

ASSOCIATED NEWSPAPERS

Press Recognition Panel Third Call for Information on IMPRESS's application for recognition. Response from Associated Newspapers

1. This is Associated Newspapers' response to the Press Recognition Panel's third call for information on the application by IMPRESS for recognition under the Royal Charter.
2. Associated Newspapers is a member of the News Media Association. We have read and endorse the NMA's submission to this consultation.
3. We maintain our position, set out in our correspondence of August 11, 18 and 22, that the PRP has no authority under the Royal Charter to base its decision on recognition on the guidance on a number of Royal Charter Recognition Criteria it published, without consultation or notification, on its website on July 15, 2016.
Section 5 of this guidance was initially entitled 'interpretation', which was then revised to 'initial indicative view of the interpretation' and finally 'indicative view'. This suggests the PRP is itself unsure of its status.
4. We also remain of the view that, despite the PRP's attempt to lower the bar in the July 15 interpretation, the IMPRESS application fails to meet a number of very important Recognition Criteria.
5. **Funding:**
 - a) Recognition Criterion 6 says: 'Funding for the system should be settled in agreement between the industry and the Board...' Schedule 2, Paragraph 1 of the Royal Charter requires the PRP, when making its decision on whether a regulator meets this Criterion, to consider the concepts of independence and reliable funding 'as articulated in the Leveson Report, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation")'. Leveson Section 4.3 says: '...I envisage that the industry should come together to create, and adequately fund, an independent regulatory body...' No part of the media industry has come to together to create or fund IMPRESS. It was created by a group of private individuals and is funded by one private individual, Max Mosley. IMPRESS clearly fails to meet Criterion 6.
 - b) However the PRP have attempted to make it possible for IMPRESS to meet the Criterion by 'interpreting' it to allow third party funding so long as safeguards are in place to guarantee independence:

'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... mean that a regulator is automatically not 'independent'... whether it does so will be a question of fact and will depend on the safeguards that were put in place to protect independence, such as the terms of the agreement between the funder and the regulator and the regulator's governance arrangements.'

- c) We have examined the new documentation provided by IMPRESS and see nothing to change our view that it remains almost entirely dependent on Mr Mosley's money, and therefore in his thrall. In particular:
- d) IMPRESS's PRP Clarification letter sets out the timeline for its application. It was founded on 11 November 2013, three days after the IPRT's declaration of trust was made on 8 November 2013, but apart from appointing its board and chief executive, and conducting a less than successful fund-raising exercise, it was largely inactive. Indeed the minutes of its board meeting on 12 January 2015 show that although it had been promised £6million by Max Mosley, at that point it only had funds to last until the end of March. That all changed on 15 June, 2015, when the Charity Tribunal ruled in favour of the IPRT. IMPRESS's board decided the very next day to approach the IPRT for funding. Three weeks later IMPRESS's chief executive made a formal request for funding which finally agreed on October 30. It was only following this, in January this year – two years after it was launched, that IMPRESS was able to announce it had recruited its first members and was applying for recognition. It is clear from this that IMPRESS cannot function without Mr Mosley's money, and cannot have his money unless he can supply it to them via a suitable charitable trust.
- e) The independence of IMPRESS's funding depends in turn on the independence of IPRT and its trustees, who are the conduit through which Mr Mosley's money is channelled. One might have expected the trustees to have been appointed by an independent process. However the IPRT's declaration of trust says nothing on this point. It simply states that Wilfrid Vernor-Miles, Christian Flackett and Richard Rees-Pulley will be the first trustees. Future trustees will be chosen by the existing trustees.
- f) The IPRT depends for its funding on the Alexander Mosley Charitable Trust. The AMCT trustees are Mr Mosley, his son, another member of his family, and family friend Horatio Bottomley. The AMCT/IPRT grant agreement shows that the AMCT pays its grant to the IPRT in £500,000 tranches, twice each year. Clauses 3 and 4 of the grant agreement show that the IPRT has to report to the AMCT twice a year on how it is spending its grant, and if it fails in this requirement, or the AMCT believes the money is not being spent in accordance with the IPRT's Objects, the AMCT can terminate or decrease the grant with fifteen days' notice. If the AMCT gives no money to the IPRT then the IPRT has no money to give to IMPRESS, and IMPRESS cannot function.
- g) IMPRESS have supplied a draft deed of variation to their agreement with the IPRT. It is undated and unsigned, so it is unclear whether it has any legal force. However it includes the following clause (3.3), which IMPRESS also reference as being included in a letter sent by the IPRT to IMPRESS on 28 June 2016:

'For the avoidance of doubt, the power to terminate, reduce or withhold funding in accordance with the provisions of Clause 3.2.3(ix) above, shall only be exercised by the Trustees in the event that the IPRT does not itself have sufficient funds to meet its financial commitments to IMPRESS pursuant to the terms of this Agreement.'

This followed the PRP's expression of concern that catch-all powers in the IPRT/IMPRESS agreement allow the IPRT to withdraw funding at ten days' notice, and is no doubt intended to supply reassurance about reliability of funding. Unfortunately it does no such thing. The AMCT is entirely controlled by Mr Mosley, his family and friends, and the IPRT is entirely dependent on the AMCT for funding. If Mr Mosley decides IMPRESS is no longer serving his ends the AMCT will not fund the IPRT, and the IPRT will not have sufficient funds to meet its commitments to IMPRESS. Clause 3.3 of the deed of variation could be invoked very easily indeed.

- h) Mr Mosley can also use his funding to demand information from IMPRESS. Under Clause 4.2 of the IPRT/IMPRESS funding agreement the IPRT can ask IMPRESS to supply "financial or other information" which the IPRT trustees reasonably request, and a failure to supply this information constitutes a notice event. The ACMT/IPRT funding agreement has an almost identically worded and numbered clause (also Clause 4.2). This chain means that the ACMT – which is controlled by Mr Mosley and his family - can indirectly demand information from IMPRESS, and if IMPRESS fails to comply it can lose Mr Mosley's money, without which it cannot operate.
- i) It is notable that the wording of the IPRT/IMPRESS funding agreement and the AMCT/IPRT funding agreement is almost identical, strongly suggesting both were drawn up by the same person and that the IPRT is a vehicle for the AMCT. We hope the PRP will ask IMPRESS why the AMCT/IPRT agreement was not supplied when IMPRESS made its initial application for recognition.
- j) IMPRESS's record of meetings with the AMCT and IPRT discloses that on 4 November 2014 the Chair and Chief Executive of IMPRESS took part in a meeting 'to establish the scope for future funding of IMPRESS from the IPRT'. Curiously, although the IPRT had by then been in existence for a year, no one from the IPRT attended this meeting. Its views appear to have been represented by Dominic Cummings of the AMCT. Mr Cummings is a partner in Payne Hicks Beach, Mr Mosley's lawyers. His biography on the PHB website includes this passage:

'By its nature, much of Dominic's work is confidential however recent instructions that are in the public domain include the Leveson Inquiry in which Dominic acted for all of the 53 "Core Participant Victims". Dominic acted for Max Mosley in his ground breaking privacy claim against News Group Newspapers Limited and led his application in the European Court of Human Rights and claim against Google. Other privacy cases include phone hacking claims for compensation and injunction applications.'

IMPRESS cannot have been in any doubt where their money was coming from and what would be expected of them. If there were any doubts they would certainly have been dispelled when a further meeting was held on 20 August 2015 'to confirm that IMPRESS's financial arrangements would secure the regulator's independence and sustainability'. Once again no one from the IPRT was present, but this time the AMCT was represented by Mr Mosley himself. Indeed when IMPRESS's chief executive wrote to

Wilfrid Vernor-Miles on 20 July 2015 he said he had never met Mr Vernor-Miles (and misspelled his name). This seems extraordinary given the IPRT had by then been in existence for eighteen months and its sole purpose was to provide funding to IMPRESS. One can only assume there was no need to talk to the monkey when there was direct contact with organ-grinder.

The PRP should also note that neither of the meetings between IMPRESS and the AMCT are mentioned in the timeline of contacts with all parties which IMPRESS supplied, at the request of the PRP, to demonstrate the due diligence they had undertaken to satisfy themselves their funding arrangements ensured their independence.

- k) We note that IMPRESS have supplied the following document to the PRP: 'IPRT confidential advice Hunters Solicitors to IMPRESS July 2015 [for PRP reference only]' which cannot be read on the PRP website, presumably for reason of confidentiality. We trust the PRP are aware that IPRT trustee Wilfrid Vernor-Miles is a partner in Hunters Solicitors, and are satisfied there are no conflicts of interest.

6. Composition of the IMPRESS Code Committee

Our response to the PRP's first call for information set out the inadequacy of IMPRESS's Code Committee, in particular the fact that it includes among its members no one who can call themselves a serving editor, apart from Mary Fitzgerald, who is editor-in-chief of openDemocracy, which appears to be a multi-author blog rather than a relevant publisher, and is not a member of IMPRESS. The PRP's July 15 'indicative view' attempts to reinterpret Royal Charter Criterion 6 to make it easier for IMPRESS to achieve recognition:

'We consider criterion 7 as permitting serving editors to be part of the Code Committee and, if they are, to play an important (but not decisive) role in such a committee. However, we do not interpret the criterion as requiring such participation in light of the words 'may comprise both independent members of the board and serving editors' in the first sentence.'

However Criterion 7 contains no 'if'. It says quite clearly: '*Serving editors have an important part to play although not one that is decisive.*' Not only do serving editors not play an important part in IMPRESS's Code Committee – they play no part.

We find it surprising, given the PRP's evident concern about the composition of the IMPRESS Code Committee (hence the need to address the issue in the indicative view), that IMPRESS have not tried to address the problem by appointing some of the editors of their members' publications to the committee. It is of course very likely that none of them have the necessary knowledge and experience. Nevertheless the PRP should ask IMPRESS why they have not done this. Is it that someone influential – possibly Mr Mosley – objects to IMPRESS editors serving on their Code Committee?

7. The Standards Code.

We have seen and endorse the News Media Association's analysis of the IMPRESS Draft Standards Code and the many failings it identifies. These no doubt result, at least in part, from there being no one on the IMPRESS Code Committee with practical experience of publishing news stories and addressing complaints.

8. Conflicts of interest.

The PRP have asked IMPRESS how they will ensure members' complaints mechanisms will manage conflicts of interest. IMPRESS have responded by revising their Regulatory Scheme so it now requires each publisher to nominate *'a senior individual within each title to have responsibility for legal and standards compliance, and a mechanism whereby that person is alerted as to the complaint, the name of the journalist involved and the name of the complainant at an early stage so that, where possible, the individual can pass the complaint to another person in the organisation in case of any conflict of interest.'*

Many IMPRESS members may find this difficult because they have only one employee, or even none at all. The Bideford Buzz, for example, says it is produced by volunteers and has no office. Its editor works out of a volunteer resource centre which is only open three and half days a week. It publishes stories intermittently – for instance, nothing was published between August 20 and September 8.

9. Effectiveness.

IMPRESS have been in operation for eight months and claim to have 43 members. And yet they appear not have received or ruled on a single complaint. Assuming IMPRESS have the procedures in place to handle complaints this must be because the publications they purport to regulate publish very few stories, and those they do publish are read by very few people. Under Schedule 2, Clause 10 of the Royal Charter, the PRP must report to Parliament this month if, in their opinion, the system of regulation does not cover all significant relevant publishers. It is quite clear, even if IMPRESS is granted recognition, that it does not cover any significant relevant publishers.

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