



NUJ briefing: Lords debate new BBC charter October 2016

Introduction

The NUJ is the voice for journalism and for journalists across the UK and Ireland. It was founded in 1907 and has 30,000 members. The NUJ represents people working for the BBC and working at home or abroad in all sectors of the media, including staff, students and freelancers.

The Secretary of State for Culture, Media and Sport, Karen Bradley MP, presented the draft royal charter to parliament on Thursday 15 September setting out the government's plans for the corporation over the next 11 years. More than 190,000 individuals and organisations responded to the public consultation. In parliament Bradley said:

"The BBC is one of this country's greatest achievements and greatest treasures".

Despite these assertions, the NUJ believes the government's proposals will further damage our much-loved public service broadcaster. The public response to the consultation on the future of the BBC was one of the largest ever, but before it started the BBC agreed a deal to fund the licence fees of the over-75s which diminished the scale and scope of the organisation by 20 per cent, this is on top of £1.5bn cuts already implemented since 2007.

Reith's principles

The new BBC charter and framework agreement are a breach of the two fundamental, distinctive principles championed by John Reith. Without which he said he would not become director general -

- Independence from government
- Freedom from reliance on the commercial imperative

The BBC's own website states:

"Reith's vision was of an independent British broadcaster able to educate, inform and entertain the whole nation, free from political interference and commercial pressure."

In addition, the previous BBC charter included among the public purposes -

"bringing the UK to the world and the world to the UK"

The closest the new charter comes to this compares as -

"To reflect the United Kingdom, its culture and values to the world" (article 6 (6)).

The new BBC charter and framework are draft documents - the government can still change them in response to concerns and objections raised by politicians, trade unions and civic society.

The period previously given to charter renewal to allow for consultation, scrutiny and parliamentary debate has been 3 years. This time around the government is rushing through major changes over a matter of months. This speed is unacceptable and underlines the politicisation of the BBC. The pace of the process underlines that political interests are to triumph over the public and national interest.

The NUJ believes that the BBC charter and agreement (and any amendments to them) should be subject to much more debate and approval by parliament and public.

Independence

Clause 67 in the agreement, entitled 'defence and emergency arrangements', covers far more than just defence and emergency. There is no limit to the government's power of censorship (see especially clause 67 (4)). We believe that this clause enables the government to interfere with the BBC's editorial judgments and broadcasting content.

We are concerned that the new charter and framework lack the safeguards needed for the BBC's editorial freedom. There is a risk of interference by Ofcom and/or government representatives at all levels and including ministers. Article 3 (2) of the charter appears to give the government carte blanche to limit the BBC's independence, including regarding editorial matters.

Competition

Under the new charter and framework, the BBC will have to consider the positive and negative market impact of its activities. Ofcom must keep this in mind when reviewing new and changed services. The NUJ is concerned by the lack of clarity and fears that commercial broadcasters will be able to launch 'anti-competitive challenges' against the BBC including but not limited to any existing programmes, scheduling and services.

Currently the BBC commissions at least 20 per cent of national radio output from independent companies and through competitive tendering. This level has been reached over a period of 20 years. The new agreement requires the BBC to increase this to "at least 60 per cent" by the end of 2022 (Agreement, Schedule 3, clause 7 (1) (b) on p. 57). The NUJ believes that this rate of increase should not be agreed and if it is to go ahead then the rate should be significantly slower with a smaller percentage increase that is then subjected to scrutiny and review in order to prevent damage to the quality of BBC radio output and the specialist expertise of in-house BBC radio production. Such a large and rapid increase in competitive tendering is not in the best interests of quality programming or licence fee payers.

Accountability

Several aspects of the charter and agreement show contempt for licence fee payers. Licence fee payers have had no say in the licence fee settlement, and the new charter gives no reassurance that this process will improve in future. Article 43 on the funding settlement says that the government can determine the next licence fee settlement in 2022 without any public consultation.

Licence fee payers also have no say in the proposed mid-term review of the charter and agreement and there is not even a requirement on the BBC to take account of the views of the public when conducting a so-called public interest test. License fee payers get no direct say in the governance of the BBC via their elected representatives.

Equality and diversity

The NUJ has been campaigning for the new charter to enshrine equality and diversity measures to ensure the corporation reflects its audiences - both on and off screen. The union therefore welcomes the charter stating:

"The BBC must ensure it reflects the diverse communities of the whole of the United Kingdom in the content of its output, the means by which its output and services are delivered (including where its activities are carried out and by whom) and in the organisation and management of the BBC."

The NUJ agrees with the aspirations enshrined in the statement above but the union is wary of the intention to use diversity as a cover to enforce relocation on existing staff. Furthermore, there are no further details; there is no information about staff consultation, organisational equality and diversity targets or associated funding to deliver increasing and much-needed diversity across the BBC.

The NUJ has repeatedly called for annual equality and diversity targets to be set and enforced. We believe there should be legal penalties put on corporation executives who fail to reach these specific targets. The extent of equality and diversity in jobs at all levels of the BBC should also be transparent and organisations including the NUJ, BECTU, equity and the TUC should be able to access the information and monitor progress. The union also supports proportionate programming of black content, including that which is produced by black production companies, as the same has already happened for BBC regional programming. The BBC should also be accountable to black licence fee payers and the corporation should establish a black advisory body. The charter and framework are a missed opportunity to tackle inequality that is clearly found in both employment and programming.

Ofcom

Under the new charter and framework, Ofcom will be the BBC's regulator. In September 2013, the chief executive of Ofcom said the regulator should not take over governance of the BBC or act as the custodian of the licence fee. The NUJ agrees with this assertion and questions the evidence-base of the government's new policy proposal. Ofcom's enforcement and compliance powers will include considering complaints made and carrying out investigations. If Ofcom are satisfied that the BBC has failed to comply with a specified requirement, they may serve a penalty notice and require the BBC to pay Ofcom. Ofcom will be compelled to carry out and publish at least two periodic reviews including a review of the extent to which the BBC is fulfilling its mission and promoting its public purposes. Ofcom may also establish a review to address any specific issues of concern they choose to identify. The first Ofcom review is expected in time for the BBC's mid-term review.

The new framework agreement states that Ofcom is expected to publish an operating framework that establishes the relationship between the regulator and the BBC. Ofcom may also carry out a competition assessment of any proposed change to the public service aspects of the broadcaster.

When carrying out a competition assessment, Ofcom are instructed to review the procedures the BBC has followed in carrying out the public interest test, review the BBC's assessment of the public value of the proposed change and assess any adverse impact (justified or not) of the proposed change on the competition.

The new framework agreement states:

"In carrying out the competition assessment, Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition."

If Ofcom is to take up its new responsibilities as a regulator it must be radically reformed from being a light-touch regulator with a record of letting broadcasters water down their public service remit. It must also be prevented from interfering with the BBC's editorial independence.

The NUJ fears that Ofcom oversight and regulation will create far more red tape, more internal BBC bureaucracy and less public accountability. Ofcom is not accessible to the public or funded adequately to carry out this remit.

These new proposals lack safeguards. There are not sufficient measures to prevent Ofcom from interfering with the BBC's editorial independence. Clause 60 of the agreement gives Ofcom the explicit right to interfere editorially in BBC online and article 20 (8) of the charter appears to give Ofcom carte blanche to interfere:

"Where it appears to the board that there is a conflict between their obligations under this charter, the framework agreement and the operating framework with any request or decision made by Ofcom, the board must comply with the request or direction made by Ofcom."

Whereas the agreement does include a clause explicitly forbidding the NAO to "question the merits of any editorial or creative judgement made by the BBC or the relevant subsidiaries" (55 (7)) there is no such prohibition applied to Ofcom. The clauses limiting Ofcom's right to interfere (56, 59) say only that Ofcom has no jurisdiction over the BBC's obligation to observe editorial guidelines. There is a significant lack of clarity about interference on editorial matters that do not focus on whether or not editorial guidelines were observed.

There needs to be additional and specific safeguards to prevent the watering down of BBC public service commitments (such as children's programming) because in the past Ofcom has allowed other UK broadcasters to reduce their public service remits.

The proposals enable Ofcom to impose financial penalties on the BBC (Charter articles 49 (3) and (4)) and there is clearly a risk that such fines could damage services. This new regime needs to operate in a way that protects public services and licence fee payers.

It appears that, unlike the BBC Trust, Ofcom does not have the right to question the BBC's assessment of the public value of a proposed change unless it believes that the change could have an adverse impact on fair and effective competition. The NUJ believes this is too narrow – it is quite possible to imagine the BBC making proposals for change that are not in the public interest but that

do not have an adverse impact on fair and effective competition. In the past, the BBC Trust could prevent such proposals being implemented. There seems to be a lack of knowledge and understanding of previous issues and a consequential lack of oversight to prevent similar problems in future.

Expanding commercial activities

The charter clearly implies a desire to expand and enhance the BBC's commercial activities with a view to generating more and increasing profits. It is repeatedly stated in the documents that the BBC must consider the effects of its activities on the competition and must not distort the market or gain an unfair competitive advantage.

The new framework states that the BBC must not directly undertake commercial activities and the profit-driven functions must be carried out on behalf of the BBC by one or more of its commercial subsidiaries, joint venture or other forms of commercial partnerships. The framework also lists the commercial subsidiaries of the BBC including BBC Worldwide, BBC Global News, BBC Studioworks and "any new subsidiary of significant size (particularly any such subsidiary established to carry out the activity of making television programmes)".

The NUJ is concerned that these plans lay the groundwork for much further commercialisation, marketisation and privatisation of the BBC and the union reaffirms its commitment to continue to campaign against the expansion of commercial activities in public service broadcasting.

BBC Board

The board will govern the BBC and the government has announced there will be an equal number of board appointed non-executive directors alongside those picked by government. The non-executive members of the board will be the chair, the four nation members (England, Scotland, Wales and Northern Ireland) and five other members. The secretary of state intends to consult the BBC on the process for appointing the nation members. There will also be four executive directors and the total number of board members will be 14.

The government claims there will be full, fair and open competition for the post of chair of the new BBC board. In addition, the BBC will be compelled to publish the salaries of BBC employees and talent who earn more than £150,000.

The NUJ welcomes the representation from Northern Ireland and Wales but we are deeply disappointed that no staff representatives will have a place on the board. In August 2016 the NUJ welcomed the CMS parliamentary committee report calling for a staff representative on the new body to oversee the BBC. This has been a long-standing policy of the NUJ. The union believes many of the recent problems and scandals, financial and otherwise, experienced by the corporation could have been prevented if staff had been able to have a voice.

It would be better if all appointments to the new board were independent of government and the BBC, and the board should also include a staff member or staff representative. For comparison, the Channel 4 board has always had independent directors, appointed by a body that is separate from government and Channel 4.

There will be five government appointees (including the chair) and four BBC representatives. Tony Hall has said there will also be five other independently appointed non-executive directors. The charter says these will be appointed by the board itself (see section 24), and "the non-executive members of the board must, with the agreement of the secretary of state, select one of their number to serve as senior independent director" (section 21). The union believes that this is not an independent structure. Furthermore, the secretary of state has the right to appoint an acting chair of the board if the post of chair is vacant (charter article 22 (6)), and the unfettered right to determine the remuneration of all non-executive board members (articles 27 (3) and (4)).

The NUJ wants additional safeguards to ensure that members of the board are appointed on merit without political interference or cronyism. The following extract suggests that the new board will be bound to the will of Ofcom, this is likely to discourage people from applying and it is not appropriate for the regulator to be permitted to interfere with matters of governance.

"Where it appears to the board that there is a conflict between their obligations under this charter, the framework agreement and the operating framework with any request or decision made by Ofcom, the board must comply with the request or direction made by Ofcom." (Charter, article 20 (8))

Financial auditing

The National Audit Office will become the BBC's financial auditor and be able to conduct investigations including 'value-for-money' studies of the BBC's commercial subsidiaries.

The NUJ welcomes more openness and transparency within public services and welcomes scrutiny of the current profit-driven areas inside the BBC's structure. We hope that the NAO's first steps will be to help eradicate executive excess at the corporation. However, the 'value for money' test should not be applied to the creative process or to programming as this would put a downward pressure on creative innovation.

Communications with staff

The charter states that the BBC must consult BBC staff on all matters affecting the interests of the workforce, seek to consult with the appropriate organisations and reach a settlement by negotiation of staff terms and conditions. In addition these relations will also include discussions of matters of mutual interest to the BBC and staff including health, safety, welfare, equal opportunities, training and efficiency. The NUJ welcomes this provision, and calls on the BBC executive to pay more than lip service to this commitment on dialogue, communication, consultation, negotiation and settlements.

Television licences

There is a section in the new framework relating to compensation for free television licences for people over the age of 75. It states that in the financial years 2016/2017 and 2017/2018 the secretary of state must pay to the BBC out of money provided by parliament the equivalent to the total amount of money relating to the free TV licences issued and cover the administrative costs incurred by the BBC in issuing free TV licences. Thereafter the amount paid to the BBC will be less than the total amount relating to these free TV licences, and will reduce as follows: £468 million in

the financial year 2018/2019; £247 million in the financial year 2019/2020; zero from then onwards. So by the financial year 2020/2021 the full cost of free TV licences is transferred to the BBC.

The NUJ urges the government to reconsider transferring the cost of the over 75s licence fees to the BBC. This move will result in a 20 per cent cut in licence fee funding, putting much-loved programming and services at risk. Welfare reforms should not be offloaded onto the BBC, which is not an arm of the government.

The agreement (page 280) states:

"The secretary of state must pay to the BBC out of money provided by parliament sums equal to the whole of the net licence revenue or such lesser sums as the secretary of state may, with the consent of the Treasury, determine."

The quote above appears to give the government carte blanche to reduce the BBC's funding and we are asking that the government give assurances that there will be no further 'top-slicing' of the licence fee to pay for other projects.

The mid-term review specified in the new proposals will coincide with the end of the 3-year trial period for the contestable fund. If the trial is successful and the contestable fund extended, what assurance will the government give that the licence fee will not be raided to pay for it?

BBC World Service

The new framework states that the budget for the World Service must be at least £254 million for each of the financial years from 2017/18 to 2021/22. Expenditure relating to the World Service may now also be classified as Official Development Assistance and the Treasury is responsible for deciding this every financial year. The BBC will be expected to provide, when requested, information to a range of government departments including the Treasury, DfID and FCO. In addition, the BBC will have to agree with the foreign secretary on the objectives, priorities and targets for the World Service; the languages in which the World Service is provided; the start of a new service in a language not currently served or stop providing services in a particular language.

The chair of the board of the BBC and the foreign secretary will meet at least once a year to review performance and the BBC must review the World Service as a whole at least once every five years. The government's desire to have considerable control over the World Service begs the question of why they are unwilling to pay for it, as used to be the case.

BBC Monitoring Service

The new framework states that in providing Monitoring Services the BBC is to be regarded as an agent of the Crown, and to be acting in the public interest.

The current proposals (not mentioned in the new charter or framework) intend to radically restructure the BBC's Monitoring Service based at Caversham Park in Reading. The plans are set to result in the loss of one in three jobs. At the moment the Monitoring Service surveys the world's broadcast and print media, selecting and, where necessary, translating reports from 150 countries into 100 languages. The work is often invaluable for government agencies, non-governmental organisations, universities, embassies, think-tanks and international businesses.

Since 2010 the funding for the Monitoring service was transferred from the FCO, Ministry of Defence and Cabinet Office to the BBC's income generated from the licence fee.

The NUJ has called on the BBC to limit the damage caused to the service and minimise any redundancies as a result of the cuts. Once again, it would be preferable for BBC Monitoring to be funded directly by the government, as used to be the case.

Subscription Services

The new framework enables the BBC to develop, test, pilot and provide a subscription service and sponsored material with the approval of the appropriate minister. The NUJ deplores this provision, which is clearly intended to lay the basis for a future watering down or removal of licence fee funding for the BBC.

Mid-term reviews

The new charter includes a series of review mechanisms. The secretary of state may undertake a mid-term review focusing on the BBC's governance and regulatory arrangements. The secretary of state will determine the scope and terms of reference including timing and the review should follow consultation with the BBC, Ofcom, and government ministers representing Scotland, Wales and Northern Ireland. As part of the review the secretary of state will also consult the public. This review will not take place before 2022 and will be completed by 2024. The charter specifies that the review should not include the BBC's mission or public purposes, or the model of licence fee funding for the period of the charter.

This review process proposed could enshrine further instability at the corporation and may leave the BBC open to undue political influence and interference. We are concerned that the government will attempt to unpick the charter and agreement during the mid-term review. The NUJ strongly believes that there should be an explicit obligation to consult licence fee payers as part of any mid-term review.

The government should clarify whether this review is an option or an obligation. Article 57 (1) of the charter states that "the secretary of state may undertake a mid-term review" whereas article 57 (3) states that the review "must be completed by 2024".

Timescale

The government will present the charter to the Privy Council to make sure the charter is in place by the end of the year and the BBC board and Ofcom will start their governance and regulatory roles on 3 April 2017. The first funding settlement will be from 1 April 2017 to 31 March 2022 and the second funding settlement is planned to commence on 1 April 2022. The duration of the second settlement is intended to last for at least five years.

The union believes this is a rushed-through process in terms of parliamentary scrutiny and this will limit the ability to conduct an in-depth assessment of the impact of the changes. The NUJ would have preferred the details of the charter and framework to be published in the first instance and be followed by full and proper consultation with the workforce and the public.