Notes of the PRP consultation event held on 3 July 2015 at Durham Law School

Introduction

Between 8 June and 31 July 2015 the PRP held a public consultation on how we would receive and determine applications for recognition from independent press self-regulators. As part of the consultation we held eight public events across England, Scotland, Wales and Northern Ireland.

The events were an opportunity for the public to have their say on the proposed recognition process and to find out more about the PRP.

This event at Durham University was hosted by Professor Gavin Phillipson, University of Durham. It was chaired by David Wolfe QC, Chair of Press Recognition Panel (PRP).

The notes below summarise the discussions, anonymised to protect the identity of individual members of the public.

Discussion

The discussion opened with a question about IPSO's relationship with the PRP. David explained that IPSO is against recognition constitutionally and as its member contracts last for five years we would need to wait and see what happened. The PRP would not undertake a formal assessment of IPSO's compliance with the criteria unless and until it sought recognition.

The conversation moved on to how regulation would work from the public's perspective. David stated that the impact of the 'sticks and carrots' (of the Crime and Courts Act) remained an unknown - for example what would happen if there was a legal challenge against an IPSO regulated publisher, as the complainant could take them to court without having to pay legal costs: this was likely to become a big commercial issue for a newspaper. The Crime and Courts Act would also make it easier to secure exemplary damages but as these orders are rare this was unlikely to impact as much.

The PRP's regulatory role was discussed. David explained that the Charter required the PRP to undertake cyclical and ad hoc reviews and remove recognition if necessary. The PRP would encourage feedback from subscribers and the public but was not a court of appeal on regulators' decisions - nor an onward complaints handler.

The examples of evidence and indicators in the recognition matrix were discussed. David referred to the Leveson concepts [para 36 of the consultation document] which the PRP would apply when evaluating an application. The qualitative indicators would help the PRP to assess whether or not the criteria were being applied in practice.

Asked why the indicators and evidence for criterion 8D (whistleblowing hotline) omitted the requirement to promote its existence and a journalist's responsibility to use it, David explained that the PRP could not overstep what was in the criteria – for example it could require confidentiality but not training.

On complaints handling, David was asked why the PRP had not set a timeframe for publishers to resolve complaints, and what the descriptors 'reasonable' and 'effectiveness and proportionate' meant in practice. David explained that the PRP would adopt a principles-based approach. It would be up to the regulator to specify and for the PRP to ensure that this was compliant with the criteria.

A further question related to the requirement in criteria 8C (standards code) for 'non-binding guidance' on the interpretation of the public interest (whereby breaches maybe justifiable) as it was difficult to see how it could not be binding. David thought it meant guidance in legal terms and the words "non-binding" had been added.

Criteria 8 refers to the standards code but only states that the regulator has to have one. The PRP cannot be too "hands off" but we cannot write or validate the details of the code - so we would assess whether it is reasonable. The PRP could require the code to correctly reflect the law, but, for example where the public interest test is used as a defence, subscribers could be acting within the code but still be breaking the law.

There then followed a discussion about the public interest exception and privacy claims: whether or note the public interest test outweighed intrusion of privacy considerations; whether there was a risk of it being stretched to the limits to get the exception, for example around celebrities who are in the public eye. This view was challenged on the grounds that there were no examples where phone hacking had been justified as being in the public interest.

The discussion then moved on to the regulator's powers to impose sanctions (criterion 19) and whether the indicators could or should say more. For example, what would the PRP expect to see as guidance on how a regulator would approach their powers. The inclusion of "reasonableness" as an indicator was welcomed by some, given that even a £10 fine might be considered "unreasonable" by some if it gave the impression that a title has acted inappropriately.

It was suggested that the PRP should require publishers to set Key Performance Indicators e.g. an indicative time period to respond to and resolve complaints - so the PRP could monitor them. David explained that the PRP had given some thought to this, for example with the data requirements for the volume and type of complaints (criterion 10) – but it seemed unlikely a regulator would have such KPIs in place when applying.

The discussion then turned to PRP's proposals for the recognition process – particularly the envisaged timescale for recognition (45 working days); which, given that it had taken a year to set up the PRP, the process seemed very rushed by comparison. The Leveson Inquiry was very lengthy but stood for a process that allowed for the public to be involved. The criteria are very open-ended and will not make sense until they are fleshed out when someone applies – so the 15 days allowed for the public to comment on the detailed document will be short. Whilst it seemed clear that some regulators had good intentions this might not always be the case so the "15 day window" for evidence is key. Not everyone shared the view that speed was of the essence.

David explained that the proposed timings were intended as windows for the public and regulator to comment - we wanted a balance between asking for evidence (which we are not required to do) and allowing enough time for responses. All regulators would be "new" when they apply, so the focus of the public feedback should be reasons for not recognising an applicant (described by one attendee as "the wedding ceremony approach.").

When asked how the public would know when an application had been received, (in addition to publication on the PRP website and through Twitter) David responded that the PRP had created a database of interested parties (of around 1,000 names including a range of civil society groups) and was using its best endeavors to involve as diverse an audience as possible in the consultation.

It was noted that there was no reference in the criteria to the diversity of the regulators' Boards, including geographical diversity. David explained that whilst the PRP is required to comply with the Public Sector Equality Duty (PSED) in its approach to an application, we cannot impose the PSED downwards - and geographic location is not a protected characteristic.