



Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania and Turkey in the years 2018-2019

Country report: United Kingdom

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Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania and Turkey in the years 2018-2019

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1. About the project

1.1. Overview of the Project

The Media Pluralism Monitor (MPM) is a research tool designed to identify potential risks to media pluralism in the Member States and Candidate Countries of the European Union, and considering both online and offline news environments. This narrative report has been produced within the framework of the implementation of the MPM carried out in 2019, under a project financed by a preparatory action of the European Parliament. The implementation was conducted in 28 EU Member States, Albania and Turkey with the support of a grant awarded by the European Union to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.

1.2. Methodological note

The CMPF partners with experienced, independent national researchers to carry out the data collection and to author the narrative reports, except in the case of Italy where data collection was carried out centrally by the CMPF team. The research is based on a standardised questionnaire and apposite guidelines that were developed by the CMPF.

In United Kingdom the CMPF partnered with Rachael Craufurd Smith (Edinburgh Law School), who conducted the data collection, scored and commented the variables in the questionnaire and interviewed relevant experts. The report was reviewed by CMPF staff. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly evaluative questions (see Annex II for the list of experts).

Risks to media pluralism are examined in four main thematic areas, which are considered to capture the main areas of risk for media pluralism and media freedom: Basic Protection, Market Plurality, Political Independence and Social Inclusiveness. The results are based on the assessment of a number of indicators for each thematic area (see Table 1 below).

| Basic Protection | Market Plurality | Political Independence | Social Inclusiveness |
|---|--|---|--|
| Protection of freedom of expression | Transparency of media ownership | Political independence of media | Access to media for minorities |
| Protection of right to information | News media concentration | Editorial autonomy | Access to media for local/regional communities and for community media |
| Journalistic profession, standards and protection | Online platforms concentration and competition enforcement | Audiovisual media, online platforms and elections | Access to media for people with disabilities |
| Independence and effectiveness of the media authority | Media viability | State regulation of resources and support to media sector | Access to media for women |
| Universal reach of traditional media and access to the Internet | Commercial & owner influence over editorial content | Independence of PSM governance and funding | Media literacy |

Table 1: Areas and Indicators of the Media Pluralism Monitor

The Monitor does not consider the digital dimension to be an isolated area but rather as intertwined with traditional media and existing principles of media pluralism and freedom of expression. Nevertheless, the Monitor allows for an extraction of a digital-specific risk score and the report contains a specific analysis of risks related to the digital news environment.

The results for each domain and indicator are presented on a scale from 0 to 100%. Scores between 0 and 33% are considered low risk, 34 to 66% are medium risk, while those between 67 and 100% are high risk.

On the level of indicators, scores of 0 were rated 3% and scores of 100 were rated 97% by default, to avoid an assessment of total absence or certainty of risk.

Disclaimer: The content of the report does not necessarily reflect the views of the CMPF or the EC, but represents the views of the national country team that carried out the data collection and authored the report. Due to updates and refinements in the questionnaire, the MPM2020 scores may not be fully comparable with MPM2017 ones. For more details, see the CMPF report on MPM2020, soon available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

2. Introduction

The United Kingdom ('UK') of Great Britain and Northern Ireland covers an area of 248,531.52 square kilometres with an estimated population of 66.4 million. Population growth is slowing, with net international migration now a bigger driver of growth than births and deaths. The official language is English, with Scots, Scottish Gaelic, Welsh, Ulster Scots and Irish all recognised regional languages. The revived Cornish is a recognised minority language. Significant populations have as their main language Punjabi, Urdu, Bengali, Gujarati, Arabic and a range of European, notably Polish, and Chinese languages. Despite considerable social and cultural diversity, particularly in major cities, 86% of the resident population in England and Wales in the 2011 census identified their ethnic group as 'White' (Office for National Statistics).

GDP growth declined from 1.3% in 2017-2018 to 1.1% in 2018-2019, with a degree of economic volatility caused by Brexit. The 12 month inflation rate also dipped to 1.4% in December 2019, with UK wages growing at a faster rate than inflation over the period (Office for National Statistics).

The UK is a constitutional monarchy with a bi-cameral parliament. Significant powers are devolved to the nations - Northern Ireland, Scotland and Wales - with the Westminster Parliament retaining powers in key areas including broadcasting, telecommunications, competition and intellectual property. The UK does not have a codified constitution or charter of rights but is a signatory to both the International Covenant on Civil and Political Rights and the European Convention on Human Rights (ECHR). The Human Rights Act 1998 (HRA) incorporated key ECHR rights, including Article 10 on freedom of expression, into domestic law. In line with the principle of Parliamentary sovereignty, the Westminster Parliament can legislate expressly contrary to these rights, though this would bring continued adherence to the ECHR into question.

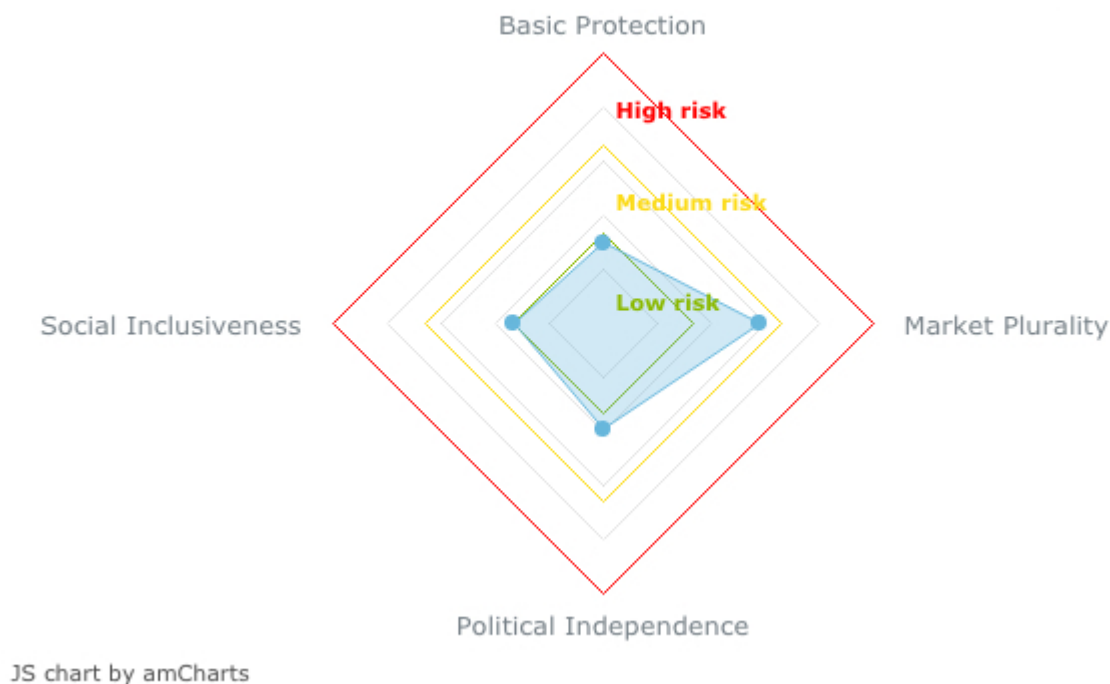
Politically, the period was dominated by Brexit and the inability of a Conservative minority government to obtain parliamentary agreement for its withdrawal terms. The situation was transformed by the December 2019 general election in which the Conservative Party gained an 80-seat majority, enabling the UK to ratify a revised EU withdrawal agreement and leave the EU in February 2020. In the election, the main party of the left, the Labour Party, lost 60 seats, while the pro-EU Liberal Democrats gained votes but only one seat. The Scottish National Party ('SNP') dominated results in Scotland but the Prime Minister has rejected a further Scottish independence referendum.

Technological change continued to influence the UK's vibrant and diverse media sector. Broadcast television still accounted for the majority of video watching and public service provision remained popular but an increasing share of viewing went to on-demand services such as Netflix and Youtube (OFCOM, 2019d). The print sector continued to struggle to find viable funding models, explored in the 2019 Cairncross Review (Cairncross, 2019). The Government's decision not to implement the cost provisions in the Crime and Courts Act 2013 or proceed with Part 2 of the Leveson Inquiry into press/police relations was broadly welcomed by the press but challenged by press victims (Agerholm, 2018). Though Brexit acted to deter major regulatory change, both OFCOM and the House of Lords Communications Select Committee (HLCD) explored the future of public service media (OFCOM, 2019f; HLCD, 2019). Stimulated in part by concerns over political disinformation, the government published an ambitious Online Harms White Paper proposing the imposition of a duty of care on providers of online sites regarding user-generated content (UK Government, 2019).

As the MPM2020 implementation covers the years 2018 and 2019, the United Kingdom is still analysed as being part of the European Union. The UK left the European Union in January, 2020.

3. Results from the data collection: assessment of the risks to media pluralism

United Kingdom: Media Pluralism Risk Areas



This section explains the risk levels associated with the four key areas studied: Basic protection, Market plurality, Social inclusiveness, and Political independence. The overall risk levels should be treated with a degree of caution, in that the broadcast, print, and online sectors in the UK are subject to very different regulatory regimes, so that aggregated scores can mask significant concerns in specific areas. The scores should thus be read with reference to the narrative section below, which seeks to highlight those areas most in need of review.

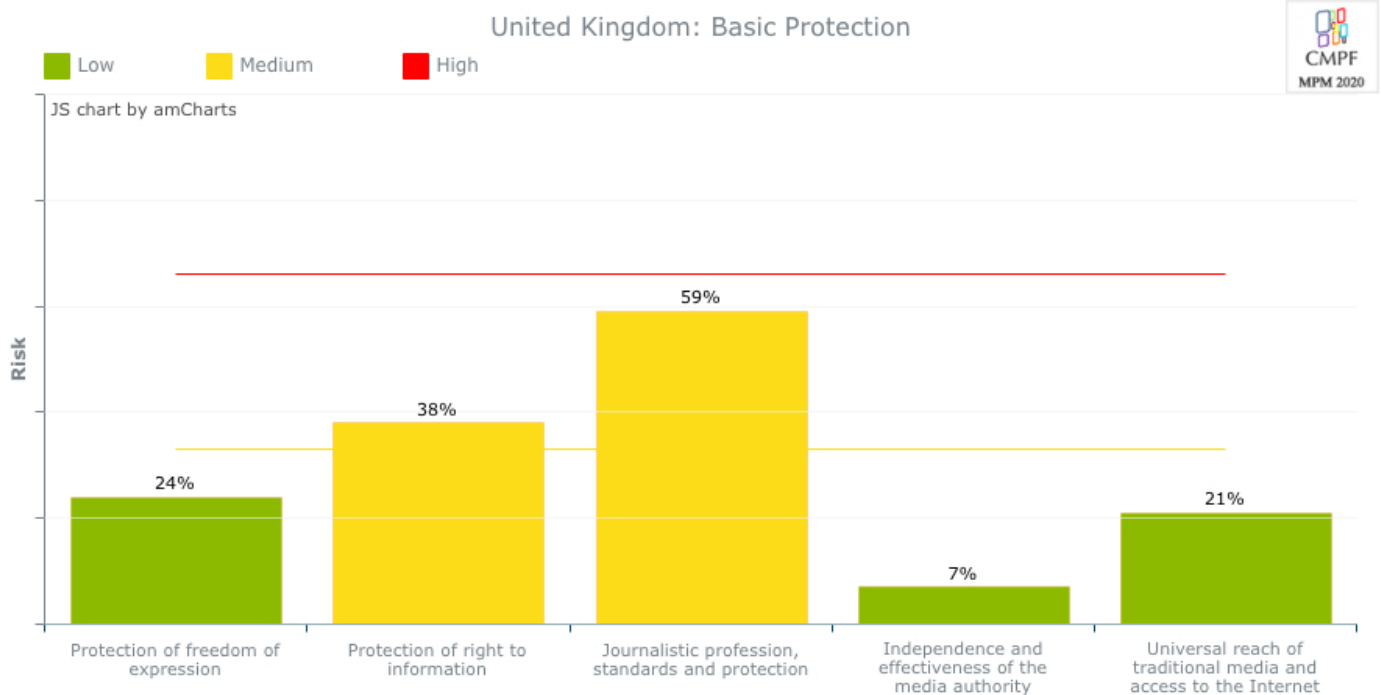
Media plurality recorded the highest risk levels overall, in particular, for news media concentration. UK citizens do not have ready access to a register of media ownership information, and calls for review of the UK media concentration controls in light of online developments have so far remained unanswered. Media viability in the print sector is an ongoing concern, the subject of detailed recommendations in the 2019 Cairncross Review.

Political independence received a number of medium risk scores, with variable levels of editorial protection in the print sector and limited information available concerning political affiliation and funding in the online sector. In the broadcasting sector, a range of ownership restrictions and impartiality requirements help to insulate broadcasters from external political influence, though see also the basis for criticism. Government powers to appoint key members of the BBC Board and a lack of transparency in fixing the BBC licence fee heightened the risk level for political independence of public service media.

Basic protection received primarily low scores, although concerns over extensive UK surveillance powers and growing physical and online threats to journalists, coupled with job insecurity in the print sector, resulted in two medium risk scores in this field. Similarly, social inclusion was largely considered a low risk area, with OFCOM taking an active role in gradually enhancing diversity and minority representation in the broadcasting sector. Access to the media by women remained, however, an area of ongoing, medium risk, concern.

3.1. Basic Protection (30% - low risk)

The Basic Protection indicators represent the regulatory backbone of the media sector in every contemporary democracy. They measure a number of potential areas of risk, including the existence and effectiveness of the implementation of regulatory safeguards for freedom of expression and the right to information; the status of journalists in each country, including their protection and ability to work; the independence and effectiveness of the national regulatory bodies that have competence to regulate the media sector, and the reach of traditional media and access to the Internet.



The risk to **freedom of expression** was, overall, rated low at 24%. Though the UK has not entrenched human rights in a formal written constitution, the Human Rights Act 1998 requires courts to interpret legislation wherever possible in conformity with ‘convention rights’, including freedom of expression, and for public authorities, including courts, to act in accordance with these rights. Domestic courts are to ‘take into account’ judgements of the European Court of Human Rights (ECtHR) when interpreting convention rights. The UK is a signatory to the International Convention on Civil and Political Rights and the European Convention on Human Rights (ECHR) and has a long tradition of respect for the rule of law and press freedom.

Parliament can, however, repeal or amend the Human Rights Act and the 2019 Conservative Manifesto pledged to ‘update’ the Act to ensure a ‘proper balance’ between individual rights, national security and effective governance, which could presage a future weakening of the domestic influence of the ECHR (Conservative Manifesto, 2019: 48). Moreover, the UK continues to rank poorly in the Reporters Without Borders Free Press Index, primarily because of state surveillance and national security concerns, the subject of high profile legal challenges during this period (ECtHR, 2018); though its position improved from 40 in 2018 to 33 in 2019.

In relation to online communications, a number of offences such as the sending of knowingly false messages in order to cause ‘annoyance, inconvenience or needless anxiety’ (section 127(2) Communications Act 2003) are very broad and the Law Commission has recommended rationalisation and clarification (Law Commission, 2018: 330).

The medium risk scores for **the right to information** (38%) and for **the journalistic profession and standards** (59%), were both negatively affected by limitations in whistleblower protection. Although the UK pioneered legal protection for employees under the Public Interest Disclosure Act 1996, whistleblowers continue to face widespread retaliation at work (All Parliamentary Group, 2019). In protecting their sources, journalists face a complex patchwork of rules relating to security, terrorism and police powers. In *Big Brother Watch and Others v UK*, the ECtHR

held that previous UK mass surveillance legislation provided insufficient protection for journalists' communications (ECtHR, 2018). The case was referred on to the Grand Chamber in December 2019.

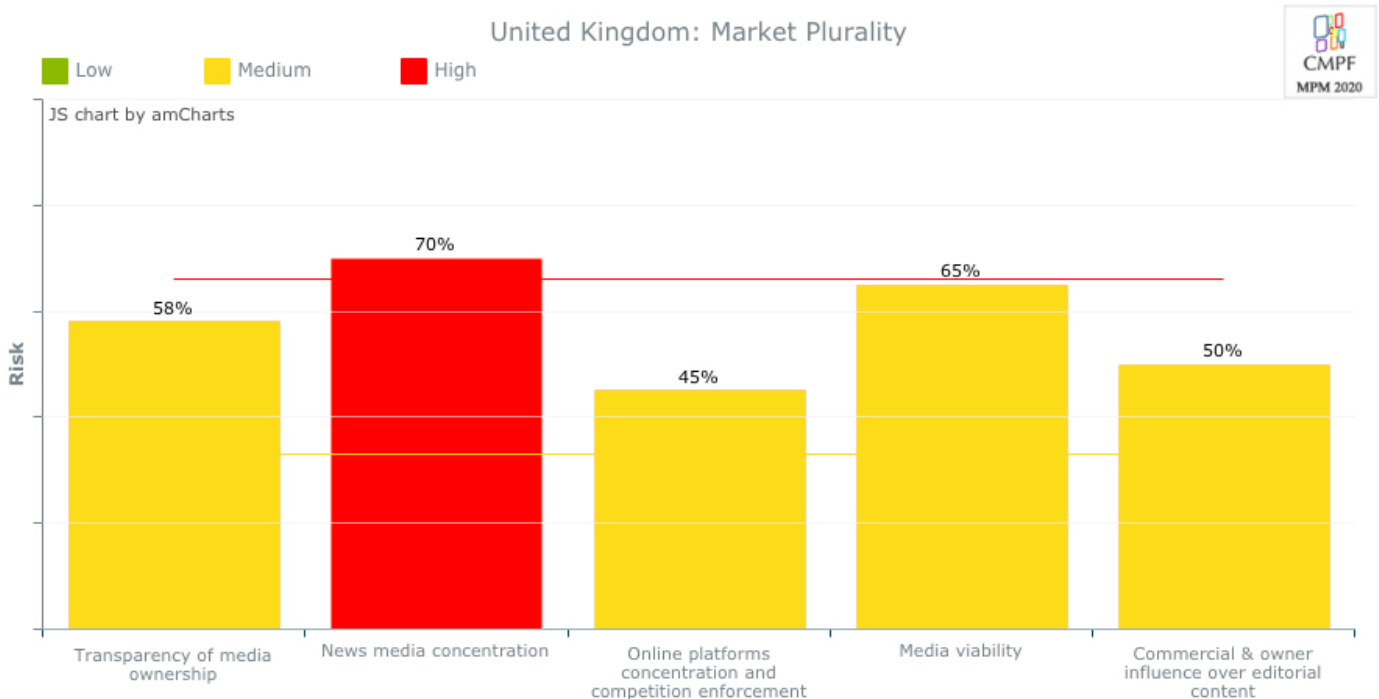
The journalistic profession was also challenged by workplace insecurity in the print sector and a 'surge in violent extremism against journalists and media workers' (NUJ, 2019), including the fatal shooting of journalist Lyra McKee. Many journalists, particularly female, were subjected to high levels of online abuse and threats of violence, even to their families (ibid.).

Independence and effectiveness of the media authority scored 7%, low risk. The UK Government appoints key Board members of the audiovisual regulator OFCOM and approves OFCOM's choice of Chief Executive, so political influence cannot be excluded. Appointments are, however, made in line with the Governance Code on Public Appointments, with reference to relevant expertise. Where the Government has sought to influence regulatory decisions, OFCOM has explicitly emphasised the importance of acting, and being seen to act, independently (OFCOM, 2017).

Universal reach of traditional media and access to the internet was also rated low risk (21%). 95% of homes can access superfast broadband and more limited access to full fibre connections increased from 6% to 10% over the period (OFCOM, 2019i). Rural access also improved, with a legal entitlement to request effective internet access from March 2020 (ibid.). Public service media have guaranteed access to DTT multiplexes and thus enjoy near universal reach (BBC, 2020).

3.2. Market Plurality (58% - medium risk)

The Market Plurality indicators examine the existence and effectiveness of provisions on transparency of media ownership and the existence and effectiveness of regulation or self-regulation against commercial & owner influence on editorial content. In addition, they assess the risks related to market concentration in the production as well as in distribution of news: as for production, considering separately horizontal concentration in each sector and cross-media concentration; as for distribution, assessing the role of online platforms as gateways to news, the concentration of online advertising market, and the role of competition enforcement and regulatory safeguards in protecting information pluralism. Moreover, they seek to evaluate the viability of the news media market.



The risk levels in the field of market plurality were assessed medium to high. **Transparency of media ownership** was scored medium risk (58%). Companies awarded a broadcasting licence are required to provide detailed ownership

information to OFCOM, covering shareholdings of 5% or more and those beneficially entitled to such holdings. Only basic company information is then, however, made available on the OFCOM website. For on-demand audiovisual media services, OFCOM requires just basic contact details and there are no media-specific ownership transparency requirements applicable to other online digital services or the printed press.

News media concentration attained the highest risk score overall of 70%. Most media-specific ownership limits have been abolished, though the cross-media newspaper/Channel 3 (TV) restriction remains (Communications Act 2003, schedule 14). The UK relies primarily on the ‘media plurality’ test in section 58 of the Enterprise Act 2002, applicable to certain mergers involving print and/or broadcast operators. These rules require reconsideration in light of online developments and the need to address non-merger-related consolidation. Decisions to initiate an investigation and approve/reject a merger on plurality grounds rest with the Secretary of State, albeit acting in a ‘quasi-judicial capacity’, so that political influence cannot be excluded.

The Top 4 market and audience share concentration figures for the audiovisual sector were high, particularly for radio and for online news media, where 65% of online news users use the BBC website (OFCOM, 2019d). For newspapers, the scores were lower but still 60 and above. Three digital native news media, HuffPost, BuzzFeed and LADbible now achieve a combined weekly reach of 25% (Reuters Institute, 2019: 68), though for the majority of operators audience share is very low.

For **Online platforms and competition enforcement** a medium risk score was returned (45%). Concentration is here considerable, with Facebook and Google accounting for 35% of adult time spent online and generating 61% of online advertising revenues (OFCOM, 2019d: 6). Responsibility for ensuring online markets remain open and competitive rests with the Competition and Markets Authority (CMA), which has initiated an investigation into platforms and digital advertising, with its report due mid-2020 (CMA, 2019a).

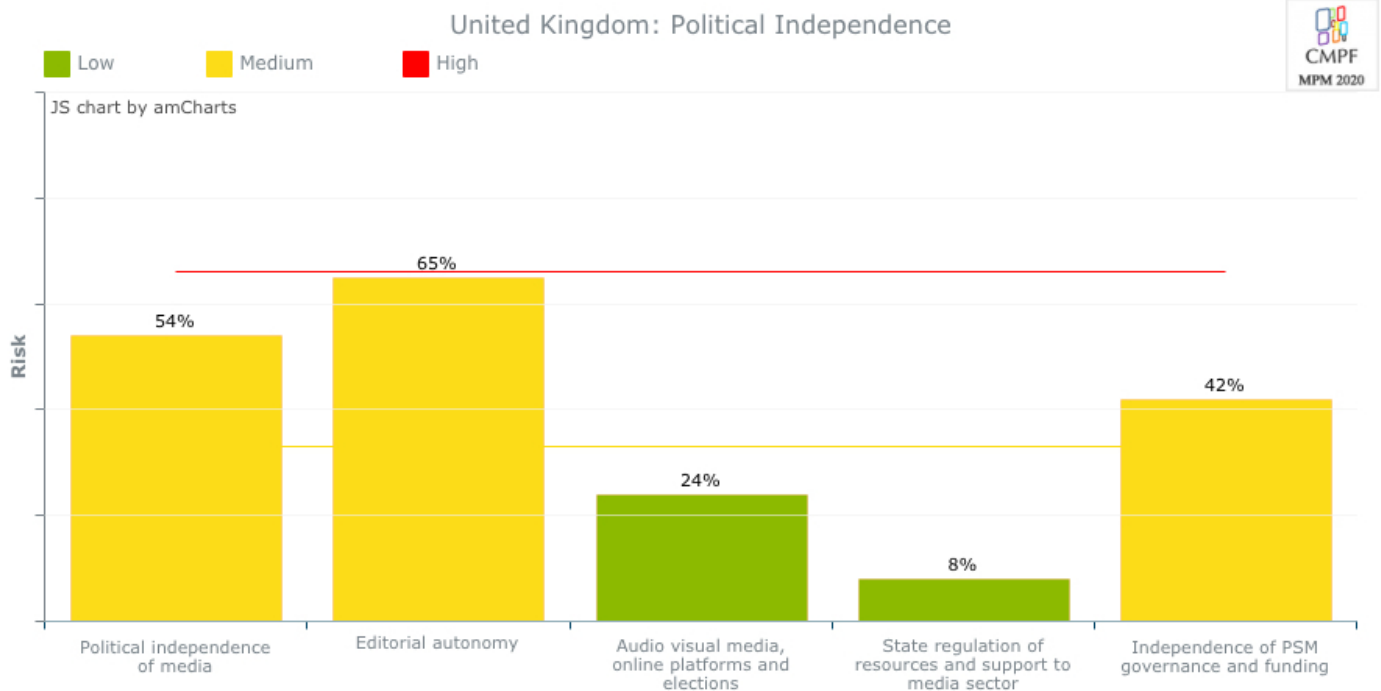
Media viability fell just short of high risk (65%). Although the audiovisual sector remained relatively stable, the UK newspaper sector continued to face significant economic and structural challenges. In 2018 Johnston Press, one of the UK’s largest publishers, went into administration and numerous local papers have closed or are under pressure (Reuters Institute, 2019). Many journalists face low pay and precarious conditions (NUJ, 2018: 8). The Cairncross Review recommended specific measures to ease the situation, including extending zero-rating to digital newspapers (accepted in the 2020 budget); the introduction of codes of conduct governing relations between platforms and publishers; and direct funding for local interest news (Cairncross, 2019). Newspapers are experimenting with different financial models, including donations, and in 2018 *The Guardian’s* online revenues began to outstrip offline ones (Waterson, 2018), offering a glimmer of hope.

Commercial and owner influence over editorial content differs significantly across and within media sectors. The OFCOM Code requires that broadcasters maintain independent editorial control and that coverage of news and current affairs is impartial (OFCOM, 2019a). Advertising agencies are prohibited from holding broadcasting licences. These protections do not, however, apply to on-demand services or the print sector, where proprietors may exert considerable influence (O’Carroll, 2012). Certain titles such as *The Guardian* have structures to protect editorial independence, though the effectiveness of the independent directors at Times Newspapers is questionable (ibid). The NUJ notes that the fragile position of the printed press is eroding traditional editorial and commercial boundaries, with some journalists encouraged to promote corporate brands (NUJ, 2018: 10). Although the UK has an established system of self and co-regulation in the advertising field (ASA, 2010a and b), political advertising largely falls outside these controls. Overall, the area was coded medium risk, 50%.

3.3. Political Independence (39% - medium risk)

The Political Independence indicators assess the existence and effectiveness of regulatory and self-regulatory safeguards against political bias and political influences over news production, distribution and access. More specifically, the area seeks to evaluate the influence of the State and, more generally, of political power over the functioning of the media market and the independence of public service media. Furthermore, the area concerns with the existence and effectiveness of (self)regulation in ensuring editorial independence and availability of plural political information and viewpoints, in

particular during electoral periods.



Political independence of the media scored medium risk (54%), with regulations to promote political independence and diversity in place for the broadcast sector. Political bodies cannot hold a broadcasting licence or control the Channel 3 nominated news provider, and politicians cannot act as news readers/reporters without editorial justification (Broadcasting Act 1990, schedule 2; OFCOM, 2019a, section 5). The ‘due impartiality’ requirements for news and current affairs can support political independence. For example, OFCOM concluded that criticism by parliamentarians of BBC Radio 4’s Brexit coverage did not warrant further investigation (OFCEM, 2019c; see also Schlosberg, 2019) – but they may also lead to a focus on extreme views, side-lining the middle-ground and risking ‘false equivalences’ (OFCEM 2019g: 3).

These rules do not apply to newspapers or online news services, though broadcasters such as the BBC maintain standards on their online services. At most, the ‘media plurality’ test in the Enterprise Act 2002 (s.58(2B)) enables plurality in the newspaper sector, understood to cover also online editions, to be considered in certain merger investigations. The highly partisan nature of much of the UK press was evident in the 2019 general election (Loughborough, 2019), and although political ownership is rare, there remains scope for press and politicians to trade ‘power and influence...out of public sight’ (Leveson, 2012: summary paras.109-137). This is most likely to be so where policies, such as the scrapping of the second Leveson inquiry into press/police relations, are of direct importance for the press (see Conservative Party 2019: 48).

Editorial autonomy (medium risk: 65%) is also sector and company specific, with scope for proprietorial influence greatest in the print sector. Although some newspapers, such as *The Guardian*, have formal structures to protect editorial independence, there is little, save commercial or reputational considerations, to prevent proprietors influencing their paper’s editorial line or choice of editor (House of Lords Select Committee on Communication, 2008: paras.120-159). Where ownership is dissipated among large financial organisations, there may be less risk of editorial intervention (OFCEM, 2018a: para.1.17).

The low risk score for **Audiovisual media, online platforms and elections** (24%) reflects controls in the broadcasting sector, which prohibit political advertising, require due impartiality, and afford dedicated space for party election broadcasts. Controversies, particularly over coverage of the smaller parties, nevertheless, arise, with OFCEM competent to address complaints only after a programme is aired and commercial broadcast decisions not subject to judicial review (High Court (EW), 2019; Bowcott, 2019). Nor do these regulations apply to other online news services or social media, where media outlets, run directly by political interest groups, could have been politically influential

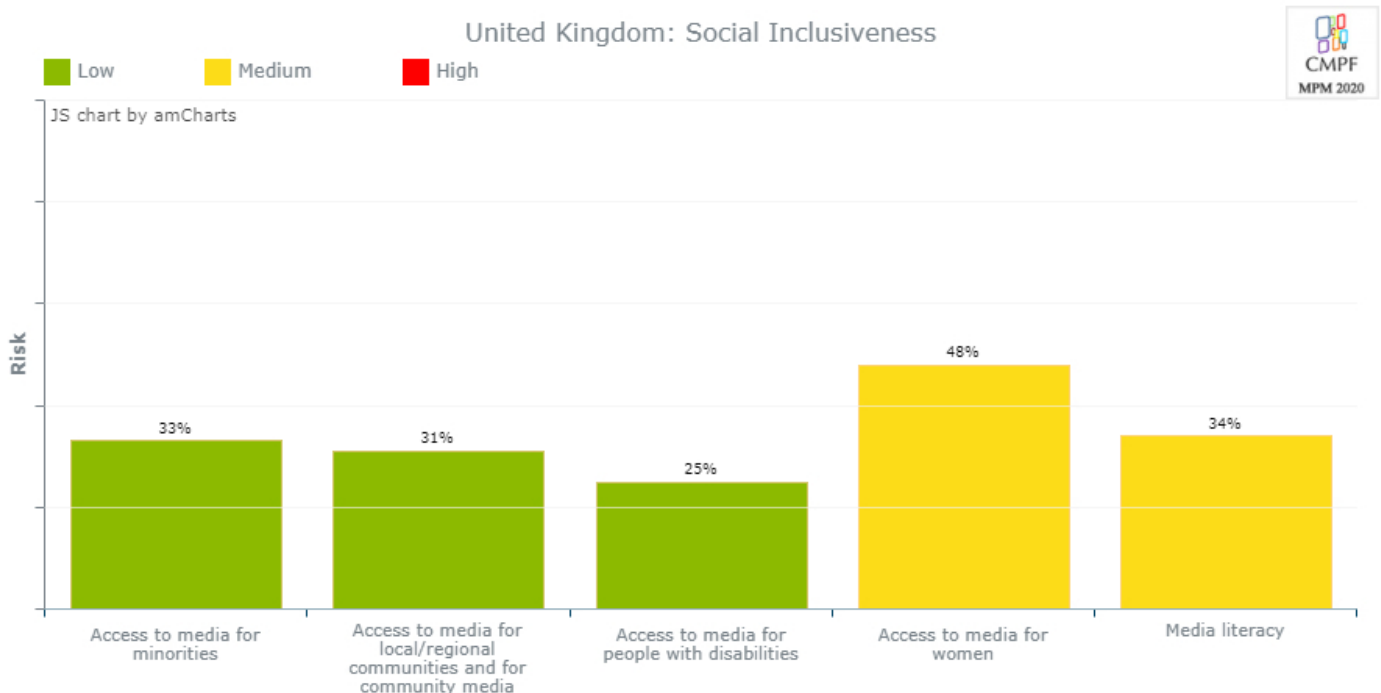
(Taylor/Democratic Audit team, 2018). In 2018, the Information Commissioner's Office (ICO) called for greater transparency in the use of personal data during elections and a statutory code of conduct to protect electoral integrity under the Data Protection Act 2018 (ICO, 2018a).

On **state funding and support for the media sector** (low risk, 8%), there are a number of targeted initiatives to assist the broadcast and television sectors, such as the Community Radio Fund (OFCOM, 2019e) and high-end tax relief for television production (HLCD, 201: chap.3). The printed press has, however, received relatively little support: local papers can claim a limited reduction in business rates and zero-rating for VAT on printed papers is to be extended to the online press (BBC News, 2020). The current crisis has thus led to calls for additional assistance, such as grants for investigative journalism; further development of the BBC's Local Democracy Reporter scheme; preferred access to online advertising for 'brand safe' news websites; and strategic placement of government advertising, which is increasingly targeting social media (Cairncross, 2018; NUJ, 2018; NMA, 2018; Hymas, 2018).

On **independence of PSM governance and funding** (medium risk, 42%), governments remain able, as previously noted, to influence key OFCOM and BBC appointments. The setting of the BBC licence fee lacks transparency, and the BBC was recently required to decide whether to remove the licence fee concession for over 75's or make drastic cuts (Waterson, 2019a). The House of Lords Select Committee on Communications and Digital (HLCD) concluded that past licence fee settlements had undermined the BBC's integrity and called for an independent BBC Funding Commission (HLCD, 2019: para.203), a proposal rejected by the Government (UK Government, 2020). The HLCD also emphasised the importance of the licence fee in underpinning PSM universality (HLCD, 2019: para.201), though the Prime Minister has questioned whether the licence fee continues to be justifiable in an evolving media environment (Mason and Waterson, 2019).

3.4. Social Inclusiveness (34% - medium risk)

The Social Inclusiveness indicators are concerned with access to media by various groups in society. The indicators assess regulatory and policy safeguards for community media, and for access to media by minorities, local and regional communities, women and people with disabilities. In addition to access to media by specific groups, the media literacy context is important for the state of media pluralism. The Social Inclusiveness area therefore also examines the country's media literacy environment, as well as the digital skills of the overall population.



The risk to **access to media for minorities** is assessed at 33% (low risk but bordering with medium). The Equality Act

2010 recognises the following characteristics: age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment, while FCOM imposes obligations in relation to three further categories such as gender, racial group and disability. PSB licence holders are required to meet a number of on-screen diversity targets, as established by the BBC Charter (which establishes more demanding targets for the BBC) or the Communications Act 2003 for the other licence holders. The Communications Act also includes provisions aimed to protect local minorities. An OFCOM study released in 2018 revealed that audiences consider that the TV industry as a whole is making progress in the way they represent diversity on screen, and Channel 4 emerged as being perceived as the most diverse channel (OFCOM, 2018b). The BBC, ITV, Channel 4, Channel 5 and Sky recently joined forces in a project called DIAMOND (Diversity Analysis Monitoring Data) to collect and report on the diversity of TV production in the UK in a consistent manner. The analysis revealed that between 1 August 2017—31 July 2018, appearances on screen for protected groups were as follows: women 52%; transgender 0.5%; ethnic origin BAME 22.9%; sexual orientation LGB 11.1%; disabled 7.3%; people aged over 50 23.3.% (DIAMOND, 2019). With regard to linguistic diversity, national news is quite broadly available in minority languages.

The risk to **access to media for local/regional communities and for community media** is 31% (low risk). OFCOM is empowered by section 286 of the Communications Act 2003 to require that the Channel 3 and 5 licensees include a certain proportion of regional productions in their schedules. The BBC is under an obligation to serve the UK nations and regions (article 6 of the 2016 Charter), providing television and radio services for Wales, Northern Ireland and Scotland and funds S4C and BBC Alba. The new Operating Licence requires that 'at least half of network hours on the BBC's television channels will be made outside of London,.. with separate minimum quotas for each UK nation, broadly reflecting their population size. Local television and community radio frequencies are allocated through the Local Digital Television Programme Services Order 2012 and the Community Radio Order 2004 respectively. Licence fee funding is put to these ends. Must-carry rules established in Section 64 of the Communications Act 2003 prescribe varying amounts of regional and local content. Despite this, some negative trends raise concerns: as noted by an independent expert, around 200 local and regional newspapers have closed in the UK since 2005, existing publishers cut staff year-by-year, and local content continues to diminish.

The risk to **access to media for people with disabilities** is 25% (low risk). The OFCOM Code establishes requirements for subtitles, audio descriptions and signing, applicable to all TV channels; these requirements remain higher for PSBs and the BBC but generally quite limited, which remains a reason for concern, though virtually all broadcasters exceed this in practice, with many providing audio description for between 27-35%. Signing requirements are also a small percentage (5%) on the PSB channels (OFCOM, 2019i).

The risk to **access to media for women** is 48% (medium risk). In 2019, the BBC announced the results of its 50:50 Project launched in 2016. According to the announcement, '[t]he proportion of female contributors appearing in BBC programmes ... radically increased [and] 74% of teams monitoring their output for 12 months or more reached 50% of female contributors on air in April 2019' (BBC, 2019). The initiative has proven influential and many commercial outlets have followed suit. Despite these efforts, issues remain especially with regard to pay gap and women in senior managerial positions. In 2018, a study conducted by Professor Lis Howell of City, University of London concluded that '[w]ith the exception of Channel 5, no broadcaster can claim parity or near parity across the three categories ... surveyed – experts, reporters and presenters' (Gove, 2018).

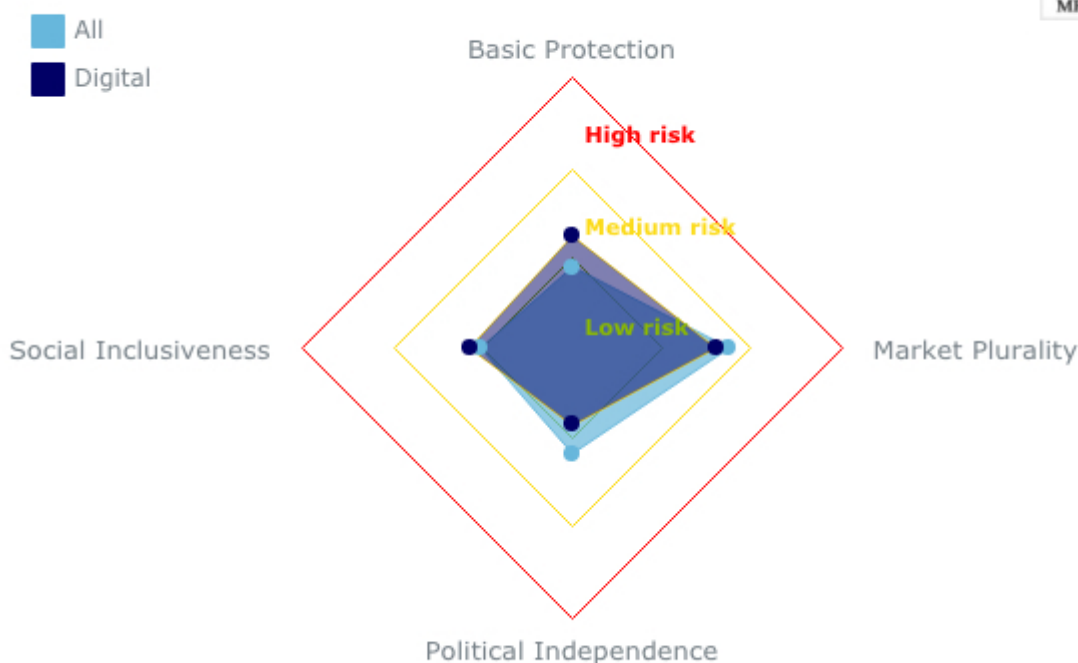
With regard to **media literacy** (34%, medium risk), the Communications Act 2003 (section 11) has tasked the independent regulator OFCOM with the responsibility to promote media literacy and undertake research to feed into the formulation of public policy. Media literacy used to form a core component of the education curriculum since the Labour government in the late 1990s; however the coalition government of 2010-2015 reduced its support to media literacy activities and OFCOM's role in the field. More recently, however, the White Paper on Online Harms recommended the development of an online media literacy strategy (UK Government, 2019). The government estimates that around 10.5 million people in the UK lack basic digital skills and this may affect their ability to participate in society and access a range of public and other services, so hopefully the negative trend can be reverted soon.

There seems to be a negative trend regarding the spread of hate speech. According to OFCOM's Media use and attitudes

report 2019 , '[c]ompared to 2017, there has been an increase in the proportion of internet users who say they have seen hateful content online in the past 12 months (53%, up from 47% in 2017)', particularly with regard to some groups, such as women, religious minorities, LGBT , BME and disabled individuals (OFCOM, 2019b). The current framework will, however, undergo a major reform, if the government acts on the recent White Paper on Online Harms (UK Government, 2019).

4. Pluralism in the online environment: assessment of the risks

United Kingdom: Media Pluralism Risk Areas - Digital



JS chart by amCharts

Basic Protection

The Human Rights Act 1998 applies to both offline and online environments and rights recognised offline are, in principle, equally applicable online. There are, however, a number of over-broad criminal offences relating specifically to online communications, which require review and rationalisation (Law Commission, 2018). In some cases, however, specific protections for online communications have been introduced, as in the single publication rule and defence for website operators in the English Defamation Act 2013.

Digital safety and source protection are major concerns for journalists. The NUJ found many members were subjected to 'vile abuse, rape and death threats' on social media, leading some, particularly women, to close their Twitter accounts because of a failure to address concerns (NUJ, 2019). In relation to data protection, Part 4 of the Investigatory Powers Act 2016 (IPA) authorises the Secretary of State, for specified purposes, to make an order for Electronic Telecommunications Operators and ISPs to retain data for 12mths. In 2018 the High Court required modifications to Part 4, following the CJEU *Watson* case (CJEU, 2016), on the basis that the specified purpose of fighting crime was not limited to 'serious crime' and access was not subject to prior review by a judge or independent administrative body (High Court, 2018). In addition, in 2018 the ECtHR held that although bulk interception powers were not in principle contrary to article 10 ECHR, prior UK legislation posed a risk to journalists' sources given the absence of sufficient safeguards (ECtHR, 2018, paras.493-5, now with the Grand Chamber). A similar challenge to the bulk interception powers in the IPA 2016 was rejected by the High Court in 2019, on the basis that a sufficient system of interlocking protections was now in place, including independent oversight by the Investigatory Powers Commissioner (High Court, 2019b).

In relation to access to online services, superfast broadband is available to 95% of homes, with full fibre connections gradually being scaled-up (OFCOM, 2019j). Public service media have guaranteed access to DTT multiplexes and thus enjoy near universal reach (BBC, 2020).

Market Plurality

In relation to ownership transparency, citizens do not have access to a specific register of direct and indirect beneficial interests in online media services. Such information has to be pieced together from company registers or civil society reports, where available.

In relation to media concentration, online services are considered when assessing the impact on plurality of newspaper and/or broadcaster mergers under section 58 Enterprise Act 2002 (OFCOM, 2018a). Section 58 does not apply to mergers involving only online news services and OFCOM has recommended updating the ownership rules only when strategic decisions on the future regulation of the online sector have been taken (OFCOM, 2018c).

Data relating to digital native news providers is patchy. Only a few players, such as the *Huffington Post*, attract significant revenues, with a long tail of smaller providers (Media Reform Coalition, 2019). Online provision continues to be dominated by legacy media, with BBC News Online attracting 50% of readers (Reuters, 2019).

A majority of users in the UK continue to access the websites of news providers directly (OFCOM, 2019g). Slow but consistent growth in advertising revenues from online news has failed to offset the dramatic drop in offline revenues. The division of revenues between technology companies and actual news producers is heavily weighted in favour of the former (News Media Association, 2018: pp.7-8). Small algorithmic changes can have a significant effect on revenues over which the papers have no control. The Competition and Markets Authority (CMA), which addresses mergers and market abuses in the online sector (eg CMA, 2019a), has strengthened its expertise in the field through creation of a Data, Technology and Analytics Team and will be reporting on online platforms and advertising in July 2020 (CMA, 2019b).

State support for online news media is extremely limited, though online editions should benefit from zero-rating of VAT in 2020 (BBC News, 2020). The new 2% digital services tax, scheduled for 2020, has not been earmarked to support news media.

Regarding commercial influence, although the OFCOM and Advertising Standards Association rules on surreptitious advertising together cover most online services, the scale of online transmission poses an enormous enforcement challenge (ASA, 2010a and b, rule 2).

Political Independence

A number of media outlets, such as The Guardian, Channel 4 and the BBC have well established guidance on the use of social media by journalists, designed to maintain editorial standards online (eg The Guardian, 2010). Print regulator IPSO provides social media guidance (IPSO, 2018), while IMPRESS addresses social media at various points in its code.

In relation to political control of online media, there is evidence that far-right and far-left media outlets, run directly by political interest groups, have sought to manipulate recent political elections and referenda using targeted communications over social media (Taylor/Democratic Audit Team, 2018). These outlets are not characteristically subject to existing self-regulatory codes, such as the IPSO and IMPRESS codes that apply to members' online and offline publications. In addition, most online and offline political advertising is unregulated, raising concerns over misleading claims. For example, online news outlet First Draft reported that 88% of the most promoted Conservative Party advertisements between the first and fourth December 2019 featured claims that had already been labelled misleading by leading fact-checking site Full Fact (Reid and Dotto, 2019).

Reporting requirements relating to election spending, including online, are set out in the Political Parties, Elections and Referendums Act 2000, and overseen by the Electoral Commission. Nevertheless, questions remain, for instance, over the funding of campaign groups that bought thousands of Facebook advertisements during the last election and the nature of their links to existing parties (Kelly, O'Murchu, Blood, 2019). In this context, the steps taken by social media organisations such as Facebook to provide greater transparency regarding political advertisements are important but not comprehensive (Lee, 2019). In 2018, following on from the Cambridge Analytica scandal, the Information Commissioner's Office (ICO) reported on serious breaches to data protection rules stemming from the use of personal data and data analytics for political purposes (ICO, 2018b). The ICO has imposed a number of significant fines, including a £500,000 penalty on Facebook, and published guidance on the necessary consents that must be obtained and records kept in the context of political campaigns (ICO, 2018b and 2019)

In relation to public service media, the BBC Agreement makes provision for 'comprehensive online content services', including news and sport websites (Sec. State DCMS, 2016, sch.1, para.2(4)). It also calls on OFCOM to have particular regard to the desirability of improving BBC online provision of news and current affairs (Sec. State DCMS,

2016, sch.2, para.2(5)). In terms of internet news sites, BBC Online News has the highest reach (67% of the UK's online population in September 2018) with users also spending the most time on the site (OFCOM, 2019d: 27). Some publishers argue that the provision of free online news by the BBC constrains commercial development, though a number of studies do not support this (Cairncross, 2019: 53-56). The Cairncross Review concluded that BBC Online News provides a valuable public service but suggested that the BBC could do more to drive traffic to commercial, particularly local, sites and share its technical expertise with local publishers (Cairncross, 2019: 87). Any material changes to the BBC public services, including online, will be subject to a 'public value test', which examines market impact, overseen by OFCOM (Sec. of State DCMS, 2016).

Social Inclusiveness

Eurostat data for 2019 indicates that 74% of individuals in the UK, aged 16 to 74, had basic, or above basic, online digital skills (Eurostat, 2020). In 2019, OFCOM found that 13% of adults did not have access to the internet, the main reason given was that they did not consider it necessary (OFCOM, 2019d: 3).

Hate speech on social media is a growing problem in the UK, with targets including ethnic minority groups and women (UK Government, 2019). In 2019, OFCOM found that 70% of adults supported further regulation of social media sites to address harmful content (OFCOM, 2019d: 5). Revisions to the EU Audiovisual Media Services Directive require Member States to ensure that video-sharing platforms take appropriate measures to protect the public from hate speech by 19 September 2020, a date that falls within the Brexit transition period (Directive (EU) 2018/1808: Chap.IXA). The 2019 Online Harms White Paper proposed the imposition of a duty of care on social media sites to protect users from certain harms, including hate speech, supported by codes of conduct, reporting obligations, and oversight by an independent regulator with significant enforcement powers (UK Government, 2019).

5. Conclusions

Conclusion

The UK has a strong tradition of respect for the rule of law and press freedom, underpinned by the Human Rights Act 1998. A number of parliamentary committees, specialist agencies and the communications regulator OFCOM carry out detailed research into online and offline media markets, facilitating evidence-based policy-making. Major challenges nevertheless remain. The print sector is struggling to survive the fall in advertising revenues, with even digital-only publishing groups under pressure (Cairncross, 2019: 6). Press representatives have called for a greater proportion of the online advertising revenues derived from their content, with the market position of the technology giants currently under examination by the Competition and Markets Authority (CMA, 2019a; NMA, 2018). The effectiveness of press self-regulation post-Leveson remains in question, particularly regarding coverage of religious minorities (Tobitt, 2019).

The UK does not meet Council of Europe guidelines on media ownership transparency, while the media plurality rules in the Enterprise Act 2002 require review in light of the various drivers of consolidation, online developments and the need to prevent political considerations coming into play. The potential impact of misleading online political coverage and largely unregulated political advertising on recent UK elections has led to calls for increasing transparency and regulatory oversight (ICO, 2018a; UK Government, 2019; Goodman, 2019).

Safety for journalists, both off and online, is a matter of pressing concern. Reporter Lyra McKee was tragically killed in 2019 and journalists, particularly women, are frequently targets of online abuse. State surveillance and its potentially chilling impact on journalism led to repeated, successful, challenges to UK legislation, necessitating the introduction of additional safeguards. A key ECtHR ruling is, however, still awaited.

In relation to public service media, the suggested decriminalisation of non-payment of the licence fee could lead to a loss in revenue of around £200million and a more wide-ranging review of BBC funding is likely (Waterson, 2019b; Mason and Waterson, 2019). Licence fee settlements remain opaque and the government ability to make key appointments to the BBC Board potentially undermines public trust in BBC independence (HLCD, 2019; OFCOM, 2019: 14).

There is thus no room for complacency as the UK leaves the EU, the source of many of the data protection, competition, intellectual property, audiovisual, and free movement rules that have governed the field for the last forty-seven years.

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ANNEXE I. COUNTRY TEAM

| First name | Last name | Position | Institution | MPM2020 CT Leader |
|------------|----------------|----------|----------------------|-------------------|
| Rachael | Craufurd Smith | reader | Edinburgh Law School | X |

ANNEXE II. GROUP OF EXPERTS

The Group of Experts is composed of specialists with a substantial knowledge and experience in the field of media. The role of the Group of Experts was to review especially sensitive/subjective evaluations drafted by the Country Team in order to maximize the objectivity of the replies given, ensuring the accuracy of the final results.

| First name | Last name | Position | Institution |
|------------|-----------|--------------------------------------|----------------------------------|
| Maria | Donde | Head of International Content Policy | Ofcom |
| John | Toner | National Organiser | National Union of Journalists |
| Robert | Beveridge | Trustee | Voice of the Viewer and Listener |

