



PRP

**INDEPENDENTLY
OVERSEEING PRESS
REGULATION**

PRESS RECOGNITION PANEL

**Consultation on proposals for
recognition of press self-regulators**

June 2015

Annex 1 - Recognition matrix

The recognition matrix is the tool that we are proposing to demonstrate the types of indicators and evidence we will consider when determining whether a Regulator meets the criteria set out in Schedule 3 of the Charter.

The first column, and its associated footnotes, are the criteria as articulated in the Charter. They are therefore not for consultation. The second and third columns propose examples of how the criteria could be achieved through possible indicators and the types of evidence an applicant could submit. These are the columns that we would welcome comments on.

The examples of possible evidence illustrate the types of information that we could consider when assessing a Regulator's application. While we propose that it is up to Regulators to evidence how they meet the requirements in the most appropriate manner, we wanted to provide some guidance as to what this could look like. Some of the examples provided are general, while others are more specific. In many cases the applicant will already hold, or could develop, the sort of documents that could be submitted as evidence.

A fourth column has been included to allow consultees to provide specific feedback.

Consultation on proposals for recognition of press self-regulators – Hacked Off response

In our response, we identify clarifications and points of guidance for applicants in the second column as we believe that producing "indicators" might be seen as adding the Leveson criteria rather showing how they will be interpreted.

Clarification rather than elaboration is in our view a better way to look at it.

So our additional points are classified under "Guidance", and "clarifications" (including points "For the Avoidance of Doubt").

Notes in blue are commentary

In the third column where there are deletions or amendments that are not explained this is because we are saying they are premature for the initial recognition stage. A separate schedule, also included in our submissions, lays these out.

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>1. An independent self-regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government. For the avoidance of doubt, the industry's activities in establishing a self-regulatory body and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body, shall not constitute influence by the industry in breach of this criterion.</p>	<p>Clarification</p> <ul style="list-style-type: none"> Because the overlapping criteria 5 states that members of the board should <i>"be nominated by a process which is fair and open"</i> for consistency the requirement of fairness also applies here Independence – in respect of the appointments process – means independence from party politicians and Parliament, not just from Industry and Government because Leveson, Part K Chapter 7.4 also states that the appointment panel must be "free of political influence". <p>Guidance</p> <p>The requirement for genuineness means that the requirements of "transparency, openness and independence" and fairness in appointments need to be positively demonstrated, not merely asserted, by the applicant. (see A)</p> <p>The PRP will have regard to the most recent edition of the principles of public appointments published by the CPA.</p> <ul style="list-style-type: none"> <u>For the Avoidance of Doubt</u> Independent does not mean merely a majority of independent members (see B) 	<ul style="list-style-type: none"> Appointments process, governance structure and supporting documents. Board members' biographies and conflict of interest declarations from each Board member. Any other supporting information to demonstrate independence from industry and/or Government. <p>Evidence to demonstrate fairness, transparency, openness and independence should include</p> <ul style="list-style-type: none"> (a) no vetoes, (b) no "special" votes and (c) no restricted nomination rules. (see C) <p>Evidence that the Principles governing public appointments published by the CPA have been complied with</p> <p>Merit The overriding principle is selection on merit..</p> <p>Fairness Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria</p> <p>Openness Information about the requirements of the post and the selection process must be publicly available Appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates</p>	<p>(A) It would be a strategy of weak regulators to "assert" these features in their procedures, without providing evidence. They are so crucial to the correct functioning of the regulator that it should be possible for applicants to provide evidence how their regulator meets them.</p> <p>(B) This is clear from Leveson K7/4 (figure K7.1) which says "independent board <i>with</i> a majority of independent members" using the term "with", not "by virtue of"</p> <p>(C) These are all provisions which, if written into regulator rules, can would compromise the transparency, openness and independence of the board, making it in breach of the criteria.]</p>

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<p>2. The Chair of the Board (who is subject to the restrictions of criterion 5(d), (e) and (f)) can only be appointed if nominated by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and [the selection] must, itself, be independent of the industry and of Government.</p>	<p><u>Clarification</u></p> <ul style="list-style-type: none"> The same two points of clarification apply here as in the above criteria. <p><u>Guidance</u></p> <p>The requirement for the selection of the appointments panel to be appropriately independent means that the requirements of "transparency, openness and independence" and fairness in appointments need to be positively demonstrated, not merely asserted, by the applicant. (see A)</p> <p>The PRP will have regard to the most recent edition of the principles of public appointments published by the CPA.</p> <ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Process used to select members of the appointment panel. Process used by the appointment panel to appoint the Chair. <p>The requirements must be positively demonstrated by the applicant. Not merely be asserted.</p> <p>The same evidence as in criteria 1 that no vetoes or special nomination rules are being used</p> <p>Evidence that the Principles governing public appointments published by the CPA have been complied with</p> <p><u>Merit</u> The overriding principle is selection on merit..</p> <p><u>Fairness</u> Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria</p> <p><u>Openness</u> Information about the requirements of the post and the selection process must be be publicly available Appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates</p>	<p>(A) It would be a strategy of weak regulators to "assert" these features in their procedures, without providing evidence. They are so crucial to the correct functioning of the regulator that it should be possible for applicants to provide evidence how their regulator meets them.</p>

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<p>3 The appointment panel: a) should be appointed in an independent, fair and open way; b) should contain a substantial majority of members who are demonstrably independent of the press; c) should include at least one person with a current understanding and experience of the press; d) should include no more than one current editor of a publication that could be a member of the body.</p>	<p>Clarification</p> <ul style="list-style-type: none"> The same two points of clarification apply here as in the above 2 criteria. <p>Guidance</p> <ul style="list-style-type: none"> The selection/appointment of the appointments panel will need to comply with the requirements of "transparency, openness and independence" and fairness. This will need to be positively demonstrated, not merely asserted, by the applicant. (A) The PRP will have regard to the most recent edition of the principles of public appointments published by the CPA. The PRP will need to provide guidance on how it will define "substantial". Presumably a majority of one can never be - by definition - substantial since one it is the "minimum majority" 	<ul style="list-style-type: none"> Process used to select members of the appointment panel. Composition of the appointment panel, clearly identifying those members that are persons with a current understanding and experience of the press; are serving editors; and those considered independent of the press. <p>The requirements must be positively demonstrated by the applicant. Not merely be asserted.</p> <p>The same evidence as in criteria 1 that no vetoes or special nomination rules are being used</p> <p>Evidence that the Principles governing public appointments published by the CPA have been complied with</p> <p><u>Merit</u> The overriding principle is selection on merit..</p> <p><u>Fairness</u> Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria</p> <p><u>Openness</u> Information about the requirements of the post and the selection process must be publicly available Appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates</p>	

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<p>4 The nomination process for the appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The appointment panel may only nominate as many people as there are vacancies on the Board (including the Chair), and the Board shall accept all nominations. The requirement for independence means that there should be no serving editors on the Board.</p>	<ul style="list-style-type: none"> No elaboration proposed. <p><u>Clarification</u></p> <ul style="list-style-type: none"> The same two points of clarification apply here as in the above criteria. 	<p>Process for selecting Board members and the selection criteria used.</p> <ul style="list-style-type: none"> Board members' biographies and conflict of interest declarations from each Board member. Governance arrangements and supporting documentation. <p>The requirements must be positively demonstrated by the applicant. Not merely be asserted.</p> <p>The same evidence as in criteria 1 that no vetoes or special nomination rules are being used</p> <p>Evidence that the Principles governing public appointments published by the CPA have been complied with</p> <p><u>Merit</u> The overriding principle is selection on merit..</p> <p><u>Fairness</u> Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria</p> <p><u>Openness</u> Information about the requirements of the post and the selection process must be publicly available Appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates</p>	

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<p>5 The members of the Board should be appointed only following nomination by the same appointment panel that nominates the Chair, together with the Chair (once appointed), and should:</p> <p>a) be nominated by a process which is fair and open;</p> <p>b) comprise a majority of people who are independent of the press;</p> <p>c) include a sufficient number of people with experience of the industry (throughout the United Kingdom) who may include former editors and senior or academic journalists;</p> <p>d) not include any serving editor;</p> <p>e) not include any serving member of the House of Commons, the Scottish Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the European Parliament or the House of Lords (but only if, in the case of the House of Lords, the member holds or has held within the previous 5 years an official affiliation with a political party) or a Minister of the Crown, a member of the Scottish Government, a Northern Ireland Minister or a Welsh Minister; and</p> <p>f) in the view of the appointment panel, be a person who can act fairly and impartially in the decision-making of the Board.</p>	<ul style="list-style-type: none"> No elaboration proposed. <p>The same two points of clarification arise here as in the previous 4 criteria</p> <p><u>For the avoidance of doubt</u></p> <p>The whole board needs to be capable of independent action and regardless of whether a member has experience of the industry, none must be industry nominees or "industry representatives" (see A)</p> <p>This is not the same as point 5 (f) in the criteria which is a matter for the appointments panel. It relates to the need for an independent Board rather than an independent majority.</p> <p><u>Guidance</u></p> <p>Guidance will be needed on the definition of "serving editor".</p> <p>Our view is that this should be interpreted by the PRP with regard to the purpose of the criteria which is to ensure independence from the industry. A deputy editor, news/features/picture editor, associate editor, assistant editor or executive editor would all fall into this category by virtue of them exercising editorial control at least "desk" level and thus being those who are directly regulated due to their position of responsibility and their role</p>	<ul style="list-style-type: none"> Process used by the appointments panel to nominate and appoint Board members. Board members' biographies, evidence of compliance with criteria 5(a) to (f), and conflicts of interest declarations. <p>The same points made in the above 4 criteria in this column should apply here including</p> <p>Evidence to demonstrate transparency, openness and independence should include</p> <p>(a) no vetoes, (b) no "special" votes and (c) no restricted nominees.</p> <p>Applicants should demonstrate in their nomenclature that their board is not split between "industry members" or "industry representatives" and "independent members".</p>	<p>(A) Experience of the industry and expertise are what the criteria call for in terms of the proposed minority of individuals connected to the press. They do not call for "representatives" of the press. Such a position is clearly ruled out by the explicit rejection of Editors serving on the Board.</p> <p>Therefore it is not appropriate to split Board members between "industry representatives" and independents. All Board members should be seen as independent, with a minority of them drawing on some experience of the industry.</p>

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<p>6 Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.</p>	<ul style="list-style-type: none"> The Regulator is funded adequately. The Regulator adopts policies and mechanisms to ensure funding arrangements cover the prescribed period and undertakes reviews in an appropriate time. The timing for negotiating funding settlements is not such as to create a concern that the negotiation would impact on the independence or perceived independence of the Board. <p>—</p> <ul style="list-style-type: none"> <u>Guidance</u> The nature and timing of negotiation with the funders/subscribers must be transparent. The process of negotiation must be laid out clearly by applicants for recognition. 	<ul style="list-style-type: none"> Contract/Articles of Association/Agreements between the Regulator and subscribers and/or any other funders on existing and/or planned funding arrangements, including subscription rates agreed. Audited accounts and statement of going concern. Annual budget, including income and expenditure forecasts. <p>Statement/assurance/minutes from the Regulator’s Board to certify that the indicative budget is adequate for the purpose.</p> <p>Indicative timescales and processes for negotiating the funding settlement.</p>	<p>We agree wit the PRP that this criteria is about preventing the funders of the regulator being able to influence the conduct of the regulator</p> <p>By</p> <ul style="list-style-type: none"> under-funding it making payments conditional on “performance” by funding only on a year to year basis <p>This is NOT about sustainability of funding.</p> <p>It is for the Board, not the recognition body to certify that the indicative budget is adequate.</p> <p>There is no basis in this recognition criteria for the PRP to make judgements on sustainability.</p> <p>Any issues with sustainability may arise after recognition and could prompt an ad hoc review if viability is at stake. But the responsibility for a viable regulator lies with those who wish to be regulated, and those appointed to run the regulator, not with the recognition panel.</p>

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<p>7 The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive.</p>	<p><u>Guidance to applicants</u></p> <p>There will need to be a definition of “serving editors”.</p> <p>This will need to be the same as that for criteria 4 and 5, and will need to be such so as to allow the true intention of the criteria (which stresses the importance of independence from those performing editorial functions rather than simply industry leadership).</p> <p>Therefore deputy, assistant, executive, associate, news/features/comment/picture/night editors would all be covered by the definition and their participation in the advisory code committee would be welcome but when combined not decisive</p> <p><u>For the avoidance of doubt</u></p> <ol style="list-style-type: none"> 1. There must be a Code Committee but it must be advisory committee only not an executive committee 2. The majority of Code Committee members must not be editors to fulfill the “not decisive” requirements. [The reference to editors here must relate to their role on the Code Ctte as they are already excluded from the Board] 3. The Committee need not be composed only of independent members of the Board and serving editors (and indeed none are compulsory). 	<ul style="list-style-type: none"> • Terms of reference between the Board and Code Committee regarding decisions on the content of the code and compliance with the code. <i>[this is not a matter for the rcode committee and if it is a matter for the PRP it would be elsewhere]</i> • This should include reference to which body has what responsibility, and lines of accountability. • Minutes of relevant meetings of the Board or between the Board and the Committee, showing a sufficient and proper process of scrutiny and consideration of the content of the standards code. • Information on the composition of the Code Committee, including the number and role played by serving editors. 	<p><u>Guidance to applicants</u></p> <p>The PRP will need to establish that the Code Committee does not give a veto or special voting powers to serving editors</p>

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<p>8 The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:</p> <p>a) conduct, especially in relation to the treatment of other people in the process of obtaining material;</p> <p>b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and</p> <p>c) accuracy, and the need to avoid misrepresentation.</p>	<ul style="list-style-type: none"> The Regulator has demonstrably considered relevant legislation, codes, rules and/or guidance in developing the code. The Regulator meets the requirements set out in the criterion including in 8 (a), (b) and (c) in a way that is proportionate to its subscribers. – [This is not necessary. No value judgements for the PRP on the Code] The code is reasonable in its terms. - [This is not necessary. No value judgments for the PRP on the Code] The code is framed in a manner consistent with the potential for complaints to be heard and decided upon by the Regulator under criteria 11 (a) to (c). <p><u>For the avoidance of doubt</u></p> <p>In 8 (b) It is for the Board of the regulator to determine what is appropriate “respect for privacy where there is no sufficient public interest justification for breach”</p>	<ul style="list-style-type: none"> A copy of the code with an explanatory note of how the code takes into account the requirements of the criteria in the context of its subscribers. [Not clear why this reference to subscribers is necessary] Description of the Board’s approach to the interests of the public and freedom of speech, and how they have been incorporated into the code. Information, if any, to show how feedback from interested parties is taken into account. <p>[The terms of the Charter and the Levesonian policy underlying it is aimed at ensuring that the Code is a matter for the independent board of an independent regulator, and not a matter for the PRP.]</p>	<p>The terms of the Charter and the Levesonian policy underlying it is aimed at ensuring that the Code is a matter for the independent board of an independent regulator, and not a matter for the PRP.</p> <p>If the code is not fit for purpose then this may emerge during the regulators working and can be picked up in an ad hoc review if the threshold is passed.</p>

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<p>8A A self-regulatory body should provide advice to the public in relation to issues concerning the press and the standards code, along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.</p>	<ul style="list-style-type: none"> • Advice to the public is provided in a way which makes it easily accessible and available to anyone who might reasonably want to access it. • The service to warn the press is easily accessible and available to anyone who might reasonably want to access it. • The Regulator identifies appropriate tools and mechanisms to notify relevant parties on timescales which ensure that the recipients of it can respond promptly. <p><u>Guidance to applicants</u></p> <ul style="list-style-type: none"> • Complainants are assisted in identifying the relevant clause(s) of the code when seeking to complain about an article (see also rec 10 and 11). 	<ul style="list-style-type: none"> • Information on provision of advice to the public in relation to the code, including information on how it operates for vulnerable individuals and those who need additional support. • Information on how the service to warn the press operates, including information on how it operates for vulnerable individuals and those who need additional support. • Contacts, if any, with individuals, broadcasters and other parties, and actions taken where relevant. • • Operating procedures which show that prospective complainants are not forced to make their own reference to the code when complaining about an article. 	

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<p>8B A self-regulatory body should make it clear that subscribers will be held strictly accountable under the standards code for any material that they publish, including photographs, however sourced. This criterion does not include advertising content.</p>	<ul style="list-style-type: none"> • Approach taken to defining advertising content takes account of the Advertising Standards Authority's definition to ensure that regulatory gaps do not emerge. 	<ul style="list-style-type: none"> • Approach to defining advertising content. • Contract/terms and conditions between the Regulator and subscribers demonstrating accountability and enforcement powers of the Regulator. • Guidance issued to subscribers regarding compliance with the code (including how 'advertising content' is defined). 	

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<p>8C A self-regulatory body should provide non-binding guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the standards code. This must be framed in the context of the different provisions of the code relating to the public interest.</p>	<ul style="list-style-type: none"> Guidance is provided in a way which makes it easily accessible and available to anyone who might reasonably want to access it. <p>[It is not necessary or desirable to add qualifications here]</p>	<ul style="list-style-type: none"> Examples of written and verbal guidance, demonstrating how it relates to the provisions in the code. Information on how the guidance will operate. Information on how guidance is accessible, including for vulnerable individuals and those who need additional support. 	

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<p>^{8D} A self-regulatory body should establish a whistleblowing hotline for those who feel that they are being asked to do things which are contrary to the standards code.</p>	<ul style="list-style-type: none"> • Concerns are welcomed, valued and treated seriously. • <u>Guidance for applicants</u> • The Regulator will need to require from subscribers contractual guarantees that individuals are not victimised for contacting the hotline; safeguards and monitoring are in place to ensure that this does not happen. • The Regulator ensures that the hotline is easily accessible and available to anyone who might reasonably want to access it. • <u>The Regulator requires from subscribers established processes that ensure alleged</u> malpractice is identified and dealt with appropriately and effectively. • Requested or required confidentiality and anonymity are assured at all times. • The Regulator demonstrates clear leadership and commitment to the protection of those engaged in whistleblowing. • The Regulator monitors and records data arising from any use of the hotline and learns from and acts appropriately on: concerns raised; action taken; and outcomes. • The Regulator has appropriate tools to support individuals who raise concerns. 	<ul style="list-style-type: none"> • Details of how the policy was developed and the review process. • Details of hotline operation, process and budget. • Published guidance on the whistleblowing policy • Clear contractual requirements on subscribers to abide by a policy which protects those engaged in whistleblowing. (D) • Data on its use and conclusions of whistleblowing. • Details of senior person(s) in the Regulator responsible for leadership/ sponsorship of hotline. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>9 The Board should require, of those who subscribe,</p> <ul style="list-style-type: none"> • appropriate internal governance processes (for dealing with complaints and compliance with the standards code), • transparency on what governance processes they have in place, and • notice of any failures in compliance, together with details of steps taken to deal with failures in compliance. 	<ul style="list-style-type: none"> • The Regulator requires subscribers to have procedures in place for dealing with complaints and standards compliance, recording and reviewing of compliance failures (where provided) and remedial actions taken/reports made. <p><u>Guidance for applicants</u> The PRP when determining what is “appropriate” will need to be satisfied that</p> <ul style="list-style-type: none"> - the Regulator requires subscribers to have procedures in place for protecting complainants from victimization (see A) - The Regulator requires the subscriber to nominate a senior individual to take responsibility for dealing with and compliance with the standards code. <ul style="list-style-type: none"> • The Regulator requires subscribers to be transparent in their processes • See text at criteria 10 and 10 and note B here about the need for full reporting by subscribers to the regulator on complaints and code breaches. 	<ul style="list-style-type: none"> • Contract/terms and conditions/Articles of Association between the Regulator and subscriber demonstrating requirements in criterion 9. • Associated practices and procedures. 	<p>(A) Given the fact that complaints cannot be made anonymously, it is possible for newspapers to "victimise" and intimidate complainants while handling their complaints. This has the effect of scaring off complainants and discouraging other complainants from coming forward. There are plenty of examples of this happening in the past. Therefore we recommend reference to this requirement for applicants to prevent this from happening in future.</p> <p>(B) Criteria 9 states that The Board should require, of those who subscribe...notice of any failures in compliance, together with details of steps taken to deal with failures in compliance</p> <p>And Schedule 2 paragraph 1 refers to the concepts of “ independence and transparency of enforcement and compliance”.</p> <p>Criteria 9 and the need for transparent of compliance with the code require clarity about all code breaches regardless of whether these are escalated to the regulator (see criteria 10 and 20 also).</p>

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<p>10 The Board should require all those who subscribe to have an adequate and speedy complaint handling mechanism; it should encourage those who wish to complain to do so through that mechanism and should not receive complaints directly unless or until the internal complaints system has been engaged without the complaint being resolved in an appropriate time.</p>	<p><u>Guidance for applicants</u></p> <p>In determining what is “adequate” the PRP will require that the complaints procedure is easily accessible and available to anyone who might reasonably want to access it and therefore that</p> <ul style="list-style-type: none"> - The Regulator requires subscribers to have a fair and accessible mechanism for dealing with complaints which is adequate and speedy including in that it should: <ul style="list-style-type: none"> - be publicised in a way which ensures that people who might wish to take advantage of it would know of its existence and how to use it; - identify when a complaint is being made and understand the reason for that complaint; - acknowledge receipt of complaint and notify complainant how the complaint will be handled in an appropriate timeframe; - share findings of investigations and conclusions with complainant - as per criteria 9, provide notice to the Regulator of any failures in compliance (see note B) - as per criteria 9, provide information to the Regulator on the steps taken to deal with such failures; and 	<ul style="list-style-type: none"> • Complaints handling policy and process. • Written agreements between the Regulator and subscribers regarding the handling and escalation of complaints. • Data on volume and type of complaints received by (a) subscribers and (b) the Regulator; time taken to handle each stage of the complaint and total time taken to resolve (including measured from the point of first contact). Analysis provided of such data. • Data on volume of complaints escalated to the Regulator and/or arbitration etc. 	<p>(A) Previous regulatory schemes and their complaints processes have been criticised (and found by independent inquiries) to be not “fair” – they were biased towards the newspaper.</p> <p>(B) While the Regulator will be able to audit complaints that are escalated to it, it will rely on the subscribers’ record-keeping and reporting or inspection for those complaints which do not reach the regulator in order to determine whether “those who subscribe to have an adequate and speedy complaint handling mechanism”</p> <p>[See criteria 20]: A significant problem with the PCC was that code breaches which were resolved before they reached the PCC were never recorded or reported. This could potentially allow for repeated code breaches, forming what could have been the basis for an investigation of systemic breaching, but which are never known by the regulator or recorded anywhere.</p> <p>While it is important to enable and encourage newspapers to resolve complaints before they need to be dealt with by the regulator, it is not acceptable for such newspapers to be breaching regularly without record (efficient though they may be at resolving the resultant complaints). For example they may have the practice of buying off complainants with donations to charity.</p>

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[still 10]	<ul style="list-style-type: none"> - if the complaint is not resolved, provide details on how the complaint can be referred to the Regulator; <p>The Regulator requires subscribers to have a fair and accessible mechanism for dealing with complaints which is adequate and speedy including in that it should not require a complainant to specify the clause of the code which is alleged to be breached when this is obvious from the complaint (see also criteria 8 and 11)</p> <ul style="list-style-type: none"> • • The Regulator ensures that the subscriber's complaints mechanism has regard to conflicts of interests. (H) • The Regulator has in place mechanisms which ensure that subscribers deal with complaints in a timeframe that is effective and proportionate for the subscriber and type of complaint. • The Regulator requires subscribers to have an accessible complaints mechanism that considers vulnerable individuals and those who need additional support. • <p><u>Guidance for applicants</u></p> <ul style="list-style-type: none"> • It is important that regulators can show they have measures (including sanctions) in place to prevent the victimisation of complainants from taking place • 	<ul style="list-style-type: none"> • Written agreements between the Regulator and subscribers regarding the recording of complaints and associated code breaches from complaints which are not "escalated". • • • • • Ref conflicts of interest: Complaints-handling and complaints-deciding staff should be shown by contract to be insulated from newspaper performance indicators in respect of compliance. 	<p><u>(C) Conflicts of interest</u></p> <p>The complaints process must be managed by staff who are independent of the interests of the newspaper in its published or reported performance on compliance.</p> <p>If the complaints process is managed by those who are assessed by their employer on how many times a complaint succeeds or to what degree the newspaper complies with the Code etc, then it is neither fair nor adequate.</p>

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>11 The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board will need to have the discretion not to look into complaints if they feel that the complaint is without justification, is an attempt to argue a point of opinion rather than a standards code breach, or is simply an attempt to lobby. The Board should have the power (but not necessarily the duty) to hear complaints:</p> <p>a) from anyone personally and directly affected by the alleged breach of the standards code, or</p> <p>b) where there is an alleged breach of the code and there is public interest in the Board giving consideration to the complaint from a representative group affected by the alleged breach, or</p> <p>c) from a third party seeking to ensure accuracy of published information.</p> <p>In the case of third party complaints the views of the party most closely involved should be taken into account.</p>	<p>The complaints procedure:</p> <ul style="list-style-type: none"> • Is publicised and explained in a way which makes it easily accessible and available to anyone who might reasonably want to access it. • Operates in a manner and on a timescale which ensures complaint adjudications are effective. <p><u>Clarification</u></p> <ul style="list-style-type: none"> • Complainants must be assisted in identifying the relevant clause(s) of the code when seeking to complain about an article (this may fit better in criteria 8 and/or 10). <p><u>Guidance for applicants</u></p> <p>In order for the Board's power to hear complaints not to be undermined by the actions of subscribers, the PRP will expect a regulator to have policy and agreements in place to prevent individuals being coerced by subscribers into withdrawing complaints due to victimisation or inappropriate financial inducements</p> <p><u>For the avoidance of doubt</u></p> <p>In respect of "In the case of third party complaints the views of the party most closely involved should be taken into account", a regulator must not escalate this into a requirement that the party most closely involved needs to authorise the complaint, nor that they have a veto.</p>	<ul style="list-style-type: none"> • Contract, terms and conditions or Articles of Association between the Regulator and the subscriber demonstrating the power to hear and decide on complaints. • Policy and procedures for dealing with complaints. • Criteria for dismissing complaints and examples of documentation/publications to demonstrate the process is clearly available to the public and subscribers. • Documentation/guidance on the handling of public interest and third party complaints (including published policies). 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>12 Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.</p>	<p><u>For the avoidance of doubt</u></p> <p>Conflicts of interest of Board members or complaints-handling officials should be declared and handled appropriately</p>	<ul style="list-style-type: none"> • Organisation structure and details of the scheme of delegations to committees and/or individual staff members for handling complaints. • Terms of reference/minutes demonstrating delegation powers and terms. • <u>Process to be</u> used to investigate complaints and present findings to the Board for decision. • • Conflicts of interest policy provided 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>12A The Board should be prepared to allow a complaint to be brought prior to legal proceedings being commenced. Challenges to that approach (and applications to stay or sist) can be decided on the merits.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<ul style="list-style-type: none"> • Policy on complaints handling, including the process for considering challenges. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>13 Serving editors should not be members of any Committee advising the Board on complaints and should not play any role in determining the outcome of an individual complaint. Any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.</p>	<ul style="list-style-type: none"> The Regulator takes appropriate governance steps to ensure that serving editors do not advise on complaints, or determine their outcome. <p><u>For the avoidance of doubt</u></p> <p>Conflicts of interest of complaints committee members or complaints-handling officials should be declared and handled appropriately</p>	<ul style="list-style-type: none"> Composition of the any Complaints Committee (or Panel) responsible for advising the Board on complaints, demonstrating independence from the press. <p>Conflicts of interest policy provided</p>	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>14 It should continue to be the case that complainants are able to bring complaints free of charge.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<ul style="list-style-type: none"> • Regulator's complaints policy and procedure. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>15 In relation to complaints, where a negotiated outcome between a complainant and a subscriber (pursuant to criterion 10) has failed, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to direct a correction and an apology must apply equally in relation to:</p> <p>a) individual standards breaches; and</p> <p>b) groups of people as defined in criterion 11 where there is no single identifiable individual who has been affected; and</p> <p>c) matters of fact where there is no single identifiable individual who has been affected.</p>	<p><u>Guidance for applicants</u> To comply with schedule 2 requirements (see A) the PRP must be satisfied that remedies are effective and that as a minimum the regulator has an approach which requires corrections and apologies to be sufficiently prominent to be effective and credible.</p> <ul style="list-style-type: none"> The Regulator's approach to appropriate remedial action is a reasonable one. The mechanisms for achieving that are designed to be effective (including sufficiently fast) and operate in that way. <p><u>For the avoidance of doubt</u> The appropriateness of the remedial action is a matter for the Board not the PRP (so the proposed two indicators in the consultation are flawed) but the PRP will need to be satisfied that</p> <ul style="list-style-type: none"> The regulator has a process for "following up" on the proposed remedial action to ensure it has been implemented (see B) The regulator has internal systems to ensure that the appropriate remedial action has been selected from the range of options available, and (see C) that the views of a successful complainant and directly affected individuals are sought and taken into account. 	<ul style="list-style-type: none"> Contract/Articles of Association/terms and conditions between the Regulator and subscribers demonstrating the Regulator's power to direct appropriate remedies which must include corrections and apologies. Information on the power to direct the press, including as seen in instances when it has and has not been applied. Premature on first application Information on handling breaches in criterion (a), (b) and (c) where no significant identifiable individual has been affected. Instances of remedies directed and evidence of actions taken by the subscriber. Premature on first application Information on the operation of remedies, including information about the instances of its use and non-use. Premature on first application 	<p>(A) Schedule 2 paragraph 1 requires the PRP, when conducting a recognition exercise, to have regard to the concepts of..."effectiveness,credible powers and remedies"</p> <p>(B) Remedies are not credible unless they are enforced. This requires the regulator to follow up its rulings to see that they are being implemented.</p> <p>(C) Remedies (which criteria 15 sates are "essentially about correcting the record for individuals") are - by definition - less likely to be effective if the complainant (for whom they are designed) is not consulted about what they should be.</p> <p>Indeed, the Leveson Report says (at Part K, Chapter 7, section 4.37) that the remedy "should, of course, be the subject of discussion between the complainant and the title"...</p>

Charter Criteria		Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
[Still] 15				

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>16 In the event of no agreement between a complainant and a subscriber (pursuant to criterion 10), the power to direct the nature, extent and placement of corrections and apologies should lie with the Board.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<ul style="list-style-type: none"> • Process and procedures to direct apologies and corrections. <p>Contracts and agreements to demonstrate that subscribers agree to adhere to directions.</p>	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>17 The Board should not have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<ul style="list-style-type: none"> • Contract/Articles of Association/terms and conditions between the Regulator and subscribers making clear that the Regulator does not have the power to prevent publication. • Any drafts of Guidance to be provided to editors on code compliance. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>18 The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board.</p> <p>The investigations process must be simple and credible and those who subscribe must be required to cooperate with any such investigation.</p>	<p><u>Guidance for applicants</u></p> <p>The PRP will need to assess sufficiency of powers, and in doing so will assess whether the Regulator has sufficient powers to carry out an effective investigation into both a reasonable approach to deciding what are</p> <ul style="list-style-type: none"> serious or systematic systemic breaches of the code and failures to comply with the directions of the Board (including the means of establishing whether the grounds for an investigation exist when reasonably suspected). <p>The PRP will need to assess whether the investigations process is “simple and credible” and that those who subscribe are required to cooperate with any such investigation</p> <p><u>For the avoidance of doubt</u></p> <p>For the powers to be sufficient and the process credible, the co-operation required must include the disclosure of otherwise confidential relevant information subject to a non-disclosure/non-publication undertaking by the regulator. (See A)</p>	<ul style="list-style-type: none"> Articles of Association/ Agreements with subscribers confirming the Regulator’s authority to examine issues on its own initiative and giving it the powers to carry out investigations. Information on the approach taken to deciding what amounts to serious or systemic breaches of the code. <p>The investigation process.</p> <ul style="list-style-type: none"> Approved budget for independent investigations. Internal/external reviews of compliance procedures. 	<p>(A) This may seem like the most obvious and basic regulatory point imaginable but previous non-recognised self-regulators have found themselves in a position where those they regulate are by the terms of the contract under no obligation to disclose any documents or records they deem to be non-disclosable for example on the basis of it being deemed “confidential”.</p>

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>19 The Board should have the power to impose appropriate and proportionate sanctions (including but not limited to financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1,000,000) on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The Board should have sufficient powers to require appropriate information from subscribers in order to ascertain the turnover that is attributable to a publication irrespective of any particular accounting arrangements of the publication or subscriber. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.</p>	<p><u>Guidance for applicants</u></p> <p>The PRP will need to assess whether</p> <ul style="list-style-type: none"> the Regulator's approach to imposing sanctions is a reasonable one in relation to whether it is "appropriate and proportionate". the Board has sufficient powers to require appropriate information from subscribers in order to ascertain the turnover that is attributable to a publication irrespective of any particular accounting arrangements of the publication or subscriber. <p><u>For the Avoidance of doubt</u></p> <p>The sanctions required to be available are not restricted to fines, corrections and apologies as set out in the criteria but should for example include the power to require the publication of a the outcome of an investigation.</p>	<ul style="list-style-type: none"> Contractual agreements between the Regulator and subscriber on enforcement of directions and agreement to comply. Data on where the power has been applied and/or reasons why sanctions have not been applied and action taken. Information on how the Board will approach sanctions including deciding on what is appropriate and on proportionality. Information on how the Board will approach decisions on calculating fines. Information demonstrating powers to gather turnover information in a manner and timescale which ensures that the overall process remains effective. Information on, and approach to, the requirement to publish corrections. 	

Recognition matrix

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>19A The Board should establish a ring-fenced enforcement fund, into which receipts from financial sanctions could be paid, for the purpose of funding investigations.</p>	<ul style="list-style-type: none"> No elaboration proposed. 	<ul style="list-style-type: none"> Information on how the Board will establish has established a sufficient enforcement fund, and how the fund is will be separated for the purpose of funding investigations. Information on how the Board will satisfy has satisfied itself as to the sufficiency of the enforcement fund. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>20 The Board should have both the power and a duty to ensure that</p> <ul style="list-style-type: none"> all breaches of the standards code that it considers are recorded as such and that proper data is kept that records the extent to which complaints have been made and their outcome; <p>this information should be made available to the public in a way that allows understanding of the compliance record of each title.</p> <p>Bullet points make this easier to read.</p>	<ul style="list-style-type: none"> No elaboration proposed. <p><u>For the avoidance of doubt</u></p> <p>The compliance record of each title refers to its overall compliance with the code, not just in respect of complaints that are escalated to the regulator. (see note A)</p> <p>Therefore, the “proper data” and “information made available to the public” applies to all breaches of the standards code not just those subject to consideration by the regulator.</p> <p>Therefore while Regulator must keep records of code breaches identified during any resolution it is involved in any case it considers (in mediation or adjudication), it must also require its subscribers to monitor and report in respect of complaints not escalated to the Regulator</p> <ul style="list-style-type: none"> the number of complaints it gets the number code breaches it has identified in complaints it resolves The speed of its complaints handling The proportion of complaints dropped by the complainant 	<p>Agreements between the Regulator and subscribers demonstrating the power specified in criterion 20.</p> <ul style="list-style-type: none"> Evidence of manner in which breaches are will be found and complaints have been will be recorded. Information on how the information is will be made available to the public to ensure the public understands the compliance record of each title. 	<p>(A) Without access to auditable records of a subscriber relating to Code breaches identified following complaints resolved without the involvement of the regulator, and to dropped complaints, the regulator will be unable to fully establish how the subscriber is performing in respect of compliance.</p> <p>In circumstances where all complaints have to go through the subscriber first, the regulator would not be able to detect multiple code breaches (and grounds for a possible systemic problem prompting an investigation) if the subscriber was adept at achieving post-breach resolution, or at getting complaints dropped by the complainants (for example by making donations to a chosen charity in exchange for dropping the complaint)..</p>

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>21 The Board should publish an Annual Report identifying:</p> <p>a) the body's subscribers, identifying any significant changes in subscriber numbers;</p> <p>b) the number of:</p> <p>(i) complaints it has handled, making clear how many of them are multiple complaints,</p> <p>(ii) articles in respect of which it has considered complaints to be without merit, and</p> <p>(iii) articles in respect of which it has considered complaints to be with merit, and the outcomes reached, in aggregate for all subscribers and individually in relation to each subscriber;</p> <p>c) a summary of any investigations carried out and the result of them;</p> <p>d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by subscribers; and</p> <p>e) information about the extent to which the arbitration service has been used.</p>	<ul style="list-style-type: none"> • Annual report is easily accessible and available to anyone who might reasonably want to access it. • Annual report is published annually. 	<ul style="list-style-type: none"> • Information about the format and timescales for publication of annual report. 	

Charter Criteria	Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
<p>22 The Board should provide an arbitral process for civil legal claims against subscribers which:</p> <p>a) complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate);</p> <p>b) provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial basis (so far as possible);</p> <p>c) contains transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds);</p> <p>d) directs appropriate pre-publication matters to the courts;</p> <p>e) operates under the principle that arbitration should be free for complainants to use¹;</p> <p>f) ensures that the parties should each bear their own costs or expenses, subject to a successful complainant's costs or expenses being recoverable (having regard to section 60² of the 1996 Act or Rule 63 of the Scottish Arbitration Rules³ and any applicable caps on recoverable costs or expenses); and</p> <p>g) overall, is inexpensive for all parties.</p>	<ul style="list-style-type: none"> The Regulator either itself provides, or has in place arrangements to ensure that someone else will on its behalf provide, the arbitral process. <p><u>For the avoidance of doubt</u></p> <ul style="list-style-type: none"> All subscribers must be members of the arbitration scheme Subscribers should not be permitted to "pick and choose" which cases to take to arbitration. the opt-out for subscribers who publish only on a local or regional basis on Schedule 2 paras 6 & 7 is only available after a cyclical review. <ul style="list-style-type: none"> The Any administration fee in 22 (e) footnote is small and genuinely related to the costs of administration <p>initial assessment of an application and not for meeting the costs of determining an application (including the costs of the arbitration) [see footnote]</p> <ul style="list-style-type: none"> <p><u>Guidance for applicants:</u></p> <p>In 22 (f) Any cap on a claimant's recoverable costs and expenses must be set at a fair and reasonable level. The PRP will require this to be determined in a way which has regard to the need to achieve an equality of arms in the relevant arbitration. (See note A).</p>	<ul style="list-style-type: none"> Information as to how the arbitral process will operate operates in practice and a description of how it complies with criteria 22 (a) to (g). <p>Information as to how any administration fee will be calculated with regard to no more than cost recovery of the sifting process.</p> <p>Contracts will need to demonstrate that membership is conditional on membership of the arbitration scheme and that there is no power for a subscriber to elect not to use arbitration in any individual case (other than by agreement with the claimant or by a decision of the arbitrator)</p> <ul style="list-style-type: none"> 	<ul style="list-style-type: none"> (A) In 22 (f) The way that recoverable claimant costs are limited is going to be critical for the workability and fairness of the arbitration scheme and access to justice for claimants on the one hand and cost-savings for publishers on the other. It is accepted that for the latter purpose there may well need to be cost-capping on recoverable costs for successful claimants but this must not be done at the expense of fairness. The way to square the circle is to ensure that due regard is paid by the regulator and the arbitrator in any scheme, to the need to secure equality of arms. A small publisher with little or no legal team will know that they will face an equally powered claimant or not face large costs. Whether the regulator or the arbitrator (or a combination of both) is responsible for setting a cap on recoverable costs or expenses, the existence of clear rules which require it to take into account the circumstances of the claim and the arbitration when determining how equality arms is to be achieved

¹ The principle that arbitration should be free does not preclude the charging of a small administration fee, provided that:

(a) the fee is determined by the Regulator and approved by the Board of the Recognition Panel; and

(b) the fee is used for the purpose of defraying the cost of the initial assessment of an application and not for meeting the costs of determining an application (including the costs of the arbitration).

Recognition matrix

Charter Criteria		Examples of proposed indicators suggested guidance and clarification	Examples of possible evidence	Your comments
23	The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.	<ul style="list-style-type: none"> Any variation in terms for different types of publisher needs to be such as to facilitate membership on fair, reasonable and non-discriminatory terms. Those terms need properly to take into account matters such as the financial position of a publisher. 	<ul style="list-style-type: none"> Eligibility criteria and process for joining the Regulator. List of current subscribers by type of membership. Premature at this stage Anonymised sample of decision making for successful and unsuccessful membership applications. Premature at this stage 	

² Section 60 (Agreement to pay costs in any event): *An agreement which has the effect that a party is to pay the whole **or part of the costs** of the arbitration in any event is only valid if made after the dispute in question has arisen.*

³ The Rules are set out in Schedule 1 to the Arbitration (Scotland) Act 2010. Rule 63 (Ban on pre-dispute agreements about liability for arbitration expenses) **M**: *Any agreement allocating the parties' liability between themselves for any or all of the arbitration expenses has no **effect** if **entered into before the dispute** being arbitrated has arisen.*

