

PROPOSED CONTRACTUAL FRAMEWORK FOR A NEW SYSTEM OF SELF-REGULATION FOR THE PRESS

Overview

It is proposed that publishers in the UK, the Channel Islands and the Isle of Man of newspapers and magazines for distribution in the UK, the Channel Islands and the Isle of Man, as well as web-only news and/or features website publishers in those jurisdictions (which do not also publish newspapers or magazines), will become members of a new scheme of self-regulation to be overseen by a NewCo regulator (the **Regulator**).

The new Regulator will have a complaints handling and mediation function as well as an arm that supervises effective internal regulatory and governance controls across Regulated Entities, in a way that is measurable, auditable, verifiable and accountable.

The Regulator will promulgate Regulations which will provide for powers of investigation, enforcement and proper sanction. Underpinning the Regulator's standards regime will be the Editors' Code of Practice (the **Editors' Code**).

Importantly, the new system will be flexible enough to allow for new Regulated Entities to join at any time.

The Industry Funding Body shall have ultimate discretion to refuse membership to any publisher wishing to join the scheme even if such publisher falls within the definition of a Regulated Entity.

The Regulator may also operate a "badge" type system for regulated entities. This would make clear to the general public which publishers are signed up to the Regulator and to the system of content regulation.

It would be possible to extend the remit of the Regulator to add a third arm to operate as an adjudicator to handle defamation and privacy claims.

Contractual basis of regulatory regime

The new regulatory regime will be underpinned through commercial contracts between each regulated entity and the Regulator. These contracts would all be on the same terms and conditions.

Attached to this note is the framework for the proposed contract between the Regulator and the regulated entities and together these are subject to and to be read in conjunction with the legal advice already given.

CONTRACT FRAMEWORK

1. Contracting Parties

1.1 The contract will be separately entered into between the Regulator and:

1.1.1 each UK, Channel Islands and Isle of Man legal entity responsible for publishing newspaper titles and/or magazine titles in the UK, the Channel Islands and/or the Isle of Man and their related websites; and

1.1.2 each UK, Channel Islands and Isle of Man legal entity being a web-only news and/or features website publisher or news aggregator service with content viewable in the UK, the Channel Islands and/or the Isle of Man

(the **Regulated Entities**).

1.2 The Regulator enters into a binding undertaking that all contracts entered into with Regulated Entities will be identical.

2. Duration of contract

Subject to clause 10.3, each contract (regardless of when entered into) will run to a specified date at least five years from the date of inception of the new regulatory scheme (the **Initial Period**). The contract will continue thereafter on an annual rolling basis unless terminated in accordance with clause 10.

3. Obligations of the Regulated Entity

3.1 The Regulated Entity shall have the following obligations:

3.1.1 Compliance with the Editors' Code: the Regulated Entity shall, and shall use its best endeavours to procure that all its employees, officers, agents and sub contractors shall, comply with the Editors' Code, as amended from time to time by the Industry Funding Body in accordance with clause 6;

3.1.2 Compliance with the Regulations: the Regulated Entity shall, and shall use its best endeavours to procure that all its employees, officers, agents and sub contractors shall, comply with all the Regulations promulgated by the Regulator, as amended from time to time by the Industry Funding Body in accordance with clause 6;

3.1.3 Reporting: the Regulated Entity shall act in an open and cooperative way towards the Regulator and promptly disclose to the Regulator any significant breaches by the Regulated Entity of the Editors' Code;

3.1.4 Co-operation: the Regulated Entity shall, and shall use its best endeavours to procure that all its employees, officers, agents and sub contractors shall: (a) subject always to any relieving provisions of the Regulations from time to time relating to disclosure of information, in relation to the Regulator's exercise of its powers (including investigatory powers), provide all necessary (as determined by the Regulator in its absolute discretion) assistance, access to persons, information and documents (that is to say anything in which information of any description is recorded) and co-operation with the Regulator; and (b) not do anything to interfere with or obstruct the activities of the Regulator;

3.1.5 Annual certification: the Regulated Entity shall provide annually to the Regulator a statement in a form to be determined by the Regulator relating to the Regulated

Entity's compliance with its obligations under 3.1.1 and 3.1.2 above, and such other matters that may be required by the Regulations;

- 3.1.6 Abiding by the Regulator's decisions and instructions: the Regulated Entity shall, and shall use its best endeavours to procure that all its employees, officers, agents and sub contractors shall, abide by and comply promptly with the decisions and instructions of the Regulator (including in relation to sanctions and payment of fines and costs);
- 3.1.7 Appointment of a responsible person: the Regulated Entity shall appoint a senior individual who will take overall responsibility for ensuring that that Regulated Entity and all its employees, officers, agents and sub contractors comply with its obligations under or in connection with the contract save that such individual shall not have personal liability for the Regulated Entity's compliance; and
- 3.1.8 Transfer of a title: if a Regulated Entity transfers control of a newspaper or magazine or website over which it has control it shall use all reasonable endeavours to ensure that the new owner/controller of such newspaper or magazine or website is a member of this regulatory scheme and has entered into a contract with the Regulator.

4. Obligations of the Regulator

- 4.1 The Regulator shall carry out its functions as set out in the Regulations in accordance with the processes set out therein.
- 4.2 The Regulator shall deal fairly and proportionately with Regulated Entities and also with any complainants bringing complaints against a Regulated Entity.
- 4.3 The Regulator shall have regard to the nature of a Regulated Entity when exercising its powers under clause 5.

5. Contractual powers of the Regulator

- 5.1 The Regulator shall have the following powers:
 - 5.1.1 the Regulator shall have the right to carry out those functions and processes set out in the Regulations including but not limited to both those relating to complaints handling and mediation and those relating to investigations into Regulated Entity's standards and compliance with the Editors' Code;
 - 5.1.2 the Regulator may compel a Regulated Entity to produce documents and materials as part of the Regulator's Standards and Compliance function;
 - 5.1.3 the Regulator shall have a right to monitor and investigate a Regulated Entity's compliance with the Editors' Code and the Regulations together with a general right to monitor the Regulated Entity's compliance with the terms of the contract; and
 - 5.1.4 the Regulator shall be entitled to impose fines and sanctions on a Regulated Entity as provided for in the Regulations. The fines and penalties would be flexible in amount and would be as determined and imposed in accordance with the Regulations and the Sanctions Guidance issued by the Industry Funding Body.

6. **Variation to the Regulations and the Editors' Code**

- 6.1 The Regulations shall be the responsibility of the Regulator. They shall only be amended with the approval of the Industry Funding Body. In considering whether to approve such amendments the Industry Funding Body may consult with whomsoever it may deem appropriate, including relevant industry bodies.
- 6.2 The Editors' Code shall be the responsibility of the Industry Funding Body. It shall only be amended with the approval of the Regulator. In considering whether to approve such amendments the Regulator may consult with whomsoever it may deem appropriate, including relevant industry bodies.

7. **Variations to terms of the contract**

The terms of the contract may be varied from time to time by agreement of the Regulated Entities. A variation to the contract does not require unanimous approval from all Regulated Entities and shall be considered incorporated where a majority agree to the variation.

8. **Limitation on Regulator's liability**

- 8.1 The Regulator excludes liability for:
- 8.1.1 failure to exercise its rights and powers under the contract; and
 - 8.1.2 the acts or omissions of the Regulated Entities.
- 8.2 The Regulator's liability under or in connection with the contract is capped at [the applicable multiple of the Regulated Entity's fee at the time of the claim].
- 8.3 Save in respect of fraud, when acting in its capacity as a member of the board of the Regulator or of either the Complaints and Mediation panel or the Standards and Compliance panel, a member of the board of the Regulator or either such panel as the case may be (or any person acting on behalf of such person) will have no liability, howsoever arising, to a Regulated Entity.

9. **Membership Fee and enforcement fund**

- 9.1 Each Regulated Entity shall pay a fee to the Industry Funding Body and the mechanism for determining the amount and frequency of the fee paid by each Regulated Entity is subject to the Industry Funding Body's discretion. The Industry Funding Body may for its own benefit and in its own right enforce non-payment of the fee.
- 9.2 Upon entering a contract with the Regulator, certain Regulated Entities (such Regulated Entities to be determined by the Industry Funding Body in its discretion) shall be required to make a loan towards an enforcement fund (the **Enforcement Fund**). The Enforcement Fund will be used to meet the costs and expenses of the Regulator in bringing enforcement actions or investigations against Regulated Entities under the Regulator's Standards and Compliance function. Any monies received by the Regulator from fines and costs contributions will also be placed in the Enforcement Fund. The Regulator may reimburse a Regulated Entity's contribution to the Enforcement Fund if the Regulator determines in its discretion that there are sufficient monies in the Enforcement Fund to enable it to do so.

10. **Termination**

- 10.1 There are no specific rights for a Regulated Entity to terminate its contract with the Regulator.

- 10.2 If a Regulated Entity has ceased entirely to be a publisher of any newspapers, magazines and/or websites which fall within the Regulator's remit it may make a request to the Regulator that it be permitted to leave the regulatory scheme. Provided that the Regulated Entity has satisfied the Regulator that it is not, and has no intention of in future becoming, a publisher of any such publication the Regulator shall terminate its contract with such Regulated Entity.
- 10.3 The Regulator has the right (as one of its powers of sanction) to terminate the contract with an individual Regulated Entity.
- 10.4 The contract may be terminated on 12 months' notice (not to expire before the end of the Initial Term) by agreement of the Regulated Entities. Termination of the contract shall be by majority approval of all the Regulated Entities.

11. **Continuing liability**

- 11.1 Notwithstanding clause 10 above, if an individual publisher ceases for any reason to be a Regulated Entity, the publisher shall continue to be liable for its acts and/or omissions whilst it was a Regulated Entity and the Regulator's powers shall continue to be enforceable against such former Regulated Entity in relation to such acts or omissions following termination.
- 11.2 Further, where a Regulated Entity transfers control of a newspaper or magazine or website to a corporate entity within the same group, it shall continue to be liable for all acts or omissions relating to that newspaper or magazine or website before the transfer and thereafter if the Regulated Entity fails to comply with clause 3.1.8 above. The Regulated Entity shall not be considered to have breached clause 3.1.8 if the relevant new owner/controller does not become a Regulated Entity due to the Regulator refusing membership to such party.

12. **Sub-contracting**

No Regulated Entity may sub contract to a third party its obligations under the contract.

13. **Confidentiality**

Subject to any relieving provisions in the Regulations from time to time relating to disclosure of information the decisions of the Regulator in relation to complaints, [adjudications] and investigations shall be made public, save that there may be circumstances where this is inappropriate, or redactions are required, for example where publication might cause an unjustified interference with any individual's Article 8 rights.

14. **Equitable remedy**

The Regulator and Regulated Entity acknowledge and agree that monetary damages alone for actual or threatened breach of any obligations hereunder will not afford an adequate remedy or relief and accordingly it is understood and agreed that in any such event, in addition to any other remedy existing at law or in equity, the parties shall also be entitled to the equitable remedies of specific performance and injunctive relief to the fullest extent available under applicable law.

15. **Third Party Rights**

Save in respect of the Industry Funding Body in relation to the payment of fees, no third party will have any rights under the contract.

16. **Force Majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, which shall be deemed to include, but not be limited to the following: act of God; war; civil commotion; sabotage; labour dispute and industrial action; explosion; or fire (a **Force Majeure Event**). For the avoidance of doubt the acts or omissions of a Regulated Entity's third party contractors shall not be considered to be Force Majeure Events unless such third party contractors' acts or omissions were outside the reasonable control of the Regulated Entity.

17. **Entire Agreement**

The contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this contract.

18. **Governing law and jurisdiction**

The contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England save that in relation to Regulated Entities registered in Scotland, the law of Scotland shall apply. The parties irrevocably agree that the courts of England (or Scotland in relation to Regulated Entities registered in Scotland) shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this contract.