

The Independent Press Regulation Trust

Decision

1. The Commission has considered a request under its decision review procedures for a review of its decision dated 7 May 2014 to refuse to register The Independent Press Regulation Trust ("IPRT") as a charity.
2. Having taken into account all of the evidence submitted in support of the application for registration in the decision review, it has concluded that IPRT is not established for exclusively charitable purposes and cannot be entered onto the register of charities. The detailed reasoning is set out below.
3. In making this decision the Commission recognises that an independent press regulator once established and recognised, if constituted in charitable form, might be established for exclusively charitable purposes for the public benefit. However, given that such a body is not established and recognised, the purpose of IPRT cannot be regarded as evidently established for exclusively charitable purposes.

Background – Press Regulation

4. The Leveson Inquiry was established in July 2011 as a judicial public inquiry into the culture, practices and ethics of the British Press. Part 1 of the Inquiry reported with recommendations in November 2012. The Leveson Recommendations set out the criteria to be adopted by the new regulator which must be recognised and audited by a recognition body. The mechanism for achieving this has been enshrined in a Royal Charter on Self-Regulation of the Press made on 18 March 2013.
5. The Charter provides for the establishment of a recognition body, the Recognition Panel who will recognise Press Regulators under a Scheme of Recognition on the basis they meet "..... the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability, as articulated in the Leveson Report.....". Schedule 3 of the Charter contains criteria the new regulator must meet to be accepted. The Charter and its Schedules are reproduced at Annex A.

The expressed purposes of IPRT

6. The purposes of IPRT set out in clause 3 of its Trust Deed dated 8 November 2013 are:
 - 3.1 *To promote for the public benefit high standards of ethical conduct and best practice in journalism and the editing and publication of news in the print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression.*
 - 3.2 *The trustees shall further the objects by such means as they think fit from time to time which may include the provision of financial assistance towards the establishment and support of an independent press regulator or independent press regulators to be established and conducted for the whole*

or any part of the United Kingdom in accordance with the recommendations and principles set out in the Leveson Report.

The Legal Framework to be applied in assessing charitable purposes

7. To be charitable IPRT must be established for a purpose falling within one or more of the descriptions of purpose set out in Section 3(1) of the Charities Act 2011 and be for the public benefit, Section 2(1) of the Act.
8. As a general rule of construction, the courts look at the plain language and ordinary meaning of the governing document to ascertain the purposes. It is a clearly established legal principle that where there is any doubt or ambiguity about the purposes of an institution and whether the purposes of an institution are charitable, relevant factual background information and the activities may be considered.¹ In Incorporated Council of Law Reporting v Attorney General, it was said “...in order to determine whether an object, the scope of which has been ascertained by due processes of construction, is a charitable purpose it may be necessary to have regard to evidence to discover the consequences of pursuing that object.”²
9. The courts have in consequence confirmed that considering the activities of an institution may be relevant to both a proper understanding of its true purposes and in assessing whether a purpose is capable of being for public benefit and, in the context of that institution, will actually be for public benefit.³
10. In determining whether the Trust is charitable it is necessary to consider the particular purposes of the Trust so as to be satisfied they are exclusively charitable as falling within the descriptions of purposes and being for the public benefit.⁴ The particular purposes need to be considered on their individual merits

¹ Incorporated Council of Law Reporting for England and Wales v AG 1972 Ch 73 at 91

² [1972] Ch 73 at 91

³ McGovern v AG [1982] Ch 321; AG v Ross [1985] 3 All ER; Southwood v AG [2000] WTLR 1199

⁴ The Upper Tribunal in *Independent Schools Council v Charity Commission* identified the steps in determining the issue of charitable status at paragraph 82 of its decision as follows:

"a. The starting point is to identify the purpose (or purposes if there is more than one) of the institution. This will be a particular purpose in the context of the constitution of the institution. Let us call this "the Particular Purpose". The Particular Purpose is the "purpose" referred to in the opening words of section 2(1) in the phrase "...is a purpose"

b. The Particular Purpose is a charitable purpose if (a) it falls within section 2(2) and (b) is for the public benefit

c. The Particular Purpose falls within section 2(2) if it falls within any of the categories listed in section 2(2).

d. The Particular Purpose is for the public benefit if it falls within section 3(3). The question then is whether the Particular Purpose itself is for the public benefit, the answer to which is obtained by ascertaining what the position would have been prior to the 2006 Act (subject to the effect of section 3(2) concerning presumptions). The question is not whether the categories in section 2(2) are inherently or necessarily for the public benefit: the focus is on

having regard to the particular circumstances of the particular institution, consistent with the current law and establishing the facts on the balance of probabilities. The Upper Tribunal in the *Independent Schools Council v Charity Commission* decision at paragraph 90 states:

"The status of any particular institution must depend on its own constitution and the context in which it operates."

The Legal Framework as applied to the expressed purposes of IPRT

Descriptions of Purposes

11. The purposes of IPRT are novel and are not clearly charitable. It is therefore appropriate to consider whether there is a suitable analogous purpose and the relevant background information to look at the circumstances in which it came into existence and the sphere in which it operates to determine whether it is charitable.
12. The Commission has adopted a purposeful and constructive approach to considering whether the object at clause 3.1 "*to promote, for the public benefit, high standards of ethical conduct and best practice in journalism and the editing and publication of news in the print and other media..*" is charitable under section 3 (1) (m) of the Charities Act 2011 - any other purposes that are recognised as charitable or analogous to charitable purposes. It has considered suitable analogous purposes including those proposed by IPRT.
13. IPRT suggests that its purpose is analogous to that of a general public utility comparable to the provision of a water supply. The Commission does not consider this to be a strong analogy on the basis that water is an essential commodity; the link is at best a tentative one.
14. IPRT also suggests that the advancement of particular professions or vocations and their practice are capable of being charities provided they are administered for the public benefit. However, the courts have only recognised professional bodies as charitable where they are established to further a charitable purpose e.g. Royal College of Surgeons – promoting the study, practice and science of surgery for the public benefit.⁵ The link to a charitable purpose is crucial to charitable status.
15. IPRT state that it is charitable to promote best practice in an individual industry. There is case law which supports the view that the promotion of industry standards and best practice might be charitable within a certain context. The courts have held that the promotion of agriculture⁶ and the promotion of industry

"the particular purpose of a particular institution. The relevance of section 2(2) is that it presents a hurdle: the purpose must fall within one of the categories and if it does not the question of public benefit is not relevant"

⁵ Royal College of Surgeons of England and Wales v National Provincial Bank 1952 AC 63

⁶ IRC v Yorkshire Agricultural Society [1928] 1 KB 611.

and commerce⁷ are purposes capable of being charitable where such purpose are for the public benefit rather than those engaged in the industry.

16. Justification for charitable status under this purpose may be on the basis of the importance of the industry under consideration in economic and social terms (agriculture in the 1920s) and the link to other charitable purposes. The courts have not specifically considered whether the promotion of the media industry for the public benefit is charitable. However, the Commission has registered charities concerned with promoting ethical standards in journalism and the media⁸ predominantly in the context of educational charities.
17. The Commission considers the strongest analogous charitable purposes are (1) to promote the ethical or moral improvement of the community⁹ and (2) to promote compliance with the law.¹⁰
18. The Commission has used the analogy of the moral improvement of the community on several occasions to recognise other organisations¹¹ and purposes¹² as charitable in its constructive approach to charity law to reflect changing social and economic circumstances, having identified a benefit to the public the law recognises as charitable by analogy with previously decided cases.

Public benefit

19. In principle, the Commission accepts that there may be a benefit to the public in promoting ethical standards and compliance with the law within the media industry. However, consistent with the approach of the Upper Tribunal¹³, consideration of whether the particular purpose of IPRT is charitable and for the public benefit is necessary. This involves consideration of the express means by which the purpose is to be furthered set out in clause 3.2 of the Trust Deed.
20. Although it is not exclusive, the express means by which the purposes of IPRT are to be furthered include the provision of financial assistance towards the establishment and maintenance of an independent press regulator that conforms to the recommendations in the Leveson Report following an inquiry on the culture, practice and ethics of the press. Recognition as a Leveson compliant Press Regulator is achieved through the framework set of in the Royal Charter as is referred to in paragraph 4 above.
21. IPRT confirm it seeks to establish and support a regulator which will: provide the public with an effective complaints mechanism and access to justice for civil claims arising from publication by way of alternative dispute resolution; facilitate the promotion of high ethical standards and best practice in journalism and;

⁷ Crystal Palace Trustees v Minister of Town and Country Planning [1951] Ch 132

⁸ The Media Standards Trust (RCN 1113680) with an object to promote ethical standards of conduct including high standards of balance, fairness, accuracy, integrity and professionalism and compliance with the law

⁹ *Re Hood, Re Price and Re South Place Ethical Society*

¹⁰ *Re Vallance* [1876] 2 Seton's Judgements (7th edn) 1304; *Re Herrick* [1918] 52 ILT 213

¹¹ Public Concern at Work Ch Comm Annual Report vol 2 April 1994

¹² The Promotion of Racial Harmony

¹³ Independent Schools Council v Charity Commission paragraph 82

promote the human rights of freedom of expression and respect of private and family life

22. IPRT acknowledges that the support of a press regulator would require the trustees to consider the factual situation and accepts that it will not be possible to support a recognised Leveson compliant regulator until one has been set up and recognised.¹⁴ IPRT also acknowledges that an essential pre-requisite for the support of a new regulator is that it is set up in such a way as to be formally recognised consistent with the provisions of the Royal Charter¹⁵.
23. IRPT has identified The IMPRESS Project as a body which is currently engaged in the design and establishment of a new press regulator which intends to comply with the Leveson recommendations and hopes to be formally recognised. Although the IMPRESS project is not charitable in itself, IPRT intends to support that part of its work dedicated to establishing a new Leveson compliant regulator which IPRT argue will be in furtherance of the charitable purposes expressed in the Trust Deed.
24. The Commission considers that to ascertain whether it would be charitable to support the establishment of a new press regulator an analysis and findings of fact on the functions and operation of the proposed press regulatory body would be necessary. The Commission is not able to do this with any degree of accuracy. This principally because although the Charter with the relevant criteria has been made, the Recognition Panel has to be established under the Charter.
25. In consequence there is no evidential basis from which the Commission can discern how the Recognition Panel will apply the criteria, both in relation to recognition of an independent press regulator and the standards code as required by the Charter. In particular there cannot be any consideration whether in the constitution and operation of a recognised regulator will confer private benefit to the press who chose to be regulated by it which cannot be regarded as incidental and therefore not fatal to charitable status, see *IRC v Glasgow (City) Police Athletic Association 1953 [1953] AC 380* private benefits not incidental and not charitable, compared with *Royal College of Surgeons* footnoted at 5, private benefits incidental and charitable. In fact there can no guarantee that any body promoted by IPRT will satisfy the Recognition Panel and be Leveson compliant.
26. Although IPRT will aspire to establish a press regulator which is Leveson compliant, promoting a concept, which although defined, has yet to be established as beneficial in the way recognised in charity law will be considered as promoting a cause and not charitable. See *Re Shaw*¹⁶ where reform and advocating the adoption of a new alphabet was not considered charitable because it could not be determined whether or not it would be beneficial, the court so held by analogy with the rule against political purposes being charitable.
27. Whilst accepting in due course that such body might be considered to be of a charitable nature, the prospect is too remote and uncertain for the Commission

¹⁴ Letter on behalf of IPRT dated 9 September 2014 paragraphs A8 and B1

¹⁵ Letter on behalf of IPRT dated 9 September 2014 paragraph B2

¹⁶ [1957] All ER 745

to conclusively conclude at this stage that it is evidently of an exclusively charitable nature beneficial to the community. It is unable to conclude with any certainty that it would be charitable to establish and support a body that is Leveson compliant, but has not yet come into existence. The Commission is not in a position to judge whether financial assistance towards the establishment of a body set up by the IMPRESS Project is charitable unless and until such time that it is established and recognised as an independent press regulator. Unless it is clear that all the potential objects of the purposes of a trust are exclusively charitable, it will fail for lack of certainty of an exclusive intention to benefit charity. See principles set out in *Morice v Bishop of Durham* (1805) 10 Ves 522.

Conclusion

28. In conclusion, although the Commission does recognise that, as descriptions of purposes, promoting the ethical or moral welfare of the community and promoting compliance with the law, may provide a suitable analogy for the purposes of IPRT, the particular purpose for which IPRT is established is to promote the establishment of an independent press regulator which will be recognised as Leveson compliant under the Royal Charter. That as such a body is yet to be established and recognised, the purposes of IPRT are considered to be too vague and uncertain for the Commission to conclude that the purposes for which IPRT are established are exclusively charitable for the public benefit.

16 October 2014

Annex – Royal Charter