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23 September 2016

Dear Ms Uppal

### **PRP's third call for information regarding IMPRESS's application**

We write further to our letter dated 2 June 2016, to request that the PRP consider the information set out in this letter when adjudicating on IMPRESS's application to be a recognised press regulator.

We note the further documentation provided by IMPRESS and listed on the PRP website. This submission sets out the further questions that we respectfully request, the PRP needs to be satisfied have been answered, in order to recognise IMPRESS.

### **Is IMPRESS's governance consistent with Criteria 1?**

In *Wilfrid Vernor-Miles & Others v The Charity Commission for England and Wales CA/2014/0022*, Judge Alison McKenna was persuaded that the IPRT's purposes were clear and unambiguous, as stated in clause 3.1 and 3.2 of the Declaration of Trust, namely that:

*"3.1 The Objects of the Charity are 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.*

*3.2 The Trustees shall further the Objects by such means as they think fit from time to time which may include the provision of financial assistance towards the establishment and*

*support of an independent press regulator or independent press regulators to be established and conducted for the whole of any part of the United Kingdom in accordance with the recommendations and principles set out in the Leveson Report.”*

The IPRT’s particular purpose was considered, as a matter of charity law, analogous to a trust promoting the ethical and moral improvement of the community. The exclusive charitable purpose of the IPRT was ruled to have been satisfied under section 3 (1) (m) (i) of the Charity Act 2006 also known as the “old law” provision.

In its letter dated 8 July 2015 to the IPRT, IMPRESS confirmed that, “any financial assistance provided by the IPRT would be restricted to the charitable purpose set out in this letter and no other purpose.”

We submit that the confused issue of governance, that goes to the heart of the IMPRESS organisation, is inconsistent with the Royal Charter requirement that it should be, “an independent self-regulatory body” and “should be governed by an independent board.”

In the regulatory framework envisaged by Lord Justice Leveson, it was foreseen that a press regulatory body (that could be recognised by the PRP) would consist of an agreed consensus between the industry and an independent board. This ambition led to the requirement that members of the independent board would be Criterion 5-compliant. However, IMPRESS has deviated from the Criterion 5 safeguards which has impacted on how the board exercise their crucial scrutinising function.

IMPRESS’s governance structure is a victim to the trail of finances that it has followed. It now finds itself, as a result of being finance-led and not independence-led, tied into a number of agreements that are far from being bilateral contracts and in actuality, impose a de facto oversight of their activities. As well as their own independent board, they are arguably also governed by:

1. the terms of the IPRT funding arrangement (we are concerned that the Deed of Variation document published on the PRP website is neither signed nor dated<sup>1</sup> and therefore lacks transparency);
2. charity law, as a result of its undertaking in the 8 July 2015 letter to exclusively utilise IPRT funding for the charitable purpose of promoting the ethical and moral improvement of the community;
3. decisions of the IPRT trustees concerning their financial arrangements whilst exercising their obligations to the Charity Commission;

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<sup>1</sup><http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/07/IPRT-IMPRESS-Deed-of-Variation-150716-003.pdf>

4. the terms of the AMCT-IPRT funding arrangement as the IPRT's funding of IMPRESS is directly related to the AMCT's funding of the IPRT<sup>2</sup>;
5. any decisions of the AMCT trustees, exercising their obligations to the Charity Commission, if they impact on the IPRT's funding.

IMPRESS, the AMCT, and the IPRT have gone to extensive lengths to date to show that the funding relationship between them maintains Charter-requisite independence. We submit that in reality, they have actually shown that the complexity of the oversight arrangements between the bodies have undermined the independence of the IMPRESS Board.

There is very little scope for the trustees of the AMCT and IPRT to fulfil their legal requirements to ensure their trusts fall **both** within the descriptions of charitable purposes in the Charities Act and be for the public benefit (promoting the ethical and moral improvement of the community) **and** for the IMPRESS board to maintain Charter requisite independence.

The Charity Tribunal ruled<sup>3</sup> that the charitable sector was an unique place for the mechanism and means of press regulation, but it did not appropriately account for the fact that there is nothing to prevent a private trust funding a press regulator to operate in the not-for-profit sector where the threshold for charitable status has not been met. Press regulation being forced (via the IPRT) into the charity sector, whilst citing Leveson objectives, does not fully appreciate that the Royal Charter did not intend for a self-regulatory body to be subject to charity law.

IMPRESS's governance arrangements conflate Leveson-compliant press regulation and the Royal Charter (specifically Criterion 1) with charity law. This is something we suggest requires the PRP's robust assessment.

### **Private fundraising vs Public feedback**

IMPRESS embarked on a process of seeking private funding that it has not been fully transparent about to the PRP. This funding was not discussed, agreed, or consulted on with its members.

The disclosure<sup>4</sup> of the record of all meetings between members of its independent board, AMCT trustees and IPRT trustees or their representatives (dated 20 July 2016) is deliberately vague and raises more questions than it answers:

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<sup>2</sup> See clause 3.3 of the IPRT-IMPRESS Deed of Variation, 30.10.15  
<http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/07/IPRT-IMPRESS-Deed-of-Variation-150716-003.pdf>

<sup>3</sup> in *Wilfrid Vernor-Miles & Others v The Charity Commission for England and Wales CA/2014/0022*

<sup>4</sup><http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/07/Record-of-meetings-between-IMPRESS-AMCT-IPRT-200716.pdf>

1. on 4 November 2014, it is unclear who was the IPRT representative at this meeting as none of the IPRT trustees are listed as having attended? Was a member of IMPRESS acting as an IPRT representative?
2. on 11 August 2015, it is unclear who was the IPRT representative at this meeting as none of the IPRT trustees are listed as having attended? Was a member of IMPRESS acting as an IPRT representative?
3. does this disclosure provide details of **all** meetings between any two of those parties, which could have had a substantial impact on funding arrangements?

Most worryingly, at pages 6-9 of the IMPRESS PRP Clarification Paper<sup>5</sup> there is no mention of any attempt to engage or discuss any of the financial arrangements with the AMCT/IPRT to any of its members until June 2016, after it had applied to the PRP for recognition. IMPRESS has had ample time and opportunity to prove it is consistent with Criterion 6 of the Royal Charter and the PRP's interpretation of it but, in our view, it has failed to do so.

The chronological framework of IMPRESS's funding discussions appear to be a closed shop arrangement with private funders followed by a superficial public feedback exercise, which is little more than "window dressing" and does not equate to Charter-requisite 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 requirements<sup>6</sup> that:

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 willfully ignored.

IMPRESS's 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.

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<sup>5</sup><http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/08/Clarification-letter-redacted-SCAN.pdf>

<sup>6</sup> R v Brent London Borough Council ex parte Gunning (1985) 84 LGR 168

Table 1: IMPRESS’s funding arrangements predate its ‘Financial Consultation’

Date	Description
4 November 2014	IMPRESS, AMCT and IPRT first recorded meeting
30 October 2015	IMPRESS signs funding agreement with IPRT
20 January 2016	IMPRESS submits its application for recognition
4 June 2016	Second call for information on IMPRESS application closes
8 June 2016	IMPRESS Financial Consultation launched
6 July 2016	IMPRESS Financial Consultation closes
13 July 2016	IMPRESS Financial Consultation Decision published
15 July 2016	Section 5 of the Guidance published

We respectfully request that given the matters set out in this letter, the PRP considers the following issues when making a decision on IMPRESS’s application, namely:

- Whether the funding and regulatory arrangements it has made allow it to act entirely independently, and within the letter and spirit of Criterion 1;
- Whether there has been a proper agreement with the industry, as opposed to private funders, on the nature of their funding arrangements;
- Whether IMPRESS’s funding is reliable, as it can be withdrawn if IMPRESS’s actions are thought not to be Leveson or Royal Charter or Charity Law compliant by the IPRT.

Please do contact us if we can be of further assistance.

Yours sincerely,

Mike Harris

CEO, 89up

Consultants to the Free Speech Network & authors of [Leveson’s Illiberal Legacy](#)

Sashy Nathan

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