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CABINET

BROADCASTING: INDEPENDENT OVERSIGHT OF PROGRAMME STANDARDS

Memorandum by the Secretary of State for the Home Department

The purpose of this paper is to consider the proposal that the Broadcasting Complaints Commission (BCC) should be replaced or strengthened in our Broadcasting Bill and given new responsibilities in relation to programme standards on radio and television. This would provide some response to public concern about taste and decency generally, including the portrayal of violence. The proposal would, if acceptable, need further work, but for obvious reasons an urgent decision of principle is required.

BACKGROUND

2. At present the BCC's remit is confined to adjudication upon complaints, brought by the injured party, of unjust or unfair treatment or invasion of privacy. The Annex gives a brief account of the history of the idea that the BCC should also consider and comment on the broad issue of programme standards, whether in individual programmes or generally. In brief the idea was considered, but rejected by the Annan Committee (1977); adopted by the last Labour Government in its 1978 White Paper; but again rejected by the present Government in drawing up the Broadcasting Bill 1980 which led to the establishment of the BCC as now constituted.

CURRENT PROPOSAL

3. The BCC has worked well since its inception in 1981, though its task is relatively narrow. It would be possible to strengthen the membership of the BCC (or to replace it with a new body) to discharge in addition a wider task of keeping under review programme standards on taste, decency and portrayal of violence and the way broadcasters respond to complaints about them. It might publicise its views and comments as occasion demanded, and in any event be required to make an annual report. It would not be given formal power to overrule the decisions of the broadcasters.

ARGUMENTS FOR WIDENING THE BCC'S ROLE

4. The advantage of the approach proposed above is that it would provide a mechanism to deal with the evident and recurrent public concern about broadcasting standards. Without disturbing the necessary constitutional independence of the broadcasters, it would provide a body to which the

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public could turn, which would articulate, on a continuing basis, an independent judgment on these matters, a judgment independent both of the broadcasters and of Government. As such it could certainly do something to channel public anxiety, and encourage the broadcasters to observe the standards expected of them.

ARGUMENTS AGAINST THE PROPOSAL

5. On the other hand it will be argued, as was accepted by the Annan Committee, that this wider role for the BCC would undermine the authority of the broadcasting organisations, perhaps diminish their own sense of responsibility, and lead to an unhelpful confusion of roles. The arrangement proposed might be welcomed by some at first, but could well be followed by disappointment and demands for the BCC to be given "teeth". But if the BCC were given formal powers over the broadcasters the position of the latter as trustees for the public interest would be hopelessly compromised.

FINANCE AND EUROPEAN COMMUNITY IMPLICATIONS

6. The BCC, which at present costs about £0.25 million per annum, is financed by contributions from the broadcasters. It is envisaged that an enlarged role, which might double its costs, would be funded in the same way. It would not be easy to assess the value for money obtained by this additional expenditure. There are no European Community implications.

CONCLUSION

7. The idea of strengthening the BCC and widening its remit has attractive features and might be welcomed by responsible opinion. There are pitfalls which need to be examined and refined further before legislation is prepared. I seek my colleagues' agreement to my setting in hand work for this purpose. In the meantime our public posture should recall what we have done, in particular through the establishment of the BCC in 1980; acknowledge that its remit is relatively narrow; say that we see advantage in giving it, or some replacement body, a wider role to monitor programme standards generally on the lines set out above; and that we will work out a specific proposal for approval by Parliament.

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ANNEX

WIDENING THE ROLE OF THE BCC: BACKGROUND

1. Under the Broadcasting Act 1981 the Broadcasting Complaints Commission (BCC) is established to adjudicate upon complaints, brought by the injured party, of unjust or unfair treatment or invasion of privacy. It must make its findings known, and may give directions to the broadcaster concerned to ensure that these are adequately publicised.

2. The BCC was originally proposed by the Annan Committee (Report 1977 Cmnd 6753). The Annan Report made several relevant proposals:

(i) That there should be a Public Enquiry Board for Broadcasting which would have public meetings every seven years to review programme standards. This somewhat cumbersome arrangement has not been implemented, partly on the grounds that ad hoc committees could better meet the need.

(ii) That senior programme makers and members of the broadcasting authorities should meet periodically with members of the public to be exposed to their views. This has been implemented and over 100 public meetings have been held by the IBA and BBC since 1977.

(iii) That there should be an independent Commission (to replace the internal bodies established by the BBC and IBA respectively) to consider complaints of unjust or unfair treatment or of invasion of privacy. This became the BCC.

(iv) That this Commission should not deal also with complaints from the general public about taste, content or standards of individual programmes or programmes in general. It took the view that 'complaints about the programmes, general or individual, are matters for the authorities'.

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3. The White Paper produced by the last Labour Government in 1978 ('Broadcasting' Cmnd 7294) accepted Annan's proposal for an independent Commission to look at complaints of unfair treatment and invasions of privacy. The Commission it envisaged would however have gone beyond Annan by also considering and commenting on 'issues arising from complaints of a more general nature relating to programme standards and on the broadcasting authorities' response to such complaints'. It envisaged that the Commission's role would be to comment on general issues and trends - for example, in its Annual Report - rather than concern itself with particular complaints and particular programmes (save, of course, in respect of complaints of unfairness and privacy).

4. When the present Government drew up its Broadcasting Bill (1980) it deliberately rejected this wider role for the BCC; and accordingly the legislation restricted it to adjudicating on complaints concerning unfairness and invasions of privacy. The Government at that time accepted the view that a wider remit would lead to a confusion of role and compromise the position of the broadcasting authorities whose primary responsibility it is to maintain programme standards.

5. Since then the Government's response to proposals that the BCC should be given a wider role has been to emphasise that the broadcasting authorities are appointed precisely to act as trustees in the public interest over matters of programme standards, and that another body would displace or duplicate their role.

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public hearings in connection with any significant changes which it is minded to make to the franchise areas. In considering such changes the Authority will also be required to pay special attention to links of community interest. The precise procedures for public hearings will need further consideration and consultation, but it will be the intention to keep them as simple as possible.

Broadcasting Complaints Commission

77. The Annan Committee considered that the present arrangements for dealing with complaints, the BBC's Programme Complaints Commission and the IBA's Complaints Review Board, do not command public confidence, though they made it clear that they were not suggesting that the existing complaints bodies were other than scrupulous, judicious and impartial in reaching their decisions. The Government agrees and welcomes the Annan Committee's recommendation that an independent Broadcasting Complaints Commission should be established to consider complaints against all the broadcasting authorities of misrepresentation or unjust or unfair treatment in broadcast programmes and that the Commission should also consider complaints about invasion of privacy during the preparation of programmes. The recommendation commands widespread support, and provision for the establishment of such a Commission will be included in the Government's forthcoming legislation. The Government has it in mind, however, to enlarge in some respects the functions envisaged by the Annan Committee for the proposed Commission.

Complaints of misrepresentation and unjust or unfair treatment

78. As regards the Commission's quasi-judicial functions in relation to complaints of misrepresentation, unjust or unfair treatment or invasion of privacy, it will be for the Commission itself to decide whether a particular programme constituted misrepresentation or unjust or unfair treatment within its terms of reference, but it is envisaged that the interpretation should not be narrowly or legalistically confined to cases of misrepresenting the words or deeds of a particular individual or company and should be extended to cover programmes which, taken as a whole, grossly misrepresent or traduce people's actions and motives. The Commission will consider such complaints only if they have been first put to the appropriate broadcasting authority and the complainant is dissatisfied with the authority's response. The Commission will therefore send any complaint of this kind which it receives direct from the complainant, to the authority concerned, and it will receive a report from the authority on the action taken. If the complainant is dissatisfied with the reply he has received from the authority, the Commission will proceed to consider the complaint. The Commission's adjudication will be published and it will be able, where it judges this to be appropriate, to require the broadcasting authority concerned to publish and/or broadcast that adjudication. The Commission will have discretion to refuse to consider a complaint of this kind if it considers it to be frivolous or malicious.

The legal waiver

79. Under the existing arrangements for dealing with complaints a person who wishes his complaint to be considered by the BBC's Programme Complaints

Commission is required, and a person who wishes to have his complaint considered by the IBA's Complaints Review Board may be asked, to waive his right to institute legal proceedings in connection with the complaint. The Annan Committee considered that the waiver was an unjustifiable interference with individual rights, but suggested only that the question of the waiver should be looked at closely before the Broadcasting Complaints Commission was established. On the question of the legal waiver required in certain circumstances by the Press Council some members of the Royal Commission on the Press* were firmly of the view that, although it might be reasonable for the consideration of a complaint to be postponed until after pending legal proceedings had been concluded, the waiver was not justified and should be done away with. Other members believed that, although the objections in principle to the waiver were strong and the theoretical arguments in its favour unconvincing, there was a practical argument for the waiver in that its abolition might cause some editors to refuse to co-operate with the Press Council on some complaints. The Press Council's waiver was also discussed in the Report of the Younger Committee on Privacy†: they concluded that, although the waiver might seem obnoxious, it was an unavoidable feature of the Press Council's complaints system. They noted, moreover, that it was a common feature of binding arbitration proceedings.

80. The arguments for and against the legal waiver are finely balanced. On the one hand it can be said that the right to have a complaint considered by an independent Broadcasting Complaints Commission established by law should be regarded as an alternative, rather than an addition, to the ordinary legal remedies, particularly since an adjudication by the Commission will be published and, in some cases, broadcast. And it can be argued that a complainant should not be able to use a favourable adjudication, or information which he might not otherwise have obtained, as a basis for legal proceedings against the relevant authority or the persons who made the programme in question, especially since this could affect their willingness to co-operate fully with the Commission. On the other hand it can be said that the proposed complaints procedure is designed to give the public a new and important right to an independent investigation, and that there is no reason why the broadcasting authorities, as public bodies, should seek the protection of a waiver, thus denying individuals the right to take legal proceedings. It is perhaps less clear that there should be no protection for the individual programme maker. Before reaching a final conclusion on the question of the waiver the Government will wish to consider comments on these paragraphs of this White Paper.

Other matters within the Commission's remit

81. The handling of complaints of a more general nature about programmes (concerning, for instance, the excessive portrayal of violence, failure to observe the requirement of due impartiality in the treatment of controversial matters, or an alleged breach of a code of conduct promulgated by a broadcasting authority) raises rather different issues from those relating to complaints of misrepresentation or unjust or unfair treatment. The Annan Committee considered that complaints relating to the taste, content or standard of individual

*Final Report of the Royal Commission on the Press, Cmnd 6810 (July 1977).

†Cmnd 5012 (July 1972).

programmes or of programmes in general were properly matters for the broadcasting authorities, and the Committee made various proposals (eg for public hearings) designed to ensure that the authorities were more open to such complaints than they had been in the past. In Chapter 10 the Government comments on the obligations of the broadcasting authorities in relation to programme standards, for example, as respects the portrayal of violence and due impartiality. Complaints of this kind amount to many thousands over a year: they can range from the expression of an individual and highly personal view to the expression of views which seem to command widespread public support. Moreover the existence of an independent Broadcasting Complaints Commission may be expected to encourage the public to direct complaints of these more general kinds to it. No single organisation could respond quickly to complaints of this kind without a large and expensive staff to monitor programmes and deal with correspondence. Moreover, if the Commission were to attempt to substitute its judgment for that of the broadcasting authorities as regards the taste, content or standards of individual programmes, it would come close to assuming part—probably an increasing part—of their responsibilities for the day to day conduct of broadcasting. On the other hand, the Government believes that there is public concern about some general issues, to which the broadcasting authorities have not always responded adequately. It considers therefore that there would be merit in giving the Broadcasting Complaints Commission, in addition to its responsibilities for adjudicating on individual complaints of misrepresentation or unfair treatment, some responsibility for reviewing, and commenting from time to time, on the nature of, and trends revealed in, the other complaints it will undoubtedly receive about failure to observe acceptable standards by the broadcasting authorities. However, the Commission's role here will be to comment on general issues and general trends rather than concern itself with particular complaints and particular programmes.

82. The Government therefore proposes that the Commission should be able to consider, and comment in its annual report, on issues arising from complaints of a more general nature relating to programme standards, and on the broadcasting authorities' response to such complaints. Where such complaints are received direct by the Commission it will therefore pass them to the appropriate broadcasting authority, which will reply direct to the complainant, sending a copy of its reply to the Commission.

83. The Broadcasting Complaints Commission will consist of a chairman, and perhaps four to eight members in the first instance, who will be appointed by the Home Secretary. It will employ such staff as are necessary. The Commission will be financed from contributions from the BBC, the IBA and the OBA, and it will decide, subject to the approval of the Home Secretary, what procedures to adopt for the purpose of carrying out its functions. The aim must be to ensure that these procedures are kept as simple and informal as possible. The Commission will be required to publish an annual report giving an account of the complaints of misrepresentation and unfair treatment it has received over the year and of the adjudications it has made on them; the report will also contain a review of the more general complaints received during the year and the issues these raise. The Commission's report will be laid before Parliament. The Government also proposes to require the broadcasting

authorities to publish in their annual reports information about the volume and nature of the complaints they have received during the year and about the action they have taken in consequence. Parliament and the public will be able to judge from the authorities' and the Commission's annual reports how far the authorities' obligations in relation to programme standards have been fulfilled.

Annual Reports

84. It is central to the accountability of the broadcasting authorities that they should produce annual reports for presentation by the Home Secretary to Parliament. Information about the volume and the nature of complaints about broadcast programmes and any action taken in consequence is one of the items which the Government considers should be included in these reports, but there are others which will be common to all broadcasting authorities. These are dealt with in the appropriate places in Part II of the White Paper and are summarised in paragraph 98. It is the intention that all the reports should be available at much the same time, that is, as soon as possible after the end of the financial year, on 31 March.

Statutory codification of the constitutional arrangements common to all broadcasting authorities

85. A number of the basic constitutional arrangements which govern broadcasting in this country are the same for the BBC and the IBA and will also apply to the OBA. These are discussed in Chapters 9 and 10. Moreover, several of the proposals in this chapter, for example that the authorities should conduct public hearings to ascertain the views of the public on the services for which they are responsible, will be applicable in the case of all three authorities. The Government considers that Parliament should have the opportunity when the forthcoming broadcasting legislation is debated to consider and approve these common constitutional arrangements for all three broadcasting authorities at the same time. This presents no difficulty in relation to the IBA which is, and the OBA which will be, bodies created and regulated by statute. The constitutional arrangements for the BBC, however, are set out in the Corporation's Royal Charter, and also in its Licence and Agreement and related prescribing memoranda. It is customary for a draft of the Royal Charter for which the Government intends to apply to be presented to Parliament, but the Charter itself is not subject to any formal Parliamentary procedure. The Licence and Agreement requires the approval of the House of Commons, not however because of the important constitutional arrangements which it contains, but because it makes provision for the grant-in-aid for the BBC's External Services and is therefore a contract which is not binding unless approved by a Resolution of the House of Commons (Standing Order No 96).

86. As indicated in Chapter 5, the Government considers that the BBC should continue to be a Royal Charter body. It believes, however, that the constitutional arrangements which are common to all three broadcasting authorities should be dealt with by statute. The forthcoming broadcasting legislation will therefore contain provisions which will be common to the BBC, the IBA and the OBA on the following matters: