PRESS RECOGNITION PANEL
Minutes of the meeting of the Board with Academics held on 30 March 2015 at 88 Wood Street, London, EC2V 7RS

Present: Dr David Wolfe QC (Chair of the Panel), Carolyn Regan, Harry Cayton, Tim Suter

Visitors: Charlie Beckett - London School of Economics
Sally Broughton-Micova – London School of Economics
Gavin Phillipson – University of Durham
Stewart Purvis – City University, London

In attendance: Susie Uppal (Executive Director), Sadie East (Communications & Stakeholder Manager)

Welcome and introductions

1. The Chair welcomed Charlie Beckett, Sally Broughton-Micova, Gavin Phillipson and Stewart Purvis to the meeting.

2. Following introductions, the Chair set out the planned format for the meeting and outlined the role of the Press Recognition Panel and its planned next steps. The meeting would be confidential but a note of the key points would be agreed for publication.

3. The Chair stated that this was one of a series of meetings with key stakeholders. In terms of timescales, the Panel was starting to develop proposals for how it intended to go about receiving and considering applications for recognition. The Panel expected to consult widely on this proposals during the early summer before publishing them in final form.

Discussions

How the Panel intends to work

4. DW started by saying that the Panel is here to make the Royal Charter work and we are interested in thoughts about how to do that. Some things in the Charter are straightforward but others are more complex and there is a lot of debate which sits behind them. We are at the beginning of getting our heads round the level of detail we need to provide about what the criteria mean in practice and what the process is for dealing with applications for recognition. Comments were invited from around the table.

5. SP said that the Royal Charter was a problem – ideally we wouldn't be starting from here. So far, the Panel is positioning itself as best it can in the circumstances. He gave evidence to the House of Lords Communications Select Committee and stated that we would not be receiving any applications at the moment. This fact overlays the whole discussion. The best the Panel can do is say it is going to do the job it has been set up to do and ensure there is a proper process which is developed through consultation. DW said that we have to take the Royal Charter as a given and will work within that framework.

6. SP commented that the Press Complaints Commission did not work according to rules but based on what things would look like. IPSO is beginning to do the same already. The Panel could try to move IPSO closer to the criteria or try to get IMPRESS to get members and seek recognition. The problem is the trigger in terms of arbitration which sets off another set of disagreements. Perhaps the IPSO route would be better. DW noted those comments but re-iterated that the Panel can only work to the requirements of the Charter.

Providing guidance

7. SBM said she was interested in what the Panel was thinking about in terms of consultation. What was the purpose of consulting on detail, for example, of what an arbitration process could look like? The criteria are clear to a superficial level and going into too much detail would constrict regulators. DW responded that the Panel could not and would not be writing a detailed framework but takes the view that some of the criteria may need amplification and explanation and so some level of guidance would probably need to be provided.

8. DW said that there may not be applications now but could be in the future. These could include regulators covering the hyper local media, for example. The Panel doesn't want to do anything now which could make it difficult for regulators to apply for recognition in due course.

9. GP said that he felt there were some areas where those applying for recognition would need some guidance; he thought that those who were considering applying (such as IMPRESS) would be in a good position to identify where they thought further guidance was needed (he stated that he was sympathetic to the position of IMPRESS but did not speak on its behalf). The Panel should allow potential regulators to feed in what they think they would need to know in order to apply as part of the consultation process. His understanding is that the code will be the current Editors' Code and this is not

likely to change in the near future. On the Panel's work generally, he thought that a key word is 'objectivity'. This must be proper objectivity, not finding a balance between opposing positions. The Panel is working in one of the most contested areas of public policy – splitting the difference between the position of the press and that of Hacked Off does not equal the truth. DW said that the Panel will consult widely. IMPRESS can be part of that consultation.

10. GP asked if the provision about costs was coming into force in November 2015. DW explained that the damages provision comes in automatically with the Crime and Courts Act on 3 November. However, the costs provisions require a commencement order. That is not a matter for the Panel.

11. DW said that the Panel needs to make sure it does not preclude IPSO or any other future regulator from applying for recognition. The Panel needs to be open to the widest spectrum of relevant regulators, including those representing smaller publishers, so we need to ensure the system is not too complex.

12. CB said he was unhappy, even about IMPRESS, and he thought the newspapers may never be content with the system. His concern is about a slippery slope. The UK has great journalism at the moment; it has its flaws but is as good as anywhere else in the world and the culture is likely to adapt without the need for prescriptive regulators. He understands why the Panel is suggesting it builds a model but the more specific and worked out that is, the more it confirms a drift towards a specific and preconceived role. The problems are so complex that minimalist, reactive regulation is the best the Panel could hope for and more than enough. It is good to consult but not to over-build. CB doesn't see much wrong with not giving any guidance at all. GP said that the 'slippery slope' that press regulation faced was not a slide into a state clampdown on the press, but simply a slide back down into a failure – as the history of attempts to regulate the press showed.

13. SP commented that it might be helpful as a reality check to think what failure would look like and work back from there – apply the criteria backwards. What was it which made the PCC fail when dealing with phone hacking? The biggest issue is how serious would a breach of the criteria need to be for the Panel to decide to take recognition away from a regulator. DW agreed that we need to be mindful of the future in what we are doing now.

14. SBM highlighted that what was being discussed was guidance for organisations which are at the start of their life. The Panel needs to consider

what it needs from them given that they will not yet be up and running. It may be that a different type of guidance is needed at this stage.

15. DW said that the criteria state that a whistleblowing hotline should be in place. Should the Panel just tick the box to confirm that a line has been set up or does it need to have a view on what is the minimum that is required to meet the requirements of the criteria in the Charter? CB suggested that if a line had been set up and didn't work, the Panel would need to consider if that was grounds for the regulator to be 'de-recognised'.

16. SBM said that a small regulator would not be able to set up a hotline in the same way as a large organisation such as Ipso, for example, which might have a dedicated member of staff. SP agreed that cost is an issue as new players won't be resourced in the same way as larger regulators. TS noted that the Charter requirements were drafted based on organisations of a reasonable size.

Consultation on proposals

17. DW asked for thoughts on how the Panel consults on proposals for how it deals with applications and who it should consult with. SP commented that there was an issue of credibility if you were consulting on a process when no one may apply for recognition. What the Panel has to do is build the best it can with what it has been asked to do. DW responded that the Panel was aiming to strike a balance. It was planning to hold meetings around the country and involve journalists and civil society groups. SP suggested that it would be good to use universities as venues.

18. TS commented that an alternative approach would be to do as little as possible at this stage as it was all theoretical. The Panel could ask regulators to come forward with what they have got. More work could be done at the time of the first reviews of self-regulators when there would be some activity to review. DW said that there was also a middle option – to do nothing in advance, receive applications and then consult on those.

Consulting on applications

19. SBM asked if we would consult on applications. In her view this would seem an odd thing to do. It would be more appropriate to consult on guidance rather than specific applications which have either met the criteria or they have not. HC suggested that people with experience of a specific regulator might have direct experience of whether they meet the criteria in practice. SBM thought that people would not have direct experience at that stage. DW said that they

would not with any new regulator – any application from them would need to be a paper process.

20. SBM suggested that there could be a call for anyone who has experience that a self-regulator has not met the criteria to say so. DW suggested the Panel could call for evidence. CB commented that he thought this was a bizarre suggestion. Although he can see why the Panel wants to consult it is perhaps more about research than consultation. Consultation does not mean anything if regulators don't consent to the process – the Panel should be putting its work into bridging the gap with self-regulators.

21. SP asked whether there was an option to publish applications and invite evidence. It would need to be evidence rather than opinion that the application contained information that was materially false. DW suggested that this could, for example, be direct experience of using a whistleblowing hotline which was not confidential.

22. GP suggested that more guidance was needed in relation to some of the criteria, and the kinds of material that would be needed to evidence compliance with them, to avoid The Panel having to go back and forth on an application, for example asking for more evidence. DW said there would need to be a threshold – what does sufficient, rather than good, look like?

23. GP commented that the closest comparison was with the Irish system. The Irish justice minister had the role of the Panel. It would be helpful for the Panel to look at what the Irish system did in terms of guidance and consultation. SP said that the Irish system is more political than it looks. DW observed that although Scotland and Northern Ireland were covered by the Panel but it was complicated by the fact that there was no equivalent there to the Crime and Courts Act.

Public interest definition

24. GP asked if the Panel was tempted to issue a definition of public interest. DW said that some stakeholders had suggested we should but others had been strongly opposed. SBM said she did not feel it was for the Panel to provide a definition. SP commented that there was a significant difference between the definitions in the Editors' Code and the Ofcom code. Ofcom is clearer about what the public interest is. GP thought that the Panel should resist any attempt to issue a comprehensive definition – something that the courts had never sought to do. Any gloss on the term it did offer should be illustrative and non-exhaustive. A useful source in addition to those mentioned was the DPP's

'Guidelines for prosecutors on assessing the public interest in cases affecting the media' at para 31.

Outcomes

25. HC raised the issue of outcomes in relation to the guidance the Panel provides. For example, with a whistleblowing line the idea would be to define the evidence a self-regulator would be required to give to provide confidence that the line was effective. SP commented that one issue was measurement of cases which were resolved through mediation. TS suggested that this could be looked at as part of looking at the effectiveness of complaint systems. GP said that it was also about how long an internal process took and placing some kind of limit on that (which IPSO did not). CP commented that the Panel could give guidance on the maximum time limit for 'speedy' resolution. SBM commented that there needed to be rigorous record keeping on things like the use of mediation.

Next steps

26. CB and SBM said they would be very happy to host a meeting with the Panel at LSE. SBM suggested a meeting with invited guests at this stage and possibly something more public during the consultation phase. GP said that Durham Law School would also be happy to provide space. DW thanked them and said that we would be in touch to follow this up.

Closing comments

27. The Chair thanked guests for attending and for speaking openly and frankly about issues that were of concern to us both.