

ASSOCIATED NEWSPAPERS

Response to the PRP's second Call for Information about IMPRESS's application for recognition

1. I am writing to give Associated Newspapers' response to the Press Recognition Panel's second Call for Information about IMPRESS's application for recognition.
2. Associated Newspapers is a member of the News Media Association. We have read the NMA's response to this second call for information and endorse it in full.
3. We note with concern that IMPRESS's Response Paper fails to address many of the most important points made in our response to the PRP's first Call for Information.
4. It makes no mention at all of Mr Max Mosley, the source of virtually all IMPRESS's funding, and devotes only two sentences to their plan to draft a new Standards Code, a development which means their entire application is made on a false basis.
5. IMPRESS's membership is still limited to 13 micro-publications, only one of which has made any effort to put in place the compliance measure IMPRESS claim to insist upon before regulation can begin and complaints can be considered.
6. Their Paper also insists, repeatedly, that the PRP's powers restrict it to a box-ticking exercise to check IMPRESS has the regulatory apparatus listed in the Royal Charter Criteria, without any examination of its suitability or effectiveness.
7. This is manifestly not the case. Schedule 2, Clause 1 of the Royal Charter says:

The Board of the Recognition Panel shall grant recognition to a Regulator if the Board is satisfied that the Regulator meets the recognition criteria numbered 1 to 23 in Schedule 3, and in making its decision on whether the Regulator meets those criteria it 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, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation")
8. We cannot see how the PRP can judge IMPRESS's effectiveness, or the credibility of its powers and remedies, when it has never adjudicated a single complaint, nor has any members against which, in its own estimation, it is ready to consider complaints.
9. It is impossible to assess the fairness and objectivity of IMPRESS's standards when they have none, and will not have any for at least another year.

10. And IMPRESS cannot claim independence, and reliability of funding, when it depends almost entirely on the largesse of one very wealthy individual, with an agenda to 'reform' the press, who channels his money through a series of trusts with the power to withdraw it at almost no notice.
11. The PRP should consider very seriously whether IMPRESS is any more than an elaborate device, set up to trigger the penal costs shifting regime of section 40 of the 2013 Crime and Courts Act.
12. Turning to the detail of IMPRESS's Response Paper, these are our observations on the further information they have supplied on each of the Royal Charter Criteria:

Criterion 1.

13. We welcome the fact that IMPRESS clearly recognise that the fact that virtually all their funding is provided by one very wealthy private individual raises very serious questions about their independence.
14. They seek to address this by supplying the Alexander Mosley Charitable Trust/Independent Press Regulations Trust Grant Agreement and a letter of reassurance from the IPRT to IMPRESS's Director.
15. The AMCT/IPRT Grant Agreement gives the AMCT's trustees – Max Mosley, two members of his family and one of his closest associates - control over the IPRT in the same way the very similar grant agreement between the IPRT and IMPRESS gives the former control over the latter.
16. Contrary to the claims made by Mr Wilfred Vernor-Miles on page 2, 2nd paragraph, of his letter of reassurance, the AMCT/IPRT Grant Agreement does not demonstrate the independence of the IPRT Trustees from the AMCT trustees. The Grant Agreement and the IPRT/IMPRESS Funding Agreement mirror each other. The Grant must be applied for the purpose specified in the Agreement, the establishment of an independent press regulator. The only body, other than IPSO, which meets this description is IMPRESS, so the decision to support IMPRESS can hardly be described as a discretionary decision by the IPTT Trustees, as Mr Vernor-Miles suggests.
17. At the same time, under Clause 4 of the Grant Agreement the IPRT's trustees have to report twice a year to the AMCT and account for how the money they have received has been spent.
18. Clause 3 provides that the grant can be terminated with 15 days' notice if in the view of the AMCT its application is 'inconsistent with the Objects of the IPRT'.
19. Very regrettably, we have no idea what the Objects of the IPRT are, because IMPRESS have failed to supply the PRP with a copy of the IPRT's Trust Deed. We have to assume, as the IPRT was created as a vehicle for the AMCT (the two funding agreements were drawn up by the same solicitors and signed on the same day), that its Objects are Max Mosley's Objects.

20. The letter of reassurance from the IPRT to IMPRESS states baldly that the IPRT does not have control or influence over the 'day to day operations' or 'strategic/policy decisions' of IMPRESS.
21. Nevertheless, we already know from the IPRT/IMPRESS Funding Agreement that funding can be terminated or decreased, at ten days' notice, in response to a series of eleven 'Notice Events'. Amongst these are 'any material amendment to the Articles of Association which is deemed by the Trustees to be inconsistent with the Objects of the IPRT' and 'any other circumstances... where the Trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS.' This latter clause is a catch-all which shows Mr Vernor-Miles is wrong to state that it is not correct that funding could be withdrawn if IMPRESS make a regulatory decision with which IPRT disagree with (Page 1, second paragraph).
22. Mr Vernor-Miles also states in his letter on page 1, under "Funding Agreement" that "As is customary with all grant making charities, the IPRT merely requires IMPRESS to account for its expenditure of the funding provided in accordance with the terms of clause 4 of the agreement." This is not correct. Clause 4.2 states "In addition to the bi-annual reports specified above, IMPRESS shall provide such financial **or other information...as the Trustees of IPRT may reasonable request from time to time** and Clause 4. 3 adds "**The Trustees may in addition, ask IMPRESS to clarify any information provided to it**". The importance of the obligation on IMPRESS to comply with its reporting obligations to IPTR is stressed in the Notice Event in Clause 3.2.3 (i).
23. Clause 2.5 gives the IPRT Trustees the power to apply the grant amount as they see fit and in exercising their discretion it states that the "**Trustees may have regard to any wishes or expectations that may be expressed by the Trust (the AMCT Trust)**", i.e. Mosley . They are not obliged to, but if they don't their grant will no doubt disappear.
24. Similarly, funding can be withdrawn:
 - a. clause 3.2.1 if the "Grant or any part thereof then outstanding is not in the opinion of the Trustees of IPRT, reasonably required for the Purpose recited at (E)" - (the establishment of a truly independent regulator etc).
 - b. "3.2.3 (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." Under clause 4, the IPRT can ask IMPRESS "to clarify any information provided to it". If it is not satisfied with the information, it has the power to withdraw funding. This shows how much control and supervision over IMPRESS is being exercised by the IPRT and AMCT Trustees.
25. There can be no doubt the board and staff of IMPRESS will know every time they take a decision that if the IPRT's Trustees decide that in their view it does not meet the requirements of the Leveson recommendations or IMPRESS's Objects, IMPRESS's funding can be withdrawn.

26. This is precisely the kind of financial hegemony that the Press Standards Board Finance was maintained by its critics to have held over the Press Complaints Commission, and which Leveson sought to avoid.
27. It also conflicts with Royal Charter Criterion 6, which requires funding agreements to be for four or five year periods, and makes no provision for funding to be withdrawn at short notice.
28. Finally, IMPRESS have made no attempt to address our criticism in our previous response that it is not self-regulatory body, and that it was not set up and financed, as envisaged in Royal Charter Criterion 1, by the industry, or even by the tiny portion of it IMPRESS proposes to regulate. It is a body set up by a small group of private individuals, and funded by one very rich private individual, which has then gone out to look for publishers to regulate – and found very few of them.

Criterion 2.

29. IMPRESS have not answered our criticism that positions on the Appointments Panel were not properly advertised. Why did they not place an ad in the Sunday Times, or similar national newspaper? If the response to the trade press ad they did place was disappointing why did they not employ a reputable firm of head-hunters, instead of conducting their own ‘friends of friends’ exercise?

Criterion 3.

30. IMPRESS have quoted this Criterion incorrectly. It does not say the Appointments Panel *may* include no more than one current editor, as IMPRESS claim, it says it *should*. This is quite different, and is a requirement that the Panel should include a current editor. Whether or not the Caerphilly Observer qualifies as relevant publisher is a matter for debate – it is certainly a micro-business.
31. We note that IMPRESS have not challenged our view that none of three individuals who they claim have current understanding and experience of the press actually pass that test.

Criterion 4.

32. IMPRESS have not denied that their Appointments Panel held a number of meetings at which decisions were taken although a majority of members were not present. Whether or not the Royal Charter has a Criterion which directly requires that would-be regulators take their decisions at meetings which are quorate, it must surely be a concern for the PRP that IMPRESS conduct their affairs in this way.

Criterion 5.

33. It remains our position that no members of IMPRESS's board have experience of the industry which, in the view of senior figures in the press, would remotely qualify them for this position. Martin Hickman, who does have recent experience of the industry, though not at a senior level, is conflicted through his close association with Tom Watson (who is not only deputy leader of the Labour Party but a central figure in a number of media controversies including the recently discredited paedophilia allegations against Lords Brittan and Bramall).
34. We also note that according to the revised register of interest the Board now has four members who are members of political parties – two Labour, two Liberal Democrat. There are no members of the Conservative or other parties. Given IMPRESS's other political links, some of which we will detail under Criterion 7, this should be a cause for concern.

Criterion 6.

35. IMPRESS's failure to meet this criterion is central to its unsuitability for recognition as a regulator. They have not answered any of the 12 points we made in our earlier response. The response they have provided offers no more than a specious interpretation of what they believe Lord Justice Leveson meant when he wrote this criterion.
36. It should be clear to anyone that Leveson intended that any regulator for the press should be funded by the industry it regulates – in IMPRESS's case its 13 micro-publishers. If he intended that press regulators should be funded by very rich private individuals – in this case one very rich private individual, Max Mosley – he would have said so. He did not.
37. Their reliance on funding from one individual makes it impossible for IMPRESS to claim they are independent. Whatever the smokescreen of charitable trusts, they are in hock to the man who ultimately supplies 90p.c. of their funds, Max Mosley. And Mr Mosley is not a benign, disinterested benefactor. He is man on a mission, determined, following his exposure by the News of the World for hiring prostitutes to take part in a orgy, to 'reform' the press.

38. This has very serious implications for the Press Recognition Panel because from November 2017 it will rely for funding on charging regulators for cyclical reviews. As the only regulator with any prospect of being recognised is IMPRESS, this threatens to make the PRP as dependent on Max Mosley's money as IMPRESS.
39. It is extraordinary, considering that IMPRESS could not exist without Mr Mosley, that their response does not mention his name once. The PRP should ask why this is.
40. Similarly, IMPRESS say the IPRT Deed of Trust is a publicly available document. If that is the case why have they failed to provide it as part of their application? The IPRT appears to have no website and Google search reveals no trace of the Deed of Trust. The PRP should ask why they have not been shown it.
41. Finally IMPRESS claim the IPRT/IMPRESS Funding Agreement demonstrates their funding is secure. It does nothing of the sort. It shows the IPRT can withdraw or reduce IMPRESS's funding at ten days' notice. We now know, in addition, that the IPRT's funding is equally insecure: the Alexander Mosley Charitable Trust can also withdraw or reduce its grant, at 15 days' notice.

Criterion 7.

42. At the heart of the work of any regulator lies its Code of Practice. IMPRESS does not have one. Despite having failed to sign a licensing agreement with the Regulatory Funding Company, IPSO says at present it uses The Editors' Code, for which it does not have responsibility as required by the Royal Charter, and which it cannot publish or quote in its adjudications.
43. However it has undermined this highly unsatisfactory state of affairs even further by announcing on May 12 that it is launching a consultation on an entirely new Standards Code <http://www.impress.press/news/impress-launches-code-consultation.html>
44. This will be 'facilitated' by the research agency Britain Thinks. Two of Britain Thinks' four senior directors have close links to the Labour Party: Deborah Mattinson, Founding Director, was Gordon Brown's pollster, and Spencer Livermore, Partner and Director, was Mr Brown's Director of Strategy <http://britainthinks.com/who-we-are> .
45. It will involve four separate phases: public workshops in London and Glasgow; quantitative polling of 2000 respondents; expert roundtables in London and Cardiff and a call for submissions. After all that the Code will have to be drafted and approved.
46. IMPRESS was founded in December 2013 and has been in existence for two and a half years. It is astonishing that it is only now – AFTER making its application for recognition – that it has announced it is beginning the process of drafting a Code.
47. It is difficult to see this taking less than a year. In addition IMPRESS will find it difficult to resist pressure from anti-press lobby groups – in particular Hacked Off - to make its new Code much more proscriptive than the Editors' Code.

48. Equally concerning, the people who will have to work under IMPRESS's new Code – the editors of its 13 micro-publisher members – are completely unrepresented on IMPRESS's Code Committee.
49. We explained in our previous response how this breaches Criterion 7, which says *'serving editors have an important role to play'*. IMPRESS's response is simply to declare, without producing any evidence, that the *'reference to serving editors is clearly permissive, not restrictive in the way suggested here'*.
50. We would argue that the reason Leveson, and the Royal Charter, placed such importance on serving editors is that a Standards Code drawn up without editors' experience and knowledge, and imposed upon them, is likely to prove unworkable, and unacceptable to editors.
51. What will happen, when IMPRESS finally promulgates its Code, if its members do indeed find it unacceptable?
52. Will it attempt to use its contractual powers to force them to operate under a Code that didn't exist when they signed their contracts? Or will they be allowed to leave IMPRESS and if so, how many members does IMPRESS need to remain viable as a regulator, if indeed it is viable in the first place?

Criterion 8.

53. IMPRESS have made no attempt at all to answer the point made in our previous response, which was that the PRP cannot make any proper assessment of their application until they can present the Code under which they intend to operate on a permanent basis.
54. We cannot see how the PRP can possibly grant recognition to a putative regulator which says it is operating under a Code for which it has no responsibility, but will be replacing it with one on which it hasn't yet even consulted, and which its members may reject.

Criterion 8A

55. IMPRESS appear to believe that the PRP is simply carrying out a box-ticking exercise, and as long as IMPRESS can show they have an Advisory Notice system in place, the PRP have no power to make a judgment on the suitability and practicality of the system.
56. This is not so. As we have already explained Schedule 2, Clause 1 of the Royal Charter requires the PRP to judge IMPRESS's application against a whole series of measures, including effectiveness, fairness and objectivity.

57. It is a fundamental tenet of freedom of expression that there should be no prior restraint. If, as IMPRESS propose, a failure to respect an Advisory Notice could be taken into account in any subsequent adjudication, then their Advisory Notice is a restraint on publication. As the notices themselves, to be effective, have to be issued without any delay, and therefore without any investigation by IMPRESS into whether they are justified, this effectively gives the subjects of potential stories the means to prevent publication.
58. This would no doubt fit Mr Mosely's agenda, but it would be a clear breach of ECHR Article 10. IMPRESS's revised application, rather than allaying concerns on this point, reinforces them: *'Without clarifying to publishers that IMPRESS may take such a failure into account, it is hardly worth issuing the Notice.'*
59. IMPRESS have failed to answer our second criticism, which is that the need for Advisory Notices to be approved by IMPRESS's board will render them ineffective.

Criterion 8B

We have no comments.

Criterion 8C

We have no comments, beyond to observe once again that IMPRESS's dismissive view of the PRP's powers is not supported by the Royal Charter.

Criterion 8D

We have no comments.

Criterion 9

60. IMPRESS claim they are completing compliance checks to ensure *'every publisher has Charter-compliant arrangements in place in relation to governance and complaints-handling'*.
61. If so they are making very slow progress. IMPRESS's chairman announced the names of their members in January this year. Five months later only one of their 14 member publications (the Southport Reporter) has any mention on its website of IMPRESS, or indeed any complaints handling arrangements, Charter-compliant or otherwise.
62. Your Harlow still says it follows the 'Press Complaints Commission Editors' Code of Practice' and Your Thurrock says it 'submits to IPSO'.

63. Byline's website carries a set of terms and conditions which makes no mention of IMPRESS but includes this extraordinary paragraph, addressed to their readers:

You acknowledge that we provide a platform for independent journalism. By operating the Services we do not represent or imply that we endorse the Content and we will not be responsible, or liable to any third party, for the Content. In particular, we make no representations, warranties or guarantees (whether express or implied) about the accuracy, quality, safety, morality or legality of the Content, or that the Content is complete, useful, up-to-date or free from errors or omissions. Views expressed on the Services do not necessarily represent our views or values. We cannot confirm that Users are who they claim to be. The Content is not intended to amount to professional advice on which you should rely.

64. Far from submitting to IMPRESS and whatever standards code it eventually enforces, Byline explicitly deny any responsibility or liability to any third party (presumably including IMPRESS) for their content, nor are they prepared to offer any guarantee of its accuracy or quality.
65. All 14 publications are listed by IMPRESS as 'undergoing compliance checks'. IMPRESS's revised application says it will not be able to take complaints against any publisher until these compliance checks have been completed.
66. As none have, this means the PRP are being asked to judge IMPRESS's effectiveness as a regulator before it has handled a single complaint. It also begs the question whether all or any of these publications will ever successfully complete their compliance checks, raising in turn the issue of whether IMPRESS is a 'ghost' regulator, created simply in a bid to activate the penal costs provisions of the Crime and Courts Act.

Criterion 10 and 11

67. While we welcome IMPRESS's addition of a procedure for handling multiple complaints, they have failed to address a number of the points we made - probably because, lacking any experience in handling complaints, they misunderstood them.
68. The reason IPSO require confidentiality from both editors and complainants when investigating a complaint is that some complainants, and some editors, use the complaint as a device to further a campaign or continue running a story. This is particularly unfair on complainants, as they may will need to provide private information to pursue their complaint and they will not be able to do so if they know the editor concerned is immediately going to publish it. The same applies in reverse to complainants who sometimes try to publish editors' responses on Twitter feeds or their own websites. Regulatory Scheme 5.4 does not cover this point.

69. Nor does it cover the need for anonymity sometimes to be granted to complainants. This is almost always the case in IPSO complaints involving children in sex cases, and quite frequently in complaints involving privacy and/or children.
70. It is worrying that IMPRESS do not recognise these problems even when they are pointed out to them, and illustrates once again why recognition should not be given to a regulator with no track record of performing its tasks.

Criteria 12 and 12A

We have no comments on these criteria.

Criterion 13

71. IMPRESS have made no attempt to answer the point made in our earlier response, namely that as virtually all IMPRESS's funding comes ultimately from one private individual, Mr Max Mosley, and the board are the body that negotiate that funding, they do not have the independence necessary to hear complaints.

Criterion 14

72. IMPRESS have not attempted to answer our point that they can only meet this Criterion because of the funding they receive from the Mosley family.

Criteria 15 and 16

73. It is deeply worrying that IMPRESS care so little about freedom of expression that they appear unconcerned that using a legal contract to make publications publish forced apologies could be a breach of ECHR Article 10.

Criterion 17

74. As we explain under Criterion 8A, IMPRESS's Advisory Notices breach this Criterion by threatening sanctions against editors who do not comply with them. IMPRESS have failed to address this point.

Criterion 18

75. IMPRESS have not addressed the points made in our earlier response. We repeat our recommendation that the PRP seek legal opinion as to whether the Regulatory Scheme Agreement actually binds Participants to the Regulatory Scheme.

Criteria 19 and 19A

76. IMPRESS have failed to address the points made in our earlier response.

Criteria 20 and 21

We have no comments on these Criteria.

Criterion 22

77. Again IMPRESS have failed to address the points made in our earlier response. It is the universal view of the established regional and local press that arbitration would impose insupportable costs. We cannot see how IMPRESS's members, which are micro-businesses, could afford arbitration.
78. We repeat: £3,500 arbitrators' fees, *plus* a costs order for £3,000, *plus* the publication's own legal fees – say another £3,000, *plus* damages – say a further £3,000, may seem inexpensive to IMPRESS and Max Mosley. It would be crippling for the The Lincolnite or the South Molton News.
79. IMPRESS say in their revised application that 'costs' will be underwritten for smaller publishers (which doubtless covers all their members) but the only reference we can find in the supporting documents is a note in their business plan which says it includes a provision of £50,000 p.a. to cover the cost of investigations and underwriting arbitrators' fees. There is no explanation of how underwriting would work.
80. They say unmeritorious claims will be truck out. This does not address the problem. The threat of an arbitration scheme to small publishers is that claims that have merit, but without an arbitration scheme would be dealt with as Code breaches at no cost to the publisher apart from time and reputational risk, become claims for damages with attendant legal and arbitrators' costs.
81. We are very concerned that IMPRESS's members, who are unlikely to have access to legal advice, may not understand the potential cost of joining a compulsory arbitration scheme.
82. We are also concerned that IMPRESS's members understand belonging to a recognised regulator does not give them protection against defamation actions in general, but only against the punitive exemplary damages and costs clauses of the Crime and Courts Act, and then only subject to the discretion of a judge.
83. We strongly recommend the PRP interview a sample of IMPRESS's member editors to ensure these points are properly understood.

Criterion 23

84. IMPRESS have failed to address our earlier point that their fee structure is hopelessly unrealistic.

Conclusion

85. We are very surprised indeed that the PRP should even be considering an application for recognition from a would-be regulator with no track record of regulation, no standards code, no established publishers among its members, and no funding beyond the largesse of one wealthy individual with an agenda.

86. We appreciate that rejecting IMPRESS's application would leave the PRP without a role, but we believe it fails to meet the Royal Charter criteria so comprehensively the Panel has no other option.

Peter Wright

Editor Emeritus

Associated Newspapers

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