

## News Media Association response to Press Recognition Panel Consultation

***Question 6. Do you consider that our proposals will have any impacts either positive or negative, including on our compliance with the Public Sector Equality Duty?***

The NMA considers that the regulatory framework comprised of the Royal Charter for Self Regulation of the Press, Enterprise and Regulatory Reform Act 2013 and Crime and Courts Act 2013, is incompatible with freedom of expression and press freedom. It was created by politicians, is subject to change by Parliament and funded by government. As the DCMS website announced, the Royal Charter went forward “as agreed by all three political leaders” but not the press. Local, regional and national news media publishers in membership of the NMA did not negotiate or agree this Charter and the associated legislation, nor petition for its imposition, nor do they support, participate in, or fund the regulatory system, that it establishes.

The NS and NPA as predecessor organisations of NMA supported the legal proceedings brought by the industry against the Privy Council, marking the industry’s rejection of the Royal Charter for Press Self regulation, including the role and remit of the Press Recognition Panel.

The overwhelming majority of local, regional and national news media publishers in membership of the NMA are members of the Independent Press Standards Organisation (IPSO), the established self-regulator for the press. The contractual scheme means that each has demonstrated individual commitment to the system of independent self- regulation, through entry into a contract for an initial five years, with provision for its continuation.

Under the express terms of IPSO’s Scheme Management Agreement any publisher would be free to terminate its contract with IPSO if the IPSO Board should decide to apply for recognition under the Royal Charter. No such application is anticipated.

The NMA and its members therefore have fundamental objections to the system under which the Press Recognition Panel is established and operates.

Nevertheless, recognition of a regulator by the Press Recognition Panel could have profound consequences for NMA members, in principle and in practice. Such recognition is the prime trigger of the Crime and Courts Act 2013 costs sanctions, rendering publishers vulnerable to the chilling effect of legal threat and crippling costs liability even where their journalism was vindicated ( see sections 40 -42 of the 2013 Act and the Royal Charter)

As previously publicised, the NMA and its members have been advised by leading counsel that the provisions of the Crime and Courts Act 2013 (sections 34 – 42) that purport to enforce the Royal Charter, through penalising publishers not in membership of a recognised regulator by creation of liability for exemplary damages and costs sanctions, are in direct contravention of Article 10 of the European Convention of Human Rights.

The NMA would like to stress that it considers it inimical to freedom of expression for the Press Recognition Panel to confer recognition upon any regulator without any significant national, regional

and local media members, where such recognition would thereby satisfy the major statutory condition for those penal provisions of the Crime and Courts Act 2013 to come into effect.

The NMA would also question whether recognition under the Charter could in any event be properly granted to any regulator devoid of members, given the Charter's terms:

- Schedule 4 (1) (a) of the Royal Charter on Self-Regulation of the Press states: 'For the purposes of this Charter: a) "Regulator" means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications'.
- Schedule 3 (6) of the Royal Charter recognition criteria requires that: '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'.

If a regulator has no members, then how can such conditions be fulfilled? How can it be shown to be formed either by relevant publishers, for the purpose of conducting regulatory activities in relation to their publications, or on behalf of such publishers, if they are not members? And how, without members, can any funding settlement be negotiated between the industry and the Board, well in advance, for a four or five year period and settled in agreement, (taking into account the specified factors) with an indicative budget certified as adequate for the purpose by the Board? And would it not be against the terms of the Royal Charter recognition criteria for the regulator to be funded by anyone other than the regulated industry (and might not that also create difficulties for Press Recognition Panel funding, aside from the specific provision for Exchequer funding)?

The Royal Charter recognition criterion also, of course, makes reference to a Code, including at Schedule 3 (7) and (8).

Schedule 3 (7) provides that '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.'

The Editors' Code of Practice, now upheld by IPSO, has been formally recognised for many years, as the paramount newspaper and magazine industry code. No regulator other than IPSO is represented upon the Editors' Code of Practice Committee. As the Code is the bedrock of a press self-regulatory system independent of the state, the protection of the integrity of the Editors' Code of Practice is important. The Regulatory Funding Company is prepared to licence use of the Editors' Code of Practice and has done so. However, licence of the Code for use in a regulatory context is subject to strict conditions, in order to safeguard its integrity. These restrict permitted use to the most up to date version of the Editors' Code of Practice. This means adoption of the Editors' Code of Practice in its entirety and without any variation by the licensee, save for immediate incorporation and application of any subsequent amendment agreed and implemented under the RFC/IPSO scheme.

The NMA's members may of course respond individually to the Press Recognition Panel's consultation and this is not intended to be any comprehensive account of NMA members' individual views.

**29 July 2015**

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