

In the matter of the Leveson Inquiry

Witness Statement of  
Rt. Hon. Lord Patten of Barnes, CH

Chairman of the BBC Trust

**IN THE MATTER OF THE LEVESON INQUIRY**

**WITNESS STATEMENT OF THE RIGHT HONOURABLE LORD PATTEN OF BARNES, CH, CHAIRMAN OF THE BBC TRUST**

1. I am pleased to make this witness statement in reply to the Notice of request issued under section 21(2) of the Inquiries Act 2005 ("the Notice") on behalf of Lord Justice Leveson, by a letter of 5 August 2011 from the Solicitor to Lord Justice Leveson's inquiry into the culture, practices and ethics of the Press ("the Inquiry"). I note that (as stated in that letter) the terms of the Notice do not place strictly-defined limits on the evidence, including documentary evidence, that I should provide to the Inquiry, and I have taken that into account in providing this statement.
  
2. I understand that Lord Justice Leveson has also served Notices under section 21(2) upon other individuals in the British Broadcasting Corporation ("the BBC"), namely, Mr Mark Thompson (as Director General), General Counsel to the BBC (Mr Nicholas Eldred) and journalists Mr Robert Peston, Mr Nicholas Robinson and Mr Richard Watson. I have read the Director General's statement to the Inquiry and refer to certain sections of it during the course of my statement. For ease of reference, I have adopted the questions in the Notice as headings.

**(1) Who you are and a brief summary of the work of the BBC Trust**

3. I am the Rt Hon. Lord Patten of Barnes, CH, and I am the Chairman of the BBC Trust ("the Trust"). I was appointed Chairman with effect from 1 May 2011.
  
4. The Trust is the governing body of the BBC. The Trust was established by the Royal Charter for the BBC which came into effect on 1 January 2007 ("the Charter"). A copy of the Charter is exhibited to this statement at tab 1. The Trust and the Executive Board of the BBC ("the Executive") replaced the former BBC Board of Governors. The Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and outlines the duties of the Trust and the Executive.

5. There is also an agreement with the Secretary of State for Culture, Olympics, Media and Sport which sits alongside the Charter ("the Framework Agreement").<sup>1</sup> The Framework Agreement provides detail on many of the topics outlined by the Charter and also covers the BBC's funding and regulatory duties. A copy of the Framework Agreement is also exhibited at tab 2.<sup>2</sup>
6. In accordance with the Charter, the Trust is responsible for setting the overall strategic direction of the BBC and for exercising a general oversight of the work of the Executive.<sup>3</sup> The Executive is responsible for making operational decisions on a day to day basis about delivering the BBC's services. The Executive is also primarily responsible for ensuring that the BBC complies with any legal and regulatory requirements imposed on it.<sup>4</sup> Further, editorial decisions are (ultimately) for the Director General of the BBC ("the Director General") to take because he is designated by the Charter to be editor-in-chief and "accountable for the BBC's editorial and creative output".<sup>5</sup>
7. The Trust's role is to hold the Executive to account for its performance of its functions, including the BBC's compliance with the general law, regulatory requirements, and the policies, editorial and other guidelines, codes, strategies and priorities set by the Trust. The Trust performs its duties in the public interest, particularly in the interests of licence fee payers.<sup>6</sup>
8. The Trust is an integral part of the BBC. This means that, without prejudicing the separate roles of Trust and Executive and their independence from each other, my fellow trustees and I, and members of the Trust Unit's staff,<sup>7</sup> can maintain regular contact with the Director General, senior executives and BBC managers to keep abreast of emerging issues. Thus, as the severity of the allegations about "phone hacking" and other data protection issues that have prompted the establishment of the Inquiry became clear, I raised the

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<sup>1</sup> Article 49 of the Charter makes provision for such an agreement. The Framework Agreement can address in more detail matters governed in outline by the Charter, and can also address matters not included in the Charter, but must of course be consistent with the Charter.

<sup>2</sup> The present Framework Agreement was entered into in July 2006. It was amended in March 2010 and again in February and September 2011.

<sup>3</sup> Article 7 of the Charter.

<sup>4</sup> Article 38(1)(d) of the Charter.

<sup>5</sup> Article 40(3) of the Charter.

<sup>6</sup> Article 7 of the Charter.

<sup>7</sup> The Trust Unit is a source of expert advice, support and assistance to Trustees, independent from the rest of the BBC: see Article 42 of the Charter.

issue with the Director General and asked him to report back to the Trust on how it might impact, or be relevant to, the BBC's practices and, in particular, the legality and ethical propriety of the BBC's investigative journalism. I was reassured to hear from him that he already had a detailed review of this matter in hand. I return to this below.

9. In summary, compliance with legal, regulatory and (by extension) ethical issues is the responsibility of the Executive. The job of the Trust is to set an appropriate regulatory framework and exercise a supervisory function, holding the Executive to account for such compliance. The close relationship between the Trust and the Executive means that the Trust is alert to emerging issues and able to act quickly to make appropriate enquiries and seek robust assurances (or if necessary take corrective action).

**(2) How the system of corporate governance is supposed to work at the BBC, with particular emphasis on systems to ensure lawful, professional and ethical conduct, and by reference to relevant documents.**

**(3) How you understand the system of corporate governance to work in practice at the BBC with particular emphasis on systems to ensure lawful, professional and ethical conduct.**

10. The two-tier corporate governance structure summarised above was established by the Charter. I will now explain this structure in more detail:

*(A) The requirements of the Charter*

11. The Trust consists of a Chairman, Vice-Chairman and 10 ordinary members. All are appointed by Order in Council. Four ordinary members are respectively designated as Trust Member for England, for Scotland, for Wales and for Northern Ireland.
12. The Charter defines the respective areas of responsibility of the Trust and the Executive. It is worth setting out in full the high-level statement in Article 7:

"Within the BBC, there shall be a BBC Trust and an Executive Board of the BBC. These two bodies shall each play important, but different, roles within the BBC. In summary, the main roles of the Trust are in setting the overall strategic direction of the BBC, including its priorities, and in exercising a general oversight of the work of the Executive Board. The Trust will perform these roles in the public interest, particularly the interest of licence fee payers. The Executive Board has responsibility for delivering the BBC's services in accordance with the priorities set by the Trust and for all aspects of operational

management, except that of the Trust's resources. Further details of the respective functions of the Trust and Executive Board are set out below and may also be addressed in a Framework Agreement."

13. The Trust and the Executive must act separately,<sup>8</sup> and the Trust must maintain its independence from the Executive.<sup>9</sup> Two further stipulations are key to understanding this relationship: first, the Trust is the sovereign body of the BBC, meaning that the Executive must act in accordance with its decisions in areas where the Trust has functions, e.g. where the Trust sets policies or has a function of approval, supervision, review or enforcement; and second, the Trust must not exercise (or seek to exercise) the functions of the Executive.
14. More details about the Trust's role are to be found in articles 22 to 24 of the Charter. At the highest level, the Trust is stated to be "the guardian of the licence fee revenue and the public interest in the BBC".<sup>10</sup> In particular, it has responsibility for stewardship of the licence fee revenue and other resources of the BBC; for upholding the public interest, especially the interests of licence fee payers; and for securing the effective promotion of the "Public Purposes" – a high-level expression of the remit of the BBC.<sup>11</sup>
15. In exercising its functions, the Trust must act in the public interest and, in particular, represent the interests of licence fee payers, secure that the independence of the BBC is maintained, assess the views of licence fee payers, exercise "rigorous stewardship of public money", have regard to the competitive impact of BBC activities on the wider market, and ensure that the BBC observes "high standards of openness and transparency"<sup>12</sup>.
16. The functions of the Trust<sup>13</sup> reflect its high-level strategic and supervisory role in relation to the Executive. Those functions include:

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<sup>8</sup> Article 8 of the Charter.

<sup>9</sup> Article 9(1) of the Charter.

<sup>10</sup> Article 22 of the Charter.

<sup>11</sup> See Article 4 of the Charter. The Public Purposes of the BBC are: sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; representing the UK, its nations, regions and communities; bringing the UK to the world and the world to the UK; and (in promoting its other purposes) helping to deliver to the public the benefit of emerging communications technologies and services, and taking a leading role in the switchover to digital television.

<sup>12</sup> Article 23 of the Charter.

<sup>13</sup> Article 24 of the Charter.

- setting the overall strategic direction for the BBC;
  - approving high-level strategy and budgets for BBC services and other activities; and
  - assessing the performance of the Executive in delivering the BBC's services and holding the Executive to account for its performance.
17. The Trust also appoints the Chairman of the Executive Board<sup>14</sup> and approves the appointment of non-executive directors on the Board.<sup>15</sup>
18. The Trust's more specific functions<sup>16</sup> are commensurate with this role. For example, it is for the Trust to define performance criteria, issue service licences, commission value for money studies, adopt a fair trading policy and set a framework for approving new and changed services proposed by the Executive. The functions which might be of particular relevance to the Inquiry and its Terms of Reference are:
- "approving guidelines designed to secure appropriate standards in the content of the BBC's services";
  - "discharging the regulatory functions accorded to the Trust and holding the Executive to account for the BBC's compliance with applicable regulatory requirements and the general law";
  - "setting the framework within which the BBC should handle complaints (and the framework must provide for the Trust to play a role as final arbiter in appropriate cases)";
  - "where appropriate, conducting investigations into any activity of the BBC which it has grounds to suspect does not comply with requirements supervised by the Trust".
19. The Executive's role, by contrast, is operational.<sup>17</sup> According to the Charter, it is responsible for:

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<sup>14</sup> Article 29(1) of the Charter. At present, the Chairman is appointed in an executive capacity and is the Director General (Article 29(2) and (4) of the Charter).

<sup>15</sup> Article 31(1) of the Charter.

<sup>16</sup> Article 24(2) of the Charter.

<sup>17</sup> Except in relation to the Trust and the Trust Unit.

- "the delivery of the BBC's services" – in accordance with the priorities and strategies set by the Trust and within the framework of service licences issued by the Trust;
  - "the direction of the BBC's editorial and creative output";
  - the operational management of the BBC;
  - "ensuring compliance with all legal and regulatory requirements placed upon the BBC";
  - "ensuring compliance with requirements placed upon the Executive Board by the Trust";
  - "the conduct of the BBC's operational financial affairs... in a manner best designed to ensure value for money"; and
  - accounting to the Trust for its own performance and the performance of the BBC and its subsidiaries.
20. Further details as to the relationship and interaction between the Trust and the Executive are set out in "Protocols" adopted under Article 25 of the Charter. Examples of Protocols relevant to the Inquiry's Terms of Reference are set out in paragraph 31 below.

*(B) The requirements of the Framework Agreement*

21. The Framework Agreement supplements the requirements of the Charter and provides further details as to the Trust's responsibilities.
22. Specifically in relation to editorial issues, the Trust is required to consider and approve guidelines ("the Editorial Guidelines") designed to secure appropriate standards in the content of BBC services.<sup>18</sup> Key extracts from the Editorial Guidelines which I think will be of most interest to the Inquiry are exhibited at tab 3. The Framework Agreement also requires the BBC to do all it can to ensure that controversial subjects are treated with due accuracy and

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<sup>18</sup> Article 24(2)(d) of the Charter, and clause 43(1) of the Framework Agreement. In 2009 – 2010, the Trust reviewed the 2005 Editorial Guidelines and approved new Editorial Guidelines in July 2010, which came into force in October 2010.

impartiality.<sup>19</sup> This includes drawing up a code giving guidance as to the rules to be applied and doing all it can to secure compliance with it. The code is included within the Editorial Guidelines.<sup>20</sup> The Trust also approves significant guidance which assists in the application of the Guidelines. For example, in a recent editorial complaint raised by high street retailer Primark relating to a Panorama programme (which was upheld by the Trust)<sup>21</sup> the Trust directed the Executive to revise the guidance connected to the Editorial Guidelines on Secret Recording and Investigations, and the Trust subsequently approved those revisions.<sup>22</sup>

23. The Trust also has a role in overseeing and enforcing the BBC's compliance with the Editorial Guidelines. Generally this is limited to broadcast content after it is transmitted. However, there have been occasions where the Trust has considered the principles prior to transmission.<sup>23</sup>
24. In relation to post-broadcast matters, the Trust is the final arbiter<sup>24</sup> in complaints about editorial matters including issues relating to the accuracy and impartiality of programmes, as well as issues such as fairness, privacy and harm and offence. The Trust must<sup>25</sup> set and publish one or more frameworks within which the BBC and its commercial arm<sup>26</sup> will handle complaints. The framework must ensure that all appeals that raise a matter of substance are subject to a right of appeal to the Trust, and the Trust is the final arbiter as to whether an appeal is for the Trust to determine or not. The

<sup>19</sup> Although that obligation strictly applies only to certain kinds of output, in fact, the BBC applies it across all its content: see the Introduction to Section 4 at

<http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-impartiality-introduction/>

<sup>20</sup> See Section 4: <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-impartiality-introduction/>

<sup>21</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/panorama.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/panorama.pdf)

<sup>22</sup> <http://www.bbc.co.uk/editorialguidelines/news/news-2011-09-13/>

<sup>23</sup> For example, it considered the Director General's decision not to broadcast a Disasters Emergency Committee humanitarian aid appeal in relation to situation in Gaza in early 2009. Here, the Trust, having considered the relevant Editorial Guidelines, decided that the Director General's decision not to broadcast the appeal was validly arrived at. The Trust also assessed the BBC's decision to invite a member of the British National Party to appear on Question Time and its decision not to include the leaders of the Scottish National Party and Plaid Cymru in the televised Prime Ministerial debates during the 2010 election campaign. In these cases, the Trust did not seek to substitute its own editorial judgment for that of the Director-General (which would have been contrary to the requirements of the Charter and Framework Agreement), but rather it considered whether all relevant factors had been taken into account in reaching the decision and that the exercise of discretion was a reasonable one.

<sup>24</sup> Article 24(2)(g) of the Charter, and clauses 89 and 90 of the Framework Agreement.

<sup>25</sup> Article 24(2)(g) of the Charter, and clause 89 of the Framework Agreement.

<sup>26</sup> Principally, BBC Worldwide and its subsidiaries.



framework must also comply with certain principles,<sup>27</sup> in particular that there should be a clear division of responsibilities between the Trust and the Executive, and that the Trust should not have a role in handling or determining individual complaints in the first instance (unless they concern an act or omission of the Trust itself).

25. In practice, the Trust has established in a Trust Protocol<sup>28</sup> an overarching Complaints Framework, beneath which sit specific procedures for particular types of complaint, including complaints alleging a breach of the Editorial Guidelines.<sup>29</sup>

*(C) The Editorial Guidelines*

26. The Editorial Guidelines contain a statement of the BBC's Editorial Values which underpin the Guidelines. It is worth considering these in order to understand the core objectives of the BBC in creating output and the Trust in monitoring it. The BBC's Editorial Values provide:

"1.2.1 Trust is the foundation of the BBC: we are independent, impartial and honest. We are committed to achieving the highest standards of due accuracy and impartiality and strive to avoid knowingly and materially misleading our audiences.

1.2.2 We seek to establish the truth of what has happened and are committed to achieving due accuracy in all our output. Accuracy is not simply a matter of getting facts right; when necessary, we will weigh relevant facts and information to get at the truth. Our output, as appropriate to its subject and nature, will be well-sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We will strive to be honest and open about what we don't know and avoid unfounded speculation...

1.2.4 The BBC is independent of outside interests and arrangements that could undermine our editorial integrity. Our audiences should be confident that our decisions are not influenced by outside interests, political or commercial pressures, or any personal interests...

1.2.8 We will respect privacy and will not infringe it without good reason, wherever in the world we are operating. Private behaviour, information, correspondence and conversation will not be brought

<sup>27</sup> See clause 90 of the Framework Agreement.

<sup>28</sup> Made under Article 25 of the Charter. See Protocol E3 (Complaints framework), at [http://www.bbc.co.uk/bbctrust/about/how\\_we\\_govern/protocols\\_policy/compliance\\_oversight.shtml](http://www.bbc.co.uk/bbctrust/about/how_we_govern/protocols_policy/compliance_oversight.shtml)

<sup>29</sup> Protocol E3 (Complaints framework) also covers fair trading complaints; complaints about television licensing; complaints about Party Political, Party Election and Referendum Campaign Broadcasts; complaints arising under the Digital Switchover Help Scheme; complaints about the BBC Trust; and "general complaints", i.e. those not fitting into any of the specific procedures.

back into the public domain unless there is a public interest that outweighs the expectation of privacy...<sup>30</sup>

(D) Ofcom

27. The Framework Agreement also requires the BBC to comply with certain obligations imposed on broadcasters by Ofcom. First, the BBC must comply with certain provisions of Ofcom's statutory<sup>31</sup> Broadcasting Code (except in so far as they relate to accuracy and impartiality), namely those concerned with:
- the protection of those under 18;
  - the prohibition of material likely to encourage or incite crime;
  - the exercise of responsibility in religious content;
  - the protection of the public from programming likely to cause harm and offence;
  - product placement; and
  - the prohibition of "subliminal images" in programmes.
28. Second, the BBC must also comply with Ofcom's code on fairness and privacy<sup>32</sup> (in fact contained within Ofcom's statutory Broadcasting Standards Code).
29. The BBC Trust and Ofcom have adopted a Memorandum of Understanding concerning their relationship and the areas of interaction between the two bodies. The Memorandum of Understanding expresses the commitment of the Trust and Ofcom to work constructively together.<sup>33</sup>
30. Accordingly, a person who is dissatisfied with any content contained in any of the UK Public Services<sup>34</sup> may complain either to the BBC or to Ofcom.<sup>35</sup> Ofcom will not entertain a complaint about accuracy and impartiality and in

<sup>30</sup> <http://www.bbc.co.uk/editorialguidelines/page/guidelines-editorial-values-editorial-values/>

<sup>31</sup> Communications Act 2003, sections 319 *et seq.*

<sup>32</sup> Clause 45 of the Framework Agreement, and Broadcasting Act 1996, section 107.

<sup>33</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/ofcom\\_trust\\_mou.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/ofcom_trust_mou.pdf)

<sup>34</sup> Any commercial service which is provided by a BBC subsidiary and licensed by Ofcom is required to observe all of the standards set by Ofcom under the Communications Act 2003, section 319.

<sup>35</sup> Except in relation to accuracy and impartiality and commercial references in programmes, other than product placement.

practice will inform the complainant that such a complaint can be made to the BBC. In fairness and privacy complaints the BBC Executive will ask the complainant to choose whether the BBC or Ofcom should consider the complaint first. At Trust level, the Trust Unit and Ofcom liaise and normally the Trust's Editorial Standards Committee will not consider a fairness and privacy or standards matter which overlaps with a fairness and privacy complaint in progress with Ofcom until Ofcom has completed its processes.

*(E) The Trust Protocols*

31. Protocols are formal regulations of the Trust whose purpose is to:

- set out in more detail how the Trust will perform its functions under the Charter and the Framework Agreement, including the practical application of those functions, and may impose more specific obligations under the Trust; and/ or
- address in greater detail the relationship between the Trust and the Executive, including allocating responsibility as between Trust and Executive for any activity that is not so allocated by the Charter or Agreement.

There are 17 Protocols grouped into six subject areas, namely:

- A. Public purposes
- B. Standards and Strategy
- C. The BBC's Services
- D. Accountability
- E. Compliance and Oversight
- F. Trust Operations

Below, I will focus my statement upon those of relevance to the Inquiry's Terms of Reference, namely the Protocols for (see tab 4 of the attached exhibit):

- Editorial Standards (B2)

- Trust oversight of the BBC (E1)
- Investigations (E2)
- Complaints framework (E3)

*(F) How the Trust exercises its functions in practice*

32. As stated above, the Executive is responsible for ensuring that the BBC complies with the law, regulation and (by extension) applicable ethical rules. The Trust's role is supervisory, holding the Executive to account for such compliance. In practice, the Trust's supervisory function falls into five broad categories:
- Constitutional;
  - regular formal engagement by the Trust and its committees;
  - regular and special reports by the Executive to the Trust;
  - regular informal engagement; and
  - exceptionally, investigations and other interventions when called for by particular circumstances.
33. Consistent with the different and complementary roles of the Trust and the Executive, the system of oversight relies to a significant extent on the Executive taking operational responsibility and reporting on relevant matters to the Trust. Thus, it builds on the structures and systems in place at Executive level, including those that are in place for supervising the BBC's content production, especially its journalism.
34. It is the responsibility of the Executive to put in place checks and systems that are fit for purpose. There have been some rare, but high-profile, occasions on which Executive systems have failed. In those cases, the Trust has adopted prompt corrective measures and/or worked with the Executive in order to take remedial action. For example, in 2007, a series of incidents occurred in which programme makers misled their audiences over on-air competitions and votes

entered into through premium rate telephone services.<sup>36</sup> This included allegations that viewers had been encouraged to call premium rate numbers in television programmes such as "Saturday Kitchen" for the chance to win a prize, even though the programme was pre-recorded. In response to these incidents and following receipt of a ten point action plan which was proposed by the Executive, the Trust engaged Ronald Neil as an independent editorial adviser to the Trust to review the Executive's action plan and to consider the editorial controls in place at the BBC in order to deal with issues that may arise when it uses premium rate telephone lines and associated programme interactivity.<sup>37</sup> The review<sup>38</sup> led to some important changes in connection with such practices including the creation of the "BBC Academy" to run training programmes which had been recommended by Mr Neil. The Trust also commissioned an independent report after an incident involving radio presenters Russell Brand and Jonathan Ross where they left offensive messages on actor Andrew Sachs' answerphone. Tim Suter (former broadcasting partner and Board member at Ofcom) and Tony Stoller (ex Chief Executive of the Radio Authority) were commissioned by the Trust to examine the systems, checks and training put in place as a result of the incident to ensure that BBC Radio programmes meet the BBC's editorial standards, and to establish whether the measures required by the Trust to improve compliance had been adequately implemented.<sup>39</sup>

*(i) Constitutional*

35. As noted above, the Trust appoints the Chairman of the Executive Board,<sup>40</sup> and at present this is the Director General.<sup>41</sup> In the review of BBC governance that I instigated on my appointment in May this year (the "governance review"), the Trust expressed the view that "the Executive Board should

<sup>36</sup> See the Director General's action plan, prepared to address editorial failings over premium rate telephone services:  
[http://www.bbc.co.uk/bbctrust/assets/files/pdf/review\\_report\\_research/editorial\\_controls\\_compliance.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/editorial_controls_compliance.pdf)

<sup>37</sup> Note, this review is not to be confused with the Neil Report referred to by the Director General in his statement, although this report was also carried out by Ronald Neil it relates to an entirely separate matter.

<sup>38</sup> Available at:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/review\\_report\\_research/independent\\_evaluation.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/independent_evaluation.pdf)

<sup>39</sup> [http://www.bbc.co.uk/bbctrust/news/press\\_releases/2010/march/am\\_compliance.shtml](http://www.bbc.co.uk/bbctrust/news/press_releases/2010/march/am_compliance.shtml)

<sup>40</sup> Article 29(1) of the Charter.

<sup>41</sup> The Charter allows the Chairman of the Executive Board to be appointed in either an executive or a non-executive capacity, but only the Director General can be appointed to serve in an executive capacity.

continue to be chaired by the Director-General, in order to reinforce the Executive Board's operational role and for reasons of clarity and accountability." The Trust also approves appointments of non-executive directors of the Board.<sup>42</sup> The Director General's terms of appointment provide for the Trust to have the power to dismiss him.<sup>43</sup> The premature termination of the term of office of a non-executive director requires the approval of the Trust.<sup>44</sup>

36. Once appointed, it is for the executive and non-executive members of the Executive Board to perform their functions independently of the Trust. It is the case, however, that the Trust can influence the character and outlook of the Board through its powers of appointment and approval. For example, as part of the governance review, we have agreed with the senior non-executive director and the Director General that future appointments of non-executive directors should ensure a good balance of relevant experience, including candidates from the public and third sectors alongside senior business figures when vacancies occur.
37. It is also appropriate that, ultimately, the Trust can dismiss the Director General if it has good reason to do so. Conversely, it can prevent the dismissal of a non-executive director, thus helping to protect the independence of their role.
38. The importance of these powers is illustrated as follows. The governance review concluded that (in view of the Trust's focus on strategic matters as opposed to day to day operational matters) the role of the non-executive directors within the Executive Board's collective oversight in the delivery of key elements of the BBC's operations should be developed. Thus, we have agreed with the Director General and non-executive directors that, in future, the non-executive directors will take on a clearer oversight and assurance role within the Executive Board, including ensuring that the Executive Board takes due notice of complaints and associated feedback on editorial and operational issues from audiences and other stakeholders. We will invite the senior non-executive director to attend Trust meetings regularly and we will invite individual non-executives to play a bigger part in briefing Trust

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<sup>42</sup> Article 31(1) of the Charter.

<sup>43</sup> Article 32(1) of the Charter.

<sup>44</sup> And such termination must be proposed by the Chairman of the Executive Board, and approved by the Executive Board: Article 33(3) and (5) of the Charter.

committees alongside their Executive colleagues on those matters that fall within their area of particular interest. We will also undertake more regular, informal contact with the non-executive directors, to benefit from their insights. We see these steps as part of a wider process to ensure that the Trust is fully sighted on Executive analysis and the thinking that lies behind it, but without encroaching on operational matters. Where the Charter requires a clearer separation of responsibilities between the Trust and the Executive Board, we will, of course, maintain that separation.

*(ii) Formal engagement by the Trust and its committees*

39. As I have explained previously, the Charter and the Framework Agreement give the Executive Board operational responsibility for the BBC's activities, and give the Trust strategic and supervisory responsibility. This separation of functions is reflected in the Protocols, too. In this section I will explain how these structures translate in practice to appropriate and effective oversight, and the holding to account of the Executive, by the Trust. I will also explain the work of the Trust committees<sup>45</sup> in this regard. On rare occasions, circumstances may dictate that it would be appropriate for the Trust to adopt a more interventionist role, such as by commissioning or conducting a formal investigation, which is covered below.
40. The ways in which the Trust engages in a formal sense reflect the structures of the Charter and the Framework Agreement. These are, principally:
- consideration and approval of the BBC's Editorial Guidelines (at least every five years);
  - determination of appropriate appeals (e.g. editorial, fair trading) from decisions of the Executive;
  - receipt of regular reports from the Director General and other executives, and an opportunity to probe the subject-matter and question the authors directly;
  - periodically commissioning reports on subjects of particular interest or importance, such as value for money studies, service licence reviews,

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<sup>45</sup> Article 20 of the Charter allows the Trust to delegate functions to committees of the Trust. All committee members are also members of the Trust: there is no power in the Charter for the Trust to include anyone who is not a member of the Trust in the membership of any committee.

annual reviews of accuracy and impartiality, reviews of the content and effects of Trust policies, and reviews of the operation of provisions of the Charter and the Framework Agreement;<sup>46</sup> and

- the ability, where necessary, to investigate when it appears that matters regulated by the Trust are not being conducted in accordance with Trust rules, policies and guidelines, either by directing the Executive to investigate and report or by conducting or commissioning an investigation itself.

41. Certain key decisions are taken by the full Trust, but the work of the committees of the Trust is, of course, very important. Even where a decision is taken by the Trust, the subject has usually been discussed by the relevant committee which may have made a recommendation to the Trust. Committee members become experienced in their particular areas of responsibility and, therefore, have a good understanding of the business brought to them and are astute to any risks facing the BBC. The Trust has seven committees at present:<sup>47</sup>

- Audiences and Performance Committee;
- Audience Council Committee;
- Editorial Standards Committee;
- Finance and Compliance Committee;
- General Appeals Panel;
- Remuneration and Appointments Committee; and
- Strategic Approvals Committee.

42. Each has its own terms of reference which (amongst other things) set out the scope of the functions delegated to them by the Trust.<sup>48</sup> In addition, "Ad Hoc" committees are set up to hear particular appeals as required, as was the case

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<sup>46</sup> For example the "window of creative opportunity", which (taken with the quota for independent productions) ensures appropriate competition for programme commissions between independent producers and in-house BBC producers.

<sup>47</sup> There are plans to reform the committees structure in light of the governance review that I instigated on my appointment.

<sup>48</sup> [http://www.bbc.co.uk/bbctrust/about/how\\_we\\_operate/committees/index.shtml](http://www.bbc.co.uk/bbctrust/about/how_we_operate/committees/index.shtml)



in considering the Gaza and Prime Ministerial debates appeals (referred to in footnote 23 above). This ensures that the membership<sup>49</sup> is appropriate for the subject-matter under consideration.<sup>50</sup>

43. Of greatest relevance to the Inquiry's Terms of Reference are the Editorial Standards Committee ("ESC") and the Finance and Compliance Committee ("FCC").
44. The ESC has primary responsibility for the exercise of the Trust's functions in relation to editorial standards and policy. This includes leading the Trust's reviews of the Editorial Guidelines; monitoring of editorial standards, especially accuracy and impartiality; considering serious breaches of standards reported to it by the Executive; and determining appeals about editorial issues. The appeals function can lead it to investigate in some depth issues raised by viewer and listener complaints.
45. The Charter requires the Trust to ensure that the Executive addresses key operating risks.<sup>51</sup> It is the responsibility of the Executive, with its Audit Committee, to operate and keep under review the BBC's risk management processes and controls.<sup>52</sup> The Trust requires the Executive to report to it (through the FCC) on those risks every 6 months, in addition to hearing from the Director General on a monthly basis as to his views on the current top risks the BBC is managing. The Trust also requires the Executive to provide written assurances on the operation of those processes and controls. At least annually, the Trust meets (without the Executive being present) the Chair of the Audit Committee, the Director, Risk and Assurance, and the BBC's external auditors.

*(iii) Regular and special reports by the Executive to the Trust*

46. As stated above, the Trust's role is supervisory not interventionist. The Trust and the Executive have separate functions and the Executive is responsible for the BBC's operations on a day to day basis.

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<sup>49</sup> Under the Trust's Standing Order dated December 2010, I am responsible for appointing all Committee members (paragraph 10.2).

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_operate/standing\\_orders\\_2010.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/standing_orders_2010.pdf)

<sup>50</sup> For example, the national Trustees were included in the membership of the Ad Hoc committee that heard the appeal about the Prime Ministerial debate.

<sup>51</sup> Article 24(2)(j) of the Charter.

<sup>52</sup> See Protocol E1 (Trust oversight of the BBC), Section A.

47. The Trust does (as part of its supervisory and oversight function), however, require that it receives both regular reports at predetermined intervals, as well as special reports commissioned in response to particular events. For example—
- the Director General makes an oral report on editorial issues to every Trust meeting
  - twice a year, the Executive submits an editorial compliance report and an accuracy and impartiality report<sup>53</sup>
  - the Executive must also report any serious editorial breach as it arises,<sup>54</sup> and may be required to submit a detailed report on it
  - twice a year, the Executive must report to the Trust on how it is complying with the law and other regulatory requirements, highlighting any significant risks and steps being taken to mitigate those risks<sup>55</sup>
  - the Executive must bring to the attention of the Trust any significant threats or challenges to the BBC's regulatory or legal compliance as required and in a timely manner<sup>56</sup>
  - each year, the Trust receives a report from the Executive about the current operation and effectiveness of staff training, on which the Trust publishes its observations.<sup>57</sup>
48. For "business as usual" situations, this is an efficient, effective and robust system for providing routine assurances to the Trust, or for drawing problems to their attention for their consideration, and to allow them to direct the Executive to take corrective action. The system is also entirely consistent with the different, but complementary, roles set out in the Charter for Trust and Executive. Clearly, situations can arise (indeed, have arisen) in which a more interventionist approach by the Trust is called for. Thus, we have powers to make enquiries seeking information from the Executive (which we do

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<sup>53</sup> Protocol B2 (Editorial standards), paragraphs B2.4, B3.3 and B3.4.

<sup>54</sup> Protocol B2 (Editorial standards), paragraphs B2.4, B3.5 and B3.6.

<sup>55</sup> Protocol E1 (Trust oversight of the BBC), paragraphs H3.1 and H3.3. Each year, the Executive must make an interim report and a full-year report.

<sup>56</sup> Protocol E1 (Trust oversight of the BBC), paragraphs H3.2 and H3.4.

<sup>57</sup> Clauses 84(1) and 85(2) of the Framework Agreement; Protocol E1 (Trust oversight of the BBC), paragraphs J1.1, J1.2, J3.3 and J3.4.

routinely, for example, to clarify Executive applications for Trust approvals for new activities), and ultimately to instigate formal investigations. This latter fall-back power, and the uses the Trust has made of it, are covered in more detail under heading (v), below.

*(iv) Regular informal engagement between the Trust and the Executive*

49. A strength of the BBC Trust is that it is an integral part of the corporation. This means that, without prejudicing the separate roles of the two organisations and their independence from each other, my fellow trustees and I, and members of the Trust Unit's staff, can meet the Director General, senior executives and BBC managers to keep abreast of emerging issues. Thus:

- I meet the Director General regularly
- Trustees regularly meet BBC executives
- the Director of the Trust Unit has regular meetings with the BBC's Chief Operating Officer
- the Head of Editorial Standards in the Trust Unit meets regularly with the Executive's Director, Editorial Policy and Standards, and with the head of the Executive's Editorial Standards Board, and attends selected items at meetings of the Complaints Management Board.

*(v) Investigations and other interventions*

50. The Charter<sup>58</sup> empowers the Trust, where appropriate, to conduct investigations into any activity of the BBC which it has grounds to suspect does not comply with requirements supervised by the Trust.

51. Such investigations (and other requests for information) are covered by Protocol E2 (Investigations):

"1.4 This protocol reflects the following general principles:

(a) the BBC Trust, as the sovereign body of the Corporation, has 'open book' access to all information in the BBC

(b) the BBC Trust will only seek that information which it requires to undertake its duties and functions, bearing in mind the administrative burden that it may place upon the BBC Executive Board through its requests for information

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<sup>58</sup> Article 24(2)(h) of the Charter.

(c) the Executive Board, and its staff, will provide to the BBC Trust without delay any information that it requests."

52. Investigations under this Protocol may be commissioned from the Executive, or conducted by the Trust, or commissioned from external experts. This power is generally reserved for serious matters which the Trust determines demand further inquiry (and, in accordance with the Trust's supervisory – but not interventionist – role, it is used infrequently).
53. As an example, the Trust's power of investigation was used to investigate the retention of certain charity phone-in donations (amounting to approximately £100,000) made by viewers of programmes such as Eurovision and Fame Academy between 2005 and 2007 to a subsidiary of BBC Worldwide called Audiocall. The investigation concluded that there was no evidence of impropriety in the retention of monies and the monies were returned to the charities concerned. However, the investigation was necessary to establish the facts and to learn from the events for the future.

**(4) What your role is in ensuring that the governance documents referred to above and all relevant policies are adhered to in practice. If you do not consider yourself to have been/be responsible for this, please tell us who you consider to hold that responsibility.**

**(5) Whether the documents and policies referred to above are adhered to in practice, to the best of your knowledge.**

**(6) Whether these practices have changed, either recently or as a result of the phone hacking media interest or prior to that point, and if so, what the reasons for the change were.**

54. In 2009-2010, the Trust conducted a review of the BBC's Editorial Guidelines and certain changes were made to the same. This was in accordance with the Trust's practice (as set out in Protocol<sup>59</sup>) of conducting a review no less frequently than once every five years (and was not connected to "phone hacking").<sup>60</sup> The previous Guidelines were adopted by the Trust's predecessor (the Board of Governors) in 2005.
55. In my view, the Guidelines are proper and robust. As explained above, there have been instances where the BBC has fallen short of the high standards

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<sup>59</sup> Protocol B2 (Editorial standards), paragraph A1.2.

<sup>60</sup> Protocol B2 (Editorial standards), paragraph A1.2.

that it sets itself. The Trust has been involved in these matters either through its determination of appeals or because breaches are reported to the Trust by the Executive. I have set out certain examples where this has happened and the remedial measures taken by the Trust and/or the Executive. To the best of my knowledge, the Guidelines are adhered to in practice in the vast majority of cases and the connected policies and procedures ensure that any issues which do arise are handled correctly and learned from in the future.

56. As explained in the introduction to my statement, the Director General has commissioned an investigation into the sorts of issues which have arisen in connection with the Inquiry and I refer to this more particularly in response to question (11) below.

**(7) Where the responsibility for checking sources of information (including the method by which the information was obtained) lies: from reporter to news editor/showbiz editor/Royal editor to editor, and how this is done in practice (with some representative examples to add clarity).**

57. The Editorial Guidelines set out a clear framework for how journalists' sources are to be verified. For example, the Editorial Guideline on Accuracy provides that "All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language".<sup>61</sup> As explained above, day to day operational matters relating to editorial content are the domain of the Director General as editor in chief: he has provided a helpful summary of the relevant reporting lines for the purposes of this question at paragraph 41 of his statement.

**(8) To what extent board members are aware, and should be aware, of the sources of the information which make up the central stories featured each day (including the method by which the information was obtained).**

58. As explained above, the editorial and creative direction of the BBC is the responsibility of the Director General as editor in chief. It is possible for certain issues to reach the Trust via reports from editorial bodies (such as the Editorial Standards Board), or other reporting mechanisms, or via the Complaints Framework, but the Trust is not involved in day to day operational activities at the BBC. Therefore, the Trustees would not be aware of sources of information behind central stories on a daily basis.

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<sup>61</sup> Editorial Guidelines, section 3.2.2.

**(9) The extent to which you consider that ethics can and should play a role in the broadcast media, and what you consider "ethics" to mean in this context.**

59. I will seek to answer this question by reference to the BBC. The BBC has been served over the years by many people who have made it their professional life to lead and develop the professional and ethical framework within which the BBC works. My remarks are made both as BBC Chairman but also as an observer of the BBC and an admirer of what it has stood for over many years.
60. It is a privilege to be funded by the licence fee and with that privilege comes not only the right to broadcast but the responsibilities that go with being the British Broadcasting Corporation. All broadcasters must meet the broadcasting standards and principles set as a result of the regulatory framework established by the Communications Act 2003. In my view the BBC should set the gold standard for ethical behaviour and that should feed through to the standards it sets itself and lives by. It is not only my view. It is the audiences' view. We have the research to demonstrate it.<sup>62</sup> Viewers understand programmes will on occasion adopt editing or filming devices (such as cut-away shots – "noddies" – to shorten interviews) and will contain short cuts, but they expect honesty.<sup>63</sup> Producers of BBC content should not only meet the standards set by the Trust and Ofcom but they should aspire in their daily behaviour to set their compass by what is in the public interest and what the audience expect of them.
61. The Director General's Introduction to the BBC's Editorial Guidelines (2010) explicitly say:

"No set of rules or guidelines can ever replace the need for producers editors and managers to use the wisdom that comes from experience, common sense and a clear set of editorial and ethical values when confronted with difficult editorial challenges."<sup>64</sup>

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<sup>62</sup> See the *Trust in Broadcasting* research commissioned by the Trust in 2008, at [http://www.bbc.co.uk/bbctrust/assets/files/pdf/review\\_report\\_research/ar2007\\_08/trust\\_in\\_broadcasting.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/ar2007_08/trust_in_broadcasting.pdf)

<sup>63</sup> Audiences saw the need for caution and rigour, but the research indicated that "ultimately editing or even re-shooting (manipulating) noddies in good faith is acceptable to the majority, providing the outcome or tone of the interview is not changed in any way, or the integrity of the interviewee is not compromised."

<sup>64</sup> [http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/Editorial\\_Guidelines\\_in\\_full.pdf](http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/Editorial_Guidelines_in_full.pdf)

62. All BBC staff – myself included – wear an identity card. On the back of it are the BBC values. The first says: "Trust is the foundation of the BBC; we are independent, impartial and honest:"
63. Trust is fragile. It must be earned. The BBC has to demonstrate that it gets it right time and time again every day every year on every service.
64. The BBC has made mistakes in its editorial standards. Since 2007 the Trust has been active in leading the BBC to develop and put in place systems that support the highest of standards (and in 2010 the Editorial Guidelines were redrawn, and that was followed by an extensive training programme); in 2008 the BBC rolled out trust training to all staff involved in producing content (it was also rolled out to independent production companies); and there have been two Executive action plans and accompanying Trust audits following serious editorial breaches (one in 2008 following both the competitions issues and separate issues relating to a press trailer about the Queen; and the other following Ross/ Brand incident in 2009).
65. But the actions of the BBC and its systems can be undermined if just one person thinks it is worthwhile to break that first value on the identity card and be dishonest. That is why it is also the job of the BBC to inculcate in its staff and in those who work for it externally a culture of public service in which those BBC values are core. Corporate culture is not defined only through systems and processes but by how people work and act in their daily life. The churn of staff through the BBC means that making sure people understand the Editorial Guidelines and reporting processes and the values at the heart of the BBC is a continual process. This requirement is stressed in the Editorial Guidelines which provides that knowledge of them "is an essential professional skill, and everyone who makes the BBC's content is contractually required to familiarise themselves with them and work within them."<sup>65</sup>
66. The BBC aims to produce the best journalism in the world. That means it will not only report the news and analyse it but it will also undertake investigations in the public interest. Some of those will involve journalists going under-cover – for example John Simpson in Zimbabwe or Russell Sharp joining the British army as an infantry recruit to expose bullying. Another example is the recent Panorama programme which used secret recording and subterfuge in order to

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<sup>65</sup> Editorial Guidelines, section 2.2.2.

uncover abuses taking place at a care home in the West Country. Occasionally this sort of investigative journalism will require a considered, planned and deliberate decision to breach privacy or even come into conflict with the law. However, any such act must be carefully considered. The Editorial Guideline headed "The Law" provides that "Any proposal to break the law must be referred to a senior editorial figure, or for independent production companies to the commissioning editor, who may consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards."<sup>66</sup>

67. Honesty is a core virtue. In my view, the methods referred to above should be used only when justified by the public interest in getting to the truth, and even then, editors and managers must exercise control through the editorial systems set up by the BBC, and those making the content must fully and correctly refer decisions to senior editors where those systems call for it. The controls in place within the BBC should mean that every such decision is a carefully considered and accords with BBC Guidelines and Ofcom rules. Those processes in my view do not hinder investigative journalism but make it stronger, more robust and grounded in an ethical judgement as to what action is proportionate in the public interest.

**(10) The extent to which you, as Chairman of the Trust, feel or have felt any financial and/ or commercial pressures from others, and if so from whom, and whether any such pressure affected any of the decisions you made as Chairman of the Trust (such evidence to be limited to matters covered by the Terms of Reference).**

68. Financial and commercial considerations have never affected any decision I have made or overseen as Chairman of the Trust (except, of course, that in accordance with the Charter, the Trust always pays due regard to value for money considerations in the BBC - but this is, of course, an entirely different issue).

**(11) Whether, to the best of your knowledge, the BBC used, paid or had any connection with private investigators in order to source stories or information and/ or paid or received payments in kind for such information from the police, public officials, mobile phone companies or others with access to the same: if so please provide details of the numbers of occasions on which such investigators or other external providers of information were used and of the**

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<sup>66</sup> Editorial Guidelines, section 18.3.1.



amounts paid to them (NB. You are not required to identify individuals, either within the BBC or otherwise).

**(12) If such investigators or other external providers of information were used, what policy/ protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on).**

**(13) If there was such a policy/protocol, whether it was followed, and if not, what practice was followed in respect of all these matters.**

**(14) Whether there are any situations in which neither the existing protocol/policy nor the practice were followed and what precisely happened/ failed to happen in those situations. What factors were in play in deciding to depart from the protocol or practice?**

69. There is no stand alone BBC policy or practice which deals specifically with private investigators. However, the Editorial Guidelines do cover issues which may be connected to the use of private investigators including the Guidelines on Privacy<sup>67</sup>, Accuracy<sup>68</sup>, Fairness, contributors and consent<sup>69</sup>, and the Law<sup>70</sup>.

70. As explained in the introduction to this statement, when the serious nature of the allegations surrounding News International which prompted the establishment of the Inquiry became clear earlier this year, I spoke to the Director General and asked him to report back to the Trust as to how these issues might impact on or be relevant to the BBC's practices and, in particular, the legality and ethical propriety of the BBC's investigative journalism. The Director General informed me that the matter was in hand and an investigation was already underway. The Director General and I shared the view that, notwithstanding the policies and procedures that have been in place for a long time at the BBC and the systems in place for monitoring compliance, it is good practice to make further and specific inquiries into these matters and to guard against complacency.

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<sup>67</sup> Editorial Guidelines, section 7.

<sup>68</sup> Editorial Guidelines, section 3.

<sup>69</sup> Editorial Guidelines, section 6.

<sup>70</sup> Editorial Guidelines, section 18.

71. The methodology applied in the BBC's investigation is explained by the Director General at paragraphs 48 and 49 of his statement to the Inquiry. I believe this methodology to be sound and proportionate in the circumstances, particularly bearing in mind the points relevant to the Inquiry.
72. The results of the investigation are summarised by the Director General in his statement to the Inquiry and so I have cross-referred to the relevant parts of his statement below. I will be continuing my discussion regarding the investigation with the Director General and will consider whether further action is required as a result of his findings - our continued attention to this area is, of course, part of the Trust's supervisory function as set out above. To the extent any new information comes to light in the future which is relevant to Terms of Reference of the Inquiry, I will provide (or request that the BBC provide) an update to the Inquiry accordingly.
73. Based on the above, with regard to the specific question as to payments to private investigators and/or other individuals for information such as the police, public officials, etc, I refer the Inquiry to the explanation provided by the Director General at paragraphs 55 to 60 of his statement.

**(15) The extent to which you are aware of protocols or policies operating at the BBC in relation to expenses or remuneration paid to other external sources of information (whether actually commissioned by the BBC or not). There is no need to cover "official" sources such as the Press Association.**

**(16) The practice of the BBC in relation to the payment of expenses and/or remuneration paid to other external sources of information (whether actually commissioned by the BBC or not). There is no need to cover "official" sources such as the Press Association.**

74. I refer the Inquiry to paragraphs 61 and 62 of the Director General's statement.

**(17) In respect of editorial decisions the editor has made to broadcast stories, what system of oversight, if any, there is and examples of how that has worked in practice.**

75. I refer the Inquiry to paragraphs 41 and 63 of the Director General's statement.

**(18) Whether the BBC (to the best of your knowledge) ever used or commissioned anyone who used "computer hacking" in order to source stories, or for any other reason.**

76. Based on my explanation at paragraphs 70 to 72 above, I refer the Inquiry to paragraph 52 of the Director General's statement.

**(19) Whether the BBC has conducted any inquiry into phone hacking or computer hacking or blagging or bribery or corruption and, if so, your role in the inquiry and the outcome.**

77. Based on my explanation at paragraphs 70 to 72 above, I refer the Inquiry to paragraphs 48 to 60 of the Director General's statement.

I believe the facts in this statement are true.



Lord Christopher Francis Patten of Barnes, CH

Date: 14.10.2011

**IN THE MATTER OF THE LEVESON INQUIRY**

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HONOURABLE LORD PATTEN OF BARNES, CH, CHAIRMAN OF THE BBC  
TRUST**

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