

The 25 April PressBoF Royal Charter (published by the Newspaper Society, 2nd May)

Material differences from Leveson recommendations

Closeness to Leveson: further from Leveson than anything previous

This charter is the furthest away from Leveson than any that have gone before. The recognition process is not independent, it is owned by the press' funding body, PressBoF. The bar on the appointment of Party Political Peers has been removed from all regulatory levels. The legal protection from Ministerial influence would no longer be valid under this Charter. The powers of the regulator are diluted. Editors retain control of the Code. Investigations could be unfunded and impractical. Complaints from representative groups would be very rarely be accepted. Arbitration would be made optional.

Independence

From political influence

Amendment: the bars on interference by politicians have been removed from this Charter:

- Any and all politicians (including serving MPs) can play a role on the staff of the Recognition Panel including its director, as the total bar has been removed (see Article 7.3).
- The bar on Party political peers and MEPs - from the Appointments Committee and the Board of the Recognition Panel – has been removed (see Schedule1, paras 2.4 & 3.3)
- The bar on Party political peers, MEPs, and elected members of the devolved parliaments/assemblies - from the Board of the Regulator - has been removed (see Schedule 3, para 5)

Funding: all funding is to come from the industry in this Charter.

Appointments: see below.

From press influence

This Charter is practically, financially, and legally dependent on the Press Standards Board of Finance. The press' funding body would have effective control of the system of recognition, and potential control over a system of regulation, as with the PCC.

Leveson was highly critical of a similar system that oversaw the PCC: 'A profound lack of any functional or meaningful independence from the industry that the industry claimed to regulate lay at the heart of the failure of the system of self-regulation for the press' (p.1,520).

In this Charter the Press Board of Finance is written into the Charter and has a great deal of power

- The Charter is granted to PressBof: (Petition and Preamble and Article 1)
- Members of PressBof make up the initial Recognition Panel (Article1.2)

- PressBof/Industry Funding Body (and trade bodies) have a veto on amendments to Charter (Article 9.2)
- PressBof/Industry Funding Body (and trade bodies) have a veto on dissolving the Charter (Article 10.2)
- PressBof funds the Recognition Panel on from year to year, rather than a long-term basis: (Article 11)

Appointments: elements of independence are removed:

- The Commissioner for Public Appointments no longer has control of process or appointment (deletions in Schedule 1, para 2.1 and para 4.2).
- The Chair (who has to be a retired Supreme Court Judge) appoints the other members (this was to be done by Commissioner for Public Appointments) (Schedule 1, para 2.2).
- One member of the (4 person) appointments committee has to be agreed with the PressBof/Industry Funding Body (Schedule 1, para 2.3).
- Members of the recognition panel serve only 2 years not 5 years - considerably increasing turnover and ability to influence appointments (Schedule 1, para 5.2)

Arbitration (Schedule 3, paragraph 22)

Arbitration is made optional in this Charter:

“The Board of the self-regulatory body may provide an arbitral process in relation to civil legal claims against subscribers”

The industry are also given the option of piloting arbitration, with no commitment to continue it after the pilot:

“The Board of the self-regulatory body may consider operating a pilot scheme to test the fairness, effectiveness and sustainability of the arbitral process.”

Access to arbitration would not be free for complainants, only ‘inexpensive’. The wording of the rest of the arbitration clause reverts to the less formal language of the Leveson summary recommendation (which does not, for example, make clear who bears the burden of costs).

Powers

Of the Recognition Panel

Decision making: the power of the Recognition Panel is restricted, as in 12th February Charter, to a tick-box approach to recognition (Schedule 2, 1)

Ad hoc reviews: reviews become ‘exceptional’ (as in February 12th Charter) though at the same time it becomes possible on issues of content rather than process. The Panel may review the regulator where:

“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” (Schedule 2, 7)

In other words, when a publisher has breached the Standards Code the Recognition Panel could intervene. This is contrary to Leveson's recommendation that the Recognition Panel only be able to make decisions about the process of regulation not the content.

Reporting on failure: there is no obligation for the Recognition Panel to report on success or failure, only to report on any review it conducts (Schedule 2, 9).

Of the regulator

Corrections and apologies: the recognition criteria are changed so that the regulator is not obliged to be able to direct corrections and apologies, but only to require remedial action, and only after negotiations with the newspaper have failed.

Investigations: the recognition criteria no longer state that investigations have to be 'simple and credible'. There is no requirement for an 'enforcement fund' to fund investigations. The recognition panel does not have the flexibility to use its judgment as to whether investigations are independent and effective.

Fines: same as February 12th draft Charter.

The Standards Code

The recognition criteria state that control of the standards code should revert to the editors, as in the February 12th Charter:

'The standards code must ultimately be adopted by the Board of the self-regulatory body, and be written by a Code Committee which is comprised of both independent members and serving editors.' (Schedule 3, 7)

Leveson said that two elements of the old system of self-regulation compromised its independence: the power of PressBoF and the control of the Code by editors. For this reason he recommended the regulatory Board be given responsibility for the Code. This Charter reverses this and proposed a return to the pre-Leveson system.

This is to the exclusion of journalists, and significantly reducing the role of the public and independent appointees or independently-appointed people (Schedule 3, para 7).

Complaints

Third Party Complaints

This Charter's recognition criteria reinstate two barriers to third party complaints – that there has to be a 'substantial public interest' in accepting them, and for there to be 'formal' consideration. This is in addition to the other barriers already added.

This would make it very difficult indeed for third parties to complain. It is a higher hurdle than currently exists. It also appears contrary to previous efforts to open the PCC up to representative groups. In 2003 Lord Black, then director of the PCC, told British Journalism Review that, 'the commission has new structures in place and urges vulnerable minorities, from refugees to the trans-gender community, to complain' (BJR, 2003, No.1).

Open Access to Publishers

Open access to publishers is removed from the recognition criteria in this Charter.

Other recommendations

All Leveson's further recommendations – 34 to 47 – are made optional in this Charter, save for the whistleblower's hotline (whose status is made ambiguous by Schedule 2,4: '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').