

IMPRESS

Appointment Panel Paper Cover

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Paper title	Appointment Panel Guidance on Reappointments
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Paper summary	It is the role of the Appointment Panel to nominate all IMPRESS Directors. This note is designed to provide the Panel with guidance on this responsibility in relation to re-appointments as several directors are reaching the end of their first tenure.
Paper purpose (select one only)	☒ For information ☒ For discussion ☒ For approval ☐ For decision
Recommendation	None.

Appointment Panel Guidance on Re-Appointments

3 July 2017

Background

The first members of the IMPRESS Board ('Directors') formally took up their roles on 1 October 2015. Deborah Arnott and Patrick Swaffer were appointed for two-year terms. All other Directors were appointed for four-year terms.

Martin Hickman and Emma Jones were appointed as additional Directors in a second round of recruitment in autumn 2015. They formally took up their roles on 1 January 2016. They were also appointed for two-year terms.

Deborah Arnott and Patrick Swaffer will come to the end of their terms on **30 September 2017**. Martin Hickman and Emma Jones will come to the end of their terms on **31 December 2017**.

Walter Merricks has discussed re-appointment with DA and PS, who have both indicated their willingness to serve for another term. He has not yet discussed re-appointment with MH and EJ.

It is the role of the Appointment Panel to nominate all IMPRESS Directors. This note is designed to provide the Panel with guidance on this responsibility in relation to re-appointments.

Legal and regulatory requirements

The Articles of Association of IMPRESS ('the Articles') contain the following requirements in relation to the work of the Appointment Panel:

11. THE DIRECTORS

11.1 The Directors are responsible for the Company and its property and funds and they may exercise all the powers of the Company.

11.2 No Director shall be appointed unless they have been nominated after a fair and open process by an Appointment Panel constituted in accordance with Article 15.

11.3 The Directors shall consist of at least five and not more than eleven persons who being individuals are over the age of eighteen, all of whom must support the Objects.

11.4 No person may be appointed as a Director if:

11.4.1 he/she is not a Member;

11.4.2 he/she has not signed a written declaration of willingness to act as a Director of the Company;

11.4.3 he/she is a serving editor of a Participant;

11.4.4 he/she is a serving member of the House of Commons, the Scottish Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the European Parliament or the House of Lords (but only if, in the case of the House of Lords, the member holds or has held within the previous 5 years an official affiliation with a political party) or a Minister of the Crown, a member of the Scottish Government, a Northern Ireland Minister or a Welsh Minister; or

11.4.5 in the view of the Appointment Panel, that person cannot act fairly and impartially in the decision-making of the Directors, (11.4.1 to 11.4.5 above being the “Eligibility Criteria”).

11.5 Each Director shall have a term of up to four years but no Director shall serve as a Director for more than eight years in aggregate unless agreed by the Board and the Appointment Panel.

11.6 A retiring Director who is eligible under Article 11.3 and meets the Eligibility Criteria may be reappointed but subject to Article 11.5.

11.7 A Director’s terms of office as such automatically terminates if he/she:

11.7.1 ceases to be a Director by virtue of any provision of the Companies Act 2006, or is prohibited from being a Director by law;

11.7.2 is incapable, whether mentally or physically, of managing his/her own affairs;

11.7.3 a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

11.7.4 a composition is made with that person’s creditors generally in satisfaction of that person’s debts;

11.7.5 is absent without permission from 4 consecutive meetings of the Directors and is asked by a majority of the other Directors to resign;

11.7.6 resigns by written notice to the Directors (but only if at least five Directors will remain in office); or

11.7.7 is removed by the Members at a general meeting under the Companies Act.

11.8 A technical defect in the appointment of a Director of which the Directors are unaware at the time does not invalidate decisions taken at a meeting.

11.9 The Directors must always:

11.9.1 comprise a majority of members who are independent of the press; and

11.9.2 include a sufficient number of people with industry experience gained within the United Kingdom or the Channel Islands or the Isle of Man.

[...]

15. APPOINTMENT PANEL

15.1 The Chair and Directors shall only be appointed if nominated by the Appointment Panel.

15.2 The Appointment Panel shall consist of the Chair, one other Director, and at least three and not more than nine further persons who being individuals are over the age of eighteen, all of whom must support the Objects.

15.3 The Appointment Panel shall:

15.3.1 be appointed by the Board after a fair and open process;

15.3.2 contain a substantial majority of members who are demonstrably independent of the press;

15.3.3 include at least one person with a current understanding and experience of the press;

15.3.4 include no more than one current editor of a publication that could be a Participant;

15.3.5 be a wholly independent subcommittee of the board of Directors; and

15.3.6 exist solely to nominate the Chair and Directors and to approve terms of payment for Directors in accordance with Article 14.1.1.

15.4 The Appointment Panel may at any time nominate any individual who meets the Eligibility Criteria as a Director to fill a vacancy in the number of Directors or (subject to the maximum number of Directors permitted by Article 11.3) as an additional Director.

15.5 If the Chair is permanently unable to continue in that role, the Directors must appoint one of themselves to chair the company until such time as a new Chair shall be nominated after a fair and open process by the Appointment Panel.

15.6 The Appointment Panel may nominate no more people than there are vacancies on the Board (including the Chair), and the Board shall appoint all nominated Directors.

15.7 Where a Director comes to the end of a term and is willing to serve for a further period, the Appointment Panel may decide to nominate such a Director without undertaking an open process.

These provisions echo the relevant sections of Schedule 2 of the Royal Charter on Self-Regulation of the Press ('the Charter'), which read as follows:

1. An independent self-regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government. For the avoidance of doubt, the industry's activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body, shall not constitute influence by the industry in breach of this criterion.
2. The Chair of the Board (who is subject to the restrictions of criterion 5(d), (e) and (f)) can only be appointed if nominated by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.
3. The appointment panel:
 - a) should be appointed in an independent, fair and open way;
 - b) should contain a substantial majority of members who are demonstrably independent of the press;
 - c) should include at least one person with a current understanding and experience of the press;
 - d) should include no more than one current editor of a publication that could be a member of the body.
4. The nomination process for the appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The appointment panel may only nominate as many people as there are vacancies on the Board (including the Chair), and the Board shall accept all nominations. The requirement for independence means that there should be no serving editors on the Board.
5. The members of the Board should be appointed only following nomination by the same appointment panel that nominates the Chair, together with the Chair (once appointed), and should:
 - a) be nominated by a process which is fair and open;

- b) comprise a majority of people who are independent of the press;
- c) include a sufficient number of people with experience of the industry (throughout the United Kingdom) who may include former editors and senior or academic journalists;
- d) not include any serving editor;
- e) not include any serving member of the House of Commons, the Scottish Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the European Parliament or the House of Lords (but only if, in the case of the House of Lords, the member holds or has held within the previous 5 years an official affiliation with a political party) or a Minister of the Crown, a member of the Scottish Government, a Northern Ireland Minister or a Welsh Minister; and
- f) in the view of the appointment panel, be a person who can act fairly and impartially in the decision-making of the Board.

The Press Recognition Panel (PRP) did not object to the provisions in the IMPRESS Articles when deciding on IMPRESS's application for recognition under the Charter. Therefore, we can be reasonably confident that, by proceeding in line with these sections of the Articles, the Appointment Panel will maintain IMPRESS's compliance with the Charter. However, the Appointment Panel should be aware that any decision in relation to re-appointments may quite properly be scrutinised by the PRP.

Guidance

In line with these legal and regulatory requirements, the Appointment Panel should ask itself a number of questions in relation to any retiring Director:

1. Would re-appointment of this Director maintain IMPRESS's compliance with Article 11.3 ('The Directors shall consist of at least five and not more than eleven persons who being individuals are over the age of eighteen, all of whom must support the Objects')?
2. Does this Director continue to meet the Eligibility Criteria set out at Article 11.4, which incorporate the requirements at Schedule 2.5 of the Charter? Most of these criteria are objective; however, 5(f) asks the Appointment Panel to reach a judgement on whether, *in its view*, the Director is 'a person who can act fairly and impartially in the decision-making of the Board'. The Appointment Panel may wish to take into account relevant facts when reaching a judgement on this question.
3. Would re-appointment of this Director maintain IMPRESS's compliance with Article 11.5 ('Each Director shall have a term of up to four years but no Director shall serve as a Director for more than eight years in aggregate unless agreed by the Board and the Appointment Panel')?

4. Is this Director willing to serve for a further period?
5. If the answer to the first three questions is positive, the Appointment Panel may act in accordance with Article 15.7 ('Where a Director comes to the end of a term and is willing to serve for a further period, the Appointment Panel may decide to nominate such a Director without undertaking an open process').
6. An open process is not obligatory in relation to the re-appointment of a Director; but nor is it prohibited. The Articles in fact give the Appointment Panel discretion on whether to undertake an open process. Therefore, any decision by the Appointment Panel in relation to the re-appointment of a Director should be reasoned.

Jonathan Heawood
27 June 2017