

- Surname: **Heawood**
- Forename(s): **Jonathan**
- Name of the organisation (if applicable): **The IMPRESS Project**
- Your email address:
- :
- : **Please feel free to publish all or part of this response.**
- As an individual (please indicate):
- :
- For an organisation (please indicate): **Regulator**
- :
- Question 1: Do you agree with the principle of using indicators and examples of evidence as guidance to applicants and the PRP in determining applications?: **Yes**
- Give reasons if you wish.: **After a seventeen-month inquiry into the culture, practices and ethics of the press, Lord Justice Leveson concluded that the well-recorded failings in press self-regulation were not necessarily the fault of any individuals, but a function of a system of press regulation which was accountable only to news publishers. At the same time, he recognised that any form of state regulation of the press was anathema to the press and the public and in breach of the UK's obligations under the European Convention on Human Rights (ECHR). Therefore, he recommended that any future regulator, or regulators, for the press should be set up by or on behalf of the press but held accountable to certain minimal standards by an independent body. In return for accepting this degree of independent oversight, a self-regulatory body would be able to offer news publishers legal incentives to subscribe to and comply with it, in the form of protections against costs-shifting and exemplary damages in libel and privacy actions. This framework resembles the Irish model of incentivised self-regulation to which many British news publishers subscribe. In fact, the post-Leveson model in the UK is less politicised than the Irish model, which is overseen directly by the Justice Minister. Moreover, the incentives for news publishers to subscribe to and comply with the decisions of an independently accountable regulator are more attractive than the incentives offered by the Irish Press Council. The role of the Press Recognition Panel (PRP) is solely to confirm whether a self-regulatory body for the press (a regulator) complies with the Leveson recommendations, as distilled in the Royal Charter on Self-Regulation of the Press (the Charter). In order to fulfil this role, the PRP is asked to satisfy itself that a regulator meets the criteria in Schedule 3 of the Charter, in light of 'the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability, as articulated in the Leveson Report, Part K, Chapter 7, Section 4.' It can do this through an initial review of a new and/or previously unrecognised regulator, or through an ad hoc or cyclical review of an established regulator. In other words, the PRP is responsible for confirming, through a formal review process, whether a regulator meets both the letter and the spirit of the Charter. The PRP is therefore not a press regulator, but a regulator of press regulators. Its scope is tightly defined by the Charter. It has no mandate, for instance, to conduct informal reviews of a self-regulatory body, or to conduct any reviews whatsoever of the internal governance arrangements of a news publisher. The PRP must strike a balance if it is to perform its role properly. If the PRP is too passive (for instance, by granting recognition to a regulator without sufficient scrutiny), it cannot give the public confidence that the regulator truly complies with the Charter. If, on the other hand, the PRP is too active (for instance, by issuing prescriptive guidance on the criteria regarding the regulator's standards code), it may exceed its limited mandate and compromise the**

freedom of the press. For these reasons, we agree with the principle of using indicators and examples of evidence as guidance to applicants and the PRP in determining application, but we suggest that the PRP should consider the following principles when finalising this guidance.

1. Transparency The Charter criteria are written for the most part in non-technical language. Any reasonably competent group of people constituted under the Charter for the purpose of recognition should be capable of interpreting them without significant differences. The role of the PRP is not to make a subjective judgement as to whether a regulator meets the criteria, but to make an objective judgement which is likely to be shared by any reasonably competent person. Therefore, the purpose of issuing guidance is solely to make the recognition process as transparent as possible, not to tighten or relax the recognition criteria as set out in the Charter. The PRP should consider issuing guidance, in the interests of transparency, only where a criterion in the Charter is so ambiguous that reasonably competent people might reach different judgements as to whether or not a regulator satisfies that criterion.

2. Integrity Notwithstanding its operational independence from Government and Parliament, any suggestion that the PRP is exceeding its mandate has the potential to damage the independence and perceived independence of any recognised regulator from the state. This would jeopardise the post-Leveson settlement, to the detriment of the public interest in a free and fair press. Therefore, in issuing any guidance, the PRP should not exceed its constitutional mandate by introducing concepts which are at odds with those in the Charter, or de facto recognition criteria which are not present in either the Charter or the relevant section of the Leveson Report.

3. Clarity The PRP has three mechanisms to assess whether a regulator complies with the Charter criteria: an initial review; an ad hoc review; and a cyclical review. We note that the latter procedures will be the subject of future consultations and that, in time, the PRP may develop different procedures for conducting an initial review of a regulator which is new and/or previously unrecognised; and an ad hoc or cyclical review of an established regulator with a record of activity (see below, re Question 5). However, the PRP should be clear at the outset about the differences between these processes. Some forms of evidence will not be available to a new regulator but should be expected of an established regulator. A regulator might, for instance, be capable of recognition at an initial review, on the basis of its policies and procedures; but recognition might be withdrawn at an ad hoc or cyclical review if the PRP were to find that these policies and procedures were not being followed in practice. The new regulator should not be expected to provide operational evidence, but the established regulator should not retain recognition on the basis of policies and procedures alone. The PRP should distinguish in this guidance between evidence which a regulator may be expected to provide when that regulator is new and/or previously unrecognised; and evidence which an established regulator may be expected to provide when it is subject to an ad hoc or cyclical review.

- Question 2: Do you agree with the indicators and evidence we propose?: **No**
- Give reasons if you wish. For specific comments on the criteria, use the comments box on the matrix.: **We agree with the majority of indicators and evidence you propose. However, for the reasons given above, we object to some of the proposed indicators and examples of evidence. We note our concerns in the relevant boxes in the matrix, to be sent separately: 'IMPRESS Recognition Process Consultation Response.pdf'.**
- Question 3: Do you agree with our proposed approach to dealing with applications?: **Yes**
- Give reasons if you wish.: **In general, we agree with the proposed approach. However, we question the rationale for consulting publicly during an initial review on the basis of an applicant's name only (see paragraph 59 and Figure 1 of the consultation document). We believe that, in the case of an initial review, either of the following options would be preferable to a name-only consultation: a) To consult on the full application, redacted**

where necessary to protect personal or commercially-sensitive data. This would allow third parties to comment on the substance of the application and would be more likely to generate information which is of relevance and value to the PRP and the applicant. b) Not to consult at all. A third party is no better placed than the PRP to determine, from its name alone, whether a new and/or previously unrecognised regulator meets the Charter criteria. A consultation which cannot, by its nature, generate relevant or valuable information is likely to waste the time of the PRP and the applicant and may lead to dissatisfaction on the part of any respondents. In the case of an ad hoc or cyclical review of an established regulator, we would strongly recommend a consultation on the full application, redacted where necessary. When a regulator has a record of activity, a third party such as a complainant or publisher may be able to provide valuable information about the regulator's operations which would not be available in the case of a new and/or previously unrecognised regulator. If necessary, such information might be made available anonymously or in summary form to the regulator.

- Question 4: Do you agree with our proposed approach to discussions with applicants?: **No**
- Give reasons if you wish.: **This is not a competitive process. There is no constitutional reason why the PRP should not be able or willing to offer advice, without prejudice, to prospective regulators. A regulator can gain no unfair advantage from such advice, and it is in the interests of the public for regulators to satisfy the recognition criteria, so long as these are interpreted by the PRP in line with the principles outlined above.**
- Question 5: Do you agree with our approach to granting recognition?: **No**
- Give reasons if you wish.: **We question the proposal to recognise a regulator 'with checks as required' (see paragraph 63 and Figure 1). We imagine that this proposal is intended to allow start-up regulators to apply successfully for recognition. This may be in the interests of a self-regulatory body such as IMPRESS. However, there is no authority in either the Charter or the Leveson Report for the PRP to award provisional recognition. A regulator cannot be provisionally recognised for the purposes of the Crime and Courts Act. Either a regulator is recognised or it is not. Furthermore, the PRP has no mandate to conduct 'checks' outside the scope of a formal review. The promise to 'monitor' a regulator (paragraph 64) suggests a role which is beyond the mandate set out in the Charter. Whilst a monitoring or supervisory role may be within the remit of other meta-regulators, it is inappropriate in this context. The PRP's role in the field of press regulation is constitutionally sensitive and must only be carried out through the formal and transparent mechanisms provided by the Charter: initial, ad hoc and cyclical reviews. The challenge of recognising both new and established regulators is anticipated in the Royal Charter, which (in Article 4.1) gives the PRP the functions of: a) determining applications for recognition from Regulators b) reviewing whether a Regulator which has been granted recognition shall continue to be recognised c) withdrawing recognition from a Regulator where the Recognition Panel is satisfied that the Regulator ceases to be entitled to recognition The PRP should not be expected to follow an identical procedure when performing all of these functions. The process of recognising a new and/or previously unrecognised regulator will be different from the process of subjecting an established regulator to an ad hoc or cyclical review. As stated above (re Question 1), some forms of evidence will not be available to a new regulator but should be expected of an established regulator. The Charter anticipates this by requiring the PRP to conduct not only an initial review but also cyclical and, potentially, ad hoc reviews of regulators. The framework of initial, cyclical and ad hoc reviews allows the PRP to recognise a start-up regulator which satisfies the criteria and then to subject that regulator to an ad hoc review in, say, 12 or 18 months' time, if 'there are exceptional circumstances that make it necessary so to do' and 'there is a significant public interest in a review of the Regulator's recognition being undertaken' (Schedule 2, Article 8). At the point of an ad hoc or cyclical review, the PRP may expect to see evidence**

of the regulator's policies and procedures in action. This review framework therefore means that there is no need for the PRP to introduce the concept of provisional recognition and monitoring, which exceeds its mandate.

- Question 6: Do you consider that our proposals will have any impacts, either positive or negative, including on our compliance with the Public Sector Equality Duty?: **Yes**
- Give reasons if you wish.: **We trust that the PRP's work in general will have a positive impact on the interest of the public in independent and effective press regulation.**