PRESS RECOGNITION PANEL
Minutes of the meeting of the Panel with the Guardian News & Media, held on 13 May 2015 at the Guardian's offices, King's Place, 90 York Way, London N1 9GU

Present:

From the Guardian
Gill Phillips, Director Editorial Legal Services, Guardian News & Media
Matt Rogerson, Head of Public Policy, Guardian News & Media

From the Press Recognition Panel
Dr David Wolfe QC, Chair
Carolyn Regan, Board Member
Susie Uppal, Executive Director
Holly Perry, Head of Governance (taking notes)

Welcome and introductions

1. Gill Phillips (GP) welcomed Panel to the meeting, and introduced her colleague Matt Rogerson (MR).

2. Following introductions, DW set out the planned format for the meeting. This was one of a series of meetings which the Board was holding in order to seek early input to how the Panel could give life to the Royal Charter recognition criteria. To date, there had been meetings with academics, commentators, key interest groups, IMPRESS, IPSO and representatives of hyper local publishers. The Panel had also been keen to engage with the large national relevant publishers not part of IPSO and IMPRESS – namely, the Guardian, Independent and Financial Times. The Panel wished to be clear on the full range of issues, to inform its work on implementing the Royal Charter.

3. In terms of timescales, the Panel had now started preparing documentation setting out proposals for how it intended to go about the task of receiving and considering applications for recognition. The Panel expected (between May and July 2015) to consult widely on those proposals – including holding public meetings - before publishing them in final form later in the summer of 2015.

4. In addition to the points set out in writing by the Panel in advance of the meeting[1], DW emphasised that the Panel would very much welcome input from the Guardian News & Media (GNM) on the proposals for assessing applications for recognition. Given GNM's significant expertise in relation to complaints, whistleblowing etc., there was likely to be a significant amount that the Panel could learn. Regardless of whether or not there were any formal applications for recognition, the Panel's processes and guidance were likely to be regarded as the benchmark and therefore the Panel wanted its approach to be helpful, useful and well informed. It was hoped that GNM would be willing to assist on this basis.

5. As part of his opening comments, DW indicated that the Panel would take a clear line in relation to recognition – only if all 28 criteria were met would a regulator be recognised. If a regulator met 27 of the 28 criteria, it could not be approved – the Charter did not allow for a lower assessment of 'good enough'.

Discussions

Background and context

6. GP outlined that the GNM was currently in transition – Katharine Viner would join as the new Editor on 1 June 2015, and a new Chief Executive would follow soon after. At this stage, they were not in a position to pre-empt the new Editor's views on regulation. GNM has maintained dialogue with IMPRESS as well as IPSO in relation to developments.

7. The current Editor, Alan Rusbridger had always been clear that he had a theological objection to the use of the Royal Charter. While IPSO had the makings of a good organisation, constitutionally it would never comply with the Royal Charter criteria. If in future IPSO was able to demonstrate independence from the RFC, then GNM has not ruled out joining. Alan Rusbridger took a view throughout Leveson that multiple regulators did not necessarily work in the best interests of industry or citizens.

8. MR explained that GNM feels that its own internal process are working well. GNM is also looking at how the system covers the international editions as well as the UK edition. The Review Panel meets regularly, and has already given a number of judgments. Given the obvious limitations, GNM felt that the panel is able to demonstrate genuine independence.

[1] The Panel wrote to the Guardian News & Media setting out the areas for discussion ahead of the meeting; details of the points covered in discussions with all publications are published on the Panel's website: http://pressrecognitionpanel.org.uk/word/wp-content/uploads/2015/05/Letter-to-newspapers.pdf

Definition of relevant publisher, a single regulator and serving the public

9. MR took the view that the definition of 'relevant publisher' set out in the Crime and Courts Act 2013[2] precluded hyper locals. DW explained that the Panel had had recent discussions (including with William Perrin of Talk About Local, and academics at Cardiff University who had researched the sector), which had led the Panel to conclude that a number of hyper locals might in fact be captured by the definition of 'relevant publisher' and the sector was certainly likely to see benefits in joining a recognised regulator.

10. Having looked in detail at the Leveson report, and the Royal Charter criteria, GP stated that there were obvious gaps in relation to internet based and micro publishers. Leveson had indicated that the press regulator needed to have all the main relevant publishers on board, and indeed had envisaged that the recognition role might be played by Ofcom. DW acknowledged that the Royal Charter had moderated the Leveson outputs, in providing a delivery vehicle for the key recommendations.

11. GP added that the arrangements did not seem to serve the public very well. The current regulatory picture was confusing – with Ofcom regulating broadcasting, IPSO and IMPRESS covering national and local press, three key national papers having developed their own arrangements and a number of small organisations (hyper locals) not seeming to fit anywhere. There were also issues with social media and instant publishing to contend with. DW acknowledged that the Panel might need to consider signposting the public, and to look at boundary issues in more detail.

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[2] Section 41, Crime and Courts Act 2013
(1) In sections 34 to 40, "relevant publisher" means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—
(a) which is written by different authors, and
(b) which is to any extent subject to editorial control.
This is subject to subsections (5) and (6).
(2) News-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—
(a) the content of the material,
(b) how the material is to be presented, and
(c) the decision to publish it.
(3) A person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site.
(4) The fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of subsection (3).
(5) A person is not a "relevant publisher" if the person is specified by name in Schedule 15.
(6) A person is not a "relevant publisher" in so far as the person's publication of news-related material is in a capacity or case of a description specified in Schedule 15.
(7) But a person who is not a "relevant publisher" as a result of paragraph 8 of that Schedule (micro-businesses) is nevertheless to be regarded as such if the person was a member of an approved regulator at the material time.

Crime and Court Act

12. GP understood that s36 of the Crime and Courts Act 2013 governing exemplary damages would come into effect in November 2015, on the first anniversary of the Panel's inception, but that the costs shifting elements (s37 to 40) needed a commencement order to be put into effect. GP stated that GMG had significant concerns in relation to these sections – they were complex, and there were real issues with regard to the separate regimes and boundary issues for example where the Guardian and BBC worked jointly on a piece of work.

13. GP added that GNM would not want to be the trigger for these clauses. The clauses seemed to have been drafted with undue emphasis on the defendant and didn't properly deal with for example an unreasonable claimant. There was also an element of double jeopardy even if one was a member of an approved regulator. It was queried whether or not there would be the political will to look again at the legislation. DW responded that the complexity of drafting was not of the Panel's making, and the intention of the regime was for a recognised regulator to secure cover and protection from it.

14. DW confirmed that while the exemplary damages elements came into effect automatically on the Panel's first anniversary, the government would need to lay a statutory instrument in order to implement the costs shifting elements of the Crime and Courts Act. The Panel would be meeting with relevant civil servants in early June 2015 to discuss further.

Arbitration schemes

15. In relation to arbitration schemes, it was understood that both IPSO and IMRESS were formulating approaches. GP indicated that a flexible, less formal approach was likely to be the most workable. DW invited further thoughts and insight into arbitration schemes – the Panel would like to be in a position to give an indication in its accompanying guidance on what a Charter-compliant arbitration scheme would look like (e.g. informal, flexible etc.). Irrespective of whether there were any applications, the Panel's guidance would have a normative effect.

16. GP outlined that IPSO was likely to encounter problems in 'selling' arbitration to the local and regional press. The best outcome was for publications to start using arbitration, and for some parameters to be set via rulings and judgments. There were likely to be issues with individuals signing away their rights to a fair trial (Article 6, Human Rights Act refers), and this was the reason why the approach needed to be kept informal. Any approach which mirrored a court route would be unworkable, and would defeat the object of

providing an alternative to court. Any arbitration scheme that was to be workable would need to have the maximum degree of flexibility and proportionality, and would require individuals to give views orally and not by paper.

17. There were also issues in relation to types of claim, including changes to the definition of harm in relation to defamation claims (and the removal of trial by jury for defamation cases). There was some overlap with the Editors' Code in relation to harassment, privacy and defamation claims. A choice would need to be made between mediation, arbitration, the legal route, or some other avenue. The question then arose as to who would make the decision as to the most appropriate course of action. There were some hard issues to resolve.

18. Given the changes in relation to defamation, it was now far easier to go to court quickly and cheaply compared to a year ago. For this reason, GP felt that it was less clear what benefits arbitration could deliver. GP acknowledged that aiming for something cheap, quick and easy in future was a laudable aim, but problems remained in how it might play out.

Independence of the Panel

19. DW explained the independence of the Panel, emphasising that the Royal Charter had a delivered an unprecedented degree of independence, meaning the Panel was immune from undue influence. MR added that this did not rule out the potential option for a future government to pass further legislation that sits alongside the Royal Charter.

Observations on joining a regulator

20. GP explained that irrespective of whether or not it sought recognition, GNM has significant concerns about IPSO's independence. Formulating guidance which put up barriers to IPSO or another regulator becoming recognised would not be helpful. It was arguably important for the Panel to translate the Royal Charter criteria into something workable for regulators.

21. Third party complaints were also a significant issue for GNM. These were difficult to manage, and the Guardian received them in large number. While there was some sympathy in relation to the reasons for these types of complaint, some professionalised complaints can be vexatious.

Additional information

22. It was clear from the drafting of the Royal Charter than a position where there might be multiple regulators was contemplated. The Panel would not be

prescriptive in its approach – it did not want to rule out smaller or larger bodies.

Closing comments

23. DW concluded the session by inviting GNM to submit additional information as it wished. DW thanked GP and MR for hosting the meeting and for offering such important insights at a critical time for the Panel. It was hoped that the dialogue would continue. GP agreed that post summer, GNM would be in a position to meet again with the Panel for a further discussion. DW added that any observations before that, and as part of the consultation, would be very helpful – the Panel was very keen to extract the Guardian's expertise in informing its work.