



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Relations Committee

**Thursday 14 December 2017**

**Session 5**



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**CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE**  
**29<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

\*Lewis Macdonald (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

- \*Jackson Carlaw (Eastwood) (Con)
- \*Mairi Gougeon (Angus North and Mearns) (SNP)
- \*Ross Greer (West Scotland) (Green)
- \*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)
- \*Richard Lochhead (Moray) (SNP)
- \*Stuart McMillan (Greenock and Inverclyde) (SNP)
- \*Tavish Scott (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kevin Bakhurst (Ofcom)  
Glenn Preston (Ofcom)

**CLERK TO THE COMMITTEE**

Katy Orr

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Culture, Tourism, Europe and External Relations Committee

*Thursday 14 December 2017*

*[The Convener opened the meeting at 10:06]*

### Decision on Taking Business in Private

**The Convener (Joan McAlpine):** Good morning and welcome to the 29th meeting in 2017 of the Culture, Tourism, Europe and External Relations Committee. I remind members and the public to turn off their mobile phones. Any members using electronic devices to access committee papers should ensure that they are in silent mode.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 3 in private?

**Members** *indicated agreement.*

## Ofcom and Broadcasting

10:07

**The Convener:** Our main item of business is to take evidence from Ofcom on the regulation of broadcasters, in particular the BBC. I welcome our witnesses: Glenn Preston, who is the director of Ofcom in Scotland, and Kevin Bakhurst, who is Ofcom's group director of content and media policy. I invite Glenn Preston to make an opening statement.

**Glenn Preston (Ofcom):** Thank you very much for the invitation to appear before the committee today. You will recall that Kevin Bakhurst and I came to the committee in February, when we discussed some of the main features of Ofcom becoming the first independent regulator of the BBC. We touched then on the separation of governance and regulation and on our role in setting the formal regulatory requirements. We also set out some of our early thinking on how we would hold the BBC to account.

Between March and July this year, we consulted on those principles in our draft operating licence and performance measures. The end result was our statement, "Holding the BBC to account for delivering for audiences: Performance Measures", which was published on 13 October. The statement sets out the first operating licence and accompanying performance framework for the BBC and covers the processes for setting and amending the licence in the future. There are some detailed annexes that explain how we took account of consultation responses and of the BBC's interim annual plan, which it published at the beginning of July.

We also published a document called "The BBC's services: audiences in Scotland", in which people can find in a single place all the regulatory conditions as they apply to Scotland. I think that members have it in your papers for today's committee meeting.

Under our performance measurement framework, we will publish an annual research report that will look at how the BBC has been delivering the mission and public purposes through the United Kingdom public services. The evidence that is gathered for the preparation of the report will ensure that any future changes to the licence are fully evidenced. We are committed to updating the audiences in Scotland document as the licence evolves and the regulatory conditions relating to Scotland change.

The BBC has a responsibility to deliver content that meets the needs of audiences across all of the United Kingdom. As was noted in the Scottish Parliament information centre's briefing for today's

session, two principal areas of the BBC's public purposes are for it to provide

"output and services that meet the needs of the United Kingdom's nations, regions and communities"

and to

"invest in the creative economies of each of the nations and contribute to their development".

We have set objectives for the BBC in relation to the nations and regions. It must accurately represent and authentically portray all audience groups. It must also distribute its production resources and support creative industries across the UK. Our approach is intended to provide a greater focus on production in each nation of the UK, and on guaranteed levels of programmes for the nations and regions, including Scotland.

At February's committee meeting, we discussed Ofcom's out-of-London production guidance. We have now committed to reviewing the guidance in the light of our new BBC duties and broader developments in the UK production landscape. We are in the middle of scoping the project and recently had two very helpful sessions in Glasgow with representatives from broadcasters, the independent production sector in Scotland and our own advisory committee for Scotland. Our intention is to publish a fuller call for evidence in the first quarter of next year.

Our new responsibilities have also required us to consult on procedures for enforcement of BBC competition requirements. The committee will be well aware of the proposals for a new BBC Scotland channel. We discussed that in February, after the BBC itself gave evidence. It will be the first test of our approach and processes, whereby Ofcom must consider whether

"the public value of the proposed change justifies any adverse impact on fair and effective competition".

We will conduct our assessment in two phases. In the first, which we will complete in the first half of January 2018, we will decide whether we agree with the BBC's view that its proposal represents a material change to its public services. Last week, on the announcement of our first phase, after the BBC had published its public interest test, we had some initial conversations in Edinburgh with key stakeholders who may be affected by the proposal. That will inform our decision about materiality.

There are two types of assessment that we could undertake in phase two. Both involve public consultation. The first is called a BBC competition assessment, which can take up to six months, and is conducted if we decide that the BBC's proposal raises large, complex or particularly contentious issues. The second is called a shorter assessment. We will generally conduct one of

those if we think that the BBC's proposal involves a more targeted set of issues that we would expect to be resolved in a shorter period.

I will close by touching briefly on diversity. Ofcom expects the BBC to lead the way in addressing underrepresentation. In our new operating licence we have set a range of requirements to ensure that the BBC is publicly accountable for achieving its workforce diversity targets. Those include that 15 per cent of staff are to be from ethnic minority groups and 50 per cent of all staff and leadership roles are to be held by women by 2020.

Under the licence, the BBC must also measure and report annually on its on-screen and on-air diversity. We will scrutinise the BBC's performance to assess whether it is making sufficient progress in serving the UK's diverse communities, and whether audiences themselves are satisfied.

I hope that that is a useful update for the committee on the current state of play. Kevin Bakhurst and I look forward to discussing those issues with members.

**The Convener:** Thank you very much for that opening statement.

I welcome the fact that you are reviewing the out-of-London guidelines. When you spoke to us in February, you said that you were going to be very tough in the way in which you held the BBC to account over what constituted a programme made in Scotland. However, as you will know if you have sat down with the independent producers—as I am sure that you do all the time—they are very unhappy with the way in which those guidelines are interpreted by the BBC. How do you intend to address the independent producers' concerns about the accuracy of measures that are used by the BBC to identify a Scottish production? Are you confident that the criteria for what constitutes such a production adhere to the BBC's public purposes that you have talked about?

10:15

**Kevin Bakhurst (Ofcom):** I can have a go at answering that. The need for the out-of-London production guidelines review was, in substantial part, something that came to our attention through some Scottish independent production companies and producers.

We looked at a number of programmes that they had concerns about. My view and the view of our team was that some of those programmes met the criteria and the guidelines as they are at the moment, but they did not deliver what the guidelines were supposed to be delivering in terms of proper investment and development of the

creative industries in Scotland and other nations. That was what kicked it off.

The team has been scoping out the work that we have been doing. We have been talking to independent producers, broadcasters and other interested parties. It will be quite a public process. As Glenn Preston said, we are going to put out a formal invitation for people to submit expressions and views at the beginning of 2018.

It is a very complex area. Quite a lot of broadcasters and independent production companies say that we do not need substantial change. Other voices say that there is not enough transparency about production bases—for example, what constitutes a substantial production base? What kind of spend leads to qualification? It is a complex piece of work and it is going to have an impact on production companies and broadcasters. It is going to be done throughout 2018.

I have no doubt that two things will come out of it. One will probably be a need for, if you like, greater transparency around the register—that is, when people say that they qualify, what do they mean? There will probably also be more rigour in terms of Ofcom looking on a regular basis at the information that is given and what exactly it means.

**The Convener:** As you said, the BBC has two public purposes that affect Scotland. One is that it supports the creative economy in Scotland by commissioning and the other is that it reflects the nation to the rest of the UK. There is obviously a tension between those two purposes. Someone could make a programme that is badged as a Scottish programme, even though it has nothing at all to do with Scotland, and that could be justified in terms of the public purpose of supporting creative industries in Scotland.

It is hard to see how, to take examples from your list, the Women's Football Association cup final between Arsenal and Chelsea or the England versus Serbia Euro 2017 qualifier qualifies as a Scottish production that meets both those public purpose criteria.

**Kevin Bakhurst:** You are right. The portrayal and representation of Scotland is one of our main concerns, alongside investment in the creative industries.

However, for Scotland or the other nations to have a truly vibrant, diverse creative sector, it should produce and be enabled to produce a range of the kinds of programmes that you mention. I would love to see more world-class production companies that are based in Scotland producing sport, for example. There are some already; *Sunset+Vine* is a very successful example.

**The Convener:** The issue is about who makes those programmes, too.

**Kevin Bakhurst:** Yes. For the creative sector to have the breadth of talent, to create jobs and to bring the right kind of investment here, it is very important that those kinds of programmes are not just written out.

It is equally important that emphasis is put on representation and portrayal. We are going to use other tools alongside the out-of-London review to do that, particularly with the BBC. I think that we mentioned that our first ad-hoc review of the BBC in 2018 is going to be a comprehensive look at portrayal and representation of the peoples of the United Kingdom, which includes the diverse groups that are well known and the nations of the United Kingdom. We are scoping out that work at the moment. There are a number of tools.

I would urge people not to dismiss programmes such as the Women's FA cup final, because if a programme brings investment to a different part of the creative sector, it needs to be seen alongside the parts of the creative sector that promote representation and portrayal. Both are needed for there to be a truly vibrant sector here.

**The Convener:** We all support women's football, and there is absolutely nothing wrong with the programmes; my point is that they are part of the Scottish allocation, so the BBC can turn round and say that it is meeting the criteria, which include things like that. On drama, the criteria include things such as "Rillington Place", which is about the John Christie murders in Notting Hill in London. That is a Scottish drama, but it has absolutely nothing to do with Scotland, the casting would not have been Scottish and the production would not have taken place here. Clearly, there is a question mark over that, is there not?

**Kevin Bakhurst:** That is why the range of measures and the range of types of production are really important. Another issue that we have looked at and had representations on is the percentage of the licence fee that is spent here in Scotland and in Wales and Northern Ireland. One reason why a seemingly higher proportion of the licence fees collected in Wales, for example, is spent there is that a very successful drama studio has been created in Cardiff that produces some really expensive top-end drama as part of the overall industry there. Many of the dramas that are made in Wales, such as "Doctor Who" or "Casualty", do not contribute a huge amount to the portrayal or representation of Welsh people, but they contribute a huge amount to the creative economy in Wales. That is why I say that we aim for a breadth of the creative economy.

**The Convener:** It is fine if programmes are not portraying Scotland, but we would expect a large

proportion of the spend to be in Scotland to support the creative industries, and there is certainly a feeling that that is not happening. How soon will the guidelines be reviewed?

**Kevin Bakhurst:** The work is already under way. As Glenn Preston said, we have been talking to the key stakeholders in scoping it out. We will go out publicly in the early new year and ask for calls for input, as we call it, which is frankly a call for submissions from people who have an interest in the area. We will then have a look at all those and come out with our proposals for public consultation. It will be in 2018—that is what we are looking at.

**Lewis Macdonald (North East Scotland) (Lab):** I will follow up a couple of the points that the convener has just addressed. Clearly, there is an important distinction to be made between the nations and regions of the UK and investment and creativity within the nations and regions of the UK. I completely accept that. However, when you review the issue of diversity—you said that the review is under way and is about authentic portrayal reflecting the diverse communities—will you look at the regions within the nations as well as what you have described as the traditional or well-known diversities between the nations? In other words, will the review involve an understanding that the portrayal of Scotland is about not simply a single representation but the diversity of Scotland?

**Kevin Bakhurst:** We are scoping that out at the moment. As part of the work that I have talked about, we are considering having focus groups in different parts of Scotland. Frankly, the amount of granular detail that we can get into on the regions of Scotland or, indeed, of England in that piece of work is a question of resource and proportionality. I was keen to look at the regions of Scotland, as I know that the issue is dear to a lot of people's hearts here and that that is an important part of what broadcasters do or should be doing, but the honest answer is that the costs ratchet up substantially the more granular you get. The least that we are considering at the moment is having focus groups in different parts of Scotland to pick up some of that.

**Lewis Macdonald:** That is welcome. The phrase "nations and regions" could be taken to mean three nations and five or six macro regions in England, which would be at a very large scale and would not reflect the reality of the diverse communities on the ground. That is covered by the objectives and regulatory conditions that are particular to Scotland.

I have questions about another couple of aspects of those particular requirements. The first is on Gaelic—in particular, the number of hours that are allocated for those learning Gaelic and the

treatment of BBC Alba. What is the basis on which, for example, the target of five hours for Gaelic learning has been reached and what consideration has there been of some of the other issues facing BBC Alba going forward?

**Kevin Bakhurst:** We have a lot of communication with BBC Alba. In the summer, I went up to Stornoway with my colleague Alan Stewart, who is sitting behind me, to see the teams at MG Alba and some of the independent producers who are based in Stornoway in order to understand at first hand what would help to build BBC Alba and MG Alba. There is a really impressive production industry there, but the question is what more regulatory support it is looking for.

We take the matter seriously. I hope—I have mentioned this to people at the BBC—that some of the work on the BBC Scotland channel will involve co-commissioning with MG Alba so that there could be a positive spin-off from the investment in the BBC Scotland channel working alongside MG Alba and BBC Alba. I know that they are already working closely on that, because they have told me. In my one year in the job, we have been doing a fair bit of work on that and talking to MG Alba.

Glenn, is there anything that you want to add?

**Glenn Preston:** I will make two additional points. In the licence conditions as they apply specifically to Scotland, we have included a new requirement for 75 per cent of all hours transmitted on BBC Alba to be original productions. That is a new requirement that it will have to fulfil.

The broader point that Kevin Bakhurst mentioned is also worth focusing on. We are having conversations with MG Alba and BBC Scotland to ensure that they are talking to each other about what they want to achieve strategically. For a number of years, Ofcom has had a role in reviewing MG Alba's operational protocol. That is partly about the pay and rations, which is the bit that we are legislatively mandated to do, but it has also been about thinking of other sources of income and other strategic approaches that it can take to promote Gaelic. In the new world in which we now regulate the BBC, there is a strong case for the BBC and MG Alba taking a joint strategic look at those matters, which both organisations are interested in doing.

**Lewis Macdonald:** That is excellent. My final question relates to the objectives and regulations that are particular to Scotland and to domestic radio output. How do you envisage the regulatory regime supporting our radio output not just in Scotland but regionally throughout Scotland, as currently happens?



**Kevin Bakhurst:** There are several requirements on Radio Scotland and other BBC radio services in Scotland. BBC Scotland has just appointed Steve Carson as its head of multiplatform commissioning, and one of the key areas that he is considering is future investment in radio in Scotland. Such investment decisions are for the BBC. It has limited budgets, but it is considering potential new radio services and continued investment in Radio Scotland. That is a priority for Steve Carson, and we track it carefully because we know it has value.

**Glenn Preston:** I was just reminding myself about the specific provisions, which it is worth repeating. Each week, at least 50 hours of BBC Radio Scotland output are allocated to news and current affairs, including repeats. Picking up on your point about regional representation, there is an obligation on Radio Scotland to provide several regional opt-outs each weekday, offering news, sport and information, and some regional opt-out community programming in the evenings. We also have obligations in respect of content and music that are of particular relevance to Scotland.

**Lewis Macdonald:** I take it from what you say that any review of those provisions would strengthen rather than reduce the level of those requirements for regional opt-outs.

**Kevin Bakhurst:** We set floors, not ceilings, for most of the requirements in the operating licence, and it is clear to the BBC that we expect it to overdeliver on those. They are not a target for the BBC; they are a floor that it should be above.

**Lewis Macdonald:** That is helpful. Thank you very much.

**Jackson Carlaw (Eastwood) (Con):** When we saw you last, Mr Bakhurst, you were preparing to take on your new responsibility. I would like to know more about the operational structure that you have now put in place. You were looking to recruit additional people. Where have those people being recruited from? We are talking about Scottish content, so were they from within Scotland or have they relocated to Scotland? How have you determined what their focus and responsibilities will be? How is that resource being deployed in the function that you now have?

10:30

**Kevin Bakhurst:** I do not want to bore you with our internal structures, but I will try to answer your question as best I can.

We work closely with Glenn Preston on our duties in Scotland. As members will know, we now have 27 people in our Edinburgh office, which is a substantially higher number than we had in the

past, and there are plans to grow that number further still.

**Jackson Carlaw:** I think that you talked about 40 people when we saw you in February.

**Glenn Preston:** That ambition remains. We have an ambition to have between 40 and 50 people here, which will, I think, take another 12 to 18 months from this point to achieve. As Kevin Bakhurst said, the number of people here has grown. I think that we had around 16 people in October 2016, and we now have just under 30 across all of Ofcom's groups—they are not just for content and media policy. For example, we have competition specialists, spectrum specialists and research specialists. Our office in Edinburgh is capable of holding 40 to 50 people, and we continue to have the ambition to have between 40 and 50 people there. I expect that that will include additional people on the content and media policy side.

**Kevin Bakhurst:** There was discussion about whether we should have a separate team in Ofcom, aside from our other broadcasting work, to look at BBC work. However, after speaking to colleagues, my view was that there is real strength in having an overview of the whole of broadcasting and the media, which would enable the teams working on the BBC to understand the concerns and issues of other stakeholders as well. Therefore, we have combined the teams.

We currently have a team that works on the BBC Scotland channel. Some of those people are based in the Edinburgh office and some are in our competition team in London, but they work together on that.

We also create bespoke teams, and the teams are combined overall. They tend to work in three areas. The first area is editorial standards—obviously, Ofcom has a track record on that across the industry, and it has now taken on the BBC responsibilities, as well. The second area is competition, which we have touched on, and the BBC Scotland channel, and the third area is performance. The team that worked on the BBC's operating licence will work on measuring and will produce our first annual report on the BBC in the autumn of 2018.

**Jackson Carlaw:** I am intrigued. From where do you recruit individuals? What is the experience of the people who will perform the BBC broadcasting scrutiny functions? Have they previously been in the broadcasting industry? I hope that they are not all on BBC-type salaries.

**Kevin Bakhurst:** Sadly for them, they are not.

There has been an open competition for every job, and people who are external and internal to Ofcom apply. There tends to be a mixture of

people—I will give you a flavour of that. We have recruited several people with broadcasting backgrounds from Sky, the BBC and other organisations. A small number—probably four or five people out of a team of nearly 100 at Ofcom—came from the BBC trust with specialist knowledge, and people have also come in with specific knowledge of competition. People tend to have a variety of backgrounds. We deliberately prefer that they have varied backgrounds in different broadcasters and that they understand regulation.

**Glenn Preston:** It is worth making the additional point that we are moving towards location neutrality for all advertised Ofcom jobs. Some specialist jobs are located in particular bits of the United Kingdom, but virtually all the jobs that Ofcom will advertise will be location neutral. In practice, however, the people who work on such issues will be based either in Edinburgh, which is one of the available sites, or in London.

**Jackson Carlaw:** On your expectation in planning for the responsibility that came in April, did you employ the plan that you imagined you would put in place, or did you have to adjust or amend it in unexpected ways?

**Kevin Bakhurst:** There was a long process not only to decide the best way to regulate the BBC and allow it the right amount of creative freedom to do the best that it could but to ensure that the key requirements of the charter agreement were in place.

The 100 or so requirements that we put on the BBC reflect what the charter agreement asked us to look at and put in place. The key areas are: representation; portrayal; investment; key genres of programming, such as key commitments to particular types of programming in peak times on BBC One, that otherwise the BBC may be tempted not to do; and the requirements on BBC Radio Scotland, whose audiences value a certain amount of news content, for example.

We amended some things because representation from the BBC suggested that certain things were not workable. It gave us the facts and figures and we accepted its argument. An example would be the percentage quota for network production for England. Previously, the BBC put multi-centre productions into that, but it said that it was not going to do that, so we needed to amend the requirement. Those are the sort of things that we changed.

The BBC asked us to change other things—for example, the quotas on hours that we put in for Scotland, Wales and Northern Ireland. We heard what the BBC said but, in the end, we did not think that it made a convincing argument. We thought that it was important to have not only a percentage

of spend in Scotland as a floor, but a percentage of hours. That ensures that there is a range of production in Scotland. A percentage of spend can be put in, but 8 per cent of spend could all be spent on one very expensive genre whereas, if 8 per cent of network hours is required, there must be a range of programmes. There was some to-ing and fro-ing.

It is important to remember that this is the first operating licence that we have put out. Undoubtedly, we will have to make changes, and we should. It should be a living document, because audience patterns change. The BBC is changing its plans for Scotland and we will have to amend the licence to take into account the new BBC Scotland channel in terms of the hours that we set for BBC Two Scotland, for example. There will have to be amendments over time, which is as it should be. The requirements should not be set in stone, because the market and audiences change really quickly.

**Glenn Preston:** There is one other broad point to make on how much it costs to regulate. We touched on that the last time that we were here, in February. We have an indicative additional budget for 2017-18 of £8.5 million and we think that we will come in within that budget. However, as Kevin Bakhurst says, the costs may change year on year as how we regulate and what we regulate change. If there was any favourable variance in the balance, we would return that to the BBC in the next year's fees. We are flexible in how we approach such things.

**Richard Lochhead (Moray) (SNP):** Many of my questions have already been covered. However, I have one outstanding question relating to productions that have had public money being made available to the public on a permanent basis. I remember "Scotland's Music with Phil Cunningham", which was a great television series. I have always wanted to see it again because I missed some of the episodes. I do not understand why it is not permanently publicly available, given that public money was presumably used to produce that programme. Should there be, or are there, guidelines on and regulation of public access to programmes that have been made with public money?

**Kevin Bakhurst:** I think that you liked the Proclaimers programme as well.

**Tavish Scott (Shetland Islands) (LD):** Well spotted.

**Richard Lochhead:** I am impressed that you know that.

**Kevin Bakhurst:** The BBC would like to make more of the back catalogue available to people. There is always a cost question. There is an agreement with the independent production

companies and artists, so there is a cost implication of making programmes available in the long term.

The BBC is now more consistently trying to ensure that programmes can be available in the long term because it is trying to build up the BBC iPlayer. It wants more content on it, and more content beyond 30 days, where it can. However, it has to weigh that against the cost. Particularly with music rights, there is quite a significant cost to the BBC in doing that. It has to weigh the level of public interest against the cost. Only the BBC can look at that because it has to weigh up where it spends its money.

**Richard Lochhead:** But if a huge amount of creative effort has been put into a production that is of cultural importance to our country, and public money has contributed to it, should it not be available permanently to the country? That is my point. Should such programmes not be subject to guidelines or regulation from Ofcom? It strikes me as bizarre that such productions are made and then hidden away for all time, in some cases.

**Kevin Bakhurst:** Rights are a highly complicated area and there are lots of stakeholders. I agree in principle that things that are of cultural importance should be a priority, but there are significant rights negotiations issues for each individual programme, whether they involve the production companies, Equity or the Musicians Union, and rightly so. People should expect to get some payment if a programme is consistently being shown, and there is a price tag on that for the BBC, which has to weigh it up against investment in new content.

I do not disagree with you in principle, but it is a practical issue for the BBC. I am sure that it would prioritise things that are of cultural importance, but it has to weigh everything up.

I am sorry; that is probably not what you want to hear.

**Richard Lochhead:** I urge you to reflect on it, because that would be in the public interest and it is public money.

**Kevin Bakhurst:** Sure—we will go away and think about it.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** Ofcom has recently accused the BBC of relying on too many repeats of films, sitcoms and long-running daytime shows. Kevin Bakhurst, you recommended that the BBC should provide more original UK drama. However, I quite like a nice black-and-white weepy movie on a Sunday afternoon.

**Richard Lochhead:** So do I.

**Rachael Hamilton:** You recommended that more original drama such as “Mrs Brown’s Boys” be televised. How do you persuade the BBC to be more creative?

**Kevin Bakhurst:** That is a really good question. I am sorry that we have taken away your black-and-white movies but you can probably get them on Netflix.

**Jackson Carlaw:** No, you can’t. *[Laughter.]*

**Kevin Bakhurst:** How do we persuade the BBC to be more creative? We looked at what audiences value about the BBC and found that original UK productions that reflect lives in the UK, whether it be drama, factual or entertainment, are what the audience really value. We tried to say that those things are important to the audiences and, frankly, they define what the BBC should do. The charter and agreement also ask the BBC to do these things. The BBC has become pretty much the only commissioner of some aspects of children’s content, whether it be in drama or whatever, and that is hugely valued by parents and the audience.

To point out what is valued is, in some cases, to set a requirement for a minimum number of hours for key genres such as arts programmes. In some ways, it is also about leaving the BBC with the freedom to make the best creative choices that it can. The BBC board and executive have to be able to manage the BBC. They have all the facts at their fingertips as well as all the brilliantly creative people in the organisation. We have to strike the right balance between making sure that we protect key genres or stand up for key things that we believe are important to audiences, such as representation and portrayal, and are in the charter and agreement, and allowing the BBC the space to make the best creative decisions it can make.

**Rachael Hamilton:** If the ultimate aim is for the BBC to spend the same per head across the UK, how long will that take and how will you measure that change?

**Kevin Bakhurst:** Our role is to make sure that we can create the best environment for that to be possible and for it to be likely that the BBC and other broadcasters will spend more in the nations of the UK. In the end, we should not be deciding what the BBC spends, but we will measure it and put that information out publicly. How long it will take depends on the decisions that the BBC takes about spend. It comes back to what I was saying about allowing the BBC to make creative decisions.

10:45

If the BBC wants to make a very expensive drama in Northern Ireland or Wales—or a few

expensive dramas in Wales, as it is doing at the moment—and that skews spending, but that is the best place to do it and there are the creative communities and the studios there to do it, that must be a decision for the BBC. I read the evidence that the BBC gave about its intention to increase spending in Scotland, which we welcome, but the most effective way to enable that to happen is to do what we are trying to do, which is to make sure that the creative economy here has the right mix of skills, the right investment and the right range of programmes being made. If Scotland has the right scriptwriters, drama will come here; if it has the right studios, different types of programmes will be made here. Those factors are slightly out of our hands, but we can try to create the best conditions for that to happen, as well as making it clear that we think that it is important that representation and portrayal improve.

**Rachael Hamilton:** Do you believe that the regulations that you are obliged to ask the BBC to meet will have an effect on the quality of the programmes that are produced?

**Kevin Bakhurst:** Undoubtedly. We need to make sure that there is a substantial commitment to children's programming, arts and religious programming, current affairs, news at peak time and regional news. Those are the sort of things that I am sure the BBC would and should be doing, but there is no guarantee, so we need to put in a floor and make sure that those valued genres that significant parts of the audience really care about remain a priority for the BBC when it has lots of other priorities, lots of other areas that it wants to spend money on and lots of other services that I am sure it would like to create. I hope that we will set a minimum standard for some of those areas, and I hope that, in many cases, the BBC will exceed it.

**Glenn Preston:** There is an additional point that it might be worth making. I mentioned in my opening remarks that we will report annually on how the BBC is performing against those obligations. We expect to have conversations about quality when we are out and about in Scotland talking to audiences about whether they think that they are getting the quality that the BBC is obligated to give them, so we will have a tool that will enable us to comment on those issues.

**Tavish Scott:** I want to ask a question about "The Crown" versus "Blue Planet II", which is at the opposite end of the spectrum from the question that Lewis Macdonald asked about local radio stations, on which I could bore you all day. My concern is about the huge international pressures on broadcasting that are coming from competition from companies such as Netflix, Amazon, Disney and Fox on the other side of the

Atlantic. Do you worry that we will all get so obsessed by the nuts and bolts of pence spent here and pence spent there that we will miss the big picture, which is that the BBC—along with every other state broadcaster—will be under enormous pressure from those vast international organisations, which are competing with it head on for customers and doing so extremely effectively?

**Kevin Bakhurst:** I think that that is a key part of what we have to do, and not just for the BBC but for Channel 4 and ITV, which, as public service broadcasters, are also our stakeholders. It is set down in statute that Ofcom has a role to play in supporting public service broadcasting in the UK, which provides a lot of what is valuable for audiences and society. We are also having conversations with other stakeholders, such as Sky, which provides an excellent service to consumers, about such existential threats—which the BBC has voiced explicitly—from the likes of Netflix.

The answer to your question is yes. When an enormous organisation such as Fox is said to have said that it is not big enough and is therefore looking to link up with Disney, that says something about the way the world is going. We constantly talk to the BBC and other broadcasters about how they can work better together to protect British content and British broadcasting. As I have said publicly, this is a particularly golden period for audiences, because of the amount of choice that there is and the range of ways in which people can view content. As well as "The Crown" on Netflix and "Blue Planet II" on the BBC, there is a range of other fantastic programming across our broadcasters and international broadcasters. Audiences have never had so much high-quality choice.

However, it might just be a moment in time, because there are pressures. For example, there are commercial pressures on ITV and Channel 4 from a downturn in the advertising market that probably mean reduced investment in content, as that is what they have to do. That golden period might therefore not go on for ever. Frankly, one of the ways in which the BBC, ITV and Channel 4 will stand up to Netflix, Amazon and so on is through investment in UK or British content that reflects the lives of British people. I do not foresee any of those other big organisations doing that in the near future. "The Crown" might represent a very small part of British society, but the unique proposition for British broadcasters is to represent people's interests, their daily lives and the issues that affect them. Frankly, that is also one way of their protecting themselves for the future.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** My question follows on from that area. I found two programmes in recent years particularly

interesting, one of which was the ITV programme “Tales from Northumberland with Robson Green”. That was a fascinating programme and certainly very informative, but the BBC does not do anything like that. The BBC had a series called “Coast” and one of the programmes a couple of years ago was about the east coast of Sweden. Part of the programme was factually inaccurate and there was a link to Scotland that the programme omitted to highlight. This goes back to your point about relevance. Irrespective of whether programmes are from the BBC, ITV or anyone else, if they ensured that links to Scotland, the UK or particular communities were highlighted, that would probably strengthen their case.

**Kevin Bakhurst:** Yes, I agree. Relevance to the audience will always improve the audience’s connection with the programming. When I was working in news in Ireland and previously at the BBC, we would always look at what would connect international stories to UK life or UK communities. We can have great stories, but a connection with people or issues here undoubtedly makes them more relevant and interesting. I therefore support what you say.

**Stuart McMillan:** Thank you for that.

**The Convener:** I will return to diversity and the public purpose in terms of the creative economy and portrayal. By 1 April 2018, the BBC has to have in place a code of practice for diversity. I wonder how you intend to measure that, particularly with regard to the public purpose to portray authentic voices and stories from Scotland. We have a way to measure the public purpose to support the creative economy, although many people would say that it was very flawed—I might come back to that. However, we do not seem to have a way to measure portrayal.

I acknowledge that that is difficult and subjective. For example, some broadcasters might argue that a drama set in Edinburgh and using it as a backdrop would fulfil the portrayal obligation, even when there was nothing else about the production that was authentically Scottish. Many people would say that that would not fulfil the portrayal obligation. How do you intend to measure the portrayal of diversity to ensure that Scottish voices are heard and Scottish stories are told across the UK and that network programmes get the funding to tell such stories?

**Kevin Bakhurst:** That is a very good question and something that we have been spending quite a lot of time talking about. Probably one of the most powerful tools that we have is to measure what the BBC does every year. Our audience research people at Ofcom already have a very good external reputation, and they have been looking at the robust measurement of the areas to which you referred. We will use a range of

measures, as it is about not just watching hours of programmes on screen but going out and talking to audiences.

You are right that it is quite hard to measure whether people feel that they have been portrayed authentically, but we are using every audience measurement tool that we can.

That work is alongside—I have already mentioned this—the first ad hoc report, which we decided would be about the representation and the portrayal of the people of the UK, which involves an even deeper dive into that issue because we think that it is really important.

When we talk to various stakeholders, including politicians, around the UK, the issue of how authentically Scottish people are shown to themselves and to the rest of the people of the UK comes up all the time. Therefore, we want to use the full range of measures that we can, and we will publish openly the information that we get, because quite often the most powerful tool that we have is to put out the figures in an independent and transparent way and to say that, for example, the BBC is doing a good job in one area, but not so good a job in another.

My colleagues in audience research, who work closely with Glenn Preston and his colleagues up here, are looking at the best way to do that using the full range of tools that we have. We will probably publish the information in October 2018 as part of our assessment of year 1 of the BBC with an independent regulator.

**The Convener:** You have an audience advisory council. First, is that its title?

**Kevin Bakhurst:** It is.

**The Convener:** I have read the council’s document from July. I was quite encouraged to see that it was quite critical of how things operate. It talked about commissioners and where they are based in terms of commissioning authentic programming—that is, the portrayal issue that we have just been talking about. This committee has had quite a bit of to-ing and fro-ing with the BBC about how powerful its drama commissioner in Scotland, for example, really is, because everybody in the industry tells us that the decisions are made in London.

Your council says that a commissioner who is not based in the nations and regions will look at things completely differently from one who is. Perhaps that is why, with the big budget network commissions, for example, our whole canon of Scottish literature is very seldom portrayed on television whereas, much as I love Dickens, there have been three or four repeats of his classics. Indeed, every few years, the BBC repeats a big budget drama version of the classics of English

literature, but they do not usually—ever, actually—reflect the Scottish canon.

That issue comes up all the time when we speak to the cultural sector in Scotland. Clearly, the approach to portrayal is not working. What will you do about that in your regulations?

**Kevin Bakhurst:** You are right—where commissioners are based, who they talk to and how easy it is to pitch to them is a really important part of improving portrayal and representation. I was encouraged to see that, of the relatively few BBC executive members who are on the board, one of them is Ken MacQuarrie, who is a very persuasive voice for Scotland and for the nations and regions as a whole on the issue of portrayal. I have spoken to Ken, but you probably know better than I do that that issue is in his blood.

Some of those key appointments are important. There is a powerful team up here with Donalda McKinnon and Steve Carson. Steve Carson worked previously in Northern Ireland, so he knows his way around the BBC's commissioning processes. It is really important to have the right people based here.

How the BBC organises its management and its teams are matters for the BBC board; it is not for us to decide where they are based, or where decisions are taken. However, we can show what the impact of those decisions is, question some of them and present the facts back to the BBC and ask it, if it is not doing well enough in an area, whether it needs to do other things about that.

**The Convener:** Authentic portrayal is one of the BBC's public purposes; as part of its licence, it must meet that public purpose.

**Kevin Bakhurst:** It must, and it knows that it needs to do better in that area—it has said so itself. We have made that very clear—indeed, we focused on that area in year 1. The ad hoc report is one of the most powerful tools that we have to shine a light on areas of the BBC. We chose that area, out of a number of contending areas, as the priority. The upshot will be the most comprehensive picture to date of how the BBC is doing in that area. We hope that it will be a useful tool to the BBC, too, and that it will think about how it can do better.

I do not think that anyone would want the regulator to decide who should manage the BBC or where they should be based. The BBC should be—and it is—in a better position to make those decisions.

11:00

**The Convener:** Yes, but it is your job to ensure that it fulfils its public purposes.

**Kevin Bakhurst:** It is our job to hold it to account on how it is doing in a general way. Absolutely.

**The Convener:** It is not just about the BBC. I noticed that your list of Scottish productions includes a Channel 4 production in which Alan Titchmarsh follows in the footsteps of A A Milne around the Harrods toy department and Surrey. Apparently, that is a Scottish programme, as well.

I go back to the regulations and how we can measure relating to supporting the creative economies. There are three criteria, two of which must be met. One criterion is about the executives who are based in Scotland, and the other two relate to spend and where people are employed. Do you see those three criteria changing as a result of your review of out-of-London spending? It is clear that there are issues relating to where the executives are based, in particular. If one or two executives are based in the Glasgow office, that will meet one of the criteria. It is clear that many people do not think that that is good enough.

**Kevin Bakhurst:** Obviously, I cannot prejudge what will happen. A huge amount of work is going on. We are looking at whether the three criteria are satisfactory in themselves, how they are interpreted, what “permanent base” means and the importance of having a permanent base. Do we want to exclude other UK companies from coming in and making a significant film, drama or whatever in Scotland because they do not meet one of those criteria? Those are all areas that we are looking at.

On the information that is available, the broadcasters currently have to tick a box to say that the executive is based in Scotland. If they tick the box to say that it is, that is as far as it goes. My view is that that is probably not enough information. Transparency is a huge tool. When that box is ticked, that means that the executive or management is based in Scotland, but I think that there should be another question about what that means.

**The Convener:** Yes. Maybe we can see that next year.

**Kevin Bakhurst:** Yes. We will go out to consultation on that, and we would really welcome the committee's views on the options and the issues that it thinks we should look at.

**The Convener:** How will you deal with a complaint in which someone says that a programme has been incorrectly identified—a box has been ticked, but that information is not true?

**Kevin Bakhurst:** That is another key area that we are looking at. We are considering whether we have a robust enough complaints system. At the moment, producers tend to come to us and ask

whether we can have a look at a programme. I have looked at your list of programmes about which there are questions. We have gone back to the broadcasters and asked for more information about all those programmes; that information will form part of our decision making. Those productions qualified, ostensibly using the criteria, but what did that mean? We want to see what that turns up.

**Glenn Preston:** It is worth adding an additional point about transparency. We have really well-established routes in which we are transparent about all sorts of complaints that we receive that relate to broadcasting. Every couple of weeks, we publish the *Ofcom Broadcast and On Demand Bulletin*, which outlines the complaints that we have received, whether or not we will pursue them and the eventual outcomes. That is less true in relation to the made-out-of-London guidance, for which the process is not so transparent, and is absolutely one of the spaces that we will have to review in the next few months.

**The Convener:** When will things change?

**Glenn Preston:** I think that we have said that we expect that to happen during 2018. We are statutorily obliged to consult on such things, and we have a method of scoping and talking to the people who will be affected before we do our formal consultation.

**The Convener:** So, at some point in 2018 we will see a set of guidelines that must be adhered to. When will that be? Will you publish a new set of guidelines?

**Kevin Bakhurst:** Yes—we will publish either a new set of guidelines or a new framework around the existing guidelines, if we decide that they are the right ones, but need to be adhered to more transparently and with a better complaints system, for example. I do not want to prejudge the outcome. We are looking at the options.

On the timetable, early in 2018 we will ask for formal inputs to the process. We will then put out our initial thinking, probably around springtime. We hope that we will, towards the end of the year, have a conclusion that we will then have to put out to consultation. We aim to get the guidelines out, done and dusted, in 2018.

**Ross Greer (West Scotland) (Green):** I will go back to representation. Among broadcasters, the BBC in particular has come under quite profound criticism for its failure to represent class accurately, both in staffing, particularly at senior level, and in representation in casting, particularly with dramas. When a drama is not set in a middle-class or upper-middle-class situation, but in a working-class situation, it is often the case that actors from upper-middle-class backgrounds are cast in working-class roles.

In your “Diversity and equal opportunities in television” report in September, you looked at a range of characteristics—the three that you can compel broadcasters to give you information on and a range of others that you requested information on under the Equality Act 2010—but class was not included. My understanding is that, off the back of that report, Ofcom has asked broadcasters to start providing it with more information on the class make-up of their staff and so on. Will you explain why that came off the back of the report but was not part of the information that you requested for the report?

**Kevin Bakhurst:** Suffice it to say that class is probably one of the more difficult characteristics to measure. However, it is, by their own admission, one of the biggest issues that face UK broadcasters. As I understand it—this is not fact; someone told me this—there are only two professions that are less inclusive than the media. One is journalism and the other is—

**Tavish Scott:** Politics.

**Kevin Bakhurst:** Not politics: the other is medicine. There is work going on to address the issue. It is one of the hardest things to measure. How does one say which social background a person comes from?

Quite a few broadcasters, including Channel 4 and the BBC, have put in place quite good new initiatives about apprenticeship schemes and so on, in order to try to open that up more. To a large extent, broadcasters have stopped doing unpaid internships, which in their own way are exclusive because people cannot afford to do them if they come from a particular part of the country or a particular background. The broadcasters are taking measures. I know from talking to people at Channel 4, ITV, the BBC and Sky that they are actively focusing on the issue: they know that it is a real issue for them.

There is a problem about trying to measure class robustly: how do we characterise someone as coming from a particular part of society? Is it that their parents did not go to university? Is it because they live in a particular area? It is not easy to get definitive figures about class, but it is a major issue. It is certainly one of the issues that we will be looking at in relation to representation as a whole, and one of the key things that we are working on is how to define it.

**Ross Greer:** Have broadcasters responded positively to your request to provide you with that information in the future?

**Kevin Bakhurst:** Broadcasters have responded positively that it is an area of concern. The current discussions are about how we define class. We do not necessarily have a solution. We may be looking at particular measures that individual

broadcasters are taking. The honest answer is that it is work in progress. We have all identified it as a significant area—as Jon Snow quite rightly did in his speech at the Edinburgh international television festival. I think that people do not have the answers to many aspects, including how we measure class effectively.

**The Convener:** Parliament has passed legislation to ensure that a broader range of social classes get into university, based on postcodes and other criteria.

On that topic, when a person applies for a job with BBC Scotland, in order to ensure diversity they can voluntarily tick a box about their background. There is a host of ethnic backgrounds including “white Irish”, but “Scottish” does not appear. I know that being Scottish is not a protected characteristic, but given the context of our discussion, do you think that people should be asked whether they are Scottish when they apply to BBC Scotland?

**Kevin Bakhurst:** I do not know. That is opening a can of worms. You had better put that to the BBC rather than to us.

**Tavish Scott:** Well answered.

**The Convener:** I bring the meeting to a close and thank our witnesses for coming.

11:09

*Meeting continued in private until 11:29.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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