

## PRP consultation on fees

In this paper, we set out our response to the consultation on fees that was launched by the PRP in April 2017.

Our response to this consultation is governed by our commitment, as set out in our Articles of Association:

*‘to promote, for the benefit of the community, the integrity and freedom of the press and to encourage the highest ethical standards in news reporting and news publication in particular, but not exclusively, by operating as an independent press regulator in compliance with the principles and in the form and with the composition and powers and otherwise as recommended, in the Royal Charter [on Self-Regulation of the Press].’*

We are also mindful of the relevant provisions in the Royal Charter on Self-Regulation of the Press (‘the Charter’) and the Five Principles of Good Regulation (‘the better regulation principles’).<sup>1</sup>

Whilst we disagree with several of the proposals here, we do so with full support for the PRP’s purpose. We hope that, by setting out alternative proposals, we are helping the PRP to achieve this purpose.

### **Question 1: Do you agree that the PRP should charge the Charter’s maximum permissible fee of £220,000 per year for cyclical reviews?**

No.

There are several provisions in the Charter which relate directly to fee-charging. These have been set out and discussed in the consultation document. However, these provisions must be read in the context of the Charter as a whole.

Article 3.1 of the Charter defines the ‘Purpose’ of the Press Recognition Panel as being ‘to carry on activities relating to the recognition of Regulators in accordance with the terms of this Charter.’ Here, and elsewhere, the Charter anticipates the

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<sup>1</sup> The better regulation principles are set out in the final report of the Better Regulation Task Force, ‘Better Regulation: from design to delivery’, pp. 26-7, available at <http://www.eesc.europa.eu/resources/docs/designdelivery.pdf>.

possible emergence of multiple self-regulatory bodies for the press.

The PRP has also recognised this possibility on numerous occasions. The PRP has also recognised the better regulation principle of proportionality, which requires that 'regulators should only intervene when necessary' and that 'remedies should be appropriate to the risk posed, and costs identified and minimised.'

The better regulation principle of proportionality also sets out the following requirements:

- *'All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.*
- *"Think small first". Regulation can have a disproportionate impact on small businesses, which account for 99.8% of all UK businesses.*

We are concerned 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, is not compatible with (a) the Charter's anticipation that multiple self-regulatory bodies may emerge; or (b) the better regulation principle of proportionality.

We are concerned in particular that the financial impact of a £220,000 annual fee for cyclical reviews, plus a £300,000 fee per year for three years for an application for recognition, will deter small and medium-sized self-regulatory bodies from seeking recognition. Thus, this proposal has the potential to frustrate the PRP's purpose.

In any case, the Charter's provisions in relation to fees do not in fact oblige the PRP to charge fees in the way that it has proposed.

We note in particular the following aspects of these provisions:

- Article 11.3 of the Charter provides that 'the aim of the scheme shall be for the Recognition Panel to recover its full costs in determining applications for recognition and for conducting cyclical reviews, as appropriate.'
- It is clearly legitimate for the PRP to 'aim' to recover the full costs of determining applications for recognition and conducting cyclical reviews from self-regulatory bodies. This does not mean that this aim will be met in all circumstances. Other requirements of the Charter or principles of better regulation may outweigh this particular consideration. The Charter includes the important caveat that this aim should only be pursued 'as appropriate'.
- Thus, Article 11.3 sets out an aim, to be pursued in an appropriate manner, rather than an absolute requirement.

- Further, Article 11.4 of the Charter sets application fees at a maximum of £300,000 per year for each of the first three years of recognition, and a maximum of £220,000 per year for each year prior to the next cyclical review.
- These figures represent a *cap* on the PRP's fees. There is no justification for the PRP's assumption that they should be the *actual* fee payable in any or every event.

We recall that Sir Brian Leveson devised the system of independent self-regulation by reference to the system of oversight regulation which has been adopted in the legal and healthcare sectors. In both of these sectors, a range of self-regulatory bodies uphold standards in relation to different groups within the relevant professions. In both sectors, an oversight regulator exists in order to ensure that these self-regulatory bodies are functioning properly, according to standards set out in statute.

The role of the PRP is analogous here to that of the two oversight bodies in the healthcare and legal professions, the Professional Standards Authority and the Legal Services Board respectively. Each of these bodies oversees the work of multiple self-regulatory bodies, just as the Charter anticipates that the PRP may oversee the work of multiple press regulators.

Our assessment of the fees paid by self-regulatory bodies to these oversight regulators, based on the most recently available accounts, suggests that they comprise no more than 6.5% of the annual budget of self-regulatory bodies and in many cases comprise a far smaller proportion of those bodies' annual budgets.

Large self-regulatory bodies, such as the Law Society and the General Medical Council, pay much higher fees *in absolute terms* than smaller bodies, such as the Institute of Legal Executives or the Pharmaceutical Society of Northern Ireland. However, we can find no example of a self-regulatory body which pays more than 6.5% of its annual budget to an oversight regulator.

By contrast, the PRP's proposal would have the effect of requiring IMPRESS to pay 23% of its annual budget to its oversight regulator. This proportion of regulatory fee to income is unprecedented, and is likely to have the impact, noted above, of frustrating the PRP's overarching purpose of recognising multiple press regulators.

Even if IMPRESS were able to meet the PRP's request for an annual payment of £220,000, this would pale beside the £520,000 which a future regulator might be expected to pay in one of its first three years in operation, when the £300,00 annual fee for applying for recognition may be combined with the £220,000 fee for the first cyclical review. For a small self-regulatory body in the healthcare sector, such as the Pharmaceutical Society of Northern Ireland, which has turnover of just over £1m, this would represent almost 50% of the organisation's budget.

It is quite possible that a self-regulatory body might emerge in the news publishing sector with a budget of less than £520,000, which would clearly make a nonsense of this approach.

For these reasons, we believe that the proposal to charge the maximum allowable fee for new applicants and cyclical reviews would be unfair, disproportionate and without precedent.

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

The provisions in the Charter in relation to fees are open to approaches which – in line with the better regulation principle of proportionality – may be more effective and cheaper to apply and which are compatible with the Charter's anticipation that multiple self-regulatory bodies may emerge.

We urge the PRP to consider an approach which is more closely aligned with that taken by the Professional Standards Authority and the Legal Services Board.

Both of these oversight regulators operate a charging model which links fees to the number of individuals registered with a self-regulatory body.

Both the Legal Services Board and Professional Standards Authority have consulted on their charging models and have put forward various options including: (i) a risk-based approach; (ii) an approach based on a regulator's volume of activity; (iii) an approach based on a regulator's number of subscribers; (iv) an approach based on a regulator's annual income; (v) combinations of (i) to (iv); and (vi) a flat fee.

After consultation, both oversight bodies have decided for the time being to retain an approach based on a regulator's number of subscribers. There is no precedent for a flat fee approach nor is there a precedent for any regulator being required to pay anything close to 23% of its budget to an oversight body.

IMPRESS urges the PRP to consider a similar basis for determining the fees payable by self-regulatory bodies for the press. For the sake of illustration, we suggest the following approach. However, we recognise that the PRP may wish to develop and consult on other options.

1. The PRP should determine the annual cost of conducting its regulatory activities.
2. The PRP should calculate the overall size of the news publishing sector by annual turnover.
3. The PRP should calculate the proportion of the industry by annual turnover which is currently regulated by a particular self-regulatory body.

4. The PRP should set a fee for that self-regulatory body based on a pro-rata contribution to the PRP's costs, subject to a maximum payable by any regulator of (a) the sum set out in the Charter; or (b) 10% of that regulator's annual budget, whichever is the lower.

For instance – and again, merely for the sake of illustration – the PRP might determine that the annual cost of conducting its regulatory activities is £500,000.

The PRP might calculate the overall size of the news publishing sector as £10bn.

It might note that a particular self-regulatory body is currently regulating news publishers with combined turnover of £1bn, and therefore calculate the proportion of this industry which it is regulating at 10%.

The PRP would then set a fee for that self-regulatory body for the purpose of applying for recognition and every year subsequent to recognition of  $£500,000 / 10 = £50,000$ . This would not exceed the maximum set out in the Charter or 10% of that regulator's annual budget.

An approach along these lines would be fair and proportionate and in line with the approach taken by other regulators. It would also make the recognition system more accessible to other niche or emerging regulators.

We note that the PRP's costs may exceed its income if it follows this approach. This is of understandable concern to the PRP. However, it does not follow that a particular self-regulatory body should be responsible for bearing these costs. This would create the risks that:

- a) Self-regulatory bodies will fail to put themselves forward for recognition because of the disproportionate cost of doing so; or
- b) The PRP will become overly dependent on income from a single self-regulatory body, leading to a risk of conflict of interests or a perception of bias.

The Charter shows how these risks can be avoided.

Article 11.7 of the Charter allows the PRP to request 'further reasonable sums' from the Government in 'the event that the Board [of the PRP] 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'. In response to such a request, the Government is required to grant such sums to the Recognition Panel as it 'considers necessary to ensure that the Purpose of the [PRP] is not frustrated by a lack of funding.'

The PRP's income is indeed likely to be insufficient to meet its expenditure relating

to the wholly unforeseen event that only one self-regulatory body (IMPRESS) has put itself forward for recognition and that this body currently regulates only a small proportion of the news publishing industry. This was not foreseen when the Charter was granted, at which point the Crime and Courts Act had been enacted and was simply awaiting ministerial commencement.

This event, as the PRP notes in the consultation paper, may be a function of the Government's failure to commence section 40 of the Crime and Courts Act 2013 and the related decision by a significant number of news publishers not to subscribe to a regulator that has been or is capable of being recognised by the PRP.

In these circumstances, it is wholly appropriate for the PRP to request further reasonable sums from the Government, in order to avoid placing an unfair, disproportionate and unprecedented burden on IMPRESS or any other small self-regulatory body which may emerge in future; and in order to mitigate the risks identified above.

**Question 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)?**

No. See above, in relation to question 1.

**Question 4: If you do not agree with the proposed basis of charging as set out in question 3, please explain your alternative proposal.**

See above, in relation to question 1.

**Question 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?**

Yes, with caveat – see below, in relation to question 6.

**Question 6: If you do not agree, when do you believe the fees should be levied?**

A regulator is unlikely to receive its income all at once or to sit on a large amount of unrestricted cash. In order to manage a regulator's cash flow, it will be necessary for the PRP to demand payment of its fees on a quarterly basis.

We agree, therefore, that the fees should *begin* to be levied from the start of the PRP's fee-charging year, i.e. 3 November. However, they should be payable on a quarterly basis, with four equal instalments invoiced on 3 November, 3 February, 3 May and 3 August.

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

Yes, with caveat – see below in relation to question 9.

**Question 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?**

Yes, with caveat – see below in relation to question 9.

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

For the reasons set out above in relation to question 6, the application fee should be payable on a quarterly basis, i.e. in four equal instalments, on the date of application and at three-monthly intervals thereafter.

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.