

Dr David Wolfe QC
Chairman
Press Recognition Panel
Mappin House
4 Winsley Street
London W1W 8HF

15 August 2016

Dear Dr Wolfe,

1. We are writing in connection with the recent publication of an addition to the guidance for applicants for recognition by the PRP: "Our interpretation of some terms and elements in the Royal Charter" (**Interpretation**).
2. The Interpretation is procedurally and substantively flawed: the PRP has acted improperly, both in how it released the 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.
3. 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. 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)¹, 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 Report², which 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.

10. 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.

¹ *“...and in making its decision on whether the Regulator meets those criteria it shall consider the concepts of effectiveness, fairness and objectivity of standards”*. Paragraph 1 Schedule 2 of the Royal Charter

² *“...any industry established independent regulatory body must be funded by its members.”* Leveson Report, Part K, Chapter 7, Section 4.



The PRP has concluded that: “[w]ilst 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 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.

11. 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.
12. 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.
13. This conclusion is given further credence when the timeline is considered as a whole:
 - 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.

14. 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.

Yours sincerely,



Lynne Anderson
Deputy Chief Executive
News Media Association

