

PRP

**INDEPENDENTLY
OVERSEEING
PRESS REGULATION**

PRESS RECOGNITION PANEL

Decision following the consultation on fee charging

August 2017

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Foreword

1. In 2015, the Press Recognition Panel (PRP) published a consultation on proposals for receiving and considering applications for recognition from press self-regulators. The responses to that consultation shaped our approach to recognising press self-regulators and we published our guidance to applicants in September 2015.
2. In February 2016, we consulted on a process for reviewing approved regulators. The responses to that consultation shaped our approach and we published our guidance in August 2016.
3. In April 2017, we consulted on our proposed scheme for charging fees to regulators in relation to the functions of recognition and cyclical review, to come into force from the third anniversary of the date upon which the Royal Charter becomes effective.
4. This document sets out our decision following that consultation. Our fee scheme is set out at the end, and it is also available on our website pressrecognitionpanel.org.uk/fee-charging-guidance.

Background

5. Following the public outcry over the behaviour and criminal activity of some sections of the press, the Leveson Report made recommendations for a new system of regulation. The Charter which followed created the PRP as part of ensuring freedom of the press whilst also protecting the interests of the public. The PRP is independent from any other body or influence, including from government and the press.
6. We do not regulate the press and we are not a regulator. We assess and review whether regulators who seek recognition meet the 29 criteria set out in the Charter. This ensures that, amongst other things, regulators are independent of the publishers they regulate, are funded to do their job, allow for any publisher to join up if they want to, and provide the public with proper opportunities to raise concerns about the conduct of a regulator's members.
7. The Charter requires the PRP to undertake cyclical reviews at set points after recognition, and the PRP may conduct ad hoc reviews, if we consider that there are exceptional circumstances and there is a significant public interest in doing so.
8. In April 2017, we launched a consultation on our proposals for charging fees to regulators applying for recognition and for conducting cyclical reviews. Article 11.4 of the Charter states that the aim of the fee scheme is to recover the PRP's full costs for determining applications for recognition and for conducting cyclical reviews. Article 11.6 states that the fees become due and payable irrespective of the success of an application or the outcome of a cyclical review.
9. The Charter states that the earliest the PRP can review the recognition of a regulator is as soon as practicable after the end of two years beginning with the date of recognition. A regulator was recognised in October 2016, so a cyclical review will take place in 2018/19.
10. This document sets out our fee scheme, shaped by responses to the consultation. You can find out more about the PRP, our Board and governance arrangements on our website: pressrecognitionpanel.org.uk.

The Consultation Process

11. Our consultation was launched on 4 April 2017 and it ran for six weeks, closing on 17 May 2017. We consulted on how and when we would charge regulators for applications for recognition and for cyclical reviews.
12. The consultation attracted a detailed response from IMPRESS (the Independent Monitor of the Press), which is on our website pressrecognitionpanel.org.uk/consultation-on-fees.
13. The respondent supported a number of our proposals, including that the proposed application fee of £300,000 should be charged when the application is made.
14. The respondent raised some questions about the PRP's proposal to charge the maximum permissible fees that apply after the fee charging scheme comes into force.
15. The consultation response has helped to shape our conclusions.

How this Document Works

16. The document is split into three sections. In the first section, we set out the consultation questions, the responses received, and our conclusions. Section two covers the steps we will take to bring the fee charging scheme into force. Finally, section three sets out the scheme we will adopt for charging regulators for applications for recognition and for cyclical reviews.

Section One – Consultation Questions, Responses, and Conclusions

We asked nine questions.

(1) Do you agree that the PRP should charge the Charter’s maximum permissible fee of £220,000¹ per year for cyclical reviews?

Summary of consultation response

There was concern that the PRP’s proposal to charge £220,000 per year for cyclical reviews, regardless of the size of the regulator or the cost to the PRP, was not compatible with the Charter’s anticipation that multiple self-regulatory bodies may emerge, or with the Better Regulation principle of proportionality.

It was also pointed out that the Charter’s provisions in relation to fees do not oblige the PRP to charge fees in the way proposed. The aim of recovering the full costs of the PRP should be pursued in an appropriate manner.

PRP analysis

There is nothing in the proposed fee charging scheme that is incompatible with having multiple regulators.

The PRP’s operating costs comprise of:

- (a) The direct cost of overseeing recognised regulators. This cost will partly be dependent on the number of recognised regulators we have.
- (b) The indirect costs of running an organisation resourced with the required expertise and facilities to comply with the provisions of the Charter from which the PRP derives its authority.

In published documents and on the website, the PRP makes a commitment to abide by principles of Better Regulation. One of the Better Regulation principles includes being proportionate. However, given that the PRP’s duties flow from the Charter, the application of other principles are secondary considerations. For example, in respect of charging fees, Article 11.3 of the Charter states that the aim of the scheme shall be for the PRP to recover its full costs in determining applications for recognition and for conducting cyclical reviews, as appropriate. This is an absolute requirement and

¹ Article 11.4 (c) of the Charter specifies an indexation formula for annually reviewing the fees, so this scheme only concerns the fee level for the first year of introduction. The indexation formula will be applied thereafter.

the Better Regulation principle of proportionality can only come into play insofar as all costs are sought to be recovered. The 'as appropriate' phrase does not signify that that PRP can recover cost only to the extent that it is appropriate to do so. Rather, it means as appropriate to either recovering costs for a cyclical review or an application for recognition.

The PRP would therefore be in breach of the Charter if it did not aim to recover its full costs and sought first to abide by the Better Regulation principle to be proportionate.

The PRP's current experience of overseeing a regulator since October 2016 leads us to the conclusion that the full permissible sum of £220,000 should be payable for the next cyclical review. Fees for subsequent cyclical reviews will be subject to the indexation formula.

PRP conclusion

The PRP will charge the Charter's maximum permissible fee of £220,000 per year (subject to annual variation according to the indexation formula) for the next cyclical review. This cyclical review will take place in 2018/19, which in accordance with paragraph 5 of Schedule 2 of the Charter, marks a period of two years since the regulator was recognised. This fee for this review is payable on 3 November 2017, which, in accordance with Article 11.4 (b) of the Charter is payable for the year prior to the next cyclical review.

(2) If you do not agree with the proposal in question 1, what do you believe the PRP's fee charging basis should be?

Summary of consultation response

The PRP was urged to consider a more proportionate approach more closely aligned with that taken by the Professional Standards Authority (PSA) and the Legal Services Board (LSB). It was suggested that as an alternative to a flat fee approach, the PRP could:

- (a) Determine the annual cost of conducting our oversight activities.
- (b) Calculate size of the news publishing sector by annual turnover.
- (c) Calculate proportion of industry by annual turnover which is currently regulated by a particular self-regulatory body.
- (d) Set a fee based on a pro rata contribution to PRP costs subject to a maximum payable of (a) the sum set out in the Charter, and (b) 10% of that regulator's annual budget.

It was argued that, if by using the above methodology, the PRP's costs exceeded its income owing to the fact of having only one regulator, the PRP could invoke Article 11.7 of the Charter and request 'further reasonable sums' from the Exchequer on the grounds that failure to commence section 40 of the Crime and Courts Act 2013 is a 'wholly unforeseen event'.

PRP analysis

Flat fee rather than charging according to characteristics of the regulator

The Charter allows the PRP discretion to set different fees for different circumstances. This could mean setting different fee levels for different sizes of regulator, for example based on income or subscriber numbers.

However, our analysis demonstrates that the size of a regulator in terms of annual turnover or membership is not a suitable proxy for the costs the PRP may incur for reviewing an approved regulator.

For example, it is clear from our published guidance on cyclical and ad hoc reviews that PRP costs will partly depend on the number of interventions the PRP makes in respect of a recognised regulator, in ensuring they continue to meet the Charter criteria, which are an ongoing obligation. This may, but need not, be linked to the number of titles the regulator regulates. If the PRP needs to continue to make assessments there will be more demands on the resources of the PRP which will have a direct impact on its operating costs.

The PRP does not consider that it is appropriate to invoke Article 11.7 of the Charter because, although the failure to commence section 40 was indeed wholly unforeseen, what had been expected was that there would be one, and possibly (but not necessarily) more, recognised regulators; and that is what has in fact happened.

The position of a first approved regulator

The PRP recognises that the PRP's discretion to set different fees for different circumstances becomes more relevant if more than one regulator gains recognition. Until then, one feature of the recognition system is that a sole approved regulator becomes liable for all the direct cost of a cyclical review as well as the indirect costs of the PRP.

Should the PRP receive further applications for recognition, economies of scale will arise and the organisation's indirect costs could be shared between participants resulting in a reduction in charges.

However, unless there were to be at least two approved regulators, the PRP would be limited in its ability to adopt a proportionate charging scheme that will take account of the differing abilities of applicants and regulators to pay.

Given the current regulatory landscape where the intended incentive for publishers to join the regulatory framework is absent and there is no certainty whether or when this situation will change, it appears academic now to consider charging according to the characteristics of the regulator.

The Legal Services Board and the Professional Standards Authority

Both the LSB and the PSA operate under statutory regulatory frameworks. As a result, they have clear and predictable fee charging bases. In respect of the LSB, they oversee nine approved regulators who in turn regulate individual legal practitioners. As of 2015 there were 142,109 solicitors, 326 alternative business structures and 15,237 barristers, all of whom are obliged by statute to be regulated. As of 2015, the sector was valued at £32 billion per annum. Therefore, year on year the LSB can predict with healthy certainty the extent of their charging base.

Having a broad, secure and stable charging base allows the LSB more flexibility to devise charging options that take account of different types and sizes of regulator and their abilities to pay.

Similarly, the PSA oversees nine regulators of health and care professionals who are obliged by the Health and Social Care Act to join the regulatory framework. So, the PSA can predict their charging base with relative precision.

By contrast, the PRP exists within a voluntary regulatory framework. Our fee charging base is much more narrow and unpredictable. This is because the PRP is

reliant on applications from regulators who are not obliged to join the framework. Regulators may also leave the recognition system if they so choose. Applications for recognition are processed sequentially on a first come first served basis and on merit, so the PRP cannot safely predict how many regulators will be part of the system of recognition in any given year. The existence of an ad hoc review process that can result in the expulsion of an underperforming regulator further enhances the instability of the PRP's charging base.

In summary, whilst the LSB and the PSA's charging bases can be described as broad and stable, the PRP charging base is narrow and unstable and therefore our enabling document (the Charter) outlines a fee charging scheme appropriate to the unique features of this regulatory oversight framework.

PRP conclusions

See conclusions in respect of question 1.

(3) Do you agree that the PRP should charge a fee of £300,000 for any future regulators that apply for recognition after the fee charging scheme is introduced, and, if the PRP's costs exceed this amount, that the PRP should charge the excess in the following one or two years (up to the Charter's annual cap of £300,000 in each year, and therefore not exceeding a total application fee of £900,000?)

Summary of consultation response

No. See in relation to question 1 (sic) 2.

PRP analysis

See analysis in relation to questions 1 and 2.

In response to the point that the level of fees under the PRP's charging scheme may inhibit applicants from coming forward, Schedule 2, paragraph 10 (b) (ii) of the Charter requires the PRP to report annually if in the opinion of the PRP, the system of regulation does not cover all significant relevant publishers. The PRP would therefore prefer that as many applicants as possible meet the recognition criteria and join the recognition system as that would enhance the prospect of covering all significant relevant publishers.

However, the integrity of system of regulation and public confidence in the system may be compromised if those applicants are not sufficiently resourced and consequently the PRP was not able to adequately assess the merits of an application or, having decided to recognise, was unable to provide effective oversight of the regulator(s).

Having assessed an application for recognition between January 2016 and October 2016, the PRP has acquired a useful insight into the time and costs involved in undertaking an application for recognition. Although in future not all applications may take as long to process, based on our current experience we consider that £300,000, subject to the annual variation according to the indexation formula set out in the Charter, is a reasonable estimate of the costs involved.

If the costs of assessing an application exceed £300,000, and given that the Charter states that the aim of the fee charging scheme is to recover full costs, it will be reasonable to recover any costs over £300,000 the following charging year(s).

PRP conclusion

The PRP considers that subject to economies of scales arising from increased participation in the recognition system and the resulting reduction in indirect costs, the PRP should charge a fee of £300,000 plus indexation to any future regulators that apply for recognition, and, if the PRP's costs for a particular application exceed this amount, that the PRP should charge the excess in the following one or two years

(up to the Charter's annual cap of £300,000 in each year) and therefore not exceeding a total application fee of £900,000.

Conversely, should the PRP's costs prove lower than the fee payable for any application, the PRP will consider refunding the applicant the appropriate amount and will review its charging scheme in the light of that experience.

(4) If you do not agree with the proposed basis of charging as set out in question 3, please explain your alternative proposal?

Summary of consultation response

See above in relation to question 1.

PRP analysis

See our analysis in relation to questions 1, 2 and 3.

PRP conclusion

See our conclusion in relation to question 3.

(5) Do you agree that annual fees for cyclical review should be levied at the start of the PRP's fee charging year, i.e. 3 November?

Summary of consultation response

Yes, with caveat in relation to answer to question 6.

PRP analysis

Given the fee is an annual fee, it is in the interest of simplicity that the fee should be levied at the start of the PRP's charging year.

PRP conclusion

The annual fee for the cyclical review will be levied on 3 November 2017.

(6) If you do not agree, when do you believe the fees should be levied?

Summary of consultation response

A regulator is unlikely to receive all income all at once. While fees should be levied from the start of the PRP's fee charging year, they should be payable on a quarterly basis, with four equal instalments invoiced on 3 November, 3 February, 3 May and 3 August.

PRP analysis

Some respondents to the [call for information on the IMPRESS application for recognition](#) commented that the independence of the PRP would be compromised by the PRP having to rely on the fees of a single regulator.

The PRP did not agree with these claims, but this perception of flawed independence would have more currency if the PRP became dependent on a single regulator to meet its costs at four separate times of the year and concurrent with the PRP having to make decisions regarding the regulator's continued compliance with the recognition criteria.

Charging at four separate times of the year would also prove more onerous administratively and operationally.

PRP conclusion

In respect of cyclical reviews, the fees should be levied a year prior to the start of the next cyclical review and should be payable in full at the due date.

(7) Do you agree that the application fee of £300,000 should be charged when the application is made?

Summary of consultation response

Yes, with caveat in relation to response to question 9.

PRP analysis

The PRP considers that it would be more simple and transparent for the fee to be levied when the application is made. We note that our guidance on applications allows for queries to be made of the PRP in advance of the submission of a formal application, meaning that the PRP may incur costs prior to the submission. This will form part of the indirect costs mentioned above in respect of applications for recognition.

PRP conclusion

See conclusion in respect of question 9.

(8) In the event that the cost of assessing an application exceeds the initial application charge of £300,000, do you agree that the excess should be levied at the start of the next one or two fee charging years, i.e. 3 November.

Summary of consultation response

Yes, with caveat in respect of response to question 9.

PRP analysis

It is in the interest of the public that the PRP is adequately funded to carry out its functions. Article 11.4 (a) of the Charter provides a mechanism that enables the PRP to recover its costs while reducing the financial burden on applicants by not obliging them to pay all charges within one charging year. In effect, there is a cap on the amount an applicant must pay in one charging year.

Should the cost of an application exceed the cap in any one charging year, the PRP considers it fair and prudent that it should use the mechanism provided in the Charter to recoup its costs in the following year so that the ultimately the PRP's full costs are recovered.

In respect of charging quarterly, see PRP analysis in respect of question 6.

PRP conclusion

See conclusion in respect of question 9

(9) If you do not agree with the proposed timings in questions 7 and 8, when do you believe these fees should be levied?

Summary of consultation response

For the reasons set out in relation to question 6, the application fee should be payable on a quarterly basis

Subject to (a) the maximum application fee allowed by the Charter of £900,000; and (b) the points set out above in relation to question 3, any excess should be payable on a quarterly basis, i.e. in four equal instalments, on the first anniversary of the date of application and at three-monthly intervals thereafter.

PRP analysis

See PRP analysis in respect of questions 6 and 8

PRP conclusion

The application fee of £300,000 (plus any additional sum arising from application of the applicable indexation formula) should be charged when the application is made. If the cost of assessing an application exceeds the initial application charge, the excess should be levied at the start of the next one or two fee charging years, i.e. on 3 November of subsequent years.

Section Two - Next Steps

Article 11.6 of the Charter obliges the PRP to design the fee charging scheme so that fees are enforceable as a matter of private contract law. The PRP therefore intends to:

- (a) Issue contracts that reflect the fee charging scheme below, in advance of implementation in November 2017.
- (b) Establish banking/invoicing arrangements to give effect to the fee charging scheme.

Section Three – The Fee Charging Scheme

The requirement for a fee charging scheme

Article 11 of the Charter requires the PRP to prepare, consult publicly upon, and publish a scheme for charging fees to regulators in relation to the functions of recognition and cyclical review, to come into force from the third anniversary of the date upon which the Charter becomes effective. That is, November 2017.

Article 11.5 states that fee sums specified in the Charter are subject to the indexation formula $(CPIA/CPIB) \times 100$. The initial amounts payable in respect of applications for recognition and for cyclical reviews, will vary annually according to the indexation formula.

Aim of the fee charging scheme

Article 11.3 of the Charter states that the aim of the charging scheme is to recover the PRP's full costs of determining applications for recognition and for conducting cyclical reviews.

The fees become due and payable irrespective of the success of an application or the outcome of a cyclical review.

PRP costs

Direct costs

The PRP will incur direct costs for assessing applications for recognition and when reviewing the recognition of approved regulators. This will include the costs of acquiring, at market rates, suitably experienced executive staff, as well as the cost of convening relevant Board meetings to assess applications and deal with issues relating to the continuing compliance of regulators.

Indirect costs

The PRP derives its authority from the Charter. To assess applications for recognition legitimately and to review the ongoing compliance of approved regulators, the PRP must comply with its Charter obligations. These include responsibilities for reporting and for managing assets. Fulfilling these obligations can be described as indirect costs relating to the functions of recognising and reviewing approved regulators.

Other indirect costs arise due to our published guidance on applications and on cyclical and ad hoc reviews. For example, in our guidance on cyclical and ad hoc reviews, we state that to ensure the effective conduct of cyclical reviews and to help inform when an ad hoc review might be appropriate, the PRP must maintain some

element of proportionate active awareness of the industry and of recognised regulators.

Other than in the exceptional circumstances set out in Article 11.7 of the Charter,² the PRP's only means of generating future income is charging regulators fees. These fees must therefore aim to cover the PRP's full costs, not just the direct costs of determining applications for recognition and for conducting cyclical reviews.

Restricting the PRP's income to fees charged to regulators³ is a fundamental principle which helps ensure the PRP maintains its independence from government.

This also means that PRP's income is limited to the fee limits set by the Charter, which effectively sets a financial limit on the PRP's budget once it achieves business as usual as an oversight body.

Fees for cyclical reviews (for a sole regulator)

Article 11.4(b) allows the PRP to charge fees relating to cyclical reviews (and implicitly, the ongoing responsibilities as an oversight body), for each year a regulator remains recognised. The Charter sets an initial maximum allowable fee of £220,000 per annum subject to annual variation by an indexation formula⁴ but allows the PRP to "determine to set different fees for different circumstances". As explained above, we are currently not proposing a scheme which differentiates in this way.

The PRP must aim, as far as possible, to recover its costs from fees. The PRP currently has oversight of one recognised regulator and there is no indication that this number will increase in the foreseeable future. The maximum the PRP anticipates being able to receive annually from fee income is therefore £220,000 subject to annual variation by the indexation formula in the above footnote, for as long as the regulator remains recognised.

As mentioned above, operational experience to date of overseeing a single regulator indicates that the actual costs as a business as usual oversight body will be no less than the maximum permissible annual fee for cyclical reviews.

The PRP will charge the Charter's maximum permissible fee of £220,000 per year (subject to indexation, as before) for the 2018/19 cyclical review.

² Article 11.7 of the Charter states: "In the event that the Board considers that its income (from whatever source received) is likely to be insufficient to meet its expenditure relating to (a) legal or other expenses arising from litigation or threatened litigation, (b) ad hoc reviews or (c) wholly unforeseen events, it shall have the right to request further reasonable sums from the Exchequer. In response to such a request, the Exchequer shall grant such sums to the Recognition Panel as the Exchequer considers necessary to ensure that the Purpose of the Recognition Panel is not frustrated by lack of funding".

³ Other than in the exceptional circumstances permitted in Article 11.7 of the Charter

⁴ (CPIA/CPIB) x 100

Fees for future applications for recognition

The PRP will not charge the existing recognised regulator for its application, as we received and assessed it during our first three years when a grant from the Exchequer covered our costs.

If one or more regulators apply for recognition after the introduction of the fee scheme, that is after 3 November 2017, the PRP would be able to charge each one an application fee. Article 11.4 (a) of the Charter allows the PRP to charge a fee not exceeding “an amount equal to £300,000 per year for each of the first three years of recognition” subject to variations set out in the indexation formula set out in Article 11 of the Charter. Article 11.4 allows that “the Board may determine to set different fees for different circumstances”.

As explained above, we do not believe that circumstances warrant us implementing a charging model that accounts for the characteristics of a regulator or applicant, and we therefore propose that any fee levied for a future application for recognition should be a flat amount regardless of the size of the regulator or the outcome of the application.

Based on the Charter’s requirement that PRP fees should aim to cover full costs, and in the light of the PRPs actual budget requirements and costs incurred when assessing IMPRESS’ application during 2016, the PRP sees no alternative other than to charge the maximum permissible fee of £300,000. This is subject to economies of scales arising from multiple participants in the recognition system that result in a reduction in indirect costs, and is also subject to annual variation in accordance with the indexation formula set out in the Charter.

Based on previous experience, we anticipate that a single charge of £300,000 should be sufficient to cover the PRP’s costs of assessing a future application. However, should costs exceed the sum arrived at, the PRP will recoup in the following year or two up to the Charter’s annual cap of £300,000 in each year, and therefore not exceeding a total application fee of £900,000 (subject to annual variation in accordance with the indexation formula set out in the Charter).

Conversely, should the PRP costs prove lower than the fee payable, the PRP will consider refunding the applicant the appropriate amount and will review this scheme in the light of the experience.

Aggregation of fees

Article 11.4(d) of the Charter allows the PRP to aggregate the annual fees chargeable. However, we do not consider this would be appropriate in the current circumstances. The organisation’s costs are projected to be consistent year on year, assuming no unforeseen changes. If the PRP receives another application for recognition, the costs associated with the assessment process are likely to be

incurred during a period of no more than 12 months, and are not expected to exceed the maximum permissible charge per year.

Timing of fee payment

Applications

This charge will be levied shortly after the applicant applies for recognition and will be payable before the application is assessed.

Cyclical Reviews

Fees become due a year prior to the start of the next cyclical review and the Charter specifies when cyclical reviews start. The next cyclical review will take place from October 2018. The first fee for cyclical reviews will become due on 3 November 2017.

Staggering payment

Where the costs of assessing an application exceeds the maximum permissible amount, the PRP will recoup the extra costs in the following one or two years.

Indexation formula

The PRP will use the following indexation formula to vary all financial amounts specified in the Charter:

$$(CPIA / CPIB) \times 1000$$

Where no period of variation is specified, the amount shall be varied on each anniversary of the date this Charter becomes effective.

- CPIA represents the Consumer Price Index all items index figure for the month before the proposed revision is to be made.
- CPIB represents the Consumer Price Index all items index figure for the month before the effective date of this Charter.

VAT on Fees

The PRP is awaiting a response from HMRC on the question of whether the VAT is chargeable on fees for applications for recognition and for the conduct of cyclical reviews.

We will update the fees guidance section of our website as soon as a determination has been made.