

Culture, Media and Sport Committee

Oral evidence: Pre-legislative scrutiny of the Draft Media Bill, HC 1287

Tuesday 4 July 2023

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Members present: Dame Caroline Dinenage (Chair); Kevin Brennan; Clive Efford; Damian Green; Simon Jupp; John Nicolson.

Questions 284 - 414

Witnesses

I: Kate Biggs, Director, Content Policy, Ofcom; Kate Davies, Public Policy Director, Ofcom; and Colin Browne, Chair, Voice of the Listener and Viewer.

II: Rt Hon. Sir John Whittingdale OBE MP, Minister for Media, Tourism and Creative Industries; and Robert Specterman-Green, Director, Media and Creative Industries, Department for Culture, Media and Sport.



Examination of witnesses

Witnesses: Kate Biggs, Kate Davies and Colin Browne.

Q284 **Chair:** Welcome to this morning's meeting of the Culture, Media and Sport Select Committee for our final evidence session on the pre-legislative scrutiny of the draft Media Bill. For our first panel this morning we are joined by Colin Browne, who is the Chair of Voice of the Listener and Viewer; and, from Ofcom, Kate Biggs, Content Policy Director, and Kate Davies, Public Policy Director. A very warm welcome to all of you.

I will start the questions with you, Colin, please. What impact do you think the removal of the genres from the public service remit will have on whether the public service broadcasters can meet the needs of as many different audiences as possible?

Colin Browne: Let me, first of all, thank you and the Committee for inviting me to appear before you. We try to represent the interests of citizens and audiences and it is good to have the opportunity to input.

To start with a very important question from our point of view, we are concerned about the removal of the genres. It is a concern that we have had for some time. Among our principal concerns is that audiences deserve a plurality of view and a wide range of view, and that content has to include what we in shorthand call high-fibre content—the spinach or the cauliflower of this world—to give a range of programming that is of societal value.

This is a broader point, but the risk we see at the moment is that the approach to this Bill seems to have been to look at the interests of public service broadcasting and how that can be preserved going forward. That is good—we are big supporters of public service broadcasting—but it has to be done in a way that protects the interests of audiences and citizens. If you make things too easy for public broadcasters we fear that that will mean that we will move more down a commercialisation route and you will lose some of the high quality, societally valuable kind of content.

We think that not just in the case of the BBC, but that all the public service broadcasters take the responsibility of providing a full range of content. We are concerned, therefore, at the removal of the genres.

Q285 **Chair:** Do you think that this kind of backstop where the Secretary of State can intervene will provide enough protections?

Colin Browne: It is difficult to know because you have to ask what will the Secretary of State be judging it against. If the criteria have not been set out, it is quite difficult for the backstop to operate and that backstop will take time. By definition, it will be after the event rather than before the event. It is good that it is there, obviously, but it may not be enough.

Q286 **Chair:** Thank you, Colin. I will turn to Ofcom on this because in the DCMS impact assessment one of the PSBs felt that the Secretary of



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State's power to intervene potentially risked undermining Ofcom's independence. Do you agree with that?

Kate Biggs: I am not sure I do. We recommended that a simplification of the PSB remit might be helpful. I think it is important that all audiences' needs and interests continue to be met. We will have a duty, as Ofcom, to consider whether those needs have been met and whether each PSB has made sufficient contribution. Then a further step in backstop or insurance policy is the ability of the Secretary of State to make changes where they see there is deficit in the delivery. I think there is a series of stages to ensure that all audience needs and interests continue to be met, even under the reformed, simplified remit.

Q287 **Chair:** Do you think that the Government are the appropriate body to be that backstop?

Kate Biggs: There are steps that Ofcom is required to take in advance of that. We provide it in our annual compliance reporting, our engagement with individual PSBs on their statements of programme policy, our periodic PSB reviews. I think that all of that would inform intervention on behalf of the Secretary of State.

Q288 **John Nicolson:** Good morning, everybody. In declaring interests, I should say that I worked previously as a journalist and broadcaster and did my very best never to reveal what my personal politics were, which I think is what every journalist should do.

I will begin with you, Ms Davies, please. I understand that Ofcom is investigating one episode of Jacob Rees-Mogg's programme. Why only one?

Kate Davies: We set out yesterday that we are investigating one programme on GB News and one on TalkTV in addition to the ongoing investigation we have on GB News. We look at every single complaint in the same way, either individual complaint or multiple complaints, and we look at our rules and take a decision on whether to investigate or not.

Q289 **John Nicolson:** The problem, of course, is that Jacob Rees-Mogg's programme is not a single episode; it is the ongoing nature of the programme. I had a look at the press release that you issued when explaining why you were going to investigate this one episode of Mr Rees-Mogg's programme. He gave an absurd commentary about Donald Trump being found innocent of sexual molestation charges, which of course is not the case at all, as we know.

This is what your press release said: "We are investigating whether this programme broke our rules which prevent politicians from acting as newsreaders unless exceptionally it is editorially justified". That is the quote from the Ofcom press release but, of course, that is not what your rules say at all. Your rules actually say: "No politician may be used as a newsreader, interviewer or reporter in any news programme unless exceptionally it is editorially justified". There is a bit of spin going on there from Ofcom, I feel. Your press release said that politicians could not



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act as newsreaders but your rules actually say that they can't act as newsreaders or interviewers or reporters.

Of course, Mr Rees-Mogg, on every single programme that he presents, Monday to Thursday—goodness knows how on earth a full-time MP can find the time to do a news programme four days a week when he should be working for constituents, but I will set that to one side—he interviews every day of the week, thus breaking your rules.

Kate Davies: I am not going to comment on an individual case. It would be inappropriate for me to do so.

Q290 **John Nicolson:** I am not asking you to comment on that particular programme. I am asking you to comment on the genre of active politicians presenting news programmes, as Mr Rees-Mogg does every single day.

Kate Davies: I can comment on our rules, which say, firstly, as you rightly quote, that no politician may be used as a newsreader, interviewer or reporter in any news programme unless exceptionally editorially justified, and there are also rules around people who are standing for election who cannot present at all. There is also a clear distinction between news and current affairs, and our rules around due impartiality cover both news and current affairs. We have set out further details about what you might expect in a news programme versus what you might expect in a current affairs programme.

Q291 **John Nicolson:** Let's look at that in a second, but he is doing a news programme. The clue is in the name "GB News". It is a news programme. He does interviews. Your rules say that politicians cannot do interviews unless under exceptional circumstances. He does interviews every single day. He is breaching the rules.

Kate Davies: We don't judge—

John Nicolson: Why not? It is your job to judge.

Kate Davies: Would you let me finish my answer? We don't judge a programme based on the name of the programme. We judge it based on the content and the way it is treated, and how a broadcaster chooses to adhere or not to the due impartiality and due accuracy rules.

Q292 **John Nicolson:** There is no due impartiality of Mr Rees-Mogg's programme. Every single day he churns out the same old right-wing pro-Brexit stuff. What he is doing is both news presenting and commentary. He does that every single day of the week. I read out your rules to you, so I won't do it again—they are very explicit. It has to be exceptional circumstances for an MP to do interviews. He interviews every single day of the week. He is breaching your rules. It is not a one-off; it is every day. Why don't you act to stop this?



Kate Davies: If the programme constitutes a news programme, that is the rule. If it constitutes a current affairs programme, we look at it differently.

Q293 **John Nicolson:** This is dancing on the head of a pin. As a former news presenter myself, I know that news programmes often contain longer format interviews, which could become current affairs programmes. I used to present “BBC Breakfast”. I would do long interviews every day but it was not a current affairs programme. It was, like Mr Rees-Mogg’s programme, a news programme. He is presenting a news programme, not a current affairs programme. He breaches your rules.

Kate Davies: I don’t have anything further to say. I have been clear on how we take our rules.

Q294 **John Nicolson:** Okay. Well, I had a little look at what Kevin Bakhurst said—I should explain, Kevin Bakhurst is the group director in Ofcom. Maybe I can turn to you, Ms Biggs. Here are the rules. You cannot apparently, according to Mr Bakhurst, speak directly to the camera. If you do that it is then a news show not a current affairs show. Let me show you a picture. There is Mr Rees-Mogg speaking directly to the camera. He does this every day. Kevin Bakhurst, who is one of your most senior figures, lists in his blog a number of rules that will make a programme a news programme rather than a current affairs programme. The first one is speaking directly to a camera. I have just shown you Mr Rees-Mogg speaking directly to the camera with a scrolling news bar underneath. That is the grammar of a news programme. Would you accept that?

Kate Biggs: There are a couple of things there. On a point of clarification, Kevin Bakhurst has recently left Ofcom. He has been appointed as the director general for RTÉ in Ireland.

John Nicolson: But you are not resiling from what he said.

Kate Biggs: No. I am just providing that as a clarification, so that members are aware.

The second thing is that a breach of our rules, whether that is a breach of due impartiality on a news programme or a current affairs programme, is incredibly serious, and we take breaches very seriously. As my colleague mentioned, we launched an investigation into that particular show—well, a particular show, I don’t know if it is exactly the one that you have just shown on the screen.

John Nicolson: He does it every night.

Kate Biggs: It would be inappropriate for us to potentially inhibit or affect an ongoing investigation. I hear what you are saying about the concerns around our definitions in our code and guidance. They are things that we keep under review. We are cognisant of changing audience appetite. We are also cognisant of audiences’ expectation to access a



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range of content and that includes magazine-style programmes, current affairs and news. There is a number of news channels that contain current affairs or more magazine-type programmes.

Q295 John Nicolson: That is fine. If you want to change the rules, change the rules. If you want to say that Tory MPs or any other party's MPs can present programmes, change the rules. My point is that it is blindingly obvious to anybody watching that channel or listening to our proceedings today that he breached the rules, not just in the single individual programme that you are investigating but every day. I have shown you one breach of the rules, speaking directly to the camera. Here is what else Mr Bakhurst said. He said that shows with MPs presenting should not have running orders or a series of stories at the top of the show. I endured a couple of episodes of Mr Rees-Mogg's programme just by way of research. He always has a running order and a series of stories at the top of the show. That is another one of Ofcom's rules breached. "They should not cut to live reporters." He also cuts to live reporters. "Should not conduct news interviews." He also conducts news interviews. Every single one of Mr Bakhurst's Ofcom tests Jacob Rees-Mogg breaches every single day of the week and yet you are only investigating one programme.

Kate Biggs: We would be very happy to update the Committee when the investigation concludes.

Q296 John Nicolson: Right. It looks to me as if you want to expand your powers, and you have been asked potentially to expand your powers, but you can't even cope with what you have got on at the moment let alone expanding.

Can I go back to you, Ms Davies? Your boss, Melanie Dawes, appeared before us previously. She seemed quite confused when I asked her about Tory MPs interviewing the Tory Chancellor on a Tory Budget. She had not seen the programme. I watched back her interview. It did not go well for her. She did not seem clear about whether or not it breached the Ofcom rules. This was the Esther and Phil show—Esther McVey and Philip Davies. You started investigating on 3 April. It is now July, 12 weeks on. Why haven't you announced the results of your investigation?

Kate Davies: As I have already said, I am not going to comment on a live case but we are progressing as quickly as we are able to. As Kate already mentioned, our breach of our code is a very serious thing. We have to balance freedom of expression and we don't take a decision to breach a broadcaster on those grounds lightly—freedom of expression for the broadcaster and the audiences. We are taking the time we need to make the right decision.

Q297 John Nicolson: It is far too long, isn't it, 12 weeks? It is a very simple matter of principle whether or not MPs are allowed to breach your rules and get away with it night after night. There is no more egregious breach of your rules, which I have read out, than a Tory Chancellor being



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interviewed by Tory MPs and that programme trailed on a news channel by the Treasury. We have just lost all sight of objective journalism and it is you guys' job to enforce the rules and you are not doing it. We will proceed down a route to end up with awful American-style ranting at the camera—we are already seeing it—all masquerading as news.

Kate Biggs: The one point to add, before we get on to the sections around the Media Bill and our views on that, is that we take our responsibility to protect the trusted impartial accuracy of television and radio news very seriously. I hear what you are saying and that is exactly why we need to take these investigations thoroughly. Decisions made publicly set a precedent for other editors.

Q298 **John Nicolson:** You say you are hearing what I am saying. I have been saying this for months and months and months. It seems to me that Ofcom is constantly following and trying to catch up. You are not setting the pace, which is your job.

Can I move on very quickly to the issue of languages? Languages is also considered in the Media Bill, and it seems a little bit opaque about the issue of languages. Ms Davies, perhaps you could tell me what are the rules on language provision under the new legislation.

Kate Davies: Are you talking about the minority languages part?

John Nicolson: Yes.

Kate Davies: I think it is really important that the Bill recognises the importance of minority languages across the UK. We will in future be able to look at whether there is sufficient provision of minority languages across PSBs—

Q299 **John Nicolson:** What is sufficient provision?

Kate Davies: I think we will need to look at that when we undertake our review of public service broadcasting. We need to look at it in the round—look at what audiences expect. We regularly research into what audiences expect and what they need. The public service broadcasters need to provide content that is diverse and meets the needs of audiences right across the UK, and clearly minority languages are a part of that.

Q300 **John Nicolson:** That is all incredibly vague. Do you know how many hours of Scots language broadcasting there is at the moment?

Kate Davies: Can I pass to you?

Kate Biggs: I would have to check because you are talking about community radio through to the major PSBs, and Scots and Ulster Scots. I would have to check and write to the Committee on that.

Q301 **John Nicolson:** I can tell you—none, not a single hour. Do you know what Scots language is?

Kate Biggs: Yes.



Q302 **John Nicolson:** Can you define it for me, out of interest?

Kate Biggs: It is of cultural relevance to a significant minority of people in Scotland. It is a minority language recognised in the UK, along with Ulster Scots, Gaelic and Welsh.

John Nicolson: It doesn't really have any status at all. It is not on the passports; it is not even an official language in the Scottish Parliament. There is no hours of broadcasting in it at all. It is the first cousin of English, related to Frisian and other languages. On the idea that there should be sufficient quantity, I notice that neither of you can define what sufficient quantity is. It is completely vague and it seems to me to be a good idea in principle, but zero thought has gone into the provision of what it actually means. I think that a lot more work needs to be done on this. Back to you, Chair.

Colin Browne: Chair, just before we leave the subject, in case we don't come back to it, could I mention on the impartiality debate that VLV recommends that the Media Bill should more clearly define exactly which output should be subjected to impartiality rules and not leave this task to Ofcom's discretion. We think that is putting an unfair burden on Ofcom in that context. We also think that the provisions in the 2003 Act should be tightened and made more clear and the current Bill is an opportunity to address those issues.

Chair: I think that Damian is going down that line in his questioning.

Q303 **Damian Green:** I want to have a much broader debate rather than about specific MPs, and also look ahead to the future, which will be hugely relevant to Ofcom since you will be regulating it.

On how the media landscape has changed without the regulations changing, all stations that did news a few years ago would attempt to be impartial and make sure that each individual presenter was impartial. Not just the news stations, and not just GB News and TVTalk, but stations that have evolved, like LBC, now have openly partisan presenters, and LBC in particular balances the range. You have a full range of political views expressed by presenters, but each of those presenters, or most of their presenters, has a recognisable political stance. We have drifted into this. That was absolutely not the case and would not have been allowable 10 years ago. It is now happening all the time and Ofcom appears at no stage to have done anything about it. Are you happy that we have drifted into this new media landscape? Does Ofcom say, "Okay, fine, it is all different now"?

Kate Davies: You are right, the media landscape has evolved significantly. I think that there has been a long tradition of personality-based presenters but I recognise your point that there are more.

Q304 **Damian Green:** That is not my point. My point is that of course we have always had personality presenters. "News at Ten" was built on Alastair Burnet. Alastair may have had strong political views but they were never



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expressed on air, whereas Andrew Marr left the BBC, the top of the range of broadcasters, because he said he wanted to find his voice. He is allowed to have his voice on LBC. Ofcom would not have allowed that a few years ago and now it does.

Kate Davies: How we think about these issues is exactly around how we perceive audiences, their expectations and what their habits are with broadcasting. We are currently undertaking research to look at how audiences are thinking about this issue so that we can get a better handle on it, because that is where our policy and regulation has to be driven from.

Q305 **Damian Green:** Who should decide—you or the legislation? I agree with the point implicit in Colin's remarks that this is an enormously important shift. You can see arguments either way, but for us to drift into it without thinking about it, which is what we have done, seems to me to be wrong and possibly a failure of Parliament in not putting legislation earlier.

Kate Davies: We absolutely still are applying our rules around due impartiality and due accuracy, in particular. That tends to be where the debate is. If Parliament and/or Government wanted to change the approach that is, of course, open to them.

Colin Browne: At our autumn conference three or four weeks ago we had Stewart Purvis, former chief executive and editor in chief of ITN and, of course, a former partner for content and standards at Ofcom. He suggested that there had been a reinterpretation of the rules by Ofcom about alternative views, partly because of a "wish in government to broaden the range of broadcasters in the country". In a sense, Ofcom may be reflecting this desire to have a broader range of voices, but we think, as I said earlier, that that is not the way to do it.

On the 2003 Act and your point about a balance across the day, we think that it needs to be a bit stricter than that. You need to have balance within programmes, otherwise you don't know that somebody who has listened to one segment or viewed one segment will view another segment, so that viewer will not have had a balanced view.

Kate Davies: One point of accuracy on that, if I may. The Act sets out to look at either individual programmes or series of programmes that are linked together where you would look at impartiality across the set of programmes. Usually when we are looking at the Broadcasting Code, it is about a single programme rather than across a day.

Q306 **Damian Green:** Does VLV have a view on the desirability or otherwise of an American-style system where basically you can pick a news channel that tells you what you already think?

Colin Browne: No, we don't, certainly not as far as the public broadcasters are concerned, but we are talking about the non-PSBs in this context. We think that everything that is available universally by free-to-air should be subject to some form of regulation for impartiality.



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We do not want to go down the American route. We think what we have at the moment, or should have at the moment, is important to keep. Particularly in this age of misinformation, of all the really dreadful stuff on social media, it is so important that the broadcasters can be seen as a beacon of accuracy and truth, and not encouraging falsehoods to them.

Q307 **Damian Green:** Thank you. I will move on to another issue of prominence. We have heard different people give a different view that they want TV selection services to give “significant” prominence to PSBs rather than “appropriate”, as the Bill puts it. I think that VLV is on the significant side of that argument, as I understand it. Is that right?

Colin Browne: Broadly, yes. It is a fine judgment. Our basic position is that all viewers—audiences—should be able to find these services easily and, therefore, the question is how can they find that and how can we make it happen. Probably “significant” is better, from that point of view, than the other alternative. We are on the whole on that side of the argument but our basic point is that audiences should be able to find these services easily whichever way they view the services, whether it is broadcast or TV or online or one of the other networks. We also think that that should apply right across the board.

Q308 **Damian Green:** Thank you. It will fall to Ofcom to write the rules, for which good luck. What do you think is the difference between “appropriate” and “significant”?

Kate Biggs: First, I would like to say how much we welcome the provisions around prominence and availability. It is something that we have looked at and recommended to Government over the years. It is an important reform of the PSB system to make sure audiences can still access PSB whether they choose to watch online or via broadcast.

On the specific point about “significant” or “appropriate”, I think that “appropriate” works. It is consistent with the linear broadcast regime, which would work alongside the new online provisions. We have a history of how we apply “appropriate”. We set out in our last review of the code the factors that we consider in determining what is or is not appropriate and we firmed up and made more specific rules to protect the PSB channels with an EPG code.

There is a coherency point with the linear regime and this new online world, which “appropriate” works for. Also we are mindful that there is a number of PSBs. We are assuming that the designated internet services will include Clic, S4C’s player, iPlayer, STV Player and so on, and we will need to make some decisions about the relative prominence of those. Currently within the EPG code you have BBC, BBC Two, Channel 3, 4 or S4C and 5, and you will want that equivalence in the online regime. I think that “appropriate” gives us the ability to set out those relative prominence requirements.

Q309 **Damian Green:** How detailed do you think that will have to be?



Presumably the way that the platforms present programmes to us will change over time as well, as it has done radically since the days of EPGs.

Kate Biggs: You touched on a very good point. This is not a simple grid like an EPG. It is not a list of channels. You have interfaces that are quite simple app-based—you can just see the iPlayer or ITVX—through to much more sophisticated programme-led interfaces where you might have rails or hero tiles to show off particular programmes. We want to make sure that the new rules for prominence requirements apply to both of those scenarios—the very sophisticated through to the more simple. I think it is important that we have the ability to set out some principle-based requirements and then provide guidance on the range of ways the prominence regime can be met.

Q310 **Damian Green:** Are you confident that the Bill gives you access to the data that you will need to investigate the algorithms that the platforms are using?

Kate Biggs: We think so. The information gathering powers are quite broad and I think the accompanying requirements through dispute resolution and enforcement will make sure that we can make decisions and provide guidance on the basis of the best available information.

Q311 **Damian Green:** How will you deal with people personalising their set top boxes, which you can do now? They might eliminate all the PSBs. What do you do about that?

Kate Biggs: We have been speaking to providers about this for some time, as I mentioned. I think our first recommendations were back in 2019. A measure of personalisation can be good and in the audience members' interests, but as a point of principle we think that personalisation needs to be active. You are choosing to put something up front because it is something you regularly choose.

I think it is a bit more problematic when that is done for you and that is one of the things we want to consider and consult on in drafting our consultation to make sure we get that balance right in consumers being able to decide what they want. That includes a range of content that goes beyond PSB through to protecting the ease of discovery for PSB content no matter what service you are on.

Q312 **Simon Jupp:** Sticking with public service broadcasting, before I come to Colin with a question, Kate Biggs, you said hero slates and programme rails. Is that what you said?

Kate Biggs: Hero tiles.

Simon Jupp: Hero tiles, sorry. What does that actually mean?

Kate Biggs: When you turn on your TV—imagine you have got Sky Glass as the product—the home page will have some big tiles. It might have the latest drama show or the latest entertainment show, and you can just click on that tile and it will take you through to that programme. A rail is



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a series, so you could have “last watched” and it will show you the five last shows that you happened to access.

Q313 **Simon Jupp:** I always hide those. They are too embarrassing. Talking about these hero tiles and programme rails, Colin, I will come to you. We are talking about public service broadcasting and to qualify for prominence in the Media Bill it says it must itself promote its public service remit content to make it readily discoverable, presumably through hero tiles and programme rails and things like that. What do the words “promote” and “readily discoverable” mean to you, Colin?

Colin Browne: What they say, I think. Some of these definitions are difficult to go into but we need to ensure that audiences can have access to the PSB content in whichever way they choose to view it. For example, on the previous discussion we believe that the PSB apps should appear on the front page of whatever system we are talking about above all other apps to provide ready accessibility and discoverability.

Q314 **Simon Jupp:** Do you think that is something that we will likely see or do you think it could be very much up to whichever thing you use, whatever app or system?

Colin Browne: I think that comes back to the previous question a little bit. It depends on the powers and the information that Ofcom has to ensure that that happens or that the reverse does not happen.

Q315 **Simon Jupp:** Do you think that more clarification is required? It sounds like you do, to make sure that PSBs are more prominent. For example, I am thrust with “Love Island”, which I don’t watch, as opposed to “Countryfile”, which I might watch.

Colin Browne: There is a link issue in that there needs to be some form of regulation so that the PSBs have to display what I called earlier the high-fibre content above the more obviously commercial activity. In that context there would be an onus on the BBC to make sure “Countryfile” was prominently available on the iPlayer. “Love Island” is not a BBC issue but the same thing should apply to ITV.

Q316 **Simon Jupp:** Understood. Thank you. To one of the Kates, I don’t mind which: how will you measure whether public service broadcasters have promoted their programmes and their public service remit content and made it readily discoverable?

Kate Biggs: In our recent update to the BBC’s operating licence we set out a requirement about ensuring that they surface a whole range of content that meets all audience needs and interests. I think there is a good precedent in how we go about that. We are working with the BBC on the information it provides and what some of the useful metrics might be for us to hold them to account on that. I think there will be lessons learnt from that that we could then apply to the commercially-funded PSBs in ensuring that, as you say, whether it is ITVX or Clic or My5 are



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showing a range of content and not just focusing on perhaps the most commercially successful content.

Q317 **Simon Jupp:** Is there more that could be done within the Bill or more that you would consider appropriate to make sure that PSB content is more prominent from the off? I know you are doing research into this at the moment but is there anything you think that needs to happen now?

Kate Biggs: I think the clauses as framed get the balance right for future proofing, giving us enough flexibility, albeit we will have to do that transparently through consultation with industry and audiences, but I think currently the clauses are—

Kate Davies: Especially because there is a provision around the internet programme service making a significant contribution to the public service remit, so it can't be that you just put all the "Love Island" type content on the thing that you want to be prominent and then vice versa.

Kate Biggs: Not to disparage a particular programme.

Simon Jupp: No, obviously not. It is not my personal taste. Thank you.

Q318 **Clive Efford:** Your submission wants the Government to review the wording around agreement objectives between public service broadcasters and television selection services. What is the problem with the wording?

Kate Biggs: The Committee has heard from a number of stakeholders about different interpretations of one of the particular agreement objectives, the one about reasonably incurred costs, agreement objective (b). I think the fact that it has been interpreted so differently by different people suggests that some further clarity there would be helpful. We are very aware that the terms negotiated between platforms and broadcasters cover a range of things and that it is not just cost-based. That includes metadata, wider factors around the functionality within a site. The intention is clear, and we support the intention, which is about incentivising deals between platforms and PSBs that are mutually beneficial wherever possible, but I think just some tweaks to that agreement objective would better express the intention, which is to ensure that terms are fair and mutually beneficial.

Q319 **Clive Efford:** Would you go as far as to say it is essential that that change is made or is it just desirable?

Kate Biggs: I think it is important that some change is made to just that one objective.

Kate Davies: So that everyone has a shared clarity about what it means.

Q320 **Clive Efford:** Do you see your role very much as encouraging negotiation between the PSBs and the platforms—the selection services—before you step in and become the arbiter of last resort? Is that how you see it?



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Kate Biggs: Absolutely. We would expect all parties to have exhausted all reasonable options before we are called in to resolve a dispute.

Q321 **Kevin Brennan:** Reflecting a little bit on some of the discussion earlier, on my electronic programming guide—I live in Cardiff—TalkTV has more prominence than Channel 4 UK. How has Ofcom allowed that to happen?

Kate Biggs: I think what you are referring to is the prominence of local TV, which we determine should be within the top 24 slots on the EPG.

Q322 **Kevin Brennan:** On that channel, TalkTV appears as a sort of infestation on the channel reserved for local TV. Do you know how many hours per day actual local TV is broadcast on that channel and how much is TalkTV?

Kate Biggs: The local TV licences vary in their requirements to meet original local content. I would have to check what they average at and I could look at that particular licence in question.

Q323 **Kevin Brennan:** It is not very much, is it?

Kate Biggs: They vary considerably and we are cognisant of the costs of creating local content, particularly on a small area, and Government have consulted recently. I know that they are in the midst of considering the next steps for the future of local TV for the next licence period.

Q324 **Kevin Brennan:** The truth is that on your watch, whether it is your fault or not, and on our watch, what has been allowed to happen is that the content that Mr Nicholson and Mr Green were talking about earlier now has greater prominence on the electronic programming guide on my television set and those of my constituents than Channel 4 UK, one of the major public service broadcasters.

Kate Biggs: I think it is fair to say that local TV varies hugely by character and nature, whether that is non-exclusive—

Q325 **Kevin Brennan:** I am just saying it is a fact in Cardiff for my constituents, leaving aside chatting about the wider thing, isn't it? Now TalkTV has greater prominence than Channel 4 UK.

Kate Biggs: The local TV station may have greater prominence on the DTT EPG and they have chosen to have a content supply arrangement with TalkTV. Some stations have, I think.

Q326 **Kevin Brennan:** Do you think that should be allowed or do you think it is an abuse of the whole intention of local television?

Kate Biggs: I think it is important that DCMS is looking at what it is seeking to achieve for local TV as it approaches the end of the current licence period.

Q327 **Kevin Brennan:** I think that it is an abuse. On the Bill and some of the technical detail we are talking about, the Department published a several hundred page-long impact assessment last Thursday evening. I have to be honest here and say that I have not had a chance to read every bit of



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it but I usually find impact assessments of legislation very interesting. Have you had a chance to read it? I accept it was published very recently and we have got the Minister in front of us later, but have you had a chance to look at it?

Kate Biggs: I have seen bits of it.

Kate Davies: I haven't read it.

Q328 **Kevin Brennan:** Part of it is about the television selection services that are used by—in the phrase that is used—a significant number of people in the UK. The impact assessment quotes Ofcom's estimate that some 15 to 23 smart TV manufacturers will be affected by the Bill. Are those manufacturers that in your estimation pass that threshold of reaching a significant number of people?

Kate Biggs: I think the designation of TV selection services will be a matter for the Secretary of State if the Bill proceeds. We provide advice around significance and I would expect us to consult on that to check that the metrics and information we are using are reasonable, free and comprehensive enough. I would not want to predetermine what we might—

Q329 **Kevin Brennan:** What is the implication of the Bill for those smart TV manufacturers?

Kate Biggs: In what way, sorry?

Q330 **Kevin Brennan:** How will the Bill affect those smart TV manufacturers?

Kate Davies: They will have to follow our rules on prominence for public service broadcasters.

Q331 **Kevin Brennan:** The impact assessment also quotes Ofcom's estimate that there could be 15 to 20 smart TV manufacturers that are reliant on third party operating systems, so they might not be in control of the platform service and the set-up of the user interface. Is the Bill, in your view, clear enough on who is responsible for ensuring compliance in that instance?

Kate Biggs: Yes, we think so. This is again something we have been discussing with industry for quite some time and I know you have had techUK as well as Sky here providing evidence. I think that there are more providers of TV selection services than there are operating systems on which they are built, but they are based on contractual relationships, so it is reasonably easy to establish who has control and who is best able to deliver on the prominence and the agreement objectives set out in the "must carry" obligations.

Q332 **Kevin Brennan:** In practice, it would be very easy for you to know who is responsible for compliance?

Kate Biggs: We think that is reasonable to work through.



Q333 **Kevin Brennan:** Lots of people have been concerned, in this Bill, about legacy devices that don't receive technical updates and how they will be handled. Is the Bill flexible enough to deal with that issue and potentially to exempt, if necessary, legacy devices? What are we talking about here?

Kate Biggs: As members have heard, it is a very different world from broadcast TV. They are essentially computers or smart TVs and so there does come a point where they may no longer be supported from a software update perspective and also then it becomes impossible for the PSBs to support the apps within that environment. The Bill as drafted does not make express provision around legacy devices and it may be useful to include something there, but I think there is a reasonability test about to what extent you expect the "must carry, must offer" obligations to be met on devices that are no longer used by a large number of people, that are no longer being supported by technology updates.

Q334 **Kevin Brennan:** I don't want to ignore radio, so I will briefly touch on that. It has proved to be, surprisingly perhaps to some, the part of the Bill that has kicked up more fuss. We had evidence last week from the big tech, who moan about any regulation obviously, but they were moaning about. Then I raised it with the Secretary of State guesting on the Welsh Affairs Select Committee last week, who pushed back a bit. We have had a letter to the Committee, which is among our papers this week, back from Radiocentre, rubbishing the evidence given by big tech last week. What is your view about the radio section of the Bill?

Kate Davies: I assume you are referring specifically to the radio selection services rather than the deregulation piece?

Kevin Brennan: Yes.

Kate Davies: I think it is clear that listeners are increasingly listening to radio online, 25%, and 14% via smart speakers. Online audio is not currently regulated, so it is not necessarily surprising that there is a wide range of views. I think that the Government have been quite clear on their policy intent to ensure availability of radio for all UK listeners no matter how they want to listen to it. An interesting thing about the various bits of evidence, despite the divergence of views, was support for that ambition, even from some people who were criticising the specific measures.

We think that not least, given the divergence of views, there could be greater clarity in some places in the drafting. There are a few areas. There has been some technical comments about the advertising provisions. There is clearly a difference of views about how the default routing provisions would work, which is where radio stations should be able to provide their services via a number of routes and express a preference. We think that potentially there could also be some more clarity around enforcement.

Q335 **Kevin Brennan:** Briefly, just to try to finish this off, on the issue of it will



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designate radio selection services that are “used by a significant number of the public”, how ought that phrase be interpreted, a significant number? Is that a million or is that 10,000? What is it?

Kate Davies: Designation is undertaken by the Secretary of State based on advice from Ofcom, which will include this question of what is a significant number.

Q336 **Kevin Brennan:** What would you advise is a significant number?

Kate Davies: The Bill sets out that we need to consider a number of things. We need to consider the number of people using the services, we need to consider how they are using them and potentially other factors. For example, we might look at what is the difference between people using the voice assistant service versus people using it for radio. We have not done that research yet, so I can’t give you any number, but those are the kinds of things I want to look at it.

Q337 **Kevin Brennan:** Is it a catch-all word basically that you can interpret or the Secretary of State can interpret at a later date?

Kate Davies: I think we will provide advice and the Secretary of State will designate, as I say.

Q338 **Kevin Brennan:** Finally, Colin, do you have anything to say on the radio section of the Bill that you have not already said to the Committee?

Colin Browne: Yes, we do, a couple of things. We think that online audio, like podcasting content, should be regulated in the same way as TV content is to protect audiences from misinformation, the point I was making earlier. We think it is important that audio in cars should be in the scope of the legislation, even if it is not on a voice-activated device. At the moment, that is not covered and we think that should be covered as well. Those are probably the two main points about that.

Q339 **Chair:** When we saw techUK last week, it had issues with the phrase “used by”. Do you have any views on how that should be interpreted?

Kate Davies: I don’t think we do aside from, as I say, when we are producing the report on these measures we will want to look at, for example, what is the main functionality of a voice assistant service, research that: are people using it to listen to radio or are they using it for lots of other things and what are the measures across those different areas?

Q340 **Clive Efford:** Colin, is the Government’s policy of only applying a video-on-demand code to platforms with large UK audiences appropriate?

Colin Browne: We think that is difficult. It would be easier if all platforms were included in the regulation. We came to the point that there might be different ways of saying which were important and which were not but it gets very complicated, so we have moved on from what we said in our submission and we now believe that all should be in this.



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Q341 **Clive Efford:** How would that apply? Do you believe that is a practical approach?

Colin Browne: I think it probably is practical but we are not pretending to be technical experts. It is equally extremely difficult to define where a line should be drawn and it is much easier and much simpler from the point of the audience if all are covered in the same way.

Q342 **Clive Efford:** I will turn to Ofcom. Will the Government's tiered approach to on-demand content standards make things harder for Ofcom to regulate?

Kate Davies: No, I don't think so. The Secretary of State would designate, that is what the Bill provides for, and Ofcom would report. They have been quite clear in their statements that they want to look at the largest, riskiest TV-like services since this expands the reach beyond the UK. It is any service used by or watched by a lot of UK audiences. It is quite important that there is a practical approach and I think a tier 1 enables us to take that practical approach. The Bill also has provisions for the Secretary of State to change that designation in future.

Q343 **Clive Efford:** Can the Secretary of State do that without further reference back to Ofcom?

Kate Davies: I would need to double check. I have a feeling we have to write a further report but I would need to double check that.

Q344 **Clive Efford:** I would be grateful if you could. We discussed earlier the issue about impartiality, political and major business and industrial controversies. In other aspects of the Broadcasting Code, which of them don't translate well in the video-on-demand context?

Kate Davies: I think that it is less about specific aspects of the Broadcasting Code and more about how we would approach it. The overall objectives would be the same, but we recognise that audiences engage with content very differently on video-on-demand players. The things we want to look at are, for example, the way that audiences engage with that content, so you tend to select a specific bit of content—you don't tend to stumble upon it as much. You tend to start at the beginning, which means there is an opportunity to warn audiences about the nature of that content. Also there is a wider range of audience protection measures available to video-on-demand services and indeed the Bill requires us to write a report on those measures. In thinking about how we establish a new code, we want to take all those sorts of things into account.

Q345 **Clive Efford:** It has been suggested to us that we could get some tourism in the form of complaints to Ofcom. The way the Bill is drafted would allow people from outside the UK to complain to Ofcom, which would turn you into a sort of policeman of the world. What are your views on that?



Kate Davies: I think that is accurate. The Bill does enable complaints from outside the UK. The reality is that if harm is happening or there is a risk of harm to a UK audience, we would want to know about it, so it doesn't matter where the complaints are coming from.

Q346 **Clive Efford:** Can I go back to the questions of my colleague John Nicolson earlier about politicians being involved in broadcast news and also the issue of how LBC approaches it? You have a broadcaster like James O'Brien, whose political views are quite clear although he is not a political activist in that sense, and then you have Nigel Farage, who is clearly a political activist and has an axe to grind politically still and probably has political aspirations still. They would be presented as being a balance of two ends, particularly around an issue like Brexit and Europe, but when it comes to the Government they are both very much against the Government and would attack the Government, probably for different reasons but none the less they would. This idea that there is a balance in the way that you select political activists to run these programmes is a very complicated thing for you to manage. If you also go down the road of where do you stop, do you end up with extreme right-wing politicians who are Holocaust deniers? Where do you then start to draw the line for what is appropriate with politicians becoming broadcasters in the way that they are on certain platforms?

Kate Davies: I am afraid I might repeat myself somewhat here. We apply our rules. Due impartiality is not applied the same in every—

Q347 **Clive Efford:** You apply them retrospectively, don't you?

Kate Davies: Yes, absolutely, and that is important for freedom of expression. It is on every broadcaster to decide how they will meet those rules. We don't expect everybody to meet them in exactly the same way, because that is important. There is a whole variety of programmes here, but we do expect everybody to meet them. Then we look at how and whether they have been met, looking across a whole range of factors and the context and audience expectations of any particular service.

Kate Biggs: I think it is important. We are not a censor. We are a post-broadcast regulator and it is a duty on all licensed services to ensure they comply with our rules. If they don't, there is a clear process by which we can investigate a case and a range of regulatory tools that we can apply, from requiring them to make a correction on air through to fining and, in extremis, removing a licence. I think we have demonstrated that we are not shy from taking those actions where required.

Q348 **Clive Efford:** What about circumstances where you don't allow a licence because you have a look at what people are intending to do and you say, "No, we are not going to license that"?

Kate Biggs: There is a test around fit and proper, for example, for us to ensure that any licensee is fit to hold a licence, but we are also mindful, as my colleague said, of the right to freedom of expression and the right for audiences in the UK to be able to access a range of content.



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Kate Davies: Partly related to your question earlier, there are rules beyond due impartiality and due accuracy around harm to audiences, questions of hate speech and so on, going beyond the due impartiality.

Clive Efford: Thank you. I will leave it there.

Q349 **Chair:** Can I quickly take you back to the new remit for public service broadcasters before I let you go? I am interested in whether Ofcom feels that you will be looking at whether they are fulfilling their remit by looking at genres anyway, or whether you have sufficient parameters with which you now decide whether or not broadcasters are fulfilling their remit?

Kate Biggs: The provision of genre is something we track in spend and hours provided. We will consult around the advice we give on how broadcasters should develop their statements of programme policy once online services are included. I think genres remain a helpful indicator but it is not obviously the only one that is relevant in determining whether they have met their remit or not.

Q350 **Chair:** What else will you use to determine that?

Kate Biggs: You look at audience viewing habits, what viewers' attitudes are to the extent to which they continue to trust the PSBs as a source of trusted and accurate news. We have a range of indicators, including whether they feel that they see themselves, and there is cultural relevance and a test as well. We have to look at those qualitative and quantitative methods in the round.

Q351 **Chair:** Now that it is being made more flexible, do you consider that serious breach of classification is too high a bar for you to be able to reasonably step in?

Kate Biggs: I think that does set a reasonably high bar and it is probably one where we are keen to hear Government and Parliament's views on whether that is set at the right level for our ability to intervene.

Q352 **Chair:** To what extent can you feed into the way that that is classified?

Kate Biggs: I think that there is a challenge in creating enough regulatory certainty to give the PSBs flexibility to adapt and evolve in response to audience changing needs and habits, but also, to Colin's point, giving them enough challenge in being brave and innovative and delivering the range of content that meets all audience needs and interests. It is a judgment call.

Q353 **Chair:** Are there any additional step-in powers that you would like to see it include?

Kate Biggs: We should not underestimate our monitoring and reporting role and what we do in enabling transparency. We will be asking the PSBs to set out how they are going to deliver. We expect a conversation around that—about whether that is sufficient or not, and then at the end



of the year reflecting back and reporting on that. We should not underestimate the impact of those for us as the regulator and the PSBs, but the wider public accountability. We think that is an important step and should not be underestimated.

Q354 **Chair:** Before I let you go, Colin, is there anything else that you think our Committee should take into consideration about the draft Bill that we have not had a chance to talk about today?

Colin Browne: Yes, just picking up on the last point and looking at the PSB remit, it is important to consider whether PSBs are delivering on the linear traditional channels. There must be a great temptation for the PSBs to say, "We are delivering this stuff but it is all on the VoD." VoD online is not universal. Universality is really important and Ofcom needs to have the means and criteria against which to measure whether the PSBs are delivering this kind of content—this high-fibre content, as I describe it—on the main channels and not just pushing it off on to their apps.

Q355 **Chair:** That is very helpful. Thank you very much. I thank you all for coming in today and for your time. If you think of anything else that you feel we should take into consideration, please do drop us a line afterwards. We will suspend the session for a couple of minutes to allow you all to flee and to bring in our new panel.

Colin Browne: Sorry, one thing on my final point, it is really important that linear is still there and so DTT needs to be preserved and kept for the sake of universality. There is some threat to that form of television and the Government and Ofcom need to work hard to make sure that DTT—digital to terrestrial—remains available to provide that universal service. Sorry to interrupt.

Chair: That is fine. Thank you very much.

Examination of witnesses

Witnesses: Sir John Whittingdale OBE MP and Robert Specterman-Green.

Q356 **Chair:** Thank you. For our final panel today, I welcome Sir John Whittingdale, the Minister for Media, Tourism and the Creative Industries at the Department for Culture, Media and Sport, and Robert Specterman-Green, who is the Director of Media and Creative Industries at the Department for Culture, Media and Sport. You are both welcome today.

I will start the questions about this whole issue of removing genres from the public service broadcasting remit. Is this a solution in search of a problem? What problem are the Government seeking to tackle by making this move, Minister?

Sir John Whittingdale: Thank you, Chair. Can I first say that it is a pleasure to be before the Committee for the third time in this incarnation, having previously been behind your desk for 10 years, to talk about the Media Bill?



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The intention of the Bill is to introduce a bit more flexibility. The basic remit that we are setting for the public service broadcasters will maintain particularly the requirements for news, but it will be less specific in precisely how each of the different genres are delivered. To some extent it is because when the original remit was drawn up there was a relatively limited number of broadcasters. Today you have a huge range, a lot of them supplying what people might well regard as public service content, particularly in the areas of high-end drama, children's programming, specific programmes, religious programming.

The requirement has changed but that is not to say that we do not still believe that there is a need for public service broadcasting to deliver the core content that most people would regard, but this is to give a bit more flexibility in its delivery.

Q357 Chair: What confidence do you have that this sort of programming will continue to be delivered? For example, we heard before you from the Voice of the Listener and Viewer. It is concerned that what it describes as this high-fibre content will be hidden away somewhere on digital content and not available on the mainstream services.

Sir John Whittingdale: That to some extent will be a matter for your other previous witness. Ofcom will have the job of ensuring that the remit is delivered. If it literally were put out at two in the morning when nobody is watching, Ofcom would have something to say about that.

Also, Ofcom retains the ability to make recommendations for us to put back specific quotas for specific genres if it becomes obvious that those are not being delivered under the new, more flexible arrangements. There is a backstop power there.

Q358 Chair: When might that backstop power be used and under what sort of circumstances?

Sir John Whittingdale: Potentially, the one you give. If genres that previously we have regarded as important enough to require specific quotas are not being supplied or are being supplied in a way that makes it almost impossible for most people to find them, it could well be that Ofcom would make that recommendation, but it would be ultimately for the Secretary of State to amend the regulations on that recommendation.

Q359 Chair: Is it all a bit ambiguous, though? Would it be better to leave the genres in the Bill rather than messing about with this?

Sir John Whittingdale: It is genuinely an intention to, first, take account of the dramatic changes that have taken place in the television landscape since original requirements were put in place and, secondly, give a bit more flexibility. Generally, the provisions have been welcomed across the board. We keep them under review and there are backstop powers, but generally most of the PSBs see it as improvement. We are



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keen that those genres should still be available. We do not regard it as necessary to specify in the way that was previously done.

Q360 **Chair:** The DCMS's own impact assessment stated that one PSB felt that the Secretary of State's powers in this risked undermining the independence. What kind of reassurance can you give us that that will not happen?

Sir John Whittingdale: To some extent, that is the alternative argument. On the one hand, we try to give them more flexibility, but they are now saying, "We do not like the fact that there is still the backstop power, which means that the Secretary of State could come back". Yes, I can see that if you remove that, it will remove all the uncertainty, but it is important that the backstop power is retained in case it becomes apparent that specific genres are not delivered in the way that we had anticipated.

Q361 **Clive Efford:** Public service broadcasters have told us that their rights for sport and news and music are not available for 30 days, and so will not meet the threshold to count towards their remit quotas. Do you intend to change the Bill to address their concerns?

Sir John Whittingdale: We do not. We felt that 30 days is an appropriate figure. It is important that if you require certain programming to be provided, it should not be there for a minute and then disappear again. It needs to be available for a period for people to be able to watch it at their convenience, but that does not mean indefinitely. Thirty days was felt to be about the right period for, on the one hand, giving audiences an ability to access that content at a time of their choosing but without having it there indefinitely.

We will keep it under review, but 30 days was our assessment of what was most suitable.

Q362 **Clive Efford:** How did you come to the conclusion of 30 days? If you are a public service broadcaster providing news, news content is pretty immediate and not relevant for long periods of time. Why would you keep it up for 30 days? Some arrangements with sport coverage is not available to keep up there for 30 days, for example. How did you arrive at 30 days as a reasonable period of time?

Sir John Whittingdale: As I say, that was an assessment that we reached. There is an argument certainly that, for instance, in a developing news story, being able to still access the reporting of how it began is quite relevant. We will continue that. If it became apparent that there were problems in maintaining it for a 30-day period, we would listen to those concerns and, if necessary, amend it.

Q363 **Clive Efford:** Concerns are being raised now by PSBs but you think that they should suck it and see. Is that your approach?



Sir John Whittingdale: Yes. It is a balance to be drawn in trying to make sure that audiences have the maximum opportunity to access the content for a period after the original transmission, but not having it maintained for months or years to come. Thirty days was our assessment, but it is not one which we are absolutely wedded to come what may. If it was causing problems, we would revisit it.

Q364 **Clive Efford:** How quickly do you think you will review it? After 30 days?

Sir John Whittingdale: No. We would wait to see. If broadcasters came back and said, "Look, this is causing us real problems for rights reasons or because we do not have the facilities or it is clogging up our service or whatever," we would look at that, but we would expect them to come and set out why they think it was not working properly. Robert was going to add something.

Robert Specterman-Green: I will add that PSBs may leave the content up for fewer than 30 days if they choose. It would not necessarily count towards the remit when the regulator looks at how they have fulfilled their obligations. The PSBs have raised this point with us directly and so it is one with which we are familiar. We recognise that there may be some technical issues around the availability of rights of some of this content, which may warrant reconsideration. As a Minister said, we thought it was a reasonable amount of time. It is about a month. We expect PSBs to make content as widely available to audiences as possible.

Q365 **Clive Efford:** Okay. We are also concerned about the changing of quotas from proportion-based to absolute hours or spend. That may create problems when it comes to economic issues affecting public service broadcasters, budget and productions such as during a pandemic. Do the Government intend to be more flexible in their approach to reflect that in the Bill?

Sir John Whittingdale: The shift to absolute hours is easier for PSBs to deliver. It also addresses a problem that has arisen as a result of the growth of on-demand viewing. If you have a set number of hours of broadcast TV, it is easy to say, "Of that set number of hours, this proportion needs to deliver the remit", but when you move to an on-demand world, there is not a set number of hours. It depends when and how long people want to access TV. We felt that it was easier to measure and to deliver an absolute number of hours rather than a proportion.

Q366 **Clive Efford:** Again, will you keep that under review in case it becomes problematic?

Sir John Whittingdale: We would keep everything under review. At this stage, we have not yet produced a final version of the Bill and so we continue to listen to the PSBs' concerns in the areas you have raised and any others. If there are convincing arguments as to why it needs amendment, we will take that into account. The shift from proportional to



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absolute is necessary simply because of the way in which television viewing has changed.

Q367 **Chair:** Can we talk about listed events? Why are you limiting listed events to public service broadcasters, given that we have heard from Sky and Amazon—but there are also others—who have said that they are willing to show these key events free-to-air.

Sir John Whittingdale: Even though they may show it free-to-air, it does not necessarily mean that everybody can access it. People may not have access to those platforms, even if when they get access they do not have to pay a subscription.

We have always said that the listed events should be restricted to free-to-air viewing to reach 95% of viewers. In practice, that means the PSBs and so we have now said that it should be a PSB-specific benefit, but that does not represent a change. It has always been for the PSBs because nobody else has managed to meet that 95% threshold.

Q368 **Chair:** We saw last year with the Emma Raducanu final where Amazon did a partnership simulcast with Channel 4 so that the UK Open final in 2021—my life is speeding before me—could be enjoyed by the widest possible audience. Should it be about something being free-to-air rather than who delivers the content?

Sir John Whittingdale: The example you give is one where there was a considerable public interest in being able to watch that match, but it was not a listed event. It was a sensible agreement between Amazon and Channel 4 to allow people to watch it. We at the time said how much we welcomed that, but we would not usually—and we would not consider—putting the US Open on the listed events list. As Mr Nicolson will know, I was talking about Scottish coverage the other day in the debate that we had in Westminster Hall, where the deal has been done with Viaplay to make available some Scottish matches free-to-air. There will be voluntary agreements reached, but the listed events are a limited list of major events, which we think it is sensible to restrict to the PSBs.

Q369 **Chair:** The draft Bill does not cover the digital rights for these listed events, things like streaming and catch-up rights. I know that the DCMS is looking at that and still reviewing whether these should be included in the regime. If you decide to include those under the listed events umbrella, how will you do that? Will you amend this Bill or another piece of legislation?

Sir John Whittingdale: We want to get it right. There are complexities about extending. This Committee has recommended in the past that we extend it to digital rights and, essentially, we agree. We have had a consultation but there are complexities in doing so and so we need to get it right. At the moment, we are considering the results of the consultation and will come forward with proposals in due course.



Q370 **Chair:** I want to talk about the issue of prominence now. We have heard concerns about the language around this and whether “appropriate prominence” should be changed to “significant prominence”. Can you set out for us the reason for choosing the former and what you regard as the definition of it, please?

Sir John Whittingdale: “Appropriate” is a word that is used in the linear world. In considering, as we move into legislating to achieve prominence on different platforms, “appropriate” works well in that case as well. It may have been said before, but “appropriate” can mean significant but “significant” does not necessarily mean appropriate. In most cases, it will be the same but it gives that additional degree of flexibility and for Ofcom to judge whether appropriate positioning has been achieved rather than necessarily prescribing significant.

Q371 **Chair:** Complicated. Is the Bill explicit enough in whether it underlines your intention to give public service broadcasters appropriate prominence when it comes to the user interface across the major routes—things like homepages, voice searches and that sort of thing?

Sir John Whittingdale: Precisely how you deliver appropriate prominence will be for Ofcom to, first, produce guidance on. Ofcom will be tasked with going away and setting it out in rather greater detail than the Bill requires. Having set out the guidance, it will be for Ofcom to judge whether it has been achieved by the services that are designated under the new regime.

Q372 **Chair:** Is it appropriate that Ofcom has had to set out the specific steps that platforms should take to comply, or should they have been allowed to take a principles-based approach to this?

Sir John Whittingdale: It is a judgment in that it will be for Ofcom to set out the guidelines, but to some extent it will be for the platforms to then decide how to meet those. If they get it wrong, Ofcom will tell them. There is a degree of flexibility—certainly an intention for a degree of flexibility—as to how they meet the requirements.

Q373 **Chair:** One other issue that has come up quite a lot over our evidence sessions over the last few weeks is the devices that are in scope of the legislation that you will be aware of. What kind of consideration did you give to including other multiuse devices like mobile phones and tablets, for example, in the legislation? Why did you rule them out?

Sir John Whittingdale: It is designed to cover devices that people use predominantly for accessing television, which does not necessarily include mobile phones, for instance. There will be a determined list of regulated TV platforms and that is amendable if viewing habits should change. It is important in this area, as in so many others, that there is a degree of flexibility because we are in a world that is moving quickly. It might well be that people start watching television through pairs of glasses, for instance, in due course and the legislation needs to be able to take



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account of that, but at the moment, we are clear that it will apply to devices that are essentially marketed for the watching of TV content.

Q374 **Chair:** What about legacy platforms? That has also come up as an issue of concern.

Sir John Whittingdale: You cannot require prominence on platforms that do not allow you to have it. If that is a problem, we can amend the legislation. Certainly we are sympathetic. That is not our intention at all and so we would listen to those concerns.

Chair: From what we heard, if you can clarify that in the legislation, it would be a definite—

Robert Specterman-Green: If I may, it is definitely not our intention for devices that are no longer available or that can no longer be updated to be within the scope of this. We certainly will look at that again.

Q375 **Damian Green:** Can I move on to the “must offer, must carry” agreement? It slightly feels to me like an extremely elegant piece of Whitehall drafting that might not survive contact with the real world. You will have seen some of the objections. What is the aim of it? What are you trying to achieve?

Sir John Whittingdale: The aim is to encourage the platforms and the broadcasters to reach a commercially satisfactory deal. We would not want to have to step in but the requirement that platforms must carry the PSB channels underlies that. That is part of the prominence agreement. Ideally, there should still be a net zero payment, as there is at the moment. You have sitting behind the negotiation between the platforms and the broadcasters the Government’s declared intention. We have called it “agreement objectives”, but it means that Ofcom is there to arbitrate if one side or the other complains that they are having unfair terms imposed.

Q376 **Damian Green:** Will Ofcom in the end be the backstop to set the terms of a commercial agreement between two private companies?

Sir John Whittingdale: No, Ofcom is there to step in if one side of the negotiation is exploiting its powerful position against the other. It is more of a fair competition requirement than a Government-determined outcome, but it is a safeguard.

Q377 **Damian Green:** I talked about contact with reality. It is public that in Amazon’s new terms that come in in September for all advertising-based PSBs as well—everyone—it basically takes 30% off the top and that is it. When Amazon was in front of us, it said, “We have bespoke agreements with broadcasters,” but, as I say, these are new terms coming out. We have had representations from PSBs saying, “Hang on, that is unacceptable.” What would happen in those circumstances? Would Ofcom step in?



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Sir John Whittingdale: First, Ofcom will set out in due course more detail about precisely how it sees the negotiation being carried out and what it regards as fair terms. If your broadcaster felt that the terms imposed by Amazon were punitive and unfair, yes, it could go to Ofcom.

Q378 **Damian Green:** In practice, if Amazon says, "Tough", it will be forced to carry that—or, indeed, if one of the platforms says, "Hang on. We have to give away too much data or something to the broadcaster". This, in all other circumstances would be a normal commercial negotiation between, quite often, people who are big and ugly enough to look after themselves. I am interested that you think Ofcom will—

Sir John Whittingdale: I do not foresee Ofcom having to step in in most circumstances. It is there as a backstop. For instance, when we have talked to platforms, they have occasionally expressed concern that they might be held to ransom by the fact that they have to carry a broadcaster but they are forced to do so under terms that they regard as unfair. The agreement objectives requirement is to ensure that this is a fair negotiation and that the outcome is fair. That has been achieved until now without Ofcom having that additional power and I hope that it will continue to be achieved without Ofcom using the power, but it is a safeguard.

Q379 **Damian Green:** Moving on to Channel 4 and the sustainability duty, I am slightly puzzled as to what that adds to its existing duties. The directors have, under the Companies Act legislation, a general duty to run a sustainable business. What is new in this?

Sir John Whittingdale: You are right to the extent that I expect competent directors to take account of sustainability in decisions they make, but—

Damian Green: The law requires them to. You do not have to expect it.

Sir John Whittingdale: No, because Channel 4 is not a company and so it is not covered by the Companies Act. You are right that a sensible director will take that into account. It is not at the moment set down as a duty of a director of Channel 4. We felt that it was sensible that it should be.

Q380 **Damian Green:** The big change is the removal of the publisher-broadcaster model. Do you have any idea of how the percentage of independent production at Channel 4 will end up commissioning, or do you have ceilings and floors?

Sir John Whittingdale: Not at the moment. First, it is entirely up to Channel 4. We will not say that it has to have a minimum of in-house production. It could have zero in-house production if it wanted to have zero in-house production. This is a freedom. It does not mean you need to exercise the freedom.



We have been concerned about the dependence of Channel 4 on advertising revenue and its inability to diversify in the way that ITV has been so successful in diversifying its revenue base. This gives it the opportunity to do so.

We are looking at the question of whether the indie quota should be increased or precisely how it should operate. We will be talking to Channel 4 about that and it will in due course be set down. This is a basic freedom that Channel 4 has not had to date. We felt it would be of benefit to Channel 4 to have if it chose to use it.

Q381 Damian Green: Have you considered what the effect is likely to be on the indie sector? Will it mean more consolidation?

Sir John Whittingdale: I am seeing John McVay later and no doubt he will give me his views on that. We are looking at the question around what the independent production quotas should be. Of course, that applies to qualifying indies. There are then the non-qualifying indies as well. We will set those in due course.

Robert Specterman-Green: If I may, we absolutely recognise the point that you make and that it is important in this to engage with all the interested parties. We are trying to enhance the longer-term sustainability of the Channel 4 corporation while at the same time recognising the amazing work that Channel 4 has done over time in the independent production sector. We have been engaging with all those people from qualifying independents, the non-qualifiers and Channel 4 itself to try to strike the right balance.

It is also worth pointing out of course that many of the independent production companies with whom Channel 4 works have grown to be very big, which is a reflection of the success of the model, but we have to take that into account when calibrating this. It is not our intention to introduce excessively negative distortions. We try to strike an appropriate balance here, given the multiple objectives that we are targeting.

Q382 Damian Green: A previous Secretary of State thought that Channel 4 was unsustainable being left under the current model. Do you have any worries about Channel 4's future sustainability?

Sir John Whittingdale: Yes, which is one of the reasons why we are trying to strengthen Channel 4 by giving it the opportunity to diversify its revenue. Channel 4 is a small player in a world of big players and it has done remarkably well, particularly in recent years. We know that the climate at the moment is a lot tougher than it has been. Channel 4's report is due out quite shortly but that will reflect the pressures that all commercial broadcasters are under at the moment. This is a changing world. We seek to give Channel 4 as much support to survive and thrive in the longer term as we can, but no doubt it will be tough.



Q383 **Damian Green:** I have heard from production companies that Channel 4 has suspended all commissioning over the summer, which has never happened before. Is Channel 4 under more threat now that it ever has been?

Sir John Whittingdale: I have both seen those reports and talked to Channel 4 about them. Yes, that is a reflection of the difficult climate it now operates in. The advertising market has dropped considerably and that impacts on Channel 4, particularly because Channel 4 is totally dependent on the revenue from advertising. Channel 4 will tell you that it is only a small number of productions and that it remains confident, but it would not conceal the fact that it is operating in a challenging climate at the moment.

Q384 **Damian Green:** Is that a case for cracking on with this? If this is the cavalry coming to the rescue, it had better come to the rescue—

Sir John Whittingdale: This is not a silver bullet. It will not suddenly remove the pressures that have been created by an adverse advertising climate, but it is an additional freedom. It is up to Channel 4 regarding the extent to which it takes advantage of it. It is entirely a matter for them. We hope that will help to sustain it.

Q385 **Chair:** Carrying on from Channel 4, it needs to at least sustain the level of activities over the long term. What do you regard as the long term in that?

Sir John Whittingdale: The requirement is for Channel 4 to not take short-term decisions but to take into account the implications and it is not blowing all the reserves in the first year. It is a long-term sustainability consideration. As Mr Green was saying, in a sense, it is what any sensible director would be doing anyway. Putting this requirement into legislation will not change behaviour particularly because I hope that they were doing that already.

Q386 **Chair:** Is long term in the next couple of years, in the next five years, in the next 10 years? Do you envisage a time in the future when—

Sir John Whittingdale: I would not put a figure on long term. We would not think of a particular figure.

Robert Specterman-Green: We want the corporation and everything it does to thrive for as long as possible but recognising the challenges that the Minister has outlined. We are trying to focus minds to ensure that the issue of sustainability is as prominent for the board of the corporation as is delivering its remit. We believe that the two can go and need to go hand in hand.

Q387 **Chair:** Given those sustainability problems that Damian has outlined, and they are significant, Channel 4 at one stage was going to be a much bigger part of this Bill and a much more contentious Bill we all agree it



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would have been in that case. Genuinely, does Channel 4 have a future within this model? Are we looking at a massive taxpayer bailout in the years to come?

Sir John Whittingdale: The last time I appeared before this Committee—and a couple of Members here were present at that time—we had that discussion and at that time I expressed concern about the long-term sustainability. In a sense, the reasons why I expressed those concerns have not gone away. We decided not to proceed with privatisation but we, nevertheless, felt that it was necessary to take measures to try to bolster the sustainability of Channel 4, which is precisely why we give it this additional freedom.

Yes, Channel 4 is operating in a different world to the one in which it was created and it is, in international terms, a small player. It has done remarkably well. I hope that it will continue to do so.

Q388 **Chair:** If you were a betting man, what would you say is the percentage chance that we are staring down the barrel of a taxpayer bailout of Channel 4 in the future?

Sir John Whittingdale: I am no longer responsible for gambling and so I will resist the opportunity to lay odds on it.

Channel 4 has been a remarkable success story. Everybody would agree with that. It has a strong management team. Again, probably members of the Committee will remember a few years ago under a different leadership when Channel 4 came and said, “The Government have to come and bail us out because we cannot survive.” We did not and Channel 4 did survive. Now it is apparent that that was unjustified alarm, but that does not change the position. I am sure that Channel 4 will seek international deals. It will seek to take advantage in due course if opportunities arise with the new freedoms. I hope it will survive and thrive.

Q389 **Chair:** Do you think it will survive without a taxpayer bailout?

Sir John Whittingdale: I certainly hope so. The Government would not like the idea of having to step in and provide taxpayers’ money.

Robert Specterman-Green: The purpose of the Bill in its current form is to give the tools to Channel 4 to ensure that it does. Its current strategy sets out its plans until 2025. The board will need to consider how it wishes to make use of the flexibilities afforded by the Bill to set out its strategy to continue performing. Then it will be for everyone, including the regulator, to assess how well it is doing.

Q390 **John Nicolson:** Good morning, gentlemen. Thank you for joining us. Sir John, you said just now that you had concerns about Channel 4 previously when you appeared before the Committee, but you expressed it rather more strongly than concerns. You said that without privatisation



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Channel 4 would not have the money to invest in future technology and programming. If you were right then, Channel 4 is now doomed, or were you wrong?

Sir John Whittingdale: I was right to the extent that it had to make substantial reductions in its programming budget. We are not going down that road, but one of the reasons why we looked at the possibility was to give Channel 4 access to more capital to invest. There is an opportunity for Channel 4 to borrow and we believe and hope that Channel 4 can thrive without a rich owner standing behind it. Instead, it has the Government, which is certainly not rich at the moment, standing behind it. I hope very much that it will, but I do not retract what I said. It was an alternative way of bolstering Channel 4 potentially—

Q391 **John Nicolson:** But you expressed your views in such strong terms. We all understand collective government responsibility. You hate this concession that you have made. Ever since I first met you, you were desperate to privatise Channel 4, desperate—

Sir John Whittingdale: Mr Nicolson, I was not desperate. If you look at what I said last time I was here, I also said that no decision has been taken and that we were looking at it. We were looking at it.

Q392 **John Nicolson:** I remember that famous picture of you when you appeared before the Committee and said, “We are not thinking about Channel 4 privatisation”. Lo and behold, you were photographed by a clever photographer going down Downing Street with a dossier under your arm about the privatisation of Channel 4, which we were led to believe your team had suddenly written inside about 36 hours—

Sir John Whittingdale: If I can correct you, it was not me who was photographed. It was actually, I believe, a Cabinet Office official who was carrying a document that did set out that that was an option. As I said at the time—and we are talking now about five or six years ago—no decision had been taken and no decision was taken because it was not proceeded with then.

John Nicolson: I stand corrected on that detail. It is a bit like the—

Sir John Whittingdale: It is quite an important detail.

John Nicolson: None the less, it was your Department. You know—

Sir John Whittingdale: Actually, no, it was not even my Department. It was, as I said, the Cabinet Office.

Q393 **John Nicolson:** I stand doubly corrected. It is a bit like the “Rocky Horror Picture Show”. We have been doing this so long that I feel we all know each other’s lines in all this. I can almost chant the lines that are forthcoming. None the less, Ernst & Young research for Channel 4 showed that removing Channel 4’s unique publisher-broadcaster model would



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result in a £2 billion reduction in its contribution to the creative economy over 10 years. That is worrying, is it not?

Sir John Whittingdale: I am not sure I accept that analysis. Channel 4 will continue to commission programming. If it chose to do it in-house, that does not mean it suddenly stops contributing to the creative economy.

John Nicolson: But it has said it does not want to do it.

Sir John Whittingdale: Channel 4 said that it does not want to do it or it does not have to do it?

Q394 **John Nicolson:** Is it quite a bizarre idea that Channel 4 says it does not want to do something and it does not want it in the legislation, but you will put something that it does not want into the legislation that it then says it will not use. What a total waste of time.

Sir John Whittingdale: I do not see it that way. Channel 4 has not actively said, "Please do not put this in". It has not told us that it would definitely use it, but giving them that additional freedom, particularly when we do not know the way the market will evolve in the future—and if we are to do it, we have to do it now because it will be a long time before another opportunity arises—seems to me only sensible. As I say, there is absolutely no compulsion on Channel 4 to start commissioning from within unless that is what it chooses to do.

Q395 **John Nicolson:** Is the truth, Sir John, that this is a bit of fig leaf? You wanted to privatise Channel 4. Channel 4 fought off for a second time your privatisation plans. You did not want to exercise a full-scale retreat for a second time and so you said, "Okay, Channel 4, we will say that due to the pressure we put on you, we will now change the model slightly." It kind of went along with it and it looked as if all this wasted time actually achieved something when we all know that it achieved absolutely nothing, but it cost us, the public, quite a lot of money for you to go down this route again that you have retreated from.

Sir John Whittingdale: We recognise and continue to recognise that Channel 4 will find it difficult moving forward unless changes are made. One of the options that certainly we looked at was privatisation in part or in its entirety. We decided that because that raised a lot of objections, which you know and which you echoed at the time, we decided not to proceed down that road, but that did not remove the concern about long-term sustainability and so we sought to address that through other means, which the Bill now does.

Q396 **Chair:** Before you go on, can I double check on the Channel 4 issue, John? What would be the consequences if Channel 4 does meet the sustainability clause? Would privatisation be back on the table?



Sir John Whittingdale: Look, if Channel 4 is unable to sustain itself, which presumably is what you mean, it would need to come and talk to the Government about the consequences. It might come and say, "You have to bail us out," or, "We could look for alternatives," but that is hypothetical. I hope it will not arise. As I have said, strangely enough, it did arise a few years ago when that exact forecast was made by the management of Channel 4, but as it turned out it got through that period.

Q397 **John Nicolson:** Quickly on STV, we have all had a meeting—and to follow up on the points that Mr Green was making—with STV. It is worried about Amazon. It is not pretending to be worried. It is worried. Amazon is a thug. To go to a relatively small company like that and say, "Unless you hand over huge amounts of your income, we will not put you on our platform," is a thuggish way to behave. It has enormous power. STV is worried—there is no secret about this—that it will not be able to resist. What advice would you give to STV?

Sir John Whittingdale: The advice I will give is that help is on its way because that is the purpose of this Bill. At the moment, there is not the ability to bring in Ofcom if STV feels that it is forced into punitive terms by—I am not sure I agree with you about "thug"—a large company like Amazon. Under the provisions of the Bill, it will now be able to appeal to Ofcom and Ofcom will have the power to step in and judge whether these are fair terms.

Q398 **John Nicolson:** One of the problems that STV identified is that a number of different companies are all subjected to the same technique by Amazon. When Amazon appeared before us, it suggested that there might be tailored negotiations and tailored agreements, but STV does not know what agreements other companies are having. This is an example where good old-fashioned trade unionism kicks in. If all those smaller companies got together and disclosed what Amazon was saying to each of them, maybe collectively they could fight off Amazon or at least get better terms.

Sir John Whittingdale: The terms are bound to be commercially confidential between the individual companies—

John Nicolson: That is of course what Amazon is saying and what STV is saying as well, but that commercial confidentiality goes against STV's interests. It has absolutely no idea what deals Amazon is doing.

Sir John Whittingdale: Ofcom as a regulator is there to assess whether the terms are fair and would take into account the behaviour of Amazon in its general negotiating approach with different companies.

Robert Specterman-Green: To be clear, if you step back and look at the process that the Bill provides, Ofcom will have to prepare a code of practice to help support the approach to the agreement objectives. In section 362AK in the draft Bill, it has to consult on that. Both parties involved can submit their thoughts. That will then provide a framework to



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guide those negotiations, which, as the Minister said, we intend to be commercial negotiations and effective negotiations.

We do have the backstop there. We have Ofcom at the front end with the code of practice and we have Ofcom at the back end should that be necessary. We hope it will not be, but we have provided for that safeguard in the event. As the Minister said, these provisions are intended to support companies such as STV, given some of the challenges to which you allude.

John Nicolson: Thank you for that clarification.

Q399 **Kevin Brennan:** Thank you, Mr Specterman-Green.

Minister, welcome. I asked you some questions last week when guesting in the Welsh Affairs Committee about radio. To take Mr Nicolson's "Rocky Horror Picture Show" analogy, let's do the time warp again. I will approach it a bit differently this time. You published a lengthy impact assessment about the Bill last week but you did not publish anything about radio in that impact assessment. Why?

Sir John Whittingdale: We were still talking to the Regulatory Policy Committee about the radio provisions and we published an overarching assessment. The detailed impact assessment will be published when the Bill is passed.

Q400 **Kevin Brennan:** The Government asked us to perform scrutiny on this draft Bill. Can we effectively do that without sight of that? We have to produce our report before you publish that impact assessment. The idea is to publish it alongside not the final version but the version that you will introduce to the House. Does that hamper our ability to properly—

Sir John Whittingdale: I am sorry in a way that we were not able to supply the Committee with the full impact assessment until quite late on in the process. There is quite a lengthy procedure within the Government to obtain agreement on the impact assessment, which we have now done. We have not yet finalised the radio provisions, which were a later part. I am keen that we should provide that as soon as we can.

Q401 **Kevin Brennan:** You know the reason I ask. This part of the Bill has actually been the part that has produced a little bit of a spat in the evidence given to this Committee. We heard from representatives of the radio industry, who broadly welcome what the Government propose in the Bill. Then we heard from big tech in front of the Committee. It has not had regulation in any way of any kind ever, but it is not keen on what you propose as a Government.

Then we had a letter back as a Committee. I know you have not seen it, Minister, but it quite helpfully rebuts what big tech was saying to the Committee and lays out the five complaints that big tech was giving to this Committee. The easiest thing is if I put them to you and see what



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you think of the claims. The first is that there has been no consultation and insufficient research on the radio clauses—part 6 of the Bill. What is your response to that?

Sir John Whittingdale: The provisions governing radio did not appear out of thin air. They came as a result of a lengthy digital radio and audio review, which we conducted. I was the Minister in my second incarnation when that review was conducted. Not only was that a lengthy discussion with representatives of the radio sector, but I know techUK was involved as well. The outcome of the review, which was recommendations that there should be protection for radio broadcasters on whatever devices are used, voice-activated devices, was agreed by all the participants in that, including techUK.

Q402 **Kevin Brennan:** Charge 2: part 6, the radio clauses, is being rushed and should be dropped from the Media Bill.

Sir John Whittingdale: Again, it has not been rushed. The radio review was published two or three years ago and there has been a lot of discussion since then. We have continued to consult. I had a roundtable with the tech platforms you are talking about yesterday and will continue to talk to them.

Q403 **Kevin Brennan:** Charge 3: the regulation is unworkable in practice.

Sir John Whittingdale: I do not see why it is unworkable. It is specifically targeted. Essentially—one of the points that we discussed yesterday—these are not regulations to require the sector to do something that it is not doing now. If it continues what it is doing now, it is fine. It is a preventive measure to stop it, for instance, suddenly imposing its own advertising instead of that which the broadcaster has agreed to broadcast, or to make it impossible to find. These are protective measures to ensure that radio is protected and accessible going forward. If it continues doing what it is doing now, there is not a problem.

Q404 **Kevin Brennan:** Charge 4: it is unclear what is in scope of the regulation. We are getting a news bulletin as we speak.

Sir John Whittingdale: The question as to which services and which devices are covered is one that we will develop, as in other parts of the Bill, in due course. Regulations are set down laying that out, which will be done by Ofcom subject to further consultation. When you said there has not been enough consultation, this is the beginning of the exercise and there will clearly be further consultation when they work out the details.

Q405 **Kevin Brennan:** The final charge is that it will create a disincentive for innovation. That is always the charge laid with any regulation.

Sir John Whittingdale: I do not see why it should. This does not impose any new requirement on them. As long as they do not want to do things



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that previously everybody had agreed would be undesirable, it should not have any impact on further research. It is true that innovation means that, as we were talking about earlier on TV content, the way in which people access radio content may well evolve in time. Therefore, you need the flexibility for the legislation to take account of that and that is there, but it is certainly not intended to prevent innovation.

Q406 Kevin Brennan: I have a couple of technical questions to finish. We need the answers from you, too, as the Minister. I am loth, after what you said earlier on about significance, to use that word again, but this is in a different context. The Secretary of State can only designate radio selection services that are used by a significant number of people. What do you have in mind? What does "a significant number of people" mean?

Sir John Whittingdale: I hesitate to say that 10,000 people is not significant whereas 100,000 is—

Kevin Brennan: Sorry, Chair, could someone turn off that notification that keeps going off? I beg your pardon, Minister. It is irritating.

Sir John Whittingdale: Clearly something dramatic is happening in the world outside. As I said, you cannot put a number on significance. To some extent, that will be a matter for the Secretary of State to determine on advice that will be received from Ofcom and Ofcom will provide advice or recommendations to the Secretary of State. To some extent, you will know significant when you see it.

Q407 Kevin Brennan: Finally from me, why have the Government chosen not to further protect UK radio's availability on connected audio devices to stations' on-demand and online-only content as well? We heard some evidence about that earlier.

Sir John Whittingdale: The provisions of the Bill are designed to cover the main stations and the way in which most people choose to access them. Most people still listen to live radio. There are other means, but at the moment we have not felt it necessary to extend these protections to those other means. We will see how the market develops. If it becomes clear that people access radio content on demand, which does not take place at the moment, we will need to revisit that.

Q408 Kevin Brennan: Would it be sensible to put in the Bill a provision that would give the Secretary of State potentially the power to do that should that occur?

Sir John Whittingdale: Robert, would the Secretary of State's ability to designate new services cover that?

Robert Specterman-Green: The powers in the Bill allow the Secretary of State to designate over a period of time. Should new information become available, and should Ofcom provide updated assessments of the market such that other selection services are advised to fall within the



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scope of the Bill, the Secretary of State can still make further designations. The focus of the Bill is device-neutral. We are looking more at the software, which is the voice-activation element of things.

Q409 **Kevin Brennan:** Would that power include being able to revise the definition of an internet radio service?

Sir John Whittingdale: Ofcom advises on the specific interpretation of that requirement in the Bill. If it changed, I imagine Ofcom could advise that this now was a method that was widely used and might merit inclusion in the Secretary of State's powers.

Kevin Brennan: Robert will run to the rescue.

Robert Specterman-Green: I refer you to section 362BA, "Meaning of radio selection services", which provides that the Secretary of State may do many things, including amend this section so as to alter the definition of a radio selection service. That answers your question.

Q410 **Chair:** Can I push you back, Robert, on that comment about how it is focused on voice-activated systems? That does not scoop up others that are not voice-activated, such as those in cars. What is the plan for that?

Robert Specterman-Green: Where car systems include voice-activation software, they will be in scope.

Q411 **Chair:** What about when they do not?

Robert Specterman-Green: Then they will not be.

Q412 **Chair:** Does that concern you?

Robert Specterman-Green: We try to target what we think to be the driver of future risk to radio. We need to target this gateway lever around voice-activation.

Sir John Whittingdale: If they are not voice-activated, they are manually activated by the person who is listening. To that extent, they can choose. This is designed for where the software decides what you will listen to rather than you, almost. If you say, "I want to listen to this", the software chooses how to deliver that.

Q413 **Chair:** I see. Briefly, I want to take you back to the video-on-demand issue. Why do only some video-on-demand providers have to abide by the code rather than all of them, as would be the case in the Broadcasting Code?

Sir John Whittingdale: Mainly because there is a large number of video-on-demand services, some of which are small and watched by few people. It was felt important that where you had big services with a large number of subscribers, they should be subject not to the same requirements as laid down in the Broadcasting Code, but similar. Ofcom



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will in due course set out what those are and also the services that are covered. It will be the tier 1 services.

I was concerned when we originally looked at this that it should not restrict freedom of speech. There are some niche services on which it would be disproportionate to impose the full requirements of the code, which was designed to apply to services with substantial audiences.

Q414 **Chair:** Thank you. That has pretty much brought us to the end. Is there anything else that you think our Committee should take into consideration about the draft Bill that we have not had a chance to cover?

Sir John Whittingdale: People have criticised us for the delay in drawing this up, but producing it as a draft Bill has advantages. It gives us the opportunity to get it right. One important contributor to that process will be your report. Thank you for undertaking the scrutiny you are doing. I can assure you that we will be keen to hear whatever recommendations the Committee comes back with.

Chair: Thank you both for being in front of us today and for your time. If there is anything else that you feel that we need to take into consideration before we wrap all this up, drop us a note.

Sir John Whittingdale: We will let you know.