



MEDIA REFORM COALITION

May 2013

Submission to Department for Culture, Media and Sport on two Royal Charter proposals for future regulation of the press

The Media Reform Coalition was established in 2011 to coordinate the responses of various civil society groups to the Leveson Inquiry and the Communications Review, and to draw up policies designed to sustain the public interest and foster a more democratic media system. Prior to the publication of the Leveson Report in 2012, we proposed a new regulatory system including many of the features that Lord Justice Leveson would later recommend (1). During the negotiations between the government and the newspaper industry, we were active in examining and critiquing proposed versions of the Royal Charter, including the one published on 12 February 2013 and the one that was finally agreed by Parliament in March 2013.

Since the publication in April 2013 of PressBoF's alternative Royal Charter, there has been a great deal of debate over whether it is Leveson-compliant. Having examined it in detail, we think the answer is no. It does not merely replicate but actually worsens the problems of the February draft and undermines what we have previously referred to as "the delicate balance between private freedom and public responsibility."

(1) *Ethical Practice: A New Settlement for British News Publishing*, December 2011. Available at: <http://www.mediareform.org.uk/wordpress/wp-content/uploads/2013/04/Ethical-practice-new-settlement-and-British-news-publishing.pdf>

Introduction

In announcing the launch of its new charter proposal (referred to as the PressBoF Charter), the Newspaper Society made a number of claims about its rules and provisions (<http://bit.ly/11mOoGo>). Its press release described it as “closely based” on a version published in February 2013 and claimed it would deliver:

- *“Tough sanctions, with the new regulator having the power to impose fines of up to £1 million for systematic wrongdoing;*
- *“Up-front corrections, with inaccuracies corrected fully and prominently;*
- *“Strong investigative powers enabling the regulator to investigate wrongdoing and call editors to account;*
- *“Genuine independence from the industry and from politicians with all the bodies making up the new regulator having a majority of independent members appointed openly and transparently; and*
- *“Public involvement in the framing of the Code of Practice which binds national and local newspapers and magazines.”*

But none of these claims really hold up to scrutiny. In fact, the PressBoF Charter is a clear attempt by certain sections of the Press to continue running a regulatory system which suits themselves. It is an attempt at self-regulation by those who have clearly demonstrated, over many years and many attempts, that they are not fit to control it.

Below we have laid out nine points of objection to the PressBoF Charter on the basis that, if implemented, it will effectively guarantee that the powerful sections of the press continue to ‘mark their own homework’ – precisely what Lord Justice Leveson’s recommendations were intended to prevent.

1: The code of conduct.

The Royal Charter must define how any new regulator is to set up its code of conduct. In the cross-party version, this code is drawn up by a committee which includes editors, working journalists, and members of the public. But in the PressBoF Charter, serving journalists have no influence. While the Newspaper Society has claimed that there will be “public involvement in the framing of the Code of Practice”, this is just a way of reframing what was already in the cross-party Charter, and obscuring what has changed.

In fact, the PressBoF Charter actually involves less input from the public, from whom sections of the press wish to distance themselves as much as possible. It removes an explicit requirement for a “biennial public consultation” which “must be considered openly” – a clear indication that this is an attempt to keep the process as closed as possible and controlled by PressBoF.

2: Investigations.

In a similar vein, the PressBoF Charter departs from the cross-party version in limiting the Recognition Panel's ability to conduct ad hoc reviews of an approved regulator's effectiveness to cases of "systemic" rather than "serious" abuse (Schedule 2, paragraph 7a). Moreover, while it technically allows for investigations by an approved regulator, it removes the requirement for them to be "simple and credible" (S3, 18) and omits the "ring-fenced enforcement fund" (19). This would allow the regulator to set up empty shell investigations which are not equipped to get to the bottom of wrongdoing and could extend for long periods of time in the hope that the complainant eventually gives up (often due to the high pressure involved).

3. Corrections and complaints.

The Leveson Report accused the press of "vigorously" resisting complaints "almost as a matter of course...even when there can be no argument". In the same way, the PressBoF Charter places unnecessary hurdles in the way of anyone seeking to complain about inaccuracy or to seek a correction.

PressBoF has raised the bar for third party complaints – demanding not only an "alleged breach of the code" but a "significant" one, and a "substantial" public interest (S3, 11). It also reduces the power of the regulator to "direct" corrections – meaning mandate their prominence – to the power to "require", while also replacing the specific "corrections and apologies" with a generic "remedy" (s3, 15).

Technically, the regulator would regain the power to require corrections if complainants are not satisfied with a resolution. But these powers are no longer "pursuant to criterion 10", which demands papers adopt "an adequate and speedy complaint handling mechanism" and that they handle complaints within "an appropriate time". Decoupling these demands from the regulator's powers of prominence could open a back door to endless delays and prevaricating in the handling of complaints, leading to the publication of corrections months later if at all.

4. Arbitration.

A cheap and quick arbitration arm to handle disputes without taking them to courts was an important buttress of Leveson's proposal for a new regulator. The PressBoF Charter makes this optional, mandating only that the regulator "*may* provide an arbitral process" and "*may*" operate a pilot scheme to test that out. This could be intended to mollify the un-evidenced fears of regional newspapers that an arbitrator will be too expensive – but it also gives the regulator a way to squirm out of one of Leveson's key recommendations.

In fact, the arbitration system recommended by Lord Justice Leveson, and included in the cross party Charter, is intended to reduce the cost, time and stress (for both sides) of bringing a case against a news publisher. Given the very high cost of going to the civil courts in this country, and the shrinking opportunity for anyone but the very rich to do so, this represents a big potential improvement in access to justice for the public. It also means that

news publishers inside the self-regulator will be entirely shielded from the costs of any civil legal cases that are brought against them in the courts. Furthermore, if a plaintiff refuses arbitration, then they will be liable to pay the paper's costs, no matter who wins the case.

If they do set up an arbitrator, the PressBoF Charter replaces “free for complainants” with “inexpensive” and removes “inexpensive for all parties”. This places extra barriers in the way of claims and suggests a desire to avoid accountability.

5. Political influence.

Some national newspapers have attempted to portray the PressBoF Charter as free from political influence. But as former *Mail on Sunday* editor Peter Wright admitted on BBC4's *World at One* programme on Thursday 25 April, it allows members of the House of Lords to serve on both the appointments committee and Board of the Recognition Panel (s1, 2.4) and the main board (s1, 3.3) of any new regulator. It removes any ban on serving members of either house working for the Recognition Panel (7.3), and lacks any requirement that board members must be able to “act fairly and impartially” (S3, 5e-f). In sum, this Charter allows for far greater political interference at every level – only by politicians amenable to the industry funding bodies.

This is very far from the independent regulator required by Leveson, opening up the possibility for direct political interference in the freedom of the press, and is directly contradicting what the press industry claims it wants. This is a clear indication that the parts of the industry who have put forward the PressBoF Charter do want interference, but on their own terms. This is totally unacceptable. The current chair of the PCC is Lord Hunt, a former Conservative Cabinet Minister who still takes the Conservative whip in the Lords. The Chair of PressBoF is Lord Black, who also takes the Conservative whip in the Lords. Allowing such politicians to play such critical roles in any new regulatory system blatantly exposes it to political influence.

6. Independence from the industry.

The PressBoF Charter sets the tone for its independence provisions by establishing a two-tier standard for influence: where the cross-party version said the regulator must act “without any influence from industry or government,” this one specifies “*direction* from industry or *influence* from Government” (s3, 1).

In fact, it guarantees serious influence for the four industry bodies in the formation and funding of the Recognition Panel, and removes a great deal of specific language preventing industry interference. The cross-party Charter bars from both the Recognition Panel and its appointments committee a member who is otherwise involved in news publication (s1, 3.3) and from the Recognition Panel any former editors (S1, 3.3(a)); all these restrictions are gone.

To be clear: the Charter will be granted to PressBoF and current members of PressBoF will make up the initial recognition panel (preamble). A “representative of the press” agreed by PressBoF will sit on the appointments panel for the new Recognition Panel (S1, 2.3). It will be able to fund the Recognition Panel on far shorter terms than Leveson recommended – annual rather than every four or five years (11) – and reduce the terms of recognizer members from 5 years to 2 years (S1, 5). It also makes these members less independent by allowing the Chair to dismiss them (S1, 5). Given all this, we do not find persuasive the special pleading of S1, 2.5: “Members of the Appointments Committee shall serve in a personal capacity.”

7. Fairness, effectiveness, and independence

At the beginning of Schedule 2, the cross-party Charter says:

“In making its decision on whether the Regulator meets those criteria [the Recognition Panel] shall consider the concepts of effectiveness, fairness, and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding, and effective accountability...”

These were the general criteria outlined in the Leveson Report and intended to set the tone of the regulator. In the PressBoF Charter, however, this language is simply gone. It is hard to interpret this except as expressing a desire to build a regulator which need not be, if the press does not want it to be, “effective”, or “objective”, or “independent”, or “fair”, or transparent”, or “credible”, and so on.

8. ‘Triple lock’

The ‘triple lock’ system, whereby no change could be made to the PressBoF Charter without unanimous agreement from the four industry bodies, has been portrayed by some newspapers as meaning freedom from ‘political control’. What it actually means is that PressBoF, or the industry funding body that replaces it, will have a permanent veto – in perpetuity – over any democratic attempts to bring the press to greater accountability.

We understand the importance of safeguarding the press from political influence. As we have pointed out, however, this Charter does no such thing, and merely allows for a press veto on acceptable political influence. With the ‘triple lock’ system, these dangerous rules could not be changed in future without great difficulty. This would put the newspaper industry precisely where it wants to be – in total charge of its own ethical behaviour and insulated permanently from being held to any kind of account beyond that of the law and that of the market. As the phone-hacking scandal showed, these disciplines, on their own, are inadequate and have been proven to be so over the last three decades.

9. Miscellany

The PressBoF Charter makes a number of other small but significant changes to the cross-party version, which include:

- Removing the ability of the regulator to provide advice to the public;
- Removing the ability of the regulator to publish non-binding guidance on interpretation of the public interest;
- Removing the certainty around any requirement for a whistleblowing hotline;
- Removing the necessity to “make membership potentially available on different terms for different types of publisher”;

Furthermore, it is our understanding that application for a Royal Charter must meet certain criteria and that PressBoF are applying for a Charter on the basis that they are a professional institution comprised of members of a unique profession. However, PressBoF is actually a body that represents large corporate interests with membership being based on the size of the commercial interest an entity has in the press industry. It does not have journalists as individual members. Similarly, neither can it claim that membership requires qualification to first degree level in a relevant discipline when members consist of corporate bodies. It is precisely this self-interestedness that makes this Royal Charter entirely unfit for purpose.

10. Conclusion

We consider that the proposed PressBoF Charter would not be remotely Leveson compliant; indeed it would effectively take us in the opposite direction. The press, after Leveson, would find itself, rather ironically, in an even more unassailable position than it has had in the past, and future governments would effectively be prevented from taking any steps at all to re-balance the freedom of the press and the rights of the individual. This is not what, according to most opinion polls, the public want, and it is certainly not what Lord Justice Leveson recommended. Therefore we do not believe that the PressBoF Royal Charter should go forward to the Privy Council, and hope that approval of the cross party Charter can be concluded expeditiously.

www.mediareform.org.uk