Susie Uppal
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By email: suppal@pressrecognitionpanel.org

2 August 2016

Dear Susie,

PRP Executive Assessment

Thank you very much for sharing with us your executive assessment and recommendation for the PRP Board in respect of our application for recognition. We appreciate the opportunity that you have given us, in line with your published procedures, to comment on this assessment. And we are extremely grateful for the painstaking attention which you and your team have paid to our application, the Charter and the relevant sections of the Leveson Report.

In making this response, we do not abandon our right to make different or additional points should anything relating to this executive assessment be the subject of future legal proceedings.

Commentary

On page 17, you say that a respondent to your first call for information claimed that the IPRT trustees include ‘a solicitor from a firm that has acted for AMCT’. Whereas the other responses which you summarise here are clearly statements of opinion, this is a truth claim which happens to be false. We do not believe that the IPRT trustees do in fact include a solicitor from a firm that has acted for AMCT. So this claim is likely to give rise to a misleading impression of the relationship between IPRT and AMCT. We would be grateful if you could make this clear.

On pages 35-36, you say that 'the statement by IMPRESS in their application that "*other candidates [for the Appointment Panel] emerged as a result of the advertisement and attendant publicity*" does not seem to be correct.' You may be confusing applicants for the Appointment Panel with successful candidates. Whilst it is true that all successful candidates were subject to the targeted search carried out by the IMPRESS Project, other applicants did indeed emerge as a result of the advertisement. We would be grateful if you could make this clear.

On page 80, you begin a sentence with the words, 'in fact'. This suggests that you intend to rebut the statement made in the preceding extract from our clarification paper. However, the statement in our clarification paper is correct: it is reasonable to conclude that Lord Justice Leveson anticipated a future regulator would adopt the Editors' Code of Practice as its initial standards code. This is clear from the Leveson Report, Part K, Chapter 7, 4.18 – 4.24, where Lord Justice Leveson sets out his recommendations in relation to a standards code.

Leveson distinguishes typographically here between references to standards codes in general and the Editors' Code of Practice in particular. He is consistent in his use of the lower-case 'code' for the former and upper-case 'Code' for the latter. Thus, when he says that 'the current Code would benefit from a thorough review, with the aim of developing a clearer statement of the standards expected of editors and journalists' (4.20), he is self-evidently referring to the Editors' Code of Practice. On the other hand, when he says that 'it is essential that it should be the regulator who approves a code of standards to which members must adhere' (4.21), he is clearly referring to standards codes in general.

This section of the Report shows that Leveson believed a regulator should take responsibility for approving a code of standards which, whilst not necessarily identical to the current Editors' Code, was highly likely to take the Editors' Code as its starting point. It is therefore reasonable for us to conclude that '*Leveson anticipated that any regulator would adopt the Editors' Code of Practice as its initial standards code*.' The removal of the words, 'In fact', from the start of your sentence would address our concerns here.

On page 85, you include a speculative passage about the relationship between freedom of speech and group discrimination. You question whether a regulator's power to intervene in cases of alleged discriminatory reporting should be extended to representative groups. You go on to suggest that questions of discriminatory reporting against groups may be 'matters for editorial ethics rather than the courts'. These comments appear to misconstrue the nature of the standards code, which is by its nature a statement of editorial ethics, and is as such free to set higher standards in relation to group discrimination than would be acceptable as a matter of law. We believe that this passage is at best irrelevant to our application and at worst prejudicial to a future *ad hoc* or cyclical review. We would be grateful if you could remove this paragraph.

On page 113, you refer to our procedures for ensuring that publishers comply with the expectations of our Regulatory Scheme and related policies. We can confirm that, since your validation and verification visit, all publishers which we describe on our website as 'regulated' have now published details of their complaints policy and procedures on their websites. All hyper-links have been tested to establish that they work properly and point to the correct documents. We would be grateful if you could note this. We would also like to clarify that two aspects of publisher compliance, namely publicising of their complaints policy and procedures and notifying employees and contributors of their whistleblowing policy and procedures, will normally take place only after the Regulatory Scheme Agreement has been entered into. To avoid any future misunderstanding over the compliance status of publishers, we will from now on only advertise on our website that a publisher is regulated by IMPRESS once a Regulatory Scheme Agreement has been entered into and all relevant information has been posted on the publisher's website.

On page 120 you describe a validation meeting as taking place on 6 June whereas in fact this meeting took place on 6 July. We would be grateful if you could correct this.

On page 121 you refer again to our procedures for ensuring that publishers comply with the expectations of our Regulatory Scheme. As above, we can confirm that, since your inspection on 28 July, all publishers which we describe on our website as 'regulated' have now published details of their complaints policy and procedures on their websites. We would be grateful if you could note this.

We recognise that you have posed a number of questions for the PRP Board in relation to criteria 6 and 23. We have no information to add at this stage in relation to those criteria, but we make the following observations.

In relation to criterion 23, you question the fairness of terms under which a publisher objecting to a fee increase cannot resign before that increase has become effective. An unfair term in a contract can be described as one that creates a significant imbalance in the rights and obligations of the parties, to the detriment of the weaker party. It is not self-evident that publishers are necessarily weaker parties in their relationship with IMPRESS. As you noted in relation to criterion 6, the IMPRESS business model depends on a certain amount of income from regulatory fees, so IMPRESS has an interest in recruiting publishers to become members. It will therefore not be in the interests of IMPRESS to ignore serious objections to fee increases if these are raised in a consultation; this would send counter-productive messages to the market of prospective recruits. The relationship between IMPRESS and its publishers is a business-to-business relationship which is respectful of the interests and benefits of each party.

We do not see publishers as weaker parties, nor do we see the provision itself as necessarily causing detriment. The provision might not suit the preference of a publisher at a particular time, but that is not the same as causing objective detriment. It will be in the interests of its members generally that IMPRESS is able to forecast reasonably accurately

its fee income in a forthcoming year so that a sound budget can be settled without this being subject to a sudden mid-year withdrawal of a substantial publisher from membership.

As far as the particular term is concerned (restricting the right of a publisher to resign before a proposed fee increase has become effective), we can point to an almost exactly analogous provision of long standing in the voluntary jurisdiction of the Financial Ombudsman Service (FOS). The standard terms of participation at the FOS require at least six months notice by a financial firm of a proposed withdrawal. Rule DISP 4.2.7 of the Financial Conduct Authority sets this out. In a very similar way to the model of annual fee revisions following a budget consultation provided for in the IMPRESS arrangements, the FOS normally consults on fee proposals in early January of each year and fee changes come into force at the beginning of April. A notable difference between the consultation provisions for the FOS and those for IMPRESS is that IMPRESS has bound itself to consult, while the FOS fee and funding rules make no formal requirement to consult.

We regard the requirement to consult our members on key aspects of our scheme as important elements in the balance between our aim of regulatory independence and the need to command the confidence of publishers. As to how consultations should be carried out and the information that should be made available to its consultees by a regulator proposing fee increases, salutary guidance can be drawn from the recent decision of the High Court concerning the General Dental Council: *British Dental Association v General Dental Council [2014] EWHC 4311 (Admin).*

We hope very much that these points are helpful. We would like to reiterate how grateful we are for the pains you have taken to understand and summarise our application.

Yours sincerely,

Jonathan Heawood
Chief Executive Officer