PRP executive assessment and recommendation for the PRP Board in respect of the application for recognition from IMPRESS: The Independent Monitor for the Press CIC

4 August 2016

Contents

Section 1: Introduction

1.1 Purpose of document

This document contains the PRP executive's assessment and recommendations to the PRP Board in relation to the application by IMPRESS: The Independent Monitor for the Press CIC ('IMPRESS') for recognition as an independent regulatory body under the terms of the Royal Charter on Self-Regulation of the Press ('the Charter').

This report has been prepared to assist the PRP Board in reaching a decision. The Board is not bound by either the analysis or the recommendations and must make its own decisions against the criteria.[1]

1.2 Role of the PRP Board

The role of the Board is to decide whether the applicant meets the (29) criteria set out in paragraphs 1 to 23 of Schedule 3 of the Charter. If the PRP Board is satisfied that all the criteria are met, then it must grant the application for recognition.[2] However, it cannot grant recognition if it considers that even one of the criteria is not met.

In assessing the application against those criteria, Schedule 2 paragraph 1 of the Charter also requires the PRP Board to consider the concepts of: effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, and reliable funding and effective accountability, as articulated in the Leveson Report (Part K, Chapter 7, Section 4 ('Voluntary independent self-regulation'). We[3] refer to these as 'the Leveson concepts' in this report. The relevant extracts from the Leveson report are in annex L1.

In its published Guidance for applicants the PRP stated:

The PRP Board has already considered these concepts in developing the current indicators and types of evidence in the recognition matrix. The PRP Board will also have to consider these concepts when further interpretation of a criterion is required in order to decide whether or not an applicant meets it.

[1] See paragraph 6.2 of the Charter: 'The Board shall not delegate the following decisions (a) a decision to recognise or withdraw recognition from a regulator in accordance with the Scheme of Recognition….'
[2] See schedule 2 paragraph 1 of the Charter
[3] References to 'we' and 'our' relate to the PRP executive where the context admits

In developing its guidance, the PRP consulted upon the indicators and evidence set out in relation to each criterion.[4] It should be noted that the indicators are there to provide guidance to applicants and are not intended to go beyond the criteria. As the PRP stated in its response to the consultation:

When developing our proposed indicators and examples of evidence we only added indicators where we thought the criteria were ambiguous and an applicant might need additional guidance on how to meet them.

In this report we have made additional references to specific Leveson concepts where we feel that they are particularly relevant.

The examples of evidence illustrate the type of information that the PRP Board could consider when assessing an application. This is a list of possible evidence an applicant could provide, and applicants can choose other types of evidence to demonstrate compliance with the criteria, if they wish.

Schedule 2 paragraph 4 of the Charter provides that the PRP Board may also, but need not, take into account a number of additional recommendations from the Summary of Recommendations from the Leveson Report as follows: 34 to 36 inclusive, 38, 43, 44 to 45 (inclusive) and 47. These recommendations are reproduced in annex L1. However, provided the PRP Board is satisfied that a regulator meets the recognition criteria, it may not refuse recognition if a regulator does not comply with those recommendations. The Charter also requires that nothing in the recognition criteria should be interpreted in a manner that conflicts with any regulatory obligation imposed on a regulator. Where we consider that these recommendations are particularly relevant we have indicated it in the report.

1.3 About IMPRESS

IMPRESS is a community interest company registered on the 24 June 2015. The articles of association (annex B2) describe the objects of the company as:

To promote, for the benefit of the community, the integrity and freedom of the press and to encourage the highest ethical standards in news reporting and news publication in particular, but not exclusively, by operating as an independent press regulator in compliance with the principles and in the form and with the composition and powers and otherwise as recommended, in the Royal Charter.

The process of establishing IMPRESS was led by the 'IMPRESS Project', a limited company formed in November 2013. The Project Directors where Lisa Appignanesi

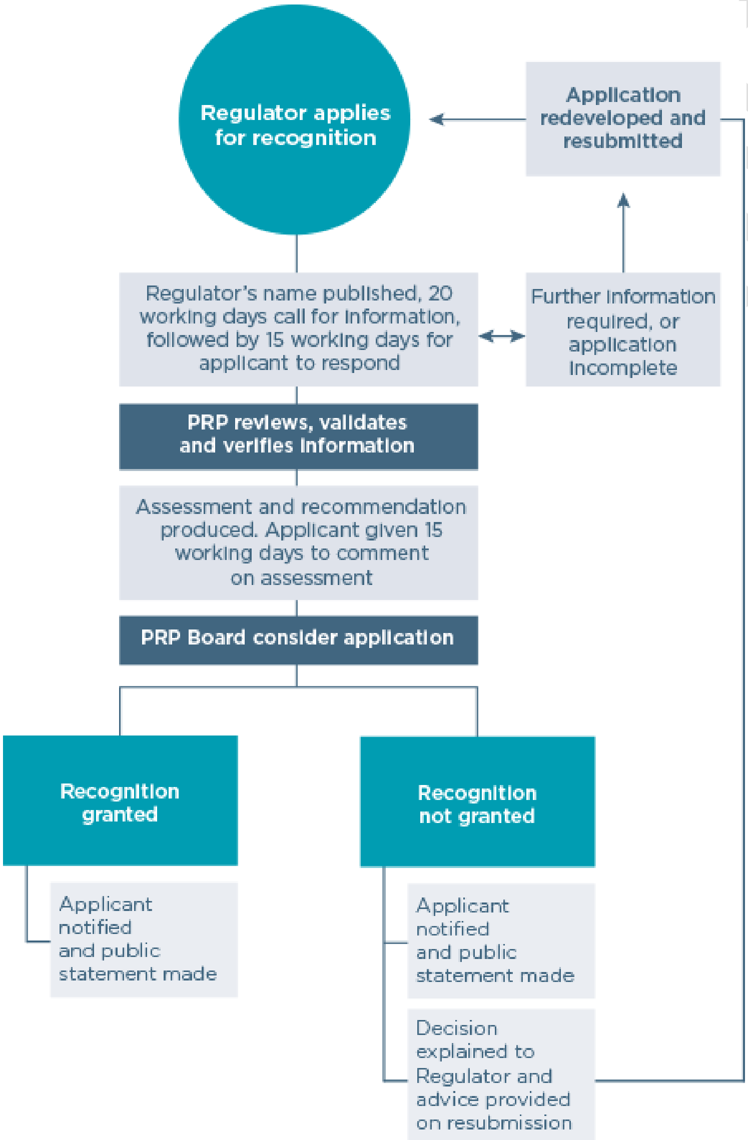
[4] See http://pressrecognitionpanel.org.uk/consultation-on-proposals-for-recognition/

OBE,[5] Isabel Hilton OBE[6] and Professor Alastair Mullis[7]. The company was managed from day to day by Jonathan Heawood acting on a consultancy basis and reporting to the Directors.[8] Jonathan Heawood is now Chief Executive Officer of IMPRESS.

IMPRESS began its operations on 1 April 2016. A list of current and prospective members is at http://www.impress.press/complaints/regulated-publishers.html.

1.4 Application process

Our application process is set out below:



[5] See http://www.lisaappignanesi.com
[6] See http://www.cisd.soas.ac.uk/person/isabel-hilton-obe,35627383
[7] See http://www.law.leeds.ac.uk/people/staff/mullis
[8] See https://en.wikipedia.org/wiki/Jonathan_Heawood

IMPRESS submitted its application to the PRP on 2 February 2016.[9] The application was published on the PRP website shortly after it was received and a call for information was launched on 5 February 2016 that closed on 4 March 2016. The purpose of a call for information is set out in the PRP's published Guidance for applicants as follows:

The call for information is not intended to be a general opportunity for third parties to assess or decide whether or not an applying regulator meets the criteria in the Charter. The call for information is an opportunity for third parties to share relevant information with us to inform our assessment. We will consider facts and evidence, not opinions or hearsay. The PRP Board will decide whether or not the applicant meets the criteria; this is not a role for third parties.[10]

Twelve responses were received (annexes J1 to J13). These were sent to IMPRESS on 7 March 2016 and it was initially given 15 working days to respond in line with our published guidance.

After requesting - and being granted - two extensions of time to respond, IMPRESS provided a reply to the issues raised in the first call for information on 27 April 2016. The reply included amended elements of the application and supporting documentation, and provided new evidence.

We considered that the amendments were significant enough to warrant a second call for information, which was issued on 4 May and closed on 2 June 2016. Twelve responses were received (annexes K1-K12). Seven of the respondents had also responded to the first call for information.

We raised further queries with IMPRESS during the validation and verification part of the process, and received a response to these issues on 1 July 2016 (annex A7) IMPRESS PRP clarification paper). This paper also made further comments on matters raised in the second call for information and made some further changes to documentation. We did not consider these changes significant enough to warrant any further call for information.

We carried out validation and verification visits to IMPRESS on 6 July 2016 and 20 July 2016.[11]

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[9] IMPRESS originally submitted an application on 20 January but withdrew it and substituted it on 02 February 2016.

[10] http://pressrecognitionpanel.org.uk/guidance-for-applicants

[11] The PRP Guidance for applicants (see note 10 above) states: 'The PRP executive team will meet with the regulator to verify information provided in the application and to validate evidence. The meeting will take place after the call for information has been closed so that relevant evidence submitted by third parties can also be verified as required.'

A draft version of this assessment report was sent to IMPRESS for factual comment on 29 July 2016 (annex H30) and it supplied comments on 2 August 2016 (annex H31).

Section 2: Some preliminary issues

In interpreting terms in the criteria, we have first considered whether the Charter provides a definition, and if it does not we have taken the common meaning of the term. The PRP Board will of course take into account the matters from the Leveson Report that Schedule 2 paragraph 1 of the Charter requires it to.

The PRP Board set out its approach to a number of issues of interpretation of the Charter following its consultation on the recognition application process in 2015.[12] The PRP Board subsequently considered some preliminary broad issues of interpretation and application of some terms and elements of the Charter, and published its indicative view on these issues in a supplement to its guidance.[13]

The PRP Board's view on these issues is set out in the report where relevant to individual criteria, and some more general issues are considered below in the following paragraphs.

A key aim of the Royal Charter is to encourage and facilitate independent self-regulation. The PRP Board has stated that its role is to apply the criteria in the Charter to applications for recognition and in doing so the Board will not adopt an overly restrictive approach to interpretation. The PRP Board recognises that there might be more than one way of meeting each criterion, although each criterion must be satisfied in order for an applicant regulator to be recognised.

A number of respondents to the calls for information made representations that questioned IMPRESS' eligibility to apply under the Charter. These mainly focussed on two areas. The first was the contention that all or most of IMPRESS' proposed members were not relevant publishers because they are micro businesses and that a regulator with no or only a handful of relevant publishers could not be recognised. The second concerned the fact that IMPRESS was not formed by a group of publishers coming together, but was created first and sought members afterwards. It was suggested that this means that IMPRESS was not formed 'by or on behalf' of relevant publishers in line with the definition of regulator in Schedule 4 of the Charter as 'an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications.'

The PRP Board has previously clarified that it does not consider that the Charter's definition of regulator in Schedule 4 precludes a body from being eligible for consideration for recognition on the basis of the number and size of its members, and therefore does not accept the first of the respondents' points summarised

[12] http://pressrecognitionpanel.org.uk/wp-content/uploads/2015/09/PRP_Final_Decision_Paper.pdf
[13] http://pressrecognitionpanel.org.uk/guidance-for-applicants - section 5

above.[14] The PRP Board has also confirmed its indicative view that a regulator being formed ‘by or on behalf of’ relevant publishers could include the situation where the regulator is formed on behalf of any publishers that might later choose to join.

Given that the costs protections afforded by Section 40 of the Crime and Courts Act only arise if the publisher is a member of an approved regulator, publishers may choose to wait for a regulator to be approved before joining. The PRP Board’s indicative interpretation is that the Charter criteria do not require the regulator to have current members in order to be eligible for consideration for recognition. However, an applicant regulator would need to show that it had the relevant procedures in place and was ready and able to operate those procedures.[15]

[14] See note 8 above

[15] http://pressrecognitionpanel.org.uk/guidance-for-applicants - section 5

Section 3: Summary of recommendations

We consider that IMPRESS meets the following criteria: 1 to 5 inclusive, 7, 8 and 11-22 inclusive.

We have made no recommendation in relation to criteria 6, 9, 10 or 23 but would ask the PRP Board to consider the matters raised against each criterion.

Section 4: Detailed assessment and recommendations

Structure of the assessment

This part the report deals with each criterion separately. The structure of each section is as follows:

- We head each section with the **criterion,** any **indicators** and examples of **evidence** that the applicant could supply to show compliance with the criterion taken from our published recognition matrix.
- Part A - IMPRESS **statement** and **list of evidence** supplied in their completed application matrix.
- Part B – a summary of key relevant information provided by respondents to the **first call for information** and IMPRESS' replies.
- Part C – a summary of key relevant information provided by respondents to the **second call for information** and IMPRESS replies
- Part D – assessment including:
  - o Further details of how the evidence supports/does not support the criterion;
  - o Any additional information or documentation supplied by IMPRESS as part of our validation and verification process;
  - o Consideration of any indicators for this criterion;
  - o Consideration of any relevant Leveson concepts or additional recommendations.
- Part E - **Recommendation** – this contains any recommendation in relation to each criterion for the PRP Board. **However, as the first five criteria contain linked issues, we have set out our recommendations in relation to those criteria at the end of the assessment of Criterion 5 (page 57) rather than after each one.**

As set out above, as part of the assessment we draw the PRP Board's attention not only to matters the PRP executive has raised with IMPRESS, but to particular issues raised by respondents to the calls for information. However, PRP Board Members will have read and considered all representations made in response to the call for information (see the original annexes J1-13 and K1-12) before making their decision. It should be noted that a number of the representations concerned disagreements with the Charter, the Leveson report or the criteria themselves, and these are not considered relevant to the PRP Board's decision, although they are included in the original documentation so that the PRP Board can take its own view on relevance.

Since IMPRESS is in the very early stages of operation, there has been limited opportunity to verify the criteria in relation to its actual practice of regulation, but where applicable we have assessed whether the relevant procedures are in place and that IMPRESS is ready to operate them as required by the PRP Board. We attended IMPRESS' office for a validation and verification meeting on 6 July 2016.

At this meeting we:

- Interviewed Jonathan Heawood (Chief Executive), Ed Procter (Chief Operating Officer) and Chris Elliott (Consultant Editorial Standards Adviser) as to the relationship with their funders, their internal procedures and their process for approving publishers as members.
- Reviewed IMPRESS' standard letters and procedures.
- Looked at IMPRESS' early correspondence.
- Examined a number of applications for membership of IMPRESS and reviewed IMPRESS' process for determining those applications.

We took an attendance note of this meeting (annex H15).

We carried out a second validation and verification visit on 20 July 2016 in order to examine correspondence between IMPRESS and their funders. We took an attendance note of this meeting annex H18.

It will be apparent throughout this report that IMPRESS has made amendments to some of the key documentation and procedures during the application process (hence the second call for evidence). However, we consider this understandable given that recognition under the terms of the Charter is a new process. Most of the amendments appear to have been made by IMPRESS in response either to questions raised by the PRP Executive as part of validation and verification or points raised by respondents to the calls for information.[16]

In the PRP's Guidance for applicants it was recognised that amendments would be likely to take place during the process, and it is states that:

Amendments are only possible up to the point when the team's assessment is completed. Applicants will be notified when this has taken place.

In this case, our assessment was formally completed on 29 July 2016 when we sent the draft version of this report to IMPRESS. However, at our visit on 6 July 2016 we confirmed that we did not wish to receive any further documentation except where we specifically requested it for validation and verification purposes.

We have set out the nature of the amendments in this report and included the earlier versions of documents in the list of annexes so that PRP Board Members can understand the history of the process and of the responses. Annex A9 summarises the amendments in table form. However, we have based our final assessment and

[16] For the avoidance of doubt, the PRP has neither requested amendments from IMPRESS nor suggested or commented on particular amendments during the application process.

recommendations on the latest versions of the documentation as these represent the position at the point of assessment - see section D in relation to each criterion.

Criterion 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.

Indicators – clearly included in the criterion.

Examples of evidence

Evidence to demonstrate fairness, transparency, openness and independence, including:

- Appointments process, governance structure and supporting documents.
- Board members' biographies and conflict of interest declarations from each member.
- Any other supporting information to demonstrate independence.

A. IMPRESS statement and evidence in their application

The process of establishing IMPRESS has been as open and transparent as possible within legal and ethical parameters (for instance, regarding the confidentiality of Board candidates).

The Chair and Members of the Board were appointed in an independent and transparent manner. The appointments were open to anyone with appropriate qualifications and there was no interference by either the news publishing industry or Government.

The IMPRESS Project ('the company') was registered as a company limited by guarantee (no. 8768595) at Companies House on 11 November 2013. The company Directors are Lisa Appignanesi OBE, Isabel Hilton OBE and Professor Alastair Mullis. The company was managed from day to day by Jonathan Heawood, acting on a consultancy basis and reporting to the Directors. The company's Articles of Association [Annex B1: The IMPRESS Project Articles of Association] define its objects and activities in terms derived from the Leveson Report.

In December 2013, the company was publicly launched with a website featuring a Prospectus which set out the company's vision of an independent self-regulatory body, in line with the criteria in Schedule 3 of the Royal Charter on Self-Regulation of the Press ('the Charter'). This Prospectus was the subject of public and political debate. Jonathan Heawood set out the company's aims at meetings with representatives of the three main Westminster parties: Rt Hon Maria Miller MP, Secretary of State for Culture, Media and Sport; Rt Hon Harriet Harman MP, Shadow Secretary of State for Culture, Media and Sport; and Lord Wallace of Tankerness, the Liberal Democrat spokesman on press regulation.

Heawood gave evidence to the House of Commons Select Committee on Culture, Media and Sport on 28 January 2014.1 He sent copies of the Prospectus to all members of the House of Commons and House of Lords, and members of the Welsh and Northern Irish Assemblies and the Scottish Parliament; and to all identifiable editors, executives and non-executive Directors of the principal newspaper companies in the United Kingdom. He spoke at events in London, Liverpool, Cardiff and Belfast. He debated the IMPRESS vision of independent self-regulation at events hosted by the London Press Club and the freedom of expression NGO Index on Censorship.

Heawood also publicised the IMPRESS vision through two comment pieces in the Guardian newspaper, on 8 October and 9 December 2013, respectively.2 He gave interviews which were published in the principal trade publications, Press Gazette, journalism.co.uk and The Drum.3 He appeared twice on the BBC Radio 4 Media Show, on 11 December 2013 and 16 July 2014, respectively.4 He also created a Twitter feed (@impressproject) to publicise the IMPRESS vision to a wider constituency and host debate on relevant issues.

The aim of this extensive programme of engagement was to ensure that, whilst remaining independent of the industry and Government, the process of establishing IMPRESS should be as open and transparent as possible. News publishers were given every opportunity to comment on the proposals for IMPRESS. Feedback from stakeholders was noted and – where appropriate – incorporated in subsequent drafts of the Prospectus.

A related aim of this programme of engagement was to ensure that the appointment of the IMPRESS Chair and Board should be as open as reasonably possible, by creating widespread awareness of the IMPRESS vision and the opportunity to become involved in this project.

B. The first call for information

A number of respondents contended that IMPRESS could not be an 'independent self-regulatory body' because of the nature of its funding. IMPRESS has a funding agreement (annex G3) with the Independent Press Regulation Trust (IPRT) which is intended to provide £950,000 a year over 4 years and which comprises the vast majority of IMPRESS' current funding.[17] The IPRT is a charitable trust funded in turn by the Alexander Mosely Charitable Trust (AMCT). The AMCT trustees are Max Mosely, his son Max Patrick Mosley, Emma Mosley and Horatio Mortimer.

Some key points made by respondents were:

- IMPRESS is dependent for its funding on one person (Max Mosely) and would therefore be obliged to comply with his wishes.
- Max Mosely has well-known views on privacy and on the behaviour of the press and has taken newspapers to court.
- The terms of the funding agreement between IMPRESS and IPRT allow the latter to terminate the funding on short notice on the occurrence of one of a number of events and this compromises the independence of IMPRESS.
- The agreement with IPRT requires IMPRESS to provide information as to inter alia, any material changes within IMPRESS and this suggests a degree of control that compromises independence.
- IPRT trustees are professional trustees not those with an interest in the press, and IPRT was set up as a funding vehicle for IMPRESS and is not genuinely independent.
- IMPRESS has been disingenuous in its application by failing to refer to the funding from the Moselys.

In response to these issues, IMPRESS replied as follows (annex A4):

In order to confirm that IMPRESS fulfils this Criterion, we provide two new documents, AMCT IPRT Funding Agreement [annex G8] *and IPRT IMPRESS Letter Dated 260416* [annex G9]. *Together, these show that the trustees of the IPRT are entirely independent of the AMCT, which has entered into a binding agreement to provide the IPRT with sufficient funds to meet its obligations to IMPRESS.*

Concerns about independence are inevitable in any regulatory funding system, whether funding is provided by the state, the regulated industry or a third party. It is for this reason, among others, that Leveson recommended that a self-regulatory body should be held accountable to certain minimal standards by an oversight regulator (in this case, the PRP), to ensure that a regulator cannot favour any source of funding.

IMPRESS's application to the PRP shows that the IMPRESS Board is obliged to act independently, in accordance with the Charter requirements. Article 6.1 of the IMPRESS Articles of Association requires the Board to 'establish and operate an

[17] See the discussion at paragraphs z below in relation to criterion 6 for further details.

independent press regulator which complies with the recommendations and principles set out in the Royal Charter'. There is no evidence to suggest that the IMPRESS Board will not fulfil this responsibility with the utmost propriety. Likewise, the Independent Press Regulation Trust (IPRT) is a charity whose trustees are professionals with clear legal obligations set out in the IPRT Deed of Trust, a publicly available document. There is no evidence to suggest that the IPRT trustees will not fulfil their responsibilities with the utmost propriety.

In any event, the IPRT IMPRESS Funding Agreement sets out clear protocols to ensure the regulator's independence from the IPRT. The reporting requirements in this agreement are typical of charitable funding agreements and are designed to ensure that the IPRT trustees properly discharge their fiduciary responsibilities. In fact, many charitable funding agreements impose more onerous reporting requirements than these. The 'material changes', of which IMPRESS has a duty to notify the IPRT under the IPRT IMPRESS Funding Agreement, are very similar to those issues, identified in Article 10.1 of the IMPRESS Articles of Association, on which IMPRESS is under a duty to consult with its participating publishers. In both cases, the reporting and consulting requirements are designed to ensure clear and positive communications between IMPRESS and its sources of funding, whether these are charitable bodies or subscribing publishers, whilst safeguarding the independence of the IMPRESS Board.

C. The second call for information

As well as reiterating many of the points raised in the first call, respondents pointed out that the funding agreement between IPRT and its funding source AMCT also allows the latter to terminate funding on short notice (15 business days).

D. Assessment

It is evident that Max Mosley has strong views on press regulation. Indeed, it is no doubt the existence of those views that led to Mr Mosley offering support to IMPRESS. It is also in the public domain that Mr Mosley has supported the Labour Party.

As the PRP confirmed in its response to the consultation on the recognition application process, there is nothing in the Charter or the criteria that prohibits a third party from providing funding for the regulator.[18] In its indicative view on the interpretation of the Charter the PRP Board stated:[19]

[18] http://pressrecognitionpanel.org.uk/wp-content/uploads/2015/09/PRP_Final_Decision_Paper.pdf
[19] http://pressrecognitionpanel.org.uk/guidance-for-applicants/ section 5

There is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party and such funding does not preclude an application or mean that a regulator is automatically not 'independent'. It would be possible for third party funding to compromise the independence of a regulator, but whether it does so will be a question of fact and will depend on the safeguards that were put in place to protect independence, such as the terms of the agreement between the funder and the regulator and the regulator's governance arrangements.

We therefore discuss the arrangements in place to secure independence in detail below.

The funding process

In the PRP's email of 16 June 2016 (annex H26) to IMPRESS, we stated:

It would also be helpful if you would clarify the timetable and process for obtaining your funding from IPRT. We have noted that the funding agreements between IPRT-IMPRESS and AMCT-IPRT are dated the same day. We would be grateful if you explain the sequence of events and timeline of the contacts you have had with all the key parties prior to those arrangements being entered into. You will recall that we have already had a conversation as regards the due diligence IMPRESS performed to satisfy yourselves that the arrangements would ensure your independence. It would be useful if you could also set that out clearly.

IMPRESS replied (annex A7 IMPRESS PRP clarification paper):

We provide here a timeline of the events leading up to the completion of the IPRT IMPRESS Funding Agreement on 30 October 2015:

***11 November 2013**: The IMPRESS Project was registered as a company limited by guarantee. The Directors, Lisa Appignanesi OBE, Isabel Hilton OBE and Professor Alastair Mullis, commissioned Jonathan Heawood to develop and implement plans to establish a press regulator which complies with the terms of the Royal Charter on Self-Regulation of the Press ('the Charter').*

***January – December 2014**: The IMPRESS Project received grants and donations from trusts and foundations including the Joseph Rowntree Reform Trust, the Andrew Wainwright Reform Trust, Betterworld and the Alexander Mosley Charitable Trust; high net worth individuals including Michael Frayn, Ian McEwan, Max Mosley, JK Rowling and David Sainsbury; and – via the crowdfunding platform Indiegogo – members of the public, who made a total of 60 donations.*

***January – December 2014**: The IMPRESS Project initiated a process, in line with the requirements set out in the Charter, leading to the appointment of an* *independent Board for the regulator. The process was completed in December 2014 with the appointment of Walter Merricks CBE (Chair), Deborah Arnott, Iain Christie, Sue Evison, Maire Messenger-Davies, David Robinson and Patrick Swaffer. (Sue Evison later stepped down from the Board and her expertise as a former journalist was replaced through the appointments of Martin Hickman and Emma Jones.)*

***12 January 2015**: The IMPRESS Board met for the first time and began the process of developing the regulator's strategy, policies and procedures.*

***10 March 2015**: The IMPRESS Board discussed the principles which should inform IMPRESS's future fundraising policy.*

***23 April 2015**: The IMPRESS Board approved the **IMPRESS Fundraising Policy**, which sets out the steps to be taken in relation to any grant or donation. This includes a number of questions for the Board to address in relation any donor.*

***15 June 2015**: The Charity Tribunal ruled that the Independent Press Regulation Trust ('IPRT') should be entered on the register of charities. The Tribunal's decision concludes as follows (our emphasis):*

*'We note that Lord Justice Leveson's recommendation for the establishment of an independent press regulator was made following a thorough-going public inquiry and public outrage at some of the press practices he uncovered. We also note that his recommendations were supported by all parties in Parliament. **We take into account the fact that, if such a regulator cannot be established by the Government for constitutional reasons and ought not to be established by the industry itself for reasons of propriety and public confidence, then the charity sector is uniquely placed to be able to offer both the mechanism and the means by which a benefit to the community as a whole can be achieved**.*
See http://www.charity.tribunals.gov.uk/documents/decisions/Vernor-Miles-decision-15-Jun-15.pdf for the full decision of the Charity Tribunal.

***16 June 2016**: The Board noted the decision of the Charity Tribunal and proposed to approach IPRT for funding.*

***24 June 2015**: IMPRESS: The Independent Monitor for the Press CIC ('IMPRESS') was registered as a company limited by guarantee.*

***8 July 2015**: Jonathan Heawood wrote on behalf of IMPRESS to Wilfrid Vernor-Miles on behalf of IPRT to request funding (**IMPRESS Letter to IPRT 080715**).*

***10 July 2015**: Wilfrid Vernor-Miles replied to Jonathan Heawood to explain that he and his fellow trustees were not prepared to enter into a funding agreement with*

*IMPRESS until IPRT held sufficient funds to allow them to meet their obligations under any such agreement (**IPRT Email to IMPRESS 100715**).*
***July – September 2015**: IMPRESS and IPRT liaised over the terms of a funding agreement whilst IPRT liaised with the Alexander Mosley Charitable Trust (AMCT) over the terms of a separate funding agreement. In the course of these discussions with IPRT, IMPRESS sought reassurance that the proposed IPRT IMPRESS funding agreement would satisfy the requirements of the Charter and the IMPRESS Fundraising Policy.*

***8 September 2015**: The IMPRESS Board noted the progress of discussions between IMPRESS and IPRT and mandated Walter Merricks and Jonathan Heawood to finalise the terms of the funding agreement.*

***September – October 2015**: Merricks and Heawood finalised the terms of the funding agreement, as mandated by the IMPRESS Board, and mindful of the requirements of the Charter and the IMPRESS Fundraising Policy. Their aim throughout was to protect the independence and integrity of IMPRESS, and they were ultimately satisfied that the agreement achieved this aim.*

***30 October 2015**: The trustees of IPRT reached a funding agreement with the trustees of the AMCT. Having concluded this agreement, they finalised and signed the IPRT IMPRESS Funding Agreement.'*

At the validation and verification meeting on 06 June 2016 with IMPRESS we asked for further detail of the history of these arrangements. The relevant extract from the attendance note (annex H15) reads:

Susie Uppal[20] (SU) reminded Jonathan Heawood[21] (JH) that a number of respondents to the call for information had made comments on the relationship between AMCT, IPRT, Max Mosley and IMPRESS. She wanted to make sure that we had a full understanding of the matter in case we needed to explain any matters to the PRP board. It would be useful therefore to have a full history of their involvement with Max Mosley, AMCT and IPRT. We had noted, for example, that IMPRESS and IPRT had been set up within days of each other.

JH – He started to think about the idea of an independent regulator in September 13. He discussed this with the Guardian and others including Hacked Off. He had also discussed with a number of potential funders. Through Hacked Off he received an introduction to Max Mosley (MM) and through his own connections he reached other potential funders, such as the Joseph Rowntree Reform Trust. MM was interested in the idea of funding an independent press regulator so that others would have the rights and remedies that MM has because of his wealth. At this stage neither MM or

[20] Chief Executive, PRP
[21] Chief Executive, IMPRESS

JH had any view on whether such a regulator would apply for recognition under the Charter. MM said he was prepared to fund a regulator – but it would have to be at arms' length to ensure the regulator's independence and he MM wanted the money to go via a charity as this would be tax efficient.

IPRT and the IMPRESS Project therefore developed in parallel although they were set up independently from each other. JH said that MM's lawyer Dominic Crossley set up IPRT trustees. A partner of his at Collier Bristow also advised JH on the technical side of setting up The IMPRESS Project as a limited company. JH had also attended a meeting with Dominic Crossley and Francesca Quint of Radcliffe Chambers regarding the charitable status of IPRT.

JH had provided evidence to the Charities Commission re IPRT charitable status as an expert on media but had no involvement with setting up IPRT – he had not known IPRT trustees personally and has only a very formal involvement with them in terms of the application for funding. He had met them once about a year ago in relation to IMPRESS funding application. The trustees behave quite correctly and distantly with IMPRESS.

JH had hoped other interested funders would also put funds into IPRT but their attitude had been that if MM was meeting the costs there was no need for them to do so at this stage.

SU: Have MM, IPRT or AMCT had anything to do with the selection of the appointment panel or Board members?

JH: Absolutely not.

SU: Have MM, IPRT or AMCT tried to influence anyone at IMPRESS or influence IMPRESS strategy or policy or attended any Board meetings?

JH: Absolutely not.

SU: Is there anything else that JH wishes to tell us which may cast doubt on the independence of IMPRESS from AMCT, IPRT or MM?

JH: No. Nothing.

At a further validation and verification meeting on 20 July 2016, Patrick Reeve[22] examined the file of correspondence between IMPRESS, IPRT, AMCT and Max Mosley.

This included the history of the funding of the IMPRESS Project (the predecessor of the IMPRESS CIC). Patrick Reeve (PR) also asked Jonathan Heawood (JH) to confirm any contact that the IMPRESS CIC Chair or Board members had had with IPRT, AMCT or Max Mosley (this question had also been raised in advance). The relevant extract from the attendance note (annex H18) reads:

[22] Application Manager, PRP

JH took PR through the correspondence file and the history of the dealings. In the build up to the creation of IMPRESS as a separate CIC, money was given to the IMPRESS Project from various sources – including JK Rowling, the Rowntree Trust and David Sainsbury. PR was given a copy of a table showing these donations. There was one direct donation of £40,000 by Max Mosely to the IMPRESS Project in July 2015 as they needed running costs because the process of set up and approval of IMPRESS CIC as a regulator was taking longer than anticipated.

There had been the following contact between the IMPRESS CIC Chair/Board members and IPRT, AMCT or Max Mosley:

4 November 2014 – Walter Merricks, JH, Caroline Instance and Tom Murdoch (both IMPRESS appointment panel) met with Dominic Crossley for AMCT. This was after Walter Merricks was appointed and before the other Board members were appointed. Walter Merricks wanted to reassure himself that funding would be available before the other Board members were recruited and this assurance was given.

11 August 2015 Walter Merricks and JH met Dominic Crossley (AMCT) and the IPRT trustees to discuss the terms of the funding arrangements between AMCT and IPRT and IPRT and IMPRESS. Walter Merricks and JH had concerns during the meeting that IPRT trustees were not being clear enough on the guarantee of funding to IMPRESS (in order to protect their own position as trustees). It was important that funding was secure and there could be no opportunity or the appearance of an opportunity for interference by IPRT or the funders.

20 August 2015 – Walter Merricks and JH met Max Mosley as trustee of AMCT to ascertain whether there was any obstacle on the latter's part to the correct provisions to secure the funding and independence. Max Mosley confirmed that there was not and that he supported the need for independence and sustainability.

The documentation

Paragraph 3.1 of the IPRT-IMPRESS funding deed (annex G3)[23] gives the IPRT's Trustees the right to terminate or reduce the grant or any payment to IMPRESS then outstanding on 10 business days' notice if IPRT reasonably consider an event in paragraph 3.2 applies.

Paragraph 3.2 then lists a number of events that will allow this termination or reduction of funding including:

- If the grant or part of it is in the reasonable opinion of the Trustees of IPRT no longer required for IPRT's charitable purpose.

[23] For the avoidance of doubt, we confirm that we have been supplied with a signed and witnessed copy of this document

- If the application of the grant or any part of it is inconsistent with the objects of IMPRESS or with the recommendations for press regulation within the Leveson report or the Charter.
- IMPRESS fails to comply with obligations under the deed, including its reporting obligations to IPRT.
- IMPRESS fails to gain recognition by the PRP within one year of the Funding Agreement or has recognition removed by the PRP.
- Steps are taken to enforce a judgment against IMPRESS or one of their directors is disqualified as a Company Director.
- Any material amendment to the Articles of Association which is deemed by the Trustees of IPRT to be inconsistent with the objects of IPRT, the recommendations within the Leveson report or the Charter.

There is then a catchall at 3.2 (ix)[24] allowing termination or reduction of the grant in,

any other circumstances arise where the Trustees [of IPRT] consider it no longer practicable for IPRT to continue funding IMPRESS.

There is therefore a very broad range of circumstances in which funding can be terminated on short notice – including the 'catch-all' provision at 3.2 (ix). If is foreseeable, for example, that IPRT would need to invoke this clause if they have allocated their funds to other causes. Respondents have argued that this goes not only to reliability of funding, but provides IPRT and their donors with a significant amount of influence over IMPRESS and therefore brings their independence into question.

As part of their response to issues raised following the first call for information, IMPRESS supplied a letter from IPRT dated 26 April 2016 (annex G8) and a copy of the funding agreement between the AMCT and IPRT (annex G9).

In summary, the letter states that:

- Under the terms of their agreement with IMPRESS, IPRT has no control over the day to day operation of IMPRESS or its policy or strategic decisions.
- The reporting obligations merely require IMPRESS to account for expenditure in the customary way for a charitable trust.
- Clause 3.2 of the agreement with IMPRESS does not permit IPRT to withhold funding from IMPRESS in the event of them making a regulatory decision that IPRT disagrees with.
- As Clause 6.1 of the agreement sets out, the independence of IMPRESS is of fundamental importance. (Clause 6.1 of the IPRT- IMPRESS funding agreement

[24] Incorrectly labelled 3.2 (viii) in the document

states: 'IMPRESS shall not be required to do anything in compliance with this funding agreement which may in the opinion of the Directors[25] conflict with or be inconsistent with its objects, independence, integrity or reputation').

- Whilst IPRT receive substantial funding from AMCT, the decision to fund IMPRESS was taken by the Trustees of IPRT acting at their discretion and in furtherance of their objects.
- IPRT is a wholly independent charity and the funding agreement with AMCT ensures that this independence and discretion to award funding remains unfettered.

Subsequently IPRT and IMPRESS have agreed a deed of variation (annex G3.2) which states:

For the avoidance of doubt, the power to terminate, reduce or withhold funding in accordance with the provisions of Clause 3.2.3(ix) above, shall only be exercised by the Trustees in the event that the IPRT does not itself have sufficient funds to meet its financial commitments to IMPRESS pursuant to the terms of this Agreement.

The AMCT-IPRT funding agreement was dated the same day as the IPRT-IMPRESS Funding agreement. Some key terms are:

- Preamble – outlining the purpose of the Grant Trust, to support IPRT in their financial support for an independent press regulator or regulators as IPRT 'in their absolute discretion shall see fit'.
- Clause 2 – AMCT agrees to pay two annual instalments of £500,000 to IPRT for a period of four years from October 2015. These payments are to be applied by IPRT in furtherance of their objects as they see fit, although in distributing the grants IPRT are to have regard to, but are not bound by, any wishes expressed by AMCT.
- Clause 3 – payments may be reduced or terminated by AMCT on 15 business days' notice if an event in Clause 3.2 occurs namely:
  - the grant or part thereof is no longer required for the purpose (as set in the preamble - see above);
  - the application of the grant or part thereof is inconsistent with the objects of IPRT;
  - IPRTs fail to comply with its reporting arrangements under the agreement.
- Clause 4 - the reporting arrangements requiring a bi annual report from IPRT on the application of the grant plus such other financial or other information as AMCT shall reasonably request.

Payne Hicks Beach, solicitors acting for AMCT wrote to the PRP as follows on 16 July 2016 (annex G13):

[25] i.e. the IMPRESS Board members

We write on behalf of the trustees of AMC T concerning its agreement with IPRT. The trustees of AMCT have established a fixed deposit account with C. Hoare & Co Bank for the purpose of safeguarding the payment arrangements provided for under the IPRT agreement. The deposit account currently holds £3,000,000 and the account has the following specified dates by which it reaches maturity:

23 September 2016 £500,000
24 March 2017 £500,000
25 September 2017 £500,000
29 December 2017 £1,500,000

The maximum period under this fixed deposit account is 2 years. When the final £l .5 million matures on 29 December 2017 the Trustees will arrange further fixed term periods in accordance.

Paragraph 3 of the IPRT declaration of trust (annex G5) states that:

3.1 The Objects of the Charity are to promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism and the editing and publication of news in the print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression.

3.2 The Trustees shall further the Objects by such means as they think fit from time to time which may include the provision of financial assistance towards the establishment and support of an independent press regulator or independent press regulators to be established and conducted for the whole or any part of the United Kingdom in accordance with the recommendations and principles set out in the Leveson Report.

Whether the arrangements that have been entered into are such as to secure the necessary independence for IMPRESS from AMCT or IPRT or both.

1. The relationship between IMPRESS and IPRT.

It is clear that IMPRESS will be dependent on IPRT for the overwhelming majority of their funding over its first four-year period. Given the amount of money involved, it does not seem unreasonable that IPRT has powers to request information from IMPRESS to ensure that money is being spent for the purposes for which it is provided; and we do not consider those powers are sufficient in themselves to compromise independence. There is nothing in the agreement, the correspondence that we have seen or other documentation supplied, to indicate that IPRT will interfere with IMPRESS' decisions on regulatory matters nor indeed do they have any power to do so directly. We have also considered the requirements on IMPRESS Board in their articles of association to act independently and the registration of IPRT as a charity with clear obligations.

Nevertheless, as set out above, IPRT has powers to terminate or reduce the funding to IMPRESS at short notice, although the deed of variation has restricted the scope.

2. The relationship between the AMCT and IPRT

As set out above, IPRT is set up as a separate registered charity. The funding agreement between the two organisations does allow AMCT to withdraw or reduce funding on fifteen working days' notice but on much more limited grounds than the IPRT -IMPRESS agreement (see above). However, in distributing the grants, IPRT is to have regard to, but is not bound by, any wishes expressed by AMCT.

3. The relationship between the AMCT and IMPRESS

The establishment of IPRT removes any direct relationship with IMPRESS with AMCT in relation to this funding.

4. The relationship between Max Mosley and IMPRESS

Although Mr Mosley has given funding directly to the IMPRESS PROJECT in the past, we saw nothing in our validation and verification process to suggest that he had imposed any conditions or interfered. In relation to IMPRESS CIC (the applicant) the funding provided by Mr Mosely is now at two removes via AMCT and IPRT.

In summary, it is our assessment that appropriate steps have been taken to separate the original funding source from IMPRESS. We have raised concerns over the wide power of grant termination in the IPRT-IMPRESS agreement particularly the 'catch-all' provision at Clause 3.2 (vii). There may be the possibility that the existence of such a power or the threat of its use could have a chilling effect on the policy or operation of IMPRESS. We have noted the reassurances that have been received from those concerned, including IMPRESS and the professional Trustees of IPRT, as well as the terms of the deed of variation, and we have no evidence to suggest that the IMPRESS Board will not fulfil their obligations to maintain independence. Whilst the catchall clause could have been more narrowly drawn, it is perhaps not unreasonable for IPRT Trustees to seek to protect the position of the Trust in the event that sufficient funds were not available to meet all of their commitments.

We would add that we have not seen any evidence during the validation and verification process of interference by Max Mosley, AMCT or IPRT in the policy, procedures or decisions of IMPRESS (or the IMPRESS Project before it).

We therefore consider that the IMPRESS funding arrangements are not such as to compromise their independence for the purposes of the Criteria (see also Criterion 18 below). We will return to the issue of stability of funding in our assessment of Criterion 6.

The process of Board appointments

The process for appointment of the IMPRESS Board by the Appointments Panel is set out in the application matrix in response to Criteria 4 and 5 and is discussed further below.

Board members are appointed as directors of IMPRESS and are therefore subject to the CIC articles of association (annex B2).

Under the criterion, we must consider whether the IMPRESS Board was appointed in an open and transparent way. In order for this to be the case, we take the view that the process appointment panel must itself be appointed in an open and transparent way. However, we consider this explicitly in relation to Criterion 3 below, and return to the issue of the IMPRESS Board appointment in our assessment under Criterion 4.

E. Recommendation

See page 57.

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.

Indicators – clearly included in the criterion

Examples of possible evidence

Evidence to demonstrate fairness, transparency, openness and independence, including:

- Process used to select members of the appointments panel.
- Process used by the appointment panel to appoint the Chair.

A. IMPRESS statement and evidence in their application matrix (annex A3)

See Criteria 3 and 4 below.

B. The first call for information

See Criteria 3 and 4 below.

C. The second call for information

See criteria 3 and 4 below.

D. Assessment

The process for selecting members of the Appointment Panel is described under Criterion 3 below. The Chair (Walter Merrick) was nominated by the Appointment Panel. The process is described under Criterion 4 below.

From the evidence available, Walter Merrick satisfies the restrictions of Criterion 5(d), (e) and (f) which are that the Chair must:

d) not [be] any serving editor;
e) not [be] 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.

E. Recommendation

See page 57.

Criterion 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.

Indicators - clearly included in the criterion.

Examples of evidence

Evidence to demonstrate fairness, transparency, openness and independence, including:

- Process used to select members of the appointment panel.
- Composition of the appointment panel, clearly identifying those members that are persons with a current understanding and experience of the press; are serving editors; and those considered independent of the press.

There have been two appointment panels, an original panel and a reconstituted panel for the subsequent appointment of additional board members, and these are discussed separately below.

1. THE ORIGINAL APPOINTMENT PANEL THAT APPOINTED THE CHAIR AND BOARD MEMBERS FOR IMPRESS

1A. IMPRESS statement and evidence in their application matrix (annex A3)

The IMPRESS Project Directors delegated Jonathan Heawood to manage the process of recruiting the Appointment Panel. With pro bono consultancy support from Simon Carne and Mandy Cormack, Heawood prepared a recruitment brief [annex C1: IMPRESS Appointment Panel Candidate Brief]*, and placed an advertisement in Press Gazette and on the website of The IMPRESS Project. Press Gazette also ran a news story about the appointment process. This ensured that the opportunity to join the IMPRESS appointment panel was widely advertised within the industry, in light of the requirement under Criterion 3, below, for the panel to contain at least one member with a current understanding and experience of the press, and potentially one current editor of a publication that could be a member of IMPRESS.*

The Directors of The IMPRESS Project and Heawood, Cormack and Carne also identified and contacted a range of potential candidates for the panel, some of whom subsequently applied for the role. Other candidates emerged as a result of the advertisement and attendant publicity.

Following the recruitment procedures described above, 12 candidates for the IMPRESS appointment panel came forward. One candidate was rejected after the first sift because they did not meet the criteria published in the recruitment brief. Another candidate withdrew their application. Jonathan Heawood interviewed, either in person or by telephone, the remaining candidates. He conducted these interviews against a set of questions derived from the published criteria, and took notes of each candidate's response to these questions. On the basis of these interviews, he recommended the appointment of Aidan White as Chair of the panel, and the appointment of a further eight candidates.

When recommending these candidates, he took into account both the individual skills of the recommended candidates and the overall composition of the panel, in light of Criterion 3 of the Charter. He also took care to ensure that all candidates, regardless of race, sexuality, gender, disability or any other protected characteristic, should be treated with equal respect and consideration, and that all appointments were made strictly on merit.

The IMPRESS Project Directors[26] accepted all of these recommendations and the names of panel members appointed are set out below, together with their biographies as supplied by IMPRESS in Application (annex C15.2).

Aidan White (Chair) is Director of the Ethical Journalism Network. He has previously worked as a journalist for newspapers including the *Guardian* and the *Birmingham Post and Mail*. He served as General Secretary of the International Federation of Journalists for 24 years. In that time, he helped create the world's largest organisation of journalists, with members in 126 countries. He is also Chair of Internews and a trustee of Statewatch.

Caroline Instance MCIPD (Deputy Chair), after 18 years in human resources, was appointed in 1996 Chief Executive of Opra to set up the UK's first statutory regulator for pensions. From 2002 to 2011, she was CEO of the two UK professional bodies for actuaries. She facilitated improvement to their self-regulatory mechanisms and assisted in the merger of the bodies and development of a new Privy Council Charter. She is currently a trustee of ShareAction.

Ashok Gupta chairs AA Insurance Services and eValue Investment Solutions and has chaired Skandia UK. He was a Founder Director of the Phoenix Group, and a

[26] Lisa Appignanesi OBE, Isabel Hilton OBE, and Professor Alastair Mullis – see section 1.3 above

non-executive director of Old Mutual Wealth and J Rothschild Assurance plc (now St James's Place Capital). He was Deputy Chair of a recent Bank of England Working Party on Procyclicality resulting from life insurance and pension fund activity.

Richard Gurner has been a journalist since 2004 and has spent his career in the local and regional press, including a short stint in PR. In 2009, he launched the hyperlocal website CaerphillyObserver.co.uk after becoming frustrated at the lack of news provision in his home area. In 2011, he quit his job and took on the website full-time. In May 2013, the print edition of Caerphilly Observer was launched as a full-colour fortnightly newspaper.

Chris Kenny was the Chief Executive of the Legal Services Board, the overarching independent regulator of the legal sector. He previously held senior posts in central government, regulation and the private sector, and was for six years a member of the Board of Ombudsman Services. He undertook a major review of the Financial Ombudsman Service with Lord Hunt of Wirral in 2007-08.

Tom Murdoch is a lawyer at leading charity law firm Stone King LLP. His recent work includes the registration of Wikimedia UK as a charity and contribution to debate around the potential charitable recognition of public benefit journalism. Outside work, Tom is a trustee of Zambia Orphans of AIDS.

Penny Shepherd MBE is an independent consultant specialising in corporate responsibility and sustainability. She is a member of the Regulation Board of the Institute and Faculty of Actuaries and a trustee of Local Trust, a community development charity. Until 2013, she was Chief Executive of the UK Sustainable Investment and Finance Association.

Damian Tambini is Associate Professor at the London School of Economics. From 2002 to 2006, he was Head of the Programme in Comparative Media Law and Policy at Oxford University. He is the author of numerous peer-reviewed articles on media and telecommunications policy, co-author of *Codifying Cyberspace: Self-regulation of Converging Media* (2008) and co-editor of *Cyberdemocracy* (1998) and *Citizenship, Markets, and the State* (2000).

IMPRESS added:

Of these panel members, a substantial majority are demonstrably independent of the press. Only Richard Gurner and Salil Tripathi depend, in whole or in part, on the press for their livelihood.

Three candidates have a current understanding and experience of the press: Aidan White, as a former journalist and long-serving Director of the International Federation of Journalists; Damian Tambini, as Director of the Media Policy Project at the

London School of Economics; and Salil Tripathi, as a regular columnist for various British and international news publications. Richard Gurner, as Editor of the Caerphilly Observer, is the editor of a relevant publisher. [Annex C15.2: IMPRESS Project Appointment Panel Biographies.]

Once the IMPRESS Project Board had confirmed its selection of these candidates, they were sent formal letters of appointment, on 4 August 2014 [annex C12: IMPRESS Appointment Panel Letter of appointment]*.*

B (1) The first call for information

One issue raised by respondents to the call for information was that the advertisement for appointment panel members was only placed in the Press Gazette (a trade magazine) and on IMPRESS' website and not more widely outside of the industry. This, it was implied, suggested that the process was not independent, open or fair, especially in light of the confirmation in IMPRESS' application that some candidates had been directly approached to apply.

In their reply to this point, IMPRESS stated:

IMPRESS took 'fair and open' in Criterion 3 to mean that the process should conform (with appropriate adaptations to circumstances) to the normal expectations of modern appointments, in that candidates should be selected against a clear and publicly available description of the role and the necessary skills by means of a standard evaluation procedure, conducted in a non-discriminatory way with an appropriate and proportionate measure of transparency given the scale of the operation. The fact of a recruitment exercise should not be concealed, and any interested person should be able to enquire about it. These requirements were met, as described in the initial application.

It is perfectly appropriate – indeed, standard practice – in Board appointments to combine advertising with a targeted search of suitable candidates. With this in mind, the IMPRESS Project Board, at a meeting on 21 March 2014, identified 42 potentially suitable candidates for the Appointment Panel. As these candidates were contacted, other candidates were also identified until a total of 87 candidates were included on the list.

At the same time as this targeted search, roles on the Appointment Panel were publicly advertised, as noted in the original application. Links to the published advertisement were tweeted at least nine times during this period, on 21, 22, 23, 24 and 28 May, and 1, 3, 5 and 7 June.

A number of respondents to the call for information argued that no panel member had a 'current understanding and experience' of the press sufficient to meet the requirement of the criterion. It was said that the term implies that the individuals concerned need to have recently been in senior positions at major publications, and that was reinforced by the reference in the criterion to there being no more than one current editor of a publication that could become a member on the panel. As part of this, respondents pointed what they considered the limited and or historical nature of the experience of Aiden White, Damian Tambini and Salil Tripathi. It was also said that Richard Gurner was not the editor of a relevant publisher under Schedule 15 of the Crime and Courts Act because,

The Caerphilly Observer has only four contributors (we note its website does not describe them as employees).

In reply, IMPRESS stated:

The panel members include Aidan White, a leading advocate of press freedom and ethical journalism, who was until recently the General Secretary of the International Federation of Journalists.

IMPRESS added that the reference to no more than one current editor was permissive only and that:

The claim that Richard Gurner is not editor of a relevant publisher relies on a misreading of the Act, which only excludes a micro-business from the definition of 'relevant publisher' if it is also a 'multi-author blog'. The Caerphilly Observer is not a multi-author blog by any stretch of the imagination. It is printed (on paper) on a fortnightly basis.

C (1) Second call for information

No new information was provided to which we wish to refer specifically.

D (1) Assessment in relation to the first appointment panel.

We have considered each element of the criterion:

Appointed in an independent, open and fair way

We consider that the appointments process was conducted independently of the press and of Government. There is no evidence that the independence of the process was compromised in any way by IMPRESS' funders.

We also considered the openness and fairness of the process, given that IMPRESS has confirmed that whilst some candidates emerged from the advertisement and associated publicity, all of the successful applicants for the appointment panel were subject to the 'targeted search' carried out by the IMPRESS Project or by consultants on their behalf. It is not of course unusual for prospective role holders to be contacted by recruitment consultants. Given the large number so targeted (87), we do not consider that this means that the procedure was not open or fair if others from outside of this group were given the opportunity to apply for the roles and were treated in the same way. We have no reason to believe that this was not the case.

There is an argument that it would have been desirable to advertise the role outside of the Press Gazette and IMPRESS' own communications. One counterargument is that there had been considerable publicity concerning the launch of IMPRESS and any applicants who came forward were likely to have been those with some interest in press regulation and who were therefore more likely to been aware of this advert and the associated publicity.

Another issue relating to the openness and fairness of the process is that the shortlisting and interviewing of the panel members was carried out by one person, Jonathan Heawood; with all of his recommendations being accepted by the Directors of the IMPRESS Project. We asked IMPRESS to provide more details of the process followed by the Project Directors in approving the recommendations.

Jonathan Heawood replied (annex A8):

You asked how the IMPRESS Project Board were provided with sufficient information to select members of the original Appointment Panel. I can confirm that the Project Board were sent information about the longlisted and shortlisted candidates for the Panel on 27 June and 24 July 2014 respectively. The information on longlisted candidates included copies of each candidate's CV and cover letter and a summary of their eligibility against the published selection criteria. The information on shortlisted candidates included a summary of each candidate's eligibility, as determined by the interviews which I conducted with these candidates. Copies of shortlisted candidates' CVs and cover letters were made available to the Project Board if required.

The steps that Mr Heawood took to ensure fairness are described in section A above in IMPRESS' statement in the application matrix.

We consider that IMPRESS meets this part of the criterion.

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

For the purposes of considering this criterion, we take independent to have its natural meaning as in, for example, 'free from control and not dependent upon (especially financially).'[27]

On the information available, this part of the criterion appears to be satisfied. Only two of the panel members currently work as an editor or journalist (and one is for a non-UK based newspaper). At least five out of the nine members of the panel appeared to have no dependence on the press – Ashok Gupta, Chris Kenny, Caroline Instance, Tom Murdoch and Penny Shepherd.

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

We consider that current understanding of the press can include those who work as academics, or for media groups. It is arguable that experience of the press could be interpreted as implying having worked as a journalist or editor at some point, but it may be possible to gain experience in other ways. In any event, Aiden White formerly worked as a journalist (and was general secretary of the International Federation of Journalists[28]) while Salil Tripathi appears to continue to do so. Further, Richard Gurner is a current Editor and journalist of one of the proposed members of IMPRESS.

We therefore consider that IMPRESS meets this part of the criterion.

Should include no more than one current editor of a publication that could be a member of the body

Of the panel members, only Richard Gurner was the editor of a publication that could be a member of the body. We therefore consider that IMPRESS meets this part of the criterion.

2. THE RECONSTITUTED APPOINTMENTS PANEL WHICH APPOINTED TWO SUBSEQUENT IMPRESS BOARD MEMBERS (M HICKMAN AND E JONES)

A (2): IMPRESS statement and evidence in their application matrix (annex A3)

In June 2015, IMPRESS: The Independent Monitor for the Press CIC ('the regulator') was registered at Companies house as a Community Interest Company [annex B2: IMPRESS CIC Articles of Association]. The regulator's articles place responsibility for Board appointments and remuneration on an independent appointment panel

[27] http://www.collinsdictionary.com/dictionary/english/independent
[28] http://www.ifj.org

which includes the regulator's Chair, one other director, and between three and nine further members who meet the Charter criteria set out above. The IMPRESS Board invited members of the original IMPRESS Project appointment panel to put themselves forward for this new panel and Caroline Instance, Chris Kenny, Tom Murdoch, Damian Tambini and Aidan White subsequently put themselves forward. At the IMPRESS Board meeting on 8 September 2015, these five candidates were appointed; Walter Merricks and David Robinson were appointed on behalf of the Board; and Caroline Instance was asked to chair the new panel [annex B8: IMPRESS Board Meeting 8 Minute].

B (2) & C (2) First and second calls for evidence

Although no representations were made in relation to the second appointment panel specifically, the representations made in relation to the first appointment panel that relate to the 'current understanding and experience of the press' are relevant here.

D (2) Assessment in relation to the second appointment panel

The relevant criteria in the Charter concentrate on the original appointment of the panel in order to select the Chair and the Board. They do not explicitly deal with the situation where the Board is already in place and maintenance of panel membership is required. Nevertheless, it would seem implicit that subsequent appointments to the panel should meet the criteria - otherwise, for example, panel members could gradually be replaced over time with persons that were not independent of the press. We have therefore assessed the second panel against this criterion.

The provisions relating to the ongoing appointment of panel members and operation of the panel are set out at article 15 of the CIC Articles of association:

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 undertaking an open process.

We have considered each element of the criterion:

Should be appointed in an independent, fair and open way

If it is accepted that the selection of the original panel was the result of an open and fair process, then inviting all of the panel members to continue in post for subsequent Board appointments would seem to meet that criterion. However, we asked IMPRESS to comment on the inclusion of the Chair and one Board Member as members on the panel going forward in light of this part of the criterion.

IMPRESS replied (annex A7, IMPRESS PRP clarification summary):

The original Appointment Panel was constituted as a wholly independent subcommittee of the Board of The IMPRESS Project, the incubator body whose purpose was to take the necessary steps towards the establishment of IMPRESS. The original Appointment Panel was responsible for appointing the Chair and Board of IMPRESS and did so in accordance with the relevant Charter Criteria. These Criteria relate to the initial establishment of the Board and do not include any explicit provisions for the subsequent appointment of additional or replacement Board members. Therefore, this Criterion is not directly relevant to the constitution of the current IMPRESS Appointment Panel.

Nonetheless, the Board decided that it was necessary and appropriate to provide an independent mechanism for the appointment of future Board members and for decisions regarding the remuneration of Board members. The Board therefore agreed on 8 September 2015 to reconstitute the Appointment Panel as a wholly independent subcommittee of the Board of IMPRESS.

The Chair of IMPRESS was included ex officio in the reconstituted Appointment Panel on the basis that the Royal Charter requires the Chair to join the Appointment Panel for the appointment of further Board members. A second Board member of IMPRESS, who is Chair of the IMPRESS Finance and Audit Committee, was also included in the reconstituted Appointment Panel, as provided for in the IMPRESS Articles of Association (15.2).

As described in our application, five members of the original Appointment Panel agreed to serve on the reconstituted panel, all of whom had been selected originally through a fair and open process. Both the Chair of IMPRESS and the second Board member who are members of the reconstituted Appointment Panel were also of course appointed to their substantive Board positions through a fair and open process.

Thus, a majority of the members of the reconstituted Appointment Panel, the remit of which is to appoint future members to the Board and to make decisions on Board remuneration, are completely independent of and separate from either the executive or the Board of IMPRESS. This reflects the principles embodied in the UK Corporate Governance Code (2012), which states that a majority of the members of any nomination committee should be independent non-executive directors.

As set out above, we consider it implicit that Criterion 3 applies to the appointment panel on a continuing basis. However, we consider that the appointment of the second appointment panel meets the requirement for independent fair and open appointment, given that:

- the majority on the second panel comes from the original panel,
- Criterion 5 requires the Chair to be involved in the appointment of subsequent Board members, and
- the Chair of the IMPRESS Finance and Audit Committee has been subject to a separate appointment process as a Board member.

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

See the assessment at section D(2) above. Caroline Instance, Chris Kenny, Tom Murdoch, Damian Tambini, as well as the two Board members.

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

See the assessment at section D(2) above. We consider that Aiden White meets this criterion –he does not currently work as a journalist but remains involved in press issues via the Ethical Journalism Network.[29]

Should include no more than one current editor of a publication that could be a member of the body

There are no current editors of a publication that could be a member of the body on the second panel. We do not accept the argument made by some respondents to the call for information that this clause implies that there must be one current editor on the panel. In our view, the clause means that there can be either none or one.

E. Recommendation

See page 57.

[29] http://ethicaljournalismnetwork.org/en

Criterion 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.

Indicators – clearly included in the criterion.

Examples of possible evidence

Evidence to demonstrate fairness, transparency, openness and independence, including:

- Process for selecting Board members and the selection criteria used.
- Board members' biographies and conflict of interest declarations from each Board member.
- Governance arrangements and supporting documentation.

A. IMPRESS statement and evidence in their application matrix (annex A3)

In order to define its legal status and ensure its independence, the IMPRESS appointment panel was constituted as a wholly independent subcommittee of the Board of The IMPRESS Project. This decision was taken by the Project Board by email and ratified at the Project Board meeting on 19 December 2014 [annex B3: IMPRESS Project Board meeting 191214 minutes]*.*

At its first meeting, on 20 August 2014 [annex C3: IMPRESS Appointment Panel Meeting 1 Minute]*, the appointment panel reviewed a Protocol* [annex C8: IMPRESS Appointment Panel Protocol]*; a Recruitment Brief* [annex C10: IMPRESS Board Recruitment Brief]*; and a draft Recruitment Advertisement* [annex C11: IMPRESS Board Advertisement]*. These were intended to bring openness, fairness and transparency to the Board appointment process. They were formally adopted by the appointment panel at its second meeting, on 2 October 2014* [annex C4: IMPRESS Appointment Panel Meeting 2 Minute Redacted]*.*

Advertisements for Board roles were placed in the Guardian newspaper, in print and online, and on online recruitment sites and lists.

At the same time, the appointment panel identified and contacted a range of potential candidates for the Board, some of whom subsequently applied for the role. Other candidates emerged as a result of the advertisements and attendant publicity. The appointment panel agreed to appoint the IMPRESS Chair before appointing other Board members, in order to comply with Criterion 5, below. For this reason, a deadline of 26 September 2014 was set for Chair applications, and 17 October 2014 for Board applications.

A total of 12 candidates applied for the role of Chair. Their applications were reviewed by Jonathan Heawood, who recommended which candidates should be interviewed. This recommendation was accepted by the appointment panel. An interview panel was formed, consisting of Aidan White, Caroline Instance and Ashok Gupta. Jonathan Heawood was asked to attend the Chair interviews as an observer. After interviewing the shortlisted candidates, the interview panel recommended that Walter Merricks CBE should be nominated as the first Chair of IMPRESS. This recommendation was accepted by the full appointment panel at its third meeting, on 23 October 2014 [annex C5: IMPRESS Appointment Panel Meeting 3 Minute Redacted].

Meanwhile, the appointment panel long-listed a number of Board applicants. 72 applications were received in total. These applications were reviewed, in three tranches, by Jonathan Heawood and Caroline Instance. They recommended that a number of candidates should be long-listed for a first interview. After discussions with the appointment panel by email, which were ratified at its third meeting, on 23 October 2014 [annex C5: IMPRESS Appointment Panel Meeting 3 Minute Redacted]*, a total of 35 candidates were invited to a first interview. One candidate subsequently withdrew, so 34 candidates received a first interview. Interview panels of two appointment panel members were formed for each interview. The panel strived to ensure that any borderline candidate who was at risk of discrimination should be invited to a first interview.*

Interviews were highly structured, with a standard format and questions. Whilst different candidates were interviewed by different members of the panel, the interviews were similar enough to allow for meaningful comparison between candidates and to ensure that each candidate was treated equally regardless of gender, race, disability or any other protected characteristic.

Interview panel members completed an assessment form after each interview, with a shared recommendation of whether to shortlist or reject the candidate. It was agreed at the panel's third meeting, on 23 October 2014 [annex C5: IMPRESS Appointment Panel meeting 3 minute Redacted]*, that borderline candidates who did not excel against all the criteria but had the potential to bring a scarce set of skills or experience to IMPRESS should be placed on a 'reserve' list. In total, 10 candidates were recommended for shortlisting and 12 were placed on the 'reserve' list. Any* *candidates who failed to excel against all the criteria, or to bring a scarce set of skills or experience, were recommended for rejection.*

All applicants for both the Chair and Board member positions were asked to complete a diversity monitoring form. In total, 19 applicants completed monitoring forms. These showed that 74% of candidates defined themselves as 'White British'; 53% of candidates were female, 42% were male and 5% preferred not to say; 42% of candidates defined themselves as Christian, 16% as Jewish and 32% preferred not to say; 89% of candidates did not have a disability; and 79% of candidates were aged 55 or older.

Having selected a Chair, as described above, the panel considered the recommendations of the first interviewers at its fourth meeting, on 13 November 2014 [annex C6: IMPRESS Appointment Panel meeting 4 minute Redacted]*, and agreed a shortlist of candidates for final interview.8 Because the first interviews were highly structured, the panel was able to compare candidates on a like-for-like basis so that candidates were treated fairly, regardless of race, gender, disability or any other protected characteristic . A final interview panel was formed, consisting of Aidan White, Walter Merricks, Caroline Instance and Damian Tambini. Jonathan Heawood was asked to join the interview panel as an observer.*

In the final interviews, candidates were invited to make a short presentation, designed to test their understanding of IMPRESS and its context and their ability to contribute as Board members. This presentation was followed by a discussion in which their understanding of the strategic and regulatory challenges facing IMPRESS was probed by the interviewers in a structured but flexible format. The aim of the final interviews was to confirm that selected candidates excelled against the published criteria and that, as a whole, the Board represented the necessary balance of skills and experiences. The interviewers drew up a matrix to assess whether candidates' skills filled gaps or duplicated each other. The panel also ensured that there was a majority of independent (non-industry) members and that, as required by the Charter, no serving editors or politicians were nominated. The panel also excluded anyone who had been barred from acting as a company director.

Following these interviews, the interview panel recommended that six candidates should be nominated for the Board. This recommendation was accepted by the appointment panel at its fifth meeting, on 16 December.

Following the departure of an initial Board member, Sue Evison, a recruitment process was begun by the second appointment panel (see above) to find a replacement.

IMPRESS' application matrix states:

The new panel agreed Terms of Reference [annex C9: IMPRESS Appointment Panel Terms of Reference]*, which were revised and approved at the IMPRESS Board meeting on 25 September 2015* [annex B9: IMPRESS Board Meeting 9 Minute]*, and proceeded to recruit an additional Board member to fill the skills gap left by the departure of Sue Evison. A recruitment pack was published* online [annex C14: IMPRESS Board Member Recruitment Pack] *and advertisements were placed with Press Gazette.*

Eight applications were received and the Appointment Panel met on 17 November 2015 to shortlist, with those panel members who were unable to attend communicating their views by email. The applications were considered against the published selection criteria. The panel confirmed that it was essential for successful candidates to demonstrate a background in journalism. The decision to call three candidates for interview was endorsed by the full panel by email.

An interview panel was formed, consisting of Caroline Instance, Walter Merricks, David Robinson, Tom Murdoch and Damian Tambini. Interviews, which were structured with a standard format and list of questions, were held on 25 November 2015. The interview panel discussed their assessment of the candidates after the interviews and decided to write these into a report for the Board, drafted by the Panel Chair and endorsed by all panel members by email.

To fill the identified vacancy the panel nominated Martin Hickman to join the Board. The Board accepted the Panel's nomination at a meeting on 10 December 2015 [annex B11: IMPRESS Board Meeting 11 Minute] *and identified another opening on the Board, for a member with experience of popular journalism. The Board therefore asked the Panel to nominate a second Board member from the candidates who had been interviewed. Following this request, the panel nominated Emma Jones. This nomination was subsequently accepted by the Board.*

B. First call for information

The argument was put forward that the Board members did not have relevant expertise, which it was said must mean expertise in operation of the press.

IMPRESS replied:

Criterion 4 … plainly means that the Board should be composed of people with a broad range of skills and experience relevant to the task of regulating the press. Such skills might include regulatory, governance and legal experience, alongside skills in relation to journalism and news publishing. All of these skills are represented on the IMPRESS Board, as is demonstrated by the Board members' biographies and *the comprehensive documentation relating to the appointments process that was included with IMPRESS's application to the PRP.*

C. Second call for information

No new information was provided to which we wish to refer specifically.

D. Assessment

The Board Members' biographies, as supplied by IMPRESS, are below. A register of interests has been supplied (annex B4v2).

The governance arrangements are set out in the CIC articles of association (annex B2).

The Board members are:

Walter Merricks CBE (Chair) was the first Chief Ombudsman of the Financial Ombudsman Service, with responsibility for an organisation of 1,500 staff and a £90m budget. He is a member of the Gambling Commission and has been involved in dispute resolution and regulation in the fields of legal services, healthcare, insurance, energy and intellectual property, among others. He has also worked as a legal journalist and academic.

Deborah Arnott is Chief Executive of Action on Smoking and Health (ASH), which has a reputation as one of the UK's most effective campaigning charities. She was awarded the Alwyn Smith prize by the Faculty of Public Health for her role in getting the ban on smoking in public places. After gaining an MBA from Cranfield and working in print and TV journalism she set up and ran the Financial Service Authority's consumer education function. As a producer and programme editor in current affairs and documentaries she developed and ran a wide range of programmes for ITV and Channel 4.

Iain Christie is a mediator, facilitator and actor with a background as a barrister in human rights and media law. He is an Associate Member of 5RB, the media and entertainment law chambers, having previously served as a legal adviser in HM Diplomatic Service. He is joint Consultant Editor of Tugendhat and Christie: The Law of Privacy and the Media. Iain is Secretary of the Civil Mediation Council and has a particular interest in dispute and conflict resolution through dialogue.

Máire Messenger Davies is Emerita Professor of Media Studies at Ulster University. After working as a journalist on regional newspapers and magazines, she gained a psychology PhD. She has taught in media schools in Boston, Cardiff and London and has conducted research with Ofcom, the IBA, the Broadcasting Standards

Commission, the BBC and the DCMS. She is on the board of the Children's Media Foundation and is the author of several books, including Television is Good for Your Kids.

David Robinson (Treasurer and Senior Independent Board Member) founded the life insurance business Bright Grey in 2001 and grew it swiftly into a commercial success, employing more than 350 staff and overtaking established competitors. An actuary, he previously worked for 30 years at Scottish Provident and more recently as Chair of Engage Mutual Assurance. David is a former Governor and Chair of the Audit and Risk Committee of Heriot-Watt University, Edinburgh. He is also a founder Trustee and Chair of the charity Smalls for All, which supports vulnerable women and children in Africa through the provision of essential personal items.

Patrick Swaffer is President of the British Board of Film Classification, the independent non-statutory body which provides trusted classification for film and video. He also sits as a Recorder in the Crown Court and is a partner in Media Compliance Services. He was for more than 30 years a solicitor with the firm Goodman Derrick, specialising in media law and working principally with broadcasters and book publishers. He frequently advised such clients when disputes arose regarding contentious material both prior to and after publication.

Martin Hickman[30] is a journalist and publisher who is passionate about press freedom and ethics. He is managing director of a publishing house, Canbury Press, which specialises in contemporary non-fiction books. In a 20-year career in local and national news, he worked as a reporter or editor for the Press Association, Reuters, and The Independent, where he was deputy news editor. In 2012, he co-authored a best-selling book about the phone hacking scandal, Dial M for Murdoch.

Emma Jones[31] is the former editor of Smash Hits magazine. As a news and show business reporter, she worked for the Sunday Mirror, Mail on Sunday and the Sun (youngest Fleet St. columnist and Bizarre Deputy Editor). Television work includes live presenting for Channel Four and ITV. Emma is Deputy Chair of Governors at Tidemill Academy, in Deptford, S.E London and serves on the board of Greenwich Dance.

We have considered each element of the criterion:

The nomination process for the appointment of the Board should also be an independent process

[30] Appointed following the second recruitment process
[31] Appointed following the second recruitment process

As set out above, the appointments were made by the Appointment Panel, the members of which appear to be independent of both press and Government. We have seen no evidence of interference by either the press or Government in the appointment process (or by the funders of IMPRESS).

The composition of the Board should include people with relevant expertise

We consider that 'relevant expertise', given its natural meaning, could be wider than experience of the press and include experience of regulation and media law, as demonstrated by several of the Board members. We note that there is a separate requirement as part of Criterion 5 (c) for the Board to include a sufficient number of people with experience of the industry. In any event, we note that Martin Hickman, Emma Jones and Máire Messenger Davies have press experience. We consider this part of the criterion to be satisfied.

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 decision was taken to appoint a Board of between 7 and 11 members including the Chair (see annex C15 IMPRESS Board recruitment brief). In relation to the appointment of the first group of Board Members after the appointment of the Chair, the Application matrix confirms:

Following these interviews, the interview panel recommended that six candidates should be nominated for the Board[32]. This recommendation was accepted by the appointment panel at its fifth meeting, on 16 December 2014.

In relation to Martin Hickman and Emma Jones, the Application matrix confirms as follows:

To fill the identified vacancy the panel nominated Martin Hickman to join the Board. The Board accepted the Panel's nomination at a meeting on 10 December 2015 [annex B11: IMPRESS Board Meeting 11 Minute] *and identified another opening on the Board, for a member with experience of popular journalism. The Board therefore asked the Panel to nominate a second Board member from the candidates who had been interviewed. Following this request, the panel nominated Emma Jones. This nomination was subsequently accepted by the Board.*

We consider this part of the criterion to have been met.

[32] i.e. seven including the Chair

The requirement for independence means that there should be no serving editors on the Board

There are no serving editors on the IMPRESS Board.

E. Recommendation

See page 57.

Criterion 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.

Indicators – clearly included in the criterion.

Examples of evidence supplied

- Composition of appointments panel complies with criteria 1 and 3.
- Process used by the appointments panel to nominate and appoint Board members.
- Board members' biographies, evidence of compliance with criteria 5(a) to (f), and conflicts of interest declarations.

A. IMPRESS statement and evidence in their application matrix (annex A3):

See this section in Criterion 4 above, which includes the applicant's description of the nomination process. The original Board Members were nominated by the same process as appointed the Chair.

The application then continues:

A majority of Board members are independent of the press. Only Sue Evison derives a significant part of her livelihood from freelance journalism.
[NB Sue Evison resigned from the Board, for personal reasons, on 2 July 2015. Her expertise was subsequently replaced on the Board in a process led by a newly constituted IMPRESS Appointment Panel [see the description of the appointment of

Martin Hickman and Emma Jones in relation to criterion 4 above.} Máire Messenger Davies has worked in the past as a professional print journalist; Walter Merricks has worked as a freelance journalist; Deborah Arnott has worked as a broadcast journalist; and Iain Christie and Patrick Swaffer are experts in media law. Thus, the Board includes a 'sufficient number' of people with experience of the industry [annex C15.3: IMPRESS Board Biographies].

The ability of candidates to act 'fairly and impartially' was tested through their written applications, interviews and references.

References were taken up for all shortlisted Board candidates, and for the selected Chair candidate. References were taken against a standard set of questions, derived from the Board recruitment brief.

The decision to nominate these candidates was taken over email and ratified at the fifth appointment panel meeting, on 16 December 2014 [annex C7: IMPRESS Appointment Panel Meeting 5 Minute]. *Board members received a letter of appointment* [annex C12: IMPRESS Board Letter of Appointment], *which set out their terms of appointment as Board Members designate. They subsequently received a second letter of appointment* [annex C13: IMPRESS Board Letter of Appointment #2], *when the new company, IMPRESS: The Independent Monitor for the Press CIC, was formed in the course of 2015 (see below).*

The IMPRESS Board has created a register of interests [annex B4v2: IMPRESS Board Register of Interests], *in which Board members declare all outside interests.'*

B. First call for information

Representations were made on the basis that the Board did not include a sufficient number of those with experience of the industry throughout the United Kingdom. For example, the News Media association (NMA) stated:

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 Máire 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.

It was also said that the experience of Martin Hickman was not recent, and the experience of Emma Jones neither senior nor recent.

In reply, IMPRESS stated:

The composition of the Board, as is demonstrated by the Board members' biographies, more than satisfies this requirement. We draw the PRP's attention in particular to the experience of Emma Jones in the regional press in North Wales, the experience of Máire Messenger-Davies as an academic journalist in both Wales and Northern Ireland and the experience of Martin Hickman in the regional press in East Anglia and Humberside, in addition to the experience of all three of these Board members of working for national publications with circulation throughout the United Kingdom.

Respondents contended that the IMPRESS Board would be seen as lacking partiality because of the views and connections of some of their members. It was pointed out that Martin Hickman has co-written a book with current Labour Party deputy leader Tom Watson which was highly critical of News International.[33]

Associated Newspapers added:

We note that of the six Board members who have declared their interests, two are members of the Labour Party and one is a member of the Liberal Democratic Party. None are members of the Conservative or any other parties. IMPRESS's Director Jonathan Heawood stood as a Labour candidate in the 2006 local council elections…... Given the emphasis IMPRESS place on diversity it is surprising they have not made more effort to achieve political balance.

C. Second call for information

One respondent made the point that IMPRESS has no Scottish representation on its Board.

IMPRESS replied:

The clear aim of the Charter is to ensure that a self-regulatory body is governed by a unitary and sovereign Board. The Charter sets out minimum requirements for the composition of this Board and makes it clear that the Board is to be recruited on the basis of relevant skills and experience. This is not to be a stakeholder Board, representing the interests of different groups or sectors, but a skills-based Board. Good practice in governance is to ensure that a Board is large enough to include a diversity of skills and experience but small enough to provide effective oversight and decision-making. In light of this principle, the IMPRESS Articles allow for a maximum of 11 Board members. The Board currently has eight members. The Board's

[33] 'Dial M for Murdoch' published in 2013

composition meets the requirements of the Charter and its members have the necessary skills and experience.

As and when further Board members are recruited by the Appointment Panel, in addition to or in place of existing Board members, it may be that the Panel highlights the need to draw on candidates with experience of the press in certain nations or regions of the United Kingdom. However, it would not be compatible with the Charter for IMPRESS to reserve Board places for 'representatives' of the news publishing industry from all the UK's regions and nations as this would (a) change the Board's character from that of a skills-based group to a stakeholder group, with potential perverse consequences for its ability to regulate fairly and impartially; and (b) distort the composition of the Board, which must include a majority of people who are independent of the press.

It is important to note, in this context, that the IMPRESS Board includes members who are resident or employed in England, Scotland, Wales and Northern Ireland. [Annex A7 PRP clarification paper].

D. Assessment

We have considered separate elements of the criterion in relation to the IMPRESS Board:

Nominated by a process which is fair and open

From the description of the process set out in the application, we consider it to have been fair and open. The roles were advertised in the Guardian and via a number of recruitment websites.[34]

We did note that IMPRESS stated that:

The appointment panel identified and contacted a range of potential candidates for the Board, some of whom subsequently applied for the role.

We asked IMPRESS how many of the successful candidates were approached through this method.

IMPRESS' response was that of the Board members including the Chair only one David Robinson, was contacted in this way (by Caroline Instance, deputy chair of the appointments panel):

[34] Including 'womenonboards.net' and 'nonexecutivedirectors.com'

In fact, of 72 applicants for the IMPRESS Board, only three were proactively contacted by IMPRESS, of whom two were ultimately unsuccessful in their applications. [Annex A7, PRP clarification paper].

Comprise a majority of people who are independent of the press

From the biographies set out above, we consider that IMPRESS meets this requirement.

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

In their application, IMPRESS stated:

Máire Messenger Davies has worked in the past as a professional print journalist; Walter Merricks has worked as a freelance journalist; Deborah Arnott has worked as a broadcast journalist; and Iain Christie and Patrick Swaffer are experts in media law. Thus, the Board includes a 'sufficient number' of people with experience of the industry.

Subsequently two other members with experience of the industry (Martin Hickman and Emma Jones) were appointed to the Board by the process described on page 54 above.

There is no complete definition of industry in the Charter. In our response to our consultation on recognition process,[35] we stated that in relation to the definition of 'industry', the Charter refers to the concepts of 'press', 'members' and 'subscribers', so we consider 'industry' to be a wider concept than simply a reference to significant news publishers.

We do not accept one suggestion put forward by respondents that experience of the industry requires the individual to have been an editor or senior journalist in the national press since the criterion explicitly states that experience 'may include' former editors and senior journalists.

There has been criticism that the experience of those Board members who were journalists was acquired some years ago. We note however that the criterion does not refer to current or recent experience and indeed talks about 'former editors' etc. which implies that past experience is valued.

What 'a sufficient number' people with experience of the industry is will no doubt depend on the size of the Board. It is not specified that such members must be in the

[35] http://pressrecognitionpanel.org.uk/consultation-on-proposals-for-recognition/

majority. Indeed, the Board must include ‘a substantial majority of members that are demonstrably independent of the press.’ However, arguably there should be more than one member. At the very least, Martin Hickman, Emma Jones and Máire Messenger Davies would seem to have significant experience of the industry which would comprise three members on a Board of eight which appears sufficient. Other members have less significant experience or have worked advising the industry.

We have considered the meaning of the requirement that the experience must be ‘throughout the United Kingdom’. We do not interpret this as a literal requirement that there must be at least one member from each of the four parts that make up the United Kingdom – in our view such a requirement would have been explicit if it were to be imposed.

One respondent put forward a suggestion that this requirement reflects the desirability of at least one Board member having senior experience of the regional press.

We consider that the IMPRESS Board satisfies this part of the criterion bearing in mind that their Board includes experience of both regional and national (UK wide) press.

Not include any serving editor

There are no serving editors on the IMPRESS Board.

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

Although respondents have raised issues in relation to the political affiliations of some of the Board members, we do not consider that such affiliations mean that the Board is not independent. In our view, this part of the criterion was designed to show the level of political affiliation or connection with Government that is forbidden. From the evidence supplied, none of the IMPRESS Board members fall into any of these prescribed categories.

We have also considered the ‘Leveson concept’ of independence in relation to governance. At paragraph 4.6 of Chapter 7 Part K of his report, Lord Justice Leveson gave his view that ‘The Chair of the Board should also be independent of any political party.’ Walter Merricks has no declared affiliation to any political party (see IMPRESS Board Register of Interests (revised) annex B4v2) nor is any such affiliation known to us.

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

The description of the process by IMPRESS confirms that the recruitment operated in accordance with a protocol and advertisement with published criteria that included fairness, independence and integrity (see annex C11, Board member advertisement) which were applied by the appointment panel.

E. Recommendation

See page 57.

Recommendations in relation to Criteria 1 to 5

Criterion 1 (independent self-regulatory body, independent Board and Chair)

We refer to our assessment in pages 15 to 28 above, and in relation to the process for choosing the appointment panel(s) (Criterion 3) and the Chair and Board of IMPRESS (Criteria 2, 4 and 5). We consider that IMPRESS meets this criterion.

Criterion 2 (Chair of the Board selected by independent appointment panel)

We refer to our analysis in pages 29 to 30 above and our assessment of the process for choosing the appointment panel(s) (Criterion 3). We consider that IMPRESS meets this criterion.

Criterion 3 (selection of appointment panel)

We refer to our analysis in pages 31 to 41 above. We consider that IMPRESS meets this criterion.

Criterion 4 (nomination of the Board, Board requirements)

We refer to our analysis in pages 42 to 49 above and under Criterion 5. We consider that IMPRESS meets this criterion.

Criterion 5 (nomination of the Board, Board requirements)

We refer to our analysis in pages 50 to 56 above and relation to Criterion 4. We consider that IMPRESS meets this criterion.

Criterion 6

Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five-year period and should be negotiated well in advance.

Indicators

- The Regulator is funded adequately to fulfil its criteria obligations.
- The Regulator adopts policies and mechanisms to ensure that funding arrangements cover the prescribed period and undertakes reviews in an appropriate time.
- The timing for negotiating funding settlements is not such as to create a concern that the negotiation would impact on the independence or perceived independence of the Board.

Examples of evidence

- Articles of Association/Agreements between the regulator and subscribers and/or any other funders on existing and/or planned funding arrangements, including subscription rates agreed.
- Audited accounts and statement of going concern.
- Annual budget, including income and expenditure forecasts.
- Statement/assurance/minutes from regulator's Board to certify that the indicative budget is adequate for the purpose.
- Indicative timescales and processes for negotiating the funding settlement.

A. IMPRESS statement and evidence in their application matrix (annex A3)

From the point at which The IMPRESS Project was registered at Companies House on 13 November 2013 until the point at which this application was submitted to the Press Recognition Panel on 20 January 2016, IMPRESS has been in regular dialogue with a large number of relevant publishers, as defined in the Crime and Courts Act 2013.

Over the course of this period, the strongest support for IMPRESS has come from independent news publishers and IMPRESS was therefore established on behalf of such publishers. This sector of the news publishing industry includes approximately 400 so-called 'hyperlocal' publications, which tend to have turnover of less than £100,000 per annum, alongside a number of larger publishers at a local and national level. We agreed with these publishers that membership of IMPRESS should be *made available, as required by the Charter, on 'fair, reasonable and non-discriminatory terms' (see Criterion 23, below).*

Taking into account the commercial pressures on this sector 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 [annex E1: IMPRESS Executive Business Plan 2015-2020]*. This Plan is based on the following assumptions, which were tested and refined in the planning process, including through dialogue with the industry:*

- *IMPRESS will begin life as a regulator for independent*
- *news publishers;*
- *There is a demand for regulation among independent news publishers;*
- *IMPRESS will operate a mixed business model; and*
- *IMPRESS will handle fewer complaints than comparable regulators.*

The Business Plan sets out an indicative annual budget of approximately £1m in 2016-17, rising to approximately £1.6m by 2019-20. As a central part of the Business Plan, this budget was approved by the Board at its meeting on 16 July 2015 [annex B7: IMPRESS Board Meeting 7 Minute]*. Participating publishers have the right, under clause 10.1.7 of the IMPRESS Articles of Association, to be consulted on changes to the organisation's budget* [annex B2: IMPRESS CIC Articles].

In order to satisfy the Charter requirement (in Criterion 23) that membership should be available to all publishers on fair, reasonable and non-discriminatory terms, and the requirement (in Criterion 14) that complainants should be able to bring complaints free of charge, 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 [annex G3: IPRT IMPRESS Funding Agreement]. *The Funding Agreement set outs how the terms of the donation will give IMPRESS absolute operational independence from the donor, except for minimal reporting and compliance conditions. The Agreement may be extended, and the IMPRESS Board will ensure that future funding settlements are negotiated well in advance.*

IMPRESS will appoint a Fundraising Officer in 2017-18 if it becomes clear that further grants and donations are necessary to support the organisation's development beyond 2019-20. Alternatively, income from subscriptions will grow sufficiently to sustain the regulator.

The Board of IMPRESS will monitor the organisation's financial sustainability, in line with the Financial Policies [annex B2.2: IMPRESS Financial Policies] *and responsibility for financial oversight will sit with the Finance & Audit Committee* [annex B2.1: IMPRESS Finance & Audit Committee Terms of Reference].

The overwhelming majority of IMPRESS funding in the next four years therefore comes from the Independent Press Regulation Trust IPRT) – an unincorporated charitable trust registered with the Charities Commission of England and Wales.

IPRT's objects include: …'to promote for the benefit of the public, high standards in ethical conduct and best practice in journalism and editing and publishing 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'. [See annex G3 IPRT Funding Agreement]*.*

B. First call for information

The funding criterion has been a focus for a number of those that have responded to the call for information. Issues were raised in connection with the issue of IMPRESS' funding source and the effects this may have on its independence – these are discussed in relation to Criterion 1 above.

Respondents stated that IMPRESS did not have sustainable funding – on the basis that the funding arrangement between IMPRESS and IPRT allows the funding to be withdrawn at 10 working days' notice in certain circumstances, and membership fees would be clearly insufficient to support IMPRESS based on their modelling. It was said that a majority of the press was already signed up to a five-year agreement with IPSO, so it would not be possible for IMPRESS to attract significant numbers of new members from those who had already joined IPSO for some years.

It was also pointed out that under the terms of Clause 4 of the Regulatory Scheme agreement (annex D1v3), although membership of IMPRESS will last five years, members can terminate early by giving no less than six months' notice terminating on 31 March in any year. Respondents have argued that this ability for early termination is relevant to consideration of stability of funding (and effectiveness of powers - see Criterion 15) as members can leave if they are unhappy with IMPRESS' decisions. It has been said, for example, that IPSO members are by contrast required to sign up for the full five-year period.

Respondents also stated that IMPRESS had not shown that funding for the system had been 'settled in agreement between the industry and the Board'*.* It was suggested that the industry had to agree the funding for this criterion to be met, and that the regulator must be funded by the industry. It was said that there was no evidence that IMPRESS had consulted the newspaper and magazine industry as a whole or even their own prospective members on their funding system which includes their funding from IPRT. One respondent claimed that it had contacted IMPRESS' prospective members (based on the information on IMPRESS' website) asking if they knew of the funding by AMCT and two of the three who replied stated that they were not aware of it. (See annex J1).

In their response to the first call for information (annex A4) IMPRESS stated:

Criterion 6 is intended to ensure that the regulator's funding is secure and sufficient. The reference to the 'industry' is plainly intended to refer to that section of the industry which has chosen to be regulated by IMPRESS.

In order to confirm that IMPRESS fulfils this Criterion, we provide a revised version of the IMPRESS Regulatory Scheme Agreement (clause 4.2) (annex D3v2), which shows that participating publishers approve the Board's capacity to raise sufficient funds to meet the regulator's obligations.

As the Leveson Report observes, 'two issues arise in relation to independence of funding. One is the absolute 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 its funding members.' It is for this reason that Leveson emphasised the need for the Board of the regulator to be involved in its financial planning – in contrast to the state of affairs in relation to the PCC, where the Press Board of Finance (Pressbof) agreed the regulator's funding with the industry alone. Thus, Leveson's emphasis here is on the involvement of the regulator in deciding its funding arrangements. IMPRESS has more than met this requirement, by ensuring that the Board has the necessary autonomy to determine its funding needs.

There is nothing in either the Charter or the Leveson Report to support the NMA's suggestion that the entire industry must agree to the means by which the regulator is to be funded. The industry – as represented here by those publishers which subscribe voluntarily to IMPRESS – has complete freedom to choose to be regulated by IMPRESS or not. If other parts of 'the industry' do not agree to these means, then they have the freedom to establish a different, Charter-compliant, regulator, with alternative means of funding; and/or to remain regulated by a non-compliant regulator; or to remain unregulated. To suggest that all relevant publishers must agree to the means of funding any one regulator would be to give unregulated publishers a veto over the funding of a regulator to which they have not subscribed.

IMPRESS's funding comes from both the IPRT and from participating publishers. Information regarding IMPRESS's funding from the IPRT is publicly available on the IMPRESS website (http://impress.press/about-us/funding.html) and is clear to any *publishers who agree to be regulated by IMPRESS. Participating publishers have the right under Article 10.1 of the IMPRESS Articles of Association (provided with IMPRESS's application to the PRP) to be consulted on the regulator's budget. Under the Regulatory Scheme Agreement, IMPRESS's members explicitly agree to pay the subscription fee applicable under the Annual Tariff Schedule published by IMPRESS. In these respects, funding is demonstrably settled in agreement with the industry.*

Funding is also secure, as demonstrated by the IPRT IMPRESS Funding Agreement. The Board has certified this funding to be adequate for the purposes for which it is required. If the PRP is satisfied that this evidence supports IMPRESS's contention that funding is secure and sufficient, then this Criterion is fulfilled.

C. Second call for information

One group of respondents (made up of 16 academics who signed a joint letter) (see annex K2) wrote that 'agreement' with the industry is complied with as part of the process of publishers agreeing to be regulated by IMPRESS.

The National Union of Journalists stated that their delegate's conference had voted in January 2016 to welcome the IMPRESS application (see annex K8). They stated that a narrow interpretation of the term 'industry' in Criterion 6 to include only proprietors was incorrect and that journalists were more representative of the industry.

However, other respondents expressed further concern about IMPRESS' funding arrangement compromising its independence, as well as the lack of security of funding. It was pointed out that the agreement between AMCT and IPRT allows the funding to IPRT to be terminated on 15 days' notice.

D. Assessment

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

In its indicative view on generic issues the PRP Board has stated:[36]

In relation to Criterion 6, we do not interpret the provision for funding for the system 'being settled in agreement between the industry and the Board' as requiring positive

[36] http://pressrecognitionpanel.org.uk/guidance-for-applicants/ - section 5

agreement to the funding arrangements with the whole of (or any particular minimum threshold of) the news publishing industry. This is because:

1. *The Charter envisages that there can be more than one regulator,*
2. *Such a requirement could allow publishers an effective veto over the recognition of a regulator when they have no wish to become a member of that (or any recognised) regulator; and*
3. *Given the sheer scale and diversity of 'relevant publishers' it would be impracticable to identify or contract all the relevant publishers that could or might be affected.*

However, we bear in mind that the regulator has to 'take into account the … commercial pressures on the industry' and is required by Criterion 23 to ensure that 'membership is open to all publishers on fair, reasonable and non-discriminatory terms….' In those circumstances we consider that Criterion 6 does, as a minimum, require some form of consultation that the wider industry could respond to if it wished.

We also consider that Criterion 6 requires the regulator to provide a rationale for the decisions taken following the consultation including for example, how the regulator will ensure that certain types or sizes of publishers are not precluded from joining at a later stage (and therefore excluded from cost protection) because the fees do not sufficiently reflect the commercial pressures on the industry.

Given that Criterion 6 refers to 'funding for the system' being agreed and not just the 'regulatory fees', we also consider that consultation should be on the whole of the funding arrangements, including any proposals to take funding from third parties.

There is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party and such funding does not preclude an application or mean that a regulator is automatically not 'independent'. It would be possible for third party funding to compromise the independence of a regulator, but whether it does so will be a question of fact and will depend on the safeguards that were put in place to protect independence, such as the terms of the agreement between the funder and the regulator and the regulator's governance arrangements.'

On 08 June 2016, IMPRESS launched a consultation on its funding arrangements (annex G1) which was placed on its website. We asked IMPRESS to confirm how the consultation was further publicised. They replied (annex H27):

On 8 June, we sent the attached notice [annex G1.1] *to our mailing list of 1,600 stakeholders, which includes all relevant publishers in the UK for whom we have contact details, alongside representative bodies such as the NMA and the Society of Editors. The notice was also posted on our website under 'Financial Consultation'.*

Also on 8 June we sent the attached press release to the following media correspondents: Jane Martinson – Guardian, Jasper Jackson – Guardian, Roy Greenslade – Guardian, Mark Sweeney – Guardian, David Bond – FT, Dominic Ponsford – Press Gazette Steve Hewlett – BBC, Katie Takatsuki – BBC David Sillito – BBC.

We also sent tweets about the financial consultation from @impressproject on 8, 9, 13, 15, 24 and 29 June and 4 and 5 July. The majority of our participating publishers are following our Twitter account.'

IMPRESS also confirmed:

On 20 June, we sent all participating publishers a dedicated email about the consultation. We also published information about the consultation on a private LinkedIn group which we use to communicate with participating publishers. And we publicised the financial consultation at a meeting with participating publishers which we held on 28 June in partnership with the Centre for Community Journalism at Cardiff University.' [See annex H29].

The consultation document states:

…we are seeking feedback on our financial arrangements not only from existing members but also from potential future members and from others who have an interest in our work and who want to make constructive suggestions. ***We encourage all news publishers to respond to this consultation, whether or not you are currently a member of IMPRESS****.*

Comments were invited on IMPRESS' fee structure which is a banded scale depending on publisher turnover (see Criterion 23 below). Views were also sought on whether using financial turnover is a fair measure and whether publishers would prefer a 'polluter pays' arrangement in which members are charged a mixture of subscriptions and complaints-handling fees.

The consultation document clarified that over its first four years much of IMPRESS funding would come from IPRT. Comments were invited on whether IMPRESS should develop a mixed financial model to include a blend of revenue from fees, grants, donations and other services.

The consultation closed on 6 July 2016. In their 13 July 2016 decision paper (annex G2) following the consultation, IMPRESS reaffirmed its account of the publicity that had accompanied the launch of IMPRESS and of the engagement with publishers (see Criterion 1 above part A). IMPRESS added that the two calls for information issued as part of this approval process had also provided opportunities for news publishers to comment on the business plan and tariff schedule.

IMPRESS’ decision paper confirmed that there had been 12 responses to the consultation. The majority of respondents agreed with fees based on a banded tariff schedule and agreed that IMPRESS should keep its financial arrangements under review and pursue a mixed model of funding with a blend of income from fees, grants donations and other services. The summary then states:

19. In light of the broad support for our financial arrangements, and taking into account the lack of any compelling argument against these arrangements to have emerged in our longer process of engagement with the news publishing industry since September 2013, we do not propose to make any significant changes to these arrangements. We will continue to use financial turnover as the basis for a tariff schedule. We will continue to employ a banded tariff schedule rather than percentage-based membership fees. And we will continue to develop a mixed income model, with a blend of income from fees, grants, donations and other services.

20. However, a significant minority of respondents did not agree that the bands, and the fees in each band, of the tariff schedule were fair and reasonable. We do not intend to reduce the fee in the lowest band which, at £50 per annum, already represents a heavily subsidised service. However, we do propose to remove the highest two bands from this schedule, so that all publishers with financial turnover above £20m will be eligible for an annual membership fee of £70,000. The revised schedule is as follows:

- *Publishers with turnover up to £100,000 pay a membership fee of £50 per annum.*
- *Publishers with turnover between £100,000 and £1m = £550pa.*
- *Publishers with turnover between £1m and £2m = £1,500pa.*
- *Publishers with turnover between £2m and £5m = £7,000pa.*
- *Publishers with turnover between £5m and £10m = £15,000pa.*
- *Publishers with turnover between £10m and £20m = £30,000pa.*
- *Publishers with turnover above £20m = £70,000pa.*

This amendment to the fees tariff therefore abolished two higher bands of fees of £225,000 and £800,000 which had been the focus of significant criticism of the IMPRESS fee scheme by respondents to the first call for information – see the assessment of Criterion 23 below. These criticisms had been on the basis that the level of fees in these bands did not take into account the commercial pressures on newspapers and were unrealistically high.

Through article 10.1 of the CIC Articles of Association (Annex B2) IMPRESS has also made a commitment to consult members over the annual budget. IMPRESS has confirmed that this process extends to consulting members on their annual tariff schedule. The PRP's clarification (Annex A7) and the IMPRESS financial stability policy (annex G11) sets out the process in more detail.

At the validation and verification visit on 6 July 2016, we queried whether members could be required to pay increased fees to which they had not agreed in light of this process. At the time of the visit, IMPRESS indicated that the intention had been that the annual consultation on the tariff would be run in January to set fees for the April in the following year. (See annex H15). This would have given members the time to serve notice and leave the scheme should they not find the fees acceptable.

However, in their letter of 28 July 2016 (annex H29) IMPRESS stated:

Under the Charter, IMPRESS is required to ensure that fees are fair, reasonable and non-discriminatory. We will allow publishers to comment on any changes to our financial arrangements before they are finalised and will of course take their views into account.

However, publishers' views cannot be allowed to outweigh all other considerations, or IMPRESS would have sacrificed the very independence which is required under the Charter. For this reason, it would be inappropriate to give publishers scope to threaten to resign unless their demands were met in relation to the budget and tariff schedule.

Therefore, the annual consultation process is designed to give publishers an opportunity to comment on any changes to IMPRESS's financial arrangements, including the annual budget and the tariff schedule, but not to give them any kind of veto over these arrangements.

We return to this issue in our assessment of Criterion 23.

There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five-year period and should be negotiated well in advance.

Indicator: The regulator is funded adequately to fulfil its Charter obligations

The IMPRESS Board approved the budget at its meeting on 16 July 2015 (annex B7: IMPRESS Board Meeting 7 Minute).

Although Criterion 6, states that it is for the regulator's Board to certify whether or not the funding is adequate, the PRP Board is also required to take into account the concepts of reliability of funding and effectiveness as set out in Part K, Chapter 7, Section 4 of the Leveson Report.

At paragraph 4.15 of Chapter 7, Lord Leveson stated:

4.15 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 absolute 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 its funding members.

It is clear that IMPRESS relies overwhelmingly on the funding from IPRT and will continue to do so over the next few years. Table 1 below shows IMPRESS' anticipated expenditure taken from their executive summary business plan (annex E1) together with projected income under the IPRT agreement. These are of course only forecast costs, and the criterion refers only to an indicative budget. There will be a number of unknowns in any new organisation and in this case there are the additional issues of whether the provisions of section 40 of the Crime and Courts Act 2013 will be activated and whether other regulators come forward. If the forecast is correct, IMPRESS would have to make up the difference between the two figures with members' fees and other income. We understand that IMPRESS does not expect any difference to be made up entirely with fees - in its consultation on its financial arrangements, IMPRESS stated:

In time, we aim to develop a mixed model with a blend of income from fees, grants, donations and other services.

	2015/16	**2016/17**	**2017/18**	**2018/19**	**2019/20**
Forecast costs	£699,984[37]	£1,045,695	£1,483,891	£1,520,854	£1,566,113
IPRT deed income.	£475,000[38]	£950,000	£950,000	£950,000	£475,000

However, actual expenditure by IMPRESS may turn out to be less than predicted, either because its assumptions as to costs may turn out to be too high or because it may reduce its costs if membership does not increase as hoped. See IMPRESS letter of 21 July 2016 to the PRP (annex G14).

[37] Includes expenditure from the IMPRESS Project

[38] The IMPRESS Project received other income during 2015-6 including £90,000 from IPRT and £40,000 from Max Mosely – see attendance note annex H17 and assessment in relation to criterion 1.

As I mentioned, we are currently underspending the grant we receive from the Independent Press Regulation Trust. The grant consists of eight six-monthly instalments of £475k, or £3.8m in total. We are currently spending the grant at a rate equivalent to approximately £760,000 per annum, which allows us to build up prudent reserves. At this rate, funding from the IPRT grant alone will sustain our operations until approximately 30 October 2020, five years from the date of the funding agreement.

No source of funding can be completely secure – a regulator funded by members alone could lose key members. However, the question of the reliability of IMPRESS' funding arises given its reliance on IPRT and the terms of the funding deed with IPRT. The ability of IPRT to reduce or remove funding is described in detail in relation to Criterion 1 above which examines the relevant documentation and history and we refer the PRP Board to that assessment. In assessing all of the circumstances, we have noted the terms of the deed of variation (annex G3.2) which limits IPRT's removal of funding under the catch-all clause of the funding agreement to circumstances in which IPRT does not have sufficient funds to meet the grant. We have also noted the letter from AMCT's solicitors (annex G12) confirming that the future funding for IPRT has been made available and is on deposit. We consider therefore that these measures go a significant way to reducing any risk in relation to reliability of funding from IPRT.

PRP Board members will want to note that there are other circumstances in which IPRT has a discretion to terminate or reduce the grant – see annex G3: IPRT IMPRESS Funding Agreement and the assessment in relation to criterion 1 above. These include 'operational' matters such as if IMPRESS fails to comply with the terms of the agreement or if one of the IMPRESS Directors is disqualified as a Company Director. However, given that the clear intention appears to be to fund IMPRESS for the purposes set out in the funding agreement we have no reason to believe that IPRT would exercise these powers in an arbitrary or unnecessary way.

The PRP Board may also wish to consider the effect on financial stability of the right of IMPRESS' individual members to terminate their agreement early, on a minimum of six months' notice ending on 1 April each year. It should be noted however that early termination does not give the right to repayment of fees already paid, but would obviously mean that fee income from the particular member would be lost going forward. Nevertheless, a business model such as that of IMPRESS based on a number of small publishers will be less affected by individual members leaving than would a regulator that relied on a few large titles for a significant proportion of its income.

The PRP Board may also wish to consider whether IMPRESS' ability to vary membership fees during the term of the five-year regulatory scheme agreement impacts on the requirement in the criterion that 'Funding settlements should cover a four or five-year period and should be negotiated well in advance'. In that connection it may be worth considering that members cannot reduce the fees – and that therefore this power is unlikely to impact on IMPRESS security of funding (see paragraph 4.15 of Chapter 7, Part K Leveson discussed above).

Indicators

- *The regulator adopts policies and mechanisms to ensure that funding arrangements cover the prescribed period and undertakes reviews in an appropriate time.*
- *The timing for negotiating funding settlements is not such as to create a concern that the negotiation would impact on the independence or perceived independence of the Board.*

The bulk of the IMPRESS funding was negotiated up until April 2019 with a single source, the IPRT Trust.

We asked IMPRESS to confirm the process and timing for reviewing its funding prior to the end of the current four-year funding period. IMPRESS replied (annex A7):

IMPRESS has received a guarantee of £3.8m in funding from the Independent Press Regulation Trust (IPRT). Our forecast shows that this will be enough to subsidise IMPRESS's costs for at least four years.

In this period, IMPRESS expects to develop a diverse financial model, with income from regulatory fees and related services; fines (which will be ring-fenced, in line with the requirements in the Royal Charter); grants and donations; and savings and investment income.

The Board has set itself the challenge of ensuring the organisation's long-term financial sustainability.

*We provide a copy of the **IMPRESS Financial Sustainability Policy*** (annex G11)*, which sets out the process through which the Board will review its financial sustainability on a rolling basis.*

Annex G11 (Clause 5) includes provisions for annual reviews of financial stability by the IMPRESS Board resulting in an annual budget and a draft four-year forecast describing in general terms how IMPRESS expects to generate funds to achieve its objects.

E. Recommendation in relation to Criterion 6

We have not made any recommendation in relation to this criterion but would invite the PRP Board to consider the issues raised.

Criterion 7

The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive.

Indicators – clearly included in the criterion

Examples of evidence

- Terms of reference and agreements between the Board and a Code Committee.
- Minutes of relevant meetings or other documentation between the Board and a Committee to validate the Board's responsibility for the code and its compliance with Criterion 8.
- Information on the composition of the Code Committee, including their experience and expertise, and the number of, and role played by, serving editors.

A. IMPRESS statement and evidence in their application matrix (annex A3):

Having recruited a Board as detailed above (see Criteria 1-5), the Board recruited a Code Committee through a similar process. Caroline Instance, on behalf of the appointment panel, chaired a selection committee which included Máire Messenger-Davies, Iain Christie and Jonathan Heawood. This selection committee agreed a recruitment brief for the Code Committee [annex C15: IMPRESS Code Committee Recruitment Brief]. *In order to advise the Board adequately on any standards code and the associated requirements under Criteria 8, 8A and 8C, prospective members of the Code Committee were asked to demonstrate exceptional experience and understanding of issues including journalism, media ethics, media law, equalities and human rights, the public interest and digital media.*

The role was advertised via Press Gazette and on the IMPRESS Project website. Nine applications were received. The selection committee shortlisted seven of these candidates, and recommended, after a series of structured interviews, that four should be appointed. This recommendation was accepted by the Board at a meeting on 16 June 2015 [annex B6: IMPRESS Board Meeting 6 Minute].

The Board also agreed Terms of Reference for the Committee [annex B12: IMPRESS Code Committee Terms of Reference]. *These state that the Committee should include the Chair and Executive Director of IMPRESS and two Board members, acting ex officio, alongside other members, up to a minimum of seven and maximum of eleven members in total.*

The eight members of the Code Committee are as follows:

- *Máire Messenger-Davies (Chair)*
- *Iain Christie (ex officio)*
- *Mary Fitzgerald*
- *Jonathan Heawood (ex officio)*
- *Walter Merricks (ex officio)*
- *Gavin Phillipson*
- *Lorna Woods*
- *Paul Wragg*

Collectively, these members demonstrate exceptional experience and understanding of journalism, media ethics, media law, equalities and human rights, the public interest and digital media [annex C15.4: IMPRESS Code Committee Biographies]. *Mary Fitzgerald is the serving editor of a relevant publisher (openDemocracy).'*

IMPRESS has adopted the current Editors' Code of Practice stating in their application (in relation to Criterion 8).

Lord Justice Leveson accepted that it was not his role to recommend specific changes to a regulator's standards code. This assumption is reflected in the Charter. However, the recitals to the Charter note that the Editors' Code of Practice will be the initial standards code of a regulator[39]*. IMPRESS has therefore adopted the Editors' Code of Practice as its initial standards code* *http://www.editorscode.org.uk/downloads/the_code/Code-1-page-A4-2016.pdf . This code is familiar to most relevant publishers and sets a realistic benchmark for standards of news publishing.*

The Board plans to conduct a public consultation on a future standards code in the course of 2016. This consultation will be facilitated, on behalf of the Board, by the Code Committee.

B. First call for information

Respondents stated that IMPRESS' decision to adopt the Editors' Code meant that they did not have a Code that is the 'the responsibility…. of the Board.' It was said that:

[39] The Charter recital states: 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:

(a) IMPRESS has been given no licence to use the Code by the Regulatory Funding Company (RFC), which owns the copyright. It was alleged that IMPRESS could not therefore link to the Code on its website, or refer to it in its adjudications.
(b) In any event, IMPRESS will need to use the Code as agreed and from time to time amended by the Editors' Code or Practice Committee, on which IMPRESS is not represented.

The representations included a copy of a letter from the RFC to IMPRESS (annex J11) stating that IMPRESS and its members had no right to use the Code in the absence of any licence from RFC as copyright owner. The letter stated that RFC has offered a licence to IMPRESS on the same terms as other organisations but that offer was rejected by IMPRESS.

Respondents also said that the recital in the Charter did not justify the use of the Editors' Code by IMPRESS, since firstly, IMPRESS is not 'the successor to the Press Complaints Commission' and secondly the recital only anticipated an initial use of the Code – whereas IMPRESS has had two years to come up with an alternative.

Respondents also queried the composition of the Code Committee. It was said that the criterion required serving editors to be on the Committee and to play an important role, whereas the IMPRESS Committee contains only Máire Messenger-Davies and it is not clear that she is in fact an editor of a relevant publication.

In relation to the adoption of the Editors' Code IMPRESS replied:

The Charter (Recital 6) and the Leveson Report anticipate that a regulator will adopt the Editors' Code of Practice as its initial standards code. Leveson also suggested that a regulator should 'consider engaging in an early thorough review of the Code with the aim of developing a clearer statement of the standards expected of editors and journalists' (recommendation 36). The Charter (at Schedule 2.4) allows the PRP to 'take into account' a regulator's compliance with this recommendation.

Thus, although it is not restrictive in this respect, the Charter provides very strong grounds for the expectation that the Editors' Code should form a regulator's initial standards code – subject to consultation.

IMPRESS has followed this expectation in a scrupulous attempt to satisfy the requirements of the Charter. The expectation that IMPRESS should be free to adopt the Editors' Code as their initial standards code has been endorsed by the Chair and Chief Executive of IPSO in their evidence to the House of Lords Select Committee on Communications, and publishers participating in IMPRESS have agreed to be bound by the Editors' Code.

However, the RFC (of which the NMA provides the secretariat) claims copyright in the Editors' Code and has proposed a licence agreement, including a clause to the effect that IMPRESS would not use the Code in any way inconsistent with, inter alia, decisions by IPSO or the Editors' Code Committee. IMPRESS cannot agree to this restrictive licence as it would compromise its independence. IMPRESS has therefore been seeking for over a year to negotiate a mutually acceptable agreement.
Even if the RFC does own copyright in the Code (and it is not clear that it does), IMPRESS is advised by specialist counsel that there is no legal impediment to IMPRESS's:

requiring its members to abide by the terms of the Editors' Code and linking to it from the IMPRESS website;
Adjudicating on breaches and promulgating adjudications (which can refer to the relevant parts of the Editors' Code);
Consulting with the public and IMPRESS members about revisions to the existing code; and
Providing guidance and commentary on the Code.

IMPRESS is therefore adopting the Editors' Code as an initial standards code. At the same time, IMPRESS is drafting a new standards code which will be consulted on and adopted by IMPRESS's participants in the course of 2016. This code will address the requirements set out in the Charter.

In relation to arguments about the need for serving editors on the Committee, IMPRESS stated:

This is a misunderstanding of Criterion 7 which sets no conditions whatsoever on the composition of the Code Committee. The reference to serving editors is clearly permissive, not restrictive in the way suggested here.

C. Second call for information

The fact of IMPRESS consulting upon a new Code was highlighted and it was claimed that the application was therefore premature. IMPRESS members would not know what Code they would be expected to comply with in the future or what they were signing up for.

D. Assessment

IMPRESS announced the launch of a public consultation on a new Code on 12 May 2016.[40] We have noted that recommendation 38 of the Leveson additional

[40] See http://www.impress.press/news/impress-launches-code-consultation.html

recommendations is ‘A regulatory body should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards expected of editors and journalists’.

However, as this consultation is ongoing and no new Code has been adopted it falls to the PRP Board to consider whether the current Code arrangements meet the criterion.[41]

We have considered separate elements of the criterion as follows:

The standards code must ultimately be the responsibility of, and adopted by, the Board

In issuing its indicative view on interpretation of the Charter, the PRP Board has taken the view that there is nothing in the criteria or Charter which prevents the adopting of the Editors’ Code by a regulator. The PRP Board’s published view states:

We do not consider it part of the PRP’s role to determine any dispute over ownership of the Editors’ Code (or any other code which an applicant submits) provided that that the criteria are met in relation to the standards code which an applicant regulator has properly adopted.[42]

If the Code is accessible to the regulator, its subscribers and the public, so that subscribers can comply and IMPRESS can operate effective complaints, then we do not consider the dispute over IMPRESS’ use of the Editors’ Code as preventing this criterion being met. We have noted that IMPRESS provides links to the Code and guidance through its website and requires the agreement of its (prospective) subscribers to comply with it and publish their complaints process.

IMPRESS has confirmed that their Board adopted the Editors Code at is meeting of 12 January 2015 (annex A8.1).

It is true that changes can be made to the Editors’ Code by its owners. In such cases IMPRESS’ Board would have to decide whether to adopt these changes. However, given the launch of IMPRESS’ consultation on a new Code to replace the Editors’ Code, this is not likely be a significant factor. We have not considered the possible terms of any new Code as part of this application, but IMPRESS informed us that their existing members are being consulted on the new Code (along with other

[41] If IMPRESS is approved and subsequently adopts a new Code, then the PRP will consider whether the new Code means that IMPRESS continue to meet criterion 8 at that point.
[42] http://pressrecognitionpanel.org.uk/guidance-for-applicants - section 5

interested groups and the public) and in the event of the final version of this Code not being acceptable to any of the members then they will be able to serve notice to terminate the agreement.

Advised by a Code Committee which may comprise both independent members of the Board and serving editors. Serving editors have an important part to play although not one that is decisive.

As set out above IMPRESS has created a Code Committee to advise their Board. The terms of reference for the Code Committee (annex B12) provide that the role of the Committee is to advise the IMPRESS Board on the development of the Code and guidance.

It is not considered that the presence of serving editors is a requirement.

The PRP Board's indicative view on preliminary issues states that:

We consider Criterion 7 as permitting serving editors to be part of the Code Committee and, if they are, to play an important (but not decisive) role in such a committee. However, we do not interpret the criterion as requiring such participation in light of the words 'may comprise both independent members of the board and serving editors' in the first sentence. If the criterion had intended a minimum requirement for serving editors this would have been stated more clearly, and we bear in mind our general approach of not implying additional restrictions into the criteria.

It should be noted that the Code Committee was not yet in existence at the time the Board took the decision to adopt the Editors' Code. However, we do not interpret the criterion as requiring the Board to have received the advice of the Code Committee before it first adopted the Code, although we would expect the Code Committee to advise on an ongoing basis. We note that the Code Committee is involved in the creation of the new Code (see http://www.impress.press/news/support-for-standards-code.html).

E. Recommendation in relation to Criterion 7

We consider that IMPRESS meets this criterion.

Criterion 8

The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:
a) conduct, especially in relation to the treatment of other people in the process of obtaining material;
b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and
c) accuracy, and the need to avoid misrepresentation.

Indicators

- The Regulator has demonstrably considered relevant legislation, codes, rules and/or guidance in developing the code.
- The Regulator meets the requirements set out in the criterion including in 8 (a), (b) and (c).
- The code is framed in a manner consistent with the potential for complaints to be heard and decided upon by the Regulator under Criterion 11 (a) to (c).

Examples of evidence

A copy of the code with an explanatory note of how the code takes into account the requirements of the criterion.

A. IMPRESS statement and evidence in their application matrix (annex A3):

Lord Justice Leveson accepted that it was not his role to recommend specific changes to a regulator's standards code. This assumption is reflected in the Charter. However, the recitals to the Charter note that the Editors' Code of Practice will be the initial standards code of a regulator. IMPRESS has therefore adopted the Editors' Code of Practice as its initial standards code [http://www.editorscode.org.uk/downloads/the_code/Code-1-page-A4-2016.pdf]. This code is familiar to most relevant publishers and sets a realistic benchmark for standards of news publishing.

The Board plans to conduct a public consultation on a future standards code in the course of 2016. This consultation will be facilitated, on behalf of the Board, by the Code Committee.

B. First call for information

See the points made in relation IMPRESS' use of the Code in Criterion 7 above. There were no detailed representations as to whether the text of the Editors' Code meets Criterion 8.

C. Second call for information

As above.

D. Assessment

The Editors' Code of Conduct can be found here.

IMPRESS has taken the view that the Editors Code meets Criterion 8:

As we have previously noted, Lord Justice Leveson anticipated that any regulator would adopt the Editors' Code of Practice as its initial standards code. Thus, the requirements relating to a code in Criterion 8 are clearly intended to describe the Editors' Code of Practice. (Annex A7, IMPRESS PRP clarification paper).

Lord Leveson made it clear that he was not carrying out an analysis of the current Editors Code, although he accepted that the current Editors Code has been widely praised in the industry and developed over a number of years to reflect changing issues.[43]

In its indicative view on preliminary issues the PRP Board has stated that:

The Board has considered the interaction between the wording of the preamble to the Charter which states that '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' and Criterion 8 which requires the PRP to assess the regulator's code. We bear in mind that the criteria are legally operative whereas the preamble simply explains the Charter's background (providing, at most, an aid to interpretation). Whilst there is nothing in the Charter to prevent a regulator from putting forward the text of the current Editors' Code as its own code, we would still need to assess that submitted code against Criterion 8 (even the preamble only talks of 'putting forward').[44]

We have therefore carried an analysis of the Editors Code to assess whether it meets Criterion 8.

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[43] See Volume 4 Part K Chapter 7 paragraph 4.18 in annex L1.

[44] http://pressrecognitionpanel.org.uk/guidance-for-applicants - section 5

As an initial point, since the Human Rights Act 1998, when considering matters of publication, the courts will balance the rights under Article 8(1) of the European Convention on Human Rights – the right to respect for private and family life, home and correspondence, with Article 10(1) – the right to freedom of expression. Both rights are qualified by various countervailing interests and are not therefore absolute. The courts have considered the predecessor to the Editors' Code on a number of occasions since the passing of the Human Rights Act in deciding whether to grant interim injunctions or grant relief at trial. The Code has been regarded as relevant both as to the scope of privacy and the scope and nature of the public interest justifications (or exceptions as the Editors' Code describes them) it contains.[45]

Whilst this does not amount to approval by the courts of the Editors' Code (nor indeed are the courts bound by it) the case law does show a recognition that the Editors' Code addresses the balance between freedom of speech and the right to privacy by individuals which is at the heart of Criterion 8.

The importance of freedom of speech

The preamble to the Editors' Code stresses that it must not be interpreted so broadly so that it,

infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain….

The public interest definition in the Editors' Code also recognises that there is a public interest in freedom of expression itself.

The interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled)

The Code provides that there may be exceptions to a number of its requirements where public interest is involved – the definition includes but is not limited to the matters referred to in the criterion.

The need for journalists to protect confidential sources of information

Paragraph 14 of the Code provides that journalists have a moral obligation to protect confidential sources of information.

[45] For example, see *Douglas v Hello! Ltd* [2001] QB 967 at [94]-[95], *Mosley v News Group Newspapers Ltd* [2008] EWHC 687 (QB) at [31], *TSE v News Group Newspapers Ltd* [2011] EWHC 1308 (QB) at [21]-[27], *Trimingham v Associated Newspapers Ltd* [2012] 4 All ER 717 at [73] and *Weller v Associated Newspapers Ltd* [2014] EMLR 24 at [54]-[57].

Taking into account the rights of individuals

These are reflected in the individual Code sections (for example Clause 2- privacy) and are balanced in the Code with the public interest exceptions.

Specifically, it must cover standards of:

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

These are covered throughout the Code, e.g. in relation to harassment (Clause 3), obtaining information from children (Clause 6), obtaining information in hospitals (Clause 8), or via clandestine devices and subterfuge (Clause 10).

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

Clause 2 emphasises the right to a private and family life, home, health and correspondence, including digital communications and stresses that editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information. Clause 2 states that it is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy. There are also specific provisions emphasising the right to privacy in certain situations and for certain groups such as victims of sexual assault (Clause 11), children (Clause 6) and relatives and friends of persons accused of crime (Clause 9). The circumstances in which there may be public interest in the breach are set out in the public interest definition.

c) accuracy, and the need to avoid misrepresentation

Clause 1 provides inter alia, that the press must take care not to publish inaccurate, misleading or distorted information or images. It states that a significant inaccuracy, misleading statement or distortion must be corrected promptly and with due prominence, and that where appropriate — an apology must be published, and that fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.

Overall we consider that the provisions of the Editors' Code meet the requirements listed in Criterion 8.

Indicator: The regulator has demonstrably considered relevant legislation, codes, rules and/or guidance in developing the code.

In this case, IMPRESS has adopted rather than developed the Editors' code on an initial basis. It has however provided its own guidance (see assessment of Criterion 8a below). In accordance with the PRP Board's interpretation of this issue (see above) we do not consider that there is anything in this criterion which prevents the regulator from adopting a pre-existing Code, provided that the Code contains the appropriate standards as set out in the criterion.

We asked IMPRESS the extent to which it had considered the relevant legislation, codes, rules and guidance in adopting the Code. IMPRESS replied that, notwithstanding their view that Lord Leveson had the Editors Code in mind when making the recommendation that forms Criterion 8:

IMPRESS has considered relevant legislation, codes, rules and guidance in (a) choosing to adopt the Editors' Code as its initial standards code; and (b) preparing to consult the public on a new standards code.

This research suggests that, whilst the Editors' Code is by no means a perfect code of standards, it reflects a normative approach, with elements that are shared by other codes in comparative jurisdictions. Principles relating to the following issues are found in a majority of the standards codes upheld by press councils in 50 comparative jurisdictions:

- *Privacy*
- *Discrimination*
- *Children*
- *Reporting of crime*
- *Accuracy*
- *Right to reply*

These principles are all addressed in the Editors' Code.

We provide a copy of a paper, ***IMPRESS Comparative Code Research****,* [annex D10] *which was prepared for the Code Committee, and an academic peer-reviewed article, 'Press Codes and the Spirit of Equalities Legislation'* [*annex D11*]*, by Heawood and Brigit Morris, which will be published shortly in the journal* ***Communications Law 21:2****, 29-35.* (Annex A7, IMPRESS PRP clarification paper).

The extent to which IMPRESS considered these issues before their Board's decision to adopt the Code in January 2015 (see Criterion 7 above) is unclear. However, the indicators are intended to be guidance to applicants on how to comply with the criteria and cannot go beyond the criteria themselves. In this case the criterion requires that the Code takes into account the relevant issues and contains the relevant standards and does not discuss the process by which such a result should be arrived at. If the PRP Board is satisfied that the Editors' Code does meet the terms of Criterion 8, any failure by IMPRESS to demonstrate compliance with this indicator could not be a reason for refusal. We consider that this indicator will be of more assistance to any applicant or regulator adopting a new Code than it is to one adopting the existing Editors' Code which has already been subject to extensive scrutiny by the courts.

Indicator: The regulator meets the requirements set out in the criterion including in 8 (a), (b) and (c).

These requirements are discussed in relation to the relevant criteria below – our view is that IMPRESS has demonstrated compliance with these criteria.

Indicator: The code is framed in a manner consistent with the potential for complaints to be heard and decided upon by the regulator under criteria 11 (a) to (c).

Under Criterion 11:

The Board should have the power (but not necessarily the duty) to hear complaints:
a) from anyone personally and directly affected by the alleged breach of the standards code, or
b) where there is an alleged breach of the code and there is public interest in the Board giving consideration to the complaint from a representative group affected by the alleged breach, or
c) from a third party seeking to ensure accuracy of published information.
In the case of third party complaints the views of the party most closely involved should be taken into account.

The provisions of the Code are drafted in such a way that anyone personally and directly affected could bring a complaint (11) (a).

However, in relation to 11 (b) IMPRESS' application matrix states:

We note that there is a tension between the wording of the Editors' Code of Practice in relation to discrimination, and the spirit of the provision under this Criterion for complaints by representative groups [criterion 11 (b)]. Lord Black, former Chair of the Press Board of Finance ('Pressbof') suggested to Lord Justice Leveson that a provision for complaints by a 'representative group' was designed to 'make it easier for groups to bring discrimination complaints under the discrimination clause of the code'. However, the current discrimination clause is explicitly limited to discrimination against individuals, not groups. We intend to explore this tension in the course of our consultation on a future standards code. Our current position on complaints in relation to discrimination, and all other provisions of the Editors' Code of Practice, is set out in our published guidance [http://impress.press/standards/].

The relevant part of IMPRESS guidance in relation to Clause 12 of the Editors' Code (discrimination) states:

The clause applies only to the treatment of individuals, not groups. However, publishers and journalists are covered by the criminal law prohibiting incitement to hatred on grounds of race, religious belief (or lack of it) and sexual orientation.[46]

Although the drafting of Clause 12 of the Editors' Code means that IMPRESS could not consider a complaint from a representative group under the discrimination provision, it could however consider such complaints in relation to other breaches of the Code that are not restricted to individual complaints in this way (for example publishing inaccurate, misleading or distorted information under Clause 1).

We do not consider that this means that the provisions of 11 (b) could not be met. 11(b) only requires there to be a power to hear complaints when there is a representative group affected by the breach – if there is no such group affected (because the Code provision relates to an individual) then clearly no power needs to exist. If all the provisions of the Code were restricted to individuals such that it would be difficult to bring any representative actions at all, then our view might be different but that is not the case here.

We draw the PRP Board's attention to the recommendation in paragraph 43 of the summary of recommendations in the Leveson Report:

In conjunction with Recommendation 11 above, consideration should also be given to Code amendments which, while fully protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting, and in so doing reflect the spirit of equalities legislation. (Annex L1).

Under Schedule 2 paragraph 4 of the Charter, this is one of the recommendations that the PRP may take into account, but if satisfied that the criteria are met, the PRP may not refuse recognition if a regulator has not complied with it. IMPRESS has identified the issue, as set out above, but will not make amendments (if any) until it has have consulted upon and implemented its new Code.

Finally, in relation to Criterion11(c), the wording of Clause 1 of the Editors' Code ('Accuracy') is consistent with a third party bringing an action for its breach.

[46] See http://www.impress.press/standards/ - Clause 12

E. Recommendation

We consider that IMPRESS meets this criterion.

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Criterion 8a

A self-regulatory body should provide advice to the public in relation to issues concerning the press and the standards code, along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

Indicators

- General and specific advice to the public is provided in a way which makes it easily accessible.
- The service to warn the press is easily accessible and available.
- The Regulator identifies appropriate tools and mechanisms to notify relevant parties on timescales which ensure that the recipients of it can respond promptly.

Examples of evidence

- Information on provision of advice to the public in relation to the code, including information on how it operates for vulnerable individuals and those who need additional support.
- Information on how the service to warn the press operates, including information on how it operates for vulnerable individuals and those who need additional support.
- Contacts, if any, with individuals, broadcasters and other parties, and actions taken where relevant.

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion falls into two distinct parts: (1) to 'provide advice to the public in relation to issues concerning the press and the standards code'; and (2) 'to warn the press […] when an individual has made it clear that they do not welcome press intrusion.

In order to avoid compromising our capacity to adjudicate, IMPRESS will not offer detailed advice on situations which might give rise to a complaint or investigation. Instead, we have published detailed guidance on the Editors' Code of Practice [http://impress.press/standards/], which is intended to provide advice to the public in line with the first part of this Criterion.

In order to help individuals make it clear that they do not welcome press intrusion, we have developed an Advisory Notice Request Form [annex D5v2: IMPRESS Advisory Notice Request Form]*, which may be completed either by an individual directly, or by an IMPRESS member of staff acting on behalf of an individual who* *has made contact by telephone, letter or email. When an Advisory Notice Request Form is cleared, an Advisory Notice will be disseminated to all publishers regulated by IMPRESS, and any other relevant parties such as broadcasters and press photographers who have asked to receive such notices, in the form shown in our template* [annex D6: IMPRESS Advisory Notice Template]*. We have prepared a database of broadcasters and press photographers who will of course not be subject to regulation by IMPRESS but may wish to receive Advisory Notices* [annex D6.1: IMPRESS Advisory Notice Database]*.*

This process will be implemented in line with our Regulatory Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Procedures* [annex D2v1: IMPRESS Regulatory Scheme Procedures]*, which bind subscribing publishers under the Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement]*. For more detail on the implementation of the Scheme and associated procedures, see our business flow charts* [annex D4: IMPRESS Business Flow]. *IMPRESS has developed a knowledge and skills matrix* [annex E2: IMPRESS Operational Implementation Plan*] to identify any staff training or development needs. All IMPRESS staff with responsibility for complaints-handling will be required to have the skills to deal with vulnerable.*

B. First call for information

Some respondents had said that providing guidance on the Editors' Code alone was not sufficient, as Criterion 8A requires the self-regulatory body to provide advice to the public in relation to issues concerning the press. It was also said that IMPRESS had no authority to provide guidance on a Code that it did not have the right to use and in respect of which guidance is already available elsewhere.

In reply to the first call for information, IMPRESS stated (annex A4):

Criterion 8A requires a regulator to provide advice to the public in relation to issues concerning the press and the standards code. It is not restrictive as to the content or ambit of any such advice.

IMPRESS has explained in its application that it will provide general advice, but will not provide detailed advice to the public on specific issues in order to seek to avoid prejudicing a future investigation or adjudication. Its published guidance on the Editors' Code is an appropriate resource for the public in such instances, and IMPRESS may offer general advice to the public with reference to this published guidance. IMPRESS will also provide advice on its own standards code in due course.

Criticisms were also made of IMPRESS' warning service for press intrusion. It was pointed out this service only extends to warning IMPRESS' members, and any members of the press who have signed up to receive those notices, of which none have been confirmed. It was therefore not a service to warn the press and other relevant parties as required by the criterion.

IMPRESS replied:

In order to confirm that IMPRESS fulfils this Criterion we provide revised versions of the IMPRESS Regulatory Scheme (clause 7.5) (annex D1v2) and the IMPRESS Advisory Notice Request Form (annex D5v2), which show that IMPRESS is prepared to share advisory notices with non-participating publishers and other parties if this is explicitly required by the person making the request.

The Charter is framed in the expectation that there may be more than one self-regulatory body for the press. Therefore, this provision cannot be read to mean that any individual self-regulatory body has a duty to warn every entity covered by the description of 'the press and other parties'. Such an interpretation would be unreasonable and impracticable, as there can be no way of determining how many entities would be sufficient to satisfy such a requirement. So it is clear that this provision can only mean that a regulator should provide a warning service for the publishers it regulates, and that this warning service may be available to other parties should this be required.

Respondents made other comments on the form of the warning notice and the process. It was said that:

- The form of IMPRESS' Advisory Notice Template is inadequate: it gives no detail of what form any alleged intrusion is taking, or what steps news publishers can take to make legitimate inquiries without raising issues about intrusion.
- The process involves approval by IMPRESS' Board, which is too slow, in circumstances where there may for example be a 'media scrum' outside the person's house.
- Associated News stated: "We are concerned at the proposed wording of [IMPRESS'] Advisory Notice, which says: 'a failure to respect this Advisory Notice may be taken into account in any subsequent investigation [or] adjudication by IMPRESS.' IPSO, which operates a very well established advisory notice system, says in its notices that it 'takes note' of the relevant clauses of the Editors' Code, to avoid placing itself in a position where it is enforcing prior restraint on editors. The PRP will need to consider whether the implied threat in IMPRESS' Advisory Notice amounts to prior restraint."

IMPRESS in its reply stated that these points do:

Not address the Criterion, which requires the regulator to operate an advisory notice system but is not prescriptive about any procedure associated with this service. IMPRESS satisfies the Criterion and the PRP is not empowered to do more than to check IMPRESS has satisfied this criterion. To make decisions based on the detail of the procedure would be to exceed its remit.

IMPRESS added:

In any case, it is self-evident that to 'take into account' a publisher's failure to respect an Advisory Notice does not in any way constitute prior restraint. IMPRESS has no power to prevent any proposed publication. Without clarifying to publishers that IMPRESS may take such a failure into account, it is hardly worth issuing the Notice. It is quite possible that a publisher's decision to flout an Advisory Notice would be found to be reasonable in all the circumstances of a complaint or investigation…

[The] IMPRESS Articles of Association clearly allow for standard means such as delegated powers and electronic communications in order to expedite decision-making where necessary and appropriate.

C. Second call for information

Associated News stated:

It is a fundamental tenet of freedom of expression that there should be no prior restraint. If, as IMPRESS propose, a failure to respect an Advisory Notice could be taken into account in any subsequent adjudication, then their Advisory Notice is a restraint on publication. As the notices themselves, to be effective, have to be issued without any delay, and therefore without any investigation by IMPRESS into whether they are justified, this effectively gives the subjects of potential stories the means to prevent publication.

D. Assessment

Schedule 2 of the Charter requires the PRP Board to consider, inter alia, the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies articulated in the Leveson Report (Part K, Chapter 7, Section 4).

In those circumstances, the PRP Board is obliged in our view to consider issues of the effectiveness of the procedures proposed by IMPRESS, the credibility of the proposed notice service and whether it would amount to unfair restraint.

We do not consider the fact that IMPRESS did not devise the Editors' Code as being any bar to complying with this criterion. We have considered elements of the criterion separately:

A self-regulatory body should provide advice to the public in relation to issues concerning the press and the standards code,

- *Indicator: General and specific advice to the public is provided in a way which makes it easily accessible.*

IMPRESS has repeated in response to the first call for information that it will not provide advice to the public on specific issues in order to avoid compromising an adjudication. Instead, it has published detailed guidance on the Editors' Code of Practice in order to advise to the public and has stated that it will provide general advice in relation to this guidance.

IMPRESS' guidance is at http://www.impress.press/standards. It covers public interest issues and each individual section of the Code.

IMPRESS has provided advice to the public, readily accessible on its website, on the interpretation of the Editors Code and public interest matters. IMPRESS has also indicated a willingness to provide further general advice to the public as required. They give general advice on complaints and a contact number and e-mail.[47]

The criterion is not explicit as to the advice that has to be provided. The only specific references to guidance in the relevant part of the Leveson report[48] relate to the requirement for it to cover public interest – see Criterion 8C below. Respondents that stated that IMPRESS did not meet this criterion did not give examples of what further advice IMPRESS should give.

…along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

IMPRESS' revised Advisory Notice Request Form (annex D5v2) now contains a field that allows a description of the alleged intrusion. It also allows the person concerned to request that the notice be given beyond IMPRESS participating publishers to cover the wider UK press and other relevant parties.

We consider that IMPRESS is entitled to bear in mind the nature and extent of its regulated membership in designing a process, and we consider that the procedure

[47] See http://www.impress.press/complaints
[48] i.e. Volume 4 Part k Chapter 7 section 4

developed by IMPRESS can be considered effective in that context. If for example, its membership expands significantly, it could no doubt review the process of requiring notices to be issued by its Board, and we note that the Board could in any event make decisions by e-mail.

We do not consider that the wording on the advisory notice template (annex D6) would be sufficient to amount to a restraint on publication given the context in which it appears. The full paragraph reads:

We cannot prevent you from publishing information about or seeking to contact this person. However, we remind you of your obligations under our standards code. A failure to respect this Advisory Notice may be taken into account in any subsequent investigation [or] adjudication by IMPRESS.

E. Recommendation in relation to Criterion 8a

We consider that IMPRESS meets this criterion.

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Criterion 8b

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

Indicator

- Approach taken to defining advertising content takes account of the Advertising Standards Authority's definition to ensure that regulatory gaps do not emerge.

Examples of evidence

- Approach to defining advertising content.
- Contract/terms and conditions between the regulator and subscribers demonstrating accountability and enforcement powers of the regulator.
- Guidance issued to subscribers regarding compliance with the code (including how 'advertising content' is defined).

A. IMPRESS statement and evidence in the application matrix (annex A3):

We have prepared a Regulatory Scheme Agreement [annex D3v1: IMPRESS Regulatory Scheme Agreement] *which confirms that subscribing publishers will be held accountable by the regulator in line with the requirements for code compliance and governance set out in the Regulatory* Scheme [annex D1: IMPRESS Regulatory Scheme]*.*

At the point of submitting this application to the Press Recognition Panel (20 January 2016), we anticipate that our first tranche of Regulatory Scheme Agreements with participating publishers will commence on 1 April 2016. By that point, we will ensure that all participating publishers have established satisfactory in-house complaints and compliance procedures, in line with our requirements under the Charter. This scheme does not cover advertising content. The Board, advised by the Code Committee, has prepared a definition of 'advertising content' [annex D7: IMPRESS Advertising Content Definition], *which is derived from the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing.*[49]

B. First call for information

Issues were raised about the effectiveness of the regulatory scheme agreement supplied by IMPRESS in its original application (annex D3v1).

[49] Known as the CAP Code (Committee of Advertising Practice)

One respondent stated:

It is … 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.'

IMPRESS replied:

In order to confirm that IMPRESS fulfils this Criterion, we include a revised version of the IMPRESS Regulatory Scheme Agreement (clause 1.1) [annex D3v2]*, which shows that participating publishers are contractually bound under the terms of the IMPRESS Regulatory Scheme and the IMPRESS Arbitration Scheme, which form schedules to this Scheme Agreement. The Regulatory Scheme Agreement (included in IMPRESS's application to the PRP) clearly states (1.1): 'From the moment You sign this Agreement and We countersign it You will become a Participant in the Regulatory Scheme; as a result, You will be bound by contract according to the terms described below for so long as the Regulatory Scheme exists and for so long as You remain a Participant.' Accordingly, the Agreement confirms that IMPRESS will have the power to direct remedial action for breach of standards, and that is accepted by the members. The changes which IMPRESS has made are designed to put the contractual force of this Agreement beyond any doubt.'*

C. Second call for information

There is no new information to which we wish to refer the Board specifically.

D. Assessment

The revised regulatory scheme agreement (annex D3v2) appears to contain the appropriate terms to hold the subscribers accountable. It provides at Clause 1.1:

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

And at Clause 2.1:

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

The Regulatory Scheme sets out, inter alia, requirements for compliance with the Code, requirements in relation to complaints procedures, and to comply with IMPRESS adjudications. Further specifics of this document are discussed in relation to other criteria.

(Indicator) Approach taken to defining advertising content takes account of the Advertising Standards Authority's definition to ensure that regulatory gaps do not emerge.

Annex D7 confirms that IMPRESS is not responsible for the regulation of advertising content. The definition used is derived from that used by the Committee of Advertising Practice, which devises and maintains the Codes used by the Advertising Standards Authority.

E. Recommendation in relation to Criterion 8b

We consider that IMPRESS meets this criterion.

Criterion 8c

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

Indicator

Guidance is provided in a way which makes it easily accessible.

Examples of evidence

Examples of guidance, demonstrating how it relates to the provisions in the code.

A. IMPRESS statement and evidence in their application matrix (annex A3):

The Code Guidance prepared under Criterion 8A [http://impress.press/standards/] contains additional guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the standards code. This guidance is both non-binding and non-exhaustive. It is intended to help publishers, journalists and members of the public to understand the principles which underlie the public interest exemption.

B. First call for information

Objections were raised that IMPRESS, as a new regulator that did not 'own' the Code, could not plausibly provide guidance, especially as there was existing guidance from IPSO and the PCC.

IMPRESS' response was:

This point does not address the Criterion, which requires the regulator to issue guidance on the public interest but is not prescriptive about the wording of any such guidance. The PRP is not empowered to do more than to check IMPRESS has satisfied this Criterion. To make decisions based on the detail of the guidance would be to exceed its remit.

C. Second call for information

There was no new information to which we wish to refer the Board specifically.

D. Assessment

Indicator

Guidance is provided in a way which makes it easily accessible.

The guidance produced by IMPRESS is accessible via one of their main website pages: http://www.impress.press/standards/

It provides general guidance on public interest and the Editors' Code and then particular guidance against each section of the Code. The guidance is brief, but appears clear.

There were two relevant additional recommendations in the Leveson report in relation to public interest (see annex L1):

43 A new regulatory body should consider being explicit that where a public interest justification is to be relied upon, a record should be available of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached.

44 A new regulatory body should consider whether it might provide an advisory service to editors in relation to consideration of the public interest in taking particular actions.

We are not aware that IMPRESS has taken specific steps in relation to recommendation 43, although in relation to recommendation 44 it has published general guidance for use by editors and others.

The PRP Board is reminded that if it considers the criterion to be otherwise satisfied it should not refuse on the basis that additional recommendations (which are in any event only 'to consider') have not been met.

E. Recommendation in relation to Criterion 8c

We consider that IMPRESS meets this criterion.

Criterion 8d

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

Indicators

- Concerns are welcomed, valued and treated seriously.
- Individuals are not victimised for contacting the hotline.
- Safeguards are in place to prevent victimisation.
- The Regulator ensures that the hotline is easily accessible and available to anyone who might reasonably want to access it.
- The Regulator has appropriate tools to support individuals who raise concerns.
- Concerns identified through the hotline are dealt with appropriately and effectively through mechanisms available to the regulator.
- Confidentiality and anonymity are assured at all times, where requested.
- The Regulator demonstrates clear leadership and commitment to whistleblowing.
- The Regulator monitors and records data arising from any use of the hotline and learns from and acts appropriately on: concerns raised; action taken; and outcomes.

Examples of evidence

- Details of how the policy was developed and the review process.
- Details of hotline operation, process and budget.
- Published guidance on whistleblowing policy.
- Data on its use and conclusions of whistleblowing.
- Details of senior person(s) in the regulator responsible for leadership/sponsorship of hotline.

A. IMPRESS' statement and evidence in their application matrix (annex A3)

We have taken advice from Public Concern at Work, the leading whistleblowing charity, with regard to the proper interpretation of 'whistleblowing hotline' in this context. As a result of the advice we received, we have commissioned Public Concern at Work to provide a whistleblowing advice hotline, at an annual cost of £3,600 + VAT [Annex D8: IMPRESS Public Concern at Work Agreement].

The cost of this is included in our business plan [annex E1: IMPRESS Executive Business Plan 2015-2020]. *The hotline will be staffed by legal professionals who will be able to advise anyone asked by a publisher regulated by IMPRESS to do things which are contrary to the standards code. Public Concern at Work have established* *a dedicated Freephone number (0800 221 8548) and there is a dedicated email address (whistleblowing@impress.press) for those who wish to contact IMPRESS directly. Callers may subsequently decide to raise their concerns internally with their publisher, editor or line manager; or to bring their concerns directly to IMPRESS.*

Alternatively, Public Concern at Work may – with the caller's consent – bring any concerns raised to our attention. These concerns will be treated in line with our Regulatory Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Procedures* [annex D2v1: IMPRESS Regulatory Scheme Procedures], *to which subscribing publishers are bound under the Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement]. *Leadership for the whistleblowing hotline will be the responsibility of the Chief Operating Officer.*

It is not always possible to protect the anonymity of whistleblowers. The nature of the information they reveal may in itself make their identity obvious to a publisher. The public interest disclosure regime is not intended primarily to protect anonymity, but to create a workplace culture in which whistleblowing is accepted. In practice, this means that, in certain circumstances, whistleblowers may have a case for unfair or constructive dismissal if they are penalised or otherwise intimidated as a result of whistleblowing.

In order to afford whistleblowers the highest possible level of protection under the Public Interest Disclosure Act 1998, we are seeking an order from the Secretary of State to confirm that IMPRESS is a 'prescribed person' for the purposes of the Act.

B. and C. First and second calls for information

There was no information provided.

D. Assessment

As set out above, IMPRESS has established a whistle-blowing hotline via the agreement with Public Concern at Work.

When considering the effectiveness of these arrangements we have in mind the indicators set out in the PRP application matrix for this criterion:

- *(Indicator) Concerns are welcome, valued and treated seriously.*

At the validation and verification meeting on 6 June 2016, IMPRESS confirmed that the whistleblowing facility is now available. As the service had not yet been used at the time of the validation and verification visit, we are unable to consider how it has operated in practice, but have based our assessment on the documentation supplied that shows that there is the intention and likely capacity to meet this indicator.

- *(Indicator) Individuals are not victimised for contacting the hotline.*
- *(Indicator) Safeguards are in place to prevent victimisation.*

Clause 2.2 of the IMPRESS Regulatory Scheme (annex D1v3) states:

Publishers are required to publicise to their employees and contributors the IMPRESS whistleblowing hotline, and not to take any action to the detriment of anyone who uses the hotline or declines to breach the Code. Publishers are required to provide a specific contractual right for employees to act in this way free from any sanction.

This matches additional recommendation 47 in the Leveson report.[50] (See annex L1).

- (indicator) *The regulator ensures that the hotline is easily accessible and available to anyone who might reasonably want to access it.*

See Clause 2.2 of the IMPRESS Regulatory Scheme above and the details of the hotline published by IMPRESS. In IMPRESS' Regulatory Scheme procedures (annex D2v3), Clause 25 provides that whistle-blowers can raise issues via the hotline or directly with IMPRESS.

Details of the whistleblowing service are on IMPRESS' website at:

http://www.impress.press/complaints/whistleblowers.html

- (Indicator) Concerns identified through the hotline are dealt with appropriately and effectively through mechanisms available to the Regulator.
- (Indicator) The regulator has appropriate tools to support individuals who raise concerns.

As set out above, issues will be dealt with using the complaints procedures as part of Regulatory Scheme. IMPRESS has stated that their Chief Operating Officer will have responsibility for leadership on the issue. See also Clause 1 of the agreement with Public Concern at Work:

PCaW agrees to provide IMPRESS with the following services and benefits:

[50] 47.The industry generally and a regulatory body in particular should consider requiring its members to include in the employment or service contracts with journalists a clause to the effect that no disciplinary action would be taken against a journalist as a result of a refusal to act in a manner which is contrary to the code of practice.

i) A whistleblowing advice line to provide safe and confidential advice to employees and other staff of IMPRESS's member publishers. This advice line will have a Freephone number attached to it and be active between 09:00 and 18:00 hours on week days. PCaW will forward to IMPRESS any information that these individuals properly instruct PCaW so to share on their behalf;

ii) An annual report and a six-monthly email update which will give details of the number and, if volume allows, type of calls that have been received through the subscription;

iii) A compliance toolkit - including a PCaW model policy, PCaW Best Practice Guide for Subscribers and a whistleblowing presentation;

iv) Promotional materials;

v) Annual access to 1 place at PCaW's expert whistleblowing training workshops;

vi) 50% reduction off the list price on extra training places;

vii) Discount on additional consultancy;

viii) Subscriber newsletter including briefings tailored to organisations on whistleblowing.'

- *(Indicator) Confidentiality and anonymity are assured at all times, where requested.*

See Clause 1 of the agreement with Public Concern at Work above. Clause 4 provides:

IMPRESS confirms that the advice and assistance on a potential whistleblowing concern provided by PCaW through the advice line and email facility is provided under a lawyer-client relationship between PCaW and any employees or other staff who contact it and IMPRESS accepts the resulting legal privileges and confidences that apply thereto.

There is also provision in Clause 5.4 of the Regulatory Scheme for information to be kept confidential in relation to a complaint, if requested by one party and the complaint can be dealt with fairly.

IMPRESS also has power to investigate issues of its own volition under Clause 5.1 of the Regulatory Scheme whether in response to a complaint or not. It would therefore have the facility to investigate issues raised by a whistle blower without breaching any confidentiality – however the Board will note IMPRESS' comments on confidentiality in the information they supplied on the application matrix at part A above.

- *(Indicator) The regulator demonstrates clear leadership and commitment to whistleblowing.*

See the evidence supplied above.

- *(Indicator) The regulator monitors and records data arising from any use of the hotline and learns from and acts appropriately on: concerns raised; action taken; and outcomes.*

Since the hotline has not yet been used, our ability to consider this indicator is of necessity limited. However, Clause 4.1 (ii) of the agreement with Public Concern at Work provides for appropriate data to be given to IMPRESS so that they will be able to carry out the relevant activities.

E. Recommendation in relation to Criterion 8d

We consider that IMPRESS meets this criterion.

Criterion 9

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

Indicators

- The Regulator requires subscribers to have procedures in place for dealing with complaints and standards compliance, recording and reviewing of compliance failures (whether escalated or not) and remedial actions taken/reports made.
- The Regulator requires the subscriber to nominate a senior individual to take responsibility for dealing with and compliance with the standards code.
- The Regulator requires subscribers to be transparent in its processes.
- The Regulator ensures that the subscriber's complaints mechanism has regard to conflicts of interest.

Examples of evidence

- Contract/terms and conditions/Articles of Association between Regulator and subscriber demonstrating requirements in Criterion 9.
- Associated practices and procedures.

A. IMPRESS statement and evidence in the application matrix (Annex A3)

Our Regulatory Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1 : IMPRESS Regulatory Scheme Agreement] *confirm that subscribing publishers must maintain appropriate internal governance processes, transparency on what governance processes they have in place, and notice of any failures in compliance.*

As publishers prepare to join IMPRESS, we will complete a compliance checklist [annex E6v2 IMPRESS Publisher Compliance Checklist] *to confirm that they have appropriate internal governance processes in place. IMPRESS officers will complete this checklist, and require any improvements from publishers, in line with our procedures* [annex D2v1: Regulatory Scheme Procedures].

Our procedure for publisher reporting [annex D9: IMPRESS Publisher Reporting Procedure] *requires publishers to provide us with quarterly reports relating to complaints and compliance.*

B. First call for information

Respondents said that there was insufficient detail to show that IMPRESS had taken steps to check that its members meet these requirements - for example, there were no examples of completed forms. They pointed out that the IMPRESS application form did not ask any questions about internal governance processes and it was therefore unclear what process, if any, IMPRESS was to follow to satisfy itself that its members have appropriate processes in place.

In reply, IMPRESS stated:

Criterion 9 asks a regulator to require appropriate internal governance processes of its members.

To confirm that IMPRESS fulfils this Criterion, we include a new document: IMPRESS Induction Pack [annex E6v1]*, which includes a revised version of the IMPRESS Compliance Checklist, and revised versions of the IMPRESS Regulatory Scheme (clause 2.6)* [annex D1v2] *and IMPRESS Regulatory Scheme Procedures* [annex D2v2] *(clauses 1-11). These show that IMPRESS conducts rigorous compliance checks on participating publishers in the period between signing the IMPRESS Application Form (included with IMPRESS's application to the PRP) and signing the IMPRESS Regulatory Scheme Agreement.*

It would be inappropriate for IMPRESS to publish application forms, which contain commercially sensitive data. The IMPRESS Regulatory Scheme sets out clear internal governance requirements and the IMPRESS Compliance Checklist shows the steps that IMPRESS takes to satisfy itself that participating publishers have appropriate internal governance processes. Both documents were included with IMPRESS's application to the PRP.

Participating publishers are required to provide information about complaints procedures, compliance and failures in compliance and steps taken as a result. IMPRESS will publish this information in an annual report, which more than fulfils the requirement in this Criterion for transparency.

IMPRESS is currently completing compliance checks to ensure that every publisher has Charter-compliant arrangements in place in relation to governance and complaints-handling. As these checks are completed in relation to each publisher, IMPRESS will become open to complaints against that publisher.

The reason for conducting compliance checks before signing Regulatory Scheme Agreements is to ensure that IMPRESS only agrees to regulate those publishers which have already demonstrated their commitment to appropriate internal governance processes. This gives the public reason to have confidence in those *publishers which display the IMPRESS kite mark. Of course, IMPRESS will continue to ensure that compliance standards are met for so long as publishers continue to participate in the IMPRESS Regulatory Scheme.*

C. Second call for information

One respondent stated that at the time of their response (2 June 2016), the prospective members announced by IMPRESS in January 2016 did yet not show any signs of compliance with IMPRESS' processes. They said that only one prospective member referred to IMPRESS on its website or published complaints handling arrangements.

D. Assessment

The internal governance requirements of IMPRESS' subscribers are set out in section 2 of the (revised) Regulatory Scheme (annex D1v3). These include:

2.1 Publishers are required to actively co-operate with IMPRESS and to provide all information reasonably required to allow them to provide their regulatory functions.

2.3 Publishers are required to provide IMPRESS with a statement of the arrangements, policies and personnel they have in place to deal with complaints and ensure compliance with the Code. This includes nominating a senior individual within each title to have responsibility for legal and standards compliance. The statement of arrangements should include details of the internal authority structure: where responsibilities for Code compliance lie, to whom notice of any failure in compliance would be reported (whether complained about or not), together with details of steps to deal with any failures in compliance. Publishers should report compliance failures of which they become aware to IMPRESS.

2.6 Once IMPRESS is satisfied that a publisher is compliant with the above internal governance requirements, the publisher may enter into an IMPRESS Regulatory Scheme Agreement. The effective date of such Agreement marks the commencement of IMPRESS's regulatory remit and the publisher's regulatory obligations.

3.1 Publishers are required to maintain adequate and speedy in-house complaints procedures in relation to editorial standards that are:

- *convenient and easy to use (in particular for those that are vulnerable or have disabilities);*
- *transparent, clear, well publicised, free, and allow complaints to be made by any reasonable means;*

prompt and fair, with decisions based on sufficient investigation of the circumstances, and (where appropriate) offer a suitable remedy.

There are a number of indicators linked to this criterion.

Indicators

- *The regulator requires subscribers to have procedures in place for dealing with complaints and standards compliance, recording and reviewing of compliance failures (whether escalated or not) and remedial actions taken/reports made.*

  This is dealt with via Clauses 2.3 and 3.1 of the revised Regulatory Scheme.

- *The regulator requires the subscriber to nominate a senior individual to take responsibility for dealing and complying with the Standards Code.*

  This indicator reflects Lord Leveson's additional recommendation 34(b) from the Summary of Recommendations (see annex L1) that a named senior individual within each title should have responsibility for compliance and standards.

  Clause 2.3 of the revised regulatory scheme imposes this requirement.

- *The regulator requires subscribers to be transparent in their processes.*

  This is a requirement of 3.1of the revised regulatory scheme.

- *The regulator ensures that the subscriber's complaints mechanism manages conflicts of interest.*

We asked IMPRESS to confirm how its complaints mechanism takes into account conflict of interest. IMPRESS replied (annex A7):

Publishers are required to provide IMPRESS with a statement of the arrangements, policies and personnel they have in place to deal with complaints fairly and effectively and ensure compliance with the Code. This includes nominating a senior individual within each title to have responsibility for legal and standards compliance and a mechanism whereby that person is alerted as to the article complained about, the name of the journalist involved and the name of the complainant at an early stage so that, where possible, the individual can pass the complaint to another person in the organisation in case of any conflict of interest.

We provide a lightly amended version of the ***IMPRESS Regulatory Scheme*** (annex D1v3), *which states that (Article 2.3):*

'Publishers are required to provide IMPRESS with a statement of the arrangements, policies and personnel they have in place to deal with complaints and ensure compliance with the Code. This includes nominating a senior individual within each title to have responsibility for legal and standards compliance, and a mechanism whereby that person is alerted as to the complaint, the name of the journalist involved and the name of the complainant at an early stage so that, where possible, the individual can pass the complaint to another person in the organisation in case of any conflict of interest. The statement of arrangements should include details of the internal authority structure: where responsibilities for Code compliance lie, to whom notice of any failure in compliance would be reported (whether complained about or not), together with details of steps to deal with any failures in compliance. Publishers should report compliance failures of which they become aware to IMPRESS.
We will make the statement of arrangements for each publisher available to the PRP.'

Further details to assist publishers in understanding and creating these requirements are set out in the induction pack provided by IMPRESS (annex E6v2). This includes a process chart and model complaints procedure and policy.

Although IMPRESS appears to us to have the appropriate requirements in place in its documentation, in order to assess whether IMPRESS is ready and able to impose those requirements[51] and whether those requirements meet the Leveson concept of 'effectiveness' (see below) we examined a number of the applications for IMPRESS membership during the validation and verification visit. See annex H15.

During our visit we noted that:

- IMPRESS uses the application form to check if the publisher is eligible.
- IMPRESS carries out due diligence, e.g. a Companies House search or search of CIC register in relation to each publisher.
- IMPRESS uses a checklist in relation to the required procedures (annex E6v2). The publishers are sent IMPRESS' standard policies for complaints annex E5 and whistleblowing and can adopt them in full, amend them or create their own, provided they comply with IMPRESS' regulatory scheme.
- Publishers provide a statement of arrangements (annex E5) dealing with matters such as: who will be the named individual(s) responsible for

[51] See http://pressrecognitionpanel.org.uk/guidance-for-applicants/ section 5 'an applicant regulator will need to show that they have the relevant procedures in place and that they are ready and able to operate those procedures.'

compliance with the Code and for receiving complaints and what steps will be taken to deal with compliance failures.
- At the end of the process, publishers are sent the regulatory scheme agreement for signature, which annexes the regulatory scheme and arbitration scheme.

We had noted that not all of the members that were stated to be regulated by IMPRESS and no longer awaiting compliance checks had completed all of the items on IMPRESS' own publisher compliance checklist (annex E6v2_appendix 6) . The missing items were:

- Giving employees notice of the whistleblowing policy (or confirming amendment of employment terms in relation to not penalising staff for whistleblowing or refusing to breach the Editors' Code)
- Publishing details of their complaints policy and procedures on their websites.

We asked IMPRESS to confirm how it followed up the outstanding matters. IMPRESS replied that it has weekly internal meetings to check follow up.

Following receipt of the draft assessment report [52] IMPRESS confirmed (annex H31 JU letter to SU 020816):

We can confirm that, since your validation and verification visit, all publishers which we describe on our website as 'regulated' have now published details of their complaints policy and procedures on their websites. All hyper-links have been tested to establish that they work properly and point to the correct documents. We would be grateful if you could note this. We would also like to clarify that two aspects of publisher compliance, namely publicising of their complaints policy and procedures and notifying employees and contributors of their whistleblowing policy and procedures, will normally take place only after the Regulatory Scheme Agreement has been entered into. To avoid any future misunderstanding over the compliance status of publishers, we will from now on only advertise on our website that a publisher is regulated by IMPRESS once a Regulatory Scheme Agreement has been entered into and all relevant information has been posted on the publisher's website.

We return to this issue in the discussion of criterion 10 below.

We also asked IMPRESS how it intends to monitor compliance in the longer term.

IMPRESS stated that it will probably be at the point of the publisher's annual return, when IMPRESS will be implementing some form of rolling annual compliance audit:

'*It is unlikely that anything more will be done unless complaints are received which throw up issues which cause IMPRESS to have more general compliance concerns regarding a publisher. At the moment the focus is on getting the members through*

[52] Sent to IMPRESS for factual comment in line with our published procedures)

the initial compliance process. [See annex H7].

Lord Leveson's comments in relation to the effectiveness of organisational requirements are set out at paragraph 4.25 of Part K, Chapter 7, Section 4 ('Voluntary independent self-regulation') (annex L1):[53]

The concerns about press standards that the Inquiry has heard about give rise to equivalent concerns about governance, across some parts of the press, in relation to internal procedures for dealing with complaints and ensuring legal and standards compliance. An effective new regulatory regime should address these internal governance issues. It is important that the companies should take responsibility for their own compliance with the standards that they sign up to. I do not expect the regulator necessarily to define the governance processes that member companies should adopt, though it may choose to set principles. However… (Report then sets out the recommendation that became criterion 9.)

Additional recommendation 34(a) of the Leveson report (annex L1) is that a new regulatory body should consider requiring that newspapers publish compliance reports in their own pages to ensure that their readers have easy access to the information. IMPRESS' revised Regulatory Scheme Clause 9.2 (annex D1v3) requires details of complaints and their outcomes to be made available to the public in redacted form if necessary.

E. Recommendation in relation to Criterion 9

We have not made any recommendation in relation to this criterion but would invite the PRP Board to consider the issues raised.

[53] These fall to be considered as part of the Leveson concepts under Schedule paragraph 1 of the Charter.

Criterion 10

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

Indicators

- The complaints procedure is easily accessible.
- The Regulator requires subscribers to have a mechanism for dealing with complaints which is adequate and speedy including in that it should:
  - be publicised in a way which ensures that people who might wish to take advantage of it would know of its existence and how to use it;
  - identify when a complaint is being made;
  - facilitate the complainant's understanding of how the complaint relates to the code;
  - acknowledge receipt of complaints and notify complainants how the complaint will be handled in an appropriate timeframe;
  - share findings of investigations and conclusions with complainant; and
  - if the complaint is not resolved, provide details on how the complaint can be referred to the Regulator.
- The Regulator has in place mechanisms which ensure that subscribers deal with complaints in a timeframe that is effective and proportionate for the subscriber and type of complaint, in accordance with performance indicators.
- The Regulator requires subscribers to have an accessible complaints mechanism that considers vulnerable individuals and those who need additional support.

Examples of evidence

- Complaints handling policy and process.
- Written agreements between the regulator and subscribers regarding the handling and escalation of complaints, including performance indicators.
- Data on volume and type of complaints received by (a) subscribers and (b) the regulator; time taken to handle each stage of the complaint and total time taken to resolve (including measured from the point of first contact). Analysis provided of such data.
- Data on volume of complaints escalated to regulator and/or arbitration etc.

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion is designed to achieve an important culture change in regulation, with the effect that publishers take primary responsibility for addressing any complaints, rather than automatically forwarding complainants to the regulator. At the same time – and in conjunction with the requirements under Criteria 9, 15, 16, 18, 20 and 21 – this culture change is not intended to allow subscribing publishers to sweep complaints under the carpet – for instance, by intimidating complainants, or failing to keep records of the numbers of complaints received and resolved.

The Regulatory Scheme [annex D1: IMPRESS Regulatory Scheme] and Regulatory Scheme Agreement [annex D3v1: IMPRESS Regulatory Scheme Agreement] require publishers to have an adequate and speedy complaints-handling mechanism, and give IMPRESS the power to require any necessary information to understand the workings of this mechanism. IMPRESS will only receive complaints directly when the internal complaints-handling system has been engaged without the complaint's being resolved to the complainant's satisfaction, or – in certain circumstances – where the complainant demonstrates that IMPRESS should consider the complaint before the prescribed time period. This will be assessed by IMPRESS in line with our procedures' [annex D2v1: IMPRESS Regulatory Scheme Procedures]

B. First call for information

It was said that the complaints procedures outlined in the regulatory scheme procedures (annex D2v1) were lacking in detail and some important areas were not covered. It was stated that 21 calendar days was too short a period to allow for publishers' internal complaints process.

IMPRESS responded:

IPSO provides for a period of 28 days in the same circumstances so it is hard to understand how publishers regulated by IPSO can claim that a period of 21 days – only seven days shorter – is unreasonable. It seems self-evident that a 'speedy' complaints-handling mechanism must take into account the needs of the complainant as well as the needs of the publisher. In any case the IMPRESS Regulatory Scheme (4.5) allows IMPRESS to 'extend a time limit to the extent that IMPRESS considers fair'

C. Second call for information

There was no new information provided to which we wish to draw particular attention.

D. Assessment

There are indicators for this criterion, which incorporate the concept of effectiveness and which we discuss below:

- *(Indicator)The complaints procedure is easily accessible.*

- *(Indicator) The regulator requires subscribers to have a mechanism for dealing with complaints which is adequate and speedy including that it should:*
  - o *be publicised in a way which ensures that people who might wish to take advantage of it would know of its existence and how to use it;*
  - o *identify when a complaint is being made;*
  - o *facilitate the complainant's understanding of how the complaint relates to the code;*
  - o *acknowledge receipt of the complaint and notify the complainant how the complaint will be handled in an appropriate timeframe;*
  - o *share findings of investigations and conclusions with the complainant; and*
  - o *if the complaint is not resolved, provide details on how the complaint can be referred to the regulator.*

The IMPRESS Regulatory Scheme (annex D1v3) confirms that complaints must be first addressed to the publisher:

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

The IMPRESS Regulatory Scheme then further provides:

3.1. Publishers are required to maintain adequate and speedy in-house complaints procedures in relation to editorial standards that are:

□convenient and easy to use (in particular for those that are vulnerable or have disabilities);
□transparent, clear, well publicised, free, and allow complaints to be made by any reasonable means;
□prompt and fair, with decisions based on sufficient investigation of the circumstances, and (where appropriate) offer a suitable remedy.

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

The IMPRESS induction pack (annex E6v2) then provides further detail of these requirements. Subscribers are required to produce their own complaints policy which IMPRESS will assess before deciding to accept the subscriber as a member. Requirements for the policy also include those in relation to publicity:

'There must be clear wording on your website and in any printed publication signposting readers to how they can make a complaint and of the timeframes in which complaints will be dealt with.'

The induction pack contains a suggested wording for subscribers' websites.

The suggested wording includes confirmation that the complaint must relate to the Code and includes a link to the IMPRESS website, which includes the Editors' Code, and IMPRESS guidance on the Code http://www.impress.press/standards/

The induction pack contains a model complaints procedure and policy. This contains a suggested definition of a complaint:

'A complaint is any expression of dissatisfaction, whether justified or not, about the editorial content, standards of journalism or conduct of employees or contributors involved in production of [Publisher / Publication name], that engages the standards set out in the Code'.

- *(indicator)The regulator has in place mechanisms which ensure that subscribers deal with complaints in a timeframe that is effective and proportionate for the subscriber and type of complaint, in accordance with performance indicators.*

The PRP wrote to IMPRESS on 11 May 2016 (annex H23) to clarify the issue of an effective timeframe for subscribers to deal with complaints:

As you know, the issue of your scheme requirement for complaints to be dealt with within 21 days was raised by some respondents to the call for information who claimed that this was an inadequate time period. In response you have stated that there is provision to extend the time limit by the publisher obtaining agreement from IMPRESS under Clause 4.5 of the regulatory scheme. This clause refers to 'exceptional circumstances'. However, the material in your Induction Pack implies that the timeline is automatically extended when it is necessary to obtain further information, and in particular neither your model complaints process chart nor your model complaints procedure1 appear to make reference to the need to obtain the agreement of IMPRESS to an extension. These last two documents also contain provision for the publisher to close the complaint if the complainant fails to provide further information within 14 days but this is not reflected in the regulatory scheme.

Finally, the model complaints process chart refers to the need to write to the complainant within 21 working days of the further information being received; however, we presume that you mean calendar days?

Could you please clarify the position on these issues? Also if publishers are required to obtain the agreement of IMPRESS to any extension, then who would have authority to grant this on behalf of IMPRESS and how would any such request be dealt with sufficiently speedily? How would 'exceptional circumstances' be interpreted?'

IMPRESS responded:

IMPRESS requires publishers to acknowledge complaints within seven calendar days and to issue a final decision letter within 21 calendar days. There is no automatic extension to these time limits.

*We provide the latest version of the **IMPRESS Induction Pack*** [annex E6v2], *which clarifies these requirements.*

The Induction Pack includes amendments to the Model Complaints Policy and the Model Complaints Procedure. It also corrects the mistaken reference to 'working days', in the process chart, to 'calendar days'.

*IMPRESS has the power to allow publishers more time to resolve a complaint where exceptional circumstances apply (**IMPRESS Regulatory Scheme** (4.5)* [annex D1v3]*. Authority to grant an extension rests with the Chief Operating Officer and the Chief Executive Officer and will be dealt with within 24 hours of a request. This is clarified in a lightly amended version of the **Regulatory Scheme Procedures** (19)* [annex D2v3].

It would be unwise to seek to define 'exceptional circumstances', which are, by their nature, highly unusual and will be dependent on all the factors present in a particular case. Our Regulatory Scheme Procedures (19) direct the attention of IMPRESS complaints officers towards circumstances which could include an unusually complex complaint which may involve multiple parties or require interviews with multiple witnesses or a delay caused by unavoidable and unforeseen events such as illness, bereavement, the extended absence of a key witness or a natural disaster or serious accident.

See annex A7 IMPRESS PRP clarification paper.

At our first validation and verification visit on 6 July 2016 annex H15 we pointed out that the revised Induction Pack (annex E6v2) now made no mention of the facility to request extra time from IMPRESS and that the revised flow chart was incomplete. Jonathan Heawood indicated on behalf of IMPRESS that this would be looked into.

- *(Indicator)The regulator requires subscribers to have an accessible complaints mechanism that considers vulnerable individuals and those who need additional support.*

The general requirement is set out at 3.1 of the Regulatory Scheme (see above). The model complaints procedure (annex E5) states:

Complaints may be sent in writing to [Publisher / Publication name] at [land address], by e-mail at [e-mail address] or telephone [telephone number] or other reasonable means where this is more convenient and practical for the complainant

[Publisher / Publication name] will make reasonable efforts to contact a complainant by telephone, e-mail or in writing to ensure that sufficient information is provided to respond to the complaint.

As set out in relation to Criterion 9 above, we looked at the manner in which IMPRESS imposes these requirements on members in practice at our validation and verification visit. The publishers are sent IMPRESS standard complaints policy and can adopt it in full, amend it or create their own provided they comply with the Regulatory Scheme. IMPRESS has stated that the first phase of publishers were mainly small businesses that did not have existing policies in place who therefore chose to adopt amended versions of the IMPRESS model policies rather than write their own from scratch. See annex H15.

We noted IMPRESS statement on their website[54] that:

Before we can handle complaints against any publisher, we first ensure that they have appropriate internal governance processes and an adequate and speedy complaints-handling mechanism in place. Only when we have completed these compliance checks do we let our publishers display the IMPRESS kite mark.

We reviewed the websites of the eight members that were stated to be regulated by IMPRESS as at 28 July 2016[55]. (We did not consider those members that were stated as still undergoing compliance checks).

[54] http://www.impress.press/complaints/regulated-publishers.html
[55] See link at 11 above.

Four of these members were: the Formby Reporter, the Liverpool Reporter, the Mersey Reporter and the Southport Reporter. These would appear to be all part of the same group under the heading of the Mersey Reporter. The Mersey Reporter appeared to be the network hub rather than a separate news service. The Southport Reporter displayed the IMPRESS kite mark and a complaints procedure but provided those wishing to complain with a link to the NUJ code rather than the Editors' Code. The Formby Reporter displayed the kite mark and its complaints procedure linked directly to the Southport Reporter complaints pages but was itself stated to be an email update service. The Liverpool Reporter's main page contained no reference to complaints and the service was stated to be an audio news archive and online radio station.

Three other members – the Ferret, VIEWdigital and Shropshire Live displayed the IMPRESS kite mark and had links to complaints policies and procedures and the Editors' Code.

We were unable to find the website for the eighth member View Magazine and the link on IMPRESS' website did not work.

Following receipt of the draft version of this report, IMPRESS confirmed that, all:

publishers which we describe on our website as 'regulated' have now published details of their complaints policy and procedures on their websites. All hyper-links have been tested to establish that they work properly and point to the correct documents. (see annex H31)

We therefore reviewed the websites listed above again on 3 August 2016 and confirmed that:

- The reference to the NUJ Code on the Southport Reporter website had been removed.
- The Mersey, Formby and Liverpool Reporter webpages now contained the IMPRESS kite mark and links to the complaints policy and procedures via the Southport Reporter.
- The View Magazine link now went to VIEWdigital pages which include the complaints procedure.

These practical matters do not relate to the nature of IMPRESS' written procedures and documentation which we consider to be generally satisfactory for the purpose of the criterion, subject to the point made above in relation to the ability of publishers to request an extension of time for dealing with complaints. Rather, the issue appears to be linked to that which we raised in relation to criterion 9 above of IMPRESS authorising members before confirmation has been received that the necessary procedures are in place in accordance with IMPRESS' own checklist. The PRP Board may consider that this is relevant in relation to whether IMPRESS requirements are effective and whether IMPRESS is ready and able to impose those requirements. In that context the PRP Board will note IMPRESS confirmation (see assessment of criterion 9 above and annex H31:

To avoid any future misunderstanding over the compliance status of publishers, we will from now on only advertise on our website that a publisher is regulated by IMPRESS once a Regulatory Scheme Agreement has been entered into and all relevant information has been posted on the publisher's website.

E. Recommendation in relation to Criterion 10

We have not made any recommendation in relation to this criterion but would invite the PRP Board to consider the issues raised.

Criterion 11

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

Indicators

The complaints and escalation procedure:

- Is publicised and explained in a way which makes it easily accessible.
- Operates in a manner and on a timescale which ensures complaint adjudications are effective.
- Facilitate the complainant's understanding of how the complaint relates to the code.

Examples of evidence

- Contract, terms and conditions or Articles of Association between the regulator and the subscriber demonstrating the power to hear and decide on complaints.
- Policy and procedures for dealing with complaints.
- Criteria for dismissing complaints and examples of documentation/publications to demonstrate the process is clearly available to the public and subscribers.
- Documentation/guidance on the handling of public interest and third party complaints (including published policies).

A. IMPRESS statement and evidence in their application matrix (annex A3)

These important provisions are designed to open up the regulatory process beyond complainants who are 'personally and directly affected' by an alleged breach of the standards code. This is intended to allow the regulator to uphold the code in relation to accuracy (for instance, in a case of scientific information, where no individual is *'personally and directly affected') and, where there is a public interest in hearing a complaint from a 'representative group', in relation to other clauses of the code. Accordingly, IMPRESS will take complaints in relation to accuracy from third parties, and, where appropriate, from representative groups. Our powers to take complaints are set out in the Regulatory* Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement].

We note that there is a tension between the wording of the Editors' Code of Practice in relation to discrimination, and the spirit of the provision under this Criterion for complaints by representative groups. Lord Black, former Chair of the Press Board of Finance ('Pressbof') suggested to Lord Justice Leveson that a provision for complaints by a 'representative group' was designed to 'make it easier for groups to bring discrimination complaints under the discrimination clause of the code'.12 However, the current discrimination clause is explicitly limited to discrimination against individuals, not groups. We intend to explore this tension in the course of our consultation on a future standards code. Our current position on complaints in relation to discrimination, and all other provisions of the Editors' Code of Practice, is set out in our published guidance [http://impress.press/standards/].

The provisions under this Criterion will be implemented by IMPRESS in accordance with our regulatory scheme procedures [annex D2v1 IMPRESS Regulatory Scheme Procedures].

B: The first call for information

Respondents including the New Media Association set out what they considered defects in IMPRESS' procedures. Claims made included:

- Complainants sometimes ask for anonymity and IMPRESS has no procedure for this.
- Sometimes stories attract very large numbers of complaints and IMPRESS has no procedure for dealing with multiple complainants.
- As complaints often involve issues of privacy, and their investigation may require publishers to divulge confidential information, IPSO has a policy that correspondence during an investigation must be kept confidential by both sides. It was said that IMPRESS has no policy on confidentiality.
- There are no procedures to protect journalistic sources.
- IMPRESS has no review process for adjudications where financial sanctions are not imposed – either prior to publication of adjudications, to ensure fairness and accuracy – or subsequently, to allow an appeal to be heard.

IMPRESS replied:

IMPRESS fulfils this Criterion. However, in order to ensure that IMPRESS is able to satisfy the associated requirement, under Criterion 21, to publish an Annual Report which identifies, among other things, the number of multiple complaints, we provide revised versions of the IMPRESS Regulatory Scheme (clause 4.6) [annex D1v2] *and the IMPRESS Regulatory Scheme Procedures (clause 26)* [*annex D2v2*]*, which show that IMPRESS is able to handle multiple complaints'*

IMPRESS' response went on to say that the points made by respondents do,

not address the Criterion, which requires the regulator to have the power to hear and decide on complaints but does not set out requirements in relation to the issues listed here by the NMA. The PRP is not empowered to do more than to check IMPRESS has satisfied this Criterion. To make decisions based on the regulator's compliance with the NMA's requirements would be to exceed its remit.
In any case, the IMPRESS Regulatory Scheme (5.4) allows for a degree of confidentiality but (quite reasonably and in line with the principle of open justice) states that 'IMPRESS will not take into account any information which one party refuses to share with the other party.' This addresses the NMA's concerns in relation to anonymity, confidentiality and the protection of sources.

In any case the IMPRESS Regulatory Scheme (6.1) allows for a provisional determination to be shared with a publisher prior to the imposition of any sanction. This gives a publisher the opportunity to object to the Board's decision.

C. The second call for information

One respondent, Associated News gave further explanation of their concerns as to confidentiality. They stated that:

The reason IPSO require confidentiality from both editors and complainants when investigating a complaint is that some complainants, and some editors, use the complaint as a device to further a campaign or continue running a story. This is particularly unfair on complainants, as they may will need to provide private information to pursue their complaint and they will not be able to do so if they know the editor concerned is immediately going to publish it. The same applies in reverse to complainants who sometimes try to publish editors' responses on Twitter feeds or their own websites. Regulatory Scheme 5.4 does not cover this point.

Associated News also stated that IMPRESS' procedures did not cover the need for complainants sometimes to be granted anonymity–such as children in sex cases or more general complaints involving privacy and/or children.

In response, IMPRESS stated:

The IMPRESS Regulatory Scheme was designed on the assumption that all information received by IMPRESS in the course of handling a complaint would be shared with any other party to that complaint but would otherwise remain entirely confidential. There is a provision in the IMPRESS Regulatory Scheme to publish adjudications in a redacted form where necessary to protect the identity of complainants in sensitive cases and to prevent other private and confidential information from entering the public domain.

In order to clarify our approach to questions of anonymity and confidentiality we provide lightly amended versions of the ***IMPRESS Regulatory Scheme*** *(5.4; 5.6; 6.5)* [annex D1v3] *and the associated* ***IMPRESS Regulatory Scheme Procedures*** *(26; 38; 40; 43)* [*annex D2v3*].

See annex A7 IMPRESS PRP clarification paper.

D. Assessment

Clause 4.2 of the IMPRESS Regulatory Scheme (revised) (annex D1v3) provides that:

If a complainant is dissatisfied with the outcome of their complaint to a publisher, or the publisher has failed to respond, the complainant may bring their complaint to IMPRESS.

Under Clause 4.7 IMPRESS may refuse to accept a complaint if:

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

Clause 4.6 provides that:

IMPRESS will accept complaints from a) anyone personally and directly affected by the alleged breach of the Code, b) where there is an alleged breach of the Code and there is public interest in the consideration of the complaint from a representative group affected by the alleged breach, or c) from a third party seeking to ensure accuracy of published information

There are indicators for this criterion:

- *The complaints and escalation procedure:*
    - *Is publicised and explained in a way which makes it easily accessible.*
    - *Operates in a manner and on a timescale which ensures complaint adjudications are effective.*
    - *Facilitate the complainant's understanding of how the complaint relates to the code.*

Details of these matters in relation to the complaints procedure are set out in relation to Criterion 10 above.

The requirements as to publicity discussed in relation to that criterion provide that subscribers need to publish details of the escalation procedure and IMPRESS contact details.

IMPRESS' website contains details of the publishers that will subscribe to them, a summary of when complaints will be accepted and from whom and makes a copy of their regulatory scheme available. See http://www.impress.press/complaints/our-regulatory-scheme.html.

The regulatory scheme provides (Clause 5.2) that in the case of a complaint, IMPRESS will:

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

Clause 5.8 provides that IMPRESS will aim to complete the investigation of complaints within 42 calendar days.

The revised regulatory scheme procedures (annex D2v3) submitted as part of IMPRESS' response, now includes provision to amalgamate multiple complaints into a lead complaint or complaints, if multiple complaints have been received on a similar issue and it is not practical to respond individually.

We have considered the points raised by respondents in relation to IMPRESS' procedures, particularly relating to issues of confidentiality, anonymity and protection of journalistic sources. We do not accept IMPRESS' argument that the PRP is confined to merely checking that the paperwork contains the powers listed in this criterion. The PRP Board is obliged to take into account the Leveson concepts of effectiveness and credible powers and remedies. If the procedures adopted by a regulator are inadequate or inappropriate such that the powers could not be effectively exercised, then this should be taken into account.

There were in any event further amendments made by IMPRESS to the documentation when we raised these concerns – see annex A7.

These amendments to the regulatory scheme (annex D1v3) clarify:

- That IMPRESS has the discretion to take into account information that cannot be shared with the publisher (if the matter can nevertheless be fairly determined) but will not ordinarily do so.
- That any published adjudication will take account of requests by a complainant to remain anonymous and to redact any personal information which may cause a further intrusion into privacy or cause harm or considerable distress to the complainant or a third party.

IMPRESS has also made amendments to their regulatory scheme procedures to reflect these procedures (annex D2v3).

Taken as a whole, we consider that IMPRESS arrangements now adequately address any matters raised by us.

E. Recommendation in relation to Criterion 11

We consider that IMPRESS meets this criterion.

Criterion 12

Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.

Indicators – are clearly included in the criterion

Examples of evidence

- Organisation structure and details of scheme of delegations to committees and/or individual staff members for handling complaints.
- Terms of reference/minutes demonstrating delegation powers and terms and the approach to conflicts of interest.
- Process to investigate complaints and present findings to Board for decision.

A. IMPRESS statement and evidence in their application matrix (annex A3)

The IMPRESS Articles of Association give the Board ultimate responsibility for all aspects of the regulator's activities [annex B2: IMPRESS CIC Articles of Association]. Our regulatory scheme procedures show how complaints will be handled in practice [annex D2v1: IMPRESS Regulatory Scheme Procedures].

B & C. First and second call for information

There was no information supplied to which we wish to draw particular attention.

D. Assessment and further evidence

The CIC Articles of Association (annex B2) provide that:

The Directors may delegate complaints handling responsibility to a subcommittee of the Board, officials of the Company or other suitably qualified persons but at all times the Directors shall retain ultimate responsibility for complaints and the operation of the complaints handling service.

The IMPRESS regulatory scheme procedures (revised) (annex D2v3) make it clear that decisions on complaints will be taken by the Board but provide the process for investigation and management of the complaints by officials. Board members who are conflicted in relation to any decision will be required to withdraw from any decision relating to the matter under the terms of Article 14.4 of the IMPRESS CIC Articles of Association.

E. Recommendation in relation to Criterion 12

We consider that IMPRESS meets this criterion.

Criterion 12A

The Board should be prepared to allow a complaint to be brought prior to legal proceedings being commenced. Challenges to that approach (and applications to stay or sist) can be decided on the merits.

Indicators – are clearly included in the criterion.

Examples of evidence

Policy on complaints handling, including process for considering challenges

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion is designed to mitigate the risk that complainants are forced to choose between making a complaint to the regulator and commencing legal proceedings against a regulated publisher.

IMPRESS will maintain an efficient and effective complaints-handling scheme that will resolve the vast majority of issues. Members of the public who wish to bring legal proceedings against a regulated publisher may in any case be deterred by sections 34-42 of the Crime and Courts Act 2013. Moreover, IMPRESS will allow complaints to be brought prior to legal action, so that complainants are not placed in the invidious position of being forced to choose whether to take a complaint to the regulator or commence legal action.

Further, IMPRESS will administer an arbitration scheme, in partnership with the Chartered Institute of Arbitrators (see below: Criterion 22), which will enable members of the public to bring claims for compensation against regulated publishers, should that be appropriate.

B and C. First and second calls for evidence

There was no information supplied to which we wish to draw particular attention.

D. Assessment and further evidence

We asked IMPRESS to provide more details on how applications to stay or sist would be dealt with. In its response to the first call for information IMPRESS stated (annex A4):

Criterion 12A includes a requirement that 'applications to stay or sist' 'can be decided on the merits'

To confirm that IMPRESS fulfils this Criterion, we provide revised versions of the IMPRESS Regulatory Scheme (clause 4.8) and the IMPRESS Regulatory Scheme Procedures (clauses 26 and 31), to show that IMPRESS has the capacity to hear applications to stay or sist.

In most cases, applications to stay or sist are likely to be directed towards the courts, and therefore fall outside IMPRESS's remit. However, the IMPRESS Regulatory Scheme allows for the eventuality that an application is made directly to IMPRESS to stay or sist.

Clause 4.8 of the regulatory scheme says:

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

In our view the purpose of the criterion is to ensure (a) that complaints can be brought prior to proceedings being commenced and (b) that if they are, and one party seeks to challenge that approach so that any complaint would have to pursued after the proceedings, then the regulator will consider such a challenge on its merits. IMPRESS has confirmed (a), and in relation to (b) has confirmed that it will decide the application by considering how the interests of justice and a speedy resolution would be best served.

E. Recommendation in relation to Criterion 12A

We consider that IMPRESS meets this criterion.

Criterion 13

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

Indicator

The Regulator takes appropriate governance steps to ensure that serving editors do not advise on complaints, or determine their outcome.

Examples of evidence

Composition of Committee (or Panel) responsible for advising Board on complaints demonstrating independence from the press, and its approach to conflicts of interest.

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion is designed to ensure that serving editors should not be able to exert undue influence over the complaints-handling process or any adjudications. As with Criterion 12 (see above), it is permissive, not restrictive. There is no absolute requirement for a regulator to establish a Complaints Committee; but if such a Committee is established, its composition should broadly reflect that of the main Board, with a majority of people who are independent of the press. We expect the IMPRESS Board to take initial responsibility for adjudicating on any complaints. In time, a Complaints Committee may be established, as the regulatory workload of IMPRESS grows. This is provided for in the Articles of Association [annex B2: IMPRESS CIC Articles of Association]*.*

B. and C. First and second calls for evidence

There was no information supplied to which we wish to draw particular attention.

D. Assessment

The criterion does not require there to be a Complaints Committee as it refers to 'any' Committee. See also the Leveson Report K Chapter 7 section 4 page 1765:

4.31 It is not for me to make specific organisational recommendations about how the body should be structured or the mechanism whereby disputes might be capable of resolution. There is, however, no reason why the Board should not establish a small complaints committee to deal with complaints in the first instance.

By definition there are no serving editors on the Complaints Committee because there is currently no Committee, and we believe it will be adequate for the IMPRESS Board to fulfil this responsibility during IMPRESS' initial period of operation.

E. Recommendation in relation to Criterion 13

We consider that IMPRESS meets this criterion.

Criterion 14

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

Indicators – are clearly included in the criterion.

Examples of evidence

Regulator's complaints policy and procedure.

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion is designed to ensure that members of the public are not deterred from bringing complaints to the regulator by any cost implication. Under Criterion 6 (see above), the regulator's funding must be sufficient to fulfil its obligations under the Charter whilst taking account of the commercial pressures on the industry. In order to meet both Criterion 6 and Criterion 14, IMPRESS will depend, at least initially, on an external source of funding. Our Business Plan [annex E1: IMPRESS Executive Business Plan 2015-20] *shows how we will bear the cost of subsidising all complaints. Complaints will be free to members of the public.*

B. and C. First and second calls for evidence

There was no information supplied to which we wish to draw particular attention.

D. Assessment and further evidence

There are no indicators for this criterion.

Clause 3.1 of the IMPRESS Regulatory Scheme (revised) (annex D3v2) provides that subscribers complaints system should be free. There is no provision in the regulatory scheme or regulatory scheme procedures (annex D2v3) for complainants to be charged.

E. Recommendation in relation to Criterion 14

We consider that IMPRESS meets this criterion.

Criterion 15

In relation to complaints, where a negotiated outcome between a complainant and a subscriber (pursuant to criterion 10) has failed, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to direct a correction and an apology must apply equally in relation to: a) individual standards breaches; and b) groups of people as defined in criterion 11 where there is no single identifiable individual who has been affected; and c) matters of fact where there is no single identifiable individual who has been affected.

Indicator

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

- Contract/Articles of Association/terms and conditions between the regulator and subscribers demonstrating the regulator's power to direct appropriate remedies including corrections and apologies.
- Information on the power to direct the press, including as seen in instances when it has and has not been applied.
- Information on handling breaches in criterion (a), (b) and (c) where no significant identifiable individual has been affected.
- 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.

N.B. Evidence of actual practice in relation to complaints is not available because of the early stage of IMPRESS operations so we have based our recommendation on the documentation supplied and on a visit made to IMPRESS to verify their internal procedures (see annex H15).

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion is designed to give the regulator 'teeth', in relation not only to individual complaints, but also to representative group complaints and complaints regarding accuracy. IMPRESS will consider complaints which have not been addressed by the publisher to the satisfaction of the complainant within the prescribed time period, or *which are found to be urgent. These complaints will be investigated according to our procedures* [annex D2v1: IMPRESS Regulatory Scheme Procedures] *and IMPRESS will publish an adjudication. These powers are set out in our Articles of Association* [annex B2: IMPRESS CIC Articles of Association], *Regulatory Scheme* [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement].

B. First call for information

Respondents pointed to Clause 5.1 of the Regulatory Scheme Agreement (annex D3v1) which states that subscribers to the IMPRESS scheme can terminate their membership early by giving no less than 6 months' notice terminating on 31 March in any year. It was said that this means that IMPRESS' powers are not effective – see the assessment in relation to Criterion 6 above. The News Media Association asked:

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.

In its response, IMPRESS stated:

This objection is based on a misunderstanding or a misreading of the documents. The IMPRESS Regulatory Scheme Agreement (4.4) [annex D3v2] *states that 'You will still be bound by regulatory directions after you cease to be a Participant if such directions were issued prior to your effective date of termination.' The Agreement constitutes a contract between IMPRESS and a participating publisher and is enforceable as such in law (6.4).*

Respondents also argued that the original documentation provided by IMPRESS did not amount to an enforceable agreement (see the assessment of Criterion 8b above).

It was also stated that the contractual requirement to oblige subscribers to publish apologies was a breach of Article 10 of the European Convention on Human Rights (the right to freedom of expression and information).

IMPRESS replied:

Whilst directed apologies may constitute a breach of Article 10 if they are required by law, there is no breach where they are required under contract, entered into *voluntarily by subscribing publishers. The…. objection appears to be to the Charter requirement, not IMPRESS's efforts to satisfy it.*

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment

The indicator for this criterion takes into account the Leveson concepts of credible and effective powers and remedies.

The mechanisms for achieving appropriate remedial action are designed to be credible and effective (including sufficiently fast) and operate in that way.

Following the first call for information, IMPRESS provided revised versions of the Regulatory Scheme, and Regulatory Scheme Agreement.

The revised Regulatory Scheme (annex D1v3) contains a power to impose sanctions at Clause 6.2:

IMPRESS may impose appropriate and proportionate sanctions including financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1m. IMPRESS may require publishers to supply appropriate information relating to their turnover.

The power to direct corrections and apologies is at Clause 5.6:

At the conclusion of a complaint or investigation, IMPRESS will issue an adjudication. An adjudication may require appropriate remedial action and the publication of corrections and apologies. IMPRESS may direct the nature, extent and placement of corrections and apologies.

These powers are available in respect of anyone from whom IMPRESS can accept complaints. Clause 4.6:

IMPRESS will accept complaints from a) anyone personally and directly affected by the alleged breach of the Code, b) where there is an alleged breach of the Code and there is public interest in the consideration of the complaint from a representative group affected by the alleged breach, or c) from a third party seeking to ensure accuracy of published information.

In terms of the speed of the mechanisms, the Regulatory Scheme provides that publishers must deal with original complaints within 21 days and that IMPRESS will aim to deal with complaints/investigations within 42 days.

We consider that the revisions to the regulatory scheme agreement deal adequately with issues in relation to enforceability – see the assessment of Criterion 8b. Further, given that IMPRESS' regulatory directions will remain binding after a publisher gives notice, we do not consider that the notice provision in itself means that the remedies are not credible and effective. See IMPRESS Regulatory Scheme Agreement (D3v2) paragraph 5.4:

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

The arguments raised in relation to the power to direct apologies appear to be arguments against the wording of the criterion – we do not see how IMPRESS could easily give effect to this provision without the contractual requirement.

E. Recommendation in relation to Criterion 15

We consider that IMPRESS meets this criterion.

Criterion 16

In the event of no agreement between a complainant and a subscriber (pursuant to criterion 10), the power to direct the nature, extent and placement of corrections and apologies should lie with the Board.

Indicators – are clearly included in the criterion.

Examples of evidence

- *Process and procedures to direct apologies and corrections.*
- *Contracts and agreements to demonstrate that subscribers agree to adhere to directionsi*

A. IMPRESS statement and evidence in their application matrix (annex A3)

As with Criterion 15 (see above), this Criterion is designed to strengthen the regulator's power to provide satisfactory remedies. It does not preclude the possibility of offering mediation to complainants and publishers, where both parties request this. The nature, extent and placement of corrections and apologies will be determined according to our procedures [annex D2v1: IMPRESS Regulatory Scheme Procedures].

These powers are set out in our Articles of Association [annex B2: IMPRESS CIC Articles of Association], *Regulatory Scheme* [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement]
As set out in the analysis of criterion 15 above, clause 5.6 of the (revised) Regulatory Scheme agreement gives the IMPRESS Board power to 'direct the nature, extent and placement of corrections and apologies.

B. First call for information

Respondents made similar points to those made in relation to criteria 8b and 15 in relation to the enforceability of the agreement, the ability for participants to terminate agreements on notice, and the power to direct apologies.

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment

Clause 5.6 of the IMPRESS Regulatory Scheme Agreement (D1v3) provides:

An adjudication may require appropriate remedial action and the publication of corrections and apologies. IMPRESS may direct the nature, extent and placement of corrections and apologies.

The IMPRESS Regulatory Scheme Procedures (annex D2v3 paragraphs 36-42) lay out procedures for adjudications to be determined by the IMPRESS Board (with or without an oral hearing), to be sent to the parties and to be published on the IMPRESS website.

E. Recommendation in relation to Criterion 16

We consider that IMRESS meets this criterion.

Criterion 17

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

Indicators – are clearly included in the criterion.

Examples of evidence

- Contract/Articles of Association/terms and conditions between the regulator and subscribers making clear that the regulator does not have the power to prevent publication.
- Guidance provided to editors on code compliance.

A. IMPRESS statement and evidence in their application matrix (annex A3)

Our Articles of Association [annex B2: IMPRESS CIC Articles of Association] *and Regulatory Scheme Agreement* [annex D3v1 IMPRESS Regulatory Scheme Agreement] *confirm that we have no power to prevent publication of any material. If an editor contacts IMPRESS to ask for advice relating to code compliance, our policy is not to offer detailed advice on situations which might subsequently give rise to a complaint, but to provide general guidance on the Editors' Code of Practice, or any subsequent standards code, as summarised in our published guidance [http://impress.press/standards/]. This non-binding and non-exhaustive guidance is intended to help editors determine whether a particular action is likely to give rise to a breach of the code, and – if so – whether it might be justified in the public interest*

B. First call for information

One respondent stated that '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.'

IMPRESS replied:

This is a restatement of the objections addressed above in relation to Criterion 8A.

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment

IMPRESS CIC Articles of Association 7.4 (annex B2) states:

The Directors shall not have the power to prevent publication of any material, by anyone, at any time.

There is no power in the Regulatory Scheme or the Regulatory Scheme Agreement for IMPRESS to prevent publication of any material.

The criterion leaves the question of whether to offer a service of advice to editors to the regulator's discretion. In this case, IMPRESS has made guidance on the Editors' Code available to editors on its website and has confirmed that it will offer general guidance if contacted.

E. Recommendation in relation to Criterion 17

We consider that IMRESS meets this criterion.

Criterion 18

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

Indicators – are clearly included in the criterion.

Examples of evidence

- Articles of Association/agreements with subscribers confirming the regulator's authority to examine issues on its own initiative, including disclosure of information, and giving it the powers to carry out investigations.
- Information on the approach taken to deciding what amounts to serious or systemic breaches of the code.
- The investigation process.
- Approved budget for independent investigations.
- Internal/external reviews of compliance procedures.

A. IMPRESS statement and evidence in their application matrix (annex A3)

These powers are set out in our Articles of Association [annex B2: IMPRESS CIC Articles of Association], *Regulatory* Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement].

Our Business Plan shows how a budget of £50,000 will be set aside as a designated investigations fund to ensure that any investigations are sufficiently credible [annex E1: IMPRESS Executive Business Plan 2015-20]. *Investigations may require the appointment of specialist lawyers, IT consultants or auditors, for instance.*

B. First call for information

One respondent stated:

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.'

IMPRESS replied:

The investigations provisions set out in the IMPRESS Regulatory Scheme (Section 5) are clearly and explicitly designed to cover both investigations which are launched in response to a complaint and investigations which are launched on other grounds. In other words, these provisions cover all circumstances in which IMPRESS may require information or documentation from publishers. They do not mean that IMPRESS must conduct a full investigation in the case of every complaint. They certainly do not mean (and it is absurd to imply) that any investigation will culminate in a financial sanction. The IMPRESS Regulatory Scheme Procedures (clauses 27-35) also make this clear.

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment

Article 6.6 of the CIC articles of association (annex B2) provides the power to set up an investigations scheme.

Section 5 of the revised Regulatory Scheme (annex D1v3) sets out powers in relation to investigations on IMPRESS' own initiative, and powers to require disclosure and co-operation:

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

Internal governance requirements are defined in section 2 of the revised Regulatory Scheme Agreement (annex D3v2) and include the requirement 'to comply with directions issued by IMPRESS relating to this regulatory scheme'.

IMPRESS' procedure for investigations is set out in paragraphs 27-35 inclusive of their revised Regulatory Scheme Procedures (annex D2v3).

We have considered the Leveson concepts of credibility and effectiveness in relation to the power to investigate. Lord Justice Leveson, when specifying that the regulators powers in relation to investigations should be simple, credible and effective,[56] recognised the need for a level of reconsideration (whether by way of appeal or otherwise).

[56] Paragraph 4.14

Clearly, since decisions on complaints must be ultimately the responsibility of the regulator's Board (see Criterion 12), this cannot refer to an appeal from the Board itself. In this case, IMPRESS has built in a reconsideration stage that covers publishers by allowing a provisional determination to be shared with a publisher prior to the imposition of any sanction.

In our view, the relevant powers and procedures are sufficient to demonstrate compliance with the criterion. We do not consider that the fact IMPRESS has included these powers in a wider clause relating to investigation and compliance with their regulation, means that the criterion is not satisfied.

E. Recommendation in relation to Criterion 18

We consider that IMPRESS meets this criterion.

Criterion 19

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

Indicators – are clearly included in the criterion.

Examples of possible evidence

- Contractual agreements between the regulator and subscriber on enforcement of directions and agreement to comply.
- Data on where the power has been applied and/or reasons why sanctions have not been applied and action taken.
- Information on how the Board will approach sanctions including deciding on what is appropriate and on proportionality.
- Information on how the Board will approach decisions on calculating fines.
- Information demonstrating powers to gather turnover information in a manner and timescale which ensures that the overall process remains effective.
- Information on, and approach to, the requirement to publish corrections.

A. IMPRESS statement and evidence in their application matrix (annex A3)

The purpose of this Criterion is to give the regulator meaningful powers. The power to impose sanctions is not limited to breaches which are found through investigations but may also apply to breaches which are found through the process of adjudicating on a complaint.

These powers are set out in our Articles of Association [annex B2: IMPRESS CIC Articles of Association], *Regulatory Scheme* [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement].

B. First call for information

Although the effectiveness of these powers were questioned by some of the respondents to the call for information, this appears to be linked to the general issue of the effectiveness of the Regulatory Scheme Agreement (discussed in relation to criteria 8a and 15). For example, the News Media Association stated:

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.

IMPRESS' reply referred to their response in relation to Criterion 15:

This objection is based on a misunderstanding or a misreading of the documents. The IMPRESS Regulatory Scheme Agreement (4.4) [annex D3v2] *states that 'You will still be bound by regulatory directions after you cease to be a Participant if such directions were issued prior to your effective date of termination.' The Agreement constitutes a contract between IMPRESS and a participating publisher and is enforceable as such in law (6.4).*

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment

The CIC memorandum of association (annex B2) contain a general power to levy fines at 6.4.

The revised Regulatory Scheme (annex D1v3) provides:

5.6 …. An adjudication may require appropriate remedial action and the publication of corrections and apologies. IMPRESS may direct the nature, extent and placement of corrections and apologies.

6.2. IMPRESS may impose appropriate and proportionate sanctions including financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1m. IMPRESS may require publishers to supply appropriate information relating to their turnover.

The criteria that IMPRESS will use when imposing sanctions including fines are set out in 6.3 In considering the imposition of a sanction, IMPRESS will take all relevant circumstances into account, including:

- *the extent to which the conduct involved wrong doing/blame, recklessness or dishonesty;*
- *where relevant, the length of time over which the breaches occurred*
- *the number or frequency and duration of the breach(es);*
- *any steps taken to put things right and avoid future breaches;*
- *whether the publisher notified IMPRESS of the breach(es) and the extent of its cooperation;*
- *the need to demonstrate to society and to other publishers that IMPRESS takes firm action in order to protect the public interest and promote regulatory compliance, and*
- *the necessity to deter the publisher from future non-compliance.*

This issue was discussed above in relation to Criterion 15, but we not consider that the ability to terminate the agreement on notice means that the powers are not credible and effective as set out in the Leveson Report (Part K, Chapter 7, Section 4). Sanctions remain applicable if imposed before the notice period expires. The effect of the Regulatory Scheme (annex D1v3) is that if a participant ignores a direction, then this would be a breach of the internal governance arrangements requirement under Clause 2.1. This could lead to an investigation by IMPRESS under Clause 5.1 and a further sanction including fines under Clause 6.2.

E. Recommendation in relation to Criterion 19

We consider that IMPRESS meets this criterion.

Criterion 19A

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

Indicators – are clearly included in the criterion.

Examples of evidence

Information on how the Board has established the enforcement fund, and how the fund is separated for the purpose of funding investigations.

A. IMPRESS statement and evidence in their application matrix (annex A3)

We have budgeted for a designated investigations fund of £50,000. As our Business Plan shows [annex E1: IMPRESS Executive Business Plan 2015-20]*, we do not expect to draw on this fund to cover our running costs. It will be used solely for the purpose of funding investigations.*

There is the possibility that IMPRESS is required to run a number of expensive investigations which do not lead to financial sanctions and that, as a result, the investigations fund is spent down. In this scenario, we would revisit our budget, in consultation with donors and regulated publishers, to ensure that we remain able to meet our obligations. Our funding agreement with the IPRT provides for the possibility of an increase in funding [annex G3: IPRT IMPRESS Funding Agreement].

On 12 November 2015, the IMPRESS Board confirmed that the enforcement fund would be separately designated from the organisation's core funds [annex B8: IMPRESS Board Meeting 10 Minutes]*. This means that, if the fund is unused, it will grow by £50,000 each year, subject to the Board's finance policies.*

B. and C. First and second call for information

There was no information supplied to which we wish to draw particular attention.

D. Assessment

One of the key purposes of a ring-fenced fund is to ensure transparency of enforcement so that the money from fines is paid into such a fund rather than going towards the general costs of enforcement – see paragraph 4.39 of Part K, Chapter 7, Section 4 of the Leveson report. Under the terms of Clause 6.6 of the IMPRESS' Regulatory Scheme (annex D1v3) any money received from fines will be paid into this fund. Although the size of the fund is relatively small, we consider it a reasonable starting point given the size and nature of IMPRESS' initial membership.

E. Recommendation in relation to Criterion 19A

We consider that IMRESS meets this criterion.

CONFIDENTIAL

Criterion 20

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

Indicators – are clearly included in the criterion.

Examples of possible evidence

- Agreements between the regulator and subscribers demonstrating the power specified in Criterion 20.
- Evidence of the manner in which breaches are found and complaints have been recorded, including those complaints not escalated to the regulator.
- Information on how the information is made available to the public to ensure the public understands the compliance record of each title.

A. IMPRESS statement and evidence in their application matrix (annex A3)

This Criterion sits with Criterion 21 (below). Both aim to introduce a greater degree of transparency to the work of a recognised regulator than was present in previous self-regulatory bodies in the UK. Their purpose is to allow the public to understand the compliance records of regulated publishers, collectively and individually. Under our procedures [annex D2v1: IMPRESS Regulatory Scheme Procedures], IMPRESS officers will enter all relevant data into forms. Our database of these forms will allow IMPRESS to generate reports regarding complaints-handling, compliance and so forth on an annual basis and, if necessary, more frequently.

B. and C. First and second call for information

There was no information supplied to which we wish to draw particular attention.

D. Assessment

The IMPRESS Regulatory Scheme (annex D1v3) 9.1 and 9.2 imposes the relevant duties on publishers:

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

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

9.3 Commits IMPRESS to publishing an annual report:

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

Provision for these matters to be included in the published Annual Report is at Article 18.3 of the CIC Articles of Association (annex B2). The functions of IMPRESS include recording and publishing breaches of the standards code – see 8.2.5 and 8.2.14; ensuring that all breaches of the Standards Code that the company considers are recorded as such; keeping proper data that records the extent to which complaints have been made and their outcome. This information is to be made available to the public in a way that allows understanding of the compliance record of each title.

E. Recommendation in relation to Criterion 20

We consider that IMPRESS meets this criterion.

Criterion 21

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

Indicators – are clearly included in the criterion.

Examples of evidence

Information about format and timescales for publication of Annual Report.

A. IMPRESS statement and evidence in their application matrix (annex A3)

Although our first Annual Report will not be published until after the end of our first full year of operations, we have commissioned a template [annex E7v1: IMPRESS Annual Report Template], *which shows how the relevant data may be presented. Annual Reports will be available on our website in due course.*

B&C. First and second calls for information

There was no information supplied to which we wish to draw particular attention

D. Assessment

Provision for matters to be included in the published annual report at Article 18.3 of the CIC Articles of Association includes the matters listed in (a) to (e) of the criterion. We pointed out to IMPRESS that its annual report template did not include full provision for the matters listed in the criterion.

IMPRESS replied (annex A7):

Our new case management database has been designed to ensure that we capture all relevant data for these reporting purposes.

We provide a revised version of the IMPRESS Annual Report Template, [annex E7v2] *which, for the avoidance of any doubt, sets out the relevant provisions in relation to the Charter criteria.*

IMPRESS has therefore put in place provision to publish an annual report containing the appropriate information after 12 months of operation as a regulator.

E. Recommendation in relation to Criterion 21

We consider that IMPRESS meet this criterion.

Criterion 22

The Board should provide an arbitral process for civil legal claims against subscribers which: a) complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate);
b) provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial basis (so far as possible);
c) contains transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds);
d) directs appropriate pre-publication matters to the courts;
e) operates under the principle that arbitration should be free for complainants to use;[57]
f) ensures that the parties should each bear their own costs or expenses, subject to a successful complainant's costs or expenses being recoverable (having regard to section 60[58] of the 1996 Act or Rule 63 of the Scottish Arbitration Rules[59] and any applicable caps on recoverable costs or expenses); and
g) overall, is inexpensive for all parties.

Indicators – The regulator either itself provides, or has in place arrangements to ensure that someone else will on its behalf provide, the arbitral process.

Examples of evidence

- Information as to how the arbitral process operates in practice and a description of how it complies with criteria 22 (a) to (g).
- Contracts/agreements between the regulator and its subscribers setting out arrangements for the arbitration of civil legal disputes.
- Guidance for the public on the arbitral process.

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[57] The principle that arbitration should be free does not preclude the charging of a small administration fee, provided that:
(a) the fee is determined by the Regulator and approved by the Board of the Recognition Panel; and
(b) the fee is used for the purpose of defraying the cost of the initial assessment of an application and not for meeting the costs of determining an application (including the costs of the arbitration).

[58] Section 60 (Agreement to pay costs in any event): *An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.*

[59] The Rules are set out in Schedule 1 to the Arbitration (Scotland) Act 2010. Rule 63 (Ban on pre-dispute agreements about liability for arbitration expenses) M: *Any agreement allocating the parties' liability between themselves for any or all of the arbitration expenses has no effect if entered into before the dispute being arbitrated has arisen*.

A. IMPRESS statement and evidence in their application matrix (annex A3)

In order to ensure that our arbitration scheme satisfies the terms of the Charter, and in particular the requirement to comply with the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010, we have established a partnership with the Chartered Institute of Arbitrators (CIArb), an internationally-recognised charity which provides arbitration in various sectors.

As a result of this partnership, a pilot scheme was developed and published in autumn 2014. Feedback on this scheme was received from various stakeholders. After the IMPRESS Board began work in January 2015, it oversaw significant changes to the pilot scheme, to ensure that the scheme met Leveson's recommendation that it should operate on an inquisitorial basis.

The scheme has now been finalised and forms part of this application [annex F1v1: IMPRESS CIArb Arbitration Scheme Rules]. *We also include a copy of the agreement between IMPRESS and CIArb* [annex F2v1: IMPRESS CIArb Arbitration Scheme Agreement].

Subscribing publishers will be obliged under the Regulatory Scheme [annex D1: IMPRESS Regulatory Scheme] *and Regulatory Scheme Agreement* [annex D3v1: IMPRESS Regulatory Scheme Agreement] *to participate in arbitration where this is approved by IMPRESS. Any application from a claimant for arbitration will be sifted by IMPRESS, in accordance with our Regulatory Scheme Procedures* [annex D2v1: IMPRESS Regulatory Scheme Procedures]*, before being forwarded to CIArb for the appointment of an arbitrator. At this stage, we will look for evidence of 'real harm'. This test is designed to operate across all three areas of law covered by the scheme (defamation, privacy and harassment). The aim is to ensure that the scheme balances the interests of the public in having access to a forum for dispute resolution with the interests of publishers in not being forced to arbitrate inconsequential claims. Frivolous or vexatious claims may also be struck out by the arbitrator.*

The IMPRESS CIArb scheme has the following important features:

- *Many cases will be resolved on paper without the need for a hearing or expensive legal representation.*
- *The recoverable costs of legal representation will be capped at £300 per hour, up to a maximum of £3,000.*
- *The arbitrators' fees will be capped at £3,500, unless the publisher – who must meet this cost – chooses to waive this cap. In practice, the average cost may be much lower than this, as cases will be resolved on paper.*
- *The arbitrator has the power to award costs and damages and to order that the publisher should publish a summary of the award.*

- *Arbitrations will normally be completed within three months from the appointment of the arbitrator, with a limit of six months in all cases other than the most complex.*
- *In common with other areas of arbitration, hearings will normally take place in private. However, because of the potential importance of the issues at stake, the parties may apply for a public hearing, at the discretion of the arbitrator.*
- *Any decision will be in writing and will contain sufficient reasons to show why the arbitrator has reached their decision and must be made public. At the request of either party the arbitrator shall decide whether any parts of the decision shall be redacted to protect confidential information.*
- *The arbitrator will actively manage the arbitration and will take on an inquisitorial role. They will decide whether pleadings and evidence can be confined to essential issues.*

The arbitrator will have the power to strike out all or part of a claim or defence if there is no real prospect in a libel claim of the applicant showing that the publication has caused or is likely to cause serious harm to their reputation or if the pleading discloses no reasonable ground for defending the claim.

B. First call for information

Representations were made as part of the first call for information concerning IMPRESS' stated intention in its application matrix to apply a test of 'real harm' before deciding whether to refer a matter to arbitration. It was said that by making a subjective assessment of whether an individual has suffered real harm, IMPRESS is judging a claim on its merits and therefore making a determination of the claim. A claimant whose claim has been rejected for arbitration could bring a civil claim in the courts which it was claimed would render the arbitration service ineffective since its purpose is to reach an efficient and final resolution of claims against the press.

It was added that this procedure was unfair as it gave IMPRESS and the arbitrator two opportunities (between them) to reject the claim whereas, it was said, the criterion envisaged only one.

In its reply, IMPRESS stated:

Criterion 22 requires a regulator to operate an arbitration scheme which contains transparent arrangements for claims to be struck out for legitimate reasons.
To confirm that IMPRESS fulfils this Criterion, we provide a revised version of the IMPRESS Regulatory Scheme (clauses 8.1–8.4) [annex D1v2] *and a new document, IMPRESS CIArb Arbitration Scheme Guidance* [annex F3].

The Charter requirements in relation to the regulator's arbitration scheme are finely balanced. The regulator must make the scheme available to claimants at no cost other than a small administrative fee. Clearly, this may serve to encourage claimants *to apply to use the arbitration scheme. It is for this reason that IMPRESS has taken steps to ensure that unmeritorious claims are struck out at the earliest opportunity. The amendments to the IMPRESS Regulatory Scheme and the new guidance are designed to clarify and communicate that IMPRESS will conduct an administrative test of all claims, and that only those which pass this test will be forwarded to the arbitrator, who has the power to conduct a merits test at the earliest opportunity. We anticipate that unrealistic claims will be struck out at this stage, at minimal cost to the publisher. '*

Representations were also made that the arbitration scheme would have a 'chilling effect' on publications, would lead to unmeritorious claims being settled by publishers to avoid the cost, and would be a significant burden on publishers.

In support of these contentions it was stated that that there could be a great many applications for arbitration because (a) there is no cost to the claimant in bringing a claim, (b) that the threshold for bringing a claim is low and (c) conditional fee arrangements will be available. It was said that the purpose of the Leveson recommendations for low-cost arbitration was to provide a low-cost alternative to litigation, not an alternative to complaints.

It was pointed out that the proposed arbitration scheme was in effect compulsory for publishers if the claimant requests it and IMPRESS considers the case suitable.

Respondents also said the process is not 'inexpensive for all parties' as required by the criterion because the costs to the publisher (which cannot be reclaimed) are potentially high- particularly for the type of small publisher proposed to be regulated by IMPRESS.

For example, one respondent stated:

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.*
- *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.'

IMPRESS replied:

The Criterion requires an arbitration system to be free for claimants to use and inexpensive for all parties. IMPRESS's scheme caps recoverable legal fees at a maximum of £3,000 and arbitration fees payable by a publisher at a maximum of £3,500. These costs will be underwritten for smaller publishers. The 'inexpensive' element of this Criterion has therefore been satisfied. The amendments to the scheme mentioned above would have the effect of mitigating some of this costs risk by ensuring that there is a clear procedure to deal with vexatious claims, and for claims to be struck out where they have no prospects of success. The IMPRESS Executive Business Plan makes clear that IMPRESS will subsidise the cost of arbitration for publishers with annual turnover of less than £1m.

D. Second call for information

The claim was repeated that the costs of arbitration were too high, and it was said that insufficient detail had been supplied of the scheme to subsidise costs, which would in any event only apply to the smallest publishers. It was also said that requiring small publishers to sign up to a compulsory arbitration scheme was problematic per se. This was because claims which without an arbitration scheme would be dealt with as Code breaches at no cost to the publisher apart from time and reputational risk would become claims for damages with attendant legal and arbitrators' costs.

IMPRESS replied (annex A7):

We believe that it would be impossible to deliver an effective arbitration scheme in keeping with the principles and criteria set out in the Royal Charter if it were not contractually binding on publishers to use it. If publishers were not contractually bound *to arbitrate and were free to pick and choose which claims were submitted to arbitration, then members of the public would be denied access to justice. Schedule 2.7(c) of the Royal Charter shows that participation in the arbitration scheme must be binding upon participating publishers, unless and until the Board of the PRP has received evidence as part of a cyclical review to show that a regulator's arbitral process causes serious financial harm to local and regional publishers. Naturally, IMPRESS would make such evidence available to the PRP at the proper time. Clearly, in all other circumstances, the binding nature of the scheme is essential.*

D. Assessment and further evidence

The Regulatory Scheme (annex D1v3) provides:

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

8.2. IMPRESS will only offer access to its arbitration scheme for civil claims between a claimant and a participating publisher for defamation, breach of confidence, misuse of private information, malicious falsehood or harassment.

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

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

We have examined the details of the scheme against the respective elements of this criterion:

a) complies with the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010 (as appropriate)

We asked IMPRESS to confirm that the scheme complies with the Arbitration Act 1996.

IMPRESS replied (annex A7):

IMPRESS confirms that our arbitration scheme complies in all material respects with the Arbitration Act 1996. Paragraph 2 of the IMPRESS CIArb Arbitration Scheme makes reference to the 1996 Arbitration Act as follows:

The Rules are intended to govern arbitrations under the Scheme. Arbitrations under the Scheme shall be conducted under the Arbitration Act 1996 (the Act). Where the arbitration is to be seated in Scotland it shall be conducted under the Arbitration (Scotland) Act 2010. These Rules incorporate the mandatory provisions of the relevant Act. All arbitrators are independently appointed by CIArb who have certified that they are qualified and required to conduct arbitrations in accordance with the 1996 Arbitration Act.

CIArb also operate in Scotland and, we understand that, as per the IMPRESS arbitration scheme, they would supply arbitrators qualified and required to conduct arbitrations in accordance with the Arbitration (Scotland) Act 2010 if the dispute arose in Scotland.

In our view, the IMPRESS scheme complies with the provisions of both the Arbitration Act 1995 and the Arbitration (Scotland) Act 2010.

b) provides suitable powers for the arbitrator to ensure the process operates fairly and quickly, and on an inquisitorial basis (so far as possible)

The Arbitration Scheme Rules (annex F1v3) sets out the arbitrator's powers. These include the following paragraphs:

13. The arbitrator shall as far as possible adopt an inquisitorial process, taking the initiative to ascertain the facts and the law, managing the case, making enquiries of or putting propositions to either party, taking into account any inequality of representation.

15. It shall be for the arbitrator to decide all procedural and evidential matters. As soon as practicable after being appointed, the arbitrator shall give directions to the parties as to the procedure and the timings that will apply, and may give further directions at any time. These directions may include the order and timings within which documents shall be exchanged, and whether or the extent to which expert evidence shall be admitted.

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

Other provisions include a power for the arbitrator under paragraph 20 to decide whether there needs to be an oral hearing.

c) contains transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds)

Under paragraph 19 of the Arbitration Scheme Rules, the arbitrator has the power to strike out the claim under the following circumstances:

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

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

Clause 8.1 of the revised Regulatory Scheme (annex D1v3) now provides:

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

The relevant extract of the IMPRESS CIArb Arbitration Scheme Guidance (annex F3) states:

IMPRESS will register the complaint, and, if necessary, help the claimant identify whether the complaint would amount to a breach of his/her legal rights. IMPRESS will also make an administrative assessment as to whether the dispute is suitable for Arbitration under the Scheme. Arbitration will only take place once a claimant has satisfied IMPRESS that their complaint relates to one of the areas of civil law covered by the scheme, has explained the harm or loss that they have suffered and how this harm or loss has been caused to them by a publisher that IMPRESS regulates.

d) directs appropriate pre-publication matters to the courts;

We asked IMPRESS how the scheme covers this requirement. It replied: (annex A7)

All requests for arbitration are subject to an administrative assessment of whether they are covered by the scheme. This includes an assessment of each claim to ascertain whether it relates to a pre-publication matter. Any pre-publication matter which seeks to prevent publication will be rejected as being outside the scope of the arbitration scheme and will be directed to the courts. We provide lightly amended versions of the ***IMPRESS Regulatory Scheme*** *[annex D1v3],* ***IMPRESS Regulatory Scheme Procedures*** [annex D2v3], ***IMPRESS CIArb Arbitration Scheme Rules*** [annex F1v3] *and* ***IMPRESS CIArb Arbitration Scheme Guidance*** [annex F3] *to clarify this.*

e) operates under the principle that arbitration should be free for complainants to use;
f) ensures that the parties should each bear their own costs or expenses, subject to a successful complainant's costs or expenses being recoverable (having regard to

section 60 of the 1996 Act or Rule 63 of the Scottish Arbitration Rules and any applicable caps on recoverable costs or expenses);
g) overall, is inexpensive for all parties.

Note to e]

The principle that arbitration should be free does not preclude the charging of a small administrative fee, provided that:
(a) the fee is determined by the Regulator and approved by the Board of the Recognition Panel; and
(b) the fee is used for the purpose of defraying the cost of the initial assessment of an application and not for meeting the costs of determining an application (including the costs of the arbitration).

Notes to f)

Section 60 (Agreement to pay costs in any event): An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

The Rules are set out in Schedule 1 to the Arbitration (Scotland) Act 2010. Rule 63 (Ban on pre-dispute agreements about liability for arbitration expenses) M:

Any agreement allocating the parties' liability between themselves for any or all of the arbitration expenses has no effect if entered into before the dispute being arbitrated has arisen.

The IMPRESS CIArb Arbitration Scheme Guidance (annex F3) confirms, 'The claimant will not be liable for any of the costs of the arbitration, other than payment of an administrative filing fee to IMPRESS'. This filing fee is set at £75. However, the IMPRESS CIArb Arbitration Scheme Rules make no reference to the fee. We asked IMPRESS to confirm that no such fee would be charged unless and until approved by the PRP Board and they replied (annex H29):

We can confirm that we are not currently charging a filing fee to access the IMPRESS CIArb Arbitration Scheme and do not intend to do so unless and until approval for this has been granted by the PRP.

We suggest that the issue of the filing fee should be considered at a separate meeting by the PRP Board in the event that they decide to recognise IMPRESS.

Clause 9 of the IMPRESS CIArb Arbitration Scheme Rules (annex F1v3) provides that no award of costs shall be made against the claimant in any circumstances.

Clauses 10 and 11 deal with payment by the publisher of the arbitrator's fee and costs as set in IMPRESS application matrix above.

As set out above, respondents to the calls for information argued that the IMPRESS arbitration scheme would be prohibitively expensive for applicants. One ground for this contention was that the scheme was compulsory for publishers. However, we agree with IMPRESS that the compulsory nature of the scheme for publishers is the intention of the criterion. Schedule 2 paragraph 7of the Charter states:

7 Where the Board has received such evidence as part of a cyclical review, it shall consider that evidence, and publish its conclusions on the fairness, effectiveness and sustainability of the Regulator's arbitral process. Such conclusions may include……

(c) that where it determines the requirement to provide an arbitral process causes serious financial harm to subscribers who publish only on a local or regional basis, the Recognition Panel may allow recognition to continue on the basis that such subscribers may, but need not, participate in the Regulator's arbitral process. Criterion 22 shall be interpreted accordingly.

We asked IMPRESS for further clarification of how the scheme would be inexpensive for publishers.

IMPRESS replied (annex A7):

IMPRESS has been very mindful of the cost burden on publishers, particularly local and regional publishers, of participating in a contractually binding arbitration scheme. In developing the scheme, IMPRESS has sought to strike a balance between the need to provide a free and accessible service to members of the public (Criterion 22 (e)) and the need to provide a service which is affordable to publishers of all sizes (Criterion 22 (g)). This is why IMPRESS has introduced the following safeguards:
- *A cap of £3,500 on arbitration fees;*
- *Provision for claims to be struck out by the arbitrator for a fee well below the £3,500 cap;*
- *A cap of £3,000 on costs awards made against a publisher if the claim is upheld;*
- *An administrative check to ensure that any claims which are outside the scope of the scheme are rejected by IMPRESS before the publisher incurs any cost;*
- *One free arbitration per year for all publishers with a turnover of less* than £1m; *and*
- *Access to an optional, low cost, insurance scheme which is exclusive to IMPRESS publishers.*

IMPRESS is very confident that its arbitration scheme offers exceptional value for money to publishers when compared to the costs of instructing lawyers and the time it takes to defend claims through the civil courts.

IMPRESS has taken specific steps to prevent its arbitration scheme from causing serious financial harm to local and regional publishers IMPRESS has established a £50,000 arbitration fund which will be used to subsidise the costs of one arbitration per year for all publishers with turnover of less than £1m. We anticipate that the majority of arbitrations will be resolved at a cost far below the £3,500 limit, and that most publishers of this size will not generate arbitration claims, so this budget should be sufficient. IMPRESS will also be offering an exclusive insurance scheme to publishers in partnership with Howden Group, a specialist media insurance broker. For an annual premium of £250, the policy insures publishers against the costs of participating in multiple arbitrations, up to a limit of £3,500 per claim, with no excess.

Overall, we consider that the scheme is inexpensive for publishers in light of these factors. We particularly note that there is cap on fees and costs as opposed to simply allowing charges and claims at hourly rates.

An indicator was published for this criterion:

- *Indicator: The regulator either itself provides, or has in place arrangements to ensure that someone else will on its behalf provide, the arbitral process.*

In this case, as explained above the Chartered Institute of Arbitrators is providing the service on IMPRESS' behalf.

E. Recommendation in relation to Criterion 22

We consider that IMPRESS meets this criterion.

Criterion 23

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

Indicators

- Any variation in terms for different types of publisher needs to be such as to facilitate membership on fair, reasonable and non-discriminatory terms.
- Those terms need properly to take into account matters such as the financial position of a publisher.

Examples of evidence

- Eligibility criteria and details of policy and process for joining the regulator.
- List of current subscribers by type of membership.
- Anonymised sample of decision making for successful and un-successful membership applications.

A. IMPRESS statement and evidence in their application matrix (annex A3)

Membership of IMPRESS is open to all relevant publishers and there is no bar to membership. We have set a sliding scale of annual subscription rates in our Business Plan [annex E1 35: IMPRESS Executive Business Plan 2015-2020]*, as follows:*

☐*publishers with turnover up to £100,000 will pay an annual subscription of £50*
☐*publishers with turnover between £100,000 and £1m will pay an annual subscription of £550*
☐*publishers with turnover between £1m and £2m will pay an annual subscription of £1,500*
☐*publishers with turnover between £2m and £5m will pay an annual subscription of £7,000*
☐*publishers with turnover between £5m and £10m will pay an annual subscription of £15,000*
☐*publishers with turnover between £10m and £20m will pay an annual subscription of £30,000*
☐*publishers with turnover between £20m and £50m will pay an annual subscription of £70,000*
☐*publishers with turnover between £50m and £100m will pay an annual subscription of £225,000*
☐*publishers with turnover above £100m will pay an annual subscription of £800,000*

We will gather information on the turnover attributable to a particular publisher, in relation to any titles being regulated, through our publisher application form [annex E3: IMPRESS Publisher Application Form]*. This will be administered by IMPRESS officers in accordance with our procedures* [annex D2v1: IMPRESS Regulatory Scheme Procedures] *and business flow* [annex D4: IMPRESS Business Flow].

Subscription rates will be the subject of a non-binding annual consultation with publishers, as set out in our Articles of Association [annex B2: IMPRESS CIC Articles of Association].

B. First call for information

It was alleged that IMPRESS' sliding scale fees would preclude large publishers from joining because of the cost. The News Media Association states:

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.

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.'

In its reply to the issues raised by respondents to the first call for information, IMPRESS stated:

The scale of fees charged by IMPRESS are fair and reasonable. They vary according to the turnover of the relevant publisher in an effort to be fair to smaller publishers. Although the fees differentiate between publishers on the basis of their turnover, they do not discriminate against any publisher on the basis of any *protected characteristic. IMPRESS has written to the RFC to ask for full details of their tariff schedule for the purposes of comparison.*

C. Second call for information

There was no new information supplied to which we wish to draw particular attention.

D. Assessment and further evidence

IMPRESS' broad requirements for members are set out on its website Join Us | IMPRESS.

IMPRESS has produced an application checklist and form (annex E3). Members will have to sign the regulatory scheme agreement and comply with the regulatory scheme including having the appropriate governance and complaints system in place, co-operate with IMPRESS and the arbitration scheme, pay annual fees and display the IMPRESS logo. Members are expected to sign up for five-year membership subject to a break clause that allows them to give notice of at least six months ending on 31 March in any year.

Membership appears to be open to all provided that they meet these conditions. Details of the regulatory scheme have been discussed in relation to the other criteria. The IMPRESS arrangements assist smaller publications by providing standard complaints and whistleblowing policies that can be adopted (see the assessment of Criterion 9 above).

The PRP has created indicators for this criterion:

- *Any variation in terms for different types of publisher needs to be such as to facilitate membership on fair, reasonable and non-discriminatory terms.*
- *Those terms need properly to take into account matters such as the financial position of a publisher.*

IMPRESS has not sought to treat different types of publisher differently under the scheme but the fee rates set take into account publisher turnover by establishing a sliding-scale as set out above. In addition, one arbitration a year will be subsidised by IMPRESS, if the publisher's turnover is under £1m.

IMPRESS launched a consultation on its fee scales on 6 June 2016 and sent its conclusions on 13 July 2016 (see annex G2 and the assessment in relation to Criterion 6 above). IMPRESS has decided to abolish the two highest categories of fees, leaving the maximum fee payable of £70,000. This would leave the highest fees below the level that the NMA suggested is charged for IPSO members in its response to the call for information.

At the lower end of the scale, the fee for the smallest publications is heavily subsidised at only £50.

We have considered whether the fact that, after consultation, IMPRESS can vary the fees payable by members each year means that the terms are not fair and reasonable. We refer the PRP Board to the assessment in relation to Criterion 6 and clause 4.1 of the IMPRESS Regulatory Scheme Agreement (annex D3v2).

In signing up to be a Participant, You agree to pay the subscription fee that is applicable to You under the annual Tariff Schedule published by Us. This fee should be paid by 1 April of each year, which is the start of a subscription year.

In our email of 27 July 2016 to IMPRESS (annex H28) we stated:

You may recall that during the validation and verification visit on 4 July we raised the issue of IMPRESS ability to vary the fees tariff every year after consulting its members. Could you please confirm (as discussed in the meeting) that the intention is to run any such consultation leaving enough time for members to serve notice if they wish before the new fees come into effect?

This was in reference to the conversation at the first verification and validation meeting on 06 July 2016 (annex H15) the relevant extract of which reads:

Susie Uppal: IMPRESS have said that they are going to amend their fee schedule every year on consulting their members. If IMPRESS consult in January on fees for April that same year, as envisaged in the documentation, then members will be stuck with the new fees for a year.

Jonathan Heawood: They will look at that again - something may have been lost in the drafting process. The intention may have been to consult in January for implementation in April the following year.

IMPRESS replied (annex H29):

You asked us to clarify the relationship between our Financial Sustainability Policy and our Regulatory Scheme Agreement. As you noted, the Financial Sustainability Policy requires IMPRESS to consult participating publishers on our financial arrangements each year, in January, in relation to changes which may come into force in April of that year. As you also noted, the Regulatory Scheme Agreement requires *publishers to give six months' notice if they wish to terminate the Agreement. You asked whether these two provisions are mutually compatible.*

We are not sure that this issue has a bearing on the recognition criteria. In any case, we believe that the provisions are mutually compatible and indeed quite appropriate. Under the Charter, IMPRESS is required to ensure that fees are fair, reasonable and non-discriminatory. We will allow publishers to comment on any changes to our financial arrangements before they are finalised and will of course take their views into account.

However, publishers' views cannot be allowed to outweigh all other considerations, or IMPRESS would have sacrificed the very independence which is required under the Charter. For this reason, it would be inappropriate to give publishers scope to threaten to resign unless their demands were met in relation to the budget and tariff schedule.

Therefore, the annual consultation process is designed to give publishers an opportunity to comment on any changes to IMPRESS's financial arrangements, including the annual budget and the tariff schedule, but not to give them any kind of veto over these arrangements.

This therefore means that members of the IMPRESS scheme can be obliged after consultation to pay increased fees set by IMPRESS (with no parameters or limit set for any such increase) for a year (i.e. from1 April to 31 March the succeeding year) before any notice they give comes into effect. The PRP Board may want to consider whether this amounts to making membership available on 'fair' or 'reasonable' terms.

Following receipt of the draft version of this report, IMPRESS made further comments on this issue (annex H31)

An unfair term in a contract can be described as one that creates a significant imbalance in the rights and obligations of the parties, to the detriment of the weaker party. It is not self-evident that publishers are necessarily weaker parties in their relationship with IMPRESS. As you noted in relation to criterion 6, the IMPRESS business model depends on a certain amount of income from regulatory fees, so IMPRESS has an interest in recruiting publishers to become members. It will therefore not be in the interests of IMPRESS to ignore serious objections to fee increases if these are raised in a consultation; this would send counter-productive messages to the market of prospective recruits. The relationship between IMPRESS and its publishers is a business-to-business relationship which is respectful of the interests and benefits of each party.

We do not see publishers as weaker parties, nor do we see the provision itself as necessarily causing detriment. The provision might not suit the preference of a publisher at a particular time, but that is not the same as causing objective detriment. It will be in the interests of its members generally that IMPRESS is able to forecast reasonably accurately its fee income in a forthcoming year so that a sound budget can be settled without this being subject to a sudden mid-year withdrawal of a substantial publisher from membership.

As far as the particular term is concerned (restricting the right of a publisher to resign before a proposed fee increase has become effective), we can point to an almost exactly analogous provision of long standing in the voluntary jurisdiction of the Financial Ombudsman Service (FOS). The standard terms of participation at the FOS require at least six months notice by a financial firm of a proposed withdrawal. Rule DISP 4.2.7 of the Financial Conduct Authority sets this out. In a very similar way to the model of annual fee revisions following a budget consultation provided for in the IMPRESS arrangements, the FOS normally consults on fee proposals in early January of each year and fee changes come into force at the beginning of April. A notable difference between the consultation provisions for the FOS and those for IMPRESS is that IMPRESS has bound itself to consult, while the FOS fee and funding rules make no formal requirement to consult.

We regard the requirement to consult our members on key aspects of our scheme as important elements in the balance between our aim of regulatory independence and the need to command the confidence of publishers. As to how consultations should be carried out and the information that should be made available to its consultees by a regulator proposing fee increases, salutary guidance can be drawn from the recent decision of the High Court concerning the General Dental Council: British Dental Association v General Dental Council [2014] EWHC 4311 (Admin).

We consider that the word 'fair' for the purposes of this criteria should be given its natural meaning rather than any technical one relating to unfair contract terms. IMPRESS' argument above may be considered to have less force were s40 of the Crime and Courts Act 2013 to be brought into effect at some future date, although even in those circumstances the Charter envisages that there could be more than one regulator.

Under clause 1.1 of the IMPRESS Regulatory Scheme Agreement annex D3v2 IMPRESS can also vary the terms of the Regulatory Scheme and the Arbitration Scheme.

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

It seems reasonable that the terms of the scheme will need to change in a contract of five years' duration.

Suggestions have been made by respondents to the calls for information that 'mainstream' publications would not join IMPRESS because of the political affiliations of some of its Board members (including in particular Martin Hickman who has co-authored a book on the News International hacking scandal) with Labour's deputy leader. (See the assessment of Criterion 5 above). Likewise, the fact that the ultimate source of IMPRESS' funding is Max Mosley was said to be a barrier given his history of litigation and known views.

We have no doubt that there are a number of publications that will not wish to join IMPRESS and that these issues could well be factors. However, many of the same publications have expressed opposition to the Charter itself and the system it seeks to introduce. As we have set out in sections 1 and 5, we consider that IMPRESS has taken appropriate steps to ensure to secure its independence from its main funder and meets the criterion as to independence of Board members.

E. Recommendation in relation to Criterion 23

We have not made any recommendation in relation to this criterion but would invite the PRP Board to consider the issues raised.

Section 5: Application annexes

Where there are multiple versions of documents, the document in **bold** is the final version.

Where there are multiple versions of documents, the document in **bold** is the final version.

A - GENERAL

- A1 IMPRESS PRP Application Cover Letter
- A2 IMPRESS PRP Application Contents List
- A3 IMPRESS PRP Application Matrix
- A4 IMPRESS PRP Call for Information Response Paper

- A5 IMPRESS letter to PRP 270416
- A6 IMPRESS PRP 010716
- A7 IMPRESS PRP clarification letter (18 page letter responding to letters of 11/05, 6/6, 16/6)
- A8 IMPRESS letter to PRP 110716
- A8.1 IMPRESS Board meeting note 120115 (enclosure to A8)
- A9 IMPRESS regulatory scheme: document control index
- A10 IMPRESS PRP Call for Information #3 Response Paper
- A11 IMPRESS letter to PRP 201016
- A12 IMPRESS letter to PRP 211016
- A13 Letter IMPRESS to PRP 180816

B - GOVERNANCE

- B1 The IMPRESS Project Articles of Association
- B2 IMPRESS CIC Articles of Association
  - B2.1 IMPRESS Finance & Audit Committee Terms of Reference
  - B2.2 IMPRESS Financial Policies
- B3 The IMPRESSS Project Board Meeting 191214 Minute
- B4v1 IMPRESS Board Register of Interests
- **B4v2 IMPRESS Board Register of Interests**
- B6 IMPRESS Board Meeting 6 Minute
- B7 IMPRESS Board Meeting 7 Minute
- B8 IMPRESS Board Meeting 8 Minute
- B9 IMPRESS Board Meeting 9 Minute
- B10 IMPRESS Board Meeting 10 Minute
- B11 IMPRESS Board meeting 11 Minute
- B12 IMPRESS Code Committee Terms of Reference

C - APPOINTMENTS

- C1 IMPRESS Appointment Panel Candidate Brief
- C2 IMPRESS Appointment Panel Letter of Appointment
- C3 IMPRESS Appointment Panel Meeting 1 Minute
- C4 IMPRESS Appointment Panel Meeting 2 Minute Redacted

    - C4.1 IMPRESS Appointment Panel Meeting 2 Minute Un-Redacted [PRP reference only]
- C5 IMPRESS Appointment Panel Meeting 3 Minute Redacted
    - C5.1 IMPRESS Appointment Panel Meeting 3 Minute Un-Redacted [PRP reference only]
- C6 IMPRESS Appointment Panel Meeting 4 Minute Redacted
    - C6.1 IMPRESS Appointment Panel Meeting 4 Minute Un-Redacted [PRP reference only]
- C7 IMPRESS Appointment Panel Meeting 5 Minute
- C8 IMPRESS Appointment Panel Protocol
- C9 IMPRESS Appointment Panel Terms of Reference
- C10 IMPRESS Board Recruitment Brief
- C11 IMPRESS Board advertisement
- C12 IMPRESS Board Lettter of Appointment
- C13 IMPRESS Board Letter of Appointment #2
- C14 IMPRESS Board Recruitment Pack
- C15 IMPRESS Code Committee recruitment brief
    - C15.1 IMPRESS Project Appointment Panel Biographies
    - C15.2 IMPRESS Appointment Panel Biographies
    - C15.3 IMPRESS Board Biographies
    - C15.4 IMPRESS Code Committee Biographies

D - REGULATION

- D1 IMPRESS Regulatory Scheme
- D1v2 IMPRESS Regulatory Scheme
- **D1v3 IMPRESS Regulatory Scheme**
- D2v1 IMPRESS Regulatory Scheme Procedures
- D2v2 IMPRESS Regulatory Scheme Procedures
- **D2v3 IMPRESS Regulatory Scheme Procedures**
- D3v1 IMPRESS Regulatory Scheme Agreement
- **D3v2 IMPRESS Regulatory Scheme Agreement**

- D4 IMPRESS Business Flow
- D5v1 IMPRESS Advisory Notice Request Form
- **D5v2 IMPRESS Advisory Notice Request Form**
- D6 IMPRESS Advisory Notice Template
- D6.1 IMPRESS Advisory Notice Database
- D7 IMPRESS Advertising Content Definition
- **D8 IMPRESS Public Concern at Work Agreement**

- D9 IMPRESS Publisher Reporting Procedure
- D10 IMPRESS comparative Code research (23 pages)
- D11 Communications Law 21.2

E - OPERATIONS

- E1 IMPRESS Executive Business Plan 2015-2020
- E2 IMPRESS Operational Implementation Plan
- E3 IMPRESS Publisher Application Form

- E4 IMPRESS Publisher compliance report
- E5 IMPRESS model complaints policy
- E6v1 IMPRESS Induction Pack
- **E6v2 IMPRESS Induction Pack (including a revised version of the IMPRESS Compliance Checklist)**
- E7v1 IMPRESS Annual Report Template
- E7v2 IMPRESS Annual Report Template

F - ARBITRATION

- F1v1 IMPRESS CIArb Arbitration Scheme Rules
- F1v2 IMPRESS CIArb Arbitration Scheme Rules
- F2v1 IMPRESS CIArb Arbitration Scheme Agreement
- **F3 IMPRESS CIArb Arbitration Scheme Guidance**

G – INFORMATION RELATING TO FUNDING

- G1 Sustaining Trust - paying for independent regulation – IMPRESS consultation
- G1.1 IMPRESS notice of consultation 080616
- G2 Sustaining Trust – IMPRESS decision paper
- G3 IPRT IMPRESS Funding Agreement
    - G3.1 IPRT IMPRESS Funding Agreement Signed [for PRP reference only]
    - G3.2 IPRT IMPRESS Funding Agreement Deed of Variation
    - G3.3 IPRT Deed of Variation Signed [for PRP reference only]
- G4 IRPT confidential advice Hunters Solicitors to IMPRESS July 2015
- G5 IPRT Declaration of Trust 081113
- G6 IMPRESS to IPRT 080715
- G7 IMPRESS Tariff Schedule
- **G8 IPRT IMPRESS Letter Dated 260416**
- **G9 AMCT IPRT Funding Agreement**
- G10 IMPRESS Fundraising Policy
- G11 IMPRESS Financial Sustainability Policy
- G12 Record of meetings between IMPRESS, AMCT and IPRT 200716
- G13 AMCT grant to IPRT letter 140716
- G14 IMPRESS to PRP 210716 note on underspend

H – PRP MEETING NOTES, CORRESPONDENCE WITH IMPRESS ETC

- H1 Attendance note SU – IMPRESS 260116
- H2 Attendance note SU – IMPRESS 010216
- H3 Attendance note SU – IMPRESS 070316
- H4 Attendance note SU – IMPRESS 080316
- H5 Attendance note SU – IMPRESS 150316
- H6 Attendance note SU – IMPRESS 170316
- H7 Attendance note SU – IMPRESS 120416
- H8 Attendance note SU – IMPRESS 200416
- H9 Attendance note SU – IMPRESS 110516
- H10 Attendance note SU – IMPRESS 180516

- H11 Attendance note SU – IMPRESS 260516
- H12 Attendance note SU – IMPRESS 310516
- H13 Attendance note SU – IMPRESS 030616
- H14 Attendance note SU – IMPRESS 210616
- H15 Attendance note PR – IMPRESS 060716
- H16 Attendance note SU – IMPRESS 080716
- H17 Attendance note PR – IMPRESS 140716
- H18 Attendance note PR – IMPRESS 200716
- H19 Attendance note PR – IMPRESS 250716
- H20 SU letter to JH 210116
- H21 SE email to IMPRESS attaching first CFI responses
- H22 SU to JH email 290416
- H23 SU letter to JH 110516
- H24 SU email to JH 310516
- H25 SU letter to JH 060616
- H26 SU to JH email 160616
- H27 JH email to PR 260716
- H28 SU email to JH 270716
- H29 JH letter to SU 280716
- H30 SU letter to JH 290716
- H31 JU letter to SU 020816
- H32 Attendance note SU - IMPRESS 260916
- H33 Attendance note SU - IMPRESS 270916
- H34 JH email to SU 300916
- H35 SU email to JH 031016
- H36 Attendance note SU - IMPRESS 041016
- H37 SU email to JH 181016
- H38 attendance note SU - IMPRESS 191016
- H39 JH email to SU 201016
- H40 SU email to JH 211016
- H41 attendance note SU – IMPRESS 211016
- H42 JH email to SU 211016

J – RESPONSES TO FIRST CALL FOR INFORMATION

- J1 89Up 040316
- J2 Associated Newspapers 250216
- J3 CPBF 030316
- J4 Guardian News and Media 040316
- J5 Hacked Off 040316
- J6 Ivor Gaber 040316
- J7 Julian Petley 030316
- J8 Julian Petley follow up 040316
- J9 News UK 040316
- J10 NMA 040316
- J11 PPA 040316
- J12 Society of Editors 030316
- J13 Telegraph Media 040316

K – RESPONSES TO SECOND CALL FOR INFORMATION

- K1 89Up 020616
- K2 Academics 020616
- K3 Associated Newspapers 020616
- K3.1 Associated Newspapers follow up 200716
- K4 C Whitney 310516
- K5 Hacked Off 020616
- K6 NMA 010616
- K7 PPA 270516
- K8 C Frost 010616
- K9 Scottish Newspaper Society 010616
- K10 Simon Carne 160516
- K11 Society of Editors 020616
- K12 Telegraph Media 210616 (Telegraph Media submitted a duplicate of their response to CFI 1)

L - MISCELLANEOUS

- L1 Leveson extracts