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## **Editorial: Why We Still Oppose Gold and Also Oppose Hybrid Open Access**

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### **Introduction**

In Vol 2, No 2 of *feminists@law* (2012) we published our response to the Finch Report<sup>1</sup> as an Editorial titled 'Why We Oppose Gold Open Access'. Five years later, it is timely to take stock of what has happened since the Finch Report and to revisit our assessment of the government's and research funders' open access (OA) policies. Our focus in this Editorial is on journal publishing in Law and more generally in Humanities and Social Sciences (HASS) rather than in the STEM disciplines, on which much of the OA literature since Finch has been based. We consider first how the market in OA has developed since 2012, and secondly how the OA ecosystem now appears, before finally making proposals for the future.

The Finch Report recommended a rapid, policy-driven shift in the publication of journal articles by UK academics from subscription-based access to Gold OA. To recap, 'Gold' OA involves making articles open access from the moment of publication, often on payment by the author of an 'article processing charge' (APC). APCs thus replace subscriptions as the journal's source of revenue.

The other major form of OA publishing is 'Green' OA, which makes a version of the article (often the author's accepted manuscript (AAM) after refereeing rather than the publisher's final formatted version) openly available from an institutional or subject-based repository, often after an embargo period. The embargo period allows the journal publisher to maintain subscriptions as the source of revenue. Subscribers gain immediate and exclusive access to the final publisher's version, while the rest of the world has to wait until the end of the embargo period before access becomes generally open, and then only to the AAM rather than the publisher's version.

For the purposes of the following discussion, it is useful to break down the two major forms of OA into different business and content models. Gold OA may appear in the following forms

- Pure Gold – a journal funded entirely by means of APCs.
- Platinum – a term we coined in our original editorial, to refer to journals, like *feminists@law*, which offer immediate open access to readers but do not charge APCs to authors, relying instead on low-cost web platforms,

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<sup>1</sup> R. Hunter, D. Alessandrini, T. Williams 'Editorial: Why we Oppose Gold Open Access' (2012) 2(2) *feminists@law*.

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‘free’ academic labour and/or alternative revenue sources. An alternative name for this model found in some literature is ‘Diamond’ OA.

- Hybrid – a journal funded by subscription revenue, but which will make individual articles immediately OA on payment of an APC. The rest of the journal content remains hidden behind the subscription paywall, and APC payments constitute ‘windfall’ profits on top of subscription revenue.

Green OA may appear in the following forms:

- Pure Green – a journal funded entirely by subscriptions, but which allows a version of articles to be placed in an institutional and/or subject repository and made OA after an embargo period.
- Grey – un-refereed material (often reports or working papers) made freely available by authors on websites or repositories.
- Hybrid – a journal which offers both Gold (on payment of an APC) and Green (subject to an embargo period) OA options for those authors subject to OA mandates, but remains funded primarily by subscriptions.

## **Developments since 2012**

### ***1. The continuing dominance of subscription journals***

Five years on, it is clear that the shift in UK academic journal publishing from subscription-based to pure Gold (or Platinum), as envisaged by the Finch Committee, has not materialised. The main reason for this is that, although the Finch Report was immediately endorsed by the government, the policy levers deployed to effect a shift to Gold OA have been relatively limited.

Research Councils UK (RCUK) have adopted an OA mandate for journal publications arising from RCUK grants after 1 April 2013, with a strong preference and additional funding incentives for Gold OA. Similar mandates have been adopted by the European Research Council and the Wellcome Trust. However, other research funders have either not imposed any OA mandate, or have not expressed a preference for Gold OA. Within Law and HASS disciplines more generally, only a relatively small proportion of research is funded by grants from these funders and thus is subject to a Gold OA mandate.

Moreover, even where a Gold OA mandate is in place, the mandate does not specify or require any particular form of Gold OA. As a result, rather than seeing the transformation of existing subscription journals into pure Gold or Platinum journals, or the substitution of pure Gold or Platinum journals for subscription journals as the major venue for the publication of academic articles, the vast majority of existing subscription journals have moved to a Hybrid model,<sup>2</sup> through which they continue to publish the vast majority of academic articles.

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<sup>2</sup> See A. Tickell, *Open Access to Research Publications: Independent Advice* (Department for Business, Innovation and Skills, 2016)

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To our knowledge, no subscription-based journals in Law have changed their revenue source from subscriptions to APCs. As we noted in our earlier Editorial, the APC model works better in STEM disciplines, which publish large numbers of relatively short articles, than in HASS disciplines, which publish relatively small numbers of longer articles. In order to maintain sufficient revenue to cover costs, APCs in the latter context must be higher, potentially to a prohibitive level. Likewise, few new pure Gold journals have been established in Law. On the other hand, there has been a burgeoning of new Platinum journals,<sup>3</sup> no doubt because the economics of launching such a journal – requiring academic energy and enthusiasm coupled with open-source journal software and low-cost server space – are much more achievable. However, these journals have struggled to attract submissions. Indeed the take up of Platinum journals in the UK is less than half the world average and since the Finch Report has been falling.<sup>4</sup> The established journals continue to be more attractive in terms of reputation and prestige, and their move to Hybrid status means that authors can meet OA mandates without having to change their publishing habits.

HEFCE's policy for OA in the REF 2021<sup>5</sup> is a much bigger policy lever and affects many more academic researchers than research council OA mandates. However, here again, the policy has not resulted in change in the direction envisaged by the Finch Report. Rather than endorsing Gold OA, the HEFCE policy remains formally agnostic as to OA models but in practice favours Green OA. The policy requires journal articles accepted for publication to be deposited in an institutional or subject repository within three months of acceptance. While article metadata must be made available immediately, the full text may be subject to embargo (for a maximum of two years in HASS). This has two consequences. First, the mandate is easily met by Hybrid journals, which permit authors to deposit AAMs in institutional repositories subject to (often the maximum) embargo period, which does not threaten subscription income. Secondly, the policy has required institutions to set up repositories, with major resource implications in terms of software/platform expenses and the time and work involved in getting academics to deposit their articles, and to check that they have done so correctly. There are also issues of sustainability and long-term preservation of the outputs whose deposit and access needs to be made permanent.<sup>6</sup>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499455/ind-16-3-open-access-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499455/ind-16-3-open-access-report.pdf).

<sup>3</sup> In 2012 there were 156 OA law journals, of which 6 applied APCs: D. MacSithigh and J. Sheekey, 'All that Glitters is not Gold, But is it Diamond?' (2012) 9(3) *Scripted* 275. In 2017 a search of the Directory of Open Access Journals found 320 OA law journals, of which only 25 applied APCs. See [www.doaj.org](http://www.doaj.org) (accessed 10/01/17).

<sup>4</sup> See Tickell, above n 2, 30, para 1.6

<sup>5</sup> See HEFCE, 'Policy for Open Access in Research Excellence Framework 2021' (November 2016) [http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2016/201635/HEFCE2016\\_35.pdf](http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2016/201635/HEFCE2016_35.pdf).

<sup>6</sup> See Tickell, above n 2, 20, para 6.27.

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It follows that, once again, there is no challenge to the hegemony of established subscription journals. There is a continuing perception that articles published in 'top' journals will score better in the REF, making publication in newer Gold or Platinum journals appear risky and undesirable, regardless of the actual rigour of their peer review processes.<sup>7</sup> This is certainly the case in Law, even though journal ranking remains informal and has always been officially resisted. It is even more the case in disciplines in which journal ranking or other metrics are well established. Indeed metrics strongly reinforce adherence to established (subscription-based) journals<sup>8</sup> and any moves to increase the use of metrics in the REF<sup>9</sup> are likely to work directly against the OA agenda.

## **2. The cost of APCs**

The second aspect of the Finch Report that has not come to pass is the Committee's assumption that mandating Gold OA would not only result in APCs replacing subscription fees for journals, but would also generate price competition among publishers in relation to APCs, and that such competition would drive the cost of APCs down. Thus, gains would be generated for readers and universities (no longer having to pay subscription fees) and for authors, funders and universities again (paying lower APCs).

As noted above, the lack of any shift to pure Gold journals means that APCs have failed to replace subscription fees. Instead, they have been *added* to subscription fees for Hybrid journals, enabling 'double dipping' by publishers who now benefit from both APCs *and* subscription fees. At the same time, both APCs and subscription fees have *increased* considerably.<sup>10</sup> In particular, the market for APCs in Hybrid journals has been described as 'dysfunctional',<sup>11</sup> and APCs for Hybrid journals are much higher than those for pure Gold journals.<sup>12</sup> The 'going rate' for an APC in a Law journal is around \$US3000.<sup>13</sup> The fact that this is a 'going rate', and that all the major publishers charge a similar amount, suggests not only that there is no competition occurring, but also that the amount is fixed at the highest level the market will bear rather than in any way reflecting the

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<sup>7</sup> For a discussion of the symbolic capital and effects of systems of prestige in academic publishing, see M.P. Eve, *Open Access and the Humanities: Contexts, Controversies and the Future* (Cambridge UP, 2014) 44-55.

<sup>8</sup> As Tickell has pointed out, 'academics not only prefer to publish in high status journals, but citation practices, promotion processes and peer review in both the REF and research granting bodies may favour such publications': above n 2, 16; see also Eve, *ibid*, 50.

<sup>9</sup> See J. Wilsdon, et al. *The Metric Tide: Report of the Independent Review of the Role of Metrics in Research Assessment and Management* (HEFCE, 2015). This includes so-called 'altmetrics', which do not offer a satisfactory alternative: see Eve, *ibid*, 51.

<sup>10</sup> See Tickell, above n 2, 19, para 6.21.

<sup>11</sup> S. Shieber, 'Why Open Access is Better for Scholarly Societies' (29 January 2013) <http://blogs.law.harvard.edu/pamphlet/2013/01/29/why-open-access-is-better-for-scholarly-societies/>.

<sup>12</sup> See P. Boyes and D. Kingsley, 'Hybrid Open Access: An Analysis' (24 October 2016) <https://unlockingresearch.blog.lib.cam.ac.uk/?p=969>.

<sup>13</sup> Tickell, above n 2, 15-16. Other publishers in the top 10 include Sage, Oxford, Cambridge and Nature Publishing Group.

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foregone revenue from making the article open access. (In the context of double dipping, that foregone revenue may be precisely £0.)

Furthermore, available evidence points to the fact that both subscription fees and APCs go to a small number of large publishers (Elsevier, Wiley, Taylor and Francis, and Springer being the four largest publishers).<sup>14</sup> Thus, rather than publishers competing on APC prices, the level of market concentration in combination with the preference for established journals means large publishers are able to extract greater rents than in the pre-Finch period.<sup>15</sup> More public funds (both RCUK funds spent on APCs and QR funds spent on journal subscriptions) are therefore destined to the largest publishers. Moreover, moves towards 'offsetting' – the notion that publishers should reduce subscription fees for universities in direct relation to the amount they receive from the university by way of APCs – have not been met with any meaningful success.<sup>16</sup>

Finally, what one gets for the price of an APC may vary. In addition to preferring Gold OA, RCUK specify that articles published from their grants should be subject only to a CC-BY license – the least restrictive of the Creative Commons licenses – allowing for free re-use of material, including for commercial purposes, subject only to attribution of the author and place of first publication. However, some publishers stipulate that the Gold OA publication can only be accessed from the publisher's website, and will not permit the publisher's final version to be uploaded to an institutional or subject repository. This does not technically contravene the RCUK mandate, although it certainly contravenes its spirit. It further illustrates how publishers have implemented minimal compliance with OA mandates while maximising their opportunities for profit.

### ***3. Access for researchers***

In our 2012 Editorial we expressed concerns that if access to journal publication was to become dependent on the availability of funds to pay APCs, this would have adverse effects for certain groups of UK researchers as well as for international researchers seeking to publish in UK journals. The failure of Gold OA to take off means that these predictions have also proved false. UK and international authors at all levels and stages of their careers continue to have access to publish in the journals of their choice, subject only to the HEFCE mandate for the REF, which means that UK authors should not publish potential REF submissions in the small number of journals which offer no OA options at all. Even in these cases, there is provision within the HEFCE policy for publications in non-OA journals to be allowed if justified on the basis that this was the best available venue in which to publish the relevant article.

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<sup>14</sup> Ibid, 15, para 6.6.

<sup>15</sup> UK universities pay approximately £94m to the largest 10 publishers in terms of costs of journal subscriptions (and the majority of income goes to the four largest above); this cost is estimated to rise to £168m in 2020 (over 11% of the value of UK QR). Approximately £33m is paid by UK universities in terms of APCs; this is estimated to rise to between £40m and £83m in 2020. Ibid, 3, para 1.6 and 15, paras 6.7-6.8.

<sup>16</sup> Ibid, 13, para 5.3

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Nevertheless, academic researchers and their institutions have been differentially affected by the OA policy developments, if in different ways from our initial concerns. These differential effects vary by funding model and location.

a. Gold OA – access to APCs?

Block grants have been provided by RCUK to help ‘research intensive universities’ *partially* meet the anticipated costs of APCs arising from RCUK grants held by academics in these universities. In the first year this amounted to £17m and was expected to cover 45% of papers, rising to £22.6m in year 3 to cover 60% of papers, and ultimately to cover 75% of papers in year 5.<sup>17</sup>

Firstly, however, not all institutions receive block grants, so a researcher who holds the only or one of a small handful of RCUK grants in their institution will not have access to these funds. Secondly, the block grants are insufficient to cover all RCUK-funded outputs which means that institutions are required to top them up with QR funding in order for their researchers to meet the RCUK OA mandate. Thirdly, block grant funding is only committed for 5 years, the last of these being 2017-18. As we have seen, this ‘transition period’ has seen barely any of Finch’s expected transition. But what happens after 2017-18 is anyone’s guess.

Fourthly, institutions have put in place widely varying criteria for access to block grant funds (and any additional QR funds available for APCs). In some institutions, only RCUK-funded researchers have access to these funds; in others, the fund is more generally available to pay APCs. In some institutions, there is no restriction on availability (especially for RCUK-funded researchers) while in others, access to the fund (especially for non-RCUK-funded researchers) is subject to additional criteria, including, for example, journal ranking, predicted REF score, and/or some form of certification from a research director or head of department. These processes may provide an opportunity, therefore, for restriction and direction of the publishing choices of individual academics, and may create barriers to access for PhD students, early career academics, and those working in unpopular, controversial, non-mainstream or interdisciplinary areas.

b. Green OA – open access?

By contrast with Gold OA, Green OA does not present cost barriers to authors. As noted above, however, the HEFCE policy for REF submission has created substantial costs for institutions in setting up repositories and monitoring compliance with the policy. For many academics without RCUK funding, Green OA has become the only OA option available by default. But if the majority of

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<sup>17</sup> See <http://www.rcuk.ac.uk/documents/documents/rcuk-apcfunddistribution-pdf/>; <http://www.rcuk.ac.uk/documents/documents/2015-16-blockgrantallocation-pdf/>.

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articles continue to be published in Hybrid subscription journals and subject to an embargo period of up to 2 years after publication, can it really be described as open access?

c. No OA – a risky option?

As noted, the HEFCE policy provides an exception where ‘the publication concerned actively disallows open-access deposit in a repository, and was the most appropriate publication for the output’.<sup>18</sup> The same applies where the publication requires an embargo period longer than 2 years but is ‘the most appropriate publication for the output’. The question remaining here, is who will decide the issue of ‘most appropriate publication’, and on what basis? Academics are being advised to document their reasons for choosing a non-complaint journal. But to how much scrutiny will these reasons be subject? Will the REF panel second-guess authors? Will institutions decide it is too risky to enter these outputs? Will institutions penalise academics who publish in non-compliant journals? This may be a particular issue for academics publishing in non-UK-based journals or journals outside the stables of the major publishers, which have not had any need within their local territory to offer an OA option.

d. Non-UK authors – access to UK journals

UK Hybrid journals continue to be available to non-UK authors at no cost (or at least, at the cost only of signing over copyright or an exclusive license to the journal). However, unless these authors are subject to their own OA mandates, they are unlikely to have the funds to pay for an APC, or the time, incentive or facilities to deposit an embargoed AAM in a repository. Some publishers, indeed, do not offer any OA options to non-UK authors who are not subject to an OA mandate. The upshot is that this work remains permanently hidden behind subscription paywalls. At best, a Grey OA version (un-refereed working paper) may be available in a repository such as SSRN.<sup>19</sup>

#### **4. International developments**

The Netherlands is the only other country to have followed the UK’s lead in preferring Gold OA,<sup>20</sup> confounding yet another of the Finch Report’s predictions. A number of other countries or their funding bodies do mandate Green or at least Green OA.<sup>21</sup> As noted, this has minimised incentives for overseas journals either to offer OA options or to change their business models, especially if they are local journals rather than part of a large publishing stable (many US university law journals fall into this category, for example).

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<sup>18</sup> HEFCE, above n 5, 7, para 39.

<sup>19</sup> We note the widespread practice of authors posting the final published version of their articles on SSRN, however this is very often in breach of their publication contract.

<sup>20</sup> See Eve, above n 7, 82.

<sup>21</sup> See V. Proudman, ‘Analysis of Funder Open Access Policy Around the World’ (11 February 2013) <http://sparceurope.org/analysis-of-funder-open-access-policies-around-the-world/>; Eve, *ibid*, 76-84.

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## The Present Publishing Ecosystem

In terms of the publication of journal articles, we have arrived at a situation in which we are paying more but still don't have open access to academic research. The compelling argument made by the Finch Report was that 'results of research that has been publicly funded should be freely accessible in the public domain'.<sup>22</sup> This has not been delivered. The economic and policy incentives have encouraged subscription journals to transform themselves into Hybrid rather than pure Gold journals. It is notable, for example, that when the Open Library of Humanities (OLH)<sup>23</sup> was established, it intended to offer an alternative Platinum OA platform which would enable subscription journals to convert to OA. Instead, it received a large number of applications to establish new journals on the platform. It has now decided not to accept any further new journal applications and to focus instead on the mission of converting subscription journals.<sup>24</sup>

However, new pure Gold and Platinum journals have not been able to compete with established (Hybrid) journals in the metrics or reputational stakes. Consequently, the great majority of publicly funded research in Law – and in HASS more broadly – still remains hidden behind subscription paywalls, or at best hidden behind a 2-year post-publication embargo. Meanwhile, public funds continue to be used to pay – and to pay more – for journal subscriptions, while also paying for institutional repositories and for expensive APCs via RCUK block grants and university QR top-ups. The major publishers, not the public/consumers of research have emerged as the big winners post-Finch.

The only model which has the potential to reduce escalating costs, to deliver immediate (rather than deferred) open access, and to ensure equal access for all authors, regardless of location, funding status or career level, is Platinum OA. However if Platinum OA is to survive it needs more active support to address issues of competitiveness, and also sustainability, since neither existing models of institutional support, nor 'free' academic labour are infinite resources.<sup>25</sup> The ways in which it may be supported are discussed in the final section.

Two other elements of the ecosystem should be mentioned. First in our original Editorial we mentioned the position of Learned Societies which use journal

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<sup>22</sup> Report of the Working Group on Expanding Access to Published Research Findings, *Accessibility, Sustainability, Excellence: How To Expand Access to Research Publications* (Finch Report) (2012) 15 <https://www.acu.ac.uk/research-information-network/finch-report-final>.

<sup>23</sup> See <https://www.openlibhums.org/>. OLH is 'funded by an international consortium of libraries who have joined us in our mission to make scholarly publishing fairer, more accessible, and rigorously preserved for the digital future'. It has also received grants from the Mellon Foundation.

<sup>24</sup> Email from Caroline Edwards, OLH to Rosemary Hunter, 4 October 2016.

<sup>25</sup> Eve argues that 'While some volunteer efforts have managed to operate on almost non-existent budgets, this does not seem a prudent idea when scaled to cover all research in the humanities': above n 7, 67. But even his preferred model of funding by institutional consortia (73-76) is limited in scale, as just indicated, for example, in relation to OLH.

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revenues to fund their activities. In many cases, Learned Society journals are published under contract with major commercial publishers. There is a strong argument for sustaining journal subscription revenues when those revenues are reinvested to develop and support academic disciplines. We would want to see these journals remain part of the ecosystem. However maintaining a revenue stream is not incompatible with reflection on the ethics of different publishing models. We would suggest that 'pure' Green is a preferable model to Hybrid, or if a Hybrid model is adopted, Learned Societies should give careful thought to the ethical use of APC revenue.

Secondly, OA monograph publishing presents a whole new set of challenges.<sup>26</sup> HEFCE sensibly concluded that it was too early to impose an OA mandate in relation to monograph submission to REF 2021, but it has served notice that there will be such a requirement in the following REF.<sup>27</sup> What we are already beginning to see, however, is something very like the split that has emerged in the journals market between established players introducing expensive APCs,<sup>28</sup> and new players such as Counterpress,<sup>29</sup> Goldsmiths Press<sup>30</sup> and Humanities Digital Library<sup>31</sup> introducing new, low-cost business models, sometimes with institutional support, which try to make book publications genuinely more accessible to readers without simply shifting costs to authors.

As with journal publishing, we believe the guiding principles for sustainable open access monograph publishing should be:

- no access charges for authors
- minimise publication costs
- maximise free availability to readers.

Again, publishers following these principle are likely to require active support.

## Conclusions

In our original editorial we argued that, rather than accepting the premise that OA can only be Gold or Green, it was important to actively promote alternative models of OA publishing such as Platinum. This argument remains valid today given the post-Finch developments we have described above. In order to become a sustainable model, however, Platinum needs both recognition and support so

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<sup>26</sup> G. Crossick, *Monographs and Open Access: A Report to HEFCE* (HEFCE, 2015). [http://www.hefce.ac.uk/media/hefce/content/pubs/indirreports/2015/Monographs.and.open.access/2014\\_monographs.pdf](http://www.hefce.ac.uk/media/hefce/content/pubs/indirreports/2015/Monographs.and.open.access/2014_monographs.pdf); Eve, *ibid*, chapter 4.

<sup>27</sup> HEFCE, *Consultation on the Second Research Excellence Framework* (December 2016) 16, para 69.

<sup>28</sup> See, e.g., Brill's open access options at <http://www.brill.com/about/open-access/brill-open-authors>. A book of up to 350 pages costs \$US9780 with a CC-BY-NC license or \$US21,280 with a CC-BY license.

<sup>29</sup> <http://counterpress.org.uk/about/>.

<sup>30</sup> <http://www.gold.ac.uk/goldsmiths-press/about/>.

<sup>31</sup> <http://ials.sas.ac.uk/digital/humanities-digital-library>.

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as to transform the current value system from one that favours publishing in journals with a well-established reputation to one that encourages publishing excellent peer-reviewed work in fully OA journals.

There are a number of ways through which different stakeholders can support this process. To start with, RCUK could require that all publicly funded research be published in peer-reviewed Pure Gold or Platinum journals, excluding Hybrid journals altogether; expect block grant funds not to be paid to Hybrid journals; or require APCs paid from block grants to be offset against subscription costs (see, for example, the agreement between Dutch universities and Elsevier).<sup>32</sup> HEFCE could make Hybrid journal publications not eligible for REF submission; provide extra weighting to publications in peer reviewed Pure Gold or Platinum journals; and/or use and reward OA metrics rather than subscription journal metrics.

Although, as we mentioned, Platinum OA relies substantially on minimising production costs, financial support is needed to make it sustainable and competitive in the long run. To this end RCUK and QR funding currently destined to the payment of APCs, as well as university funds devoted to journal subscriptions and institutional repositories, could be diverted to support Platinum OA journals, investing in editorial support, better web platforms and good quality archiving to ensure permanence.

Finally, institutional policies could be devised to provide recognition of work carried out by academics on Platinum OA journals, for instance in work allocation models, promotion criteria, and so forth. This is a first step towards acknowledging that this labour is work of strategic importance to our institutions and academic life.

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<sup>32</sup> See Tickell, above n 2, 19, para 6.22.

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