About you

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Confidentiality
A list of respondents and their responses may be published by the PRP following the end of the consultation period. Please indicate below if you do not wish your name and/ or response to be published. While we may not publish all individual responses, it is PRP policy to comply with all Freedom of Information requests.

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More about you
The information you provide will assist us in understanding the range of responses we receive.

How are you responding?

National newspaper//website

INTRODUCTION / OPENING REMARKS

Guardian News & Media (GNM) does not support the PRP process. GNM has been clear that it views Parliament's decision to pursue the use of a Royal Charter as the founding tool of a new settlement on press regulation, as opaque and medieval. The Royal Charter was neither designed by, nor suggested to, Lord Justice Leveson during his inquiry. In 2013, Lord Justice Leveson said that he "**received submissions from hundreds of people, dozens of bodies, and it [the Royal Charter] wasn't a concept that came to me then or at any stage over the course of my deliberations**."

If the use of the Royal Charter to implement the settlement on press regulation is confusing for those involved, then the consequent regulatory landscape is surely even more confusing for consumers. The current landscape means that Ofcom regulates broadcasting but not apparently the websites of broadcasters. The BBC Trust, for the moment at least, regulates the BBC's dominant presence in TV, radio and online, while IPSO covers the national and local press and some magazines and periodicals. IMPRESS continues to seek members, in parallel with seeking recognition from the PRP despite having no members. Three key national papers, including GNM, have put their own self regulatory arrangements in place, and a number of smaller organisations (hyper locals) don't seem to fit anywhere. There are also longer-term issues around who, if anyone, regulates social networks, which are increasingly becoming the primary point of consumption of media for the digital generation.

GNM does not believe that the creation of multiple press regulators is in the best interests of the

media industry or the public, especially within a system that permits a regulator to be approved that does not represent the main body of news publishers. Indeed, such a system would not be representative of the main thrust of the Leveson Report, which stated that **"A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers**" (Leveson Report Part K, Chapter 7, para 3.14). GNM's decision to remain outside of both the Royal Charter process, and the process of regulation pursued by the majority of industry is a reflection of the fact that the "deal" on press regulation was struck without the consensus required to give that settlement credibility.

GNM continues to have concerns about the founding articles and regulations of IPSO. At the heart of those concerns is the unnecessary power of the Regulatory Funding Company. If, in the future, IPSO is able to demonstrate independence from the Regulatory Funding Company, then GNM has not ruled out joining IPSO. For the time being, in addition to its long standing Readers' Editor role, GNM has set up a Review Panel to provide a further tier of review for editorial complaints about GNM. The Review Panel meets regularly, and has already given a number of judgments, which are available on the GNM website.

GNM has already outlined its substantive concerns about the provisions on exemplary damages and costs that are set out in the Crime and Courts Act 2013 (CCA). These provisions seek to implement the "carrots and sticks" incentives envisaged by the Leveson Report as the quid pro quo for approved regulation. Not least there are serious issues as to whether these provisions are contrary to Article 10 of the European Convention on Human Rights. While ss 34-6 CCA governing exemplary damages are due to come into effect later this year, on the first anniversary of the appointment of the PRP's chair, the costs shifting elements (ss 37 to 40 CCA) not only needed a commencement order to be put into effect, but also need there to be a recognised regulator and an arbitration scheme.

These sections are over complicated, and unclear, giving rise to significant issues with regard to the separate regimes as well as "boundary" issues. For example, were the Guardian and a broadcaster such as Channel 4 or the BBC to work together on a piece of public interest journalism, these clauses would allow for a court of law to exercise much more punitive measures against the Guardian, than against the broadcaster. At a time when the European Commission is consulting on the need for more converged regulation of traditional and new audio-visual media services, the singling out of a type of news organisation through the CCA seems anachronistic and, as mentioned above, potentially contrary to Article 10 of the European Convention on Human Rights.

Furthermore, the provisions of the CCA seemed to have been drafted with undue emphasis on penalising a publisher defendant and don't properly deal with, for example, an unreasonable claimant. These clauses also provide for an element of double jeopardy, in the sense that even if one is a member of an approved regulator and has been fined by that regulator, the clauses in the CCA enable a judge to punish a publisher again. Given these concerns, GNM does not support any initiative which might lead to these provisions coming into effect.

GNM has expressed concern that definitions within the CCA 2013 relating to key concepts such as the definition of a "relevant publisher" are unclear. For example, GNM believes that this definition precludes hyper locals from joining any recognised regulator.

Furthermore, were the PRP to take the decision to interpret the concept of a ‘relevant publisher’ in a

broad sense in order to encompass hyper local publishers, what would be the implications for the rest of the hyper local sector should they decide that they cannot afford to, or do not want to join a recognised regulator? Would this for example mean that any hyper locals who decided not to join a recognised regulator, could be subject to the punitive clauses set out in the CCA?

Similarly, GNM is concerned about a lack of clear definition as to what it means for a regulator seeking recognition to be funded 'by the industry'. It would be a deeply unsatisfactory situation if the punitive clauses of the Crime & Courts Act impacted on the vast majority of local, regional and national commercial news organisations as a result of the PRP taking such a broad reading of 'the industry', as to allow a regulatory body, funded by charities or rich donors, representing the hyper local sector, to become a recognised regulator.

In relation to a system of arbitration, these are complex issues relating to individuals signing away their rights to a fair trial (Article 6, European Convention on Human Rights). There are cost issues, and there needs to be proper research as to the extent arbitration could work in practice. This is especially important so as to not divert claims away from IPSO's normal mediation procedures, especially given the potential for overlap with the Editors' Code and legal causes of action in relation to harassment, privacy and defamation claims. Any arbitration scheme that was to be workable would need to have the maximum degree of flexibility and proportionality.

Any reading of the requirements set out in the Royal Charter should also be cognisant of recent changes to the definition of harm in relation to defamation claims and the removal of trial by jury for defamation cases. These changes have opened up the potential for quick and cheap resolution of a number of matters by the courts, and might mean there is in fact less demand and therefore less need for an arbitration scheme in the form envisaged by the Leveson Inquiry.

GNM believes that a more practical balance needs to be struck around some key areas such as third party complaints, directed apologies and arbitration costs than is set out in the Royal Charter's version of the Leveson proposals.

GNM has reservations about a process where it may be considered credible and plausible for a regulator with no members to be able to apply for and obtain recognition. That would appear to make a mockery of the underlying settlement on press regulation.

It is subject therefore to these caveats that GNM responds to the PRP's Consultation.

Questions

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

Question 2

Do you agree with the indicators and evidence we propose?

Give reasons if you wish. For specific comments on the criteria, use the comments box on the matrix.

No

We are surprised that the PRP does not feel it necessary to give some proper guidance around some of the key terminology that is used in the Charter Criteria, especially at 1-6.

By way of example only, surely some indicators should be given as to what is meant by key terms such as "industry" "independent" "Government" "the press". Does the PRP consider "the industry" and "the press" to be one and the same thing? Is "independent from the industry" to be interpreted in the same or a different way to ""independent of the press"?

Does the PRP consider that the criteria set out at 5d-e also apply to the appointments panel?

How does the PRP consider that the requirement at criterion 6 for funding to be settled "in agreement between the industry and the Board" will be met.

As far as criterion 12A is concerned, should the PRP not try to give some guidance as to what sort of merits might preclude someone from bringing a complaint as a prelude to a legal complaint being brought.

As far as criterion 22 (arbitration) is concerned, does the PRP consider that use of any scheme is mandatory or voluntary to the members? Does the PRP propose to give any indication of how it might differentiate between "appropriate pre-publication matters" to the courts? Does the PRP propose to offer any guidance as to what claims might be dealt with by the regulator under the complaints process and what might be appropriate for any arbitration scheme?

Question 3

Do you agree with our proposed approach to dealing with applications?

Yes

Question 4

Do you agree with our proposed approach to discussions with applicants?

Yes

Question 5

Do you agree with our proposed approach to granting recognition? Give reasons if you wish.

No

Fundamentally, even if all the individual criteria are met, surely the PRP has to then stand back and ask itself whether the regulator seeking approval has a sustainable operation and a sufficient core of

members to make it effective. If a regulator has no membership or only a limited membership, it should not be approved. As mentioned above, the Leveson Report stated that "A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers."

GNM questions whether it is the PRP's role to take such a flexible reading of the legislation so as to trigger the Royal Charter system of press regulation. But rather it is for the PRP to report to Parliament that no credible body that genuinely represents the industry has come forward seeking recognition, and as such, the Royal Charter settlement has failed. Consequences of that failure should ultimately follow, but those consequences should be determined by Parliament.