

Online Harms White Paper

Consultation response from the Press Recognition Panel

13 June 2019

Executive summary

1. The Press Recognition Panel (PRP) welcomes the opportunity to respond to the Government's consultation on its Online Harms White Paper, particularly since the White Paper is concerned in part with news, "fake news" and disinformation.
2. Social media platforms perform as news publishers when they produce, edit and distribute news. For these platforms, a regulatory framework already exists in the form of the recognition system, of which the Royal Charter and the PRP are part. Under this system, social media news publishers can join or form an independent self-regulator. That regulator can apply to be independently assessed by the PRP to confirm that it protects the public and upholds freedom of speech.
3. The recognition system – if fully in operation – would bring to an end political involvement in news publishing and regulation.
4. The Government should not overburden news publishers and social media platforms by creating a new regulatory system, since an existing system already exists. Nor should they operate within a system different to that which applies to other news publishers (including the traditional 'press')
5. Over the last five years, the PRP has demonstrated a commitment to an independent system of self-regulation and shown that the recognition system leads to an increase in standards.

Introduction

6. The PRP was established by a Royal Charter in 2014 as part of a new system of regulatory oversight to ensure freedom of speech for the press and other news publishers whilst also protecting the interests of the public. This followed the Leveson Inquiry (2011-2012) into the culture, practices and ethics of the press. In his independent report, Lord Justice Leveson had proposed a genuinely independent and effective system of self-regulation with politics playing no part in it.
7. The Royal Charter gives the PRP a unique and unprecedented independence from Government, politicians, the press, news publishers and others.

News publishers

8. The Royal Charter sits alongside the Crime and Courts Act 2013 to provide a legal framework (the recognition system) for the regulation of news publishers in England and Wales. Section 41 of the Act sets out a clear definition of the news publishers concerned, and it terms them 'relevant publishers'.
9. The Act applies to any relevant publisher that can be sued in the courts of England and Wales, which therefore includes the social media organisations that are the focus of this consultation.
10. '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.
11. Further:

"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."
12. Also:

"(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)."
13. 'News-related material' also has a specific definition under the Act. It means:
 - (a) news or information about current affairs,
 - (b) opinion about matters relating to the news or current affairs, or

- (c) gossip about celebrities, other public figures or other persons in the news.

14. The PRP considers that in relation to some or all of their news-related activities, some social media platforms perform as relevant publishers. They do so when they publish news or current affairs information. They perform the role of news editors including when they “fact-check” (or similar) content and decide what to publish, amend or remove from their platforms.

The PRP

- 15. It follows that, for social media platforms that perform the role of relevant publishers in England and Wales, a system of regulatory oversight already exists in the form of the recognition system.
- 16. Those publishers should consider joining or forming a regulator which meets the recognition criteria set out in the Royal Charter.
- 17. As considered further below, those criteria were framed on the basis of the recommendations of the Leveson Report to provide the minimum requirements for news regulators. The criteria balance the public interest imperatives of free speech and the public interest in proper oversight of news publishing (including through access to independent complaint and low-cost arbitration processes).
- 18. If such a regulator were to apply to be recognised within the scheme of recognition under the Royal Charter by the PRP, the PRP would consider its application in accordance with the PRP’s guidance.
- 19. The PRP’s approach to those matters was challenged by way of a judicial review of its decision to recognise IMPRESS as meeting the Royal Charter criteria. That challenge was roundly rejected by a Divisional Court. The appeal against that decision was withdrawn shortly before the Court of Appeal was due to consider it.
- 20. The relevant activities of the social media organisations concerned mean that the scheme of recognition and the Royal Charter criteria are entirely appropriate for this purpose.

The Charter system of regulation

- 21. The Royal Charter lists 29 criteria, which if met ensure a regulator is, among other things, independent of the publishers it regulates, is appropriately funded, and has systems in place to protect the public.
- 22. The Royal Charter requirements could be applied to a regulator that had social media platforms as members. For example, the Royal Charter requires news publishers to be held strictly accountable under a standards code for the material they produce. Amongst other things, the code must take into account the importance of freedom of speech, the interests of the public, and the rights of individuals. Many social media platforms already have standards or codes of conduct that could be adapted.

23. The Royal Charter also requires news publishers to have appropriate internal governance processes for dealing with complaints and compliance with the standards code. Many social media platforms already have complaints processes in place that could be adapted.
24. The Royal Charter is as appropriate for social media platforms as it is for other publishers of news-related material such as the print press and online news publishers.

Better regulation

25. As the Better Regulation principles outline, all regulation should be proportionate, consistent, accountable, transparent, and targeted only where needed.
26. As outlined above, social media companies already undertake activities which the PRP considers fall within the ambit of the existing 'recognition system'. It would not be consistent with Better Regulation for an additional, overlapping system to be put in place in relation to those activities
27. It would be inconsistent and inappropriate to create an additional, parallel or overlapping regulatory system for the social media platforms which would be more intrusive, and/or burdensome, and/or less independent than the system that is already in place for other relevant publishers. The consultation appears to contemplate such an arrangement.

Oversight regulation

28. Given the free speech concerns that have properly been raised by some parties, it is important that the regulation of social media platforms is properly independent of Government and other similar interests.
29. Over the last five years, the PRP has demonstrated that it is properly independent. The way it was created (including the appointment of its Board and its total independence from Government) ensures that remains the case. The PRP has no involvement in the operation of relevant publishers. The PRP merely oversees regulators who have applied to it voluntarily.
30. The Royal Charter prevents the Government, politicians, and others from unduly influencing the PRP.
31. It would be understandable if social media platforms and other publishers of news-related material such as the press objected to the current proposals for regulating social media platforms that are outlined in the White Paper. The current proposals increase the regulatory burden on relevant publishers, increase Government interference and put freedom of speech at risk.
32. The Royal Charter system of regulation is proportionate, and it would protect both the public and freedom of speech.