

Press Recognition Panel—written evidence (FOJ0037)

Communications and Digital Committee inquiry on the future of journalism

Introduction

1. The Press Recognition Panel (PRP) welcomes the opportunity to respond to the Communications and Digital Committee's inquiry on the future of journalism.
2. A sustainable and professional news publishing industry requires a system of independent self-regulation that protects both the public and the industry. The PRP is a vital part of that system and we support high-quality journalism.
3. The PRP was created by a Royal Charter almost eight years ago to independently oversee press regulation in the UK, giving effect to the conclusions of the Leveson Inquiry (2011-2012) into the culture, practices and ethics of the press. The inquiry was established following widespread concern about unlawful behaviour by some sections of the media, including hacking the phones of ordinary members of the public.
4. In his independent report, Lord Justice Leveson had proposed a genuinely independent and effective system of self-regulation with politics playing no part in it. The Royal Charter gives the PRP a unique and unprecedented independence from Government, politicians, the press, news publishers and others.
5. The role of the PRP is to assess whether press regulators meet the 29 recognition criteria in the Royal Charter. Amongst other things, the criteria ensure a regulator is truly independent, well-funded, and has systems in place to protect the public. If the PRP is satisfied that a regulator meets the criteria, the PRP will recognise it. If a regulator does not meet all 29 criteria, then the PRP will not recognise it.
6. Applying to be independently assessed by the PRP is voluntary. The PRP has independently assessed IMPRESS as meeting the Royal Charter recognition criteria. IPSO has not applied to be independently assessed by the PRP and it has stated publicly that it does not intend to apply.

News publishers

7. It is important that there is a common understanding of key terms used in relation to 'the press', 'news publishers', 'journalists' and 'editors'.
8. The Royal Charter sits alongside the Crime and Courts Act 2013 to provide a legal framework (the recognition system) for the regulation of news publishers in England and Wales. Section 41 of the Act sets out a clear definition of the news publishers concerned, and it terms them 'relevant publishers'.
9. '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.

10. Further:

"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."*

11. Also:

"(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)."

12. 'News-related material' also has a specific definition under the Act. It 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.*

13. When we refer to the "press", we include the range of written news publishers that operate online and in print, and that reach local, national and global audiences. As we explain later, it also includes social media platforms who publish news and who an increasing number of commentators agree should be subject to a regulatory framework.

14. The Royal Charter criteria apply to news publishers operating in print and online.

Increasing public confidence in new publishers

15. A key Leveson recommendation was that ordinary members of the public needed affordable access to justice if they think they have been legally wronged by a news publisher – for example in civil cases of libel, slander breach of confidence, misuse of private information, malicious falsehood or harassment. The Charter sets out minimum standards for such a system.

16. This is needed because ordinary members of the public cannot currently afford the high legal costs usually associated with action in the courts. Arbitration by a Charter-compliant scheme would secure proper access to legal redress for all.

17. In order to protect publishers from dealing with vexatious or frivolous challenges, the Royal Charter requires an arbitration scheme to have a filter system to ensure that a claimant has an arguable case before it can be taken forward.

18. Providing low-cost access to justice through an arbitration scheme that has been independently assessed as meeting the Royal Charter criteria will secure the public confidence and contribute to the security of the industry.

Recognising IMPRESS

19. In January 2016, IMPRESS applied to independently assessed by us against the criteria.
20. We carried out a robust assessment and in October 2016, we recognised IMPRESS as an approved regulator because it met all 29 recognition criteria.
21. IMPRESS is subject to our processes for ad hoc and cyclical reviews, which were devised following public consultation.

The current situation

22. Several news publishers remain outside the recognition system. Although IMPRESS' numbers are growing, some publishers have chosen to join IPSO, who do not intend to apply to be independently assessed by the PRP. No one has carried out an independent assessment of IPSO's ability to protect the public and maintain standards.
23. Many news publishers are not regulated and have chosen not to belong to IMPRESS or IPSO.
24. In relation to some or all of their news-related activities, some social media platforms perform as 'relevant publishers'. They do so when they publish news or current affairs information. They perform the role of news editors including when they "fact-check" (or similar) content and decide what to publish, amend or remove from their platforms.
25. Social media news publishes are not currently regulated.
26. The Government is currently considering how social media should be regulated. For these platforms, a regulatory framework already exists in the form of the recognition system, of which the Royal Charter and the PRP are part. Under this system, social media news publishers can join or form an independent self-regulator. That regulator can apply to be independently assessed by the PRP to confirm that it protects the public and upholds freedom of speech.
27. The Government should not overburden news publishers, journalists and social media platforms by creating a new regulatory system, since an existing system already exists. Nor should they operate within a system different to that which applies to other news publishers (including the traditional 'press').
28. Over the last five years, the PRP has demonstrated a commitment to an independent system of self-regulation and shown that the recognition system leads to an increase in standards.

Incentivising the system

29. Leveson anticipated that incentives would be required to encourage news publishers to form or sign up to approved regulators. These incentives are provided by section 40 of the Crime and Courts Act 2013 in England and Wales. The legislation has not yet been commenced, and disappointingly, the Government has announced that it plans to ask Parliament to repeal it.

Protecting journalists and the news publishing industry

30. Section 40 would give financial protections to news publishers who are members of an approved regulator. This is because anyone wanting to bring legal action against those publishers could raise the issue through arbitration and avoid a costly court case.
31. If a claimant still chose to pursue the matter through the courts, those news publishers would be protected from paying any legal costs. Section 40 supports investigative journalism and removes the chilling effect brought about from the threat of legal action that publishers often face.
32. If fully implemented, the new system of regulation would protect news publishers and journalists and it would support freedom of speech.
33. Section 40 should be commenced immediately. If Parliament decides to repeal section 40, then Parliament must consider other forms of regulation and implement a system that protects the public and promotes freedom of the press.

Public concerns about the media standards

34. In March 2020, the PRP published a report on the recognition system (Annex A). The report is informed by views from stakeholders, but the conclusions that it reaches are entirely those of the independent PRP Board.
35. Our report explains that the concerns about the ethics and behaviour of the press that led to the Leveson Inquiry being established have not gone away. In recent months, a number of celebrities and high-profile individuals, including England cricketer Ben Stokes and the Duke and Duchess of Sussex, have initiated legal action against UK news publishers.
36. In February 2020, following the tragic death of TV presenter Caroline Flack, a petition calling for a change to press regulation accumulated more than half a million signatures. The public is demanding effective and transparent regulation of the press.
37. Hacked Off, who campaign for a free and accountable press, have published reports showing how ordinary people have also been cruelly mistreated by the press. As we saw during the Leveson inquiry, the general public face harm from press intrusion and illegality, not just the celebrities and high-profile people.
38. Lessons have not been learned from the past and urgent action is needed to ensure people who are wronged get access to justice. Currently only the rich can afford to take legal action against the press. Ordinary people do not have means to seek redress through the courts.
39. In this era of fake news and misinformation, the Covid-19 crisis brings into sharp focus the need to ensure there are clear standards for news reporting and affordable access to justice for everyone, if they are harmed by the press and news publishers. The system of regulation that was intended following the Leveson Inquiry would provide this.