

Introduction

Telegraph Media Group (TMG) makes this submission to the “Call For Information” by the Press Recognition Panel (PRP) alongside fully supporting the views submitted by the News Media Association (NMA) of which we are a member.

The PRP should consider *all* information below as it is related to the application by IMPRESS (Application).

We make this submission to the PRP only because we are aware that our - and the newspaper industry's - principled stand to remain outside the system has the potential to unleash provisions of the Crime and Courts Act 2013 should the PRP approve the Application.

This Application clearly cannot satisfy the various criteria which the PRP and the Royal Charter requires. As we outline below there are many areas where IMPRESS fails to provide information, and in instances where it does vital information is lacking.

Notwithstanding the above, we have read the Application and wish to make various comments.

IPSO

The UK national, regional and local newspaper and magazine industry came together to establish the Independent Press Standards Organisation within the framework suggested by Lord Justice Leveson. He said that “by far the best solution to press standards would be a body established and organised by the industry.”

IPSO has been up and running since September 2014 and was set up with the encouragement of the government and the backing of the newspaper and magazine industry bodies. More than 2,600 newspaper and magazine titles (1500+ in print and 1100+ online) are currently regulated by IPSO.

These titles represent well over 90% per cent of the UK national, regional and local press which is read by over 42 million people in print and online, and over 80 per cent of the top UK magazine publishers with a combined circulation of some 20 million copies. The titles range across the national press from the *Telegraph*, *Mail on Sunday*, *i*, to the newly launched *New Day*.

The vast majority of the UK's national newspaper groups – even those who have not yet decided to join IPSO - have made their opposition *in principle* to the whole Royal Charter regime well known.

IPSO is, in short, sustainable and financially secure due to legally binding contracts with successful news media businesses. It represents genuine, independent self-regulation and will remain the only regulator of any genuine significance of the UK newspaper industry.

IMPRESS: Background

The PRP will be aware of the historical background which has led to the Application, and key personalities and “campaign groups” involved in the fight to impose statutory regulation on the newspaper industry.

The Application, it would seem, is the culmination of the lobbying of an unrepresentative pressure group. It is also worryingly funded by one person, albeit via a convoluted process which is discussed at length later on.

It is also worth noting that Jonathan Heawood created IMPRESS and the appointments process which resulted in him being appointed as Chief Executive. He is now also involved in every single aspect of the regulator and will continue to serve on the Code Committee, sit on the Board, and be responsible for funding etc. It is abundantly clear that should he move on IMPRESS will cease to function.

Immediately, we question the ‘independence, fairness and openness’ of IMPRESS.

There is no evidence in the Application or elsewhere that IMPRESS has genuinely been created by the industry, as required by the Royal Charter. It cannot be described as self regulation using any stretch of the term.

We must also assume – given no other evidence has been submitted - that it is Jonathan Heawood himself who has secured the only discernible funding so far for IMPRESS from both Max Mosely and JK Rowling, the former of whom is *and will remain* the only credible source of funding for this self-styled “independent regulator” which is again discussed at length later.

From inception to the point of seeking recognition IMPRESS is simply a project of a pressure group. Its organisation; “membership”; lack of independence; or proper funding lead to a conclusion that it lacks credibility.

IMPRESS

The public statements and made by IMPRESS about the 13 “member” organisations (publishing 14 titles) that they have found to regulate are largely hyper local online publishers and recent start-ups with fewer than five members of staff or volunteers, but the Application does not provide any evidence that they have actually entered into any agreements with IMPRESS.

These “members” variously describe themselves as:

“a work in progress” (The Ferret);

“staffed by volunteers” (Port Talbot Magnet);

“a platform rather than a newspaper, we don’t edit the journalist” (Byline);

“looking for something to do in my journalistic spare time” (A Little Bit of Stone); and

“hoping to become sustainable within three years” (Positive News).

Byline describes its “most natural niche” as “Murdoch-bashing” and features articles by a select group of journalists including Brian Cathcart and Peter Jukes – all of whom will be well known to the PRP.

Relevant publisher

"Relevant publisher" has the meaning given in section 41 of the Crime and Courts Act 2013 see clause 1 (b) of Schedule 4 to the Charter. Section 41, where relevant, reads as follows:

“(1) ... relevant publisher” means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—

(a) which is written by different authors, and

(b) which is to any extent subject to editorial control.

This is subject to subsections (5) and (6).

(2) News-related material is “subject to editorial control” if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—

(a) the content of the material,

(b) how the material is to be presented, and

(c) the decision to publish it. ...

(5) A person is not a "relevant publisher" if the person is specified by name in Schedule 15.

(6) A person is not a "relevant publisher" in so far as the person's publication of news-related material is in a capacity or case of a description specified in Schedule 15."

1. Section 42 (7) defines news-related material as follows:

(7) "News-related material" means—

(a) news or information about current affairs,

(b) opinion about matters relating to the news or current affairs, or

(c) gossip about celebrities, other public figures or other persons in the news.

2. Schedule 15 is headed "Exclusions from definition of 'relevant publisher'". Paragraph 8 of Schedule 15 excludes from that definition:

"(1) A person who, in carrying on a micro-business, publishes news-related material where either condition A or condition B is met.

(2) Condition A is that the news-related material is contained in a multi-author blog.

(3) Condition B is that the news-related material is published on an incidental basis that is relevant to the main activities of the business.

(4) "Micro-business" means a business which—

(a) has fewer than 10 employees, and

(b) has an annual turnover not exceeding £2,000,000.

(5) The number of employees is to be calculated as follows—

(a) find the total number of hours per week for which all the employees of the business are contracted to work;

(b) divide that number by 37.5.

(6) "Employee" has the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act)."

(7) "Multi-author blog" means a blog that contains contributions from different authors."

Not one of IMPRESS's supposed regulated publications appear to have audited circulation or audience figures, and there is limited information about them at Companies House. Most would appear to fall within the description of 'micro-businesses' (fewer than 10 employees) and a number of them could be described as 'multi-author blogs'.

In evidence to the PRP, IMPRESS's 'Application Form' for "members" does not even seek this information. We can only assume that IMPRESS does not have this information either. This is a worrying situation for any regulator to be in.

The Leveson report and recommendations repeatedly stated that the regulator must encompass significant publishers. In a section headed 'A new system must include everyone', the Leveson report says:

'A new system must be effective, and one of the key criteria of effectiveness is that it should include all major publishers of news (if not all publishers of newspapers and magazines) – Part K, p1751.

He concluded:

'I therefore recommend that a new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers.' – Part K, p1754.

The Royal Charter on Self-Regulation of the Press says in Schedule 2 that the Board of the Recognition Panel must inform Parliament, the Scottish Parliament, and the public as soon as practicable if, on the first anniversary of the date the Recognition Panel is first in a position to accept applications for recognition and thereafter annually if:

there is no recognised regulator; or

in the opinion of the Recognition Panel, the system of regulation does not cover all significant publishers.

Indeed, the PRP also states in its own online guidance for applicants, drawn from the Crime and Courts Act (section 41 and schedule 15), that micro-businesses that are multi-author blogs would be exempt from qualification as a relevant publisher.

We can only assume from public statements and information available that IMPRESS seeks to regulate just a dozen blogs. It is therefore incumbent upon the PRP to seek more information and establish whether these organisations are, indeed, relevant publishers at all.

The PRP should also ask themselves, have such small “member” organisations listed by IMPRESS on their website have been made aware of the business and financial risk they are potentially leaving themselves exposed to, particularly in relation to Arbitration?

Independence

Criteria 6:

Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.

IPRT: A funding vehicle

The funding structure and process of IMPRESS conceal the fact its sole funder is Max Mosely. The only contributor to the IPRT is the ACMT (Alexander Mosely Charitable Trust “ACMT”), which his family controls.

It is not clear why the ACMT should be so interested, or generous, in funding a press regulator with no members of the press to regulate

Nevertheless, the vehicle to deliver this money is actually irrelevant: all of IMPRESS’s paid staff (on whose livelihoods their employment would depend); those ‘regulated’; and those on the various IMPRESS Boards - can be under no illusion as to the true source of funding. Indeed, IMPRESS depends wholly on the generosity of one man.

The PRP must consider in their deliberations whether they would allow funding of a press regulator wholly funded by one individual newspaper proprietor. We submit it, quite correctly, would not. And this is no different.

IMPRESS: Funding

The only guaranteed funding partially evidenced in the Application is that between the IPRT and IMPRESS. But section 3 of the submitted Funding Agreement suggests that even this funding by the IPRT is not secure.

A 'Notice Event' (defined as 10 day notice to terminate funding) can be served, when:

3.2.3 (viii) "Any other circumstances arise where the Trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS."

Such widely defined contractual points, particularly about funding from *the* sole provider of funds, should concern the PRP and require further investigation.

On IMPRESS's own submitted projections each "member" publisher would be liable each for nearly £75,000 [£950,000 – running costs ÷13 "members"]. This is clearly not viable: collectively these "member" organisations, quite understandably, do not even have the combined *turnover* to pay for the full functioning of their 'regulator', let alone be in a position to ensure its continued survival.

Should IPRT decide to stop funding IMPRESS, or the ACMT (Alexander Mosely Charitable Trust "ACMT") stop funding the IPRT, it is an inescapable reality that IMPRESS would simply cease to function.

Charitable Objectives

The Charitable Objects of the IPRT, as recorded on the Charity Commission website, state:

"To promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism and the editing and publication of news in the 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."

Whilst it was understood that the Charitable Objects of the IPRT should be used to fund IMPRESS, what if other organisations choose to call upon the funds of the IPRT? Many organisations within the UK could quite rightly call upon the funds of the IPRT.

Also, given the clear funding link between the Mosely family and the IPRT, what arrangements are in place between the two? There is no information or evidence submitted in the Application about this crucial funding arrangement.

Indeed, putting all legal arguments aside, the PRP's own website states:

“The PRP ensures that, among other things, approved regulators are independent of the publishers they regulate, are funded properly to do their job, are open to all publishers, and provide the public with proper opportunities to raise concerns about the conduct of the regulator’s members.” [Our emphasis]

We are sure that the PRP cannot ever seriously claim that IMPRESS is “funded properly”.

Funding Agreement

The Funding Agreement between the IPRT and IMPRESS states that IMPRESS is under an obligation to let the IPRT know of “material changes” within IMPRESS. The list includes:

4.4.1 Plan

4.4.2 Articles of Association

4.4.3 board of Directors

4.4.4 senior staff; or

4.4.5 auditor(s)

We question why an ‘independent’ IMPRESS should be under any obligation to the IPRT supply this information. It is understandable why a proper self-regulator, funded by an industry should require this information, but a “wholly independent charitable trust” who supposedly have no involvement in regulation should not be making demands such as this.

IPRT: funding the PRP

The expense so far to the taxpayer of the PRP is at least £3,000,000 by way of Exchequer funds granted for first three years of operation. The PRP told the House of Lords Communications Committee that:

“After that time it is implicit in the Charter that we will be funded through charging fees to regulators. “

Should IMPRESS be given the status an ‘Approved’ regulator by the PRP, it is “implicit” that the PRP must seek fees from IMPRESS.

Given the only credible funding for IMPRESS comes, indirectly from the ACMT, this should be of considerable concern to not only the PRP but Parliament itself as it raises alarming independence questions not only and most obviously for IMPRESS, but the PRP itself.

Business Plan

There are concerns with the Business Plan submitted by IMPRESS. It states in their Objectives the requirement “to sustain our operations financially, by attracting funding from news publishers and donors.” It is later even more explicit:

Donors

The responsibility for fundraising will sit with the Chief Executive Officer. We have established a secure funding relationship with the IPRT, which has made a commitment to provide IMPRESS with £3.8m funding over this period

Again, we question how can the person with operational responsibility for IMPRESS be personally responsible for seeking “donations” but, at the same time, remain independent of that donor?

This presents even further important considerations for the PRP to consider. Amongst other things:

1. Do the PRP assume that any donations will also be given to the IPRT?
 - a. If so does this not reinforce the point that the IPRT is merely a bank account, with a thin veil of credibility afforded by charitable status?
 - b. Given the CEO has no *recorded* involvement in the IPRT is it proper he is seeking funds for the charity that funds his organisation?

2. There are no procedures or explanations anywhere in the documentation which outline the mechanism for any donation to IMPRESS. If donations are made directly to IMPRESS
 - a. how will this be made transparent?
 - b. How will IMPRESS be independent from these donors?

3. What understandings are in place with the IPRT about any potential donations and how will they affect the funds given to IMPRESS? If any agreements are in place, why is there no evidence in the Application?

Standards Code

Criteria 7

The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by 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 Editors' Code of Practice which IMPRESS has adopted is neither the responsibility of IMPRESS's Board nor its Code Committee. It remains the responsibility of IPSO and the Regulatory Funding Company (RFC).

IMPRESS therefore does not have 'responsibility' for any Code, nor can it claim to have. Leaving aside the claimed expertise of those recruited onto IMPRESS's Code Committee to create such a lengthy document - whether IMPRESS will or, indeed, can create one is entirely speculative.

Criteria 8A

A self-regulatory body should provide advice to the public in relation to issues concerning the press and the standards code, along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion

IMPRESS are simply not in a position to advise on a Code which is not their responsibility.

Moreover, there is no proper warning system in place. Given the membership of IMPRESS is so limited, and the organisations are in their infancy that it would be a stretch to claim it is credible. Similarly, whilst a list of broadcasters is included in the Application there is no evidence to suggest that they would want to receive information from IMPRESS.

Arbitration

The Arbitration scheme submitted by IMPRESS in the Application states:

"Rule 9: no awards of costs shall be made against the Claimant under any circumstances."

"Rule 19: The arbitrator shall have the powers under the Act in the event of a party's failure to comply with directions. Notwithstanding the fact that IMPRESS has referred a claim to arbitration, the arbitrator shall have the power to strike out all or part of a claim...."

Rule 19 gives the arbitrator the power to strike out a claim, notwithstanding the fact that it has been referred to arbitration by IMPRESS. This is unjust. Members are unable to opt out of arbitration, and so could end up being liable for substantial arbitration fees that have been

incurred through no fault of their own. This injustice is amplified by the nature of IMPRESS's current members - small publishers unable to absorb such costs.

Furthermore, bearing in mind there are no administrative costs, any aggrieved person is presented with two options:

1. enter into arbitration, entirely cost free and without any financial risk- even if unsuccessful at application or failing to “win” the case – yet having the potential for financial compensation; or
2. simply pursue a complaint – again at no cost – but without *any* potential for financial compensation.

This is problematic. TMG submit, given our experience of complainants, that the first option would be adopted by most – and the system has the potential to become overloaded quite quickly. The financial risk is loaded against IMPRESS's members: not IMPRESS itself, or indeed, the IPRT or ACMT. Indeed, we also submit it would not take long for the legal profession to advertise their services to handhold claimants through an arbitration service.

Again, even if IMPRESS decide, by their subjective criteria, that a complainant cannot have access to arbitration he is still entitled under Article 6 of the ECHR access to a Court (even if IMPRESS's subjective assessment were actually correct).

The PRP need to also consider at length the potential, significant costs of Arbitration to IMPRESS “member” organisations. The Application itself states in paragraph 9 that costs “shall be set at no more than £3,000”. This clearly excludes other matters such as time to a burgeoning publisher (many of whom are volunteers) and, indeed, any potential damages.

We submit these costs are so great they would be unsustainable to many of the organisations ‘regulated’ by IMPRESS.

In conclusion: the arbitration system outlined in the Application is poorly considered and demonstrates a lack of understanding of how both the legal system and publishing industry works. But worst of all it is potentially ruinous to each and every “member” of IMPRESS.

Telegraph Media Group
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