

Regulatory Scheme Agreement

Between

IMPRESS: The Independent Monitor for the Press (the Regulator)

and

Publisher of:

THIS AGREEMENT is made on

Between:

- (1) **IMPRESS: The Independent Monitor for the Press CIC**, a company registered in England and Wales with registration number 09655520 and whose registered office is at 16-18 New Bridge Street, London, EC4V 6AG (the Regulator) (“We” or “Us”) in this agreement;
- (2) **Publisher** (the Participant) (“You”) in this agreement.

1. Your obligations

- 1.1. You agree to be bound by the terms of this agreement and to be regulated by IMPRESS in accordance with the Regulatory Scheme and the Arbitration Scheme from time to time in force, the current versions of which are attached hereto as Schedule 1 of this agreement.

2. Duration of this Agreement

- 2.1. From the moment You sign this Agreement and We countersign it You will become a Participant in the Regulatory Scheme; as a result, You will be bound by the terms of this agreement for so long as the Regulatory Scheme exists and for so long as You remain a Participant.

3. Our obligations

- 3.1. We promise to provide the services as set out in the Regulatory Scheme from time to time.
- 3.2. In carrying out our regulatory functions (which include investigating matters that are not the subject of complaint as well as those that are) We will act fairly and proportionately and in a transparent manner in all our dealings with You.
- 3.3. We agree that any revisions to the Regulatory Scheme and the Arbitration Scheme will only be made after consultation with the Participants.

4. Membership Fee & Funding of Enforcement Activities

- 4.1. In signing up to be a Participant, You agree to pay the subscription fee that is applicable to You under the annual Tariff Schedule published by Us. This fee should be paid by 1 April of each year, which is the start of a subscription year. If You become a Participant during the course of a subscription year, the fee payable is that pro rata to the number of months remaining in the subscription year, or otherwise provided for in the annual Tariff Schedule.
- 4.2. You agree that We may seek funding from other sources in addition to the

subscription fee that you and other Participants pay Us. We promise to consult with You annually over our budget.

4.3. Any fines that We levy shall be used to fund our enforcement activities.

5. Termination

Your rights to terminate

5.1. This Agreement will last for a period of 5 years. You may terminate this Agreement by giving Us no less than 6 months' notice ending on 31 March in any year.

5.2. If You choose to terminate this Agreement before the end of the 5 year period, You may not seek to recover any fees already paid in relation to Clause 3.1 above.

5.3. You may terminate this Agreement if during the five year membership period You cease to be a publisher of any publications and We agree to release You, at which point You will cease to be a Participant.

5.4. You will still be bound by regulatory directions after you cease to be a Participant if such directions were issued prior to your effective date of termination.

Our rights to terminate

5.5. We can terminate your membership for failure to comply with our directions or the provisions of this Agreement.

Automatic Termination

5.6. If We cannot pay our debts within the extended meaning of Section 123 of the Insolvency Act or apply for or enter a CVA, this Agreement shall terminate automatically.

6. Limitation of our Liability

6.1. Subject only to our obligations as set out in Clause 2, We will have no liability to You for any act or omission which is or is alleged to be a breach of trust or breach of duty unless the act or omission amounts to a criminal offence or We knew or ought to have known that the act or omission was a breach of trust or breach of duty.

7. Delegation, breach, variation and termination

7.1. You may not assign, sub-contract, delegate or otherwise transfer to a third party your obligations under this Agreement without our consent.

- 7.2. Neither of us shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from Force Majeure.
- 7.3. This Agreement (including future variations that We may make) constitutes the whole agreement and understanding of the parties.
- 7.4. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales save that in relation to Participants registered in Scotland, the law of Scotland shall apply.

EXECUTED by the parties as a deed on the date first mentioned above

SIGNED as a deed and DELIVERED by _____)

IMPRESS _____)

Acting by [_____], a director)

Signature:

SIGNED as a deed and DELIVERED by _____)

Publisher _____)

Acting by [_____], a director)

Signature:

SCHEDULE 1

IMPRESS: The Independent Monitor for the Press CIC

Regulatory Scheme

This scheme describes how IMPRESS will exercise the regulatory functions and powers conferred on it under the Articles. The scheme makes reference to other documents and provisions such as the IMPRESS Standards Code, the arbitration scheme and the whistleblowing hotline. IMPRESS may exercise its powers in response to complaints (including complaints that are withdrawn), or to information received via its whistleblowing hotline, or on its own initiative. The functions and powers may be exercised by officials or committees under a scheme of delegation, subject to the ultimate responsibility of the IMPRESS board.

1. The Code

- 1.1.** IMPRESS requires publishers to uphold and adhere to the IMPRESS Standards Code ('The Code') and use it in their assessment of complaints in respect of all material first published and acts occurring from 24 July 2017.
- 1.2.** IMPRESS requires publishers to use the Editors' Code in their assessment of complaints in respect of material first published and acts occurring before 24 July 2017.
- 1.3.** Publishers may include additional requirements in their own editorial guidelines. However, IMPRESS will only accept complaints that engage the Code.

2. Internal Governance Requirements for Participating Publishers

- 2.1.** Publishers (and those for whose conduct or for whose material they are legally responsible or control) are required to actively cooperate with IMPRESS in the discharge of its regulatory functions. Amongst other requirements, this means that they should provide IMPRESS with all the information and documentation that may be reasonably required to enable IMPRESS to perform its regulatory functions. Publishers are required to comply with directions issued by IMPRESS relating to this regulatory scheme.
- 2.2.** Publishers are required to publicise to their employees and contributors the IMPRESS whistleblowing hotline, and not to take any action to the detriment of anyone who uses the hotline or declines to breach the Code. Publishers are required to provide a specific contractual right for employees to act in this way free from any sanction.

- 2.3.** Publishers are required to provide IMPRESS with a statement of the arrangements, policies and personnel they have in place to deal with complaints and ensure compliance with the Code. This includes nominating a senior individual within each title to have responsibility for legal and standards compliance, and a mechanism whereby that person is alerted as to the complaint, the name of the journalist involved and the name of the complainant at an early stage so that, where possible, the individual can pass the complaint to another person in the organisation in case of any conflict of interest. The statement of arrangements should include details of the internal authority structure: where responsibilities for Code compliance lie, to whom notice of any failure in compliance would be reported (whether complained about or not), together with details of steps to deal with any failures in compliance. Publishers should report compliance failures of which they become aware to IMPRESS.
- 2.4.** Publishers are required to consider and take account of advice or warnings provided by IMPRESS when individuals have made it clear privately or publicly that they do not welcome press intrusion.
- 2.5.** Publishers are required to display the IMPRESS Trust in Journalism kitemark in a prominent position in their publications together with the words “Regulated by IMPRESS, the independent monitor for the press”, together with details of how to contact IMPRESS.
- 2.6.** Once IMPRESS is satisfied that a publisher is compliant with the above internal governance requirements, the publisher may enter into an IMPRESS Regulatory Scheme Agreement. The effective date of such Agreement marks the commencement of IMPRESS’s regulatory remit and the publisher’s regulatory obligations. IMPRESS’s regulatory remit in relation to a publisher extends to materials first published and acts occurring after its commencement.

3. Complaints handling by Participating Publishers

- 3.1.** Publishers are required to maintain adequate and speedy in-house complaints procedures in relation to editorial standards that are
- convenient and easy to use (in particular for those that are vulnerable or have disabilities)
 - transparent, clear, well publicised, free, and allow complaints to be made by any reasonable means
 - prompt and fair, with decisions based on sufficient investigation of the circumstances, and (where appropriate) offer a suitable remedy.

- 3.2. Publishers are required to provide a written or emailed acknowledgement of complaints within seven calendar days of having received a complaint. Within 21 calendar days of receipt of the complaint, they must tell complainants in a final decision letter that they have the right to refer their complaint to IMPRESS, stating the applicable time limits and how to contact IMPRESS.

4. **Complaints Handling by IMPRESS**

- 4.1. Before accepting a complaint IMPRESS will seek confirmation as to whether the complainant has already complained to the publisher and has either not received a substantive response within 21 calendar days of its communication, or the complainant is dissatisfied with the response.

Time limits

- 4.2. If a complainant is dissatisfied with the outcome of their complaint to a publisher, or the publisher has failed to respond, the complainant may bring their complaint to IMPRESS.
- 4.3. A complainant may bring their complaint to IMPRESS without waiting for the publisher's response if the matter is urgent.
- 4.4. A complainant must bring a complaint to IMPRESS within four months of the first publication or the act complained of, or within four months from when the complainant should reasonably have known that there was cause for complaint and in such case not later than 12 months from the first publication or act complained of.
- 4.5. In exceptional circumstances IMPRESS may extend a time limit to the extent that IMPRESS considers fair.

Acceptance of complaints

- 4.6. IMPRESS will accept complaints from a) anyone personally and directly affected by the alleged breach of the Code, b) where there is an alleged breach of the Code and there is public interest in the consideration of 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 event that a volume of complaints is received about a specific issue or related issues, IMPRESS may amalgamate these complaints into one or more 'lead' complaints and handle them accordingly.

4.7. IMPRESS may refuse to accept a complaint if

- the complaint does not engage a breach of the Code by a participating publisher, or
- the complainant has already complained about the same issue, or
- the complaint is manifestly without justification, is an attempt to argue a point of opinion rather than a Code breach, or is simply an attempt to lobby.

4.8. IMPRESS will not accept complaints or refer to arbitration matters where the cause of a complaint is already subject to litigation. Where a matter is subject to a threat of litigation, and an application is made to IMPRESS to stay or sist, IMPRESS will decide the application by considering how the interests of justice and a speedy resolution would be best served.

4.9. If the complaint is not accepted, IMPRESS will tell both the complainant and the Publisher and explain why.

5. Investigations

5.1. IMPRESS may investigate potential Code breaches or breaches of its internal governance requirements whether in response to a complaint or not. Publishers are required to cooperate with IMPRESS in any investigation, and to produce information and documents that IMPRESS considers necessary.

5.2. In the case of a complaint, IMPRESS will

- send relevant material to both parties and invite representations within reasonable stated deadlines
- ensure that both parties have an opportunity to state their case
- send to both parties a proposed adjudication with a time limit for response
- consider any responses
- after considering responses, issue an adjudication.

5.3. IMPRESS may require parties to produce any information or document that it considers necessary for the determination of the complaint.

5.4. Information provided by publishers and complainants will ordinarily be shared with the other party, and IMPRESS will not ordinarily take into account any information which one party refuses to share with the other party. Exceptionally, IMPRESS may accept information or documents in confidence (for example so that only an edited version, summary or description is disclosed to the other party) where it considers that the complaint may nevertheless be fairly determined.

- 5.5.** A publisher, or in the case of a complaint both parties, may be required to attend an oral hearing to answer such questions as IMPRESS may have.
- 5.6.** At the conclusion of a complaint or investigation, IMPRESS will issue an adjudication, which will take account of requests by a complainant to remain anonymous and to redact any personal information which may cause a further intrusion into privacy or cause harm or considerable distress to the complainant or a third party.
- 5.7.** All adjudications will be published on the IMPRESS website (in a redacted form, where necessary) within 7 calendar days of the conclusion of the complaint.
- 5.8.** IMPRESS will aim to complete the investigation of complaints within 42 calendar days.

6. Sanctions and Remedies

- 6.1.** As a result of an investigation (whether following a complaint or otherwise), if IMPRESS is of the view that a publisher has been responsible for serious or systemic breaches of the Code or governance requirements, it will notify the publisher of its view together with any proposed sanction, in a provisional determination. The notification will invite the publisher to respond to IMPRESS within a period specified.
- 6.2.** IMPRESS may impose appropriate and proportionate sanctions including financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1m. IMPRESS may require publishers to supply appropriate information relating to their turnover.
- 6.3.** An adjudication may require appropriate remedial action and the publication of corrections and apologies. IMPRESS may direct the nature, extent and placement of corrections and apologies. IMPRESS will require significant inaccuracies to be corrected with due prominence, which will normally be equal prominence.
- 6.4.** In considering the imposition of a sanction, IMPRESS will take all relevant circumstances into account, including
- the extent to which the conduct involved wrong doing/blame, recklessness or dishonesty
 - where relevant, the length of time over which the breaches occurred
 - the number or frequency and duration of the breach(es)
 - any steps taken to put things right and avoid future breaches
 - whether the publisher notified IMPRESS of the breach(es) and the extent of its cooperation

- 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, and
 - the necessity to deter the publisher from future non-compliance.
- 6.5.** After considering any representations received from the publisher in response to a provisional determination, IMPRESS may confirm or modify its view and may issue a final determination.
- 6.6.** A final determination will be published on the IMPRESS website within 7 calendar days of its issue. All other documents and materials collected and shared during the course of investigating a complaint will be kept confidential and must not be published by any party involved in the complaint, except to the extent that disclosure may be required by a legal duty, to pursue or protect a legal right or that such documents may already be in the public domain.
- 6.7.** Receipts from financial sanctions will be held in a ring-fenced enforcement fund for the purpose of funding investigations.

7. Advisory Notice Requests

- 7.1.** IMPRESS will accept requests from individuals who do not welcome press intrusion.
- 7.2.** IMPRESS will consider the reasons why an individual does not welcome press intrusion by reference to the Code.
- 7.3.** IMPRESS may issue an Advisory Notice to its publishers to give warning or advice about unwelcome press intrusion.
- 7.4.** IMPRESS has powers to take into account failure by a publisher to respect an Advisory Notice in any subsequent investigation or adjudication by IMPRESS.
- 7.5.** IMPRESS will consider requests to send Advisory Notices to publishers that it does not regulate, or to request that other regulators issue Advisory Notices.

8. Arbitration

- 8.1.** IMPRESS has adopted an arbitration scheme. IMPRESS may offer access to its arbitration scheme for the determination of civil claims for compensation to complainants (claimants) and publishers where a complainant requests this

8.2. IMPRESS will only offer access to its arbitration scheme for civil claims between a claimant and a participating publisher for defamation, breach of confidence, misuse of private information, malicious falsehood or harassment. Civil claims relating to pre-publication matters which aim to prevent publication are not covered by the IMPRESS arbitration scheme and will be directed to the courts where it is appropriate to do so.

8.3. An IMPRESS decision to offer access to its arbitration scheme will be based on an administrative assessment of whether a claim is covered by the scheme. For the avoidance of doubt, it will not be based on an assessment of the merits of a claim. When arbitration is offered, publishers will cooperate in the arbitration.

8.4. An arbitration award under the IMPRESS scheme will be published on the IMPRESS website within 7 calendar days of its conclusion.

9. Compliance Records

9.1. IMPRESS requires publishers to maintain, in respect of each title, a written record of all complaints, to include the name and contact details of the complainant; the material or conduct in respect of which the complaint is made; and the alleged Code breach.

9.2. This written record must include any steps taken by the publisher to address the complaint, and the outcome of the complaint. This record must be made available to IMPRESS and to the public (in a redacted form, where necessary).

9.3. IMPRESS will publish an annual report to include details of all complaints received by IMPRESS, including multiple complaints; articles in respect of which it has considered complaints to be without merit and those which it has considered to be with merit and the outcomes reached, in aggregate for all participating publishers and individually in relation to each title and each publisher. It will also include numbers of complaints received by publishers and their outcomes.

9.4. Investigation determinations will be published on the IMPRESS website (in a redacted form, where necessary) within 7 calendar days of the conclusion of the investigation.

Last amended 13 June 2017



CI Arb
evolving to resolve

Dispute Appointment Service





CI Arb/IMPRESS ARBITRATION SCHEME RULES (“the Rules”) FOR USE IN ENGLAND, WALES, SCOTLAND, AND NORTHERN IRELAND

Where any claim is referred for arbitration under the Scheme, the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the Rules or any modified, amended or substituted Rules which the Scheme may have adopted and which have come into effect before the commencement of that arbitration.

Scope

1. The IMPRESS/CI Arb scheme relates to civil claims between a claimant and a participating publisher for:
 - (a) defamation;
 - (b) breach of confidence;
 - (c) misuse of private information;
 - (d) malicious falsehood; or
 - (e) harassment.

The Scheme does not cover pre-publication matters which seek to prevent publication.

2. The Rules are intended to govern arbitrations under the Scheme. Arbitrations under the Scheme shall be conducted under the Arbitration Act 1996 (the Act). Where the arbitration is to be seated in Scotland it shall be conducted under the Arbitration (Scotland) Act 2010. These Rules incorporate the mandatory provisions of the relevant Act.
3. The parties may not amend or modify these Rules or any procedure under them after the appointment of an arbitrator unless the arbitrator agrees to such amendment or modification.
4. Under the terms of the IMPRESS Regulatory Scheme, where IMPRESS has determined that such a dispute is suitable for arbitration under the IMPRESS/CI Arb scheme, the publisher is required to participate in the arbitration.
5. The parties shall sign an agreement to arbitrate and submit it, through IMPRESS, to CI Arb. In the case of a publisher the document shall be signed by or on behalf of the individual notified to IMPRESS as the legal and standards compliance manager. The arbitration shall be regarded as commenced when both parties have signed Form ARB1 and the signed Form ARB1 has been received by CI Arb.

Appointing authority and appointment of the arbitrator

6. CI Arb shall appoint a sole arbitrator. The arbitrator will proactively manage the arbitration,

making such enquiries of the parties as the arbitrator may think fit.

7. Arbitrators appointed under this scheme may be subject to monitoring, supervision or scrutiny by CIArb and by agreeing to arbitration under these Rules the parties agree that disclosure of documentation to CIArb for the purposes of such monitoring, supervision or scrutiny, does not infringe any principle of confidentiality relating to the arbitration.

Representation, informality and costs

8. Without restricting the right of a party to be legally represented, the arbitration shall be conducted with minimum formality and as far as possible without the need for legal representation. If one party is represented and the other is not, the arbitrator will aim to ensure that lack of representation does not disadvantage the unrepresented party.
9. No award of costs shall be made against the Claimant under any circumstances.
10. The fees of the arbitrator, which shall be paid by the publisher, shall be set at no more than £3,500 unless the publisher agrees to the payment of a higher fee.
11. Where the Claimant has succeeded in whole or in part in their claim, the arbitrator may make an award of costs against the publisher. The arbitrator shall approach the assessment of such costs on the basis that, in ordinary circumstances:
 - (a) the maximum sum to be awarded will be £3,000; and
 - (b) the hourly charging rate of a lawyer employed by the complainant shall be reasonable and proportionate having regard to the nature of the claim and the rate shall not exceed £300 per hour. The arbitrator shall hear submissions on costs before making any award.
12. In making a decision to award costs, the arbitrator shall have regard to all the material circumstances, including such of the following as may be relevant:
 - (a) whether the costs of the Claimant were reasonable and proportionate having regard to the nature of the claim;
 - (b) whether or not legal representation was necessary;
 - (c) any offer of settlement or compromise made by the publisher.

The arbitrator's inquisitorial role

13. The arbitrator shall as far as possible adopt an inquisitorial process, taking the initiative to ascertain the facts and the law, managing the case, making enquiries of or putting propositions to either party, taking into account any inequality of representation. In doing so, the arbitrator must treat the parties fairly, ensuring that before any award is made, each party has had a reasonable opportunity to put its case and to deal with the other party's case.
14. In the case of a publisher, notwithstanding that the publisher may be legally represented, the

arbitrator has the right to communicate direct with the publisher's legal and standards compliance manager.

Procedure

15. It shall be for the arbitrator to decide all procedural and evidential matters. As soon as practicable after being appointed, the arbitrator shall give directions to the parties as to the procedure and the timings that will apply, and may give further directions at any time. These directions may include the order and timings within which documents shall be exchanged, and whether or the extent to which expert evidence shall be admitted.
16. The Claimant should set out in written form the allegations of fact or matters of opinion which it is intended to establish by evidence and set out the other remedies sought and the total value of all quantifiable sums if any claimed, together with a copy of all documents or statements relied on. The publisher should set out in written form the extent to which the allegations of the Claimant are accepted, and where allegations are denied, their reasons for doing so, and if they intend to put forward a different version of events from that given by the Claimant, they must state their own version and supply all documents and or statements relied on.

Speed

17. The arbitrator shall take all reasonable steps to ensure that, in arbitrations conducted without an oral hearing, the arbitration is concluded within a period of 3 months of appointment of the arbitrator and, in all other cases (except the most complex), the arbitration is concluded within a period of 6 months of appointment.

Settlement and Determination

18. The arbitrator shall seek to establish the facts underlying the dispute and exercise his/her powers accordingly. The arbitrator may explore with the parties whether an agreed settlement is possible. If not, the arbitrator will decide the substance of the dispute in accordance with the law of England and Wales, or, where appropriate, Scotland or Northern Ireland.

Default and striking out

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 in the following circumstances:
 - (a) In the case of a claim for libel, there is no real prospect of the Claimant showing that the publication has caused or is likely to cause serious harm to their reputation;
 - (b) The Claimant discloses no reasonable ground for bringing the claim;
 - (c) The claim is an abuse of process;

- (d) The claim is trivial with the time and cost of the claim being wholly disproportionate to the potential award;
- (e) The claim is made in bad faith; or
- (f) The claim is otherwise frivolous or vexatious.

Arrangements for any hearing

20. The arbitrator will decide:

- (a) whether or not to hold an oral hearing, and if so, after hearing representations from the parties, whether it should be held in public or in private;
- (b) the procedures to be adopted at any hearing;
- (c) which, if any, witnesses shall attend; witnesses of fact will be questioned by the arbitrator or, in exceptional cases and with the leave of the arbitrator, the other party;
- (d) any time limits to be imposed on the length of oral submissions or the examination or cross-examination of witnesses.

21. The arbitrator may at any time order any of the following to be delivered to him or her in writing:

- (a) submissions to be advanced by or on behalf of any party;
- (b) questions intended to be put to any witness;
- (c) answers by any witness to identified questions.

Awards

22. Any award shall be in writing, dated, and signed by the arbitrator, and shall contain sufficient reasons to show why the arbitrator has reached the decisions contained in it, unless the parties otherwise agree or the award is by consent.

23. Any award shall be final as to the issues determined in it, and shall be binding on both parties.

24. The award shall be made public. On application by the parties, the arbitrator shall decide whether any parts of the award shall be redacted to protect confidential information.

25. The arbitrator may award and/or direct:

- (a) Damages to the Claimant;
- (b) That the publisher shall publish a summary of the award, in a form to be agreed by the parties or directed by the arbitrator;
- (c) That the publisher shall not re-publish the information or statement in respect of which the claim has been brought; and/or

(d) Such other award or direction as he/ she may determine.