

WEDNESDAY 14 DECEMBER 2005

Present

Bonham-Carter of Yarnbury, B.
King of Bridgwater, L.
Fowler, L. (Chairman)
Holme of Cheltenham, L.
Howe of Idlicote, B.
Kalms, L.
Peston, L.

Memorandum submitted by Ofcom

Examination of Witnesses

Witnesses: **Lord Currie of Marylebone**, a Member of the House, Chairman, and **Mr Tim Suter**, Partner for Contents and Standards, Ofcom, examined.

Q1431 Chairman: Good morning. It is very good to see you again. I gather you decided not to bring Stephen Carter today?

Lord Currie of Marylebone: We felt that the two of us would be able to handle your questions appropriately. Tim Suter is head of our contents and standards area.

Q1432 Chairman: As you know, we are now into the second part of our review. We have published the first part and we are now looking at various other areas but perhaps we could jog back to the first part and some of the recommendations and proposals that we made there and also in light of the debate we had in the House of Lords on Friday. One of the things which is constantly said about Ofcom is that you are just an economic regulator, nothing more, nothing less. Do you accept that?

Lord Currie of Marylebone: I would certainly not accept it. Our public service broadcasting review and the whole process around it indicate the much broader range of responsibilities

that Ofcom has given to us by Parliament, enshrined in the Communications Act. We have a very clear responsibility for the citizens' interests as well as consumer interests and we have to balance those where they might come into conflict. We have a very clear responsibility to maintain and strengthen public service broadcasting which is reflected in our PSB review. We have a much wider range and we regulate not just the private sector but the state owned Channel 4 and we also have regulatory powers over many aspects of the BBC's activities. We are certainly not a pure economic regulator.

Q1433 Chairman: Remind us of the two powers, the powers you have with the BBC and the powers you have with the commercial broadcasters in the non-economic field.

Lord Currie of Marylebone: We have over the commercial broadcasters, including Channel 4, tier one responsibilities for harm and offence, fairness and privacy and accuracy and impartiality. We also have those powers over the BBC except in respect of accuracy and impartiality of news. Then we have powers at tier two in terms of quotas of regional production, origination and so on. The BBC governors have responsibility for tier three powers. In the case of commercial broadcasters, we have a co-regulatory arrangement.

Q1434 Chairman: If someone makes a complaint to the BBC and they are not satisfied with it, that is perhaps the end of the matter but if someone makes a complaint to ITV do you act as a final court?

Lord Currie of Marylebone: Yes and also in respect of the BBC. We made the final adjudication on the *Jerry Springer Opera*.

Mr Suter: It is important on issues like that that the BBC is regulated in exactly the same way as any other broadcaster. If it is an issue of harm or offence, what used to be described as taste or decency that is a matter for Ofcom. A complainant to the BBC has exactly the same status as a complainant to ITV about a similar programme or a complainant to any other

broadcaster. The broadcaster may respond to it and may satisfy the complainant or may not, or the complainant can come direct to the regulator and in those instances the regulator is us. In *Jerry Springer*, the BBC received a lot of complaints. We received a lot of complaints directly as well. We waited, as we always do in situations like that, for the broadcaster to determine their own response, whether they think what they did was appropriate or not appropriate, before we come to our regulatory decision. In those senses, the BBC is in no different circumstance to any other broadcaster.

Q1435 Chairman: When it comes to accuracy and impartiality the BBC is a special case?

Mr Suter: That is right.

Q1436 Chairman: They are judge and jury, to put it in an emotive way?

Mr Suter: They regulate their own output in relation to accuracy and impartiality in news programmes.

Q1437 Chairman: They are judge and jury.

Mr Suter: If regulators are judges and juries that is what they are.

Q1438 Chairman: You say that you will consider charging companies who use the spectrum from 2006 and you also say that if you decide to go ahead charges would apply to the BBC and Channel 4. As far as the BBC is concerned, obviously it would push up the costs and the licence fee costs. Have you therefore decided whether the BBC is to be charged for spectrum from 2006?

Lord Currie of Marylebone: No, we have not. We have made it clear that there will be no charge for analogue spectrum unless a broadcaster was wilfully late with the digital switchover process. The question of whether we should charge for digital spectrum for broadcasters is a question that we will be going out for consultation on next year. We have

not taken a view on it but it is a question that we will come to as part of the broader review of spectrum pricing and spectrum trading. This is part of a much broader picture but whether we would wish, after consultation, to charge broadcasters is an entirely different matter.

Q1439 Chairman: Is the decision entirely up to you?

Lord Currie of Marylebone: Yes.

Q1440 Chairman: What is the case for adding to the costs of the BBC?

Lord Currie of Marylebone: I would not wish to say that there is a case for adding to the costs of the BBC in its own right but there is a case -- here again the broader spectrum review is relevant -- for spectrum pricing in order to encourage efficient use of spectrum. For example, if one was rolling out a new broadcast network, a system of masts and so on, with spectrum being priced you would arrive at a very different configuration of masts than if there was no charge, just as if you do not charge for electricity you would have a very different usage of electricity by broadcasters and others. We are asking the question: should broadcasters pay for spectrum, which is a very valuable resource, but nobody asks should the BBC pay for its electricity usage. It is also worth making the point that we are talking about a prime bit of spectrum, 112 megahertz of ultra high frequency spectrum. That is about two thirds of the equivalent of the 3G spectrum that was auctioned a number of years ago, so potentially it is a very valuable resource and one would want to encourage broadcasters to use that spectrum in the most efficient, possible way. That is the rationale, not pushing up costs. Those are arguments that will have to be considered and balanced in the consultation and the decisions which we take next year.

Q1441 Chairman: What would happen to the money that you raise?

Lord Currie of Marylebone: Like all spectrum receipts which we collect across the range, they go to the Treasury.

Q1442 Chairman: What we are talking about is a spectrum tax?

Lord Currie of Marylebone: Yes. It is a price for the use of spectrum.

Q1443 Chairman: The Treasury will be very interested in this, will they not, because they can raise more money? You are saying that is an independent decision for yourself?

Lord Currie of Marylebone: Yes. One of the key points is that in making that decision the maximisation of revenue for the Treasury is not the main consideration.

Q1444 Chairman: Why have we not charged before?

Lord Currie of Marylebone: Historically, we have had a different arrangement. We have slowly been implementing charging for spectrum across the board. We saw that with the mobile phone auction. We have increasingly applied administrative incentive pricing to the Ministry of Defence and other public sector users. Interestingly, in the case of the Ministry of Defence, it has been releasing spectrum and it has been made available for other users. We have seen the effect of pricing, encouraging exactly the type of efficiency benefits one would like, given the highly valuable spectrum. In the case of broadcasting, we have not charged. We have had the analogue compact, where in return for the gifting of spectrum there has been a requirement of public service broadcasting which has been laid upon the commercial broadcasters.

Q1445 Lord Holme of Cheltenham: There is obviously a strong *prima facie* case for looking at spectrum between broadcasters to arrive at a level playing field and a fair definition of entry cost in the way you describe. The bit that is worrying in the evidence you have just given is the role of the Treasury. When you go out to consultation next year is the Treasury

simply one of the bodies with which you consult or does the Treasury have some special role in this?

Lord Currie of Marylebone: Clearly the Treasury will take an interest in it but it is a decision for Ofcom.

Q1446 Lord Holme of Cheltenham: Will you consult with the Treasury?

Lord Currie of Marylebone: Of course. We will consult with all relevant bodies.

Q1447 Lord Holme of Cheltenham: Will they be like any other stakeholder or will they be a special stake holder?

Lord Currie of Marylebone: I do not think they will be special.

Q1448 Chairman: When the consultation document goes out, will you have shown it to the Treasury beforehand to see if you are putting the right points?

Lord Currie of Marylebone: That is something I have not considered. We would want to get the views of the Treasury but it will be an Ofcom consultation document that goes out. I do not think we as a regulator have been seen to be in thrall to any particular department of government. We are an independent regulator set up by Parliament with our statutory duties and I think we have been quite vigorous in pursuing those independently.

Chairman: I have not put out a Green Paper yet which has not been pored over by the Treasury but you might say I was a government department and not an independent regulator.

Q1449 Lord Peston: Obviously the other comparison would be with road pricing. Essentially, all you are enunciating is the view that if something is scarce it is appropriate to get the optimum use of it through pricing. I am right, am I not, that in economics there is nothing that says that should be used as a revenue raising device? In other words, there is no reason why that money should accrue permanently to the Treasury?

Lord Currie of Marylebone: It could be recycled back, for example, into public service broadcasting, the broadcasters themselves or some new concept like the public service publisher that we have talked about.

Q1450 Lord Peston: Normally the economic analysis of this is that it is revenue neutral, is it not?

Lord Currie of Marylebone: Yes. On the other hand, what that money is used for is not a matter for Ofcom.

Q1451 Lord Peston: You said that you were not purely an economic regulator but you are to some degree concerned with economic considerations. Are there limitations on that? For example, do you have the right to look at the sellers of broadcasting rights of all sorts? Obviously, sporting rights are the ones that particularly interest us. If you believe that the sellers of those rights are abusing their dominant market position, do you have any role there or is that a matter for OFT and the Competition Commission?

Lord Currie of Marylebone: We have competition powers concurrently with the Office of Fair Trading. In the media area, we would work with the Office of Fair Trading on any possible breach of competition policy. Ultimately, those decisions then go to the Competition Commission.

Q1452 Lord Peston: If there were explicit or implicit collusion, for example, between the owners and therefore the sellers of broadcasting rights and one or two of the buyers, would that fall within your remit or would you just discover it and pass it on to the OFT and the Competition Commission?

Lord Currie of Marylebone: There would also be the question of whether it rests within UK competition law or whether it is a European matter and therefore whether the jurisdiction is with the Commission rather than the UK competition authorities.

Q1453 Lord Peston: What if it clashed with the UK to start with?

Lord Currie of Marylebone: If it was purely UK, we would be very much involved with but we would be working closely with the Office of Fair Trading.

Q1454 Lord Peston: If it were international or European?

Lord Currie of Marylebone: It would be a matter for the Commission.

Q1455 Lord Peston: Just for the Commission? You would not draw it to their attention if you came across something?

Lord Currie of Marylebone: If there was something that we felt was remiss, we would have the scope for bringing it to the attention of the Commission but it would not be a matter for us.

Q1456 Lord King of Bridgwater: You said you might charge the BBC if you thought they were being too slow hanging on to spectrum when they should have switched over. Are you or the BBC taking responsibility for this issue about who is going to lose coverage when we do the switch over and people who will be disadvantaged by that? Is that your responsibility overall? If people have complaints, do they come to you?

Lord Currie of Marylebone: The relevant body is Digital UK which has responsibility for overseeing the whole process of digital switchover.

Q1457 Lord King of Bridgwater: Who do they report to?

Lord Currie of Marylebone: The government.

Mr Suter: And the Secretaries of State.

Q1458 Lord King of Bridgwater: It is a government department?

Mr Suter: No. It is an organisation. We suggested in our report on digital switchover last year that the implementation of digital switchover should be put in the hands of a body that drew from the broadcasters and the relevant industries and stakeholders who would ensure that switchover happened. There should be a body set up that would report through to government on implementation. Our role is around ensuring that the spectrum coverage is going to meet the requirements as set out for digital switchover. It is the role of Digital UK which has representations from the broadcasters, the manufacturers and the relevant bodies to ensure that the marketing works.

Q1459 Lord King of Bridgwater: If there is one particular area of the country that is going to be seriously disadvantaged by the switchover and plans are not in place or there are no arrangements to provide alternative broadcasting coverage, who takes the decision that would delay the switchover because it is going to disadvantage one group too severely? Is that you or Digital UK?

Lord Currie of Marylebone: Any decision for delay would be a matter for DCMS. The government made the decision to proceed with digital switchover. On the question of disadvantaged areas, there are very detailed plans to ensure that digital coverage at least matches the current analogue coverage. Stephen Carter and our people gave evidence to the House of Commons Trade and Industry Select Committee on exactly this point yesterday.

Q1460 Lord King of Bridgwater: We are back to the point I tried to make in a speech on Friday. It is average coverage. We will have the same coverage, you think on average, as we have at the moment when we do the digital switchover but there will be different people.

Some people do not get any reception at the moment and some people will not get any reception in the future.

Lord Currie of Marylebone: The vast majority of people who do not get digital reception at the moment will get it once you have digital switchover. The great advantage or one of the many advantages in terms of increased choice and one of the key merits of it is that it will not be until the analogue signal is switched off that the digital signal can be boosted to reach the vast majority of the country.

Q1461 Lord King of Bridgwater: You use the phrase “the vast majority”. If Parliament has a role, it is also to defend minorities. I am interested in the administration of it. You said you were going to take the decision or you might take the decision to impose effectively a fine on the BBC because they have been slow but they might have taken the decision to be slow because they thought a minority otherwise would lose out.

Lord Currie of Marylebone: We have done a very detailed analysis of the costs and benefits of digital switchover because of all the issues potentially that could be raised against the process around state aid. Our analysis supported the view that it would be appropriate to match the analogue coverage, 98.5 per cent of the country, but not to go the extra margin just as we have not as a government or as a country felt it appropriate to boost the analogue signal to 100 per cent. We have lived with that position ever since the beginning of television.

Q1462 Lord King of Bridgwater: Obviously every possible care has been taken but from the evidence we have had people are not quite sure how it is going to pan out until it happens. Who do they then turn to? We seem now to have three bodies: yourself, Digital UK and DCMS and maybe even the BBC.

Lord Currie of Marylebone: I would argue that the creation of Digital UK was precisely to avoid that muddle. Digital UK is the body that has responsibility for managing this process

and delivering it operationally. You say that people are unclear. They are at this point but we have to remember that it is barely three months since the decision was taken. Digital UK has since come into being and is starting the process of communication. It has some very active plans in that direction.

Q1463 Baroness Howe of Idlicote: There are about four bodies involved in the whole switchover but you say it is Digital UK who are overseeing it. Is the consumer sufficiently represented on that body?

Mr Suter: In the end, the issue is whether the public have confidence in the representation that is around the table. Government, having constituted that body, believe that it has sufficient representations from those with a direct interest in making this work, which are the broadcasters, the consumer groups and the manufacturers.

Q1464 Baroness Howe of Idlicote: In other words, you are saying consumer groups are represented?

Mr Suter: Yes.

Q1465 Baroness Howe of Idlicote: In what proportion?

Mr Suter: I am afraid I do not have the precise constitution of Digital UK.

Q1466 Baroness Howe of Idlicote: You referred previously to your public service publisher idea. I was wondering about the independence of your views on that because if you are going to decide whether to charge for spectrum you might be slightly inclined to charge if some of that money was going to one of your ideas.

Lord Currie of Marylebone: That would not be a consideration. It could not be since it is entirely a matter for the Treasury how it uses its spectrum receipts.

Q1467 Chairman: Lord King raised some interesting points. The House of Commons Select Committee is looking at these points as well. We will probably try to keep to our role at the moment although the two do intertwine. To sum up on the spectrum tax, I do not see how you can describe it as anything else. What would happen is that the person who pays the licence fee would pay more and that more would go to the Treasury in receipts.

Lord Currie of Marylebone: I think that is a fair description.

Q1468 Chairman: That is what you are going to be consulting on?

Lord Currie of Marylebone: Indeed. We have no preconceived view as to which way we will go on that question, except we are conducting that review in the context of the broader reform of spectrum pricing.

Q1469 Chairman: When do you expect your consultation paper to go out?

Mr Suter: We are just scoping out that project now and I suspect it will be some point during next year. I will confirm the date.

Q1470 Chairman: Some point during next year is even more imprecise than the average government minister.

Mr Suter: Forgive me but we have our own different bits of responsibility and that bit is not mine.

Lord Currie of Marylebone: We could provide that answer to you.

Chairman: We might give you some free advice.

Q1471 Lord Holme of Cheltenham: Would you envisage in your consultation paper saying whether Ofcom should be paid for effectively acting as a collection agent for the Chancellor?

Lord Currie of Marylebone: Ofcom's income streams fall into different buckets. We are able to offset the administrative costs of all our spectrum work against the receipts for the

money which comes from spectrum. The spectrum work includes not just the collection, the licensing and so on, but also the enforcement of stopping interference in spectrum and keeping spectrum clean as a major part of our field work which goes on around the country. However, we are not looking to increase those costs. Over time, we have been quite effective in reducing costs and we are considerably increasing the efficiency with which we license in the whole spectrum area.

Q1472 Chairman: You will take into account that the Treasury will then be receiving money from what is a regressive tax?

Lord Currie of Marylebone: Those will be considerations that no doubt will be very thoroughly explored in the consultation.

Q1473 Baroness Bonham-Carter of Yarnbury: You have been asked a lot of intellectual questions about the role of the Treasury. I am going to ask you a very crude one. Can you tell us what value you think the money that you say is going to the Treasury will be? Can Ofcom estimate the value of spectrum to the government after analogue switch-off?

Lord Currie of Marylebone: It is not easy to have a precise estimate. The lesson we have from the 3G auction is that timing is everything in terms of valuation. It is prime spectrum we are talking about. The analogue spectrum is very useful and in quantitative terms it is about two thirds of the quantity that was auctioned at the 3G. I am not suggesting you will get two thirds of 22.5 billion. That would be nonsense.

Q1474 Baroness Bonham-Carter of Yarnbury: What figure would you put on it?

Lord Currie of Marylebone: I do not think we could put an estimate on it.

Q1475 Baroness Bonham-Carter of Yarnbury: A range?

Lord Currie of Marylebone: I would be very happy to undertake to come back to the Committee to see whether we could answer that question but estimates in this area are exceedingly imprecise.

Q1476 Baroness Bonham-Carter of Yarnbury: You said at the beginning that there was no charge for analogue spectrum. That is the situation now.

Lord Currie of Marylebone: And continuing until switchover.

Q1477 Baroness Bonham-Carter of Yarnbury: One of the things I think we can agree on here is that it is very important that Channel 4 remains a strong player in the PSB market. Do you think the government should consider allocating free digital spectrum to Channel 4? They, as you know, have access to analogue spectrum.

Lord Currie of Marylebone: As we made clear in the PSB report, we think the question of maintaining the strength of Channel 4 as a public service broadcaster is very important. We want to strengthen PSB but we also want to maintain diversity and even expand diversity. Therefore, the question of the future of Channel 4 is important. Today we have published our annual plan for next year. One of the streams of work that we have flowing out of our public service broadcasting review is a review of the position of Channel 4 because it is something that we want to keep closely monitored, to consider whether there will in the future need to be ways of helping Channel 4 which could involve the gifting of spectrum or grant in aid. There might be a number of different mechanisms.

Q1478 Baroness Bonham-Carter of Yarnbury: Coming back to the BBC, as I understand it, high definition television is very spectrum greedy. Do you support the BBC's pursuit of HDF?

Mr Suter: The question of high definition, how much spectrum it will use and therefore what that will do to other potential users of spectrum, both within the public service multiplexes and elsewhere, is an important consideration for that review going forward. Clearly, we are looking at the most efficient use of spectrum going into the digital age. That will balance consumer issues, the desire to have an enhanced service which will be appropriate for some kinds of service but not necessarily for all, against citizen issues, ensuring that there is a plurality and diversity of services being made available. That is an important issue that we will need to address. Lord Currie has said we are looking at the next set of implications for public service broadcasting. A year ago we finished our public service broadcasting review. There are continuing implications in there for how public service broadcasting will develop. Among those is how will public service broadcasters, conventional broadcasters, be able and want to make themselves available in future and what kinds of services will they be, alongside what other kinds of public service content should be made available and what demand might that have on other kinds of spectrum or distribution. We have to ask those questions and the question of Channel 4 is clearly an important one. Possibly the answer to the question about the consultation will be contained in our draft annual plan for you, so we may be able to get that to you even quicker.

Q1479 Chairman: You were very kind to say, Lord Currie, that you would try to give us an estimate on the sale of analogue and how much that could raise. When do you think you could do that by?

Lord Currie of Marylebone: Fairly quickly. High definition brings huge benefits. It is stunning to watch television with high definition, but that is one area where the consideration of the costs of spectrum and the whole question of the pricing of that into the decision is pretty central because it is also very greedy of very valuable spectrum.

Q1480 Lord Holme of Cheltenham: No doubt you have had a chance to read our first report?

Lord Currie of Marylebone: Indeed.

Q1481 Lord Holme of Cheltenham: It does envisage quite an enlarged role for Ofcom. Some Members of the Committee probably felt that Ofcom's position of authority and impartiality made that plausible and some might even felt *faute de mieux* because we felt there had to be a body that was not the BBC itself if we were to get a proper division between regulation and governance. For whichever reason, it does envisage quite substantial extra duties being laid on Ofcom. What is your general reaction to the proposals in the report which contained several areas: the adjudication of appeals about the BBC's public value tests about complaints on accuracy and impartiality as an ultimate forum, the role of approving the BBC's own fair trading rules and empowering you to demand information from the BBC and, perhaps most crucially, strengthening the Content Board in order to cope with at least two of those functions. What was the general reaction of Ofcom to our report?

Lord Currie of Marylebone: I thought the report was very helpful in clearly separating the three aspects of governance, accountability and regulation. We see our role as regulation and not those other functions. With respect to the Content Board and the recommendations there, to give it a little context, our annual plan is for the fourth year running setting out a plan for reducing the overall cost of Ofcom. We do not think the additional duties that you are recommending that we be given in the content area are a huge increase in what we are doing. We do quite a lot of tier one and tier two for the BBC already. If those recommendations were followed, no doubt we would wish to increase the resource going into the content area but we could do that, we believe, within an overall declining budget. We would want to strengthen the resources available to the Content Board. We think our Content Board is quite a strong, powerful body. The report refers to it needing to become semi-autonomous. That is

a fair description of where we are because all content issues are handled by the Content Board with the support of a very able team run by Tim Suter. Yes, we need to strengthen it but I am not sure we need to change its operations hugely.

Mr Suter: I think that is right. Your overall thrust is very helpful in that it simplifies a system that is currently complex and not necessarily in that complexity the best vehicle going forwards when the kinds of media people are going to consume, the ways they are going to consume them and where they are going to consume them are going to become increasingly complicated. It is the bit that is relatively simple called broadcasting that is complicated in its regulatory arrangements for where and how people complain and how they seek redress. That seems to us not terribly optimal and it would be better to simplify the system. That is our position and therefore we welcome the general thrust of your report.

Q1482 Lord Holme of Cheltenham: Thank you. Presumably from Ofcom's point of view, with these extra responsibilities as well as the issue of extra resources which you mention which seems on the face of it reasonable, there would be issues of organisation. Is it your case that the organisational shape you have -- after all, it is quite early in the life of Ofcom and I doubt you have reached your final, immutable organisational form -- without any significant changes could, with resources, assimilate these new responsibilities?

Lord Currie of Marylebone: Yes. We have just gone through an organisational change reflecting the fact that Ofcom is now up and running and starting to get into its stride. We felt it was appropriate to make changes. The one area where we have not needed to make changes is in the content and standards area. This is working well. We need to put in some additional resources but in structure terms I do not think we would need to make major changes.

Mr Suter: Importantly, it is not least because you are not asking us to change what we do but to extend what we do to include the BBC. The areas you are asking us to cover are areas that we already cover for every other provider of news and information in regard to ITV news,

Channel 4 news, the ITV news channel, Sky news and any other news channel that is broadcast. We are already responsible for ensuring that it is accurate and impartial and upholding the law. It is not the arrival of a new set of skills that will be required within Ofcom to make those judgments. It is an extension of those judgments beyond the relatively large number of broadcasters to whom we already provide them to the BBC, which is obviously a significant broadcaster and a very significant addition, but it is not a change in what we do.

Q1483 Lord Holme of Cheltenham: If you were to take on these court of appeal functions in respect of complaints and maintenance of public service values, are you confident that you could operate the right mixture of light touch in the sense that you want the BBC to deal with complaints and you want them to be concerned as a matter of governance to have the right implementation of public service? Are you satisfied that you can operate as an ultimate arbiter with a light enough touch to encourage the BBC to do it right in the first place so that your final regulatory role is limited?

Mr Suter: That is the way we want to operate with all broadcasters and the way I think we operate now with the BBC in relation to the large amount of editorial content it is our role to regulate. The large majority of complaints in the broadcasting sphere already go to broadcasters to be dealt with. Those who wish to make a more formal complaint can and do come to us. We are looking at whether it would be appropriate for us in the future to have as our first response formally to invite the complainants to go back to the broadcaster to seek the appropriate form of redress, apology or whatever it might be and reserving, therefore, the right for them to come back to us in relation to whatever complaint they have made if they are not satisfied with the response they have got. That seems to be a sensible balance going forward of establishing the right framework, giving broadcasters an incentive to deal with issues themselves which on the whole I think they do pretty well anyway, but preserving our

statutory powers to intervene where we need to and to operate on behalf of the citizen if they have not had fair enough redress in the first instance. That is not something we would want to do differently with the BBC. Indeed, our argument -- and I welcome its echo in your report -- is that there should be a single approach to broadcasters in relation to issues of standards, taste, harm, offence, fairness and accuracy and impartiality because of that separation between regulation which is an external validation and approval, and governance, which is the internal process of guaranteeing the highest of editorial standards. It seems to us that that is an appropriate and important distinction and could be made to work across the whole system.

Q1484 Baroness Howe of Idlicote: As you have already heard, a number of us came to the conclusion that Ofcom would be the best at dealing with the other aspects of the BBC via different methods of thought processes. Perhaps there are already too many regulators being set up and the idea of the court of appeal to let the broadcasters get on with it in the first instance is very important. You will remember that the main reason that there is concern about the Content Board not being on the same parallel as the consumer panel is because the Content Board was very much a last minute add-on. The concern people were expressing in the debate on the Broadcasting Act was very much concentrated in this last minute effort to set up the Content Board. Subsequently you will remember the view that it is an economic regulator first and foremost, though it has content power. You will remember that there was a fillip about the citizen consumer or consumer citizen. I gather you have addressed that and you do not think in those terms any more which is reassuring, but there is still the desire out there on the content side that there should be greater transparency in what you are doing on the Content Board. The argument that we have made for giving a parallel situation to the Content Board that you have already there in the consumer panel, which reports and we can see where you have been discussing with the panel and the board getting together on some of the issues, is that this would be a beneficial and reassuring approach to the citizen group,

those who are very concerned about content and would like to hear more, more regularly, about what you do.

Lord Currie of Marylebone: The architecture which the Communications Act gave us, in my view, is working very well indeed. The Content Board takes responsibility for all content matters and works exceedingly effectively in that area. Where there are issues where content and economic issues come together, the main board listens very carefully indeed to the advice it gets on the content issues from the Content Board but in the end it has to make a balancing decision and those issues arise from time to time but by no means very regularly. The consumer panel is independent because it is not a decision making body. It advises us. The Content Board is making decisions on behalf of Ofcom, very important decisions in the content area. To make it as autonomous as the consumer panel would create very serious difficulties in those areas where content issues have to be balanced against broader economic issues. That change would be disabling for Ofcom. The present arrangement does allow us to work very effectively in combining the content of other issues in a way that I think is linked to the needs of citizens and consumers.

Mr Suter: The transparency point is essential. We can always learn lessons from how others make themselves transparent and make sure that our decisions are well understood. At the moment, we have programmes of research which are published and which I think are quite authoritative. We will be holding seminars in relation to key aspects of public service broadcasting. We publish every fortnight our bulletin which contains all our findings and, where there are no findings of breaches but there are nevertheless editorial issues that need to be promulgated widely across the industry so that people can see where our thinking is coming from, that happens every fortnight. We have just issued our code in the summer, the first ever combined broadcasting code. No doubt there will be others who will do it better but it was a pretty good example of us trying to be as inclusive as possible in that consultation

because it was a lengthy consultation process with 900 responses to get at a single code. I think it is a pretty authoritative piece of work. I have no doubt there will be other ways in which we can do it better. Transparency of our decision making must be our goal. We started from the position that said there should be simplicity in our rules and applicability of our guidance which should be kept up to date through dialogue with citizens and broadcasters. That is what we have adopted. That is all available online in our guidance and it is regularly updated.

Q1485 Baroness Howe of Idlicote: From the viewpoint of the licence fee payer, what is going on is not as transparent to them as what is happening between the board and the consumer panel. It is that which is underlying the process. You are seen very much as an economic regulator with the priorities that you have because if you remember quite a lot of the argument was, “Not yet. We may look at that later” but perhaps you could take on more of the content at a later stage. Given all of that, surely there is a case for saying where is your priority for citizenship issues? I am talking about the board overall. How can we see this more transparently unless you have something that for the licence fee payer looks as transparently clear? Sometimes the consumer panel says something to you and sometimes you accept it; sometimes you do not, but it is out and public. How can you do that if you are not slightly separate? I hear what you are saying, that you think you have more power, but from the point of view of the licence fee payers that is not entirely clear.

Lord Currie of Marylebone: The question of how we are seen to be serving the interests of consumers and citizens is a very important one. One thing that we are considering which could be very important is a proposal by our consumer panel that we should find a mechanism for doing an audit of our work which examines how and how effectively we take account of consumer interests and citizen interests. That would be a way of making it transparent. Any such audit would be published, to make transparent the way in which we operate and pursue

the citizen and consumer interests. I believe we are doing that and I believe the mechanism we have is achieving the goals Parliament set us, but we need to be able to demonstrate that absolutely firmly. One demonstration is our public service broadcasting review, looking at economic matters and very clearly at citizen matters. A pure economic regulator would not have come forward with a report of that kind at all. It would have reached a very different conclusion.

Q1486 Chairman: Perhaps we can come to our second report. We seem to have come up with a broad formula which will reduce complexity, which must be to the advantage of the public and broadcasting, and also which can be managed without a big increase in resources and cost, which from the Treasury point of view must again be extremely important.

Lord Currie of Marylebone: Not from the Treasury's point of view; from the point of view of broadcasters.

Chairman: I take back my customary insult to the Treasury. Let us move to our second inquiry. We are looking at religious broadcasting, the broadcasting of sport and various other aspects.

Q1487 Baroness Howe of Idlicote: In your phase one of the public service broadcasting review and various consultations you did make the point that you had found there were too few religious programmes in peak time viewing, that demonstrated the moral, ethical and philosophical relevance to topical or factual issues. Since that review, have you seen any evidence that the BBC is scheduling rather more of this type of religious broadcasting in peak time?

Mr Suter: I do not think there is any evidence that the BBC is scheduling more religious programmes in peak time but the issue that frames this is the distinction between religious programmes that are defined as religious programmes and returned by the broadcasters as

religious programmes, as opposed to programmes that will deal with issues of morality, ethics or religious faith in a broader or different way. That is always the challenge. It is the challenge we laid out in the public service broadcasting review which we hope commissioners and producers will rise to, which is to find ways that are more likely to attract the large audiences that you need to hold a programme within the heart of the peak time schedule, that will tackle those difficult subjects, but using genres or formats that are more conventionally likely to attract those large audiences. What we are expecting broadcasters to do is to balance those more traditional, protected types of programme that are likely to have smaller audiences and therefore are likely to struggle if put into the peak time schedule with programmes that are more likely to sustain a large audience because they are tackling those subjects in different ways. That is what we hope broadcasters will do. To the straightforward, factual question are more religious programmes being scheduled in peak time, the answer is no. Do we expect to see broadcasters commission more inventive ways of getting religious programmes into peak time? We certainly hope so.

Q1488 Lord Kalms: Your executive summary dated May 2005 rather damned with faint praise the BBC's efforts in religious broadcasting. We have interviewed the BBC on this and they made a very impressive show but I did not have the sense that they were responding to the points that you were making. It is a difficult area. You are walking on eggshells all the time and there are lots of forces which have impact and they have their slots and popularity. Nevertheless, I did not get any sense that they were moving in the direction of your executive summary. I do not know how you interface with them. I have a feeling that the BBC reads your executive summary and puts it into a pigeon hole. Would that be unfair?

Mr Suter: It is important that the arrangements for the qualitative aspect of public service broadcasting regulation, what is commonly referred to as the tier three stuff in relation to different kinds of public service output, are a matter in terms of the BBC for the governors.

We do our review which looks at all of public service broadcasting. We try to draw out the threads that we think are common across the piece and challenges that we hope broadcasters collectively and individually will rise to. It is then a matter for the governors to ensure the delivery of the sorts of programmes they think will best meet the public service purposes of the BBC.

Q1489 Lord Kalms: If they ignore you, what is your purpose? The executive summary is quite critical of what the BBC should be doing in religious broadcasting. There are strong words here. If that criticism does not impact -- it is now six or seven months since the criticism -- what is the purpose of the whole exercise?

Mr Suter: It is a review that we do every five years. Annually, we report statistically what is going on in terms of broadcasting. Secondly, this is an area where we do not regulate the BBC. We do not regulate the religious output of the BBC in relation to its public service broadcasting obligations. That is a matter for the governors. It is our job to put forward our perception of the whole broadcasting system. Commissioning cycles are quite long. It takes time to change the nature and balance of output, especially if you are talking about developing new approaches or new commissioning strategies. Those are not going to happen within seven months.

Q1490 Lord Kalms: Do you think the BBC is listening to you? Listening to the BBC, I did not hear in their comments a reflection of these criticisms. In other words, they must have read it but one did not get the sense that they had picked up these points and were going to run with them. If you are only in an advisory capacity and you do not have any powers other than mild persuasion, it is not a very satisfactory role.

Lord Currie of Marylebone: The key point is that this is a role that rests with the governors. We are charged as the overall regulator in broadcasting to take a periodic look and that is a

sensible thing that Parliament asks us to do. Therefore, it is quite germane to your consideration of the charter process that is under way. Tim has articulated the key point that the challenge in this area is one of finding new formats that grab people's attention and enthuse people, presenting religious and ethical issues in a new way, in the way that you are reinventing other formats in other areas of broadcasting more generally. It is not necessarily an easy thing but broadcasters need to be experimenting to bring that about. It is quite interesting that the BBC programme *The Monastery* had more viewers than *Celebrity Love Island* and that is encouraging. We would like to see a few more successes of that kind.

Q1491 Lord Kalms: You do not have adequate powers to implement your review. You have purely advisory powers; you have no stick and perhaps a little carrot somewhere.

Lord Currie of Marylebone: I think that is right but that is how Parliament set us up. They felt it appropriate that the power should rest with the governors and broadcasters without us having an influence on those decisions.

Mr Suter: If I may just supplement that. We do have very significant powers in relation to enforcing public service obligations in relation to ensuring the quantity of original programming that must be made. We said in our Public Service Broadcasting Review that it was an absolutely fundamental requirement going forward that there should be a heavy investment in original programming. That requires broadcasters to spend that money across the schedule that they are going to deliver. That is not an insignificant lever with which to influence the behaviour of public service broadcasters.

Q1492 Chairman: Lord Kalms is absolutely right, is he not, because your paper makes a fairly persuasive case for having more entertaining, more innovative religious broadcasting and it is also critical of a number of points, that particularly industry professionals, let alone the public, think that audiences are currently poorly served by religious broadcasting in a

number of ways? We have got the diagnosis but how are we ever going to get to a better outcome?

Mr Suter: I think the outcome is one that can only be achieved by the broadcasters themselves exerting influence over their commissioning strategies. It is not for us as regulators to be setting up commissioning strategies for broadcasters. It is not our job and, frankly, I do not think we would be very good at it. It is our job to point out what we believe the citizen deficit is and how we believe broadcasters could address it. It is then our job to come back and review whether they have done so. We have not found a better way of doing it.

Q1493 Lord Kalms: You have got one every five years which means nothing is going to happen between now and four and a half years if your recommendations are not implemented.

Mr Suter: No. Every year, every broadcaster has to publish a statement of programme policy. That is in relation to, and takes account of, our Public Service Broadcasting Review. There is an annual process.

Q1494 Chairman: So you could go on banging away at it year by year. When it comes to it, Lord Kalms was right, if the BBC wishes to ignore, they can ignore. I am not saying they would, but that is the power structure as it stands at the moment.

Mr Suter: The formal lever that we have to pull is insisting on the amount of original production that they make, on setting out the purposes of public service broadcasting and judging whether the statements of programme policy as delivered to us by the public service broadcasters constitute a significant change from the way it was being delivered before, and if so whether that change is beneficial.

Lord Currie of Marylebone: Just to be clear, suppose Parliament had decided to give us more regulatory levers in this area, I submit that those levers would not have been effective,

what you would arrive at is a process of box ticking. In the end, as Tim has said, it is the commissioners who have to do the creative act of finding new formats; regulation cannot make that happen.

Q1495 Baroness Bonham-Carter of Yarnbury: You have talked about formats but what about subject matter. In their evidence, Channel 4 suggested that the BBC's approach is monotheistic and within that it concentrated too much on Christianity and Judaism. Is that something that you have a view on?

Mr Suter: It is not something on which we have a formal view, other than we believe the public service obligation is to present programmes and ideas that cover a range of beliefs, a range of faiths, a range of attitudes, and that is something we expect all broadcasters to do.

Lord Currie of Marylebone: Public service broadcasting is about reflecting our multicultural society and that is a core aspect of the ambition there.

Q1496 Lord Peston: I want to ask you about the Central Religious Advisory Committee. Perhaps I ought to declare an interest: I think there is far too much religion that is broadcast and I cannot see any necessary connection, which Tim seems to take for granted, between religion on the one hand and morality and ethics on the other. I would regard it as your duty to say that we ought to have programmes that show that. Is not the Central Religious Advisory Committee a rather anomalous body and in practice they are just a religious pressure group, are they not? They consist only of religious people who believe in things. Why should there exist such a body and why should you take any note of them, other than you take note of all citizenship issues?

Mr Suter: I think the first thing to say is that it is not a committee of Ofcom, it is a BBC committee. Its membership and constitution and constitutional arrangements are really for the BBC to respond to rather than us. It is an organisation that will need to respond to the

different roles that the BBC as constituted in future will have of it, and one of those is assisting the regulator in forming conclusions about issues in relation to whether a particular programme was appropriate and whether it was offensive to different groups, and another role is assisting commissioners and broadcasters to ensure that their range of subject matter or their treatments are appropriate or are sensitive or well enough thought through. I think those are different roles and the Religious Advisory Council will want to address how it meets those and whether a single body can do those and how it is appropriate in the new BBC structure. It is for the BBC to determine what that is. From Ofcom's perspective, we do not have any other formal advisory bodies than those that have been set up by statute. We seek advice from a wide range of people to ensure that our judgments are well rooted and we try to be as open as we can about those from whom we seek that advice.

Q1497 Lord Peston: When Dr Siddiqui told us that CRAC was an unofficial advisory committee to Ofcom that was wrong?

Mr Suter: The important word there is "unofficial". It is an advisory committee to the BBC with whom we meet a couple of times a year.

Q1498 Lord Peston: You meet CRAC?

Mr Suter: We meet CRAC but it has no formal role in advising us.

Q1499 Lord Peston: Are there any other pressure groups of that sort that you meet formally?

Lord Currie of Marylebone: We meet a whole range of bodies.

Q1500 Lord Peston: Formally, regularly?

Lord Currie of Marylebone: Yes. I am meeting with the CBI this lunchtime. We take a view that it is appropriate for us to expose ourselves to the views of ordinary people and organisations out there that have views and interests in what we are doing.

Q1501 Lord Peston: You do not feel, for example, that what we really need is not a body of this sort but a body that would be called the Central Morality and Ethical Advisory Committee? Is that not the body you ought to be looking for somewhere? Is that not the issue?

Mr Suter: There are specific issues when it comes to offence in relation to religious programming where we do not necessarily have the sensibilities within Ofcom, or the range of faiths or knowledge, to be able to respond to issues of offence that are brought to us by, for instance, the Tamil community in relation to a piece of broadcasting. It is important for us to have access to people who can authoritatively tell us where a line has or has not been crossed. It is important to have that resource.

Lord Currie of Marylebone: I have no doubt that if the body you have mentioned existed we would be meeting with them.

Chairman: You think that is up to somebody else to set up?

Lord Holme of Cheltenham: Lord Peston!

Q1502 Chairman: Just one point of fact. You answered Lord Peston and said basically it is a BBC committee, but I understood its members are appointed jointly by the BBC and Ofcom Content Board?

Mr Suter: They are appointed by the BBC; the Content Board has been consulted on recent appointments.

Q1503 Chairman: So are they jointly appointed?

Mr Suter: No.

Q1504 Chairman: They are appointed by the BBC?

Mr Suter: They are appointed by the BBC.

Q1505 Chairman: But the BBC goes to the Content Board and says, “Have you got any suggestions or proposals”?

Mr Suter: And advises us of who they are intending to appoint.

Q1506 Chairman: If the Humanists or others were an inside body you would consult with them as well?

Mr Suter: Of course.

Q1507 Chairman: Do you at the moment?

Mr Suter: With the ----

Q1508 Chairman: With non-religious bodies. Do you talk to the Humanists or someone like that?

Mr Suter: We will talk to any organisation that can help us in forming the judgments we have to form.

Q1509 Baroness Howe of Idlicote: I just want to come back to your document and the programme code review where I think you printed some very interesting comments by people which give the right balance of where people might have concerns if broadcasters were not taking the right view of things that are being put over. Perhaps being a little bit specific, getting a bit too like some of the stuff that goes on in American broadcasting of religion. Given the different areas in which broadcasts are now being heard and accessed and so on, are

you at all concerned that some of the areas that are quite clearly the responsibility that your code is concerned about will just drift in and people perhaps will be persuaded in areas that certainly religion in this country would not want them to be persuaded: giving money, watching certain forms of religious activity that might influence children, you know what I am talking about, that are in the code?

Mr Suter: Beyond question, the environment we live in now makes those sorts of channels available to people who have access to satellite and cable technology, for instance. They can get those channels. They are not licensed in the UK, they are licensed elsewhere, but they are freely available here. It is not that this broadcasting is not available. The question for us is what broadcasting we wish to license, and that is an important distinction. Just because something is available elsewhere does not mean to say that it should be licensed by us. It might mean we should license similar programmes but it does not necessarily mean that we should, we may take a stricter rule in regard to some kinds of broadcasting that prey on particular sensibilities. Until now we have taken that line with some kinds of religious broadcasting on television, limiting the ability to appeal directly for funds, for instance, because of the concern we have about sensibilities.

Q1510 Baroness Howe of Idlicote: Is that available via the Internet?

Mr Suter: Of course it is available via the Internet and it is available from ----

Q1511 Baroness Howe of Idlicote: But you have not much control over the Internet.

Mr Suter: No, nor indeed over channels that are licensed outside the UK.

Q1512 Lord King of Bridgwater: On this business about the European Commission's Premier League rights, Talk Radio complained to you about the radio rights being exclusive to the BBC and you waited to see what the European Commission were going to do about

television. Did anybody complain to you about the television situation or did the European Commission do it off their own bat? You had a complaint only on the radio rights that came to you, you do not seem to have had a complaint on the television, is that right?

Lord Currie of Marylebone: Are you talking about the Premier League?

Q1513 Lord King of Bridgwater: Yes.

Lord Currie of Marylebone: That is a matter for the European Commission.

Q1514 Lord King of Bridgwater: Somebody complained to you about the radio rights, Talk Radio, but did anyone complain to you about the television?

Mr Suter: We have had no complaints on the television. We knew this was a subject that was for the Commission anyway and which the Commission would be picking up.

Q1515 Lord King of Bridgwater: Was radio not something for the Commission?

Mr Suter: It is a separate issue. The issue that Talk Radio brought to us was in relation to the BBC purchase of those rights which we stood off until we knew where the FAPL and the Commission would come out.

Q1516 Lord King of Bridgwater: Television appears to be a matter for the Commission, radio does not, but they have both got exclusive coverage, one in radio and one in television.

Mr Suter: They would both be a matter for the Commission, but the Commission is deciding on the appropriate allocation of FAPL rights going forward.

Q1517 Lord King of Bridgwater: You waited until you saw what the Commission had to say. Are you now going to say any more on the radio issue?

Mr Suter: I think it is not yet clear where the Commission is going to end up. We have indications of where it will end up but I do not think it is yet clear.

Q1518 Lord King of Bridgwater: Is Talk Radio waiting to hear from you? Have you said to them, “Hang on; we will wait to see what the Commission says”?

Mr Suter: We said to Talk Radio we will wait to see the outcome of the European deliberations, and that is still the position.

Q1519 Lord King of Bridgwater: Would it be in your power to say, “The Commission says six packages; nobody can have more than five”? Are you likely to do that with radio and say the BBC can only have that and somebody else can have some of the gains?

Lord Currie of Marylebone: That is a matter for consideration when we know the outcome of the FAPL.

Q1520 Lord King of Bridgwater: Would it be within your power to do that?

Lord Currie of Marylebone: I am not sure. Does this fall within our power?

Mr Suter: I am not sure.

Lord Currie of Marylebone: Could we write to you on this? I think that might be sensible.

Q1521 Chairman: Let us ask you about television then. Do you think that the sale of Premier League broadcasting rights and what appears to have been the Commission’s view does present a genuine opportunity for others to acquire live rights, that you cannot have more than five parts of the six?

Lord Currie of Marylebone: This whole area is one that needed a detailed look. The fact that the Commission has taken up the issue has been helpful. The fact that there will be more than one acquirer is a significant step forward. Our understanding is the Commission is currently looking to get undertakings from the Premier League, the fact that in the market mechanism for allocating the rights, the auction processes, there will be some quite detailed

rules to ensure that process is fair and if that is indeed the outcome that is an important step forward, yes.

Q1522 Chairman: Do you think it is an important step forward? On the face of it, it seems that if you are only able to acquire one-sixth of it ----

Lord Currie of Marylebone: That is not necessarily the case.

Q1523 Chairman: No, it is not necessarily the case.

Lord Currie of Marylebone: If there is a fair auction it may be that there will be a bidder who will come along and acquire more than the minimum one-sixth; indeed, you might find a bidder acquiring a third or more. That is the relevance of the fairness of the auction process which is a rather critical element in this. Even if it is the one-sixth, I think that is a step forward in this market.

Q1524 Chairman: To put it the other way round and I now come from the opposite direction, why should the Premier League not just sell whatever they want to sell? They are the owners, why should there be any restraints placed upon them?

Lord Currie of Marylebone: I think there are questions about the fairness and the openness of the process. This is not a matter for Ofcom, let me emphasise. We have provided some research to the Commission, they asked for that, but it is not for us to decide these issues. There are questions of the appropriateness of all the rights going in one direction and not necessarily changing hands. In other countries you have them all going to one acquirer, but different acquirers over time have been able to get into the business.

Q1525 Chairman: So you really have no say in this at all?

Lord Currie of Marylebone: No, this is purely a European Commission matter.

Q1526 Lord Holme of Cheltenham: As I understand it, you have got a duty to ensure that due process is observed in bidding so that if non-BBC broadcasters provide false information or withhold material information in the bidding process you can fine them, is that right?

Lord Currie of Marylebone: If we found a breach in competition law of an auction process we would certainly have powers. This one rests with the Commission because of the inter-connectivity between the different markets in the different national countries.

Q1527 Lord Holme of Cheltenham: To the extent that you are the UK market I have two questions. First of all, do you think it would be appropriate to extend those powers to the BBC which at the moment are not subject to you playing that role? The second question is, given how important these great sporting rights are to the British public and, therefore, how they are prone to all sorts of lobbying, do you think it would be appropriate that all bidders should have to declare any lobbying of public officials they make in the course of trying to acquire sports rights?

Lord Currie of Marylebone: I think the latter one is a rather hot potato that I prefer not to be drawn on. On the first, we are in discussion as part of the Charter Review process about the question of whether there are certain specific competition powers that we should be given over the BBC in addition to the powers that we already have, because we are a competition authority that does include the BBC in those powers. The question of how far that should be extended is an interesting set of issues.

Q1528 Lord Peston: Very briefly, you do have these responsibilities to the public as citizens, it is not just economic.

Lord Currie of Marylebone: No.

Q1529 Lord Peston: What interests me is if we look at outcomes so that free-to-air broadcasting includes no test cricket, no top class football, who would the citizens think would be standing up for them within the broadcasting area to say these outcomes are less than satisfactory? I thought it was you.

Mr Suter: Our role is to define what we think public service purposes are and how they can be used. Can sport be legitimately part of public service broadcasting? Clearly it can be. Clearly we would expect to see public service broadcasters position themselves in relation to how do we meet that public need, how do we meet that public purpose. They will do that in a variety of different ways and some of those will be driven by the extent to which that sport activity is already available elsewhere and the extent to which it is not, and therefore there is a *prima facie* role for them to get involved. If you ask the question whose job is it to define that space, I would say it is our job in relation to the public service broadcasters to define the parameters of the interaction between public service broadcasters and sport. It is not our role to define which public service broadcasters should carry which kinds of sport, that is for them to decide in relation to their own objectives and priorities.

Q1530 Lord Peston: I will give you one specific example and then I will stop. Someone pointed out to this Committee that the way the Test rights were sold means that a young person from a not very well off family who could not afford pay-per-view in the next five years would not see the rest of Freddie Flintoff's career, perhaps, because he might be gone in the next five years. I was rather shattered by that because it had not occurred to me at all that that is the outcome of this kind of market process. You say you have got no duty to say that at least consideration ought to be put that people as citizens have the right to see a team called England available to them when they cannot afford pay-per-view?

Mr Suter: I take the force of the question but you could argue the same for a whole load of other activities that may well be constituted equally as public service - great musical careers

that we ought to find access to, great acting talent, great moments of heritage – which would all form part of public service ambition, public service purposes. It is our job to define that challenge, and representing those aspects of our culture and our heritage are part of the responsibility of public service broadcasters, but it is not our job to say, “That means you must cover these individual things”, it is for broadcasters themselves to decide how they rise to that challenge.

Q1531 Lord Peston: So you do not feel you should speak up for the citizen who does not like the monopolistic outcomes that occur?

Mr Suter: We feel very much that we should speak out for the citizen in defining what their expectations should be and for the broadcasters to rise to it.

Q1532 Chairman: You do not want a wider role than that?

Mr Suter: We do not seek a wider role than that. It seems to me that the consequence of the wider role than that is to start to determine precisely what broadcasters should or must carry and actually gets us into the business of dictating their programme planning.

Q1533 Lord Kalms: We have been talking around it and we have spent a lot of time talking to the BBC and the providers about the Premier League, rugby and cricket, and it is quite clear that in the bidding process all the time, whatever happens, Sky get the cream and the BBC is lucky if it gets the skimmed milk. The process has been conducted in a totally unsatisfactory way, and anyone in business would know that you do not go into a battle if you are going to get beaten up, so it shapes the BBC’s thinking. I can bring this down to one simple question. There is a problem there which you have half recognised but you have ducked away from it. Would you support an independent review of the way the BBC bids for sports rights because it is an unsatisfactory process and it ought to be reviewed properly and

in public with a transparent look at the process? We did not get a transparent look at the process; we got a lot of half truths, half expressions and platitude after platitude. Would you support an independent review of the process of bidding for sports rights? It is a simple question.

Lord Currie of Marylebone: I am not sure that is a question that we, as a body, have considered. The prime question is, is there a major problem in this area and, if so, where does the responsibility lie? It seems to me the BBC Governors have a responsibility for appropriately managing the way in which they bid and pay for programmes they buy, including sports rights, and it may well be that the BBC Governors should be asked to look at that question and be held to account for it.

Q1534 Lord Kalms: They may be happy to keep on losing bids because a lot of people are happy to be second, it keeps their budgets intact. I think there ought to be a public review, not a private decision as to whether the process is right. This is about the public interest. As Lord Peston just said, people are being denied, therefore, it is not the BBC, who are very happy not to spend whatever millions in getting the rights, the public ought to understand the process of why the BBC comes in at number two regularly. It is an issue of public interest and, therefore, you ought to be involved.

Lord Currie of Marylebone: If there was a review we would certainly wish to contribute to it and help to facilitate it.

Q1535 Chairman: You could not do it yourself?

Lord Currie of Marylebone: I think it would be a matter for Government if it wished to ask us to do that. It would be a matter for you if you wish to recommend that as a course of action.

Q1536 Chairman: You have been very patient, thank you very much indeed, both Lord Currie and Mr Suter, for your evidence. I am very grateful. There were a number of points that came up and if you could let us have those as soon as possible we would be very grateful.

Lord Currie of Marylebone: Thank you very much. We look forward to your report in due course.

Chairman: Thank you.