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Dear Sir,

Response to the PRP's decision on 25 October 2016 to recognise IMPRESS as an "approved regulator"

We act for the News Media Association (**NMA**). The NMA is the voice of national, regional and local news media organisations in the UK: a £5 billion sector read by 48 million adults every month in print and online. Its members are the biggest investors in news, accounting for two-thirds of the total spent on news provision in the UK, with most of the remainder spent by broadcasters including the BBC.

We write following the decision of the Press Regulation Panel (**PRP**) to recognise IMPRESS as an "approved regulator" pursuant to the terms of the Royal Charter on Self-Regulation of the Press (the **Decision**).

We understand that the Decision was made at a meeting of the board of the PRP on 25 October 2016 (the **Board Meeting**). Currently, the website of the PRP states simply that:

*"the Board has decided that IMPRESS meets all 29 criteria (numbered 1 to 23) in the Charter, which means that, amongst other things, IMPRESS is independent of the print and online publishers it regulates, and is appropriately funded."*¹

We understand that at the Board Meeting the Board Members, led by you, simply ran through each of the 23 (or as broken down, 29) recognition criteria set out in Schedule 3 to the Royal Charter and formed the view in each case that IMPRESS had been able to meet the criterion threshold. Other than that, we have no information about the grounds on which the Decision was made and what reasoning was applied by the PRP. In particular, without limitation, we do not know on what bases the Board determined that each of the criteria was met. Accordingly the NMA reserves its position generally both on the PRP's interpretation of the criteria, and its determination that the criteria have been met, pending the release of further information including production of the material described on the website of the PRP in the following terms:

"All the information received during the calls for information will be published on the PRP's website within 30 days, alongside the IMPRESS application, the PRP's assessment report and the Board's final decision."

¹ "PRP Board recognises IMPRESS" 25th October 2016 - <http://pressrecognitionpanel.org.uk/prp-board-recognises-impres/>

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The NMA requires urgent sight of this material. There is a serious risk of prejudice in the event that the NMA has to wait the full 30 day period before reviewing this material. The reason for this is that it is our view, based on the published recognition application made by IMPRESS (and as amended on numerous occasions) that the IMPRESS scheme of regulation falls short of the recognition criteria in a number of material respects which are not capable of cure and that there are grounds for judicial review of the Decision. We refer, by way of example, to the NMA's responses to the public consultation made on 4 March 2016, 1 June 2016 and 20 September 2016 (**Submissions**).

At this stage, and based on such information as has been made publicly available, we consider that the Decision is likely to be capable of challenge on public law grounds. In the meantime, and without prejudice to its right to raise further points in due course, the NMA gives early notification that it is giving consideration to the following facts and matters.

The Code

The recognition criteria provide that the standards code "*must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee...*".

IMPRESS has sought to adopt the Editors' Code which is the standards code against which the Independent Press Standards Organisation regulates its members. That Code is not the responsibility of IMPRESS and IMPRESS has no copyright in the Code. We understand that there was a casual inquiry at the Board Meeting as to whether there had been any complaint of copyright infringement by the copyright owners. This was hardly sufficient to establish whether or not there had been such a complaint but in any event, in the light of the PRP's recognition that the Editors' Code is 'owned' by a third party and therefore cannot be the responsibility of IMPRESS, a decision that this criterion has been met is unsustainable.

IMPRESS has consulted on its own standards code, but no such code has yet been adopted by IMPRESS. We understand that the Decision was based on the recognition application made by IMPRESS as at 25 October 2016. It follows that the Decision has been made without access to the code that is to be adopted by IMPRESS. It is unlawful for the PRP to approve a regulator without assessing the standards code against which it is to regulate its members. Indeed, in its own indicative view published in August 2016 (**Indicative View**) the PRP confirmed that it should assess the standards code which a recognised regulator would apply.

Moreover, Sir Brian Leveson stated that: "*it is essential that it should be the regulator who approves a code of standards to which members must adhere*"².

It is further understood that IMPRESS has no "serving editors" on its Code Committee. The Royal Charter criteria state that serving editors have "an important part to play". The decision that this criterion can be met by a regulator which has **no** serving editor on its Code Committee is unsustainable.

Self-Regulation and effectiveness of IMPRESS as a regulator

Schedule 4 to the Royal Charter defines "Regulator" as "*an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications*". By its own admission, IMPRESS has not been established by relevant publishers and it appears to have only a small minority of relevant publishers within its membership. The vast majority of its 'regulated members' appear to fall within the description of 'micro-businesses' (fewer than 10 employees), including a number of 'multi-author blogs', which are excluded from the definition of 'relevant publisher' as defined by the Royal Charter and the Crime and Courts Act 2013. It is therefore unclear on what basis the PRP can have concluded that IMPRESS will perform *self-regulation* of the press under the Royal Charter when it is not formed by, or even on behalf of, those it is meant to regulate.

Sir Brian Leveson stated that a regulatory body should "*be established by the industry, that it be able to secure the voluntary support and membership of the entire industry*"³. IMPRESS clearly fails to meet this

² Vol IV, page 1762 para 4.21 to 4.24

³ Vol IV, page 1771, para 6.1

requirement. The membership of IMPRESS covers a small minority of small publishers. There is an overwhelming likelihood that for the foreseeable future, the vast majority of the press publishers will not join IMPRESS. IMPRESS is, quite simply, unable effectively to regulate the press as it will not secure membership or support of a significant part of the industry, let alone its entirety.

Funding

As set out in the NMA's Submissions, the source of funding of IMPRESS is a matter of grave concern. In our view the funding arrangements between the AMCT, IPRT and IMPRESS demonstrate that IMPRESS is neither reliably nor independently funded.

AMCT is a Max Mosley family trust. The IPRT is the recipient of a grant (under the Grant Agreement of 30 October 2015) from the AMCT. It in turn funds IMPRESS. The recognition requirements in the Scheme of Recognition of the Royal Charter require the PRP to consider the "reliability" of funding. Clause 3.2(a) of the Grant Agreement entitles AMCT to terminate or decrease funding to IPRT if AMCT's trustees reasonably consider that the funding is not reasonably required to advance IPRT's purposes. AMCT has no obligation to inform IPRT of its grounds for invoking clause 3.2(a). The effect of these arrangements is that AMCT controls the funding and may remove funding unilaterally. That is not sufficient to discharge the recognition requirements of reliable funding.

The Royal Charter emphasises that the regulator must be independent. This is the backbone of the recommendations in the Leveson report which gave rise to the Royal Charter. The PRP, in its Indicative View, recognises the requirement of independence (although the NMA's rights are wholly reserved in respect of the legitimacy of any indicative views reached by the PRP). In that Indicative View, the PRP states that whether third party funding compromises the independence of a regulator is a:

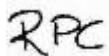
"question of fact and will depend on the safeguards that were put in place to protect independence, such as the terms of the agreement between the funder and the regulator and the regulator's governance arrangements".

The PRP's presumed decision that there are such safeguards is not supported as a matter of fact or at all; indeed, clause 3.2(a) of the Grant Agreement effectively gives the AMCT, and thus Mr Mosley, a monopoly over the funding arrangements of IMPRESS. The funding of IMPRESS cannot reasonably be said to be independent.

Please provide the documentation and information requested by **4 November 2016** at the latest. We expect to be writing to you with a formal pre-action protocol letter thereafter.

The rights of the NMA are fully reserved.

Yours faithfully,



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