

PRP

INDEPENDENTLY  
OVERSEEING  
PRESS REGULATION

# PRESS RECOGNITION PANEL

Annual report  
on the recognition system

**October 2016**



**Press Recognition Panel Annual Report on the Recognition System**

Presented to Parliament by Command of Her Majesty

Prepared and laid before the Scottish Parliament as required by paragraph 10.b  
of Schedule 2 of the Royal Charter on Self-Regulation of the Press

13 October 2016

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# CHAIR'S INTRODUCTION

The Press Recognition Panel (PRP) was created following the Leveson Inquiry, to independently oversee press regulation in the UK.

**The Royal Charter on Self-Regulation of the Press gives us a unique and unprecedented independence, and we operate transparently as part of the system designed to balance the freedom of the press and the public interest.**

The Charter sets out the criteria based on the recommendations in the Leveson Report, which, if met, would ensure press regulators are independent, properly funded and able to protect the public.

The Charter requires us to report on the recognition system. In doing so here, we have considered the differing and often opposing views of stakeholders. However, the conclusions we have drawn are our own, based on our own judgement.

I am pleased to present the PRP's first annual report on the recognition system.



**Dr David Wolfe QC**

Chair | Press Recognition Panel

# EXECUTIVE SUMMARY

1. The Press Recognition Panel (PRP) was established by Royal Charter to independently oversee press regulation in the UK. The Charter was granted following the Leveson Inquiry into the culture, practices and ethics of the press, in the light of alleged criminal activity including phone hacking.
2. The Leveson Inquiry itself followed several unsuccessful reviews into editorial standards, ethics, privacy and press freedom that took place over the last 70 years.
3. Lord Justice Leveson's recommendation for a genuinely independent and effective system of self-regulation led to the framing of the 29 recognition criteria as part of a scheme of recognition within the Charter. That scheme of recognition sits within the recognition system which strikes the balance between the freedom of the press and securing the public interest.
4. Although the Charter applies to the United Kingdom, press regulation is a devolved matter. In England and Wales, 'the recognition system' includes the arrangements put in place by the Charter as well as provisions in the Crime and Courts Act 2013 (CCA 2013). The provisions relating to exemplary damages came into force automatically on 3 November 2015, whereas the cost shifting provisions have not yet been brought into force. This means

*Success would then be when all or most significant relevant publishers were members of one or more recognised regulators.*

that in England and Wales, the recognition system is not yet in place as contemplated.

5. In Scotland or Northern Ireland, there are no equivalent linked statutory provisions, so there is no recognition system.
6. Until the recognition system is fully in place, we cannot judge its success or failure. Success would then be when all or most significant relevant publishers were members of one or more recognised regulators.
7. There are currently no recognised regulators, so it follows that the system of regulation does not cover all significant relevant publishers. IMPRESS, has applied for recognition, and we are currently assessing its application. IMPRESS has 14

member publishers that produce 25 publications, so even if IMPRESS is successful in its application, that will still leave the majority of significant relevant publishers outside the recognition system.

8. It was anticipated by the framing of the Charter that the PRP would become self-funding through fees charged to recognised regulators. Since publishers have not moved towards recognition, it is unclear how the funding framework can follow the expected path.
9. Urgent action is required if the post-Leveson system of independent self-regulation is to be given a chance to succeed. The public interest embodied in the Charter cannot be safeguarded until the recognition system is given the opportunity to function.
10. In England and Wales, the measures to incentivise recognition set out in Section 40 of the CCA 2013 should be commenced, and the Scottish Government and Northern Ireland Executive should consider what further action is required to bring about success as contemplated by the Charter.
11. We are of the view that it would be premature to consider introducing statutory regulation. The recognition system must be established first and then properly tested.
12. However, if the Secretary of State for Culture, Media and Sport decides that Section 40 of the CCA 2013 should not be brought into effect, and the Scottish Government and Northern Ireland Executive decide not to introduce measures required to create a recognition system, then Parliament, the Scottish Government and Northern Ireland Executive may wish to consider what other or further action is required to bring about success of the kind contemplated by the Charter.

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**URGENT ACTION IS REQUIRED  
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## PURPOSE

The Royal Charter requires us, the Board of the PRP, to report ‘on any success or failure of the recognition system’<sup>1</sup> and to:

‘...inform Parliament, the Scottish Parliament, and the public as soon as practicable if, on the first anniversary of the date the Recognition Panel is first in a position to accept applications for recognition and thereafter annually if:

- there is no recognised regulator; or
- in the opinion of the Recognition Panel, the system of regulation does not cover all significant relevant publishers.’<sup>2</sup>

Although the Charter applies to the United Kingdom, press regulation is a devolved matter. In England and Wales, ‘the recognition system’ includes both the arrangements put in place by the Charter, which make up the recognition scheme, and the statutory provisions in the Crime and Courts Act 2013 (CCA 2013). There are no equivalent linked statutory provisions in Scotland or Northern Ireland, so there is no recognition system in these countries.

Until the recognition system has been fully implemented, we cannot judge its success or failure. We consider that ‘success’ would then be when all or most ‘significant relevant publishers’ were members of one or more recognised regulators. We cannot assess success on any other basis or by any other measure. To do so would be to go beyond the PRP’s obligations as set out in the Charter, and the framework as contemplated by that Charter.

We have also decided to send copies of this report to the Welsh Assembly and Northern Ireland Assembly.

# 4

# APPROACH

In preparing this report, we held a public call for information from 18 April 2016 to 12 June 2016.<sup>3</sup>

The call for information asked two questions:

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.
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?

**We received feedback via a web-based survey, email, post, and face-to-face meetings. All the responses, including notes of meetings, are available on our website.<sup>4</sup> Where respondents asked to be anonymous, we have respected this.**

This report is also informed by what we have learned from a range of sources since the PRP was established, including our conversations and correspondence with stakeholders. Again, notes of meetings and copies of correspondence are available on our website.<sup>5</sup>

**HAS THE NEW SYSTEM  
FOR OVERSEEING PRESS  
REGULATION IN THE UK BEEN A  
SUCCESS OR FAILURE SO FAR?**

# A BRIEF HISTORY OF PRESS REGULATION IN THE UK

Since the 1940s, ongoing concerns over editorial standards, ethics, privacy, and press intrusion has led to a series of reviews, each making recommendations on how to ensure an appropriate balance between freedom of expression and the right to privacy.

Separately, two Royal Commissions and various parliamentary committees have each considered how best to ensure satisfactory editorial standards and to provide adequate recourse for complainants if standards have not been met.

In the 1990s, the increasing frustration with the ineffectiveness of successive regulatory approaches, including by the General Council of the Press, the Press Council, and the Press Complaints Commission, prompted two reviews to recommend that some form of statutory framework was required for considering complaints. However, these recommendations were rejected by government.

Long-standing concerns about press standards were heightened during the late 1990s and the first decade of this century, as technological developments made it easier for unscrupulous journalists to obtain

information – sometimes illegally – to generate sensational and highly damaging news stories including about victims of crime, high profile public figures and politicians.

In 2011, against a background of alleged criminal activity including phone hacking, and growing public outrage about the behaviour of some sections of the UK press, the Prime Minister announced an inquiry to be led by Lord Justice Leveson.<sup>6</sup>

Lord Justice Leveson published his report into the culture, practices and ethics of the press in November 2012. Among the key recommendations was the creation of ‘a genuinely independent and effective system of self-regulation’.<sup>7</sup> The report acknowledged an almost universal acceptance that ‘all major newspapers should be covered by a new regulatory regime’, and that convincing incentives would be required to achieve this.<sup>8</sup>

# THE ROYAL CHARTER AND THE WIDER LEGAL FRAMEWORK IN THE UK

From December 2012, discussions on how to implement the recommendations of the Leveson Report took place between politicians from all parties, the press and other interested stakeholders.<sup>9</sup>

On 30 October 2013 the Charter was granted.<sup>10</sup> The Charter was backed by the Conservatives, Liberal Democrats and Labour. It provided for the PRP to be the body to oversee UK press regulators.

The PRP automatically came into existence as a legal entity on 3 November 2014 when the board was appointed following an open process that was independent from Government, Parliament, and news publishers, as required by the Charter.<sup>11</sup>

**We have a unique and unprecedented independence, and the Charter provides that we avoid any undue influence by anyone. The Charter itself can only be changed by a two thirds majority in the House of Commons, the House of Lords and the Scottish Parliament and with the unanimous agreement of the PRP Board.<sup>12</sup>**

Ofcom's role in regulating television, radio and video on demand services<sup>13</sup>, and the Advertising Standards Authority's role in regulating advertising across all media remain unchanged.<sup>14</sup>

The Charter sets out 29 criteria (numbered 1-23) based on the recommendations in the Leveson Report. They are part of a scheme of recognition which embodies what the Report considered to be the necessary minimum requirements for effective self-regulators that strikes the right balance between various interests including the clear public interest in freedom of speech and the freedom of the press.

The criteria interact with each other and operate as a package. Compliance with all of them would ensure that a recognised regulator is, among other things:

- properly independent, including of government and the publishers it regulates,
- adequately funded to do its job,
- equipped with the powers and mechanisms to ensure that publishers adhere to standards of accuracy and fairness, and
- providing the public with proper opportunities to raise concerns about the conduct of the regulator's members.

Regulators must meet all the criteria to be recognised by us. If they fall short in any respect, they cannot be considered to have met the overall requirements embodied within the scheme of recognition.

If we consider that a regulator meets all the criteria, we must recognise it – we cannot add additional requirements.

**On 10 September 2015, following a public consultation, we announced that we were in a position to receive applications for recognition from regulators,<sup>15</sup> and we published our final guidance for applicants.<sup>16</sup>**

Following the recognition of a regulator, the Charter requires us to periodically review that regulator's continued compliance with the recognition criteria and the scheme of recognition. The Charter also requires us to undertake ad hoc reviews in exceptional circumstances and where there is a significant public interest in doing so.

In August 2016, again following a public consultation, we published our approach for conducting these cyclical and ad hoc reviews.<sup>17</sup>

The PRP has no role or powers whatsoever in relation to the regulatory decisions taken by a recognised regulator.

*“an effective self-regulation system that strikes the right balance between various interests including the clear public interest in freedom of speech and the freedom of the press.”*

The Charter applies to ‘relevant publishers’, as defined by Section 41 of the CCA 2013.<sup>18</sup> That definition includes both news-related broadsheet and tabloid publications, and online and print publications with a local, regional or global target audience.

The definition of a relevant publisher is not limited to publishers based in the UK, but its practical impact currently only applies to any publisher against whom a claim could be brought in the courts of England or Wales.

In England and Wales, the Charter sits within a wider legislative landscape, enacted with cross-party support. The landscape includes statutory provisions within the CCA 2013. These provisions have the effect of incentivising recognition as well as providing easier access to court to challenge the actions of publishers who choose not to be a member of an approved regulator.<sup>19</sup> The Charter and those provisions are constituent parts of the recognition system.

The two key elements of the CCA 2013 related to press regulation in England and Wales are:

### 1. Exemplary damages provisions:

These provisions came into force automatically on 3 November 2015 – the anniversary of the establishment of the PRP. Since then, relevant publishers who are not a member of an approved regulator have faced the possibility of exemplary damages in egregious privacy cases. They continue to face the risk of exemplary damages in egregious libel cases as this was in common law already and now has statutory form. Publishers who are members of an approved regulator will be protected against the risk of exemplary damages in either case.<sup>20</sup>

### 2. Costs provisions:

If the PRP recognises a regulator, that regulator's member publishers would not (other than in exceptional circumstances) have to pay the legal costs of a claimant who chose to bring relevant court proceedings against them and won, rather than raising the point through the regulator's Charter-compliant arbitration scheme. Those who choose not to be a member of an approved regulator would (other than in exceptional circumstances) have to pay both sides' costs in legal cases whether they win or lose.<sup>21</sup> That mechanism is particularly important in providing easier access to court for people who want to challenge the legality of the actions of publishers who choose not to be a member of an approved regulator, as well as providing an important incentive to publishers to become members.

The costs provisions of the CCA 2013 need to be brought into force through the making of a commencement order (by the Secretary of State for Culture, Media and Sport) to take effect. In October 2015, the then Secretary of State John Whittingdale said that he was 'not convinced the time is right for the introduction of these costs provisions'.<sup>22</sup>

The damages and costs provisions of the CCA 2013 focus on publishers who might be sued in the courts of England and Wales for what the Act calls 'relevant claims', namely civil claims for libel, slander, breach of confidence, misuse of private information, malicious falsehood or harassment.

In Scotland and Northern Ireland there are no equivalent linked statutory provisions. Although the arrangements put in place by the Charter for a new form of press regulation apply in these countries, the CCA 2013 statutory provisions that provide incentives to join the system and public protections where that does not happen do not apply.

Following the publication of the Leveson Report, Lord McCluskey was invited by the then Scottish First Minister, Alex Salmond, to look into the report's implications for Scotland. The McCluskey Report recommended that 'statute would provide a basic underpinning to ensure ... that, in future, news-related material would be regulated.'<sup>23</sup> This proposal was not accepted by the Scottish Parliament.

*“ensure that publishers adhered to standards of accuracy and fairness, and providing the public with proper opportunities to raise concerns*

# EXISTING SELF-REGULATORY APPROACHES

There are currently two organisations that describe themselves as press self-regulators in the UK: the Independent Monitor of the Press (IMPRESS) and the Independent Press Standards Organisation (IPSO).

## IMPRESS

IMPRESS is a Community Interest Company, registered on 24 June 2015, with the stated intention of operating as an independent press regulator in compliance with the Charter.<sup>24</sup>

**In January 2016, IMPRESS applied to the PRP for recognition. At the time of publishing, IMPRESS had 14 members covering 8 printed and 17 online publications.**

## IPSO

Following the closure of the Press Complaints Commission, IPSO was set up in September 2014, with the stated intention of overseeing editorial standards for the majority of national, regional, local and trade publications. At the time of publishing, IPSO had 81 members covering 1,503 printed and 1,165 online publications.<sup>25</sup>

**IPSO has stated that it does not intend to seek recognition from the PRP.<sup>26</sup> Indeed, one of the few ways IPSO members could be released from their contracts is if IPSO applied for recognition.<sup>27</sup>**

## Other approaches

*The Independent*, *the Financial Times* and the national titles published by the Guardian Media Group (*The Guardian* and *The Observer*) have chosen not to set up or to join a body which calls itself a regulator, but instead they operate their own internal complaints and standards processes.

Their stated reasons for not joining either IMPRESS or IPSO have included: the view that domestic regulation is increasingly irrelevant for press titles with an international circulation and competitive market;<sup>28</sup> concern about the founding articles and independence of IPSO;<sup>29</sup> and concern about a regulatory system underpinned by a body perceived by some to have been set up by the government.<sup>30</sup> Concern has also been raised about how IMPRESS is funded.<sup>31</sup>

Other publications, such as *PinkNews*,<sup>32</sup> have cited similar reasons for choosing to rely on their own editorial and complaints processes rather than subscribing to an external body.

In terms of periodicals, whilst *The Spectator* has joined IPSO, *Private Eye* has declined. The editor of *Private Eye* has explained that he disagrees with the legal framework of costs and exemplary damages that are part of the recognition system.<sup>34</sup>

Some independent local newspaper companies, like family-owned *Bullivant Media*, which publishes 18 weekly editions that are delivered to around 350,000 homes in Warwickshire, Worcestershire, Coventry, and the West Midlands, are not members of a regulator. Neither are digital publishers like *Buzzfeed*, *Huffington Post*, *Vice* and *TheLadBible*.

There are also hundreds of printed and online hyperlocal titles and smaller print news publishers that do not subscribe to a regulator.

The Annex to this report (page 27) provides further background on the wide range of relevant publishers.

“ Their stated reasons for not joining either regulator have included the view that domestic regulation is increasingly irrelevant for press titles with an international circulation and competitive market;

# WHAT PEOPLE HAVE SAID TO US

Since the PRP was established, we have encouraged open dialogue with the wide range of individuals and organisations who have an interest in our work. Their views have helped to inform our thinking.

We received 886 responses to the call for information specific to this report, including from campaigning organisations, representative organisations, politicians, publishers, academics, journalists and members of the public. Where we had permission to do so, we have published the responses on our website.<sup>35</sup> We have also drawn on relevant information and views provided to us in other ways since the PRP came into existence.

We have aimed to include a variety of views here, from all perspectives. We have quoted respondents in their own words. Inclusion of a particular opinion is not an indication of the weight or importance that the PRP has given to it. Where we received a number of comments on a particular subject, we have limited ourselves to the comment(s) that capture(s) it most succinctly.

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## The press and its role

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**We received observations about the changing nature of the landscape of news-related publishers.**

**One of these commented:**

*Britain's tabloid press has been the most powerful (in its influence on politics) in the world. It is now weakening, as are all newspaper cultures.*

*Online organisations (sic) as BuzzFeed, Vice and Vox are taking their place. Social media are now determining political and social debates, and setting up direct exchanges and challenge.*

(John Lloyd)

**A number of people expressed critical views on the behaviour of the British press:**

*The British press brings shame on this country and it does so with absolute impunity. Democracy*

*demands not just freedom, but responsibility. Without the latter the former is simply the freedom to bully, persecute and misinform. (Anonymous)*

*Press freedom is fostered in an environment in which media outlets act responsibly. Acting responsibly means never knowingly publishing false information, never disseminating stories with no basis in evidence and respecting the privacy of individuals in cases where it is reasonable to suppose no law has been broken. (Richard Smithson)*

**However, there was strong support from respondents that a responsible press is vital to society:**

*A good democracy is impossible without a good Press. (Chris Wilson)*

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### Opposition to the recognition system

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**The News Media Association, which represents over 1,800 national, regional and local news media organisations in the UK and is opposed to the Charter and the recognition system. It explains:**

*The industry has profound objections to the system, including the establishment and role of the Press Recognition Panel. It certainly does not ensure the freedom of the press or protect the interests of the public, rather the reverse.*

*The industry has rejected the system of press regulation under the Royal Charter. (NMA)*

**The Society of Editors, which has nearly 400 members – including editors; managing editors; editorial directors; training editors; editors-in-chief; and deputy editors in national, regional and local newspapers and magazines – shares this view:**

*The Society maintains its opposition to the system of press regulation imposed by the Royal Charter which goes against the recommendations of the then Lord Justice Leveson who called for a voluntary system to self-regulation without state interference. (Society of Editors)*

**One of the reasons given for this opposition is a concern about political interference and state control:**

*The Royal Charter was written and agreed by politicians, in conjunction with the Hacked Off lobby group, after the Press were excluded from negotiations. Any system of regulation that is obliged to follow the Royal Charter Criteria is therefore not self-regulation. In truth, with the exception of wartime censorship, this is the first time since the lapse of the Licensing Act in 1695 that the British state has attempted to dictate to the Press. (Associated Newspapers)*

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### Support for the recognition system

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**Others have stated their support for the system:**

*The new system will assist to rebuild public confidence and trust in the press and press regulation. (IMPRESS)*

*As a body set up to ensure that any regulator that chooses to apply for recognition complies with a set of standards as laid out in the Charter and recommended by the Leveson report, the PRP has the support of the NUJ. (NUJ)*

*I view this from the perspective of someone who thought that (i) Lord Justice Leveson's proposals were, on the whole, highly desirable and (ii) the manner in which they were developed by way of a Royal Charter and the associated legislation similarly desirable. (Simon Carne)*

**Some respondents suggested that the reaction to the Charter by some of those opposed to it has been disproportionate:**

*Much of the press reaction to this has been overblown, bordering on the absurd, claiming to see in the Charter a dictatorial system of censorship and suppression of comment. No such system is possible in the UK, short of an authoritarian regime. (John Lloyd)*

*[The] incentives for joining, and the penalties for refusing to join, were enshrined in section 40 of the CCA 2013. Again, the press has waged a quite hysterical campaign against this measure, as well as against IMPRESS, the PRP and indeed anyone remotely involved with either body. (Professor Julian Petley)*

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## Views on the success or failure of the system for overseeing press regulation

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**As part of the call for information, we asked respondents whether the new system for overseeing press regulation in the UK been a success or failure so far. Some responded by explaining that they did not think that standards had improved:**

*As far as I can see the new system has done absolutely NOTHING to regulate the press in running roughshod over people's rights to privacy, or raised the quality of reporting from its current gutter base. Journalism seems to be a roughly thrown over title of what is simply the most base cut and paste reporting in history with little to no fact checking or consideration other than the number of copies that can be sold. (Michael Unitt)*

*The behaviour of the national press is just as bad as ever. (Lord Strasburger, Liberal Democrat Peer).*

*From the man in the street's point of view, the press industry have exhibited no sign of contrition over their abuses and no willingness to embrace rules of behaviour that would prevent past excesses being repeated in the future. (John Walls)*

**Other respondents felt that the system could not be judged a success because of the absence of a recognised regulator, and because the system is not supported by members of the NMA and the Society of Editors:**

*No NMA member has declared any interest in joining IMPRESS, the sole applicant for recognition by the PRP. (NMA)*

*By far the vast majority of our newspaper members are in organisations that have contracted to be regulated by IPSO and, in accordance with their decisions, the organisation has no intention of applying for recognition to the Press Recognition Board. While we are aware that another organisation, IMPRESS, has been set up and is in the process of applying for recognition, the organisation currently has no significant publishers that have expressed an interest in joining the organisation. (Society of Editors)*

*IPSO deciding to not seek recognition is concerning, as it has a large number of publishers subscribing to it. (Trans Media Watch)*

*We are concerned about the very obvious point (made by others, not requiring repetition by us) that due to the small size and nature of IMPRESS's publisher-members to date, it is not sufficiently representative of the press industry. It does not appear to be in a position to deliver independent self-regulation of the industry in any meaningful sense. (Financial Times)*

**Some respondents reflected on the position of the national publishers outside of either IMPRESS or IPSO:**

*The national newspapers most likely to be sympathetic to such a project – the FT, The Independent, The Guardian – have taken the view that their conduct, and the journalistic culture they have created, are the responsibility of the editor. (John Lloyd)*

*There is a further issue as to the likely decisions of the three big fence-sitters: the FT, the Guardian and the Observer. The FT is pleading that it is not a British newspaper. Not much white smoke has emerged from the Guardian/Observer. (Member of the House of Lords)*

**Publishers themselves discussed their reasons for deciding not to join IMPRESS or IPSO:**

*We continue to operate a successful in-house complaints handling mechanism, and seek to refine it when necessary in order to meet the requirements of those who use it.*

*While satisfied that our internal mechanism is working well, we continue to consider the possibility of joining the external system of regulation operated by IPSO.*

*As for the PRP itself, its function feels increasingly distant from the day-to-day realities of the news industry, which has moved on apace even in the past twelve months. That said we do understand that you have been mandated to carry out a particular role. (The Independent, London Evening Standard)*

*In essence, we remain satisfied that the FT's system of internal regulation is at least as robust as any other model available, and enjoys the flexibility to address any additional issues at our discretion, to maintain high standards universally. The FT has always been an international publication, and since its change in ownership, the overriding imperative remains to write for a global audience*

*without fear or favour, in accordance with the principles of freedom of expression and public-interest journalism, in any market in which we operate. The FT is, as you might expect, wary of any manifestation or perception of state regulation of the press.* (Financial Times)

**The NUJ suggested another reason for publishers remaining outside of the recognition system:**

*Other publishers though (including almost certainly some regional papers currently members of IPSO) want to work with a regulator that matches the Leveson recommendations and the Charter guidance in order to show their readers and the public at large that they do take their responsibilities for high standards of journalism seriously. It is not surprising that at the moment these seem (through their application to Impress) to largely be small publishers or hyperlocals. This is partly, of course, because many are trapped by corporate decisions however many potential applicants are keen to join a recognised regulator but are trapped by the Catch 22 that they won't apply until the regulator is recognised because they only want to belong to a recognised regulator, but the supporters of IPSO use a lack of members as a reason to suggest Impress should not be recognised.* (NUJ)

**Some respondents expressed concern that a large number of publishers had chosen not to come within the recognition system:**

*As a parliamentarian who has spoken in the debates in the Lords on press regulation and as someone who gave evidence to Lord Justice Leveson, I am deeply concerned about the failure of the press to accept the Leveson recommendations, and in particular their refusal to join a recognised regulator.* (Baroness Hollins, Crossbench Peer)

*I am horrified that almost all the big newspapers have defiantly rejected the system recommended by Lord Leveson, with its essential safeguards for the public. It appears to us, the concerned public, that these publishers have ignored all that was exposed in the enquiry and the subsequent recommendations. The power remains with those who have been proved to misuse it. I am personally ashamed that my government is allowing this.* (Tessa Cohn)

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## The Crime and Courts Act 2013

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**A number of respondents considered that the failure to implement Section 40 of the CCA 2013 was a significant factor when it came to how relevant publishers have behaved:**

*The system has not been allowed to succeed because the Secretary of State [John Whittingdale] has refused to implement a fundamental plank of the framework which was agreed by Parliament: section 40 of the CCA. It was always intended – as the Prime Minister [David Cameron] himself told Parliament – that an integral element of the Charter framework was an incentives package which would reward those publishers which joined a genuinely independent and effective self-regulator. By refusing to commence the cost provisions element of the CCA – which would also provide access to justice for ordinary victims of press abuse – the Secretary of State [John Whittingdale] has effectively pulled the rug from under the whole system.*

*It is therefore not yet possible to say that the system as implemented by Parliament has been a complete failure.* (Professor Steve Barnett)

*[The] exemplary damages provision, in isolation, are unlikely to incentivise independent and effective regulation, because the legal threshold for the award of exemplary damages under the [Crime and Courts] Act is extremely high.* (IMPRESS)

*Full implementation of the cross-party agreement including commencement of Section 40 of the CCA, which provides crucial incentives for publishers to become members of a recognised regulator. Without this, it is not a surprise that most large national and regional newspapers feel they can ignore the Leveson system as endorsed by Parliament.* (Joseph Rowntree Reform Trust)

*[The] PRP should indicate to government in the strongest terms that the delay in implementing the cost provisions is inexcusable and is wrecking Leveson's reforms at the expense of a new set of victims.* (Lord Strasburger)

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## The relationship with politicians

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### A number of supporters of the Charter pointed out that it had received cross-party support:

*The current system of press regulation received support from all major parties in Parliament and was the subject of a formal cross-party agreement. (IMPRESS)*

*It is clear that the Secretary of State for Culture, Media and Sport [John Whittingdale] and, by extension, the Prime Minister [David Cameron] have no desire to commence this part of the Act, despite it passing both Houses of Parliament and receiving Royal Assent. (Trans Media Watch)*

### Some respondents expressed concerns about the perceived closeness between the press and government:

*I am concerned that there is collusion between the incumbent government and the media over the accountability of the press.... (Tim Rose)*

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## Making Leveson happen

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### Some respondents discussed concerns around the level of resources that had been invested in the Leveson inquiry and what happens next:

*I am very anxious that the excellent Leveson Report should not be allowed to disappear into history. (Catherine Belsey)*

*The Government have spent upwards of six million pounds on an inquiry into the illegal activities of the press. The enquiry, one assumes, had a remit to tell the government what to do to help curb the enthusiasm of the press. Because the government are closely attached to certain media barons they are obviously not in a strong position to legislate themselves and hence one assumes they will heed all of the advice of the Leveson Inquiry. If they don't it will appear to us the plebs that the government have ignored the advice of the enquiry and taken the advice of the newspaper barons. Not only would this be a waste of 6 million pounds of taxpayers money but it would almost seem to be undemocratic, we surely elect our governments to carry out the wishes of the people, not the wishes of big business. As I, long ago, lost faith in governments,*

*it was refreshing to get an enquiry that did not carry out the wishes of the government but carried out a thorough and HONEST evaluation of the situation and made recommendations accordingly. (Pete Webb)*

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## The role of the PRP

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### A number of respondents chose to comment on the work undertaken by the PRP as part of establishing the recognition system:

*We respect the work done by the Press Recognition Panel to date, in circumstances that might best be described as fraught. We particularly applaud the Panel's commitment to transparency, and would recommend all public bodies took the matter as seriously. We have no plans at present to submit our system of regulation to the Panel for approval, but we shall keep the matter under review. (Financial Times)*

### Some respondents discussed the PRP's financial position:

*This has left the PRP with an existential dilemma. It has spent the best part of two years, and approaching £2 million of tax-payers' money, overseeing nothing. (Associated Newspapers)*

*Exchequer funding for the PRP ends in November 2017. From then on the PRP is dependent for its funding on charging regulators for cyclical reviews. Given the profound opposition of almost all publishers to state-sponsored press regulation, it is highly unlikely that any body other than IMPRESS will ever apply for recognition. It is therefore very likely that from November 2017 the PRP will be entirely dependent for funding on IMPRESS. ... This is bound to raise serious questions about the independence of the PRP. (Associated Newspapers)*

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## What next – the view from respondents

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**Some respondents asked that the PRP use this report as an opportunity to inform the Government that the system of press regulation, in their view, was not yet working:**

*The current system of press regulation is completely unsatisfactory. We are nowhere near to meeting the recommendations of the Leveson Inquiry and large sections of the press remain in denial of its findings and opposed to its implementation. Your report to DCMS and Parliament should make this clear. (Andrew Cree)*

**Others suggested that further action, in addition to commencing Section 40 of CCA 2013, was needed for the system to work.**

**Hacked Off has been campaigning for the ‘full implementation of the Leveson reforms via the Royal Charter and the associated legislation, and if necessary by further legislation.’<sup>36</sup> Several of Hacked Off’s supporters responded to the call for information asking that the PRP remind Parliament of Lord Justice’s Leveson’s comments on his report:**

*So far, it has not worked. Whether or not IMPRESS is recognised, many relevant publishers have decided to stay outside the recognised system in order to try to continue the old failed system. Leveson – while offering one last voluntary chance to get their house in order – anticipated that this may happen and said that if it did, Parliament needed to act. The PRP should take the opportunity of its report to remind Parliament of Leveson’s words on this matter.*

He said:

*“If some or all of the industry are not willing to participate in effective independent regulation, my own concluded view is to reject the notion that they should escape regulation altogether. I cannot, and will not, recommend another last chance saloon for the press. With some measure of regret, therefore, I am driven to conclude that the Government should be ready to consider the need for a statutory backstop regulator being established, to ensure, at the least, that the press are subject to regulation that would require the fullest compliance with the criminal and civil law, if not also to*

*ensure consequences equivalent to those that would flow from an independent self-regulatory system.” (Over 200 members of the public)*

**Some respondents are against the idea of statutory regulation as an alternative to the system recommended by the Leveson Report and provided for by the Charter and the CCA 2013:**

*State regulation of the press is a completely undesirable model for the press as it risks stifling freedom of expression. (IMPRESS)*

**Professor Barnett added:**

*I sincerely hope, therefore, that the PRP will conclude i. that the system will be bound to fail while it is not fully implemented; and ii. that this situation cannot be allowed to continue indefinitely at the government’s whim. That is categorically not what Parliament intended, and is wholly contrary to the public interest. I would ask, therefore, that the PRP recommends i. that the government implement s40 as a matter of urgency so that we can see whether or not the system works; ii. that, if the government does not do so within the next 3 months, the system should be deemed to have failed and Parliament must consider the alternatives that Lord Justice Leveson laid out as his personal opinion in his report. This would involve a greater statutory element involving Ofcom to ensure that a genuinely independent and effective system is achieved. (Professor Barnett)*

**However, some respondents suggested that more time was needed before a definitive decision about the success or failure could be determined:**

*The new system for overseeing press regulation is in its infancy and so it is difficult at this time to make a definitive judgment about its success or failure. The recommendations of the Inquiry into the Culture, Practices and Ethics of the Press (the ‘Leveson Inquiry’) are intended to create long-term cultural change. It is important that the new system for press regulation be given adequate time to develop in line with the Leveson recommendations. (IMPRESS)*

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## Our clarification of specific issues raised by respondents

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### The Crime and Courts Act 2013

Some respondents suggested that Section 40 of the CCA 2013 cannot be commenced until there is a recognised regulator.

We disagree. The wording of Section 40 makes clear that the section itself can be commenced at any point, but that its provisions would not apply (in England and Wales) until there is a recognised regulator for relevant publishers to join.

Some respondents suggested that recognising a regulator would trigger the automatic commencement of Section 40 of the CCA 2013.

That is also a misreading of the legislation. Section 40 must be commenced by the making of a commencement order the Secretary of State for Culture, Media and Sport. Recognition of a regulator would not change that.

### Article 10 of the European Convention on Human Rights

As one of the reasons for its opposition to the Charter system, the NMA has said that:

*The Charter was a political creation, imposed without industry agreement and intended to enforce industry involvement by statutory sanctions that contravene Article 10 of the European Convention on Human Rights.* (NMA)

This point was also made by the NMA<sup>37</sup> and Associated Newspapers<sup>38</sup> in their responses to our consultation on our proposals for the process for granting recognition in July 2015. Both said then that they had received legal advice to support their assertion:

*More specifically, we have legal advice that sections 34-42 of the CCA 2013, which enforce the Royal Charter, and which discriminate against and penalise certain groups of news publishers, are in breach of Article 10 of the European Convention of Human Rights.* (Associated Newspapers)

We wrote to both the NMA<sup>39</sup> and Associated Newspapers<sup>40</sup> to request a copy of that legal advice.<sup>41</sup> The NMA responded to say that it was not possible for it to release it.<sup>42</sup> Associated Newspapers supplied a copy, which included a particular concern that if smaller publishers could not afford a regulator's membership fees, the CCA

2013 would be discriminatory and lead to a breach of Article 10 of the European Convention on Human Rights. The legal advice in question had been produced in January 2013 (before the CCA 2013 was enacted in April 2013 and the Royal Charter was made in October 2013).

In July 2016, to ensure that the point could be fully understood and to check the up-to-date position, we wrote to the NMA again asking to see any further legal advice, or whether they could expand on the argument.<sup>43</sup> The NMA responded and directed us to the legal advice previously provided to us by Associated Newspapers.<sup>44</sup>

Accordingly, we have been able to find only limited justification for the concerns about Article 10, and nothing has been provided to us which post-dates the CCA 2013 and the Charter. Much of what was said made assumptions regarding events which have not in fact materialised. However, given that the allegation is that the Privy Council and Parliament have put in place a framework which breaches key human rights obligations, Parliament may wish to consider the position.

# CONCLUSIONS AND SUMMARY

Over the last two years we have received many, often conflicting, views from stakeholders about our role and our work, bearing on the issues we address in this report. They have informed our thinking, but our conclusions are entirely our own, reached through our own independent assessment.

**We operate in accordance with the Charter. It provides a clear and objective framework for our decision making, and an unprecedented independence as a recognition body. We have fulfilled our Charter obligations to date.**

The Charter requires us to report on any success or failure of the recognition system and to report if there is no recognised regulator or, in our opinion, the system of regulation does not cover all significant relevant publishers. As we explained earlier, the recognition system in England and Wales includes the arrangements put in place by the Charter as well as the linked statutory provisions in the CCA 2013. In Scotland and Northern Ireland there are no equivalent linked statutory provisions, so there is no recognition system there.

Only once the recognition system is in operation across the UK can its success be judged. We consider that ‘success’ would then be when all or most ‘significant relevant publishers’ were members of one or more recognised regulators. We cannot assess success on any other basis or by any other measure. To do so would be to go beyond the PRP’s obligations as set out in the Charter, and the framework as contemplated by that Charter.

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## Coverage of the recognition system

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We formally report that there are no recognised regulators. In the first year in which we could receive applications, we have not recognised any regulators as meeting the requirements of the Charter. It therefore follows that the system of regulation does not cover all significant relevant publishers.

IMPRESS has applied for recognition, and its application is being assessed by the PRP. IMPRESS has 14 member publishers that produce 25 publications.<sup>45</sup> Therefore, even if IMPRESS is successful in its application, the majority of significant relevant publishers will still be outside the recognition system.

Many publishers have joined IPSO, which has stated it does not intend to seek recognition from the PRP. Some have chosen not to be members of any regulator, including The Financial Times; the Independent; the Guardian; many periodicals; and a large number of other small and large relevant publishers. (See Annex, page 27, for further background on relevant publishers).

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## The Secretary of State's intervention in England and Wales

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The provisions in the CCA 2013 that relate to exemplary damages came into force automatically on 3 November 2015, but the cost shifting provisions (Section 40) must be brought into force by the Secretary of State for Culture Media and Sport.

On 19 October 2015, the then Secretary of State, John Whittingdale, said that he was not yet minded to make the order which would commence Section 40. At the same time, he urged relevant publishers to move within the recognition system.

In making this statement, he moved away from the recognition system in England and Wales as contemplated by the Charter and the CCA 2013 apparently to see whether relevant publishers would nonetheless create and/or join an approved regulator as contemplated by the Charter. The majority of relevant publishers have not taken this opportunity.

The shared view from both proponents and opponents of the recognition system (and implicit in the Charter itself) is that press regulation should be free from political interference. Full implementation of the recognition system would achieve that. Some opponents of the recognition system have focussed on discouraging the Secretary of State from commencing Section 40 arguing that its cost shifting measures amount to an attack on free speech. The decision to delay commencing Section 40 has paradoxically kept a political presence in place, something which its commencement would remove.

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## Scotland and Northern Ireland

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Although the UK-wide Charter applies in Scotland and Northern Ireland, the Scottish Parliament and the Northern Ireland Executive have not yet introduced mechanisms to incentivise membership of recognised regulators and provide public protections in relation to those who are not members. This means that the recognition system is not fully in place there.

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### The current situation

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A number of respondents have directly linked the small number of publishers that have so far moved towards the recognition system in England and Wales with the fact that Section 40 has not been commenced. The fact that Section 40 has not been commenced also means that the public has not had the intended benefit of easier access to court in relation to publishers who are not regulated by an approved regulator.

It was anticipated by the framing of the Charter that the PRP would transition to becoming self-funding by charging applicants who apply for recognition and fees to recognised regulators. As most publishers have not moved towards recognition, the funding framework has not followed the path that was clearly anticipated.

We have written to the current Secretary of State for Culture, Media and Sport, Karen Bradley, to ask when she intends to make a decision about Section 40.

**THE SHARED VIEW FROM BOTH  
PROPONENTS AND OPPONENTS  
OF THE RECOGNITION SYSTEM [...] IS THAT PRESS REGULATION  
SHOULD BE FREE FROM  
POLITICAL INTERFERENCE.**

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### Next steps: others' views

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There was a sense of despondency in many of the responses to our call for information, and a concern that the money invested in creating a solution to the issues identified by the Leveson Inquiry has not yet borne fruit.

Some members of the public have expressed a lack of trust in the commitment of politicians to deliver the recognition system, and some have formed the view that its incomplete implementation is the result of inappropriate influence.

Some opponents of the recognition system in England and Wales have suggested that the recognition system has proved itself a failure and that the PRP should be wound up and the recognition system abandoned.

On the other hand, supporters of the recognition system call for the commencement of Section 40.

Others are calling for the introduction of statutory press regulation, and inviting Parliament to consider the comments that Lord Justice Leveson made about this in his report.

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### Next steps: our view

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It would be premature to consider introducing statutory regulation given that the recognition system is not yet in place and its success cannot be judged.

Urgent action needs to be taken if the recommendations of the Leveson Report are to be given a chance to succeed: Section 40 should be commenced in England and Wales, and the Scottish Government and the Northern Ireland Executive should consider what further action is required to bring about success as contemplated by the Charter. Until this happens, free speech and the public interest cannot be safeguarded.

However, if the Secretary of State for Culture, Media and Sport decides that Section 40 of the CCA 2013 should not be brought into effect, and the Scottish Government and Northern Ireland Executive do not bring in provisions with a similar effect, Parliament, the Scottish Government and Northern Ireland Executive may wish to consider what further action is required to bring about success as contemplated by the Charter.

*“It provides a clear and objective framework for our decision making, and an unprecedented independence as a recognition body.”*

# ANNEX: THE LANDSCAPE OF RELEVANT PUBLISHERS IN THE UK

The landscape of news-related publishers in the UK is complex and dynamic.<sup>48</sup> It includes publishers of many different sizes, some mature and established, others new entrants that are challenging previous industry models.

**A diverse range of news-related publications are available in the UK including international, national, regional, local and hyperlocal titles operating across print, online, and often both. The current market for national printed publications is generally characterised by declining circulation, reduced profitability, and consolidation, with an emergence of new business models to increase circulation as well as innovative approaches to generating new revenue streams.<sup>49</sup>**

Four of the UK's eight national news publishers account for 80% of printed newspapers sold in the UK.<sup>50</sup>

There are 1,112 distinct daily and weekly local newspapers circulating in the UK (November 2015), with five publishers owning 80% of these local newspaper titles across the UK, whilst 58 other publishers own the remaining 20%.<sup>51</sup> Some of these other publishers include independent businesses such as the KM Group, a media company serving the local communities of Kent and Medway.<sup>52</sup>

National, regional and local publishers are facing intense commercial pressure to establish new editorial and business strategies to increase profitability in the face of new digital technologies, and a range of new business models

are emerging. Some titles – for example, *The Times* and its sister *The Sunday Times* – combine print with an online paywall.<sup>53</sup> *The Sun* is looking to move into other digital service markets, and having recently suspended its paywall,<sup>54</sup> has announced that it is expanding to be a holiday operator and betting operator.<sup>55</sup>

*The Guardian* has not implemented a paywall, but seeks to extend its revenue stream via a paid-for membership scheme.<sup>56</sup> In June 2016 *The Guardian's* editor asked readers to help fund its journalism, explaining that '*The Guardian* – like the rest of the media – is operating in an incredibly challenging commercial environment.'<sup>57</sup>

**In February 2016, *The Independent* became the first national newspaper title to move to a digital-only business model, ceasing publication of its print offering in favour of an online-only offering.<sup>58</sup> The national daily newspaper it has been acquired by local and regional Johnston Press.<sup>59</sup>**

Newspapers have also been experimenting with new print offers to maintain and attract readers. In February 2016 *Trinity Mirror* launched the first standalone national daily newspaper for 30 years in the UK, *The New Day*.<sup>60</sup> The title ceased publication on May 2016 amidst reports that the newspaper's sales had dropped from 150,000 in the days after its launch to 40,000.<sup>61</sup>

In June 2016, Cumbria-based CN Group launched a new daily newspaper aimed at readers in the North of England. Described as '*The North's National*', 24 aimed to give a northern perspective on big news stories.<sup>62</sup> The newspaper closed one month after its launch.<sup>63</sup>

Further evidence of the trend for experimentation was seen in July 2016 when the regional publisher Archant launched a weekly 'pop-up' national newspaper. *The New European* was aimed at Britons who voted to stay in the European Union during the June 2016 referendum. The plan was for the newspaper to run initially for just four issues, with subsequent print runs being decided by reader interest.<sup>64</sup>

Some titles are seeking to adapt by forming partnerships. In April 2016 a partnership bringing together old and new media was announced between Dublin-based *Irish Times* and the Belfast-based investigative website *The Detail*.<sup>65</sup> In May 2016, the *BBC* announced how it planned to work with

“ A major driver for these changes appears to be the digital revolution and the rapid growth in access to news through online sources.

local press to enhance local journalism. The partnership was welcomed by the *News Media Association*, which said that it would strengthen journalism while maintaining the healthy competition between different news sources.<sup>66</sup>

A major driver for these changes appears to be the digital revolution and the rapid growth in access to news through online sources. Established print publishers are increasingly investing in digital development,<sup>67</sup> which offers the potential to sustain profits either by reaching wider audiences, or by deepening the relationship with existing readers.<sup>68</sup>

**The internet has supported globalisation. *MailOnline* for example has an international readership with separate home pages for the UK, USA, India and Australia.<sup>69</sup> It has achieved 229 million monthly global unique browsers, and is the world's largest English-language newspaper.<sup>70</sup>**

The London-based *Financial Times* has a similar global interest, and its specialist focus helped it move towards internationalised daily print editions, as well as moving early and successfully behind an online paywall. The *Financial Times'* circulation across print and online was 780,000 at the end of 2015.<sup>71</sup>

As well as posing both risks and opportunities to the traditional press, the internet has facilitated the proliferation of new titles, some of which – such as *Huffington Post UK*, *Vox*, *Vice* and *Buzzfeed UK* – have achieved significant scale and international presence. These digital news outlets are investing in

original news reporting, hiring high profile journalists,<sup>72</sup> and are challenging mature and established news brands.

The internet has also enabled specialist publications to be established, such as youth-oriented *TheLadBible*, which is followed by half of all 18-24 men in the UK and a fifth of women in the same age group.<sup>73</sup> Other specialist publications include *PinkNews* and *Business Insider*. *PinkNews* is a UK-based online newspaper marketed to the lesbian, gay, bisexual and transgender community. The publication has UK, US and world editions.<sup>74</sup>

In 2015 it was reported that *PinkNews* regularly received between five and seven million readers per month. Its Editor estimated that this readership was approximately 40% UK, 40% US, with the rest of the world (led by Ireland, Canada, the Netherlands, Australia, and New Zealand) making up the final 20%.<sup>75</sup>

**Online news is also increasingly being accessed and distributed via social media,<sup>76</sup> which provides opportunities as well as risks for news publishers. Access of online news through social media is not only important for discovery but also facilitates discussion and sharing of news.<sup>77</sup> This means that content has the potential to reach new and wider audiences, but reduces publishers' control of content and potentially weakens brands.**

It has been suggested that some social media sites exercise a level of editorial control in the distribution of news via their site.<sup>78</sup> Facebook recently reduced human intervention, instead relying on algorithms to automate their news feed.<sup>79</sup>

Finally, the internet has supported the development of the growing online 'hyperlocal' sector as a distinct model of local news and information provision in the UK. There are estimated to be several hundred active hyperlocal print and online publications in the UK.<sup>80</sup> The internet enables both individual citizens and small local news enterprises to publish news at little or low cost. This sector faces different financial pressures to the traditional press. Some hyperlocal news websites have also turned to print,<sup>81</sup> while others are web or print only. Some are potentially challenging the established local press. The majority do not have ambitions for commercial profitability.<sup>82</sup>

The turnover of one such title, the *Caerphilly Observer*, is such that it employs a full time editor and staff. *The Caerphilly Observer* is a fortnightly full-colour tabloid newspaper covering the *Caerphilly* county borough. The publication has a print run of 10,000 copies and the website attracts an average of 30,000 unique readers a month.<sup>83</sup>

Another example is *Bristol24/7*. Set up in 2009 as a Community Interest Company this free news website and monthly magazine was established to strengthen communities in Bristol and provide journalism opportunities to marginalised young people. *Bristol24/7* covers current affairs, lifestyle, what's on, business, and sports news through a daily email newsletter, a free monthly print edition with a circulation of 20,000, and a website that attracts an average of 200,000 unique monthly users. In July 2016, the Resonance Bristol Social Investment Tax Relief Fund invested £150,000 in Bristol community news website *Bristol24/7*. The fund champions companies with social missions in the city.<sup>84</sup>

Although its reach may be large, the financial size of the hyperlocal sector remains small. Although 13% of hyperlocal websites generate more than £500 per month, most local news sites are self-funded.<sup>85</sup> Investment in the UK hyperlocal media sector has been less than £5 million between 2012 and 2015, compared to an investment of more than \$400 million in the US over two years.

“ Online news is also increasingly being accessed and distributed via social media, which provides opportunities as well as risks for news publishers.”

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