CIISA
The Creative Industries
Independent Standards Authority

Dame Caroline Dinenage MP
Chair, Culture, Media and Sport Select Committee
House of Commons
London
SW1A 0AA

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Dear Dame Caroline,

Further information regarding CIISA for the Culture, Media and Sport Committee

Thank you again for allowing myself, CIISA Board Chair Baroness Kennedy, Ruth Wilson, and Rebecca Ferguson the opportunity to meet with the Committee on 11th February to discuss the current realities of working in the creative industries, CIISA's progress in tackling these issues, and what further needs to be done to embed safe and inclusive workplaces across the sector.

We discussed the progress we have made to make CIISA a reality, alongside some of the ongoing challenges we face. I wanted to follow up with further details as the Committee kindly invited me to do.

Long-term, sustainable funding for CIISA is vital
The creative industries represent one of the UK's most prolific success stories, contributing £126bn to the UK economy and creating over 2 million jobs over the last decade. Yet the reality is that – behind the scenes – there is a prevalence of harmful workplace behaviours where bullying, harassment and discrimination thrives.

Our creative industries enjoy a global reputation for great art delivered to the highest standards but, as scandals in the sector accumulate, the risk of serious reputational damage to the sector becomes undeniable.

The UK has the opportunity to lead the way in embedding cultural change and better workplaces for our amazing creative industry workforce that will continue to drive growth, but real action needs to be taken. CIISA offers the practical solution that leaders, individuals and organisations across the sector have asked for, and now is the time for that to be backed with real, long-term financial commitments.

<u>Voluntary funding models do not provide long-term security</u>
Despite 91% of creative industry workers endorsing the urgent need for CIISA, a funding model based on voluntary contributions from organisations (many of whom will come under CIISA's remit) cannot provide the long-term funding security that CIISA needs.

We are supported by certain responsible organisations who are committed to CIISA for the long term, but this is not universal. Despite seeing public displays of goodwill from other organisations across the sectors, obtaining suitable funding is taking much longer than expected.

Securing the future of CIISA on short-term goodwill alone is precarious and unsustainable. Warm words must be translated into long-term financial commitments, not delays and one-year offers. I will write to the Committee with a full funding update in April 2025, when our funding round for the 2024-25 business year is complete.

Whilst the current model has helped CIISA to evolve from an idea to a defined solution, it is rapidly becoming unfit for purpose for multiple reasons:

- An 'opt-in' voluntary model means an organisation (or a group of organisations) can either choose not to fund or stop funding CIISA at any time with limited or no consequences. This will significantly impact on CIISA's ability to commit to longer-term plans.
- Organisations could potentially withdraw (or reduce) funding if they disagree with any decision or recommendation CIISA makes, seriously damaging CIISA's independence and effectiveness.
- Others may ask CIISA for specific assurances as part of their funding commitment. This too can seriously impact CIISA's independence.
- The current 'banding' system is unlikely to meet CIISA's ongoing growth needs (including annual uplifts based on inflationary factors) as we embed our services. It is likely CIISA will need to grow to meet demand, particularly if it is to cover all of the creative industry sectors in time.
- The time and resources needed for CIISA to convince organisations to fund is significant, in part due to the creative industries being made up of so many small companies and micro businesses. This is diverting valuable resources away from CIISA's main aims.

If no action is taken to support a new funding approach, there is a real risk that CIISA will never become fully operational. To see CIISA not being able to meet its potential will have significant implications for the creative sector's image. It will mean a clear industry need will remain unmet, and harmful behaviour will continue to thrive, putting creative industry workers – and the sector's reputational credibility - at risk.

<u>Our proposals for sustainable funding</u>

We believe it is right for the creative industries to continue to fund CIISA and that a mandatory funding mechanism is the most appropriate route to CIISA's long-term future. This can be achieved through the UK Government exploring two options:

- **A mandatory levy for CIISA** for all creative industry organisations. This would replicate a similar principle seen in the recently proposed Gambling levy. By introducing an industry-wide levy, individual contributions can be lower whilst guaranteeing suitable, ringfenced and consistent funding to prevent and tackle poor behaviours.

- **Contribution to CIISA becomes mandatory for all in receipt of Creative Sector Tax Relief.** Any beneficiary of one of the existing Creative Sector Tax Reliefs is mandated to contribute to CIISA an amount equal to a small percentage (less than 1%) of the relief they receive. Unlike other territories, there are currently no conditions linked to such tax relief eligibility that focus on tackling these structural fault-lines seen in the creative industries that has a significant impact on worker retention and growth.

We continue to explore these options with the Department for Culture, Media and Sport (DCMS), and I would welcome the Committee's views on how we can secure a sustainable future for CIISA.

Meeting other challenges to CIISA's work

We would like to make the Committee aware of other factors that have the potential to prevent or inhibit CIISA from being able to carry out its agreed objectives.

<u>Non-Disclosure Agreements and Confidentiality Clauses</u>

We fully support the tireless work of organisations such as Can't Buy My Silence, who have outlined the prevalent misuse of Non-Disclosure Agreements (NDAs) within the creative industries that prevent victims from speaking out about their experience of significantly poor behaviour within the workplace.

This is also seen in the use of 'pre-emptive' confidentiality clauses in employment contracts – effectively preventing people from speaking up before they have even begun work. We hear too often that it is difficult (if not impossible) for people to object to such clauses, given the power imbalances that exist: if you do not agree to them, you do not get the work.

It is probable NDAs and confidentiality clauses will prevent people reporting to CIISA, impacting on our ability to carry out our legitimate interests. Such clauses should not be used to silence people from reporting potentially criminal or unlawful behaviour, or to cover up inappropriate behaviour or misconduct, especially if there is a clear risk of it happening again to somebody else.

In addition, the fear of victimisation in the creative industries (that people will be punished for speaking up by losing their job or not receiving any further work) is commonplace. People often do not feel safe to raise their wider concerns with those they work with. CIISA has a key role to play by offering creative industry workers a safe, confidential, third-party route to report a concern, so CIISA can use their insight to hold the creative industries to account.

That is why CIISA has applied to the Department for Business and Trade (DBT) to become a 'Prescribed Person'[1] to provide additional protections for creative industry workers to raise whistleblowing concerns to CIISA under the Public Interest Disclosure Act 1998.

By becoming a Prescribed Person, CIISA will strengthen its objective to become a designated independent safe space for creative industry workers to report relevant poor workplace behaviours that are covered by CIISA's Standards. Becoming a Prescribed Person provides certain legal protections to relevant 'protected disclosures' that will encourage more reporting and ensure CIISA is well placed to act on the information that has been disclosed.

Our application to become a Prescribed Person is currently with the DBT and we continue to explore this route with them and DCMS.

CIISA's Services and Data Protection

We will ensure the design of our services comply with all relevant legal duties, with UK General Data Protection Regulations (GDPR) at the forefront of that.

CIISA will comply with all relevant data protection principles aligned to our purpose and objectives. This also applies to a data subject's rights as given within GDPR, but we recognise that a number of those rights will likely impact on how CIISA can carry out its work effectively.

Confidentiality is critical, and fear of victimisation is a core concern for creative industry workers. If CIISA is to be a trusted service, we must ensure people feel safe to report concerns to us without fear of being identified and victimised. This also applies to those who are subject to a reported concern.

CIISA's ability to monitor concerns about behaviours (and what is being done to tackle those), alongside ensuring that people trust CIISA as a confidential, safe space to speak up without fear, will need to be balanced with a number of core data subject rights. This is important, although it may restrict how CIISA can use personal data effectively in pursuit of the legitimate interests the creative industries are asking us to achieve.

In particular, an individual has the right to object to CIISA processing their personal data (or restrict its use), alongside the right to be forgotten. This could limit CIISA in being able to monitor and act on patterns of behaviour and how we can investigate and hold people accountable through an independent, evidence-based process.

Potential statutory exemptions for CIISA regarding Data Protection

With this in mind, we would like to explore whether CIISA can obtain statutory recognition for its functions for the purposes of obtaining limited exemptions to

[1] 'section 43F of Employment Rights Act 1996

enforcement of certain data subject rights (under Schedule 2 of the Data Protection Act) on the basis that enforcement would '*be likely to prejudice the proper discharge of the [regulatory] function*'.

If CIISA were to be granted limited exemptions, we would continue to place emphasis on upholding data protection principles to ensure everybody's information is processed properly, accurately, securely, and fairly. We would always balance these exemptions against ensuring that people do not abuse CIISA' process via malicious or inaccurate reporting.

Conclusions

I hope this detail is of use to the Committee to expand on some of the core challenges for CIISA at this time. I look forward to discussing CIISA's progress with the Committee in the near future.

Yours sincerely,

Jen Smith

CIISA Chief Executive