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**David Kaye**

*UN Special Rapporteur on Freedom of Opinion and Expression*

**Dunja Mijatovic**

*OSCE Representative on the Freedom of the Media*

**Via email only**

*Dear David and Dunja*

November 2016

Thank you for your recent letter raising some of your concerns around media issues in the UK. As I am sure you are aware the UK highly values the work you both do, so I greatly appreciate you sharing your expert views with me. As you know the UK has a long heritage of media freedom and this is something we have fiercely defended at home over generations and continue to advocate for internationally. I have set out below a detailed response to the two issues you raise and hope this will be helpful to you.

**BBC Governance**

The BBC Charter review process has been an extensive process of consultation and evidence gathering. Over the last two years the government has listened very carefully to the views of industry and the public, including reading more than 190,000 consultation responses and commissioning an independent review of the BBC's governance and regulation by Sir David Clementi. The draft Charter has also been debated by the devolved legislatures in Wales, Scotland and Northern Ireland as well as both Houses of Parliament in Westminster, with additional scrutiny through an inquiry on the Charter review process by Parliament's Culture, Media and Sport Select Committee.

The government agrees that the independence of the BBC is absolutely central to its mission and has been a reason for its success both in the UK and around the world. Since setting out our policy proposals in a White Paper in May, we have had collaborative discussions and negotiations with the BBC, and the Charter and Framework Agreement (updated drafts were published by government on 1<sup>st</sup> November 2016) go further in a number of important areas, including governance and independence. The Charter confirms



that the new unitary BBC Board will have 14 members, with the majority being appointed by the BBC for the first time. The government will now appoint five, not six non-executive members to the Board (the Chair and four members for each of the UK nations) and the BBC will also appoint five non-executive members, as well as four executive members. In place of a Deputy Chair, the non-executive members of the Board will select one of their number to serve as Senior Independent Director. Whether appointed through a Public Appointments process or by the BBC, all appointments will follow a robust and transparent process.

The BBC should always have the editorial and operational independence to decide how best to serve its audiences and the Charter will enshrine the editorial independence of the BBC. It will be a duty of each and every board member to uphold and protect this independence, including by acting in the public interest, exercising independent judgment and neither seeking nor taking instructions from Government Ministers or any other person. While the Board will collectively have responsibility for all that the BBC does, it is important to distinguish between the role of the executive and non-executive members particularly in relation to editorial matters. The Board as a whole will have responsibility for setting the overall editorial direction and the framework for editorial standards, but the Charter sets out that Director-General will remain the editor-in-chief and chief executive of the BBC. This means that the Director General, acting independently of the Board, will have final responsibility and be accountable to the Board for individual decisions on the BBC's editorial matters and creative output. As is currently the case, the government will have no role in the appointment of executive members of the BBC Board.

We believe we now have a Charter and Agreement that goes further than ever before in protecting the fundamental principle of BBC independence. The new Charter will support a BBC that continues to make world-class content that UK audiences love; that remains an impartial provider of high quality news; that enables the rest of the UK creative sector and is more transparent, accountable and independent.

I hope this information will allay your concerns and demonstrate the government's commitment to strengthening the independence of the BBC.

### **Press self-regulation**

The UK is a world leader in journalism, and we have the longest history of having a free press, which has been jealously guarded by civil society, Parliament and Government for centuries. No action taken with regard to press self-regulation is taken lightly. We have introduced a new system of independent press self-regulation that protects press freedom whilst offering real redress when mistakes are made.

In 2011, evidence of widespread phone-hacking came to light. It was clear that the systemic and widespread breakdown of ethics was of such a scale in some sections of the press that it had to be addressed.

In response the government appointed a senior judge, Lord Justice Leveson, to lead a thorough public inquiry into the culture, practices and ethics of the press. After an exhaustive inquiry, taking evidence from hundreds of witnesses and written submissions, Lord Justice Leveson published his extensive report in four parts (available at <https://www.gov.uk/government/publications/leveson-inquiry-report-into-the-culture-practices-and-ethics-of-the-press>). I would encourage you to read it in entirety, as many of the concerns you raise in your letter are addressed in the report, as are the concerns of victims of the press.

Lord Justice Leveson was acutely aware of the vital need for a free press in a democratic and open society. It was from Lord Justice Leveson's recommendations that the current press self-regulatory regime was drawn. The government has set up the independent Press Recognition Panel to recognise press self-regulators that meet specific criteria set out in a royal charter. This includes providing a route for low cost arbitration rather than costly civil action. We must be clear the UK continues to have the freest press in the world, and continues to be self-regulated under this system.

You mentioned two specific measures with regards to the new system of press self-regulation. Costs provisions (section 40 of the Crime and Courts Act 2013) are not commenced and we are currently considering the implementation of this legislation through an open consultation. We would welcome any views or evidence you would like to submit as part of this process. The consultation runs until 10 January 2017 and can be found here: <https://www.gov.uk/government/consultations/consultation-on-the-leveson-inquiry-and-its-implementation>

Exemplary damages can be issued against relevant publishers outside a recognised self-regulator in civil cases of libel, slander, breach of confidence, misuse of private information, malicious falsehood and harassment. They allow higher damages to be awarded against defendants who have shown "a deliberate or reckless disregard of an outrageous nature" for a claimant's rights.

The exemplary damages and costs provisions will still be at the discretion of the court. The UK has one of the most respected legal systems in the world and we are confident judges would only exercise such measures if it was in the interest of justice to do so.

I hope this allays your concerns on these two issues. Please do not hesitate to contact me again if you have any further concerns as the UK is always keen to help both of you and your offices at any opportunity.

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**The Rt Hon Karen Bradley MP**  
**Secretary of State for Culture, Media and Sport**

