PRESS RECOGNITIONAL PANEL

Minutes of the meeting of the Board with the Media Standards Trust held on 9 March 2015 at 107-111 Fleet Street, London EC4A 2AB

Present: Dr David Wolfe QC (Chair of the Panel), Emma Gilpin-Jacobs and Carolyn Regan

Visitors: Sir David Bell, Chair, Media Standards Trust (until paragraph 16)
Dr Martin Moore, Founding Director, Media Standards Trust

In attendance: Susie Uppal (Executive Director), Holly Perry (Interim Governance Manager) (taking the note)

Welcome and introductions

1. The Chair welcomed Sir David Bell and Dr Martin Moore to the meeting.

2. Following introductions, the Chair set out the planned format for the meeting, which was expected to last around an hour. It was hoped that this would allow sufficient time for discussion, but he invited the Media Standards Trust (MST) to send any further thoughts in writing after the meeting. DB explained that he would need to leave part way through the meeting.

3. In terms of timescales, the Panel would shortly start preparing documentation setting out proposals for how it intended to go about the task of receiving and considering applications for recognition. The Panel then expected (later in the spring) to consult widely on those proposals before publishing them in final form later in the summer of 2015.

4. In addition to any points the visitors wished to raise, the Chair emphasised that the Panel would very much welcome comments – as part of the discussions, or in writing after the meeting – on the following points[1]:
   - the **general approach** the Panel should adopt to the recognition criteria and process;
   - how the Panel should approach the areas where the criteria for recognition were **least specific** (for example: public interest, appropriate internal governance processes);
   - how the Panel should give effect to its duty under paragraph 1 of Schedule 2 of the Charter to apply to the criteria concepts of: effectiveness, fairness and objectivity of standards; independence and transparency of

[1] The Panel wrote to the Media Standards Trust setting out the areas for discussion ahead of the meeting; details of the points covered in discussions with all stakeholders are published on the Panel's website: http://www.pressrecognitionpanel.org.uk/documents/Letter%20to%20attendees.pdf

enforcement and compliance, credible powers; and remedies, reliable funding and effective accountability;

- what **evidence** the Panel should require in support of applications;
- any relevant examples of **best practice** or other learning, including in those areas, of which you are aware;
- on any particular **dangers**, including in any of those areas that visitors' think the Panel should be aware of;
- how best the Panel should **seek the views of the public** and other interested persons on our draft proposals;
- whether recognition applications might need to include, or could be said to include, information which was or might be **confidential**; and if so, how the Panel should respond to that; and
- whether the Panel should seek and take into account **public comment** on recognition applications which we receive and, if so, how best the Panel should go about doing that.

5. The aim of the meeting was to provide a forum for free and frank exchange of views. The meetings was being held in private, and a note of the key points discussed would be agreed by all participants for publication on the Panel's website.

Discussions

Timescales

6. MM asked why 3 November 2015 was a critical date. DW responded that this represented a year after the Panel's inception, and was the point at which exemplary damage provisions of the Crime and Courts Act would come into force. The Panel could in theory start accepting applications for recognition at any stage, but wanted to be ready to so no later than 3 November 2015. MM added that while the reasons for careful timing were understood, the Panel needed to understand that a significant amount of time had already lapsed since publication of the Leveson report, and the sooner the Panel could be open for business the better. DW responded that the Panel did not want to slow down the process.

7. MM added that the timing of the Panel's first annual recognition report (to be published on the first anniversary of the date the Panel was open for receipt of applications) was in his view critical, to ensure that it attracted sufficiently due attention. Obvious dates needed to be avoided, such as summer recess, party conference season etc. so that Parliament had an opportunity to respond.

8. In relation to public consultation, MM agreed that this made sense and that a maximum timeframe for receipt of comments was appropriate (e.g. 28 days).

Leveson and the Royal Charter

9. DB stated that there was a need to distinguish sharply between Leveson and the arrangements that had been put in place since, including the Royal Charter. Leveson had not envisaged a Royal Charter and therefore had not commented on such arrangement. In all likelihood, a Royal Charter would have been ruled out. However, the MST respected the fact that it had been agreed (by all three of the main political parties) and was happy to explore with the Panel how it might operate. DW explained that from the Panel's perspective, it took what the Royal Charter said as a given – it set out the Panel's remit and scope, and gave the Panel ultra-independence. There were, however, areas in which the Charter criteria were not clear and/or required interpretation, and the Panel would focus on these.

10. DB commented that a number of the questions that the Panel had suggested for exploration were covered in the Leveson report – however, not so much in the summary of the report. The Panel would be well advised to read the main body of the report in some detail.

Engagement of the industry

11. DB asserted that the main elements of the industry i.e. the national newspapers were highly unlikely to engage, on the basis that they regarded the Panel as an extension of the state and an attempt by the state to control the media. DW responded that the Panel would vigorously rebut this proposition – though there were challenges in relation to how best to do this, given the usual channels of communication were shut off.

12. DW invited MST to make suggestions as to whom the Panel could approach. DB suggested that the Panel ask the key players to explain themselves, including in what ways they thought the Panel was compromised. The Guardian, for example, had stated explicitly that it had concerns about the Panel, and he thought that the Panel ought to invite Alan Rusbridger to explain why (particularly as he was leaving the role of Editor in Chief of the Guardian). In addition, the Independent and Financial Times should be invited to discuss their concerns with the Panel.

IPSO

13. DW asked whether the Panel should be reassured by the Chair of IPSO's comments about re-negotiation of the contract with the Regulatory Funding

Committee (RFC). MM responded that while Sir Alan Moses' commitment was undoubted, the structures of IPSO were hugely problematic. The process would involve votes, qualified majorities and a real concern about the domination by the large industry players. In effect, if IPSO wished to re-negotiate the contract with the RFC, it would need to undertake negotiations with each of the individual publishers who have signed contracts. The process would be very long winded, and it seemed that there was no clear appetite within the industry to make the changes that Sir Alan wished to make. DB added that the members of the Editorial Code Committee had not progressed any of the changes to the Code recommended by Leveson.

Recognition process and arbitration

14. DW commented that the Royal Charter envisaged more than one regulator. While the Panel did not have a view about the likely or preferred number of regulators, the Panel would design its processes to accommodate breadth in size and complexity. MM stated that there were a number of myths being circulated about the recognition process (for example, that the cost of arbitration arrangements would be significant). DW explained that the Panel wished to preclude and discourage these sorts of myths by designing a fair, open and fit for purpose process.

15. In relation to arbitration, MM asked whether it was likely that conditional fee agreements (CFAs) would be cut off. CFAs were widely used by the public and small publishers. If CFAs were removed, this would create an exposure in relation to litigation. The intention was for arbitration arrangements to fill the gap, however DB added that the majority of industry did not want arbitration arrangements to be established. The expense of the current arrangements could suit a publisher and create an imbalance of power. For this reason, some papers might resist an attempt to generate a cheap or free arbitration system.

Concluding views: David Bell

16. DB needed to leave the meeting and proposed the following thoughts prior to his departure:
    - the Editorial Code was in fact widely regarded as a positive tool, but that the practical application of it was not always helpful;
    - prior to phone-hacking, MST has wanted to find a way for the PCC to be workable. While it wasn't a regulator, it was a good complaints handler;
    - Leveson had proposed a number of models that were workable, including the Advertising Standards Agency (which was funded by the industry, but which had workable funding and governance

arrangements in place). The Panel were advised to review the ASA model, as well as the other models proposed by Leveson.

Leveson and models of regulation

17. MM advised that the Panel needed to review in detail the four volumes of the Leveson report, and in particular his critique of previous systems. For example, in relation to investigations, Leveson found it difficult to point to a credible process, but did set out what he felt an effective process would look like. DW agreed that the Panel needed to look over Leveson in detail, however the Panel would need to take care not to include elements in the recognition process that were not expressly referenced in the 23 recognition criteria set out in the Royal Charter. There was latitude to consider the spirit of Leveson through supplementing the application process with guidance from Schedule 2 of the Royal Charter.

18. In relation to intervention, MM noted that the Panel could only do this where there was a failure to comply with the criteria.

Evidence thresholds

19. MM set out that in evaluating applications and assessing the criteria, the emphasis needed to be on 'entry level' criteria i.e. meeting a minimum standard. Guidance might point to best practice, and how to go beyond minimum standards but these assessments would always be subjective. DW responded that there was no room for discretion with the 23 recognition criteria set out in the Royal Charter, however the Panel would consider a 'sufficient' assessment threshold as acceptable.

20. MM stated that Sir Alan Moses would struggle to get publications to provide detailed data to IPSO on formal complaints, let alone informal complaints.

Levy arrangements

21. MM advised that the Panel needed to make the levy arrangements as simple as possible, for example a percentage of profits. The current arrangements were opaque. A report by MST dating back to 2009 had reviewed a number of models, including in the financial and legal sectors. Financial regulators tended to have workable approaches in relation to investigations, while legal regulators were better at audit. EGJ asked MST for a copy of the report.

Consultation

22. DW asked MM for any comments in relation to the consultation process and the mechanics of consulting, including thoughts on who the Panel should see. MM responded that the Panel had an obligation to be transparent, and that including a pre-application stage with lots of dialogue between the Panel and the regulator in advance of a formal application would be important. It would be important, too, to formulate ways in which individuals could speak in confidence with the Panel. There were likely to be cases where individuals may not want to 'break rank' with an industry line, and therefore confidential conversations needed to be allowed for.

23. EGJ explained that the Panel was in the process of building a fuller stakeholder list, as it was a priority for the Panel to engage and inform individuals directly via email and mailshot. MM responded that there were around 400 to 500 'hyper local' new sites across the UK, with no industry body. Financially, these sites were barely viable and would not have the capacity to engage with the Panel on the sorts of issues being considered.

Pitfalls

24. MM argued that there was a need to ensure that undue influence from industry was avoided in all regulators that emerged, and that funding arrangements were the biggest threat to this. There needed to be a minimum level of independence and separation, and the Panel would need to define this (which would be a very difficult task).

25. MM said that the Editors Code was sacrosanct to the industry, and resistance to being told what to do with the Code would be very strong indeed.

Taking into account public comment on recognition applications

26. MM advised that the Panel allow around 28 days for comment, in order to allow for the helpful insight of stakeholders.

27. DW explained that the Panel was minded to consider pre-application paperwork in confidence and not publish any materials at this stage. In relation to the main application, any elements relating to finances were likely to be held confidentially. There might be an argument to publish the mechanisms, or the percentages involved rather than exact figures – MM responded that there was a need to give the public confidence that there were adequate independent mechanisms in place to allocated funding, with no need to publish actual figures. The key evidence required was that which demonstrated that the Panel could have confidence in relation to the separation of regulation and financial arrangements. MM had undertaken considerable research to track finances, through review of various public

documents including annual reports, and it was impossible to do – it was not clear why IPSO and the PCC before it were so opaque in relation to funding.

28. MM considered that in relation to holding information in confidence, the onus would be on the regulator to explain why this was necessary and what harm would be incurred if information was disclosed.

Concluding comments

29. MM advised that it would be very helpful for the Panel to agree a definition of 'relevant publisher' as soon as possible, in order that individuals and publications could decide whether or not they could seek protection via recognition with the Panel. DW noted that it could be necessary to design a process that allowed for flexibility in the future and for regulators who might come in different shapes and forms. MM added that the Panel ought to engage new media such as Twitter, Facebook and Google – while these organisations were likely to regard themselves as 'platforms' rather than 'publishers', they did have a version of editorial control (albeit algorithmic rather than human).

Additional information

30. The Chair concluded the session by inviting MST to submit additional information as referred to in the discussions. The Panel would share its contacts database, for comment and additional thoughts from MST.

Closing comments

31. The Chair thanked MST for attending and for speaking openly and frankly about issues that were of concern to them.