

Media Freedom and Regulatory Standards Bill

A
B I L L
TO

Protect the freedom and independence of the media and to provide for the process and effect of recognition of voluntary media regulators.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

PART 1
MEDIA FREEDOM

1. Guarantee of media freedom

- (1) Ministers of the Crown and public officials with responsibility for matters relating to the media must uphold the freedom of the press and its independence from parliament and the executive.
- (2) Ministers of the Crown and such public officials must have regard to—
 - (a) the importance of the freedom and independence of the media;
 - (b) the right of the media to receive and impart information without interference by public authorities;
 - (c) the need to secure the independence of the media.

Rec 33 “the law should also place an explicit duty on the Government to uphold and protect the freedom of the press.”

The Leveson Report quotes an example from a submission by the Media Regulation Round Table and says “I am sure there would be benefit from further consideration around the precision with which the intention is expressed.” (Part K, Chapter 7, para 6.41).

That provision was drawn from s3 of the Constitutional Reform Act 2005, which protects judicial independence.

The bill develops that example as follows:

- Applying it to all Ministers
- Applying it to all public officials (not just “all with

- (3) Interference with the activities of the media by Ministers of the Crown and public officials shall be unlawful unless it is for a legitimate purpose and is necessary in a democratic society, having full regard to the importance of media freedom in a democracy.
 - responsibility for the media”).
 - Referring in (2)(a) to the “independence” rather than “integrity” of the media.
 - Making clear that this duty is in addition to existing duties

- (4) Compliance with the legislation listed in subsection (5) is not necessarily sufficient to satisfy the requirements of this section; and nothing in this section excuses failure to comply with, or removes or diminishes any exception, limitation or restriction in, a provision of that legislation.

This provision would mean, for example, that the interests of the media would have to be taken into account when decisions were made on matters such as fees for access to court papers or police restrictions on the activities of journalists.

- (5) The legislation referred to in subsection (4) is—
 - (a) the Human Rights Act 1998;
 - (b) the Freedom of Information Act 2000;
 - (c) the Data Protection Acts;
 - (d) any other enactment regulating the disclosure of information.

- (6) In this section—
 - (a) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,
 - (b) “public official” means any person carrying out functions which are susceptible to judicial review, and
 - (c) providing information to the media impartially, or entering into commercial arrangements for the printing of notices, advertisements or information, does not constitute interference

2. Interpretation: “the media”, “news publishers” etc

- (1) In this Act “the media” means—
 - (a) media organisations, and
 - (b) servants and agents of media organisations in the performance of functions relating to the activities of those organisations.

Definitions

These definitions are designed to ensure that the *benefits* of belonging to a voluntary self-regulator are clearly available to any publication dealing with news and current affairs, whether published in hard copy, on-line or both, but that any *penalties* for not

- (2) In this Act “media organisations” means organisations which—
- (a) make broadcasts within the meaning of section 95(1) of the Wireless Telegraphy Act 2006;
 - (b) publish in England and Wales a newspaper, magazine or periodical (or online content associated with a newspaper, magazine or periodical), a substantial proportion of which consists of news of, or opinion and discussion about, current affairs;
 - (c) in the course of a business, publishes in England and Wales content on a website, a substantial proportion of which consists of news of, or opinion and discussion about, current affairs.
- (3) In this Act “news publishers” means media organisations referred to in subsection (2)(b) and (c).
- (4) In this Act organisations “publish in England and Wales” if
- (a) the publication takes place in England and Wales, and
 - (b) the publication is targeted primarily at an audience in England and Wales

belonging cannot be applied to non-commercial publications which exist on-line only.

Clause 2(2) must be read in conjunction with Clause 5(1) and Clause 6(1) where the benefits in court costs are made available to any publisher who chooses, and is allowed by the self-regulator, to subscribe and clause 6(2) where the detriments of not being a subscriber potentially apply only to “news publishers” defined here in clause (2)(b) and 2 (c) where it was reasonable for them to have been regulated (and so for example would not apply to a small news blog even if it were commercial).

We understand that the Scottish Parliament is considering having its own legislation setting up a Scottish verifier. The same may apply to the Northern Ireland Assembly. We will consult those bodies. In the meantime we propose that news publishers be defined as those which publish in England and Wales.

PART 2

RECOGNITION OF VOLUNTARY MEDIA REGULATORS

3. Recognition

- (1) In this Act “recognised regulator” means a body which—
 - (a) in the opinion of the Recognition Commission is established as a voluntary regulatory body for the purposes of this Act, and
 - (b) is certified by the Recognition Commission for the purposes of this subsection.
- (2) In deciding whether to certify a body the Recognition Commission must consider, in particular, whether the body has—
 - (a) sufficient guarantees of independence, including suitable independent, fair and transparent procedures for appointments and funding,
 - (b) suitable functions, powers, personnel and resources to ensure that it can fulfil its principal objects effectively,
 - (c) an appropriate standards code,
 - (d) an arbitration service,
 - (e) effective processes for upholding standards,
 - (f) an efficient procedure for handling complaints, and
 - (g) subscribers which include a substantial proportion of all news publishers.
- (3) The Recognition Commission may not certify a body unless satisfied that it complies with the minimum requirements specified in Schedule 1.
- (4) The Recognition Commission must review a recognised regulator—
 - (a) at least once during the period of two years beginning with the date of certification, and
 - (b) at intervals of not more than three years after that
- (5) The Recognition Commission must review a recognised

Leveson Report, Para 6.9 page 1772: “Recognition requires a recognition process, and body to carry out that process. The legislation setting out the requirements for recognition would also have to set out both the process and who would be responsible for carrying it out.”

Rec 27: ..”that the law must identify those legitimate requirements and provide a mechanism to recognise and certify that a new body meets them”

Para 6.9 page 1772: “The role of the recognition body is essentially an objective one. Its task would be simply to check that the statutory requirements have been met by the body applying for recognition. The role would consist of:

- (a) approving the independence of appointment processes (if the approach above is adopted);
- (b) checking whether bodies applying for recognition meet the statutory criteria on application; ...”

2 (g) is aimed at preventing a multiplicity of self-regulators which Leveson said (Part K, Chapter 7, para 6.37) would represent a failure of the industry

Rec 29 “The requirements for recognition should be those set out above numbered 1 to 24 inclusive and more fully described in Part K, Chapter 7, Section 4 of the Report.”

Rec 30 “The operation of any certified body should be reviewed by the recognition body after two years and thereafter at three yearly intervals”

Part K Para 6.9 (d) “..in specifically

regulator if in the Commission’s opinion there has been, or may have been, a significant change in the structure, independence or effectiveness of the recognised regulator.

defined circumstances, carrying out any ad hoc reviews that a recognised body continues to meet the statutory criteria should the need arise. “

Part K Para 6.10 “... *The circumstances in which an ad hoc review might be necessary could perfectly properly be defined restrictively.*”

(6) If having reviewed a body the Recognition Commission is no longer satisfied that it complies with subsections (2) and (3), the Recognition Commission must consult the body and give directions designed to ensure that the body complies with subsections (2) and (3) within a reasonable time.

This clause refers to “a [voluntary regulatory] body” rather than “the voluntary regulatory body” as per Rec 32 **“It should be possible for the recognition body to recognise more than one regulatory body, should more than one seek recognition and meet the criteria, although this is not an outcome to be advocated and, should it be necessary for that step to be taken, would represent a failure on the part of the industry”** See also Part K Para 6.26-6.37, page 1777-9

(7) If the body fails to comply with directions given under subsection (6), the Recognition Commission must revoke the body’s certification.

(8) In making decisions under this Act the Recognition Commission must aim to adopt procedures which are transparent and must, in particular, publish information and invite representations on applications made to it, progress of proceedings on consideration of applications and the determination of applications.

(9) Interference with the proceedings of the Recognition Commission by Ministers of the Crown and public officials shall be unlawful.

3(9) This underpins the protections provided for by clause 1 and required by the Report. Rec 33 **“the law should also place an explicit duty on the Government to uphold and protect the freedom of the press.”**

(10) In its capacity as the recognition body, the Recognition Commission shall not be involved in the regulation of any subscriber.

Rec 28: **“In its capacity as the recognition body, it will not be involved in regulation of any subscriber”**

(11) In this Act “the Recognition Commission” means—
(a) the Recognition Commission constituted in accordance with Schedule 2, or
(b) if no Recognition Commission is constituted in

Clause 3(11) and Schedule 2 of this bill provide a mechanism for an independent Recognition body which is not Ofcom, but with Ofcom as a back-stop in the event of failure to appoint the Commission.

accordance with Schedule 2, Ofcom.

See Schedule 2 for more on the nature of the Recognition body

Rec 23 A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers

4. Failure to Recognise any Voluntary Regulatory Body

- (1) This section applies if
 - (a) at the anniversary of the commencement of section 3 there is no recognised regulator certified under section 3;
 - (b) at the anniversary of the commencement of section 3 any significant news publisher is not a subscriber to a recognised regulator;
 - (c) if within 3 months of the Recognition Commission revoking a recognised regulator's certificate of recognition, any significant news publisher which was at the time of revocation a subscriber to that recognised regulator is not a subscriber to a recognised regulator;
 - (d) if over any continuous period of 6 months, after the anniversary of the commencement of section 3, any significant news publisher is not a subscriber to a recognised regulator.
- (2) Where this section applies, the recognition authority must within 3 months make a report to the Secretary of State stating that it does consider the system of regulation to be sufficiently effective.
- (3) In this section, a "significant news publisher" is a news publisher which publishes one or more newspapers which circulate throughout England and Wales.

K7: 3.14 ...the very strong view expressed to the Inquiry by politicians in Government and Opposition, from the victims of press abuse, from press regulators and from those at the head of the industry itself, was that any new system of regulation should cover all significant news publishers, and I entirely agree.

PART 3

CONSEQUENCES OF SUBSCRIPTION TO REGULATOR

5. Introduction

- (1) In this Part a news publisher or other publisher is a “regulated publisher” if it subscribes to a scheme of supervision provided by a recognised regulator.
- (2) This Part applies to proceedings for—
 - (a) defamation;
 - (b) malicious falsehood;
 - (c) misuse of private information;
 - (d) invasion of privacy;
 - (e) breach of confidence;
 - (f) harassment

In this Part, clause 4 represents the statutory recognition analogous to that found in the Irish system. Clause 5 identifies and gives effect to the benefits and penalties in law associated with choosing or not to subscribe to a recognised self-regulator..

6. Costs of Legal Proceedings

- (1) A court determining proceedings to which this Part applies brought against a regulated publisher shall (irrespective of the outcome) award costs against the regulated publisher only if the court is satisfied that—
 - (a) the issues raised by the proceedings could not have been resolved satisfactorily in accordance with the procedures of the relevant recognised regulator, or
 - (b) there are other special reasons for awarding costs.
- (2) A court determining proceedings to which this Part applies brought against a non-regulated news publisher shall (irrespective of the outcome) award costs to the news publisher only if the court is satisfied that—
 - (a) the news publisher was unable to become regulated for reasons beyond its control,
 - (b) it would have been unreasonable in the circumstances to expect the news publisher to have become regulated,
 - (c) the issues raised by the proceedings could not have been resolved satisfactorily in accordance with the procedures of any relevant recognised regulator, or

Rec 26

“[A subscriber to a recognised regulator] could request the court ...to have regard to the availability of the arbitration system when considering claims for costs incurred by a claimant who could have used the arbitration service.”

Sub-section (1) protects a news publisher – and indeed any other subscribing publisher - from having to pay costs (of the claimant – even a successful one) if they are signed up to a recognised self-regulator, because cheaper arbitration would have been an option.

Rec 26 **“On the issue of costs, it should equally be open to a claimant to rely on failure by a newspaper to subscribe to the regulator thereby depriving him or her of access to a fair, fast and inexpensive arbitration service”.**

Sub-section (2) ensures that claimants will not have to pay costs to a defendant news publisher that is not signed up to a recognised self-regulator unless there are good reasons why it is not signed up or good reasons why costs should be

(d) there are other special reasons for awarding costs. awarded in that particular case.

(3) A court in determining proceedings brought against a non-regulated news publisher, may award costs against the publisher when it is successful in its defence of the proceedings if, in all the circumstances (and in particular taking into account the news publisher's failure to subscribe to a recognised regulator), it is just to do so.

Rec 26 **"Where that [failure by a newspaper to subscribe to the regulator thereby depriving [the claimant] of access to a fair, fast and inexpensive arbitration service] is the case, in the exercise of its discretion, the court could take the view that, even where the defendant is successful, absent unreasonable or vexatious conduct on the part of the claimant, it would be inappropriate for the claimant to be expected to pay the costs incurred in defending the action."**

(4) Rules of court may reflect or give effect to this section (and may, in particular, make transitional provision to address situations where a news publisher becomes, or ceases to be, regulated before or after the commencement of legal proceedings).

7. Exemplary Damages

(1) In any proceedings to which this Part applies, a court may award exemplary damages against a non-regulated news publisher if the court is satisfied that—

Rec 72

"The application to a defendant of any relevant system of regulation of standards enforcement which is contained in or recognised by statute and good internal governance in relation to the sourcing of stories should be relevant to the decisions reached in relation to such damages."

(a) the conduct to which the proceedings related was contrary to the standards code of a recognised regulator which provides a scheme of supervision to which the non-regulated news publisher could have subscribed, and

(b) having regard to any other relevant circumstances, it is appropriate to award exemplary damages.

Part J, Chapter 3, Section 4
Pages 1511-2

5.11 *"In that regard, it seems to me entirely appropriate that, when considering the question of exemplary damages, the court should be entitled to consider membership of a regulatory body as being relevant to the willingness to comply with standards (whether or not there was a failure to comply in relation to the subject matter of the action). In addition, the demonstration of good internal governance in relation to an appropriate audit by the editor as to the origin of stories should also be material. Equally, but on the other hand, a refusal to participate in a regulatory body might itself be evidence of a deliberate decision to stand outside any approved regulatory regime which itself could go towards the demonstration of*

(2) In any proceedings to which this Part applies, a court may award exemplary damages against a regulated publisher but only if it is satisfied that it is appropriate to make such an award having regard to all the circumstances and in particular to:

(a) any failure by the regulated publisher to comply with the Standards Code or any advice provided by the recognised regulator to which it is subscribed at the time of publication;

(b) any failure by the regulated publisher to have in place adequate systems of internal governance in relation to the sourcing of stories and the notification of individuals likely to be mentioned in the publication to which the proceedings relate.

- (3) Subsections (1) and (2) provide an additional ground on which exemplary damages may be awarded (and not an additional test to be satisfied in relation to the existing grounds). *outrageous disregard, as could the absence or failure of any adequate procedures for internal governance”.*
- (4) In subsection (1) the reference to a non-regulated news publisher is a reference to a news publisher which was not regulated at the time when the proceedings were commenced or when the claimant first gave notice of an intention to commence proceedings. *5.12 “Voluntary participation in a regulatory regime contained in or recognised by statute and good internal governance in relation to the sourcing of stories should be relevant to the decisions reached in relation to such damages.”*

8. Data Protection

In considering the exercise of any of its powers in relation to regulated publishers, the Information Commissioner shall have regard to the fact that such publishers are regulated by a recognised regulator.

Rec 25 “In any reconsideration of the powers of the Information Commissioner (or replacement body), power should be given to that body to determine that membership of a satisfactory regulatory body, which required appropriate governance and transparency standards from its members in relation to compliance with data protection legislation and good practice, should be taken into account when considering whether it is necessary or proportionate to take any steps in relation to a subscriber to that body.”

Rec 53 “Specific provision should be made to the effect that, in considering the exercise of any of its powers in relation to the media or other publishers, the ICO must have regard to the application to a data controller of any relevant system of regulation or standards enforcement which is contained in or recognised by statute.”

PART 4
GENERAL

9. Freedom of Information

In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public bodies and offices), insert at the appropriate place—

“A recognised regulator under the Media Freedom and Regulatory Standards Act 2013.

The Recognition Commission constituted in accordance with Schedule 2 to the Media Freedom and Regulatory Standards Act 2013.”

10. Extent

This Act extends only to England and Wales.

Clause 10 is based on the assumption that the Scottish Parliament (& Northern Ireland Assembly) will wish to consider its own Recognition body and because of differences in the way the law works in Scotland. We will consult the devolved institutions and Governments.

11. Commencement

This Act comes into force 3 months after Royal Assent.

Clause 11 avoids the Government seeking to gain advantage or influence through rushing or delaying an order bringing the Act into force, or bringing into force only selected sections of the Act.

12. Short Title

This Act may be cited as the Media Freedom and Regulator Recognition Act 2013

SCHEDULE 1

- Schedule 1 lists the requirements for recognition of a voluntary self-regulator, used by the Recognition Commission in Clause 3(3)
- There are significant advantages to the recognition requirements being clearly laid out in statute, because relying on referring to the Leveson Report (which is not set out in legal language and was not written with the intention of having direct legal effect), would lead to disputes due to ambiguity and legal challenges; also voluntary subscribers require certainty and clarity that they will be able to access the benefits of subscription to a recognised regulator; and given the long history of failure of self-regulation the public also need the transparency and clarity of the requirements being set out in statute. This is what Lord Justice Leveson intended.
- Leveson's own wording is underlined (both exact wording and the equivalent using a bill's terminology).
- Rec ... refers to Leveson recommendations by number
- ES... refers to paragraphs in the Executive Summary by number
- Other references are to paragraph numbers in the report. For example, K5:1.9 refers to Part K, Chapter 5, paragraph 1.9.
- Explanatory notes are in the right margin.

Section 3

SCHEDULE 1

MINIMUM REQUIREMENTS FOR RECOGNISED REGULATORS

Structure

1. A recognised regulator must be a company limited by guarantee.

Company objects

2. The principal objects of a recognised regulator must be to—
 - (a) ensure the protection of freedom of expression of news publishers,
 - (b) protect the public interest by ensuring ethical, accurate and truthful reporting by news

These are the principal objectives of the Irish Press Council as set out in their Defamation Act Schedule 2.2, <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0031.pdf> - quoted in Leveson K5:1.9, page

- publishers,
- (c) maintain certain minimum ethical and professional standards among news publishers, and
 - (d) ensure that the privacy and dignity of the individual is protected.

1710, save that we have referenced the Bill's definition of "news publishers."

Independence

- Recs 1–6** 3. A recognised regulator must be independent in the performance of its functions.

Rec 4 "The requirement for independence"

Access to services

- Rec 24** 4. The regulatory system provided by a recognised regulator must be open to subscription by any news publisher or other publisher on fair, reasonable and non-discriminatory terms (although subscription should be made available on different terms for different types of publishers).

Non-news publishers should be entitled to seek to join and derive the benefits of membership although clauses 5 and 6 make clear that they can suffer no penalty for not doing so.

Governing Board

- Rec 1** 5. A recognised regulator must be governed by an independent Board, the members of which are appointed without any influence of news publishers or the Government.

- Rec 2** 6. The Board must be appointed by an independent panel
Rec 5 which must -

- Rec 3a** (a) be appointed in an independent, fair and open way;

- Rec 3b** (b) contain a substantial majority of members who are demonstrably independent of news publishers;

Rec 3c (c) include at least one person with current experience of news publishers;

Rec 3d (d) include no more than one current editor of a news publisher;

Rec 1 (e) not include serving members of the House of Commons, or any Minister of the Crown, or any member of the House of the Lords or of any devolved Parliament or Assembly who, while a member, has been affiliated to any political party.

Rec 1: “**without any influence from industry or Government**”

Government influence can occur, or seen to occur, through those who take its whip in the Lords or devolved Parliaments or assemblies so such members are excluded in this bill.

7. The Chair of the Board—

Rec 2 (a) must be appointed by the independent panel by an independent, fair and open process, and

Rec 5a

K7:4.6 (b) must be independent of all political parties and all media organisations.

Leveson says “clearly and demonstrably independent of the press” and explains: “By that I mean that he or she should have no current, or recent, affiliation with any particular press organisation.” [Part K, Chapter 7, Section 4.6 page 1759]

Rec 5 8. The other members of the Board must be appointed by the independent panel, and the Chair of the Board, using the same independent, fair and open process; and the process must be designed to secure that the Board—

Rec 5a

Rec 5b (a) comprises a majority of members who are independent of news publishers,

Rec 5c (b) includes a sufficient number of members with experience of the media who may include former editors and senior or academic journalists,

Rec 5d (c) does not include any serving editor of a news publisher,

- Rec 5e** (d) does not include any serving members of the House of Commons, or any Minister of the Crown, or any member of the House of the Lords or of any devolved Parliament or Assembly who, while a member, has been affiliated to any political party, and
- Rec 5(e): “**not include any serving member of the House of Commons or any member of the Government**”
- Government influence can occur, or be seen to occur, through those who take its whip in the Lords or devolved Parliaments or assemblies so such members are excluded in this bill
- (e) at least a third of whose members are men and at least a third of whose members are women.
- Gender equality on the board is both desirable and feasible and there is no reason why it should not be a requirement.

Finance

- Rec 6** 9. A recognised regulator must be funded under the terms of an agreement between news publishers and the Board of the regulator, taking into account the costs of fulfilling obligations of a regulator and the commercial pressures on news publishers.
- Rec 6** 10. The Board of a recognised regulator must prepare an indicative budget which it certifies is adequate for the purpose, in accordance with which funding settlements—
- (a) cover five-year periods, and Rec 6: “four or five”
- (b) are negotiated with a minimum notice-period of 2 years excluding the year of establishment of the regulator. Rec 6: “well in advance”

Standards Code

- Rec 7** 11. A recognised regulator must have a Standards Code which is the responsibility of the Board, advised by a Code Committee which may comprise both members of the Board and serving editors of news publishers.

K7:4.2 1	12.	<u>The Code Committee—</u>	
		(a) <u>must include members of the Board who are independent of news publishers (“independent members”),</u>	K7:4.21 “ <i>The Board could well be advised by a Code Committee including serving editors and journalists, but with independent members as well</i> ”
		(b) <u>may include serving editors of news publishers, and</u>	
		(c) <u>must have a simple majority of independent members.</u>	ES 60: “serving editors have an important part to play although not one that is decisive”
Rec 8	13.	<u>The Standards Code must take into account the importance of freedom of speech and the public interest.</u>	K7:4.19 for “ethical and legal context” and K7:4.24 for “clear picture... behaviour.”
	14.	<u>The Standards Code must set out the ethical and legal context within which it applies; together with a clear picture of how good journalism serves the public interest and the implications that has for journalistic behaviour; and the Code must cover standards for—</u>	Leveson says in this section that he sees the Code as an “ethical framework” which should “provide some positive depiction of ethical journalism.” This paragraph seeks to reflect that.
Rec 8a		(a) <u>conduct, especially in relation to the treatment of other people in the process of obtaining material,</u>	
Rec 8b		(b) <u>appropriate respect for privacy where there is no sufficient public interest justification for breach, and</u>	
Rec 8c		(c) <u>accuracy and the need to avoid misrepresentation.</u>	
Rec 42	15.	<u>A recognised regulator must provide guidance, in the context of different provisions of the code, on the interpretation of “public interest” that justifies conduct that would otherwise be a breach of the Code</u>	Rec 42: “ A regulatory body should provide guidance on the interpretation of the public interest that justifies what would

otherwise constitute a breach of the Code. This must be framed in the context of the different provisions of the Code relating to the public interest, so as to make it easier to justify what might otherwise be considered as contrary to standards of propriety”

Rec 41 16. The Standards Code must provide that news publishers will be held strictly accountable for any material that they publish, including photographs (however sourced).

Rec 46 17. A recognised regulator must establish a whistleblowing hotline for those who feel that they are being asked to do things which are contrary to the Standards Code.

Governance of subscribers

Rec 9 18. A recognised regulator must require all subscribers—

Rec 9 (a) to maintain appropriate internal governance
Rec 8a processes, in particular in relation to the
process of obtaining material for publication

Throughout the report, Leveson stresses the need for compliance with internal governance arrangements, such as clear audit trails and records, especially in news-gathering.

Rec 9 (b) to provide transparency on what governance
processes they have in place, and

Rec 9 (c) to give notice of any failures in compliance
with the Code, as well as details of steps taken
to address those failures.

Complaints handling

Rec 10 19. A recognised regulator must—

Rec 10 (a) require all subscribers to have an adequate and speedy complaints handling mechanism;

Rec 10 (b) encourage those who wish to complain to do so through that mechanism;

Rec 10 (c) not receive complaints directly unless or until the internal complaints system has been engaged and the complaint has not been resolved within specified time limits.

20. In relation to complaints—

Rec 11 (a) a recognised regulator must have the power to hear and decide on complaints about breach of the standards code by subscribers;

Rec 11 (b) a recognised regulator must 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 which case the views of the party most closely involved should be taken into account);

Rec 37 (c) a recognised regulator should be prepared to allow a complaint to be brought prior to commencing legal proceedings, without prejudice to any power of the court to order a stay of the regulator's action if continuing it would endanger the civil action.

Part K, Chapter 3:5.14 discusses how regulation and court action relate. Leveson states that simultaneous actions are possible and should be allowed; that the court should be able to stay regulatory action; and that this should be made explicit in the self-regulator's constitution.

Rec 12 (d) decisions on complaints must be the ultimate responsibility of the Board, advised by complaints handling officials to whom

appropriate delegations may be made;

- Rec 13** (e) servicing editors may not have any role in determining the outcome of individuals' complaints, nor 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; and
- K7:4.32 says "it is absolutely clear to me that it is unacceptable to have servicing editors playing any role in determining the outcome of individual complaints." This follows the well-established maxim that no one should be a judge in his or her own cause.
- Rec 14** (f) the mechanism must allow complainants to bring complaints free of charge.

Investigations

- Rec 18** 21. The arrangements for subscription to each registered regulator must ensure that—
- a) the Board has authority to examine issues on its own initiative,
 - b) the Board has sufficient powers, and personnel with the necessary experience and expertise and independence from news publishers, to carry out investigations both into suspected serious or systemic breaches of the Code and failures to comply with directions of the Board,
 - c) subscribers are required to cooperate with any such investigation, and
 - d) the investigation process must be simple and credible.
- Experience, expertise and independence are stipulated in K7:4.34, as are the provisions about the investigation process.

Breaches of Standards Code

- Rec 20** 22. A Board must 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; and this information must be made available to the public in a way that allows understanding of the compliance record of each title.

23. In relation to breaches of standards which a Board finds to have been established—
- Rec 15** (a) the Board must have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies;
- Rec 15** (b) the Board must have the power to require publication of a correction and an apology, both in relation to standards breaches affecting individuals or groups of people, or to matters of fact where there is no single identifiable individual who has been affected;
- Rec 16** (c) the Board must have the power to direct the nature, extent and placement of apologies;
- Rec 19** (d) the Board must have the power to impose appropriate and proportionate sanctions (including financial sanctions up to 1% of turnover, with a maximum of £1million) on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body;
- Rec 17** (e) the Board must 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.
- K7 4.40 *“In that way, there is potentially the opportunity for the regulatory body, should the need arise, to give reasoned opinions on issues brought to them by editors, or by individuals concerned about potential publication of a matter, that might provide explanation and context and thereby assist the court in any subsequent consideration of the matter.”*
- 4.41 *“Any material that generates a greater practical understanding of the approach to decisions made by editors and the constraints under which they are made is likely to help and I have little doubt that, if that context is provided by an*

independent regulator, it will carry real weight. In that way, it could help to shape the way that the courts apply the law in these cases. Given the often voiced concerns about the willingness of courts to grant injunctive relief, supportive context in this area might help both claimants and publishers better to understand context and be better able to reach a fair and balanced solution to the issue of injunctive relief then being argued. Independent focus on the balance between Articles 8 and 10 can only assist the thinking of all.”

Annual report

Rec 21 24. The Board must publish an Annual Report identifying—

Rec 21a (a) the body’s subscribers, identifying any significant changes in subscriber numbers;

Rec 21b (b) the number of complaints it has handled and the outcomes reached, both in aggregate for the all subscribers and individually in relation to each subscriber;

Rec 21c (c) a summary of any investigations carried out and their result;

Rec 21d (d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by each subscriber;

Leveson does not explicitly specify that the report should cover “each” subscriber. We concluded that was the appropriate interpretation to ensure that the report “allows understanding of the compliance record of each title” as he stipulates in Rec 20.

Rec 21e (e) information about the extent to which the arbitration service had been used;

- (f) information relating to its financial arrangements in the exercise of its functions and any changes to financial arrangements.

Although this is an addition, finances are a normal part of annual reports.

Arbitration process

Rec 22 25. The Board must provide an arbitration service process in relation to civil legal claims against subscribers, drawing on independent legal experts on a cost-only basis to the subscribing member; and—

Rec 22 (a) the arbitration rules must provide for a fair, quick and inexpensive process, which is 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);

(b) the arbitrator shall have the powers set out in sections 48(3) to (5) of the Arbitration Act 1996;

Section 48 (3) to (5)
 (3) The tribunal may make a declaration as to any matter to be determined in the proceedings.
 (4) The tribunal may order the payment of a sum of money, in any currency.
 (5) The tribunal has the same powers as the court—
 (a) to order a party to do or refrain from doing anything;
 (b) to order specific performance of a contract (other than a contract relating to land);
 (c) to order the rectification, setting aside or cancellation of a deed or other document.

Rec 22 (c) the arbitrator must be able to hold hearings where necessary or dispense with them where not necessary; and

Rec 22 (d) the process must include provision for frivolous or vexatious claims to be struck out at an early stage.

Enforcement fund

- Rec 39** 26. The Board must establish a ring-fenced enforcement fund into which receipts from financial sanctions are paid, for the purpose of funding investigations.

Advice to public

- Rec 40** 27. The Board must have the duty to provide advice to the public in relation to issues concerning its subscribers and the Code.

Advice to the media

- Rec 40** 28. The Board must have the duty to provide a service to warn its subscribers, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

Rec 32

Duty to co-operate

29. The Board must have the duty to cooperate with any other recognised regulator and must put in place procedures to enable such co-operation.

K7 6.34 “One possible solution to this problem (of multiple regulators) would be to make it a criterion for recognition that the body would agree procedures and cooperate with any other recognised regulatory body in relation to complaints or systemic investigations that cover titles across regulator boundaries: they might even agree a common appeals mechanism to ensure consistency of approach”.

Clause 3(10) and Schedule 2

The way to implement the Leveson Report without using Ofcom as the recognition body

Recommendation 31

The role of recognition body, that is to say, to recognise and certify that any particular body satisfies (and, on review, continues to satisfy) the requirements set out in law should fall on Ofcom.

A less attractive alternative (on the basis that any individual will not have the requisite authority or experience and will only be occasionally be required to fulfil these functions) is for the appointment of an independent Recognition Commissioner supported by officials at Ofcom

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6.20 The final option is that of some independent person or panel, a Recognition Commissioner or Commission, sitting within an existing body with the expertise and size to provide both the technical and legal support that would be needed. Obviously such a person or panel would need to be appointed in a way sufficiently independent from the industry and from political influence. Three questions arise: what are the necessary characteristics for a Recognition Commissioner; who should appoint them; and what body would provide the administration and expertise to support them.

6.22 Thus the Commissioner would need to be an independent person, with experience of being responsible for weighing evidence and taking significant decisions, but need not have specific experience of the press or of regulation. He or she would have to be appointed by another process independent of the press, independent of the Government and independent of the legislature. Again, it could involve those who hold equivalent responsibilities in other areas such as the Commissioner for Public Appointments and the Chairman of the Judicial Appointments Commission.

Section 3

SCHEDULE 2

Recognition Commission

Introduction

1. This Schedule provides the method by which the Recognition Commission may be constituted for the purposes of this Act.

Appointments Panel

2. Her Majesty may by Letters Patent appoint three or more individuals as the Appointments Panel for the purposes of this Schedule.

The process set out in paragraphs 2-4 establishes the appointments panel as independent

3. An individual may be appointed only if he or she has consented to act and is—
 - (a) a present or former Civil Service Commissioner,
 - (b) a present or former holder of high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005 – see s.60); or
 - (c) a person who in the opinion of those nominating them is suitable for appointment having regard to their reputation and experience and is independent of all political parties and all media organisations.

4. The Prime Minister must recommend Her Majesty to make an appointment under paragraph 2 if each of the individuals to be appointed has been nominated by —
 - (a) the Prime Minister,
 - (b) the Leader of the Opposition,
 - (c) the leader of the party with the third largest number of seats in the House of Commons,
 - (d) the convenor of the crossbench peers in the House of Lords, and
 - (e) the editors of at least 6 national newspapers

The process set out in paragraphs 4-8 ensures that the appointment of the appointments panel is itself a process with less political influence than any other because it requires the agreement of the political parties, the cross-bench peers leaders and the editors of 6 national newspapers. This guarantees that no party political or Government-influenced member of the appointments panel could be appointed.

5. The Prime Minister may not recommend Her Majesty to make an appointment under paragraph 2 unless the condition in paragraph 4 is satisfied.

6. A member of the Appointments Panel may resign by notice in writing to the Prime Minister.

The scheme gives a veto to the industry, albeit that a failure to appoint any appointments panel will result, under clause 3(10), in OfCom becoming the Recognition Commission.

7. A member of the Appointments Panel is dismissed if Her Majesty revokes the Letters Patent of appointment; and—
 - (a) the Prime Minister must recommend Her Majesty to revoke a member’s appointment if those listed within paragraph 4(a) to (e) request the Prime Minister to make a recommendation, and
 - (b) the Prime Minister may not recommend revocation unless paragraph (a) is satisfied.

Since the industry and many politicians are opposed to any involvement by Ofcom in the recognition process, this will encourage co-operation in the identification of truly independent

8. If membership of the Appointments Panel falls below three, the

Commission is (automatically) dissolved.

members of the
Appointments Panel.

Process for appointment of members of Recognition Commission

9. The Appointments Panel must, within the period of three months beginning with the date of its constitution, lay before Parliament a draft scheme for the appointment by the Panel of members of the Recognition Commission.

10. In preparing a draft the Appointments Panel must aim to achieve a scheme which—

- (a) ensures a fair, transparent, independent, and non-discriminatory method of appointment, and
- (b) reflects, so far as practicable or relevant, the systems used for making appointments to the Senior Civil Service.

Paragraphs 10-11
ensures that the
Independent
Appointments Panel
appoint independent
members to the
Recognition
Commission

11. The scheme must provide that an individual may not be appointed as a member of the Recognition Commission if the individual is or has ever been—

- (a) a member of the House of Commons or any Minister of the Crown or any member of the House of the Lords or of any devolved Parliament or Assembly who, while a member, has been affiliated to any political party
- (b) an editor, senior executive or director of a media organisation.

12. Before laying a draft the Appointments Panel must consult—

- (a) each political party with at least one seat in the House of Commons,
- (b) one or more bodies appearing to the Commission to be representative of the interests of media organisations,
- (c) anyone else who has expressed a wish to be consulted, by notice in writing received by the Commission before the commencement of the consultation, and
- (d) such other persons as the Commission deems appropriate.

13. If the draft is approved by resolution of each House of

Parliament, the scheme shall take effect.

14. If a draft is not approved, the Commission must prepare an alternative draft and lay it before Parliament as soon as is reasonably practicable.
15. The Appointments Panel may from time to time lay before Parliament a revised scheme; and paragraphs 12 to 14 shall apply.
16. The scheme prepared by the Appointments Panel must include provision for the resignation, retirement and dismissal of members of the Recognition Commission.

Money

17. (1) The Treasury must within two months of Royal Assent set aside the sum of £5 million for the purposes of this paragraph.
- (2) The sum set aside under subsection (1) is to be invested by the Treasury, and investment receipts are to be added to the capital and set aside for the purposes of this paragraph.
- (3) The Appointment Panel and the Recognition Commission may apply to the Treasury for sums to be made available in respect of expenditure incurred or to be incurred by the Panel or the Commission.
- (4) The Treasury shall grant applications under subparagraph (3).
- (5) But if the Treasury are concerned about sums expended or to be expended, or the manner in which decisions about expenditure have been or are to be taken, or the methods of procurement adopted, the Treasury may refer the matter to, and comply with any directions given by, the Comptroller and Auditor General.
- (6) The Appointments Panel and the Recognition Commission shall have regard to any guidance given to them by the Treasury in relation to—

Paragraph 17 provides that the Appointments Panel and the Recognition Commission are financially independent of the Government and the industry. It is envisaged that, as with other regulators, the general expenses of the Recognition Commission will be met out of fees paid by body or bodies applying for recognition. The £5m fund is intended to ensure that the Recognition Commission will always have working funds.

- (a) best practice in relation to procurement in the public sector,
- (b) any applicable European Union law relating to procurement,
- (c) accounting practice and record-keeping in the public sector, and
- (d) any other financial matters on which the Treasury think it appropriate to give guidance.

Procedure

18. The Appointments Panel shall regulate its own procedure.
19. The Recognition Commission shall, subject to section 3, regulate its own procedure.

Status of the Appointments Panel and the Recognition Commission

20. The Appointments Panel and the Recognition Commission are not to be regarded—
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.

Powers

21. The Appointments Panel and the Recognition Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of their functions.
22. The Recognition Commission may charge fees to bodies which apply to be recognised
23. The Appointments Panel and the Recognition Commission may appoint staff and engage services