

# ASSOCIATED NEWSPAPERS

## Response to Press Recognition Panel consultation on proposals for recognition of press self-regulators

I am writing in response to your consultation on the way the Press Recognition Panel plans to carry out the task of assessing applications from potential self-regulators for recognition under the Royal Charter on the Self-Regulation of the Press.

As Editor Emeritus of Associated Newspapers I deal with regulatory matters for the United Kingdom's second- and third-largest daily newspapers by circulation, the Daily Mail and Metro and second-largest Sunday newspaper by circulation, The Mail on Sunday. The observations below represent the view of Associated Newspapers.

As you will no doubt be aware, Associated Newspapers do not believe a recognition process created and funded by the Government is compatible with freedom of expression.

More specifically, we have legal advice that sections 34-42 of the Crime and Courts Act 2013, which enforce the Royal Charter, and which discriminate against and penalise certain groups of news publishers, are in breach of Article 10 of the European Convention of Human Rights

In common with virtually all other news publishers we are members of the Independent Press Standards Organisation (IPSO), the established self-regulator for the press, which meets all the Leveson recommendations which are not either unworkable or inimicable to freedom of expression. The Board of IPSO have given no indication that they intend to apply for recognition under the Royal Charter.

For these reasons, this is not a detailed response to your consultation. However we are aware that Impress, a body set up by a number of private individuals with the intention of offering regulation to the press, has decided it will apply for recognition, thereby possibly triggering the penal costs provisions of the Crime and Courts Act. This would be a very serious threat to freedom of expression.

With that in mind, we would make the following observations. We would like to draw your attention in particular to our observations under Point 2 (Key definitions):

- 1. Independence.** Your consultation document says repeatedly that the Press Recognition Panel is entirely independent of the Government. That is not true. Your constitution was written by politicians, without the agreement of industry whose regulation you purport to recognise; it can only be changed by politicians, in the form of a two-thirds majority of both Houses of Parliament; and you are funded by the Government.

It also describes the Royal Charter as a 'compromise' (para 4). It was not a compromise with the newspaper industry. It was agreed by politicians and the Hacked Off lobby group without input from news publishers. No publisher has accepted the terms of the Royal Charter.

We are particularly concerned that it was reported that the Director of Impress sat alongside the Chair of the Press Recognition Panel at the launch of your consultation process. This seems extraordinary, given that Impress is likely to be the only applicant for recognition.

We are also concerned that Impress's funding, which appears to depend on a small number of very wealthy individuals, means it is in effect a private body purporting to be a self-regulator, and its independence is hopelessly compromised. We examine this further under point 5, below.

2. **Key definitions.** Schedule 4 of the Royal Charter says: *'For the purposes of this Charter... "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'*. We are very concerned that this key point is not addressed in your consultation document. Recognition must surely be open only to a regulator which (a) has been formed by publishers, not private individuals, and (b) actually has members.

Impress meets neither of those requirements. Its Board members have said they are in discussions with 'hyperlocals' but none have been declared as members, nor is it clear that they would qualify as relevant publishers under the Crime and Courts Act.

We also cannot see how you can consider for recognition, against the Recognition Criteria in Schedule 3 of the Royal Charter, a proposed self-regulator that has no members, has handled no complaints, and issued no decisions. Indeed in the absence of industry funding and industry membership it is difficult to see how Impress can term itself a self-regulator at all.

Our legal advice is that a decision to grant recognition to a hypothetical regulator with no relevant publishers as members and no record of performing its functions would be open to challenge in the courts, because the Recognition Panel would have acted in breach of its remit, and the provisions in relation to costs and exemplary damages in the Crime and Courts Act should not come into force.

3. **Transparency.** You say (para 54) *'we are committed to operating in a way that is open and transparent'*. You then appear to propose (para 55) to publish no more than the name of any applicant for recognition. This cannot meet your commitment to transparency. How can interested parties possibly comment constructively without any opportunity to examine applications? We would also question whether 15 working days is an adequate consultation period.

4. **Board members.** We note the consultation document proposes ‘no elaboration’ to Charter Criteria 5 (c) which requires that members of a self-regulators board should ‘*include a sufficient number of people with experience of the industry (throughout the United Kingdom) who may include former editors and senior or academic journalists*’. We hope ‘no elaboration’ does not mean this important criteria will not be applied rigorously. The Board of IPSO includes very senior former editors and CEOs from across the national, regional and Scottish newspaper industries, and the magazine industry. The Board of Impress has never included anyone with experience of the regional or Scottish press and, since the resignation of Sue Evison, no one from the national press either. It has only one member with any sort of industry experience, and the most senior editorial position she held was deputy editor of Mother and Baby magazine (1969-70).
  
5. **Funding.** Charter Criteria 6 requires: ‘*Funding for the system should be settled in agreement between the industry and the Board... Funding settlements should cover a four or five year period and should be negotiated well in advance.*’ The Criteria clearly requires any self-regulator to be funded by the industry it regulates. Impress has no industry funding. It has raised about £20,000 from crowd-funding, half of that from just two anonymous sources, but appears to rely mainly on donations from very wealthy private individuals. Former Impress board member Sue Evison has criticised the sustainability of Impress funding and its reliance on two wealthy individuals: ‘*They have funding from JK Rowling and Max Mosley, but I just think where is this money going to come from in future?*’ <http://www.pressgazette.co.uk/impress-board-member-leaves-rival-press-regulator-and-gives-backing-ipsa>. It is very difficult to see how this meets Criteria 6, particularly as both of these individuals have made very strong personal criticisms of the press. We hope this question will be addressed with rigour.
  
6. **Standards.** Charter Criteria 7 requires: ‘*The standards code must ultimately be the responsibility of, and adopted by, the Board*...’ The universally-recognised standards code for the press is the Editors’ Code of Practice, which is administered by IPSO. Impress has no standards code.
  
7. **Complaints Committee.** Charter Criteria 13 requires a self-regulator to have a complaints committee reflecting the composition of the main Board. IPSO’s Complaints Committee meets that requirement. Impress has announced it is recruiting a Complaints Committee, but has not yet appointed any members. Please see our comments regarding the Board.

Peter Wright

Editor Emeritus

Associated Newspapers

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