WHO JOINS THE REGULATOR?

A report on the impact of the Crime and Courts Act on publishers

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CONTENTS

Executive summary ......................................................................................... 3

Introduction ....................................................................................................... 4

The new class of ‘relevant publisher’ ................................................................ 7

Publishers’ views on press regulation ............................................................. 16

Conclusion ...................................................................................................... 20

Appendix 1 Relevant extracts from the Crime and Courts Act 2013 ................. 22

Appendix 2 Which publications are ‘relevant’ for the purposes of the Crime and Courts Act 2013? ............................................................................................................ 29

About the author; about English PEN ................................................................ 32
Executive summary

In 2013, the Crime and Courts Act was passed and a Royal Charter was granted to create a new system of press regulation.

As part of the Act, a new class of publisher was created known as a ‘relevant publisher’, to define the publications expected to join a recognised regulator.

English PEN is concerned that the lack of consultation and parliamentary debate surrounding the legislation and the Royal Charter has resulted in a confused, contradictory and arbitrary series of definitions and exemptions that will create uncertainty and chill freedom of expression.

Categories of publisher that the government itself intended to be exempt will, according to English PEN’s analysis, be expected to join the regulator.

This includes charities, not-for-profit community newspapers, political parties and specialist publications.

Lord Justice Leveson did not expect the new regulator to encompass all the media, although he believed that it should be open to small publishers to join. The failure to define the scope of the regulator clearly both during and after the Leveson Inquiry was a serious omission.

English PEN calls for an urgent review of the legislation.

Key findings:

- Publishers expected to be exempt from regulation appear to fall into the category of ‘relevant publisher’, including campaigning organisations, political parties and think tanks

- Terms in the legislation are poorly defined, leading to uncertainty for publishers and the risk of a chill on free speech

- Lack of clarity in the legislation will result in anomalies within categories of publication expected to be excluded from regulation, including blogs and specialist publications

- English PEN’s analysis of a range of publications, according to the terms in the legislation, reveals widespread inconsistency across the media landscape regarding which publications are exempt and which qualify for regulation
Introduction

In July 2011, the government appointed Lord Justice Leveson to conduct a public inquiry into the culture, ethics and practices of the press. This followed the public outcry as the scale and nature of phone hacking by at least one national newspaper emerged. The inquiry dealt with the press’s relationship with politicians, the police and the public, and made recommendations for reform, including for a new system of press regulation.

As part of his inquiry, Lord Justice Leveson invited and received evidence from a number of interested parties, including journalists, special interest groups, politicians and people who felt mistreated by the press. A number of core participants – consisting largely of victims of phone hacking, national newspaper groups and various government ministers – instructed legal representatives who were able to ask questions of witnesses along with counsel to the inquiry.

Lord Justice Leveson’s report was published in November 2012. The inquiry’s recommendations included: the creation of an independent self-regulatory body; the appointment of an independent board, with power to carry out investigations and impose sanctions; the establishment of a low-cost arbitration service for civil legal claims; a recognition body to certify a new regulator – a role that the report recommended be carried out by Ofcom.

Lord Justice Leveson’s proposal of statutory underpinning for the regulator was rejected by the prime minister, David Cameron, and by most of the press. In March 2013, the leaders of the three main political parties reached an agreement, supported by the campaign group Hacked Off, which resulted in the granting of a Royal Charter and the passing of associated legislation.

The Royal Charter established a process for formulating a recognition panel, whose role will be to give formal approval to a press regulator. The charter also set out the criteria which a press regulator must meet in order to be considered for approval. Associated legislation contained in the Crime and Courts Act¹ (‘the Act’) passed by the House of Commons set up a system of exemplary (i.e. punitive) damages and costs designed to offer an incentive to publishers to subscribe to an approved regulator, with the risk of financial penalties if they fail to join. The legislation also set out the categories of publishers, ‘relevant publishers’, who are expected to join the regulator, along with those who are exempt.

The legislation has significant implications for both free speech and access to justice. Publishers classed as ‘relevant publishers’ will have to choose between

¹ See Appendix 1 for relevant extracts of the Crime and Courts Act 2013
joining a recognised regulator or risking exposure to high court costs, even in cases that they win. This may make publishers who decide not to join a regulator more likely to self-censor in order to minimise their exposure to the risk of being sued, even if they believe that it would be lawful to publish.

English PEN’s analysis and research reveals that there is a worrying lack of clarity regarding the classification of relevant publisher. Publishers whom the government had intended to be exempt in fact appear to fall into the category expected to subscribe. The definitions and exemptions are poorly defined, leading to uncertainty for publishers as to their status and resulting in the risk of a chill on free speech.

This confusion is the consequence of the government’s failure to consult on the Leveson Inquiry’s recommendations and to engage in full debate and scrutiny when it introduced the Royal Charter and associated legislation, in breach of its own guidelines. There were no impact assessments nor scrutiny by any parliamentary committee. MPs did not even have copies of the draft Royal Charter when it was first debated in the House of Commons.

Supporters of the legislation have argued that such consultation and scrutiny were unnecessary because the issues had been fully considered in the public inquiry. Although the Leveson Inquiry took evidence, it did not consult on its findings or recommendations. Furthermore, the new system of press regulation differs from that recommended in the Leveson report.

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2 English PEN’s response to the Leveson Inquiry’s recommendations 6 December 2012 http://www.englishpen.org/campaigns/what-about-the-bloggers/
See also Helen Anthony http://www.theguardian.com/media/media-blog/2013/oct/27/press-regulation-royal-charter-legislation
3 The government invited views on the narrow issue of how those who operate small-scale blogs could be excluded from the definition of relevant publisher. There was also a very low-key consultation on the Royal Charter, though it could be argued that this was merely to pay lip service to the requirement to do so, since no formal questions were asked and no consultation response ever published by the Government. There was no consultation on the complete package of proposals for press regulation, and there was no scrutiny at all by members of Parliament in committee as the bill passed through Parliament.
5 ‘On a point of order, Mr Speaker. I am sorry to do this, but it is all very well to talk about the publication of the draft charter, but it is not available in the Vote Office or in the Library. The Clerk has a copy of it, but hon. Members do not have copies of it. It is an odd way of doing business for us to debate something that we have never had an opportunity to see.’ Chris Bryant MP, in the House of Commons, 18th March 2013, Column 631, Hansard
6 Two of the most significant differences are
   i. the creation of a new recognition body by Royal Charter as opposed to amending Ofcom’s responsibilities to include formally recognising press regulators which meet Leveson’s criteria; and
   ii. under the costs rules (s.40(3) Crime and Courts Act) it is the default position that a relevant publisher who is a defendant in publication proceedings, and is not a member of a recognised regulator must pay the claimant’s costs of the case. In contrast, Leveson recommended that the availability of an arbitral system through a recognised regulator should be one factor the court takes in to account when considering awards of costs (recommendation 75).
The Recognition Panel created under the Royal Charter was formally established on 3 November 2014. In a year’s time, relevant publishers who are not members of a recognised regulator may be exposed to paying exemplary damages in publication proceedings if they lose. The same publishers will risk punitive costs awards against them when the first regulator gains recognition under the Royal Charter.\(^7\)

\(^7\) s.61(7) Crime and Courts Act 2013

\(^8\) The recognition panel expects to be in a position to recognise regulators ‘by late 2015, or not long afterwards’ Para 28, from David Wolfe’s presentation to the ‘Protecting the Media Conference’ 23rd September 2014, http://pressrecognitionpanel.org.uk/word/
The new class of ‘relevant publisher’

Lord Justice Leveson gave some guidance as to which publishers should submit themselves to regulation (i.e. who is to be a ‘relevant publisher’), stating that the new system of regulation ‘must involve all the major players in the industry, that is to say, all national newspaper publishers and their online activities, and as many regional and local newspaper publishers, and magazine publishers, as possible. This is not meant to be prescriptive at the very small end of the market: I would not necessarily expect very small publishers to join the body, though it should be open to them to do so on appropriate terms’. ⁹

Section 41 of the Crime and Courts Act defines relevant publisher (with exceptions set out in Schedule 15, see Appendix 1) but makes no attempt to apply this to ‘major players’ alone. Furthermore, it relies on a number of terms that are themselves undefined and have no clear and obvious meaning. Interpretations of the legislation will therefore differ, producing uncertainty for publishers who may not know whether they will be classed as a relevant publisher or not.

English PEN is concerned about the impact of the new press regulation system on publishers. It believes that the definition of relevant publisher draws in more publishers than intended and that the lack of clarity will result in a chill on freedom of expression.

This report considers the definition of relevant publisher in detail, attempts to identify the types of publisher that will qualify as such, as well as gathering the views of different types of publisher on the issue.

According to the legislation, the test applied in considering whether a publication is relevant is as follows:

- Is the publication made in the course of a business, whether or not carried on with a view to a profit?
- Does the publication contain
  - news or information about current affairs,
  - opinion about matters relating to the news or current affairs, or
  - gossip about celebrities, other public figures or other persons in the news?
- Is the publication written by different authors?
- Is there a person (including the publisher) who has editorial responsibility for
  - the content of the material in the publication,
  - how the material is to be presented, and

⁹ Leveson Report, Volume IV, Part K, Chapter 7, Para 4.11
• the decision to publish it?
  o If the publisher is the operator of a website, did it post the relevant material itself?
  o Is the publisher exempt by virtue of schedule 15? Exempt publishers include broadcasters, public bodies, charities, micro businesses, and those who publish special interest titles, scientific and academic journals, company news publications, and books.

English PEN carried out an analysis of whether a number of publications might fall within the definition of relevant publisher, which is attached at Appendix 2. This, of course, cannot provide a definitive answer as to whether a publication will be a relevant publisher or not. It is our interpretation, based on our understanding of the criteria set out in the legislation, of whether publishers are likely to be relevant for the purposes of the Act, and so is purely illustrative of the range of publications likely to be affected.

**National newspapers**

All major national newspapers will be relevant publishers. They were the focus of the Leveson Inquiry and the intended target of the legislation. They clearly publish as businesses, are written by multiple authors, are subject to editorial control, contain news-related material and are not exempt by virtue of Schedule 15 of the Act. This includes daily newspapers such as *The Times*, the *Daily Telegraph*, the *Guardian*, the *Financial Times*, the *Daily Mail*, the *Daily Mirror* and the *Sun*, as well as their Sunday publications.

The definition of relevant publisher makes no distinction between a newspaper that is published in print, and one that is published online, and therefore encompasses these publications’ websites. There is some confusion, however, as to whether relevant publishers would be responsible – under the terms of the Act – for comments posted on their websites by others. Section 41(3) of the Act excludes publishers who host internet forums from the definition of relevant publisher, but it is not clear whether this section protects relevant publishers such as national newspapers, which invite comments on their otherwise regulated articles.

**Regional and local newspapers**

The definition of relevant publisher does not depend on a title having national coverage or being published daily, so local newspapers are produced by relevant publishers too.

Likewise the definition has no limit on size or circulation numbers, so very small local newspapers are affected by the legislation in the same way as large regional
groups or national newspapers. Online newspapers – whether with significant or very small audiences – are similarly affected.

Community newspapers

Community newspapers published voluntarily may also be affected by the legislation, despite assurances by the former Secretary of State Maria Miller regarding not-for-profit publications.10

While it is self-evident that newspapers publish news-related material, it is unclear whether community newspapers publish in the course of a business (irrespective of whether they intend to make a profit). There is no definition of the term ‘in the course of a business’ in the Act. It is a phrase used elsewhere in legislation and similarly undefined (so far as the author and English PEN are aware). It is a term discussed in case law in relation, for example, to the sale of goods, when the Court of Appeal has said11 the words should be taken ‘at their wide face value’. In this context, the phrase ‘at their wide face value’ would suggest that the publication should be more than a one-off (‘in the course of’) and not carried out as a purely personal act. If this wide reading of the phrase is applied in the case of the Crime and Courts Act, community newspapers would be relevant publications for the purposes of the Act. For community newspapers to be protected as the government intended,12 the courts would have to interpret the term narrowly in this instance.

Community newspapers may be exempt if they are published by a charity. The Ambler, for example, a local newspaper that runs a website and produces a hard copy paper six times a year, will probably not be considered a relevant publisher. It is produced by one part-time worker and a team of volunteers, but is published by the Amble Development Trust, which is a registered charity13 and seemingly exempt by virtue of s.6(1) of Schedule 15 to the Act.

Other community newspapers are published by small groups of volunteers, but not as part of a charity or other exempt organisation. The publisher of the ECHO, for instance, a not-for-profit community newspaper produced entirely by volunteers14 and published as a monthly print edition, appears to be a relevant publisher for the purposes of the Act.

10 Rt Hon Maria Miller MP in the House of Commons, 18th March 2013, Column 704, Hansard
12 Rt Hon Maria Miller MP in the House of Commons, 18th March 2013, Column 704, Hansard
13 http://www.theambler.co.uk/about-us/ and http://www.ambledevelopmenttrust.org.uk/
14 http://www.echonews.org.uk/
Current affairs and celebrity magazines

Current affairs magazines and those magazines discussing the lives of celebrities fall squarely within the definition of relevant publisher. They are published in the course of a business, they clearly publish news-related material, they are written by different people and subject to editorial control, and they are not exempt. How frequently a title is published is irrelevant: weekly, fortnightly, monthly, annual or ad hoc publications will be affected by the legislation.

Current affairs and celebrity magazines are in a similar position to national newspapers, in that they were targeted by both the Leveson Inquiry and the government as part of the scope of publisher that should be covered by the new press regulation regime.

Special interest magazines

Many special interest magazines publish news that is of interest to their readers. In many cases, their publishers meet all the criteria needed to become ‘relevant’. The publications are made in the course of a business, written by different people and subject to editorial control. To ascertain whether these publications are ‘relevant’, we must consider the schedule of exemptions.

Some magazines may be exempt by s.4 of Schedule 15, which excludes those who publish ‘a title that (a) relates to a particular pastime, hobby, trade, business, industry or profession and (b) only contains news-related material on an incidental basis that is relevant to the main content of the title’. For example, *BBC History Magazine*[^15] contains occasional news items relating to recent finds, such as the discovery of the body of King Richard III.

For other specialist magazines, however, news stories form a much more significant part of the publication. For these magazines, the ‘incidental’ exemptions cannot apply.

*Decanter*, a magazine about wine, was given as an example by Maria Miller as the type of publication which would not be relevant for the purposes of the Act.[^16] Yet news-related material forms the main content of the publication. Its news is about vineyard sales and profits, new wines, environmental issues affecting the industry, and people concerned with making and selling wine. It may not be news that is

[^15]: Despite its name, *BBC History Magazine* is not published by the BBC, but by Immediate Media Company Limited under licence to the BBC.
[^16]: Rt Hon Maria Miller MP in the House of Commons, 18th March 2013, Column 704, Hansard
interesting to everyone, but it is news. It seems that *Decanter* may be a relevant publisher despite Maria Miller’s assurances otherwise.\(^{17}\)

*Decanter* magazine is certainly not alone. Many other specialist magazines that relate to particular trades or hobbies focus on news-related material that is not incidental to the main content of the title. To consider whether a magazine’s news-related material is ‘main content’ or ‘incidental’ to this, it is necessary to assess the definition of ‘news-related material’.

The definition of news-related material in the Act is ‘(a) news or information about current affairs, (b) opinion about matters relating to the news or current affairs, or (c) gossip about celebrities, other public figures or other persons in the news.’\(^{18}\) This definition is incredibly broad. Any new event is news, but it might not be news to everyone. A baby being born is always news to one or more people. How many people it is of interest to depends entirely on personal perspectives and interests. Most births are news only for family and friends. Perhaps it is news to a wider community of neighbours and colleagues. Perhaps the birth took place on New Year’s Day and is therefore of symbolic interest to a town and appears in the local paper. Perhaps the parents once appeared on television and therefore the birth is worthy of an article in a magazine. Or, at the extreme end of the scale, perhaps the birth is a royal one and the subject of international news coverage. So when does a birth become news? Perhaps when a journalist deems it to be so.

So news relating to a particular pastime or hobby might be viewed as news to one person and not another. Football magazines for instance relate to a particular pastime, but contain news and opinion regarding football. Is this news-related material? In all likelihood, the answer will be yes. What if the sport is not football, but less popular, like angling? The answer should surely still be yes, but again Maria Miller identified the *Angling Times*\(^ {19}\) as a publication that is not relevant for the purposes of the Act. There seems to be no logical explanation for this. Just like

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\(^{17}\) *Decanter* is published by Time Inc. This company publishes a number of titles, including those clearly containing news-related material, but according to s.41(6) of the Act, a distinction should be drawn between a publisher’s different publications. Hence it appears that the content of *Decanter* itself, and not the other output of the publisher, ought to be considered when looking at the nature of the material.

\(^{18}\) s.42(7). Subsection (a) could be interpreted to mean ‘news about current affairs or information about current affairs’ or ‘news, or information about current affairs’. The construction of subsection (b) suggests it is the latter as it sets out news and current affairs as being clearly different things. Does it matter? The probable answer is no. If the former interpretation of section (a) is correct, it may limit the scope of news-related material to that related to ‘current affairs’. This is not defined in the Act, but its meaning according to oxforddictionaries.com is ‘Events of political or social interest and importance happening in the world at the present time’. However, even if this definition appears to slightly limit the scope of news-related material to political and significant social events, section (b) brings any opinion on any type of ‘news’ into the definition. Very few publications contain news without also containing opinion on it. The debate about the construction of section (a) may therefore prove to be of little practical consequence.

\(^{19}\) Rt Hon Maria Miller MP in the House of Commons, 18 March 2013, Column 704, Hansard
**Decanter**, the news-related material appears to be the main content of the title, rather than being incidental, and the special interest title exemption does not appear to apply.

**Special interest websites**

Special interest websites are in the same position as special interest magazines, although the content of websites may differ, for example hosting relevant discussion forums. The same key issues concerning whether material is 'news-related' and 'incidental' to the main content of the title arise. The result is that the publishers of many websites, just like the publishers of many magazines, will be left unsure as to whether they are 'relevant publishers' or not.

**Political parties**

All major political parties publish websites containing news-related material, written by different people and subject to editorial control.

Are they published in the course of a business? Almost certainly. Political parties operate like many large businesses, employing people, producing annual reports and having their accounts audited. None of the exemptions listed in Schedule 15 can be said to apply. Political parties are not public bodies or charities. The publication may be said to relate to a particular pastime, hobby, trade, business, industry or profession, but the news-related material they publish cannot be described as only being published on an incidental basis to the main content of the title. The news-related content on political parties' websites is significant. Websites published by political parties therefore appear to be relevant for the purposes of the Act.

Local political parties also send out newsletters, and some have their own websites. These contain news-related material, are sometimes written by different people and are usually subject to editorial control. Are they published in the course of a business? Again, this may depend on how widely the courts interpret this term. Many local political organisations, such as the Welwyn & Hatfield Conservative Association Limited, are registered companies, which suggests that they do operate as a business.

As regards exemptions, the same position applies to local parties as it does to national parties. Their publications may relate to a particular trade, hobby, pastime, industry or profession, but the news content of newsletters or websites is not included incidentally, it is a significant and probably essential component of the publication.
It appears to have been the government’s intention to exclude at least local political parties’ newsletters. Maria Miller gave assurances to Conservative MP Jacob Rees-Mogg concerning their status\(^\text{20}\) and yet for this to be borne out in practice, such publishers will have to rely on the court to make very generous interpretations of either the term ‘in the course of a business’ or the word ‘incidental’.

**Charities, campaign groups and think tanks**

Campaign groups regularly publish news-related material both in print and online. A visit to Amnesty International’s website at the time of writing told readers about a ‘Spiral of Abuses’ in Thailand and ‘Evidence of War Crimes’ in Ukraine.\(^\text{21}\) This type of information, along with material published by campaign groups such as Global Witness, Index on Censorship and Which? is clearly news-related for the purposes of the Act. It is written by multiple authors and edited and, although these organisations operate on a not-for-profit basis, their publications are produced ‘in the course of a business’. Furthermore, many do not appear to be exempt by virtue of Schedule 15 which exempts a ‘public body or charity that publishes news-related material in connection with the carrying out of its functions’\(^\text{22}\) because of the structure of the organisations.

Index on Censorship, for example, which aims to promote freedom of expression around the globe, and publishes a magazine containing news-related material, has both a charitable and non-charitable arm. The magazine is commissioned by its non-charitable arm, and so, for the purposes of the Act, Index would appear to be a relevant publisher.

Other apparently charitable organisations have similarly complex corporate structures. Amnesty International, for example, consists of both an International Secretariat and national branches, including Amnesty International UK. Both these organisations are made up of registered charities and registered companies.\(^\text{23}\)

The government made clear, in the limited debate in Parliament, that it intended charities to be exempt and that it would be unlikely for campaigning organisations to be expected to join a recognised regulator. Lord McNally said: ‘My noble friend would exclude non-charitable campaigning organisations that publish material that is incidental to the organisation’s aims and objectives. The government’s definition of a relevant publisher already excludes charitable organisations, which will represent the vast majority of campaigning organisations. A “non-charitable campaigning organisation” would have, first, to be run as a business and, secondly,

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\(^{20}\) Rt Hon Maria Miller MP in the House of Commons, 18\(^\text{th}\) March 2013, Column 704, Hansard
\(^{21}\) www.amnesty.org on 11/9/2014
\(^{22}\) Crime and Courts Act 2013, Schedule 15, s.6(1)
to be publishing news, opinion or information about current affairs before it would be caught by the government’s current proposed definition.\textsuperscript{24}

Think tanks publish similar material to campaigning organisations, such as research, briefings and policy papers that may be news-related material. There is no exemption for such organisations and they will therefore be relevant publishers for the purposes of the Act.

\textbf{Blogs}

Small multi-author blogs are not relevant for the purposes of the Act.\textsuperscript{25} The term ‘blog’ is not defined in the Act (deliberately so\textsuperscript{26} though this seems strange given that the apparently self-explanatory term ‘multi-author’ is). The term is to be given its ordinary meaning it seems. Definitions differ, from a ‘regularly updated website or web page, typically one run by an individual or small group, that is written in an informal or conversational style’\textsuperscript{27} to ‘a discussion or informational site published on the World Wide Web and consisting of discrete entries (“posts”) typically displayed in reverse chronological order’.\textsuperscript{28} Lord McNally described a blog as being primarily for ‘the expression of opinions, comments or personal experiences by an individual or group of individuals’.\textsuperscript{29} For the government this appears to be what sets blogs apart from online newspapers, and therefore excludes them (so long as they remain micro-businesses) from the class of relevant publisher. Yet the definition of news-related material – the central issue of concern to relevant publishers – includes the publication of ‘opinion about matters relating to the news or current affairs’.\textsuperscript{30} The government’s logic in excluding bloggers but not other small, news-related publications is therefore baffling.

To qualify for this exemption, the multi-author blogs must also be a micro-business, having fewer than ten employees and a turnover of less than £2,000,000.\textsuperscript{31} This will mean that small groups of individuals that produce blogs concerning local, national or international news are excluded from the definition of a relevant publisher.

Blogs such as www.blogpreston.co.uk may not be considered ‘relevant’ for the purposes of the Act. It is a website that reports local news, with posts listed in reverse chronological order and several local contributors (but not employees). It

\textsuperscript{24} Lord McNally in the House of Lords, Column 873, 25 March 2013, Hansard
\textsuperscript{25} Crime and Courts Act, Schedule 15, s.8
\textsuperscript{26} Lord McNally in the House of Lords, Column 1390, 23\textsuperscript{rd} April 2013, Hansard
\textsuperscript{27} http://www.oxforddictionaries.com/definition/english/blog
\textsuperscript{28} http://en.wikipedia.org/wiki/Blog
\textsuperscript{29} Lord McNally in the House of Lords, Column 1390, 23\textsuperscript{rd} April 2013, Hansard
\textsuperscript{30} Crime and Courts Act 2013, s.42(7)(b)
\textsuperscript{31} Crime and Courts Act 2013, Schedule 15, s.8 (4)
contains some opinion, but primarily reports news in a neutral way. Yet it is clearly styled as a blog.

The lack of clarity surrounding the definition of blogs, and whether they are exempt from being relevant publications, can be seen if Blogpreston is compared to the Brixton Blog, which styles itself as ‘Brixton’s online newspaper’ and is organised more like a traditional local paper’s website, with sections on news, what’s on, features and sport. It therefore appears as if the Brixton Blog would not qualify for the same exemption as Blogpreston. Should the two websites be treated differently on the basis of how the material is presented?

A further anomaly may arise because the publishers of the Brixton Blog also produce the Brixton Bugle, a print edition that contains content that also appears online. Even if the online content is exempt because it is deemed to be a blog, the print edition of the paper will be a relevant publication.

The exclusion of small, multi-author blogs from the definition of relevant publisher may therefore not protect small community-based, online papers such the Brixton Blog or onthewight.com.

It does however mean that other influential blogs are not classed as relevant publishers. Order-order.com, the influential website styled as Guido Fawkes’ blog of plots, rumours and conspiracy, appears to be excluded from the definition of relevant publisher, as it is a micro business which publishes news-related material in a multi-author blog. This is despite the website being visited by between 50,000 and 100,000 daily, and as many as 100,000 readers per hour when big political stories break.32

**Broadcasters**

The exemptions for broadcasters (s.1-3, schedule 15) appear to be based on the fact that they are regulated by Ofcom. Yet whilst this is true in relation to broadcasting, it is not in relation to the broadcasters’ websites. The websites of the BBC and Sky News will not be classed as relevant publishers, whilst those belonging to national newspapers such as the *Guardian* and *The Times* will be. Likewise, MTV’s website is exempt from being a relevant publication, but NME’s website, which covers similar subject matter (music, television, celebrity gossip), is not exempt. A further example is *National Geographic*, which covers several current affairs issues and seems not to qualify as a relevant publisher because of its related television channel, whereas other current affairs magazines do.

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32 Leveson Report, Volume 1, Part C, Chapter 3, Para 4.4
Publishers’ views on press regulation

English PEN contacted a number of publishers – of varying types – to gather their views on press regulation.

The traditional news publishers we contacted – those with large publishing groups or national coverage – were aware of the issues concerning press regulation and had considered the matters at stake. Some smaller local news sites had also considered the issues, although they were wary of the costs implications of joining a regulator. Other publishers – such as those who deliver news but not in traditional formats – were aware of the issues but uncertain of their positions. And others – including a very small, local newspaper – considered that press regulation affected others, but not them.

A brief description of the publications we heard from, along with their comments, is set out below.

Large regional newspaper – London Evening Standard

The London Evening Standard, together with sister newspapers the Independent and the i, is one of the major newspapers that has not signed up to the Independent Press Standards Organisation (IPSO). Will Gore, the paper’s deputy managing editor, believes that the legislation concerning press regulation is unclear, and that this encourages people to wait and see how the law will develop. He believes that there are a number of uncertainties created by the legislation, and that there is an anomaly between the websites operated by the press, which will fall within a recognised regulator’s remit, and websites that are operated by broadcasters, which are not regulated by Ofcom.

Small, local, printed newspaper – anonymous

The newspaper is published by a small local printing business. It is written by several authors and edited, and contains local news. There are no exemptions for newspapers of any size.

The publisher regards press regulation as ‘not for tiny fish’ like this publication. He had not considered whether he might be a relevant publisher nor the consequences. If the publication was relevant, he would have to think about whether it was ‘worth the candle’ to carry on. He did not see issues of press regulation applying to this publication and therefore probably would not join a regulator.
Community news site – Cricklade Bugle

Styled as a community and news site for the local area, the Cricklade Bugle urges readers to think of it as Cricklade’s local paper. It is written by its editor, Peter Hansen, but he is seeking a team to help. At the moment therefore, the site would not be a relevant publication (as it is not written by more than one person), but it may become so.

The editor is aware of issues of press regulation and says all contributors must comply with the PCC editors’ code. Although not a journalist by trade, the editor has said he tries to run the site as professionally as he can, and uses common sense to handle everything. He believes that press regulation ought to apply to his small site as much as the large newspapers, but is concerned about the cost of joining the regulator.

Local online paper – The Lincolnite

An online newspaper for the city of Lincoln, the Lincolnite has a small staff and a number of other local contributors. Its articles are listed in reverse chronological order, almost like a blog, but are also sorted into categories much like more traditional newspaper sites. Its editor, Daniel Ionescu, believes that the Stonebow Media Ltd (which publishes the Lincolnite) will be a relevant publisher. He has said that the Stonebow would gladly join a recognised regulator, ‘as long as there are not ridiculous fees for businesses our size’.

Current affairs magazine – Private Eye

A satirical current affairs magazine, Private Eye’s publishers Pressdram Ltd fall squarely within the definition of a relevant publisher. Pressdram is acutely aware of the relevant legislation and the consequences of not joining a recognised regulator once one exists, saying that the provisions in the Crime and Courts Act 2013 are ‘likely to result in unnecessary expenditure of time and costs, if not outright injustice’. Ian Hislop, Private Eye’s editor, has said that Pressdram ‘will have to have [these provisions] in mind when we consider whether to join an approved regulator (when there is one) and, if we decide not to do so, our reasons for that decision’.

Special interest magazine – Digital Spy

An internet-based magazine, Digital Spy says its site contains news and discussion about entertainment of every kind. As part of Hearst Magazines UK, the website is part of a large business that publishes a range of news-related publications, including Cosmopolitan magazine. This business did not tell us its views on the issues of regulation, but did say it had chosen to join IPSO.
Special interest website – Mumsnet

This is a popular parenting website. It hosts forums, provides advice and information on a whole host of subjects that may be relevant to parents. It also contains a significant number of articles about its campaigns that contain news and opinion about current affairs. This appears to be news-related material. This would draw the website into the definition of a relevant publisher. Questions arise as to whether Mumsnet could be described as a special interest title (can parenting be called a particular ‘pastime’ for instance?) and whether the ‘incidental’ exemption may apply to its contents, though Justine Roberts (CEO of Mumsnet) does not believe it meets these criteria. Her view is that Mumsnet might be a relevant publisher, because it sometimes commissions guest blogs which may be news related, but the position is unclear. She says: ‘The position with the proposed regulator seems to have become so confused and sclerotic that at present we are just watching and waiting.’

Party political website – Liberal Youth

This is the website of the youth branch of the Liberal Democrats. Whether it is published in the course of business is arguable either way and will depend on the courts’ interpretation of the term. It is written by different people, edited and contains news-related material in respect of both its news page, which gives updates relating to the organisation, and its campaigns page, which contains news-related material of more general interest. These sections appear to be an integral part of the publication. Whether or not the publication is likely to be relevant for the purposes of the Act is uncertain. When English PEN contacted the editor of Liberal Youth she said she had not considered the criteria for relevant publishers and did not know how it would affect her.

Campaign Organisation – Index on Censorship

An international campaign organisation that promotes and defends the right to freedom of expression, Index produces a quarterly magazine and publishes a website. The magazine contains in-depth articles about issues of interest to Index, and is published by Sage under Index’s non-charitable arm Writers and Scholars International Limited. Index does have a charitable arm, but it is not responsible for publication of the magazine. Index operates as a not-for-profit business. Its publications are written by more than one person and are subject to editorial control. It appears as if the exemption for charities does not apply to Index and therefore it will be a relevant publisher.

Jodie Ginsberg, Index’s CEO, has said that Index believes it is a relevant publisher and is taking detailed advice on the issue. Index will not join a recognised regulator, as it is opposed to the Royal Charter that establishes the recognition panel. It would
however consider changing its business model to avoid becoming a relevant publisher.

Blog – Guido Fawkes

This political blog, published at order-order.com, is produced by a small number of people. It clearly meets all the criteria for a relevant publication, but is excluded by virtue of the micro-business provisions. Paul Staines, editor of the blog, has said that the publishers of the blog would not join a recognised regulator in any event, because 'We don't believe in licensed journalism.'


Conclusion

In defining the term ‘relevant publisher’, the government, according to Lord McNally, intended to capture the ‘main elements of the press, as well as ...”press-like” activity online’. Unsurprisingly, therefore, national and regional newspapers and celebrity magazines are, for the most part, relevant publications. More surprisingly, publications such as those produced by campaigning organisations, political parties, hyperlocal websites, community newspapers, think tanks and some specialist publications, for which news reporting is integral to the business model of the publication, also fall into this category.

Publishers who will not be ‘relevant’ for the purposes of the Act include publications such as parish magazines containing no news-related material, purely specialist magazines containing only incidental news-related material, blogs meeting certain conditions and personal political blogs. Charities, including student unions if they are registered as such, will be excluded from the definition of relevant publisher irrespective of the type of publication.

These are conclusions reached on the basis of an analysis of the definition of ‘relevant publisher’ contained in the Act. It is a definition that is far from clear – with particular issues of interpretation arising over the terms ‘in the course of a business’, ‘incidental’, ‘blog’ and ‘news-related material’.

The uncertainty surrounding these definitions is compounded by the government’s apparent intention to exclude community papers, political parties and a broad range of special interest magazines from the definition, yet there is nothing in the legislation to guarantee that this will be the case.

Campaigning organisations with apparent charitable purposes may fall within the definition of relevant publisher, yet they would not be widely considered to form part of the ‘main element’ of the press. Very small community-run newspapers such as the ECHO are not exempt, yet very influential blogs such as Guido Fawkes are. There are particular problems with exemptions for broadcasters, charities, micro-businesses and ‘incidental’ exemptions.

In summary, the research into the new status of relevant publisher shows that the definition depends very much on who you are and how you publish as much as what you publish. It demonstrates that the number of publications that the definition of relevant publisher covers is significant. The exemptions are arbitrary, excluding publishers that might be expected to be included in the definition of ‘relevant publisher’ and vice versa.

33 Lord McNally in the House of Lords, 25 March 2013, Column 849, Hansard
Awareness of the issues of press regulation was generally good amongst the small number of publishers with whom we discussed the issues. Some, such as the large publishing group Hearst Magazines, have chosen to join IPSO like many national newspapers. Other well established publications such as Private Eye and the London Evening Standard are choosing to wait and see what the new legislation brings. Smaller organisations were concerned about the costs of regulation, and those who were not mainstream news publishers spoke about uncertainty.

English PEN believes that the lack of consultation, scrutiny and debate surrounding the creation of a new system of press regulation pose a risk to freedom of expression. Our analysis reveals a dangerous level of uncertainty regarding the definition of relevant publisher that will have a direct impact on small publishers and points to confusion at the heart of government itself regarding its intentions. A viable system of press regulation cannot and should not be founded on such a clearly unsatisfactory basis.
Appendix 1

Relevant extracts from the Crime and Courts Act 2013

Publishers of news-related material: damages and costs

34 Awards of exemplary damages

(1) This section applies where—

(a) a relevant claim is made against a person (“the defendant”),
(b) the defendant was a relevant publisher at the material time,
(c) the claim is related to the publication of news-related material, and
(d) the defendant is found liable in respect of the claim.

(2) Exemplary damages may not be awarded against the defendant in respect of the claim if the defendant was a member of an approved regulator at the material time.

(3) But the court may disregard subsection (2) if—

(a) the approved regulator imposed a penalty on the defendant in respect of the defendant's conduct or decided not to do so,
(b) the court considers, in light of the information available to the approved regulator when imposing the penalty or deciding not to impose one, that the regulator was manifestly irrational in imposing the penalty or deciding not to impose one, and
(c) the court is satisfied that, but for subsection (2), it would have made an award of exemplary damages under this section against the defendant.

(4) Where the court is not prevented from making an award of exemplary damages by subsection (2) (whether because that subsection does not apply or the court is permitted to disregard that subsection as a result of subsection (3)), the court—

(a) may make an award of exemplary damages if it considers it appropriate to do so in all the circumstances of the case, but
(b) may do so only under this section.

(5) Exemplary damages may be awarded under this section only if they are claimed.

(6) Exemplary damages may be awarded under this section only if the court is satisfied that—

(a) the defendant's conduct has shown a deliberate or reckless disregard of an outrageous nature for the claimant's rights,
(b) the conduct is such that the court should punish the defendant for it, and
(c) other remedies would not be adequate to punish that conduct.

(7) Exemplary damages may be awarded under this section whether or not another remedy is granted.

(8) The decision on the question of—

(a) whether exemplary damages are to be awarded under this section, or
(b) the amount of such damages,
must not be left to a jury.
35 Relevant considerations

(1) This section applies where the court is deciding whether the circumstances of the case make it appropriate for exemplary damages to be awarded under section 34.

(2) The court must have regard to the principle that exemplary damages must not usually be awarded if, at any time before the decision comes to be made, the defendant has been convicted of an offence involving the conduct complained of.

(3) The court must take account of the following—
   (a) whether membership of an approved regulator was available to the defendant at the material time;
   (b) if such membership was available, the reasons for the defendant not being a member;
   (c) so far as relevant in the case of the conduct complained of, whether internal compliance procedures of a satisfactory nature were in place and, if so, the extent to which they were adhered to in that case.

(4) The reference in subsection (3)(c) to "internal compliance procedures" being in place is a reference to any procedures put in place by the defendant for the purpose of ensuring that—
   (a) material is not obtained by or on behalf of the defendant in an inappropriate way, an
   (b) material is not published by the defendant in inappropriate circumstances.

(5) The court may regard deterring the defendant and others from similar conduct as an object of punishment.

(6) This section is not to be read as limiting the power of the court to take account of any other matters it considers relevant to its decision.

36 Amount of exemplary damages

(1) This section applies where the court decides to award exemplary damages under section 34.

(2) The court must have regard to these principles in determining the amount of exemplary damages—
   (a) the amount must not be more than the minimum needed to punish the defendant for the conduct complained of;
   (b) the amount must be proportionate to the seriousness of the conduct.

(3) The court must take account of these matters in determining the amount of exemplary damages—
   (a) the nature and extent of any loss or harm caused, or intended to be caused, by the defendant's conduct;
   (b) the nature and extent of any benefit the defendant derived or intended to derive from such conduct.

(4) The court may regard deterring the defendant and others from similar conduct as an object of punishment.

(5) This section is not to be read as limiting the power of the court to take account of any other matters it considers relevant to its decision.
37 Multiple claimants

(1) This section applies where a relevant publisher—

   (a) is a defendant to a relevant claim, an
   
   (b) is found liable to two or more persons in respect of the claim ("the persons affected").

(2) In deciding whether to award exemplary damages under section 34 or the amount of such damages to award (whether to one or more of the persons affected), the court must take account of any settlement or compromise by any persons of a claim in respect of the conduct.

(3) But the court may take account of any such settlement or compromise only if the defendant agrees.

(4) If the court awards exemplary damages under section 34 to two or more of the persons affected, the total amount awarded must be such that it does not punish the defendant excessively.

(5) If the court awards exemplary damages under section 34 to one or more of the persons affected, no later claim may be made for exemplary damages as regards the conduct.

38 Multiple defendants

(1) Any liability of two or more persons for exemplary damages awarded under section 34 is several (and not joint or joint and several).

(2) Subsection (1) has effect subject to the law relating to the liability of a partner for the conduct of another partner.

(3) Where the liability of two or more persons for exemplary damages is several, no contribution in respect of the damages may be recovered by any of them under section 1 of the Civil Liability (Contribution) Act 1978.

39 Awards of aggravated damages

(1) This section applies where—

   (a) a relevant claim is made against a person ("the defendant"),
   
   (b) the defendant was a relevant publisher at the material time,
   
   (c) the claim is related to the publication of news-related material, and
   
   (d) the defendant is found liable in respect of the claim.

(2) Aggravated damages may be awarded against the defendant only to compensate for mental distress and not for purposes of punishment.

(3) In this section, "aggravated damages" means damages that were commonly called aggravated before the passing of this Act and which—

   (a) are awarded against a person in respect of the person's motive or exceptional conduct, but
   
   (b) are not exemplary damages or restitutionary damages.

(4) Nothing in this section is to be read as implying that, in cases where this section does not apply, aggravated damages may be awarded for purposes of punishment.
40 Awards of costs

(1) This section applies where—
   (a) a relevant claim is made against a person ("the defendant"),
   (b) the defendant was a relevant publisher at the material time, and
   (c) the claim is related to the publication of news-related material.

(2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—
   (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
   (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.

(3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—
   (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
   (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.

(4) The Secretary of State must take steps to put in place arrangements for protecting the position in costs of parties to relevant claims who have entered into agreements under section 58 of the Courts and Legal Services Act 1990.

(5) This section is not to be read as limiting any power to make rules of court.

(6) This section does not apply until such time as a body is first recognised as an approved regulator.

41 Meaning of “relevant publisher”

(1) In sections 34 to 40, “relevant publisher” means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—
   (a) which is written by different authors, and
   (b) which is to any extent subject to editorial control.

This is subject to subsections (5) and (6).

(2) News-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—
   (a) the content of the material,  
   (b) how the material is to be presented, and
   (c) the decision to publish it.

(3) A person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site.

(4) The fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of subsection (3).

(5) A person is not a “relevant publisher” if the person is specified by name in Schedule 15.
(6) A person is not a “relevant publisher” in so far as the person’s publication of news-related material is in a capacity or case of a description specified in Schedule 15.

(7) But a person who is not a “relevant publisher” as a result of paragraph 8 of that Schedule (micro-businesses) is nevertheless to be regarded as such if the person was a member of an approved regulator at the material time.

42 Other interpretative provisions

(1) This section applies for the purposes of sections 34 to 41.

(2) “Approved regulator” means a body recognised as a regulator of relevant publishers.

(3) For the purposes of subsection (2), a body is “recognised” as a regulator of relevant publishers if it is so recognised by any body established by Royal Charter (whether established before or after the coming into force of this section) with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers.

(4) “Relevant claim” means a civil claim made in respect of any of the following—
   (a) libel;
   (b) slander;
   (c) breach of confidence;
   (d) misuse of private information;
   (e) malicious falsehood;
   (f) harassment.

(5) For the purposes of subsection (4)—
   (a) the reference to a claim made in respect of the misuse of private information does not include a reference to a claim made by virtue of section 13 of the Data Protection Act 1998 (damage or distress suffered as a result of a contravention of a requirement of that Act);
   (b) the reference to a claim made in respect of harassment is a reference to a claim made under the Protection from Harassment Act 1997.

(6) The “material time”, in relation to a relevant claim, is the time of the events giving rise to the claim.

(7) “News-related material” means—
   (a) news or information about current affairs,
   (b) opinion about matters relating to the news or current affairs, or
   (c) gossip about celebrities, other public figures or other persons in the news.

(8) A relevant claim is related to the publication of news-related material if the claim results from—
   (a) the publication of news-related material, or
   (b) activities carried on in connection with the publication of such material (whether or not the material is in fact published).

(9) A reference to the “publication” of material is a reference to publication—
   (a) on a website,
   (b) in hard copy, or
   (c) by any other means;
   and references to a person who “publishes” material are to be read accordingly.
(10) A reference to “conduct” includes a reference to omissions; and a reference to a person’s conduct includes a reference to a person’s conduct after the events giving rise to the claim concerned.

SCHEDULE 15 - EXCLUSIONS FROM DEFINITION OF “RELEVANT PUBLISHER”

Broadcasters

1. The British Broadcasting Corporation.
2. Sianel Pedwar Cymru.
3. The holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence.

Special interest titles

A person who publishes a title that—

(a) relates to a particular pastime, hobby, trade, business, industry or profession, and
(b) only contains news-related material on an incidental basis that is relevant to the main content of the title.

Scientific or academic journals

4. A person who publishes a scientific or academic journal that only contains news-related material on an incidental basis that is relevant to the scientific or academic content.

Public bodies and charities

5. (1) A public body or charity that publishes news-related material in connection with the carrying out of its functions.
   (2) “Public body” means a person or body whose functions are of a public nature.

Company news publications etc

6. A person who publishes a newsletter, circular or other document which—
   (a) relates to a business carried on by the person, and
   (b) only contains news-related material on an incidental basis that is relevant to the person’s business.

Micro-businesses

7. (1) A person who, in carrying on a micro-business, publishes news-related material where either condition A or condition B is met.
   (2) Condition A is that the news-related material is contained in a multi-author blog.
   (3) Condition B is that the news-related material is published on an incidental basis that is relevant to the main activities of the business.
   (4) “Micro-business” means a business which—
       (a) has fewer than 10 employees, and
       (b) has an annual turnover not exceeding £2,000,000.
   (5) The number of employees is to be calculated as follows—
       (a) find the total number of hours per week for which all the employees of the business are contracted to work;
(b) divide that number by 37.5.

(6) “Employee” has the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act).

(7) “Multi-author blog” means a blog that contains contributions from different authors.

Book publishers


(2) “Book” does not include any title published on a periodic basis with substantially different content.
Appendix 2

Which publications are ‘relevant’ for the purposes of the Crime and Courts Act 2013?

<table>
<thead>
<tr>
<th>Type of publication</th>
<th>Publication</th>
<th>Relevant publisher?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadcaster's website</td>
<td>BBC News Website</td>
<td>No - broadcaster</td>
</tr>
<tr>
<td>Broadcaster's website</td>
<td>Sky News Website</td>
<td>No - broadcaster</td>
</tr>
<tr>
<td>Broadcaster's website</td>
<td>ITV Website</td>
<td>No - broadcaster</td>
</tr>
<tr>
<td>Broadcaster's website</td>
<td>Channel 4 News</td>
<td>No - broadcaster</td>
</tr>
<tr>
<td>Broadcaster's website</td>
<td>MTV website</td>
<td>No - broadcaster</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>Reporters Without Borders</td>
<td>Yes</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>Which?</td>
<td>Yes</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>Index on Censorship</td>
<td>Yes – published by company arm</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>People &amp; Planet</td>
<td>No - charity exemption</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>Global Witness</td>
<td>Yes</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>Amnesty</td>
<td>Maybe – has complex corporate structure</td>
</tr>
<tr>
<td>Campaign organisation</td>
<td>HRW</td>
<td>Maybe - depends on status of overseas charities</td>
</tr>
<tr>
<td>Celebrity &amp; magazine</td>
<td>Marie Claire</td>
<td>Yes</td>
</tr>
<tr>
<td>Celebrity magazine</td>
<td>OK</td>
<td>Yes</td>
</tr>
<tr>
<td>Celebrity magazine</td>
<td>Hello</td>
<td>Yes</td>
</tr>
<tr>
<td>Celebrity magazine</td>
<td>Heat World</td>
<td>Yes</td>
</tr>
<tr>
<td>Celebrity magazine</td>
<td>Now</td>
<td>Yes</td>
</tr>
<tr>
<td>Celebrity magazine</td>
<td>Reveal</td>
<td>Yes</td>
</tr>
<tr>
<td>Children's newspaper</td>
<td>First News</td>
<td>Yes</td>
</tr>
<tr>
<td>Community online newspaper</td>
<td>Cricklade Bugle</td>
<td>No - written by only one author</td>
</tr>
<tr>
<td>Community newspaper</td>
<td>Ambler</td>
<td>No - charity exemption</td>
</tr>
<tr>
<td>Community newspaper</td>
<td>ECHO</td>
<td>Yes</td>
</tr>
<tr>
<td>Computing magazine</td>
<td>PC Pro</td>
<td>Yes</td>
</tr>
<tr>
<td>County Council Website</td>
<td>Herts CC</td>
<td>No - public body exemption</td>
</tr>
<tr>
<td>Current affairs blog</td>
<td>Order-Order (Guido-Fawkes blog)</td>
<td>No - micro business exemption</td>
</tr>
<tr>
<td>Current affairs blog</td>
<td>Political scrapbook</td>
<td>Probably not - micro business exemption</td>
</tr>
<tr>
<td>Category</td>
<td>Title</td>
<td>Joined</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>New Internationalist</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>The Spectator</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>The Week</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>Standpoint</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>The Economist</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>Monocle</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>The Oldie</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>New African</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>Foreign Affairs</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs magazine</td>
<td>Private Eye</td>
<td>Yes</td>
</tr>
<tr>
<td>Current affairs website</td>
<td>The Broker Online</td>
<td>Yes</td>
</tr>
<tr>
<td>Education magazine</td>
<td>Times Higher Education</td>
<td>Yes</td>
</tr>
<tr>
<td>General lifestyle magazine</td>
<td>Wired.com</td>
<td>Yes</td>
</tr>
<tr>
<td>Global environment/travel magazine</td>
<td>National Geographic</td>
<td>No - broadcaster exemption</td>
</tr>
<tr>
<td>History Magazine</td>
<td>BBC History Magazine</td>
<td>No - special interest/incidental exemption</td>
</tr>
<tr>
<td>International Catholic Magazine</td>
<td>The Tablet</td>
<td>Yes - special interest but news not incidental</td>
</tr>
<tr>
<td>Local blog</td>
<td>Blog Preston.co.uk</td>
<td>No - micro business exemption</td>
</tr>
<tr>
<td>Music &amp; entertainment website</td>
<td>Digitalspy.co.uk</td>
<td>Yes</td>
</tr>
<tr>
<td>Music &amp; politics magazine</td>
<td>Rolling Stone</td>
<td>Yes</td>
</tr>
<tr>
<td>Music, TV &amp; Celebrity magazine</td>
<td>NME</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>Daily Mail</td>
<td>Yes</td>
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<tr>
<td>National newspaper</td>
<td>Daily Telegraph</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>Mirror</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>The Guardian</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>The Times</td>
<td>Yes</td>
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<tr>
<td>National newspaper</td>
<td>The Sun</td>
<td>Yes</td>
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<tr>
<td>National newspaper</td>
<td>The Independent</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>Express</td>
<td>Yes</td>
</tr>
<tr>
<td>National newspaper</td>
<td>Metro</td>
<td>Yes</td>
</tr>
<tr>
<td>Nursing magazine</td>
<td>Bjn</td>
<td>No - special interest/incidental exemption</td>
</tr>
<tr>
<td>Nursing magazine</td>
<td>Nursing Times</td>
<td>No - special interest/incidental exemption</td>
</tr>
<tr>
<td>Online newspaper</td>
<td>Huffington Post</td>
<td>Yes</td>
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<tr>
<td>Online newspaper</td>
<td><a href="http://www.positivenews.org.uk">www.positivenews.org.uk</a></td>
<td>Yes</td>
</tr>
<tr>
<td>Parenting website</td>
<td>Mumsnet</td>
<td>Yes</td>
</tr>
<tr>
<td>Personal (local political) blog</td>
<td>Bignews Margate</td>
<td>No - written by only one author</td>
</tr>
<tr>
<td>Political blog</td>
<td>Conservative Home</td>
<td>Maybe - depends on turnover</td>
</tr>
<tr>
<td>Category</td>
<td>Name</td>
<td>Yes/No</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Political party</td>
<td>Labour</td>
<td>Yes</td>
</tr>
<tr>
<td>Political party</td>
<td>Lib Dems</td>
<td>Yes</td>
</tr>
<tr>
<td>Political party</td>
<td>Conservative</td>
<td>Yes</td>
</tr>
<tr>
<td>Political party - youth wing</td>
<td>Liberal Youth</td>
<td>Maybe - if in the course of business</td>
</tr>
<tr>
<td>Politics magazine &amp; website</td>
<td>total politics</td>
<td>Yes</td>
</tr>
<tr>
<td>Regional news website</td>
<td>Brixton blog</td>
<td>Yes - despite its name, it is not a blog</td>
</tr>
<tr>
<td>Regional news website</td>
<td>On the Wight</td>
<td>Yes</td>
</tr>
<tr>
<td>Regional news website</td>
<td>The Lincolnite</td>
<td>Yes</td>
</tr>
<tr>
<td>Regional newspaper</td>
<td>Isle of Wight County Press</td>
<td>Yes</td>
</tr>
<tr>
<td>Regional newspaper</td>
<td>Manchester Evening News</td>
<td>Yes</td>
</tr>
<tr>
<td>Regional newspaper</td>
<td>The Scotsman</td>
<td>Yes</td>
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<tr>
<td>Regional newspaper</td>
<td>London Evening Standard</td>
<td>Yes</td>
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<tr>
<td>Regional newspaper</td>
<td>Portsmouth News</td>
<td>Yes</td>
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<tr>
<td>Regional newspaper</td>
<td>Lincolnshire Echo</td>
<td>Yes</td>
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<tr>
<td>Regional newspaper</td>
<td>Evening Standard</td>
<td>Yes</td>
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<tr>
<td>Regional/Local newspaper</td>
<td>The Clarion (Forest of Dean &amp; Wye Valley)</td>
<td>Yes</td>
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<tr>
<td>Regional/Local newspaper</td>
<td>Lancashire Evening Post</td>
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<tr>
<td>Science magazine</td>
<td>New Scientist</td>
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<tr>
<td>Student newspaper</td>
<td>The Boar (Warwick University)</td>
<td>No - charity exemption</td>
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<tr>
<td>Student newspaper</td>
<td>Wessex Scene (Southampton University)</td>
<td>No - charity exemption</td>
</tr>
<tr>
<td>Think Tank</td>
<td>Institute of Economic Affairs</td>
<td>Yes</td>
</tr>
<tr>
<td>Think Tank</td>
<td>Fabian Society</td>
<td>Yes</td>
</tr>
<tr>
<td>Think Tank/Pressure Group</td>
<td>Compass</td>
<td>Yes</td>
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<tr>
<td>Think Tank/Pressure Group</td>
<td>The Freedom Association</td>
<td>Yes</td>
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</tbody>
</table>
About the author

Helen Anthony is a qualified, non-practising solicitor who works as a freelance policy consultant. Helen has advised English PEN on issues relating to the Leveson Inquiry, free speech and access to justice since 2012. She is the author of English PEN and Index on Censorship’s report The Alternative Libel Project, published in March 2012, funded by the Nuffield Foundation, which made recommendations to changes in procedural and costs rules to reduce the cost of libel cases in England and Wales. Helen has worked as a legal policy officer for the Association of Personal Injury Lawyers, and more recently carried out policy development work for a range of organisations concerned with the issue of free speech.

About English PEN

English PEN supports the freedom to read and the freedom to write in the UK and internationally, through advocacy, public events, outreach and the promotion of literature in translation. It is a registered charity.

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