

David Kaye
UN Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression

Dunja Mijatović
OSCE Representative on Freedom of the Media

15 June 2016

Re: Media Freedom in the UK

Dear Ms Mijatović and Mr Kaye

We are writing to you on behalf of ARTICLE 19 and concerned experts and academics to address attempts to undermine the independence of public service broadcasting and to ensure the independence of the press in the UK.

We strongly urge you to use your mandates to provide recommendations to the UK government on the following:

1. Threats to the independence of the BBC

On 12 May 2016, the UK Government published a White Paper on the future of the British Broadcasting Corporation (BBC), the UK public service broadcaster.¹ This document sets out the main elements of the renewal of the BBC Charter, which will define the remit and governance of the public service broadcaster for the next 11 years.

The White Paper proposes reforms to the board of the BBC. Under the new charter, the government would appoint the Chair, the Deputy Chair and 4 members of a board, of 12 to 14 members. The other members would be appointed by the BBC. Even though the White Paper pledges to strengthen the editorial independence of the BBC with specific clauses to be included in the new charter, there is real concern that the proposed composition of the board will pave the way for direct government interference in BBC editorial decision-making for the first time in its history. ARTICLE 19 has criticised this proposal and noted that previous government appointments to the BBC governing board or BBC Trust had no influence over day-to-day editorial decisions.²

The BBC has strongly resisted the introduction of direct government appointment of executive board members. The BBC claims that this would be an unacceptable interference in the internal

¹ "A BBC for the future: a broadcaster of distinction" at <http://bit.ly/1UztkGn>.

² ARTICLE 19, UK: White paper on BBC's future fails to guarantee independence of public service broadcaster, 16 May 2016, at <http://bit.ly/25LBlTP>. See also R. Greenslade, "Does the government want the BBC to be a state broadcaster?", The Guardian, 8 June 2016, at <http://www.theguardian.com/media/greenslade/2016/jun/08/does-the-government-want-the-bbc-to-be-a-state-broadcaster?>

editorial processes of the Corporation.

The Special Rapporteur recently visited Japan and has been critical of the involvement of the Japanese Diet in appointments to the board of NHK, the Japanese public service broadcaster. The OSCE Representative has constantly insisted on the need to preserve the independence of public broadcasters.³ The proposed BBC arrangements would raise such concerns. Whilst reforms to the governance arrangements of the BBC are necessary, there is no need for such a direct involvement of the government in appointments that will set the editorial direction and policy of the BBC. The BBC sets a high quality threshold for broadcasters around the world and concerns have been raised by broadcasters outside the UK that these new arrangements would set a bad example.

The proposed governance structure contravenes numerous international standards on public media governance, notably the Council of Europe Declaration of the Committee of Ministers on Public Service Media Governance (Adopted by the Committee of Ministers on 15 February 2012) which states that “Public service media need to show that their own governance systems subject any decision to proper scrutiny, while ensuring that any external oversight (by governments or independent regulators) do not undermine the organisation’s independence.”

As you are aware, under international and European standards on freedom of expression, the independence and the autonomy of public service broadcasters must be guaranteed. Members of the board of the public service broadcaster should be appointed in a manner which minimises the risk of political or commercial interference and contributes to ensuring that they serve in their individual capacity and exercise their functions at all times in the public interest. Overall, membership should represent the whole of society. There should be clear rules of incompatibility protecting the board from political and commercial influence. Further, the role of the government should consist at most of formally appointing those persons chosen through a transparent and participatory process that allows the public to have an effective voice in the selection of the governance structure of the public service broadcaster. Parliament could be responsible for appointing a part of the board on the basis of a list of candidates proposed by civil society stakeholders. In any case, all appointment processes should be transparent and open to participation from the public. The board should be responsible for electing its own chair and deputy chair.

The government has said that, following the publication of the White Paper, it will now “listen to feedback” from key groups and that there will a debate in Parliament. It will then publish a draft charter.

Hence, we believe that there is an urgent need for the independent scrutiny that your mandates can provide at this crucial time before the new BBC charter is finalised.

2. Self-regulation and threats to editorial independence of newspapers

The current situation of self-regulation of the print media in the UK combines the lack of independence of the current system, the lack of effectiveness and accountability to the public, and a high degree of uncertainty.

International human rights standards do not prescribe a specific model of press regulation, however, self-regulation in the print media is considered the least restrictive means available by

³ See e.g. "Independence of public broadcaster and broadcast regulator must be respected, says OSCE Representative following events in Croatia", 10 March 2016, <http://www.osce.org/fom/226861>.

which the press can be effectively regulated. At the same time, self-regulation must be meaningful: it must not only provide protection for members of the journalistic profession, but also hold them accountable to their profession and hold press outlets accountable to the public. The current system of self-regulation in the UK fails to ensure the accountability and responsibility of the press.

The legislative underpinning of the press regulation system in the UK, the Royal Charter on self-regulation of the press (Royal Charter), has been carefully designed in order to prevent government interference with the press.⁴ The Charter establishes a Press Recognition Panel which can give official recognition to self-regulatory bodies, and new legislation has been adopted to provide incentives to join a voluntary scheme by offering members a shield from liability.

Statutory and co-regulatory systems, as seen in other European countries and elsewhere, are compatible with European and international human rights standards provided they include strong guarantees for media freedom and the independence of regulatory bodies. This applies to the system for press self-regulation in the Royal Charter.

There are currently two self-regulatory bodies established in the UK:

- The Independent Press Standards Organisation (IPSO) of the newspaper and magazine industry is a self-regulatory body which does not want to seek recognition by the Press Recognition Panel. However, many independent academics and commentators have criticised IPSO's control by the main newspaper publishers and have suggested that it is little different from its predecessor, the Press Complaints Commission;
- Independent Monitor for the Press (IMPRESS), a new self-regulation organization, is currently seeking recognition from the Press Recognition Panel.⁵ It has signed up over 30 small publishers, but so far has little support from the mainstream media.

As part of the provisions that accompany the Royal Charter, Section 40 of the Crime and Courts Act 2013 has been passed by Parliament but the Secretary of State for Culture, Media and Sports has chosen to delay its commencement. This provision would shield press defendants from costs in legal proceedings provided that they are members of an approved self-regulatory body which provides low cost arbitration to the public. The Secretary of State has not confirmed whether he will eventually sign the law into effect. In the meantime, the process of recognition of IMPRESS is ongoing and this new provision will not be applicable until there is a recognised self-regulatory body.

In the present situation, the Secretary of State for Culture, Media and Sports has chosen to hold the legislation in abeyance by not 'commencing' it. This is, apparently, in response to private representations made by the press industry who do not want to take part in an independent and effective self-regulatory system. The Secretary of State has, at their request, delayed the implementation of such a system. He can, at any stage, "commence" the legislation. As a result, the government in the person of a single minister, has given itself the power to decide on the legal framework applicable to the press in the UK.

This means that the Government has placed itself in a position where it can exercise direct influence over the press: the commencement of Section 40 can be deployed as a threat. The system of self-regulation is, therefore, directly under the influence of a Government minister. This

⁴ H. Tomlinson QC, *The New UK Model of Press Regulation*, LSE Media Policy Brief 12, at <http://bit.ly/1ZqZnLL>; S. Barnett, *Press self-regulation in 2014: Reasons to be cheerful*, at <http://bit.ly/1UEnPck>.

⁵ W. Merricks, "Why IMPRESS is Seeking Recognition as an Independent Press Regulator", 22 May 2015, at <http://bit.ly/1PiQzml>.

is likely to seriously undermine the public's trust in the “watchdog of democracy”. Under international standards on freedom of expression, the public has a vital interest in an accountable and responsible press.

We believe that it is important that your mandates provide recommendations on how to address these issues.

Thank you for your consideration.

Yours sincerely,

Thomas Hughes, ARTICLE 19

Dr Damian Tambini, London School of Economics

Professor Eric Barendt

Professor Steve Barnett, University of Westminster

Dr Sally Broughton Micova, University of East Anglia

Dr Martin Moore, Kings College University of London

Dr Mark Thompson, University of East Anglia

Hugh Tomlinson QC, Matrix Chambers

Professor Julian Petley, Professor of Screen Media, Brunel University

Professor James Curran

Dr Justin Schlosberg, Birkbeck College, University of London

Professor Des Freedman, Goldsmiths College, University of London

Professor Natalie Fenton, Goldsmiths College, University of London

Professor Georgina Born, Senior Research Fellow, University of Oxford

Dr Andrew Scott, Department of Law, London School of Economics