

## **Guardian News & Media response to the Press Recognition Panel's call for information - IMPRESS's application for recognition**

On 30<sup>th</sup> July 2015, Guardian News & Media (GNM) responded to the Press Recognition Panel's (PRP) consultation on proposals for the recognition of Royal Charter compliant regulator of the press. In its submission to the PRP, GNM outlined a range of concerns relating to the process by which the Royal Charter settlement came into being. GNM also made clear that it continues to have concerns about the founding articles and regulations of the Independent Press Standards Organisation (IPSO).

GNM continues to operate its own self regulatory regime comprised of a system of complaints handling that involves a first tier readers' editor, with a second tier review of decisions of the readers' editor provided by the Scott Trust review panel.

Under the rules of the Royal Charter settlement, GNM recognises that its decision not to join a regulator that is recognised as being compliant with the criteria set out in the Royal Charter could expose GNM to significant financial risk. GNM expressed detailed concerns about the way in which those financial risks have been constructed through clauses of the Crime & Courts Act (CCA). Specifically, GNM made the point that these clauses have been drafted in ways that place undue emphasis on penalising a publisher defendant and don't properly deal with, for example, an unreasonable claimant. Clauses in the CCA 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. GNM made clear that it does not support any initiative that might lead to these provisions coming into effect.

Against this background, GNM writes to support a number of the points made in a detailed submission to this consultation made by the News Media Association (NMA) opposing the application of IMPRESS to gain recognition as a Royal Charter compliant regulator of the press. In this short note, GNM highlights in particular the following five points as being of particular concern in relation to analysis of IMPRESS' application.

First, in line with concerns raised in GNM's earlier submission to the PRP about its recognition process, GNM is concerned that the current membership of IMPRESS does not reach the threshold of the definition of 'relevant publisher' in spirit or in practice. As the NMA submission outlines, it is unclear whether the 13 hyper local publishers that comprise the membership of IMPRESS pass the fundamental test as to whether they are 'relevant publishers' as defined by the CCA.

Second, the NMA submission makes clear that Leveson's intention was that the funding of a Leveson compliant regulator should be through industry subscriptions following discussions with the board of the proposed regulator. It is therefore of significant concern that IMPRESS' application to become a recognised regulator is underpinned by a Trust - set up with the sole aim of funding IMPRESS' development and running costs – which is in turn funded by a single charitable donor. The NMA argues in its response to the PRP, that the absence of industry funding, the reliance of IMPRESS on a single donor to fund IMPRESS' operations is neither independent or sustainable. The NMA submission rightly points to a range of Notice Events which demonstrate that the charitable trust can withdraw funding from IPSO on the basis of a range of subjective factors.

Furthermore, were the PRP to recognise IMPRESS as a recognised regulator, the PRP would itself become reliant on fees from recognised regulators – IMPRESS - to fund the annual reviews of those regulators. In recognising IMPRESS the PRP would itself become reliant on the subjective conditions of a charitable trust, exposing the PRP to the same insecurities of funding and lack of independence as IMPRESS. Given the Rubicon that is crossed in terms of the activation of punitive clauses of the CCA by dint of the PRP recognising a regulator as Royal Charter compliant, the sustainability of both the regulator and the PRP that recognised the regulator should be a significant concern in the PRP recognition process.

Third, the NMA highlights that the contracts that have been signed with the 13 members of IMPRESS are subject to just a 6-month notice period. This compares to a fixed 5-year contract to become a member of IPSO. The NMA argues that this demonstrates that IMPRESS would have difficulty in enforcing standards investigations against member publishers. If they did not like IMPRESS's actions, the publishers could exit the regulator's jurisdiction without penalty within 6 months. Furthermore, it is unlikely that if the 13 micro-businesses that are currently members of IMPRESS left the organisation, that they would be adjudged to be 'relevant publishers' in the context of the CCA. This means that it is unlikely that these publishers would face any of the escalated punishments contained within the CCA that would be triggered on the rest of the news media industry as a result of IMPRESS being recognised.

Fourth, the NMA expresses concern about the cost of regulation for large publishers if they were to join IMPRESS and suggests that this may deter the majority of the press from doing so. The NMA points out that the five largest publisher members of IPSO pay £780,000 a year to fund IPSO. Under the plans submitted to the PRP, each one of those organisations would have to pay £800,000 to become a member of IMPRESS. The NMA suggests that the "average that the top 10 IPSO publishers pay is £108,000. IMPRESS charges almost eight times this sum. There is therefore something seriously wrong with IMPRESS's financial model."

Furthermore GNM understands that IMPRESS' business plan provides no details as to how it expects to raise its running costs of an expected £1.56m in 19/20. This is of especial concern given that – outside of funds from donors – IMPRESS has thus far only managed to raise £600 in membership fees from its 13 member organisations.

Fifth, the NMA submission points to a range of flaws and omissions in IMPRESS' scheme of regulation. In particular, the NMA criticises the arbitration process set out by IMPRESS, outlining a number of flaws which would mean that a failed mediation could still see a complainant bring a civil claim against a publisher and that the process also enables publishers to elongate the process for complainants. The NMA highlights that the IMPRESS arbitration scheme will see the publisher liable for the fees of the arbitrator in any event. These fees could be up to £3,500. The publisher must also bear its own legal costs since no award of costs shall be made against a claimant "under any circumstances". The NMA further points out that where claimants are successful, the publisher may be ordered to pay the claimant's costs. In "ordinary circumstances" those costs will be capped at £3,000 and £300 an hour, but could be higher depending on an assessment by the arbitrator "having regard to all the material circumstances".

The NMA suggests that a publisher could easily be liable for costs of more than £10,000 in a case where it has been forced to arbitrate and loses the case even in part. This seems to be exceptionally high in terms of industry norms, but especially high given the context of IMPRESS's existing members. The NMA submission rightly makes the point that if IMPRESS's 13 members are only able to pay an annual fee of £50 each, paying £10,000 to arbitrate a case seems significantly out of their reach.

GNM's decision to pursue a system of genuine self-regulation outside of membership of IPSO and of the prospective rules and regulations of IMPRESS put GNM in a unique position to observe the ongoing development of the self regulation of the press. A great deal of time has been spent by both sides of the argument for and against press regulation debating whether the respective regulators meet the criteria and principles set out within the Leveson report, and subsequent Royal Charter settlement on press regulation. It is undoubtedly clear that IPSO does not meet the requirements set out in the Royal Charter, and therefore would not – and explicitly has no desire to – gain recognition from the PRP.

In contrast IMPRESS explicitly seeks recognition as being compliant under the 29 principles of the Royal Charter. It is therefore required to be absolutely clear that its plans, finances, membership and business plan meet those criteria exactly. This is particularly critical given the implications of recognition for the wider media. It is not clear from the analysis of IMPRESS's application for recognition that GNM has seen that IMPRESS's application does meet the relevant criteria.

As outlined earlier in this submission, the failure of the PRP to recognise a Royal Charter compliant regulator of the press would not produce a nil result. The Royal Charter settlement allows for such an outcome, providing a trigger point in September 2016 at which point the PRP would report back 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.

GNM believes that this route is preferable to the recognition of a regulator of the press that is not credible.

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