Hacked Off submission to the PRP's 3rd Call for Information on the IMPRESS application for recognition

Introduction

Hacked Off and the victims we work with believe that this third call for information over the IMPRESS application is not necessary. Since the publication of The PRP Board's indicative view on some elements of the Charter on 15th July, the correspondence in August from the newspaper industry lobby has not revealed any new arguments with any real merit or substance. No further information about IMPRESS' application which would affect its recognition application can be found in those letters.

Victims see the recent series of letters from industry lobbyists raising objections, as the latest in a long line of industry attempts to sabotage or delay the Leveson process; attempts that began before Leveson's report was even published, and which are the latest in a decades-long line of industry attempts to avoid independent regulation of the press.

Hacked Off commends the transparency and integrity of the PRP's processes. But we note that past experience, both recent and historic, demonstrates that no degree of transparency or purity of process will make the slightest difference to the scale or rationality of the press industry's attack on the reform process.

Nevertheless, please find below,

1. Our remarks on the objection that the PRP may have provided inappropriate or ultra vires guidance to IMPRESS in the course of their recognition application.
2. Our rebuttal of the objection that the PRP did not consult on further guidance published to its website for applicants.
3. Finally, we have produced a table of all the arguments made by industry lobbyists in letters since August 11th. We have provided rebuttals to each of them.

If more lobbying enters the public domain after the submission of this, we will seek to respond.

We are aware that, since the criticisms to which we are responding are not relevant to the questions sought in the calls for information, then these comments may also be deemed to irrelevant to the "call for information", but we still believe these comments should be published alongside those of the critics.

1) Comment on whether the PRP provided ultra vires guidance or advice to IMPRESS in the course of the recognition process

Much of the argument made by press representatives hinges around this matter: whether or not the PRP gave guidance to IMPRESS which influenced how the IMPRESS went about its application, and affected its decision to hold a financial consultation and the content of that consultation.

In fact, the reality is that the PRP executive sought views on specific criteria from the PRP Board, the Board provided them, and in the spirit of transparency the PRP decided to publish them. The PRP executive notified IMPRESS of the Board's views via phone call and email, as borne out in the PRP's public board meeting minutes.

In any event it should be noted that it would have been perfectly legitimate for the PRP executive to have engaged directly with IMPRESS and provided specific, tailored guidance regarding its application if it so wished. This would be in line with the procedures that the PRP published, after consultation, in the summer of 2015.

Here are extracts from the PRP's 2015 consultation on "Proposals for Recognition" (highlighting added):

Consultation paper:

Discussions with applicants
61. This is a new process and Regulators approaching an application for the first time will be in a unique position. We have therefore developed a process which we consider is straightforward and simple to follow.

62. We also propose to welcome discussions with applicants before they formally apply and provide assistance with the process as required. However, we will not advise the applicant in relation to how it should meet the criteria, nor will we help with the development of internal processes. We will keep applicants informed throughout the process.
> Question 4: Do you agree with our proposed approach to discussions with applicants? Give reasons if you wish.

Decision paper:

> Question 4: Do you agree with our proposed approach to discussions with applicants? Give reasons if you wish.

Number of written responses clearly stating yes or no to Question 4
Yes: 18
No: 4
Total: 22

69. In our consultation, we proposed welcoming discussions between our executive team and applicants before they formally applied and providing assistance with the process as required. We made clear that it is not our intention to advise the applicant on how it should meet the criteria, nor would we be able to help with the development of an applicant's internal processes.
70. The responses to the consultation demonstrated that there was general support for our proposed approach to executive team discussions with applicants, but different views about the level of any possible support. "...your approach looks to be reasonable in both fostering appropriate dialogue between the PRP and potential Regulators while setting clear standards to ensure the process remains transparent, impartial and fair" (Ombudsman Services)
71. One respondent noted that there was insufficient information in the consultation to determine if our proposals were suitable or not.

Greater collaboration
72. Several respondents said that they did not agree with our proposals, and that there should be deeper collaboration pre-application to make it as easy as possible for applicants to meet the requirements. This was supported by comments made by a number of participants at our consultation events. "There is no constitutional reason why the PRP should not be able or willing to offer advice, without prejudice, to prospective regulators. A regulator can gain no unfair advantage from such advice, and it is in the interests of the

public for regulators to satisfy the recognition criteria, so long as these are interpreted by the PRP in line with the principles outlined above." (IMPRESS)
"We believe that the PRP should take a more positive and proactive approach: it should be willing (at staff level and without prejudice to any later assessment) [to] advise the applicant and help it develop Charter-compliant systems and operation with as much guidance as required... While we acknowledge that the Board of the PRP may not wish to have direct contact with potential applicants to avoid their objectivity coming into question, we believe there is no harm in the staff of PRP doing so and we believe this should be made clear." (Hacked Off)

Our response

73. We will welcome discussions between the PRP executive team and applicants before they formally apply and will provide assistance with the application process as required.

74. Several respondents said they wanted a deeper collaborative approach in the pre-application process. We believe that such an approach would not be appropriate. Fundamental to how we will discharge our obligations under the Charter is our independence from external influence. Whilst we agree there is a distinction between the PRP Board (who make the recognition decision) and our executive team (who prepare an assessment and recommendation to the Board), it could be considered to compromise the independence of staff assessing the systems and operation of an applicant if they had been involved in their design.

Publishing discussions

75. One individual respondent, a member of the public, who did not agree with our proposals in Question 4, nonetheless said that should we decide to engage in discussions with applicants, we should at least publish that we have done so, although the details of the engagement could be confidential. The respondent also said we should consider whether to meet other interested parties at an appropriate time.

Our response

76. We want our executive team's discussions with applicants to be free and frank, but also without prejudice to the outcome of the PRP Board's recognition decision. Any discussions that take place once an application has been made will be noted in the outcome report following the Board's decision, but the content of those discussions will remain private.

77. Third party information may have an important role to play in the recognition process, specifically during our 'call for information'. Whether or not we meet third parties will depend on the information we receive back from such a process.

As is clear from the above, there was a consultation on whether the PRP executive should be permitted to hold discussions with regulators during the course of their application or not, and the matter was settled transparently by the PRP, who publicly said that it would be legitimate to do so. Point 76 has also been adhered to, as all relevant discussions are recorded in the minutes and agenda packs of board meetings. There was no discussion between the PRP Board and IMPRESS, which was the only prohibition, in any case.

All major newspaper groups had the opportunity to respond to this consultation. Both Peter Wright on behalf of Associated Newspapers, and the News Media Association responded to this consultation, and made no remarks in respect of this consultation point. Neither 89up nor their funding body the "Free Speech Network" (which is a front organisation for the large newspaper corporations) made any response at all, although the newspaper groups who fund the FSN were well-represented in consultation responses, and they too made no remarks on this matter. Specifically, Trinity Mirror, News UK and the Telegraph made no comment on this point. Guardian News and Media and the Financial Times indicated agreement with the PRP approach (and it should be noted that they are not among the objectors now).

The above highlights the corporate press lobby's strategy on this matter. They could have responded to the consultation on this process in June-July 2015 and they did not. Now in August/September 2016, they wait until the last fortnight before the IMPRESS application is decided, and then they raise complaints over this long-agreed and transparently settled matter (which in the event, isn't even at issue). It could not be clearer that this is a tactic to attempt to sabotage and delay.

2) The necessity for consultation on the PRP Board's indicative view of some elements of the Charter

As per para 73, the PRP has decided it will provide guidance to applicants following public consultation. There was no requirement under the Decision taken on that matter to consult before doing so. If 89up and others thought there should have been, they were free to respond to that consultation at the time. There was certainly no requirement to consult on ad-hoc interpretations of specific criteria, agreed by the PRP board.

Furthermore, the PRP has never been under a specific obligation to consult on anything, and their decisions to do so have been freely taken to increase engagement with the (often hostile) industry, with the public, and to show transparency. Indeed, under the Decision on the matter above, the PRP were not obliged to even publish the content of these further interpretations. Press lobbyists should not use the fact they chose to take the extra step of publishing guidance in the name of transparency, to criticise them for not consulting.

3) Table of press industry lobby arguments

This document lists the arguments made, verbatim, by the press lobbying bodies in their letters to the PRP since August 11th, and rebuts them sequentially.

Body	Criticism	Comment
Associated Newspapers Limited (Peter Wright)	As you know from our submissions, we believe, in common with the vast majority of the newspaper industry, that this poses a very serious threat to freedom of expression.	Unsubstantiated. And wrong.
	The PRP has been assessing IMPRESS'S application for seven months. Why was it considered necessary to make your decision on the application in third week of August, when many stakeholders who would have wanted to attend are on vacation? The fact that the PRP was meeting on August 23 has been known for a considerable time. Given that August is the holiday season and many stakeholders would find it difficult to change arrangements, why was the fact that the IMPORESS decision would be made on that day, in public, not announced until August 5, just 18 days before the meeting?	1. Recognition process has a well-published timetable. People take vacation different times of year. A public body cannot be expected to consult editors' holiday diaries as it discharges its functions. 2. There have been two month-long consultations since IMPRESS' application. No-one can accuse PRP of not providing stakeholders opportunity to engage. 3. 18 days is not short notice, and the PRP were under no obligation to publicise it anyway. 4. The PRP would have been open to more valid criticism if it had refused to progress the IMPRESS application because "it is

		August". No other regulatory body abandons its functions because it is the "summer".
	Your announcement states that information received during calls for information, and other papers relating to the IMPRESS application and the PRP's assessment of it, will not be published until after the decision has been made. How will stakeholders at the meeting be able to verify that concerns expressed by Associated Newspapers and others about IMPRESS'S failure to meet Royal Charter criteria have been properly considered?	1. There is no opportunity to engage in the meeting anyway – it is only open to observe. No representations can be made. 2. It is unclear how publication of responses to the calls for information (the most substantial of which have in fact already been published by the submitters in most cases) will verify that the board has considered them. As is the case with decision processes involving calls for information and/or consultations, the board will have access to them. It makes no difference to their consideration whether the public has seen them or not.
	On July 15 the PRP published on its website a document entitled 'Guidance for Applicants'. The PRP is normally punctilious about notifying stakeholders about its activities. As far as we are aware, stakeholders were not notified about this guidance, nor was there any press announcement. Why was this the case?	1. The PRP is under no requirement to call a press conference every time it adds content to its website. 2. The PRP did publish a news item on the matter. The newspaper industry lobby employs staff to scour the PRP website looking for new information. 3. The fact that the PRP published this guidance at all, rather than simply using it privately, is a testament to its transparency.

		4. Reference to this guidance being developed has appeared in several public board meeting agenda packs and minutes, going back to as early as May 24th. Mr Wright could have reviewed these at any time, as any member of the public could. It is telling that he waited until 12 days before the final decision meeting to do so.
	The PRP has carried out consultations on nearly every aspect of its work. Why was there no consultation on this Guidance?	1. The PRP is not obliged to consult on these matters. 2. The PRP already consulted on these matters anyway, when in 2015 it consulted on how it should interpret the Charter criteria. Press bodies responded then.
	The Guidance says 'we will not adopt an overly restrictive approach to interpretation [of the Royal Charter]. We recognise there may be more than one way of meeting each criteria...' Clause 3.2 of the Charter makes clear that: 'Provisions and definitions to assist in the interpretation of this Charter are contained in Schedule 4 (Interpretation)'. Where does the Charter authorise the PRP to make its own interpretation of the Charter Criteria?	1. As in the very Charter clause Wright quotes from, the specific wording on interpretation is: *"provisions and definitions to assist in the interpretation of this Charter are contained in Schedule 4 (Interpretation)".* Note the term "assist". The PRP is *assisted* in its interpretation by Schedule 4, but is not prevented from developing further its interpretation of the terms within the criteria.
	How has the PRP come to its conclusion that Clause 1 of Schedule 4 of the Charter 'could include a situation where the regulator is	Clause 1, Schedule 4 in fact reads:

	formed on behalf of any publishers who might later choose to join?	*1. For the purposes of this Charter:* *a) "Regulator" means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications;* *b) "relevant publisher" has the meaning given in section 41 of the Crime and Courts Act 2013 (as enacted on the day following the date this Charter is sealed).* It is not clear what part of Clause 1 Mr Wright believes requires publishers to be a member of a regulator at the time of application.
	Does the PRP accept that in the absence of this interpretation, the IMPRESS application does not meet the definition of a regulator under this Clause?	1. Clause 1 of Schedule 4 clearly permits recognition of a regulator established on behalf of publishers, regardless of whether those publishers are members of it at the time. Many publishers may not wish to join a regulator until it has proven its independence under the Recognition system. 2. Even if Clause 1 said something different, and required publishers to be signed up, IMPRESS already has relevant publishers among its subscribers. So the point is redundant anyway.
	The Guidance says: 'The PRP does not interpret the Charter as requiring the regulator to have current members in order to be eligible for consideration for recognition.' How did it reach this interpretation?	See above.

	It says further: 'an applicant regulator will need to show that they have the relevant procedures in place and they are ready and able to operate those procedures.' As far as we are aware IMPRESS has never handled a complaint, made an adjudication, or issued an advisory notice. How can the PRP determine whether or not IMPRESS is ready and able to operate whatever procedures it may have in place?	1. The criteria specify that they have the relevant procedures "in place" and are "ready and able" to operate relevant procedures. It is up to IMPRESS to show that is the case, but clearly there is no obligation for IMPRESS to provide a record of prior regulatory activities. 2. It would be absurd to have written the criteria in such a way as to require a prior record, as that would be to require a regulator to operate in an unrecognised and thereby unreliable manner for a period. 3. In any case, Associated Newspapers should give thought to the statistic that IMPRESS have, in fact, issued just as many investigations and fines in two years of non-operation as their own sham regulator, IPSO, has in two years of claimed regulation.
	Royal Charter Recognition Criterion 6 says quite unequivocally that: 'Funding for the system should be settled in agreement between the industry and the Board'. The Guidance says: 'there is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party.' How did the PRP reach this conclusion when the Royal Charter sets out so clearly how funding should be provided? The Guidance says: '...we consider that criterion 6 does, as a minimum, require some form of consultation that the wider industry could respond to if it wished.' IMPRESS carried out a	Again, the Charter clause cited by ANL contradicts their summary of it. On funding, while ANL say "provided", the Charter clearly says "settled". So the Charter does not require funding to be "provided by" members of the industry – it requires the funding arrangements to be "settled with" the industry. This can certainly be said to have happened after IMPRESS held a financial consultation with the industry.

	consultation, which lasted four weeks and ended on July 6, 2016. As far as I am aware we and other stakeholders were not notified of this consultation and therefore did not respond. The Guidance was published on July 15. Were IMPRESS aware that the requirement to hold a consultation would be included in the Guidance before the Guidance was published? If so, why were other stakeholders not made aware?	The PRP executive have the right to tell applicants what is required of them (see above). There is no requirement on the PRP to notify third parties in real time of what discussions are taking place between the PRP executive and applicants.
	As far as I am aware we and other stakeholders were not notified of this consultation and therefore did not respond	The consultation was announced by IMPRESS on their website and in their newsletter. It is obvious that the NMA, ANL, 89up and the rest of the press industry lobby monitor the activities of IMPRESS.
	Guidance says "we consider that criterion 6 does, as a minimum, require some form of consultation that the wider industry could respond to if it wished". IMPRESS did not notify industry stakeholders of its consultation. Was IMPRESS made aware that there would be a requirement to consult in the guidance before the guidance was published? If so, were other stakeholders made aware?	1. The Guidance says that the industry should be able to respond if they wish – not that IMPRESS is obliged to seek responses from specific bodies. 2. IMPRESS did notify stakeholders by publishing the consultation and sending messages to those who had signed up for their newsletter. It was clearly possible for the newspaper industry lobby with all its resources to have seen the consultation and it is certain that they did given their interest in IMPRESS's activities. 3. Whether IMPRESS were pre-aware of the guidance or not is immaterial: there was a consultation on Charter interpretation in 2015, and:

		a. all of the matters covered in the additional guidance were covered then and b. the approach that the PRP executive was to take when dealing with applicant regulators – ie providing regulators throughout the process with advice – was also covered and settled at the time.
	Why did the PRP not publish its Guidance, and notify stakeholders of this requirement, before the consultation was launched (which consultation? IMPRESS's), in order to give them an opportunity to respond?	It goes without saying that specific matters relating to an application will unexpectedly be raised during the process. The topics which the guidance covered were already consulted upon twice throughout the course of the assessment of IMPRESS' application. Stakeholders had an opportunity to respond to the IMPRESS consultation because it was a public consultation.
	The Guidance claims that Royal Charter Criterion 7 does not require the participation of serving editors in a regulator's Code Committee. How does the PRP justify that interpretation in the light of the second sentence of Criterion 7, which says 'Serving editors have an important part to play...'?	The subject of criterion 7 is the Code, not the Committee. It says, in full: *The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive.* So what Criterion 7 is really saying, is that Editors have an important part to play in respect of the

		code in general. That part can be played as a member of the Committee, as a respondent to the consultations of the Committee, or in other ways. Nowhere does it require serving editors to actually sit on the Code Committee, nor for there to be a Code Committee.
	The Guidance says: 'We do not consider it part of the PRP's role to determine any dispute over ownership of the Editors' Code.' However Criterion 7 states quite clearly: 'The standards code must ultimately be the responsibility of and adopted by, the Board...' Could the PRP explain in what way the Editors' Code of Practice, which IMPRESS says it will use initially, is the responsibility of the Board of IMPRESS?	The question of whether IMPRESS' code arrangements are or will be compliant with the Charter is a matter for the PRP to settle on. But it is bizarre for ANL to take issue with the uncontroversial and obvious comment that the PRP won't take a view on Editors' Code ownership.
	When did the PRP take its decision (a) to compile and (b) to publish section 5 of the Guidance for Applicants?	This is all set out in the PRP's published minutes.
	Can the PRP confirm that in the absence of this guidance, IMPRESS would be able to meet the requirements of Criteria 6 and 7?	The "guidance" is simply the publication of the proposed interpretation of elements of the Charter and its publication does not affect the likelihood of the success of IMPRESS' application. If IMPRESS can prove they are compliant with the Charter, then the PRP will have no option but to recognise them regardless of whether this "guidance" is published.
	We and other stakeholders responded to two calls for information on IMPRESS'S application on the clear understanding that the Recognition Criteria would apply as presented in the Royal Charter, without interpretation or embellishment. Why did the PRP not publish section 5, which conveniently reinterprets a number of Criteria in a way which makes it easier for IMPRESS to meet them, until these consultations had closed.	The Charter has not been embellished. Elements of the charter will always require interpretation by a decision-making body so it is not coherent to argue that the PRP should not interpret the criteria. The additional guidance does not change the meaning of the Charter in any way. The Charter remains the document the PRP will make

		decisions by, as has been made clear by the PRP. The additional guidance is entirely consistent with the Charter.
	It appears to many stakeholders that this Guidance has been drawn up without consultation and published without notice in order to give the PRP grounds to decide that IMPRESS fulfils a number of Royal Charter Criteria which it would otherwise fail to fulfil. Has the PRP given consideration to the likelihood of legal challenge in these circumstances?	If the PRP has grounds to believe that IMPRESS fulfils a number of Royal Charter criteria, it will decide that irrespective of whether they set out and publish their approach in advance. So drawing up the guidance and publishing it (with or without "notice") does not affect the recognition decision. No legal challenge against the PRP, which has conducted two calls for information over IMPRESS' application and a further consultation over interpretation of the Charter criteria would be successful. Equally, no amount of consultation and transparency will reduce the likelihood of a legal challenge from moneyed press corporations desperate to delay and sabotage the process.
	When the Royal Charter was being debated one of the major concerns of the newspaper industry was that once politicians had set the terms under which a regulator could be recognised, they could change them. We were assured that the double lock in Article 9 of the Charter, under which any changes have to be approved by a two-thirds majority of both Houses of Parliament and/or the Scottish Parliament, would prevent this happening. The PRP now appears to believe it has the power to vary the Recognition Criteria at will by 'interpretation'.	Actually, while victim groups, free speech advocates and elements of the press campaigned for and achieved the double lock on the terms of the Charter (which was essential reform to protect the Charter from being amended by a Government under pressure from the press) this was of course no obstacle to the independent Charter body being able to interpret the criteria as necessary provided that interpretation was rational. No decision-making body can be denied the ability to reach interpretations of their governing rules. The press lobby opposed the

		double lock and Associated Newspapers supported a Royal Charter (the PressBoF Royal Charter) which contained no lock at all against change by the Government. This guidance clearly does nothing to "vary" the Charter criteria, which can only be amended in the way Mr Wright describes (although he forgets that the Panel's unanimous consent would also be needed). It is perfectly legitimate to provide guidance in line with the results of the PRP's initial consultation in 2015.
	You also say in your letter: 'There is no requirement on us to provide any public process or information at all.' This is not what case law rules, nor is it best practice for public bodies to conduct their business without consultation on key points of legal interpretation.	The Recognition Panel is only bound by the Charter, and is not obligated to consult further than it has already
	Furthermore the Charter says: '4.3 The functions of the Recognition Panel shall be public functions.' The PRP recognises this when it says on its website that it will perform its duties 'independently, fairly, openly and transparently'. In the case of the IMPRESS application the PRP conducted two well-publicised consultations, to which we responded in the belief the PRP would be applying the Recognition Criteria as set out in the Royal Charter. We have since discovered that key Criteria have subsequently been reinterpreted, and that reinterpretation has been communicated to IMPRESS before it was published (but significantly not notified) to other stakeholders. This is not a proper way for a public body to carry out its functions, nor is it fair, open or transparent.	This complaint is misplaced and wholly without merit as set out above. Charter criteria have not been "reinterpreted". The PRP did not publish a previous indication of how they were planning to interpret the criteria.

	We also note that IMPRESS have today published a draft Standards Code and announced a consultation on its contents which will close on September 29. It seems extraordinary for the PRP to make its decision on recognition when it has had only two working days to consider such a central part of the IMPRESS proposition - unless, as with other aspects of this application, there has been private collaboration.	This reflects a misunderstanding. The IMPRESS draft standards Code is NOT part of the application, so there is no need for the PRP to make any assessment of it for the purposes of this application.
	The effect of the PRP's interpretation of the Charter is to amend it. To give just two examples: On funding the Charter Criterion 6 states clearly: 'Funding for the system should be settled in agreement between the industry and the Board'. This is positive requirement - nowhere does the Charter say funding can be settled by agreement with a charitable trust controlled by a very wealthy private individual. However your interpretation takes the view that because Charter did not envisage funding by a private individual it is permissible: ''There is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party and such funding does not preclude an application or mean that a regulator is automatically not 'independent'. This is clearly intended to have the effect of allowing a method of funding which, without your 'interpretation' would fail to meet the requirements of Criterion 6. Similarly Criterion 7 is very clear: 'Serving editors have an important part to play although not one that is decisive'. However you have seized on the word 'may' to 'interpret ' this Criterion to allow recognition of a regulator with a Code Committee on which serving editors have NO role to play. Again this allows an arrangement which would otherwise fail to meet the Charter requirement.	As above, the guidance the PRP have produced is not inconsistent with the Charter and therefore does not "amend" it in any way. It is the case that funding from charitable sources IS permissible so long as the relevant part of the industry (that is, its members) are in agreement. No amount of sound and fury from ANL and the other large newspaper corporations can change that fact. On the role of serving editors, see above. In any event, the IMPRESS application is predicated on using the Editors' Code, at least initially. There is no doubt about the role of editors in the development of that Code.

	Schedule 4, Clause 1(a) states: “Regulator” means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications.' The Charter does NOT say a Regulator means a body formed by a small group of private individuals in the hope that they might later be able to find some publishers who can be persuaded to become members, which is how IMPRESS came into being.	As above, the Criterion here is clear in allowing regulators to be established “on behalf of relevant publishers” and even if it did require publishers to be already subscribed, IMPRESS still fits the description.
	Criterion 7 says that to be recognised a regulator must be funded by the industry: 'Funding for the system should be settled in agreement between the industry and the Board' . What the Charter means by 'the industry' is clear from the preamble: 'AND WHEREAS the Report of the Inquiry recommended that for an effective system of self-regulation to be established, all those parts of the press which are significant news publishers should become members of an independent regulatory body', and from Schedule 4, Clause 1(a), quoted in answer 2 above. At no point does the Charter allow for recognition of a regulator funded by a third party, as your interpretation seeks to permit.	As above: the term “settled” requires that that part of the industry which is to be regulated by the regulator have to be consulted and in broad agreement with the funding arrangements. It does not give the corporate press establishment the power to veto the development of an independent regulator for other publishers. The preamble has been misinterpreted. It is stating that the system will not be effective unless all significant news publishers are regulated by a recognised regulator; it does NOT say that any and every recognised regulator must include all significant news publishers,
89up	As you are no doubt aware, the PRP is a statutory corporation confined by the scope of the power that conceived it, the Royal Charter, and should act only in accordance with those powers conferred upon it . The Section 5 Guidance the PRP has issued to 1 applicants for recognition is a preliminary form of advice that engages principles of natural justice and which should abide by established law on procedural fairness.	The so-called “section 5” guidance is indeed consistent with obligations and requirements placed on the PRP by the Charter.

	This went as far as reinterpreting the Charter; for example, supplanting 'being settled in agreement between the industry and the Board' with the statement that there should not be 'an effective veto over the recognition of a regulator when they [publishers] have no wish to become a member of that (or any recognised) regulator.' Herein lies an important distinction to be made between the Royal Charter and the Section 5 Guidance. The Charter Criterion 6 made a positive assertion of the type of situation which was fertile for recognition of a press regulator, which is the industry proactively joining a regulator that subsequently seeks recognition. Section 5 turns this on its head by invalidating the views of the vast majority of the industry who do not wish to become members of IMPRESS, a radical reinterpretation of the Charter and its precursor, the Leveson Report. Moreover, Section 5 also uses one of the chief criticisms of Criterion 6 (on its practical unworkability) as a justification to loosen obligations on the applicant for recognition – 'given the sheer scale and diversity of "relevant publishers" it would be impracticable to identify or contact all the relevant publishers that could or might be affected.' We are alarmed that there was no public consultation on the Section 5 Guidance. Section 5, which was binding on an applicant regulator, was unknown to the public at the time of the calls for information on IMPRESS's application.	1. This is spurious and strained. 2. The Charter is not being "reinterpreted". The PRP is setting out is proposed interpretation of elements of the Charter that are open to different interpretations. 3. The criteria do not describe a "fertile situation" for a press regulator to be established in. They are exact requirements which hopeful applicants must pass. In no other industry would the public be expected to await a "fertile situation" for independent regulation to be established. 4. IMPRESS cannot be a "radical reinterpretation of the Charter", because no Charter functions relate to IMPRESS – they relate to the PRP. The PRP's responsibility is to approve or not IMPRESS as having passed the criteria. 5. It is not clear what 89up mean when they say Section 5 guidance was "binding" on an applicant regulator. It does not necessarily place any requirements or restrictions – it is an indication of the way the PRP are proposing to interpret certain elements of the Charter which are open to different interpretations.
	The Section 5 Guidance goes beyond what was envisaged in the Leveson Report. It vastly elaborates on aspects of the Royal Charter that were not specifically defined	All these matters were consulted upon, at length, in 2015, when the PRP sought public and stakeholder comment on the way the applicants

	and go beyond the PRP's initial proposed indicators. Terms such as 'in agreement' 'the industry' and 'for the system' have now been interpreted in a way that had not been set out or consulted on with specificity before.	should fulfil the criteria. 89up chose not to respond.
	Did IMPRESS have sight of Section 5 before or during its application? If so, why was this guidance withheld from public scrutiny until after that application had been submitted?	The minutes of the PRP set out that the way the PRP were minded to interpret relevant elements of the Charter was transmitted in a phone call and a note to IMPRESS on May 28th and 31st respectively. Following the 2015 consultation, it was agreed that the PRP executive would support applicant regulators in their application, provide guidance, answer questions as they can, and clearly this is what happened. If the newspaper lobby objected to that approach, then they should have responded more persuasively to the 2015 consultation.
	According to Section 5, the PRP considers that in order for Criterion 6 to be passed, an applicant should show: 'funding for the system' being agreed and not just the "regulatory fees", we also consider that consultation should be on the whole of the funding arrangements, including any proposals to take funding from third parties'. IMPRESS's first application would have failed to fulfil this criteria. As we previously demonstrated, two of the publications we contacted confirmed to us that they did not know the detail of IMPRESS's third party funding.	The whole system was structured in such a way as to give regulators the opportunity to develop their processes and return with an improved application, if necessary. IMPRESS have simply followed that approach.
	Subsequently, after the first application, we believe this chronology of events in relation to the criterion occurred in a procedurally unfair way: 4 June 2016 Second call for information on IMPRESS application closes	It was settled after the 2015 consultation that the PRP would make further guidance available to regulators to support their application process (notwithstanding the fact that IMPRESS did not

	8 June 2016 IMPRESS Financial Consultation launched 6 July 2016 IMPRESS Financial Consultation closes 13 July 2016 IMPRESS Financial Consultation Decision published 15 July 2016 Section 5 of the Guidance published In order for a consultee to the PRP's call for information on the application for recognition to properly scrutinise IMPRESS on Criterion 6, the process could only have been ordered in this way to be fair and lawful: 1. Section 5 of the Guidance published. 2. IMPRESS Financial Consultation launched. 3. IMPRESS Financial Consultation closes. 4. IMPRESS Financial Consultation Decision published. 5. Call for Information on IMPRESS application opened. The Section 5 Guidance should have been published first, not last. By inverting this chronology, the PRP has alleviated IMPRESS from public scrutiny of its requirement to consult on the whole of its funding arrangements, including any proposals to take funding from third parties. This has impacted the process in two important ways: 1. Consultees to IMPRESS's Financial Consultation did not have sight of the PRP's guidance on third party funding so could not raise legitimate points pertinent to its consultation. 2. The public and interested parties should have had access to the tests and standards the PRP was applying to IMPRESS in order to inform their consultation responses.	even request this guidance). 89up appear to reject that decision, by claiming that any guidance should be published *before* it is provided to any applicant. They are free to disagree with that decision of course, but the decision was legitimately taken by the PRP, after consultation, in 2015 – and if 89up had strong feelings it should have responded at the time. Additionally, the PRP were free to provide that guidance in private. But they chose to publish it anyway to show transparency. The proposal to take funding from third party charitable sources has been explicit from the start of the IMPRESS application process. It would not require the publication of the way the PRP were proposing to interpret the Charter in respect of this matter, to prompt the newspaper lobby and others to express their views on the subject. And it is clear from what the industry has published during the two previous calls for information, that it did not.
	This failure of a fair PRP process on Criterion 6 is exacerbated by the fact that IMPRESS's funding arrangements predate its 'Financial Consultation'. In order for a consultation to be a valid exercise, the decision on the matter should be	89up quote the Sedley Requirements as if they are relevant. If they apply here at all, and that is questionable, they only apply to a public body. IMPRESS is not a public body.

	made after consultees are canvassed. IMPRESS was legally bound to its funding agreement with the IPRT before it asked the members about it. This means its whole process of 'consulting' is flawed and fails even the minimum Sedley requirements that: 1. Consultation must take place when the proposal is still at a formative stage. 2. Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response. 3. Adequate time must be given for consideration and response. 4. Consultation responses must be conscientiously taken into account. IMPRESS had agreed its financial arrangements with third parties before consulting its members. The crucial requirement that decision-making follows consultation was willfully ignored.	
	Why did publishing Section 5 take so long? Since the PRP's formation five different public consultations have been carried out: It is notable that all of the consultation periods have been followed by timely reporting and decisions, where they have been made to date, except for the publication of Section 5. This took place more than a year after the consultation for the proposals for recognition took place and after IMPRESS had submitted its application. The webpage where Section 5 was published only refers to 4 sections of guidance for applicants. These specific interpretations of the Royal Charter would have affected how bodiesresponded to the consultations that occurred in 2016, as set out above. Consultees	There is no legitimate reason for the PRP not to develop positions on certain areas of the criteria as time goes by. There is no evidence the PRP developed these positions a long time ago and delayed publication unreasonably. It would be more questionable for the PRP NOT to consider how it was going to interpret ambiguous elements of the Charter, when it became clear that this would be required.

	responded to the two IMPRESS applications based on the proposed indicators when they should have had sight of the Section 5 Guidance. Crucial questions of press regulation were consulted on without lawful insight into how the PRP interpreted the Royal Charter.	
	In order for a public body to make a decision using a fair procedure, the process should exhibit a number of features that are lacking in the PRP's composition of Section 5 and consideration of IMPRESS's application: ● The right to know the case one has to meet, to see relevant documentation or information is crucial for informed representations to be made before decisionmaking is undertaken. ● The duty to comply with established procedural requirements such as the Civil Service Consultation Principles or those established at common law are also, as exemplified earlier, lacking in this process. ● The PRP is also required to exercise its functions without delay that is so gross or inordinate that it is unfair, which was contravened by the July 2016 publication of Section 5. The PRP has fallen short of these established principles in the call for information on IMPRESS's application by denying consultees information on how the PRP, and potentially IMPRESS themselves, had been guided on specifically interpreting the Royal Charter.	These supposed requirements are irrelevant. Regardless: 1. The Royal Charter remains the document by which applications can be assessed; the indication of how the PRP will interpret some criteria is for the benefit of applicants. 2. The newspaper industry lobby is not a party to the decision and is not being consulted on the recognition decision itself. The industry lobby has chosen to misinterpret the opportunities it has to provide information on the application as giving it decision-making powers with the PRP or as a statutory consultee on the actual decision. The recognition decision must be made independently of the industry. 3. The Civil Service Consultation Principles are not relevant to this matter; not just because the PRP is not part of the civil service (regardless of how often it is described that way by 89up funders); 4. There is nothing unreasonable about guidance being added after it became

		clear that elements of the Charter would have to be interpreted– on matters previously consulted upon more than 12 months previously.
	It is clear that the substance of the Section 5 Guidance, the timing of its publication, and the way in which it applied to an ongoing application for the first staterecognised press regulator in the United Kingdom has not demonstrated requisite public law practice. At this stage, in our view, a further consultation on Section 5 and subsequently on the IMPRESS application for recognition will need to be held to redress the procedural unfairness of the current process.	89up are inventing requirements of the PRP and IMPRESS which do not exist. The PRP is governed by the Charter and is fulfilling its responsibilities as required. This is not "state-recognition" as 89up intend this to mean. It is recognition independent of the executive, the judiciary and of Parliament.
	We would like to reiterate the principle which underpins our work, namely that freedom of speech and a press regulator almost singlehandedly funded by Max Mosley, via the IPRT, are irreconcilable in the public interest.	Even if this was an accurate representation and true, it is irrelevant to recognition and not a serious objection. Regulators must always be financed somehow and, as decades of failed regulation have shown, what are needed are safeguards which prevent influence being exerted, regardless of where finance comes from. It is likely that charitable funding with no influence from the benefactors is more consistent with freedom of expression than funding controlled by those who own the industry .
	We believe that in the UK debate on press regulation the international perspective has often been missing.	We believe that the international perspective would scarcely be helpful to the anti-regulation cause of 89up and others. A number of European democracies utilise statute and far "stronger" methods of press regulation than the Leveson approach, and do so successfully in such a way as to enhance freedom of speech while protecting

		the public – both of which have suffered under years of sham regulation in the UK.
	It is hard to conceive that we would welcome a Russian oligarch funding a press regulator through trusts, which then sought a form of state recognition, creating potential sanctions for independent media who refused to sign up.	1. The Leveson system represents "state recognition" only in the sense that the fact 89up is a registered Limited Company makes it a state-recognised body. 2. It is a misuse of the term "independent media" to use it to describe and powerful press corporations owned by a few wealthy individuals. 3. There is no question of a Russian oligarch attempting to provide funds for an independent press regulator. But 89up should give thought to the fact that the so-called "regulator" adopted by their funders is largely financed by a handful of overseas tax exiles, who not only have no safeguards preventing them exerting influence, but indeed have executives through the Company which controls their regulator – controlling that regulator. 89up's criticism on this point is without merit.
	Your interpretation of the Royal Charter (referred to previously as 'the Section 5 Guidance') could create a precedent that others in less free countries may copy.	The effect of the Charter system, which the PRP's interpretation is perfectly consistent with, is to enhance freedom of speech. Freedom is curtailed when an absence of regulation allows newspapers to bully, intimidate, abuse and harass the public without redress.

		If less free countries copied the Leveson model of independent regulation there would be much greater press freedom in those countries.
	To date, the PRP has not engaged with human rights organisations, nor it appears any global freedom of expression watchdogs, who could have advised on avoiding curtailment of freedom of expression. The PRP should, as a matter of urgency, engage with civil society organisations and consider the impact of your current loose interpretation of the Royal Charter.	1. These questions go to the Leveson system as a whole and do not have any bearing on how the PRP discharges its functions. They are not relevant. 2. The Leveson Inquiry took evidence from many civil society groups. 3. The PRP have nonetheless held numerous public consultations, and any such organisations with strong views have been able to respond. 4. Several civil society and human rights organisations have taken the initiative to respond to PRP consultations. Others, such as international free speech charity Article 19, have registered support for the Leveson process without directly engaging with the PRP itself.
	Please consider the effect of recognising a regulator that will set a global precedent that the rich can pay for a press regulator of their choosing with no backing from the independent nonstate press, and without proper public consultation.	This line doesn't make sense: 1. Only regulators which meet Leveson's tests can get recognised. The "rich" are irrelevant. 2. 89up's critical assessment best describes the previous system, where the wealthiest publishers have been able to design a regulator to their own specifications at the expense of the public, victims and indeed the rest of the industry.

		3. After a 15-month public multiple public consultations, one must wonder how much consultation would be required to ever satisfy 89up.
	The status of the Section 5 Guidance was ambiguous on the PRP's own website, suggesting a lack of clarity on the part of the PRP itself	This is an administrative matter and not relevant.
	This is infertile ground in which to initiate sweeping reforms to press regulation.	The reforms were agreed democratically by Parliament in March 2013. We are long past that stage.
	We must now also further question why you think that the Royal Charter gives the PRP the power to interpret the Charter, irrespective of public law precedents.	Clause 3.2 of the Charter specifically states that Schedule 4 is there "**to assist with interpretation"**. Clearly, the PRP is permitted to interpret the Charter where necessary.
	In your letter dated Monday, 15 August 2016, you stated that the Royal Charter mandated you to discharge your functions in private without public input if your board chose to. With respect, we completely disagree that the letter or spirit of the Royal Charter allow for anything that betrays the public interest.	The approach of the PRP is far from a betrayal of the public interest. 89up ignore the public interest in the process moving forward in a timely manner, so that the public have access to an independent regulator (or not).
	It is also in the public interest that a further consultation on your interpretation of the Royal Charter and subsequently on the IMPRESS application for recognition will need to be held to redress the procedural unfairness of the current process.	This is not in the public interest. Two Calls for Information have been gone through on IMPRESS' application, and further consultation occurred on guidance for applicants in 2015. There is no requirement for yet another round, although the PRP have provided for it.
	We reject the assertion that the documents disclosed by IMPRESS show Charter requisite independence, because they do not answer our previous questions:	It is bizarre for 89up to invoke the Charter (which is all that is relevant) and then give a list of points which are not in the slightest relevant to it.

	1. How were the IPRT's trustees appointed? What is their expertise or interest in press regulation? 2. What is the personal or business relationship between the trustees of the AMCT, the trustees of the IPRT and IMPRESS? 3. 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? 4. 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? 5. What is the connection between IMPRESS, Sovereign Strategy and Max Mosley? 6. Fundamental Inaccuracies: IMPRESS has 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	The Charter's requirements on funding are very narrow, and none of these points relate to it. Most of these questions are not questions for the PRP.

	IMPRESS's independence and they have failed to make submissions on whether this scrutinising function is consistent with the Royal Charter criteria.	
	The governance of the IPRT 7. Paragraph 2.6 of the AMCTIPRT agreement raises serious questions about the IPRT's financial affairs. In particular, have any of the trustees been paid for their work for the trust? 8. Have any of these payments been declared to the Charities Commission? 9. In paragraph 2.6 of the AMCTIPRT 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.' 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'? 10. Why did the IPRT sign an official financial arrangement document which is contrary to their letter and Charities Commission guidance? 11. What is the impact on IMPRESS if the IPRT loses its charitable status?	As above, these questions are totally irrelevant to the matter of recognition. Only IMPRESS could answer them in any case.
	The funding arrangement between IMPRESS and its members 12. IMPRESS has disclosed its induction pack for members but this document does not answer either of our previous questions including: How many of the	1. It is irrelevant how many declined to be subscribing to IMPRESS, or how many accepted.

	approximately 400 hyperlocal publishers that IMPRESS purports to represent have been contacted about subscribing? How many of those have declined to subscribe? 13. What discussions did IMPRESS have with its members about its funding, as part of agreeing funding with the industry? 14. Why, when we asked 13 IMPRESS subscribers if they were informed of the sources of its funding prior to the application to the PRP for recognition, did two of the three organisations who replied tell us they had not been informed of or consulted on IMPRESS's funding arrangements?	2. IMPRESS had a consultation on its financial arrangements in June/July. All subscribers were invited to participate in that. 3. The PRP cannot possibly answer question 14. The question is for IMPRESS and not relevant to recognition.
	The Royal Charter is entitled 'The Royal Charter on the Self Regulation of the Press.' IMPRESS purports to be regulating on behalf of the independent sector (IMPRESS Application Matrix, section 6, page 18) yet by its own admission, it has not a single national or regional newspaper signed up as a member. It is doubtful whether even 0.1% of journalists working in the UK today would be regulated by IMPRESS. Does the PRP believe that a regulator without a single national or regional newspaper can fit the definition of 'self regulation' as defined by international standards and the Royal Charter?	1. Unclear why or on what basis 89up are invoking "international standards", and why they would be different. 2. 89up answer their own question when they say "IMPRESS purports to be regulating on behalf of the independent sector", and then ask why no national newspaper has signed up. 3. It is irrelevant what proportion of the UK's journalists would work for publications regulated by IMPRESS. But 89up should consider that the NUJ, the leading body representing journalists, has given its backing to IMPRESS and rejects IPSO.
	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.	1. The quote comes from the preamble, not the criteria. 2. In any event, IMPRESS is not intended to be the successor to the PCC but has put forward the Editors' Code as its initial code of standards.

	Why has IMPRESS failed to consult serving national newspaper editors during its consultation on its recently published 'draft standards code'? Prior to this consultation, IMPRESS had simply adopted the Editor's Code drawn up by the Independent Press Standards Organisation.	3. The IMPRESS Application is predicated on the use of the Editors' Code. 89up are wrong to believe that the draft IMPRESS code is relevant at this point.
	Why did the PRP edit its website so the Guidance for applicants which had a 'Section 5' element, was changed to 'Our interpretation of some terms and elements in the Royal Charter' and the phrase 'The following section outlines the Board's initial indicative view on the interpretation and meaning of some terms and elements of the Charter' was inserted above this? Is this indicative that the Section 5 guidance was in fact not the settled view of the PRP even though it was published alongside four settled points of Guidance?	The PRP have stated that the section was renamed after 89up and Associated Newspapers complained about it, so that the section was more clearly signposted.
	Why did the PRP reject so many of the responses it received in the Consultation on Criterion 6?	A consultation does not oblige the PRP to agree with everything respondents said. The PRP noted the responses and transparently set out their view, which is best practice. Furthermore, over 200 individuals responded and the majority of those registered support for the view adopted by the PRP.
	The Section 5 Guidance goes beyond what was envisaged in the Leveson Report. It vastly elaborates on aspects of the Royal Charter that were not specifically defined and go beyond the PRP's initial proposed indicators. Terms such as 'in agreement' 'the industry' and 'for the system' have now been interpreted in a way that had not been set out or consulted on with specificity before. Why was there no public consultation on the Section 5 Guidance?	As above, these matters were covered in the 2015 consultation. It does not go beyond what Leveson envisaged, and is entirely in keeping with the requirements and obligations of the Charter. It is obvious that elements of the Charter would require one interpretation to be chosen over alternatives.

	Why was the Section 5 guidance, which was binding on an applicant regulator, unknown to the public at the time of the calls for information on IMPRESS's application?	As above.
	Did IMPRESS have sight of Section 5 before or during its application?	Yes, as noted in the PRP's published board meeting minutes.
	If so, why was this guidance withheld from public scrutiny until after that application had been submitted?	It wasn't "withheld"; it was published fairly promptly. The fact it was published at all meant the PRP had gone further than required of it.
	It is our view that the Section 5 Guidance should have been published first, not last. By inverting this chronology, the PRP has alleviated IMPRESS from public scrutiny of its requirement to consult on the whole of its funding arrangements, including any proposals to take funding from third parties. Does the PRP think it is fair that consultees to IMPRESS's Financial Consultation did not have sight of the PRP's guidance on third party funding so could not raise legitimate points pertinent to its consultation?	See above.
	Does the PRP think it is fair that the public and interested parties were denied access to the tests and standards the PRP was applying to IMPRESS during a period in which they were undertaking their consultation responses?	The PRP was not applying "tests and standards" at all. The executive of the PRP were considering IMPRESS against the Charter criteria; the Board had only given its own indication of how it may interpret certain Charter criteria to the executive.
	IMPRESS was legally bound to its funding agreement with the IPRT before it asked its members about it. Does the PRP accept that IMPRESS's consultation on its funding was flawed and failed even the minimum Sedley requirements?	The funding settlement which IMPRESS reached needs only have the "agreement" of the industry. Nothing prevents elements of that arrangement to be agreed retrospectively. Otherwise no publisher could ever join a regulator after it had already been established.
NMA	The Interpretation is procedurally and substantively flawed: the PRP has acted improperly, both in how it released the	As above, this argument has no merit.

	Interpretation and in coming to the conclusions that are set out therein. It is clear that the PRP intends to recognise IMPRESS and is using the Interpretation to attempt to legitimise its decision retroactively. Further, very little advance notice has been given of the decision meeting, which further emphasises the improper nature of the PRP's decision making process.	1. The PRP reached the decision to clarify certain points on their own, without input from IMPRESS. 2. The PRP Board had not even considered IMPRESS' application when it made its clarifications. 3. There was over two weeks' advance notice of the agenda of the meeting, which was a scheduled meeting advertised long in advance.
	The Interpretation is presented as guidance for potential applicants for recognition to use to draft applications. However, this is clearly not its true purpose: a. it was released at a time when there are no bodies, other than IMPRESS, that have expressed any interest in applying for recognition; and b. it was released very late in the application process, after the only body that had expressed any interest in recognition had made both its initial application, and a further amended version intended to address criticisms from stakeholders that had already been lodged.	1. The fact that other bodies have not expressed interest in applying for recognition is irrelevant. IMPRESS have always been the only regulator expressing such interest. If the NMA's point is taken, then the PRP should never have done any consultation at all, as one could argue all consultation would be skewed towards IMPRESS. 2. Certain issues of contention were always likely to arise in the course of the executive's examining of IMPRESS' application which could not have been foreseen. It is not inappropriate to seek a non-binding indicative view from the board on such matters, without requiring a consultation for every interpretation. The Charter empowers the board to make its own interpretations. That is part of

		why the independence of the board is so critical.
	The Interpretation was released after two calls for information from the industry and the public, without providing any opportunity to respond to the contents. This denied the public and stakeholders knowledge of the standards against which their responses were to be judged, creating significant procedural unfairness.	The standards against which IMPRESS will be judged remain in the Charter and are unchanged. This was only an indicative view from the board on how it will approach those standards.
	As a public body, the PRP is required to act as fairly and reasonably, and should also act as openly, as possible. Until the release of the Interpretation, the PRP has dutifully notified all stakeholders and interested parties of every stage of the application process. However, there was no such notification of the release of the Interpretation, which, if used as intended by the PRP, is a fundamental part of the application process. This emphasises that the PRP is very likely to be aware of the impropriety of the timing and circumstances of the drafting and publication of the Interpretation.	Actually, the PRP published a news item on their website when they published this guidance. They certainly haven't buried or published it discreetly. If they were acting secretively, they wouldn't have published it at all. It isn't clear what the NMA mean when they say of the guidance, "if used as intended by the PRP, is a fundamental part of the application process". The PRP have intended to provide this guidance as information to applicants. It is not binding and the test remains the Charter.
	Every section of the Interpretation attempts to address an element of IMPRESS's application which was identified in the calls for information as failing to meet the Recognition Criteria in the Royal Charter. This leads to the inescapable conclusion that the purpose of publishing the Interpretation was to provide a foundation for a decision to recognise IMPRESS and not, as the Interpretation purports, to provide assistance to applicants and the public generally. This suggests that there may have been private sessions and discussions during which the application by IMPRESS has been discussed while the PRP seeks to present the process as an open public process.	Private conversations within the PRP are not outlawed by any obligation of the PRP placed on them by the Charter, or indeed themselves. The outcome of the 2015 consultation made clear that applicants could seek advice and guidance from the PRP executive. But even if they were, the PRP have shown transparency in publicly releasing the agenda of their board meetings which bare out the subject of any private meetings.

		The decisions made on this guidance were made by the PRP Board before they even had access to the Executive's view on IMPRESS' application.
	The Royal Charter provides interpretation in Schedule 4. The PRP has not explained its power or authority to interpret the Royal Charter in any way other than by using Schedule 4. It has not explained how it has the authority to adopt its own interpretation or, even if it had such authority, how it could adopt its own interpretation without public consultation.	The Royal Charter states: *"provisions and definitions to **assist** in the interpretation of this Charter are contained in Schedule 4 (Interpretation)".* The clear implication is that the PRP are entitled and indeed expected to interpret the Charter criteria; it was established as a fully independent body purely for this reason.
	The Interpretation confirmed that the PRP will approach the recognition decision as a "box ticking" exercise – if it deems an application to meet all the Criteria in the Royal Charter as it interprets them, it will grant recognition. Our objections to a public body approaching decision making, and to the PRP discharging its Royal Charter public functions, in this manner are detailed comprehensively in both our responses to the calls for information and will not be restated here.	Leveson recommended an element of "box-ticking" in respect of fulfilling specific criteria" because of decades of press regulatory deception. The industry has had the previous seventy years to establish a press regulator which lived up to its promises of independence, by whatever qualitative or anecdotal standards preferred by the NMA, and spectacularly failed on every occasion. Leveson deemed the directness and objectivity of a criteria-based approach to be the only way of ensuring this didn't happen again. IPSO has vindicated Leveson's approach, by virtue of the fact that it fails the criteria-based test, and in spite of its claims, has shown itself to be an utterly incompetent regulator in the actual experience of anyone who has used it. In any event schedule 2 makes clear that recognition requires an assessment beyond

		merely the fulfilling of the criteria, so the NMA are plain wrong on this point.
	However, not only has the PRP confirmed that it is treating its recognition function as a mere box ticking exercise, but it has retroactively increased the size of the boxes in the light of IMPRESS's application and the widespread objections received in response to it. If box ticking were to be in anyway legitimate (which we maintain it is not), the criteria would have to be read strictly, and not stretched beyond any reasonable interpretation, as they have been here: a. Clause 1 of Schedule 4 states: ""Regulator" means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications". The PRP has distorted this interpretation grossly by stating that it "could include a situation where the regulator is formed on behalf of any publishers who might later choose to join". The meaning of "on behalf of" does not include acting independently of, and indeed despite the objections of, those it purports to represent. b. Criterion 6 of the Royal Charter states that: "[f]unding for the system should be settled in agreement between the industry and the Board". The Interpretation states that "[t]here is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party". This interpretation of Criterion 6 negates the plain meaning of the words that have been specified in the Charter and in the Leveson Report, which	1. Recognition was designed to include "box-ticking" as above, in respect of the criteria, but as set out above schedule 2 makes clear that fulfilling the criteria is not sufficient. 2. IMPRESS was not established "despite the objections of" newspapers. A number of local publications have been involved for some time. The NMA should remember that the journalism sector includes more than the dozen largest publishing corporations. 3. If criterion 6 meant to say "funding for the regulator must derive entirely from member publications" then it would have said that. It was specifically worded to allow alternatives. 4. Leveson's and hence the Charter's criterion on the constitution of the Code Committee was specifically in reaction to the Editors' Code Committee which was made up exclusively of editors. This is why Leveson was clear to rule out the possibility of editors even having a majority. The criterion adds that editors "may" sit on the Committee. The "important part to play" may be referring to a consultative capacity. Indeed, given

	requires the funding to be from, or at the very least sanctioned by, a substantial proportion of the industry. c. Criterion 7 states that "…a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive." The clear meaning was that serving editors would be involved. The PRP's Interpretation stretches the meaning of "an important part to play" beyond all logic to include having no part to play at all.	that their role is not to be decisive, a "consultative" role makes more sense.
	The PRP says that Criterion 6 requires some form of consultation on funding that the wider industry could respond to. There has been some very limited consultation a month before the PRP's publication of the Interpretation which it appears to have conducted with the knowledge of what the Interpretation would require, reinforcing the suggestion that there have been private sessions. This should undermine IMPRESS's application, even on the box ticking approach. It has failed to operate in the fair and transparent manner required. The PRP has concluded that: "[w]hilst there is nothing in the Charter to prevent a regulator from putting forward the text of the current Editors' Code as its own code, we would still need to assess that submitted code against criterion 8". By this definition, it is not possible for the PRP to recognise IMPRESS. This interpretation is an artificial construct which appears to try to side step both the ownership of the Editors' Code and the failure of IMPRESS to meet the requirement under Criterion 7 that the code be their responsibility. IMPRESS has stated that it will use the Editors' Code until it has completed a consultation on its own code and drafted one accordingly. Given this pending change, the PRP cannot find that IMPRESS has met	1. IMPRESS definitely knew about the guidance of the PRP that a consultation on funding would benefit their application, because the PRP's minutes record a phone call between the PRP and IMPRESS baring this out. That isn't at issue. 2. It is going to be up to the PRP to assess IMPRESS' code arrangements. But the question of who "owns" the Editors' Code is not relevant, and the PRP's interpretation simply means that they will be sticking to the Charter criteria regardless.

	the requirements of Criterion 8; knowledge of the upcoming change to the code used by IMPRESS means that the PRP is aware that it is unable to assess anything but the stop gap measure.	
	Although the PRP has taken the view that there is nothing in the Royal Charter which would prevent IMPRESS from putting forward the Editors' Code of Practice and that the PRP's role is to assess the code against Criterion 8, this ignores the fact that the code must also be the regulator's responsibility; even if IMPRESS was licensed to use the Editors' Code, it is not IMPRESS's code and it has no responsibility for it.	As above.
	By releasing the Interpretation at the time and in the manner that it did, the PRP has fallen far short of the behaviour required of it as a body exercising public functions. It is clear from the specific nature of the definitions within the Interpretation that the PRP made its decision and then distorted the recognition requirements in an attempt to allow IMPRESS's application to succeed.	1. There is no evidence that the criteria have been "distorted" in any way. Legitimate interpretations have been made by the board of the PRP, which would have been inevitable over the course of the recognition decision. 2. IMPRESS were not even consulted before this guidance was suggested, considered, or decided upon. 3. The NMA is able to construct conspiracy theories and will no doubt propagate them through its publications. But as the PRP have explained before, and as is shown in their public minutes, the PRP executive were seeking clarification on certain points and the board provided that, blind to the executive's recommendations on IMPRESS.
	This conclusion is given further credence when the timeline is considered as a whole:	1. The "additional guidance" published by the PRP was decided by the board to

	a. IMPRESS submits an initial and an amended application, with public calls for information following each; b. The PRP publishes additional guidance on how to apply long after the application has closed and without public consultation. This guidance states that potential regulators should hold consultations about their funding sources, which was a fundamental objection of those responding to IMPRESS's application; c. It then becomes apparent that IMPRESS has already held a consultation on its funding, before publication of the Interpretation, without notifying any key stakeholders; d. The PRP announces that it will hold its decision meeting with very little notice and at a time when many will be unable to attend. By turning recognition into a box ticking exercise, the PRP is ignoring the requirement to consider IMPRESS's application in the wider context in which it was made, in light of standards of fairness and objectivity, as articulated in the Leveson Report. Further, the PRP has interpreted the Criteria so broadly that the words used in the Charter have been given an entirely new meaning, which we consider to be substantively incorrect, and which is beyond the authority of the PRP to do.	assist the PRP's executive as they prepared the paperwork for IMPRESS' recognition decision. It was not intended as further guidance, as the PRP corrected on their website and has acknowledged. The PRP's decision to publish this at all shows admirable transparency. 2. IMPRESS' decision to consult on its funding was theirs to make. IMPRESS published details of the consultation on their website, and emailed their full mailing list. One can sympathise that the NMA missed their opportunity to submit what would no doubt have been an evidence-based, constructive submission. But it is not IMPRESS' responsibility to ensure a lobbying body of publishers, which either ignores or openly attacks the regulator through its member newspapers, is signed up to their mailing list. In any event, it is clear that the NMA and its members keeps a close eye on the activities of IMPRESS. 3. As above, the PRP cannot be expected to have to rewrite their recognition timeline to fit in with the holiday diaries of newspaper editors and their lobbyists. It would have been an abuse of process to call a halt to recognition for the summer.

	The process followed by the PRP appears to have been designed with a view to granting recognition to IMPRESS under the Royal Charter without proper regard to the Charter's requirements. If the PRP proceeds with its meeting on 23 August and grants recognition, as a body exercising public functions it will be susceptible to challenge that its decision is substantively and procedurally irrational and unfair. The PRP must also bear in mind that the effect of a decision to recognise IMPRESS would be that the majority of publishers would become vulnerable to the disincentives of S.40 of the Crime and Courts Act (when in force) with the consequent implications for freedom of expression. We request that the PRP properly discharges its public functions by refusing recognition of IMPRESS.	1. A "proper discharge" of the PRP's functions would be to assess IMPRESS against the Charter criteria; no more and no less. 2. Nothing about the PRP's process suggests an intention to grant recognition without proper regard to the Charter requirements; any argument otherwise is rebutted above. 3. The NMA do not identify the "implications for freedom of expression" stemming from section 40 commencement. That is because there are none. Any financial disadvantage from s40 for some elements of the press is self-inflicted by refusal of those newspapers to adopt the Leveson system.
	We note that when the Interpretation was originally published it was identified as Section 5 of the Guidance and as the Board's "interpretation of some terms and elements in the Royal Charter" (as it was when we wrote to you on Monday). We see that now it is no longer portrayed as part of the Guidance and is described as the Board's "initial indicative view" on those elements. Can you please explain the reason for this change?	The PRP have explained that they retitled those points for the very reason that bodies such as the NMA and other publisher lobbying groups had requested greater clarity over them.
	Our concerns about the serious flaws, both in the substance of IMPRESS's application and the process adopted by the PRP thus far in considering it, are not allayed. We repeat our request that the PRP properly discharges its public functions and refuses recognition of IMPRESS.	As above.

	So it is now clear that IMPRESS intends to adopt its own Code, and not attempt to use the Editors' Code for which it has no responsibility, but that the PRP will not know what is in IMPRESS's Code until some unknown date after 29September. In our view, the PRP cannot properly give recognition to a body until it knows the content of the Code which that body will administer and adjudicate upon.	Leveson did not set specific requirements for the content of the code because his view was that it should be the decision of the regulator (public consultation notwithstanding). The very general requirements he set out are in criterion 8, and it will be up to the PRP to judge whether IMPRESS' arrangements sufficiently meet them when that Code is adopted by IMPRESS. For now the PRP will need to consider the Editors' Code when carrying out the recognition function.
	Alternatively, if the PRP is contemplating in some way treating the draft Code as IMPRESS's Code that would in turn be an improper exercise of its public functions not least because it appears to be just that, a draft, on which the public is to be consulted.	As above, for now the PRP will need to consider the Editors' Code when carrying out the recognition function.
	We also question when the PRP was made aware of the content of the draft Code and the IMPRESS consultation process and timeline. Unless the PRP had privately been made aware of its contents some time before it was disclosed to the public, it cannot surely have time to assess even the draft on 23August.	As above, for now the PRP will need to consider the Editors' Code when carrying out the recognition function.
	In point (1) you asked: "What precisely you rely on in the Charter as showing that a regulator, when formed, can only be considered to have been formed on behalf of publishers which are its members at the time of its formation". As set out at paragraph 9a in our original letter, Clause 1 of Schedule 4 of the Royal Charter states: " 'Regulator' means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications". The phrase "on behalf of" means done for another person's benefit or support, or done as a representative of that person. The phrase "by or on behalf of" therefore means either done by relevant	1. It is unclear where the NMA derive the threshold of "a significant proportion of relevant publishers" – or indeed what that threshold even is. It appears to be totally arbitrary, and the NMA can't even quantify it themselves. 2. IMPRESS clearly has the support of a number of publishers who have signed up to be regulated by them. 3. If opposition from the press industry stood in the way of independent

	publishers, or done with their support. Our point was not that every relevant publisher must be a member of an applicant regulator, but that at the very least it must have the support of a significant portion of relevant publishers. Here, IMPRESS not only lacks this support, but faces great opposition from almost the entirety of the industry, and so does not have either the support or the prospect of ever gaining that support.	regulation, then there would never be any hope of such regulation being realised.
	In point (2) you asked: "what precisely you rely on in the Charter as showing that a regulator can only be considered such if it has the support of all relevant publishers". We did not say this. We maintain that when the Charter and the Leveson Report contain phrases such as "by or on behalf of relevant publishers", it is not satisfied by the presence of one relevant publisher or even a small proportion of relevant publishers. It is more general than that. For example, a political candidate could not claim to have the female vote because three women supported them while the rest were explicitly opposed. To interpret references to "relevant publishers" as having such a low threshold changes the fundamental principles behind both the Leveson Report and the Royal Charter. Indeed, the Leveson Report made clear it did not expect very small publishers to join the body and implied that it was largely irrelevant whether they joined or not. A regulator supported only by a tiny minority of relevant publishers cannot constitute 'self-regulation of the press'. a. Schedule 2 of the Charter specifies that: "…in making its decision on whether the Regulator meets those criteria [the Board of the Recognition Panel] shall consider the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective	1. As above, there is no reasonable argument in favour of the NMA view that one must place an unspecified and invented arbitrary threshold on what qualifies as "by or on behalf of relevant publishers". The analogy to voters is misguided, because the Charter does not require IMPRESS to "have the press vote" – it only requires that the regulator be established "by or behalf of" relevant publishers. A better analogy would be to the "Justice for Men and Boys" political party, whose raison d'etre is advocacy on behalf of men – and yet very few men support it. 2. Leveson did not limit there to being only one regulator; indeed a virtue of the recognition system is that more than one regulator can co-exist. It is perfectly consistent with Leveson for small publishers to establish their own regulator, and it is not for the NMA to dictate how small and local publishers should conduct their regulatory affairs, and bully them into signing up to IPSO.

	accountability, as articulated in the Leveson Report, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation"). Section 4.11 of the report states: "It is important for the credibility of the system, as well as for the promotion of high standards of journalism and protection of individual rights, that the body should have the widest possible membership among news providers." It said the new system"must involve all the major players in the industry, that is to say, all national newspaper publishers and their online activities, and as many regional and local newspaper publishers, and magazine publishers, as possible. This is not meant to be prescriptive at the very small end of the market: I would not necessarily expect very small publishers to join the body, though it should be open to them to do so on appropriate terms". b. The Leveson Report also states (Part K, Chapter 7, Section 3): "A new system must be effective, and one of the key criteria of effectiveness is that it should include all major publishers of news (if not all publishers of newspapers and magazines)." Section 3.14 concludes: "I therefore recommend that a new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers…"	3. The quote from Leveson under point (a) appears to undermine the NMA's previous point that small publishers shouldn't be permitted to establish their own independent regulator. 4. With regard to point (b), Leveson is referring to the "system" of regulation – the Charter recognition system. The NMA are contradicting the stance of their own publishers, who have refused to sign up to an independent press regulator recognised by the PRP.
	In points (3) and (4) you contradict yourself. In (3) you say that we contend that a regulator should be funded "entirely and only by its members", but in (4) you quote our letter as saying that a regulator's funding must be "from, or at least sanctioned by, a substantial proportion of the industry". The characterisation in (3) is wrong. Reiterating the point, Criterion 6 of the Royal Charter states that: "[f]unding for the system should be settled in agreement between the industry and the Board". As explained above, this reference to "the industry" is not satisfied by the	1. The only requirement the Charter places on where funding for the regulator comes from is that it is settled in agreement with the industry. The NMA take issue with the PRP's two characterisations of their positions, but both positions are equally arbitrary. To take "in agreement with the industry", and set a threshold of "the majority", "the entirety" or a

	miniscule proportion of the industry in membership of IMPRESS. It is clear that there needs to be a reasonable proportion of relevant publishers in agreement to satisfy this requirement. Far from its funding being settled in agreement with the industry, IMPRESS's funding source is effectively one individual: Max Mosley. This not only fails Criterion 6 but is also at odds with a fundamental feature of the Charter criteria: that a regulator should be independent. An applicant for regulation which is ultimately funded by a single individual falls at the first hurdle. a. In making its decision on whether a regulator meets the recognition criteria, the PRP is also obliged to consider the concepts of reliable funding as articulated in the Leveson Report. Part K, Chapter 7, Section 4.14 of the report makes clear "that any industry established independent regulatory body must be funded by its members."	proportion of some other description are all equally groundless. 2. The criteria designed by Leveson and enshrined in the Charter are written to guarantee independence – on funding and everything else. They are sufficient to test the independence of any regulator. If the NMA disagree, they should have made their point more persuasively in evidence to the Inquiry. 3. The passage quoted from the Leveson Report is Leveson writing in reaction to the suggestion of there being another "PressBOF" – such as the "RFC" body which controls IPSO. What he is doing is criticizing the reach and powers of PressBoF/the RFC while acknowledging that funds should still be collected from the industry. Leveson's final recommendation sets out his complete view on this, which is reflected in the Charter criteria.
	In point (5), you ask "what precisely you rely on in the Charter as requiring there to be serving editors on a Code Committee". We restate the point made in paragraph 9c of our original letter -that Criterion 7 states that "…a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive." This is very clear in dictating that serving editors have not only a role to play, but an important role, on the Code Committee of any regulator that is to be recognised. It is difficult to see how the PRP is confused on this point. There is no room to	The NMA make a leap of logic which they do not justify: that an "important part to play" *necessarily* means a seat on the Code Committee. Admittedly, under the Editors Code which the NMA member publications control, the fact that there is no public consultation or meaningful engagement with anyone who isn't on the Committee itself means that the *only* part to play is by sitting on the board. But it is normal for transparent and accountable bodies, such as the code committee Leveson envisaged, to have

	interpret Criterion 7 as not requiring at least one serving editor to be on the Code Committee.	consultations, consultative committees, and a range of other ways of engaging others and giving other constituencies important roles.
	Beyond these specific points, we would like to emphasise the overarching duty on the PRP. The Royal Charter specifies that, in making its decision on whether the Regulator meets the recognition criteria, the PRP: "shall consider 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..." This duty does not allow for dubious or illogical interpretations, especially if done with a motive to recognise a regulator that would not otherwise meet the requirements for recognition.	As above.
PPA	No substantive new points.	
Society of Editors	No substantive new points.	
Scottish Newspaper Society	I cannot see how IMPRESS can be recognised as a regulator for the whole of the United Kingdom when as far as I can see the only entity in Scotland applying to be regulated by IMPRESS is a website of relatively little significance. As such, IMPRESS must surely fall well short of the basic criteria laid down in both the Royal Charter and Leveson recommendations that a regulator needed to include "all significant news publishers" and I can see no possible justification for giving it any kind of status here as an official regulator.	1. It is not up to the Scottish Newspaper Society to declare which publications are of “significance” or not, and to then attempt to dictate their regulatory affairs. 2. Leveson and the Royal Charter do not require a regulator to have all significant publishers as members (although this is desirable). Leveson said that all significant publishers *should* join a recognised regulator, and if they don’t, then they should fall under regulation by OfCom.

	By contrast, the members of the Scottish Newspaper Society, which represents all significant nonbroadcast news providers in Scotland, have with only one exception (the Shetland Times, which has also rejected IMPRESS) signed up to IPSO.	This is irrelevant to the question of IMPRESS' recognition.
	Further, as the privileges in defamation actions the Crime and Courts Act 2013 attempts to accord signatories to an officially-sanctioned regulator are not applicable in Scotland, I find it hard to understand what relevance IMPRESS has in Scotland at all.	Again, not relevant. Regardless, the s40 costs protection for member publishers applies for those newspapers which are sued in England.
	I also share the bemusement expressed by the NMA and the Society of Editors about the speed with which IMPRESS's attempt at a Code of Conduct has been passed for consideration, especially as Lord Leveson was specific in his praise for the old PCC code which has in fact been strengthened under IPSO.	1. The Editors' Code has not been strengthened by IPSO. At best, it has been re-ordered. 2. Leveson did not praise the "PCC Code". He was very critical of the lack of public consultation to it and the constitution of the code committee.