

**1. In your opinion, has the new system for overseeing press regulation in the UK been a success or failure so far? Please explain your reasons.**

It is hard to describe the new system as a success when so many key publishers have refused to participate. The old system was an abject failure, so the present state of affairs cannot be allowed to continue. The Press Recognition Panel needs to take the bull by the horns and report to Parliament that an element of compulsion as recommended by Leveson LJ (as he then was) in the *Report of An Inquiry into the Culture, Practices and Ethics of the Press* is obviously required, thus putting the ball in Parliament's court regarding legislative action. Please excuse the mixing of four-letter metaphors in the preceding sentence).

**2. For publishers, joining an approved regulator is voluntary. For regulators, applying for Charter recognition is voluntary. In your opinion, what factors or issues will affect regulators' and publishers' decisions when they consider these choices?**

I think we need to revisit the carefully thought-out cost-shifting incentives identified by Leveson LJ. Low-cost arbitration rather than high-cost court proceedings - the new costs just for issuing proceedings these days makes it necessary to add to the old saying 'justice, like the Ritz, is open to all' a phrase like 'but at least the Ritz is cheaper' - is obviously desirable. It should make honest, daring publishing less 'chilled' through the sanction of costs, and provides further protection for the publisher against the gung-ho litigant who insists on a day in court rather than an arbitration room.

This is also desirable as it provides us ordinary folk with limited bank balances a mechanism to access justice whilst protecting the public interest in honest, if daring reporting by removal of the costs sanction. It is worth looking at section 40 of the Crime and Courts Act which Parliament enacted in 2013:-

“(1) This section applies where -

(a) a relevant claim is made against a person (“the defendant”),

(b) the defendant was a relevant publisher at the material time, and

(c) the claim is related to the publication of news-related material.

**“(2) If the defendant was a member of an approved regulator at the time when the claim was commenced** (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that -

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or

(b) it is just and equitable in all the circumstances of the case to award costs against the defendant.

**“(3) If the defendant was not a member of an approved regulator at the time when the claim was commenced** (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), **the court must award costs against the defendant** unless satisfied that -

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or

(b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.

**“(4) The Secretary of State must take steps to put in place arrangements for protecting the position in costs of parties to relevant claims who have entered into agreements under section 58 of the Courts and Legal Services Act 1990.**

“(5) This section is not to be read as limiting any power to make rules of court.

“(6) This section does not apply until such time as a body is first recognised as an approved regulator.”

It is time that all of Part 2 “Publishers of news-related material: damages and costs” is given full effect. At the very least, the Press Recognition Panel should recommend to government and Parliament that section 40 be given full effect, as this is likely to play the greatest role in the recognition & incentives system envisaged in the *Report of An Inquiry into the Culture, Practices and Ethics of the Press*.

David Radlett

"All lawful government must be self government; that if we are to count as free persons then any government over us must be government by us, by us, not by anyone else." Quentin Skinner, lecture on the 400th anniversary of the birth of Milton at the University of Cambridge 30th January 2008