



Could the Black/Hunt proposals for a new self-regulator pass the draft Royal Charter test?



**ELIZABETH
THE SECOND**

*By the Grace of God of the United Kingdom of Great
Britain and Northern Ireland and of Our other
Realms & Territories Queen Head of the Commonwealth Defender of the Faith*
TO ALL TO WHOM THESE PRESENTS SHALL COME. GREETING!

Martin Moore
March 2013

Contents

Executive summary.....	3
Summary Table: Could Black/Hunt be acceptable under the draft Royal Charter?	6
Introduction	7
Draft Royal Charter vs Leveson beyond the Recognition Criteria.....	8
Leveson on the Black/Hunt Plan.....	10
Analysis: would Black/Hunt pass the Royal Charter test?	12
The Board of the Regulator.....	13
Funding	16
Control of the Code of Practice.....	18
Internal complaints and compliance.....	20
Third party complaints	22
Handling complaints	24
Corrections/Apologies	25
Investigations.....	28
Fines	30
Transparency & publication of data	31
Arbitration.....	33
Coverage.....	35
Membership.....	35
Delaunay vs draft Royal Charter	36
Conclusion.....	37
Appendix 1 – Peter Wright Email to Oliver Letwin	38
Appendix 2 – Leveson vs Delaunay vs Royal Charter.....	41

Executive summary

The proposals for a new regulator that Lord Black and Lord Hunt submitted to the Leveson Inquiry on behalf of the press in 2012 did ‘not come close’ Leveson said ‘to delivering... regulation that is itself genuinely free and independent of the industry it regulates and political control’.

The Prime Minister agreed, telling the House on 29th November 2012:

“Frankly, I think we have to be tougher on Hunt and Black than that. We need to say very clearly that what has been proposed so far is progress on the Press Complaints Commission, but that it is not good enough. We need more changes; the public want more changes; the victims want more changes. It is not yet the sort of independent regulation that we can say is right or of which we can be proud. Leveson points out the weaknesses in the system, and we need to plug those gaps”

However, based on this analysis their proposed regulator would - with two exceptions – be accepted under the terms of the draft Royal Charter.

Those two exceptions are:

1. Serving editors cannot serve on the Complaints Committee according to the Royal Charter. However, this does not preclude deputy editors, managing editors or emeritus editors from serving on the Committee
2. The Industry Funding Body cannot have ‘ultimate discretion to refuse membership to any publishers’, as in the Black/Hunt proposals

On funding it is not possible to tell whether or not Black/Hunt would pass since the summary criteria are so vague.

Beyond these two exceptions, and the question mark over funding, the Lord Black and Lord Hunt plan would have to be accepted by the newly established Recognition Panel.

There are two principal reasons why Black/Hunt was viewed as unacceptable by Leveson but, with specific changes, would be accepted under Royal Charter:

- A. The substance of certain Leveson recognition criteria have been altered considerably, notably by:
 - i. Removing responsibility for appointing the Chair and Board members of the regulator from the Appointments Panel, and reducing their role to ‘nominating’ candidates
 - ii. Removing responsibility for the Code of Practice from the Board of the Regulator and giving it to serving editors on the Editorial Code Committee (as now), as well as removing the obligation to include independent Board members on the Code Committee
 - iii. Limiting the power of the Board to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach

- iv. Removing the power of the Board to determine the prominence and placing of an apology, correction or adjudication, and reducing it to requiring a 'remedy', and only after negotiations have failed
- B. In the draft Royal Charter, the Recognition Panel can only judge the adequacy of a regulator based on these summary recognition criteria, without reference to the detail or context within the Leveson report. Without such reference, in particular with reference to Leveson's 'Criteria for a Regulatory Solution' (Part K, Ch.1), there is enough ambiguity within the summary criteria to allow for greater leeway than intended. For example:
- a. On funding: Leveson said that the direct relationship 'between major publishers and the core decisions over funding of the regulator is possibly the single biggest problem with the proposal that Lord Black has presented'. Yet the summary criteria on funding is vague enough to allow much of the Black proposal to stand
 - b. On compliance: Leveson said that 'the available evidence suggests that there was a failure across significant sectors of the industry to develop and implement appropriate systems to govern conduct and ethics'. Yet the summary criteria only prescribes 'appropriate internal governance processes' such that a system even weaker than that proposed by Black/Hunt could be ratified.
 - c. On investigations; Leveson said that 'the process described above [in the Black/Hunt proposal] appears somewhat extreme and could be thought to give so many opportunities to the regulated entity to challenge every single step so as to frustrate the investigation and make it very difficult for the regulator to reach a conclusion, particularly if that conclusion was adverse'. Yet, based on the Royal Charter summary criteria, the Black/Hunt investigative process could go through unchanged

As a consequence, the Royal Charter, as drafted, enables the press to set up a regulator that Leveson judged to be wholly unsatisfactory.

It is notable that the changes to Leveson's criteria made in the draft Royal Charter map closely to the changes demanded by the press following publication of the report (as noted in the document leaked from the Delaunay meeting) and distribution of an initial, unpublished, version of the Charter.

An email sent by Peter Wright (Associated Newspapers) to Oliver Letwin on 4th January 2013, in response to the initial draft of the Royal Charter (not published), raised a series of concerns the newspapers had about that draft. Wright went further and said there were certain recommendations that were 'red lines' for the industry:

'We have made clear from the beginning' Wright wrote, 'that some of Leveson's recommendations, in particular those addressing the Code Committee and group complaints, are not acceptable to anyone in the industry. We have drawn up our 'red lines' and presented them to you and Maria Miller, but they do not seem to be represented here. It may be that

this will be dealt with in further drafting; it would be helpful to be reassured that is the case’.

Since 4th January those red lines have been conceded, in favour of the industry, by Oliver Letwin and Maria Miller.

Appendix 1 has a full copy of the email from Peter Wright to Oliver Letwin.

Appendix 2 compares Leveson’s recommendations with the document leaked from the newspaper editors’ Delaunay meeting in December, and the draft Royal Charter. Every change dilutes Leveson’s recommendations and allows the Black/Hunt proposals room to pass.

Summary Table: Could Black/Hunt be acceptable under the draft Royal Charter?

Recognition criteria	Would Black/Hunt pass under Royal Charter?
1) Board of the regulator	Yes, effective industry veto remains
2) Funding	Not clear
3) Control of the Code of Practice	Yes
4) Internal complaints and compliance	Yes
5) Third-party complaints	Yes
6) Handling complaints	No, though complaints committee could be populated by senior editorial figures
7) Corrections / Apologies	Yes
8) Investigations	Yes
9) Fines	Yes
10) Transparency and publication of data	Yes, provided regulator provides greater detail on information to be published, as Black/Hunt plan proposes
11) Arbitration	Yes
12) Coverage	Yes
13) Access to the system of regulation	No

Introduction

During the Leveson Inquiry a large proportion of UK newspapers, represented by Lord Black and Lord Hunt, submitted proposals for a new system of regulation. Lord Justice Leveson reviewed those proposals and found that they did ‘not come close to delivering... regulation that is itself genuinely free and independent of the industry it regulates and political control’ (Lord Justice Leveson, Statement, 29th November 2012).

In his report he detailed the problems with the Black/Hunt proposals, and explained why they did not come close. Overall, he said: that they were not adequately independent of the industry; the model was not stable or robust; it had insufficiently broad support, and it did not work for the public.

“Any model with editors on the main board is simply not independent of the industry to anything approaching the degree to warrant public confidence. It is still the industry marking its own homework. Nor is the model proposed stable or robust for the longer term future. The press needs to establish a new regulatory body which is truly independent of industry leaders, and of government and of politicians.

It must promote high standards of journalism and protect both the public interest and the rights and liberties of individuals. It should set and enforce standards. Hear individual complaints from its members, and provide a fair, fair, quick, and inexpensive arbitration service to deal with civil law claims.

The Prime Minister accepted Lord Justice Leveson’s criticisms of that plan. Leveson “sets out what is wrong with Hunt-Black”, David Cameron told the House on 29th November 2012, “and what needs to be put in place. That work should start straight away”.

On Tuesday 12th February the DCMS published a Royal Charter that, Conservative Ministers claim, can deliver Lord Justice Leveson’s recommendations without requiring legislation. Yet the Royal Charter is, even beyond the legislative requirement, very different from Leveson’s recommendations.

This document tests whether the Royal Charter can deliver Leveson’s regulatory recommendations. The Black/Hunt proposal demonstrably and decisively failed the test. It did not, the judge said, ‘in its current form, meet any of the criteria I set out in May’ (p.1,648). This document assesses whether the Black/Hunt proposal, as submitted to Leveson, could satisfy the terms of the Royal Charter. If it does, or if it comes close to doing so, this would demonstrate the inability of the draft Royal Charter to achieve Leveson.

Draft Royal Charter vs Leveson beyond the Recognition Criteria

There are significant differences between the draft Royal Charter and Leveson's recommendations beyond the recognition criteria. The analysis presented here focuses on the recognition criteria in order to assess the Black/Hunt proposals in that context. This does not, however, imply that simply by changing the recognition criteria the draft Royal Charter would be 'Leveson-compliant'. There are at least six other problems with the Charter as drafted beyond the recognition criteria:

- i. It jeopardises press freedom
 - The provisions within Clause 9 may not stop Ministers changing the Royal Charter. Such changes would be without established democratic constraints, process, or transparency
 - The Charter can be dissolved by the Privy Council (2.2)
 - The Royal Charter could be amended at any stage by Parliament using statute
 - There is no protection of the Charter within law to prevent interference
- ii. It is not transparent
 - There is very limited direction regarding transparency in the Charter, contrary to Leveson's proposals. The Recognition Panel is not subject to the Freedom of Information Act
- iii. There is excessive government oversight
 - As a recipient of government funding the body will be required to report to the Minister at the DCMS – (11.2) 'For the first three years after the date upon which this Charter becomes effective, the Board shall provide the Secretary of State for Culture, Media and Sport, upon request, with such budgets, once prepared, and with such other information as she requires, in order to estimate the on-going costs of the Recognition Panel from time to time.'
 - Should it require more money then the Recognition Panel can go back to Exchequer, again making it reliant on government funding (11.7)
 - The Board is required to lay an annual report before Parliament with support of Secretary of State at the DCMS (12.4)
- iv. It compromises the independence of members of the Recognition Panel
 - The Chair of the appointments panel is a political appointment
 - The appointments panel is required to have a representative of the press, entirely at odds with Leveson (Schedule 1, 2.3a)
 - Party political peers and former MPs are not excluded from the Board – despite Leveson's recommendation that the line of Conservative Peers who have chaired the PCC should stop (Schedule 1, 2.3d)
 - The requirement for every Board member to have 'senior board level experience in a public or private sector organisation' excludes a large number of people who may be qualified and suitable (people, for example, who have led large NGOs)
 - The Board is expected to include at least one member with 'an understanding of the context in which the Regulator will operate', one with 'financial understanding' and one with 'an understanding of the legal framework in which

- the regulator will operate', but no-one with experience or understanding of media misrepresentation or intrusion (Schedule 1, 3.2)
- Two years is too short for an appointee to serve on the Board and reduces its authority, its expertise and its institutional memory. It also makes appointments more vulnerable to political or press pressure (Schedule 1, 5.2)
- v. It constrains the authority and remit of the Recognition Panel
- 'The Board of the Recognition Panel shall grant recognition to a Regulator if the Board is satisfied that the Regulator meets the recognition criteria' – constrains the Board to the criteria, rather than giving it the ability to make judgments based on other factors (Schedule 2, 1)
 - Strikes off any need to take 34-47 into account (Schedule 2, 4)
 - 'As soon as is practical after (Schedule 2, 6) means that recognition may be unnecessarily and strategically delayed
 - The reasons for allowing the Board to withdraw recognition are also very constricting – 'is not meeting the recognition criteria' constrains it to 1-24 which are themselves, in summary form, ambiguous (Schedule 2, 10)
- vi. It confuses regulation of process with regulation of content
- The rationale drafted for 'exceptional reviews', Schedule 2, 7(a), fundamentally misunderstands Leveson's point about process vs content: 'there are exceptional circumstances that make it necessary so to do, having regard, in particular, to whether there have been systemic breaches of the Standards Code'

Leveson on the Black/Hunt Plan

Leveson set out some general criticisms of the Black/Hunt plan.

'In short, the new body must represent the interests of the public as well as the press and the proposed model does not go anything like far enough to demonstrate sufficient independence from the industry (and, in particular, serving editors) or sufficient security of high and unalienable standards for the public; neither does it appear to have sufficient support from all the major participants within the industry.'

'Even more fundamentally, this proposal fails to meet the test of independence. The arrangements for appointment of the Chair of the proposed Trust Board give too high a degree of influence to the industry funding body, which looks remarkably like PressBoF with a different name and may, indeed, have more power than PressBoF. That body also has responsibility for the contents of the standards code, albeit requiring the agreement of the Trust Board. Furthermore, the body making decisions on complaints would include serving editors and this does not provide the required degree of independence of enforcement.'

'These are real and significant issues and mean that I cannot recommend adoption of the approach proposed by Lord Black as a way forward.'

He also raised concerns about the dominance of powerful individuals from the industry:

'The second issue that has been raised, particularly in the context of Mr Desmond's decision to leave the PCC, is the way that a few powerful individuals have been able to dominate the system. This has been an observed flaw in the existing system and Lord Black acknowledged that there is nothing in the new system to prevent it from recurring or continuing. This therefore remains a weak point in the proposed system, which would need to be addressed for the new system to be genuinely independent. The Leveson Report, Vol.4, 1625'

And, he questioned the degree to which the Black/Hunt plan worked to the benefit of the public:

'It is important to note, that the proposal put forward by Lord Black gives no rights of any sort to members of the public. The contracts are between the publishers and the regulators. Third parties have no rights under the contract and nothing else in the proposal gives those who are either customers of the press or victims of press behaviour any rights in relation to complaints or redress. Lord Black acknowledged this, but suggested that the rights of third parties would be protected by the potential to take an action for judicial review. Whilst it is arguable whether the Trust, as envisaged in this proposal, would be subject to judicial review, Lord Black repeated to the Inquiry that it would be unlikely that the industry would contest that point.'

'This is not a sufficiently credible answer. It is surprising, given the evidence that has been put before the Inquiry of the harm that the press can do, and have done, to the lives of ordinary individuals, that the industry has not felt it necessary to address anywhere in the system the rights of individuals. I have said, many times, that any new regulatory system must work for the public and for a system to work for the public it should have the rights and interests of the public at its heart. This proposal manifestly fails that test.' p.1,622

Over the following pages the proposals put forward by Black/Hunt are set against the criticisms Leveson made of them, and then against the relevant proposal in the Royal Charter. This is followed by an assessment of whether the Black/Hunt proposals would be accepted under the Royal Charter.

Analysis: Could Black/Hunt pass the Royal Charter test?

The Board of the Regulator

Black/Hunt

The Trust Board will have a majority of independent, public members on it. It is proposed that there should be seven Directors in total comprising the independent Chairman of the Regulator, three public members who have no connection with the print or digital media and three press or new media representatives... The minority press or new media representatives will be appointed by the IFB, and are likely to be individuals with senior editorial or publishing experience, but not serving editors' Lord Black, 3rd Witness Statement, paragraph 38.

There is unlikely ever to be a universally agreed way of appointing the Chairman within a self regulatory system. But we start from two general premises: first that the industry should have some role while the Government or other statutory regulator should not ; and second that the Chairman must be an authoritative individual with no current or recent connection with the industry. Lord Black, 3rd Witness Statement, paragraph 74.

A four person Panel would be appointed with two industry members alongside two public members entirely independent both of the publishing industry and of the regulator. The industry members would be appointed by the IFB; and the public members would be appointed by the Trust Board under an independent process, which might perhaps be agreed with the Public Appointments Commissioner. The Panel would meet to commission a search consultant independently to draw up a shortlist of candidates following the terms of public appointments procedures and open advertisement. The Panel would interview this shortlist and make a choice but the decision of this Panel would have to be unanimous. The support of the independent members of the Panel for the appointment would safeguard the interests of the public; and the support of the press members would ensure that the Chairman of the Regulator would be a figure for whom the industry has the respect it needs. Lord Black, 3rd Witness Statement, paragraph 76.

Leveson on Black/Hunt

*'Overall, however, I have serious reservations about the independence of the appointment process for the Chair of the Trust, and about the role of the Industry Funding Body throughout this model. **I believe that sufficient independence cannot be achieved while the industry has a veto on the appointment of the Chair**, has the right to define the standards and has the right to define the sanctions available.'* The Leveson Report, Vol.4, p1,650 [emphasis added]

'The most important appointment, self evidently, is the Chair of the Trust Board. The appointment of the Chair, who would have no press background, would be made by a four person panel with two industry members and two public members, making a unanimous decision. Lord Black defended this process as "independent of press interests" on the grounds that it was a "balance" with neither press nor lay interests having control of it. I do not find this entirely convincing. A requirement for unanimity across an equally weighted panel effectively gives a veto to either side. That is certainly balance of a kind, but it puts a considerable amount of influence in the hands of the industry in relation to what should be an independent appointment. Lord Black indicated that the proposal in front of the Inquiry was the industry's "best

current shot” and that he would look at an alternative model that would provide a majority of lay members on the panel. In my opinion, **it is of fundamental importance that the Chair of any regulatory body should be independently appointed, and a mechanism that puts a veto in the hands of the industry does not constitute an independent process.** The Leveson Report, Vol.4, p1626-1627 [emphasis added].

‘The powers of the IFB, which run throughout this proposal, undermine claims to independence of the regulatory system. Lord Black talks of independently led-self regulation but it is not clear that leadership in this system can come from the Trust. Rather, there is a joint system of leadership between the Trust and the IFB in which the IFB has the lead in many important issues, in particular the funding of the body, the definition of the code and setting sanctions guidelines; it also has significant influence in many others, such as the appointment of the Trust Chair and changes to the Regulations. Removing the IFB from decision relating to appointments, the code, the Regulations and sanctions would go a long way to enhancing the independence of the proposed system.’ The Leveson Report, Vol.4, p1626-1627

‘although it would represent an improvement on the status quo, and aspects of the framework could be built on, I conclude that the extent of industry control within the proposed system is a fundamental flaw’. The Leveson Report, Vol.4, p.1,750

Royal 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 direction from industry or influence from Government.
2. The Chair of the Board 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 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 who may include former editors and senior or academic journalists;
- d) not include any serving editor; and
- e) not include any serving member of the House of Commons or any member of the Government.

Verdict: would Black/Hunt pass Royal Charter?

Yes. Black/Hunt would need adaptation, but with some adjustment the essence of their proposal would pass the Royal Charter test. Royal Charter would allow an industry veto, but not in the form that Black/Hunt first proposed. The end result, however, would be the same. The appointments panel could not be composed of two industry representatives and two independents (requiring a ‘substantial majority’ of independent members’). But, in the Royal Charter, the role of the appointments panel is reduced simply to that of a nominations committee. As a consequence, the industry retains control of appointments – based on those nominated by the panel, even potentially through the **Industry Funding Body** (the IFB or revised PressBoF).

Regarding serving editors, there was never any intention in Black/Hunt to have serving editors on the Board, simply individuals with senior editorial or publishing experience. This would remain possible in the Royal Charter model, and could be orchestrated by the IFB. It is also possible, in the Charter model, to have Party Political peers on the Board.

Funding

Black/Hunt

‘Funding for the Regulator will be guaranteed by the contract, which will commit publishers to funding the Regulator in proportion to an agreed formula’. Lord Black, 3rd Witness Statement, paragraph 89.

‘the IFB... will scrutinise budgets put forward by the independent Trust Board and agree an annual figure for expenditure. The budgeting process will have to take account of the commercial state of the industry’ Lord Black, 3rd Witness Statement, paragraph 91.

Leveson on Black/Hunt

‘This brings me to the most significant issue in relation to funding. Publishers will sign contracts with the regulator that bind them into the system for five years, and those contracts will require them to pay the fees set by the IFB. So far, so good. However, Lord Black was clear that this commitment was to the principle of funding, not to any particular amount:

“I can’t give you guarantees over a five-year period. The industry might face a complete economic collapse in that time. What we are doing is making a commitment through contracts to provide funding over a five-year period. I think it unlikely that we would be able to actually build exact figures into that contract because of course, the needs of the regulator may change over time.”

‘The effect of this proposal, therefore, is that the IFB will set the budget for the regulator on a year-by-year basis. This has practical implications for the regulator, which may not be able to plan its operations effectively on a long-term basis, but much more significantly it has implications for the independence of the regulator.’

‘The IFB is comprised of representatives of the industry that the regulator is regulating. It is easy to see how a regulator which is dependent for the next year’s funding on the goodwill of its regulated bodies might be expected to operate with a light touch, and to seek to avoid conflict – particularly with those publishers who have the most influence on the IFB. I noted earlier that the composition and appointment processes of the IFB remain entirely opaque, so the public will never even know who wields that influence and, therefore, who the regulator is most likely to want to propitiate. ‘

‘This direct relationship between major publishers and the core decisions over funding of the regulator is possibly the single biggest problem with the proposal that Lord Black has presented.’ Leveson Report, Vol.4, p.1,640-1,641 [emphasis added].

‘An effective regulatory system must be adequately financed and have sufficient independence from its funding body to operate independently. I have significant concerns on both those fronts in relation to this proposal. First, the sums proposed both for core funding and for the enforcement fund look tight. This is particularly the

case in relation to the enforcement fund which could easily be used up on investigations into a recalcitrant publisher. Second, the role of the Industry Funding Body throughout the proposal and the fact that the funding will not be settled in advance for the full contract period, give far too much influence to the IFB. It is welcome that the industry is keen to fund this regulatory regime itself without input from the taxpayer or from complainants; however, the extent to which the largest players must shoulder the bulk of the burden of the cost for the good of the industry as a whole, along with the extent to which the funding mechanism should be open and transparent, are also issues which would have to be addressed.' The Leveson Report, Vol.4, p. 1,750

Royal Charter

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.

Verdict: Could Black/Hunt pass Royal Charter?

It is not possible to determine whether Black/Hunt could or could not pass the Royal Charter since the only reference is to the summary recommendation. Without Leveson's accompanying explanation there is considerable ambiguity in what could, or could not, pass. The IFB could, based on criteria number 6, remain in control of arranging funding by the industry. Assuming it did, then under the Royal Charter the IFB could come to a funding agreement with the Board of the Regulator, though only based on an indicative budget. This would leave considerable leeway for negotiation each year, compromising the independence of the Board. As Leveson said:

'It is easy to see how a regulator which is dependent for the next year's funding on the goodwill of its regulated bodies might be expected to operate with a light touch, and to seek to avoid conflict – particularly with those publishers who have the most influence on the IFB.'

Or, if the Board was fully independent, it may refuse to certify the indicative budget (though it is unclear on what grounds it would do this). A lot depends on the strength and autonomy of the Board.

Control of the Code of Practice

Black/Hunt

'It is proposed that there should be up to five public members of the Code Committee alongside the serving editors - nearly a quarter of their number - who would include the independent Chairman of the Regulator, its CEO, and two or three other public members appointed by the Trust Board (who may - though they don't necessarily have to be - themselves be members of the Board or of the Complaints Committee. If they were it would help ensure effective co-ordination throughout the system). The Code Committee Chairman will be elected by its members from among the editorial members.

'In order to ensure the public interest is protected with regard to any future changes to the Code, changes will have to be ratified by the Trust Board before they come into effect.' Lord Black, 3rd Witness Statement, paragraphs 80-81.

Leveson on Black/Hunt

Leveson's basic criteria for a regulatory solution: '2.3 The setting of standards must be independent of government and parliament, and sufficiently independent of media interests, in order to command public respect.' The Leveson Report, Vol.4, p.1,583

'Whilst I recognise the importance of having a strong editorial voice advising on standards, it seems to me quite wrong that editors should actually be responsible for setting standards. It would be quite reasonable for the Trust Board to be advised by the Code Committee, constituted as Lord Black proposes, but the Board should retain responsibility for the code. It is arguable that the Trust Board does have the final say on the code in this proposal, as they would have to agree any changes to the code, but the distinction is important. Whatever mechanism is put in place as to the weight to be attached to advice from the Code Committee, I am not clear that allowing serving editors to set the code provides sufficient independence from the industry to command public respect.' The Leveson Report, Vol.4, p.1624

'I do not accept that the concept of 'self-regulation' requires the presence of serving editors either on the body that sets the standards, although, as I have indicated, I recognise that it would certainly be desirable that serving editors should have an advisory role in standards setting, or on the body that takes decisions on complaints. Self-regulation can equally mean self-owned and self-designed regulation, by independent people, led by a Chairman appointed by a panel which included 'self'. The Industry's unwillingness to address public concern on this matter is a real indication that the proposal to a significant extent represents a broad continuation of the status quo rather than a fundamental shift in attitude or an acceptance of the need for independent regulation.' The Leveson Report, Vol.4, p.1,625

'A new system must have an independent process for setting fair and objective standards. In my opinion, this proposal fails to meet that test by leaving the setting of standards in the hands of the industry, albeit with a check by the Trust Board. A relatively small change to the proposal, making it clear that the Code Committee is advisory and that the Trust Board is responsible for establishing and altering the

code, would go a considerable way to deal with this concern.’ The Leveson Report, Vol.4, p.1,649

In the Black/Hunt proposal ‘The industry, primarily through the Industry Funding Body (IFB), would have substantial influence over the appointment of the Chair of the Trust, as well as having ‘responsibility’ for the Code and having to approve any changes in the regulations. The continuation of the Code Committee with a majority of serving editors, acting in more than an advisory role, does not allow for independent setting of standards.’ The Leveson Report, Vol.4, p.1750

Royal Charter

7. The standards code must ultimately be adopted by the Board, and be written by a Code Committee which is comprised of both independent members and serving editors.

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.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. The Royal Charter substantially alters the recommendation in the Leveson report, such that serving editors remain in control of the code. Indeed, the Royal Charter is worded in such general terms that a Code Committee could be composed almost entirely of serving editors with only two ‘independent member’ (whose ‘independence’ is not defined).

Internal complaints and compliance

Hunt/Black

Regarding complaints: 'In the main these complaints should always be dealt with directly by the editor of the publication concerned, as that is likely to be the fastest way to resolve a dispute. The changes to internal compliance systems which the new regulatory structure is designed to foster - including annual reporting to the Regulator - should ensure that this happens more often than it does now.' Lord Black, 3rd Witness Statement, paragraph 40.

Regarding compliance 'it is proposed that there is a senior figure within an individual publisher responsible for overseeing and monitoring compliance', Lord Black, 3rd Witness Statement, paragraph 57.

'Each year the publishers will have to provide an annual statement covering a number of key issues. These are set out in detail in the Annex to the Regulations but include:

- copies of internal manuals, codes or guidance issued to journalists;
- details of compliance processes including how a publishers deals with pre-publication advice, Code compliance, verification of stories, editorial complaints and training it gives its staff; and
- details of steps taken in response to any adverse adjudications from the Regulator in the previous year.'

Lord Black, 3rd Witness Statement, paragraph 58.

'It will be the role of the [Investigation and Compliance] Panel to monitor these standards, and it will do so by means of annual process of certification by individual publishers.' Lord Black, 3rd Witness Statement, paragraph 58.

Leveson on Black/Hunt

On the previous failures of compliance: 'the available evidence suggests that there was a failure across significant sectors of the industry to develop and implement appropriate systems to govern conduct and ethics.' The Leveson Report, Vol.2, p.730

On Black/Hunt internal complaints proposals: 'Members of the new system will be expected to try to resolve complaints directly with the complainant in the first instance. The intention here is to improve transparency and accountability within publishers, as well as to reduce the workload for the regulator. This is a sensible development.' The Leveson Report, Vol.4, p.1,630.

On proposal for annual compliance reports: 'This proposal strikes me as an eminently sensible one. It must be right that the primary responsibility for compliance lies with the company and they should be encouraged to take that responsibility seriously.' p.1,631. Although 'The draft Regulations leave publication of the annual reports to the discretion of the Trust' The Leveson Report, Vol.4, p.1,604

On senior figure to oversee compliance: 'Arguments may be made about whether that senior individual should, of necessity, be the editor or the proprietor but, in any event, this also seems like a sensible innovation that could, if operated properly, encourage real change within organisations' The Leveson Report, Vol.4, p.1,632

On the lack of a whistleblowing hotline: 'It is a shame that this has not been taken on board by the industry proposal: it is obviously sensible.' The Leveson Report, Vol.4, p.1,632

Royal Charter

9. The Board should require, of those who subscribe, appropriate internal governance processes, 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.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. Leveson approved of the Black/Hunt proposals on compliance so it is not notable that these proposals also pass the Royal Charter test. However, the Royal Charter is phrased in such a way that the press would be under no obligation to provide the specific compliance mechanisms Black proposed, namely a 'senior figure within an individual publisher responsible for overseeing and monitoring compliance', or an annual compliance report. Nor is there any detail on what constitutes 'an adequate and speedy complaint handling mechanism'.

Third party complaints

Black/Hunt

‘Complaints shall be accepted only from people who have been affected directly by the matters about which they are complaining or in the Head of Complaints’s discretion by a third party group where the Head of Complaints considers that there may have been a significant breach of the Editors’ Code and there is substantial public interest in allowing the complaint to be brought’ Regulations, Submission by Lord Black C1, p.2

Leveson on Black/Hunt

‘Further, in relation to complaints by groups, although I have recognised the concern expressed by Mr Dacre and would endorse a filter system to remove complaints that are ideologically motivated only to further the group’s objectives, I do not otherwise accept the argument. As I have pointed out earlier the current Editor’s Code outlaws prejudicial or pejorative reference to an individual’s race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability, but does not provide similar protection in respect of groups. It is difficult to understand why there should not be some mechanism for representative groups to engage in challenges similarly based on the standards set out in the code.’ The Leveson Report, Vol.4, p.1,691

‘In addition, I see no reason why representative organisations should not be entitled to raise a complaint in relation both to accuracy and prejudice where articles are discriminatory in respect of a group. Where such articles are found to have breached the relevant standards to the level that can trigger a standards investigation, it should be possible for the standards body to impose whatever sanctions or redress they would normally impose in respect of a breach of standards’. The Leveson Report, Vol.4, p.1,692

‘I am confident that, at some level, it must be possible within any effective new system for breaches of the relevant code to be drawn to the attention of the enforcement body by those affected by the breach, whether in the form of a direct personal reference or more indirectly... I do not believe that it is right to characterise the desire of groups to see agreed standards upheld as an attempt to “impose their views on society at large by controlling what is written in the press about them” The Leveson Report, Vol.4, p.1592

‘The Board should have the power (but not necessarily in all cases, depending on the circumstances, the duty) to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach, or a third party seeking to ensure accuracy of published information... 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 code breach or is simply an attempt to lobby, but they should, as a matter of principle, have the power to take up any complaint that is brought to them.’ The Leveson Report, Vol.4, p.1,765

Royal Charter

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 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 an alleged breach of the code is significant and there is substantial public interest in the Board giving formal 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.

Verdict: Could Black/Hunt pass Royal Charter?

Yes, the Black/Hunt plan could pass the Royal Charter test. The Royal Charter actually maps closely to the wording of the Black/Hunt plan, using the terms 'significant' breach, and 'substantial public interest'. It is not clear who would define these terms, though in practice it would have to be at the discretion of the complaints body.

Handling complaints

Hunt/Black

It is proposed that the Complaints Committee should be a standing body of 13 adjudicators. They would comprise the independent Chairman of the Regulator, seven public members appointed by the independent Trust Board under public appointments procedures and five working editors representing the broad texture of the industry - two from national newspapers, one magazine editor, one regional editor and one editor from Scotland (in view of the distinctive nature of the Scottish press). The minority press members will be nominated not by the IFB as now, but by the relevant industry trade association. It may be that, in order to reflect structural change within the industry, one of these may from time to time be a digital editor. Lord Black, 3rd Witness Statement, paragraph 46.

Leveson criticisms of Hunt/Black

‘One concern would be that having serving editors on the complaints body creates the perception, at the very least, of a lack of independence. Indeed, it is the presence of serving editors on the Complaints Committee that gives rise to the concept of editors marking their own homework.’ The Leveson Report, Vol.4, p.1,628

‘I do not consider that this brings the required degree of independence from industry to the enforcement of standards... I have not considered whether it would be appropriate for there to be a role for a serving editor to be able to provide written advice to the Complaints Committee, but I do not accept that the Committee should have serving editors sitting on it.’ The Leveson Report, Vol.4, p.1,628.

Royal Charter

12. Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.

13. Serving editors should not be members of any Committee advising the Board on complaints and 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.

Verdict: Could Black/Hunt pass Royal Charter?

No, not as proposed. The Royal Charter would preclude serving editors from serving on the Complaints Committee, in keeping with Leveson. Black/Hunt’s proposal that there be five serving editors on the Complaints Committee would therefore not pass. Although, the minority press members could still be appointed by the industry trade association (or even by the IFB itself). The Complaints Committee could therefore be composed of deputy editors, managing editors or senior executives of newspapers.

Corrections/Apologies

Black/Hunt

Only where a complaint cannot be resolved with the publication concerned should it become a matter for the Regulator. Most such disputes can then be mediated through a process of conciliation. Relatively few of them - particularly on matters of accuracy - will require a formal ruling'. Lord Black, 3rd Witness Statement, paragraph 41.

The Regulator will publish a "ladder of sanctions" for breaches of the Code. These will graduate, for instance, from informal resolution, to published apologies, to a formal reprimand through an adjudication. It will be for the new Regulator, which will be independent in such matters, to set these out. It will also be for the Regulator to look into how critical adjudications are presented and branded in the relevant publication to make clear that it has been criticised, and - under the Code - to agree where it should be placed.' Lord Black, 3rd Witness Statement, paragraph 43.

"...a ladder of sanctions from a fairly straightforward correction through to a breach of the code that's remedied and identified in statistics, through to a formal reprimand of the editor, right up to where there has been a very serious breach and that leads to a referral from the complaints arm to the publisher because it raises contractual disputes..." Oral testimony, Lord Black, pp6-7, lines 21-3, 9th July

Leveson on Black/Hunt

On mediation in the current system: 'Many witnesses and commentators have criticized the PCC for mediating too many complaints to a negotiated conclusion rather than giving formal adjudications... There is a balance to be struck between mediation and formal adjudication, but I have little doubt that under the current system that balance has fallen in the wrong place' The Leveson Report, Vol.4, p.1,558

'there is a cultural tendency within parts of the press vigorously to resist or dismiss complainants almost as a matter of course. Securing an apology, a correction or other appropriate redress, even when there can be no argument, becomes drawn out and difficult. When an apology or correction is forthcoming, there is then an argument as to prominence which, again, can be prolonged. Meanwhile, a general defensive approach has led to some newspapers resorting to high volume, extremely personal attacks on those who challenge them: it is not enough simply to disagree. Given the audience enjoyed by newspaper titles, these personal attacks can be particularly damaging. The result is that potential critics sometimes do not complain, not because they do not have a valid complaint but because they do not have the energy for the inevitable fight, or because they are unwilling to expose their friends and families to hurt. This can hardly be described as a healthy state of affairs' Leveson Report Executive Summary, p.11.

'The proposed process [in Black/Hunt proposals] appears to mirror closely the existing PCC approach. Once a complaint has been accepted by the Head of Complaints, the Trust will write to the regulated entity with a copy of the complaint. The company must then respond and a copy of that response is sent to the complainant. Any response from the complainant then goes back to the company. If

the complaint has not been resolved by that stage then the primary aim of the Trust is to find a mediated resolution. If mediation is successful then a summary of the outcome would be published on the Trust's website. If mediation is not successful the complaint is passed to the Complaints Committee' The Leveson Report, Vol.4, p.1,602

On the determination of sanctions by the complaints arm: 'Whilst this [the ladder of sanctions] was presented as a change, the only thing that this proposal adds to the current armoury of the PCC is the power to refer the matter to the complaints arm. Lord Hunt did not dissent from that, saying "it's a simple codification of it..."' The Leveson Report, Vol.4, p.1,633

'It is notable that the regulations do not appear to give the regulator the power to determine where an adjudication or apology should be placed. Lord Black suggested that it was possible that this could be changed but that it would be a matter for the Code Committee, subject to Trust Board ratification, to change. I welcome Lord Black's implication that this is an area where some movement may be seen, but it is, again, surprising that the industry has not already moved on this issue if they are inclined to do so. It is, frankly, absurd that the regulator should not have the power to determine the location of an adjudication or apology.' The Leveson Report, Vol.4, p.1,633

'A new system must have the ability to offer meaningful remedies of correction and apology to those who have been harmed and to apply effective sanctions to those who continue to breach standards (or fail to comply with directions as to correction and apology). The remedies offered to individuals under the proposed system are exactly the same as those currently offered by the PCC, albeit with some potential improvements in transparency. This does not seem to me to be sufficient. The regulator should have the power to determine the prominence and placing of an apology, correction or adjudication and all breaches of the code should be identified and recorded as such, even where the publisher cooperates with a mediated settlement.' The Leveson Report, Vol.4, p.1,650

Royal Charter

15. In relation to complaints, the Board should have the power where appropriate to require remedial action for breach of standards where a negotiated outcome between a complainant and a subscriber has failed. Although remedies are essentially about correcting the record for individuals, the power to require a remedy 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, the power to require the nature, extent and placement of a remedy 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.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. The Royal Charter does not, as Leveson recommended, give the regulator ‘the power to determine the location of an adjudication or apology’. As with the Black/Hunt proposals it forces the complainant into a negotiation with the news outlet, at the end of which the regulator can require ‘a remedy’, not direct a correction or apology. It would be up to the industry when establishing the regulator to define the ‘remedy’ as they see fit.

Investigations

Black/Hunt

'The Regulator will have an entirely new function... to investigate where it believes there has been a systemic breach in standards, and to impose sanctions. These new and significant powers will derive from the contract between the Regulator and its member companies,

'It is proposed that there will be a small number of full time staff within the Regulator to service its Investigation and Compliance Panel ("the Panel"). It will be overseen by a public member of the independent Trust Board, whom the Trust Board will appoint... if the Trust Board believes a full investigation - including requests for documentation and the interviewing of witnesses - is required, it can proactively trigger such an investigation', Lord Black, 3rd Witness Statement, para 48-49

Leveson on Black/Hunt

'There can be no objection to procedural fairness, and it is right that the subject of an investigation should have an appropriate opportunity to make their case and to ensure fair treatment. However, the process described above [in the Black/Hunt proposals] appears somewhat extreme and could be thought to give so many opportunities to the regulated entity to challenge every single step so as to frustrate the investigation and make it very difficult for the regulator to reach a conclusion, particularly if that conclusion was adverse.

'These provisions have obviously been drafted to take into account the anxieties of the publishers about the implications of an investigation and I do, of course, recognise the need for them to have a full say in the process. However, if there is to be any value in the investigations process, which is itself the only genuinely new part of this proposal from the industry, then it is essential that it should be capable of operating without continually being frustrated by those subject to regulation. I do not have a particular view on what is the right number of opportunities for an investigated party to appeal against the process but I am clear that, as currently drafted, it goes too far in that direction with the serious risk of entirely undermining that effectiveness of the investigation remit of the regulator.

'I note that the investigations process is entirely between the regulator and the publisher. There is no role at all for the victim, or victims, of the behaviour that has given rise to the investigation. There is no opportunity for them to submit evidence to the investigation, and no opportunity for them to challenge the outcome of the investigation. I recognise that if an investigation is looking at systemic failures of governance it may not be easy to identify the victims. There is no reason, though, why this should prevent the investigations process allowing a role for victims (or, at the very least an obligation on the part of the standards investigator to consult the victim) where an investigation relates to one or more specific events in relation to which victims can be identified.' The Leveson Report, Vol.4, p.1636

On the enforcement fund: 'The enforcement fund is set to start at £100,000, thereafter being supplemented by any fines, or contributions to investigation costs,

that are levied. If the permanent standards and investigations staff were to be funded from this £100,000 it is hard to see how there would be any capacity at all for ad hoc investigations; this would effectively render the standards arm irrelevant.

‘The concept of providing a ring-fenced enforcement budget is a good one, but in order to be effective it must be enough to allow the regulator to be able to undertake investigations even where the publisher concerned might not cooperate. A regulator who cannot afford to take enforcement action will lose credibility with both the industry and the public. I am not well placed to say what the appropriate level of an enforcement fund should be, but what is proposed has the appearance of a very limited and inflexible enforcement budget that may simply be wholly inadequate to do the job in hand, with no obvious mechanism for addressing such difficulties if they arise. The Leveson Report, Vol.4, p.1,639

‘The proposal for a standards and compliance arm, with both its ongoing monitoring role and its ability to carry out investigations, is welcome, although in practice, as currently set out by Lord Black, it could be so drawn out and so hedged about with appeals that I doubt it could ever be used effectively’ The Leveson Report, Vol.4, p.1,750

Royal Charter

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. Those who subscribe must be required to cooperate with any such investigation.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. There is no detail provided within the Royal Charter, nor any acknowledgment of the problems Leveson foresaw with the Black/Hunt proposals. For this reason the investigative process laid out by Black/Hunt could be acceptable under the Royal Charter plan. Indeed it could be made even more complex and there is no reason why it could not pass the recognition criteria as set out in the Charter.

Since the enforcement fund is an optional extra, according to the Charter, then the weaknesses identified by Leveson need not be addressed for a regulator to pass the test.

Fines

Black/Hunt

‘The fine can be levied at up to 1% of the annual turnover of a publisher relating to the publication or publications (both print and digital) which is or are found to be in serious or systemic breach of the Code or where there has been a serious breakdown in ethics or internal governance, with an upper cap of £1,000,000.’ Lord Black, 3rd Witness Statement, paragraph 55.

Leveson on Black/Hunt

‘The regulator has the power to impose fines and sanctions, but this must be done in accordance with the Fines and Sanctions Guidance issued by the IFB. Whilst it is entirely reasonable to have fines and sanctions guidance, I am completely at a loss as to why that guidance should be set by the industry rather than by the regulator. Lord Black did not provide any insight into this, but pointed out that once the guidance had been incorporated into the contract the IFB would have no power to amend it. This is a minor point, but is indicative of the extent to which the industry has kept to itself control of the tools that the regulator has.’

Royal Charter

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 of 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 sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or other remedial action if the breaches relate to other provisions of the code.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. The Royal Charter is similar to Leveson and Black/Hunt, though dilutes both. It limits the fine to 1% of turnover of the publication rather than the publisher, and replaces apologies with ‘remedial action’. There is no reference to who issues the guidance for sanctions so no reason why Lord Black’s proposal – that guidance should be issued by the industry – should not pass the Royal Charter.

Transparency & publication of data

Black/Hunt

‘The industry would wish the Regulator to be as open and transparent as possible. It will be for the Trust Board, however, to establish the precise way it seeks to achieve that, including the setting of benchmarks and targets, the publication of statistics, reporting on an annual basis and possibly more often, publication of minutes and open and transparent appointments procedures including for senior full time staff.’ Lord Black, 3rd Witness Statement, paragraph 83

‘The other significant driver of accountability and transparency within the entire system will be the process of annual certification by publishers. Once they have been analysed by the Investigations Panel, summaries of these reports, with any commercially confidential information redacted, will be published so that the public, and indeed Parliament, can draw its own conclusions about the effectiveness of internal governance and whether the system is working to raise standards’ Lord Black, 3rd Witness Statement, paragraph 88

Leveson on Black/Hunt

On the PCC: ‘The PCC has not been transparent about its own performance and the performance of newspapers. Figures published purporting to demonstrate both were not easy to understand, meaning that the public could not readily assess the performance of the PCC in particular or of the newspapers which came into contact with it. Throughout there is an imprecision as to the use of language which obscures meaning.’ The Leveson Report, Vol.4, p.1,559

‘Overall, these statistics as presented in the [PCC] Annual Reviews have tended to underplay the significance of mediation as the centre piece of the PCC’s work as well as to obscure the fact that many so called ‘prima facie’ breaches of the Code were, in fact, likely breaches. Further, the PCC have failed to publish aggregate figures for complaints made against newspapers, meaning that neither the public nor policy-makers could get any idea of which publications were most regularly in breach of the Editors’ Code of Conduct.’ The Leveson Report, Vol.4, p.1,560

On funding: ‘A final point on funding is the extent to which it is apparent who is funding the regulatory body. The funding of the PCC is shared between national newspapers (59.1%), regional and Scottish newspapers (34.4%) and magazines (6.5%). However, due to what is described as ‘trade association politics’, Lord Black was unable to tell the Inquiry how the national newspaper share of the funding is made up. He indicated that there might be greater transparency on this issue in the future, but was not able to give any guarantees.

This is a matter for concern and I would urge those responsible to resolve the matter so that there is full transparency over the funding of any self regulatory body. The Leveson Report, Vol.4, p.1,641

Royal Charter

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 articles in respect of which it has handled substantive complaints and the outcomes reached, both in aggregate for all subscribers and individually
- c) in relation to each subscriber;
- d) a summary of any investigations carried out and the result of them; d) a report on the adequacy and effectiveness of compliance processes and
- e) procedures adopted by subscribers; and
- f) information about the extent to which the arbitration service has been used.

Verdict: Could Black/Hunt pass Royal Charter?

Black/Hunt could pass the Royal Charter test as long as the Regulator spelt out in more detail – as the Black proposal says it would – the information that it planned to publish. The Royal Charter provides greater detail as to the obligations of the Board with regard to publication of information.

Arbitration

Black/Hunt

‘The nature of the system - based on contracts that can be changed - means that over time more functions can be added to it. This might include an "arbitral" arm to deal with matters of libel, or privacy issues arising under the Human Rights Act 1998. These are not included in the current proposal because they are contingent on changes in the law. It is possible that this might follow from the Defamation Bill which has just been brought before Parliament. The industry is extremely keen to pursue this - believing it will be good for the public and good for the industry at the same time - and believes that the structure that is being proposed will be flexible enough to allow such an important development’. Lord Black, 3rd Witness Statement, paragraph 36.

Leveson on Black/Hunt

‘Lord Black suggests the possibility of establishing an ‘arbitral arm’ as a part of the model he proposes on behalf of the industry. However, this proposition is not worked up in any detail. It is clear that the value to the industry from this proposal would come principally from the ability to require complainants to use it.’ The Leveson Report, Vol.4, p.1,696

Royal Charter

22. The Board should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair and quick, inquisitorial and inexpensive for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.

Verdict: Could Black/Hunt pass Royal Charter?

Yes. It was proposed by Lord Black and others within the industry (notably Paul Dacre), and is adopted in both Leveson and the Royal Charter. The Royal Charter alters Leveson by making the process ‘inexpensive’ for a complainant to use, rather than free, therefore raising the hurdle for access to ordinary victims.

Coverage

Black/Hunt

“the credibility of the new system could be fatally undermined if any genuinely big fish seek to escape the net.” Lord Hunt submission

“While a lot of detailed work is still to be done, the proposals have the broad support of the organisations and their members. The proposals are being further developed in the light of comments received as part of the ongoing consultation process.” Lord Black, 3rd Witness Statement, paragraph 5, statement agreed by the industry’s four trade associations.

Leveson on Black/Hunt

‘A new system must be effective, and one of the key criteria of effectiveness is that it should include all major publishers of news (if not all publishers of newspapers and magazines). This has been an almost universal view from the witnesses who have given evidence to the Inquiry in relation to future regulation; they have been clear that any new system should cover all news publishers, and that compliance with it should not be a matter of choice. There has been a striking level of agreement between commentators, the industry and politicians as to the desirability of all newspapers being covered by a regulatory regime, although not everyone has explained how they would deliver such comprehensive coverage.’ The Leveson Report, Vol.4, p.1,751

‘Under these circumstances, whilst it is clearly possible that all national newspapers would be prepared to join a system along the lines proposed, I cannot conclude with any certainty that the system proposed by Lord Black would have any greater coverage among the national press than the PCC currently does. This must be regarded as a significant flaw, albeit one that could be remedied by all major national newspapers signing a contract for membership of the new system.’ The Leveson Report, Vol.4, p.1616

‘23. A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers.’ The Leveson Report, Vol.4, p.1,806

Royal Charter

There is no reference to coverage in the Royal Charter

Verdict: Could Black/Hunt pass Royal Charter?

Black/Hunt could pass, as could a version of Black/Hunt that lacked broad support from the industry. The Royal Charter does not create any hurdle.

Membership

Black/Hunt

The Industry Funding Body would have “*ultimate discretion to refuse membership to any publishers wishing to join the scheme, even if such a publisher falls within the definition of a regulated entity.*”

Leveson on Black/Hunt

‘As drafted, this provision does not appear to place any restrictions on who could be refused membership by the IFB, or on the reasons for such a refusal. Neither does it allow the Press Trust itself any say in whether membership should be granted to an applicant. This could be an issue of particular concern if there were significant benefits to membership, or disadvantages attaching to non-membership.’ The Leveson Report, Vol.4, p.1598

‘The proposal includes provision to allow the Industry Funding Body (IFB) absolute discretion to refuse membership. Lord Black explained that this provision was essentially to allow the industry to refuse membership to top shelf publications, whose membership would be wholly inappropriate because they would only give rise to complaints about taste and decency, which was outside the scope of the body. I find this problematic. First, it is difficult to see why it should be the IFB, rather than the Trust itself, which takes decisions on whether or not it is appropriate for a publisher to be a member of the Trust. Secondly, and of greater significance, the provision as drafted allows the IFB to refuse membership to any publisher for any reason, giving rise to the possibility that a publisher could be excluded for commercial or other reasons. finally, I do not understand the problem about taste and decency. If such a complaint is outside the scope of the code (as at present), it will be very easy to deal with it. It seems to me that it is essential that any regulatory body, self or otherwise, should be open to all in the industry to participate in on a fair, reasonable and non-discriminatory basis.’ The Leveson Report, Vol.4, p.1,623

Royal Charter

23. The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms.

Verdict: Could Black/Hunt pass Royal Charter?

No. Criteria number 23 is clear that membership should be open to all publishers, preventing the IFB from having control over who is in and out.

Delaunay vs. Draft Royal Charter

One of the striking things about the differences between the Royal Charter and Leveson's recommendations is how closely the changes map to the recommendations the newspapers wanted changed.

The press, based on the document leaked after the editors' summit at the Delaunay restaurant on 5th December 2012, did not like Leveson's recommendations regarding control of the Code of Practice or third party complaints. Both were deemed 'unacceptable'. Peter Wright of Associated Newspapers reiterated this in a letter to Oliver Letwin on 4th January. Both these recommendations have been fundamentally altered in the draft Royal Charter.

Similarly, the newspapers were keen to keep the appointments process as proposed in the Black/Hunt submission, contrary to Leveson's recommendations. The draft Royal Charter has been altered to allow the Black/Hunt process – with some adaptation – to go ahead.

The Black/Hunt proposals also made clear that corrections and apologies could only be agreed with the regulator after a process of negotiation. Leveson was critical of this because such a process favoured the newspaper and not the complainant – quote. Yet, the draft Royal Charter changes Leveson and, as in the Black/Hunt proposals, prescribes that there must be a process of negotiation before remedial action (not necessarily a correction or apology) is agreed.

In other words, it would appear that the demands made by the press have been acceded to by those drafting the Royal Charter (presumably within DCMS and working with the Minister of State at the Cabinet Office).

For a breakdown see the table in Appendix 2.

Conclusion

'The ultimate test of any new regime' Lord Justice Leveson said, 'is that it must work in practice, in terms of ensuring that the press comply with agreed standards'. In order to be effective in doing so, he said, the system must be independent.

The regulatory system proposed by Lord Black and Lord Hunt 'does not', Leveson wrote 'go anything like far enough to demonstrate sufficient independence from the industry (and, in particular, serving editors) or sufficient security of high and unalienable standards for the public'.

Moreover, one of the fundamental problems with the previous system, the judge reported, was 'the way that a few powerful individuals have been able to dominate the system. This has been an observed flaw in the existing system and Lord Black acknowledged that there is nothing in the new system to prevent it from recurring or continuing.'

This power was institutionalized in the structures of the previous system, for example through the Press Board of Finance. In Lord Black's proposal PressBoF would be replaced by an Industry Funding Body (IFB). Yet instead of reducing the power and influence of the industry's vested interests, Leveson said the IFB increased them. The IFB, he wrote 'looks remarkably like PressBoF with a different name and may, indeed, have more power than PressBoF'.

All this could remain substantially unchanged under the scheme as drafted in the Royal Charter.

The new regulatory system would not, in these circumstances, be 'genuinely free and independent of the industry it regulates and political control' as Leveson said was necessary if it was to be effective and have credibility with the public. Rather the opposite, it could perpetuate the problems of the old system and risk the same consequences.

Appendix I – Peter Wright to Oliver Letwin

ASSOCIATED NEWSPAPERS

The Editor Emeritus
020 3615 2288
peter.wright@assocnews.co.uk

Northcliffe House
2 Derry Street
London W8 5TT

4 January 2013

Oliver Letwin

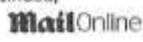
By email

Dear Oliver

Thank you very much for letting us see your working drafts for the proposed Royal Charter and Bill clause. I have taken the liberty of sharing them with a number of senior figures in the industry (representing all the national newspaper groups and the Newspaper Society), all of whom share my concern that it is going to be very difficult to sell the package as it appears to stand at the moment to the industry at large at the meeting on January 10.

We are taking legal advice, but I thought it might be helpful to you to let you know our immediate concerns.

1. Our greatest difficulty in explaining this to the industry is a fundamental one. The Prime Minister told the House of Commons when Leveson was published that he was 'not convinced' by Leveson's call for a statute and that writing press regulation into the law would be 'crossing the Rubicon'; now we have a five-page statute that does just that. When we discussed the arbitral arm at No 10 you said it could be put in place simply by changes to Civil Procedure Rules; now it requires a statute. When you introduced the idea of a Royal Charter you said its purpose was to persuade the judiciary to accept the arbitral arm without a statute; now it, too, requires a statute. Both the Prime Minister and Maria Miller said a statute would be impossibly complicated – has the Government changed its mind? And, if so, why?
2. It is impossible to make a judgment on the viability of a Recognition Panel made up of the holders of various Offices, until we know which Offices those will be. Niva Thiruchelvam has said you hope to let us know by January 10 – it is vital that you do because we will have great difficulty explaining these proposals to the industry if we cannot tell them who sits at its apex. Is there any progress on this? And how will it apply in Scotland, where Alex Salmond is setting up an entirely separate recognition system?
3. We do not know whether the holders of these Offices will have any working knowledge of our industry. It would be highly desirable if at least one of them did, but if they don't it will place great responsibility on the panel of advisors. It is very worrying that clause 8.3 (a) seems to preclude anyone with any working connection to the newspaper and magazine industry from becoming an advisor. For the industry to have faith in a new system of regulation, and for the system to function effectively, there must be industry representation at every level. Can you confirm whether or not this will be the case?

      continued/

Registered Office: Northcliffe House, 2 Derry Street, London W8 5TT Registered number 84121 England and Wales

4. We are concerned that the timetable is far too tight. We are working on the arbitral arm, but it is currently very difficult to see how this can be set up without the majority of cases currently dealt with at no cost by the complaints body migrating in search of compensation (and lawyers' costs) to the arbitral arm. It would be impossible to persuade regional and magazine publishers signing up to a regime that could be a new opening for the claims-farming industry. Until we can resolve this problem the Recognition Panel may find it has no regulatory body to recognise. The issues here are inevitably complex – are you sure you that in rushing into a bill you are not in danger of creating another Dangerous Dogs Act?
5. One of the reasons the Government was previously opposed to a statute was the danger that MPs would try to amend it. What would prevent this Draft Bill being amended? Which existing Bill would it be added to? What proposals are there for legislation in Scotland, which has a different structure to its defamation laws?
6. We do not think the industry will buy a literal acceptance of Leveson's recommendations as viable recognition criteria. We have made clear from the beginning that some of Leveson's recommendations, in particular those addressing the Code Committee and group complaints, are not acceptable to anyone in the industry. We have drawn up our 'red lines' and presented them to you and Maria Miller, but they do not seem to be represented here. It may be that this will be dealt with in further drafting; it would be helpful to be reassured that is the case.
7. The definitions of 'news-related material' and 'relevant publisher' in 17.1 (c) and (d) seem very wide. Is the new regulatory body intended to cover anyone who publishes news on the web, from Guido Fawkes through to Google News, via countless individual bloggers? How about book publishers who place books on the web? What about official publishers like the Government Information Service, or political parties' own websites? What about Twitter (many individuals publish news-related material, particularly gossip, and some have more followers than any newspaper)?
8. It is one of the basic principles of justice that justice is blind and the same laws apply equally to everyone, from peasant to king. Now it is proposed that libel, confidence and other laws specified will apply with differing degrees of severity to different groups, with different levels of damages for newspapers, magazines and websites inside a regulator, those outside a regulator, and broadcasters. Have you considered whether this won't immediately face challenge in the European courts?
9. We are very concerned that the provision 'whether or not the material was in fact published' in 3(1)(b) explicitly extends the power of the courts into the pre-publication arena. It is often the case, particularly in investigative journalism, that documents, photographs and other information have to be acquired and examined before any judgment can be made as to whether they are legitimate material for publication. To allow claimants to sue over unpublished information would have a monstrous chilling effect and lead to constant fishing expeditions by lawyers seeking to use discovery to reveal the identity of whistle-blowers and claim damages.

continued/

-3-

10. We are also concerned about the references to 'material obtained in an inappropriate way' and 'publication in inappropriate circumstances' in relation to the Editors' Code in Section 4.4, which seem to give the courts the power to interpret the Editors' Code in any way they think fit. What does 'inappropriate' mean?
11. The reintroduction of exemplary damages – a measure that has in recent years been largely phased out by the courts, with the support of the House of Lords, and is not recognised in European law – would inevitably encourage more individuals to sue, whereas one of the supposed purposes of Leveson's recommendations is to relieve the burden of defamation law.
12. It is not at all clear that membership of a regulatory body would help a publisher defend a case in which exemplary damages were being sought. In fact 4(3)(c) seems to suggest the opposite. Could you clarify?
13. The section on costs seems very vague and appears to leave it to the discretion of the court on whether impose any costs penalties on a party that refuses to use the arbitral arm. Again, could you clarify?
14. In summary, Britain already has the most draconian libel law in the civilised world. To that it is now proposed we add exemplary damages, an arbitration service that will award compensation and incur costs over complaints that were previously resolved for free, and a compliance arm that can impose £1million fines – all overseen by a body created by statute, from which the industry is excluded, and which is set in stone forever. Leveson was at pains to describe his recommendations as 'voluntary independent self-regulation'. He envisaged a system of carrots and sticks. These latest proposals have no shortage of sticks. Where are the carrots?

With very best regards



Appendix 2 – Leveson vs Delaunay vs Royal Charter

Section	Rec#	Leveson Recommendation	Delaunay document	Royal Charter	Notes
Independence: Appointments	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	ACCEPTABLE. We have already suggested seven members, four of them public and three press members who are not serving editors, along with appointments process in line with public appointment procedure independent	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 direction from industry or influence from Government	Changed to allow press veto
	2	The appointment of the Chair of the Board should be made 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.	ACCEPTABLE	The Chair of the Board 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.	Changed to allow press veto
	3	<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>	ACCEPTABLE. Current proposal is for 2 lay people and 2 industry people on panel. We could accept two lay people, plus one 'with industry expertise' and one serving editor, but would argue for decisions to be unanimous.	<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>	No longer an appointments panel, reconstituted as a nominations panel (see recommendations 1,2,4 and 5)
	4	The appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The requirement for independence means that there should be no serving editors on the Board.	ACCEPTABLE	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 requirement for independence means that there should be no serving editors on the Board.	Changed to allow press veto
	5	<p>The members of the Board should be appointed by the same appointment panel that appoints the Chair, together with the Chair (once appointed), and should:</p> <p>(a) be appointed by a fair and open process;</p> <p>(b) comprise a majority of people who are</p>	ACCEPTABLE. Current proposal is no serving editors and independent majority	<p>The members of the Board should 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</p>	Changed to allow press veto

		<p>independent of the press;</p> <p>(c) include a sufficient number of people with experience of the industry who may include former editors and senior or academic journalists;</p> <p>(d) not include any serving editor; and</p> <p>(e) not include any serving member of the House of Commons or any member of the Government.</p>		<p>independent of the press;</p> <p>(c) include a sufficient number of people with experience of the industry who may include former editors and senior or academic journalists;</p> <p>(d) not include any serving editor; and</p> <p>(e) not include any serving member of the House of Commons or any member of the Government.</p>	
Independence: funding	6	<p>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>	<p>ACCEPTABLE - BUT there must be a break clause so that either side can instigate a review if circumstances change</p>	<p>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>	<p>Criteria vague enough to allow for break clause</p>
Functions: Standards Code and Governance Requirements	7	<p>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.</p>	<p>A. NOT ACCEPTABLE. Code Committee remains a separate body - it must be the Editors' Code - but Trust Board must ratify Code changes before they come into effect. B. ACCEPTABLE. Code Committee to have majority of serving editors but with five public members including Chairman and CEO of regulator</p>	<p>The standards code must ultimately be the responsibility of, and adopted by, the Board, and written by a Code Committee which is comprised of both independent members and serving editors.</p>	<p>Changed to fit with press demands</p>
	8	<p>The code must take into account the importance of freedom of speech, the interests of the public (including the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled) 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>ACCEPTABLE. Code Committee to look at changes once reconstituted</p>	<p>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>Changed to include need to protect confidential sources but not to include recommendation 45 encouraging transparency on public sources such as web links or poll results ('This is not in any way intended to undermine the existing provisions</p>

		(c) accuracy, and the need to avoid misrepresentation.		(c) accuracy, and the need to avoid misrepresentation.	on protecting journalists' sources,' Leveson writes 'only to encourage transparency where it is both possible and appropriate to do so.')
	9	The Board should require, of those who subscribe, appropriate internal governance processes, 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.	ACCEPTABLE. Current proposal offers new system of "compliance and enforcement to ensure a renewal of internal governance". Annual audits will be made public	The Board should require, of those who subscribe, appropriate internal governance processes, 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.	Delaunay document indicates that press assume Black/Hunt passes this test
Functions: complaints	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.	ACCEPTABLE	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 should have the power (but not necessarily in all cases depending on the circumstances the duty) to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach, or 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.	NOT ACCEPTABLE. Third party complaints only to be allowed at discretion of Complaints Committee where there is "substantial public interest". Group complaints only to be allowed on matters of accuracy.	The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board should have the power (but not necessarily in all cases depending on the circumstances the duty) to hear complaints: (a) from anyone personally and directly affected by the alleged breach of the standards code; or (b) where an alleged breach of the code is significant and there is substantial public interest in the Board giving formal 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.	Changed to include 'substantial public interest' test, as wanted by press
	12	Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations	ACCEPTABLE. Decisions taken by Complaints Committee	Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations	Delaunay document appears to indicate the press intend to re-

		may be made.		may be made.	interpret this criteria to give decision-making to Complaints Committee
	13	Serving editors should not be members of any Committee advising the Board on complaints and 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.	ACCEPTABLE	Serving editors should not be members of any Committee advising the Board on complaints and 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.	ACCEPTABLE	It should continue to be the case that complainants are able to bring complaints free of charge.	
Function: Powers, Remedies and Sanctions	15	In relation to complaints, 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 require a correction and an apology must apply equally in relation to individual standards breaches (which the Board has accepted) and to groups of people (or matters of fact) where there is no single identifiable individual who has been affected.	ACCEPTABLE. Code already stipulates corrections and apologies must be agreed with the regulator	In relation to complaints, the Board should have the power, where appropriate, to require remedial action for breach of standards when a negotiated outcome between a complainant and a subscriber has failed. Although remedies are essentially about correcting the record for individuals, the power to require a remedy 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.	Criteria changed to insert process of negotiation, leading to agreement, as wanted by the press - and alteration of 'correction' and 'apology' to 'remedy'
	16	The power to direct the nature, extent and placement of apologies should lie with the Board.	ACCEPTABLE. Code already stipulates corrections and apologies must be agreed with the regulator.	In the event of no agreement between a complainant and a subscriber, the power to require the nature, extent and placement of a remedy should lie with the Board	Criteria changed to re-confirm process of negotiation, despite Leveson recommendation, as wanted by press
	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 which editors, in their discretion, can deploy in civil proceedings arising out of publication.	ACCEPTABLE - BUT pre-publication advice to editors which can be taken into account in civil proceedings would place editors under enormous pressure not to publish and place Board in an impossible position if it later had to adjudicate on a story on which it had offered advice not to publish.	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 which editors, in their discretion, can deploy in civil proceedings arising out of publication.	Qualification of the press still stands
	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	ACCEPTABLE	The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry	

		investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. Those who subscribe must be required to cooperate with any such investigation.		out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. 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 financial sanctions up to 1% of turnover with a maximum of £1m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. 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.	ACCEPTABLE	The Board should have the power to impose appropriate and proportionate sanctions, (including, but not limited to , financial sanctions up to 1% of turnover of 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 sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or other remedial action if the breaches relate to other provisions of the	1% of turnover or publisher changed to 1% of turnover of publication concerned - likely to be a much lower figure. Apologies replaced with 'other remedial action'.
	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.	ACCEPTABLE	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.	
Functions: Reporting	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 complaints it has handled and the outcomes reached, both 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 had been used.	ACCEPTABLE	The Board should publish an Annual Report identifying: (a) the body's subscribers, identifying any significant changes in subscriber numbers; (b) the number of articles in respect of which it has handled substantive complaints and the outcomes reached, both 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 had been used.	This change significantly reduces the obligation of the regulator to publish statistics about complaints
Functions: Arbitration	22	The Board should provide an arbitral process in	ACCEPTABLE	The Board should provide an arbitral process in	Changing 'free' to

Service		relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair, quick and inexpensive, inquisitorial and free for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage		relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair and quick, inquisitorial and inexpensive for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage	'inexpensive' for complainants to use substantially alters the purpose of the system as set out by Leveson, namely that members of the public would have access to redress
Encouraging membership	23	A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers			There is no comprehensive-ness test built into the Royal Charter, leaving the Desmond dilemma entirely unresolved
	24	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		The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms	
Additional recommendations	34-37			The Board of the Recognition Panel, in determining an application by a Regulator for recognition, may but need not, take into account any of recommendations 34 to 47 in the Summary of Recommendations of the Leveson Report. Where the Recognition Panel is satisfied that a Regulator meets the recognition criteria it shall not refuse to grant recognition to that Regulator by reason of a failure to comply with any of recommendations 34 to 47.	In the draft Royal Charter there is no requirement for the industry to comply with any of Leveson's recommendations 34-47