Exploring Press Recognition Panel annual report on the recognition system

05/03/2019

TMT analysis: Isabella Piasecka, PSL and associate at Mishcon de Reya, considers the key recommendations of the Press Recognition Panel (PRP) annual report on the recognition system, along with potential implications.

Original news

Press Recognition Panel publishes report on recognition system, LNB News 13/02/2019 131

The Press Recognition Panel (PRP) has published its annual report on its recognition system. The PRP was founded in 2014 with the aim to independently oversee press regulation in the UK. Its founding followed the Leveson Inquiry into the culture, practices and ethics of the press, in the light of alleged criminal activity which included phone hacking. The report states its recognition of only one regulator, IMPRESS. It notes that the recognition system does not cover all significant relevant publishers and so therefore the system has not been fully implemented.

What is the background to this report?

The PRP was set up in 2014, by royal charter, to oversee press regulation in the UK. The charter was granted in response to one of the key recommendations by Lord Leveson, in his critical 2012 report on press conduct, to create a 'genuinely independent and effective system of self-regulation'. Under the new scheme, regulators can apply to the PRP for recognition, based on the charter's 29 criteria. Lord Leveson also envisaged that news publishers would be encouraged to sign up to an approved regulator by a system of 'convincing incentives'. One of the most important—and controversial—of these, as provided for in section 40 of the Crime and Courts Act 2013 (CCA 2013), would make publishers outside the scheme liable for both sides' costs in legal cases, win or lose. However, the government has since pledged to repeal CCA 2013, s 40 'at the earliest opportunity'.

To date, only one regulator, IMPRESS, has been recognised by the PRP, a decision that was challenged by the News Media Association (NMA), by judicial review, but ultimately upheld (the NMA discontinued its appeal in January 2019). Still, IMPRESS currently regulates only 111 publications in the UK, and many of the larger publishers have resisted joining. Some have joined a rival regulator, the Independent Press Standards Organisation (IPSO) but, according to the PRP, IPSO fails to meet all 29 of the charter criteria. In any event, IPSO has said it does not intend to apply. In short, most of the significant publishers remain outside the regime.

This latest report by the PRP fulfils a statutory requirement to report to Parliament on the success or failure of the new system. At heart, it is a plea to the government, and reluctant publishers, to give the post-Leveson system a chance to succeed.

What are the key recommendations?

The key recommendations are:

- CCA 2013, s 40 should be commenced immediately, so that the recognition system can be completed, and then properly tested
- the PRP should explore what role, if any, it should have in regulating social media platforms that are deemed to be 'relevant publishers', ie that publish news-related material subject to editorial control
- platforms that already recognise themselves to be relevant publishers should consider moving under the recognition system voluntarily

What could this mean for the press, social media platforms and fake news and IPSO?

The press

CCA 2013, s 40 employs the carrot and stick approach—it provides costs protections, as well as exposure, to encourage both claimants and publishers to settle their disputes via arbitration schemes run by approved regulators, rather than the courts. A publisher that signs up to an approved regulator will, if sued, avoid paying the claimant's costs even if it loses, unless the complaint could not have been resolved via arbitration, or it would be just and equitable for the defendant to pay. But, if a publisher fails to sign up to an approved regulator, and is sued, it pays the claimant's costs (as well as its own, and again unless there are exceptional circumstances) even if it wins. That is certainly, as intended, an incentive for publishers to come within the new scheme, but it is also extraordinary in breaching the longstanding English rule that the loser pays the winner's costs. If the government does commence CCA 2013, s 40, and if publishers nevertheless refuse to sign up, there will be at least uncertainty, in terms of when and how the various exceptions apply, and potentially real unfairness. That said, without alternative incentives, it is hard to see how publishers would be persuaded to join.

Social media platforms

As the PRP has observed, the boundaries between the press and certain social media platforms are dissolving. It believes that some of those platforms, in at least some of what they do, are 'relevant publishers' under the recognition system, and can be regulated as such, although it will be for the courts to determine what, if any, legal liability they should assume. There are growing calls, including by news publishers, to make social media companies more accountable—the House of Commons Digital, Culture, Media and Sport Committee recommended in February that the government consider a new category of tech company, between platform and publisher, to tackle harmful content and fake news. But the PRP warns that any regulation of social media could subsequently be imposed on the press—another reason to embrace proper self-regulation now.

IPSO

The PRP is clear that IPSO falls short of the necessary minimum requirements set by the charter. In particular, it is not sufficiently independent, and does not provide the level of public protection intended by Parliament, post-Leveson. To what extent it may have to reform, and to seek recognition by the PRP, will depend on whether the government introduces incentives—namely CCA 2013, s 40, or others—to ensure that the comprehensive system of self-regulation envisioned by Lord Leveson is fully realised.

Interviewed by Alex Heshmaty.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.