

**CONFIDENTIAL**

To Secretary of State cc Sue Street  
Andrew Ramsay  
From Jon Zeff  
Stephen Lovegrove  
File Ref Bill Bush  
Date 9 February 2005

**BBC GOVERNANCE: Conversation with John Birt**

1. I understand you are planning to speak to John Birt this evening about our BBC Governance proposals. I spoke to Sarah Hunter this morning, who told me that the PM is querying whether the Green Paper should settle on the BBC Trust as single option or whether it should remain "green" on the issue of Governance.
2. I suggest there are 3 headline arguments for remaining "white" on Governance:
  - a. We are clear that the "BBC Trust" is the right model.
  - b. Prolonged uncertainty will make it difficult/impossible for the BBC to proceed with reforms, the broad direction of which we support
  - c. Instability: the BBC Governors are currently prepared to go along with the Trust option. Leaving the issue open risks pushing the BBC and Govt apart.

**Key differences between the Burns model and the "BBC Trust" model**

3. The two models are very similar in many respects. Both involve the creation of two, structurally separate bodies – an oversight body (the "Public Service Broadcasting Commission" or "BBC Trust") and a delivery body ("the BBC" in the Burns model or "BBC Executive Board" in ours). Both models envisage a clearly set out division of functions between the two bodies – and there are no fundamental differences in the way the functions are divided between the two (noting that under Burns the Government would no longer have any role in approving new services).
4. Key differences are:

**a) Number of non-execs**

**The Burns model envisages that the delivery arm should have a fully code-compliant board, comprising a majority of non-execs.**

**The Trust model envisages that the delivery arm should have a "significant minority" of non-exec members.**

**Argument:** In a conventional plc, the non-executives are in the majority as shareholder representatives. In the BBC's case, the Trust (or Commission) has the

responsibility for representing the interests of licence fee payers. The non-execs on the delivery body perform a different role – as “critical friends”, bringing a wider perspective to decision-making. It is therefore unnecessary to have a majority – and risks a confusion of roles.

#### **b) The Chair of the Delivery Body**

**Under the Burns model, the delivery arm is chaired by a non-executive, who is appointed by the Government.**

**In the Trust model, the chair of the delivery arm is appointed by the Trust, which has discretion over whether to appoint the DG or a non exec**

**Argument:** Giving the Trust control over the appointment is a key driver of the relationship between the two bodies: the Trust is clearly sovereign and the Executive Board is clearly accountable to the public via the Trust. (BBC Govs feel particularly strongly about the discretion to appoint the DG).

Making the Government responsible for appointing the Chairs of both bodies enforces too great a separation between the two. It confuses lines of accountability – since both bodies have a direct relationship with Government – and increases the potential for serious conflict between the two bodies.

There is a serious risk that the Burns model would, in practice, tilt the balance of power too far away from the oversight arm. It could be very difficult for the “Commission” to exercise real control over a powerful, separately appointed non-exec chair with a primarily non-exec board.

#### **c) Contestability/Name**

**The Burns model is specifically geared to the possibility that the oversight body might take on responsibilities for PSB beyond the BBC, including possible distribution of the licence fee to other organisations. The name – “Public Service Broadcasting Commission” – clearly envisages this.**

**The BBC Trust is a BBC-specific model, although it could be adapted to take on wider responsibilities in future if desired.**

**Argument:** One of the core principles underpinning the Green Paper is that the connections between the BBC and licence-fee payers need to be strengthened. The Burns model undermines this as it is not BBC-specific. It is potentially more confusing to the public than the current system.

As the Green Paper signals, decisions on possible wider uses of the licence fee are some years down the track. It would be premature to base the BBC governance model on specific assumptions about future decisions.

Jon Zeff  
Head of Broadcasting Policy Division

RESTRICTED.

-----Original Message-----

**From:**  
**Sent:** 10 February 2005 14:42  
**To:** ZEFF JON  
**Cc:** RAMSAY ANDREW; BUSH BILL  
**Subject:** PHONE CALL WITH LORD BIRT - CONFIDENTIAL  
**Importance:** High  
**Sensitivity:** Confidential

Jon,

The Secretary of State spoke on the telephone to Lord Birt last night about the Green Paper. He said he was disappointed that the Paper did not recommend Lord Burns's model. The SoS said she was satisfied that the Trust model was the right one, both in substance and policy terms, not least because it was flexible to adapt to change over the coming years. She thought it would be a tougher, more flexible, more transparent system than is currently in place.

Lord Birt did not agree, and felt that the Trust model would in practice be similar to the current system. The Secretary of State disagreed. He said that it was unlikely that the Trust model would be interested in real contestability. The SoS said that any introduction of contestability would be for the SoS to decide, and she was satisfied that the Trust model was flexible enough to allow for contestability to come into effect mid-way through the Charter period if desired.

Lord Birt asked why all the model options had not been left open in the Paper. The SoS said it was her clear judgement that if the options were left open then there would be significant political disadvantages and much progress made with the BBC would be lost.

*Private Secretary, Secretary of State's Office*

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**RESTRICTED - POLICY**

To Secretary of State cc Andrew McIntosh  
Bill Bush  
From Sue Street Andrew Ramsay

File Ref

Date 15 March 2005

**MEETINGS WITH LORD BIRT**

1. Now that the Lord Hanningfield PQs have been answered, it is in order for you to meet John Birt if you want to do so. I am aware that his office is pressing to reinstate the meeting recently postponed on my advice. I presume it is to discuss broadcasting policy, including the BBC.

2. You need to bear in mind that he told you in March 2003 that he was not talking to you about the BBC in his capacity as a government advisor, as broadcasting policy was specifically excluded from his remit at Number 10. You should also refresh your memory on paragraph 51 of the Ministerial Code (attached). In this case, since John Birt is an unpaid advisor to Number 10, it is for them jointly to ensure that there is no conflict of interest relating to the issues on which he advises.

3. Nevertheless, if you meet you should refer at the outset to his helpful clarification in March 2003 of the ground rules, check what the current position is, stick to that rigorously in discussion and make sure that an agreed note is taken for the record.



**SUE STREET**

such approval. Any departures from the rule of two Special Advisers per Cabinet Minister will need to be explained publicly. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract for Special Advisers and the Code of Conduct for Special Advisers.

### **Unpaid advisers**

51. The appointment of an unpaid adviser is to provide advice to a Minister in their ministerial capacity. Such appointments are exceptional, and the prior written approval of the Prime Minister should be sought for any such appointment before a commitment is entered into. These appointments carry no remuneration or reimbursement from public funds. The appointment of an unpaid adviser is a personal appointment by the Minister concerned and there is no contractual relationship between such an adviser and the Department. In making an appointment Ministers must ensure that there is no conflict of interest between the matters on which the unpaid adviser will be advising and their private concerns. A letter of appointment must be issued by the employing Minister making this clear. The letter should indicate the subjects with which an unpaid adviser may (or may not) deal and their access to papers. The normal rules of confidentiality also apply. Unpaid Advisers are subject to the Official Secrets Act and Business Appointment Rules. Aside from the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system, an unpaid adviser should constitute no cost to the public purse.

### **Royal Commissions, Committees of Inquiry**

52. The Prime Minister should be consulted in good time about any proposal to set up:

- a. Royal Commissions: these can only be set up with the sanction of the Cabinet and after The Queen's approval has been sought by the Prime Minister;
- b. independent Committees of Inquiry into any aspect of public policy.

Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning appointments set out in paragraph 53 below. The Lord Chancellor should also be consulted where there is a proposal to appoint a judge or legal officer (eg a Law Commissioner) to any of the above inquiries. Indeed it may be preferable for the individuals concerned to be approached by the Lord Chancellor, rather than the Department concerned.

### **Appointments by Ministers**

53. The Prime Minister should be consulted in good time about the appointment or re-appointment of:

- a. the Chair and other Members of Royal Commissions;
- b. the Chair of and, as required, the Members of
  - i. Public Corporations
  - ii. Nationalised Industry Boards
  - iii. the most important Non-Departmental Public Bodies (both executive and

## MEETING WITH LORD BIRT

### *Tessa*

As you know Sue submitted advice to you on conducting this meeting, which is enclosed. The main advice is at para 3:

3. Nevertheless, if you meet you should refer at the outset to his helpful clarification in March 2003 of the ground rules, check what the current position is, stick to that rigorously in discussion and make sure that an agreed note is taken for the record.

In view of that advice the following lines might be helpful for the beginning of the meeting:

- Remind Lord Birt that at your meeting on the BBC Charter Review in March 2003 he made clear that he was speaking in a personal capacity as a former Director-General of the BBC, and not as a Government adviser.
- Explain that you were grateful for this clarification. You'd be grateful if he could clarify his position again for the record:
- is speaking in a personal capacity at this meeting? Ask whether Lord Birt is still employed in his consultancy role, considers himself commercially or personally conflicted.
- (At the meeting in 2003) he said that broadcasting policy is deliberately excluded from his remit at No 10, partly because of his previous role at the BBC and partly due to his current employment as a consultant to a wide range of commercial broadcasters.

To Helen Macnamara cc Sue Street

From

File Ref

Date 7 April 2005

### **MEETING WITH LORD BIRT, THURSDAY 7 APRIL 2005**

1. I was present when SoS met with Lord Birt. SoS said that she said that they needed to clarify in what capacity he was attending the meeting. She said that at a meeting in March 2003, which had been minuted, he had clarified that he was discussing the BBC Charter Review in a personal capacity only. SoS said that she wanted to adhere to the necessary proprieties of the discussion.

2. Lord Birt explained that he sought to meet because of his personal relationship with SoS, because they have friends in common etc. He said he would not be at the meeting if he only had a professional relationship with SoS.

3. Lord Birt said that he thought the meeting should not be minuted. SoS asked about his remit as a number 10 advisor with regard to broadcasting. Lord Birt said that broadcasting is specifically excluded from his role and he has no involvement in broadcasting matters, he is not party to meetings or papers on the subject. He said he did not have the involvement in the BBC Charter Review Green paper alleged in the press. He said that he did discuss the Green paper in the margins of meetings where some people asked his opinion but he did not attend any formal meetings on the subject. I then left the meeting.

Private Secretary