

Industry-Proposed Royal Charter Further from Leveson than Anything Before



On 25 April a large group of publishers proposed their version of a Royal Charter for a new press regulator. **Claire Enders** of *Enders Analysis* compares it to the version agreed by political leaders on 18 March and the draft released on 12 February and determines that this latest proposal is farthest from Leveson's recommendations.

When Lord Justice Leveson delivered his report in late November last year, a process of negotiations began between the newspaper industry, represented by a negotiating panel including Peter Wright, Paul Vickers and Guy Black, and the Government. A long process of private meetings took place, usually with Maria Miller and Oliver Letwin, which lasted until mid-February. Amid signs that Hacked Off were being excluded from discussions while the industry was still being engaged by Letwin and Miller, Lord Putnam tabled an amendment to the **Defamation Bill** that would have introduced an arbitral system. The issue having been forced, a draft of the Royal Charter that had been circulating the industry was published by the DCMS. **That version** is dated the 12th of February.

After the draft was published, it became clear to supporters of regulation, including Hacked Off, that Leveson's recommendations had been substantially watered down. In response, peers in the House of Lords and MPs in the Commons tabled amendments to Government bills that would have implemented Leveson in full. The Conservatives were then faced with a dilemma: let the Bills they were attached to go through, or withdraw those Bills entirely. This tactic, and the realisation that the Conservatives did not have the votes to defeat a Lib-Lab coalition of MPs and peers prepared to vote for full implementation of Leveson, forced Cameron back to the negotiating table with Clegg and Miliband, where he made concessions back to the pro-regulation side. The end result was a deal that constituted implementation of Leveson's recommendations, but with concessions in some areas to satisfy press concerns. **That version** of the Royal Charter was published on the 18th of March. The key concessions to the press were:

1. Group complaints (limiting when the Board can consider them to instances where there is a public interest in doing so)
2. The composition of the Code Committee, which has an industry majority. However, the industry is represented half by journalists and half by editors on the committee, and all members of the committee are appointed by the independent Board.

In most other respects, the 18th March Royal Charter agreed by the 3 main parties meets what Leveson recommended. In contrast, the February 12th Royal Charter makes the following main concessions to the press in addition to the above (this list is not exhaustive):

1. The industry would be represented on the Appointments Committee for the Recognition Panel, potentially with a power of veto
2. No exclusion of party-political members of the House of Lords from being on the Appointments Committee for the Recognition Panel, or on the Recognition Panel itself, or on the staff of the Recognition Panel, or on the Appointments Panel of the Regulator, or on the Board of the Regulator (Leveson had said there was a specific problem with Tory peers being continually appointed to run an ostensibly 'independent' regulator, which is why he wanted no party politicians involved in the process at any stage)
3. The industry is allowed a veto over appointments of the Chair and the Board
4. The Code of Practice would be controlled by editors, with the Board having no final say. Leveson had envisaged the press being on the Code Committee but the Board having a final say over the **contents** of the Code.

5. A change of language in the Board's powers from being able to 'direct' an 'apology or correction' to being able to 'require' an unspecified 'remedy'.
6. No requirement for a whistleblowing hotline
7. There were several general criteria Leveson recommended the Recognition Panel evaluate regulators against, in addition to the specific Recognition Criteria. Those general criteria were: effectiveness, fairness, objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability. There was no mention of them in the 12 February draft (they were returned in the 18 March Charter).

Yesterday, representatives of the industry launched **their own Royal Charter**, which it seems they intend to take to the Privy Council for approval. One thing can be said with confidence: this one, which we will refer to as the 25 April Charter, is not closer to Leveson than the 18 March Royal Charter. Leveson wanted a much stronger and more independent regulator than the industry was prepared to accept. The 18 March version of the Royal Charter represents a compromise between Leveson and the newspaper industry, but not a substantial watering down of Leveson. The 12 February version *did*, however, represent a substantial watering down; that is why it was rejected by Labour and the Liberal Democrats. The 25 April version waters down Leveson still further. For this reason, we believe it is unlikely to be approved by the Privy Council. If it *were* to be approved, Parliamentarians would re-table amendments implementing Leveson fully through statute, and more legislative disruption would be caused. The Conservatives are aware of this, which is why we are sceptical that this Charter will receive much support from them.

The 25 April Royal Charter differs from the 18 March Royal Charter in all the ways the 12 February version does, but also in the following ways:

1. It stipulates that 'The members of the Former Pressbof shall be the first Members of the Recognition Panel'. They must then resign upon the appointment of the Board.
2. The requirement for the Recognition Panel to report on the success or failure of the Royal Charter system is dropped
3. The Recognition Panel and its work are funded by an Industry Funding Body, rather than by Government
4. Instead of changes to the Royal Charter needing to be approved by 2/3 majorities in both Houses of Parliament, they have to be approved unanimously by:
 1. The members of the Board of any recognised Regulator
 2. The members of the Board of all trade associations represented on the Industry Funding Body
5. The Royal Charter's dissolution must be approved by b. and c., rather than by Parliament
6. The Appointments Committee for the Recognition Panel is chaired by a retired Supreme Court Justice instead of a Public Appointments Assessor, and the Chair must appoint:
 1. A person who "in his opinion, and in that of the Industry Funding Body, represents the interests of relevant publishers"
 2. A person who represents the interests of the public
 3. A Public Appointments Assessor nominated by the Commissioner for Public Appointments
7. The list of people who were ineligible to be appointed to the Appointments Committee no longer includes members of the House of Lords. Where in the 18 March version it excludes anyone who is "a relevant publisher or otherwise involved in the publication of news or current affairs in the United Kingdom", it now just says "a relevant publisher".
8. The criteria for who can serve on the Recognition Panel itself have changed:
 1. Where the 18 March version excludes current *and* former editors from being on the Recognition Panel itself, this version only excludes current editors.
 2. Where the 18 March version excluded anyone who is "a relevant publisher or otherwise involved in the publication of news or current affairs in the United Kingdom", this version only excludes anyone who is "a relevant publisher".
 3. Where the 18 March version excluded peers who have had a party political affiliation within the last 5 years, this version makes no exclusion of peers.
9. Recognition Panel members now serve shorter terms (2 years and another 2 on renewal, as opposed to 5 years then 3 years on renewal in the 18 March Charter)
10. The Chair can dismiss other members of the Recognition Panel



11. There is no requirement for the Board of the Recognition Panel to notify Parliament, or anyone else, if no-one applies for Recognition or is approved by the Panel.
12. There is no requirement for a recognised regulator to provide an arbitral process. Where in the 18 March Charter it says “the Board of the self-regulatory body should provide an arbitral process”, here the “should” has become “may”. In the same paragraph, it says that “the Board of the self-regulatory body may consider operating a pilot scheme to test the fairness, effectiveness and sustainability of the arbitral process.”

In summary, this new proposal takes Parliament entirely out of the Recognition Process. Recognition would therefore be funded by the industry and partly controlled by the industry (though also by independent figures). The original purpose of the recognition process, as Leveson envisaged it, was twofold: first, to check that the regulator publishers set up and join continues to be an adequate one; second, to allow arbitral judgements reached by the regulator to be able to be recognised by the courts, with all the benefits in terms of costs protection for publishers which that was supposed to bring. This system would, on our reading of it, not achieve that second purpose.

To reiterate: we are sceptical that this Charter will get any real support in Parliament. It is further away from what Leveson recommended than anything that has gone before. As long as Labour and the Liberal Democrats have: the numbers to defeat the Conservatives in a vote, the will to table amendments implementing Leveson by statute, and the desire to see Leveson implemented in full, they will continue to drive this process. They are the people the industry needs to convince. Judging by the response to yesterday’s announcement from Harriet Harman, it has not been a success:

“The Royal Charter implements Lord Justice Leveson’s recommendations. It was supported unanimously by the House of Commons and had the full backing of the House of Lords. The important thing is that we get on with implementation.”

We have yet to hear an official response from the Conservatives or Liberal Democrats, but have seen indications that they will reject the industry proposal.

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