

### **Note from BBC Trust Chairman**

In the days following the PAC hearing on BBC severance payments on 10 July 2013, the former Director-General, Mark Thompson, made a statement that the Trust was fully informed in advance, in writing as well as orally, about the proposed severance packages for Mark Byford and Sharon Baylay.

Given that this seemed at odds with the documentary evidence that the BBC had given to the NAO, I asked that the electronic records and archives across the BBC Trust and Executive from the relevant period be searched again to ascertain whether any evidence had been overlooked, and to provide as clear an account as possible of the sequence of events. This question predates my Chairmanship of the BBC Trust, and I am as dependent as the Committee on email records and other evidence from the time.

We have now produced a summary timeline (below) setting out key facts as we understand them on the closure of Mark Byford's post and his associated severance payment, with a focus on interaction between the Trust and the Executive. Some of the documents on which the summary draws did not emerge from the earlier trawl, as explained in the timeline. While I regret this – and we took early action to share them in full with the NAO as soon as this became clear – I do not think that the facts as now established contradict the conclusions in the NAO's published report that the Trust was informed of the headline costs of Mark Byford's package, was told that this would be on the basis of contractual terms but had no role in the approval process. Nor do they alter the evidence that Anthony Fry and I gave to your Committee.

It is probably impossible now to establish precisely what was said or understood on each side in conversations between Mark Thompson and Sir Michael Lyons at the time, or how various facts or comments were interpreted, beyond a common position that approval responsibility rested with the Executive Board Remuneration Committee. In any event, those members of today's Trust who were members in 2010 confirm that none of them was aware of any level of detail about Mark Byford's severance package beyond what was in the note provided by Mark Thompson on 7 October 2010, which we discussed with the Committee at its last hearing.

We hope that this note will be useful to the Committee. Given the wider interest in this topic we are also putting it in the public domain.

Lord Patten of Barnes

### MARK BYFORD'S DEPARTURE FROM THE BBC

#### Introduction

1. As set out in the BBC Charter, the respective duties of the BBC Trust and the Executive Board as regards Executive remuneration are (a) for the Trust to approve a strategy for the remuneration of Executive members of the Executive Board; and (b) for the Executive Board, through its remuneration committee, composed of Non-Executive Board members, to determine the remuneration and other benefits of individual executive members of the Board in accordance with that strategy.
2. In October 2009, following the agreement of an executive pay strategy instigated by the BBC Trust, the BBC set targets to reduce senior manager numbers by 20 per cent and the associated salary pay bill by 25 per cent. Against a baseline of August 2009 these targets were to be achieved by December 2011.
3. As part of this programme of work, the then Director-General decided to close the post of Deputy Director-General, instigating a redundancy for the post holder, Mark Byford, who had been a long-serving BBC employee, with 31 years' service at the Corporation.
4. Set out below is a summary timeline with key facts on the closure of Mark Byford's post and his associated severance payment, with a focus on the interaction between the Trust and the Executive.

#### Closing the post of Deputy Director-General

5. In July 2010, Mark Byford was made aware that the BBC might close the post of Deputy Director-General, as part of the wider programme of senior manager post closures being implemented by the Executive. The senior manager post closures were taking place to meet a target agreed with the BBC Trust to reduce the number of senior managers at the Corporation.
6. In late August it appears that Mark Thompson informed the then Chairman Sir Michael Lyons about his decision to close the post of Deputy Director-General. This took place as part of routine conversations between the two.
7. Following initial discussion about severance terms between HR Director Lucy Adams and Mark Byford, on 17 September the Director-General's office provided the Trust Unit with an options note, as the basis for discussion between Mark Thompson and Sir Michael Lyons. In this document – attached as Document A - Mark Thompson outlined a number of options for a severance package for Mark Byford, who is referred to in the note under the codename "Silver". It sets out three options: "Custom and Practice" with a potential cost of more than £2.5 million; "Minimum contractual terms", with a potential cost of more than £1 million; and "A different approach", an option that sought to reduce the overall cost through a mixture of agreeing part-time working arrangements and moving to a different post. Of these, Mark Thompson notes "A different approach" as his favoured option, sets out costs and timings in

## ANNEX B

some detail and indicates his intention to raise it with Mark Byford. This option is significantly different from the eventual package provided. This note did not emerge from the original document trawl: it never came to any Trust meeting since there is no Trust approval and so is not part of the Trust's formal record; and use of the codename "Silver" prevented any electronic search from identifying this as a reference to Mark Byford. We shared the note with the NAO as soon as it emerged.

8. The BBC has searched for but not found any subsequent documentary trail setting out engagement with Sir Michael Lyons in progress to the final package as discussed below, although there appears to have been phone contact on this subject between Mark Thompson and Sir Michael Lyons both before and after the 17 September document was sent. During this period, work appears to have continued within the Executive on developing options; these included mechanisms to extend Mark Byford's contractual benefits, specifically consideration for entering into new restrictive covenants to protect the BBC's business interests, a possible promise of future consultancy agreement and pushing back the date on which written notice would be given.
9. On 29 September Mark Thompson attended a Trust dinner, at which he informed Trustees of his intention to make the post of Deputy Director-General redundant. There is no record that severance terms were raised or discussed on that occasion. This is confirmed by Sir Michael Lyons and current Trustees then present.
10. At their meeting the following day (30 September 2010) the Trust considered and approved a recommendation from the Director-General to restructure the BBC Executive Board. The Trust's responsibilities in this regard are limited to the respective numbers of executive and non-executive directors on the board, and the paper prepared for the meeting reflected that fact. There was no discussion of severance terms at the Trust meeting that day.
11. On 6 October, Lucy Adams wrote two letters to Mark Byford setting out the terms of his redundancy, and explaining that his notice period would not be activated immediately. This correspondence formally set out the terms on which the BBC had agreed to make him redundant; it was provided to Mark Byford in advance of approval from the Executive Board Remuneration Committee and before the Director-General informed the BBC Trust about costs (see below). The correspondence stated that the BBC would not want to activate the notice period until 30 June 2011. The correspondence was not provided to, or seen by, the BBC Trust at the time.
12. On 7 October a note was provided by the Director-General to the Trustees. This note covered, among other things, the total cost and payback period for the restructuring and stated that the redundancy would take place on the basis of contractual terms. It did not refer to the intention to delay the serving of notice until 30 June 2011. Our records indicate that this note was the first time that Trustees collectively were made aware of the cost of the severance package. This document was provided to the NAO as part of their initial review, and given to the PAC in advance of the hearing on 10 July; for completeness it is attached here as "Document B".

## ANNEX B

13. On 8 October, following receipt of the note from the Director-General, the Trust Unit emailed the Director-General's private office to confirm that the note would be forwarded to the Chairman, to seek confirmation that the Executive Board Remuneration Committee was content with the payments as outlined in the note and to ask when the Executive would expect to go public with them. In response the Director-General's private office confirmed that approval was for "maximum payments"; that the individuals would be in consultation with the BBC and would only get formal and final letters confirming redundancy arrangements when served with notice, in both cases in calendar year 2011; and that it was not yet possible to say when the BBC would go public. It was noted that although the Executive Board Remuneration Committee would not meet until the following day, the chair of the Committee (Marcus Agius) was comfortable with what was proposed and had agreed to it being approved. This exchange of emails was provided to the NAO for their initial review.
14. On 10 October, the Director-General's note was provided to all Trustees by the Trust Unit, following a discussion between Sir Michael Lyons and Mark Thompson that morning reflected in a note from Sir Michael to his colleagues. Sir Michael Lyons had sought and received confirmation that the non-executive directors on the BBC Executive Board had signed up to the costs of the proposed redundancies.
15. On 11 October the Executive Board Remuneration Committee met to approve the recommendation to consult on redundancy and to agree the associated costs related to the closure of the Deputy Director-General post and post of Director, Marketing and Audiences (Sharon Baylay). The paper confirms the intention to delay the serving of notice until 30 June 2011. A copy of the Executive Board Remuneration Committee paper "Proposed changes to the Executive Board" is attached to this timeline as "Document C";
16. On 12 October the BBC announced that the post of Deputy Director-General would close, and Mark Byford would leave the BBC.
17. On 13 October the BBC announced the restructure of the BBC Executive Board, including the fact that Sharon Baylay would leave the BBC.

2 September 2013

**DOCUMENT A - Copy of "Project Silver" options note provided from the Director-General's private office to the Trust Unit on 17 September 2010****Strictly confidential****Project Silver**

## 1.) Custom and Practice

Historic custom and practice with the redundancy of senior managers has varied, but has typically included i.) notice (12 months), ii.) pay in respect of service (usually calculated at 1 month per year of service to a cap of 2 x annual pay) and frequently, though not always, iii.) pension augmentation. The [REDACTED] recently left us on terms calculated broadly in this way.

On this basis, it is possible to derive a figure for exit for Silver consistent with historic expectations (and including pension augmentation) of more than £2.5 million pounds.

## 2.) Minimum contractual terms

In fact, Silver signed a new director's contract in 2002 which limited pay in respect of service to a cap of 1 x annual pay. Moreover Silver accepts that, notwithstanding precedent, it would not be appropriate for the BBC to inject any additional funds into his already substantial pension.

However, that would still leave Silver with a minimum contractual right on redundancy to 12 months notice + 1 x annual pay in respect of service, ie a total of 2 x annual pay. That would add up to £950,000. Other contractual obligations would be likely to take even this minimum figure to a disclosed amount more than £1 million. Depending on the precise timing of his departure, the declared total (if it included some weeks/months of salary, pay in lieu of leave, &c.) could be well over a million.

Moreover it's important to add that neither Lucy nor I believe it would be possible to conclude an amicable settlement on minimum terms. Silver is currently 52, will not be able to draw his pension (under the new HMRC rules) until 55. He explored his future prospects at the BBC carefully with us just before the HMRC rules came in — so that he could assess whether he was likely to be able to stay until his 55<sup>th</sup> birthday and, although no formal or contractual undertakings were given to him, he concluded after these conversations — quite reasonably in my view — that the risk of early departure was low. He therefore elected not to resign recognising that, by staying on, he was facing a four year window during which he would not be able to take a pension. It is also worth noting that if he reaches the age of 55 as a deferred rather than current member of the Scheme he will face a much larger discount to his pension than if he had stayed (this of course is why augmentation has often entered negotiations in such cases in the past). These factors make the conversation about terms a real one.

An amicable settlement could probably be reached at around £1.3 to £1.4 million — but that would be regarded by many as an enormous figure. So the dilemma we are wrestling with is between trying to deal fairly with someone who has devoted many years of service to the BBC (and who is being realistic about pension augmentation in particular) as against numbers which — even at the contractual minimum — might cause us serious difficulty when they become public.

### 3.) A different approach

Lucy and I have explored a number of alternative options: future consultancies, contractual variations (for instance to reflect that the 2002 change to directors' contracts has not been systematically or consistently applied). None solve the central dilemma of quantum. We must proceed on the basis that the total cost of Silver's departure would be likely to be disclosable/disclosed at or soon after his departure, even if the payments fell over a number of years.

However we've come up with an alternative scheme. The dates and numbers below are approximate but indicative:

- In Jan 2011, Silver steps down from the post of DDG and from Exec Board.
- In April 2011, he moves to a new role, working four days a week on two major BBC projects (2012 Games and the W1 project, both of which he is currently heavily engaged in). At this point, his pay reduces to 3/5ths of its current level: £285,000 per year. The BBC gets four days work for three days pay to reflect his reduced responsibilities. He loses car/driver and moves from Director to Senior Manager benefits.
- In August 2012 after the conclusion of the Olympic Games (say), the BBC serves Silver 12 months notice. The BBC may not require Silver to work for any/all of this notice period.
- In August 2013, Silver leaves BBC employment. His departure is a simple retirement: no further payments to Silver or into his pension are made.

In this model, the BBC's total costs to facilitate the departure should be limited to well under £700,000 — and the BBC derives some genuine value in support of its key projects: the actual departure costs would be limited to 12 months notice at the reduced salary of £285,000. In disclosure terms, the costs can be quite legitimately spread over a number of years and will be much lower than his standard salary currently is in all the years in question (from 2011/12 onward). We can say i.) that this approach is much cheaper than redundancy would have been, ii.) that no special or unusual payments have been made, iii.) that the BBC has not topped up Silver's pension.

Why would Silver accept such an arrangement? He might accept it because it has the effect of extending his BBC employment beyond his 55<sup>th</sup> birthday. This means i.) that he can take his pension immediately, ii.) as a current member retiring at that point, he will face a discount of 6% rather than 24% of the pension if he begins to take it at 55.

It's not perfect. From Silver's point of view, it may be less attractive than a clean break from the BBC. From our point of view as well, it sends out a less clear message than a simple redundancy and departure would. It means moreover that Silver's remuneration — and

pension arrangements — will continue to be a feature of Annual Report disclosures potentially until the AR published in July 2014. Finally, it obviously transfers a higher burden to the Pension Scheme than would be the case if Silver left the Scheme at age 52.

But it offers by far the best VFM of any of the options we've looked at and, despite its drawbacks, may be the option most likely to meet the test of public acceptability.

#### 4.) Conclusions

The choices we face therefore are as follows:-

- go for a clean break, gaining all of the advantages of that but recognising that we will face a disclosure in a single year of a pay-out, probably in the £1.1 to £1.4 million range;
- opt instead for the alternative laid out above, minimise the cost of Silver's departure from the BBC but not achieve a declarative clean break for Silver or for the BBC;
- conclude that legacy commitments mean that post closure/redundancy in this case is simply too expensive and sensitive and look for other ways of reducing Exec Board numbers.

Although a case can be made for all three options, I favour the alternative route and intend to raise it as a possibility with Silver.

**DOCUMENT B - 7 October 2010 note provide to Trustees****NOTE FROM THE DIRECTOR-GENERAL TO THE CHAIRMAN OF THE TRUST**

7 OCTOBER 2010

**Purpose**

1. To provide the Trust with a greater level of detail about the restructuring proposals including:
- A Value for Money assessment, including the payback period, of the proposed executive restructuring
  - Operations Division
  - Arrangements for who will be acting Director-General when I am abroad, on leave or unavailable
  - How the critical areas of editorial standards, compliance and complaints will be given the joined up senior Executive scrutiny they deserve.
  - Implementation

**Value for Money**

1. It's probably best to analyse the value for money and the payback period for the proposed Executive Restructuring in two ways. First to examine the costs and pay-back of the redundancy and closure of the two posts (DDG and Dir MC&A) which are being eliminated altogether. Second to examine the ongoing running costs of the new seven Executive Directors compared to the old ten Executive Directors.

The Two Post Closures

2. Most of the proposed changes to the Executive do not involve restructuring costs:
- Dir North and Dir People step down from Executive Board NIL COST
  - Dir Vision transfers to a new post in BBC WW NIL COST (and opportunity to re-appoint at lower salary)
  - Non-replacement of one retiring non-executive NIL COST

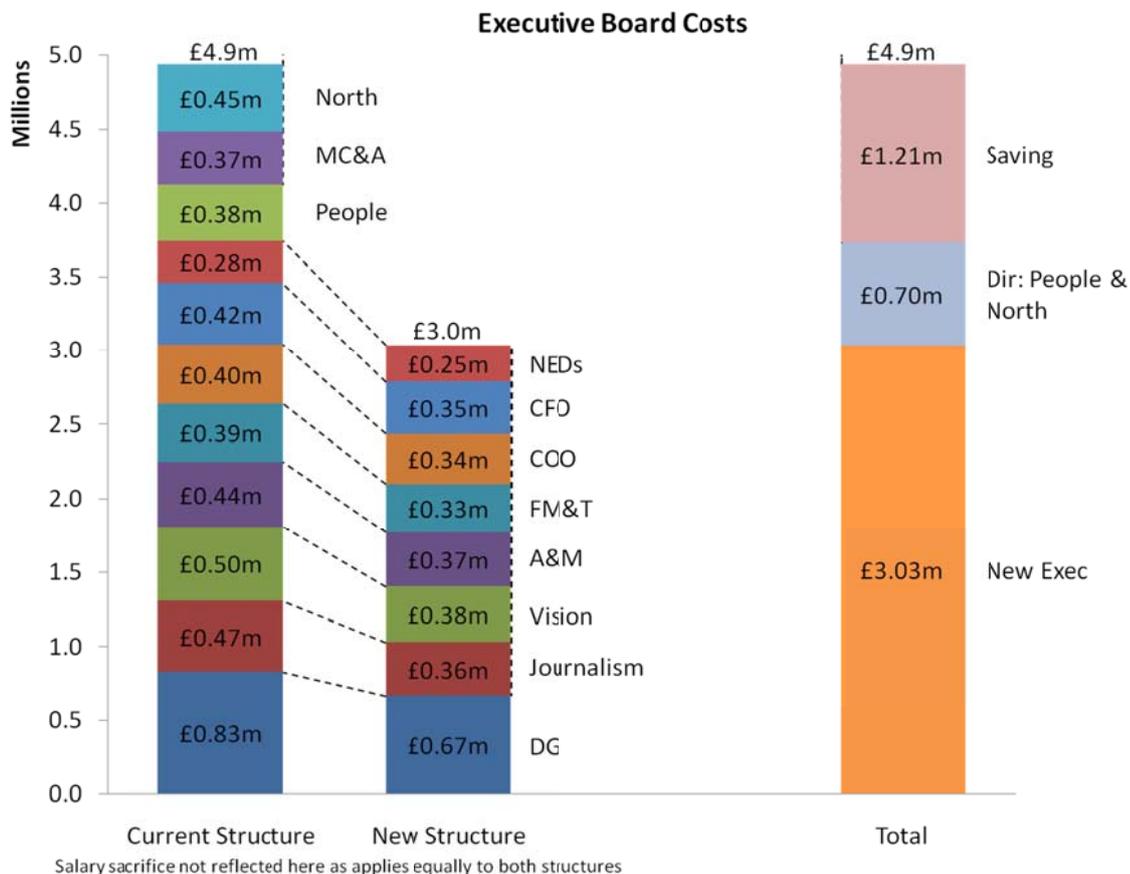
Although COO will take on additional responsibility, their remuneration will remain unchanged.

3. Restructuring costs therefore are restricted to the closure of the DDG and MC&A posts. These redundancies will take place on the basis of the terms set out in their contracts and WITHOUT any form of pension augmentation. The total cost of redundancy is £1.4 million (£1,022,077 for the DDG post and £387,500 for Director, MC&A). The post closures will pay for themselves within 16 months. If one includes all additional relevant savings (eg, DDG's car and driver, PAs and other employment and office costs etc.), the post closures will pay for themselves within 12 months. The resulting savings from restructures of the Journalism, News and MC&A Boards that are made possible by the removal of these posts are clearly far more significant.

The New Executive Board

4. We can also compare the expected net costs of the new Executive Board with the old. Assuming that the changes take place at the start of the next financial year, we can compare an estimated outturn of the employment costs of the current exec for the year 2010/11 with a projection for the new board for the year 2011/12. Expected changes include:

- Director News occupying the journalism place on the board at a lower salary than DDG
- A new Director Vision employed at a lower salary than the present one
- One fewer Non-Executive Director, and the loss of Director North, Director MC&A and Director People from the Executive Board
- The ending of pension supplements.
- The sacrifice of one month's pay will be applied equally to both years so is not reflected in the totals.



5. In summary, the two redundancies pay for themselves quickly. In addition, the restructuring of the Executive Board, together with other reforms, leads to a significantly lower run-rate of remuneration costs. The proposed actions will mean that the overall targets for senior management reductions (25% in pay-bill, just under 20% in numbers) will be exceeded at the Executive Board level and delivered well before the deadline.

#### Total Numbers of Directors

6. One final question is about the total numbers of directors. Director People and Director North are no longer members of Executive Board but remain directors of the BBC - to what extent is a reduction in numbers of directors at Executive Board level being matched by an increase in numbers of directors NOT on the Executive? Again, it's a good story. Over the past year, we have abolished the role of Director Nations & Regions, saving a post, merged the role of Director World Service with that of Director Global News, saving a second post. [REDACTED]

#### **Chief Operating Officer**

1. The new structure will see increased responsibilities for the COO. The new structure is necessary for the BBC to meet its SM reduction targets by bringing together roles with similar responsibilities which previously sat in different Divisions. So the restructured Operations Division is an opportunity to exploit synergies and find efficiencies. However, in the organisational design of this restructured Division, very careful consideration needs to be given to the workload and competencies of the COO's Direct Reports and other Divisional SMs. I propose to run a thorough assessment, which will identify optimal Divisional design, and highlight risks and mitigations. I will share my conclusions with the Trust. As with the Executive Board, these changes in Operations will come into effect in April 2011.

#### **Arrangements for Deputising and the Management of Editorial Compliance**

1. Currently the COO, as well as the DDG, deputises for me. In future, the COO would be the first choice to deputise for me, as she has successfully done in the past. However, I think there is merit in the Trust seeing the capabilities of other senior Directors on the Executive Board in this acting role. This would be a development opportunity for these individuals, and provide evidence to the Trust when it considers succession planning. So I propose that others - for instance the Director A&M and the incoming Director Vision - should also take up this role from time to time. I would mentor these directors in advance so they would be prepared.

2. Ensuring the highest editorial standards and dealing fairly with complaints are central to maintaining the high levels of audience trust in the BBC. I am determined to ensure that the DDG's departure does not diminish the Executive scrutiny of these areas. I propose to ask Mark Byford to prepare a report for me, to be delivered by the end of the calendar year, with his detailed proposals of where these critical functions are best dealt with after his departure. There is no one better placed to advise on this and to design a fail safe new system. He will then have a further 4

months to ensure smooth hand over and mentoring for the key individuals who are taking on critical new responsibilities.

## **Implementation**

1. The newspapers are already making enquiries about the proposed restructure and so delay is not a realistic option. We plan to make the announcement of the Deputy Director-General leaving the BBC on Tuesday 12th October and the announcement of the restructure of the Executive Board and the reduction of Executive Directors from ten to seven on Thursday 14th October. As part of that announcement, we will also announce that the Director MC&A will be leaving the BBC. We will be limiting the announcements to changes brought about as a direct result of the restructure of the Executive Board.

**DOCUMENT C - Executive Board Remuneration Committee Paper****REMUNERATION COMMITTEE****RC(10) 15**

Title:	<b>Proposed changes to the Executive Board</b>
Action:	<b>FOR DECISION</b>
Meeting:	<b>11 October 2010</b>

**Purpose:**

The Director-General has outlined his intention to reduce the number of senior managers within the BBC and to reduce the senior management payroll by 25% by December 2011. Critical to the delivery of these objectives is a demonstrable streamlining of the Executive Board, both to ensure Divisional Directors are provided with leadership from the top but also to enable some of the necessary organisational changes to take place through addressing the top level structure.

It is proposed that the Executive Board is reduced from 10 to 7 Executive Directors. Whilst the Director, North and Director, People will remain within the organisation, it is proposed to make the roles of Deputy Director-General (DDG) and Director, Marketing, Audiences and Communications (MC&A) redundant.

The purpose of this paper is to seek Executive Remuneration Committee approval for the Director-General to consult with the DDG and the Director MC&A on being made redundant from the BBC and to approve a maximum redundancy payment for the two roles.

**Recommendation:**

The Executive Remuneration Committee is invited to approve:

- The Director-General to consult with the DDG and the Director MC&A on being made redundant from the BBC.
- A maximum redundancy payment of £1,336,500 (£949,000 for Mark Byford, £387,500 for Sharon Baylay), excluding the balance of accrued leave at the date of exit.

	Name	Title
Author:	Lucy Adams	Director, BBC People
Sponsor:	Lucy Adams	Director, BBC People

	Date	Board or Committee
Onward approval path:	n/a	n/a

**APPROVAL PATH TO DATE**

Board or Cttee	Date	Summary of feedback on paper and resulting amendments
n/a	n/a	n/a

## PROPOSED CHANGES TO THE EXECUTIVE BOARD

### **I. Context**

The Director-General has outlined his intention to reduce the number of senior managers within the BBC and to reduce the senior management paybill by 25% by December 2011. Critical to the delivery of these objectives is a demonstrable streamlining of the Executive Board, both to ensure Divisional Directors are provided with leadership from the top but also to enable some of the necessary organisational changes to take place through addressing the top level structure.

It is proposed that the Executive Board is reduced from 10 to 7 Executive Directors. Whilst the Director, North and Director, People will remain within the organisation, it is proposed to make the roles of Deputy Director-General and Director, Marketing, Audiences and Communications redundant.

The purpose of this paper is to seek Executive Remuneration Committee approval for the Director-General to consult with the DDG and the Director MC&A on being made redundant from the BBC and to approve a maximum redundancy payment for the two roles.

#### **I.1 Deputy Director General**

Mark Byford has been with the BBC for 33 years. His salary is £474,500. It is proposed that the role of DDG be made redundant from June 30<sup>th</sup> 2011.

Should the consultation with the Director-General result in redundancy It is proposed to pay Mark Byford his contractual redundancy payment of £474,500, plus the entitlement to his year's contractual notice of £474,500, plus the balance of his accrued leave at the date of exit.

It should be noted that as a result of being made redundant and thereby becoming a deferred pensioner, he would take pension reduced by 24% should he choose to take his pension at 55.

#### **I.2 Director, MC&A**

Sharon Baylay joined the BBC in 2009. Her salary is £310,000. It is proposed that the role of Director, MC&A be made redundant from June 1<sup>st</sup> 2011.

Should the consultation with the Director-General result in redundancy it is proposed to pay Sharon Baylay her contractual redundancy payment of £51,667, plus her year's contractual notice of £310,000 and an additional month's salary to secure a compromise agreement, plus the balance of her accrued leave at the date of exit.

## **2. Costs of re-structure and payback period**

The estimated cost of redundancy for the two roles is approximately £1.35 million. Given this figure, the post closures would pay for themselves within 16 months. If one includes all additional relevant savings (e.g., DDG's car and driver, PAs and other employment and office costs etc.), the post closures would pay for themselves within 12 months. The resulting savings from re-structures of the Journalism, News and MCA Boards that are made possible by the removal of these posts are clearly far more significant.

## **3. Recommendation**

The Executive Remuneration Committee is invited to approve:

- The Director-General to consult with the DDG and the Director MC&A on being made redundant from the BBC.
- A maximum redundancy payment of £1,336,500 (£949,000 for Mark Byford, £387,500 for Sharon Baylay), excluding the balance of accrued leave at the date of exit.