

**FLYING THE ETHICAL KITEMARK:
HOW THE UK PRESS CARD COULD SUPPORT STRONGER SELF-REGULATION**

Introduction

1. Lord Leveson's inquiry and the events leading to it have stimulated considerable public and Parliamentary demand for more effective ethical regulation of the UK news media, particularly (but not exclusively) newspapers. Most of the newspaper and magazine industry has already responded by accepting Lord Hunt's proposal to replace the Press Complaints Commission (PCC) with a more effective form of self-regulation.
2. The details of the PCC's successor have yet to be agreed – and Lord Leveson has yet to express his view on this or on the wider issues involved. However, it is clear that the new ethical regulator must be better in several ways. Its processes and sanctions must be tougher, swifter, and more independent of the industry. Its coverage must be complete – currently one national newspaper group does not take part. Finally, it must command much greater public confidence than the PCC.
3. However, major change that seeks public support needs to be both effective and visible. It will probably take some high profile misdemeanour and a vigorous disciplinary response before the public is convinced about the new regulator. In addition, public concern has focussed not just on newspapers' behaviour, but also on that of individual newsgatherers.
4. The UK Press Card is a unique, self-regulating scheme, commanding the support of the widest range of media industry bodies. Its purpose is to provide a standard, national form of identity for professional newsgatherers. It has operated successfully for 20 years, supported and managed by media organisations, trade and professional associations, and trades unions. It is recognised by major institutions, including all the UK's police forces. It has a single core design, and its security features and verification hotline allow any third party to check that a card is genuine.
5. Currently, the UK Press Card serves only as an identity card, but it is carried by more than 20,000 newsgatherers. It can also be used to identify their employers, or their professional association, or trade union. The Inquiry has already asked for details of the scheme, and both witnesses and Lord Leveson have expressed interest in how the card could be used to support better ethical regulation.

6. Therefore this paper has been commissioned to explore how the UK Press Card could certify commitment to ethical practice by UK media organisations and their staff, and by freelancers – becoming what has been nicknamed an ethical kitemark. In particular, it examines:
 - a. how the scheme could be part of an improved self-regulating system while remaining inclusive and accessible.
 - b. how this would affect the responsibilities and roles of the scheme's gatekeepers;
 - c. what other issues which could emerge, and how they might be resolved.

NB: No changes in eligibility are proposed for resident foreign journalists served by the Foreign Press Association (FPA) – see para. 16 – and any description of changes below should be read in that context.

7. It is important to stress that this proposal is intended to preserve the key and equally important principles of the UK Press Card Scheme:
 - The scheme must remain inclusive, accessible to any newsgatherer eligible under its rules;
 - no single organisation can blackball a newsgatherer from holding a card – there will always be multiple routes for an application; and
 - the scheme must not be used to licence the practice of journalism or publishing; there must be no requirement on an individual newsgatherer to hold a card or carry the card in order to do his or her job.

The benefits of change

8. The ethical kitemark change could have very significant benefits for cardholders, the media industry, the public and the UK Press Card scheme itself. At the moment, the sheer variety of ethical regulators, codes, and processes used across the industry makes it very difficult to communicate collective culture change and commitment to the public. In great contrast, promoting the UK Press Card as carrying the mark of ethical probity would require a single, relatively simple campaign tailored to the various platforms. Other benefits would include:
 - a. Greater leverage for cardholders in negotiation with people from whom they were seeking information, help or access;
 - b. Greater protection for cardholders who found it necessary to dispute the ethical acceptability of an instruction from an employer or client, including greater leverage for the cardholder's professional association or trade union;
 - c. Greater underpinning for the authority of self-regulation bodies, which would have a significant and visible sanction available for breaches of their codes; and
 - d. Greater leverage for the UK Press Card scheme in its task of seeking accreditation and recognition for the card and its holders.

How the scheme would change and why

9. Under the ethical kitemark scheme, some current features of the UK Press Card Scheme would be extended to demonstrate ethical compliance in two ways.
 - a. The first would be the cardholder’s declaration to abide by an ***appropriate ethical code*** for his or her media sector.
 - b. The second would be the ethical compliance of
 - i. his or her employer, if the newsgatherer was staff member, or
 - ii. his or her main client, or professional association or trade union if he or she was a freelance.

10. A key outcome would be that only ***ethically regulated employers*** – those regulated by statute, or those choosing to be subject to self-regulation - would be able to get UK Press Cards for their staff. Staff of a media organisation which chose not to be self-regulated would not be eligible for a UK Press Card by any route.

11. Examples of the regulators in question - established ethical regulators for their sector - are statutory regulator Ofcom and self regulator the PCC. In this proposal, all such regulators of similar standing are collectively termed ***appropriate ethical regulators***

12. In terms of the UKPCA’s rules, the ethical kitemark proposal would extend the purpose of the scheme, shown by the underscored words below

“... to provide a standard, verifiable photo identity card to anyone who is working professionally as a media worker and who needs to identify themselves in public;

and to certify that both they and

(a) their employer comply with an appropriate ethical code, OR

(b) if they are freelance, their main customer, or trade union or professional association comply with an appropriate ethical code.

13. Paragraph 14 below sets out the kitemark scheme’s proposed tests for eligibility, allowing for the different circumstances of employees, and the large and growing number of freelance newsgatherers. Annex Three also sets out the tests in a flowchart.

14. To become a UK Press Card holder, a newsgatherer would have to pass three tests: those at (a) and (b) below PLUS test (c) or test (d).
 - a. Every applicant would have to be aged 18 or more, and earn the majority of his/her earnings from newsgathering as a frontline journalist, photographer, TV cameraman, sound recordist, or broadcast support worker (the original age and “majority of income” tests);
 - b. Every applicant would have to certify that he or she personally complied with the code of the appropriate ethical regulator for their sector.

- c. All applicants who were employees would also have to work for an ethically regulated employer
- d. All applicants who were freelances would also have to show that either
 - i. the majority of their work was for an ethically regulated employer
 - ii. or their professional association or trade union applied an ethical code and appropriate complaints and disciplinary processes.

NB: Some freelances choose not to belong to any membership organisation and some of them may not have a main customer. The scheme will introduce an adjudication sub-committee (Annex Two) to consider their applications.

What would not change

- 15. There would be no change to most of the current features of the UK Press Card scheme or the key principles set out in para.7. In particular, gatekeepers would remain committed to providing multiple routes for an eligible newsgatherer to gain a card, ensuring that no single organisation could blacklist an applicant.
- 16. The kitemark principles are aimed at UK media organisations and UK newsgatherers. The employers of resident foreign newsgatherers are not headquartered in the UK, and only a small minority seek any British audience. Therefore no change is proposed for resident foreign journalists who apply through the Foreign Press Association, which already puts considerable effort into establishing their eligibility and requires annual renewals. (This exception is reflected in the flowchart at Annex Three.)
- 17. The scheme would continue to be managed and administered by its 17 gatekeepers. These are the media organisations, trade associations, trades unions and professional associations which scrutinise applications and instruct the scheme's card contractor to produce the individual cards.
- 18. The scheme would continue to be governed by the UK Press Card Authority Ltd (UKPCA) – the company which owns the copyright to the card. The UKPCA is collectively owned by the gatekeepers, which each provide a director.
- 19. All cards would continue to use the same core design and security features. There would be no change to the verification telephone line which allows anyone to cross check the card's serial number with the holder's PIN or password.

Gatekeepers facing least change

- 20. Most gatekeepers would face minimum changes under the ethical kitemark proposal. Besides the FPA, they are direct employers of

newsgatherers, employers' associations, and broadcasters and broadcast service providers and include NPA, NS, BBC, ITV, ITN, SKY, PPA, and IVCA.

21. Their card application process would remain as straightforward as now because
- the applicant's identity would already have been established by employment processes;
 - the applicant's employer would either be their gatekeeper (e.g. ITN), or a member of their gatekeeper's organisation (e.g. the Newspaper Society); and the employer would already be ethically regulated, either by statute (independent broadcasters); or by statute and self-regulation (the BBC); or by self-regulation alone (newspapers and magazines);
 - and in the case of many newspapers and magazines, adherence to the relevant ethical code might already be a term of the employee's contracts.

Gatekeepers facing some change, and news and picture agencies

22. Neither NAPA, nor Reuters and the press agencies it serves as a gatekeeper, publish to the public directly. Except for the Press Association - which stands by the PCC's Editors' Code - they are not covered by a regulator.
23. However, agencies are employers and open to self-regulation. For their staff to get UK Press Cards, they would need to become ethically regulated by subscribing to an appropriate code in the same way as the Press Association.

Gatekeepers facing greater changes: trade unions and professional associations

24. Bigger changes would affect the gatekeepers which are membership organisations for individuals. These include the NUJ, CIOJ, BECTU, BAJ, BPPA and CPNA, Some, such as the NUJ, have longstanding ethical codes of their own and a strong commitment to effective ethical regulation. Others are equally committed to strong ethical practice, but do not yet have formal codes.
25. Currently they only have to establish applicants' identity and eligibility under the "majority of earnings" and age tests. However, under the kitemark scheme, they would also have to establish that each card provided the two routes of ethical accountability. The first would be the applicant's own commitment to the appropriate code for the sector. The second would be
- a. **for an employee**, an ethically regulated employer;
 - b. **for a freelance**, the gatekeeper/membership organisation itself. Like the NUJ and others, the gatekeeper would need to have in place an appropriate ethical code and the processes to handle complaints.

26. Therefore if a newsgatherer was an employee of a non-ethically regulated employer, the relevant gatekeeper would not be able to issue a UK Press Card. (To give an example, neither the NPA nor the NUJ could issue a UK Press Card to an employee of a newspaper not signed up to the PCC's successor.) The gatekeeper could still issue its own "in-house" press identity card as some already do.

Freelances

27. Because of the increasing number of frontline freelance newsgatherers, the UK Press Card scheme needs a range of ways to accommodate them. Many of the options have been covered in preceding sections, but this section pulls them together for clarity. The options and the respective levels of change under the kitemark scheme would be as follows:
- a. freelances who get their cards through ethically regulated employers would be asked to confirm their compliance with the appropriate code;
 - b. freelance members of gatekeeper trade unions or professional associations would either get their cards via their main customers as in (a) above, or via their gatekeeper, which would itself be accountable via its ethical code;
 - c. Unaffiliated freelances – those without a relevant association/union membership, or a main client - would be helped by UKPCA to find a gatekeeper who would issue a card if the newsgatherer was found eligible by the adjudication sub-committee (see para.28 and Annex Two). Normally, the gatekeeper would charge a fee to cover its costs.
28. Under the ethical kitemark scheme, nothing would change for the gatekeeper helping an unaffiliated freelance, apart from the application of the new, more stringent, tests. To pass them, the applicant would have to show the adjudication sub-committee that the bulk of his or her work was for ethically regulated employers. In turn, ethically regulated employers would need to support their freelance contributors by providing evidence and other corroboration when asked. (This is unlikely to be a large burden; there are few cases at the moment.)
29. **NB:** Ensuring that eligible freelances without union or association membership can get help to demonstrate their professional track record is not a trivial issue. The UK Press Card must continue to be reasonably accessible to any eligible newsgatherer. If clients of freelances refused to take the small trouble to help those who have no affiliations, it would create a group of justifiably angry allies for anyone who wanted to undermine self-regulation.

Eligibility, compliance and sanctions

30. The ethical kitemark scheme would need to deal with questions of eligibility, complaints, misuse, misbehaviour, and breaches of ethical codes. These should reflect the UKPCA's long-standing approach: simple procedures, and card withdrawal (for anything other than ineligibility) only by decision of the gatekeepers' committee.
31. A description of the proposed adjudication sub-committee and its procedures is at Annex Two.

Miscellaneous issues

32. Some new arrangements would be needed to strengthen the administration, policing and transparency of the card scheme.
33. Given the importance of regulation and visibility in establishing the value of the ethical kitemark, it would be helpful to name the respective regulator on the card. This could be a simple phrase, e.g. "the holder of this card follows the professional ethical code of [XXXXX]."
34. The script for the verification hotline could be modified to ensure that that the operators volunteer the fact that matching the PIN/password and card number confirms that both the newsgatherer and his or her ethically regulated employer, or his association/union subscribe to professional ethical codes. The hotline could be given an additional database allowing the operator to confirm that a named organisation is regulated, and by whom.
35. A new application form would need to be introduced and incorporated into the rules, alongside a new set of guidance for applicants and gatekeepers.
36. The scheme's secretariat might need some strengthening to support the new procedures. This could be financed via the fee for the card.
37. Finally, if this scheme meets the approval of gatekeepers and the wider industry, it could be submitted to the Leveson Inquiry as a clear statement of the industry's commitment to the collective strengthening and transparency of ethical regulation – and particularly self-regulation of the press. Leveson could also be asked not to propose a specific new code, but propose the principles which should be common to all the ethical codes used within the media industries.

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Chair, UKPCA, April 2012

ANNEX ONE: Making the change

This annex indicates the process necessary to change the rules of the UK Press Card scheme to create the ethical kitemark (para. 1), and some of the detailed changes which would need to be considered (paras. 2-8).

1. To create the “ethical kitemark”, some rules and processes of the UK Press Card scheme would need to be modified. These would have to be agreed at a special meeting of the gatekeepers committee under Rule 9.1.5.
 - 9.1.5 A resolution for the following specific items requires at least a 2/3rds majority of all Gatekeepers at a special Gatekeepers’ Committee meeting which has been called with 14 days’ notice by a quorate Gatekeepers Committee.*
 - 9.1.5.1 Modification of this Scheme, including the criteria for issue of the card*
 - ...
2. Rule 1 of the scheme will need three extra definitions. The first two would be “*appropriate ethical code*” and “*appropriate regulator*”, the ethical enforcer for the media sector in question. These would be defined by naming specific codes and the relevant self-/regulators in the rules. Examples would be Ofcom and its broadcasters code, and the PCC’s successor and its code. If the Leveson Inquiry chooses to specify its requirements for an ethical code, this could be incorporated later.
3. The third new definition would be “*ethically regulated employer*” - an employing organisation self-regulated or regulated by an appropriate regulator.
4. It would also be necessary to extend the definition of an “*eligible newsgatherer*” (Rule 1.8). Currently this states that:

An Eligible Newsgatherer is anyone working in the UK, aged 18 years or over, whose employment or self-employment is wholly or significantly concerned with the gathering, transport or processing of information or images for publication in broadcast electronic or written media including TV, radio, internet-based services, newspapers and periodicals; and who needs in the course of those duties to identify themselves in public or other official services.
5. Rule 1.8 would be extended with two further criteria:
 - ...and (a) who certifies that he or she will abide by the appropriate ethical code for the media sector in which he or she works;*
 - and (b) who can demonstrate that*
 - (i) he or she works for or mainly supplies an ethically regulated employer OR*
 - (ii) is a member of a trade union or professional association which enforces an appropriate ethical code.*

NB: The wording of (b)(ii) allows the union/association in question to adopt and use the appropriate code of another organisation if it did not have a written code of its own.

6. Rule 2 defines the purpose of the scheme and the verification hotline. This would need an amended definition:
 - a. *...To provide a standard, verifiable photo identity card to anyone who is working professionally as a media worker and who needs to identify themselves in public; and to certify that both they and*
 - (a) *their employer;*
 - or
 - (b) *if they are a freelance, their main customer, or their trade union or professional association comply with an appropriate ethical code.*
7. Setting up the adjudication sub-committee (see Annex Two below) can already be done under Rule 9.1.6. This allows the gatekeepers' committee to delegate any function to a sub-committee except modification of the scheme, the appointment or removal of a gatekeeper, or the appointment or removal of the card contractor. The gatekeepers' committee would also have to set the criteria by which the sub-committee would judge applications.
8. Defining how a card could be withdrawn would require removing Rule 10.3.1 and inserting a new rule 10.4:

A card will be withdrawn:

- if the issuing Gatekeeper considers the holder has become ineligible through a change of role, or because the holder's application has been found to be fraudulent; or the cardholder's employer has left its appropriate self-regulation scheme

- if the Gatekeepers' Committee

- considers the holder has used the card in a way likely to bring the Scheme into disrepute through misrepresentation or dishonesty*
- accepts the recommendation of the cardholder's appropriate regulator to remove the card because of a breach of the regulator's ethical code.*

[End annex]

ANNEX TWO:**Decisions on eligibility, compliance and sanctions, and the adjudication sub-committee**

This annex proposes a structure and processes for considering applications with circumstances which are not straightforward, such as:

- *freelances without a main client or membership of an UKPCA gatekeeper and union/professional association;*
- *disputes over eligibility decisions; and*
- *allegations about cardholder behaviour.*

It follows the principles of ensuring that (a) only the full gatekeepers' committee can withdraw a card for reasons other than ineligibility; and (b) that judgements on breaches of ethical codes would lie with the appropriate regulator.

Adjudication sub-committee

1. Using the gatekeepers' committee for lesser decisions is cumbersome and slow. To handle most such decisions, an ***adjudication sub-committee*** with delegated powers should be set up under Rule 9.1.6. It would comprise a rotating cross-section of at least six gatekeepers (e.g. three employing or employer organisations and three membership organisations at any one time).
2. The adjudication sub-committee would be charged to act in line with certain general principles and/or specific criteria. For example, it could be mandated to authorise acceptance of an application from a freelance newsgatherer who could show that (a) he or she had no main employer or client, but (b) had personally committed himself or herself to a specific ethical code and procedures.

Eligibility and ineligibility

3. Most decisions on *eligibility* would rest, as now, with the issuing gatekeeper. But while the large majority of cases will be clear-cut, there will others such as freelances without a main client or membership of a UKPCA professional association or trade union with an appropriate ethical code.
4. The gatekeeper receiving the application would refer this case to the adjudication sub-committee and act on its decision. Appeals against the adjudication sub-committee's decision would go to the gatekeepers committee.
5. In a case of newly-discovered *ineligibility*, the gatekeeper should be able to withdraw the card immediately. This could arise where a cardholder left newsgathering or moved to a non-ethically regulated employer, or where an application was found to be fraudulent. Where the issues were less clear-cut, the gatekeeper would refer them to the adjudication sub-committee and act on its decision. Appeals would go to the gatekeepers' committee.

Misuse of the card

6. Complaints would be investigated by the issuing gatekeeper, which would report its findings to the adjudication sub-committee for decision. If the adjudication sub-committee recommended withdrawing the card, the decision would be for the gatekeepers' committee.

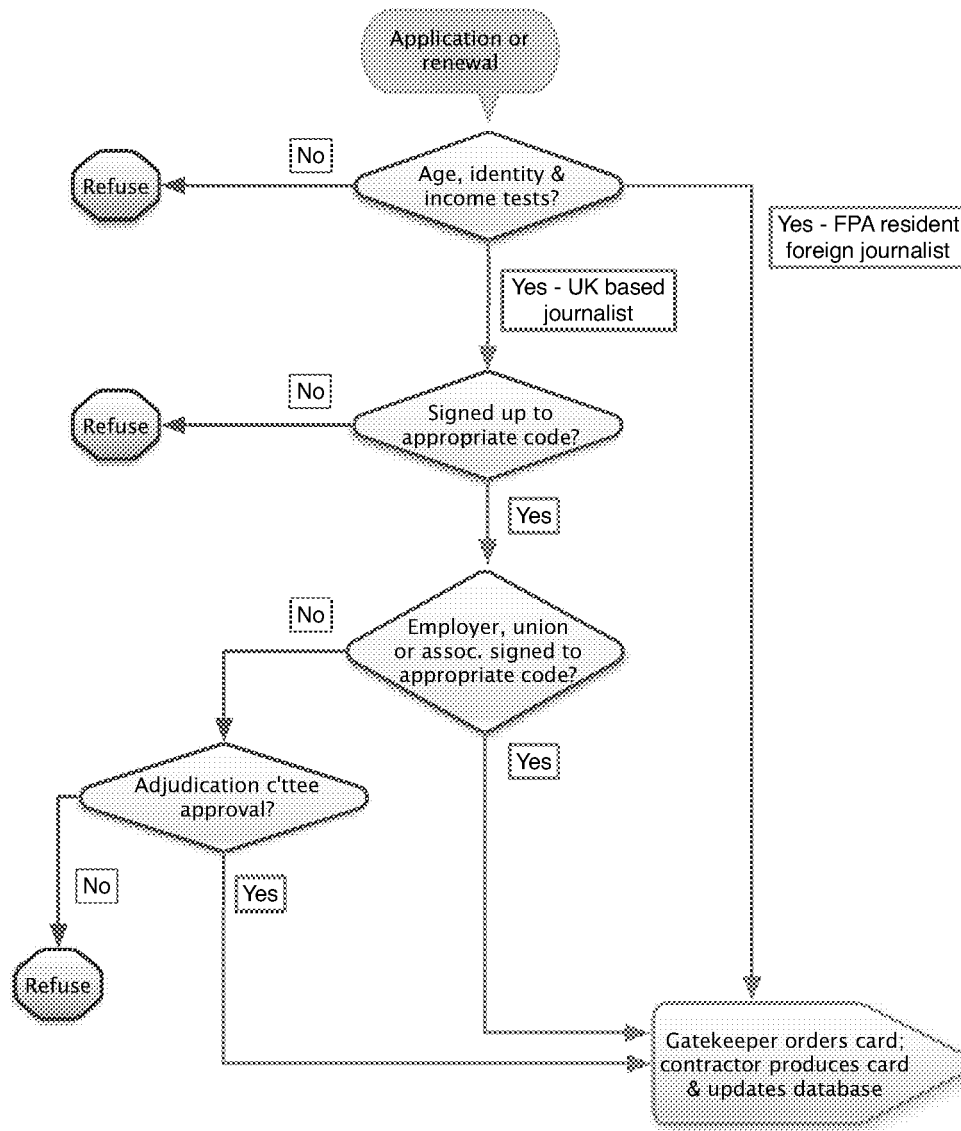
Breaches of an ethical code

7. Complaints would be referred to the appropriate regulator, who would be asked to inform the UKPCA adjudication sub-committee about its findings. If the regulator recommended withdrawing the card, any decision would be taken by the gatekeepers' committee.

[End annex]

ANNEX THREE

UK Press Card: "kitemark" application process



ANNEX FOUR: How this paper was commissioned, financed and drafted

This paper was commissioned by Associated Newspapers to explore points given in evidence to the Leveson Inquiry suggesting that the UK Press Card could have a role to play in supporting more effective self-regulation.

No payment has been made for this commission. Associated Newspapers have offered a donation to a charity supported by the author and repaid the author's expenses.

This draft takes accounts of comments from members of the UK Press Card Authority, staff at Associated Newspapers, and the Board and Director of The Society of Editors.

[Ends]