



CPBF Briefing Notes on: *BROADCASTING. A copy of the Draft Royal Charter for the continuance of the British Broadcasting Corporation, London, DCMS, Cm 9317, September 2016.*

This brief document contextualises the Draft Royal Charter, draws attention to some of the issues it raises and puts forward alternative approaches to policy on the BBC.

Executive Summary

The core of the draft charter forces the BBC to obey the rules set by Ofcom, a regulator designed to promote commercial media.

In addition, the draft charter requires the BBC to ensure that its future development is subject to an effective veto by its commercial rivals.

This puts both the independence and the public service nature of the BBC at great risk. The draft charter needs significant amendments if the future of an Independent public service BBC is to be secured.

The Context

1. Since the 1980s communications policy as pursued by Tory and Labour governments has been designed to increase the amount of privately owned communications funded by subscription or advertising and to reduce the relative role of public service broadcasting. This is because since the 1980s policy making in this area, as in other areas such as health, transport, public services and education, has been framed by neo-liberal assumptions which assume that markets are the best way of providing services. This is clearly not the case.¹ Successive governments have increased the amount of commercial media, forced the BBC to take into account the needs of private companies when developing services, undermined ITV's role as a public service broadcaster, and set up a regulator, Ofcom, charged with promoting the development of commercial media. Whereas Labour governments took the view that within this

¹ See: Leys, Colin (2001) *Market Driven Politics. Neoliberal Democracy and the Public Interest* London: Verso; Mendoza, Kerry-Anne (2015) *Austerity. The Demolition of the Welfare State and the Rise of the Zombie Economy*, Oxford: New Internationalist Publications; O'Malley, Tom (1994) *Closedown? The BBC and Government Broadcasting Policy, 1979-92*, London: Pluto

context the BBC should remain relatively strong, the Tory government elected in 2015 has adopted a much more aggressive policy towards the BBC. Under pressure from the Tory government the BBC has been subject to cuts and encouraged to hive off most of its core production capacity to the private sector.²

2. This is the broad context in which the Draft Charter has to be seen. For the problems with the Charter to be put right communications policy has to be put on a new footing. That means supporting public service content, placing obligations on commercial providers to produce public service content, democratising and expanding the BBC and placing strict controls on the market dominance of large communications companies. In short the very premises on which policy has been formulated in the last thirty years have to be overturned and new ones based on accountability and the expansion of public service media put in place.

The Draft Charter³

3. The BBC's public purposes in relation to news are formulated in the document as: 'the BBC should provide duly accurate and impartial news, current affairs and factual programming to build people's understanding of all parts of the United Kingdom and of the wider world. Its content should be provided to the highest editorial standards'.^[6(2)] This should include an obligation to represent the widest possible range of views on matters of social and public interest, as a strict adherence to the idea of impartiality can, and does result in reporting which constructs impartiality from a very narrow range of establishment sources. Witness the recent controversy over the way the BBC has covered the leadership of Jeremy Corbyn.
4. The Draft Charter states that ' Its services should be distinctive from those provided elsewhere and should take creative risks, even if not all succeed, in order to develop fresh approaches and innovative content.' ^{[6[4]]}. 'Distinctive from those provided elsewhere ' has become code for 'not producing output which commercial should and could make'. It is designed to force the BBC to withdraw from popular programmes which the commercial sector claims is reducing its capacity to make profits. The sentence could be rephrased to read: 'Its services should be of the very highest quality across all areas of output and it should take creative risks, even if not all succeed, in order to develop fresh approaches and innovative content.'
5. A new paragraph should be inserted between paragraphs 6 and 7, in the form of a new public purpose. It should read:

2 Conlan, Tara (2015) BBC to hive off production of top shows into studios division, Guardian, 2 March. Available online at <http://www.theguardian.com/media/2015/mar/02/bbc-production-top-shows-studios-division-doctor-who>, accessed on 9 June 2015

3 *BROADCASTING. A copy of the Draft Royal Charter for the continuance of the British Broadcasting Corporation*, London, DCMS, Cm 9317, September 2016. References to the document are given as paragraphs and subparagraphs in brackets, i.e. ^[17(3)]

‘To sustain a strong and developing pool of skills and talent in the industry, by making a significant majority of its programmes in-house, and developing within the staff of the Corporation culture characterised by equality, training and innovation’

This is to reverse the trend at the moment to turn the BBC into a commissioning body rather than as major producer and trainer for the industry; and to ensure that by sustaining a strong in house production culture, innovation and creative risk taking are maintained and developed.

6. [9(1)] asserts that the BBC must act in the public interest and asserts in the next sub-paragraphs that this means:

(a) ensure that the benefits (whether direct or indirect) of decisions relating to the fulfilment of its Mission and the promotion of the Public Purposes outweighs the costs (whether direct or indirect); and

(b) in doing so, have regard to economic, social and cultural benefits and costs.

In (b) ‘economic’ should be deleted and ‘value for the licence fee payer’, as ‘economic’ in this context could be construed that the BBC’s fulfilment of the public interest is dependent on it considering the economic costs of its activities on other providers. Whilst the BBC should be aware of what else is being provided, its decisions should not be influenced by second guessing the economic impact of its activities on the commercial sector.

7. Paragraph 11 which states that the BBC must take into account the impact of its activities on competition in the market has to be deleted. This is at the core of a policy which, in effect, prioritises the needs of the commercial over those of the public sector. Unless the BBC acts unlawfully it should be allowed to plan and implement services with not particular regard to its impact on the market.

8. In paragraph 13 (1) the following appears: ‘The BBC must work collaboratively and seek to enter into partnerships with other organisations, particularly in the creative economy, where to do so would be in the public interest.’ In this sentence ‘must’ should be replaced by ‘may’. This would give the Corporation autonomy over decisions relating to which partnerships it enters into and under what terms. ‘Must’ as used implies that policy is to force the BBC to enter into agreements with commercial partners.

9. Paragraph 15 asserts that the BBC must promote technological innovation. Sub-paragraph two then states:

(2) In complying with this article, the BBC must—

(a) focus on technological innovation to support the delivery of the UK Public Services, non-service activities and the World Service;

(b) seek to work in partnership with other organisations; and

(c) share, as far as is reasonable, its research and development knowledge and technologies.

Again ‘must’ should be replaced by ‘may’ as the fall back position must be that the BBC uses work in this area primarily to develop public provision

and should not, if it deems this necessary, not be made to enter into partnerships which might undermine this end.

10. Paragraph 18(b) requires the BBC to ensure that its commercial activities do not distort the market or give it unfair competitive advantage. This should be deleted. It is a way of internalising the BBC's subordination to market imperatives. There is competition legislation which may apply here, but no special provision should be included in the Charter.
11. Paragraph 20 (4) requires the BBC Board 'The Board must consider proposals for material changes to the UK Public Services, non-service activities or trading activities, and must assess both the public value and impact on competition of such proposals.' In this sentence, 'and impact on competition' must be deleted. Again, it subordinates the activities of what should be a public service, concerned to develop rich and varied and innovative output, to the imperatives of the marketplace.
12. Similarly the wording of paragraph 20(5) should be altered. Presently it is:
'The Board must consider proposals for material changes to the commercial activities, and must assess the proposed changes in terms of their alignment with the Public Purposes, their commercial efficiency, their impact on the BBC's reputation and whether the proposed changes, as a result of their relationship with the UK Public Services, trading activities or non-service activities, distorts the market or create an unfair competitive advantage.'
In order to remove the implication that the BBC should pay particular attention to the needs of its competitors it should read:
'The Board must consider proposals for material changes to the commercial activities, and must assess the proposed changes in terms of their alignment with the Public Purposes, their commercial efficiency and their impact on the BBC's reputation.'
13. Paragraph 20(8) reads as follows:
'The Board must ensure compliance by the BBC with its obligations under this Charter, the Framework Agreement, the Operating Framework and the general law by, in particular—
(a) complying with requests made by Ofcom;
(b) complying with any decision made by Ofcom; and
(c) complying with any request made by or decision of Ofcom relating to the commercial subsidiaries including ensuring that any necessary action is taken by commercial subsidiaries controlled by the BBC to give effect to a request or decision.
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.'
Ofcom is a regulator set up to promote market forces not to sustain and develop public service independent of the demands of the market. This paragraph subordinates the BBC to Ofcom. Until Ofcom's remit is radically redrawn to include a clear obligation to prioritise the promotion of public service media, and its board is made properly representative of the constituencies of interest that constitute the UK, the paragraph should read as follows:

'The Board must ensure compliance by the BBC with its obligations under this Charter, the Framework Agreement, the Operating Framework and the general law.'

If this is left in then the BBC's future as a public service broadcaster acting independently of market forces is undermined. The door is opened to the idea, promoted by the neo-liberal *Committee on the Financing of the BBC* (1986), for the BBC to be reduced to a kind of Public Service Broadcasting Council, producing, under pressure from Ofcom, output which the market will not or cannot produce. This would institute a system whereby only those who can pay for high quality programming via subscription will gain regular access to it.⁴ Paragraphs 44-51 should be deleted from the document until the changes to Ofcom recommended here are implemented and the powers to regulate the activities of the BBC should be vested in a properly elected and constituted BBC Board, as of and until a satisfactory solution can be arrived at for the proper, non commercial, external supervision of the Corporation.

14. Paragraphs 21-24, 27-28 must be reformulated. Firstly all appointments to the Board must be subject to a system whereby organisations and constituencies of interest register as 'electors'. People will then put themselves forward for appointment, stating their qualifications. They should then be subject to public scrutiny by an independently appointed 'Electoral Board', with public hearings. Following that the 'electors' will then vote on who should be appointed. Board membership should be for periods of 3 years only and replacement of members should be staggered. A similar process should be used to appoint the members representing the Nations. As it stands the proposals in the Draft Charter are a recipe for keeping control over appointments in the hands of a small group of powerful individuals.
15. Paragraph 35(1) (b) says the BBC must 'seek to consult with any appropriate organisation with a view to maintaining or (as the case may be) establishing and maintaining adequate arrangements of the kind mentioned in paragraph (2).' Insert, 'in particular recognised trade unions' between 'organisation' and 'with'. This is to make sure that the Corporation pays particular attention to the views of staff as represented by their unions.
16. Paragraph 37(2) (j) states:
 - (ii) the names of all senior executives of the BBC paid more than £150,000 from licence fee revenue in that financial year; and
 - (iii) the names of all other staff of the BBC paid more than £150,000 from licence fee revenue in that financial year set out in pay bands'Given the government's commitment to competition this requirement seems odd. If the BBC is to compete fairly with its rivals, then why should it be required to publicise details which may give them competitive advantage? More importantly, if this rule were applied to all senior public service appointments and to the salaries of all senior members of companies who contract with government or local authorities, there might be some justification. As it stands this is a petty and unfair requirement, designed to weaken the BBC's ability to attract and retain star presenters and performers.

4 O'Malley, op.cit:113-114.

17.Paragraph 59 (6) and (7) state:

‘(6) A draft of the proposed charter and framework agreement must have been laid before Parliament and debated by each House.

(7) A draft of the proposed charter and framework agreement must have been laid before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly and debated by each of those assemblies if the assembly deems it appropriate.’

In order to ensure that the procedure for renewing the Charter is properly democratic then they should read as follows:

‘(6) A draft of the proposed charter and framework agreement must have been laid before Parliament, debated and approved by a majority vote in each House.

(7)A draft of the proposed charter and framework agreement must have been laid before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly and debated and approved by a majority vote by each of those assemblies.’