IN THE HIGH COURT OF JUSTICE **Claim No. CO/140/2017**

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

B E T W E E N:

THE QUEEN on the application of
NEWS MEDIA ASSOCIATION

Claimant

-and-

PRESS RECOGNITION PANEL

Defendant

-and-

IMPRESS: THE INDEPENDENT MONITOR FOR THE PRESS CIC

Interested Party

DEFENDANT'S DETAILED GROUNDS OF RESISTANCE

Suggested reading: Witness statement of David Wolfe QC

A. Summary

1. The Claimant contends that the Board of the Press Recognition Panel (the "Panel") breached its Royal Charter in recognising IMPRESS as a Regulator on 25 October 2016.

2. The Panel is set up by Royal Charter to give effect to the Leveson Report. The Board of the Panel is uniquely independent of Government, the press and other interests. The Board has exceptional security of tenure and other protections to give them independence in their decision-making. The decision now challenged was taken by an open process after three rounds of consultation in which the Claimant had (and took) multiple opportunities to express their views.

3. The Claimant raises three grounds for judicial review. Each ground encompasses multiple sub-grounds. In summary, it contends that the Panel ought not to have found that:

   (1) IMPRESS was (a) a "*Regulator*" and (b) an "*independent self-regulatory body*" and (c) was sufficiently impartial (Schedule 2 and Criteria 1 and 5(f));

   (2) IMPRESS' funding was (a) "*settled in agreement between the industry and the Board*" and (b) sufficiently secure (Criteria 1 and 6); and

   (3) IMPRESS satisfied the requirements for a standards code (a) by adopting the Editors' Code and (b) without the involvement of a "*serving editor*" on its Code Committee (Criteria 7 and 8).

4. For clarity, the Panel has sought to identify the separate complaints, each of which should be dismissed for the reasons set out below:

a) **<u>Ground 1A</u>: Did the Panel err in law in concluding that IMPRESS was a "*Regulator*" within the meaning of paragraph 1 of Schedule 2 to the Charter (defined in Schedule 4 as "*an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications*")? [Grounds §§13-25]**

IMPRESS was founded "*on behalf of*" relevant publishers — in their interests and for their benefit. It is not necessary for the legal entity that carries out the regulation to have been created *by* relevant publishers. If that were the case, the effect of the Claimant's argument would simply be that IMPRESS should transfer its operations and funding to a new legal entity formed by its publisher members.

By the date of IMPRESS' application, a number of "*relevant publishers*" had joined IMPRESS and were being regulated by it. There is no requirement that a recognised Regulator must have support from a minimum proportion of the entire body of publishers. Such a requirement would allow those publishers that disagree with the scheme under the Charter to frustrate the recognition of any Regulator. The Claimant's members have no veto on the recognition of a Regulator by the Panel.

b) **<u>Ground 1B</u>: Did the Panel err in law in concluding that IMPRESS was an "*independent self-regulatory body*" within the meaning of Criterion 1 of the Charter? [Grounds §§19, 26-30]**

For essentially the same reasons, the Panel did not err in concluding that IMPRESS was an independent self-regulatory body.

c) **<u>Ground 1C</u>: Was the Panel's conclusion (on the evidence before it) about the impartiality of IMPRESS' Board members under Criteria 1 and 5(f) lawful? [Grounds §§31-32]**

At the date of the Panel's decision, the concerns raised about IMPRESS' Board primarily essentially concerned one member: Martin Hickman. He had written a book about telephone hacking critical of News International. In the (perhaps unlikely) event that News International joins IMPRESS, Mr Hickman might need to recuse himself from some decision-making. The Panel were rightly satisfied that IMPRESS had an appropriate procedure in place to manage recusal in such cases.

Since the decision, the Claimant's members and others have raised additional points about the impartiality of other members of the IMPRESS Board. Those concerns were not before the Panel at the time it took its decision. As Nicol J noted when granting permission, "*Of course, the Court will ordinarily take into account only factual matters which were known to the decision maker at the time of the decision*".

The new material will be considered by the Panel in accordance with the provisions in the Royal Charter providing for the possibility of an *ad hoc* review (Schedule 2, paragraph 8) and the Panel's published policy on such reviews. This is the proper mechanism for the consideration of new material that may be relevant to continued recognition. A claim for judicial review in reliance on such new material is premature.

d) **<u>Ground 2A</u>: Did the Panel err in law in concluding that IMPRESS' funding was "*settled in agreement between the industry and the Board*" within the meaning of Criterion 6? [Grounds §§35-43]**

IMPRESS' funding was settled in agreement with the industry within the meaning of the Charter. IMPRESS' members accept and agree its funding arrangements. Further, IMPRESS conducted a public consultation on its funding and made significant changes to its proposals following responses from publishers. There is no requirement that relevant publishers who choose not to join IMPRESS (or any other recognised Regulator which could be set up) accept IMPRESS' funding plan. Such publishers do not have a veto. In circumstances in which some publishers do not wish to join IMPRESS, the Panel did not err in concluding that a fair public consultation with conscientious consideration of the responses is sufficient.

e) **<u>Ground 2B</u>: Did the Panel err in law in concluding that Criteria 1 and 6 were satisfied and that IMPRESS' funding was sufficiently secure? [Grounds §§44-52]**

The Panel was entitled to conclude that IMPRESS' funding was secure from withdrawal. The funding provided by the Independent Press Regulation Trust is for a substantial period and may only be withdrawn in extremely limited circumstances. The only scenario identified by the Claimant in which funding could be withdrawn is fanciful and assumes dishonest conduct.

f) **<u>Ground 3A</u>: Did the Panel err in law in concluding that IMPRESS satisfied Criteria 7 and 8, even though it adopted the existing Editors' Code? [Grounds §§55-68]**

IMPRESS adopted the existing Editors' Code as its initial code. IMPRESS is currently consulting on its own Code. The preamble to the Charter indicates that the regulatory body applying for recognition "*should put forward the Editors' Code of Practice as its initial code of standards*". IMPRESS has done so. There is no arguable error of law.

g) **<u>Ground 3B</u>: Did the Panel err in law in concluding that Criterion 7 does not require at least one serving editor on IMPRESS' Code Committee? [Grounds §§69-73]**

Criterion 7 provides that the Code Committee of a Regulator "*<u>may</u> comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive*". It is therefore discretionary not mandatory to have serving editors on a Code Committee. The important (but non-decisive) role of editors is met by IMPRESS conducting a consultation on the content of its Code.

<u>B. The Leveson Inquiry</u>

5. The Leveson Inquiry into the culture, practices and ethics of the press identified serious shortcomings in the previous system of press regulation. As the Executive Summary noted:

> "7. The evidence placed before the Inquiry has demonstrated, beyond any doubt, that there have been far too many occasions over the last decade and more … when these responsibilities, on which the public so heavily rely, have simply been

ignored. There have been too many times when, chasing the story, parts of the press have acted as if its own code, which it wrote, simply did not exist. This has caused real hardship and, on occasion, wreaked havoc with the lives of innocent people whose rights and liberties have been disdained. This is not just the famous but ordinary members of the public, caught up in events (many of them, truly tragic) far larger than they could cope with but made much, much worse by press behaviour that, at times, can only be described as outrageous …"

"11. … there is no argument but that changes do need to be made … it is almost universally accepted that the body presently charged with the responsibility of dealing with complaints against the press is neither a regulator nor fit for purpose to fulfil that responsibility." [2/13/338-339]

6. Sir Brian Leveson then rejected a proposal by Lord Black for a new press regulator: "*the new body must represent the interests of the public as well as the press and the proposed model does not go anything like far enough to demonstrate sufficient independence from the industry*" [2/13/348/§53].

7. Sir Brian Leveson noted the unwillingness of the press to accept a regulator that would be sufficiently independent. He also noted the undesirability of a state press regulator. He concluded that what was required was a system of "*incentives*", including in relation to legal costs, to encourage membership of a new regulator, backed by a "*statutory verification process to ensure that the required levels of independence and effectiveness are met by the system*" [2/13/351/§§70-73].

C. The Royal Charter and the Panel

8. Parliament and the Privy Council drew on the Leveson Report in devising the Royal Charter scheme. By cross-party agreement, the Panel was created to deal with applications for recognition by potential press regulators. The Charter expressly recognises that the Panel may recognise multiple regulators.

9. The preamble to the Charter explains what is meant by an effective system of self-regulation and the function of the Panel:

> "… 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"
>
> "… there should be a mechanism to recognise and certify an independent regulatory body or bodies for the press, and that the responsibility for such recognition and certification should rest with a recognition body … [which] should not be involved in the regulation of the press"

10. The Panel is uniquely independent of government and the press. See Schedule 1 to the Royal Charter:

    a) An amendment to the Charter must be unanimously approved by the Board of the Panel and by an affirmative resolution passed by a two-thirds majority in both Houses of Parliament.

    b) Each of the members of the Board of the Panel were directly appointed by an independent appointments committee (i.e. without any of the Ministerial involvement which is a characteristic of similar appointments on Non Departmental Public Bodies). None of the members of the Panel may be an editor, a publisher,

a member of an elected assembly (or the House of Lords if politically affiliated in recent years) or a Minister.

c) Before each appointment to the Board, the Commissioner for Public Appointments must certify that the selection of that person was fair, open and merit-based.

d) Panel members have security of tenure. Appointments are for 5 years and may only be terminated if a two-thirds majority of the Board of the Panel are satisfied that the member is "*unwilling, unable or unfit to discharge the functions of a Member*". Reasons must be given.

11. The Panel is under a duty to grant recognition to a "*Regulator*" if the "*recognition criteria numbered 1 to 23*" are met. In making its decision, the Regulator "*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 (Schedule 2, paragraph 1 [1/7/95]).

12. A "*Regulator*" is defined in Schedule 4 as "*an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications*".

13. A "*relevant publisher*" has the meaning given in section 41 and Schedule 15 to the Crime and Courts Act 2013. The definition includes both online and print publishers:

a) A relevant publisher is a person who, in the course of a business, publishes news-related material written by different authors and which is to any extent subject to editorial control (section 41(1)).

b) Websites and other online publishers may be relevant publishers (section 41(3)).

c) Certain categories of publisher are excluded (section 41(5) and Schedule 15):

i) broadcasters;

ii) publishers of special interest titles relating to a pastime, hobby, trade, business, industry or profession, or scientific or academic journals;

iii) public bodies and charities;

iv) company news publications and book publishers;

v) "micro-businesses" – including multi-author blogs with less than 10 employees and an annual turnover of less than £2 million.

d) Importantly, a micro-business *is* a relevant publisher if it has elected to be a member of an approved Regulator (section 41(7)).

14. Once a Regulator has been recognised, recognition may be reviewed under the *ad hoc* review process if "*there are exceptional circumstances that make it necessary to do so, having regard, in particular, to whether there have been serious breaches of the recognition criteria; and … there is a significant public interest in a review of the Regulator's recognition being undertaken*" [1/7/96/§8].

15. A decision to carry out an *ad hoc* review must be accompanied by written reasons. A report of the review must be published (paragraph 10(a)). The Panel may withdraw recognition where, following a review, the Regulator is not meeting the recognition criteria, or there is insufficient information to determine whether or to what extent the Regulator is

meeting those criteria [1/7/96/§§9-12]. The Panel has consulted on and published a policy on how it will exercise these powers.[1]

16. Under the 2013 Act, publishers who are members of a recognised regulator will benefit from two incentives:

    a) restrictions on the award of exemplary damages (section 35); and

    b) protection against adverse costs orders in privacy and defamation claims, where the claim could have been dealt with using a low-cost arbitration scheme operated by the regulator (section 40(2)).

17. A relevant publisher who was not a member of an approved regulator will ordinarily be ordered to pay the costs of litigation unless:

    a) it was not reasonable for the publisher to have been a member of a regulator;

    b) the issues in the claim could not have been resolved using a low-cost arbitration scheme; or

    c) it is just and equitable to make a different order for costs, or no order for costs (section 40(3)).

18. The effect of section 40 is not simply to incentivise membership of a recognised regulator. It is also to guarantee that members of the public have low-cost access to justice. If a publisher is a member of a recognised regulator, the member of the public will be able to use its low-cost arbitration scheme. If a publisher chooses not to become a member of a recognised regulator, members of the public have access to the Courts and will ordinarily have his or her reasonable and proportionate costs paid by the publisher.

19. Section 40 has not been brought into force. The government is currently consulting on whether to commence section 40.

D. The Decision

20. The Panel adopted a fair and open decision-making process. It issued three calls for information on IMPRESS' application. The Claimant and its members (and many other members of the public and organisations) made detailed representations. The materials before the Panel have been published on its website, along with the recording and transcripts of the Panel's meetings. The decision on IMPRESS' application extends to 190 pages [1/11/143].

21. The context in which the application was decided is notable, not because it is relevant to the issues in the claim, but to explain the strength of feeling seen in the representations to the Panel:

    a) Sir Brian Leveson made strong criticisms of some elements of the press and encouraged the press generally to participate in a system of self-regulation underpinned by incentives and a recognition process.

    b) Parliament, on a cross-party basis, adopted a solution drawing on Sir Brian Leveson's report. No challenge has been brought to the lawfulness of the Charter.

    c) There are very strongly-held views about the merits of section 40 of the 2013 Act (even though it has not yet been brought into force). But the purpose of section 40

[1] See DW Annex 1,Witness statement of David Wolfe, 13 March 2017, pages 230-236

is clear: to ensure access to justice and incentivise the press to join a recognised regulator.

d) Many national and regional publishers have chosen not to participate in the recognition process and to reject the approach proposed in the Leveson Report and reflected in the legislation and the Charter.

e) Instead, a new regulator, IPSO, was created by the Regulatory Funding Company. IPSO has not applied for recognition, and does not intend to. IPSO's members are prohibited (by contract) from seeking to join a recognised Regulator until "*2019 at the earliest*" [1/6/55/§71].

f) In consequence of that choice, most larger publishers would be in breach of contract if they joined IMPRESS, even if they wished to. IMPRESS therefore seeks to focus its current activities on the local and online publishing sector (although the Panel's recognition that IMPRESS satisfied the Charter criteria means that its membership is open to all publishers on fair, reasonable and non-discriminatory terms). Such local and online publishers may be those least able to afford litigation and who may derive a substantial benefit from membership of a recognised Regulator. Such publishers are also often the source of significant public interest journalism.

g) Most of IMPRESS' funding originally derived from the Alexander Mosley Charitable Trust. Funds are provided under a grant agreement to the Independent Press Regulation Trust, a separate charity with different trustees. IMPRESS is the recipient of a grant from IPRT. One of AMCT's trustees is Max Mosley. Mr Mosley has strong views on press regulation and has successfully brought a privacy claim against News Group Newspapers in the past.

E. Ground 1 — Independent self-regulatory body

Ground 1A: Did the Panel err in concluding that IMPRESS was a "*Regulator*" within the meaning of paragraph 1 of Schedule 2 to the Charter?

22. The Claimant contends that the Panel erred in law in concluding that IMPRESS was a "*Regulator*" as defined in Schedule 4 to the Charter ("*an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications"*). The Claimant's argument has two limbs.

23. **First**, the Claimant argues that IMPRESS was created first and sought members second, and this prevents IMPRESS from being a "*Regulator*" [Grounds §20].

24. The Panel agrees with the Claimant's earlier representations in its letter of 22 August 2016 that "*the phrase 'on behalf of' means done for another person's benefit or support, or done as a representative of that person*" [3/69/1405]. The term "*on behalf of*" (which was not used in the Leveson Report) indicates that a Regulator may be formed by persons other than relevant publishers, for the benefit and support of all relevant publishers. The wording makes clear that the Regulator does not need to have been created by particular relevant publishers. The Leveson Report concludes that the creation of a recognised Regulator is to the benefit and in the long-term interests of all relevant publishers and the public (including in securing the proper balance between free speech and the availability of appropriate mechanisms for the public to raise concerns about what is published).

25. In any event, the key date must be the date of application for recognition (or approval). There is no requirement in the Charter criteria to set up a new company or other entity. A new scheme could have been promulgated by an existing legal entity. At the time of its application to the Panel for recognition, IMPRESS had 11 members. At the time of the Panel's decision, IMPRESS had 27 members. It would be absurd if IMPRESS could achieve recognition if it reformed as a new legal entity, but with the incorporation documents signed by its 27 current members.

26. **Secondly**, the Claimant suggests that a body cannot be a Regulator unless it has the support of "*a significant proportion of relevant publishers*". IMPRESS is said to "*fall … well short of the line*" [Grounds §25].

27. There is no requirement in the Charter for a Regulator to have the support of a minimum number of publishers or proportion of the total body of relevant publishers. If that were the case, the Claimant's members could have a veto over the recognition of a regulatory body. Indeed, the Claimant accepts this is the consequence of its argument ("*the Charter <u>does</u> preclude an organisation being recognised in circumstances where it has no or only minimal support from the industry*" Grounds §25, emphasis in original). As Sir Brian Leveson recognised, it is "*questionable as to whether it would be helpful to put this much power in the hands of any of the large players*" and noted that there are "*advantages to allowing more than one regulatory body*" [2/14/425/§6.32].

28. The combination of IPSO's contractual restraints on its members joining an approved Regulator and the Claimant's interpretation of the Charter would mean that, at present, if the Claimant's analysis is correct, it would be impossible for the Panel to approve *any* Regulator. In consequence, the incentive (for publishers) and the benefit (for members of the public) in section 40 (if it is brought into force) cannot take effect and the legislative and Royal Charter scheme has been rendered largely nugatory. Those publishers that legitimately wish to enjoy the kite mark (and statutory advantages including in being shielded from exemplary damages, the provisions for which are already in force) of being regulated by a recognised Regulator will be unable to do so.

<u>Ground 1B: Did the Panel err in law in deciding that IMPRESS was an "*independent self-regulatory body*" within the meaning of Criterion 1 of the Charter?</u>

29. For "*essentially the same reasons*", the Claimant contends that the Panel was not entitled to conclude that IMPRESS is not an "*independent self-regulatory body*" [Grounds §26] within the meaning of Criterion 1.

30. A "*self-regulatory body*" is not a defined term in the Charter. It means no more than a regulator created voluntarily rather than by legislative compulsion. Self-regulation of the press is the alternative to full statutory regulation of the press.

31. The Claimant seeks to use the term "*self-regulatory*" to cut down the definition of "*Regulator*" in Schedule 4. The words do not bear that meaning. The nature of self-regulation is explained by Criterion 1 itself, and the other criteria.

32. For example, Criterion 3 requires that the appointment panel include at least one person who has current understanding and experience of the press, no more than one current editor, and a "*substantial majority of members who are demonstrably independent of the press*". Self-regulation thus permits a degree of involvement by relevant publishers themselves, but within the limits set out in Criterion 1:

"For the avoidance of doubt, the industry's activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body, shall not constitute influence by the industry in breach of this criterion".

33. Again, if the Claimant is correct, the Charter scheme will be frustrated. It will in practice not be possible for *any* Regulator to be approved. That is unlikely to be the correct approach to the interpretation of the Charter.

Ground 1C: Was the Panel's conclusion on the evidence before it about the impartiality of IMPRESS' Board members under Criteria 1 and 5(f) lawful?

34. Mr Highfield's witness statement contains detailed criticism of IMPRESS' Chief Executive and several of its board members based on their public and social media comments [1/6/61-65/§§119-156].

35. Most of this material was not before the Panel at the time it took its decision. The Panel gave multiple opportunities for any relevant information to be provided, and the Claimant and others provided a great deal of information. Indeed, much of it post-dates the decision. Nicol J's observation when granting permission was accurate: "*… the Court will ordinarily take into account only factual matters which were known to the decision maker at the time of the decision*".

36. The material before the Panel prior to the decision mostly concerned one IMPRESS Board member, Martin Hickman. He had written a book about telephone hacking critical of News International. As a result, in the (perhaps unlikely) event that News International joins IMPRESS, Mr Hickman might[2] need to recuse himself from some decision-making. The Panel were satisfied that IMPRESS had an appropriate procedure in place to manage recusal in such cases.

37. The Panel dealt with this issue:

    a) Under Criterion 5(f), it noted that "*recruitment operated in accordance with a protocol and advertisement with published criteria that included fairness, independence and integrity … which were applied by the appointment panel*". The Panel was therefore satisfied that, as required by Criterion 5(f), IMPRESS' appointment panel had satisfied itself of the Board's ability to act fairly and impartially in its decision-making. The Claimant does not take issue with that conclusion, but rather contends that the Panel "*was required to form its own view*" [Grounds §32]. First, it cannot be expected to have formed a view on material that was not before it. Second, and in any event, the Panel was neither permitted nor required to do so in view of the express stipulation that Criterion 5(f), unlike other paragraphs in Criterion 5, is "*in the view of the appointment panel*".

    b) Under Criterion 23, the Panel noted that "*the Board considered that the mechanisms in place operated to deal with that, or any other risk of perceived bias by individual board members*". That analysis was correct. Not every member of a Board may be able to handle a complaint by every potential member. That does not affect the independence of IMPRESS as a whole. There was no reason to think

[2] Sir Brian Leveson also made trenchant criticism of some of News International's past conduct. Recusal does not always follow from past criticism.

that any potential conflicts of interest would not be identified, declared and managed appropriately by IMPRESS.

38. Since the decision, the Claimant has raised additional new points about the impartiality of other members of the Board. Those concerns were not before the Panel at the time it took its decision. The Royal Charter contains a mechanism for the consideration of new material that may be relevant to continued recognition in Schedule 2, paragraph 9. The Panel will apply those provisions, and its published policy guidance, to this new material.

39. A claim for judicial review in relation to such new material is therefore premature. The Panel cannot fairly be criticised having made three calls for information about IMPRESS' application and then dealing with the application on the basis of the information it received.

F. Ground 2 — Funding

Ground 2A: Did the Panel err in concluding that IMPRESS' funding was "*settled in agreement between the industry and the Board*" within the meaning of Criterion 6?

40. IMPRESS consulted publicly on its proposed charges and fees. Further, its members are content to accept its charges and fees.

41. The Claimant's case is that Criterion 6 "*requires that funding for a Regulator must come from (or at least by sanctioned by) the news industry itself, and not come from third parties*". It seeks to substitute for the words of Criterion 6 a proposal in the Leveson Report that a regulatory body "*must be funded by its members*" [Reply §3(2)].

    a) First, there is no requirement in Criterion 6 that funding "*come from*" industry, or from anywhere in particular. It requires only that funding has been "*settled in agreement*" between industry and the Board, as IMPRESS' funding has been.

    b) Secondly, the Claimant's reading gives its members a veto, even though they do not wish to join IMPRESS, and have a strongly held view that it ought not be recognised. Given that the Charter envisages that there may be multiple recognised Regulators, the reference to agreement cannot require more than agreement between the members of a Regulator and its Board over funding. If it were otherwise, no Regulator could operate. Rightly, IMPRESS consulted, but no more than that can be required.

42. Further, the Panel was satisfied that IMPRESS' membership fees are consistent with the requirement of Criterion 23 (namely that its membership is open to all publishers — including the Claimant's members — on fair reasonable and non-discriminatory terms). The point therefore has no practical importance in any event.

Ground 2B: Did the Panel err in law in concluding that Criteria 1 and 6 were satisfied and that IMPRESS' funding was sufficiently secure?

43. Criterion 6 requires that "*funding settlements should cover a four or five year period and should be negotiated well in advance*".

44. Sir Brian Leveson recognised that there is no objection in principle to funding (especially in the start-up phase of a Regulator's existence) being provided by third parties [2/14/409/§4.17] ("*I recognise that the start-up costs of such a body may be significant and those putting together such a proposal may need to look for sources of funding*").

45. IMPRESS' funding derived from the Alexander Mosley Charitable Trust ("AMCT"). AMCT made a grant to the Independent Press Regulation Trust ("IPRT"). IPRT has entered into a grant agreement with IMPRESS.

46. Sufficient funds are available to last for the four or five-year period envisaged by Criterion 6. AMCT has placed £3 million on deposit at a bank to ensure that funds are available.

47. The objects of IPRT are to promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism. The IPRT's trustees may decide how to further their objects, including (but not limited to) funding an independent press regulator.

48. IPRT entered into a grant agreement with IMPRESS. No criticism is made of the security of this arrangement. Instead it is alleged that "*it remains open to Max Mosley to engineer a situation whereby IMPRESS' funding is terminated by ensuring that the circumstances for funding are no longer satisfied*" [Grounds §50].

49. In fact, funding can only be withdrawn if it is "*not reasonably required for the Purpose*", defined as "*to support the work of the IPRT in the furtherance of its Objects … in particular, by providing financial assistance towards the establishment and support of an independent press regulator or press regulators (as the Trustees in their absolute discretion shall see fit) …"* [3/51/973-5]. It is difficult to envisage any situation in which the funds would not reasonably be required for IPRT's objects, namely the promotion of high standards of ethical conduct and best practice in journalism, in particular to provide support for an independent press regulator. This was a matter for the assessment of the Panel, and there was an ample basis for it to be satisfied that this Criterion is met. See [1/11/219].

50. The Claimant then puts forward a scenario in which AMCT might have a secret, improper motive for withdrawing funding ("*AMCT might have as its true motive dissatisfaction with the low level of sanctions imposed by IMPRESS for invasions of privacy*"). This allegation appears fanciful and would not be lawful or reasonable conduct by AMCT. The IPRT could (and would) be able to insist on the grant payment through litigation and AMCT would be exposed to regulatory action by the Charity Commission. The trustees of AMCT would be acting in breach of trust and would have to account for the costs of their misconduct.

51. The Panel was entitled to make its decision on the basis that the trustees of AMCT and IPRT would comply with their legal and regulatory obligations and act lawfully. There was no evidence to suggest otherwise. It was for the Panel to make its determination on the evidence before it. It did so. Properly analysed, the Claimant's complaint is a rationality challenge. There is no basis for suggesting that the Panel acted irrationally in its assessment of the funding position.

G. Ground 3 — Standards Code

Ground 3A: Did the Panel err in law in concluding that IMPRESS satisfied Criteria 7 and 8, even though it adopted the existing Editors' Code?

52. Criterion 7 provides:

> "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".

53. The Claimant contends that Criterion 7 "*requires that the body applying for recognition by the PRP must have formulated and adopted its own standards code… The concept of a body having "responsibility" for a particular code is left without any meaningful content if it can be satisfied simply by the body "deciding" that someone else's code contains "the rules it intends to apply*"" [Grounds §57] (emphasis in original).

54. The Claimant's construction of Criterion 7 cannot be reconciled with the preamble to the Charter. The preamble notes that a new regulatory body "*should put forward the Editors' Code of Practice as its initial code of standards*". The Claimant argues that this should be ignored since IMPRESS is not a "*successor to the Press Complaints Commission"* since it does not regulate a large proportion of the press [Reply §3(3)]. This is no more than a different iteration of the Claimant's attempt to infer into the Charter a requirement that a recognised Regulator be of a particular size and membership, and to give itself a veto. The Charter recognises that multiple Regulators may be recognised as the successor to the old regime, and that those Regulators could initially adopt the Editors' Code. IMPRESS has done so.

55. IMPRESS is also consulting on a new code, which will be evaluated by the Panel against the criteria as and when it is adopted.

Ground 3B: Did the Panel err in law in concluding that Criterion 7 does not require at least one serving editor on IMPRESS' Code Committee?

56. The Claimant contends that "*properly construed, Criterion 7 requires that there must be at least one serving editor on a regulator's Code Committee*". This argument is difficult to understand.

57. Criterion 7 provides that the Code Committee of a Regulator "*may comprise both independent members and serving editors. Serving editors have an important part to play although not one that is decisive*". It is therefore discretionary not mandatory to have serving editors on a Code Committee. The important (but non-decisive) role of Editors is met by IMPRESS conducting a consultation on the content of its Code. IMPRESS could have put an editor on its Code Committee. But it did not have to.

H. Conclusion

58. For the reasons set out above, the Court is invited to dismiss the claim.

BEN JAFFEY QC

Blackstone Chambers

13 March 2017