



89up.org
12 TILEYARD, LONDON, N7 9AH

Susie Uppal
Chief Executive
Press Recognition Panel
Mappin House
4 Winsley Street
London
W1W 8HF

& by email to: applications@pressrecognitionpanel.org.uk

Friday, 19 August 2016

Dear Ms Uppal

Many thanks for responding to our letter, dated Friday 12 August 2016, so promptly.

We would like to reiterate the principle which underpins our work, namely that freedom of speech and a press regulator almost single-handedly funded by Max Mosley, via the IPRT, are irreconcilable in the public interest.

89up staff members have taken press freedom missions with international human rights watchdogs to Hungary, Belarus and Azerbaijan where they have seen first hand what happens when press regulation is handled without proper consultation with the media or civil society. We believe that in the UK debate on press regulation the international perspective has often been missing. 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. 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.

Throughout the PRP's tenure we have consistently raised concerns over the impact on freedom of expression, a right guaranteed by Article 10 of the European Convention on Human Rights. 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.

We now stand at a crucial juncture with the consideration of the application by IMPRESS to be a state-recognised regulator. Please consider how your decisions in the coming days could impact free speech and investigative journalism not just in the UK, but internationally. 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 non-state press, and without proper public consultation.

During the period in which IMPRESS has sought recognition we have raised no fewer than 25 issues and questions for IMPRESS, the Independent Press Regulator Trust ('IPRT'), the Alexander Mosley Charitable Trust ('AMCT') and to the PRP, none of which have been addressed properly to date. Some of these matters raise questions of legality, and if left ignored, could result in costly lengthy proceedings. We have listed these matters in an appendix to this letter.

The PRP's interpretation of the Royal Charter, the timing of its publication, and the manner in which it applied to an ongoing application for the first state-recognised press regulator raise questions that are in the public interest. Moreover, 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 infertile ground in which to initiate sweeping reforms to press regulation. 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.

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.

It is in the public interest that the PRP respond to the 25 issues raised.

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.

We respectfully request that this letter, alongside our previous letter, dated Friday, 12 August 2016, be shown to your board for consideration during your meeting on 23 August 2016.

Please do contact us if you require any further information.

Yours sincerely,

Mike Harris

CEO, 89up

Sashy Nathan

Director of Advocacy, 89up

Consultants to the Free Speech Network and authors of [*Leveson's Illiberal Legacy*](#)

Appendix A: Unanswered or outstanding issues with the IMPRESS application

The funding arrangement between the AMCT, the IPRT and IMPRESS

Impress stated in their Response Paper dated 27.4.2016:

In order to confirm that IMPRESS fulfils this Criterion, we provide two new documents, AMCT IPRT Funding Agreement and IPRT IMPRESS Letter Dated 260416.

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

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 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 AMCT-IPRT 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 AMCT-IPRT grant agreement, it is stated:

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

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?

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 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?

Self-regulatory

15. 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?

The Editors' Code

16. 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.

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.

How did the PRP develop the Section 5 Guidance?

17. 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?
18. Why did the PRP reject so many of the responses it received in the Consultation on Criterion 6?
19. 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?
20. 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?
21. Did IMPRESS have sight of Section 5 before or during its application?
22. If so, why was this guidance withheld from public scrutiny until after that application had been submitted?
23. 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?
24. 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?
25. 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?