

**IMPRESS: The Independent Monitor for the Press**  
**PRP Call for Information**  
**Response Paper**

**27 April 2016**

Without prejudice to the PRP's views on the weight to be attached to the submissions in response to the PRP call for information on IMPRESS's application, this paper represents our considered view on the points raised. Having analysed the submissions in detail, we address in this paper only those points which relate to IMPRESS's compliance with the recognition criteria set out in Schedule 3 of the Royal Charter on Self-Regulation of the Press. These points appear, in general, to be relevant to IMPRESS's application. However, in some cases, the respondents object to certain provisions in IMPRESS's application in purported reliance on the recognition criteria, whilst in fact the recognition criteria have been misunderstood or misapplied. Where that is the case, we have made it clear. Where necessary, we describe any new or revised documentation which we provide alongside this response paper.

<p>1</p>	<p>'IMPRESS is not independent as it is dependent for its funding needs on Max Mosley.' (NMA)</p> <p>'In the event that the trustees [of the IPRT] were to decide for whatever reason that they no longer wished to continue funding IMPRESS, the trustees would be acting entirely within their powers if they ceased funding IMPRESS altogether on the occurrence of any one of [the notice events in the IPRT IMPRESS Funding Agreement].' (NMA)</p> <p>'it is surely obvious that if IMPRESS fails to meet AMCT's (or Max Mosley's) expectations in any way (for example if it fails to attract significant publishers as members or if it imposes fines for privacy breaches that are not as high as Mr Mosley thinks they should be), it will [...] lose its funding.' (NMA)</p> <p>'The Funding Agreement between the IPRT and IMPRESS states that IMPRESS is under an obligation to let the IPRT know of "material changes" within IMPRESS. ... We question why an "independent" IMPRESS should be under <u>any</u> obligation to the IPRT [to] supply this information. It is understandable why a proper self-regulator, funded by an industry should require this information, but a "wholly independent charitable trust" who supposedly</p>	<p>Criterion 1 requires a regulator to be 'governed by an independent Board'.</p> <p><b>In order to confirm that IMPRESS fulfils this Criterion, we provide two new documents, AMCT IPRT Funding Agreement and IPRT IMPRESS Letter Dated 260416. Together, these show that the trustees of the IPRT are entirely independent of the AMCT, which has entered into a binding agreement to provide the IPRT with sufficient funds to meet its obligations to IMPRESS.</b></p>	<p>IMPRESS's application to the PRP shows that the IMPRESS Board is obliged to act independently, in accordance with the Charter requirements. Article 6.1 of the IMPRESS Articles of Association requires the Board to 'establish and operate an independent press regulator which complies with the recommendations and principles set out in the Royal Charter'. There is no evidence to suggest that the IMPRESS Board will not fulfil this responsibility with the utmost propriety.</p> <p>Likewise, the Independent Press Regulation Trust (IPRT) is a charity whose trustees are professionals with clear legal obligations set out in the IPRT Deed of Trust, a publicly available document. There is no evidence to suggest that the IPRT trustees will not fulfil their responsibilities with the utmost propriety.</p> <p>In any event, the IPRT IMPRESS Funding Agreement sets out clear protocols to ensure the regulator's independence from the IPRT. The reporting requirements in this agreement are typical of charitable funding agreements and are designed to ensure that the IPRT trustees properly discharge their fiduciary responsibilities. In fact, many charitable funding agreements impose more onerous reporting requirements than these. The</p>
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	<p>have no involvement in regulation should not be making demands such as this.’ (TMG)</p>		<p>‘material changes’, of which IMPRESS has a duty to notify the IPRT under the IPRT IMPRESS Funding Agreement, are very similar to those issues, identified in Article 10.1 of the IMPRESS Articles of Association, on which IMPRESS is under a duty to consult with its participating publishers. In both cases, the reporting and consulting requirements are designed to ensure clear and positive communications between IMPRESS and its sources of funding, whether these are charitable bodies or subscribing publishers, whilst safeguarding the independence of the IMPRESS Board.</p>
2/3	<p>‘IMPRESS ran an advert for positions on their Appointments Panel in the Press Gazette, a trade website not read widely outside the newspaper industry, and on their own website, which at that time did not even come up on the first page of Google search. The response appears to have been poor because they then, according to their application, approached a range of candidates they had identified themselves, “some of whom applied for the role”. Do the PRP regard this as an “appropriately independent way” of selecting an Appointment Panel?’ (Associated)</p>	<p>Criterion 2 requires the ‘selection of the appointment panel [to] be conducted in an appropriately independent way [...] independent of the industry and of Government’ and Criterion 3 says that the panel ‘should be appointed in an independent, fair and open way’.</p> <p><b>IMPRESS fulfils both Criteria.</b></p>	<p>Clearly, if a regulator were established directly by representatives of the industry to be regulated, the process should not be open to domination or manipulation by those publishers. It should, in effect be independent of that section of the industry, as well as of Government. There is no suggestion that IMPRESS failed to meet this element of Criteria 2 and 3.</p> <p>IMPRESS took ‘fair and open’ in Criterion 3 to mean that the process should conform (with appropriate adaptations to circumstances) to the normal expectations of modern appointments, in that candidates should be selected against a clear and publicly available</p>

			<p>description of the role and the necessary skills by means of a standard evaluation procedure, conducted in a non-discriminatory way with an appropriate and proportionate measure of transparency given the scale of the operation. The fact of a recruitment exercise should not be concealed, and any interested person should be able to enquire about it. These requirements were met, as described in the initial application.</p> <p>It is perfectly appropriate – indeed, standard practice – in Board appointments to combine advertising with a targeted search of suitable candidates. With this in mind, the IMPRESS Project Board, at a meeting on 21 March 2014, identified 42 potentially suitable candidates for the Appointment Panel. As these candidates were contacted, other candidates were also identified until a total of 87 candidates were included on the list.</p> <p>At the same time as this targeted search, roles on the Appointment Panel were publicly advertised, as noted in the original application. Links to the published advertisement were tweeted at least nine times during this period, on 21, 22, 23, 24 and 28 May, and 1, 3, 5 and 7 June.</p>
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3	<p>'Criterion 3 provides, among other things, that the appointment panel should include at least one person with a current understanding of the press. In the case of the IMPRESS appointment panel, it is unclear who that person is.' (NMA)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The panel members include Aidan White, a leading advocate of press freedom and ethical journalism, who was until recently the General Secretary of the International Federation of Journalists.</p>
	<p>'It seems plain from the words themselves and also from the requirement in Criterion 3 that the appointment panel should contain "no more than one current editor of a publication that could be a member of the body", that it was envisaged that the panel should include a serving editor or someone with equivalent current understanding of the press and that such a person should be someone working in the industry or at the very least someone with recent experience of such work. There is no such person on the [reconstituted] panel and it is therefore highly questionable if the panel has been properly constituted in accordance with this criterion.' (NMA)</p> <p>'Richard Gurner is described by IMPRESS as the editor of a relevant publisher. He is the editor of the Caerphilly Observer. However as the Caerphilly Observer has only four contributors (we note its website does not describe them as employees) it is unlikely to qualify as a relevant publisher under schedule 15 of the Crime and Courts Act.' (NMA)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The NMA appear to misconstrue a permissive clause as though it were restrictive. The panel <i>may</i> include 'no more than one current editor', but it is not absolutely <i>required</i> to include <i>any</i> current editors. If the Charter required the panel to include one current editor it would say so. If the PRP imposed such an obligation here they would be seriously exceeding their remit.</p> <p>In any case, the claim that Richard Gurner is not editor of a relevant publisher relies on a misreading of the Act, which only excludes a micro-business from the definition of 'relevant publisher' if it is <i>also</i> a 'multi-author blog'. The Caerphilly Observer is not a multi-author blog by any stretch of the imagination. It is printed (on paper) on a fortnightly basis and widely distributed in the Caerphilly area.</p>

4	<p>'IMPRESS describe their nomination process in great detail. We have no comment to make on it, beyond noting the poor attendance at meetings of the Appointments Panel. They held five meetings: at three of the meetings five of the nine members were absent, and at the other two three were absent. For the first hour of one meeting (October 2, 2014) only two of the nine members were present. The PRP should ask IMPRESS if all these meetings were quorate.'</p> <p>(Associated)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>This criticism does not amount to an allegation that IMPRESS does not fulfil Criterion 4. Accordingly, it should not be taken into account by the PRP.</p> <p>In any case, the IMPRESS Appointment Panel Protocol (included with IMPRESS's application to the PRP) sets out in detail the approach to decision-making by the Panel, which was followed scrupulously, at the meeting on 2 October 2014 as in all Panel deliberations.</p>
	<p>'Criterion 4 provides, among other things, that the composition of the Board should include people with relevant expertise. As the Board is regulating the press, that plainly means people with expertise in the operation of the press. ... In fact, the Board is composed of a narrow group of people with no obvious expertise in the operation of the press.'</p> <p>(NMA)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>Criterion 4 does not 'plainly mean' that the Board should be composed of people with 'expertise in the operation of the press'. In fact, it plainly means that the Board should be composed of people with a broad range of skills and experience relevant to the task of <i>regulating</i> the press. Such skills might include regulatory, governance and legal experience, alongside skills in relation to journalism and news publishing. All of these skills are represented on the IMPRESS Board, as is demonstrated by the Board members' biographies and the comprehensive documentation relating to the appointments process that was included with IMPRESS's application to the PRP.</p>
5	<p>'There is not a sufficient number of Board members with experience of the industry.'</p> <p>(NMA)</p>	<p><b>To confirm that IMPRESS fulfils this Criterion we provide an updated version of the</b></p>	<p>As with the previous point, this objection is entirely misplaced. The Charter clearly states that the members of the Board should 'include</p>

		<p><b>IMPRESS Board Register of Interests.</b></p>	<p>a sufficient number of people with experience of the industry (throughout the United Kingdom) who may include former editors and senior or academic journalists'. The composition of the Board, as is demonstrated by the Board members' biographies, more than satisfies this requirement. We draw the PRP's attention in particular to the experience of Emma Jones in the regional press in North Wales, the experience of Maire Messenger-Davies as an academic journalist in both Wales and Northern Ireland and the experience of Martin Hickman in the regional press in East Anglia and Humberside, in addition to the experience of all three of these Board members of working for national publications with circulation throughout the United Kingdom.</p>
6	<p>'The Charter criteria explicitly envisage a system of funding that is "settled in agreement between the industry and the Board", in other words a funding system whereby the industry to be (self-) regulated pays for the regulatory structure or at least agrees to the means by which it is to be funded.' (NMA)</p>	<p>Criterion 6 is intended to ensure that the regulator's funding is secure and sufficient. The reference to the 'industry' is plainly intended to refer to that section of the industry which has chosen to be regulated by IMPRESS.</p> <p><b>In order to confirm that IMPRESS fulfils this Criterion, we provide a revised version of the IMPRESS Regulatory</b></p>	<p>As the Leveson Report observes, 'two issues arise in relation to independence of funding. One is <i>the absolute level of funding</i>, and the other is <i>security of funding over a reasonable planning period</i>. Both are important if the regulator is not to be at risk of being effectively held to ransom by its funding members.' (Our emphasis.) It is for this reason that Leveson emphasised the need for the Board of the regulator to be involved in its financial planning – in contrast to the state of affairs in relation to the PCC, where the Press Board of Finance</p>

		<p><b>Scheme Agreement (clause 4.2), which shows that participating publishers approve the Board's capacity to raise sufficient funds to meet the regulator's obligations.</b></p>	<p>(Pressbof) agreed the regulator's funding with the industry <i>alone</i>. Thus, Leveson's emphasis here is on the involvement of the <i>regulator</i> in deciding its funding arrangements. IMPRESS has more than met this requirement, by ensuring that the Board has the necessary autonomy to determine its funding needs.</p> <p>There is nothing in either the Charter or the Leveson Report to support the NMA's suggestion that the entire industry must agree to the means by which the regulator is to be funded. The industry – as represented here by those publishers which subscribe voluntarily to IMPRESS – has complete freedom to choose to be regulated by IMPRESS or not. If other parts of 'the industry' do not agree to these means, then they have the freedom to establish a different, Charter-compliant, regulator, with alternative means of funding; and/or to remain regulated by a non-compliant regulator; or to remain unregulated. To suggest that all relevant publishers must agree to the means of funding any one regulator would be to give unregulated publishers a veto over the funding of a regulator to which they have not subscribed.</p> <p>IMPRESS's funding comes from both the IPRT and from participating publishers. Information</p>
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	<p>‘we invite [the PRP] to request copies of the following documents as being relevant to compliance with Criterion 6 and to share those documents with the public when they become available, whereupon the NMA would also urge the PRP to allow time for further information to be provided to it by the NMA and others</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The IPRT Deed of Trust is a publicly available document. The other documents requested here are irrelevant to the recognition criteria. IMPRESS is required to demonstrate that funding is secure and sufficient. It has done so. Correspondence would only be relevant if the</p>

	<p>following their consideration of such documentation:</p> <ul style="list-style-type: none"> <li>• The IPRT trust deed</li> <li>• Correspondence between the Board of IMPRESS and relevant publishers concerning the settlement of funding</li> <li>• Correspondence between IMPRESS and the IPRT (including any of its trustees or advisers) concerning the funding of IMPRESS</li> <li>• Correspondence between IMPRESS and AMCT and/or Max Mosley concerning the funding of IPRT and/or IMPRESS</li> <li>• The application by IMPRESS to the IPRT for funding'. (NMA)</li> </ul>		<p>PRP considered that IMPRESS has not demonstrated this.</p>
7	<p>'It is clear from the Application that IMPRESS does not have its own standards code. It has instead "adopted" the Editors' Code .... It is wholly unclear to the NMA how IMPRESS can "adopt" the Editors' Code; or how its Board can thereby be said to have "responsibility" for the Editors' Code. ... It is extraordinary and unacceptable that IMPRESS should be seeking approval as a regulator without having produced its own code of standards.' (NMA)</p> <p>'How could press regulation properly take place if the regulator has failed to promulgate the standards it expects its members to observe? Yet IMPRESS has flunked this basic</p>	<p>Criterion 7 simply requires the Code to be the responsibility of the Board (rather than the regulated publishers).</p> <p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The Charter (Recital 6) and the Leveson Report anticipate that a regulator will adopt the Editors' Code of Practice as its initial standards code. Leveson also suggested that a regulator should 'consider engaging in an early thorough review of the Code with the aim of developing a clearer statement of the standards expected of editors and journalists' (recommendation 36). The Charter (at Schedule 2.4) allows the PRP to 'take into account' a regulator's compliance with this recommendation.</p> <p>Thus, although it is not restrictive in this respect, the Charter provides very strong grounds for the expectation that the Editors'</p>

	<p>requirement by purporting to adopt a code of practice for which it cannot take responsibility because responsibility for the code already lies elsewhere. Indeed, so far is IMPRESS from taking responsibility for the Editors' Code that it is unable even to reproduce the Code in its Application because it has refused to agree the terms of a licence to use the Code with the owner of copyright in the Code.' (NMA)</p>		<p>Code should form a regulator's initial standards code – subject to consultation.</p> <p>IMPRESS has followed this expectation in a scrupulous attempt to satisfy the requirements of the Charter. The expectation that IMPRESS should be free to adopt the Editors' Code as their initial standards code has been endorsed by the Chair and Chief Executive of IPSO in their evidence to the House of Lords Select Committee on Communications, and publishers participating in IMPRESS have agreed to be bound by the Editors' Code.</p> <p>However, the RFC (of which the NMA provides the secretariat) claims copyright in the Editors' Code and has proposed a licence agreement, including a clause to the effect that IMPRESS would not use the Code in any way inconsistent with, <i>inter alia</i>, decisions by IPSO or the Editors' Code Committee. IMPRESS cannot agree to this restrictive licence as it would compromise its independence. IMPRESS has therefore been seeking for over a year to negotiate a mutually acceptable agreement.</p> <p>Even if the RFC does own copyright in the Code (and it is not clear that it does), IMPRESS is advised by specialist</p>
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			<p>counsel that there is no legal impediment to IMPRESS's:</p> <ul style="list-style-type: none"> <li>• requiring its members to abide by the terms of the Editors' Code and linking to it from the IMPRESS website;</li> <li>• Adjudicating on breaches and promulgating adjudications (which can refer to the relevant parts of the Editors' Code);</li> <li>• Consulting with the public and IMPRESS members about revisions to the existing code; and</li> <li>• Providing guidance and commentary on the Code.</li> </ul> <p>IMPRESS is therefore adopting the Editor's Code as an initial standards code. At the same time, IMPRESS is drafting a new standards code which will be consulted on and adopted by IMPRESS's participants in the course of 2016. This code will address the requirements set out in the Charter.</p>
	<p>'The criterion makes clear that serving editors "have an important part to play" in the Code Committee which IMPRESS is obliged by this criterion to maintain. Of the eight members of IMPRESS's Code Committee only one is claimed to be a serving editor (Mary Fitzgerald). The composition of the committee therefore fails to meet the criterion, which specifies</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>This is a misunderstanding of Criterion 7 which sets no conditions whatsoever on the composition of the Code Committee. The reference to serving editors is clearly permissive, not restrictive in the way suggested here.</p>

	“serving editors” – i.e. more than one serving editor.’ (Associated)		
8A	<p>‘Criterion 8A requires the self-regulatory body to provide advice to the public in relation to issues concerning the press. In its Application IMPRESS says it will not do this. Its published guidance on the Editors’ Code is no substitute. In any event, it is extremely questionable whether IMPRESS has any business or authority providing “guidance” on a code for which it has no responsibility and in respect of which guidance is already available elsewhere’.</p> <p>(NMA)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>Criterion 8A requires a regulator to provide advice to the public in relation to issues concerning the press and the standards code. It is not restrictive as to the content or ambit of any such advice.</p> <p>IMPRESS has explained in its application that it will provide general advice, but will not provide detailed advice to the public on specific issues in order to seek to avoid prejudicing a future investigation or adjudication. Its published guidance on the Editors’ Code is an appropriate resource for the public in such instances, and IMPRESS may offer general advice to the public with reference to this published guidance. IMPRESS will also provide advice on its own standards code in due course.</p>
	<p>‘Criterion 8A also requires the self-regulatory body to provide a warning service for the press and other parties when an individual has made it clear they do not welcome press intrusion. But this service will extend only to warning its own members (of whom there is at most a handful of very small publishers) or those who have asked for warnings to be sent to them (of which there are none at all).’ (NMA)</p>	<p><b>In order to confirm that IMPRESS fulfils this Criterion we provide revised versions of the IMPRESS Regulatory Scheme (clause 7.5) and the IMPRESS Advisory Notice Request Form, which show that IMPRESS is prepared to share advisory notices with non-participating publishers and</b></p>	<p>The Charter is framed in the expectation that there may be more than one self-regulatory body for the press. Therefore, this provision cannot be read to mean that any individual self-regulatory body has a <i>duty</i> to warn every entity covered by the description of ‘the press and other parties’. Such an interpretation would be unreasonable and impracticable, as there can be no way of determining how many entities would be sufficient to satisfy such a</p>

	<b>other parties if this is explicitly required by the person making the request.</b>	requirement. So it is clear that this provision can only mean that a regulator should provide a warning service <i>for the publishers it regulates</i> , and that this warning service may be available to other parties should this be required.
<p>'We are concerned at the proposed wording of [IMPRESS's] Advisory Notice, which says: "a failure to respect this Advisory Notice may be taken into account in any subsequent investigation [or] adjudication by IMPRESS." IPSO, which operates a very well-established advisory notice system, says in its notices that it "takes note" of the relevant clauses of the Editors' Code, to avoid placing itself in a position where it is enforcing prior restraint on editors. The PRP will need to consider whether the implied threat in IMPRESS's Advisory Notice amounts to prior restraint.' (Associated)</p> <p>'IMPRESS's Advisory Notice Template is woefully inadequate: it gives [no] detail of what form any alleged intrusion is taking, or what steps news publishers can take to make legitimate inquiries without raising issues about intrusion.' (Associated)</p>	<b>IMPRESS fulfils this Criterion.</b>	<p>This point does not address the Criterion, which requires the regulator to operate an advisory notice system but is not prescriptive about the wording of any such notice. The PRP is not empowered to do more than to check that IMPRESS has satisfied this Criterion. To make decisions based on the content of the Notice would be to exceed its remit.</p> <p>In any case, it is self-evident that to 'take into account' a publisher's failure to respect an Advisory Notice does not in any way constitute prior restraint. IMPRESS has no power to prevent any proposed publication. Without clarifying to publishers that IMPRESS may take such a failure into account, it is hardly worth issuing the Notice. It is quite possible that a publisher's decision to flout an Advisory Notice would be found to be reasonable in all the circumstances of a complaint or investigation.</p>
'We also note that under IMPRESS Regulatory Scheme procedures the approval of the IMPRESS Board has to be secured before an	<b>IMPRESS fulfils this Criterion.</b>	This point does not address the Criterion, which requires the regulator to operate an advisory notice system but is not prescriptive

	Advisory Notice can be issued. This is hopelessly impractical. The main purpose of such notices issued by IPSO is to prevent media scrums forming outside the homes of individuals at the centre of major breaking news stories. In such circumstances they would have no use at all if IMPRESS were unable to issue notices until they had arranged a meeting of their Board.’ (Associated)		<p>about any procedure associated with this service. IMPRESS satisfies the Criterion and the PRP is not empowered to do more than to check IMPRESS has satisfied this criterion. To make decisions based on the detail of the procedure would be to exceed its remit.</p> <p>In any case, the IMPRESS Articles of Association clearly allow for standard means such as delegated powers and electronic communications in order to expedite decision-making where necessary and appropriate.</p>
8C	‘How can a completely new entrant to the regulatory sphere plausibly offer guidance on a code over which it has no authority or responsibility and which has long been the subject of adjudication by the PCC and is now the subject of adjudication by IPSO?’ (NMA)	<b>IMPRESS fulfils this Criterion.</b>	This point does not address the Criterion, which requires the regulator to issue guidance on the public interest but is not prescriptive about the wording of any such guidance. The PRP is not empowered to do more than to check IMPRESS has satisfied this Criterion. To make decisions based on the detail of the guidance would be to exceed its remit.
8D	n/a	<b>To confirm that IMPRESS fulfils this Criterion, we provide a signed version of the IMPRESS Public Concern at Work Agreement.</b>	IMPRESS’s application to the PRP included an unsigned version of the IMPRESS Public Concern at Work Agreement. We have now included a signed version.
9	‘Although the IMPRESS publisher application form seeks information about prospective members’ complaints handling mechanisms, no completed forms have been produced or any other evidence that IMPRESS has taken steps	Criterion 9 asks a regulator to require appropriate internal governance processes of its members.	It would be inappropriate for IMPRESS to publish application forms, which contain commercially sensitive data. The IMPRESS Regulatory Scheme sets out clear internal governance requirements and the IMPRESS

<p>to satisfy itself that its members have adequate complaints handling mechanisms.’ (NMA)</p> <p>‘The IMPRESS application form does not ask any questions about internal governance processes and it is unclear what process, if any, IMPRESS has so far followed to satisfy itself that its current members have satisfactory internal governance processes etc. such as to satisfy IMPRESS’s obligations pursuant to Criterion 9.’ (NMA)</p>	<p><b>To confirm that IMPRESS fulfils this Criterion, we include a new document: IMPRESS Induction Pack, which includes a revised version of the IMPRESS Compliance Checklist, and revised versions of the IMPRESS Regulatory Scheme (clause 2.6) and IMPRESS Regulatory Scheme Procedures (clauses 1-11). These show that IMPRESS conducts rigorous compliance checks on participating publishers in the period between signing the IMPRESS Application Form (included with IMPRESS’s application to the PRP) and signing the IMPRESS Regulatory Scheme Agreement.</b></p>	<p>Compliance Checklist shows the steps that IMPRESS takes to satisfy itself that participating publishers have appropriate internal governance processes. Both documents were included with IMPRESS’s application to the PRP.</p> <p>Participating publishers are required to provide information about complaints procedures, compliance and failures in compliance and steps taken as a result. IMPRESS will publish this information in an annual report, which more than fulfils the requirement in this Criterion for transparency.</p> <p>IMPRESS is currently completing compliance checks to ensure that every publisher has Charter-compliant arrangements in place in relation to governance and complaints-handling. As these checks are completed in relation to each publisher, IMPRESS will become open to complaints against that publisher.</p> <p>The reason for conducting compliance checks before signing Regulatory Scheme Agreements is to ensure that IMPRESS only agrees to regulate those publishers which have already demonstrated their commitment to appropriate internal governance processes.</p>
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10	'It is often impossible for a publisher to provide a substantive response [to a complaint] within 21 days.' (NMA)	<b>IMPRESS fulfils this Criterion.</b>	<p>IPSO provides for a period of 28 days in the same circumstances so it is hard to understand how publishers regulated by IPSO can claim that a period of 21 days – only seven days shorter – is unreasonable. It seems self-evident that a 'speedy' complaints-handling mechanism must take into account the needs of the complainant as well as the needs of the publisher.</p> <p>In any case the IMPRESS Regulatory Scheme (4.5) allows IMPRESS to 'extend a time limit to the extent that IMPRESS considers fair.'</p>
	'Members of IPSO find that a very high proportion of complaints are made to IPSO in the first instance, where they are sifted and in many cases rejected as being without merit or not engaging with the Editors' Code. IMPRESS appears to have no procedure for this.' (Associated)	<b>IMPRESS fulfils this Criterion.</b>	<p>One of the findings of the Leveson Inquiry was that the PCC was acting as a clearing house for all complaints, however minor or ill-founded. The recommendation that a regulator should not receive complaints directly, unless or until the publisher's internal complaints system has been engaged, was designed precisely in order to address this shortcoming. Associated's objection appears to be to the</p>

			Charter requirement, not IMPRESS's efforts to satisfy it.
11	'IMPRESS has said it will hear complaints from "a representative group affected by the alleged breach" and from any third party seeking to ensure accuracy of published information. This potentially invites complaints from all manner of groups irrespective of the feelings of any individuals and regardless of the status of the third party.' (NMA)	<p>The Criterion requires the regulator to have the power to hear and decide on complaints from representative groups and third parties.</p> <p><b>IMPRESS fulfils this Criterion.</b></p>	<p>These provisions are required by the Charter and are in any case reasonable when the aim of the regulator is to uphold standards – i.e. to regulate – and not simply to handle individual complaints.</p> <p>We note that IPSO, the regulator to which many NMA publishers subscribe, also hears complaints from representative groups and third parties.</p> <p>The NMA's objection appears to be to the Charter requirement, not IMPRESS's efforts to satisfy it.</p>

	<p>'IMPRESS does not appear to have a policy for dealing with the following issues:</p> <ul style="list-style-type: none"> <li>• Complainants who wish to be anonymous</li> <li>• Multiple complainants/complaints</li> <li>• Confidential information provided in the course of complaints</li> <li>• Protection of journalistic sources' (NMA)</li> </ul>	<p>Criterion 11 requires the regulator to have the power to hear and decide on complaints.</p> <p><b>IMPRESS fulfils this Criterion. However, in order to ensure that IMPRESS is able to satisfy the associated requirement, under Criterion 21, to publish an Annual Report which identifies, among other things, the number of multiple complaints, we provide revised versions of the IMPRESS Regulatory Scheme (clause 4.6) and the IMPRESS Regulatory Scheme Procedures (clause 26), which show that IMPRESS is able to handle multiple complaints.</b></p>	<p>This point does not address the Criterion, which requires the regulator to have the power to hear and decide on complaints but does not set out requirements in relation to the issues listed here by the NMA. The PRP is not empowered to do more than to check IMPRESS has satisfied this Criterion. To make decisions based on the regulator's compliance with the NMA's requirements would be to exceed its remit.</p> <p>In any case, the IMPRESS Regulatory Scheme (5.4) allows for a degree of confidentiality but (quite reasonably and in line with the principle of open justice) states that 'IMPRESS will not take into account any information which one party refuses to share with the other party.' This addresses the NMA's concerns in relation to anonymity, confidentiality and the protection of sources.</p>
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	<p>'There does not appear to be any provision for adjudications to be reviewed.' (NMA)</p>	<p><b>IMPRESS has fulfilled this Criterion.</b></p>	<p>This point does not address the Criterion, which requires the regulator to have the power to hear and decide on complaints but does not set out requirements in relation to reviews of adjudications. The PRP is not empowered to do more than to check IMPRESS has satisfied this Criterion. To make decisions based on the regulator's compliance with the NMA's requirement here would be to exceed its remit.</p> <p>In any case, the IMPRESS Regulatory Scheme (6.1) allows for a provisional determination to be shared with a publisher prior to the imposition of any sanction. This gives a publisher the opportunity to object to the Board's decision.</p>
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12	<p>'Since the Board of IMPRESS is responsible for agreeing on IMPRESS's funding arrangements, it is unsatisfactory that it should also have responsibility for complaints. The complaints function ought to be independent from funding.' (NMA)</p>	<p>Criterion 12 requires the Board to take ultimate responsibility for complaints.</p> <p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The Charter, drawing explicitly on the Leveson Report, quite rightly expects the Board of the regulator to have ultimate responsibility for complaints-handling <i>and</i> to have ultimate responsibility for ensuring that the regulator's funding is sufficient and sustainable. The extent to which it chooses to delegate these responsibilities is irrelevant to the PRP's considerations.</p>
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12A	n/a	<p>Criterion 12A includes a requirement that ‘applications to stay or sist’ ‘can be decided on the merits’.</p> <p><b>To confirm that IMPRESS fulfils this Criterion, we provide revised versions of the IMPRESS Regulatory Scheme (clause 4.8) and the IMPRESS Regulatory Scheme Procedures (clauses 26 and 31), to show that IMPRESS has the capacity to hear applications to stay or sist.</b></p>	<p>In most cases, applications to stay or sist are likely to be directed towards the courts, and therefore fall outside IMPRESS’s remit. However, the IMPRESS Regulatory Scheme allows for the eventuality that an application is made directly to IMPRESS to stay or sist.</p>
15	<p>‘It is ... unclear by precisely what means IMPRESS seeks to ensure that its current or future members are contractually bound to comply with its regulatory scheme. Although the application form contains a declaration that the publisher agrees to abide by the terms of the Regulatory Scheme, this is said to be ‘subject to contract’ and the Regulatory Scheme Agreement appears to contain no provision whereby the publisher actually agrees to abide by the terms of the Scheme. The only positive obligation to which the publisher is required</p>	<p>Criterion 15 requires the regulator to have the power to direct appropriate remedial actions.</p> <p><b>In order to confirm that IMPRESS fulfils this Criterion, we include a revised version of the IMPRESS Regulatory Scheme Agreement (clause 1.1), which shows that participating publishers are contractually bound under the terms of the</b></p>	<p>The Regulatory Scheme Agreement (included in IMPRESS’s application to the PRP) clearly states (1.1): ‘From the moment You sign this Agreement and We countersign it You will become a Participant in the Regulatory Scheme; as a result, You will be bound by contract according to the terms described below for so long as the Regulatory Scheme exists and for so long as You remain a Participant.’ Accordingly, the Agreement confirms that IMPRESS will have the power to direct remedial action for breach of standards,</p>

	expressly to agree is the obligation to pay the subscription fee.’ (NMA)	<b>IMPRESS Regulatory Scheme and the IMPRESS Arbitration Scheme, which form schedules to this Scheme Agreement.</b>	and that is accepted by the members. The changes which IMPRESS has made are designed to put the contractual force of this Agreement beyond any doubt.
	‘The Regulatory Scheme Agreement is intended to last for five years, but the publisher may terminate the agreement by giving no less than six months’ notice ending on 31 March in any year. That raises the question of how effective IMPRESS will be in directing appropriate remedial action for breach of standards ... What would prevent a member who does not like the remedial action proposed, e.g. publication of a correction or an apology, from giving notice of termination and ignoring the direction?’ (NMA)	<b>IMPRESS fulfils this Criterion.</b>	This objection is based on a misunderstanding or a misreading of the documents. The IMPRESS Regulatory Scheme Agreement (4.4) states that ‘You will still be bound by regulatory directions after you cease to be a Participant if such directions were issued prior to your effective date of termination.’ The Agreement constitutes a contract between IMPRESS and a participating publisher and is enforceable as such in law (6.4).
	‘IMPRESS claim the power to direct apologies. We have strong legal opinion not only that forced apologies have no value (which is why they are not imposed by the courts in defamation cases) but that they are a serious breach of ECHR Article 10. IMPRESS do not appear to have given any consideration to this.’ (Associated)	<b>IMPRESS fulfils this Criterion.</b>	Whilst directed apologies <i>may</i> constitute a breach of Article 10 if they are required by law, there is no breach where they are required under contract, entered into voluntarily by subscribing publishers.  The NMA’s objection appears to be to the Charter requirement, not IMPRESS’s efforts to satisfy it.
16	‘It is unclear that IMPRESS will be able to direct publication of corrections and apologies in an effective manner.’ (NMA)	<b>IMPRESS fulfils this Criterion.</b>	This is a restatement of the objections addressed above in relation to Criterion 15.
17	‘Criterion 17 says the Board should be able to offer a service of advice to editors of	<b>IMPRESS fulfils this Criterion.</b>	This is a restatement of the objections addressed above in relation to Criterion 8A.

	subscribing publications relating to code compliance. In its Application IMPRESS says it will not do this. Its published guidance on the Editors' Code is no substitute.' (NMA)		
18	'IMPRESS has given itself much wider powers to investigate which are not restricted to suspected serious and systemic breaches of the code and failures to comply with directions of the Board. Such powers are unwarranted and would involve publishers in unnecessary expense.' (NMA)	<p>Criterion 18 requires that the Board has authority and powers to examine and investigate issues on its own initiative.</p> <p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The investigations provisions set out in the IMPRESS Regulatory Scheme (Section 5) are clearly and explicitly designed to cover <i>both</i> investigations which are launched in response to a complaint <i>and</i> investigations which are launched on other grounds. In other words, these provisions cover all circumstances in which IMPRESS may require information or documentation from publishers. They do not mean that IMPRESS <i>must</i> conduct a full investigation in the case of every complaint. They certainly do not mean (and it is absurd to imply) that any investigation will culminate in a financial sanction. The IMPRESS Regulatory Scheme Procedures (clauses 27-35) also make this clear.</p>
19	'It is unclear that IMPRESS will be able to impose sanctions in an effective manner.' (NMA)	<b>IMPRESS fulfils this Criterion.</b>	This is a restatement of the objections addressed above in relation to Criterion 15.
21	n/a	<b>IMPRESS fulfils this Criterion.</b>	The IMPRESS Annual Report Template includes a number of charts and tables which are designed to present some of the information required under Criterion 21. The other information required under this Criterion will be provided in narrative form in the Annual Report.

22	<p>'By making an assessment (indeed a subjective assessment) of whether an individual has suffered real harm, IMPRESS is judging a claim on its merits and thereby making a determination of the claim. Where the claim is rejected, that is a final determination. However, the determination will not be enforceable as it is not an arbitration award enforceable under the Arbitration Act or a determination of the claimant's civil rights which is compliant with the article 6 requirement of an independent and impartial tribunal. Following a procedure of this kind, a claimant whose claim has been rejected for arbitration could simply bring a civil claim in the courts. That would render the arbitration service ineffective since its purpose is to reach an efficient and final resolution of claims against the press.' (NMA)</p>	<p>Criterion 22 requires a regulator to operate an arbitration scheme which contains transparent arrangements for claims to be struck out for legitimate reasons.</p> <p><b>To confirm that IMPRESS fulfils this Criterion, we provide a revised version of the IMPRESS Regulatory Scheme (clauses 8.1–8.4) and a new document, IMPRESS CIArb Arbitration Scheme Guidance.</b></p>	<p>The Charter requirements in relation to the regulator's arbitration scheme are finely balanced. The regulator must make the scheme available to claimants at no cost other than a small administrative fee. Clearly, this may serve to encourage claimants to apply to use the arbitration scheme. It is for this reason that IMPRESS has taken steps to ensure that unmeritorious claims are struck out at the earliest opportunity. The amendments to the IMPRESS Regulatory Scheme and the new guidance are designed to clarify and communicate that IMPRESS will conduct an <i>administrative</i> test of all claims, and that only those which pass this test will be forwarded to the arbitrator, who has the power to conduct a <i>merits</i> test at the earliest opportunity. We anticipate that unrealistic claims will be struck out at this stage, at minimal cost to the publisher.</p>
	<p>'There is ... apparent unfairness in the arbitration process as this would seem to give IMPRESS and the arbitrator between them two opportunities to dismiss the claim when in fairness, there should only be one (and Criterion 22 only envisages there being one).'</p> <p>(NMA)</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>See above.</p>
	<p>'The scheme envisaged by IMPRESS will not be inexpensive for all parties. On the contrary, it would be costly – potentially very costly – for</p>	<p><b>IMPRESS fulfils this Criterion.</b></p>	<p>The Criterion requires an arbitration system to be free for claimants to use and inexpensive for all parties. IMPRESS's scheme caps</p>

<p>publishers in those cases where IMPRESS decides arbitration is appropriate. Those costs would be problematic for publishers, particularly the smaller newspaper and magazine titles.’ (NMA)</p> <p>‘The purpose of the Leveson recommendations for low-cost arbitration was to provide a low-cost alternative to litigation, not an alternative to complaints. But the threshold for having a claim referred to arbitration is so low, and the financial risk so low (particularly as CFAs will be available) that anyone with an arguable civil claim will be tempted (and no doubt encouraged by lawyers) to have a go. This will lead to a proliferation of claims which will in turn impose a serious costs burden on publishers and thereby have a chilling effect on freedom of expression. The imposition of such a burden on publishers (particularly publishers such as IMPRESS’s current members who would appear to have nothing like sufficient resources to meet costs of this size) will lead to injustice as publishers will capitulate to unmeritorious claims in order to avoid an order for costs against them and/or will be inhibited from investigating and/or publishing stories out of fear of incurring such costs. That is not a fair system and its unfairness ought to preclude IMPRESS from recognition by the PRP: see</p>		<p>recoverable legal fees at a maximum of £3,000 and arbitration fees payable by a publisher at a maximum of £3,500. These costs will be underwritten for smaller publishers. The ‘inexpensive’ element of this Criterion has therefore been satisfied.</p> <p>The amendments to the scheme mentioned above would have the effect of mitigating some of this costs risk by ensuring that there is a clear procedure to deal with vexatious claims, and for claims to be struck out where they have no prospects of success. The IMPRESS Executive Business Plan makes clear that IMPRESS will subsidise the cost of arbitration for publishers with annual turnover of less than £1m.</p>
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	paragraph 1 of Schedule 2 to the Royal Charter.’ (NMA)		
23	‘The scale of fees IMPRESS proposes to charge ... raises serious concerns about its compliance with Criterion 23 of the Royal Charter which requires membership of the regulator to be open to all publishers on fair, reasonable and non-discriminatory terms.’	<b>IMPRESS fulfils this Criterion.</b>	The scale of fees charged by IMPRESS are fair and reasonable. They vary according to the turnover of the relevant publisher in an effort to be fair to smaller publishers. Although the fees differentiate between publishers on the basis of their turnover, they do not discriminate against any publisher on the basis of any protected characteristic. IMPRESS has written to the RFC to ask for full details of their tariff schedule for the purposes of comparison.