

## REGULATIONS

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### The Remit of the Regulator

1. The Regulator shall regulate the following material published by the Regulated Entities, subject to the exceptions in paragraph 3 below:
  - 1.1 Editorial content included in a traditional printed newspaper or magazine.
  - 1.2 Editorial content on electronic services operated by Regulated Entities such as websites and apps, including text, pictures, video, audio/visual and interactive content and 'user generated content' reviewed and/or moderated by the Regulated Entity.
2. The Regulator shall monitor the Regulated Entities' compliance with the Editors' Code of Practice.
3. The Regulator shall not deal with:
  - 3.1 Complaints about TV and radio services regulated by Ofcom.
  - 3.2 Complaints about advertising regulated by the Advertising Standards Authority.
  - 3.3 Concerns about matters of taste/decency and due impartiality.
  - 3.4 Legal or contractual matters that are dealt with more appropriately by the courts including intellectual property and employment law issues.
  - 3.5 Complaints about books.
  - 3.6 Complaints about 'user generated content' posted onto Regulated Entities' websites which has not been reviewed or moderated by the Regulated Entity.
  - 3.7 Complaints about online material that is not on sites owned by or under the control of Regulated Entities.
  - 3.8 Complaints that raise issues relating to current, or possible criminal proceedings, until those proceedings are over or it is clear that a prosecution will not be brought.
  - 3.9 Complaints about non-editorial content included in a traditional printed newspaper or magazine.
  - 3.10 Complaints about content over which a publisher has exercised no editorial control.

### The Regulator's Functions

4. The Regulator shall have two core functions:
  - 4.1 Complaints handling and mediation.
  - 4.2 Standards and compliance, which shall comprise:

- 4.2.1 The monitoring of compliance with the Editors' Code of Practice (the **Editors' Code**), primarily through the undertaking of an annual certification.
  - 4.2.2 The investigation of, and adjudication upon, other editorial, ethical or governance issues.
5. Further regulations may be made if Regulated Entities' contracts are varied so as to provide for a defamation and privacy adjudication process.
6. The principal decision making body of the Regulator shall be its board of directors (the **Trust Board**). The Regulator shall employ staff to assist with the operation of the Regulator's responsibilities, including:
  - 6.1 A Chief Executive, or Chief Executive Officer (CEO), who shall be appointed by and report to the Trust Board.
  - 6.2 A person who shall exercise the duties of the Head of Complaints, either exclusively or in conjunction with other responsibilities, and who shall report to the CEO, and ultimately to the Trust Board.
  - 6.3 A person who shall exercise the duties of the Head of Standards and Compliance, either exclusively or in conjunction with other responsibilities, and who shall report to the CEO, and ultimately to the Trust Board.
7. The Trust Board may, in its discretion, extend any of the time periods prescribed under these regulations.

## Complaints and Mediation

### A) Procedure

8. The Regulator shall offer a 'complaints and mediation' service to the public for use where there is disagreement between a complainant and a Regulated Entity about whether the standards required by the Editors' Code have been met. Regulated Entities are expected to try and resolve their issues with the complainant directly where possible.
9. Complaints shall be accepted only from people who have been affected directly by the matters about which they are complaining or in the Head of Complaint's discretion by a third party group where the Head of Complaints considers that there may have been a significant breach of the Editors' Code and there is substantial public interest in allowing the complaint to be brought.
10. Subject to 11 below, complaints shall be accepted only within two months of the date of first publication, or two months of the end of direct correspondence between the complainant and the Regulated Entity, provided that correspondence was entered into straight away.
11. If a complaint is received outside of the period(s) identified in 10 above, and relates to an article which remains accessible to the public on a Regulated Entity's website, the Head of Complaints shall consider the complaint out of time, but only if (i) the Regulated Entity declines to take the article down; and (ii) the Head of Complaints considers that it is still possible for it to investigate and adjudicate fairly, having regard to the period of time since first publication.

12. The complaints and mediation process shall start when a complaint is submitted to the Regulator. The complaint shall include:
  - 12.1 A copy of the article in question, if there is one;
  - 12.2 A letter or email outlining the concerns by reference to the Editors' Code; and
  - 12.3 Any other relevant letters or documents which will help the Head of Complaints to assess the complaint.
13. On receipt of the complaint, it shall be reviewed by the Head of Complaints (or a Complaints Officer within his/her team) to ensure that it falls within the Regulator's remit and discloses a likely breach of the Editors' Code, and is neither delayed nor subject to related legal proceedings. If the Head of Complaints is not satisfied that the complaint should proceed, he/she shall write to the complainant to explain why, and will close the complaint. A complainant can ask the CEO of the Regulator to review any closure decision, but must do so within 7 days of receiving the letter or email confirming closure.
14. If the CEO considers that the complaint does fall within the Regulator's remit, and raises a likely breach of the Editors' Code, he/she shall direct that the complaint shall proceed.
15. The Head of Complaints (or a Complaints Officer within his/her team) shall then investigate the complaint:
  - 15.1 The Regulator may request the complainant to clarify aspects of its complaint, or to provide further information, before the Regulated Entity is contacted about the complaint.
  - 15.2 The Regulator shall then write to the Regulated Entity with a copy of the complaint (and any supporting material and clarification) and a copy of the article about which complaint has been raised.
  - 15.3 The Regulator shall require the Regulated Entity to respond to the complaint within 21 days, or such longer period as is reasonable in the circumstances. A copy of any reply shall be sent to the Complainant. If the Complainant wishes to make any points in response, a copy will be provided to the Regulated Entity at least 14 days before the meeting of the Complaints Committee.
  - 15.4 If it still appears that there may have been a breach of the Editors' Code, the Regulator's primary aim shall be to find a satisfactory resolution to the complaint, by facilitating mediation. If the complaint is resolved through this process, a summary of it shall be published on the Regulator's website. If the complaint cannot be resolved by mediation, it shall be passed to the Complaints Committee.
16. The Complaints Committee shall consider the complaint:
  - 16.1 If the Complaints Committee decides that there has not been a breach of the Editors' Code, the complaint shall be rejected.

- 16.2 If the Complaints Committee decides that there has been a breach of the Editors' Code, it shall decide whether the Regulated Entity has taken - or offered - sufficient remedial action.
- 16.2.1 If the Complaints Committee concludes that the Editors' Code has been breached, and the breach has not - or cannot - be remedied, it shall uphold the complaint in a public ruling. The Regulated Entity shall be obliged to publish the critical ruling with due prominence in accordance with the requirements of the Editors' Code.
- 16.2.2 If the Complaints Committee concludes that the Editors' Code has been breached, but that the breach has been remedied, the Head of Complaints shall decide whether it is appropriate for details of this outcome to be published on the Regulator's website, but will otherwise take no other action.
17. A complainant or a Regulated Entity may request that a decision made by the Complaints Committee, with respect to a complaint with which it was involved, be reviewed by the Independent Assessor.
18. A request for a review by the Independent Assessor must be made in writing to the Trust Board within 14 days of decision by the Complaints Committee being made.
19. Following a request made in accordance with 17, the Independent Assessor shall review the decision of the Complaints Committee. Within 14 days of a request, following its review, the Independent Assessor shall refer back to the Complaints Committee stating whether it agrees with the original decision of the Complaints Committee or whether it recommends a different conclusion in relation to the complaint in which case the Complaints Committee will review its decision. The Independent Assessor's decision to refer the complaint back to the Complaints Committee with a different conclusion or to agree with the Complaints Committee's original decision is final.

B) Composition of Complaints Committee and Independent Assessor

20. The Complaints Committee shall be a committee of 13 members appointed by the Trust Board, comprising:
- 20.1 the Chair of the Trust Board, but no other members of the Trust Board;
- 20.2 seven individuals each of whom is neither closely connected with, nor has any substantial financial interest in, nor owes any duty of loyalty to any Regulated Entity or the Industry Funding Body; and
- 20.3 five current editors (comprising two editors of national newspapers, one editor of a regional newspaper, one editor of a Scottish newspaper and one editor of a magazine or digital equivalent) and in each case an individual to deputise in the event of absence.
21. The Independent Assessor shall be appointed by the Trust Board and shall be an individual who is not an individual on the Complaints Committee and who is neither closely connected with, nor has any substantial financial interest in, nor owes any duty of loyalty to any Regulated Entity or the Industry Funding Body.

## Standards and Compliance

### A) Annual certification

22. Each year, every Regulated Entity shall submit to the Regulator a statement of its editorial practices containing the information identified in Annex A. The Trust Board shall determine the dates by which statements must be submitted, ensuring that Regulated Entities are provided with at least 56 days notice.
23. The statements submitted by Regulated Entities may be published by the Regulator on its website, at its discretion.
24. The Head of Standards and Compliance shall review these statements and identify any areas of concern. Any such concerns shall then be raised by the Head of Standards and Compliance with the Regulated Entities concerned, who will be required to provide a response to any queries raised within 21 days. On receipt of these responses, the Head of Standards and Compliance will prepare a confidential report to the Trust Board with the findings of the review, identifying any issues of concern and listing any points that require further investigation.

### B) Investigations

25. The Trust Board may direct that a 'Standards Investigation' takes place in the following circumstances:
  - 25.1 Where it appears there has been one or more significant or serial or widespread breach or breaches of the Editors' Code or of ethical standards which indicate a systemic or serious failure at one or more Regulated Entity (a **Systemic Failure**).
  - 25.2 Where serious breaches of the criminal law by a Regulated Entity have been resolved by the Courts, but the Trust Board believes that an investigation is desirable because of the wider issues raised about the practices of the Regulated Entity involved.
  - 25.3 Where an annual certification identifies significant issues of concern, either in relation to a single incident, a Regulated Entity's compliance processes or a pattern of significant, serial or widespread breaches of the Editors' Code.
  - 25.4 Where it appears, on analysis of public or Parliamentary reports into press standards, there have been substantive compliance issues identified at one or more Regulated Entity.
26. Investigations may be started by the Trust Board on its own initiative, or in response to complaints or suggestions received from employees, such as the Head of Compliance and Standards or a third party save that it shall be the Trust Board's sole discretion as to whether or not to commence a Standards Investigation.
27. The Trust Board will determine the proposed remit and terms of reference for a Standards Investigation. Before the Trust Board directs that a Standards Investigation is undertaken the Head of Standards and Compliance shall write to each Regulated Entity which is likely to be the subject of the investigation, setting out the reasons why an investigation is thought necessary. The letter shall also set out the proposed remit and terms of reference of the investigation. The Regulated Entity shall reply to that notification within 14 days either (i) consenting to the investigation

or (ii) setting out reasons why the investigation should not take place. The Regulated Entity's response shall be provided to the Trust Board before it takes a decision to commence a Standards Investigation and determines its remit and terms of reference.

28. Once the Trust Board has taken a decision and has directed that a Standards Investigation is undertaken it shall :
  - 28.1 select and appoint an Investigation Panel as provided by D below;
  - 28.2 appoint a member of the Trust Board to undertake day to day oversight of the Head of Standards and Compliance in the conduct of the investigation to the extent that the appointed member considers appropriate .
29. The Head of Standards and Compliance shall be responsible for the investigation and shall at all times act reasonably in discharging his responsibilities. He shall notify the Regulated Entity that a Standards Investigation will take place and of its remit and terms of reference. He may seek assistance from third parties, such as lawyers and experts, but only where this is necessary and proportionate. The Head of Standards and Compliance shall be under a duty to ensure that any investigation is carried out in a manner that is:
  - 29.1 Independent of the interests of the press or any third party.
  - 29.2 Proportionate to the issues raised.
  - 29.3 Fair to the people involved, including any person directly affected by the published articles or conduct under investigation, the newspaper or magazine, its editors and journalists.
  - 29.4 Objective and open-minded as to outcome.
  - 29.5 Consistent with the terms of reference set for the specific investigation.
30. The Head of Standards and Compliance may request the Regulated Entities which are the subject of the investigation to provide:
  - 30.1 Documents (which for these purposes mean anything in which information of any description is recorded).
  - 30.2 Answers to questions raised, either about practices generally or the facts relating to a particular incident or incidents.
  - 30.3 Access to key personnel, for example the editor, deputy editor or assistant editor, and any journalists concerned with the matters under investigation, for meetings and taped interviews.
31. If a Regulated Entity refuses to provide information requested by the Head of Standards and Compliance, this refusal, and any reasons given for it, will be notified to the Investigation Panel.
32. If at any stage a dispute arises between the Regulated Entity under investigation and the Head of Standards and Compliance, for example over the scope of the investigation, the need for documentary evidence, etc, this shall be referred for determination to the Trust Board.

33. If a Regulated Entity declines to provide material voluntarily, the Regulator shall have the power (in its contracts with members) to compel the production of documents, seeking specific performance of the contract if necessary, subject to 57 (sources) and 59 (privilege) below. The Regulator shall not bring legal proceedings to compel the production of documents without the prior approval of the Trust Board.
34. The Head of Standards and Compliance shall prepare a confidential report providing details of his/her investigation, its conclusions and his/her recommendations. The report shall be provided to the Regulated Entities which are the subject of the investigation, and to any other third party likely to be directly affected by the Investigation Panel's decision, for example journalists accused of wrongdoing. It shall not be provided to any original complainant(s), except to the extent that the report is about the original complainant. All recipients shall have 28 days to prepare any written submissions in response to the report and the issues raised by it. All submissions received will be considered by the Investigation Panel.
35. The Investigation Panel will consider the investigation at a meeting, which shall be attended by the Investigation Panel members together with its secretariat and a legal adviser if appropriate. In most cases the Head of Standards and Compliance shall be asked by the Investigation Panel members to attend the meeting to present his/her report, assisted by external advisers, as required.
36. The Investigation Panel shall invite representatives from the Regulated Entities which are the subject of the investigation to attend for part of its meeting, in order to answer questions from the Investigation Panel about the issues raised. Representatives shall be permitted to make oral representations to the Investigation Panel to allow the Investigation Panel to determine the issues, and any outcome, fairly. Representatives shall not be present when the Investigation Panel discusses and reaches its decision.
37. At the meeting the Investigation Panel shall either:
  - 37.1 Direct the Head of Standards and Compliance to undertake further work, if the Panel considers this is necessary to conclude the investigation; or
  - 37.2 Reach a preliminary view on the investigation, and its outcome.
38. The Investigation Panel may conclude the investigation in one or more of the following ways:
  - 38.1 By determining that there is no evidence of any wrong doing or that there is no evidence of any significant wrong doing.
  - 38.2 By making non-binding recommendations about best practice, either for the Regulated Entities which were the subject of the investigation, or for the industry more generally.
  - 38.3 By reprimanding the Regulated Entity which is the subject of the investigation.
  - 38.4 By referring the matter to the Trust Board where there has been a Systemic Failure so that it can consider whether to fine one or all of the Regulated Entities which were the subject of the investigation. The criteria to be followed by the Trust Board for determining the level of fines will be set out in separate financial sanctions guidelines.

- 38.5 By directing that one or all of the Regulated Entities which were the subject of the investigation publish a summary of the Panel's finding, the wording and prominence of the publication to be agreed with the Trust Board.
- 38.6 By referring the matter to the Trust Board so that it can consider whether to require one or all of the Regulated Entities which were the subject of the investigation to make a costs contribution. The criteria to be followed by the Trust Board for determining the level of a costs contribution will be set out in separate guidance.
- 38.7 By requiring undertakings from the Regulated Entity in respect of future conduct.
39. Any sanction imposed must be proportionate.
40. The Secretary to the Investigation Panel shall prepare a note of the Investigation Panel's preliminary decision on the investigation and outcome, and circulate this to the Investigation Panel for approval. Once approved, the note shall be sent in draft to the Regulated Entity which is the subject of the investigation. It will have 14 days in which to make any comments on the draft, including to correct inaccuracies and to inform the Investigation Panel if the Regulated Entity believes that the Investigation Panel has misunderstood anything, or reached incorrect conclusions. It is also open to the Regulated Entity to accept the Investigation Panel's finding.
41. Any comments received from the Regulated Entity shall be considered by the Investigation Panel, either by email, telephone conference call or at a meeting. The Investigation Panel shall then reach a decision on the investigation, including the outcome. The Investigation Panel shall give reasons for its decision(s).
42. Unless there has been a request for a review of the decision of the Investigation Panel within the time period set out in 46, the usual position shall be that the decision and the reasons for the decision are published, although there might be circumstances where this is inappropriate, or redactions are required, for example where publication might cause an unjustified interference with any person's Article 8 rights.
43. In appropriate cases, the Investigation Panel may at its discretion also publish a report setting out details of the investigation and its findings in more detail.

C) Review of the findings of the Investigation Panel

44. When a Regulated Entity has been the subject of an investigation and a decision has been made by the Investigation Panel under 41 the Regulated Entity may request in writing to the Trust Board that the Trust Board review that decision.
45. Requests for a review by the Trust Board may be made only on the ground that the Investigation Panel's decision or the process by which it was made is substantially flawed.
46. Requests for a review should contain a full statement of the grounds for the review and should be sent to the Trust Board within 14 days of the date of the Regulated Entity's receipt of the decision of the Investigation Panel. Evidence not previously submitted may be submitted with the statement together with an explanation as to why such evidence was not previously provided.

47. On receipt of the Regulated Entity's statement pursuant to 46 the Trust Board shall as soon as practicable evaluate the request for review, and may in its discretion consider any new evidence, and shall make a decision as to whether or not it shall accept the request.
  48. If the Trust Board decides not to accept the request (in whole or in part), it will inform the Regulated Entity making the request.
  49. If the Trust Board decides to accept the request (in whole or in part) it will appoint a Review Panel as provided in D below.
  50. The Review Panel shall review the information considered by the Investigation Panel and, in its discretion, any new evidence provided.
  51. The Secretary to the Review Panel shall prepare a note of the Review Panel's preliminary review of the decision, and circulate this to the Review Panel for approval. Once approved, the note shall be sent in draft to the Regulated Entity which has requested the review. It will have 14 days in which to make any comments on the draft, including to correct inaccuracies and to inform the Review Panel if the Regulated Entity believes that the Review Panel has misunderstood anything, or reached incorrect conclusions. It is also open to the Regulated Entity to accept the Investigation Panel's finding.
  52. Any comments received from the Regulated Entity shall be considered by the Review Panel, either by email, telephone conference call or at a meeting. The Review Panel shall then reach a decision on its review and shall either confirm the decision of the Investigation Panel or reach a different decision.
  53. The Review Panel's decision is final and the usual position shall be that the decision and the reasons for the decision is published, although there might be circumstances where this is inappropriate, or redactions are required, for example where publication might cause an unjustified interference with any person's Article 8 rights.
- D) Investigation and Review Panels
54. The Trust Board will appoint Investigation and Review Panels for the purposes provided under these Regulations. Each of the Investigation Panel and the Review Panel shall comprise of:
    - 54.1 a majority of individuals each of whom is neither closely connected with, nor has any substantial financial interest in, nor owes any duty of loyalty to any Regulated Entity or the Industry Funding Body;
    - 54.2 at least one individual who has a connection in a senior position with the newspaper or magazine industry save that such individual shall not be a current serving editor or have a connection with a Regulated Entity who is the subject of a Standards Investigation; and
    - 54.3 no current serving member of the Editors' Code of Practice Committee.
  55. The Investigation Panel and the Review Panel shall each conduct its proceedings as it considers appropriate subject to any requirements imposed by the Trust Board.

56. A Review Panel shall not comprise any member of an Investigation Panel whose decision such Review Panel is reviewing.

**Privilege and Confidentiality**

57. Nothing in these Regulations shall give the Regulator or any of its employees, members, board and panel members or advisers the right to require access to, or copies, of materials or information which a Regulated Entity says will disclose the identity of a confidential journalistic source.
58. It shall be the duty of Regulated Entities to ensure that if they submit any material to the Regulator which is commercially sensitive that they clearly mark it as such and bring this to the attention of the Regulator. In such circumstances, the Regulator shall discuss with the Regulated Entity concerned how that material shall be handled and, subject to approval of the Chair of the Trust Board, the Regulated Entity may redact commercially sensitive material.
59. Nothing in these Regulations shall give the Regulator or any of its employees, members, board and panel members or advisers the right to require access to, or copies, of materials or information which is privileged (for example legal privilege or privilege against self-incrimination). Should any dispute arise over whether material is privileged, an independent Queen's Counsel shall be retained to review the material and adjudicate on whether it is privileged, the costs of Counsel to be met in the first instance by the Regulator (but in principle the reasonable costs of Counsel shall be recoverable as a cost of the investigation).

## Annex A

Matters to be set out as part of the Regulated Entities annual statement:

1. Factual information about the publisher:
  - 1.1 A list of its titles/products.
  - 1.2 The name of the Regulated Entity's compliance officer.
  - 1.3 A brief overview of the nature of the publisher, the circulation of its titles, approximate number of staff. It is not expected that this will be longer than one or two paragraphs.
2. Copies of any internal manuals, codes or guidance used by journalists.
3. Brief details of the compliance process, including how the publisher deals with:
  - 3.1 Pre-publication advice;
  - 3.2 Verification of stories;
  - 3.3 Compliance with the Editors' Code;
  - 3.4 Editorial complaints;
  - 3.5 Training of staff.

It is not expected that this will be longer than 1-3 pages in most instances.
4. Details of any incidents known to involve a material breach of the Editors' Code or the Regulations, and the measures taken in relation to such breaches. This information is to be provided in an anonymised form.
5. Details of the steps taken by the Regulated Entity in response to any adverse adjudications by the Regulator during the previous year

## Annex B

### FINANCIAL SANCTIONS GUIDELINES

1. Introduction
  - 1.1 Following a referral from the Standards and Compliance Panel, the Trust Board has the power to impose a financial sanction on a Regulated Entity following a Standards Investigation. The Trust Board has discretion on whether to impose a fine and its amount.
  - 1.2 The power to impose a fine plays an important role in the Regulator's pursuit of its regulatory objectives of enforcing standards and compliance.
  - 1.3 The following guidelines are designed to assist the Trust Board in acting effectively and proportionately when exercising its discretion to impose financial sanctions.
2. **Guidelines**
  - 2.1 Subject to paragraph 2.2 below, the Trust Board shall have the power to fine a Regulated Entity up to 1% of its annual turnover relating to the publication(s) (both print and electronic) which is/are, following a Standards Investigation, found to have committed a Systemic Failure (as defined in the Regulations).
  - 2.2 The maximum fine which the Trust Board may impose on any one Regulated Entity shall be £1,000,000 in respect of each Standards Investigation.
  - 2.3 In determining the level of the fine to be imposed on a Regulated Entity, the Trust Board shall take into account the following factors:
    - 2.3.1 the nature of the Regulated Entity<sup>1</sup>;
    - 2.3.2 the nature of the Systemic Failure and its impact;
    - 2.3.3 whether the Systemic Failure was inadvertent or deliberate or reckless;
    - 2.3.4 any aggravating or mitigating factors relating to the Systemic Failure (see paragraph 2.4 below);
    - 2.3.5 any adjustments for deterrence, if appropriate; and
    - 2.3.6 any discounts for early settlement, if appropriate.
  - 2.4 The following non-exhaustive list of factors may have the effect of aggravating or mitigating a Systemic Failure:
    - 2.4.1 the conduct of the Regulated Entity in bringing (or failing to bring) quickly, effectively and completely the Systemic Failure to the Regulator's attention;
    - 2.4.2 the degree of cooperation of the Regulated Entity with the Regulator during a Standards Investigation;

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<sup>1</sup> "Nature" has not been defined to keep the Regulator's discretion broad but could include the size of the Regulated Entity (whether by staff, circulation, number of titles, turnover or otherwise).

- 2.4.3 whether the Regulated Entity's senior management were aware of the Systemic Failure or of the potential for a Systemic Failure and whether they took any steps to stop and/or remedy the Systemic Failure, and when these steps were taken;
- 2.4.4 any financial impact suffered by the Regulated Entity arising from the Systemic Failure; and
- 2.4.5 the previous record and compliance history of the Regulated Entity.