

Submission to the Press Recognition Panel by the News Media Association

1. This submission is made in response to the call for information issued by the Press Recognition Panel ("PRP") following the application for recognition (hereafter referred to as the Application) by IMPRESS.

The News Media Association

2. This submission is made by the News Media Association ("NMA"). The NMA is the voice of national, regional and local news media organisations in the UK – a £6 billion sector read by 42 million adults every week in print and online. Its members are the biggest investors in news, accounting for two-thirds of the total spent on news provision in the UK, with most of the remainder spent by broadcasters including the BBC.
3. The NMA was formed by the merger of the Newspaper Society and Newspaper Publishers Association. It represents well over 90% of the UK news media sector covering some 1100 national, regional and local newspaper titles in print and digital. Its Board comprises publishers from across the national and local press:
 - Ashley Highfield, Johnston Press (Chairman)
 - Geraldine Allinson, KM Group
 - Steve Auckland, ESI Media
 - Kevin Beatty, DMG Media
 - David Dinsmore, News UK
 - Henry Faure Walker, Newsquest Media Group
 - Simon Fox, Trinity Mirror
 - Jeff Henry, Archant
 - Phil Inman, Midland News Association
 - Murdoch MacLennan, Telegraph Media Group
 - David Pemsel, Guardian Media Group
 - Jeremy Spooner, Baylis Media

4. The NMA campaigns to safeguard press freedom, promote freedom of expression, open government and open justice. It resists any special controls on the press. It vigorously supports the case for self-regulation of the press versus any form of state-backed regulation.

Executive Summary

5. IMPRESS does not merit recognition as an approved regulator for the following reasons:
 - 5.1 It is not representative of the press. No significant publisher has subscribed to it.
 - 5.2 It is not independent, being reliant for its funding on a rich donor.
 - 5.3 It is not credible, being neither supported nor funded by the press and lacking its own code of standards.
 - 5.4 Its lack of backing by the press and the absence of a code of standards mean it is incapable of being effective.
 - 5.5 It is not viable. Its funding can be withdrawn at any time and it has no realistic prospect of replacing that funding as there is no body of members waiting to join it.
 - 5.6 Its Application lacks transparency. There is, for instance, no mention of the identity of the rich donor who is funding it.
 - 5.7 A failure to meet even one recognition criterion is fatal to IMPRESS's Application. IMPRESS has in fact failed to meet most of the key recognition criteria.
 - 5.8 Recognition of IMPRESS will not create an effective press regulator, but it will impose on 90% of the newspaper and magazine industry who have joined an established self-regulatory body a system of penalties that was only ever intended to affect a recalcitrant minority. That would be a perverse outcome.

For those reasons it would be unreasonable, irrational, unfair and unlawful for the PRP to confer recognition on IMPRESS.

The criteria for recognition

6. The NMA reminds the PRP that it is insufficient for it simply to perform a box-ticking exercise by reference to the numbered criteria set out in Schedule 3 to the Royal Charter. Paragraph 1 of Schedule 2 to the Royal Charter specifies that the PRP's duty is as follows:

The Board of the Recognition Panel shall grant recognition to a Regulator if the Board is satisfied that the Regulator meets the recognition criteria numbered 1 to 23 in Schedule 3, and in making its decision on whether the Regulator meets those criteria it shall consider the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability, as articulated in the Leveson Report, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation").

(Emphasis added)

7. The NMA further submits that in exercising its functions the PRP must, as a public body exercising public functions, at all times act reasonably.

Overview of the Application by IMPRESS

8. Even if IMPRESS is properly defined as a Regulator such that its Application qualifies for consideration by the PRP (see paragraphs 14 to 24 below), the Application forms a wholly unsatisfactory basis for recognition for the following reasons:
 - 8.1 Crucial information about IMPRESS and its proposed scheme is missing from the Application.
 - 8.2 Such information as has been provided, together with the further information provided in this submission, show that IMPRESS is not independent, viable, effective or credible as a press regulator.
 - 8.3 IMPRESS has in any event failed to meet most of the key recognition criteria listed in Schedule 3 to the Royal Charter.
9. It would therefore be wrong for the PRP to grant recognition to IMPRESS having regard to the recognition requirements in paragraph 1 of Schedule 2 to the Royal Charter.

10. It would, further, be a perversion of the scheme that has been introduced by sections 34 to 42 of the Crime and Courts Act 2013 for recognition to be conferred on a regulator that is not in any proper sense a self-regulatory body that is representative of, and financially supported by, the news media but is instead a regulator in name only, having next to no participants and dependent for its funding on a single benefactor with outspoken views on press conduct and regulation.

Lack of crucial information in the Application

11. In its call for information the PRP has asked the public and third parties to make it aware of information about IMPRESS and its proposed scheme that IMPRESS has failed to include in its application. As this submission will make clear, the Application fails to include any, or any sufficient, information about the following matters that are of crucial significance to any fair and reasonable assessment of the Application by the PRP:
 - 11.1 The true source and nature of funding for IMPRESS.
 - 11.2 The standards code which IMPRESS members will be expected to observe.
 - 11.3 The relationship between IMPRESS and its members (assuming it actually has any – see below).
 - 11.4 The likely future membership and financial viability of IMPRESS, bearing in mind the self-regulatory scheme which already exists and covers the vast majority of print and online news media in the UK, the scale of fees IMPRESS proposes to charge and the high running costs set out in IMPRESS's business plan.
12. Subject to an important threshold point that will be dealt with first, this submission will deal with these matters in turn. It will also then deal with the following matters that are fundamental to the PRP's consideration:
 - Constitution of the appointment panel and Board
 - IMPRESS as a regulator
 - The arbitration scheme proposed by IMPRESS
 - The potential consequences of recognition for UK news media in light of sections 34 to 42 of the Crime and Courts Act 2013

13. Against that background, this submission will then provide, by reference to the Application Matrix, its own assessment of IMPRESS's compliance with the relevant criteria for recognition contained in the Royal Charter. The NMA recognises that this is ultimately the PRP's function, but it reasonably expects that the PRP will take fair and proper account of the NMA's consideration of the matter, having regard to the NMA's role as a representative of the news media and the possible effect on such news media of any decision by the PRP to recognise IMPRESS as an approved regulator. As will be seen, the NMA considers that IMPRESS fails to fulfil almost all of the 23 criteria.

The threshold point

14. The PRP's function is to determine applications for recognition from Regulators: see clause 4.1(a) of the Royal Charter.
15. Clause 1 (a) of Schedule 4 to the Charter (Interpretation) defines a "Regulator" as an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications.
16. "Relevant publisher" has the meaning given in section 41 of the Crime and Courts Act 2013: see clause 1 (b) of Schedule 4 to the Charter. Section 41, where relevant, reads as follows:

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

(a) which is written by different authors, and

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

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

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

(a) the content of the material,

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

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

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

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

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

“(7) “News-related material” means—

(a) news or information about current affairs,

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

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

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

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

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

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

(4) “Micro-business” means a business which—

(a) has fewer than 10 employees, and

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

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

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

(b) divide that number by 37.5.

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

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

19. There is no suggestion that IMPRESS has been established by relevant publishers. IMPRESS does however maintain that it has been established on behalf of relevant publishers: see the covering letter to the PRP dated 20 January 2016 from the chief executive of IMPRESS. But IMPRESS has provided no evidence of this. There is no material to suggest that any publishers have asked IMPRESS to form a regulator on their behalf, and IMPRESS provides no information about any discussions with any publishers or any material to suggest that IMPRESS is acting on behalf of any section of the newspaper and magazine publishing business. IMPRESS does not even identify in its Application the 13 publishers who have apparently joined it and indeed says in terms in its covering letter that it is still considering compliance issues and no contract between IMPRESS and any publisher is yet in force. Nor does IMPRESS provide any information about the publishing activities of those 13 publishers or copies of the application forms they have presumably completed. It is therefore unclear if IMPRESS actually has or will have any members.
20. The NMA invites the PRP to give careful consideration to the question whether IMPRESS has indeed been established on behalf of relevant publishers and is therefore properly to be regarded as a Regulator whose application may be properly considered pursuant to the Royal Charter.
21. Of the 13 publishers who have so far joined IMPRESS (according to its website and covering letter to the PRP):
 - Five are hyperlocals of which three are online only; one is online and print; and one is online with a monthly magazine.
 - One is a print newspaper with a circulation of about 2,000. It is a one-man operation.
 - One is a local news and information website for the city of Lincoln.
 - One is an online investigative journalism platform which appears to be in the early stages of development.
 - One is an online and print magazine with an anti-capitalist/environmentalist outlook.
 - One is a weekly online regional news provider in the Southport area.

- One is an online newsletter for the third sector.
- One is an online journalism platform.
- One is a quarterly online and print publication that describes itself as a "constructive journalism" magazine that showcases "rigorous journalism about progress and possibility".

These publishers doubtless perform a useful function for their readers and there is also no doubt that there is a growing market for hyper-locals. But on any analysis, they form a tiny and rather specialised part of the news media in the UK. It is, to say the very least, extremely surprising that a body should be making a serious application for recognition as a press regulator with such a limited base of potential members. We suggest that the PRP needs to ask itself whether it can credibly recognise a body that has been unable to generate any greater support than the publishers briefly described above.

22. This is a point of real importance. The Leveson Report and the ensuing Royal Charter envisaged a system of self-regulation, i.e. a system to which the press as a whole (or at least in very large part) subscribed. Pursuant to paragraph 10 of Schedule 2 to the Royal Charter the PRP must inform Parliament, the Scottish Parliament and the public as soon as practicable if, on the first anniversary of the date the Recognition Panel is first in a position to accept applications for recognition and thereafter annually if:

- (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.

(Emphasis added)

We note that the PRP rightly ascribes importance to this requirement when it says in its latest consultation paper¹ that this report is its "report on the success or failure of the recognition system as required under the Charter". Should it recognise IMPRESS, it seems to the NMA that the PRP will be obliged to report that the system of regulation it has recognised does not cover all significant relevant publishers. Rather, it covers no significant relevant publishers, only a handful of small publishers who may not even be relevant publishers as that term is defined by the Royal Charter.

23. It seems to the NMA that the PRP will wish to ask at least the following questions:

¹ Consultation on undertaking cyclical and ad hoc reviews, February 2016, paragraph 90.

- 23.1 Does IMPRESS actually have any current members?
- 23.2 If so, do those members form a sufficient grouping to merit recognition of the body they wish to join as a credible regulator of the press in the UK?
- 23.3 Are the publishers on whose behalf IMPRESS has been established operating in the course of business, whether or not with a view to profit?
- 23.4 Are the publishers microbusinesses?
- 23.5 If so, is either Condition (A) or (B) of paragraph 8 of Schedule 15 met?
- 23.6 Is the material generated by the publishers subject to editorial control?
24. The NMA suggests that before proceeding further with the Application, it should invite IMPRESS and/or its publisher members to provide evidence to satisfy it that they are relevant publishers as defined in the legislation and that IMPRESS has indeed been established on behalf of such publishers. The information that follows is submitted without prejudice to that threshold issue.

IMPRESS's source of funding

25. The Charter criteria explicitly envisage a system of funding that is "settled in agreement between the industry and the Board", in other words a funding system whereby the industry to be (self-) regulated pays for the regulatory structure or at least agrees to the means by which it is to be funded. That is nothing more nor less than the Leveson Report expected: a system that was not industry-funded would have neither credibility nor independence. But this is not the system that is the subject of this Application: this is not a body set up or supported by the industry (the few prospective members are not remotely representative of the industry) and in those circumstances it would be unreasonable and unfair to grant the body recognition.
26. This is what IMPRESS says in its Application:

"Taking into account the commercial pressures on this sector [independent news publishers] and the cost of fulfilling the obligations of the regulator, the Board developed a Business Plan for the period 1 April 2015 – 31 March 2020 ...

The Business Plan sets out an indicative annual budget of approximately £1M in 2016-17, rising to approximately £1.6M by 2019-20. ...

In order to satisfy the Charter requirement (in Criterion 23) ... and the requirement (in Criterion 14) ... and in light of the assumption that IMPRESS will begin life as a regulator for independent news publishers, the Board applied to the Independent Press Regulation Trust (IPRT) for funding to supplement our income from news publishers.

The IPRT, an independent charity registered with the Charity Commission of England & Wales, approved IMPRESS's application for funding with a grant of £950,000 per year over a period of four years. This long-term commitment was enshrined in a Funding Agreement ...

The Funding Agreement sets out how the terms of the donation will give IMPRESS absolute operational independence from the donor, except for minimal reporting and compliance conditions."

27. There is no evidence in the Application or indeed elsewhere that the system by which the operations of IMPRESS are to be funded has even been discussed with the industry, let alone settled in agreement with the industry. There is not even any evidence that the funding system has been discussed with or settled in agreement with the tiny number of publishers that may so far have agreed to become members of IMPRESS. Indeed, in view of the potential financial exposure of those publishers (see paragraphs 94.4 to 94.8 below), it seems likely that these publishers do not appreciate what they are getting into, and it seems to the NMA that the PRP has a responsibility to those publishers to ensure that in their discussions with IMPRESS they have been fully informed as to the nature of IMPRESS and the implications of being a member of such a body: see further paragraph 94 below.
28. The notion that funding for an independent regulator should be settled in agreement with the industry is fundamental to the Royal Charter. In the section of his report headed "Conclusions and Recommendations for Future Regulation of the Press" Sir Brian Leveson said the following:

"Funding

The industry, through Lord Black, has made a principled point that the industry should fund self-regulation without requiring input from the public purse. Certainly, I agree that any industry established independent regulatory body must be funded by its members. ... In my opinion ... it would be perfectly possible for the regulator to set its own fees and collect them directly from its members, taking account of the financial position of the industry. ...

However the fees are set and collected, the Board should establish the budget that it requires in order to carry out its functions effectively, and fees should be levied accordingly. As I have identified earlier, two issues arise in relation to independence of funding. One is the level of funding, and the other is security of funding over a reasonable planning period. Both are important if the regulator is not to be at risk of being effectively held to ransom by funding members.

I recognise that it is not appropriate that the regulator should have a blank cheque any more than that the industry should have a strangle-hold on the regulator's budget. In practice, if the regulator is too expensive, publishers will not join.

I recommend that 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...

I recognise that the start-up costs of such a body may be significant and those putting together such a proposal may need to look for sources of funding to help to cover some of those costs. In this context I do not believe it to be unreasonable for some public funding to be made available to facilitate the establishment of a satisfactory, genuinely independent press regulatory body."²

29. It is clear that the system of independent self-regulation that was recommended by Sir Brian Leveson, and which formed the basis of the Royal Charter, was a system that would be funded by the industry. Moreover, it was a system that would depend on the industry finding a means by which the funding was neither so extravagant as to deter publishers from joining nor so limited that it gave the industry a strangle-hold over the regulator.
30. Although the Leveson Inquiry considered a number of other means of regulating the press, only to reject them in favour of its own model of independent self-regulation, it does not appear that anyone at any time suggested to the Inquiry a system of regulation which would depend for the first five years of its operation on a rich private donor (as turns out to be the case with IMPRESS – see below). Such a system raises two fundamental issues of principle which are dealt with below: independence and credibility.

² Vol IV, pages 1761-1762, paras 41.14 to 4.17

Independence

31. The financial projections on page 9 of IMPRESS's Executive Business Plan show that its operations depend overwhelmingly on money that has been or will be paid to it by the IPRT. This can be illustrated by the following table:

Financial year	Cost of operations	IPRT funding	% of operations funded by IPRT
2015-16	699,984	950,000	100%
2016-17	1,045,695	1,045,695 (assuming balance of 2015-16 is carried over)	100%
2017-18	1,483,891	1,104,321 (assuming remaining balance of 2015-16 is carried over)	74.42%
2018-19	1,520,854	950,000	62.46%
2019-20	1,566,113	950,000	60.66%

(In fact, it seems unlikely that non-IPRT income will be anything like sufficient to make up the balance of the cost of operations in 2017-20: see paragraph 95 to 103 below. Accordingly, the actual percentage of operations funded by IPRT will almost certainly be close to 100% for the next four years (if it continues until then) as IMPRESS is going to be forced to reduce its costs base in the absence of income to pay for it. The PRP should also note that the IPRT funding pursuant to the Funding Agreement runs out in October 2019.)

32. With striking understatement, IMPRESS notes on page 5 of its Executive Business Plan that in its first five years of operation IMPRESS will cost more to run than it expects to generate in regulatory fees. On page 12 of its Plan it says:

"Our expenditure from 2016 onwards is projected to increase in line with an increase in the number of regulated publishers and corresponding volume of complaints. The additional cost of regulating more publishers will be met by the fees to be paid by these publishers.

We have estimated our likely income from regulated publishers by studying the total market available to be regulated; researching average complaints volumes

at a number of comparable press regulators in the United Kingdom and overseas; and making reasonable assumptions about publisher engagement with IMPRESS."

33. The reality is that IMPRESS will not just cost more to run than it expects to generate in fees: its fee income is minuscule and has no current impact on the cost of its operations at all. As explained further below, it has only a handful of prospective members who have virtually no resources and therefore no capacity to pay anything other than nominal contributions to IMPRESS. Indeed, as 12 of IMPRESS's 13 publishers are believed to have turnover of less than £100,000, then according to IMPRESS's annual subscription rate-card, those 12 publishers will pay a combined total of £600 – the same amount IMPRESS spent on postage in its first year of operation and around 10% of what it expects to spend in postage in the next financial year. IMPRESS's total expected subscription income for 2016/17 is believed to be less than £1,000 a year.
34. As for the future, there is no evidence in the Application to suggest any reasonable basis for IMPRESS's belief that there will be any material increase in the number of regulated publishers from 2016 onwards. Indeed, we set out in paragraphs 95 to 103 below a number of matters which suggest that IMPRESS will struggle to recruit any further news publishers, independent or otherwise, in the foreseeable future. It is therefore probable that IPRT will be required to fund IMPRESS not just for the first five years but for however long it remains in operation.
35. There is obvious potential for a funder that is providing on average 79.5% of an organisation's funds over a five year period³ to influence that organisation's activities, either directly or indirectly. This is particularly the case when it is overwhelmingly likely that the funder will be required to provide yet more funds even after that initial five year period has come to an end.
36. The potential for a funder to interfere with a regulator's independence was recognised by Sir Brian Leveson. Under the heading "Independence of funding" in Chapter 3 of Part K of his report, he said this (albeit in a somewhat different context, as explained below):

"It is easy to see how a regulator which is dependent for next year's funding on the goodwill of its regulated bodies might be expected to regulate with a light touch, and to seek to avoid conflict – particularly with those publishers who

³ *a fortiori* if it is providing close to 100%

have most influence with the [funding body]. I noted earlier that the composition and appointment processes of the [funding body] remain entirely opaque, so the public will never even know who wields that influence and, therefore, who the regulator is most likely to want to propitiate."⁴

37. The context in which Sir Brian expressed these remarks was his analysis of the regulatory model then proposed by the PCC and PressBof. However, although he was addressing a situation whereby regulated entities provided funding for the regulator, his concerns about independence would apply also to a situation in which a third party is funding the regulator. Indeed, there is surely an even greater risk of influence in a situation where, as here, one rich individual is providing the regulator's funds as opposed to a situation such as the one under consideration by the Leveson Inquiry in which funding for the proposed regulator was to be provided by a multiplicity of publishers, meaning that no single publisher was likely to be in a position to exercise undue influence unless acting with others.

38. It appears that IMPRESS has anticipated possible objections to its independence arising out of its dependence on a single source of private funding. It appears to believe it has the following answers to these objections:

- The IPRT is an independent charity
- It has made a long-term funding commitment that has been enshrined in a funding agreement which will give IMPRESS "absolute operational independence from [IPRT], except for minimal reporting and compliance conditions"

Dealing with these in turn:

An independent charity?

39. There is little publicly available information about the IPRT and IMPRESS provides none in its Application. Charity Commission records show that the IPRT was registered as a charity on 20 July 2015; that its governing document is a trust deed (not provided by IMPRESS); and that its charitable objects are to promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism and the editing and publication of news in the print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression.

⁴ Vol IV, page 1641, para 6.13

40. Under clause 3 of its trust deed (according to the recitals to the Funding Agreement with IMPRESS which IMPRESS has provided with its Application) the trustees of the IPRT have power to provide financial assistance towards the establishment and support of an independent press regulator.
41. The charitable status of the IPRT has been a matter of controversy. On 7 May 2014 the Charity Commission refused to register IPRT as a charity, having concluded that it had not been established for exclusively charitable purposes. That decision was confirmed on 29 October 2014 following a decision review.
42. The IPRT appealed to the Upper Tribunal against the decision of the Charity Commission. That appeal succeeded and IPRT was duly registered as a charity in July 2015.
43. It is clear that IPRT is not all that it seems. Its trustees have no apparent interest in press standards or any connection with journalism or the press. They are charity professionals. One is a specialist in tax planning; one is a solicitor with expertise in private tax and charities; and the third is an asset manager who represents wealthy individuals. It is obvious that the IPRT must have been set up by others and that whoever set it up wished to create a tax-efficient vehicle for the purpose of providing financial support to a prospective regulator such as IMPRESS. Moreover, IPRT has been established in such a way as to conceal the identity of those who established it.
44. So far as can be ascertained from publicly available sources, the only donor to have provided funds to IPRT is the Alexander Mosley Charitable Trust ("AMCT"). This is a charitable trust set up by Max Mosley and his family in memory of Mr Mosley's son Alexander, who died in 2009. Its charitable purpose is making grants to other charities.
45. According to the latest annual report and accounts of the AMCT dated 5 April 2015 (available on the Charity Commission website):
 - 45.1 The trustees are Max Mosley, his son Patrick, his wife Emma, and Horatio Mortimer.⁵
 - 45.2 The trustees were unremunerated and there are no staff, premises or fundraising costs.
 - 45.3 For the year ending 5 April 2015 the trustees awarded grants totalling £1,756,307.

⁵ Horatio Mortimer is an employee of an organisation called Sovereign Strategy which has provided financial and other support to the campaigning group Hacked Off. Mr Mortimer describes himself as a campaigner for media reform: <https://www.opendemocracy.net/author/horatio-mortimer>. See further <http://www.telegraph.co.uk/news/uknews/phone-hacking/8656563/How-Labours-favourite-lobbyist-is-pushing-hacking-campaign.html>.

- 45.4 The sum of £400,000 was paid (or committed) to the IPRT and the sum of £110,000 was paid (or committed) to The IMPRESS Project.
- 45.5 Other recipients of substantial sums included Make Roads Safe (£500,000), which is a global safety campaign organised under the auspices of the FIA (Formula One Association) Foundation, and the University of Oxford Development Trust (The Clarendon Physics Laboratory) (£495,307).
46. The AMCT's income therefore derives from the Mosley family. Understandably, the recipients of its donations are charitable bodies favoured by the Mosley family.
47. It is to be reasonably inferred that the person who established IPRT, or was at the very least instrumental in establishing it as well as funding its legal battle for charitable status, is Max Mosley, the former President of the Formula One Association who is now best known as a privacy campaigner following his successful legal action over the publication of aspects of his private life, including his sexual activities with a group of prostitutes, by the News of the World in 2008.
48. Although IMPRESS has been reluctant to reveal that Max Mosley has been bankrolling IPRT (and therefore IMPRESS), and indeed never mentions Mr Mosley or AMCT in its Application, the Chair of IMPRESS, Walter Merricks, confirmed in answer to a question from the floor following a lecture he gave at the LSE on 20 January 2016 that IPRT and therefore IMPRESS were indeed wholly reliant on the Mosley family for their funding. Mr Merricks had earlier confirmed that Mr Mosley had been a donor to IMPRESS alongside others without revealing the extent to which he was actually now supporting it in the absence of any other donors.
49. Against that background, it at best disingenuous of IMPRESS, and at worst misleading, to state in its Application that the IPRT is an "independent" charity. The IPRT is in reality far from independent since it is wholly dependent for its existence and future viability on the largesse of the Mosley family's charitable trust. While its trustees are nominally independent, there must be very considerable doubt about their true independence in view of the fact that the only known beneficiary of their philanthropy is IMPRESS. It is simply not credible that three professional trustees with no track record in the area of press ethics should have spontaneously alighted on IMPRESS as (so far as we know) the only deserving recipient of the massive sums of money they are empowered to bestow for the charitable purposes of promoting, among other things, best practice in journalism. Given the number and variety of ventures to which such sums might have been awarded, it is entirely obvious that the decision to favour

IMPRESS must have arisen from an instruction by Max Mosley or at the very least a positive indication from him.

The funding agreement

50. It is said in the Application that the Funding Agreement will give IMPRESS absolute operational independence. This claim also merits closer scrutiny.
51. Pursuant to Clause 3.1 of the Funding Agreement IPRT may terminate or decrease the Grant (defined as two payments of £475,000 in April and October each year for the next four years) on the occurrence of one or more "Notice Events".
52. For the purposes of assessing whether the Funding Agreement does indeed give IMPRESS absolute operational independence, the following Notice Events are relevant:
 - 52.1 If the IPRT shall reasonably consider that the Grant or any part thereof is not in the trustees' opinion reasonably required for the Purpose recited at paragraph (E) of the Funding Agreement (3.2.1)
 - 52.2 If the IPRT shall reasonably consider that the application of the Grant or any part thereof is inconsistent with the Objects of IMPRESS or the recommendations for press regulation within the Leveson Report or the Charter (3.2.2)
 - 52.3 If IMPRESS fails to comply with any of its obligations in connection with the Funding Agreement and in particular its reporting obligations under clause 4 (3.2.3 (i))
 - 52.4 If IMPRESS fails to gain recognition by the Press Recognition Panel as an approved regulator within one year of the date of the Funding Agreement (i.e. by 30 October 2016) (3.2.3 (ii))
 - 52.5 If IMPRESS fails to comply with the requirements of the Companies Act as to keeping records, the audit or independent examination of accounts and transmission to the Registrar of Companies and the Regulator if Community Interest Companies of information required by law (3.2.3 (iii))
 - 52.6 If the PRP, having granted recognition to IMPRESS, withdraws recognition (3.2.3 (iv))
 - 52.7 If steps are taken leading to enforcement of a court judgment obtained against IMPRESS (3.2.3 (v))
 - 52.8 If a director of IMPRESS is disqualified from being a company director (3.2.3 (vi))

- 52.9 If any material amendment to the Articles of Association is made which is deemed by the trustees to be inconsistent with the objects of IPRT, the recommendations for press regulation within the Leveson Report or the Charter (3.2.3 (vii))
- 52.10 If IMPRESS is dissolved (3.2.3 (vii) (*sic*))
- 52.11 If any other circumstances arise where the Trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS (3.2.3 (viii))
53. Each and every one of these Notice Events is conceivable. If, for example, a director of IMPRESS were to be disqualified from acting as a director, or if steps were to be taken by a judgment creditor against IMPRESS⁶, that would be sufficient to enable the trustees to terminate or decrease the Grant without any requirement to show that they are acting reasonably or proportionately. In the event that the trustees were to decide for whatever reason that they no longer wished to continue funding IMPRESS, the trustees would be acting entirely within their powers if they ceased funding IMPRESS altogether on the occurrence of any one of these events. In other words, if they are minded to do so, they could "use" an occasion such as a failure by IMPRESS to comply with its contractual reporting requirements to deprive IMPRESS of all future funding.
54. It will be seen in any event that pursuant to clause 3.2.1 the funding can be withdrawn if the IPRT shall reasonably consider that the Grant or any part thereof is not in the trustees' opinion reasonably required for the purpose of "ensuring its establishment as a truly independent press regulator ...". This affords considerable scope to the trustees to cancel or reduce funding with little or nothing in the way of a remedy available to IMPRESS should it be dissatisfied with an adverse decision by the trustees.
55. Similar wide scope is afforded to the trustees by clauses 3.2.2 and 3.2.3 (vii).
56. But perhaps most significantly, pursuant to clause 3.2.3 (viii), funding can be stopped or reduced if "any other circumstances arise where the trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS". This could mean funds being made unavailable if, for example, The Alexander Mosley Charitable Trust should decide that it no longer wishes to fund the IPRT. This highlights a fundamental gap in the information provided in the Application and may possibly reveal a crucial flaw in

⁶ In the contentious field of press regulation, this is not at all unlikely. The reproduction of the Editors' Code could well give rise to a copyright infringement action against IMPRESS and decisions by IMPRESS will be subject to judicial review.

IMPRESS's supposedly secure four-year funding scheme. This is the absence of any evidence to demonstrate that the AMCT (or any other body or person) has provided to the IPRT a parallel undertaking to provide to the IPRT such funds as will be sufficient to enable IPRT to meet its obligations to IMPRESS.

57. In the absence of any evidence to this effect, the PRP has to assume that there is no guarantee of funding to the IPRT. It follows that if the IPRT has insufficient funds with which to pay the Grant, its trustees would be perfectly entitled under clause 3.2.3 (viii) not to pay it.

58. It is of course hardly surprising that the AMCT has not provided an irrevocable commitment to fund IMPRESS to the tune of £950,000 for each of the next four years since it will naturally wish to know that IMPRESS is doing what it wishes IMPRESS to do before releasing such munificent sums of money. Hence it will be seen that the funding commitment immediately ceases if IMPRESS does not gain recognition from the PRP (clause 3.2.3 (ii)). It is surely obvious that if IMPRESS fails to meet AMCT's (or Max Mosley's) expectations in any way (for example if it fails to attract significant publishers as members or if it imposes fines for privacy breaches that are not as high as Mr Mosley thinks they should be), it will similarly lose its funding. That is perhaps understandable – why would anyone voluntarily fund an organisation that is not meeting their expectations? But it illustrates that the funding mechanism for IMPRESS is neither independent nor secure. And it certainly has nothing to do with the publishers it is seeking to regulate.

59. It seems to the NMA that IMPRESS is nowhere near meeting Criterion 6 and it is therefore unnecessary for the PRP to make further inquiries or requests for documentation from IMPRESS. Should the PRP nonetheless consider it appropriate before determining the matter to seek further information and/or documents from IMPRESS, we invite it to request copies of the following documents as being relevant to compliance with Criterion 6 and to share those documents with the public when they become available, whereupon the NMA would also urge the PRP to allow time for further information to be provided to it by the NMA and others following their consideration of such documentation:

59.1 The IPRT trust deed

59.2 Correspondence between the Board of IMPRESS and relevant publishers concerning the settlement of funding

- 59.3 Correspondence between IMPRESS and the IPRT (including any of its trustees or advisers) concerning the funding of IMPRESS
- 59.4 Correspondence between IMPRESS and AMCT and/or Max Mosley concerning the funding of IPRT and/or IMPRESS
- 59.5 The application by IMPRESS to the IPRT for funding (referred to on page 19 of the Application)

The position of the PRP

- 60. From 3 November 2017 the PRP will be permitted to charge fees for cyclical reviews of approved regulators. Paragraph 11.3 of the Royal Charter provides that the aim of the scheme for charging fees to regulators "shall be for the [PRP] to recover its full costs ... for conducting cyclical reviews."
- 61. It follows that if IMPRESS is recognised, the PRP will be expected to look to IMPRESS for the cost of its first review which will be due two years after recognition. That will mean some time in 2018. IMPRESS has projected that it may be charged £220,000 a year by the PRP from 2017 (the maximum permitted sum): see page 9 of its Executive Business Plan.
- 62. As explained above, IMPRESS will be financially dependent on Max Mosley for the foreseeable future. It follows that in the absence of any other approved regulator (of which there is no realistic prospect), the PRP (if it recognises IMPRESS) will also be financially dependent on Mr Mosley. If Mr Mosley should decide no longer to fund IMPRESS, the PRP will have no other source of funds from which to derive its fees.⁷ So Mr Mosley's funding of IMPRESS affects not only the independence of that body, it would also affect the independence of the PRP. Just as Mr Mosley has the power to close down IMPRESS, so he would have the power to close down the PRP. In other words, the PRP cannot credibly claim it is independent if it recognises a body that relies for its funding on Mr Mosley.⁸

IMPRESS's standards code

- 63. The Charter criteria provide that the standards code (a) "must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee ..." and (b)

⁷ Although the PRP may under paragraph 11.7 of the Royal Charter request money from the Exchequer, the circumstances in which it may do so would not extend to this situation. There are only three circumstances in which such a request may be made and this is not one of them.

⁸ For the avoidance of doubt, this is not to imply that it could otherwise make credible claims to independence.

"must take into account the importance of freedom of speech, the interests of the public ..., the need for journalists to protect confidential sources of information, and the rights of individuals ...".

64. It is clear from the Application that IMPRESS does not have its own standards code. It has instead "adopted" the Editors' Code: see page 22 of the Application. It is wholly unclear to the NMA how IMPRESS can "adopt" the Editors' Code; or how its Board can thereby be said to have "responsibility" for the Editors' Code.
65. The NMA refers the PRP to the website of the Editors' Code of Practice Committee: <http://www.editorscode.org.uk/index.php> from which the PRP will note the following:
 - 65.1 The Editors' Code is the foundation stone of the current system of press self-regulation.
 - 65.2 It sets out the rules that those publishers voluntarily subscribing to that self-regulatory system.
 - 65.3 It is by those rules that publishers can be held to account by the Independent Press Standards Organisation (IPSO). The Editors' Code is a key element of the contractual agreements between IPSO and newspaper, magazine and electronic news publishers.
 - 65.4 The terms of the Editors' Code are under regular review by the Editors' Code of Practice Committee.
 - 65.5 That committee consists of experienced editors, lay persons and the chairman and chief executive of IPSO. Its members do not include any representatives of IMPRESS.
 - 65.6 There exists an Editors' Codebook which sets the Editors' Code in context. It brings together the Code and case law developed through years of adjudications by the Press Complaints Commission and will in due course reflect decisions made and policy guidance issued by IPSO.
 - 65.7 The website also contains guidance notes on issues such as the Data Protection Act, people accused crime, cases involving paedophiles, and financial journalism.
66. There is therefore a structure and body of precedent around the Editors' Code. Responsibility for the terms of the Code lies with the Editors' Code Committee, not IMPRESS. Responsibility for enforcement of the Code lies with IPSO through contractual arrangements with subscribing publishers. It does not lie with IMPRESS. Responsibility for application of the Code lies in the first instance with editors, and is

based on Code adjudications by IPSO alongside guidance issued by it. It does not lie with IMPRESS. In any event, there is no mechanism whereby IMPRESS can review or amend the Code. And how can IMPRESS plausibly enforce a code when it has already declared that it does not agree with it, e.g. in relation to complaints by representative groups? This alone demonstrates its unsuitability for recognition as a credible regulator.

67. The fact that IMPRESS does not have a licence to reproduce the Code means that it cannot even circulate the Code to its members or licence them in turn to promulgate the Code on their websites. This inability to use the standards code in the ordinary way that a regulator would expect to use the very code it expects its members to observe is a serious, if not fatal, inhibition on IMPRESS's effectiveness as a regulator.
68. It is understandable that the Royal Charter expects a regulator to take responsibility for a code of standards. How could press regulation properly take place if the regulator has failed to promulgate the standards it expects its members to observe? Yet IMPRESS has flunked this basic requirement by purporting to adopt a code of practice for which it cannot take responsibility because responsibility for the code already lies elsewhere. Indeed, so far is IMPRESS from taking responsibility for the Editors' Code that it is unable even to reproduce the Code in its Application because it has refused to agree the terms of a licence to use the Code with the owner of copyright in the Code.⁹ All it can do is to refer to the Code by means of a hyperlink. It is wholly impractical for a regulator to adopt a code of standards when it does not even have a legal entitlement to use the text of the code. How could it even consider a complaint? Correspondence concerning a complaint could not take place on any meaningful basis unless it contained the precise words of the relevant parts of the Code. By the same token, an adjudication would make sense only if the relevant passages of the Code are reproduced so the persons affected and the general public can properly understand the nature of the adjudication.
69. It is also impossible to see how IMPRESS can credibly fulfil the requirement in Royal Charter Criterion 8C for it to provide non-binding guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the standards

⁹ IMPRESS's chair suggested in a speech at the LSE on 20 January 2016 that the copyright owner was acting unreasonably in asking IMPRESS to agree to a licence. There is in fact nothing unreasonable about this. The owner of copyright in the Editors' Code wishes to ensure that the Code is not bowdlerised and its ownership of copyright provides it with an entirely legitimate means of doing so, which has been exercised in relation to permissions for reproduction by others such as textbook authors and publishers. Publishers have been content to agree the terms of a licence to reproduce the Code in order to preserve its integrity and consistency and in similar terms the copyright owner was asking IMPRESS for nothing more than they have previously asked others to agree.

code. How can a completely new entrant to the regulatory sphere plausibly offer guidance on a code over which it has no authority or responsibility and which has long been the subject of adjudication by the PCC and is now the subject of adjudication by IPSO?

70. IMPRESS seeks to justify its extraordinary decision to "borrow" the Editors' Code in two ways:

70.1 It suggests that its decision has in some sense been endorsed by Sir Brian Leveson and the Royal Charter.

70.2 It says it will be conducting a public consultation on a future standards code "in the course of 2016", implying that its adoption of the Editors' Code is a temporary measure only.

Dealing with these in turn:

Endorsement by Leveson/Royal Charter

71. IMPRESS says at page 22 of its Application that Sir Brian Leveson "accepted that it was not his role to recommend specific changes to a regulator's standards code". That is true as far as it goes, but it is worth looking at the full text of the relevant part of the Leveson Report. In Chapter 7 of Part K ("Regulatory Models for the Future"), the report says this:

"The new regulatory regime must have a standards code. The current Editors' Code has been widely praised by those in the industry. It has been developed by the industry over the last two decades and has adapted to take account of new concerns and issues that have arisen. I have made no attempt during the course of this Inquiry to conduct a full scale evaluation of the Code of Practice. My role is to make recommendations for an effective and independent structure for setting and enforcing standards, not to set those standards. That is properly a role for the independent regulatory body, in consultation with the industry and with the wider public. Where comments on, or criticisms of, the Code have been made in evidence I have reflected them in this report, but that should not be read as an analysis of the Code."¹⁰ (emphasis added)

¹⁰ Vol IV, page 1762, para 4.18

72. In paragraph 4.19¹¹ Sir Brian goes on to make some general points about what the code should contain and at paragraphs 4.21 to 4.24 he says this:

"In order for the new regulatory regime to have the independence required to secure public trust and confidence, it is essential that it should be the regulator who approves a code of standards to which members must adhere. The Board could well be advised by a Code Committee including serving editors and journalists, but with independent members as well: indeed, I can see no reason why the Code Committee in the amended form as proposed by Lord Black should not be constituted as a formal advisory body to the Board.

I recommend that 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.

As a further step to secure public confidence, it appears to me that it would be valuable if the Board was to satisfy itself that the proposed Code had been subjected to public consultation, albeit on the basis that the Code Committee would then analyse the result of any consultation and provide the Board with the benefit of its experience on issues that might have arisen. Thus the Code would command the confidence of both the public and the industry.

As I have said above, I have no particular desire to comment on the actual content of the Code. It is both important and appropriate, however, that I make some recommendations about the scope and coverage of the Code. The Code will be the document that articulates the nature of the boundaries between journalism, its subjects and its readers. As such it is essential that it fully reflects the interests of all three.

I therefore recommend that the Code must take into account the importance of freedom of speech, the interests of the public (including the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled) and the rights of individuals. Specifically, it must cover standards providing for:

(a) conduct, especially in relation to the treatment of other people in the process of obtaining material;

¹¹ Page 1762

(b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and

(c) accuracy, and the need to avoid misrepresentation.

If an editor can create his own definition of the public interest without any constraint then the standards will be meaningless. The regulator, alongside the Code, must provide guidance on the interpretation of the public interest that justifies what otherwise would constitute a breach of the Code and must do so in the context of the different provisions of the Code so that the greater the public interest, the easier it will be to justify what might otherwise be considered as contrary to standards of propriety. That guidance should be available for editors and journalists to use when making day-to-day decisions, and should also be the basis of decisions taken on complaints about breach of the Code." (emphasis added)¹²

73. It is clear from the above that Sir Brian envisaged that an approved code of standards was an essential component of his proposed regulatory scheme. Further, he made some specific suggestions about what the code should contain, and he recommended that the Board should consult publicly about the Code. Finally, he said that a regulator "must" provide guidance on the interpretation of the public interest that justifies what would otherwise be a breach of the code.
74. The words in bold in the second paragraph of the last-quoted passage above found their way into Criterion 7 of the Royal Charter. They ought therefore to be read not just on their own (though they make perfect sense anyway) but in the context of the relevant part of the Leveson Report read as a whole.
75. Whether the words are read alone or in that context, it is clear that Criteria 7 and 8 are not met by the "adoption" of a code over which IMPRESS has, and can have, no responsibility because that responsibility lies with others. It is extraordinary and unacceptable that IMPRESS should be seeking approval as a regulator without having produced its own code of standards. That is surely the baseline requirement for any press regulator without which IMPRESS cannot reasonably be considered an appropriate body to regulate anyone.
76. Finally, it is worth recording that at the time the Royal Charter was drafted, it was not known that within a year or so IPSO would be up and running without any application for approval having been made. The Charter envisaged that a prompt application for

¹² Pages 1763 to 1764

approval would be made by a regulator and it was no doubt with that situation in mind that the recitals to the Charter provided for the initial use of the Editors' Code of Practice. The precise words of the recital are as follows:

"AND WHEREAS the independent regulatory body which is intended to be the successor to the Press Complaints Commission should put forward the Editors' Code of Practice as its initial code of standards."

77. The purpose of those words was surely to encourage any regulatory body seeking to occupy the space vacated by the PCC to get on with it and not to delay its application by spending time devising a new code. But IMPRESS did not get on with it. It has waited for over two years since the Royal Charter came into effect to make its application. That is ample time within which to have come up with its own standards code, even allowing for public consultation. In any event, the PCC's space has been filled by a regulator that is proving to be trusted and effective and the Charter provision now relied on by IMPRESS plainly did not envisage a situation in which a successor body to the PCC applying the Editors' Code was already successfully established as an incumbent regulator. In those circumstances, it is nonsense for a new regulator to be seeking to enter the field by seeking to adopt the very same code as the active incumbent.

Public consultation on a future code

78. The absence of a code cannot be excused by a vague declaration by a prospective regulator that it plans to conduct a public consultation at some unspecified point in the future.
79. IMPRESS does not specify (a) when the consultation will commence, (b) when it will finish, (c) what questions will be asked, (d) how the public will be consulted, (e) what section(s) of the public will be consulted, or (f) how the results of the consultation will be used to devise a new code. Nor does it say how much it envisages spending on the consultation. It is interesting that the Executive Business Plan contains no financial provision for a public consultation. The absence of any financial provision suggests that this is either an afterthought or that IMPRESS is not actually intending to undertake a proper consultation at all.

The relationship between IMPRESS and its members

80. As has been noted above, IMPRESS has provided next to no information about the publishers who have so far indicated an interest in joining its scheme. In its covering

letter of 20 January 2016 it says the first publishers to join IMPRESS "include" the 11 publishers it names. In fact, save for two or possibly three other publishers, that is the entirety of IMPRESS's current (or proposed) membership.

81. The 13 prospective members of IMPRESS are largely hyperlocal online publishers and recent start-ups with fewer than five members of staff. They variously describe themselves as "a work in progress" (The Ferret), "staffed by volunteers" (Port Talbot Magnet), "a platform rather than a newspaper, we don't edit the journalist" (Byline), "looking for something to do in my journalistic spare time" (A Little Bit of Stone), and hoping "to become sustainable within three years" (Positive News). Byline describes its "most natural niche" as "Murdoch-bashing" and features articles by a select group of journalists including Brian Cathcart and Peter Jukes, who are well known for their campaigning against the popular press (Brian Cathcart is the co-founder and former director of Hacked Off). None of IMPRESS's proposed member publications appear to have audited circulation or audience figures and there is limited information about them at Companies House. Most would appear to fall within the description of 'micro-businesses' (fewer than 10 employees) and a number of them could be described as 'multi-author blogs'.
82. The publishers who have joined (or may join) IMPRESS are (through no fault of their own) unrepresentative of the news media in the UK: see further paragraph 21 above. This raises the question of how effective a regulator IMPRESS could be when its membership is so limited. The PRP is reminded that in making its decision on whether IMPRESS meets the Royal Charter criteria, it is obliged to consider, among other matters, the concepts of effectiveness and credibility as articulated in the Leveson Report, Chapter 7, Section 4 ("Voluntary independent self-regulation"): see paragraph 1 of Schedule 2 to the Royal Charter.
83. The Leveson Report equated effectiveness with the inclusion of major publishers. In a section headed 'A new system must include everyone', it said this:

"A new system must be effective, and one of the key criteria of effectiveness is that it should include all major publishers of news (if not all publishers of newspapers and magazines). This has been an almost universal view from the witnesses who have given evidence to the Inquiry in relation to future regulation; they have been clear that any new system should cover all news publishers, and that compliance with it should not be a matter of choice. There has been a striking level of agreement between commentators, the industry and politicians as to the desirability of all newspapers being covered by a regulatory

regime, although not everyone has explained how they would deliver such comprehensive coverage."¹³

84. Sir Brian Leveson concluded:

"I therefore recommend that a new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers. The challenge, then, is to find a way of achieving that result."¹⁴

85. Later, under the heading 'Membership', the Leveson Report said this about the credibility of a new regulatory system:

"Ideally the body would attract membership from all news and periodical publishers, including news publishers online. It is important for the credibility of the system, as well as for the promotion of high standards of journalism and the protection of individual rights, that the body should have the widest possible membership among news providers. Clearly this will be unlikely to include broadcasters who are already covered by the Broadcasting Code. It has been accepted that, although I am very anxious that it remain voluntary, it must involve all the major players in the industry, that is to say, all national newspaper publishers and their online activities, and as many regional and local newspaper publishers, and magazine publishers, as possible. This is not meant to be prescriptive at the very small end of the market: I would not necessarily expect very small publishers to join the body, though it should be open to them to do so on appropriate terms. Having said that, however, I have no doubt that there would be advantages in doing so. Ideally it would also include those who provide news and comment online to UK audiences.

I recognise that most blogs have very different processes, audiences and business models to most newspapers, and that consequently it may be difficult to establish one set of requirements, for example in respect of internal governance, annual reporting or membership fees, that is appropriate for all different types of publisher. It is important, however, that all types of publishers should be able to join such a body, and to do so on terms that are not manifestly inappropriate for their business model."¹⁵ (Emphasis added)

¹³ Vol IV, page 1751, para 3.1

¹⁴ Vol IV, page 1754, para 3.14

¹⁵ Vol IV, page 1761, para 4.11 and 4.12

86. It is clear that Sir Brian was here concerned to ensure that any new regulator should be accessible to small publishers as well as large publishers. But there can be no doubt that he was also articulating his strong opinion that a self-regulatory system would not be credible unless it attracted major publishers and the widest possible cross section of news media. It would seem to be implicit from what Sir Brian said that even if small publishers, let alone blogs, did not join the regulator, that would not have a material effect on the credibility of the system. It follows that a system of regulation such as that of IMPRESS that only covered small publishers would, in Sir Brian's eyes, have very little credibility indeed.

87. Finally, under the heading 'Giving effect to the incentives', Sir Brian made this observation:

"I will say again, because it cannot be said too often, that the ideal outcome from my perspective is a satisfactory self organised but independent regulatory body, established by the industry, that is able to secure the voluntary support and membership of the entire industry and thus able to command the support of the public. In order to achieve that, it is necessary both to have a satisfactory independent regulatory body established by the industry, and that it should secure support from the entire industry."¹⁶ (Emphasis added)

88. Royal Charter Criterion 9 requires the Board of the regulator to "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". The PRP matrix for applicants sets out a number of indicators of compliance and provides examples of evidence that might demonstrate compliance. Those examples include "Contract/terms and conditions/Articles of Association and associated practices and procedures".

89. Royal Charter Criterion 10 requires the Board of the regulator to "require all those who subscribe to have an adequate and speedy complaint handling mechanism". The PRP matrix sets out a number of indicators of compliance and provides examples of evidence that might demonstrate compliance. Those examples include "Written agreements between the regulator and subscribers regarding the handling and escalation of complaints".

¹⁶ Vol IV, page 1771, para 6.1

90. In its Application IMPRESS refers to its Regulatory Scheme and the Regulatory Scheme Agreement between itself and its subscribers. It does not, however, provide any evidence at all of any actual compliance by their members with the necessary internal governance processes or complaints handling mechanisms. Although the IMPRESS publisher application form seeks information about prospective members' complaints handling mechanisms, no completed forms have been produced or any other evidence that IMPRESS has taken steps to satisfy itself that its members have adequate complaints handling mechanisms. Indeed, examination of the website of at least some of those members, e.g. Your Harlow, suggests there is no such mechanism. (Your Harlow – and by implication IMPRESS – takes so little interest in regulation that its website refers to the "Press Complaints Commission's Code of Practice" and directs readers to a link to a website that no longer exists.)
91. The IMPRESS application form does not ask any questions about internal governance processes and it is unclear what process, if any, IMPRESS has so far followed to satisfy itself that its current members have satisfactory internal governance processes etc. such as to satisfy IMPRESS's obligations pursuant to Criterion 9.
92. It is also unclear by precisely what means IMPRESS seeks to ensure that its current or future members are contractually bound to comply with its regulatory scheme. Although the application form contains a declaration that the publisher agrees to abide by the terms of the Regulatory Scheme, this is said to be 'subject to contract' and the Regulatory Scheme Agreement appears to contain no provision whereby the publisher actually agrees to abide by the terms of the Scheme. The only positive obligation to which the publisher is required expressly to agree is the obligation to pay the subscription fee.
93. The Regulatory Scheme Agreement is intended to last for five years, but the publisher may terminate the agreement by giving no less than six months' notice ending on 31 March in any year. That raises the question of how effective IMPRESS will be in directing appropriate remedial action for breach of standards: see Royal Charter Criterion 15. The indicator for that criterion is that "The mechanisms for achieving appropriate remedial action are designed to be credible and effective (including sufficiently fast) and operate in that way". Examples of evidence that might demonstrate compliance include:
- Information on the power to direct the press, including as seen in instances when it has and has not been applied

- Instances of remedies directed and evidence of actions taken by the subscriber
- Information on the operation of remedies, including information about the instances of its use and non-use

IMPRESS has provided no such evidence, perhaps unsurprisingly given its total lack of experience in regulating the press. Having regard to that lack of experience and the fact that IMPRESS's ability to direct remedial action depends entirely on the credibility of its documentation and the powers that documentation contains, the PRP must apply especially close scrutiny to assurances by IMPRESS that it actually does have the power to effectively direct appropriate remedial action. What would prevent a member who does not like the remedial action proposed, e.g. publication of a correction or an apology, from giving notice of termination and ignoring the direction? (A publisher may very well object to an order to publish an apology for publishing something it believes was true.) Indeed, what consequences, if any, ensue if a member ignores such a direction? The paperwork does not seem to answer that question. This is, moreover, a question that is by no means academic. It is entirely foreseeable that a publisher, particularly a small publisher of the kind IMPRESS has so far attracted, will be resistant to a direction that it should pay its own and/or a successful complainant's fees in an IMPRESS-ordered arbitration.

94. Because IMPRESS has provided no information about its proposed members in its Application, or any discussions between IMPRESS and those publishers, it is impossible to know the extent to which those prospective members actually understand the implications of joining IMPRESS. Among other things, the Application is silent on the following matters:
- 94.1 How has IMPRESS promulgated the Editors' Code and the requirement to uphold and adhere to the Code and use it in their assessment of complaints? (Paragraph 1 of the Regulatory Scheme)
- 94.2 Do those proposed members appreciate that they are required to have certain internal governance process and have such processes been implemented? (Paragraph 2)
- 94.3 Do they appreciate that they are required to maintain adequate and speedy in-house complaints procedures and have they instituted such procedures? (Paragraph 3)
- 94.4 Do they appreciate that they may be fined up to 1% of their turnover for a breach of the Code?
- 94.5 Do they appreciate and agree to the costs implications of the arbitration scheme?

- 94.6 Have they been supplied with a copy of the Tariff Schedule referred to in paragraph 3.1 of the Regulatory Scheme Agreement?
- 94.7 Have they been made specifically aware that they are liable pursuant to paragraph 3.1 of the Regulatory Scheme Agreement to pay whatever sum IMPRESS may specify in the Tariff Schedule?
- 94.8 Has it been explained to them that if IMPRESS's funding is withdrawn by Max Mosley, the sums in the Tariff Schedule will have to be increased and that the increase will have to be very significant if IMPRESS is to survive?

The viability of IMPRESS as a press regulator

95. We have referred above to IMPRESS's business plan. As IMPRESS would be forced to admit had it decided not to sweep the point under the carpet, it owes its existence to financial donations by Max Mosley and not to any support from the industry it wishes to regulate (save a handful of very small, mainly local, online publishers). Should Mr Mosley choose to extend his generosity further, IMPRESS may survive for a year or two (assuming, contrary to this submission, that it is recognised by the PRP). However, for the reasons that follow, even if IMPRESS is recognised by the PRP, the NMA believes IMPRESS will not survive for long. Should the PRP choose to recognise IMPRESS (despite the numerous other reasons why it should not do so), it will be recognising a lame duck.
96. The principal reason why IMPRESS will not survive is because the press already has a regulator. IPSO has been up and running since September 2014. Unlike IMPRESS, IPSO was established with the support of the newspaper and magazine industry. IPSO currently regulates more than 2,600 newspaper and magazine titles (1500+ in print and 1100+ online). These titles represent over 90% of the UK's national, regional and local press and over 80% of the top UK magazine publishers.
97. There is no evidence that any of the newspaper and magazine publishers who currently subscribe to IPSO wish to join IMPRESS now or in the future. Indeed, there is evidence that certain major publishers will never join IMPRESS: see, for example the submissions to the PRP from Associated Newspapers Limited.

98. Even if there were evidence (which there is not) that any current IPSO member might wish to join IMPRESS in the future, they could not do so until 2019 at the earliest because they are currently regulated under a binding five-year contract with IPSO.¹⁷
99. There is a further reason why IPSO-regulated publishers are extremely unlikely to join IMPRESS in 2019. This is because IMPRESS is so expensive. The NMA's analysis of the IMPRESS rate card and Regulatory Funding Company figures shows that the largest five publisher members of IPSO (who include regional as well as national publishers) pay a combined total of £780,000, which is less than any of them would have to pay individually if they joined IMPRESS (£800,000). For the highest-paying IPSO publishers, IMPRESS would be over £500,000 more expensive each year (nearly three times as expensive as IPSO.) The average that the top 10 IPSO publishers pay is £108,000. IMPRESS charges almost eight times this sum. There is therefore something seriously wrong with IMPRESS's financial model.
100. The flawed nature of IMPRESS's financial model can be demonstrated by an analysis of its figures if IMPRESS were (improbably) to attract just two of the large nationals and two of the large regional groups into membership. Applying the rate card in IMPRESS's Application (see Criterion 23 of the application matrix), IMPRESS would have income of £3.4 million. That is over half a million pounds more than it currently costs to run IPSO for 85 members with over 2,600 titles. Pursuing the comparison further, if IMPRESS had the membership that IPSO currently has, it would have an income of well over £10m, which is four times the total running cost of IPSO. These figures show that the fees IMPRESS intends to charge bear no proper relationship to the cost of its operations. One is driven to the conclusion that IMPRESS simply does not understand the nature of the undertaking it is seeking to embark on - further demonstration, if this were needed, of the total lack of experience of press regulation among those who are running IMPRESS. The scale of fees IMPRESS proposes to charge also raises serious concerns about its compliance with Criterion 23 of the Royal Charter which requires membership of the regulator to be open to all publishers on fair, reasonable and non-discriminatory terms. The PRP is also reminded of the words of Sir Brian Leveson cited in paragraph 28 above:

"I recognise that it is not appropriate that the regulator should have a blank cheque any more than that the industry should have a strangle-hold on the

¹⁷ While there is provision for IPSO members to terminate their contracts, there are sanctions for doing so. One of the purposes of those sanctions is to ensure that IPSO members cannot easily choose no longer to be regulated because they happen to be unhappy with a particular adjudication or decision affecting them. This can be contrasted with IMPRESS's Regulatory Scheme, which permits members to cease to be regulated by giving six months' notice.

regulator's budget. In practice, if the regulator is too expensive, publishers will not join."

101. IMPRESS's business plan recognises that for the first five years of its operation, it will cost more to run than it expects to generate in regulatory fees. Its funding agreement with the IPRT lasts only until 2019 (though as we have pointed above, it could actually last for no more than another six months). If IMPRESS should survive until 2019, then unless it can secure more funding from Mr Mosley (who will by then be 79 years old), it will have to depend for its funding on income from regulated publishers. As its projected expenditure for 2019-20 is £1.56M, it will have to generate fees of that amount from its members.
102. IMPRESS nowhere explains how it can ever seriously hope to generate such income from publishers. In its two years of operation so far, it has attracted only 13 small publishers contributing, we believe, a total sum of less than £1,000. Although IMPRESS states in its business plan that it has estimated its likely income from regulated publishers by "studying the total market available to be regulated; researching average complaints volumes at a number of comparable press regulators in the United Kingdom and overseas; and making reasonable assumptions about publisher engagement with IMPRESS", it has not shared the results of that study or research or explained the basis of its assumptions about publisher engagement. The PRP needs to do some serious reality checks here. For the reasons we have just given, the overwhelming likelihood is that when publishers' contracts with IPSO come to an end in 2019, the vast majority of those publishers will sign up for a further five-year term with IPSO, eschewing any involvement whatever with IMPRESS. To the extent that IMPRESS might succeed in attracting any further publishers, they are likely to be small operations like the Port Talbot Magnet who will pay minimal fees.
103. It follows from the above that there is no reasonable basis for believing that IMPRESS is or will ever be a viable, effective or credible regulator of any significant part of the newspaper and magazine industry. It is not even clear that it will be able to fulfil its obligation to pay an annual cyclical review fee to the PRP. Those ought to be fundamental objections to its recognition by the PRP: see paragraph 1 of Schedule 2 to the Royal Charter.

Constitution of the appointment panel and Board

104. Criterion 3 provides, among other things, that the appointment panel should include at least one person with a current understanding of the press. In the case of the IMPRESS appointment panel, it is unclear who that person is. There are seven

members of whom five appear to have no current understanding of the press beyond what any person chosen at random might have. Two of the seven might be thought to have some greater understanding: Damian Tambini and Aidan White. Mr Tambini is a career academic whose research interests include "media and telecommunications policy and democratic communication"¹⁸ and Mr White once worked as a journalist but has not done so for some 30 years. To regard a media academic and a former journalist as people with a "current understanding" of the press is to take a very narrow view of that criterion. It seems plain from the words themselves and also from the requirement in Criterion 3 that the appointment panel should contain "no more than one current editor of a publication that could be a member of the body", that it was envisaged that the panel should include a serving editor or someone with equivalent current understanding of the press and that such a person should be someone working in the industry or at the very least someone with recent experience of such work. There is no such person on the panel and it is therefore highly questionable if the panel has been properly constituted in accordance with this criterion.

105. Criterion 4 provides, among other things, that the composition of the Board should include people with relevant expertise. As the Board is regulating the press, that plainly means people with expertise in the operation of the press. It is implicit, but important, that the Board should comprise a broad cross-section of people. Criterion 5 requires that the Board should 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". Criterion 5 (f) requires members of the Board to act fairly and impartially in the decision-making of the Board.
106. In fact, the Board is composed of a narrow group of people with no obvious expertise in the operation of the press. Walter Merricks and David Robinson have no relevant experience of the press; Deborah Arnott and Maire Messenger Davies have no recent experience of working in the press or any high-level experience at all; and Iain Christie and Patrick Swaffer are lawyers.
107. That leaves Martin Hickman and Emma Jones. Martin Hickman is the former Deputy News Editor of the Independent and Westminster correspondent for the Press Association. Emma Jones is a former columnist at the Sun and a news and features writer at the Sunday Mirror. She worked her way up to become Deputy Editor of the 'Bizarre' showbiz column at the Sun.

¹⁸ <http://www.lse.ac.uk/media%40lse/whosWho/AcademicStaff/DamianTambini.aspx>

108. Mr Hickman will be widely (and correctly) perceived as lacking impartiality. He has co-written a book with the deputy leader of the Labour Party which is a forceful attack on News International, one of the UK's largest publishers. The deputy leader, moreover, is one of the most prominent critics of the press in Parliament. As it happens, Ms Jones is a former employee of News International who was sacked by that company some years ago. Ms Jones has made her anti-press views known on the IMPRESS website itself. In a blog on 25 February 2016 she described the national newspaper business as a "failing industry that doesn't listen".¹⁹
109. It appears that the Board is not even representative of the small number of publishers who have expressed an interest in joining IMPRESS. There is, for example, no-one with experience of hyper-locals on the Board.

IMPRESS as a regulator

110. We have explained already why for reasons of, among other things, lack of independence and non-viability, IMPRESS is not qualified to be a press regulator. In this section we examine whether it fulfils certain regulatory functions required by the Royal Charter criteria.
111. Criterion 8A requires the self-regulatory body to provide advice to the public in relation to issues concerning the press. In its Application IMPRESS says it will not do this. Its published guidance on the Editors' Code is no substitute. In any event, it is extremely questionable whether IMPRESS has any business or authority providing "guidance" on a code for which it has no responsibility and in respect of which guidance is already available elsewhere: see further paragraph 69 above.
112. Criterion 8A also requires the self-regulatory body to provide a warning service for the press and other parties when an individual has made it clear they do not welcome press intrusion. But this service will extend only to warning its own members (of whom there is at most a handful of very small publishers) or those who have asked for warnings to be sent to them (of which there are none at all).
113. Criterion 11 requires the Board to have the power to hear and decide on complaints about breach of the standards code by those who subscribe. A number of further requirements are prescribed in Criterion 11. IMPRESS's complaints procedures are contained in section 4 of its Regulatory Scheme. The NMA draws attention to the following issues:

¹⁹ <http://impress.press/news/facing-up-to-the-country-and-western-music.html>

- 113.1 It is often impossible for a publisher to provide a substantive response within 21 days.
- 113.2 Similarly, it cannot be right to accept a complaint simply because the complainant is dissatisfied with the publisher's response. Some complainants pursue frivolous complaints and will never be satisfied with the response. That ought not to mean the complaint should always be accepted.
- 113.3 There is a tension between 4.1 and 4.3 and between 4.1 and 4.7 and it is not at all clear what the criteria for acceptance are.
- 113.4 IMPRESS does not appear to have a policy for dealing with the following issues:
- Complainants who wish to be anonymous
 - Multiple complainants/complaints
 - Confidential information provided in the course of complaints
 - Protection of journalistic sources
- 113.5 There does not appear to be any provision for adjudications to be reviewed.
- 113.6 IMPRESS has said it will hear complaints from "a representative group affected by the alleged breach" and from any third party seeking to ensure accuracy of published information. This potentially invites complaints from all manner of groups irrespective of the feelings of any individuals and regardless of the status of the third party.
114. Criterion 17 says the Board should be able to offer a service of advice to editors of subscribing publications relating to code compliance. In its Application IMPRESS says it will not do this. Its published guidance on the Editors' Code is no substitute. In any event, it is extremely questionable whether IMPRESS has any business or authority providing "guidance" on a code for which it has no responsibility and in respect of which guidance is already available elsewhere: see further paragraphs 63 to 79 above. There is a clear risk that IMPRESS's published guidance will conflict with the guidance by the authors of the Editors' Code and the adjudications of the regulator of the publishers who subscribe to that Code.
115. Criterion 18 requires the Board, "being an independent self-regulatory body", to have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious and systemic breaches of the Code and failures to comply with directions of the Board. The investigations process must be "simple and credible". IMPRESS has given itself much wider powers to investigate

which are not restricted to suspected serious and systemic breaches of the code and failures to comply with directions of the Board. Such powers are unwarranted and would involve publishers in unnecessary expense.

116. There is a further problem with investigations by IMPRESS. This is that they will not be perceived as independent for as long as Max Mosley is funding them. As is evident from his public pronouncements, Mr Mosley has strong views on press conduct.

The proposed arbitration scheme

Compliance with article 6

117. If a regulator is to achieve recognition by the PRP, its arbitration process must be fair and reasonable and must comply with article 6 of the European Convention of Human Rights. This is important for the following reasons:

117.1 An award made following an arbitration process that is not compliant with article 6 will not be enforceable by the court as the claim will not have been validly determined.

117.2 If the arbitration process is not fair and reasonable, the respondent publisher is unlikely to obtain the costs protection envisaged by the Crime and Courts Act 2013 (subject to s 40 coming into force) because the claimant will not be acting unreasonably by declining to use the arbitration process.

118. For the reasons that follow, the arbitration process devised by IMPRESS is not fair or reasonable and raises serious questions as to compliance with article 6.

119. Pursuant to clause 8 of the Regulatory Scheme, arbitration will be foisted on a publisher if the following criteria are fulfilled:

- The complainant requests it
- The complainant "appears to have suffered real harm" (this seems to depend on a subjective assessment by IMPRESS)
- IMPRESS "considers that arbitration will provide appropriate access to justice for the determination of the claim in the light of all the circumstances of the case" (this also seems to depend on a subjective assessment by IMPRESS)

Once those criteria are fulfilled, the publisher is obliged to co-operate in the arbitration.

120. Article 6 requires everyone to have access to a court or other dispute resolution tribunal that is independent and impartial, whether their claim has merit or not.
121. By making an assessment (indeed a subjective assessment) of whether an individual has suffered real harm, IMPRESS is judging a claim on its merits and thereby making a determination of the claim. Where the claim is rejected, that is a final determination. However, the determination will not be enforceable as it is not an arbitration award enforceable under the Arbitration Act or a determination of the claimant's civil rights which is compliant with the article 6 requirement of an independent and impartial tribunal.
122. Following a procedure of this kind, a claimant whose claim has been rejected for arbitration could simply bring a civil claim in the courts. That would render the arbitration service ineffective since its purpose is to reach an efficient and final resolution of claims against the press.
123. Even where a claim is allowed to proceed to arbitration, there would then be a perception of unfairness on the part of the claimant if their claim were then to be struck out by the arbitrator on the ground that the claimant had suffered no real harm. Such inconsistency would undermine confidence in the arbitration service.
124. There is, moreover, apparent unfairness in the process as this would seem to give IMPRESS and the arbitrator between them two opportunities to dismiss the claim when in fairness, there should only be one (and Criterion 22 only envisages there being one).
125. The NMA refers the PRP further to the written evidence submitted by the Newspaper Society to the Culture, Media and Sport Select Committee in June 2013: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomeds/writev/rop/m6a.htm>.

Cost

126. Criterion 22 of the Royal Charter requires the arbitral process to be "inexpensive for all parties". The scheme envisaged by IMPRESS will not be inexpensive for all parties. On the contrary, it would be costly – potentially very costly - for publishers in those cases where IMPRESS decides arbitration is appropriate. Those costs would be problematic for publishers, particularly the smaller newspaper and magazine titles.
127. The effect of paragraphs 9 to 12 of the IMPRESS CIArb Scheme rules is as follows:

- The publisher shall be liable for the fees of the arbitrator in any event. Those fees may be as much as £3,500.²⁰
- The publisher will also have to bear its own legal costs since no award of costs shall be made against a claimant "under any circumstances".
- Where the claim has succeeded in whole or in part, the publisher may be ordered to pay the claimant's costs. In "ordinary circumstances" those costs will be capped at £3,000 and £300 an hour, but they may be higher. The level of costs will depend on an assessment by the arbitrator "having regard to all the material circumstances".

It follows that a publisher could easily be liable for costs of more than £10,000 in a case where it has been forced to arbitrate and loses the case even in part. If damages were awarded, it would of course also be liable for those and there is no apparent limit on such damages. In cases where a publisher wins, it could still be liable for costs on a similar scale save that it would not be liable for the claimant's own costs. It would appear that claimants will be able to take advantage of CFAs in such cases: there will be plenty of experienced media lawyers willing to act on a no win no fee basis in cases such as these.

128. As noted above, the publishers who have apparently already subscribed to IMPRESS are small operations and may not even be run on a commercial basis for profit. They do not have thousands of pounds to spare. The costs of even one arbitration, successful or otherwise, could therefore easily endanger their future viability.
129. The arbitration scheme proposed by IMPRESS, which poses little financial risk to claimants (not even an administration fee) and could result in the award of substantial damages, is likely to encourage complainants to pursue the arbitration route rather than the complaints route. That is not in the public interest. The purpose of the Leveson recommendations for low-cost arbitration was to provide a low-cost alternative to litigation, not an alternative to complaints. But the threshold for having a claim referred to arbitration (see paragraph 119 above) is so low, and the financial risk so low (particularly as CFAs will be available) that anyone with an arguable civil claim will be tempted (and no doubt encouraged by lawyers) to have a go. This will lead to a proliferation of claims which will in turn impose a serious costs burden on publishers and thereby have a chilling effect on freedom of expression. The imposition of such a burden on publishers (particularly publishers such as IMPRESS's current members

²⁰ The Royal Charter permits regulators to charge complainants a small administration fee, but this option has not been adopted by IMPRESS.

who would appear to have nothing like sufficient resources to meet costs of this size) will lead to injustice as publishers will capitulate to unmeritorious claims in order to avoid an order for costs against them and/or will be inhibited from investigating and/or publishing stories out of fear of incurring such costs. That is not a fair system and its unfairness ought to preclude IMPRESS from recognition by the PRP: see paragraph 1 of Schedule 2 to the Royal Charter.

The effect of recognition and the policy of the Crime and Courts Act 2013

130. It should be clear from the above and from the table that follows why IMPRESS should not be recognised. Should the PRP nonetheless (wrongly) decide that IMPRESS should be recognised as an approved regulator, there is a further reason why it should stop short of conferring recognition. This is that the grant of recognition would be a travesty of the policy underlying the recognition scheme. That policy was that there should be incentives to publishers for joining a recognised regulator (immunity from exemplary damages and potential awards of costs in cases even where it loses) and disincentives for not joining a recognised regulator or joining an unrecognised regulator (potential awards of exemplary damages and awards of costs against publishers even where they successfully defend cases against them).²¹ The purpose of that policy was to ensure that all significant publishers joined a recognised regulator. Hence, the incentives and disincentives would operate only once a regulator was recognised.
131. As events have unfolded, 90% of the industry - due to fundamental concerns over freedom of expression and the way in which the Crime and Courts Act 2013 conflicts with article 10 of the European Convention on Human Rights - has chosen to join a regulator that does not seek recognition from the PRP and the regulator that does seek recognition has next to no members and is not remotely representative of the industry. In those circumstances it would be perverse for the incentives and disincentives to be triggered by the recognition of IMPRESS since that would mean conferring a privilege on a tiny minority of publishers while penalising the majority. Although this may be assumed to be precisely the intention of IMPRESS's benefactors, it is the opposite of what the system intended, which was that the majority (having opted for self-regulation) would get the privilege and the minority (having opted out) would be penalised.

²¹ As the PRP will be aware, section 40 of the Crime and Courts Act 2013 has yet to be brought into force. It is therefore fair to say that even if IMPRESS were to be recognised tomorrow, there would be no immediate consequences for publishers so far as costs are concerned. But the NMA submits this should not of itself provide any justification for the PRP to ignore the potential future consequences of its actions should it decide to recognise IMPRESS.

Conclusion

132. The Application by IMPRESS is so far from satisfying the relevant criteria that it would be irrational for the PRP to confer recognition on it. Recognition will not create an effective regulator. It will, however, unfairly impose on publishers not regulated by IMPRESS a system of penalties in the form of damages and (potentially) costs in circumstances that were never intended and which would in the opinion of the NMA be open to legal challenge.

4 March 2016

Quick reference assessment of IMPRESS application for recognition by reference to Charter criteria

Criterion	Description of criterion	Assessment of compliance with criterion	Information, notes and observations (paragraph numbers refer to paragraphs of the NMA's submission)
1	Independent self-regulatory body governed by independent Board	No	IMPRESS is not independent as it is dependent for its funding needs on Max Mosley: see paragraphs 25 to 62.
3	Constitution of appointment panel	No	There is no-one with a current understanding and experience of the press: see paragraph 104.
5	Constitution of Board	No	There is not a sufficient number of people with experience of the industry: see paragraphs 105 to 109.
6	Funding to be settled in agreement between industry and Board	No	Scheme clearly envisages a self-regulatory body funded by the industry itself, not a private donor. See paragraphs 25 to 62.
7	Standards code must be responsibility of, and adopted by, Board, advised by a code committee	No	IMPRESS does not even have a code. See paragraphs 62 to 78.
8	Matters to be included in Code	No	IMPRESS have simply adopted Editors' Code (without permission). See paragraphs 63 to 79.
8A	Provision of advice to public and warning service	No	No advice service or effective warning service. See paragraphs 111 and 112.
8B	Accountability to regulator	No	Unclear that subscribing publishers will be held accountable. See paragraphs 66 and 92 to 94.
8C	Non-binding guidance on public interest	No	IMPRESS cannot credibly provide guidance on what would justify what would otherwise constitute a breach of a code when it has no responsibility for that code and no experience of operating as a press regulator. See paragraph 69.
9	Internal governance processes of subscribers	No	There is no suitable evidence that IMPRESS has required from its prospective members appropriate internal governance processes or that such processes are in place. See paragraphs 88 to 92.

Criterion	Description of criterion	Assessment of compliance with criterion	Information, notes and observations (paragraph numbers refer to paragraphs of the NMA's submission)
10	Adequate complaint handling mechanism for subscribers	No	There is no suitable evidence that IMPRESS has required from its prospective members adequate complaints handling mechanisms or that such mechanisms are in place. See paragraphs 88 to 92.
11	Complaints procedure	No	There are a number of issues surrounding IMPRESS's complaints procedures. See paragraph 113.
12	Responsibility for decisions on complaints	No	Since the Board of IMPRESS is responsible for agreeing funding, it is unsatisfactory that it should also have responsibility for complaints. The complaints function ought to be independent from funding.
14	Complaints to be free of charge	No	It was envisaged that complaints would be free of charge because the industry would fund them, not because a rich donor would fund them.
15	Power to direct remedial action	No	It is unclear that IMPRESS will be able to direct remedial action in an effective manner. See paragraphs 92 to 94.
16	Power of Board to direct publication of corrections/apologies	Yes	It is unclear that IMPRESS will be able to direct publication of corrections and apologies in an effective manner. See paragraphs 92 to 94.
17	No power to prevent publication, but should offer advice service	No	There is no advice service. See paragraph 114.
18	Authority of Board to examine issues on own initiative and have power to investigate serious/systemic breaches	No	It is unclear that IMPRESS will have funds sufficient to cover investigations or that such investigations will be independent having regard to its source of funding. See paragraphs 115 and 116.
19	Power to impose sanctions	No	It is unclear that IMPRESS will be able to impose sanctions in an effective manner. See paragraphs 92 to 94.

Criterion	Description of criterion	Assessment of compliance with criterion	Information, notes and observations (paragraph numbers refer to paragraphs of the NMA's submission)
22	Arbitration process	No	There are numerous issues surrounding the proposed arbitration scheme. See paragraphs 116 to 128.
23	Fair, reasonable and non-discriminatory membership terms	No	The membership terms are not fair, reasonable or non-discriminatory. See paragraphs 99 and 100.