

Press Recognition Panel

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

1 March 2017

Overview

The purpose of the Press Recognition Panel (PRP), as set out in the Royal Charter on Self-Regulation of the Press ('the Charter'), is to 'carry on activities relating to the recognition of Regulators in accordance with the terms of this Charter' (3.1).

In line with this purpose, the Charter gives the PRP the following functions:

- a) determining applications for recognition from Regulators;*
- b) reviewing whether a Regulator which has been granted recognition shall continue to be recognised;*
- c) withdrawing recognition from a Regulator where the Recognition Panel is satisfied that the Regulator ceases to be entitled to recognition; and*
- d) reporting on any success or failure of the recognition system. (4.1)*

The Charter requires the PRP to ensure that, in performing these functions, it shall:

- a) apply the Scheme of Recognition set out in Schedule 2 (Scheme of Recognition); and*
- b) manage the assets of the Recognition Panel efficiently and effectively so as to best achieve the Recognition Panel's Purpose. (4.2)*

Schedule 2 of the Charter sets out the Scheme of Recognition ('the Scheme') that the PRP must follow in performing its functions. This states that:

The Board of the Recognition Panel shall grant recognition to a Regulator if the Board is satisfied that the Regulator meets the recognition criteria numbered 1 to 23 in Schedule 3, and in making its decision on whether the Regulator meets those criteria it shall consider the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability, as articulated in the Leveson Report, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation"). (Schedule 2.1)

The Scheme gives the PRP powers to conduct an initial review of a regulator and cyclical reviews at specified periods after any initial decision to grant recognition.

The Scheme also gives the PRP the power to conduct an 'ad hoc' review of a regulator 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. (Schedule 2.8)

On 16 February 2016, the PRP set out proposals in relation to the ad hoc review process. In August 2016, following a consultation on these proposals, the PRP confirmed that its executive team would follow a risk-based approach to determining whether to recommend to the Board of the PRP that it should launch an ad hoc review of a recognised regulator.

The PRP's published guidance includes the following risk matrix:

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

The guidance sets out the considerations which will bear on the PRP executive's decision-making process in relation to this risk matrix:

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 guidance includes the following categorisation of risk levels:

Red	There is a serious breach of the criteria or a serious breach may be imminent and the likelihood of compliance is low. This is an exceptional circumstance and there is significant public interest in conducting an ad hoc review. An ad hoc review is recommended to the PRP Board on the basis of the intelligence gathered.
Amber	A serious breach of the criteria may have occurred/be occurring or may be imminent and there may be significant public interest in conducting a review. If there has already been correspondence about the matter and undertakings given, another letter is written to the regulator about the relevant intelligence and asking for revised estimated timescales for when further action will be taken to reduce the risk further. In this letter, the PRP will inform the regulator that an ad hoc review may be required, if further information or action is not forthcoming.
Yellow	It is unlikely there are serious breaches of the criteria and there is limited public interest in conducting a review. A letter is sent to the regulator detailing the significance of the intelligence gathered. The issue/s can also be raised with the regulator during the next cyclical review.
Green	It is very unlikely there are serious breaches of the criteria and there is no significant public interest in undertaking an ad hoc review. The issue/s can be raised with the regulator in a meeting with them or during the next cyclical review.

In the present consultation, the PRP sets out proposals to seek third party information (in the form of a 'call for information'), in the event that the PRP's executive is *considering* whether to recommend to the Board of the PRP that it should launch an ad hoc review of a recognised regulator:

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.

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.

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. (paragraphs 9-11)

We understand from this that the proposals set out in the consultation paper are intended to amplify but not fundamentally modify the approach represented by the PRP's existing guidance on cyclical and ad hoc reviews.

Our response to this consultation is intended to ensure that the PRP performs its functions in accordance with its remit under the Charter.

We note, in particular, the PRP's duty to manage its assets efficiently and effectively. We share the PRP's commitment to the principles of 'better regulation' and believe that it is appropriate for the PRP to take steps to ensure that a recognised regulator continues to meet the recognition criteria set out in Schedule 3 of the Charter.

At the same time, we note that the Charter draws a careful distinction between the PRP's status as an oversight body exercising public functions and the status of a self-regulatory body. This distinction is central to the way in which the Charter respects the principle of press freedom. It ensures that the PRP, as a public body, cannot interfere directly with the work of a self-regulatory body, which must remain entirely autonomous.

With these principles in mind, we set out proposals which are intended as a constructive contribution to the PRP's work in this area.

Question 1: do you agree that 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?

Yes. We recognise that in some circumstances, it may be appropriate and necessary for the PRP executive to conduct a call for information in order to reach an informed decision on whether to recommend to the Board of the PRP that it should launch an ad hoc review of a recognised regulator.

Question 2: do you think our proposed process addresses the issue adequately?

No. The consultation paper suggests amending the guidance on cyclical and ad hoc reviews to state that 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.'

We are concerned that this proposal does not provide sufficient clarity to a recognised regulator or other stakeholders. As a result, we cannot be confident that a call for information in such circumstances would represent the most efficient or effective use of the PRP's assets.

There are various risks in relation to conducting a call for information.

On the one hand, the PRP executive might conduct a call for information on a minor or insignificant variation by a recognised regulator. This would place a disproportionate burden on the work of the regulator. An effective regulator must be allowed to make reasonable adjustments to its operations in response to internal and external developments without the need for a call for information that would impose time, resource and reputational costs on the regulator.

On the other hand, the PRP executive might choose to conduct a call for information in circumstances where there is already prima facie evidence of a serious breach of the recognition criteria. A call for information in such circumstances would represent an inefficient use of the PRP's assets.

We have no reason to doubt that, in practice, the PRP executive will use sound judgement to determine whether a call for information would help inform the assessment process. However, we also see no reason not to set out certain criteria to help inform this judgement. In fact, published criteria to inform this decision-making process should also help the public to have confidence in the executive's judgement.

Question 3: is there another potentially better way to address the issue?

Yes.

Question 4: if yes, can you provide details?

The PRP has the power under the Charter to conduct an ad hoc review of a recognised regulator if the Board of the PRP 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. (Schedule 2.8)

In the present consultation, the PRP sets out proposals to seek third party information (in the form of a 'call for information'), in the event that the PRP's executive is *considering* whether to recommend to the Board of the PRP that it should launch an ad hoc review of a recognised regulator.

In order to mitigate the risks identified above, whilst ensuring that the PRP performs its functions in accordance with its remit under the Charter, we propose that PRP

executive should follow certain criteria when determining whether to conduct such a call for information.

We recommend that, in determining whether to conduct such a call for information, the PRP executive should consider whether:

- The variation or variations in question engage the recognition criteria set out in Schedule 3 of the Charter;
- The PRP executive has a reasonably open mind as to whether the variation or variations in question meet the ‘red’ or ‘amber’ threshold for recommending an ad hoc review (for example, it would not be reasonable for the PRP executive to have an open mind if there was already prima facie evidence of a serious breach of the recognition criteria or if the variation or variations in question were minor or insignificant);
- There is a realistic prospect that any information gathered through a call for information would help the PRP executive to decide whether to recommend to the Board of the PRP that it should launch an ad hoc review of a recognised regulator (for example, it might not be realistic to expect third parties to provide helpful information in relation to a highly technical variation, which would be better addressed through dialogue with the regulator);
- The recognised regulator itself has already conducted a proper consultation on any variation or variations, against the relevant Charter criteria, and has taken any submissions into account when finalising the variation or variations – and if so whether a call for information represents an efficient use of the PRP’s assets;
- The public interest in a call for information outweighs the potential disruption such a process might cause to the regulator’s work and the work of regulated publishers; and
- All other avenues for gathering relevant information have been exhausted.

Finally, we recommend that the PRP should set out clear expectations in relation to the information which is sought and how this will be assessed by the PRP in reaching a decision on whether or not to recommend an ad hoc review.

We note the PRP’s guidance on ‘source reliability’ in relation to ad hoc and cyclical reviews. We agree that it is important to assess the reliability of third party information that may trigger an ad hoc review. We consider this to be equally important when assessing any third-party information that may trigger a call for information on a variation. As part of assessing such information, the PRP should consider whether such information is vexatious or frivolous and whether the information is corroborated by diverse sources or merely forms part of a campaign.