

Examples of suggested “example of possible evidence” inappropriate for initial recognition process

We believe the following points are premature for testing in a new Regulator and should either be amended, be instead used in respect of cyclical reviews (or, if appropriate to the particular circumstances, any ad hoc review), or dispensed with altogether depending on the example.

We understand that these are only examples of “possible evidence”. But this still has the effect of creating confusion about how the process works, and how the cyclical review differs from the initial recognition, and may set up unnecessary real or imagined hurdles for new regulators to consider.

Charter criteria		Disputed example of possible evidence	Suggested alternative approach
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.	<ul style="list-style-type: none"> • Audited accounts and statement of going concern. 	<i>Delete. May be appropriate for cyclical review.</i>
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.	<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. • 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. 	<p><i>For point 1: Amend</i></p> <ul style="list-style-type: none"> • <u>Agreed</u> Terms of reference between the Board and Code Committee regarding decisions on the content of the code and compliance with the code. <p>The question of compliance with the code, if it was ever relevant to an initial application, falls to be considered under criteria 10 and 11.</p> <p><i>For point 2:</i></p> <p><i>Delete. May be appropriate for cyclical review.</i></p>

8	<p>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 accuracy, and the need to avoid misrepresentation.</p>	<p>Information, if any, to show how feedback from interested parties is and the regulator's own decisions will be taken into account.</p>	<p>Amend to make prospective Information-if any to show how feedback from interested parties is <u>would be</u> taken into account.</p>
8D	<p>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"> • Data on its use and conclusions of whistleblowing. 	<p><i>Delete. May be appropriate for cyclical review.</i></p>
10	<p>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>	<ul style="list-style-type: none"> • 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><i>Amend as below</i></p> <ul style="list-style-type: none"> • <u>Details of record-keeping processes in place to record</u> 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. • <u>Details of record-keeping processes in place to record</u> Data on volume of complaints escalated to the Regulator

			<p>and/or arbitration etc.</p> <p><i>While we recommend that these points are amended in the instance of first-time recognition, we believe they are essential in their original state for cyclical reviews.</i></p>
12	<p>Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.</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. 	<p>Delete as premature or amend to make less specific as individual staff members may not all be in place at the time of application.</p>
15	<p>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> <ol style="list-style-type: none"> a) individual standards breaches; and b) groups of people as defined in criterion 11 where there is no single identifiable individual who has been affected; and c) matters of fact where there is no single identifiable individual who has been affected. 	<ul style="list-style-type: none"> • Information on the power to direct the press, including as seen in instances when it has and has not been applied. • Instances of remedies directed and evidence of actions taken by the subscriber. • Information on the operation of remedies, including information about the instances of its use and non-use. 	<p>Amend as shown to make it prospective only</p> <ul style="list-style-type: none"> • Information on the power to direct the press, including as seen in instances when it has and has not been applied. • Instances of remedies directed and evidence of actions taken by the subscriber. • Information on the operation of remedies, including information about the instances of its use and non-use. <p><i>As with previous comments, we believe these are nonetheless essential for cyclical reviews in</i></p>

			<i>their original state.</i>
19	<p>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.</p> <p>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>	<ul style="list-style-type: none"> Data on where the power has been applied and/or reasons why sanctions have not been applied and action taken. 	<p>Delete as premature</p> <ul style="list-style-type: none"> Data on where the power has been applied and/or reasons why sanctions have not been applied and action taken. <p>Add</p> <ul style="list-style-type: none"> <u>Detail of sanctions policy.</u>
19A	<p>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"> Information on how the Board has established a sufficient enforcement fund, and how the fund is separated for the purpose of funding investigations. Information on how the Board has satisfied itself as to the sufficiency of the enforcement fund. 	<p>Amend as shown to make it prospective only</p> <ul style="list-style-type: none"> Information on how the Board <u>will establish</u> has established a sufficient enforcement fund, and how the fund <u>is will be</u> separated for the purpose of funding investigations. Information on how the Board <u>will satisfy</u> has satisfied itself as to the sufficiency of the enforcement fund.
22	<p>The Board should provide an arbitral process for civil legal claims against subscribers which:</p> <ol style="list-style-type: none"> complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate); provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial 	<p>Information as to how the arbitral process operates in practice and a description of how it complies with criteria 22 (a) to (g).</p>	<p>Amend as shown to make it prospective only</p> <p>Information as to how the arbitral process operates <u>will operate</u> in</p>

	<p>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 overall, is inexpensive for all parties.</p>		<p>practice and a description of how it complies with criteria 22 (a) to (g).</p>
23	<p>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.</p>	<ul style="list-style-type: none"> • List of current subscribers by type of membership. • Anonymised sample of decision making for successful and un-successful membership applications. 	<p>Amend as shown to make it prospective only</p> <ul style="list-style-type: none"> • List of current subscribers by type of membership. • Anonymised sample of decision making for successful and un-successful membership applications. • Detail of policy and process for accepting or not accepting applications for membership.