

## DECISION NOTICE

### THE APPOINTMENT OF THE CHAIR OF THE BOARD OF THE BRITISH BROADCASTING CORPORATION (BBC) 2020/2021

#### Introduction

This Report sets out the findings of an Inquiry by Adam Heppinstall KC into the 2020/21 competition to appoint a new Chair of the BBC Board. It considers whether the procedures and practices applied during the appointment process were in accordance with the Governance Code for Public Appointments ('the Governance Code'<sup>1</sup>).

#### The Scope and Process Followed by this Inquiry.

- a. The Commissioner<sup>2</sup> has the power, under the Order<sup>3</sup> (article 4(4)), to conduct an inquiry into the procedures and practices followed by the Department of Digital, Culture, Media and Sport<sup>4</sup> (DCMS) in relation to the appointment of the Chair of the BBC Board in 2021, whether in response to a complaint or otherwise. The Commissioner must exercise this power with the object of ensuring that DCMS acted in accordance with the Governance Code, including the principles of public appointments (article 4(1)).
- b. He also has a duty under the current BBC Charter<sup>5</sup> (article 22(3), set out at paragraph 3 of Annex A to this Report) to ensure that the appointment of the Chair of the BBC Board is made in accordance with the Governance Code.
- c. DCMS must provide any information the Commissioner reasonably requires for the purposes of this Inquiry (article 4(6)) and has done so<sup>6</sup>.
- d. On 22 January 2023 Ms Lucy Powell MP, Shadow Secretary of State for DCMS, wrote<sup>7</sup> to the Commissioner asking him to "investigate" the appointment process for the Chair of the BBC following a Sunday Times Report on 22 January 2023. On 23 January 2023, the Commissioner confirmed that he would undertake this Inquiry<sup>8</sup>.
- e. The then Commissioner noted in relation to the powers of his office (in his 2020-2021 Annual Report<sup>9</sup>): *"The Commissioner has a strict remit - he cannot place or remove people into posts, nor can he ask departments to change criteria or run competitions again. He has no remit over the conduct of appointees. He takes on complaints which concern an apparent breach of the Code, about the experience of an applicant, and over the way a department or other responsible organisation has handled an appointments process."* The lack of any remit over appointees and the terms of the BBC Charter (see paragraph 86 below) mean that it is not for this Inquiry to judge Mr Sharp's conduct and the sole focus of this Report is the Governance Code and whether there has been a breach.
- f. The current Commissioner has not, himself, conducted this Inquiry for the reasons set out in his letter to the Chair of the DCMS Select Committee dated 30 January 2023<sup>10</sup>. Instead, he delegated his power to do so to the Chief Executive of the Office of the Commissioner for Public Appointments (OCPA) under article 7(1)(a) of the Order, who

in turn appointed Adam Heppinstall KC to lead this Inquiry. Mr Heppinstall has had access to all papers and has carried out all interviews and drafted this Decision Notice. Mr Heppinstall has made a declaration of his interests to the Chief Executive. This Report has been delivered to the Chief Executive who has accepted its contents. The Inquiry has followed the process set out at Annex B of the Commissioner's Regulatory Framework<sup>11</sup>.

- g. The Commissioner at the time of the appointment, the Panel Chair<sup>12</sup>, the Cabinet Secretary, the Deputy Cabinet Secretary at the time of the appointment, and Mr Richard Sharp, were all interviewed. There were further requests made of some interviewees and further information was supplied. As is noted below, the Senior Independent Panel Member in relation to this appointment has sadly passed away (see paragraph 39) and therefore the non-senior independent panel members<sup>13</sup> were contacted and evidence was taken from them in relation to matters arising from this Inquiry.
- h. It is considered that this statutory Inquiry has sufficient powers and formality to attract the application of article IX Bill of Rights<sup>14</sup> and therefore parliamentary materials have not been considered by way of evidence.
- i. Prior to the production of the final Decision Notice, draft copies were given to the interviewees so that they could comment on factual accuracy and respond to any provisional adverse findings, and their comments on the draft were considered<sup>15</sup>.

### **Key Findings**

1. DCMS complied with the Governance Code when carrying out this appointment process. Overall, DCMS officials conducted a good and thorough process. There are matters where improvements to good practice should be made, and these are raised in this Decision Notice.
2. DCMS asked candidates to declare any potential conflicts of interest in their application and at interview. The successful candidate, Mr Richard Sharp, failed to disclose potential perceived conflicts of interest to the Panel which interviewed candidates and advised Ministers on who to appoint:
  - 2.1 Mr Sharp informed the former Prime Minister (Rt. Hon. Boris Johnson MP) that he wished to apply to be Chair of the BBC Board, before he made his application in November 2020.
  - 2.2 Mr Sharp also informed the former Prime Minister, before he was interviewed, that he was going to meet the Cabinet Secretary so as to attempt to introduce to him a person who had made a suggestion that he might assist the former Prime Minister with his personal finances. Mr Sharp said he met the Cabinet Secretary, on 4 December 2020, and informed him of this suggestion, so that the Cabinet Secretary could ensure that any assistance given to the former Prime Minister by this third party complied with any applicable rules and so that he would have no further involvement with the matter. This Inquiry has not considered, nor does it make any findings about, any matter related to the former Prime Minister's personal finances.
  - 2.3 These matters gave rise to a potential perceived conflict of interest. There is a risk of a perception that Mr Sharp was recommended for appointment because he assisted (to the very limited extent of attempting to make the

introduction to the Cabinet Secretary mentioned above<sup>16</sup>) the former Prime Minister in a private financial matter, and/or that he influenced the former Prime Minister to recommend him by informing him of his application before he submitted it. There may well have been a risk of a perception that Mr Sharp would not be independent from the former Prime Minister, if appointed. I make no findings about whether Mr Sharp had any intention of seeking to influence the former Prime Minister in this manner. I cannot and do not judge his independence in office. I note that I have been told that the introduction to the Cabinet Secretary never happened, in the sense that the Cabinet Secretary never met nor was in contact with the person.

2.4 Both these non-disclosures caused a breach of the Governance Code because the Panel was unable at the time to advise Ministers on these matters. DCMS and the Panel bear no responsibility for this breach.

2.5 Mr Sharp does not consider the first matter (paragraph 2.1) to have amounted to a conflict of interest for the reasons I record at paragraphs 72-76 below. I disagree with this for the reasons set out paragraph 82 below.

2.6 Mr Sharp does acknowledge that he should have ensured that the Panel was aware of the second matter (paragraph 2.2). He agrees that he should have disclosed information that risked the perception of a conflict of interest. He says that his failure to disclose was entirely inadvertent. Mr Sharp informed this Inquiry that he had, when meeting with the Cabinet Secretary on 4 December 2020, informed him of his application to be Chair of the BBC Board and had believed, at the time, that this removed him from any conflict relating to the attempt to introduce the person who was suggesting he would assist the former Prime Minister, before it arose, because the matter would be addressed entirely by the Cabinet Office, with no involvement on his part (see further paragraph 77).

3. As stated in the Governance Code (paragraph 9.1), a potential conflict of interest should not preclude a candidate from being shortlisted or appointed, provided that it is declared, and appropriate arrangements are made. The departmental official on the Panel (usually the Chair) is responsible for seeking advice within their department and/or the Cabinet Office on the handling of any conflict, which is included in the final Panel advice to Ministers. In this case, the Panel Chair (the then DCMS Permanent Secretary<sup>17</sup>) was not made aware of these potential perceived conflicts of interests and therefore was not able to seek advice so that the Panel could advise Ministers, accordingly, as required by the Governance Code.

### **Summary of Next Steps and Recommendations**

4. A breach of the Governance Code does not invalidate an appointment. The consequences of these non-disclosures on Mr Sharp's appointment should now be considered by the current Secretary of State (DCMS), in consultation with the Board of the BBC, as required (see further, paragraphs 86 and 87). It will be for the Secretary of State, and the Board as required, to consider and take into account Mr Sharp's account of his actions.

5. Ministers are reminded of their duties to declare and resolve any interests and relationships which they have with a candidate participating in a campaign regulated by the Governance Code (see further paragraphs 61 and 62). This Inquiry makes no findings about the conduct of Ministers, in relation to this appointment process, including the former Prime Minister.

6. Leaks and briefing to the press of “preferred candidates” for public appointments (referred to as “pre-briefing”) should be prohibited by Ministers. If this does happen, then mitigating steps should be considered. In this case such pre-briefing may well have discouraged people from applying for this role. It can also undermine efforts made to increase diversity. A suggestion was made by civil servants to Ministers that the effects of pre-briefing could be mitigated by calling potential candidates and alerting them to the open application. This was not taken up by Ministers (see paragraphs 11 and 12 below). This was unfortunate as it might have encouraged others to apply who had been put off by the “pre-briefing”. Leaks and pre-briefing of Ministers’ preferred candidates for public appointments can undermine the steps taken by officials to try to ensure an appointment process is a fair and open competition, in accordance with the Code.
7. Given the breach of the Governance Code in this case, which arose out of a non-disclosure of potential perceived conflicts of interest, it is recommended that officials from the Cabinet Office and the Office of the Commissioner for Public Appointments (in consultation with other key stakeholders, such as other Departments who administer a large number of public appointments) work together to agree steps to avoid a similar situation arising in the future. These steps can include, but are not limited to:
  - 7.1 A review of current conflict of interest guidance for candidates to ensure it is fit for purpose. This might include a new section addressing relationships and interactions between candidates and appointing Ministers, and how confidential or sensitive issues might be disclosed.
  - 7.2 Considering advice to senior officials in relation to handling (from the perspective of a Minister) potential conflicts between Ministers and candidates.
  - 7.3 Considering whether changes need to be made to the Governance Code to strengthen Section 9 (Standards in public life and handling conflicts), in consultation with the Cabinet Office.

### **A Summary of the Appointment Process**

8. Sir David Clementi’s term as Chair of the BBC Board came to an end on 15 February 2021<sup>18</sup>. Planning to select his successor commenced in Summer 2020 and DCMS officials interacted with Ministers to agree the role specification (including amendments suggested by the BBC), the remuneration on offer and the advertising strategy. Ministers were asked to approve the appointment of an executive search agency. Despite being strongly argued for in submissions to Ministers, an executive search agency was not ultimately used for this campaign. It is noted that the BBC provided an indication that DCMS’s duty to consult them under the BBC Charter (article 22(4), see paragraph 3, Annex A) had been discharged.
9. The former Secretary of State<sup>19</sup> (“the Secretary of State” below) was asked to agree the appointment of the Senior Independent Panel Member (SIPM), and he was provided, by DCMS officials, with a list of potential names. The late Sir William Fittall, the SIPM eventually appointed, was not on this list. It was proposed that the Permanent Secretary chair the Panel. The Secretary of State was told that Number 10 (“No. 10”) would likely wish to agree the composition of the Panel. On 4 September 2020, a submission was made to the Secretary of State which noted that No.10 had suggested a SIPM (not the late Sir William Fittall) and later in that month the Secretary of State stated that he was content to appoint that person as SIPM.

10. On 14 October 2020, No.10 provided its consent for the appointment process to commence.
11. On 26 October 2020, the Secretary of State was asked to agree that potential candidates could be approached in light of the need to ensure that the process was fair. It was noted that there had been press speculation about preferred candidates (see paragraph 35) and allegations that the process was neither fair nor open. It was said that the Chair of the DCMS Select Committee had written to the Secretary of State for an assurance that the BBC Charter and the Governance Code would be followed (the then Commissioner also made his views, to the same effect, known to the Permanent Secretary). It was stated that making calls to potential candidates would help build assurance that the campaign was fair and open and that a genuine search had been carried out. This was particularly suggested given that an executive search agency was not being used in this campaign (see paragraph 8).
12. The Secretary of State decided not to proceed with this suggestion on 2 November 2020. It was not thought to be necessary given that the appointment had already been discussed repeatedly by Ministers and others in the media, and that the role was well understood given its high-profile nature. As such, Ministers preferred that potential candidates were not approached as they considered that selective approaches to candidates could be seen as unfair by those not approached.
13. At around the same time, No. 10 proposed that the independent members of the Panel be the late Sir William Fittall as SIPM and Ms Catherine Baxendale and Ms Blondel Cluff CBE as the non-senior independent members. None were on lists provided to Ministers by DCMS officials. The Secretary of State agreed, and the Commissioner approved the choice of SIPM and was informed of the names of the other members of the Panel (and he raised no concerns). This issue is dealt with further below at paragraphs 37 to 49.
14. The application deadline was 11 November 2020. On 16 November 2020 the “long-list” of candidates was provided to the Secretary of State and No.10. The Secretary of State authorised the process to move to the “sift-stage”. No.10 also did so and noted its support for Mr Sharp’s candidacy on 19 November.
15. On 18 November 2020, officials sought the Secretary of State’s approval of the interview process, including in relation to the provision of a media test, the interview questions and a request as to whether the Secretary of State would like to meet the short-listed candidates prior to appointment (he did not). On 23 November 2020, the Secretary of State broadly agreed the process, making suggestions in relation to the media test and the questions to be asked at interview.
16. The Panel met to conduct the sift of 23 applications on 20 November 2020 and produced a Sift Report. They noted any potential conflicts between themselves and the candidates. No conflicts of concern were noted. Candidates were scored according to their strength of match to the criteria.
17. On 23 November 2020, the Secretary of State was informed that the 23 applicants had been sifted to a shortlist of eight by the Panel. The Secretary of State was informed that 24 candidates were on the original shortlist, but one had withdrawn. The Panel expressed disappointment about the lack of diversity but were content that they had selected a strong shortlist.
18. Very shortly thereafter, the Secretary of State was said to be content with the shortlist but disappointed by the lack of gender diversity.

19. No.10 commented to DCMS, on 26 November 2020, that Mr Sharp looked like a strong candidate.
20. The interviews took place, in person (with COVID-19 precautions in place), on 4 and 11 December 2020. Five candidates were selected by the Panel as appointable, including Mr Sharp. They were not ranked, in accordance with paragraph 3.1 of the Governance Code. Ranking is prohibited unless specially asked for by Ministers and it was not in this case. The Secretary of State was sent the list of appointable candidates on 15 December 2020, and was asked who he would like to appoint and recommend to the former Prime Minister for submission to The Queen-in-Council.
21. The Secretary of State was sent the Panel's interview report ("The Report"). Again, this notes any potential conflicts of interest between the Panel and the candidates. None of concern were reported. The Report discloses any declarations of conflict of interest by the candidates during the interview. The Report records that Mr Sharp said that he had none.
22. The interviews were in person and lasted 45 minutes and each candidate was asked the same list of questions. They each had a remotely conducted media test which was filmed, and viewed by the Panel.
23. Mr Sharp was interviewed at 11.15am on 11 December 2020. He was the final candidate interviewed. The Panel Chair said, when interviewed for this Inquiry, that No.10's support for Richard Sharp was made known to the Panel as required by the Governance Code<sup>20</sup> and that he was the only candidate identified to the Panel as having his candidacy supported by Ministers.
24. On 16 December 2020, the Secretary of State informed his officials that he would like to appoint Mr Sharp and the former Prime Minister indicated agreement on 23 December 2020. As to the role of a Prime Minister in the making of this appointment, see further paragraphs 6 and 7, Annex A.
25. Mr Sharp gave evidence to the DCMS House of Commons Select Committee, by way of the pre-appointment scrutiny required by the BBC Charter (article 22(5), see paragraph 3, Annex A) on 13 January<sup>21</sup> and it confirmed his appointment on 15 January 2021<sup>22</sup>.
26. On 17 January 2021, Mr Sharp (as Chair-Designate of the BBC Board) met with the then Prime Minister<sup>23</sup>.
27. On 26 January 2021, Mr Sharp accepted the appointment and signed the terms of appointment which required him to comply with the Seven Principles of Public Life and the Code of Conduct for Board Members of Public Bodies<sup>24</sup>. The terms set out the manner in which the appointment can be terminated under the BBC Charter (which is further noted below at paragraph 86).
28. On 27 January 2021, the Secretary of State, as directed by the former Prime Minister (who had previously made a recommendation to HM The Queen directly, and had received Her late Majesty's approval), sent a draft Order in Council to the Lord President, to appoint The Honourable Richard Sharp as Chair of the Board of the BBC.
29. The Queen-in-Council made that Order on 10 February 2021<sup>25</sup>, with effect from 16 February 2021 for a term ending on 15 February 2025.

30. The public announcement was made on 17 February 2021<sup>26</sup>.

### **DCMS Compliance with the Governance Code**

31. The then Commissioner wrote a letter to the DCMS Select Committee on 6 January 2021 which, as well as roundly condemning the “pre-briefing”, stated that: *“DCMS officials have kept me informed about the process and have provided me with a copy of the Advisory Assessment Panel interview report. I have also been in contact with the Senior Independent Panel Member, Sir William Fittall. He has found no points about the conduct of the competition to report to me. It has been a well conducted and thorough process. The Panel Report is comprehensive and detailed about the recruitment process run by DCMS. It is unfortunate that the applicant field was not particularly diverse, but DCMS have recognised this. The Panel was confident with the calibre of applicants. The recruitment process included a presentation, and a broadcast interview scenario test, and the usual interview. The candidates’ potential conflicts of interest were fully explored. I am confident the Panel used the published criteria for the role to assess each candidate fairly. Five candidates were found appointable by the Panel and these names were submitted to Ministers for the final choice. The report goes into great detail about all the interviewed candidates.”*
32. The then Commissioner has confirmed to us that he spoke to the late Sir William Fittall, SIPM, and Sir William did not raise with him any concerns about this appointment process.
33. There is no reason to depart from the then Commissioner’s assessment. Overall, it was a well conducted process. DCMS complied with the Governance Code in conducting this appointment. There are matters where improvements to good practice should be made, one of which is set out in the paragraph immediately below and a further matter relating to the checks undertaken with respect to independent Panellists is mentioned at paragraph 47 below.

### **Conflicts of Interest Guidance**

34. The Declaration of Conflicts of Interest form which Mr Sharp completed directed candidates to a DCMS booklet entitled “Public Appointments, Probity & Conflicts of Interest, A Guide for Candidates”. The form stated that this booklet was “enclosed” as well as being available on the DCMS website. DCMS did not in fact enclose it and did not provide it to candidates. DCMS informed us that this is because it was out of date. They cannot say when it stopped being used. Copies could be found online. The Declaration of Conflicts of Interest form in current use provides a link to Cabinet Office [Guidance](#). It is unfortunate that DCMS used, for this campaign, a Declaration of Conflicts of Interest form which made reference to a defunct policy. This is not material to this inquiry because candidates were given sufficient other guidance, but checks should be made to ensure that correct forms are used during appointment processes.

### **Leaks (pre-briefing), diversity, and mitigating measures**

35. As noted above, both the Panel and Ministers were disappointed at the lack of diversity in the pool of applicants for this role. This might have been because the press were told about “preferred candidates”. By way of example, the Financial News reported on 22 October 2020 that the Daily Telegraph (which newspaper online is behind a paywall and therefore cannot be transparently referenced in this Report) had said that Mr Sharp had applied for the post and that he was *“tipped as a frontrunner for the role of BBC Chair”*<sup>27</sup>. The day before the Daily Telegraph<sup>28</sup> had reported that Mr Sharp was *“understood to be applying”* for the role, that Mr Sharp declined to comment but that *“a source”* confirmed that *“he was likely to apply for the job”*. No 10 was reported as



declining to comment. The former Commissioner criticised this (and other) “pre-briefing” and in a letter responding to the criticism the Secretary of State recorded his “*frustration*” and apologised that it had happened, referring to the practice as “*unacceptable*”.

36. It was noted above (see paragraph 11) that officials at DCMS did propose to Ministers that they and others might telephone potential candidates to encourage them to apply in case they were discouraged by press reporting of “preferred candidates”. Notwithstanding the widespread general knowledge of the campaign, contacting potential candidates to encourage a wider range of applications (particularly given an executive search agency was not appointed) may have increased the number and hence, diversity of applicants. Pre-briefing should not happen, but if it does, it is recommended that Ministers give careful thought to approving mitigating steps in the future.

### **The Composition of the Panel**

37. In relation to this appointment, the Panel must include a departmental member (the then DCMS Permanent Secretary<sup>29</sup> in this case) and a Senior Independent Member (SIPM)<sup>30</sup>. For this role, DCMS chose to appoint other non-senior independent members. The composition of the Panel is agreed by Ministers, although the Commissioner must be consulted in relation to the appointment of the SIPM.
38. Ministers must ensure that there are no relationships or circumstances which are likely to affect, or could appear to affect, the judgment of any independent Panel member. The SIPM must be familiar with senior recruitment, the Public Appointments Principles and the Governance Code. He or she must be independent of the Appointing Authority (see para 5, Annex A) and of the BBC and should not currently be politically active<sup>31</sup>. The non-senior independent members must not be “significantly politically active”.

### **The Appointment of the SIPM**

39. No.10 suggested a SIPM for the Panel on 4 September 2020. The Secretary of State agreed to make this appointment on 8 September 2020, and it was approved by the former Commissioner the next day. That person could not take up the appointment and another person was nominated on 24 September of whom the then Commissioner did not approve, due to “current political activity”, and that disapproval was communicated on 25 September. No.10 then suggested the late Sir William Fittall as SIPM, and his appointment was approved by the Secretary of State and by the former Commissioner on 29 September. Sir William passed away on 10 March 2022.
40. Sir William had been a Senior Civil Servant in the Home, Northern Ireland and Cabinet Offices and had served as secretary-general of the Archbishops’ Council until 2015<sup>32</sup>. He was knighted in 2017 and awarded the Canterbury Cross for Services to the Church of England, receiving both honours for his service to the Church. He was retired as at the date of this appointment process.

### **The Appointment of the Non-Senior Independent Panellists**

41. Ms Catherine Baxendale, a Director of Ayot Consulting, was appointed as one of the non-senior independent panellists. She was a former HR Director at Tesco and an HR Consultant for the Cabinet Office. She was the author of the “Baxendale Report” on how to best attract, induct and retain talent recruited into the Senior Civil Service<sup>33</sup>. The press has reported<sup>34</sup> that donations to the Conservative and Unionist Party were



made in her name, and she had been on a shortlist to become a candidate for a Parliamentary seat at a general election.

42. Ms Blondel Cluff CBE was appointed as the other non-senior independent member of the Panel. She is CEO of the West India Committee, a member of the Commission on Race and Ethnic Disparities, a member of the Windrush Cross-Government Working Group, as well as (at the time) Chair of the National Lottery Heritage Fund, London and South Committee (she is now Chair of the National Lottery Community Fund, an appointment addressed by the Commissioner in a report<sup>35</sup>) and a member of the Royal Mint Advisory Committee.
43. The Panel Chair said, when interviewed for this Inquiry, that to the best of her knowledge, No.10 supplied the names of the non-senior independent panellists. From the documentary evidence provided by DCMS, this would seem to have happened at some point prior to 4 November and it would appear that by 9 November, they had been appointed, with the former Commissioner being informed thereafter on 11 and 12 November. The then Commissioner raised no concerns.
44. DCMS has informed us of their practice of conducting “light touch” checks on non-senior independent panellists and have assured the Inquiry that this was done in this case and that no issues were identified. DCMS states that this light-touch approach is directed towards detecting any “significant political activity” which is taken to be a reference to paragraph 9.2 of the Governance Code which states:

*“Political activity should not affect any judgement of merit nor be a bar to appointment or being a member of an Advisory Assessment Panel, with the exception of Senior Independent Panel Members. It should be publicly disclosed however if a panel member, or a successful candidate, has, in the last five years, been employed by a political party, held a significant office in a party, has stood as a candidate for a party in an election, has publicly spoken on behalf of a political party, or has made significant donations or loans to a party.”*

## Findings

45. DCMS did not keep a formal record of these checks but were satisfied that Ms Baxendale’s political donations were made outside of the five-year period mentioned above. It is noted that the press reported that she was shortlisted to be a Conservative candidate, not that she stood as a candidate in a general election.
46. Ms Baxendale told this Inquiry that the donation was made in 2011 by her husband (erroneously recorded in her name), that she was last on a shortlist to be a candidate in 2017 and withdrew from that list shortly afterwards. She candidly and transparently drew attention to the fact that she served as Chair of her local Conservative Association from March 2016 to July 2020. She provided evidence that the Commissioner had approved her to act as a SIPM in a different DCMS appointment process in July 2021 (i.e. he had been satisfied that she was not politically active at that time). It would therefore appear that there was no “significant political activity” which might have caused concern and no reason to doubt that Ms Baxendale (or Ms Cluff) were appropriately appointed to this Panel.
47. Whilst the “independent” element of this Panel was substantially provided by the SIPM, it is recommended that Appointing Authorities (see paragraph 5, Annex A), especially in relation to high profile appointments, ought to have a process to allow Ministers to conclude “*whether there are relationships or circumstances which are likely to affect, or could appear to affect, the Panellist’s judgement*” as well as checks on “significant

political activity” as above. It is unfortunate that formal records of the checks which were performed were not retained. They should be retained in future.

48. It is recorded that from the information I have been provided, it appears that DCMS did inform the Commissioner of the composition of the whole Panel and that he raised no concerns. This is not a Governance Code requirement but was good practice in a high profile appointment such as this.
49. This Inquiry has not detected anything which would call into question the independence of the senior and non-senior independent Panel members (to the standard required by the Governance Code) who acted, from what I have seen and have been told, appropriately throughout.

### **The interactions between the Former Prime Minister, Mr Sharp and the Cabinet Secretary in November and December 2020**

50. It is important to record that the former Prime Minister, the Cabinet Secretary and Mr Sharp (then Special Economic Adviser to HM Treasury, addressing national financial issues arising from the pandemic) were, at the time of these events, focused upon the management, in abnormal working conditions, of a national crisis in the form of the Coronavirus Pandemic.
51. Mr Sharp informed the then Prime Minister that he was applying for the role of the Chair of the BBC Board before he made his application but cannot now be precise about when this occurred. The Daily Telegraph reported, on 21 October 2020, that “a source” had informed it that Mr Sharp was likely to apply for the role (No 10 was said by the Daily Telegraph to have declined to comment). Mr Sharp said he applied for the role on or about 9 November 2020.
52. No.10 nominated the independent members of the Panel by early November 2020 and made its support for Mr Sharp’s candidacy known to DCMS (and this was subsequently passed onto the Panel as required by the Governance Code, see paragraph 23) on 16 and 19 November 2020 (see paragraphs 14 and 19).
53. Mr Sharp told us that, after informing the former Prime Minister he was going to do so, he met with the Cabinet Secretary<sup>36</sup> on 4 December 2020.
54. Mr Sharp and the Cabinet Secretary spoke about this meeting when interviewed for the purposes of this Inquiry and the rough notes that the Cabinet Secretary made during the meeting have been supplied and examined. Nobody else was present and there was no official notetaker apart from the Cabinet Secretary himself at this meeting. No minutes were produced.
55. Mr Sharp said that he does recollect raising his application to be Chair of the BBC Board with the Cabinet Secretary. He said that he felt reassured after doing so because he considered that he had been removed from any conflict before one arose because he considered that he had been personally removed from any involvement in the matter, which would now be handled exclusively by the Cabinet Office. The Cabinet Secretary could only use his rough notes to recollect this meeting. There is no mention of the “BBC” or any application by Mr Sharp for any appointment, in the Cabinet Secretary’s notes. The notes include the words “Interests”, “Conflicts” and “Disclosure” but there is no context as to what they relate. They might have related to the issue of the person who suggested he might possibly assist the former Prime Minister in his private financial affairs as much as they might have related to Mr Sharp’s position (or to both).

56. Following the interviews of both Mr Sharp and the Cabinet Secretary further evidence came to light. It does not directly assist me with the issue of whether there was a breach of the Governance Code, but for completeness I have dealt with it in Annex B to this Report.
57. The Cabinet Secretary does not wish to dispute that Mr Sharp raised his application to be Chair of the BBC Board with him at the meeting, as the fact is, that he simply cannot recall either way and is limited to relying on his notes. As I explain below (see paragraph 84) I do not have to resolve this difference in recollections.
58. Mr Sharp was interviewed by the Panel for the role of Chair of the BBC Board on 11 December 2020.
59. The Cabinet Secretary commissioned advice to be given to the former Prime Minister about his private financial affairs. This advice was commissioned from the then Deputy Cabinet Secretary<sup>37</sup> on 22 December 2020 and was provided to the then Prime Minister on that same day. The Deputy Cabinet Secretary told this Inquiry that she was unaware of the salient facts relating to this matter before this advice was commissioned, and indeed only subsequently became aware of some aspects following the more recent media reporting. The advice materially states, “*Given the imminent announcement of Richard Sharp as the new BBC Chair, it is important that you no longer ask his advice about your personal financial matters.*” The balance of the advice concerns the Prime Minister’s personal financial affairs. The explanation given to this Inquiry for the part of the advice quoted above being drafted in this way was that it was not given to avoid or mitigate any conflict of interest arising in the appointment process but to stop the former Prime Minister having further contact with Mr Sharp, in relation to such private financial matters once Mr Sharp had been appointed as Chair of the BBC Board. This was in order to maintain Mr Sharp’s independence from the Prime Minister once he was so appointed. This explanation is corroborated by the fact that on the next day No.10 confirmed that Mr Sharp was to be recommended for appointment (see paragraph 24 above). The advice was neither commissioned nor obtained until after the appointment process was almost over. Indeed, the advice notes that the appointment was “imminent”.
60. The former Prime Minister’s formal role in making this appointment has been noted at paragraphs 6 and 7 of Annex A. His office’s active role in supporting Mr Sharp’s candidacy is also mentioned at paragraphs 14 and 19 above.
61. Ministers must act in accordance with the Governance Code and the Ministerial Code. The Principles of Public Appointments (found in the Governance Code) state:
- B. Selflessness - Ministers when making appointments should act solely in terms of the public interest.*
- C. Integrity - Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.*
62. The Ministerial Code<sup>38</sup> states that: “*Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise. It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the*

*Independent Adviser on Ministers' interests."* (paragraphs 7.1 and 7.2) and *"Public appointments should be made in accordance with the requirements of the law and, where appropriate, the Governance Code issued by the Cabinet Office. Ministers have a duty to ensure that influence over civil service and public appointments is not abused for partisan purposes."* (paragraph 3.1).

63. The Commissioner for Public Appointments has no jurisdiction in relation to the conduct of Ministers, including the former Prime Minister. No findings can be or are made, in this Report, in relation to such conduct.
64. All Ministers are reminded to declare and resolve any interests and relationships which they have with a candidate in an appointment process to which the Governance Code applies. I have recommended at paragraph 7.2 that advice be considered as to how such matters might be resolved in future, including the giving of timely advice to Ministers as to how to resolve potential conflicts which might arise during an appointment process.

### **The Disclosure of Conflicts of Interest to the Panel by Mr Sharp**

#### **What Candidates were Told:**

65. The "role spec" which appeared online<sup>39</sup> and which was available to all candidates for the role stated:

*"Given the nature of public appointments, it is important that those appointed as members of public bodies maintain the confidence of Parliament and the public. If there are any issues in your personal or professional history that could, if you were appointed, be misconstrued, cause embarrassment, or cause public confidence in the appointment to be jeopardised, it is important that you bring them to the attention of the Advisory Assessment Panel and provide details of the issue(s) in the statement supporting your application".*

66. The Code of Conduct for Board Members of Public Bodies<sup>40</sup>, which was also provided with the role spec<sup>41</sup>, states:

*"4.1 When accepting an appointment to the public body you should consider if any conflicts of interest arise from your private interests or by virtue of any other roles you hold. You should consider, with advice from the appointing department how these should best be managed, and agree these with the organisation.*

*4.2 You must ensure that no conflict arises, or could reasonably be perceived to arise, between your public duties[footnote 7] and your private interests, financial or otherwise.*

Footnote 7 states:

*In general, all financial interests should be declared. When considering what non-financial interests should be declared, you should ask yourself whether a member of the public, acting reasonably, would consider that the interest in question might influence your words, actions or decisions"*

67. As part of the appointment process, Mr Sharp was asked to complete a Declaration of Conflict of Interest Form which required disclosure as follows:

*“Please give details of any business or other interests or any personal connections which, if you are appointed, could be misconstrued or cause embarrassment to the public body or DCMS. These could include financial interests or share ownership, active connections with a field of expertise in which the public body works, membership of societies, activities associations or employment of a partner or friend in the particular field in which the public body operates. Any potential conflicts of interest detailed here will not prevent you going forward to interview but may, if appropriate, be explored with you during your interview to establish how you would address the issue(s) should you be successful in your application.”*

### **What Mr Sharp Disclosed to the Panel**

68. Mr Sharp said this in his Declaration of Conflicts of Interest Form (dated by him 9 November 2020): *“All relevant private sector holdings are presently in a blind trust. Should I be selected then I would expect to discuss this matter with the appropriate authority. I am a Non-Executive Director of the Centre for Policy Studies.”* Mr Sharp electronically signed his name under the statement *“I confirm that all the information given on this form and any supporting material is true and complete”*.

69. The Panel reported the following, in relation to Mr Sharp’s interview:

*“In terms of conflict of interest, the candidate declared that he had none”*.

The information provided to this Inquiry in relation to the interviews discloses no further information of relevance. Mr Sharp has confirmed to this Inquiry that he did not say anything additional in interview about any conflicts of interest.

### **What the Governance Code Requires**

70. The Governance Code requires that the Panel must be satisfied that all candidates have no conflicts of interest *“that would call into question their ability to perform the role.”* It states that *“All potential conflicts of interest and how they might be managed must be discussed with an individual at interview.”* If a conflict is disclosed then *“The departmental official on an Advisory Assessment Panel is responsible for seeking advice within their department and/or the Cabinet Office on handling any conflicts, which should be included in the final advice to Ministers. If the appointment is subject to a Parliamentary preappointment hearing, the advice to the Select Committee should cover the handling of any conflicts of interest.”* (paragraph 9.1).

71. A failure of a candidate to make a disclosure leads to a breach of the Code as it prevents all potential conflicts of interest from being discussed and advised upon as above. Any failure to make a disclosure to the Panel also prevents the relevant Select Committee from being advised of, and considering, any such issues in accordance with the Governance Code. The readers of this Notice can also read the conclusions<sup>42</sup> of the DCMS Select Committee on the issue of disclosure to the Committee.

### **What Mr Sharp has said to this Inquiry.**

72. Mr Sharp drew attention to the fact that the Panel were aware, from his CV (submitted for this application), of the fact that he was working closely with the former Prime Minister as Special Economic Adviser to HM Treasury<sup>43</sup>. He had also been an economic adviser when he was Mayor of London<sup>44</sup>, although this does not appear on his CV submitted for this appointment process. He also submitted that the Panel knew of the former Prime Minister’s support for his candidacy (as noted at paragraph 23).



73. He also said that he perceived his conversation with the former Prime Minister, informing him that he wanted to make an application, as being akin to a conversation with a person's current "boss", effectively seeking permission to apply for a new role. Mr Sharp considers that it would have been a gross dereliction of his own duty<sup>45</sup>, in the context of the work he was doing, as Special Adviser, for the country at the time of a national emergency, not to have given the then Prime Minister an opportunity to "persuade him to stay in his current job".
74. Mr Sharp said to this Inquiry that he felt it was necessary to seek the former Prime Minister's permission because, had the former Prime Minister asked him to stay as Special Economic Adviser and not to have made the application to be Chair of the BBC Board, then he would have done so, given the country was facing a national emergency. Mr Sharp considers that most reasonable people (including the Panel) would have assumed that he would have told the former Prime Minister about his application before he made it.
75. Mr Sharp noted people outside of Government drew his attention to the role of Chair of the BBC Board and encouraged him to apply.
76. Mr Sharp does not accept that his conversation with the Prime Minister in relation to him making the application constituted a conflict of interest because he considers that, as set out above, he was duty bound to offer the then Prime Minister an opportunity to persuade him to stay in his current role. He said that the then Prime Minister merely accepted his decision to apply and said nothing else about it.
77. As to the conversation with the Cabinet Secretary, Mr Sharp stated that whilst he had had no intention to mislead the Panel, he had reflected and, in hindsight, accepted that he should have disclosed this matter to the Panel and he apologised for his error. Mr Sharp also said that he perceived his meeting with the Cabinet Secretary on 4 December 2020, at which, he says, he raised his application, as providing him with reassurance that he had been "removed from any conflict" before one arose. Mr Sharp stated that the Cabinet Secretary had confirmed to him that he would be "excluded" from matters relating to the private financial affairs of the former Prime Minister and Mr Sharp thought that this meant that he did not have to disclose this matter further, including to the Panel.
78. Mr Sharp also wishes it to be noted that he was candid, at all material times, about his past support of the Conservative and Unionist Party and of the former Prime Minister.

### **Whether Mr Sharp Failed to Disclose a Potential Conflict of Interest**

79. The Role Specification made clear that the Chair is required to "*maintain the Corporation's independence*". The BBC Charter states that each member of the Board "*must at all times uphold and protect the independence of the BBC including by acting in the public interest, exercising independent judgment and neither seeking nor taking instructions from Government Ministers or any other person.*"<sup>46</sup>
80. None of the candidates could have been in any doubt as to the need to maintain the BBC's independence, the role of the office to which they were applying in fulfilling that duty, and as to their duties in terms of the disclosure of potential conflicts of interest which might touch upon those matters.
81. Mr Sharp should have made the disclosure set out in the Key Findings section above. Those matters were, using the words of the role spec, "*issues in [his] personal or professional history that could, if [he] were appointed, be misconstrued, cause embarrassment, or cause public confidence in the appointment to be jeopardised*". Or

in the words of the Form which Mr Sharp filled in, they were “*details of .... any personal connections which, if you are appointed, could be misconstrued or cause embarrassment to the public body or DCMS*”.

82. As to Mr Sharp’s arguments in relation to his conversation with the former Prime Minister:

82.1 It may well have been a reasonable conversation in the context of Mr Sharp’s role as Special Adviser, but failing to mention it to the Panel does amount to a failure to disclose a potential perceived conflict of interest.

82.2 Whilst it might have been appropriate for Mr Sharp to inform his “boss” of his application particularly in light of Mr Sharp’s work at a time of national emergency, it was also appropriate for him to have informed the Panel of the conversation.

82.3 This is because the conversation was with someone who had three different roles. He was Mr Sharp’s current “boss”<sup>47</sup> but he was also the person who would make the final decision on the recommendation for appointment and also a person from whom Mr Sharp would have to maintain independence if so appointed.

82.4 There was a risk that members of the public might form the view that Mr Sharp was informing the Prime Minister of his application because he wanted him to make a recommendation to appoint him. They might also perceive that he was putting himself in a position where he might, if appointed, be beholden to the Prime Minister for his support such that his independence from Government was compromised. None of this need be true. What Mr Sharp actually did or intended to do is not relevant to this Inquiry. The focus here is on how these matters could be perceived by others, not on what Mr Sharp was intending to do, or in fact did.

82.5 It is to be noted that Mr Sharp was clearly requested to disclose to the Panel matters which might “*be misconstrued, cause embarrassment, or cause public confidence in the appointment to be jeopardised*” (see paragraphs 65 and 67). This is because perceptions, including things which might be wrongly misconstrued by others, are as important as actual conflicts of interest. The erosion of public trust and confidence in a public office holder can be caused by the perception of a conflict of interest, as well as by an actual conflict<sup>48</sup>.

82.6 It was important that the Panel were provided with a full account of what Mr Sharp had done so that they could assess whether the conversation could be perceived/misconstrued in a manner which might “*cause embarrassment, or cause public confidence in the appointment to be jeopardised*” i.e. whether it amounted to a potential perceived conflict of interest upon which they had a duty to advise Ministers.

82.7 The Panel were aware of the former Prime Minister’s support for Mr Sharp’s application (indeed they may well have been aware of the objectionable media pre-briefing of favoured candidates) and may have been aware that Mr Sharp and the former Prime Minister were working closely together (and had done so in the past, which was noted in the Daily Telegraph pre-briefing article<sup>49</sup> although was not in Mr Sharp’s CV for this role, see paragraph 72), but they were not made aware of the additional fact of this pre-application conversation.



- 82.8 For all the reasons Mr Sharp gives, the Panel may have concluded that no conflict arose, but he did not put them in a position where they were able to form that judgement and it is that disabling of a key part of the system which constitutes a breach of the Governance Code.
- 82.9 It is very important that candidates think very carefully about what might amount to a potential conflict of interest and that they adopt a wide and expansive approach. If a candidate is in any doubt, they should disclose. Candidates should carefully consider what facts might be misconstrued and how they might be perceived.
- 82.10A pre-application conversation about an application to an office, with the person who will make the final decision to recommend someone to that office, in circumstances in which that office fundamentally requires independence from that person, should be disclosed.
- 82.11 Even if, as Mr Sharp contends, a candidate might be able to guess that a Panel has sufficient information, such as in relation to a pre-existing relationship, they should put the matter beyond doubt by making full disclosure.
- 82.12 Mr Sharp has stated to me that if there was a failure to disclose a conflict, it was inadvertent. As noted elsewhere in this Report it is not for me to form a judgment on Mr Sharp's conduct.
83. As to the attempted introduction to the Cabinet Secretary, confidentiality may well have made it difficult for Mr Sharp to have set out his (very limited<sup>50</sup>) involvement with the former Prime Minister's private financial affairs in writing or at interview. Mr Sharp accepts that he should have found an alternative way of making sure that the disclosures were made to the Panel. This might have been by way of ensuring the Cabinet Secretary spoke with the Panel Chair. It needs to be recalled that the Governance Code requires that the Panel consider all potential conflicts. If the candidate does not ensure disclosure to the Panel, then, in particular, the independent panellists are entirely circumvented and disabled from discharging their duties under the Governance Code. This is why non-disclosure is a breach of the Governance Code.
84. Mr Sharp drew attention to the fact that the Cabinet Secretary did not raise his conversation with Mr Sharp with DCMS and that this might suggest that the Cabinet Secretary had concluded that there was no potential conflict of interest. The Governance Code puts the obligation of disclosure on the candidate and not on others, and it is for candidates to make their own judgement as to whether to make disclosure and if so, to ensure that such disclosure is made. I have formed no view on whether or not Mr Sharp did mention his application to the Cabinet Secretary on 4 December 2020 because even if I accept that he did, it makes no difference to my finding of a breach of the Governance Code as Mr Sharp did not ensure disclosure to the Panel, whether via the Cabinet Secretary or otherwise.
85. I record that Mr Sharp is adamant that he was trying, at this meeting, to forestall any conflict of interest arising by removing himself as any form of intermediary in relation to the Prime Minister's personal finances and this was done with his application to be Chair of the BBC Board fully in mind. I am happy to record that Mr Sharp has been consistent in his evidence that he did mention his application to the Cabinet Secretary on 4 December 2020, and gained the impression that the Cabinet Secretary agreed

with him on this point, when they spoke again on 20 January 2023 (and when Mr Sharp had sight of the Cabinet Office's lines to take to the media thereafter) (see Annex B). As I note above the Cabinet Secretary does not dispute that Mr Sharp did mention it; as he cannot recall either way and is restricted to relying on his rough notes (as one can readily understand given the time that has passed and the events which have occurred in the life of the nation in the meantime).

### **Next Steps**

86. It is noted that the BBC Charter states that the Chair's appointment may be terminated by Order in Council, if, in the opinion of the Secretary of State, having consulted the Board, the Chair is unable, unfit or unwilling to perform the functions of a member of the Board (article 28(1)(b)(ii) and (2)). Any other applicable legal process should also be followed<sup>51</sup>.
87. It is for the current Secretary of State, consulting with the Board of the BBC as necessary, to decide what action now needs to be taken in light of the breach of the Governance Code identified above. This will include taking into account Mr Sharp's account of his actions, and making an assessment of it, including as to his intentions, and whether the non-disclosure was inadvertent, taking into account all of the relevant circumstances.

**ADAM HEPPINSTALL KC**

28 April 2023

## **ANNEX A: Background**

### **The Governance Code for Public Appointments**

1. The Committee on Standards in Public Life (CSPL) was set up in 1995 under Lord Nolan and it established the well-known Seven Principles of Public Life as well making recommendations which led to the regulation of public appointments and the appointment of the first Commissioner for Public Appointments<sup>52</sup>. The public appointments system was reviewed by Sir Gerry Grimstone<sup>53</sup> in 2016<sup>54</sup>, (“the 2016 Review”) and his work gave rise to the Governance Code for Public Appointments<sup>55</sup> which came into force on 1 January 2017 (“the Governance Code”). It is issued by the Minister for the Cabinet Office pursuant to Public Appointments Orders in Council 2019 (No 2)<sup>56</sup> (“the Order”). It replaced the previous Code of Practice<sup>57</sup>.

### **The Commissioner for Public Appointments**

2. The Order also sets out the functions and powers of the Commissioner for Public Appointments<sup>58</sup> (“the Commissioner”). The Order requires the Commissioner to ensure that the Governance Code is followed in relation to public appointments, including the appointment of the Chair of the BBC Board (article 4(1)).

### **The Appointment of a Chair of the BBC Board**

3. The current Charter of the BBC<sup>59</sup> states, at article 22, that

*“(1) The Chair of the Board must be appointed by Order in Council.*

*(2) The appointment may only be made following a fair and open competition.*

*(3) The Governance Code, including the public appointment principles, must be followed in making the appointment. The Commissioner for Public Appointments will ensure that the appointment is made in accordance with the Governance Code.*

*(4) The Secretary of State must consult the BBC on the process for appointing the Chair (including on the job specification, skills description and time commitment which must be developed to ensure that the requirements of article 21(5) (composition of the Board) are met).*

*(5) No recommendation may be made to Her Majesty in Council to appoint the Chair unless a pre-appointment hearing has been held and a report published by the Select Committee.”*

4. It can be seen that the Governance Code also has to be followed in relation to the appointment of the Chair by virtue of the terms of the BBC Charter as well by virtue of the Order.

## **How an appointment process operates under the Governance Code**

### **The Appointing Authority**

5. The Appointing Authority, as defined by the Order (article 2(2)), is, for the purposes of this case, the Secretary of State for Digital, Culture, Media and Sport<sup>60</sup> (and her<sup>61</sup> Department, DCMS) being the Minister who recommends appointment in relation to the BBC (one of the public bodies listed in Schedule 1 to the Order<sup>62</sup>, and the BBC is listed in that Schedule under the heading “DCMS”).

## **The Prime Minister**

6. The 2016 Review noted that:

*“The Prime Minister has a direct role in appointments made by The Queen and in those appointments for which he has statutory responsibility. Additionally, some appointments are so important to public life in the UK, the Prime Minister will understandably want to be involved. In such cases, the process must be designed from the start to accommodate this.”*

7. Accordingly, whilst the appointment is made by Order in Council, it makes practical sense for DCMS to administer the process as the Appointing Authority given that the BBC falls within its portfolio of responsibilities. The Prime Minister, by convention, makes the final decision as to who is to be recommended for appointment and is closely involved, through his office at No.10 Downing Street, with the process to select appointable candidates.

## **The Responsibilities of Ministers**

8. The Governance Code<sup>63</sup> makes Ministers responsible for appointment processes. Ministers should agree the job description, the advertising process, and the composition of the Panels which consider candidates (known as Advisory Assessment Panels). Ministers should, before the campaign starts, be asked for the names of individuals who should be approached to apply, as well as the names of those they think should be interviewed. Ministers should be invited to provide their views to the Panel on candidates at all stages of a competition. At the end of the process Ministers are provided by the Panel with a choice of appointable candidates from which they choose to appoint. Ministers do not, however, have to accept the Panel’s advice and may ask for a competition to be re-run.

## **ANNEX B: Further evidence relating to the meeting of 4 December 2020.**

1. After the Cabinet Secretary was interviewed for the purposes of this Inquiry, Mr Sharp drew attention to “lines to take” with the press drafted by the Cabinet Office following enquiries from the Sunday Times on 22 January 2023. These state that at the meeting on 4 December 2020, Mr Sharp had informed the Cabinet Secretary about “the BBC appointment process” and had asked the Cabinet Secretary for advice given his “existing relationship with Boris Johnson”. This Inquiry has seen evidence which suggests that these lines to take were drafted with the involvement of the Cabinet Secretary and that Mr Sharp was informed of their contents (and retains WhatsApp messages which include such content, copies of which he gave to me). They corroborate Mr Sharp’s account of the 4 December 2020 meeting.
2. During the Maxwellisation process (see paragraph i), Mr Sharp drew to my attention WhatsApp messages (dated Saturday 21 January 2023) he had sent and received from individuals which appear to corroborate him informing them that he had spoken to the Cabinet Secretary on Friday 20 January 2023. They record Mr Sharp telling people that there was a “record of the facts” and that the Cabinet Secretary was “supportive” and “agrees that I have behaved carefully and entirely appropriately - and made a record of that”. Mr Sharp says that on that Friday, he had spoken to the Cabinet Secretary who had then recalled that he had raised the “BBC issue’ with him and that he had done nothing wrong.
3. Mr Sharp has also sent me a reproduction of the text of a document which he says he was sent by an unnamed journalist which purports to be some form of communication to “Mr Wragg” from the Cabinet Secretary.
4. The Cabinet Secretary has provided his response to these matters:
  - 4.1 He confirms that he spoke to Mr Sharp on 20 January 2023, at a time when he had already left his office.
  - 4.2 Mr Sharp informed him, in that telephone conversation that he, Mr Sharp, had raised his application for the role of Chair of the BBC Board with him when they met on 4 December 2020.
  - 4.3 The Cabinet Secretary, at that time, had no reason to doubt Mr Sharp’s account of the 4 December 2020 meeting as relayed to him over the telephone on 20 January 2023.
  - 4.4 The lines to take referred to above, as well as a draft letter to the Chair of the Public Administration and Constitutional Affairs Committee (PACAC) (William Wragg MP) were then prepared (as the Cabinet Secretary wished to address the growing media reports), and these included Mr Sharp’s account of the 4 December conversation as relayed to the Cabinet Secretary over the phone, particularly in relation to Mr Sharp’s recollection that he had raised the issue of his application to be Chair of the BBC Board.
  - 4.5 The Cabinet Secretary has confirmed that the draft letter to Mr Wragg has been leaked to the press and that the copy in Mr Sharp’s possession (mentioned above) is accurate.
  - 4.6 On returning to his office on Monday 23 January 2023, the Cabinet Secretary had the first opportunity to consult his rough notes of the 4 December 2020 meeting and could not find mention of Mr Sharp raising the issue of his application to be Chair of the BBC Board.
  - 4.7 He therefore caused the lines to take and the draft letter to the Chair of PACAC to be amended to remove reference to that point. The Cabinet Secretary has provided me with the revised version of the draft letter which appears to corroborate this point.

- 4.8 This draft was never finalised and a letter was never sent to Mr Wragg because it was thought more appropriate for the Cabinet Secretary to wait to give his account to this Inquiry, which he has done.
- 4.9 The draft “lines to take” were deployed on the afternoon of 22 January 2023 but as noted above, the Cabinet Secretary asked for the lines to take to be amended on 23 January 2023.

## END NOTES

Weblinks valid at time of publication.

---

<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578498/governance\\_code\\_on\\_public\\_appointments\\_16\\_12\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf)

<sup>2</sup> The current Commissioner is Mr William Shawcross CVO who took up his appointment on 1 October 2021 <https://privycouncil.independent.gov.uk/wp-content/uploads/2021/09/2021-09-29-List-of-Business.pdf>. His predecessor, who served from 19 April 2016 until 20 September 2021, was Rt. Hon. Sir Peter Riddell CBE, appointed pursuant to the Public Appointments Commissioner Order in Council 2016 <https://privycouncil.independent.gov.uk/wp-content/uploads/2016/04/Order-approved-in-Council-19-April-16.pdf> who was therefore in post at the time of the appointment of Mr Sharp.

<sup>3</sup><https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2019/04/2019-Public-Appointments-Order-In-Council.pdf>

<sup>4</sup> As then known, there has been a change in the title since February 2023 to The Department of Culture, Media and Sport - <https://www.gov.uk/government/publications/making-government-deliver-for-the-british-people/making-government-deliver-for-the-british-people-html#department-for-culture-media-and-sport>

<sup>5</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/charter.pdf)

<sup>6</sup> See further the Commissioner's Regulatory Framework as to the type of documents requested from DCMS <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf>

<sup>7</sup> <https://twitter.com/BethRigby/status/1617165306719264775?s=20>

<sup>8</sup> <https://twitter.com/publicapptscomm/status/1617542771002470400?s=20>

<sup>9</sup> <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2021/10/OCPA-20-21-Annual-Report.pdf>

<sup>10</sup> <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2023/01/2023-01-30-WS-Letter-to-DCMS-Secret-Committee-1-1.pdf>

<sup>11</sup> <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf>

<sup>12</sup> See paragraph 3 of the Key Findings and End Note 17.

<sup>13</sup> See paragraphs 41 and 42

<sup>14</sup> <https://www.legislation.gov.uk/aep/WillandMarSess2/1/2#commentary-c2144673> Article IX was considered in detail by Stanley Burnton J in *OGC v ICO* [2008] EWHC 737 (Admin) <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2008/737> and as he notes at paragraph 32, the modern rule can be summarised as follows:

*"In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of—(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament; (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament."*

<sup>15</sup> This is in line with the duty to conduct a Maxwellisation process- named after *Maxwell v Department of Trade and Industry* [1974] QB 523. The process was recently described by Murray J as "...putting provisional findings that might adversely affect that person to that person and giving the person an opportunity to respond" in *R (Clarke and others) v Chairman of Magnox Public Inquiry* [2019] EWHC 3596 <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2019/3596>.

<sup>16</sup> As noted above, this Inquiry has not considered the Prime Minister's private financial affairs, but in so far as it is relevant I am happy to record that I have seen no evidence of Mr Sharp having any role in those matters save for the attempted introduction mentioned above.

<sup>17</sup> Sarah Healey CB, appointed Permanent Secretary of the Department for Levelling Up, Housing and Communities (DLUHC) on 7 February 2023. Prior to this, she was Permanent Secretary at DCMS from 2019 and therefore was in that role at the time of this appointment process.

<sup>18</sup> <https://www.bbc.com/aboutthebbc/whowere/david-clementi>

<sup>19</sup> The Secretary of State at the material time was Rt.Hon. Oliver Dowden CBE MP (in post 13 February 2020 to 15 September 2021, currently Deputy Prime Minister, Secretary of State in the



---

Cabinet Office and Chancellor of the Duchy of Lancaster). It is currently, since February 2023, Rt.Hon. Lucy Frazer KC MP.

<sup>20</sup> Paragraph 5.4 of the [Governance Code](#):

*“Each panel must be made familiar with the Minister’s requirements and views at every stage including after the long and short lists are determined. The departmental official on the panel is responsible for representing and making other members aware of the Minister’s views throughout the process. Ministers should feel free to put names forward to the Advisory Assessment Panel for interview. If a panel does not think it appropriate to interview such a candidate, the panel chair must inform the Minister of the reasons for this before informing the candidate of the rejection.”*

<sup>21</sup><https://committees.parliament.uk/work/926/preappointment-hearing-for-chair-of-the-bbc/news/138253/committee-questions-governments-preferred-candidate-for-bbc-chair/> This is not the first time that Mr Sharp had been through this process as he went through a pre-appointment process with the Treasury Select Committee in 2013 when he was appointed to the Financial Policy Committee: <https://publications.parliament.uk/pa/cm201314/cmselect/cmtreasy/224/224i.pdf>

<sup>22</sup><https://committees.parliament.uk/work/926/preappointment-hearing-for-chair-of-the-bbc/news/138523/dcms-committee-approves-appointment-of-richard-sharp-as-next-bbc-chair/>

<sup>23</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002819/Rt\\_Hon\\_Boris\\_Johnson\\_MP\\_meetings\\_January\\_to\\_March\\_2021.csv/preview](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002819/Rt_Hon_Boris_Johnson_MP_meetings_January_to_March_2021.csv/preview)

<sup>24</sup><https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies/code-of-conduct-for-board-members-of-public-bodies-june-2019>

<sup>25</sup><https://privycouncil.independent.gov.uk/wp-content/uploads/2021/02/2021-02-10-List-of-Business.pdf>

<sup>26</sup> <https://www.gov.uk/government/news/richard-sharp-is-confirmed-as-the-new-bbc-board-chair>

<sup>27</sup><https://www.fnlondon.com/articles/ex-goldman-sachs-heavyweight-richard-sharp-tipped-for-bbc-chair-20201022>

<sup>28</sup><https://www.telegraph.co.uk/politics/2020/10/21/exclusive-rishi-sunaks-ex-boss-goldman-sachs-now-surprise-candidate/> (paywall)

<sup>29</sup>Sarah Healey CB, appointed Permanent Secretary of the Department for Levelling Up, Housing and Communities (DLUHC) on 7 February 2023. Prior to this, she was Permanent Secretary at DCMS from 2019 and therefore was in that role at the time of this appointment process.

<sup>30</sup>This is because the role of Chair of the BBC Board has been agreed by the Commissioner and Ministers to be a “significant appointment” within the meaning of paragraph 6.1 of the Governance Code which states: “A list of ‘significant appointments’ should be agreed by Ministers and the Commissioner for Public Appointments and published. These competitions must have a Senior Independent Panel Member (SIPM) on their Advisory Assessment Panels”. The list of significant appointments is here <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/significant-appointments/>

<sup>31</sup>Defined by the Governance Code “as an individual being employed by a political party, holding significant office in a party, standing as a candidate for a party in an election, having publicly spoken on behalf of a political party or having made significant donations or loans to a party. Significant loans and donations are those of a size which are reported to the Electoral Commission, in line with a central party’s reporting threshold.” (paragraph 9.2 and FN9).

<sup>32</sup><https://www.churchtimes.co.uk/articles/2022/18-march/news/uk/sir-william-fittall-former-secretary-general-of-the-general-synod-dies-aged-68>; <https://www.churchtimes.co.uk/articles/2022/25-march/gazette/obituaries/obituary-sir-william-fittall>

<sup>33</sup><https://www.gov.uk/government/publications/baxendale-report-how-to-best-attract-induct-and-retain-talent-recruited-into-the-senior-civil-service>

<sup>34</sup><https://www.theguardian.com/media/2023/jan/24/panel-approving-richard-sharp-as-bbc-chair-included-tory-party-donor>

<sup>35</sup><https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2022/07/2022-07-DCMS-NLCF-decision-notice.pdf>

<sup>36</sup> <https://www.gov.uk/government/people/simon-case> appointed to this role in September 2020.

<sup>37</sup> <https://www.gov.uk/government/people/helen-macnamara>

<sup>38</sup> <https://www.gov.uk/government/publications/ministerial-code/ministerial-code>

<sup>39</sup><https://publicappointments.cabinetoffice.gov.uk/appointment/chair-british-broadcasting-corporation-bbc/>

<sup>40</sup><https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies/code-of-conduct-for-board-members-of-public-bodies-june-2019>

---

<sup>41</sup>See the attachments at the end of the web page:

<https://publicappointments.cabinetoffice.gov.uk/appointment/chair-british-broadcasting-corporation-bbc/>

<sup>42</sup><https://committees.parliament.uk/publications/33962/documents/186346/default/>

<sup>43</sup><https://news.sky.com/story/coronavirus-sunaks-ex-goldman-boss-to-be-adviser-on-crisis-11971965>

<sup>44</sup> An older CV which remains on Parliament’s website in connection with a prior public appointment (to the Financial Policy Committee <https://www.bankofengland.co.uk/about/people/financial-policy-committee> ) held by Mr Sharp records that he was on the London Mayor’s Board of Economic Advisors from 2008 to 2010 when Mr Johnson was Mayor of London (2008-2016) - <https://www.parliament.uk/globalassets/documents/commons-committees/treasury/FPC-04-Sharp-CV.PDF> As far as I can tell this did not appear on the CV submitted to DCMS in the instant appointment process.

<sup>45</sup> As to which see paragraph 21 of the Code of Conduct for Special Advisers -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/832599/201612\\_Code\\_of\\_Conduct\\_for\\_Special\\_Advisers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf)

<sup>46</sup>The BBC cites examples on its own website when it has demonstrated its independence from Government, and from the Prime Minister of the day:

<https://www.bbc.co.uk/historyofthebbc/research/editorial-independence/>

<sup>47</sup> Special Advisers can only be appointed with the approval of the Prime Minister of the day, as set out at section 15 Constitutional Reform and Governance Act 2010 and Mr Sharp may well have seen the former Prime Minister as his ultimate “boss” in light of this requirement, albeit he was working as an adviser to HM Treasury.

<sup>48</sup> The DCMS guidance document, albeit not in use at the time, states: “Sometimes, rather than an actual conflict, the perception of a conflict alone may arise. Both are a problem, as the perception of a conflict may be as damaging as the existence of an actual conflict. It is important, therefore, that you consider your circumstances when applying for a public appointment and identify any potential for conflicts of interest arising. .... Even the perception of a conflict of interest in relation to a board member can be extremely damaging to the body’s reputation and it is therefore essential that these are declared and explored, in the same way as an actual conflict would be.” The National Audit Office in its guidance notes that: “...often the perception of conflict alone is enough to cause concern. This can lead to reputational damage and undermine public confidence in the integrity of institutions.” <https://www.nao.org.uk/wp-content/uploads/2015/01/Conflicts-of-interest.pdf>. As Lord Denning made clear in his *Profumo* report, the question was not whether Profumo had committed adultery, the question was “was his conduct, proved or admitted, such as to lead ordinary people reasonably to believe that he had committed adultery” Lord Denning’s Report into the Profumo Affair, 24 October 1963, Cmd 2152.

<sup>49</sup><https://www.telegraph.co.uk/politics/2020/10/21/exclusive-rishi-sunaks-ex-boss-goldman-sachs-now-surprise-candidate/> (paywall)

<sup>50</sup>See End Note 16

<sup>51</sup>Consideration will no doubt be given to Mr Sharp’s status as the holder of an office under the Crown and whether or not that attracts any contractual or statutory rights.

<sup>52</sup>See the Committee’s first report -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336919/1stInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf)

<sup>53</sup>Chairman of Standard Life at the time (2007-2019). Now Rt. Hon. Baron Grimstone of Boscobel Kt, after receiving a life peerage on becoming a Minister for two years, 2020-2022.

<sup>54</sup>The Better Public Appointments – Review of the Public Appointments Process Report

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507066/Better\\_Public\\_Appointments\\_March\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507066/Better_Public_Appointments_March_2016.pdf)

<sup>55</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578498/governance\\_code\\_on\\_public\\_appointments\\_16\\_12\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf)

<sup>56</sup><https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2019/11/Public-Appointments-No.-2-Order-in-Council-2019.pdf>

<sup>57</sup>For example, the 2002 Order generally charged the Commissioner to take action with the “object of maintaining the principle of selection on merit in relation to public appointments” including the power to “prescribe and publish a Code of Practice on the interpretation and application by appointing authorities of the principle of selection on merit for public appointments”. The 2009 Code is archived here - <https://publicappointmentscommissioner.independent.gov.uk/wp->

---

[content/uploads/2017/01/New-Code-of-Practice-for-Ministerial-Appointments-to-Public-Bodies-August-2009.pdf](#) . The Minister must consult the Commissioner and the First Minister for Wales before publishing or amending the Governance Code.

<sup>58</sup>The current Commissioner is Mr William Shawcross CVO who took up his appointment on 1 October 2021 <https://privycouncil.independent.gov.uk/wp-content/uploads/2021/09/2021-09-29-List-of-Business.pdf> His predecessor, who served from 19 April 2016 until 20 September 2021, was Rt. Hon. Sir Peter Riddell CBE, appointed pursuant to the Public Appointments Commissioner Order in Council 2016 <https://privycouncil.independent.gov.uk/wp-content/uploads/2016/04/Order-approved-in-Council-19-April-16.pdf> who was therefore in post at the time of the appointment of Mr Sharp.

<sup>59</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/charter.pdf)

<sup>60</sup>As then known, there has been a change in the title since -

<https://www.gov.uk/government/publications/making-government-deliver-for-the-british-people/making-government-deliver-for-the-british-people-html#department-for-culture-media-and-sport>

<sup>61</sup>The Secretary of State at the material time was Rt.Hon. Oliver Dowden CBE MP (in post 13 February 2020 to 15 September 2021, currently Deputy Prime Minister, Secretary of State in the Cabinet Office and Chancellor of the Duchy of Lancaster). It is currently, since February 2023, Rt.Hon. Lucy Frazer KC MP.

<sup>62</sup>It would appear that the appointment of Gavyn Davies CBE (a former Goldman Sachs banker who had advised Government and whose appointment caused controversy -

<http://news.bbc.co.uk/1/hi/entertainment/1552199.stm>) as Chairman of the BBC in 2001 was the first time that the public appointments regulatory regime established by the CSPL applied to the role of the Chair of the BBC. The BBC does not appear in Schedule 1 to Public Appointments Order 1995, but it does appear in the 1998 Order and in each thereafter (also see paragraph 2.11 of the 2016 Review). Sir Christopher Bland was Chair 1996-2001. Further details about the methods of appointment over time are available in House of Lords Select Committee reports -

<https://publications.parliament.uk/pa/ld200607/ldselect/ldcomuni/171/17105.htm> and see here - <https://publications.parliament.uk/pa/ld200506/ldselect/ldbbsc/50/5007.htm> including for the more elaborate process applied to the appointment of Mr Davies's successor (Lord Grade in 2004).

<sup>63</sup>Annex D to the Commissioner's Regulatory Framework

(<https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf> ) sets out a useful checklist by which Appointment Authorities might ensure Governance Code compliance.