



BY EMAIL TO: consultation@pressrecognitionpanel.org.uk

Ms Holly Perry
The Press Recognition Panel
107-111 Fleet Street
London
EC4A 2AB

31 July 2015

Dear Ms Perry

CONSULTATION ON PROPOSALS FOR RECOGNITION OF PRESS SELF-REGULATORS

I wrote an open letter to you on 10 March 2015, with my comments on the initial list of questions that the Recognition Panel was seeking views on from interested parties. I am now following up with some comments on the more detailed Consultation issued by the Panel in June.

My comments do not naturally fit within the structure of the questionnaire issued as part of the consultation. I am, therefore, attaching a note containing my comments, followed by the questionnaire form, which I have filled in as best as possible under the circumstances.

You may recall that I write from the perspective of someone who has been an adviser to several regulators and self-regulators over the past 20 years. I took a keen interest in the Leveson Inquiry and was an occasional commentator on its progress and afterwards.¹

In the interests of completeness, I should note here (as I did in my 10 March letter) that, as a result of my role as a commentator, I was asked to provide occasional advice and support to the IMPRESS Project during the course of 2014, which I was happy to do on a pro bono basis. With the IMPRESS board and initial staffing now in place, I am not currently working with IMPRESS and they have not (yet) seen this response. I believe my comments meet the test of independence, in the sense that I would have commented no differently if I had had no prior involvement with IMPRESS, but if the Panel senses any bias in my comments, please adjust for that as appropriate.

Yours sincerely

Simon Carne

¹ See, for example, <http://www.simoncarne.com/index.php?s=leveson>

RESPONSE TO CONSULTATION ON PROPOSALS FOR RECOGNITION OF SELF-REGULATORS

Overview

Clearly, a lot of work has gone into the creation of the Recognition Matrix, which forms the central part of the matters being consulted on. Whilst much of that work has led to useful outcomes, I have concerns that implementing the matrix in full would cause the Panel to go beyond its powers, either by requiring more of regulators than the Charter calls for or by interfering the decisions which are for the regulator to make, with the risk that the role and powers of the regulator might actually be undermined. My concerns are explained below.

1 Going beyond the Panel's brief: powers of the self-regulator (Criteria 18 and 19)

Charter Criteria 18 and 19 require a recognised regulator to have certain powers. The consultation paper indicates that, in its proposed indicators, the Panel will look for evidence that the relevant powers will be, or have been, exercised in a reasonable manner. I suggest that, by seeking evidence of reasonableness, the Panel would be going beyond its authority.

Quite apart from the fact that Criteria 18 and 19 are self-evidently limited to ensuring that the regulator possesses the relevant powers, as opposed to discussing how those powers are used, Criterion 12, for example, makes it quite clear that decisions on complaints are to be the ultimate responsibility of the regulator. This ultimate responsibility cannot be maintained, if the Panel is making a judgement either on the policy by which the applicant regulator intends to exercise those powers or on the manner in which those powers have been exercised in the past.

I do not suggest for one moment that the Charter intends that approved regulators should be free to behave unreasonably. But the Charter does not propose that the work of the regulator should be supervised, nor that the regulator's decisions should be subject to approval by another body. The relevant protection lies in the fact that the Charter lays down criteria for who may be appointed to the Board of a regulator. Those criteria are designed to ensure that the regulator will have the necessary skills to act appropriately, just as the charter lays down (different) criteria for appointment to the Panel, designed to ensure that the Panel has the necessary skills to carry out its own role.

There should be no possibility that decisions made by a regulator might be constrained (or be thought by any observers to be constrained) by the fear that a controversial decision may not sit well with the Panel.

2 Going beyond the Panel's brief: review of the regulator's decisions (Criteria 7, 8 and 12)

Along the same lines as my previous point, there are a number of criteria where it seems that the Panel proposes to delve into the actual decision-making, both as to its quality and its processes, in ways which seem to go beyond the Panel's brief:

- Criterion 7 is that the standards Code must be the responsibility of the Board, advised by a Code Committee (the membership of which must meet certain criteria). It is right that the Panel should review the terms of reference between the Board and that Committee and also the composition of the Committee. But it seems to be quite beyond the Panel's role to review minutes of meetings to test the process of scrutiny adopted by the Committee and/or the Board of the regulator.
- Criterion 8 requires that the Code must address various matters. It is the responsibility of the Board of the Regulator to ensure that happens (cf Criterion 7). The Panel cannot test the proportionality and reasonableness of the Code without interfering with the responsibility reserved to the Board of the Regulator.
- Criterion 12 is that decisions on complaints must be the responsibility of the Board, albeit with the power to delegate some of the work. It is difficult to see how achieving that criterion can be evidenced by the Panel looking into the manner in which complaints are investigated and the findings presented to the Board. It is the role of the Panel to review the decision-making *powers* and the delegated *authority*, not the investigatory mechanisms adopted prior to reaching a decision.

3 Possible misunderstanding of the practical realities relating to whistle-blowing (Criterion 8D)

There are several aspects of the proposals relating to the whistleblowing criterion which strike me as impractical in the context of a hotline arrangement:

- The second indicator under this Criterion, relating to non-victimisation, seems to be based on the misconception that the publisher would know the identity of the whistle-blower. But the whole point of a whistle-blowing hotline established by the regulator is that the hotline should go through to the regulator (or a sub-contractor appointed by the regulator), with confidentiality and anonymity maintained at all times, as set out in the fourth of the Panel's indicators under this item.

Moreover, monitoring to ensure that no victimisation takes place would be likely to *increase* the risk that the publisher became aware that a whistle had been blown and possibly even (depending on the size of the organisation) jeopardising the confidentiality and/or anonymity that is essential to the success of such a hotline. The risk follows from that fact that, in a well-behaved publisher, there would be no whistle-blowing. So the mere fact that the regulator takes an interest in possible victimisation at a particular publisher will put at risk the very secrecy that it seeks to protect.

- The fourth indicator, that malpractice is identified by whistle-blowing, is dependent entirely on the willingness of individuals to blow the whistle and on the usefulness of the information they provide when doing so. This is completely beyond the control of the regulator and not a criterion against which the applicant regulator should be tested.
- The second part of this indicator – that malpractice is dealt with appropriately and effectively – seems to relate to processes that are quite unrelated to the hotline. The appropriate action from the regulator, on getting information through the hotline, might well be to initiate an investigation (cf Criterion 18). It is, of course, important that such investigations are well-conducted, but the relevant evidence for that would have nothing to do with the effectiveness, or otherwise, of the hotline.
- A similar point applies in relation to the proposed indicator that the regulator has the appropriate tools to support the whistle-blower. The appropriate tools will depend entirely on the nature of the malpractice alleged and whether it was sufficiently foreseeable to have been covered by the regulatory contract between the regulator and its subscribers. It is very much to be hoped that the regulator *would* be able to be supportive, but the matter may fall outside the regulator's powers.
- I am at something of a loss to know what the Panel envisages by the sixth indicator regarding "leadership and commitment" to whistle-blowing or how that would be demonstrated.

4 Possible over-zealous interpretation of the Charter (Criteria 19A and 8C)

The following comments address aspects of those proposals in which the Panel appear to have interpreted the Charter more stringently than is necessary. I don't consider these matters to be a cause of great potential harm to the objectives of the Charter, but it seems to me that they impose undue costs and burdens on applicant regulators:

- Criterion 19A calls for the regulator establish a ring-fenced enforcement fund into which financial sanctions could be paid. The Panel proposes to seek evidence of the *sufficiency* of the fund which, I submit, represents a complete misunderstanding of the purpose of this criterion. The essence of this criterion is the ring-fencing of the fund, not its sufficiency.

I recognise that my submission possibly sounds implausible, if viewed out of context. But the matter becomes clearer when one reads Leveson, Part K, Chapter 7, paragraph 4.39, in which he says:

"[If the regulator] were to be able to draw on fines to meet its ongoing costs there would be an inappropriate incentive on the body to levy fines. The solution proposed by Lord Black is that a ring-fenced enforcement fund should be established, with fines being used only to finance investigations into systemic or significant breaches. This approach seems to me to be an acceptable way of dealing with the issue."

The potential harm caused by the Panel's interpretation is that their proposal requires the regulator to place funds into a ring-fenced area in order to finance investigations which may never materialise or may not arise until after the fund has received money from financial sanctions. The funds originally placed behind the ring-fence will never be able to be returned to the main finances of the regulator.

I submit that it's was Leveson's intention that financial sanctions should be trapped indefinitely behind a ring-fence, but not that subscribers' fees or donor's funds might end up in such a position.

- Criterion 8C requires an approved regulator to provide guidance on how the term "public interest" should be interpreted in the context of justifying what would otherwise be a breach of the Code. The indicators and evidence which the Panel proposes to adopt suggest that the Panel regards it as essential that the regulator makes this guidance easily accessible to the public, including the vulnerable and those needing support.

As laudable as this goal is, one needs to consider what the regulatory objective is here and how it can best be achieved in accordance with the Charter. The primary users of the guidance will be journalists (or, more generally, news gatherers and news publishers) who need to be well-informed in advance of a potential breach, so that they can know whether to proceed or refrain. There is a secondary need for potential complainants to be able to access the guidance so that they can know whether a possible complaint might be well-founded. But the only risk which would flow from the public not having easy access to the guidance is that they will over-complain. (It is not plausible that, in the absence of easy access to the guidance, potential complainants will interpret the public interest test against themselves and under-complain.)

Bearing in mind that the first port of call for any complaints is the publishers themselves, and not the regulator, there is an obvious incentive for publishers to make available any guidance which they think potential complainants have not yet seen, either by publishing it generally (eg on their *How to Complain* webpage) or by sending it in response to actual complaints in respect of which the publisher seeks to deploy the public interest defence.

In light of this analysis, I think it is a mistake to interpret the Charter requirement for guidance as extending to the point where an applicant regulator might have their application rejected simply on the grounds that not enough effort has been expended in proactively making that guidance available to the wider public.

Closing remarks

I would, of course, be happy to provide additional comments or explanation, in support of these remarks, if the Panel would find it helpful.

Simon Carne
31 July 2015

Charter Criteria	Examples of proposed indicators	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>	<ul style="list-style-type: none"> • No elaboration proposed. 	<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>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 must, itself, be independent of the industry and of Government.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<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. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<p>3</p> <p>The appointment panel:</p> <p>a) should be appointed in an independent, fair and open way;</p> <p>b) should contain a substantial majority of members who are demonstrably independent of the press;</p> <p>c) should include at least one person with a current understanding and experience of the press;</p> <p>d) should include no more than one current editor of a publication that could be a member of the body.</p>	<ul style="list-style-type: none"> • No elaboration proposed. 	<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>4</p> <p>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. 	<ul style="list-style-type: none"> • Process for selecting Board members and the selection criteria used. • Board members' biographies and conflict of interest declarations from each Board member. • Governance arrangements and supporting documentation. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<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. 	<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. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<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. 	<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. • Statement/assurance/minutes from the Regulator’s Board to certify that the indicative budget is adequate for the purpose. • Indicative timescales and processes for negotiating the funding settlement. 	
<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>	<ul style="list-style-type: none"> • No elaboration proposed. 	<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. • Information on the composition of the Code Committee, including the role played by serving editors. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<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. • The code is reasonable in its terms. • 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). 	<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. • 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. 	<div style="border: 1px solid black; height: 500px; width: 100%;"></div>

Charter Criteria		Examples of proposed indicators	Examples of possible evidence	Your comments
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.	<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. 	<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. 	
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.	<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). 	

Charter Criteria		Examples of proposed indicators	Examples of possible evidence	Your comments
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.	<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. 	<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. 	
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.	<ul style="list-style-type: none"> • Concerns are welcomed, valued and treated seriously. • 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. • Malpractice is identified and dealt with appropriately and effectively. • Confidentiality and anonymity are assured at all times. • The Regulator demonstrates clear leadership and commitment to whistleblowing. 	<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. • Data on its use and conclusions of whistleblowing. • Details of senior person(s) responsible for leadership/ sponsorship of hotline. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
	<ul style="list-style-type: none"> 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. 		
<p>9 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.</p>	<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. The Regulator requires the subscriber to nominate a senior individual to take responsibility for dealing with and compliance with the standards code. The Regulator requires subscribers to be transparent in their processes. 	<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. 	

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<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>	<ul style="list-style-type: none"> • The complaints procedure is easily accessible and available to anyone who might reasonably want to access it. • The Regulator requires subscribers to have a 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; 	<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. 	<div style="border: 1px solid black; height: 600px; width: 100%;"></div>

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
	<ul style="list-style-type: none"> - provide notice of any failures in compliance information on the steps taken to deal with such failures; and - if the complaint is not resolved, provide details on how the complaint can be referred to the Regulator; • The Regulator ensures that the subscriber’s complaints mechanism has regard to conflicts of interests. • 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. 		

Charter Criteria	Examples of proposed indicators	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. 	<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). 	<div style="border: 1px solid black; height: 600px; width: 100%;"></div>

Charter Criteria		Examples of proposed indicators	Examples of possible evidence	Your comments
12	Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.	<ul style="list-style-type: none"> No elaboration proposed. 	<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. Process used to investigate complaints and present findings to the Board for decision. 	
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.	<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. 	
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.	<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. 	<ul style="list-style-type: none"> Composition of the Complaints Committee (or Panel) responsible for advising the Board on complaints, demonstrating independence from the press. 	

Charter Criteria	Examples of proposed indicators	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. 	
<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>	<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. 	<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 including corrections and apologies. • Information on the power to direct the press, including as seen in instances when it has and has not been applied. • 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. • Information on the operation of remedies, including information about the instances of its use and non-use. 	

Charter Criteria	Examples of proposed indicators	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. • Contracts and agreements to demonstrate that subscribers agree to adhere to directions. 	
<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. • Guidance provided to editors on code compliance. 	
<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. The investigations process must be simple and credible and those who subscribe must be required to cooperate with any such investigation.</p>	<ul style="list-style-type: none"> • The Regulator has a reasonable approach to deciding what are serious or systematic breaches of the code. 	<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. • The investigation process. • Approved budget for independent investigations. • Internal/external reviews of compliance procedures. 	

Charter Criteria	Examples of proposed indicators	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>	<ul style="list-style-type: none"> • The Regulator’s approach to imposing sanctions is a reasonable one. 	<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. 	<div style="border: 1px solid black; height: 600px; width: 100%;"></div>

Charter Criteria		Examples of proposed indicators	Examples of possible evidence	Your comments
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.	<ul style="list-style-type: none"> No elaboration proposed. 	<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. 	
20	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.	<ul style="list-style-type: none"> No elaboration proposed. 	<ul style="list-style-type: none"> Agreements between the Regulator and subscribers demonstrating the power specified in criterion 20. Evidence of manner in which breaches are found and complaints have been recorded. Information on how the information is made available to the public to ensure the public understands the compliance record of each title. 	

Charter Criteria	Examples of proposed indicators	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. 	<div style="border: 1px solid black; height: 674px; width: 100%;"></div>

Charter Criteria	Examples of proposed indicators	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>	<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. • The administration fee is small and genuinely related to the costs of administration. 	<ul style="list-style-type: none"> • Information as to how the arbitral process operates in practice and a description of how it complies with criteria 22 (a) to (g). 	<div style="border: 1px solid black; height: 500px; width: 100%;"></div>

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).

Charter Criteria	Examples of proposed indicators	Examples of possible evidence	Your comments
<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>			
<p>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.</p>	<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. Anonymised sample of decision making for successful and un-successful membership applications. 	

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.*

Consultation response

Your response will help us evaluate our proposals for receiving and determining applications for recognition from press self-regulators, as outlined in the consultation document.

The consultation runs for eight weeks from Monday 8 June to Friday 31 July 2015. You can make your response through either our **website** or by completing this form and emailing to: **consultation@pressrecognitionpanel.org.uk**.

About you

Surname

Forename(s)

Name of the organisation (if applicable)

Your email address

Confidentiality

A list of respondents and their responses may be published by the PRP following the end of the consultation period. Please indicate below if you do not wish your name and/or response to be published. While we may not publish all individual responses, it is PRP policy to comply with all Freedom of Information requests.

Please do not publish my name

Please do not publish my response

Please do not publish part of my response.

Please specify

More about you

The information you provide will assist us in understanding the range of responses we receive.

How are you responding?

As an individual (please indicate)

- Academic
- Member of the public
- Journalist or media employee
- Politician
- Student
- Other - please specify

For an organisation (please indicate)

- Academic institution
- Third sector or campaigning organisation
- Government
- Member organisation/representative body
- Media owner
- National newspaper/magazine/website
- Local/regional newspaper/magazine/website
- Publisher
- Regulator
- Trade union
- Other - please specify

If you are responding as an individual it would assist us in complying with our obligations under the Public Sector Equality Duty if you would complete the separate diversity monitoring form. The completed form will be held confidentially, and will be separated from your consultation response. The data will be used for statistical purposes only. This is included as a separate form on our website.

Questions

Question 1

Do you agree with the principle of using indicators and examples of evidence as guidance to applicants and the PRP in determining applications?

Yes

No

Give reasons if you wish.

Question 2

Do you agree with the indicators and evidence we propose?

Yes

No

Give reasons if you wish. For specific comments on the criteria, use the comments box on the **matrix**.

Question 3

Do you agree with our proposed approach to dealing with applications?

Yes

No

Give reasons if you wish.

Question 4

Do you agree with our proposed approach to discussions with applicants?

Yes No

Give reasons if you wish.

Question 5

Do you agree with our proposed approach to granting recognition?

Yes No

Give reasons if you wish.

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?

Yes No

Give reasons if you wish.