



Information Commissioner's Office

The Information Commissioner's Response to the Press Recognition Panel (PRP) consultation on proposals for recognition of press self-regulators ('the consultation')

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Commissioner welcomes the invitation to respond to this consultation. We have confined our response to providing comments that are relevant to our main information rights responsibilities mentioned above and have not responded to those aspects that fall outside of our regulatory remit.

The Commissioner has been following developments in the implementation of the recommendations of the report of the Leveson Inquiry closely. In the report, Lord Justice Leveson made a series of recommendations for the ICO, and for the Ministry of Justice, in relation to the DPA. The ICO responded to these recommendations in 2013¹.

Since then, further work has been undertaken by the ICO to address these recommendations. Following a robust and lengthy consultative process with the press and wider media, interest groups, and academics the ICO published guidance in September 2014 on data protection and journalism². This guidance was published specifically in response to the recommendation that the ICO "should take immediate steps, in consultation with the industry, to prepare and issue comprehensive good practice guidelines and advice on appropriate principles and standards to

¹ <https://ico.org.uk/media/about-the-ico/documents/1042562/ico-response-to-leveson-report-012013.pdf>

² <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf>

be observed by the press in the processing of personal data.” The ICO guidance helps those working with personal data in the course of journalistic activity to understand their obligations under the DPA and promotes good practice.

The ICO guidance was written in such a way that it can be compatible with any press regulation solution that emerges. The ICO stands ready to work constructively with any press regulator on data protection issues.

It should be noted at the outset of this response that the scope of the relevant publisher definition used in the Crime and Courts Act 2013, and in this consultation, is not as wide as the scope of media organisations about which the ICO considers data protection concerns and to which our guidance is directed.

Annex 1 – Recognition matrix

	Charter Criteria	Examples of proposed indicators	Examples of possible evidence
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.	No elaboration proposed	<p>Terms of reference between the Board and Code Committee regarding decisions on the content of the code and compliance with the code.</p> <p>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> <p>Information on the composition of the Code Committee, including the role played by serving editors.</p>

Our reading of Criterion 7 is that the standards code of any regulator seeking recognition by the PRP must be controlled, in terms of content and amendment, by a committee at that same regulator in order to fully satisfy this criterion. If this interpretation is not correct, we hope that the PRP can clarify this in the consultation outcomes report.

The Commissioner has a relevant interest in the emergence of new standards codes for the press. It is likely that any new code would cover privacy aspects, which will overlap with issues in the Data Protection Act. The ICO has previously worked with the Press Complaints Commission on the DPA section of the Editors' Codebook. We would therefore welcome any approach by press regulators, alone or jointly, to seek our input on DPA-related aspects of a new standards code.

Additionally when assessing concerns about the media's processing of personal data, section 32(3) of the DPA states that the ICO may take into account compliance with any relevant code of practice (as designated by the Secretary of State) when considering whether a data controller's view that publication would be in the public interest was reasonable. Currently there are three specified codes: the Editors' Code; the BBC's Editorial Guidelines; the Ofcom Code. Therefore a new standards code for the press would not immediately be covered by this clause of the DPA. The designation of any new press standards code under section 32(3) of the DPA would be a matter for the government rather than the Commissioner. However as a matter of good regulatory practice, when investigating concerns about the media the ICO is likely to give regard to the extent to which a data controller has complied with a press standards code used by a PRP-recognised self-regulator, even if that code has not yet been formally designated by ministerial order.

	Charter Criteria	Examples of proposed indicators	Examples of possible evidence
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> <ul style="list-style-type: none"> a) conduct, especially in relation to the treatment of other people in the process of obtaining material; b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and c) accuracy, and the need to avoid misrepresentation. 	<p>The Regulator has demonstrably considered relevant legislation, codes, rules and/or guidance in developing the code.</p> <p>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.</p> <p>The code is reasonable in its terms.</p> <p>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>	<p>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.</p> <p>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.</p> <p>Information, if any, to show how feedback from interested parties is taken into account.</p>
8C	<p>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>	<p>Guidance is provided in a way which makes it easily accessible and available to anyone who might reasonably want to access it.</p>	<p>Examples of written and verbal guidance, demonstrating how it relates to the provisions in the code.</p> <p>Information on how the guidance will operate.</p> <p>Information on how guidance is accessible, including for vulnerable individuals and those who need additional support.</p>

The Commissioner welcomes the explicit requirement in Criterion 8 that, notwithstanding public interest justification, a press regulator's standards code must give appropriate respect for privacy. The ICO's guidance on data protection and journalism should prove a useful resource both for those involved in drafting a standards code and for those at the PRP tasked with evaluating such codes.

Whilst the ICO’s guidance recognises the inherent public interest in freedom of expression and a free press it does not seek to be an exhaustive or definitive source in setting out what the public interest is and how it applies to particular news stories. It does however provide useful practical considerations in terms of justifying reliance on the journalism exemption found in section 32 of the DPA by, for example, keeping a record of editorial discussions and meetings where a public interest justification was considered in relation to publication of a story.

It is worth noting that the balance between privacy and freedom of expression in the ICO guidance can also be seen in current media industry codes of practice. Page 21 of our guidance says that “Factors which will help ensure you strike a fair balance – including public interest tests and definitions for fairness, openness and accuracy – are to be found throughout these codes. We would therefore emphasise that if you comply with industry codes, this will go a long way to ensure you also comply with the DPA.” Any new press standards code that follows the letter and spirit of the relevant Charter criteria in this consultation would therefore be likely to satisfy many of the compliance requirements of the DPA.

	Charter Criteria	Examples of proposed indicators	Examples of possible evidence
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>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.</p> <p>The service to warn the press is easily accessible and available to anyone who might reasonably want to access it.</p> <p>The Regulator identifies appropriate tools and mechanisms to notify relevant parties on timescales which ensure that the recipients of it can respond promptly.</p>	<p>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.</p> <p>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.</p> <p>Contacts, if any, with individuals, broadcasters and other parties, and actions taken where relevant.</p>

The Commissioner welcomes any efforts by a press regulator to alert other industry parties when an individual has explicitly requested that the media do not contact them. The inclusion of a warning service as a

specific Charter criterion should, we hope, encourage the development of such a service. Preventing further intrusion or harassment is particularly important in cases of death and grief, when the wishes of the deceased's family members to maintain privacy should be respected.

We are aware that IPSO currently operates an anti-harassment system that covers the IPSO press, some broadcasters, and non-IPSO press publications. The ICO is supportive of any industry-wide warning service that would safeguard individuals who have opted to maintain their privacy and not engage with the media. As there is currently no overarching regulatory body that covers all three arms of the news industry, namely the broadcasters, the press, and photo agencies, we hope that efforts can continue between regulatory bodies and individual media organisations to establish a truly industry-wide warning service.

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