

SCHEDULE 3

RECOGNITION CRITERIA

The following requirements are the recognition criteria for the Scheme of Recognition established under Article 4 of, and Schedule 2 to, this Charter:

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.
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.
3. The appointment panel:
 - a) should be appointed in an independent, fair and open way;
 - b) should contain a substantial majority of members who are demonstrably independent of the press;
 - c) should include at least one person with a current understanding and experience of the press;
 - d) should include no more than one current editor of a publication that could be a member of the body.
4. 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.
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:
 - a) be nominated by a process which is fair and open;
 - b) comprise a majority of people who are independent of the press;
 - 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;
 - d) not include any serving editor;

- 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
 - f) in the view of the appointment panel, be a person who can act fairly and impartially in the decision-making of the Board.
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.
 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.
 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:
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.

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.
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.
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:
 - 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.

12. Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.
- 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.
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.
14. It should continue to be the case that complainants are able to bring complaints free of charge.
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:

- 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.
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.
 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.
 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.
 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.
 - 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.
 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.
 21. The Board should publish an Annual Report identifying:

- a) the body's subscribers, identifying any significant changes in subscriber numbers;
 - b) the number of:
 - (i) complaints it has handled, making clear how many of them are multiple complaints,
 - (ii) articles in respect of which it has considered complaints to be without merit, and
 - (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;
 - c) a summary of any investigations carried out and the result of them;
 - d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by subscribers; and
 - e) information about the extent to which the arbitration service has been used.
22. The Board should provide an arbitral process for civil legal claims against subscribers which:
- a) complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate);
 - b) provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial basis (so far as possible);
 - c) contains transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds);
 - d) directs appropriate pre-publication matters to the courts;
 - e) operates under the principle that arbitration should be free for complainants to use¹;
 - 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
 - g) overall, is inexpensive for all parties.

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).

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.*

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.