

# ASSOCIATED NEWSPAPERS

## Press Recognition Panel Call for Information - IMPRESS's application for recognition. Response from Associated Newspapers

### 1. Introduction

**1.1** I am writing to give Associated Newspapers' response to your Call for Information in respect of IMPRESS's application for recognition under the government's Royal Charter.

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

**1.3** Associated Newspapers is a member of the News Media Association. We have read the NMA's response to this Call for Information and endorse it in full.

**1.4** Before examining IMPRESS's application in more detail we would like to call into question one aspect of this consultation. It is framed as a 'Call for Information' rather than a 'Call for Evidence'. The consultation document says the PRP will not consider opinions offered to it:

*The PRP will only consider facts and evidence related to IMPRESS's compliance with the Royal Charter criteria, not opinions or hearsay.*

This contrasts with the much more open approach taken during the PRP's last consultation:

*Through this consultation we will continue to seek the views of interested parties to inform the recognition process – and give everyone the opportunity to have their say.*

No reason is given for this change of approach. We look forward to receiving an explanation of why the PRP believes it should not take account of the opinions of consultees on the merits of IMPRESS's application.

- 1.5** We are responding to this call for information not because there is any prospect of Associated Newspapers joining IMPRESS – in common with virtually all established newspapers we are regulated under a five year binding contract with the Independent Press Standards Organisation – but because recognition of a regulator under the Royal Charter, created and funded by the Government, sets in place the conditions for the operation of the costs provisions of section 40 of the Crime and Courts Act 2013, under which newspapers could be responsible for the claimant’s costs in a libel action even if the claimant loses the case.

The present Culture Secretary has wisely decided not to make the ministerial order bringing these provisions into effect, but a future Culture Secretary can always reverse that decision (evidence if any were needed that the system of regulation overseen by the PRP is subject to political control).

- 1.6** This is a very serious threat to freedom of expression. We have a legal opinion from Lord Pannick QC that newspaper publishers would have a ‘strong claim’ that section 40 is in breach of articles 10 and 14 of the European Convention on Human Rights. In their report *Leveson’s Illiberal Legacy* <http://www.89up.org/leveson> libel reform campaigners Helen Anthony, Mike Harris, Padraig Reidy and Sashy Nathan described the dangers section 40 creates as follows:

*In practice, this will mean that when a publisher is threatened with court proceedings, the assumption will be that it will not just have to pay its own costs, but that it will have to pay the other side’s too. When these are likely to amount to tens or hundreds of thousands of pounds (in a jurisdiction which is already one of the most expensive on earth), it is easy to see why a defendant is likely to refrain from publishing the material, retract it, apologise, or quickly agree to pay damages, even where no tort had been committed. This will clearly have a chilling effect on free speech.*

- 1.7** Despite that, activating section 40 appears to be a central part of IMPRESS’s case for applying for recognition. In his speech at the LSE launching IMPRESS’s application <http://blogs.lse.ac.uk/mediapolicyproject/2016/01/21/impress-and-the-future-of-press-regulation-in-the-uk-lecture-by-walter-merricks-cbe/> its Chair Walter Merricks said:

*Section 40 would have another benefit. It would allow people who bring a defamation or privacy case against publisher which is not independently regulated to claim back their costs whether they win or lose... At this moment IMPRESS is the only body with any prospect of becoming a recognised regulator and thereby offering these protections.*

- 1.8** Whether it offers any ‘protection’ at all to the general public to trigger a legal regime which would allow unscrupulous individuals to stifle the reporting of their activities by offering them and their lawyers a blank cheque to legal actions, however a spurious, is a matter to which the PRP needs to give careful attention.

More particularly, given the profoundly damaging consequences of a successful application by IMPRESS, it is important that the PRP examines their application with particular care, and ensures it meets every one of the Royal Charter criteria in full. In fact, as we will show below, it fails in a number of the most vital areas:

- It does not have independent funding. It is reliant almost entirely on one very rich individual, Max Mosley, who has his own declared agenda for 'reform' of the press. This has not been made clear in its application. The PRP should ask why.
- The Mosley funding is not secure. IMPRESS must report to the IPRT, the body through which he channels his money, every six months, and the funding can be withdrawn at ten days' notice.
- IMPRESS has no standards code. It purports to use the Editors' Code of Practice, over which it has no control and for which it has refused to sign a licensing agreement, which means it cannot reprint it or quote it in its adjudications.
- IMPRESS was not formed on or behalf of the industry it seeks to regulate, as required by the Royal Charter, but by a group of private individuals.
- It has no experience whatsoever of regulating the press, and therefore no track record on which the PRP can judge its application. The 13 micro-publishers (publishing in total 14 titles) it plans to regulate have not yet signed contracts (and may decide not do so when they receive legal advice on the obligations IMPRESS places on them),.

**1.9** We would also like to draw the PRP's attention to one clause of the Royal Charter which IMPRESS appear to have entirely overlooked - Schedule 4, Part One: Key Definitions:

*1. For the purposes of this Charter:*

*a) "Regulator" means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications;*

*b) "relevant publisher" has the meaning given in section 41 of the Crime and Courts Act 2013 (as enacted on the day following the date this Charter is sealed).*

**1.10** As their application makes clear, IMPRESS was not 'formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications', but was formed by a group of private individuals seeking to pursue their own personal agenda for 'reform' of the press.

As far as we are aware no established publishers took any part in the formation of IMPRESS. Certainly Associated Newspapers did not.

IMPRESS did not announce their list of ‘hyperlocal’ members until January 20, 2016, more than two years after its launch by private individuals on December 9, 2013. Although this list appears on IMPRESS’s website, they have not included it as part of their application for recognition. They give no information on whether any of their current members took any part in the formation of IMPRESS. No do they provide any evidence that any of their members have actually signed their Regulatory Scheme Agreement. Indeed, as we will explore below, it may well be that when any putative members which have not yet signed show this agreement to their lawyers they will be advised not to sign it.

- 1.11** Furthermore it is by no means clear that IMPRESS’s hyperlocal members would qualify as relevant publishers under the Royal Charter. The definition of relevant publishers, which is given in Schedule 15 of the Crime and Courts Act <http://www.legislation.gov.uk/ukpga/2013/22/schedule/15/enacted>, is notoriously vague, but would seem to exclude publishers with fewer than 10 full-time employees and an annual turnover not exceeding £2million. IMPRESS give no information on whether their members qualify as relevant publishers under Schedule 15.
- 1.12** It appears to be the case that none of IMPRESS’s members are substantial enough to submit circulation or audience figures to the Audit Bureau of Circulation, the recognised body for measuring audience reach.
- 1.13** Nor is IMPRESS independent. As we shall examine further later, it relies for virtually 100 p.c. of its funding on one very wealthy private donor, Sir Max Mosley, who also has his own personal agenda for press ‘reform’. We cannot see how any regulator tied so closely to one individual with such strong views on the press can call itself independent.
- 1.14** We would strongly suggest that before examining the detail of IMPRESS’s application the b PRP gives careful consideration to whether IMPRESS meets the test to be regarded as a regulator under the definition enshrined in the Royal Charter.

## **2. The IMPRESS application**

We will examine the IMPRESS application using their application matrix and following their numbering. For ease of reference each section is headed by the relevant Royal Charter criterion.

- 2.1** *An independent self-regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government. For the avoidance of doubt, the industry’s activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body, shall not constitute influence by the industry in breach of this criterion.*

**2.1.1** As we have already explained, IMPRESS's reliance on funding from Max Mosley means it is not independent. It is also not a self-regulatory body. The Cambridge Business English dictionary defines self-regulation as '*a situation in which an industry, profession, etc. checks that its members act according to particular rules, rather than having this done by another organization*'. IMPRESS was set up by private individuals, not the newspaper industry (or even the hyperlocal publishing industry, such as it is), and the few publishers it purports to regulate have no representation on its Board.

**2.1.2** Furthermore the third sentence of the Royal Charter criterion:

*'For the avoidance of doubt, the industry's activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body, shall not constitute influence by the industry in breach of this criterion.'*

makes it clear that the establishment and funding of a self-regulatory body for the press should be carried out by the industry. IMPRESS fails this test.

**2.2** *The Chair of the Board (who is subject to the restrictions of criterion 5(d), (e) and (f)) can only be appointed if nominated by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.*

**2.2.1** IMPRESS ran an advert for positions on their Appointments Panel in the Press Gazette, a trade website not read widely outside the newspaper industry, and on their own website, which at that time did not even come up on the first page of Google search. The response appears to have been poor because they then, according to their application, approached a range of candidates they had identified themselves, 'some of whom applied for the role'. Do the PRP regard this as an 'appropriately independent way' of selecting an Appointment Panel?

**2.3** *The appointment panel:*

- a) should be appointed in an independent, fair and open way;*
- b) should contain a substantial majority of members who are demonstrably independent of the press;*
- c) should include at least one person with a current understanding and experience of the press;*
- d) should include no more than one current editor of a publication that could be a member of the body.*

**2.3.1** We have already commented on the inadequacy of the appointment process. IMPRESS claim three of the nine members of their appointment panel have a current understanding and experience of the press: Aidan White, Damian Tambini and Salil Tripathi.

**2.3.2** In common with many Royal Charter formulations ‘current understanding and experience of the press’ is not given a proper definition. IMPRESS appear to take it to cover anyone who has an interest in journalism. We would suggest that Lord Justice Leveson’s intention was that it should mean individuals who currently hold senior positions in substantial news publishers which would give them contemporary practical experience of dealing with problems raised by the public or met by journalists. None of IMPRESS’s three named individuals appear to pass that test:

**Aidan White**, according to his wikipedia profile, has not been employed as a journalist since 1987. On his appointment to IMPRESS he was described by media commentator Roy Greenslade as a ‘press freedom campaigner’ <http://www.theguardian.com/media/greenslade/2014/jul/25/press-regulation-nationalunionofjournalists> and seems to have spent most of his career working for international lobby groups.

**Damian Tambini** is an academic. As far as we can establish he has no experience at all of working as a journalist for a news publisher.

**Salil Tripathi** works for a human rights lobby group. He writes a column for an Indian business publication called Mint. He does not appear to have written for any British news publication since 2005.

Neither Aidan White, nor Damian Tambini, nor Salil Tripathi, appear to hold current senior editorial positions at British news publishers.

**2.3.3** **Richard Gurner** is described by IMPRESS as the editor of a relevant publisher. He is editor of the Caerphilly Observer. However as the Caerphilly Observer has only four contributors <http://www.caerphillyobserver.co.uk/about/contributors/> (we note its website does not describe them as employees) it is unlikely to qualify as a relevant publisher under schedule 15 of the Crime and Courts Act.

**2.4** *The nomination process for the appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The appointment panel may only nominate as many people as there are vacancies on the Board (including the Chair), and the Board shall accept all nominations. The requirement for independence means that there should be no serving editors on the Board.*

**2.4.1** IMPRESS describe their nomination process in great detail. We have no comment to make on it, beyond noting the poor attendance at meetings of the Appointments Panel. They held five meetings: at three of the meetings five of the nine members were absent, and at the other two three were absent. For the first hour of one meeting (October 2, 2014) only two of the nine members were present. The PRP should ask IMPRESS if all these meetings were quorate.

**2.5** *The members of the Board should be appointed only following nomination by the same appointment panel that nominates the Chair, together with the Chair (once appointed), and should:*

*a) be nominated by a process which is fair and open;*

*b) comprise a majority of people who are independent of the press;*

*c) include a sufficient number of people with experience of the industry (throughout the United Kingdom) who may include former editors and senior or academic journalists;*

*d) not include any serving editor;*

*e) not include any serving member of the House of Commons, the Scottish Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the European Parliament or the House of Lords (but only if, in the case of the House of Lords, the member holds or has held within the previous 5 years an official affiliation with a political party) or a Minister of the Crown, a member of the Scottish Government, a Northern Ireland Minister or a Welsh Minister; and*

*f) in the view of the appointment panel, be a person who can act fairly and impartially in the decision-making of the Board.*

**2.5.1** This criterion includes another requirement with no clear definition: *[The Board should] 'include a sufficient number of people with experience of the industry (throughout the United Kingdom)'*. To have any sensible meaning it must refer to people who have recent experience of working at senior level at a relevant news publisher, with *'throughout the United Kingdom'* reflecting the desirability of at least one board member having senior experience of the regional press.

**2.5.2** In their application matrix IMPRESS claim five of their original board members meet this requirement: Maire Messenger Davies, Walter Merricks, Deborah Arnott, Ian Christie and Patrick Swaffer.

**Maire Messenger Davies** is an academic. According to her c.v. she spent only three years as a full-time journalist, from 1967-70 (46 years ago), and the most senior position she held was Deputy Editor of Mother & Baby magazine.

**Walter Merricks** is a lawyer who has served, and chaired, a number of regulators. According to an interview he gave the Guardian <http://www.theguardian.com/law/2014/nov/05/IMPRESS-ipso-press-monitor-walter-merricks-chair> he worked as a freelance legal journalist prior to joining the Law Society in 1985 (31 years ago). He does not appear ever to have been employed at a senior level by a news publisher.

**Iain Christie** is another lawyer. We can find no record of him having been employed as a journalist or for a news publisher.

**Deborah Arnott** runs a lobby group. She worked as a producer for London Weekend Television prior to joining the Financial Services Authority in 1998 (18 years ago). IMPRESS say that after obtaining her degree she worked in print journalism, but we can find no record of this, or of when her career as a print journalist ended.

**Patrick Swaffer** is a third lawyer, with no apparent experience of employment as a journalist or in the newspaper industry, who runs the British Board of Film Classification. It is alarming that IMPRESS appear to believe this makes him a person with experience of the industry. The Editors' Code, which IMPRESS seeks to operate, is specifically not concerned with matters of taste and decency, and regulates journalistic practice, not selection of content.

- 2.5.3** The one member of the original IMPRESS board who did have recent experience at a relevant publisher was Sue Evison who worked for 22 years at The Sun in a number of senior positions. However she resigned from the Board in July 2015, telling the Press Gazette <http://www.pressgazette.co.uk/impress-board-member-leaves-rival-press-regulator-and-gives-backing-ipsa> she found IMPRESS:

*"...too academic rather than being rooted in the reality of day-to-day journalism. I was the only tabloid journalist on the board and it sometimes felt that I wasn't being heard."*

She was concerned about IMPRESS's focus on hyperlocal publishers:

*"Hyperlocals are often not staffed by professional journalists. These are often untrained people. I don't see how you can regulate that unless you provide training for these people. That's a whole different thing."*

She was also concerned about IMPRESS's funding:

*"They have funding from JK Rowling and Max Mosley, but I just think where is this money going to come from in future?"*

(Walter Merricks said when he gave his LSE lecture that IMPRESS no longer has funding from JK Rowling).

- 2.5.4** No doubt aware of the weakness of their board in this area IMPRESS have recently appointed another two members: Martin Hickman and Emma Jones.

**Martin Hickman** now describes himself as a journalist and publisher; he was employed as a journalist at the Independent 2001-13, where he was at one point deputy news editor. He appears to have a close relationship with the Deputy Leader of the Labour Party Tom Watson, with whom he co-wrote the book Dial M for Murdoch, about the phone-hacking scandal.

**Emma Jones** worked as a journalist for a number of publications before becoming The Sun's Voice of Youth in 2002. She was sacked by Rebekah Wade in 2003 (13 years ago). We can find no record of her having worked as a newspaper or magazine journalist since then, and IMPRESS's application provides no evidence of her having done so.

- 2.5.5** It is notable that IMPRESS have no board members with any experience at all of hyperlocal news publishing. The one board member with recent experience of national newspaper news publishing, Martin Hickman, has close links with a politician who (a) played a central role in the phone-hacking inquiry and (b) has subsequently had to apologise to the widow of Lord Brittan over allegations he had made against the former politician, and was heavily involved in promoting false allegations made against Lord Bramall.
- 2.5.6** We note that of the six Board members who have declared their interests, two are members of the Labour Party and one is a member of the Liberal Democratic Party. None are members of the Conservative or any other parties. IMPRESS's Director Jonathan Heawood stood as a Labour candidate in the 2006 local council elections [https://en.wikipedia.org/wiki/Kensington\\_and\\_Chelsea\\_London\\_Borough\\_Council\\_election,\\_2006](https://en.wikipedia.org/wiki/Kensington_and_Chelsea_London_Borough_Council_election,_2006). Given the emphasis IMPRESS place on diversity it is surprising they have not made more effort to achieve political balance.
- 2.6** *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.*
- 2.6.1** IMPRESS has no funding agreement with the newspaper industry, indeed it has never sought one. It therefore fails this criterion.
- 2.6.2** IMPRESS has a budget for 2016-17 of £1.046million. At the launch of IMPRESS at the LSE Walter Merricks said hyperlocal publishers would be charged a subscription fee of £50 a year. It was pointed out to him during questioning that with 13 members, almost all hyperlocal, IMPRESS's fee income was unlikely to be more than £1,000 a year. He did not dispute that figure, although he said some members would pay more than £50 a year. He was then asked how much of the funding shortfall – more than £1 million - would be supplied by Max Mosley and his family. He replied 'all of it', making clear the money was being channelled through the Independent Press Regulation Trust.
- 2.6.3** Since the News of the World exposed how Max Mosley took part in an orgy, he has conducted a personal campaign for what he regards as 'reform' of the press. This is not the place to rehearse all his activity in this area, but it is notable that his demand that there should be a legally binding obligation on newspapers to pre-notify people before publishing stories which might expose their private lives was rejected by the European Court of Human Rights, which said such a system would have a 'chilling effect' on the press. The court said Mr Mosley had not managed to cite 'a single jurisdiction in which a pre-notification requirement as such is imposed', that it would run the risk of being counter to Article 10, freedom of expression, and that it 'might operate as a form of censorship prior to publication' <http://www.theguardian.com/media/2011/may/10/max-mosley-loses-european-privacy-case>.

- 2.6.4** Given Mr Mosley's strong views on the press, and his generosity in funding IMPRESS, it is very surprising that his name is not mentioned at any point in their application. The agreement between the IPRT and IMPRESS, under which IMPRESS are guaranteed £950,000 a year makes no mention of where this money comes from, though Walter Merricks in his LSE speech made no secret of the fact that it is Max Mosley and his family.
- 2.6.5** However this agreement gives the IPRT considerable powers to control IMPRESS. Under clause 3.1 the IPRT can withdraw or reduce funding at ten days' notice. There are a number of circumstances which can trigger withdrawal of funding. The key one is failure by IMPRESS to achieve or maintain recognition by the PRP. Given the ambivalent statements over Royal Charter recognition made by Walter Merricks and Jonathan Heawood during the first eighteen months of IMPRESS's existence, the PRP may be concerned that their current application has been made simply to satisfy the IPRT and its paymaster Max Mosley.
- 2.6.6** Indeed the timing of the IMPRESS application suggests that Mr Mosley has strong influence over IMPRESS's decisions. IMPRESS was launched in December 2013, but did not announce whether or not it would apply for recognition for another 17 months. On May 7, 2014 the Charity Commission announced it had refused the IPRT's application for charitable status. The IPRT appealed to the Charity Tribunal, and the appeal was heard on May 12, 2015. Eight days later, on May 20, 2015, IMPRESS announced it would apply for recognition. On June 17, 2015 the Charity Tribunal announced that the IPRT's application for charitable status had been successful.
- 2.6.7** The PRP may also be concerned that under clause 3.2.3 (viii) the IPRT has the power to withdraw funding if 'any other circumstances arise where the Trustees decide that it is no longer practicable... to continue funding'. As the IPRT supply the only significant funding for IMPRESS this is bound to have the effect of forcing the Board to act in a way which they believe will secure the approval of the IPRT and the IPRT's funders, the Mosley family.
- 2.6.8** This is reinforced by clauses 4.1 to 4.4 of the IMPRESS Funding Agreement, significantly entitled 'Monitoring and Reporting'. Under these clauses IMPRESS must report twice a year to the IPRT to explain how it has spent the IPRT's money and to notify it of any changes to its Business Plan, Articles of Association, board of directors, senior staff, or auditors. It is difficult to see this as anything other than a device through which control can be exerted.
- 2.6.9** IMPRESS have not included in their application any articles of association for the IPRT, nor its funding arrangements. We trust the PRP will ask IMPRESS to provide this information, and make it available for public scrutiny, before considering their application.

**2.6.10** The Mosley funding also raises serious questions about the funding of the PRP. Exchequer funding for the PRP ends in November 2017. From then on the PRP is dependent for its funding on charging regulators for cyclical reviews. Given the profound opposition of almost all publishers to state-sponsored press regulation, it is highly unlikely that any body other than IMPRESS will ever apply for recognition. It is therefore very likely that from November 2017 the PRP will be entirely dependent for funding on IMPRESS, which in effect means the IPRT and the Mosley family. Indeed IMPRESS's business plan sets aside £220,000 a year for this very purpose. This is bound to raise serious questions about the independence of the PRP – it will make the PRP as dependent on Max Mosley as IMPRESS is.

**2.6.11** Membership of IMPRESS carries very heavy financial risks for hyperlocal publishers. Under Clause 3.1 of IMPRESS Regulatory Scheme Agreement, members are liable to pay whatever annual fee IMPRESS chooses to charge under its Tariff Schedule. At the moment hyperlocals are only being charged £50 a year. However if Mosley family funding was to be withdrawn and IMPRESS was to proceed with the budget already drawn up, IMPRESS's 13 members could be asked to make up the shortfall of £950,000 a year - £67,857 a year each. This would rise to more than more than £100,000 a year each from 2017-18 onwards, when IMPRESS would become liable for a PRP recognition fee of £220,000 a year. We trust the PRP will ask IMPRESS's members whether they are aware of these risks and willing to carry them.

**2.6.12** IMPRESS supply no information on the number of complaints their hyperlocal members currently receive, and no projections of the numbers they expect to handle once they are fully functioning. It must be fair to assume however that a hyperlocal like the Port Talbot Magnet or A Little Bit of Stone will attract far fewer complaints than an established regional newspaper and its website, let alone a national newspaper. IPSO regulates around 2600 print and online titles, including all the mass circulation national titles, on an annual budget of £2.4million – just over £920 a year per title. IMPRESS expects in its first year to regulate 14 titles on a budget of £1.046million - £74,700 a year per title. We trust the PRP will ask IMPRESS why their budget projections are so extravagant – and whether they intend to engage in activities other than regulating the press.

**2.7** *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.*

**2.7.1** IMPRESS has no standards code. It applied to the Regulatory Funding Company, which holds the copyright, for a licence to use the Editors' Code of Practise, the universally recognised standards code for print journalists, which is administered by IPSO. However although it was offered a licence on similar terms to those agreed with newspapers which are not members of IPSO (The Financial Times and Shetland Times), it rejected the offer.

- 2.7.2** A further practical problem is that without a licence IMPRESS cannot publish the Editors' Code except through a link on their website, and cannot quote from it in their adjudications.
- 2.7.3** These issues are set out in a letter which the Chairman of the Regulatory Funding Company sent to Walter Merricks on February 25 this year, following IMPRESS's application for recognition. (See Appendix 1).
- 2.7.4** Even if IMPRESS had agreed to use the Editors' Code under licence, the Code would not have been the responsibility of IMPRESS's Board, as required by this criterion, because it would have been obliged to use the Code as agreed and from time to time amended by the Editors' Code or Practice Committee, on which IMPRESS is not represented.
- 2.7.5** The criterion makes clear that serving editors 'have an important part to play' in the Code Committee which IMPRESS is obliged by this criterion to maintain. Of the eight members of IMPRESS's Code Committee only one is claimed to be a serving editor (Mary Fitzgerald). The composition of the committee therefore fails to meet the criterion, which specifies 'serving editors' – i.e. more than one serving editor.
- 2.7.6** Mary Fitzgerald is Editor-in-Chief of openDemocracy. IMPRESS describe openDemocracy as a relevant publisher, but it is not clear that is the case. Its website gives no figures for turnover, number of employees, or audience. It describes itself as '*a digital commons not a magazine*' - so it appears not regard itself as a news publisher. Indeed it would appear to be a multi-author blog rather than a news publisher. Significantly openDemocracy is not a member of IMPRESS. We trust the PRP will examine these questions.
- 2.7.7** Given that IMPRESS has 13 hyperlocal members, it is notable that none of their editors could either be persuaded, or were considered suitable, to serve on their Code Committee. The PRP should ask why that is the case.
- 2.8** *The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:*
- a) conduct, especially in relation to the treatment of other people in the process of obtaining material;*
  - b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and*
  - c) accuracy, and the need to avoid misrepresentation.*

**2.8.1** IMPRESS say in their application that they will adopt the Editors Code of Practice as their initial standards code, then launch a public consultation prior to drawing up their own code. We have already examined the difficulty in IMPRESS using the Editors' Code without a licence. We would suggest that the PRP cannot make any proper assessment of this application until IMPRESS are able to present the code under which they intend to operate on a permanent basis. What would happen, for instance, if they were to draw up a code which was so burdensome that their members refused to be regulated under it?

**2.8A** *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.*

**2.8A.1** We note that IMPRESS intend to establish an advisory notice request service. We are concerned at the proposed wording of their Advisory Notice, which says: 'a failure to respect this Advisory Notice may be taken into account in any subsequent investigation of adjudication by IMPRESS'. IPSO, which operates a very well-established advisory notice system, says in its notices only that it 'takes note' of the relevant clauses of the Editors' Code, to avoid placing itself in a position where it is enforcing prior restraint on editors. The PRP will need to consider whether the implied threat in IMPRESS's Advisory Notice amounts to prior restraint.

**2.8A.2** IMPRESS's Advisory Notice Template is woefully inadequate: it gives not detail of what form any alleged intrusion is taking, or what steps news publishers can take to make legitimate inquiries without raising issues about intrusion.

**2.8A.3** We also note that under IMPRESS Regulatory Scheme procedures the approval of the IMPRESS Board has to be secured before an Advisory Notice can be issued. This is hopelessly impractical. The main purpose of such notices issued by IPSO is to prevent media scrums forming outside the homes of individuals at the centre of major breaking news stories. In such circumstances they would have no use at all if IMPRESS were unable to issue notices until they had arranged a meeting of their Board.

**2.8B** *A self-regulatory body should make it clear that subscribers will be held strictly accountable under the standards code for any material that they publish, including photographs, however sourced. This criterion does not include advertising content*

We have no comments on this point.

**2.8C** *A self-regulatory body should provide non-binding guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the standards code. This must be framed in the context of the different provisions of the code relating to the public interest.*

We have no comments, beyond observing that as IMPRESS has no experience of functioning as a regulator, its guidance is theoretical.

**2.8D** *A self-regulatory body should establish a whistle-blowing hotline for those who feel that they are being asked to do things which are contrary to the standards code.*

We have no comments on this point.

**2.9** *The Board should require, of those who subscribe, appropriate internal governance processes (for dealing with complaints and compliance with the standards code), transparency on what governance processes they have in place, and notice of any failures in compliance, together with details of steps taken to deal with failures in compliance.*

**2.9.1** IMPRESS's regulatory Scheme requires their members to maintain appropriate internal governance processes, and their application includes a publisher compliance checklist. They have provided no evidence that any of their members have put this into effect.

We have examined their members' websites and found that nine of them give no detail of any governance processes, or indeed any information on how to complain. Nor do they inform readers that they are members of IMPRESS. Of the rest:

**The Lincolnite** gives an email address for corrections, but no information about governance and no mention of IMPRESS.

**Your Harlow** says it follows the 'Press Complaints Commission Editors' Code', but gives no governance details and no mention of IMPRESS.

**Your Thurrock** gives a rudimentary complaints procedure, but says it 'submits to the Independent Press Standards Organisation'. There is no mention of IMPRESS.

**The Southport Reporter** was the only publisher to give a proper complaints procedure and mention its membership of IMPRESS – though it refers variously to following the Editors' Code of Practice, the NUJ Code of Conduct and the IMPRESS Code of Conduct.

**2.9.2** We note that IMPRESS require their members to supply quarterly reports relating to complaints and compliance. This goes considerably beyond any Royal Charter requirement and, given that there is no evidence that any of their members have yet nominated responsible persons for dealing with complaints (or indeed employ any staff with training or experience in this area), the PRP should enquire whether this is not an insupportable burden.

**2.10** *The Board should require all those who subscribe to have an adequate and speedy complaint handling mechanism; it should encourage those who wish to complain to do so through that mechanism and should not receive complaints directly unless or until the internal complaints system has been engaged without the complaint being resolved in an appropriate time.*

**2.10.1** The complaints procedures outlined in IMPRESS's Regulatory Scheme and Regulatory Scheme Procedures are extremely sketchy, doubtless because IMPRESS has no experience at all of functioning as a regulator. Amongst the points not covered:

- Members of IPSO find that a very high proportion of complaints are made to IPSO in the first instance, where they are sifted and in many cases rejected as being without merit or not engaging with the Editors' Code. IMPRESS appear to have no procedure for this.
- 21 calendar days – 15 working days – is very short period of time to allow for IMPRESS members' internal complaints process. Complainants are often very slow to supply follow-up correspondence.
- Complainants sometimes ask for anonymity. IMPRESS have no procedure for this.
- Sometimes stories attract very large numbers of complaints – one currently under consideration by IPSO generated 2800 complaints. IPSO have no procedure for dealing with multiple complainants.
- As complaints often involve issues of privacy, and their investigation may require publishers to divulge confidential information, IPSO has a policy that correspondence during an investigation must be kept confidential by both sides. IMPRESS have no policy on confidentiality.
- IMPRESS have no review process for adjudications where financial sanctions are not imposed – either prior to publication of adjudications, to ensure fairness and accuracy – or subsequently, to allow an appeal to be heard..
- Where financial sanctions *are* imposed they give publishers the opportunity to respond to provisional determinations (Regulatory Scheme 6.1), but do not give that right to complainants. There is no explanation for this discrepancy.

**2.10.2** IMPRESS claim the power to direct apologies. We have strong legal opinion not only that forced apologies have no value (which is why they are not imposed by the courts in defamation cases) but that they are a serious breach of ECHR Article 10. IMPRESS do not appear to have given any consideration to this.

- 2.11** *The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board will need to have the discretion not to look into complaints if they feel that the complaint is without justification, is an attempt to argue a point of opinion rather than a standards code breach, or is simply an attempt to lobby. The Board should have the power (but not necessarily the duty) to hear complaints:*
- a) from anyone personally and directly affected by the alleged breach of the standards code, or*
  - b) where there is an alleged breach of the code and there is public interest in the Board giving consideration to the complaint from a representative group affected by the alleged breach, or*
  - c) from a third party seeking to ensure accuracy of published information. In the case of third party complaints the views of the party most closely involved should be taken into account.*

IMPRESS indicate they will be ready to accept complaints from third parties and representative groups even when individuals personally and directly affected do not make a complaint. This carries serious risks – individuals personally and directly affected in a story may not wish to bring a complaint for privacy reasons, or because they have privately assisted in the publication of the story. IMPRESS do not appear to have a clear policy on the circumstances in which they will accept third party and representative group complaints.

- 2.12** *Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.*
- 2.13** *The Board should be prepared to allow a complaint to be brought prior to legal proceedings being commenced. Challenges to that approach (and applications to stay or sist) can be decided on the merits.*

We have no comments on either of the above points.

- 2.14** *Serving editors should not be members of any Committee advising the Board on complaints and should not play any role in determining the outcome of an individual complaint. Any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.*

**2.14.1** The reason IPSO has a complaints committee separate to its main board is to ensure absolute independence of decision-making on complaints. To remove any possibility of financial pressure being applied it was felt the body deciding complaints should be entirely different to the body responsible for agreeing funding. As IMPRESS relies almost entirely on funding that comes ultimately from one private individual their failure to form a separate complaints committee raises serious questions about the independence of their decision-making.

**2.14.2** We note that the IMPRESS board includes no one who has any experience of working in any capacity at a hyperlocal publisher of the type they propose to regulate. The PRP should ask why this is the case.

**2.15** *It should continue to be the case that complainants are able to bring complaints free of charge.*

IMPRESS are only able to meet this criterion because of the funding they receive from the Mosley family.

**2.16** *In relation to complaints, where a negotiated outcome between a complainant and a subscriber (pursuant to criterion 10) has failed, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to direct a correction and an apology must apply equally in relation to:*

- a) individual standards breaches; and*
- b) groups of people as defined in criterion 11 where there is no single identifiable individual who has been affected; and*
- c) matters of fact where there is no single identifiable individual who has been affected.*

Please see our comments at 2.10.2 and 2.11.

**2.17** *The Board should not have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance.*

Please see our comments at 2.8A regarding IMPRESS's advisory notice template. The PRP will need to consider whether the way this is formulated amounts to a power to prevent publication.

**2.18** *The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. The investigations process must be simple and credible and those who subscribe must be required to cooperate with any such investigation.*

**2.18.1** The Scheme Membership Agreement from which IPSO derives its contractual powers to enforce the Editors' Code and secure compliance by publishers [https://www.ipso.co.uk/assets/1/SCHEME\\_MEMBERSHIP\\_AGREEMENT\\_PDF\\_PDF](https://www.ipso.co.uk/assets/1/SCHEME_MEMBERSHIP_AGREEMENT_PDF_PDF) sets out ten specific obligations for its members (see Appendix 2). The IMPRESS Regulatory Scheme Agreement does not set out any specific obligations on IMPRESS participants beyond a duty to pay fees. The term 'participant' is not defined, and indeed is not used in the parallel Regulatory Scheme under which IMPRESS operates.

**2.18.2** The Regulatory Scheme Agreement is also unclear. It says at 1.1:

*'From the moment You sign this Agreement and we countersign it You become a Participant in the Regulatory Scheme; as a result, You will be bound by the contract according to the terms described below for so long as the Regulatory Scheme exists and for so long as You remain a Participant.'*

The meaning of this will not be at all clear, nor will it necessarily be understood by Participants that this document is intended to bind them to all of the contractual obligations under the Regulatory Scheme. 'The contract' to which Participants are bound 'according to the terms below' would, on one analysis, be capable of being understood to be the Regulatory Scheme Agreement rather than the Regulatory Scheme itself. The PRP should seek legal advice on whether the IMPRESS Regulatory Scheme fulfils the requirements of Criterion 18.

**2.18.3** In fact much of the Regulatory Scheme Agreement is devoted to the conditions under which either IMPRESS or the participants can terminate their contracts. In the case of participants, they can terminate at any time simply by giving six months' notice. This raises the prospect of participants who are subject to adjudications with which they disagree walking out on IMPRESS. This was always held to be one of the major shortcomings of the Press Complaints Commission, and one of the main reasons it was replaced by IPSO, a body founded on enforceable contracts.

**2.19** *The Board should have the power to impose appropriate and proportionate sanctions (including but not limited to financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1,000,000) on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The Board should have sufficient powers to require appropriate information from subscribers in order to ascertain the turnover that is attributable to a publication irrespective of any particular accounting arrangements of the publication or subscriber. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.*

**2.19.1** IMPRESS's response to this criterion appears to indicate that they intend to impose financial sanctions on a routine basis for breaches of the Code (whatever Code they eventually choose to adopt) found through the process of adjudicating complaints. Given that the majority of IMPRESS's members are only able pay a subscription of £50 a year, the PRP should ask whether they are aware they may be routinely subject to financial sanctions. Furthermore, given the very small turnover of these publishers would any financial sanctions that were proportionate under this criterion also be substantial enough to inspire confidence in complainants and the public at large?

**2.19.2** We also note that, under clause 6.3 of IMPRESS's Regulatory Scheme, when considering the imposition of a sanction IMPRESS will take into account: *'The need to demonstrate to society and to other publishers that IMPRESS takes firm action in order to protect the public interest and promote regulatory compliance'*. This raises the prospect of IMPRESS imposing sanctions for its own reputational purposes, which is not compliant with the requirement of this criterion that sanctions are *'appropriate and proportionate'*.

**2.19A** *The Board should establish a ring-fenced enforcement fund, into which receipts from financial sanctions could be paid, for the purpose of funding investigations.*

Given the very small turnover of IMPRESS's members, and consequent very small size of any potential financial sanctions, IMPRESS's enforcement fund will rely almost entirely on funding derived ultimately from the Mosley family.

**2.20** *The Board should have both the power and a duty to ensure that all breaches of the standards code that it considers are recorded as such and that proper data is kept that records the extent to which complaints have been made and their outcome; this information should be made available to the public in a way that allows understanding of the compliance record of each title.*

We have no comments on this point.

**2.21** *The Board should publish an Annual Report identifying:*

- a) the body's subscribers, identifying any significant changes in subscriber numbers;*
- b) the number of:*
  - (i) complaints it has handled, making clear how many of them are multiple complaints,*
  - (ii) articles in respect of which it has considered complaints to be without merit, and*
  - (iii) articles in respect of which it has considered complaints to be with merit, and the outcomes reached, in aggregate for all subscribers and individually in relation to each subscriber;*
- c) a summary of any investigations carried out and the result of them;*
- d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by subscribers; and*
- e) information about the extent to which the arbitration service has been used.*

We have no comments on this point.

- 2.22** *The Board should provide an arbitral process for civil legal claims against subscribers which:*
- a) complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate);*
  - b) provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial basis (so far as possible);*
  - c) contains transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds);*
  - d) directs appropriate pre-publication matters to the courts;*
  - e) operates under the principle that arbitration should be free for complainants to use ;*
  - f) ensures that the parties should each bear their own costs or expenses, subject to a successful complainant's costs or expenses being recoverable (having regard to section 602 of the 1996 Act or Rule 63 of the Scottish Arbitration Rules<sup>3</sup> and any applicable caps on recoverable costs or expenses); and*
  - g) overall, is inexpensive for all parties.*

- 2.22.1** One of the main attractions to publishers ( and complainants) of membership of a regulator is that in return for an annual fee it offers a means of resolving complaints without the very heavy costs that come with the involvement of lawyers.

If membership of a regulator entails membership of an arbitration scheme, under which publishers can be forced to arbitrate (as is the case with IMPRESS), that advantage is lost.

- 2.22.2** This is the reason the established regional press have always been opposed to the introduction of arbitration schemes. For hyperlocal publishers such as IMPRESS's members the problem is even more acute.

These are businesses which can only afford to pay £50 a year for regulation by IMPRESS – one-sixth of the *hourly* rate (£300) complainants can recover from them for legal representation under the IMPRESS scheme. Under this scheme they could be liable, for a single complaint, for £3,000 complainant's legal costs, plus any legal costs they incur themselves (very likely another £3,000), and an arbitrator's fee of £3,500. That is £9,500 in legal expenses alone *before* the award of any damages. Even if publishers win their case they still have to pay the arbitrator and their own legal costs are not recoverable, so they face a potential bill of £6,500.

£300 an hour may not seem much money to a lawyer like Walter Merricks, who boasted in his LSE lecture how in his previous career he had forced the banks to pay out £26 billion in PPI compensation. It will seem an awful lot of money to IMPRESS's hyperlocal publishers, most of whom would struggle to pay the few journalists they employ £300 *a week*.

There is then the question of any award of damages the arbitrator might make. The IMPRESS scheme does not appear to place any limit on such awards.

**2.22.3** The IMPRESS scheme covers defamation, privacy and harassment. The experience of the PCC and IPSO is that the vast majority of complaints are about accuracy. Where the alleged inaccuracy concerns an individual, which a high proportion do, it can easily be framed as a defamation complaint. The scheme does not prevent lawyers offering Conditional Fee Agreements and does not limit claims by charging an administration fee, even though this is permissible under the Royal Charter. Given the lure of damages and the minimal risk to claimants, it is likely that a very high proportion of complaints under the IMPRESS system will go to arbitration.

**2.22.4** IMPRESS say in their application that they will apply a ‘real harm’ test to sift claims before they go to the arbitrator. They do not say whether they have examined if this is compatible with ECHR Article 6. The QC’s opinion which the newspaper and magazine industry was given when examining arbitration schemes during negotiations with the government over the Royal Charter was that any scheme which involved a sift of the claims by the regulator was not compliant with Article 6.

**2.22.3** We would suggest the PRP must take evidence from IMPRESS’s members to establish whether or not they understand the financial risks they are taking by agreeing to take part in IMPRESS’s arbitration scheme, and whether they have the financial resources to submit to arbitration in any circumstances.

We cannot see how the IMPRESS scheme meets criterion 22(g): *‘overall, is inexpensive for all parties’*.

**2.23** *The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.*

**2.23.1** The subscription rates supplied by IMPRESS in their application are very steep indeed for publishers of substance. We have been informed by the Regulatory Funding Company that if these rates were charged by IPSO it would give it an annual income of more than £10million – more than four times its current operating budget. The five largest publishers in IPSO pay a total between them of £780,000 a year, less than what one large publisher would pay as a member of IMPRESS.

Not only do these subscription rates fail to meet the criterion’s requirement for IMPRESS to offer *‘fair, reasonable and non-discriminatory terms’*, they make it extremely unlikely that IMPRESS will ever be able to attract any of the large established publishers that it needs as members in order to establish credibility as a serious regulator.

**2.24** There is a further problem for the PRP. Schedule 2, Clause 10 of the Royal Charter says:

*The Board of the Recognition Panel must:*

- a) prepare and publish a report of any review it conducts, whether of a cyclical or ad hoc nature; and*
- b) 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:
  - i. there is no recognised regulator; or*
  - ii. in the opinion of the Recognition Panel, the system of regulation does not cover all significant relevant publishers.**

It must be abundantly clear that system of regulation proposed by IMPRESS does not cover all significant relevant publishers. Indeed it does not cover *any* significant relevant publishers.

### **3 Conclusion**

The Press Recognition Panel says on the home page of its website:

*The Press Recognition Panel is the independent body set up by Royal Charter to ensure that regulators of the UK press are independent, properly funded and able to protect the public.*

As we have demonstrated above, IMPRESS is not independent (it depends entirely on the largesse of one private individual), it is not properly funded (that largesse can be withdrawn at any time) and it is not able to protect the public (it has no standards code to enable it to do so).

It is not even clear that it can properly call itself a regulator of the UK press, because none of the 2600 titles produced by Britain's 85 established publishers are members, and none of the 13 publishers which are members appear to qualify as relevant publishers under the Crime and Courts Act.

We strongly recommend that this application is rejected.

Peter Wright

Editor Emeritus

Associated Newspapers

March 4, 2016

**Appendix 1 Letter from the Chairman of the Regulatory Funding Company to the Chairman of IMPRESS**

Walter Merricks CBE  
Chairman  
IMPRESS  
83 Victoria Street  
London  
SW1H 0HW

25 February 2016

Dear Mr. Merricks,

IMPRESS: EDITORS' CODE OF PRACTICE

The Press Recognition Panel has published a redacted version of IMPRESS's application for recognition as part of its call for evidence.

Your application and scheme documentation state that IMPRESS has adopted the Editors' Code of Practice and outline IMPRESS's regulatory functions, powers and requirements of any members.

However, IMPRESS's application is silent on the Regulatory Funding Company's ownership of the copyright in the Editors' Code of Practice and makes no reference to the consequent restrictions upon IMPRESS's lawful use of the Code- or that of any members of IMPRESS- in the absence of any licence.

The RFC has not licensed any use of the Editors Code of Practice by IMPRESS or by any potential members of IMPRESS. We are surprised that IMPRESS has not made this clear in its application to the Press Recognition Panel and scheme documentation published, given the pivotal role of the Editors' Code of Practice. The RFC finds it difficult to see how IMPRESS could make lawful use of the Editors' Code of Practice in the exercise of its regulatory functions, or any IMPRESS members comply with scheme requirements, from day to day compliance, to complaints adjudications, to standards enforcement, in the absence of any licence from the RFC as copyright owner.

In view of our previous letter of 8 January 2016 to IMPRESS raising our concerns in respect of passing off and infringement of copyright, the RFC feels it necessary to stress to IMPRESS that the RFC has not given permission for any use of the Editors' Code of Practice by IMPRESS or any member of IMPRESS, or for any representation by IMPRESS or any member of IMPRESS to that effect.

The RFC has always made it clear to IMPRESS that the RFC owns the copyright in the Editors' Code of Practice but is prepared to license use of the Editors' Code of Practice, subject to certain safeguards to protect the integrity of the Editors Code of Practice and its role in the independent self-regulatory system upheld by IPSO. Indeed, it has done so. The RFC has repeatedly offered IMPRESS a licence in similar terms to that accepted by others (I refer you to RFC letters and draft licence e-mailed 18 August 2015, 15 October, 8 January 2016). IMPRESS has rejected all such offers to date (I refer you to IMPRESS's responses of 1 October 2015, 4 November 2015, 20 January 2016).

The RFC remains open to agreeing a licence for the use of the Editors' Code of Practice on the terms that the RFC has previously offered.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Beatty', written in a cursive style.

**Kevin Beatty**

**Chairman**

**Regulatory Funding Company**

## **Appendix 2 Specific obligations of members of IPSO as listed in the Scheme Membership Agreement**

3.3 Each PGRE shall comply with the following obligations:

3.3.1 Compliance with the Editors' Code: Each PGRE shall, and shall use its reasonable endeavours to procure that all its employees, officers, agents and sub-contractors shall, comply with the Editors' Code, as amended from time to time in accordance with clause 7.

3.3.2 Compliance with the Regulations: Each PGRE shall, and shall use its reasonable endeavours to procure that all its employees, officers, agents and sub-contractors shall, comply with the Regulations, as amended from time to time in accordance with clause 7.

3.3.3 Internal governance: Each PGRE shall implement and maintain internal governance practices and procedures with the aim of ensuring compliance with the Editors' Code and the Regulations. Each PGRE shall ensure that such practices and procedures comply with any requirements specified by the Regulator from time to time.

3.3.4 Complaints procedure: Each PGRE shall implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints. Each PGRE shall ensure that such internal complaints handling procedures are implemented in relation to the handling of any complaint. Each PGRE shall comply with any requirements which may be specified by the Regulator from time to time, acting in a reasonable and proportionate manner, in relation to the content, implementation and operation of complaints procedures.

3.3.5 Co-operation: Each PGRE shall act in an open and co-operative way towards the Regulator. Each PGRE shall, and shall use its reasonable endeavours, to procure that all its employees, officers, agents and sub-contractors shall: (a) subject always to any relieving provisions of the Regulations from time to time relating to confidentiality of information and of sources of information, in relation to the Regulator's exercise of its powers (including investigatory powers), provide all necessary (as determined by the Regulator in its absolute discretion) assistance, access to persons, information and documents (that is to say anything in which information of any description is recorded) provided that to do so would not breach - 5 - any applicable law or regulation; and (b) not do anything to interfere with or obstruct the activities of the Regulator.

3.3.6 Employment contracts: No PGRE shall take any disciplinary action against any of its employees on the grounds that he or she has used the Regulator's whistleblowing hotline (provided that such use is appropriate and proportionate) or has refused to act in a manner which he or she reasonably and in good faith believes is contrary to the Editors' Code and each PGRE shall include a term to this effect in all contracts of employment it enters into after the Effective Date.

3.3.7 Annual statement: The Publisher shall provide annually to the Regulator a statement as prescribed by the Regulations which shall include each PGRE's compliance with its obligations under clauses 3.3.1 to 3.3.4 above.

3.3.8 Abiding by the Regulator's decisions and requirements: Each PGRE shall, and shall use its reasonable endeavours to procure that all its employees, officers, agents and sub-contractors shall, abide by and comply promptly with the decisions and requirements of the Regulator which the Regulator may issue in accordance with its remit.

3.3.9 Appointment of a responsible person: Each PGRE shall ensure that all its employees, officers, agents and sub-contractors comply with the requirements of this Agreement and the Publisher shall, on behalf of the PGREs, appoint a senior individual who will report annually to the Regulator as required under clause 3.3.7.

3.3.10 Transfer of a title: If a PGRE transfers control of a Publication outside the Publisher's Group to a new owner or controller which is not a Regulated Entity, it shall encourage the new owner or controller of such Publication to become a Regulated Entity.