

MINUTES OF THE GOVERNORS' PRIVATE SESSION

Thursday 5 February 2004  
in Room 2364, Broadcasting House

at 11.00am

PRESENT:

Richard Ryder	Acting Chairman
Deborah Bull	
Ruth Deech	
Dermot Gleeson	
Sarah Hogg	(by telephone)
Merfyn Jones	
Fabian Monds	
Pauline Neville-Jones	
Angela Sarkis	
Robert Smith	
Ranjit Sondhi	(from minute 140)

In attendance:

Mark Byford, Acting Director-General (for minutes 135-137, 140, 141)  
Simon Milner, the Secretary  
Stephen Dando, Head of BBC People (for minutes 138-143)  
Nicholas Eldred, General Counsel (for minutes 139-143)  
Sarah Jones, Head of Litigation (for minutes 139-143)  
Janet Youngson, Head of Employment Law (for minutes 139 and 142)  
Andy Duncan, Head of Marketing, Communications and Audiences (for minute 141)  
Sally Osman, Head of Communications (for minute 141)  
Tina Stowell, Head of Communications, Governance and Accountability (for minute 141)  
Sally Kendall, Head of Business Administration (for minute 137)

135	<p><b><u>REPORTS FROM ACTING CHAIRMAN AND ACTING DIRECTOR-GENERAL</u></b></p> <p>Richard Ryder thanked Governors for making time to attend this additional Private Session one week after the resignations of Gavyn Davies and Greg Dyke. He explained that the main business of the meeting was to begin the appointment process for the post of Director-General, which needed to be done with due speed. The meeting was also a vital occasion for the Board to demonstrate their full support for Mark Byford, and for that support to be known to the organisation through a statement to be issued after the meeting.</p> <p>Richard reported on his meeting with the Secretary of State, Tessa Jowell, on 29 January. The meeting had been friendly and constructive. He had conveyed to her that the Board and the BBC were still very much in business, and that they looked to her Department to appoint a new Chairman as swiftly as</p>
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possible. They had also discussed the Charter Review process and Richard had indicated that the BBC would need more time before submitting its response to the DCMS consultation given recent events.

Richard explained that earlier in the week he had written an article to staff in *Ariel* and spoken in the House of Lords debate on the Hutton Report in the same terms. He was not planning to enlarge on this statement, allowing Mark Byford free reign as agreed at the previous meeting.

Mark Byford reported on the actions he had undertaken in the last week. He had aimed to bring calmness, stability and leadership to the organisation in the context of continuing strong feelings for Greg. He said that Executive Committee was united in support of the Governors' statement following the Hutton Report, including the terms of the apology, and that the Committee was pulling together well. Every member of the Executive had been at one or more regional BBC centre meeting staff to discuss recent events and the way forward for the BBC. This had achieved substantial credit from the staff.

Mark explained what internal communications he was undertaking, including briefing the *Leading the Way* group of the 350 or so top BBC managers and leading a ring-main event with staff on Friday 6 February. He had not sought to influence the coverage of recent events in that week's edition of *Ariel*, but believed the editorial team had judged their coverage well.

Mark said that he had accepted all external interview requests with the Press and broadcast media in the previous week, but was expecting to stop doing so within the following few days.

He briefed the Board on his meeting with the All Party BBC Group earlier in the week, which had been well-attended and very supportive of the organisation. He had also met privately with Tessa Jowell.

Mark said his main messages in all communications had been straightforward:

- The BBC accepts that the Hutton process has finished, with the publication of Lord Hutton's report.
- We accept that we made mistakes and we are now seeking to learn from them.
- The independence of the BBC and its journalism must be maintained in these turbulent times.
- We want the organisation to feel confident, creative and to take risks within a robust and rigorous editorial framework.
- We must now move on.

Mark then set out his plans for a review of the editorial lessons from the Hutton affair and the 'due process' in respect of individual members of staff.

#### *Review of editorial lessons*

Mark said that he intended the review to examine the related issues of editorial processes and culture, at a number of levels including *Today*, BBC News and

	<p>the BBC more generally. It would also incorporate the review of complaints handling which we was undertaking previously as DDG. He wanted a ‘wise owl’ or two from outside the organisation to assist the review, for example people like Ron Neil, Stewart Purvis or Richard Tait. He said that the review would initially report to him, then he would bring the report to the Executive Committee and then to Governors.</p> <p>It was suggested by a Governor that Mark should consider underpinning the exercise by using an external lawyer – and one not involved in the BBC’s case to Hutton. Governors provided strong support for the involvement of someone like Ron Neil or Richard Tait in this review.</p> <p>The Governors considered whether or not Mark’s review should include an assessment of the lessons for governance processes. After discussion, it was agreed that a separate review ought to examine the lessons, which Governors could learn in order to help improve the governance section for the Charter Renewal document. Richard Ryder undertook to bring a proposal back to the next Private Session on this matter.</p> <p><i>Due Process</i></p> <p>Mark said that he was keen to expedite the due process in respect of a number of individuals (around eight), since these people were currently in limbo. He was considering with Stephen Dando how to manage the process.</p> <p>Mark explained that he had decided to move some people out of the Director General’s office, since they could well be conflicted as both the review of editorial lessons and the ‘due process’ procedure played out. This was not a reflection on the quality or character of the individuals in question.</p> <p>[REDACTED PARAGRAPH - UNRELATED MATTERS]</p> <p>Mark expressed appreciation for the support he had had over the previous few days from, among others, Richard Ryder, Stephen Dando, Simon Milner, Sally Osman and Tina Stowell.</p> <p>Richard Ryder thanked Mark Byford on behalf of the Board for the outstanding way in which he had handled matters over the course of the preceding week.</p>
136	<p><u>CHAIRMAN APPOINTMENT PROCESS</u></p> <p>Simon Milner briefed the Board on the DCMS’s process for appointing a new BBC Chairman, most of which was in the public domain having been announced by the Secretary of State earlier in the week. For example, requesting that Dame Renee Fritchie convene a panel of Privy Councillors to oversee the process to ensure it meets the highest standards of probity under the public appointment rules.</p> <p>Simon set out the Department’s best case timetable:</p>

	<ul style="list-style-type: none"> <li>• c. 8 February: Multiple adverts placed in national newspapers.</li> <li>• 27 February: Deadline for applications.</li> <li>• w/b1 March: Sift panel produces shortlist</li> <li>• 22 March: interviews</li> <li>• w/b 5 April: special Privy Council convened</li> </ul> <p>Simon confirmed that headhunters were being appointed by the Department to assist the process.</p>
137	[REDACTED SECTION - UNRELATED MATTERS]
138	<p><u>DG APPOINTMENT PROCESS</u></p> <p>Stephen Dando joined the meeting.</p> <p>Richard Ryder thanked Stephen for his professionalism and diligence in his handling of Greg Dyke's departure the previous week. Richard then explained that he intended that a statement could be issued after this meeting confirming that the Governors had asked Stephen to begin the process for appointing a permanent Director-General.</p> <p>Stephen tabled a brief paper explaining the key issues involved in the appointment process, including the appointment of a search firm and the establishment of a Board sub-committee. This nominations committee would oversee the process and deliver a short-list for consideration by the full Board after the appointment of a new Chairman. The Board agreed to Stephen's broad recommendation to follow a similar approach to the appointment as was applied in the previous appointment process in 1999.</p> <p>The Board agreed to delegate the search firm selection process to Stephen Dando, though a number of individual Governors agreed to offer him their views on the qualities of respective firms outside the meeting. Stephen committed to making a recommendation on the search firm ahead of the next Private Session on 25 February.</p> <p>Stephen also said he planned to talk with Margaret Salmon, the Director of Personnel who had run the previous DG appointment process. His understanding of the process viewed from the outside of internal candidates</p>

	<p>actively campaigning, led him to believe that we would need some firm internal guidelines to ensure we do not have the same problems this time. One Governor agreed, suggesting that we should tell internal candidates that such behaviour will not help their cause.</p> <p>Stephen said that he would bring a draft job description to the Board for discussion on 25 February. Among the issues to be considered would be whether the position retained the role of editor-in-chief and whether the post of DDG is stipulated. A short discussion of the editor-in-chief issue led to an in principle conclusion that the DG must remain editor-in-chief. Any delegation should therefore be of operational rather than editorial responsibilities. That said, there was a general appetite among Governors for a refreshment of the job description.</p> <p>Richard Ryder set out his thinking on the composition of the nominations sub-committee, including that he did not plan to be a member of it in order to maintain his independent position should problems arise. He planned to get the sub-committee's membership agreed ahead of the next Private Session.</p> <p>In concluding this section of the meeting, Stephen Dando tabled a paper containing a recommendation for a temporary salary increase for Mark Byford in recognition of the additional responsibilities he was taking on until the appointment of a permanent DG. This recommendation (mid way between Mark's current salary and Greg's salary on departure) was approved.</p>
139	<p><u>CORRESPONDENCE FROM GREG DYKE</u></p> <p>Nicholas Eldred, Sarah Jones and Janet Youngson joined the meeting.</p> <p>Richard Ryder asked Simon Milner to table a letter received at Simon's home that morning which Greg Dyke had asked be considered by the Board at this meeting. Governors having had an opportunity to read the letter, Richard asked Simon to state what Greg had said he wanted from the Board.</p> <p>Simon quoted Greg directly in saying: "I believe I have been mistreated and I want to be reinstated."</p> <p>The letter alleged that a strategy had been agreed between Gavyn Davies, Pauline Neville-Jones and Greg Dyke on the evening of 27 February that Gavyn Davies would resign, and that Greg Dyke would receive the support of Pauline in a subsequent vote of confidence by the Board.</p> <p>Richard said that he had asked the BBC's lawyers and Stephen Dando to advise on the terms of a response, assuming the Board would confirm its decision in respect of Greg. A draft response was also tabled.</p> <p>Richard stressed that he had never canvassed Governors for their opinions before the publication of the Hutton Report in the knowledge that he might have to act as an independent Chairman. He also confirmed that when asked by Greg, before Hutton was published, whether he felt his (Greg's) resignation was necessary, he replied that he must reserve his position until hearing the views of the Board.</p>

Pauline stated that she had not been party to an understanding with Gavyn and Greg as described in Greg's letter. She explained that a private meeting had taken place on that evening after she had returned following an external reception. Gavyn had said that he thought his position was unsustainable and that he would have to resign, and Greg had said he thought similarly and would have to offer to go. She had advised both of them not to take precipitate action after the Report was published.

With hindsight, Pauline suggested that Gavyn and Greg may have reached an agreement of their own, and by describing it to her and not being contradicted, they had implicitly assumed that she concurred with it. She said that there had been no question to her about whether she agreed with their assessment. She made it clear that even had she understood what it now seems Gavyn and Greg were driving at, she would never have sought to prejudge or predetermine the decision of the Board on such a matter by reaching an understanding in this manner.

There were a range of initial reactions from Governors to the letter, draft response and Pauline's statement. Pauline's integrity and professionalism were commended by several Governors. There was some disquiet, however, about this turn of events.

Some Governors said they were minded to re-examine the events of the previous week, to ensure that the Board did not take a decision with insufficient information. One Governor expressed concern about the notion of a deal being struck outside the Board Room, but took the view that even if such an understanding had been reached there was no evidence of it influencing the Governors' discussion or decisions on 28 January over Greg's position. Other Governors confirmed their belief that the Board was right to accept Greg's offer of resignation.

In spite of the wide range of initial views, the Governors were unanimous in the view that reversing their decision and therefore reinstating Greg Dyke as DG was simply untenable. One Governor summed this up by arguing that such a response would look ridiculous and would create anarchy in the organisation. The Board resolved therefore to respond firmly to Greg to confirm its previous decision to accept his offer of resignation.

The Board considered whether to speak with Gavyn Davies to hear if he shared the same view as Greg Dyke. After proper consideration and on the basis of legal advice offered, it was decided that Gavyn should not be called. This led to an assessment of why Gavyn and Greg might have felt there was an understanding to retain Greg after Gavyn's resignation. Several Governors recounted being telephoned on the morning of 27 February by Gavyn to seek their views of Greg's sustainability in post if Lord Hutton was critical of Greg's role in the Gilligan/Kelly affair. On the basis of these conversations, Gavyn may have led Greg to believe that he would have sufficient Board support to continue. The very different context of these individual conversations (with no knowledge of Hutton and no suggestion that Gavyn would resign first) and the decision faced by the Board on 28 January about Greg Dyke were noted.

The lawyers were asked to redraft the response to Greg to take account of the

	<p>Board's discussion and to table it later in the meeting. The letter was duly approved later in the meeting (see minute 142). Richard Ryder concluded the discussion by reflecting on the need to keep this correspondence confidential to Greg and the Governors. We should be prepared for the possibility of it being made public, but ensure that we were not responsible for a deliberate or inadvertent leak.</p> <p>All the numbered copies of the Greg Dyke letter were collected by Simon Milner at the end of this item.</p> <p>Stephen Dando, Sarah Jones and Janet Youngson left the meeting. Nicholas Eldred remained in the meeting to discuss the Lord Fraser letter.</p>
140	[REDACTED SECTION - UNRELATED MATTERS]
141	<p><u>COMMUNICATIONS</u></p> <p>Mark Byford, Andy Duncan, Sally Osman and Tina Stowell joined the meeting.</p> <p>Sarah Jones was asked to brief the Board on the story running in that day's <i>Independent</i> that the Governors were not shown a dossier which set out a potential legal defence against the Hutton Report.</p> <p>Sarah said that the BBC's legal team, including external counsel, had conducted a review of the legal issues in the Hutton Report in the 24 hours after early receipt. In particular they had analysed it in respect of the Reynolds defence and freedom of expression. Their analysis concluded that although</p>

	<p>some of the legal aspects of Lord Hutton’s findings were debatable, there was no real prospect of judicial review. Therefore it was reasonable not to present the results of this review to the Governors when they were considering the Report’s initial implications on 28 January. The document in question was significantly shorter than that alluded to in the <i>Independent</i> story.</p> <p>Following a brief discussion, it was generally agreed that this story was a red herring. Consequently Nicholas Eldred was instructed to put the story right in a letter for publication, and Stephen Dando was asked to communicate this internally.</p> <p>Andy Duncan and Sally Osman briefed the Board on the current external communications position in respect of the consequences of the Hutton Report. Discussion then focused on whether the policy adopted at the previous week’s meeting – that Governors would not engage in external communications activity beyond Richard Ryder’s public statements – should be maintained. Andy Duncan and Sally Osman recommended the continuation of this position, in order to avoid a return to the press focusing on the circumstances of Greg Dyke’s resignation.</p> <p>There was general Board agreement that the policy on external communications should be continued for the immediate future. One Governor expressed concern at this policy continuing indefinitely, given the impact on external communications by Governors acting in another capacity.</p> <p>A number of Governors asked for help in terms of communicating key messages when meeting with staff and advisory bodies as part of normal business over the coming weeks. It was recognised that this type of contact would be very useful in demonstrating that the Governors always aim to make their decisions in the public interest for the BBC.</p> <p>On the occasion of her final Board meeting, Sarah Hogg said that although she could no longer be an insider, she would be a supportive outsider. She commended the quality of the Board and advised that the value of repeating key messages over and over again should not be underestimated.</p> <p>Andy Duncan, Sally Osman and Tina Stowell left the meeting at the end of this item.</p>
142	<p><u>RESPONSE TO GREG DYKE</u></p> <p>A draft response from Richard Ryder on behalf of the Board to Greg Dyke was tabled by Janet Youngson for consideration. After a brief discussion, the text was approved. The Board also agreed that the letter should be despatched that afternoon and shortly afterwards a statement from the Board on its business that day should be issued.</p> <p>Richard Ryder commented that if these letters were put into the public domain, the Board would seek legal advice on how to proceed. It was not the Board’s intention to see either letter in the public domain, but should Greg’s letter only be made public, the Board might be prepared to release its response subject to legal advice.</p>

143	<u>ANY OTHER BUSINESS</u> There was no other business. The meeting concluded at c. 4pm.