the mix of programming across those channels. To take an example, BBC Radio 5 Live is a distinctive service, in our view, because it provides a unique mix of news and live sport, and a unique range of sport and a unique amount of news coverage. You might say that its sports coverage is not that distinct from that of talkSPORT, which also does excellent Premier League commentary, for example. Sometimes it is about individual pieces of content that are clearly distinctive in public service. More usefully, quite often it is about services provided by PSB institutions that are distinctive.

Baroness McIntosh of Hudnall: So it is a key word for you.

Kevin Bakhurst: It is a really important word, but I do not think that just saying whether something is distinctive or not will solve all the issues.

Baroness Bull: One word that did not come up but is in the five principles set out in the March 2018 report is “challenging”: in other words, making viewers question their perspectives. I wonder whether, having not mentioned it, that still feels important as part of a distinctive characteristic of PSB.

Kevin Bakhurst: Yes. That was an oversight by me; there were probably a lot of things that I could have mentioned in that briefing. “Challenging” is really important, particularly for news coverage and in a world where quite often people do not expose themselves to different ideas or content. A journey in PSB sometimes brings you to content that you may not necessarily choose but which confronts you with a different take on life, reality or society. Channel 4 in particular is very good at challenging shibboleths or accepted views. Certainly, when I listened to Alex Mahon give evidence, that came across as important for its own distinctiveness as a broadcaster.

Lord Gordon of Strathblane: Part of the problem is that, with modern streaming services, there has been quite a lot of pressure to recognise PSB as applying to the programme rather than to the source of its production. Representatives of COBA, for example, said that it would be illogical if a programme like “Our Planet”, which was produced by Netflix but could equally well have been on the BBC, were to be regarded as inferior in some way to a programme like “Flog It!” just because it was put on the BBC. How do you reconcile the difficulty between PSB applying to programmes and it applying to producers of programmes?

Kevin Bakhurst: As I said, this will be one of the thorny issues that everyone needs to consider. It would clearly be bizarre to label a lot of programmes on Netflix as lower quality or not of a PSB-type standard, because many of those programmes are co-produced by Netflix and the BBC or ITV so appear on both—“Planet Earth” is a good example of a really high-quality programme.

At the moment, we are taking the lead from Parliament on this, which has designated certain institutions as PSBs. Importantly for us, those institutions have a responsibility and are regulated to provide a range of PSB-type content. It is not pick and choose, and they can do it when they want. They have to provide a range of PSB-type content. They all have their own requirements which they are required to deliver on under law.

It is an arrangement that, in our view, has worked extremely well in maintaining quality of broadcasting in the UK. Arguably, some of the fantastic commercial broadcasters are producing this type of content because they want to compete with the PSBs. “Chernobyl” on Sky is a fantastic drama; its audience says it is one of the best that it has seen. It was very expensive. It would easily sit on the BBC, for example. If those broadcasters were not competing with high-quality organisations, would they be striving to do that?

Q206 **Lord Gordon of Strathblane:** The problem comes to one of prominence. Some streaming services disaggregate programmes and link

kindred programmes together. How will you cope with that and the issue of prominence?

Kevin Bakhurst: There is continuing discussion, primarily at the moment between the PSBs and some of the platforms, about the basis on which they allow their content to be disaggregated. They all have different arrangements with the platforms, which seem to be working. The argument going forward is whether the platforms make enough data available to the PSBs and whether the PSBs are satisfied that their programmes are given the right prominence as part of the commercial deal. Did they get the data on it? Are they able to link to other programmes? Is the context on the platform—the positioning of a programme in relation to the other programmes that are put alongside—satisfactory from their point of view?

That is all very much part of the commercial discussions with platforms such as Sky and Virgin, and I think with Apple. It seems to have worked relatively well so far. There is an argument that it might not always work very well and that some backstop might be needed.

Lord Gordon of Strathblane: Another aspect of public service broadcasting is universality of provision. Most people apply the term purely to content, but the availability, free to air, of public service broadcasting is an important ingredient. Digital terrestrial television is guaranteed only until 2022, which is rapidly approaching.

Kevin Bakhurst: There are two public service broadcaster MUXs—as they are called—whose licences expire in 2022. We are currently looking at those and we will make recommendations to government. I think that it will need new, but quite straightforward, legislation to extend that.

We communicated publicly with the PSBs about a year ago. First, the guiding principle for Ofcom is the survival and health of PSBs. Secondly, when it comes to demand on spectrum, we cannot see that spectrum, within that window of about 10 years, being of enough value even to discuss. We have given them some comfort about it overall. We are looking quite quickly to make a decision and a recommendation to government on the future of the two MUXs which I think you are talking about.

Lord Gordon of Strathblane: I may be totally wrong, but I thought that another spectrum switch was coming about for broadcasting.

Kevin Bakhurst: As I understand it, three MUXs will run out in the next four or five years. There are the two PSB MUXs in 2022, which I am talking about, and there is one commercial MUX, which is currently owned by ITV. We discussed this only yesterday to try to push it forward, because we would like to give the PSBs as much early certainty as we can. The plan is that we will make recommendations to government in the next couple of months.

Lord Gordon of Strathblane: Arguably, the choice of platform for public service broadcasting is important, because DTT is the only one at the moment that is free to air.

Kevin Bakhurst: Arguably, yes. You can get some free services on Sky boxes, for example. But it is critical to them. Clearly, the commercial PSBs do much better in terms of audiences on DTT than on other platforms, so it is also very helpful in driving advertising revenue.

Lord Gordon of Strathblane: This is my final question—the accent gives away the self-interest. People have said that the large public service broadcasters are well looked after, but we should always remember that Channel 3's remit in Scotland is exercised not by ITV but by STV. Are you building it into all the equations?

Kevin Bakhurst: We certainly are. We have had ongoing discussions with both STV and S4C. Current prominence seems to be fine. Our work on EPG prominence has cemented the positions of both STV and S4C.

On future prominence, we are not just looking at the larger public service broadcasters; we realise that it is critical for the future of all public service broadcasters.

Viscount Colville of Culross: I declare an interest as a series producer at Raw TV, making content for CNN.

We have read your report on prominence and have seen the TV controllers that have Amazon and Netflix on them. In your report, you say that some smart TVs' search tools could not find PSB content, because the necessary degree of integration had not been negotiated. What can be done about that, and what can be done to push back the incredible power of these huge SVOD content providers linking up with the smart TV manufacturers?

Kevin Bakhurst: You will see in our prominence report that we effectively looked at it in three phases. We looked at EPG prominence and made our recommendations about cementing the position of PSBs.

To turn to your point on future prominence, clearly there is an immediate phase about provision of on-demand players. We have made a recommendation: we think the Government and Parliament should legislate to give prominence to the VOD players of PSBs. Then there is more work to be done on both search and voice.

We also said very clearly in our report that we absolutely believe that whatever legislation is enacted needs to be future-proofed. It needs to set out a set of principles, but give power to the regulator so that it can move relatively quickly as the market develops. The next phase of prominence will probably be on the on-demand players, which is certainly what the public service broadcasters have said to us and in sessions here is critical to them for the next few years, but we are well aware that the market and technology are moving very quickly, and that search and voice will be coming up the rails, so to speak.

The Chairman: So prominence is one of the important privileges that PSBs have, but there are others.

Q207 **Baroness McIntosh of Hudnall:** What else could be done to help the PSBs to sustain their viability by way of things other than prominence?

One of the things we have heard, particularly last week from ITV, is considerable concern about the platforms carrying their material and the loss of advertising revenue that they sustain from that.

Also, there was the question of whether there should be a retransmission fee when other platforms carry their stuff. At the moment there is not. Could you talk to us a bit about your view on whether there is an imbalance in regulatory terms at the moment between what is expected of the commercial PSBs in particular, like ITV and Channel 4, and what is not expected of the other platforms that carry their material?

Kevin Bakhurst: I was not surprised to hear ITV raise this issue, because we have spoken to it about it for some time. We have also spoken to Virgin about it in particular. The truth is that the law now allows them to have their negotiations over retransmission fees. Clearly there is a “must offer, must carry”, but that is about only the PSB channels themselves. In ITV’s case, ITV1 is not really up for grabs. It has to offer it to other platforms; there is no negotiation to be had about that.

There is a whole negotiation to be had about the players, the other ITV channels and arguably about ITV HD. It has a suite to negotiate on retransmission fees. I hear loud and clear the points that Carolyn and Magnus made about the difficulties faced by platforms allowing programmes to be recorded so easily—in fact, pushing recording of programmes and therefore diminishing the value of ads. Realistically, the evidence for that behaviour must play into the next round of negotiations on retransmission fees for the platforms and the value to the platforms of PSBs. It is a very fraught area, as you can imagine.

On the other side of the equation, it is really important to the UK that it has successful, viable commercial platforms like Sky and Virgin, which are also able to invest in their own platforms, innovation and so on. It is a live issue. At the moment, our view is that it is best resolved by commercial negotiation. We have played a background role once or twice to try to make sure services will not disappear off platform; to try to encourage people to carry on talking—or to get them back on, if you like.

Baroness McIntosh of Hudnall: Forgive me, but I slightly get the feeling that you are saying, “Not really our problem”. I am sure you do not want to say that quite so bluntly. Is there any role for a slightly tighter regulatory framework that would give them a little more confidence? There may be a necessity for them to be the principal negotiators, but what they appear to be saying is that there is just no level playing field at the moment. It would be fair to ask Ofcom whether it has a role to play in that.

Kevin Bakhurst: All these things have to be looked at in the PSB review and the future of UK broadcasting: all those relationships, all the ways in which PSBs can monetise and pay for their content. We will inevitably have to look at the relationship between PSBs and platforms, because if there is legislation about prominence we will force the platforms to put PSB content on them when they might not necessarily want to in future.

Clearly, the platforms' argument at the moment is correct: PSBs get prominence because audiences want it and no one else has outbid them for it, but that will not necessarily always be the case. In effect, a monetary cost to some of the platforms will potentially be attached to any legislation about future prominence. Sorry, it is a complicated discussion.

Baroness McIntosh of Hudnall: I completely understand that it is complicated, and clearly you have to be careful about how you position yourself.

You touched earlier on spectrum when replying to Lord Gordon. Could you clarify your position on long-term access to spectrum and whether you think the PSBs should be charged for access?

Kevin Bakhurst: I can probably talk about the foreseeable future, which is probably 10 years.

Baroness McIntosh of Hudnall: You are doing very well if you can foresee 10 years.

Kevin Bakhurst: I can foresee 10 years only in certain areas. I can foresee it for the PSB MUXs. ITV and Channel 4 came in and made an argument for extending the licence to those PSB MUXs for 10 years. That is what we are looking at. It might be tied to the remaining PSBs, particularly ITV, but these are PSB-designated MUXs. In the current environment, if we can offer 10 years' certainty on the PSB MUXs in some way it would go quite a long way to answering the question that they were posing.

Q208 **Lord Bethell:** I would like to ask about young audiences. We have heard a lot of evidence about the incredible transition from the terrestrial channels, such as the BBC, to the SVODs. Could share your insight into this phenomenon, where you think it will play out to and what the impact will be on the mandate for public sector broadcasting?

Kevin Bakhurst: In previous evidence hearings you will have heard quite a few people quote Ofcom figures. Clearly there has been a very steep fall in younger audiences from linear broadcasting. There has been a 60% fall in those aged 16 to 24 over the last six years or so. These are big figures for young audiences turning to other ways of watching content.

It is really important to say, as I think Netflix did, that the BBC and the other PSBs are still doing an amazing job in the provision of programming and material for young audiences. It is part of our responsibility to make sure that children get children's content in the way they want to watch it or receive it. It is also part of our remit to make sure that Channel 4 is providing young adults with content that they are interested in. It is clearly in the interests of the PSBs to remain relevant to those audiences.

We have heard from the broadcasters that some of the best creative minds are thinking about how they will maintain a connection to young audiences. Clearly, number one is content. Number two is making sure

that young audiences can find it. Number three is putting it where they are—go fishing where the fish are, basically, so putting good content where the audiences can find it.

We will give what support we can to the PSBs by making sure that, first, we encourage them, secondly, we measure what they are doing, thirdly, we give them as much information about audiences possible, and fourthly we try to support them in delivering that content to where the young audiences are. A lot of it will come back to whether they are making the kind of stuff that young audiences really want to watch.

Lord Bethell: Is it your expectation that the audiences that have left the PSBs over the last few years will simply grow into a different habit, and we will have a world where young people skew off PSB but grow into it when they are older? Or is it a more existential problem and we will see a long-term shift? That has quite big implications for both the sector and the taxpayer.

Kevin Bakhurst: If you look at the evidence, which is what we are reputed to do most of the time, you will see that at the moment the move of young audiences away from linear and traditional broadcasters is continuing or picking up pace, rather than being reversed. The perennial question for the broadcasters, for everyone, is whether audiences are going to come back.

Part of the evidence shows that older audiences are adopting the habit of younger audiences slightly later, so I am not sure whether it is about young audiences coming back or about how much the older audience is going to follow where the youngsters go. That is a challenge for the PSBs as well.

Having said that, it is really important to remember that although young audiences have moved away from linear TV significantly, they are still watching a lot of linear TV. There are particular types of programming that attract them. You have talked about this already. Live sport is a great one for young audiences, as are some of the dramas and some of the family shows produced by ITV—"Britain's Got Talent", "The X Factor" and so on. "The Voice" and "Killing Eve" on the BBC are other examples. These programmes have really cut through with young audiences and have done so, at times, on traditional channels. Look at the Women's World Cup. It was a massive success for the BBC, not just in numbers but in the demographic range of those who watched it, including young audiences.

Lord Bethell: But if we follow the logic of your comment that this is a significant shift, and if we accept that the objectives of public sector broadcasting are very valuable, at what stage does Ofcom have to think about a different way of achieving public sector broadcasting objectives? Rather than working through the existing broadcasters, might it have to think about different models for securing the societal benefits that we all value?

Kevin Bakhurst: We continue to think about PSBs and how they best deliver the benefits to UK society. That will be at the heart of our look at the future of PSBs.

Under statute, we have to look at PSBs every four or five years. Traditionally, that has been a rather thick book that sits on people's tables gathering dust and does not have a huge amount of impact, but a lot of work goes into it. This time, we have decided that we will look into what PSBs have been doing over the past four years, how successful they have been and what the trends are. We would then do a separate piece of work looking at the challenges and the future of PSBs. It is about continuing the conversation that is being kicked-off here, with Parliament, stakeholders, audience groups and so on, about the challenges, how PSBs can shape up for the future and what the regulator can do to enable that.

You are absolutely right: looking at how those values are best sustained, how the provision of news to big audiences is sustained and how PSBs can continue to be relevant and bring the country together around national events, all of which are critical, are some of the key things that we will look at.

Baroness Bull: I want to follow up on the question of diverging viewing habits, in particular in the light of something you said in your introduction about the responsibility to enable and contribute to the coherence of society. Is there a tension between different generations viewing and engaging in different ways and the ambition to create coherence across those different sectors of the community?

Kevin Bakhurst: There is potentially a tension there. In a way, it speaks to the power of the events and programmes that continue to bring all age groups and people together. Interestingly, to take "Britain's Got Talent" on ITV and "Strictly Come Dancing" on the BBC, the evidence is that they still deliver very big, family audiences, with different generations watching TV together. They still really cut through. The big national events, such as the Olympics and the World Cup, still do the same job. It is clearly getting harder and harder to produce such programmes. There is no Morecombe and Wise anymore to bring absolutely everyone together, but from time to time there are still these huge programmes that get the country talking and bring coherence and commonality to people.

Baroness Bull: So the programmes or events act as a glue. But what about the responsibility of PSB to interrogate the issues that are leading to this divergence, which goes way beyond different viewing habits? What is the PSBs' role in that and how can it be fulfilled?

Kevin Bakhurst: The PSBs do a lot of work to decide where their audiences are going and what they are watching. One of the advantages of new ways of distribution and new technology is that, where there are fragmenting audiences, smaller audiences can be reached much more cheaply and effectively. Interestingly, BBC Sounds is a recognition of that. When young people are listening to stuff on demand and to

podcasts, that is where a service that is attractive to them should be offered.

I have talked a lot about TV here, but TV and radio still drive big national audiences: 80% to 90% of the audience watch or listen to BBC and ITV content every week, in the face of incredible competition and choice. I am a bit of a glass-half-full person. The glass is still half full, as far as I am concerned.

The Lord Bishop of Chelmsford: I want to pick up on something you said earlier. I entirely take the points that the SVODs are providing PSB-type content and that the PSBs are there to entertain as well as educate. It feels to me that the missing bit is the informing, and you mentioned, very briefly in passing, news and current affairs. I do not see how the SVODs are going to deliver that, or why they would want to. The PSBs are getting squeezed, newspapers are not being read and there is evidence that young people receive news in the echo chamber of the internet.

How concerned should we be about news and current affairs? How concerned is Ofcom about news and current affairs? What do we need to do about that, because we have some opportunity to say something?

Kevin Bakhurst: You are entirely correct: the SVODs have said themselves that they are not interested in news or current affairs. We know from our audience research that the impartial news and current affairs programming on public service broadcasters like the BBC and others—and on Sky, to be fair—is hugely valued by audiences.

We do a lot of work on the plurality of news sources on TV and radio and, on the occasions when we are asked to look at mergers, in newspapers. As you rightly say, there is no doubt that some news sources are under pressure. We know that newspapers are under pressure, and some have closed or merged. As things stand, the UK has a very vibrant broadcast news market with a lot of suppliers of news, which provides a huge range of news and current affairs programmes and very high-quality journalism. The audiences know that and rightly have high expectations, and they know they have a backstop with the regulators when it comes to quality.

You are absolutely right. Even if PSBs were to have their responsibilities slimmed down, the provision of news in an era of distrust, disinformation and misinformation, and of placing a value on reliable public service news that reports on the world and the UK for people in the UK, is probably the last man standing. It is the most valuable part of what public service broadcasters do. You are right to say that we should value it and that it should be at the forefront of any thinking about the future of PSBs.

The Chairman: Sadly, we need to move on. We might come back to you outside the meeting to explore some of those issues a bit further. We are going to move on to talk about Ofcom's powers has to deliver some of the objectives that you have described.

Q209 Baroness Quinn: I have a couple of questions on diversity, including BAME, LGBT and regional diversity—diversity in its different forms. The background is that some of our witnesses have felt the PSBs were not doing enough to appeal to diverse groups, or to reach out and involve diverse groups in different ways.

My first question is whether you feel you have sufficient powers to hold PSBs to account where they fail to represent a range of people both on and off screen.

Kevin Bakhurst: I saw the evidence from Simon Albury and Lenny Henry. This is an area that we have given a huge amount of thought to. I would not disagree with many of the things they said at all. To be fair to the PSBs, we know, because we measure it, that they have made significant progress in their portrayal and representation on screen of the peoples of the UK, and we know that the audience recognises that.

There is still some way to go and no one should be complacent about it, but we have measured this. Last year we did an in-depth review of the BBC, as I mentioned, on representation and portrayal. As you rightly say, they are all important parts of diversity, and this is not simply an issue about BME portrayal, which is a crucial part of it, but about a whole range of characteristics and the diversity shown in portraying the peoples of the UK, the nations and regions of the UK—and, in fact, the regions of the nations of the UK. It is a complex area.

Have the broadcasters made progress? Undoubtedly they have. We know that they have. You can measure it and see it on screen and you can hear it on air. I looked at the BBC's annual report recently, and it published a very long section at the back about its figures on workforce diversity.

Transparency is a really powerful tool and it is good to see it there. It has made some progress. It says itself, as does Channel 4, that there has not been enough progress in particular areas, particularly off-screen diversity. I am sure that that is still an issue for broadcasters. They say that themselves and it is in the figures too, particularly for BAME in senior management. Channel 4 and the BBC both say that they need to do better.

The really positive thing from our point of view is that we have a range of powers. Sometimes that is not enough for a lot of people, and sometimes there are other tools that we could ask for. One of the most important things for us is that we know the genuine commitment of the chief executives of the public service broadcasters and of Sky to this. For me, it is a sea change from years ago because it is genuine. Also, they know that it is important, not just because it is the right thing to do, but because it is the only way to come back to connecting with audiences, especially young audiences.

Audiences know what is authentic. They know when dramas about particular communities have been commissioned, written and produced by people from that community and when they have not. Audiences can spot a lack of authenticity. Broadcasters increasingly know that it is not

just the right thing to do, but critical for their businesses. They must deliver this and deliver it better.

You asked about our powers. We have certain powers. As you know, we now publish a report every year about the diversity of TV and a separate report on diversity in radio broadcasters' workforces. We have the powers to get the figures for the three protected characteristics. We do not have the powers to force broadcasters to give us figures for the other characteristics. We have written to the Secretary of State twice to ask for those powers. Do we need more powers in that area? Yes, we do, and we have asked about it. It would be great if we got an answer.

To come back to Simon Albury and Lenny Henry, I heard Channel 4 talk about tax breaks, which are not for us to do, but there are other tools that could be used, such as bespoke tax breaks for independents that have BAME quotas or whatever. That would be quite a powerful tool as well.

Baroness Quin: On the regional issue, I noticed in your evidence that you had issued a consultation setting out proposals to review the criteria to define a regional production. What progress has been made on this, has the consultation finished and the results been analysed? Where do we go from here?

Kevin Bakhurst: The consultation closed. In fact, we issued a statement a few weeks ago on "made outside London" content, as it was called. The overall consensus was that the rules were working generally satisfactorily. However, the regime needed policing more carefully and there needed to be more clarity about the interpretation of those rules.

We have done both those things. We have clarified how people qualify for regional production, or productions in the nations. We have also said that there will be a more stringent reporting regime and a more stringent regime of spot checks to make sure that production companies that say they are producing in the nations or regions are actually doing so and meeting the criteria properly.

Baroness Grender: You say that there has been significant progress with the PSBs, but at the same time do you see it as ironic or something of a concern that BAME groups are shifting towards, say, Netflix and finding that it is more reflective of them than the PSBs?

Kevin Bakhurst: I am not sure that I find that ironic.

Baroness Grender: Does it worry you? You have said that we are making progress, yet the evidence that BAME audiences are shifting towards Netflix and finding a home there flies in the face of that.

Kevin Bakhurst: The PSBs definitely need to think about why they are going there. Some of this comes back to the type of programming, its authenticity, who is making it and whether they actually understand enough what the audiences are looking for.

It is undoubtedly a challenge for the PSBs. Yes, some of the audiences have shifted a bit, but the PSBs still have very large, diverse audiences. If I was running a PSB I would want to get those audiences back, look at

why they had gone to Netflix or Amazon, and interrogate those reasons a bit. I am sure a lot of it comes down to whether it is genuine, authentic content that picks up the issues that people are genuinely thinking about in those groups.

Baroness Grender: You mentioned BBC data. Something that has recently come in for quite a bit of criticism is the fact that BBC Studios and BBC Worldwide are being put together as a single piece of data when it comes to diversity. Do you think that the BBC will be sufficiently transparent on reporting this kind of data if those two organisations are put together?

Kevin Bakhurst: We had to consider the merger of BBC Studios and BBC Worldwide when the director-general proposed it a few months ago or whenever it was—a year ago. We were concerned about the overall transparency in the commercial arm, because as soon as parts of the BBC get moved into the commercial arm Ofcom has very little remit over them. We cannot force them to be transparent.

Generally, we have said that we think transparency is important for the BBC. That underlines a lot of our decision-making about it. We were concerned about aspects of transparency that included the different business lines in BBC Studios when it moved across. We were very gratified when the BBC came forward and made some public commitments on maintaining the business reporting so that people could have the same degree of transparency in the business part of the Studios as they had had up to now. The BBC offered those and we accepted them.

There are clearly issues, because they are being commented on. I looked at those BBC figures in the light of that, and clearly there are problems, in that you cannot determine whether Studios is making progress or not. BBC Studios produces a whole load of BBC content. The diversity of the producers of that content and being able to measure it are important. The BBC should think about that and perhaps break down the figures so that people can track the progress which it has said it will make.

Clearly, other issues, such as presenter pay in BBC Studios, have also arisen. It is a commercial part of the BBC and there is no requirement on it to be transparent about that. So, yes, there are transparency issues around BBC Studios, of which the workforce aspect is important.

Baroness Grender: So not only will you ask it to think about that but you will pursue it and ask for a more detailed breakdown of data.

Kevin Bakhurst: Somewhat handily, we will start a review of BBC Studios this autumn. It will be a general review, but these may be some of the issues that we look at. We might make recommendations. As Sir David Clementi has alluded to, there is also the mid-term charter review, so it may be an issue that others want to look at as well.

Baroness Chisholm of Owlpen: You have talked a lot about authenticity in the programmes, but that is very dependent on who is working off screen behind the cameras. Is there some way in which you can measure how that is working and whether the PSBs really are

employing people from diverse backgrounds? That would surely then be manifested in what is shown on the screen.

Kevin Bakhurst: We have a number of ways to measure it. First, the BBC reports on itself; it does job breakdowns in its figures at the back of its annual report.

Baroness Chisholm of Owlpen: I saw that.

Kevin Bakhurst: There is quite a lot of information about who is in which roles.

Baroness Chisholm of Owlpen: The proportion is still pretty low, is it not?

Kevin Bakhurst: Yes, it is too low; I think the BBC recognises that itself. We talked about “made outside London” as another aspect of diversity. To meet one of the criteria, production companies must have a certain amount of their workforce based in the nations or regions. Again, facts about that are available and we can access them.

One issue generally for the industry is that an awful lot of content is made by independent producers, which is a great thing in many ways, but the information about individual productions so far available on a granular basis through Project Diamond is probably not what everyone would like it to be. We know the overall, self-declared picture, but it would be great to see more progress in those areas.

Baroness Chisholm of Owlpen: Does that need if not legislation then some incentive?

Kevin Bakhurst: I think Deborah said that they feel that they are making progress. In a way, it is in the hands of the broadcasters; they manage the project alongside Deborah. It would be quite welcome. Clearly, there are issues with smaller workforces and so on that they need to deal with. Our view is always that the more transparency and information there is, the better, because that is a powerful tool in tackling some of these issues.

The Chairman: We are a little pushed for time. Lord Storey, I think you wanted to come in and then you have your own questions. Perhaps you want to take the two together.

Lord Storey: We can see changes in diversity on screen, but the BBC—you mentioned BBC Studios—and ITV use lots of independent production companies. They are not going to use those companies if they have all-white presenters or actors, but can we be sure that the BBC or ITV would ensure that people working behind the camera were from a range of ethnic backgrounds and diverse, or is there no way of knowing that? Are we reliant on the BBC or ITV to ensure that that is the case?

Kevin Bakhurst: We are reliant on them to some extent. However, one thing that we agreed with the BBC about diversity is that it would come up with a commissioning code on how it commissions material from independent producers. We are aware as a regulator that we have no

remit over the workforces of independents; in fact, we have no remit to get the facts and figures about them either.

What we do have is a remit for the BBC. It volunteered to come up with a commissioning code, which means that every time it commissions a programme from an independent production company, the company must give it exactly that information and answer those questions. We will report on how that is being implemented in our annual report on the BBC. The BBC came up with quite a stringent commissioning code that should help drive some of this drive.

Lord Storey: In practical terms, if the BBC was using Lime studios, or whatever it is, for a production, would there be evidence about the diversity of the workforce making those programmes?

Kevin Bakhurst: Yes, there would. I know from talking to commissioners at the BBC, ITV and Channel 4 that this is very much a part of the discussion. I think they know that there is more progress to be made and there are areas where not enough information is available, but there is a clear drive to improve diversity both on and off screen. I think they all recognise that they have made some progress on screen but that there is a lot more to be made off it. When I go to conferences of producers, we sit there talking about diversity, but I look around the room and see very little diversity on show. Getting diversity in the workforce is an issue for us at Ofcom, too. We have progress to make as well.

The Chairman: We still have quite a lot of stuff we want to cover with you, so we will take probably two more questions and then ask you to write to us about a couple of areas.

Q210 **Viscount Colville of Culross:** In your submission, you talked about there having been a decline of some £1 billion a year in UK-originated network content during the past 15 years. At the same time, we are told that the SVODs are able to pay huge amounts of money for high-end drama—people such as Peter Kosminsky are worried about that. Are you worried that the disparity in money available to the SVODs and the PSBs to make high-end content is disadvantaging PSBs and will affect their content long term?

Kevin Bakhurst: It is an area that we monitor carefully. The answer is yes. If it tipped one way or the other, I would be concerned about it. It was interesting listening to the evidence from the different broadcasters, who had a very different take on this. ITV pays fully for 84% of its productions. That is a great selling opportunity for ITV Studios.

For the BBC—I have discussed this with Peter Kosminsky and heard his concerns about it—there are concerns if co-commissioning suddenly dried up, but the evidence is that co-commissions are still happening, with Netflix having said that it intends to carry on doing them. I do not know whether it will or not; it is building up its presence in the UK and will probably not be so reliant on them.

There is no doubt that if co-commissioning dried up completely it would pose a problem for PSBs and certainly in some of the high-end programmes that they are making—factual, drama, or whatever. You talked about inflation costs. Clearly, those are in areas such as high-end drama, which the BBC’s director-general talked about.

Yes, we are keeping an eye on it. If it dries up, there could be other tools, particularly under AVMSD and so on, to try to redress that.

Viscount Colville of Culross: What about the terms of trade? Under the present terms of trade, the PSBs take the risk with the commission, yet they cannot get their back out. There has been talk about amending the terms of trade for some of the big consolidated independent groups owned outside the UK? Is there any mileage in that?

Kevin Bakhurst: I am not sure. We have conversations with the PSBs about terms of trade and with PACT as well. As you know, Channel 5, Channel 4 and ITV have all renegotiated terms of trade and are satisfied with the outcome, as are the independent producers. As I understand it, the BBC is also in discussions with PACT, because the terms of trade need to change to reflect the changing environment of on-demand and so on.

It is an incredibly vibrant market right now and terms of trade seems to be working okay. Of course, it is a backstop for independent producers; they are totally free to go beyond it if they want to or to negotiate different terms.

Viscount Colville of Culross: We are being told—I am being told, anyway—that the BBC increasingly cannot afford the tariff, so it is expecting the independent producers to be able to make up the difference by giving up some of their rights.

Kevin Bakhurst: You are talking about the negotiations between the BBC and the producers?

Viscount Colville of Culross: Yes.

Kevin Bakhurst: I am not privy to the discussions, and those negotiations are ongoing at the moment. Of course the BBC is under financial pressure, but luckily there is a vibrant marketplace at the moment and the BBC is not the only game in town for the producers.

The Chairman: Sadly, we have run out of time. There are a couple more areas that we would like to discuss with you. I will ask members of the Committee to briefly summarise the questions, and we will ask you to respond to us in writing.

You will have seen Sir David Clementi’s comments when he spoke to us about regulation and Ofcom. Sir David subsequently wrote to us with further evidence, which we asked for and will send to you. We may ask you to comment on that.

Lord Storey, for the record, will you outline the questions on the BBC that we would like to ask?

Q211 **Lord Storey:** When it was suggested that Ofcom was going to regulate

the BBC, there were all sorts of concerns on both sides about how this would work in practice.

I have a very general question. How do you think Ofcom's regulation of the BBC has worked, not just in practice but in the relationships? How do you respond to the criticism that public service broadcasters are having to adapt and change very quickly and will come to you with requests? How quickly will you be able to respond to those requests? iPlayer is an example; there have been suggestions that you have taken rather a long time to come to a view about that.

Kevin Bakhurst: Should I answer that now, Chairman?

The Chairman: Perhaps you could make a very brief comment. We will also send you Sir David's letter, and perhaps you could comment in writing when you have had an opportunity to read it. Is that all right?

Kevin Bakhurst: Certainly. On the overall relationship with the BBC, we are nearly two years in now. As you would expect, it is generally professional. There have been occasional bumps in the road, and I would say that iPlayer was probably one of them.

A lot of things have gone well so far. This is a learning process; the BBC has not had an independent regulator before, and Ofcom has not regulated the BBC before. I am sure that there are lessons for both sides to learn along the way.

Just to be crystal clear about the iPlayer decision—I will try to be brief—it has taken a certain amount of time. When the BBC came to us originally with their proposal, we said, "Okay. That's for 12 months. Can you show us a longer-term strategy?" The answer was no. We said, "Can you tell us what the impact will be on the other UK public service broadcasters?" The answer was, "No, because we haven't discussed it with them".

I know that the criticism has been, "Don't be obsessed by the UK public service broadcasters", but we have a duty to all UK public service broadcasters. It is also our duty in the charter agreement to look at BBC competition and whether public value justifies market intervention on the part of the BBC. It is in the statute.

We are well aware of the presence of Netflix and Amazon. Clearly we spend half our time dealing with issues relating to that. We also told the BBC, "We don't think this is the wrong strategy. We just think that we need transparency about it. You need to give the other UK broadcasters a chance to know what you're doing, to comment on it and for there to be a proper process". There needs to be transparency in what the BBC is doing here and the impact it will have on Channel 4, ITV and others. We feel that the process has given that.

In the initial few months when we were talking to the BBC about it and disagreed with their materiality assessment, we did not stop them doing anything at that stage; they could carry on doing it. In fact, when we said that we thought it was the material, there was an option for us either to stop the BBC in their tracks or to make them rewind what they had done. Actually, we took a very pragmatic view, which was, "We think

this is generally the right thing, but there needs to be a proper process. You can carry on doing it, but we will look at it and everyone will have a chance to comment on it". We had seven months to do it. We have done it in three and a half months.

This is a very fast-moving environment, and the BBC and others are facing unprecedented changes. I have told the BBC that what we were asked to do by Parliament in the charter agreement—for the first operating licence, for example—was very linear and almost backward-facing. We absolutely intend to look at how we can make this more future-facing and more agile, and at how we can provide a more fleet-of-foot response to some of these things, but when you are asking other broadcasters to comment on such significant changes you have to give them the time to look at the material, do a bit of research and respond. A few weeks for consultation is not a very long time to do that.

Q212 The Chairman: Thank you for that, and for your evidence. There was another subject area that we wanted to explore with you, online advertising and a level playing field, which I know you have looked at from the perspective of a number of sectors. We will write to you about that, if we may.

Kevin Bakhurst: Sure.

The Chairman: You have given us some very full answers. Thank you very much for the evidence you have given us and for the written evidence that you sent us.