Dear Press Recognition Panel,

I am a member of the public, a supporter of the Royal Charter and have a longstanding interest in ensuring that the Leveson Report is delivered fully and effectively. I have considered the consultation and read Hacked Off's submission to the PRP consultation, a copy of which is here. I am writing firstly to say that I back Hacked Off's submission, prepared with the input of victims of press abuse. I hope you will take note of this.

One issue which I am passionate about in a press regulator is complaints handling, and in response to the Consultation I would like to draw your attention to my views (which I share with Hacked Off) on how the PRP should apply the Charter criteria in respect of this particular matter below.

Internal governance, complaints, sanctions and reports of compliance

Criterion 9 says:

The Board should require, of those who subscribe,

- *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.*

Victimisation

In addition to what the PRP has already suggested, fundamental to the credibility and efficacy of any complaints system is the avoidance of victimisation of those who complain and the deterring of complaints or the coercion to drop complaints that flows from this activity.

Therefore in the guidance for applicants in relation to this criteria (or possibly criteria 10 or 11) the PRP should explain that when the time comes to determine what is "appropriate", they will need to be satisfied that:

the Regulator requires subscribers to have procedures in place for protecting complainants from victimization.

Full transparency by subscribers about their compliance

Criterion 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"

And Schedule 2 paragraph 1 of the Royal Charter refers to the concepts of "independence and transparency of enforcement and compliance".

So both Criteria 9 and the need for "transparency of compliance with the code" require reporting to the regulator from subscribers which is full and clear; and which is transparent about all code breaches regardless of whether these are escalated to the regulator.

This should be made clear in the form of guidance to applicants in the matrix either here or under criteria 10 or 20 where it also arises.

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Criterion 10 says:

> *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.*

Guidance for applicants is needed here because the PRP has to determine what is "adequate".

So it is in relation to determining what is an "adequate" complaints-handling mechanism that, as the PRP sets out in the matrix, they will require that the complaints procedure is easily accessible and available to anyone who might want to access it and the indicators then listed.

The PRP suggests that an applicant regulator will need to require subscribers to have a mechanism for dealing with complaints which is adequate and speedy and then lists a number of "indicators" which are reasonable.

But the PRP needs to stress that an adequate complaints handling system is one that is fair and accessible.

In regard to the above 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.

Full reports of compliance

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".**

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.

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.

So the PRP should make clear in the guidance column (also called "indicators") that the Regulator will need to show

Written agreements between the Regulator and subscribers regarding the recording of complaints and associated code breaches from complaints which are not "escalated".

Criteria 9 and 20 also point to the same requirement.

Assisting complainants

There should be no question that the regulator and any subscriber should help complainants frame their complaint and so it is worth setting out in applicant guidance that for the avoidance of doubt.

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).

Conflicts of interest

The PRP rightly say that their guidance will include that

"The Regulator ensures that the subscriber's complaints mechanism has regard to conflicts of interests"

However part of this is that the complaints process of s subscriber/newspaper must be managed by staff who are independent of the interests of the newspaper in its published or reported performance on compliance. 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.

While one cannot insist that the complaints handlers are independent of the newspaper, one can expect as a minimum that they do not personal or financial interests in the outcome of a complaint or compliance rates.

Therefore in respect of examples of possible evidence to satisfy the conflict of interest point,

> **Complaints-handling and complaints-deciding staff in subscribers should be shown by contract to be insulated from newspaper performance indicators in respect of compliance.**

Victimisation (see criterion 9 also)

Guidance for applicants in the second column of the matrix should include

It is important that regulators can show they have measures (including sanctions) in place to prevent the victimisation of complainants from taking place.

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Criterion 11 says:

> *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:*
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> *a) from anyone personally and directly affected by the alleged breach of the standards code, or*

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

c) from a third party seeking to ensure accuracy of published information.

In the case of third party complaints the views of the party most closely involved should be taken into account.

Assistance to complainants

By way of clarification, as mentioned above in criteria 8A, and 10, it should be made clear that complainantsmust 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).

Preventing victimisation, intimidation or coerced resolution

In this criteria reference is made to the Board of the regulator needing to have the power to hear complaints. This must not be undermined by the actions of subscribers, so the PRP should set out here in guidance to applicants that it will expect a regulator to have policy and agreements in place to prevent individuals being coerced by subscribers into withdrawing complaints or accepting a resolution due to victimisation, intimidation or inappropriate financial inducements.

3rd party complaints

The criteria states that "In the case of third party complaints the views of the party most closely involved should be taken into account". For the avoidance of doubt the matrix should make clear to applicants that a regulator must not interpret this as a requirement that the party most closely involved needs to authorise the complaint, nor that they have a veto over a complaint being made.

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Criteria 12 and 13 say:

Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.

And

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.

In relation to either one or the other or both it should be stated for the avoidance of doubt that conflicts of interest of Board members or complaints-handling officials should be declared and handled appropriately.

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Criteria 12A – no comment

Criteria 14– no comment

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Criteria 15 says:

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:

individual standards breaches; and

groups of people as defined in criterion 11 where there is no single identifiable individual who has been affected; and

matters of fact where there is no single identifiable individual who has

been affected.

The limit of the PRP's interest on remedies

The PRP has said that these may be part of the guidance in respect of this criteria:

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.

However that is not the best approach because the appropriateness of the remedial action in not a matter that the PRP can determine or should determine by reference to its own "reasonableness" test.

However the schedule 2 requirements are relevant here and they would be better basis for guidance to applicants about remedial action than a new test of reasonableness.

Schedule 2 paragraph 1 requires the PRP, when conducting a recognition exercise, to have regard to the concepts of…"effectiveness, ….credible powers and remedies".

Remedies are not credible unless they are enforced. This requires the regulator to follow up its rulings to see that they are being implemented.

Remedies (which criteria 15 states 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. 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"…

Finally the PRP must be satisfied that remedies are effective and this goes to the issue of prominence (or corrections and apologies) which was much discussed at the Leveson Inquiry itself.

So it is agreed that the PRP will need to be satisfied that

The regulator has a process for "following up" on the proposed remedial action to ensure it has been implemented.

The regulator has internal systems to ensure that the appropriate remedial action has been selected from the range of options available, and that the views of a successful complainant and directly affected individuals are sought and taken into account.

as a minimum the regulator has an approach which requires corrections and apologies to be sufficiently prominent to be effective and credible.

In respect of "Examples of possible evidence" the suggestion made by the PRP is reasonable although it should be clearly stated that possible remedies which the regulator can direct *must* include corrections and apologies.

For the avoidance of doubt the term "direct" here means that the regulator must have the power – if needed – to specify the placement and prominence of the remedy.

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Criteria 16– no comment

Criteria 17 – no comment

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Criteria 20 says:

The Board should have both the power and a duty to ensure that

- *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;*

this information should be made available to the public in a way that allows understanding of the compliance record of each title.

Full record of compliance

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.

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.

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.

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).

Therefore, the PRP should make clear in the matrix that, while Regulator must of course 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:**

the number of complaints it receives

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

This also is an issue in criteria 9 and 10.

Martin Kemp