



Section 6:

Supplement to the PRP executive assessment and recommendation for the PRP Board in respect of the application for recognition from IMPRESS: The Independent Monitor for the Press CIC

7 October 2016

Section 6.1: Introduction

In this document, references to ‘the August report’ are to the [PRP executive assessment and recommendation](#) for the PRP Board dated 4 August 2016.

Where the context admits, references in this document to ‘we’ are to the PRP Executive.

The third call for information was launched on 24 August 2016 and closed on 23 September 2016. IMPRESS’ application for recognition was due to be considered by the Board on 23 August 2016. However, on that date, the PRP Board had its first opportunity to consider recent correspondence received from various organisations. The organisations expressed concern that the [indicative view on the interpretation of aspects of the Charter](#), which the Board expressed earlier in the summer, might have prompted them or others to provide the PRP with additional information about the IMPRESS application had it been known at the time of our second call for information. The PRP Board therefore decided to defer its decision on IMPRESS’ application, to allow a further call for information in order to assist in obtaining the fullest and best information before making that decision.

When launching the call for information, the [PRP website](#) stated:

In accordance with our commitment to operating as openly and transparently as possible, this call for information seeks any additional information relating to IMPRESS’ application as it now stands, and in the light of the PRP’s recently published indicative interpretation of some terms of the Royal Charter.

As it is not our practice to consult or seek additional public input when we consider how to interpret elements of the Charter, the call for information is not intended to provide a general opportunity for respondents to comment on the PRP’s indicative view. For more information about contacting us or sharing your views on any aspect of work see the ‘ways to connect’ section of our website.

Ten responses were received and are included at [annexes M1-M9](#). This supplement report contains a summary of the responses, but PRP Board members will have read and considered the responses in full. This supplement report also contains the PRP Executive’s assessment of the issues raised where appropriate and any indication of any impact on the assessment in the August report.

This supplement report was shared with IMPRESS for its responses and comments. IMPRESS’ response to the issues raised is included in this document.

This document refers to the PRP Board’s indicative interpretation of various terms and criteria in the Charter. As referred to above, the PRP Board has received additional correspondence making representations to those interpretations which we commented on in the [Additional briefing note for the PRP Board in its assessment of the application for recognition from IMPRESS](#). The PRP Board will take these representations into account, as well as those made in response to the third call for information, when considering whether its indicative interpretations will be amended

or maintained in light of the specific circumstances of IMPRESS' application.

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Section 6.2: Preliminary Issues

Views were again expressed that IMPRESS does not meet the intentions of the Leveson Report and the Charter because it does not have the support of the majority of the industry or even of any significant publishers. This, it is said, will mean that there cannot be effective self-regulation. One respondent stated: 'Leveson was never about small and hyperlocal publishers of the kind that are believed to have signed up'.

The PRP Board will no doubt wish to consider whether to revise its [indicative interpretation](#) on requirements for membership of any regulator in light of the representations made.

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Section 6.3: Detailed assessment

Criterion 1

The fact that IMPRESS' funding comes from Max Mosely/AMCT was again stated to be an insuperable obstacle to independence.

It was stated that the IPRT was set up solely in order to fund IMPRESS and that IPRT trustees were not independently appointed.

Although respondents noted the deed of variation of the funding agreement ([annex G3.2](#) to the August report) which limited the circumstances in which IPRT could terminate or reduce funding, it was said that this did not resolve the problem of the ongoing viability of IMPRESS.

The News Media Association (NMA) stated:

Put simply, the ongoing viability of IMPRESS from a funding perspective is at the mercy of ACMT; it can be put into a position where there is an "insufficiency of funds" at the whim of AMCT.

The Society of Editors made a similar point:

However it is dressed up, IMPRESS derives the majority of its funding from one wealthy individual who is vocal in his antipathy towards the industry and there is no evidence that it has the ability to finance itself, now or in the future. In fact, it is vulnerable to being withdrawn at any time.

Associated Newspapers went through the timeline provided by IMPRESS as part of the clarification paper ([annex A7](#) to the August report) and stated that this showed that IMPRESS had been unable to function without the money from Mr Mosely and had to wait for IPRT to achieve charitable status before operating.

Respondents asked why the meetings with AMCT disclosed by IMPRESS ([annex G12](#) to the August report) did not include IPRT.

Reference was made to the circumstances under which AMCT could terminate or reduce the funding to IPRT – including if IPRT fails to provide a bi-annual report on the expenditure of the grant plus 'such other financial or other information as AMCT shall reasonably request.'¹ This combined with IPRT's ability to require information from IMPRESS² meant, it was said, that the AMCT can indirectly demand information from IMPRESS, and if IMPRESS fails to comply, the funding to IPRT will be terminated, which in turn will mean that IMPRESS will no longer be able to operate.

In response to these issues, IMPRESS stated:

IMPRESS has placed a considerable amount of information about its funding arrangements into the public domain.

¹ See page 25 of the August report.

² See pages 23-24 of the August report.

This information demonstrates beyond all reasonable doubt that these funding arrangements do not compromise IMPRESS's independence or security of funding, as required by criteria 1 and 6 of the Charter. However, for the avoidance of all reasonable doubt, we once again summarise those arrangements here.

All grants from the AMCT to the IPRT, and from the IPRT to IMPRESS, are governed by clear and transparent funding agreements. These agreements are subject to relevant laws and regulations, and are overseen by independent individuals who are consequently bound by these laws and regulations. The submissions have provided no evidence that these individuals have not fulfilled or will not properly fulfil their obligations.

The funding agreement between AMCT and IPRT states that:

'The purpose of this Grant Trust is to support the work of the IPRT in the furtherance of its Objects for the benefit of the public, in particular by providing financial assistance towards the establishment and support of an independent press regulator or independent press regulators (as the Trustees in their absolute discretion shall see fit) to be established and Leveson's "Report into the Culture, Practices and Ethics of the Press" of 29th November 2012 and the Royal Charter on Self-Regulation of the Press (the "Purpose").' [Our emphasis]

The agreement goes on to state that a sum of £4m will be granted from the AMCT to the IPRT in a series of eight instalments of £500,000 each, over a period of four years. The agreement gives the trustees of the IPRT 'absolute discretion' over their interpretation of the purpose set out in the funding agreement and strengthens this discretion by confirming (at clause 3.2) that the grant may only be varied if:

- a. The Grant or any part thereof then outstanding is not reasonably required for the purpose [...];*
- b. The application of the Grant or any part therefore is inconsistent with the Objects of the IPRT; or*
- c. The Trustees shall have failed to comply with their reporting obligations under Clause 4 below.*

The reporting obligations at clause 4 merely ask the trustees of the IPRT to provide a bi-annual report on their application of the grant and any additional information requested by the AMCT in relation to the grant.

Thus, the AMCT may only vary the grant if the trustees of the IPRT fail to comply with these obligations (for instance, by refusing to provide the necessary information); or if this report, or any other information provided to the AMCT, reveals that conditions (a) or (b) have been met.

There is no scope for the AMCT to vary the grant in any other circumstances and there is therefore no reason whatsoever to conclude that the AMCT may suspend its funding to the IPRT at a 'whim', in the words of the NMA, or 'at any time', in the words of the Society of Editors. In fact, the AMCT may suspend its funding only in very narrowly-defined circumstances.

The funding agreement between IPRT and IMPRESS states that:

'IPRT in furtherance of its Objects, has to-date donated the sum of £90,000.00 to IMPRESS. The Trustees intend to make further substantial donations to IMPRESS for the purposes of ensuring its establishment as a truly independent press regulator for the whole or any part of the United Kingdom in accordance with the recommendations set out in Lord Justice Leveson's 'Report into the Culture, Practices and Ethics of the Press' of 29th November 2012 and the Royal Charter on Self-Regulation of the Press (the Purpose).'

The agreement goes on to state that a sum of £3.8m will be granted in a series of eight instalments over a period of four years. As with the grant from AMCT to IPRT, this grant may only be varied in tightly-defined circumstances, if the IPRT reasonably considers that the:

3.2.1. Grant or any part thereof then outstanding is not in the opinion of the Trustees of IPRT, reasonably required for the Purpose [...];

Application of the Grant or any part thereof is inconsistent with the Objects of IMPRESS or the recommendations for press regulation within the Leveson Report or the Charter;

3.2.3 that any of the following shall apply to IMPRESS:-

- (i) *IMPRESS fails to comply with any of its obligations in connection with this deed and in particular, its reporting obligations under Clause 4 below.*
- (ii) *IMPRESS fails to gain recognition by the Press Recognition Panel as an approved regulator within one year of the date of this funding agreement;*
- (iii) *IMPRESS fails to comply with the requirements of the Companies Act as to keeping records, the audit or independent examination of accounts and the preparation and transmission to the Registrar of Companies and the Regulator of Community Interest Companies of information required by law;*
- (iv) *Where IMPRESS has the status of an approved regulator recognised by the Press Recognition Panel, but such recognition is withdrawn by the Panel;*
- (v) *Steps are taken leading to enforcement of a judgment obtained against IMPRESS in a Court of competent jurisdiction, such steps including the obtaining of a warrant of execution, a charging order, a garnishee order, the issue of a statutory demand or a winding up petition;*

A Director of IMPRESS is disqualified from being a company director;

- (vii) Any material amendment to the Articles of Association which is deemed by the Trustees to be inconsistent with the Objects of IPRT, the recommendations for press regulation within the Leveson Report or the Charter;*
- (viii) IMPRESS is dissolved; or*
- (ix) Any other circumstances arise where the Trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS.*

The reporting obligations at clause 4 of this funding agreement are similar to those in the AMCT/IPRT funding agreement.

In response to concerns raised previously in relation to clause 3.2.3(ix) (mistakenly numbered 3.2.3[viii] in the original), the IPRT and IMPRESS have signed a Deed of Variation, which states that:

‘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.’

By returning to the terms of the IPRT’s funding agreement with the AMCT, it is clear that the IPRT would only have insufficient funds to meet its financial commitments to IMPRESS in the event that the conditions at 3.2 of that agreement were met. Once again, there is no scope whatsoever for the trustees of the IPRT to vary the grant to IMPRESS for any reasons other than those stated here. In fact, the IPRT may suspend its funding only in the circumstances identified above.

Clearly, the IPRT grant of £3.8m over four years has given the Directors of IMPRESS the necessary security to develop the organisation and it was prudent of them to wait until this funding was available before investing in the organisation’s future.

The meetings between Directors of IMPRESS, AMCT and IPRT have been previously disclosed and the purpose of each meeting has been clearly identified. Because it was clear that the IPRT would be funded by the AMCT it was a necessary part of IMPRESS’s due diligence to meet representatives of the AMCT as well as representatives of the IPRT.

The funding agreements allow for the funding body in each case to request information from the grantee. This is normal and appropriate, in order for the trustees to confirm whether any of the notice events may have been engaged. But there is no reason to believe that any other information revealed in the course of these reports could or should be taken into account by the trustees of either the IPRT or AMCT when considering whether any of the notice events identified above have been engaged.

One respondent (89up) stated that the governance arrangements mean that IMPRESS is compromised because as well as their own independent board, they are arguably governed by:

- 1 The terms of the IPRT-IMPRESS funding arrangement
- 2 Charity law (see below)
- 3 Decisions of the IPRT trustees concerning their financial arrangements whilst exercising their duties to the Charities Commission
- 4 The terms of the AMCT-IPRT funding agreement since this directly affects IPRT's funding of IMPRESS
- 5 Decisions of the AMCT Trustees, exercising their obligation to the Charity Commission

In relation to point 2, IMPRESS is not a charity but a CIC. However, in their letter of 8 July 2015 to IPRT ([annex G6](#) to the August report) IMPRESS confirmed that any funding received from IPRT 'would be restricted to the charitable purpose set out in this letter and to no other purpose'. The charitable purpose referred to was:

To promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism and the editing and the publication of news in print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression.

89up stated that IMPRESS' governance arrangements conflate the Royal Charter with the requirements of charity law. They added that:

Press regulation being forced (via the IPRT) into the charity sector... does not fully appreciate that the Royal Charter did not intend for the self-regulatory body to be subject to charity law.

In response to this issue, IMPRESS stated:

These submissions appear to suggest that the requirements of English charity law may be at odds with the requirements of the Royal Charter. Even if this were the case (and there is no reason to believe that it is), the Charter anticipates such a situation, at Schedule 2.3, which states that:

'Nothing in the recognition criteria shall be interpreted in a manner which conflicts with any regulatory obligation imposed on a Regulator. A regulatory obligation is one that

(a) regulates the manner in which the Regulator is required to operate, (b) is contained in legislation and (c) applies as a matter of general law to bodies of the legal class to which the Regulator belongs.'

This clearly and incontrovertibly gives the PRP the discretion and indeed the duty to take into account any other regulatory obligation imposed on a self-regulatory body.

Indeed, it would be odd to suggest that a self-regulatory body might not be subject to other regulatory or legal obligations. A self-regulatory body might conceivably take one or more of the following forms:

- *Company limited by guarantee*
- *Company limited by share capital*
- *Limited Liability Partnership (LLP)*
- *Community Interest Company (CIC)*
- *Registered charity*

IMPRESS is both a company limited by guarantee and a CIC and is, as a result, subject both to general company law and to the particular requirements which govern CICs. There is nothing in the Charter to preclude a self-regulatory body from being a charity, and so a future regulator might well be directly subject to charity law in addition to these other requirements.

As it happens, IMPRESS is not a charity, but the IPRT is, and so we provide the following notes, for information, on the compatibility between charity law and the Royal Charter.

*The charitable purpose enshrined in the Articles of Association of the IPRT is entirely compatible with the recognition criteria set out in the Royal Charter. Indeed, the Charity Tribunal considered the compatibility between these two areas of law in some detail in the decision of Judge Peter Lane CP, Judge Alison McKenna and Margaret Hyde OBE in *Wilfrid Vernor-Miles and Others v The Charity Commission for England and Wales CA/2014/0022*.*

The Tribunal welcomed the evidence submitted by Jonathan Heawood, who was at that time a Visiting Fellow at the Centre for Writing and Rights at the University of East Anglia and Founding Director of the IMPRESS Project, the body which preceded and helped establish IMPRESS: The Independent Monitor for the Press CIC. Dr Heawood is now the Chief Executive Officer of IMPRESS.

In its decision, the Tribunal drew upon this evidence, as follows (paragraphs 18-19):

‘Dr Heawood’s report describes how the system of regulation of journalism and the news media is underpinned by the right to freedom of expression in Article 10 of the European Convention on Human Rights. He explains that this is not an absolute right, but one which must be balanced against other interests, such as national security and public order. He outlines the privileged status of journalists within the legal framework, and the history of attempts by bodies such as the Press Complaints Commission to develop ethical codes for journalists. He describes the current situation thus:

“The Leveson Inquiry into the Culture, Practices and Ethics of the Press was launched in response to massive breaches of journalism standards ... Leveson sought to reconcile the constitutional importance of press freedom with the need for more effective regulation of journalism. He concluded that a self-regulatory body, or bodies, should have new powers and enhanced independence from newspaper publishers, and should be subject to oversight

by an independent body to mitigate the risk of regulatory capture ... Leveson hoped that his recommendations would be implemented through a constructive dialogue between the industry and Government. However, this dialogue broke down soon after his Report was published. So the post-Leveson legal framework, as set out in the Royal Charter on Self- Regulation of the Press, the Crime and Courts Act 2013 and the Enterprise and Regulatory Reform Act 2013, reflects the will of Parliament, Government and the courts but it has been rejected by the dominant news publishers, who have instead established a body, IPSO: The Independent Press Standards Organisation, which does not comply with the Leveson principles. An alternative body, IMPRESS: The Independent Monitor for the Press, has been established by a group of journalists and academics in order to advance the public interest in effective and independent press regulation.”

In respect of the public benefit test, Dr Heawood’s conclusions were as follows: “A body such as IMPRESS, which complies with the public interest principles of the Leveson Report, would be of considerable benefit to the public. It would promote ethical journalism, free expression, privacy, alternative dispute resolution and the education of journalists and the public. It would encourage the publication of journalism that provides the public with accurate and reliable information and which avoids harm. It would help the courts to distinguish between journalism produced according to ethical standards and other forms of expression, thereby upholding the constitutional protections for free expression, within permissible limitations. It would protect the human right to privacy, not only by offering redress for the victims of privacy breaches, but also by mitigating the risk of such breaches in future. It would promote alternative dispute resolution through its complaints- handling and arbitration schemes. It would educate journalists and the public through its standards code and the publication of guidance on the code, and by allowing publishers to display a kitemark to help the public distinguish ethically regulated journalism from other forms of expression. Any private benefit to regulated news publishers under such a system would be minimal and incidental to the public benefit”.’

The Tribunal concluded (at paragraph 40) that:

‘Finally, we are satisfied on the basis of the unchallenged evidence before us that the objects set out in clause 3.1 of the Declaration of Trust are for the public benefit under the first limb of the test described in the ISC decision. Dr Heawood’s evidence (see paragraph 19 above) was not available to the Charity Commission when it made its decision, but we found it persuasive in its assessment of the public benefit which will result from the establishment of a Leveson compliant regulator. We agree with his conclusions. We note that Lord Justice Leveson’s recommendation for the establishment of an independent press regulator was made following a thorough-going public inquiry and public outrage at some of the press practices he uncovered. We also note that his recommendations were supported by all parties in Parliament. We take into account the fact that, if such a regulator cannot be

established by the Government for constitutional reasons and ought not to be established by the industry itself for reasons of propriety and public confidence, then the charity sector is uniquely placed to be able to offer both the mechanism and the means by which a benefit to the community as a whole can be achieved.'

So, whilst the Charter allows the PRP to take into account any potential conflict between the recognition criteria and other relevant laws and regulations, the Charity Tribunal's decision here shows that the obligations imposed on the IPRT by charity law are in fact quite compatible with those imposed on IMPRESS by the Royal Charter".

Assessment

It is clear that IPRT was set up primarily if not exclusively as a vehicle for IMPRESS to receive funds from AMCT. It is also clear that IMPRESS has relied in large part on the IPRT funding in order to operate and is likely to continue to do over the next four years. IMPRESS does not dispute these matters. We consider that it is still relevant to consider whether the arrangements that have been made to secure IMPRESS' independence from the funding source are sufficient, and whether IMPRESS has stability of funding such that the criteria are met. These issues are discussed in relation to criteria 1 and 6 in particular at pages 18-27 and 63-70 of the [August report](#).

In relation to the meetings held between IMPRESS and AMCT, the PRP Board is referred to the attendance note of the PRP Executive's visit to IMPRESS to look at funding documentation ([annex H18](#) to the August report). As described in that note, according to IMPRESS the meetings were held directly with AMCT to seek assurance from the source that funding was available and that the conditions of funding would allow independence to be secured.

We have noted the comments made in relation to the assurance given by IMPRESS in their letter of 8 July 2015 and charity law ([annex G](#) to the August report). The preamble to the funding agreement between IPRT and IMPRESS ([annex G3](#) to the August report) dated 30 October 2015 states that:

*The Trustees intend to make further substantial donations to IMPRESS for the purpose of ensuring its establishment as a truly independent press regulator for the whole or any part of the United Kingdom in accordance with the recommendations set out in Lord Justice Leveson's 'Report into the culture, practice and ethics of the press' of 29 November 2012 and the Royal Charter on self-regulation of the press (the **Purpose**).*

We do not consider that there is anything in the Charter which precludes a regulator from being a charity or, as in this case, receiving funding from a charity and we have not been made aware of any particular way in which charity law would operate such as to prevent any of the criteria being met.

Having considered the further representations, we do not wish to change our recommendation in relation to criterion 1, although the PRP Board will doubtless consider the extra information now supplied when making its own decision.

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Criterion 6

In their second submission to the third call for information, the NMA make the point that IPRT is only registered with the Charity Commission of England and Wales, and suggest that because of this they can only support IMPRESS financially over IMPRESS's activities in England and Wales.

IMPRESS commented:

Charities registered with the Charity Commission are free to apply their funds overseas should that be, in the eyes of their trustees, an appropriate means of achieving their objects. This allows charities registered in England and Wales to operate in numerous jurisdictions, not least Scotland and Northern Ireland.

Respondents also focussed on the consultation process by IMPRESS on their funding arrangements. This is discussed on pages 64-66 of the August report. 89up stated that this was not a valid consultation:

In order for a consultation to be a valid exercise, the decision on the matter should be made after consultees are canvassed. IMPRESS was legally bound to its funding agreement with the IPRT before it asked its members about it. This means the whole process of 'consulting' was flawed and failed even the minimum Sedley requirement s....6 6 R v Brent London Borough Council ex parte Gunning (1985) 84 LGR 168

- 1. Consultation must take place when the proposal is still at a formative stage.*
- 2. Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response.*
- 3. Adequate time must be given for consideration and response.*
- 4. Consultation responses must be conscientiously taken into account.*

IMPRESS agreed its financial arrangements with third parties before consulting its members. The crucial requirement that decision-making follows consultation was wilfully ignored.

IMPRESS' Financial Consultation occurred after their initial application. The chronology of events occurred in a procedurally unfair way as consultees to that process did not have sight of the PRP's guidance on third party funding and so they could not raise legitimate points to IMPRESS pertinent to its financial affairs.

IMPRESS response was as follows:

The Charter does not impose any requirement for a formal consultation. It is not accepted that IMPRESS is bound by the so-called Sedley requirements or indeed any requirements in relation to consultations by public bodies. However, IMPRESS has conducted a voluntary financial consultation; and we provide the following notes, for information, on this consultation.

IMPRESS launched a consultation on its financial arrangements in order to establish the views of the news publishing industry and other interested parties on these arrangements. In the consultation, IMPRESS made clear that the organisation is

developing a mixed financial model, with a blend of income from grants, regulatory fees and other sources.

*As 89 Up note in their submission, one of the Sedley principles for consultations run by public bodies is that ‘the proposal is still at a formative stage.’ This does not mean that the decision-maker is obliged to consult on all possible options, or that the decision-maker should not have a preferred option clearly in mind, so long as their preferred option is clear to consultees. (See *R v Worcestershire Health Council; Ex Parte Kidderminster & District Community Health Council* [1999] EWCA (Civ) and *Nichol v Gateshead Metropolitan Council* (1988) 87 LGR 435.)*

*A mixed financial model, with a blend of income from grants, regulatory fees and other sources, was clearly IMPRESS’s preferred option. As Hickinbottom J ruled, in *R (Sumpter) v Secretary of State for Work and Pensions* [2014] EWHC 2434 (Admin), in relation to consultations by public bodies, ‘an open mind is not the same thing as an empty mind’.*

That IMPRESS had an open mind in relation to the questions posed in the consultation is confirmed by the fact that IMPRESS has subsequently made changes to its tariff schedule in light of consultation responses.

None of the respondents to the current PRP Call for Information chose to contribute to the IMPRESS financial consultation. In a letter to David Wolfe dated 11 August 2016 and published on the PRP website, Peter Wright of Associated Newspapers suggested that this failure to respond was because of a lack of publicity on the part of IMPRESS. Mr Wright claimed that ‘we and other stakeholders were not notified of this consultation and therefore did not respond’.

However, the IMPRESS financial consultation was publicised in the following ways:

- On the IMPRESS website;*
- Via an email news update which was sent to approximately 1,400 stakeholders, including representatives of Associated Newspapers;*
- Via a dedicated email to IMPRESS members;*
- Via the IMPRESS Twitter account; and*
- Via a press release.*

Those stakeholders who did take the trouble to respond to the financial consultation strongly favoured IMPRESS’s preferred financial model. If IMPRESS had received a larger proportion of negative responses to this consultation, or indeed any submission from the parties now expressing their reservations about this model, it would of course have taken these submissions into account.

Assessment

We refer the PRP Board to the representations above in relation to the adequacy, independence and stability of the funding from AMCT/IPRT which are relevant to the Board’s consideration of this criterion.

We now turn to the fees consultation launched by IMPRESS in June 2016 ([annex G1](#) and the discussion on pages 63-66 of [the August report](#)). The relevant part of the PRP Board's indicative interpretation on the Charter's requirements of a regulator's funding arrangements is:

We consider that criterion 6 does, as a minimum, require some form of consultation that the wider industry could respond to if it wished..... Given that criterion 6 refers to 'funding for the system' being agreed and not just the 'regulatory fees', we also consider that consultation should be on the whole of the funding arrangements, including any proposals to take funding from third parties.

The relevant extract from IMPRESS consultation states:

We are fortunate to have secured funding in the form of a four-year grant from the Independent Press Regulation Trust (IPRT). This covers our start-up costs and allows us to subsidise the membership and arbitration fees of smaller publishers. In the longer term, we aim to develop a mixed financial model with a blend of income from fees, grants, donations and other services.

Although IMPRESS asked a consultation question on whether they should develop a mixed income model in the future 'including fees, grants, donations and other services', they asked no question specifically relating to the existing funding from IPRT. (See [annex G2](#) and <http://impress.press/about-us/financial-consultation.html>). Saying that, we have seen nothing that would have prohibited respondents from commenting on the IPRT funding or from suggesting another funding model if they had wished to do so. IMPRESS would have then needed to consider any responses it received before making its decision on how to proceed. We have noted that the terms of the funding with IPRT were already agreed³ but it is not possible to speculate what if any action IMPRESS would have taken if the IPRT funding had been raised as a concern by respondents.

We do not agree with the comment that IMPRESS's consultation was procedurally unfair on the grounds that respondents were not aware of the PRP Board's interim interpretation of criterion 6 during that consultation and therefore could not raise 'legitimate points relating to IMPRESS and its financial affairs'. As above, we cannot see why respondents were prevented from raising any points with IMPRESS had they chosen to respond to the consultation. Respondents have raised a great number of questions and issues about financing IMPRESS from the very beginning of this process; well before IMPRESS launched their consultation, and indeed '89 up' have written to IMPRESS and IPRT directly about funding in the past (see [Annex J1](#) to the August report).

In respect of the issue of IPRT being registered as a charity in England and Wales, it is our understanding the Charity Commission for England and Wales registers charities on the basis of issues such as: where they are based, whether they comply with the law of England and Wales and are subject to the jurisdiction of the High

³ I.e. the terms on which the funds were to be given were agreed, IMPRESS would no doubt have a discretion to refuse future payments.

Court and where the majority of the Trustees live.⁴ This registration does not prevent services being provided outside of the jurisdiction. Many England Wales based charities provide support outside of England and Wales.

In relation to criterion 6, we have made no recommendation in the August report and would invite the PRP Board to consider the additional matters raised.

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⁴ <https://www.gov.uk/government/publications/how-charity-registration-decisions-are-made-charity-commission/how-the-charity-commission-makes-charity-registration-decisions>.

Criterion 7

The PRP Board's [indicative interpretation](#) in relation to Composition of the Code Committee was:

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.

Some respondents disagreed with this interpretation. For example, Associated News stated:

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.

Hacked Off stated in their response:

Leveson's and hence the Charter's criterion on the constitution of the Code Committee was specifically in reaction to the Editors' Code Committee which was made up exclusively of editors. This is why Leveson was clear to rule out the possibility of editors even having a majority. The criterion adds that editors "may" sit on the Committee. The "important part to play" may be referring to a consultative capacity. Indeed, given that their role is not to be decisive, a "consultative" role makes more sense.

IMPRESS replied:

We note these concerns and reiterate that the Charter does not make an absolute requirement for the presence of serving editors of regulated publications on any Code Committee. This Committee's role is, under the Charter, advisory only, and therefore its composition is of secondary concern to the composition of the Board.

Assessment

The PRP Board will no doubt wish to consider whether its indicative interpretation on the composition of the Code Committee is affected by the representations made, our recommendation remains that this criterion is met.

Criterion 8

The view was repeated that IMPRESS does not own the Editors' Code and does not have final say on it, and therefore the Code cannot be the responsibility of the IMPRESS Board.

Various comments made about the new Code of Standards that IMPRESS are currently consulting on.⁵ NMA made detailed representations on what they regard as the inadequacies of the new Code.

IMPRESS replied:

In its application for recognition, IMPRESS is putting forward the Editors' Code of Practice as its initial standards code. IMPRESS has previously given the reasons for the decision to adopt the Editors' Code on this initial basis.

IMPRESS is meanwhile consulting on a new standards code. The draft code has been derived from the core standards of journalism ethics, as distilled from 50 comparative codes from press councils around the world. We note the NMA's concerns about this code and have written to ask whether they would like us to consider this element of their submission as a simultaneous submission to our code consultation. They have refused this permission.

Assessment

We have not assessed IMPRESS's new draft Code, as it has not yet adopted it and relies on the Editors' Code for the purposes of this application. When and if IMPRESS decides to adopt a new Code, the PRP will review it at that time.

The PRP's Executive view on the Editors' Code is set out in relation to criterion 8 in the August report and our recommendation remains unchanged.

⁵ See <http://www.impress.press/standards/code-consultation.html>

Criterion 9

Associated Newspapers stated:

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.

IMPRESS replied:

The IMPRESS Regulatory Scheme requires each publisher to nominate a senior individual to have responsibility for legal and standards compliance. In the case of very small publishers, it is possible that this person may also be the subject of a complaint. In such circumstances, IMPRESS asks that the senior individual alerts the complainant to the potential scope for a conflict of interests, and gives the complainant the opportunity to bring their complaint directly to IMPRESS. In such circumstances, IMPRESS would consider the complaint directly.

In this way, IMPRESS requires regulated publishers to manage conflicts of interest. IMPRESS clearly cannot remove the scope for any potential conflict of interests.

However, IMPRESS can and does ensure transparency and clarity, such that the interests of the public are met.

Assessment

One of the PRP's indicators for criterion 9 is that 'The regulator ensures that the subscribers' complaint system manages conflicts of interests'. We consider that IMPRESS arrangements for dealing with this issue meet the indicator.