

**HOUSE OF LORDS SCIENCE & TECHNOLOGY COMMITTEE
INQUIRY INTO OPEN ACCESS PUBLISHING**

**SUBMISSION FROM THE PUBLISHERS ASSOCIATION
18 JANUARY 2013**

Introduction

1. The Publishers Association (The PA) ¹ welcomes this opportunity to submit evidence to the Committee Inquiry. We participated constructively in the Finch working group and have publicly supported the recommendations in the working group report (“The Report”) and the endorsement setting out Government Policy in the letter from David Willetts MP, Minister of State for Science and Innovation to Dame Janet Finch of 16th July 2012. The publishers we represent look forward to playing a full role in the implementation. We understand that this Inquiry is to focus on the implementation of that Government Policy. We summarise below our responses to the issues raised in the Chairman’s letter and we expand on these in a more detailed Appendix.

The Issues Raised in the Chairman’s letter

Support for Universities to cover article publication charges, and the response to these efforts

2. On 8 November 2012, RCUK announced details of the block grant funding mechanism which it is introducing to aid its implementation of open access policy. It estimates that in the first year these will cover the Article Publication Charges (APCs) of 45% of RCUK-funded papers, provided that universities supplement the RCUK block grants by an additional 25%. By the fifth year RCUK estimates that its block grants will cover the cost of Gold open access publication for 75% of RCUK-funded papers, again assuming a 25% matching contribution from the universities. We are not in a position to comment on the ability of the universities to supplement the RCUK block grants in this way, nor on how they might fund any probable mandate for open access publication from HEFCE. However, we would observe it is possible that some part of this RCUK block grant funding will be absorbed by administration costs in managing the payment of potentially thousands of APCs at any single institution.
3. We recognize that the bold aim to shift the scholarly communication system from a subscription/ licensing base to Open Access has not been attempted on a national scale anywhere else. The Report acknowledged the cost of taking a leadership role. RCUK and the Universities will need time to work out policy and operational issues with the full support of all stakeholders. As publishers we are ready to enable publication of as many papers under the Gold open access model as universities are able to pay APCs, from block grants and/ or their own resources. However, funding for APCs is unlikely to be sufficient for several years, so it is essential that the alternative Green route to open access works smoothly and is sustainable – as we outline further below.

¹ *The Publishers Association (“The PA”) is the leading representative voice and trade organisation for book, journal, audio and electronic publishers in the UK. Our membership includes publishing houses in the academic, educational and general trade sectors. Collectively, their revenues total £4bn, 80% of the overall total for the sector.*

Embargo periods for articles published under the green model

4. On this point, RCUK policy is inconsistent with Government Policy and risks undermining its successful implementation. The Report said the following on embargo periods:
“Our recommendations are presented as a balanced package, so it is critical that they are implemented in a balanced and sustainable way, with continuing close contact and dialogue between representatives of each of the key groups.” (Executive Summary #4, p.8).

“Where an appropriate level of dedicated funding is not provided to meet the costs of open access publishing, we believe that it would be unreasonable to require embargo periods of less than twelve months. (Government, funders, universities)” (Executive Summary #4, xviii, p.10).
5. This view was endorsed by David Willetts in his letter to Dame Janet of 16th July 2012, in which he set out Government Policy as follows:

“Embargo periods allowed by funding bodies for publishers should be short where publishers have chosen not to take up the preferred option of their receiving an Article Processing Charge (which provides payment in full for immediate publication by the ‘gold OA’ route). Where APC funds are not available to the publisher or learned society, for the publication of publicly-funded research, then publishers could reasonably insist on a longer more equitable embargo period. This could be up to 12 months for science, technology and engineering publications and longer for publications in those disciplines which require more time to secure payback. Even so, publications with embargo periods longer than two years may find it difficult to argue that they are also serving the public interest.”
6. Publishers are in broad agreement with this Policy with its distinction between appropriate Green open access embargo periods depending on the availability of funding for APCs. However, the RCUK Policy says only that Green open access embargo periods should be no longer than six months, except for papers arising from funding provided by AHRC and ESRC, in which cases for an interim period they should be no longer than twelve months. When questioned on this divergence from Government Policy, RCUK has stated that “ambiguity” is required. Given the expectation that there will be a large proportion of papers for which block grant funding for APCs will be not provided, even in the fifth year of implementation, it is essential that there is clarity, not ambiguity, over Green embargo periods, and that RCUK Policy be brought in line with Government Policy.

Engagement with publishers, universities, learned societies and other stakeholders

7. As publishers we have not experienced effective engagement with RCUK, especially over Green open access policy. RCUK has acted unilaterally and in isolation. Successful implementation of Government Policy will require close collaboration between all stakeholders. Publishers remain ready to engage to facilitate a successful implementation, which will require above all simple processes and clear guidance for researchers.
8. We note that HEFCE has made a public commitment to “consult with its partners in research funding and other interested bodies before finalising its plans” and we look forward to taking part in those discussions.

Challenges and concerns raised by the scientific and publishing communities

9. In addition to concerns about the level of dedicated funding, the costs of administration, and compliance with Government policy on the length of Green open access embargo periods, the research community has also expressed concerns about the RCUK requirement for the

blanket use of a CC-BY licence with Gold open access publication (allowing unlimited commercial and non-commercial re-use of the article and requiring only attribution to the author) and the requirement for unlimited non-commercial re-use for Green open access publication. This concern is shared by publishers. The application of a CC-BY licence may not be appropriate for every research community, nor for every researcher within a community, and may be impossible for some disciplines such as literature and music, in which articles may contain extensive quotation from third-party in-copyright works for which the research author does not have the authority to grant unlimited rights of re-use.

10. The requirement for CC-BY is also likely to have an upward impact on the price of APCs. Publishers will lose secondary income from commercial re-use which they will only be able to recover through higher APCs. The RCUK requirement for CC-BY goes beyond the Finch Group recommendations and beyond Government Policy. The requirement for unlimited non-commercial re-use to be associated with Green open access publication (RCUK has spoken specifically of a requirement for CC-BY-NC), even in cases where no funding is provided for APCs, goes even further beyond the Finch Group recommendations and Government Policy and is not accepted by many publishers who expect flexibility over the licensing terms to users for Green open access (see Appendix, #A7). Again, there has been no meaningful discussion of this issue by RCUK with publishers.

Article Publication Charges and Green open access embargo periods: the publishers' position

11. As publishers, our position on APCs and Green open access embargo periods is clear. We expect that by April 2013 the great majority of journals will be ready to comply with the 'Compliance of Journals' section #4 of the RCUK Policy, and with any similar policy from HEFCE yet to be published, meaning that most journals will be compliant under the Gold open access publication option. This will have the following consequences for Green open access embargo periods:
12. If an author submits to a journal that is offering an appropriate Gold open access option, **and** the paper is accepted for publication, **and** the author is able to pay the journal's APC, then the paper will be published in compliance with the RCUK Policy.
13. Conversely, if an author submits a paper to a journal which does **not** offer an appropriate Gold open access option compliant with the RCUK Policy, **and** the paper is accepted for publication, **and** the author has funding to support payment of an APC, then we would expect that the journal should comply with the RCUK Policy that requires deposit of the author's Accepted Manuscript in a repository under an embargo period of no more than 6 months, or 12 months for articles funded by AHRC or ESRC for a period of five years.
14. However, if an author submits to a journal which **is** offering an appropriate Gold open access option, **and** the paper is accepted for publication, **but** the author is **unable** to source funding for the journal's APC, then the paper will be published **on a subscription basis with Green open access**, typically available under the journal's licence terms after an embargo period of between 12 and 24 months. As cited above, this position is supported in The Report and in the Government Policy: where APC funds are not available publishers "can reasonably insist on a longer more equitable embargo period".
15. The essence of this position can be summarised in the following decision tree:



16. This decision tree has been endorsed by BIS as a correct interpretation of Government Policy and was initially accepted by RCUK, though this has yet to be reflected in its written Policy and guidance.

Challenges and concerns, and how these have been addressed

17. Publishers are ready to implement Government Policy as published on 16th July 2012. We can do so if RCUK Policy is brought into line with Government Policy and if all stakeholders are able fully to engage with each other in the practical implementation of that policy. There are now considerable challenges to an effective implementation from 1st April 2013 as planned.
18. I am grateful to the Committee for the invitation to provide further information on this submission at the oral evidence session on 29 January, together with Steven Hall, Chief Executive of the Institute of Physics Publishing and a member of the Finch Working Group.

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SUBMISSION FROM THE PUBLISHERS ASSOCIATION: APPENDIX

The Finch Working Group And Government Policy

- A1 The Finch Working Group included representatives of all stakeholder communities - both public and private research funders, the universities, researchers, learned societies, libraries, and publishers. It succeeded in producing a set of workable recommendations to expand access to research outputs because all stakeholders recognised that consensual solutions were more likely to be implemented effectively. From the very beginning of the working group process, publishers supported a substantial expansion of the open access publication model as a means to expand access, provided that this could be achieved sustainably and with no detrimental impact on the high quality of scholarly publishing in the UK. Publishers are ready to implement Government Policy as set out in the Willetts letter, as, we believe, are most other stakeholders.
- A2 The Report spoke of a mixed economy and a 'balanced package' of recommendations (#4, p.8), the essential elements of which are as follows:
- i) support for Gold open access as the preferred publication model (meaning immediate open access to the final published Version of Record of a paper, with extensive rights of re-use, funded through an Article Publication Charge ("APC")) by way of grants for APCs;
 - ii) transitional support for extensions to licences, to enable access to articles from across the world that are not published on open access terms, to cover all institutions in the HE and health sectors;
 - iii) an initiative to enable free on-site access to journals in all public libraries, for the benefit of SMEs and the general public; and
 - iv) an agreement that Green open access (meaning deposit in an open access repository of the Accepted Manuscript without any payment to the publisher for its services) can be supported only if publishers are able to require a reasonable embargo period before access is enabled via the repository (Government Policy recommends 12-24 months in general, depending on the discipline), and that Green open access with shorter embargo periods should not be imposed on publishers **except** in cases where an APC is offered but the journal does not offer a Gold open access option.

The Government endorsed elements 1), 3) and 4) in its own Policy statement.

- A3 With regards to (i), support for Gold open access, for most journals the industry now offers a publication option in return for an APC which is compliant with Government Policy and with the RCUK Policy published on 16th July. Usually this includes the option of using a CC-BY licence, as required by the RCUK Policy, although we understand that this remains the subject of intense and growing debate in some author communities (see for example <http://www.history.ac.uk/news/2012-12-10/statement-position-relation-open-access>) and may not be practical in disciplines such as literature and music, in which articles may quote extensively from third-party in-copyright works. We believe this issue requires further discussion by all stakeholders.
- A4 On (ii), transitional support for licence extensions, we have been told by officials at the Department for Business that no additional funding is available, which is perhaps understandable given the funding support now given for APCs. We have reluctantly accepted this position, although The Report [p.7 #3(iv) and p.101 #8.44] calls for £10m to be made available for extensions to licences. We still expect however that the rest of the 'balanced package' should be delivered.

- A5 In respect of (iii), public library access, our implementation group has been working practically with colleagues from the public library sector on technical and licensing work streams to enable a launch date in the spring, assuming all other elements of the package are resolved.
- A6 Finally on (iv), that short Green open access embargo periods will not be imposed on publishers if an APC is not available, it is essential that RCUK Policy is brought in line with Government Policy and that this is clearly communicated to all stakeholders, not least to researchers themselves needing to be compliant with RCUK policy under the terms of their grants.

Embargo periods for articles published under the Green model

- A7 The RCUK Policy was published on 16th July and no amendment has since been issued, although there has been a very extensive and intensive debate over how the Policy is to be interpreted, including we understand at a number of meetings between RCUK officials, the research community and pro Vice Chancellors (PVCs) at which publishers were not present. We have made representations to RCUK and to BIS based on our position summarised above. We have endorsed the recommendations in The Report and we have kept faith with our side of the 'balanced package'. As explained above, we firmly believe that to apply sustainable Green open access embargo periods is a reasonable position to adopt if APCs are not available to fund a Gold open access option. We are not opposed to Green open access, although the model has no funding attached to cover the costs of publication and peer review (apart from funds to sustain repositories that have a wider rationale) and has been demonstrated by the [PEER project](#) to be operationally problematical.
- A8 Many publishers already facilitate Green open access, with embargo periods set according to the requirements of individual journals and according to academic discipline. For example, in the arts, humanities and social sciences it is likely that funding for APCs will not be readily available, but Green open access embargo periods need to ensure the sustainability of subscription based journals in these disciplines – as recommended in The Report. There are concerns that disciplines with very different characteristics are being treated in the same way, with insufficient account taken of the need for varying, longer, embargo periods. Green open access with short embargo periods cannot be seen as a sustainable option on a global scale.

Engagement in research council open access policies and guidance

- A9 *A Proposed Policy on Access to Research Outputs* was circulated informally by RCUK in March 2012. Publishers were not consulted but we reported a number of issues to RCUK officials and to the Chair of RCUK. These related to the use of the Version of Record, the funding of Gold open access, the application of "unrestricted use", and in particular the imposition of short embargo periods for Green open access across all subjects. No meeting involving publishers took place, which struck us as odd for a Policy which stated that: "ideally the version of a paper to be made open access should be the publisher's final version – the Article of Record" yet with no discussion of how this was to be achieved.
- A10 As noted above, the current RCUK Policy was formally published on 16th July and again publishers were not consulted. Subsequently we made representations over Green open access embargo periods, the licensing of re-use, and stewardship of the Version of Record. We invited the appropriate RCUK official to a publishers roundtable meeting on 17th September but he was unable to attend and no opportunity for engagement has since been offered other than a joint meeting at the Wellcome Trust on 5th October when we were told (along with ALPSP and the International STM Association) about sanctions on researchers for non-compliance and the requirement by both Wellcome and RCUK of the blanket application

of a CC-BY licence for publication funded by APCs that derive from their grants. As requested by RCUK and Wellcome, we communicated these dimensions of the RCUK Policy to the publishers at large. We are aware of concerns within the research community around the application of CC-BY, but we have chosen not to take this up as an issue unless our authors decide to do so. The adoption of CC-BY by publishers will mean a loss of considerable secondary income in the medical and biochemical sciences sectors, but most publishers seem willing to accept this in order to continue to provide their authors with the publication service they require.

- A11 There is continuing uncertainty about RCUK policy on licences associated with articles made open access through the Green model. The RCUK Policy [#4(2)] states that “where a publisher does not offer option 1”... [which is immediate Gold open access, with no restriction on re-use (*our words*)]...“the journal must allow deposit of Accepted Manuscripts that include all changes resulting from peer review....in other repositories *without restrictions on non-commercial re-use* [our emphasis] and within a defined period.” No guidance is given in the RCUK Policy as to what licence should be associated with such re-use. It is common practice for journals to adopt a variety of CC licences and indeed in some instances publishers apply a proprietary licence of their own. For example, the International STM Association has developed a licence based on CC-NC-ND but with additional rights for text mining and translations. However, subsequent to publication of the RCUK Policy, and again without consultation, we hear that RCUK officials have elevated their policy to requiring a CC-BY-NC licence to be associated with Green open access deposits. We anticipate that many publishers may be unwilling to accept this requirement, which will only introduce more confusion among researchers looking for a journal that is compliant with the RCUK Policy.
- A12 As with embargo periods, a similar need for differentiation exists with regard to the blanket requirement for a CC-BY licence for Gold open access. In those disciplines, such as humanities and social science, where interpretation and context are crucial, publishers have heard concern in their author communities that the use of CC-BY will enable the misuse of research, for example by presenting extracts in ways that appear to contradict or undermine the author’s meaning. These concerns are sufficiently serious for some authors to refuse to publish on this basis. There is also the practical issue that the blanket requirement for a CC-BY licence assumes that the author is able to grant CC-BY rights on the whole article. However, where articles include third party material, such as poetry in literary studies, images in art history, or research analysing computer code, it is highly likely that the copyright owners will not give the necessary rights to enable the research author to grant a full CC-BY licence. This could limit the ability of UK authors to undertake research, especially on contemporary topics, knowing that they will not be able to publish that research without breaking the terms of their grant and risking sanctions.

ENDS