

BACKTRACKING ON LEVESON?

Two developments within the space of a week have revived debate over the post-Leveson system of press regulation. The first of these was the decision by the Press Recognition Panel (PRP) on October 25, 2016 to recognise IMPRESS as an “approved regulator”. The announcement itself will have little immediate impact for a number of reasons. As at July 14, 2016 the IMPRESS membership comprised a total of 31 UK “news publications” made up of local newspapers and other periodicals in a list which includes the *Caerphilly Observer*, *Leasehold Knowledge*, *Shropshire Live*, *The Ferret* and *Your Thurrock*. Most of the press – about 1,500 print and 11,000 online titles – have signed up to the Independent Press Standards Organisation (Ipsos), a body that has ruled out seeking PRP approval and whose members have joined up specifically because they do not want to belong to a regulator that is recognised under the Royal Charter on press regulation. Some newspaper publishers – notably the Guardian group – have refused to join any form of organisation and opted for self-regulation. The effect of the PRP’s recent announcement is that government has declared its official support for a regulator with few members and no backing from the major publishers while the vast majority of the industry continues to subscribe to a regulator operating outside the system created to oversee and control the press.

While the industry was still digesting the implications of IMPRESS’ elevation to approved regulator, Culture Secretary Karen Bradley launched a surprise consultation on November 1, 2016. *Consultation on the Leveson Inquiry and its implementation: Section 40 of the Crime and Courts Act 2013 and Part 2 of the Leveson Inquiry* addresses two main issues.

The Leveson Inquiry was set up in 2011 when evidence emerged of phone hacking by sections of the press, and the terms of reference for Part 2 were drafted before Part 1 had started. Most of the objectives of Part 1 – which involved inquiring into the culture, practices and ethics of the press and making recommendations for a more effective regulatory regime – have been acted upon. The government wonders whether undertaking Part 2 of Leveson is still in the public interest. The terms of reference for Part 2 included examining the extent of unlawful and improper conduct within News International, and corrupt payments or other inducements received by the police. Three police operations have investigated a wide range of relevant offences since 2011 at a cost of some £43 million, and the government feels that as matters stand Part 2 may have little to add. The choices would be to continue with the inquiry under its original or amended terms of reference, or terminate activity under Part 2.

Section 40(3) of the Crime and Courts Act 2013, which has not been implemented, states that a court must award costs against a defendant publisher in a claim related to the publication of news-related material if at the time the claim

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was made the defendant was not a member of an approved regulator, unless the issues raised by the claim could not have been resolved by using the regulator’s arbitration scheme; or, it would be just and equitable in all the circumstances of the case to make a different award of costs or no award at all. If the defendant was a member of an approved regulator at the relevant time, section 40(2) stipulates that the court must not award costs against the defendant subject to the same issues set out in s 40(2).

Four options for section 40 are discussed in the consultation document: keep under review; commence in full; repeal; or partial commencement that would give protections to members of a recognised self-regulator. Publishers are worried that draconian costs orders could threaten the existence of many parts of the press, particularly local and regional newspapers, if they are compelled to pay the costs for both sides even if the newspaper was to win in court. The costs provisions compliment sections 34-39 of the Crime and Courts Act 2013, which came into force on November 3, 2015. Under these provisions publishers who do not belong to an approved regulator face the threat of exemplary damages being awarded against them in claims brought against the press. These claims could involve defamation, misuse of private information, breach of confidence, malicious falsehood and harassment.

At present the Culture Secretary, Karen Bradley, is adopting a conciliatory approach towards the press, and the Society of Editors has applauded her view that evidence of how press regulation is now working must be considered rather than looking back to the Leveson report. The major newspaper publishers will not soften their approach to Leveson-based regulation; for example the law firm RPC, acting for the News Media Association, has warned that the PRP decision to recognise IMPRESS as a press regulator is open to an application for judicial review and has written to the PRP requesting disclosure of the information on which the decision was based. On the other hand, supporters of Leveson, such as the group Hacked Off which represents people who complain of intrusive press treatment, have denounced the postponement and potential cancellation of Part 2 as a betrayal of promises made. Ms Bradley has a difficult balance to strike.

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