



PRESS RECOGNITION PANEL

Consultation on amendments to our guidance on cyclical and ad hoc reviews. (Variations submitted by approved regulators).

February 2017

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About the PRP

1. The Press Recognition Panel (PRP) is the independent body set up following the Leveson Inquiry into press standards to ensure that any organisation that regulates the press is independent, properly funded and able to protect the public, while recognising the important role carried out by the press.

Our purpose

2. Our role is to consider whether or not independent press self-regulators meet, and continue to meet, the recognition criteria in the Royal Charter. Our specific functions are to:
 - grant recognition to regulators that meet the requirements set out in the Charter's recognition criteria;
 - undertake reviews of those regulators;
 - withdraw recognition if a regulator no longer meets the recognition criteria; and,
 - report on the successes or failures of the recognition system.
3. Fundamental to how we discharge our obligations under the Charter is our independence from external influences such as Government and press. This underpins our work to ensure that recognised regulators of the UK press are independent, properly funded and able to protect the public.
4. We do not regulate the press and we cannot compel any regulator to apply for recognition.

Background

5. On 30 October 2013, the Royal Charter on Self-Regulation of the Press (the Charter) was granted and on 3 November 2014, the PRP came into formal existence.
6. The PRP is entirely independent of the government, Parliament, and the press. Independence is fundamental to the way in which we operate.
7. On 16 February 2016, we consulted on our approach to reviewing the performance of approved press self-regulators. After careful consideration, we published our decision document and guidelines for reviewing regulators in August 2016.
8. On 24 October 2016, the PRP recognised IMPRESS.
9. It is reasonable and foreseeable that at some stage following recognition, but prior to a cyclical review period, circumstances may lead approved regulators to vary the way they meet the recognition criteria. The PRP Board will then be

required to consider such variations and determine whether the recognition criteria continue to be met.

10. Our current guidance on cyclical and ad hoc reviews anticipates such circumstances but does not explicitly provide a mechanism for the PRP to ask third parties for information that is relevant to its consideration of continued compliance with the recognition criteria following a variation.
11. Therefore, we propose a mechanism that explicitly enables the PRP to have the benefit of third party information prior to making judgements on whether approved regulators continue to meet the recognition criteria following a variation.

About this consultation document

12. This document proposes amendments to our guidance on cyclical and ad hoc reviews to explicitly enable the PRP to seek information from third parties to assist its consideration of whether an approved regulator continues to meet the recognition criteria following a variation. It sets out the provisions of our current guidance on the subject of third party information, together with our proposed amendments.
13. Respondents are invited to comment on our proposals, and provide alternative suggestions. Your response to this consultation will be considered by the PRP Board before final proposals and amendments to the guidance on cyclical and ad hoc reviews are adopted.

How to respond

14. The consultation runs for six weeks from 8 February 2017 to 23 March 2017.
15. You can respond in writing by emailing consultation@pressrecognitionpanel.org.uk. We will also consider requests from people who prefer to provide feedback in a manner that suits them, for example, by means of face-to-face meetings or by telephone.

Confidentiality and data protection

16. We are not currently listed within the Schedule to the Freedom of Information Act 2000 and so the PRP is not a body to which its provisions apply. We have nevertheless taken a decision to operate as if the provisions of the Act apply, including the provisions relating to considering and responding to information requests. Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such) we will assume that you are content for us to publish your response to this consultation, including your name, and to share it with other appropriate bodies and stakeholders.

17. We would encourage named responses where possible and particularly from representative organisations so that we can identify the different interests reflected in the responses. If you do not wish us to publish all or part of your response because you regard the information you have provided as confidential, please indicate so.

What happens next?

18. After the consultation closes, we will review the responses received, together with feedback received from anyone who wishes to meet us. We will publish a summary of the responses and explain how they have shaped our final proposals for inviting third party feedback on variations submitted by approved regulators.

The Charter's requirement for reviews

19. Schedule 2 (Paragraphs 5-9) of the Charter sets out the PRP's functions in respect of carrying out and reporting on cyclical and ad hoc reviews.

20. The Charter requires us to carry out cyclical reviews as soon as reasonably practicable after an initial two-year period, and three yearly thereafter. The Charter also requires us to undertake ad hoc reviews, when the PRP Board considers there are 'exceptional circumstances' (having regard in particular to 'serious breaches' of the recognition criteria) and where there is a 'significant public interest' in undertaking a review.

21. As part of the cyclical review process, paragraph 6 of Schedule 2 allows the PRP to seek views from third parties.

22. Following either an ad hoc or cyclical review, paragraph 10 of Schedule 2 requires us to publish a report and paragraph 11 allows the Board to withdraw recognition, if:

- a) the regulator is not meeting the recognition criteria, or
- b) the Board has insufficient information to determine whether or to what extent the Regulator is meeting those criteria.

The PRP's approach

23. We are not a regulator, but the Charter is consistent with better regulation principles. In the interest of good public administration, we therefore intend, when undertaking either cyclical or ad hoc reviews, to have regard to better regulation principles of transparency, accountability, proportionality, consistency and to target activities only at cases in which action is needed.

24. In undertaking our work, we will:

- help to ensure that the recognition criteria are met;

- be transparent, independent, proportionate and fair in the actions that we take; and
- use insight from those who have an interest in our work, to inform what we do.

Current guidance

25. Our current guidance on reviews only specifically anticipates the need for a call for information if a full ad hoc or cyclical review is being undertaken.
26. Our published guidance on cyclical and ad hoc reviews details the process for handling changes to compliance with the recognition criteria.
27. This guidance specifically provides for us to invite third party input on variations prior to us making a decision, in the following circumstances:
- (i) during a cyclical review (where our published process states that we will invite feedback on the regulator’s self-assessment), or
 - (ii) in cases where an ad hoc review has commenced, where we have published details of the criteria to which it relates, and on which we state that we will invite third party feedback.

Limitations of this approach

28. The first cyclical review can only take place a minimum of two years after recognition. The Royal Charter states that: *“the Panel must review the recognition of a Regulator as soon as practicable after (a) the end of the period of two years beginning with the day of recognition (b) the end of the period of three years after that period (c) the end of each subsequent period of three years”*.
29. In practice, it is likely that a regulator may wish to vary its ways of working or operation that may affect the way it meets the recognition criteria before then. The threshold for requiring an ad hoc review is a high one. The Royal Charter states that: *“The Board of the Recognition Panel may review the recognition of a Regulator at any other time if it thinks that: (a) there are exceptional circumstances that make it necessary so to do, having regard, in particular, to whether there have been serious breaches of the recognition criteria; and (b) there is a significant public interest in a review of the Regulator’s recognition being undertaken”*.
30. Our guidance on reviews provides for the PRP to gather information relevant to a regulator’s ongoing compliance, but does not explicitly provide for the PRP to proactively seek information from third parties in circumstances other than a cyclical or ad hoc review. It commits us to “establish means by which all interested parties can submit relevant information, in writing, online or by

telephone”, however the indication is that this will be information provided on an ongoing basis, rather than in response to a specific request from the PRP.

31. Our guidance explains how we will use a risk matrix approach to assess information gathered, whether from third parties, from regulators, or from our own process of maintaining awareness. We will use our risk matrix to assess the seriousness of the alleged breach, potential breach, or variation, against the likelihood of ongoing compliance.
32. Our decisions on the seriousness and likelihood of compliance will involve the PRP making judgements. In circumstances where a variation has been submitted by an approved regulator, it may be beneficial to issue a call for information to help inform our assessment of whether the regulator continues to comply with the criteria. As explained above, our guidance on cyclical and ad hoc reviews does not make any specific provision for this.
33. At present, unless an analysis is done and a decision is made to proceed to an ad hoc review, the PRP guidance does not explicitly permit us to invite third party comment on variations made or proposed by a recognised regulator.

Proposed amended approach

34. We propose revising our “Reviews” Guidance to clarify that we may conduct a call for information in circumstances where doing so would materially assist our risk-based assessment of a variation made by a regulator. The advantage of this approach is that it would allow the PRP to seek third party input at its discretion, where we judge it would assist us in our determination of the seriousness and likelihood of compliance.

Proposed amendments to our guidance on cyclical and ad hoc reviews

35. We proposed changes to the guidance on cyclical and ad hoc reviews as highlighted in red and underlined in this extract below.

Assessing information

Information gathered will form the evidence base for our assessment for cyclical and ad hoc reviews. We will use a risk matrix to determine the appropriate response in each case.

		Likelihood of compliance				
		Very high	High	Medium	Low	Very Low
Seriousness	High					
	Upper medium					
	Lower medium					
	Low					

The risk matrix assesses the seriousness of the alleged breach, or variation against the likelihood of compliance. Generally, the more serious the breach and the less likely it is for the regulator to put it right, the more severe it becomes on the traffic light system and the more likely it will be for the us to raise the issue at the next cyclical review, or to undertake an ad hoc review.

The steps involved in our risk matrix for assessing information can be summarised as:

- Identifying the level of seriousness
- Identifying the likelihood of compliance
- Applying the likelihood of compliance to the level of seriousness to determine the appropriate threshold and the consequential PRP response.

Seriousness

Factors we will have regard to in assessing seriousness include, but are not limited to:

- the extent to which the alleged breach could damage public confidence in the regulatory mechanisms
- the potential negative impact on the public and the press
- the extent to which the alleged breach was caused deliberately or recklessly
- extent to which the alleged breach revealed serious or systemic weaknesses in the regulator's management or compliance procedures
- extent to which senior management was aware or should have been aware of the alleged breach
- source reliability

Likelihood of compliance

Factors that would influence the likelihood of compliance include, but are not limited to:

- findings from previous cyclical and ad hoc reviews
- relevant communications between the Regulator and the PRP
- undertakings given by the Regulator in breach of the criteria.

The risk matrix and discretion

Our decisions on the seriousness and likelihood of compliance will involve making judgements while deciding how to react to those judgments involves the exercise of discretion. The indicators provided are a guidance in relation to those things, and are not intended to be formulaic.

Prior to coming to a view on seriousness or the likelihood of compliance, we examine the factors we think relevant to the circumstances under consideration. In respect of variations by approved regulators, the PRP Executive will make a judgement as to whether a call for information on the information gathered would help inform the assessment process, and if so on the appropriate duration for the call for information. The PRP Board will ultimately decide if an ad hoc review is to be undertaken.

Consultation questions

Question 1

Do you agree the PRP needs discretion to decide whether to seek third party information in order to assist its assessment of a regulator's variation to the way they comply with the recognition criteria?

Question 2

Do you think our proposed process addresses the issue adequately?

Question 3

Is there another potentially better way to address the issue?

Question 4

If yes, can you provide details?