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Dear Ms Uppal

### **PRP's second call for information regarding IMPRESS's application**

We write further to our letter dated 4 March 2016, to request that the PRP consider the information set out in this letter when adjudicating on IMPRESS's application to be a recognised press regulator.

We note the further documentation provided by IMPRESS and listed on the PRP website. This submission sets out that the further disclosures made by IMPRESS raise more questions about the merits of their application and do not address many of the concerns raised in the first round of the call for information. IMPRESS has failed to behave in an open and transparent manner in responding to questions in the public interest we have asked.

#### **1. Inadequate Response**

*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.*

- IMPRESS Response Paper 27.4.16

We reject the assertion that the documents disclosed by IMPRESS show Charter requisite independence, because they do not answer our previous questions:

- i) How were the IPRT's trustees appointed? What is their expertise or interest in press regulation?
- ii) What is the personal or business relationship between the trustees of the AMCT, the trustees of the IPRT and IMPRESS?
- iii) What discussions did the IMPRESS board have when deciding whether to accept funding from the AMCT through the IPRT? Did it consider the effect that this would have on its independence?
- iv) Why does IMPRESS's funding come through the IPRT rather than from the AMCT directly, and why wasn't the AMCT, as the original source of the IPRT's funding, referred to in IMPRESS's application for recognition?
- v) What is the connection between IMPRESS, Sovereign Strategy and Max Mosley?

## **2. Fundamental Inaccuracies**

IMPRESS have argued that, "there is no evidence to suggest that the IPRT trustees will not fulfil their responsibilities with the utmost propriety" however, two of the new documents they have disclosed actually raise more questions than they answer.

IMPRESS has mischaracterised the nature of its reporting requirements to the IPRT as being "designed to ensure clear and positive communications between IMPRESS and its sources of funding."

In fact, on inspection of the underlying funding arrangement the definition of "material changes" that IMPRESS is contracted to report to the IPRT on, is much wider-reaching. Clause 3.2 (vii) states that IMPRESS would have to report to the IPRT before it made material amendments to its Articles of Association. This would mean that should IMPRESS seek to amend its Constitution to reflect the most up to date company law, charity practice, or developments in media law, they would be subject to the IPRT's scrutiny. This has an impact on IMPRESS's independence and they have failed to make submissions on whether this scrutinising function is consistent with the Royal Charter criteria.

## **3. Questionable Governance**

In paragraph 2.6 of the AMCT-IPRT grant agreement, it is stated:

"For the avoidance of doubt, the Trustees shall be entitled to recover from the Grant Amount, any expenses, charges or professional fees properly incurred in the administration or management of the IPRT and/or this Grant Agreement as eligible expenditure."

This is inconsistent with Charity Commission guidance on payments to charity trustees, which states:

*Legal requirement: before paying a trustee, you must have regard to the commission's guidance on paying trustees for services. It explains how you must:*

- *produce a written agreement between the charity and the trustee (or connected person) being paid*
- *specify the exact or maximum amount to be paid*
- *make sure the trustee does not take part in decisions made by the trustee board regarding any aspect of the agreement*
- *agree the payment is in your charity's best interests and reasonable for the service provided*
- *not allow payments or other benefits to half or more than half of your board – the number of trustees receiving any payment or benefit must be in the minority*
- *make sure your charity's governing document doesn't prevent you from paying trustees for services*

*When deciding to pay a trustee for services or goods, you must follow your duty of care as trustees. In practice, this means you should:*

- *be clear that the payment can be justified in the charity's best interests*
- *identify and record conflicts of interest and prevent them from affecting the decision*
- *use reasonable care and skill when making your decision (take legal advice if you need it)*
- *decide what you will do if the services or goods aren't satisfactory*
- *keep records of discussions at meetings and disclose the payment in your accounts*

Paragraph 2.6 of the AMCT-IPRT agreement raises serious questions about the IPRT's financial affairs.

- i) Have any of the trustees been paid for their work for the trust?
- ii) Have any of these payments been declared to the Charity Commission?
- iii) Why, in its letter to 89up dated 4 March 2016, did the IPRT state, "The IPRT does not employ external bodies or staff to administer the work of the charity. This is undertaken by the Trustees who, as is customary, serve on a voluntary basis without remuneration."?
- iv) Why did they sign an official financial arrangement document which is contrary to their letter and Charity Commission guidance?
- v) What is the impact on IMPRESS if the IPRT loses its charitable status?

There are critical questions to be asked, and investigations to be made, into the IPRT's financial affairs, and potentially its charitable status, that impact on IMPRESS and as such Criterion 6 of their application for recognition.

#### **4. Lack of Transparency**

On page 9 of the IMPRESS Response Paper 27.4.16, it is stated by IMPRESS that the following documents are irrelevant to establishing whether the application is funding arrangement ('Criterion 6') compliant:

- i) correspondence between the Board of IMPRESS and relevant publishers concerning the settlement of funding;

- ii) correspondence between IMPRESS and the IPRT (including any of its trustees or advisers) concerning the funding of IMPRESS;
- iii) correspondence between IMPRESS and AMCT and/or Max Mosley concerning the funding of IPRT and/or IMPRESS;
- iv) the application by IMPRESS to the IPRT for funding.

We submit that IMPRESS has exhibited a lack of transparency by refusing to disclose this information by way of narrowly defining it to being irrelevant to Criterion 6. It is clear that these documents, requested by the NMA, also serve to challenge or prove the independence ('Criterion 1') and overlap with the level of disclosure requested by 89up in our previous submission and repeated here at numbers 1(i)-(v).

IMPRESS's failure to address these points and to demonstrate opacity when challenged are inconsistent with a body that should be recognised under the Royal Charter.

#### **5. Funding problems**

IMPRESS has disclosed its induction pack for members but this document does not answer either of our previous questions:

- i) how many of the approximately 400 hyperlocal publishers that IMPRESS purports to represent have been contacted about subscribing? How many of those have declined to subscribe?
- ii) what discussions did IMPRESS have with its members about its funding, as part of agreeing funding with the industry?

Furthermore, the body has applied a false test to self-certificate its Charter compliance. By stating that its funding is "secure and sufficient" IMPRESS has not engaged with the key element of Criterion 6 of the Charter – that funding is settled "in agreement between the industry and the Board".

There is no declaration or information in the induction pack about the sources of IMPRESS funding. It is submitted that a transparent body ready for recognition would clearly state from the outset to its membership, "IMPRESS is mainly funded by the Independent Press Regulation Trust, a beneficiary of the Alexander Mosley Charitable Trust."

We note that the funding arrangement between IMPRESS and the IPRT was signed on 30 October 2015, the same day as the funding arrangement between the AMCT and the IPRT. However, the fact that there was a link between IMPRESS's funding and a wealthy individual, Max Mosley was not disclosed to IMPRESS's membership. On 20 January 2016, IMPRESS announced its first members. We asked 13 IMPRESS subscribers if they

were informed of the sources of its funding prior to the application to the PRP for recognition: of the three who replied, two said they had not been.

The duty to properly inform members of IMPRESS of the sources of its funding are fundamentally intrinsic to the notion of a settled agreement being in place. Failure to do so reflects a failure to comply to the terms of the Royal Charter. We request the PRP investigates this matter fully and consider the effect of non-compliance with the merits of IMPRESS's application.

## **6. Editors' Code**

The Royal Charter states that: "the independent regulatory body which is intended to be the successor to the Press Complaints Commission should put forward the Editors' Code of Practice as its initial code of standards." The Charter further states that "Serving editors have an important part to play" in the formulation of a standards code.

To date, IMPRESS has lacked participation by serving editors and has simply adopted the Editor's Code drawn up by the Independent Press Standards Organisation. The lack of genuine engagement with the industry on this important standard, poses difficulty for their application for recognition. IMPRESS seemingly recognised this on 12 May 2016 when it announced that it would commence a consultation on the drafting of its own standards code – almost five months after it first applied for recognition as a regulator.

A sound editors' code, reflecting substantial industry engagement, is a fundamental part of any regulator, but IMPRESS seems to have approached this as an afterthought. No serving editor of a national or regional newspaper is part of IMPRESS or is likely to participate in IMPRESS's consultation.

A proper standards code has a crucial role to play in safeguarding free expression as a public good. The lack of a developed standards code at the point at which IMPRESS is applying for recognition as a press regulator suggests a serious lack of thought about this fundamental right.

We submit that compliance with the Royal Charter on a standards code, to which serving editors have inputted, has not and will not be satisfied.

## **7. A failed application**

The concerns we raised previously about IMPRESS's ability to meet three of the criteria contained in Schedule 3, namely whether it is: independent (para. 1), a self-regulatory body (para. 1) or is funding arrangement compliant (para. 6), have not been answered during the response period.

In summary, our concerns were and remain that:

- IMPRESS's funding does not allow it to act independently, with the risk that external influence will be exerted over its decisions

- IMPRESS's funding agreement with the IPRT is not transparent, as it does not reflect the fact that IMPRESS will be funded overwhelmingly by one wealthy donor
- IMPRESS's funding is unreliable, as it can be withdrawn if the organisation's actions are thought not to be Leveson or Royal Charter compliant by the IPRT
- There is a lack of capacity among the trustees of the IPRT to make informed decisions about IMPRESS's funding
- IMPRESS has so few members, which represent such a small proportion of just one section of the press
- IMPRESS has not agreed its funding with the "industry" or even with the few subscribers it does have.

We re-submit that in order for IMPRESS's application for recognition to be accepted, the PRP should expect the utmost transparency and have evidence to satisfy it of this. The further documentation has disclosed that financial affairs of the IPRT and indeed, the legitimacy of its charitable status in particular, mean the PRP can not be in a position to recognise IMPRESS as a press regulator.

Please do contact us if we can be of further assistance.

Yours sincerely,

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