



Submission to DCMS consultation on PressBoF petition for a Royal Charter

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Media Standards Trust submission to DCMS regarding PressBoF petition for a Royal Charter

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Executive summary

This submission to the DCMS consultation on the PressBoF petition for a Royal Charter assesses the petition on the basis of its ability:

- To satisfy the criteria necessary for grant of a Royal Charter
- To satisfy the criteria for a successful regulatory system as set out by the Leveson report
- To achieve public support

It finds that the petition fails to satisfy the criteria for a Royal Charter, fails – in part or in full – the criteria Leveson set out for a regulatory system, and does not achieve public support.

Ability to satisfy the criteria for a Royal Charter

This analysis finds that the PressBoF Charter does not satisfy four of the five criteria set out by the Privy Council:

- a) PressBoF does not have as its members most of the eligible field of members of a unique profession. There is also an existing Chartered Institute of Journalists;
- b) Members of PressBoF do appear to be qualified to at least first degree level, though this is rendered irrelevant by the failure to satisfy other criteria;
- c) PressBoF cannot demonstrate a track record of achievement over a number of years, rather it has been shown, through evidence at the Leveson Inquiry and in the Leveson report, that PressBoF bears a large degree of responsibility for the failure of the previous system of press self-regulation;
- d) It would not be in the public interest to incorporate PressBoF by Charter since press regulation would then be open to interference by Privy Councillors (i.e. the government). The protection afforded to the cross-party Royal Charter via the ERR Act would not be applicable to the PressBoF Charter
- e) PressBoF does not have 5,000 members or more, it has 10. These 10 represent approximately 300 newspaper and magazine publishers

Ability to satisfy criteria set out by the Leveson report

This assessment shows that the PressBoF Charter would fail – in part or in full – to satisfy all five of the criteria Lord Justice Leveson set out in Volume 4 of his report as necessary for a regulatory solution:

1. **Effectiveness:** while a large number of news publishers may perceive the PressBoF Charter as effective and credible, this does not include all news publishers, nor does it include the largest representative body of journalists. More importantly, the public do not perceive a Charter established by the press in this way to be effective or credible.
2. **Fairness and objectivity of standards:** ‘it seems to me quite wrong’ Leveson said, ‘that editors should actually be responsible for setting standards’. Yet this is what the PressBoF Charter proposes.
3. **Independence and transparency of enforcement and compliance:** the previous system of self-regulation was not, in practice or perception, independent. This was in large part, Leveson said, due to PressBoF: ‘The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means that the PCC is far from being an independent body’. Under this Charter the system would be even more dependent on PressBoF.
4. **Powers and remedies:** the PressBoF Charter removes the central elements of Leveson’s recommendations regarding powers and remedies: the obligation to provide an arbitration

service, the power to direct a correction or apology, the ability to conduct simple and credible investigations, and the power (though not the duty) to accept complaints whoever they come from.

5. **Cost:** PressBoF was responsible for financing the PCC. Leveson found that the PCC was not reliably financed and its financing was not sufficient to provide either reasonable independence or appropriate scope. There is no evidence in the PressBoF proposal to show why this would be different under a new system.

Degree of support from public

There is a clear lack of support for the press Charter amongst the public, with only 20% declaring confidence in the system proposed by PressBoF, while 73% believe there will be a return to press abuses, if the system proposed by PressBoF were to go ahead.

The public is also opposed to specific changes to the system of regulation proposed by PressBoF – notably the dilution of a regulator’s powers on corrections and apologies, and downgrading the arbitration system to an optional extra:

- 76% believe a regulator should be able to direct corrections/apologies on the same page as the original article, against 4% who oppose this
- 52% believe an arbitration system should be obligatory, while 18% feel it should be optional

Consistent longer-term trends in public opinion on press regulation show clear evidence that the public finds it unacceptable that the press should remain in control of the regulatory system. The public, like Leveson, support a system of regulation that is independent of government and independent of undue influence from the press. A strong majority would also like some sort of external oversight – either through legislation or statutory underpinning.

Ability to satisfy the criteria for a Royal Charter

The Privy Council website sets out five main criteria that a body applying for a Charter is expected to meet. These are:

- a) *The institution concerned should comprise members of a unique profession, and should have as members most of the eligible field for membership, without significant overlap with other bodies;*
- b) *Corporate members of the institution should be qualified to at least first degree level in a relevant discipline;*
- c) *The institution should be financially sound and able to demonstrate a track record of achievement over a number of years;*
- d) *Incorporation by Charter is a form of Government regulation as future amendments to the Charter and by-laws of the body require Privy Council (ie Government) approval. There therefore needs to be a convincing case that it would be in the public interest to regulate the body in this way;*
- e) *The institution is normally expected to be of substantial size (5,000 members or more).¹*

These criteria are contextualised elsewhere by the Privy Council in an explanation of the purpose and function of Royal Charters.

'A Royal Charter is a way of incorporating a body, that is turning it from a collection of individuals into a single legal entity. A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. Royal Charters were at one time the only means of incorporating a body, but there are now other means (becoming a registered company, for example), so the grant of new Charters is comparatively rare. New grants of Royal Charters are these days reserved for eminent professional bodies or charities which have a solid record of achievement and are financially sound. In the case of professional bodies they should represent a field of activity which is unique and not covered by other professional bodies.'²

A close analysis of PressBoF, its roles in the previous system of press regulation, and its intended use of a Royal Charter finds that four of the five criteria are not met – (a), (c), (d) and (e) – while the fifth – (b) – though satisfied, is essentially rendered irrelevant. The evidence for this conclusion is set out in detail below.

(a) The institution concerned should comprise members of a unique profession, and should have as members most of the eligible field for membership, without significant overlap with other bodies

The petition submitted by PressBoF indicates that the 'members of a unique profession' who will be incorporated into a single legal entity will be the representatives of newspaper and magazine associations and societies:

'This Petition is submitted on the authority of a unanimous resolution of the members of The Press Standards Board of Finance Limited (hereinafter referred to as PressBoF) passed on 30th April 2013)

¹ <http://privycouncil.independent.gov.uk/royal-charters/applying-for-a-royal-charter/>

² <http://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>

1. *PressBoF was incorporated in England and Wales as a company limited by guarantee on 1st November 1990 with company number 2554323*
2. *PressBoF's membership comprises The Newspaper Publishers Association, The Newspaper Society, the Professional Publishers' Association and the Scottish Newspaper Society, making it fully representative of the newspaper and magazine industry*
3. *PressBoF has a long and distinguished history of supporting the preservation and maintenance of Press standards and the adjudication of complaints from the public.*³

It is not clear how many individuals will be captured by this Charter. The confusion arises from the status of PressBoF, which is an incorporation of individuals representing associations which themselves represent organisations, each of which employ varying numbers of individuals practicing journalism – the activity that will be subject to self-regulation.

PressBoF was initially set up in 1990 by the representative bodies of the newspaper and magazine industry. Its primary purpose was, and is, to fund the system of press regulation centred on the Press Complaints Commission (PCC), although it performs a number of other functions, including the appointment of the Chair of the Press Complaints Commission and the review of the Editors' Code of Practice through a subcommittee of PressBoF – the Editors' Code of Practice Committee.⁴

Over time, the representative bodies who founded PressBoF and who provide its members have reduced to four. These are:

- ***The Newspaper Publishers Association (NPA)***: (Company No. 00089611) Comprises eight corporate members, representing the major national newspaper publishers.⁵
- ***The Professional Publishers Association (PPA)***: (Company No. 00132310) Represents "more than 200 companies, covering everything from consumer magazine publishers to business-to-business data and information providers and smaller independents."⁶
- ***The Newspaper Society (NS)***: "Independent commercial newspaper publishers in the UK are eligible to apply to join the Newspaper Society."⁷ As of 1st January 2013, there were 88 local news publishers in the UK.⁸ This figure appears to contain Scottish titles. The Newspaper Society claims to be an unincorporated association.
- ***Scottish Newspaper Society***: It is unclear how many members the SNS has, as it appears to have no independent online presence or publicly available contact details. In the absence of any more information, it is assumed that membership is provided on the same basis as the Newspaper Society, for members based in Scotland.

Membership of the Board of PressBoF, according to Article 5 of its Articles of Association consists of delegates drawn from these organisations, with the following balance: NPA (3 delegates); NS (3 delegates); PPA (2 delegates); SNS (2 delegates).⁹ At present, however, there are only nine members of PressBoF.

³ <http://privycouncil.independent.gov.uk/wp-content/uploads/2013/05/Press-Standards-Board-of-Finance-Ltd-Petition-and-Draft-Charter.pdf>

⁴ <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Appendix-B.pdf> (Paragraph 3(1)(i); see also oral evidence to the Leveson Inquiry by Lord Black, 1st Feb 2012: <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf> (p6, lines 14-18)

⁵ <http://www.n-p-a.org.uk/>

⁶ <http://www.ppa.co.uk/about/>

⁷ <http://www.newspapersoc.org.uk/membership-of-the-ns>

⁸ <http://www.newspapersoc.org.uk/regional-press-structure>

⁹ <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Lord-Black1.pdf> (Paragraph 15).

PressBoF, as the body seeking incorporation under Royal Charter, would therefore appear to consist of 10 individuals. These individuals do not represent members of a unique profession (if journalism could be described as a unique profession), they represent approximately 300 publishers who are members of the four associations that make up the Board of PressBoF.

If the petition from PressBoF for a Royal Charter is intended to represent journalists, it does not represent 'most of the eligible field for membership' of the approximately 60-70,000 journalists working in the UK. The National Union of Journalists, which represents approximately 30,000 journalists, has stated that it does support the PressBoF Charter. The PressBoF Charter does not, in its view, 'have the independence from the industry that is required by Leveson'. Therefore PressBoF cannot be said to have as its members, members of the NUJ.

Nor would PressBoF represent the members of the Institute of Journalists who are already represented by a Chartered Institute. Indeed, the PressBoF Charter would inevitably overlap with the Chartered Institute of Journalists (CioJ), granted Royal Charter status in 1890.¹⁰

Privy Council criterion (a) states that there should be no "significant overlap with other bodies", while the explanatory note on the purpose of Royal Charters this is clarified as: "In the case of professional bodies they should represent a field of activity which is unique and not covered by other professional bodies." Both the CioJ and PressBoF share a stated aim to promote press standards,¹¹ while both the CioJ conditions for membership and the PressBoF Charter are wedded to the existing Editors' Code of Conduct.¹² This indicates considerable overlap between the Charters.

The PressBoF Charter therefore does not satisfy criteria (a) since it does not have as members most of the eligible field for membership, and it overlaps with an existing Chartered body.

(b) Corporate members of the institution should be qualified to at least first degree level in a relevant discipline

This is explained further in the Privy Council's explanatory note on Chartered bodies, which states that "At least 75% of the corporate members should be qualified to first degree level standard".¹³ While it is debatable whether journalism is a formal profession, a March 2013 report by the NCTJ shows that 82% of journalists are educated to a degree level. Of these, 10% of undergraduates and 53% of postgraduates hold university qualifications in journalism. 73% of journalists hold an NCTJ qualification.¹⁴

However, given that the PressBoF Charter would be granted to the members of PressBoF, the qualification criteria would appear to be irrelevant. Current members of PressBoF include barristers, serving editors, and newspaper and magazine publishing executives.¹⁵

¹⁰ <http://cioj.co.uk/welcome-to-the-website-of-the-cioj/history-of-the-cioj/>

¹¹ CioJ summary statement (<http://cioj.co.uk/the-cioj/>); PressBoF Memorandum, Article 3(1)(i): <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Appendix-B.pdf>

¹² CioJ Code of Conduct (<http://cioj.co.uk/the-cioj-code-of-conduct-for-our-members/>) and PressBoF Charter petition, paragraph 3.

¹³ <http://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>

¹⁴ http://www.nctj.com/assets/library/document/j/original/jaw_report_final.pdf

¹⁵ <http://www.pcc.org.uk/about/whoswho/pressbof.html>

The PressBoF Charter would appear to satisfy (b), but it is not clear how professional qualifications are relevant to membership of PressBoF.

(c) The institution should be financially sound and able to demonstrate a track record of achievement over a number of years

Given the central role of PressBoF with the previous system of self-regulation, it is difficult to see how PressBoF can credibly claim to demonstrate “a track record of achievement over a number of years”, as specified in criterion (c) of the Privy Council rules.

The petition for the PressBoF Charter makes two claims about historical functions of PressBoF that are intended to demonstrate the suitability of PressBoF in this area:

3. PressBoF has a long and distinguished history of supporting the preservation and maintenance of Press standards and the adjudication of complaints from the public.

6. PressBoF’s financial position is sound as its latest annual report and accounts show. Furthermore, a body established by the newspaper and magazine industry to collect and provide funding for independent self-regulation of the Press shall grant to the Recognition Panel such sums of money as are sufficient to enable it to commence its operations as a Recognition Panel and discharge its functions.

Each of these assertions, as they relate to the relevant criteria, are highly contestable and demonstrate why the application by PressBoF for a Royal Charter should not be accepted.

PressBoF’s ‘long and distinguished history’

As Lord Justice Leveson makes clear, drawing on evidence from several witnesses, PressBoF’s composition and functions in relation to funding the PCC has been central to “a profound lack of functional or meaningful independence from the industry... at the heart of the failure of the system of self-regulation of the press”.¹⁶

Leveson explicitly singled out PressBoF as ensuring a chronic lack of independence, achieved through its three core functions – funding (described below), the appointment (and termination) of the PCC Chair, and the Editors; Code of Practice Committee (a subcommittee of PressBoF).

As Clause 1(i) of the Memorandum and Articles of PressBoF (above) show, and as Volume IV, Part J of the Leveson report demonstrates, the newspaper industry – primarily through PressBoF – exerted a dominant influence over the self-regulatory system. Section 8 of Part J¹⁷ lists a series of failures of the previous system of press regulation, several of which are at least partially linked to an area of PressBoF’s competence:

- **8.1:** “The PCC is constrained by serious structural deficiencies which limit what it can do. The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means that the PCC is far from being an independent body”
- **8.2:** Lack of sufficient funding provided to the PCC by PressBoF (see below)

¹⁶ Volume IV, Part J, Para 3.1 (p1520)

¹⁷ Volume IV, Part J (pp1576-1579)

- **8.3:** “Minor changes to the Editors’ Code of Practice [the Code Committee is a subcommittee of PressBoF] and the self-regulatory system has been deployed as a substitute for real, substantial reform which might have improved press standards and provided a real basis for trust in self-regulation”.
- **8.4 – 8.7:** The inability of the PCC to initiate investigations (linked in part to resource restrictions due to PressBoF’s insufficient funding – see below).

As Leveson concludes:

*“The failings which have fatally undermined the PCC and caused policy makers and the public to lose trust in the self-regulatory system are not new. They have been consistently identified by external scrutiny for at least a decade. The twin failure of both the self-regulatory system and the industry to address these problems is itself evidence that there has been no real appetite for an effective and adequate system of regulation from within the industry, in spite of a professed openness to reform and self-criticism. It is not difficult to avoid the conclusion that the self-regulatory system was run for the benefit of the press not of the public”.*¹⁸

This is not an endorsement of a “long and distinguished history of supporting the preservation and maintenance of Press standards and the adjudication of complaints from the public”, as PressBoF claims in Paragraph 3 of its petition to the Privy Council.

PressBoF’s ‘sound financial stewardship’

PressBoF’s stewardship of the previous system failed on two counts. The funding it secured from the industry was insufficient to provide a workable system, and its own role in relation to funding damaged the system of Press self-regulation it was supposed to be supporting.

The magnitude of funding for the PCC is set by PressBoF and based on an opaque formula agreed by the representative bodies of the industry (NPA, etc).¹⁹ By being positioned between the self-regulator and the industry, PressBoF retained ultimate control over the size of the levy provided to the self-regulator. This arrangement was described as ‘unhealthy’ by Lord Grade, a PCC commissioner:

*“...the fact that PressBoF controls the purse strings leaves them in the position where... they can have a huge influence on the constitution and the running of the organisation. I don’t think that’s healthy”.*²⁰

The ‘hands on’ role of PressBoF in this regard, ensured – according to Leveson – that PressBoF was unquestionably the “ultimate paymaster” of the self-regulator, reducing the functional independence of the PCC through the supply of limited resources.²¹

PressBoF’s role in funding, rather than facilitating self-regulation, was seen by Leveson to do the precise opposite:

¹⁸ Volume IV, Part J, Para 8.12 (p1579)

¹⁹ <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf> (p5)

²⁰ <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf>

²¹ Volume IV, Part J, Paras 3.5-3.6, p1521

*It is also clear to me that the funding made available to the PCC is barely sufficient to enable it to conduct its complaints handling functions effectively. Further, in so limiting the funding available to the PCC, the organisation was unable to exercise other functions that might be properly expected of a regulator, for example, in relation to investigations into industry conduct, and the promotion of standards.*²²

Similar conclusions were drawn from the former Chair of the PCC, Baroness Buscombe:

*“[The PCC’s] performance runs the risk of being compromised because of lack of adequate funding... whilst there has been a real desire on the part of all of us at the PCC to raise our game, a significant lack of resource makes this frankly impossible”.*²³

This directly contradicts the claim by PressBoF in paragraph 6 of the petition to the Privy Council that it “shall grant to the Recognition Panel such sums of money as are sufficient to enable it to commence its operations as a Recognition Panel and discharge its functions.” As Lord Justice Leveson concluded:

*“The PCC is barely given enough money to perform its key function of complaints handling, let alone to expand its activities in order to raise standards across the board”.*²⁴

For these reasons, PressBoF does not demonstrate either a sufficient track record of achievement, or the financial record to justify incorporation under a Royal Charter.

(d) Incorporation by Charter is a form of Government regulation as future amendments to the Charter and by-laws of the body require Privy Council (i.e. Government) approval. There therefore needs to be a convincing case that it would be in the public interest to regulate the body in this way

As the Privy Council website states, “incorporation by Charter should be in the public interest... since once incorporated by Royal Charter a body surrenders significant aspects of the control of its internal affairs to the Privy Council.”²⁵

Leveson made clear in his report that any future system of press regulation should be independent of government and of political influence, because there is a public interest in separating the press from politicians.

Incorporating PressBoF by Royal Charter to run a system of regulation would not be in the public interest since it would enable government to amend regulation through the Privy Council.

The special protection from interference provided for the cross-party Royal Charter of 18th March would not be applicable to a PressBoF Charter. This special protection is in the form of a clause (Section 96) added to the Enterprise and Regulatory Reform Act 2013. This states:

²² Volume IV, Part J, Para 3.7, p1521

²³ Baroness Buscombe, Witness Statement, Leveson Inquiry, para 39-41

²⁴ Volume IV, Part J, Para 8.2, p1577

²⁵ <http://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>

Royal Charters: requirements for Parliamentary approval

Where a body is established by Royal Charter after 1 March 2013 with functions relating to the carrying on of an industry, no recommendation may be made to Her Majesty in Council to amend the body's Charter or dissolve the body unless any requirements included in the Charter on the date it is granted for Parliament to approve the amendment or dissolution have been met.

Therefore incorporating PressBoF by Royal Charter would enable a degree of government intervention that would be inimical to the public interest.

In addition, the PressBoF Charter explicitly allows party-political peers and members of the European Parliament to serve on the Recognition Panel of the new system, and on the Board of a new self-regulatory body. Notwithstanding that this arrangement has been linked with the failure of the previous system, this creates a clear avenue of political interference.

The PressBoF Royal Charter proposal would therefore be especially vulnerable to political interference. For this reason, it fails to satisfy (d).

(e) The institution is normally expected to be of substantial size (5,000 members or more).

As demonstrated above (a), if the body seeking Chartered status is taken to mean the members of PressBoF, this would constitute a maximum of 10 individuals under the Memorandum and Articles of PressBoF. If PressBoF is taken to represent the members of each of the organisations who appoint delegates as members of PressBoF, this would account for approximately 300 newspaper publishers. This is substantially below the approximate number provided by the Privy Council (5,000 members or more).

The Privy Council does state that “each application is dealt with on its merits”, but “in the case of professional institutions” the main criteria apply.²⁶ It is not clear why in this case the Privy Council should substantially reduce its membership criteria.

The individuals seeking incorporation under the Royal Charter petition submitted by PressBoF do not add up to a tenth of the Privy Council size threshold.

²⁶ <http://privycouncil.independent.gov.uk/royal-charters/applying-for-a-royal-charter/>

Ability to satisfy criteria set out by the Leveson report

Lord Justice Leveson set out, in Volume IV of his report, the criteria he believed necessary for a regulatory solution.²⁷

These were (excerpts):

1. **Effectiveness** – “Any solution must be perceived as effective and credible both by the press as an industry and by the public”
2. **Fairness and objectivity of standards** – “The setting of standards must be independent of government and parliament, and sufficiently independent of media interests, in order to command public respect”
3. **Independence and transparency of enforcement and compliance** – “Enforcement of ethical standards, by whatever mechanism, must be operationally independent of government and parliament, and sufficiently independent of media interests, in order to command public respect”
4. **Powers and remedies** – “The system must provide credible remedies, both in respect of aggrieved individuals and in respect of issues affecting wider groups in society”
5. **Cost** – “the system must be sufficiently reliably financed to allow for reasonable operational independence and appropriate scope, but without placing a disproportionate burden on either industry, complainants or the taxpayer”.²⁸

The following assessment demonstrates that the PressBoF Charter would fail – in part or in full – to satisfy all five of these criteria.

1. Effectiveness

A “regulatory regime for the press must be accepted as credible both by the press and the public”²⁹

A number of major publishers have publicly stated their support for the PressBoF Charter, and these have been followed by other local and regional publishers. It is not clear, however, exactly what proportion of the press supports the PressBoF Charter but appears to be a large number of news publishers. *The Guardian* and the *Financial Times* have not said they support the PressBoF Charter.

The support of publishers does not correspond to support from journalistic organisations. The NUJ, the largest union representing UK journalists, does not support the PressBoF Charter.

PressBoF did not seek to ascertain the views of the public about its Charter before submitting it to the Privy Council. This despite Leveson’s previous criticism of the lack of public consultation by the press.

Leveson found it “extraordinary”, for example that, with respect to their plans for a new system of regulation in 2012, the newspaper industry ‘did not regard public views on the matter [of their regulatory proposal] as of sufficient interest or importance to make any effort to ascertain them’. This lack of interest in the views of the public, he said, “demonstrates the extent to which the press continue to prioritise their own interests, with consideration of the wider public interest only in as much as it applies to the importance of protecting the freedom of the press, and only then to the extent that they can appoint themselves the arbiter of it.”³⁰

²⁷ Part K, Chapter 1

²⁸ p1,583

²⁹ p1,585

³⁰ p1,621

The Media Standards Trust has asked the public what they think about a new system of press regulation run by the press. The Trust commissioned YouGov to ask a series of questions in May 2013 about the press Charter in general, and about specific differences between the PressBoF Charter and the cross-party Charter.³¹

The YouGov opinion poll found that:

- The alternative system proposed by newspaper publishers is not considered to be credible by the public (only 20% of the public would have confidence in such a system)
- 73% of the public fear that, if such a system were set up by the press, there would be a risk of a return to the illegal and unethical practices that led to the establishment of the Leveson Inquiry

Therefore while a large number of news publishers may perceive the PressBoF Charter as effective and credible, this does not include all news publishers, nor does it include the largest representative body of journalists. More importantly, the public do not perceive a Charter established by the press in this way to be effective or credible. A fuller description of the poll results is included below.

With respect to Leveson's test for effectiveness, therefore, the PressBoF Charter may appear credible to the newspaper industry, but is not accepted as credible by the public.

2. Fairness and objectivity of standards

"The setting of standards must be independent of government and parliament, and sufficiently independent of media interests, in order to command public respect"

During the Inquiry Leveson closely examined the setting of standards through the Editors' Code of Practice committee. He concluded that it was not a fair and objective way to set standards. The suggestion, he wrote "that those in charge of the regulated entities should be responsible for the code pursuant to which they are regulated is not one that would (or should) command support."³²

He strongly disputed the idea put to him by the industry that only editors had the practical knowledge necessary to draw up the code:

"If one were to accept that it is reasonable for the industry to be in a majority in writing the code, it is also worth considering whether it is appropriate that those representing the industry should be serving editors... Lord Black denied that serving editors would have a degree of self-interest in how the standards set in the code... He argued instead that only serving editors would have the practical day-to-day understanding of what life was like in newsrooms and how the rules needed to change to reflect that. I simply do not accept that. 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."³³

³¹ <http://mediastandardstrust.org/mst-news/media-standards-trust-poll-shows-lack-of-public-support-for-press-royal-charter/>

³² p1,627

³³ p1,624

This is why Leveson recommended that: “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.”³⁴

This PressBoF Charter reverses this, keeping control of the Code in the hands of editors: “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.”³⁵

This would not, Leveson was clear, represent adequate independence of standards:

“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.”³⁶

Nor would it lend credibility to the system or command public respect:

“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.”³⁷

The PressBoF proposal therefore fails Leveson’s test for fairness and objectivity of standards.

3. Independence and transparency of enforcement and compliance

“Enforcement of ethical standards, by whatever mechanism, must be operationally independent of government and parliament, and sufficiently independent of media interests, in order to command public respect.”³⁸

“A profound lack of any functional or meaningful independence from the industry that the PCC claimed to regulate” was the central reason why the previous system of regulation failed, according to Lord Justice Leveson.³⁹

This was particularly due, Leveson said, to the dominance of PressBoF and its failure to provide adequate funding and scope:

“The PCC is constrained by serious structural deficiencies which limit what it can do. The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means that the PCC is far from being an independent body.”⁴⁰

According to the same criteria, the PressBoF Charter would fail for the same reason. It does not seek to create an independent system, it seeks to institutionalize the power of the major news organisations, acting through the funding body, the Press Standards Board of Finance (PressBoF).

PressBoF is composed entirely of senior executives within the industry: this includes the executive director of the Telegraph Group, the Editor-in-Chief of Associated Newspapers, and the chief

³⁴ Volume IV, Part K, Chapter 7 (Para 4.21)

³⁵ Schedule 3, Paragraph 7 of the PressBoF Charter

³⁶ p1,750

³⁷ p1,624

³⁸ p1,583

³⁹ p1,520

⁴⁰ p1,576

executive of News International. PressBoF members are appointed by the industry by a process that is not open. PressBoF has no website, publishes no record or minutes of meetings, and does not publish the list of news outlets that are its members.

In her evidence to the Inquiry, the ex-PCC Chair Baroness Buscombe wrote that “there was something that was continually disturbing me [when running the PCC], and that is that you have this slightly obscure body in some ways, PressBoF, who are supposed to be the sort of funding mechanism in charge of remit, sanctions. Basically the guys who make the rules are the industry.”⁴¹

Yet, PressBoF proposes this Charter be granted to them, in perpetuity. Not only would the Charter be granted to PressBoF, the members of PressBoF would:

- make up the initial Recognition Panel (Article 1.2)
- have a veto on amendments to Charter (Article 9.2)
- have a veto on dissolving the Charter (Article 10.2)
- fund the Recognition Panel on from year to year, rather than a long-term basis (Article 11)

This invests power over the new system in the same people and vested interests who controlled the old, discredited PCC system.

Lord Justice Leveson noted ‘the way that a few powerful individuals have been able to dominate the system’ and believed this was one of the previous system’s key flaws:

“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.”⁴²

Rather than address this flaw, the PressBoF petition accentuates it. Such a system would not be independent of the industry, rather the opposite. It would be highly dependent on the industry, and the most powerful organisations and individuals within it.

The PressBoF proposal therefore fails Leveson’s test for independence and transparency of enforcement and compliance.

4. Powers and remedies

‘The system must provide credible remedies, both in respect of aggrieved individuals and in respect of issues affecting wider groups in society’

Access to justice

Leveson was particularly concerned that ordinary people have access to fair remedies with regard to media abuse. He was very conscious that recent changes to the law “will put access to justice in this type of case [libel and privacy] in real jeopardy, turning the clock back to the time when, in reality, only the very wealthy could pursue claims such as this.”⁴³

⁴¹ <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf> (p45)

⁴² p1,626

⁴³ p1,507

Therefore he recommended an arbitration service that would play a dual role of providing access to ordinary people who would otherwise be unable to gain redress, and protecting publishers from expensive legal action by corporations and wealthy individuals:

“An arbitral arm of a new regulator could provide such a mechanism which would benefit the public and equally be cost effective for the press.”⁴⁴ (p.1,507).

Yet, this Charter does not guarantee this central element of Lord Justice Leveson’s recommendations. It reduces arbitration to an optional extra (Schedule 3, 22), and even then only after an optional pilot scheme has been conducted.

Corrections and apologies

“It is”, Leveson said, “frankly absurd that the regulator should not have the power to determine the location of an adjudication or apology.”⁴⁵

For this reason Leveson recommended that ‘The power to direct the nature, extent and placement of apologies should lie with the Board’.

Yet, the PressBoF Charter does not ensure a regulator would have the power to determine the location of an adjudication or apology.

The PressBoF Charter only ensures that the regulator would, like the current PCC, “have the power where appropriate to require remedial action”, and only after negotiation between the complainant and publisher had failed. In other words, the regulator would be in the position of negotiating what sort of remedial action is suitable and limited power with which to say what, how or where a correction or apology should be published.⁴⁶

Investigations

Lord Justice Leveson was clear that the investigations should be “simple and credible” and that there should be adequate funding for them, ring-fenced to ensure the regulatory could act independently and on its own initiative.

In his report he said that the process of investigation proposed by Lord Black on behalf of the industry in 2012 were so complicated and allowed for so many interventions that they were unlikely to reach any conclusion.

The “process described above [in the Lord Black proposal]” Leveson said, “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.”⁴⁷

Yet in this Charter there is nothing to prevent the Lord Black proposals being accepted. Moreover, since in this Charter there is no requirement for an investigations fund, it is far from clear how investigations would be paid for. If they were funded at the discretion of PressBoF then, based on

⁴⁴ p1,507

⁴⁵ P1,633

⁴⁶ Schedule 3, Paragraphs 15 and 16 of the PressBoF Charter

⁴⁷ p1,636

past experience, one must assume that lack of funding would prevent or highly constrain investigations.

Complaints

Obstacles are deliberately put in the way of complainants in this Charter that are contrary to Leveson's recommendations and would prevent almost all complaints from representative groups.

A representative group complaint has to be a "significant" code breach, there has to be "substantial" public interest in taking the complaint, and it has to qualify for "formal" consideration. This is such a high bar that very few complaints from these groups will ever make it through.

This is a higher bar than currently exists at the Press Complaints Commission. In 2011, for example, a complaint from Carmathenshire County Council against the South Wales Guardian regarding a breach of clause 6 (children) was accepted and upheld.⁴⁸ In the same year the Samaritans complained to the Wrexham Leader about the level of detail in the coverage of a suicide. The claim was accepted by the PCC and resolved.⁴⁹ These complaints are likely to be rejected under the PressBoF Charter.

The PressBoF Charter submitted by Lord Black and David Newell also goes against Lord Black's previous efforts to open the PCC up to complaints from representative groups when he was director in 2003. In an interview with the British Journalism Review Lord Black said that "the commission has new structures in place and urges vulnerable minorities, from refugees to the trans-gender community, to complain."⁵⁰

The PressBoF proposal therefore fails Leveson's test for powers and remedies.

5. Cost

"The system must be sufficiently reliably financed to allow for reasonable operational independence and appropriate scope, but without placing a disproportionate burden on either industry, complainants or the taxpayer"

PressBoF was responsible for financing the PCC. Leveson found that the PCC was not reliably financed and its financing was not sufficient to provide either reasonable independence or appropriate scope. As Leveson wrote:

"It is also clear to me that the funding made available to the PCC is barely sufficient to enable it to conduct its complaints handling functions effectively. Further, in so limiting the funding available to the PCC, the organisation was unable to exercise other functions that might be properly expected of a regulator, for example, in relation to investigations into industry conduct, and the promotion of standards."⁵¹

Nor was this an occasional or recent problem. The failure to finance the PCC sufficiently was a chronic problem of which PressBoF was aware for at least a decade:

"The PCC is barely given enough money to perform its key function of complaints handling, let alone to expand its activities in order to raise money in order to raise standards across

⁴⁸ <http://presscomplaints.org/case/4689/>

⁴⁹ <http://presscomplaints.org/case/4539/>

⁵⁰ http://www.bjr.org.uk/data/2003/no1_riddell

⁵¹ p1,521

the board. Funding has been an issue for a long time; almost a decade ago the CMS Select Committee recommended that PressBoF heed a plea from Sir Christopher for additional funding. In more recent years Baroness Buscombe was obviously concerned about funding levels but does not appear to have made formal requests for additional funding.”⁵²

The PressBoF Charter gives responsibility to PressBoF to fund both the regulator and the recognition panel. Yet it has been shown, by Lord Justice Leveson, to have failed to perform this role in a way that enabled the PCC to perform even its key functions.

The PressBoF proposal therefore fails Leveson’s test for cost.

⁵² p1,577

Degree of support from public

How the PressBoF Charter fails to represent public opinion

Since the summer of 2012, multiple polls have been commissioned measuring public opinion on several aspects of press regulation. Many of the questions that have been asked are relevant to the PressBoF petition for a Royal Charter, and some have been asked specifically to gauge public support for aspects of the PressBoF Charter. Due to the volume of questions, only selected questions are included here, although they show a clear lack of public support for the key aspects of the PressBoF Charter proposal. Below these are separated into:

- Specific aspects of the PressBoF Charter
- General lack of support for press-led regulation

Specific questions on the PressBoF Charter:

A YouGov poll commissioned by the Media Standards Trust and conducted on 1st-2nd May 2013 (shortly after the announcement of the PressBoF Charter) asked specific questions about public attitudes to the PressBoF Charter, and obtained the following results (N=1,851):

1) In March, a new system of press regulation, based on Lord Justice Leveson's recommendations, was agreed by the three political parties and by Parliament, and was backed by representatives of some of the victims of press abuses.

A number of major newspaper publishers have said they oppose the new system of regulation and have proposed their own alternative system.

How much confidence would you have in the alternative system proposed by newspaper publishers?

A lot of confidence	4%
A fair amount of confidence	16%
TOTAL CONFIDENCE	20%
Not much confidence	34%
No confidence at all	22%
TOTAL NO CONFIDENCE	56%
Don't know	25%

2) The system of regulation agreed in March specified that newspapers who sign up to the regulator **MUST** set up a fast, low cost arbitration system for people who feel they have been libelled or harassed by the press to use as an alternative to the courts.

The alternative system put forward by the newspaper publishers includes a similar, but **OPTIONAL** system.

Do you think the new newspaper regulator?

Should HAVE to provide a low-cost arbitration system	52%
Should have the OPTION of providing a low-cost arbitration system	18%
Don't know	30%

3) To what extent would you support or oppose the following:

A new regulator should be able to direct a newspaper to print a correction and/or an apology on the same page number as the original story if it reports something incorrectly, even if it is on the front page?

Strongly support	50%
Tend to support	26%
TOTAL SUPPORT	76%
Neither support nor oppose	10%
Tend to oppose	3%
Strongly oppose	1%
TOTAL OPPOSE	4%
Don't know	10%

4) Imagine that the new system of press regulation agreed by Parliament did NOT go ahead, and instead the alternative system of press regulation proposed by the newspapers went ahead.

What risk, if any, do you think there is that there would be a repeat of unethical and illegal practices (such as phone-hacking and intrusions into people's private lives) that were revealed during the Leveson Inquiry?

A large risk	36%
A small risk	37%
TOTAL RISK	73%
No real risk	8%
No risk at all	1%
TOTAL NO RISK	9%
Don't know	18%

5) (NB: asked to those who read newspapers N=1,382) Imagine the new system of press regulation agreed by Parliament DID go ahead, but some newspaper groups continued to oppose it and did not join the new regulator.

Thinking about the newspaper you tend to read the most, which of the following statements comes closest to your view?

I want the newspaper I read to join the new system of regulation and will be disappointed if they don't	52%
I do not want the newspaper I read to join the new system of regulation and will be disappointed if they do	10%
I do not really mind either way	28%
Don't know	11%

Relevant trends in public opinion

Polling on the Leveson Inquiry and its aftermath has been conducted for over a year, and some clear trends in public opinion are evident over that time that demonstrate a lack of public support for the principles behind the PressBoF Charter.

Polling results on control of the system by the press

A YouGov/Hacked Off poll⁵³ in October 2012 asked the public whether they agreed or disagreed with the statement: **“After the phone hacking scandal it is no longer acceptable for newspaper owners and editors to control the system for dealing with complaints about press behaviour.”** Results were (N=2,846):

Total Agree	77%
Total Disagree	5%
Neither agree or disagree	12%
Don't know	5%

Shortly afterwards, in November 2012 a ComRes/BBC 5 Live poll⁵⁴ (N=1,002) asked something similar: **“Who would you most like to see regulate newspapers in Britain?”**

A regulatory body with rules agreed and enforced by newspaper owners	12%
A regulatory body with rules agreed and enforced by the courts	47%
Something else	33%
Don't know	8%

⁵³

http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/zbsbfp8gnb/Hacked%20Off%20results%20121005.pdf

⁵⁴ http://www.comres.co.uk/polls/BBC_5_Live_Leveson_November2012.pdf

This was followed in January-February 2013 by a YouGov/Media Standards Trust poll⁵⁵, which asked: **“How much confidence would you have in... A press regulator set up voluntarily by the newspapers, without any legal backing?”** Results were (N=2,030):

Total a lot/fair amount of confidence	12%
Total not much/no confidence	73%
Don't know	14%

Polling results on the need for oversight or underpinning of the system

The YouGov/IPPR poll⁵⁶ from May 2012 (referenced above, N=1,705) asked the public: **“what type of regulation, if any, would you prefer to see?”**

Through a legally-established body	62%
Through self-regulation	19%
No regulation	3%
Don't know	17%

Hacked Off's October 2012 YouGov poll⁵⁷ (N=2,846) asked: **“Which of the following statements comes closer to you view on how you think newspapers in Britain should be regulated?”**

Independent body, established by law	78%
Newspapers' own body	10%
Neither	4%
Don't know	7%

This was followed by the YouGov/Media Standards Trust poll⁵⁸ in November 2012 (N=3,620), which repeated the question:

Independent body, established by law	79%
Newspapers' own body	9%
Neither	4%
Don't know	8%

⁵⁵ http://cdn.yougov.com/cumulus_uploads/document/mry6s51f2n/YouGov-Media-Standards-Trust-Archive-results-010213-Leveson-Inquiry-press-regulation.pdf

⁵⁶ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/2ug29dsdxy/YG-Archives-IPPR-AVRef-MediaRegulation-240512.pdf

⁵⁷

http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/zbsbfp8gnb/Hacked%20Off%20results%20121005.pdf

⁵⁸

http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/c9321abal2/Media%20Standards%20Trust%20121123.pdf

A YouGov/Sunday Times poll⁵⁹ in November-December 2012 immediately after the publication of the Leveson Report asked a similar question, with an emphasis on the creation of new laws: **“Do you believe there should or should not be new laws, passed by MPs, to encourage newspapers to join this new system of regulation?”** Results were (N=1,773):

New laws should be passed by MPs to encourage newspapers to join this new system of regulation	58%
New laws should NOT be passed by MPs to encourage newspapers to join this new system of regulation	26%
Don't know	15%

This question was repeated in the poll by YouGov in March 2013⁶⁰ (N=681), demonstrating very little change despite significant number of news articles arguing against any Parliamentary involvement:

New laws should be passed by MPs to encourage newspapers to join this new system of regulation	55%
New laws should NOT be passed by MPs to encourage newspapers to join this new system of regulation	26%
Don't know	19%

Shortly prior to this, the January-February 2013 YouGov/Media Standards Trust poll⁶¹ asked: **“Thinking about the need to ensure independent and effective regulation of the press, and the need to protect press freedom, which of the following best reflects your view?”** Results were (N=2,030):

For press regulation to be effective and independent it needs to be backed up by a law	52%
Any regulation of the press backed by a law would risk the freedom of the press and political interference	23%
Neither	8%
Don't know	16%

⁵⁹ http://cdn.yougov.com/cumulus_uploads/document/97maro5ob4/YG-Archives-Pol-ST-results%20-%2030-021212.pdf

⁶⁰ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/2yjk6nbvtu/YG-Archive-Pol-190313-press-regulation.pdf

⁶¹ http://cdn.yougov.com/cumulus_uploads/document/mry6s51f2n/YouGov-Media-Standards-Trust-Archive-results-010213-Leveson-Inquiry-press-regulation.pdf

Full list of polls on press regulation, May 2012 – May 2013

[IPPR/YouGov, \(fieldwork conducted on\) 20-21 May 2012 \(N=1,705\)\(pdf\)](#)⁶²
[Hacked Off/YouGov, 3-6 October 2012 \(N=2,846\)\(pdf\)](#)⁶³
[Carnegie UK/Demos/Populus, published October 2012 \(N=2,000\)\(pdf, infographic\)](#)⁶⁴
[Sun/YouGov, 4-5 November 2012 \(N=1,608\)\(pdf\)](#)⁶⁵
[Free Speech Network/Survation, 12-13 November 2012 \(N=1,002\)\(pdf\)](#)⁶⁶
[Media Standards Trust/YouGov, 21-23 November 2012 \(N=3,620\)\(pdf\)](#)⁶⁷
[ITV News/ComRes, 23-25 November 2012 \(N=2,038\)\(pdf\)](#)⁶⁸
[BBC Radio 5 Live/ComRes, 23-25 November 2012 \(N=1,002\)\(pdf\)](#)⁶⁹
[Sunday Times/YouGov, 30 November – 1 December 2012 \(N=1,773\)\(pdf\)](#)⁷⁰
[Media Standards Trust/YouGov, 31 January – 1 February 2013 \(N=2,030\)\(pdf\)](#)⁷¹
[YouGov, 10-11 March 2013 \(N=1,684\)\(pdf\)](#)⁷²
[Sunday Times/YouGov, 14-15 March 2013 \(N=1,918\)\(pdf\)](#)⁷³
[YouGov, 19 March 2013 \(N=681\)\(pdf\)](#)⁷⁴
[Sunday Times/YouGov, 21-22 March 2013 \(N=1,937\)\(pdf\)](#)⁷⁵
[Free Speech Network/Survation, 26-28 April 2013 \(N=1,001\)](#)⁷⁶
[Media Standards Trust/YouGov, 1-2 May 2013 \(N=1,851\)](#)⁷⁷

⁶² http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/2ug29dsdxy/YG-Archives-IPPR-AVRef-MediaRegulation-240512.pdf

⁶³ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/zbsbfp8gnb/Hacked%20Off%20results%20121005.pdf

⁶⁴ <http://www.carnegieuktrust.org.uk/carnegie/media/sitemedia/News/Carnegie-UK-Trust-Press-Infographic.pdf>

⁶⁵ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/ebpx5kd9fo/Sun%20results%20121105%20Newspapers.pdf

⁶⁶ <http://survation.com/wp-content/uploads/2012/11/Final-Free-Speech-Tables.pdf>

⁶⁷ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/c9321abal2/Media%20Standards%20Trust%20121123.pdf

⁶⁸ http://www.comres.co.uk/polls/ITV_News_Index_26_November_2012.pdf

⁶⁹ http://www.comres.co.uk/polls/BBC_5_Live_Leveson_November2012.pdf

⁷⁰ http://cdn.yougov.com/cumulus_uploads/document/97maro5ob4/YG-Archives-Pol-ST-results%20-%2030-021212.pdf

⁷¹ http://cdn.yougov.com/cumulus_uploads/document/mry6s51f2n/YouGov-Media-Standards-Trust-Archive-results-010213-Leveson-Inquiry-press-regulation.pdf

⁷² http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/yn9v8h9rqj/YG-Archives-Pol-110313-Leveson.pdf

⁷³ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/qnkt3jc19/YG-Archive-Pol-Sunday-Times-results-15-170313.pdf

⁷⁴ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/2yjk6nbvtu/YG-Archive-Pol-190313-press-regulation.pdf

⁷⁵ http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/48oioey95/YG-Archive-Pol-Sunday-Times-results-240313.pdf

⁷⁶ <http://survation.com/wp-content/uploads/2013/04/Press-Regulation-Full-Report.pdf>

⁷⁷ <http://mediastandardstrust.org/mst-news/media-standards-trust-poll-shows-lack-of-public-support-for-press-royal-charter/>

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