

Carnegie UK Trust

Response to invitation to submit additional evidence to the Leveson Inquiry

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Introduction

A number of groups have a strong and legitimate interest in how the press is regulated. This includes the industry itself, politicians and the general public. Our primary interest, as a charitable foundation which aims to improve the wellbeing of people in the UK and Ireland, is in how well any new regulatory regime meets the needs of citizens.

We believe that:

- A free press has an important and powerful role to play in any democracy. However, the press must act in the interests of citizens, and regulation has a vital role in helping to protect citizens from harm.
- Citizens and civil society should play a more central and active role in the new regulatory system.
- The role of the regulatory regime should be to ‘raise the floor’ and ensure that acceptable minimum standards of behaviour are applied by all those who wish to be seen as credible news providers. There are limits to what regulation can achieve, and any system that seeks to do too much is unlikely to be effective and risks damaging innovation and competition.
- ‘Raising the ceiling’, and supporting innovation and excellence across the industry is essential – but this is better achieved through improved training and new funding and ownership models than through regulation.
- Some activities are clearly illegal and this behaviour must be dealt with by the courts and the police. There is an important debate to be had about whether the existing legal framework on certain issues, such as privacy, needs to be reviewed. This is a separate debate to the questions addressed in this submission – as any legislative changes would apply much more widely than to those participating in the regulatory regime for the press. However, any changes in the legal protections afforded to citizens may impact upon the type of regulatory solution that is required.

We believe that the debate about the pros and cons of statutory versus voluntary regulation is something of a false dichotomy. In Ireland, newspapers are not required by statute to be a member of the regulatory system – but the regulator is recognised in legislation. This recognition can benefit citizens by enhancing their recognition of and trust in the system. It can also bring benefits to those news providers who are members of the regulatory regime. This is because the courts can take account of their membership in any case brought against them. The fact that a news provider has signed up to the regulatory regime and committed to adhering to certain standards reflects positively upon them. There are parallels here to the ‘shield law’ in the United States, where journalists are afforded certain legal protections – as long as they adhere to certain standards and behaviours. We believe that an independent voluntary system of regulation which has strong incentives to join but which is recognised in legislation offers a viable approach to delivering an effective new regulatory system which meets the needs of citizens in the UK.

A New Regulatory Solution

We have analysed each of the five Draft Criteria for a Regulatory Solution; set out what we see as the key issues to be tackled in relation to each of these criteria; and offered our views on how this could be done most effectively, in order to ensure that the new system meets the needs of citizens.

1. Effectiveness

We are supportive of the description of ‘Effectiveness’ set out in the Draft Criteria.

We believe that a firm, reliable independent system with strong incentives to join – and significant risks in not joining – offers the most desirable way forward for citizens. However, the critical question which must be addressed is to identify the most appropriate mechanisms to ensure news providers’ voluntary participation in this new regime.

This is not straightforward, as the new system must impose stricter requirements upon providers than the previous regulatory regime. Fears about the possibility of statutory regulation are likely to encourage some news outlets to participate in a stronger voluntary system at the start. However, it is essential that more powerful and sustainable mechanisms to maximise on-going participation are embedded within the new system.

News media providers are businesses. Therefore we believe that market mechanisms are the most effective tools which can be deployed in order to ensure their participation in the regulatory regime. This means that news media providers should see the clear benefits to their business from participating in the system – and clear disadvantages in not participating. Market mechanisms must therefore create a clear distinction in the news media market between those providers who wish to be regarded as serious suppliers of news and information and be regulated as such; and those who do not wish to be seen in this way and choose to remain outside of the system.

The main benefit for citizens of this approach is that it would help to ensure providers’ participation in the regulatory regime and adherence to an agreed set of standards. However, these mechanisms can also deliver other benefits to citizens, as well as to news providers. Some examples of how these types of mechanisms could work in practice, and the benefits that they might offer, are described below:

- At present there is no agreed, recognised kitemark to let citizens know that a news organisation is part of the regulatory system and adheres to certain standards. This is problematic, as citizens are not able to make an informed choice about the news sources that they access. With the rapid proliferation of a vast array of online news media – and the fallout from the phone hacking crisis – citizens are likely to be increasingly interested in being able to differentiate between those news providers which have committed to adhering to an agreed, public set of standards, and those which have not. The lack of a recognised kitemark is also problematic for responsible news providers. There is currently limited market benefit for these organisations in being part of the regulatory system as they cannot communicate this to their customers. Conversely, there is no market penalty for a news provider that chooses to operate outside of the system. Creating a new kitemark which

indicates membership of a regulatory regime and adherence to its standards – and promoting and marketing this kitemark widely so that citizens recognise and support it – would therefore offer significant benefits to both readers and news providers.

- Citizens and news providers would also benefit from providers having the opportunity to access free, confidential pre-publication advice from the regulator on challenging or controversial issues. In certain cases this may help to avoid unnecessary harm being caused to citizens. It could also give providers confidence to publish news stories that they may otherwise be hesitant about, and help them avoid getting into legal difficulties at a later stage. This would give these providers a market advantage against those outlets operating outside of the system, which would not have the option of accessing this advice. The Danish Press Council is an example of a press regulator which offers pre-publication advice to its members.
- The existing conventions around accreditation and recognition of news outlets already give newspaper journalists significant market benefit. These include privileged access to important news events, decision-makers and embargoed copies of reports; subsidised facilities and resources in public buildings such as parliaments, courts of law and local authorities; and dedicated information resources such as press officers employed by public bodies. These arrangements clearly deliver a significant market advantage for those news organisations which have access to them, compared to those which do not. The public investment in providing these market advantages for news providers is significant. We believe that a new balance has to be struck between society providing these benefits, and requiring that citizens are given the assurance that a very clear set of standards and behaviours will be adhered to in return. Strengthening the link between the existing press accreditation system and the new press regulatory regime would help to achieve this.

For each of these benefits the distinction between printed and digital media is not relevant. This is logical from a citizen perspective, as these different forms of media are now broadly competing in the same market. It is the purpose of the news provider that is important – not its platform. Does it wish to be a kitemarked news organisation with all the privileges and responsibilities that this confers; or does it wish to be a provider of opinion and commentary which is unregulated but which does not qualify for the various benefits that regulation would provide?

There is a question over how some of the benefits listed above might apply to individual, freelance journalists as opposed to news organisations – in particular, the question of privileged access to events and occasions. We believe that this system would apply at the level of news organisations. We would not support a system which appeared to ‘license’ individual journalists. However, a whole range of organisations have had systems and procedures in place for many years to determine who they provide privileged access to, and who they don’t. Our proposal would simply seek to align these existing systems and procedures with the regulatory regime.

2. Fairness and objectivity of standards

We agree that a credible and enforceable set of standards which has the support of citizens (and the industry) must be at the heart of the new regulatory regime. We believe that there are two critical questions that must be addressed in order to achieve this goal:

- what should be in a new set of standards; and
- what should the process be for agreeing these standards?

What should be in a new set of standards?

The first recommendation in the ‘Carnegie Plan for Better Journalism’, published in February 2012 calls for a new ethical and editorial code for all journalists as the key measure to support and encourage better news media in the digital age. We believe that an agreed industry-wide code would give much clearer guidance and set high standards for journalists in newspapers, broadcasting and online news services. This becomes ever more important as media platforms converge and more and more new entrants arrive to challenge traditional news suppliers.

A new industry-wide code would bring significant benefits for citizens by providing a single source of information about what they have a right to expect from journalists. It would also provide journalists with a single source of professional guidance and clarity about their mission and purpose and the rules they must follow; and it would benefit the growing numbers of citizen journalists by providing a point of reference on the standards to which they should aspire.

Such a code would clearly have much wider applicability than those news organisations which are members of the new regulatory system for the press. However, we believe that the new press regulator should take the lead in commissioning the design and drafting of the code, and should then use the code as the new statement of standards to underpin the press regulatory regime.

This new code, or statement of standards, needs to be a document that combines values and principles with more practical advice. We believe that the new statement should set out the rules and regulations – or minimum standards – required of journalists more comprehensively than the current PCC Editors’ Code. This greater level of detail and transparency would be of significant benefit to citizens. As an example of how such a statement might be constructed, the Broadcasting Code administered by Ofcom provides a far more detailed set of requirements than the existing Editors’ Code. Aside from the requirements around impartiality – which would clearly not apply – we believe that there is very little in the Ofcom Code relating to journalistic content that responsible print and digital media providers could not adopt.

However, the new code, or statement of standards, should not just be about rules and procedures. Ethics is about more than just following the rules. The new statement must also set out the values and principles which journalists should adhere to. This is important for citizens as it helps to convey what they should expect from journalists – rather than only what journalists should not do – and also for journalists, by providing inspiration and a sense of pride and purpose. The BBC Editorial Guidelines provide a helpful demonstration of how this can be achieved. The section on secret recording – as just

one example – provides a very good illustration of how you can blend very concrete/specific rules and requirements with the editorial and ethical context which underpins those rules.

At present the press is able to undertake activities that would otherwise be prohibited, if these activities uncover information that is clearly in the public interest. It is important that this ability is maintained in the new regulatory regime. However, if a complaint is subsequently made to the new regulator about activities of this nature then the regulator should require news providers to demonstrate clearly and transparently that they have gone through a careful process of decision-making, and that they have properly satisfied themselves that any breach of the standards code was justified and proportionate in relation to the public interest involved. This transparency will be important in helping to maintain citizens' trust in the integrity of the new standards code.

How should the regulatory standards be agreed?

The process for constructing a new statement of standards to underpin the new regulatory system is of critical importance.

Citizens and members of civil society must be given a much more prominent role in defining these standards than they have had previously, if the new standards are to have the support of the public and trust in the industry is to be rebuilt. This role must be both in establishing the new standards and in overseeing them on an on-going basis. This may be achieved, for example, through the involvement of public interest representatives on a new standards committee, or a programme of on-going research with citizens to identify what standards they would wish to see the press adhere to. In-depth consumer research is regularly carried out by regulators in many other industries, including broadcasting.

The case for giving citizens and civil society a greater role in determining the standards of the press is particularly important given the significant 'public interest' role that the press fulfils. The 'public interest' is currently defined in the Editors' Code of Practice. We envisage that this definition will be updated as part of the new regulatory regime. It is essential that citizens are included in the process of determining how 'the public interest' is defined in the new system – and in agreeing which otherwise prohibited activities the press might be permitted to carry out in their name. The Carnegie UK Trust and Demos have recently embarked on a new research project to explore citizens' views on how the public interest should be defined – and we suggest that the new regulator has an on-going programme of research to gather citizens' views on this issue on a regular basis.

At present, the guidelines which determine the standards that the press in the UK must adhere to are written and reviewed by newspaper editors, through the Editors' Code of Practice and the Editors' Code Committee. Industry representatives – including editors, journalists, providers and digital media producers – should continue to play a significant role in overseeing the standards required of the industry in the new regulatory system. Regulation in any industry works more effectively when those who are the focus of the regulation are signed up to the rules of the game.

3. Independence and transparency of enforcement and compliance

The new statement of standards will only be effective if there are suitable mechanisms in place to ensure it is upheld. A simple, smooth and rapid redress mechanism, which citizens are aware of and trust, must therefore be a central element of the new regulatory system. We agree that this mechanism must be independent of both government and the media industry.

Independent ombudsmen have been appointed in many industries in recent years, including the property and legal professions, to investigate complaints and apply sanctions. In Ireland, the Office of the Press Ombudsman was established in 2008. To give a sense of scale, in 2011 the Ombudsman received 343 complaints, of which 77 proceeded to formal investigation or adjudication. The combined budget for the Office of the Press Council and the Press Ombudsman in Ireland in 2011 was 559,000 euros.

We believe that there would be a number of benefits to citizens in appointing an ombudsman to investigate and adjudicate on complaints as part of the new system of press regulation in the UK:

- Such an approach would appear to offer the desired level of independence both from government and the industry.
- Ombudsmen often play an important role in helping providers to establish or improve their own internal redress systems, which must then be exhausted before cases are referred to the ombudsman. This would benefit citizens – and newspapers – by making it easier for complaints to be resolved at an early stage.
- Ombudsmen often have a high public profile, which would help to ensure that citizens were aware of the redress mechanism and how to use it.
- Ombudsmen often try to resolve a dispute through conciliation and mediation, moving to adjudication only if necessary. This would help to ensure that the effective mediation work carried out by the PCC would continue in the new regulatory system.
- Ombudsmen can share the lessons and information gathered from the resolution of disputes to help prevent problems from recurring – this would be beneficial to both citizens and news providers.
- In Ireland any citizen is able to make a complaint to the Press Ombudsman about a news article if they believe it breaches the Code of Practice. If such an arrangement were deployed in a new regulatory system in the UK then this would significantly strengthen the current model, where complaints can generally only be made by those directly affected by the article in question.

4. Powers and remedies

The redress mechanism is, of course, only effective if it has the powers and sanctions that it needs to remedy problems and ensure compliance with the agreed code of standards. These sanctions should also be sufficiently robust to act as a deterrent.

There is an important distinction between remedies and sanctions. Remedies exist to provide redress to individual citizens who have been harmed by their dealings with the press. We believe that the power to issue these should rest with an ombudsman. The ombudsman should have the power to require news providers to issue prompt and prominent corrections and apologies for factual errors or misleading articles, and award compensation if appropriate.

In addition to the individual remedies applied by the ombudsman, we believe that the regulatory body should have the power to apply additional sanctions, such as financial penalties, upon news providers in the very rare cases where these might be appropriate. This may include cases, for example, where there has been a gross or extreme breach of the code of standards; if a provider has been found to repeatedly breach certain rules; or if a case affects wider groups in society.

The ultimate sanction available to an independent, non-statutory regulator would of course be to require a news provider to leave the regulatory system, and relinquish the benefits that membership of this system might afford. However, we would envisage that such a scenario would be highly unusual, and would apply only the most extreme, irretrievable, cases. It is important to note that if such a scenario ever did arise then the news provider in question would of course be able to continue publishing – they would simply no longer be a member of the regulatory regime and would not be able to enjoy the benefits of membership such as privileged access to events, the use of kitemarks, pre-publication advice and so on.

5. Cost

We believe that the new regulatory regime is likely to be more substantial than the previous system – with a broader range of powers and activities, and potentially a larger membership if a significant number of digital news providers were incentivised to join. This means that the new body is likely to be more expensive to run.

We would be concerned if the full cost of the new regulatory system was passed on to the industry. Given the challenging economic and market conditions facing the newspaper industry at present this could have a detrimental effect on the sustainability of a number of news outlets – and this is not in the interest of citizens. Therefore, while we believe it would be reasonable to ask the industry to pay for some of the increased regulatory costs that the new system might entail, we suggest that additional public funding should also be sought to support the activities of the new regulator.

Some public support for the regulation of the industry could be regarded as an appropriate investment in the plurality and transparency of our democracy. However, if such an approach were to be followed, then it would be important to construct a mechanism that allows public funds to be made available to

the regulator in way that is fully open and transparent – but which clearly demonstrates the independence of the regulator from government.

The most effective way of achieving this may be for public funding to pay for the ombudsman element of the new regime, while the industry would fund the remainder of the regulatory system. Helping to improve the redress available to citizens would also seem to be an appropriate use of public funds.

6. Additional Criteria for a Regulatory Solution

We believe that the ‘Draft Criteria for a Regulatory Solution’ which the Inquiry has established are appropriate and provide an effective framework for identifying a viable way forward. However, reflecting our desire to ensure that the new regulatory regime meets the needs of citizens we would recommend that the following issues are also explicitly recognised within the criteria:

- The governance structures must be transparent and clear, and with an independent chair and a majority of lay representatives. This will ensure that citizens understand and trust the system and are able and willing to engage with it.
- Arrangements which reflect the devolved nature of the UK should be built in to governance and/or delivery arrangements of the new regulator.
- The system must deliver rapid redress to citizens and its services should be accessible to the public. Services such as a 24-hour helpline (as currently provided by the PCC) should be embedded within the framework of any new system.