PRP

INDEPENDENTLY
OVERSEEING
PRESS REGULATION

PRESS RECOGNITION PANEL

Report on the

recognition system

February 2019

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

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CHAIR'S INTRODUCTION

Over the last year, the news publishing industry has continued to evolve but the role of the PRP has remained constant. We protect both the freedom of the press and the public interest; and since we were established, we have shown an unwavering commitment to that.

The Judicial Review of our decision to recognise IMPRESS confirmed that we interpreted and applied the Royal Charter lawfully. The Judgment upholds that we acted independently and transparently. We now continue to oversee IMPRESS and we are ready to accept applications from other regulators.

There continues to be resistance from some publishers to move within the recognition system. I would ask those publishers to judge us by our track record: we have remained faithful to the Charter. We have no say in how the press operates or how regulators are run; and the Government and politicians have absolutely no say or involvement in how we operate or in our decisions.

We are completely opposed to any kind of political interference in press regulation. That is one of the reasons why we support the commencement of section 40 of the Crime and Courts Act 2013. The law would take press regulation out of the hands of politicians and give the public the protections that were intended following the Leveson inquiry.

The recognition system does not currently cover all significant relevant publishers. We note however that the existence of the PRP, the existence of the Charter and having section 40 remain on the on the statute books has led to some limited improvements in standards. For example, although IPSO runs a voluntary arbitration scheme, it has introduced a compulsory version for some publishers, which provides increased public safeguards. Nevertheless, based on limited publicly available information, IPSO does not come close to meeting all the Charter criteria, which means the public is not fully protected in the way that Lord Leveson intended. Some other publishers have complaints systems but the information available to assess even their independence is limited.

The boundaries between the press and some social media platforms are dissolving and, ironically, some news publishers are calling for tougher regulation of the likes of Google, Facebook and Twitter despite themselves resisting independent regulation. A potential consequence of this is that a system of state regulation for social media platforms could subsequently be applied to the press. It is our view that it is too soon to consider state regulation of the press. The post-Leveson system of regulation must be given a change to operate first - section 40 should be commenced without any further delay.

It appears to us that there are some social media platforms that act as relevant publishers at least in some of what they do. If it is determined that they are, then a system of regulatory oversight already exists in the form of the recognition system. All relevant publishers should consider joining an approved regulator or setting up their own, which could apply for recognition.

Our third annual report on the recognition system has again been informed by the views of our stakeholders, but the conclusions drawn are entirely our own.

David Wolfe QC
Chair | Press Recognition Panel

2 EXECUTIVE SUMMARY

Background

1. The Press Recognition Panel (PRP) was established in 2014 by Royal Charter to independently oversee press regulation in the UK. The Charter was granted following the Leveson Inquiry (2011-2012) into the culture, practices and ethics of the press, in the light of alleged criminal activity including phone hacking.

2. The Leveson Inquiry was the seventh time in 70 years that a government-commissioned inquiry was instigated to deal with concerns about the press.

3. In his report, Lord Justice Leveson proposed a genuinely independent and effective system of self-regulation with politics playing no part in it. He recommended that there should be a system of incentives to encourage news publishers to participate.

4. Lord Leveson made it clear that he was not recommending statutory regulation. He proposed independent regulation of the press organised by the press, with processes in place to ensure that required levels of independence and effectiveness were met.

The Royal Charter

5. The Charter had all party support.

6. The Charter gives us a unique and unprecedented independence. It can only be changed by a two-thirds majority of those who vote in the House of Commons, the House of Lords and the Scottish Parliament and with the unanimous agreement of the PRP board. The Charter prevents politicians from interfering with our work and decisions.

7. The Charter sets out 29 criteria based on Lord Leveson's recommendations. The criteria are part of a scheme of recognition which embodies what the Leveson report considered to be the necessary minimum requirements for effective press regulators, striking the right balance between the public interest in freedom of the press and the wider public interest.

8. In January 2016, IMPRESS applied to the PRP for recognition.

9. In October 2016, following three public calls for information and a robust assessment process, we recognised IMPRESS as an approved regulator because it met all 29 recognition criteria.

10. We continue to oversee IMPRESS, and the approved regulator is subject to our processes for ad hoc and cyclical reviews. We plan to complete the first cyclical review of IMPRESS in March 2019.

11. IMPRESS currently regulates 111 publications across the UK, that operate both in print and online.[1]

12. Many of the larger relevant publishers remain outside the recognition system. Some have joined IPSO, which does not intend to apply for recognition. This means that the new system of regulation does not cover all significant relevant publishers.

Judicial Review

13. The News Media Association (NMA) applied for a Judicial Review of the PRP's decision to recognise IMPRESS. In October 2017, the High Court rejected all the NMA's arguments. The judges found that the arguments against our decision lacked any legal basis. The judgment confirmed that we acted independently, transparently and lawfully when we recognised IMPRESS.

14. The NMA was ordered to pay our costs and the High Court refused the NMA permission to appeal.

15. In April 2018, the NMA gained the Court of Appeal's permission to appeal the decision.

16. The case was listed for hearing on 17 January 2019, but on 5 December 2018, the NMA abandoned its case and agreed to pay the PRP's legal costs.

The Charter and the wider legal framework

17. 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 the intended system of incentives provided for in the Crime and Courts Act 2013 (CCA 2013).

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

A. Section 34: Awards of exemplary damages

Under section 34, publishers who are not members of an approved regulator face the possibility of exemplary damages in egregious privacy and libel cases. Publishers who are members of an approved regulator are protected against the risk of exemplary damages in either case.

B. Section 40: Awards of costs

Other than in exceptional circumstances, a person who sued a publisher member of an approved regulator rather than raising the point through the approved regulator's arbitration system would pay their own costs and those of the publisher, win or lose. Publishers who choose not to join an approved regulator would (other than in exceptional circumstances) pay both sides' costs in legal cases whether they win or lose.

19. The provisions relating to exemplary damages came into force automatically on 3 November 2015. However, the Government has not commenced section 40. This means that in England and Wales, the recognition system is not yet in place as Parliament had contemplated.

20. Urgent action is needed if the post-Leveson system of independent self-regulation is to be given a chance to succeed. The recognition system has still not been given an opportunity to function and the public interest embodied in the Charter has not been safeguarded.

21. Until the recognition system is fully in place, no one can judge its success or failure. Success would then be when all or most significant relevant publishers were members of one or more recognised regulators.

22. In Scotland or Northern Ireland, there are no equivalent linked statutory provisions, so there is no recognition system

Political activity

23. For as long as the Government declines to bring section 40 into force, there is still political involvement in press regulation in the UK (Annex 5).

24. In November 2016, the Government announced a consultation on the Leveson Inquiry and its implementation, which included reviewing section 40. This was the eighth review into press issues in 70 years and it came before the system that Parliament agreed in 2013 had been fully implemented.

25. In March 2018, the Government announced that it intended to ask Parliament to repeal section 40 at the earliest opportunity. Section 40 has not yet been repealed.

26. In May 2018, the Government stated: 'The Press Recognition Panel remains an important part of the regulatory framework.'[2]

Conclusions

27. There is one recognised regulator – IMPRESS – and we remain ready to accept applications for recognition from other regulators.

28. The recognition system does not cover all significant relevant publishers. Although we have fulfilled our role, the system has not been fully implemented and it has not been given an opportunity to succeed.

29. Larger publishers are resisting joining the recognition system and some parties have tried to undermine it.

30. Until the recognition system is fully implemented, 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.

31. As part of our consideration of the success or failure of the recognition system, we reviewed some aspects of IPSO and some publishers outside the system. This has provided an insight into the variety of approaches to complaints and self-regulation and into

how organisations perceive themselves as a relevant publisher or not.

32. IPSO has a system in place that it asserted was better than that of its predecessor; however it has not been independently assessed by the PRP. Based on limited publicly available information, IPSO does not meet the Charter criteria, and it does not provide the public with the levels of protection intended following the Leveson Inquiry.

33. It is not possible to conduct a full review on the extent to which IPSO meets the Charter criteria because the information needed is not publicly available.

34. The Financial Times, The Independent, the Evening Standard and The Guardian have each instigated complaint handling systems. These systems could not be independently reviewed to confirm the quality and independence of the service being provided to the public because the information needed to conduct such a review is not in the public domain.

35. In terms of social media platforms, Google, Twitter and a news aggregator who asked us not to publish their response have asserted that they do not consider themselves as relevant publishers.

36. It appears to us that there are some social media platforms that act as relevant publishers at least in some of what they do, however, this is a matter for the courts to clarify.

37. The lines between the press and some social media platforms are continuing to blur. Ironically, the mainstream press is leading calls for social media platforms to be regulated despite resisting for itself the system of regulation that was established following the Leveson Inquiry to protect the public.

38. The Government is currently considering how to do this. An unintended consequence of this media campaign is that a system of state regulation for social media platforms could be implemented that is subsequently applied to the press.

39. It seems clear that if it is determined that social media regulators are relevant publishers, then a system of regulatory oversight already exists in the form of the recognition system. All relevant publishers should consider joining an approved regulator or setting up their own, which could apply for recognition.

Next steps

40. We continue to fulfil our role, and it is disappointing that two years after the publication of our first report on the recognition system, the recognition system is still being frustrated by the Government. The public is still not receiving the intended protections.

41. Lord Leveson recommended that if (but only if) the new system of regulation was considered to have failed then Parliament should consider statutory action. We are of the view that it would be premature to consider introducing statutory regulation. The recognition system must be established first and properly tested: Section 40 of the Crime and Courts Act should be commenced immediately.

42. We will engage with stakeholders to discuss what role, if any, we might have in a system of regulation that applied to social media platforms that were deemed to be relevant publishers.

43. Social media platforms who recognise themselves to be relevant publishers should consider moving under the recognition system voluntarily.

44. We will continue to share our learnings and experience with stakeholders, including those involved in the planning of new systems of regulation for social media platforms that are deemed to be relevant publishers.

45. The Government acknowledges that the PRP is an important part of the regulatory framework, however it has pledged to remove the incentives that would complete the framework. We would welcome a meeting with the Government to understand its rationale.

46. We remain committed to the system of regulation intended to protect the public following the Leveson inquiry and that was agreed by all parties.

3 INTRODUCTION

Background to the Press Recognition Panel

The independent Press Recognition Panel (PRP) was established in 2014 as part of a new system of regulatory oversight to ensure the freedom of the press whilst also protecting the interests of the public (Annex 1).

Our Royal Charter was granted following the Leveson Inquiry (2011-2012) into the culture, practices and ethics of the press, which took place in the light of phone hacking and other criminal activity. Victims included ordinary members of the public.

In his report, Lord Leveson proposed a wholly independent and effective system of self-regulation with politics playing no part in it.

Lord Leveson made it clear that he was not recommending statutory regulation. He proposed independent regulation of the press organised by the press, with processes in place to ensure that required levels of independence and effectiveness were met.

The Royal Charter

The Charter received all-party support in Parliament. It gives us a unique and unprecedented independence and it can only be changed by a two-thirds majority of those who vote in the House of Commons, the House of Lords and the Scottish Parliament, and with the unanimous agreement of our board. This prevents politicians from interfering with our work and decisions.

The Charter sets out 29 criteria based on Lord Leveson's recommendations. The criteria are part of a scheme of recognition which embodies what the Leveson report considered to be the necessary minimum requirements for effective press regulators.

Regulators must meet all the criteria to be recognised by us. Compliance 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.

Our core role is to consider applications from regulators who voluntarily apply to be assessed against the recognition criteria.

4 THIS REPORT

Our Royal Charter requires us to report on any success or failure of the recognition system. It also requires us 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.

This report fulfils both reporting obligations.

The 'relevant publishers' referred to above are defined by section 41 of the Crime and Courts Act 2013, which was enacted the day after our Charter was sealed:

(1) Relevant publisher' means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—

(a) which is written by different authors, and

(b) which is to any extent subject to editorial control.

The Charter leaves it to us to determine which 'relevant publishers' are 'significant'. However, clarification of the definition is a matter for the courts.

See Annex 2 for further information on relevant publishers.

Although press regulation is a devolved matter, our Charter applies to the whole of the United Kingdom. We have therefore sent copies of this report to the Welsh Assembly and Northern Ireland Assembly.

See Annex 3 for further discussion our Charter and the wider legal framework within which we operate.

5 APPROACH

In preparing our report, we have considered information from a variety of sources.

From 18 September 2018 to 8 October 2018, we conducted a call for information that invited views on the extent to which the recognition system had succeeded in its purpose. We publicised the call for information on our website, sent details to everyone on our stakeholder database, and promoted it on Twitter.

We have also reviewed our previous reports and considered the feedback received to the public calls for information that informed them.

We have reviewed reports, articles and commentary about our work and the recognition system, along with the notes of meetings and correspondence with stakeholders, all of which are available on our website.

In order to determine the success or failure of the recognition system, we must consider the behaviour of publishers both inside and outside the system. As we have done in previous reports, to help inform our thinking we considered a sample of significant publishers – as well as IPSO – with reference to some areas that the Charter identifies as key to protecting the public. These areas include providing access to an effective and independent system of complaints and low-cost arbitration, and the independence of decision-making committees.

The sample of publishers are: Buzzfeed UK, Facebook, the Financial Times, Google, The Guardian, HuffPost UK, The Independent, LADbible, Pink News, Private Eye, Reuters, Snapchat, Twitter, and Yahoo! News.

We selected these publishers to illustrate how different sections of the press have chosen to approach complaints and self-regulation following the Leveson Inquiry. They have different audiences and reach; some have publicly said that they independently self-regulate; and some operate online, offline and both. Comparisons should not be made between the publishers we have included and similar ones that have not been. Publishers were chosen for illustrative purposes only.

This review is not a formal assessment of a regulator against the criteria listed in the Charter. We have not assessed these bodies in that way, nor could we. The criteria apply to press regulators and an assessment can only be undertaken following an application for recognition from such a body.

We wrote to the publishers listed above, as well as IPSO, to invite them to share any information that they would like us to consider. We have published the correspondence exchange on our website.[3]

6 REPORT ON THE RECOGNITION SYSTEM

Recognising IMPRESS

In January 2016, IMPRESS applied for recognition.

In October 2016, following three public calls for information and a robust assessment process, we recognised IMPRESS as an approved regulator because it met all 29 recognition criteria.

We continue to oversee IMPRESS, and the approved regulator is subject to our processes for ad hoc and cyclical reviews, which were devised following public consultation.

In November 2018, we started the first cyclical review of IMPRESS, which included a public call for information that ran from 29 November 2018 to 9 January 2019. The PRP Board plans to complete the review in March 2019.

IMPRESS currently regulates 111 publishers across the UK.[4] When it applied to be recognised it had 14 members.

Judicial Review of our decision to recognise IMPRESS

The News Media Association (NMA) applied for a Judicial Review of our decision to recognise IMPRESS.

On 12 October 2017, the High Court rejected all of the NMA's arguments. The judges found that their arguments lacked any legal basis and the judgment confirmed that we acted independently, transparently and lawfully when we recognised IMPRESS. The NMA was ordered to pay our costs and the High Court refused the NMA permission to appeal.

On 1 November 2017, the NMA made an application to the Court of Appeal seeking permission to appeal the decision and in April 2018, permission was granted.

The case was listed for hearing on 17 January 2019, but on 5 December 2018, the NMA abandoned its case and agreed to pay our legal costs.

The outcome of the Judicial Review confirms that our interpretation on the Charter was sound.

The court confirmed the primacy and effect of the Charter when it stated that 'It is plain that the Charter means what it says and does not mean what it does not say.'[5]

We remain ready to receive applications for recognition from regulators.

See Annex 4 for more information on the Judicial Review.

IPSO

Only IMPRESS has been independently assessed by the PRP as meeting the 29 recognition criteria in the Charter. This means that the system of regulation does not cover all significant relevant publishers.

Some publishers have joined IPSO, which was set up on 8 September 2014, following the winding-up of the Press Complaints Commission.[6] It currently covers around 1,500 print and 1,100 online titles.[7] These publications are expected to follow the Editors' Code of Practice.[8]

In response to our call for information, IPSO stated:

> 'IPSO makes available extensive documentation about our work on our website, which you and your colleagues are welcome to look at. We accept and welcome scrutiny of our processes, guidance on standards and decisions from all quarters, and that includes the Press Recognition Panel.'

IPSO also stated: 'we have not sought, nor are we seeking, any recognition or assessment by the Press Recognition Panel of our work.'

IPSO allows complaints to be brought free of charge, as required by the Charter.
The organisation accepts complaints in relation to breaches of the Editors' Code from those affected by breaches, representative groups, and third parties wishing to correct accuracy. IPSO can also refuse a complaint if it considers that there has been no breach of the Code.[9]

The Code is not the responsibility of the complaints body, as recommended by Lord Leveson and included in criterion 7 of the Charter. It is the responsibility of the Editors Code of Practice Committee, which is a separate organisation. The Committee is dominated by editors: there are ten editors from the national, regional and magazine industry; three independent lay members; and the Chairman and Chief Executive of IPSO are also members.[10]

IPSO has not been independently assessed in the same way that IMPRESS has, so the extent of the protections offered to the public has not and could not been determined.

IPSO is funded by the Regulatory Funding Company's (RFC). The body is charged with raising a levy on the news media and magazine industries. The RFC states that 'This arrangement ensures secure financial support for IPSO, while IPSO's complete independence is at the same time guaranteed by a majority of lay members and is a further sign of the industry's commitment to effective self-regulation.'[11]

From even the limited amount of information available publicly, it is clear that IPSO's member publishers have a significant amount of influence over IPSO, meaning the organisation is not independent of the press.

When IPSO appoints 'Industry Directors' (five out of its 12 Board members) the IPSO Appointment Panel must take account of the views of the RFC in relation to the suitability of the candidates.[12]

The first of the Charter's recognition criteria states:

'For the avoidance of doubt, the industry's activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the self-regulatory body shall not constitute influence by the industry in breach of this criterion.'

However, the requirement for IPSO's Appointment Panel to take into account the RFC's views when appointing Board members means that the appointments are not made in a 'genuinely open, transparent and independent way, without any influence from industry' (criterion 1) or that the Board members are not 'nominated by a process that is fair and open' (criterion 5).

When appointing the Complaints Committee, IPSO has to take into account the views of the RFC in relation to the suitability of the candidates.[13] The RFC also has a veto over the existence or continued existence of any arbitration scheme.[14]

IPSO's complaints process generally appears to reflect the provisions in the Charter.

Under criterion 12 of the Charter, decisions on complaints should be the ultimate responsibility of the Board. In IPSO's case, decisions on complaints are made by IPSO's Complaints Committee, not its Board.

Although IPSO's Board 'shall at all times remain responsible for, and shall have ultimate discretion in relation to, the decisions of the Complaints Committee',[15] it is difficult to see in practice how this responsibility and discretion is exercised.

Particularly since it is the Committee that issues the determinations and directs remedial action and there is no right of review to the Board itself.[16] However, there may be procedures of which we are unaware.

Criterion 11 of the Charter requires that the Board of an approved regulator has the power to hear complaints:

'a) from anyone personally and directly affected by the alleged breach of the standards code, or

b) where there is an alleged breach of the code and there is public interest in the Board giving consideration to the complaint from a representative group affected by the alleged breach, or

c) from a third party seeking to ensure accuracy of published information.'

IPSO accepts complaints via these routes. However, in relation to representative groups, IPSO refers to 'substantial public interest' rather than 'public interest', which sets a lower level of public protection.[17]

IPSO's complaints system has an emphasis on mediation between the parties in relation to a complaint.[18] If a regulated publisher makes an offer to resolve a matter which the Complaints Committee considers is satisfactory, but it is not accepted by the complainant, the Committee may decide that the complaint is closed.[19]

In terms of sanctions and remedies, IPSO does not have the power to direct apologies, which the Charter requires.

IPSO's approach to corrections appears to match the Charter criteria requirements. IPSO's Complaints Committee has the power to order corrections in cases where it upholds a complaint.[20]
With regards to investigations, the Charter provides that an approved regulator must have power to investigate 'serious or systematic' breaches of the Code. IPSO provides a much more restrictive test than the Charter in that the breaches have to be both 'serious and systematic for it to launch an investigation.[21]

There are other provisions that allow for investigation into serious breaches, but these rely on exceptional circumstances or the breach being apparent through a publisher's annual report or a report from a statutory authority.[22]

IPSO offers both a compulsory and a voluntary arbitration scheme. IPSO describes the compulsory scheme being 'fully Leveson-Compliant' (as distinct from 'Charter Compliant').[23] In practice, the major national newspapers that IPSO regulates have signed up the compulsory scheme, but other IPSO members have not. Members of the compulsory scheme must accept any genuine arbitration claim. Under the voluntary scheme, anyone can request to arbitrate but the publisher is not obliged to do so.[24]

IPSO arbitration can be sought by claimants in relation to:

- 'The publication of statements that may have caused harm:
    - Defamation (Libel and Slander)
    - Malicious falsehood
- The publication or use of information that is confidential or private:
    - Breach of confidence
    - Misuse of private information
    - Data protection
- The unacceptable behaviour of journalists or photographers:
    - Harassment'[25]

Criterion 22(e) of the Charter requires arbitration to be free to complainants but allows for a small administrative fee 'used for the purpose of defraying the cost of the initial assessment of an application and not for meeting the costs of determining an application (including the costs of the arbitration).' The IPSO scheme charges a fee of £100 to complainants,[26] but it appears that part of this is payable for the costs of the arbitration. Under the scheme: 'the Claimant's Administrative Fee in respect of a Claim that proceeds directly to a Preliminary Ruling Procedure shall be split into two payments of £50. The first payment shall be payable before the Arbitrator is appointed, and the second payment shall only be payable in the event that the Claim is to proceed to a Final Ruling Procedure. The Claimant shall not pay an Administrative Fee in the event that the Claim proceeds directly to an Assessment.'

Publishers outside both IMPRESS and IPSO

A significant number of relevant publishers belong to neither IMPRESS nor IPSO.

For example, The Independent, the Financial Times, The Guardian, and the Evening Standard operate their own internal complaints and standards processes.

We met with The Independent in May 2015 and were informed that when complaints were received, they were submitted directly to the Executive Editor to deal with. The majority were clear-cut, they told us, and could be dealt with through issuing a correction. In a small minority of cases, other ways of resolving matters needed to be found. Their view was that the public appeared satisfied with the straightforward process in place.[27]

In June 2015, the Executive Editor told us that in cases where complaints could not be resolved, the publisher would be prepared to go to arbitration, but this had not been necessary.

In October 2018, in response to our call for information, the Executive Editor confirmed that the system had not changed, and that,

> 'journalists adhere to the Editors' Code of Practice, as well as our own company Code of Conduct, which we publish on our websites. Complaints can be lodged using an online form, and they are dealt with promptly and fully.'

In response to our call for information, the Director of Editorial Legal Services at Guardian News and Media (GNM) informed us:

> 'GNM's approach to self-regulation

> comprises an editorial code of practice, an independent readers' editor and an independent review panels, both of whom report to the Chair of The Scott Trust. The review panel ensures that where complainants do not feel their issues have been adequately resolved through the internal complaints procedures, they have the opportunity to have their complaint further considered by an independent panel. Where appropriate, arbitration is offered by GNM as a way to resolve legal disputes without the need to go through a lengthy and costly court process for both sides. GNM's primary focus is on resolving complaints in a rapid and effective manner and promoting the highest quality standards of independent journalism.'

The information in the public domain does not allow for evaluation of the independence of those review panels.

Following our letter to the editor of the Financial Times inviting a response to our call for information, we received a submission from the Editorial Complaint Commissioner on behalf of all publications within Financial Times Limited.

The FT Editorial Code explains that the Editorial Complaints Commissioner 'will ensure a continued means of dealing with reader complaints following the closure of the UK Press Complaints Commission. Their remit is to support the FT's existing framework for handling editorial complaints, independent of the editor.'

Although the Editorial Complaint Commissioner stated his role was 'internal-but-independent', the information in the public domain would not allow for any evaluation of that description.

The Editorial Complaints Commissioner informed us that the Financial Times 'operates its own independent regulatory system, and has chosen not to seek recognition.' He also stated:

> 'We have tried to be open and transparent with our readers about what we are doing, and why we are doing it independently.'

In response to our call for information, Private Eye informed us that it has a 'long and well-established system for dealing with any complaints that it receives'. The publisher also stated that publishers were unlikely to 'volunteer private and confidential information to [the PRP] about their processes, internal and otherwise, and the operation of them'.

Most digital-only publishers like Buzzfeed UK, HuffPost UK, and PinkNews, are not members of a regulator, nor are hundreds of printed and online hyperlocal titles.

HuffPost informed us:

> 'HuffPost UK does not receive a high volume of complaints, whether factual correction requests or legal notices. Our internal processes ensure that all complaints are promptly handled and thoroughly reviewed. While we have never had any problems with these processes, we do keep them under periodic review throughout each year.'

Following our letter to the UK editor of one particular online news aggregator inviting a response to our call for information, we received a letter from their lawyers, which they asked us not to publish. The letter outlined that the online site reproduces content under licence from third parties, and that such aggregation services do not exercise editorial control over the third-party content they publish. The letter stated that such services were not the target of the Leveson Inquiry and recommendations, and they should not be considered as 'relevant publishers'. The letter referred us to: Commons consideration of Lords amendments, Crime and Courts Bill, 22 April 2013, Column 687.

Social media platforms

The way in which news is published and accessed continues to change, and social media continues to disrupt traditional print models. This is not a surprise, and it was anticipated by Lord Leveson in his report:

'It is indisputably the case that newspapers in this country cannot be viewed as once they were, as being uniquely responsible for the delivery of news. They are not. Control over information which might have been possible in an earlier age can be defeated instantly on Twitter or any one of many other social media sites, based out of the UK and not answerable to its laws.'[29]

The recognition system, including the Charter criteria, is framed to remain applicable despite those changes.

Social media platforms generally operate their own internal complaints systems and have their own standards with which people posting material are asked to comply.

Snapchat users can report snaps in stories that do not follow the platform's community guidelines.[30] Facebook users can report content that goes against the platform's community standards[31] using a range of forms and guidance.[32]

In January 2019, Facebook announced plans to address misinformation and fake news and stated that it had increased its content review team.[33] The social media company also announced

steps to make the platform safer for young people, including blurring images and blocking hashtags.[34]

In response to our call for information, Twitter informed us:

'It is important to note that under Twitter's Terms of Service, users are responsible for the content they publish on the platform. To suggest Twitter is a publisher is at odds with the statutory definition of "relevant publisher" in s.41 of the Crime and Courts Act 2013 and incongruous with the E-Commerce Directive.'

Twitter also allows users to report violations of the platform's rules and terms of service.[35] The network provides various forms for reporting specific violations including copyright, trademark and impersonation.[36]
In response to our call for information, Google stated its view that it is not a publisher:

> You previously wrote to us on 8 February 2018. We did not reply to that letter because it appeared to be predicated on a suggestion that Google is a publisher, whereas we are quite clear that this is not the case. Your more recent letter again proceeds on the basis that Google is a publisher, and nothing has happened since your last correspondence to change our view that this approach is incorrect.

In May 2017, ahead of the UK general election, the Conservative Party manifesto suggested plans for online regulation, if the party was elected:

'Our starting point is that online rules should reflect those that govern our lives offline.'
It added: 'Some people say that it is not for government to regulate when it comes to technology and the internet. We disagree.'[37]

In October 2017, Secretary of State Karen Bradley informed the Digital, Culture, Media and Sport Committee that the Government was considering changing the legal status of Google, Facebook, and other internet companies, amid growing concerns about copyright infringement and the spread of extremist material online. However, she expressed concerns about doing this.[38]

In January 2018, Secretary of State Matt Hancock, warned that social media companies could be banned if they failed to remove harmful content.[39]

In September 2018, Ofcom proposed that social media platforms should be regulated in the same way broadcast media.[40]

The Guardian published its view that Facebook should be regulated:

> 'There is strong public interest in having Facebook regulated as a media company. Lawmakers must consider ways of curbing how it uses data to target advertisements and what information it makes available to third parties. Like any other media company, it ought to face strict advertising regulations and tough transparency requirements in elections.'[41]

The NMA has also stated a similar view:

'Give the tech companies the same legal responsibility as publishers for the content they carry, unless this is from a bona fide news source, and introduce independent regulatory oversight of their activities. This is intended to incentivise them to promote verified news content over fake news and other harmful content.'

The NMA added:

'It must not impose any new restrictions or additional regulation on news media publishers nor allow the tech companies to obstruct access to news media sites, discriminate against their content, or seek to shift liability, costs and regulatory burdens onto news media publishers.'[42]

If the courts take the view that, in at least part of their activities, those platforms are acting as 'relevant publishers' then the recognition system would perform that role. Beyond that, the introduction of further regulation would be a matter for Government and Parliament.

Incentivising regulators

Lord Leveson recommended that there should be a system of incentives to encourage news publishers to participate.

In England and Wales, the recognition system includes the arrangements put in place by the Charter as well as the intended system of incentives provided for in the Crime and Courts Act 2013 (CCA 2013).

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

A. Section 34 Awards of exemplary damages: publishers who are not members of an approved regulator face the possibility of exemplary damages in egregious privacy and libel cases. Publishers who are members of an approved regulator are protected against the risk of exemplary damages in either case.

B. Section 40 Awards of costs: Other than in exceptional circumstances, a person who sued a publisher member of an

> approved regulator rather than raising the point through the approved regulator's arbitration system would pay their own costs and those of the publisher, win or lose. Publishers who choose not to join an approved regulator would (other than in exceptional circumstances) pay both sides' costs in legal cases whether they win or lose.

The provisions relating to exemplary damages came into force automatically on 3 November 2015. However, the cost-shifting provisions have not yet been brought into force - the Government has not commenced section 40. This means that in England and Wales, the recognition system is not yet in place as Parliament had contemplated.

Although the Charter applies to the United Kingdom, press regulation is a devolved matter. In Scotland and Northern Ireland, there are no equivalent linked statutory provisions, so there is no recognition system. (See Annex 3 for more information on the system of incentives).

Political activity

In November 2016, the Government announced a consultation on the Leveson Inquiry and its implementation, which included reviewing section 40. This was the eighth review into press issues in 70 years and it came before the system that Parliament agreed following the Leveson Inquiry had been fully implemented. (See Annex 5 for more on politics and press regulation).

We met with Secretary of State Karen Bradley in December 2016.[43]

In March 2018, the Government stated that it intended to ask Parliament to repeal section 40 at the earliest opportunity. It has not done so.

In February 2018, the Government launched a new review into press sustainability in the UK,[44] and in March 2018 Dame Frances Cairncross was appointed to Chair it.[45]

The PRP has written to the Government on a number of occasions seeking to explain the recognition system, just as we have with other stakeholders. We wrote to Secretary of State Jeremy Wright in July 2018; and Secretary of State Matt Hancock in January 2018, and April 2018. We did not receive a response to those letters.
In May 2018, the Government stated:

> 'The Press Recognition Panel remains an important part of the regulatory framework.'[49]

Campaigners against the recognition system

A key concern for the PRP is that some news publishers who could help promote the public benefits of the recognition system are against it. They have argued against the PRP's work and encouraged politicians to repeal section 40. This has included publishing misinformation about the PRP and the recognition system.
For example, the PRP is often wrongly described as being 'state-controlled' and it has been falsely stated that the new system of regulation would bankrupt the local and regional publishers. (See Annex 6, where we correct some of the myths that have been perpetuated about the PRP.)

During the three calls for information we held when assessing IMPRESS' application for recognition, we received a considerable amount of comment against the system. This led to press coverage that included misleading feedback about the PRP.

Press coverage of the NMA's announcement that it had abandoned its legal case against the PRP's decision to recognise IMPRESS was dwarfed in comparison to the NMA's announcement that it was bringing the case in the first place.

In December 2018, we noted publicly that the Ministry of Justice had stated in its departmental accounts that from 1 April 2018, PRP has been designated as within the 'Departmental Boundary' following a decision by HM Treasury. We wrote to HM Treasury to remind them that the PRP is independent of the Government, government departments and indeed any other body. As such, the PRP should not be included in any 'departmental boundary". No external party had taken control of the PRP.[50]

It was subsequently misreported in the press that ministers had taken control of the PRP.

In January 2019, the Government confirmed:

> 'The Royal Charter establishing the Press Recognition Panel sets out the responsibilities of the Lord Chancellor. Other than in his role as Lord Chancellor, the Secretary of State for Justice does not have any ministerial responsibilities in respect of the Panel.
>
> 'HM Treasury determined that the Press Recognition Panel should fall under the Ministry of Justice Departmental Boundary for Estimates and Accounts purposes, this is purely an administrative action. There is no change in terms of the Lord Chancellor's responsibilities as set out in the Royal Charter, and the Panel remains outside the Secretary of State's responsibilities.'

To help ensure our stakeholders have accurate information about our work, we produce briefing documents and we offer to meet stakeholders to explain the recognition system.

What people have told us

Openness and transparency are central to everything that we do. We actively encourage dialogue with the wide range of people and organisations that have an interest in our work. Their views have helped to inform our thinking.

The responses and correspondence that we received to the call for information specific to this report have been published on our website, where we had permission to do so.

We have quoted respondents in their own words. Inclusion of an opinion is not an indication of the weight or importance that we have given it.

The system of press self-regulation recommended by Leveson

During the call for information, we asked: To what extent does the new system of genuinely independent and effective press self-regulation recommended by Leveson exist today?

The responses we received included the following:

> *The system of independent and effective press-regulation recommended by Sir Brian Leveson exists but does not cover all significant publishers of news- related material in the United Kingdom.*
>
> *Despite the assertions made at the time that they would be committed to reform, a number of publishing companies which collectively control a large number of news publications, have chosen to turn their backs on the system that Sir Brian recommended. Some are 'regulated' by IPSO, a complaints-handling body that largely replicates the reactive approach taken by its predecessor, the PCC. Others have eschewed any form of external accountability whatsoever.*
>
> *Sir Brian Leveson was right to anticipate that some news publishers would reject independent regulation. (IMPRESS)*
>
> *The all-embracing system of genuinely independent and effective press self-regulation recommended by Leveson does not exist today.*
>
> *Leveson recommended that "a new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers" (Recommendation 23). This, in turn, required all significant news publishers to be members of a self-regulatory body which conformed to his recommendations for genuinely independent and effective self-regulation. In fact, all the significant publishers most relevant to the Leveson inquiry have refused to join or establish such a regulatory body.* (Hacked Off)
>
> The cross-party agreement which established the Royal Charter and Press Recognition Panel was extraordinary, such a historic consensus is rarely achieved. I believe it places on those charged with implementing the decisions a requirement for a high level of commitment and tenacity to see through the agreed proposals, even if this takes more time than originally envisaged. (Anonymous)
>
> *In a nutshell, since Leveson has not been fully implemented and key publications have declined to join an appropriate organisation, citing the dubious benefits of self regulation, I think very little has changed and that both organisations are entirely unable to fulfil any useful role. My clients continue regularly to receive entirely unwarranted and unsolicited media attention, fall victim to misreporting, stories are leaked by police officers and others who should be secure and subject to discipline and my work remains largely unaffected by the work of Lord Leveson, the creation of allegedly regulatory pronouncements of many others involved with this issue.* (Sue Stapley)
>
> *We are extremely disappointed that the present Conservative Government has conspicuously failed to honour the most solemn promises of the Conservative*
>
> *Prime Minister, David Cameron, that Leveson would be implemented in full. As a result, in spite of the diligence, professionalism and robust independence of the PRP, the system is at best only partially in place. It is falling far short of the ideal advocated by Leveson and endorsed at publication by all parties in the House of Commons.* (Liberal Democrats DCMS team)
>
> *While the Panel fulfils its purpose as an independent auditor of press self-regulators, it is a matter of fact that most significant publishers are members of IPSO, a body which is not recognised by the Panel. Although one self-regulator,*

Impress, has been recognised, it has not yet attracted publishers of significant size.

Without formal recognition, according to the criteria recommended by Leveson for effective and independent self-regulation, no independent assessment of either IPSO or industry standards is possible. Because the government has consistently refused to implement the incentives for joining a recognised regulator contained in the 2013 Crime and Courts Act, the large publishers have chosen to bypass the system and to continue to be their own judge of their standards. It is thus a matter of great regret that, as far as IPSO is concerned, there is no genuinely independent or effective regulation. (Independent and crossbench Members of the House of Lords)

The changing nature of the news industry

One respondent shared their view about online publications:

[Online] media exposure is instantaneous, still seems virtually impossible to control let alone regulate and can trash reputations disastrously in seconds in ways from which the victim can never recover or receive remedy. (Sue Stapely)

IMPRESS recalled what Leveson said about the changing nature of news in his report:

[Lord Leveson was right] to note that the technology of news publishing would continue to evolve in the years following his Inquiry, and that 'press regulation' should also apply to 'press like services'.

However, he could not have anticipated the many ways in which the media would evolve in the intervening years, which include but are not limited to the following phenomena:

- Traditionally distinct forms of print, digital and broadcast media are converging on devices such as smartphones, laptops, tablets and smart televisions.
- Social media platforms have a growing role as the primary gatekeeper to news content for many consumers, with the capacity to determine which sources of news are easily accessible to which consumers.
- These platforms' control over the media value chain has eroded the advertising-based business model for the news publishing industry and thereby for professional journalism.
- As well as news, platforms also enable the distribution of other forms of content, including advertising and political communications as well as many forms of individual self-expression.
- As a result of these rapid technological changes, consumers are struggling to navigate the media landscape and there is a profound media literacy deficit.
- Meanwhile, there are serious regulatory gaps in relation to media content generally, news content in particular, data protection, advertising and political communications. (IMPRESS)

In light of the changing nature of the news industry, the respondent made some recommendations:

Taken together, these developments show that the entire regulatory framework for the media requires an urgent review. Whilst Sir Brian may have been right in 2012 to recommend the extension of Ofcom's powers, those powers in 2018 are not necessarily adequate to address the challenges posed by the digital media economy. It would be wrong, therefore, to tack on responsibility for press regulation without addressing the challenges facing media regulation more generally.

We have elsewhere recommended a 'Digital Accountability Audit', to ensure that digital intermediaries such as social media platforms and search engines operate in the public interest.

We believe that the PRP would have an important role to play in any such audit, alongside other direct and indirect regulators of news-related material, including IMPRESS, Ofcom, the Advertising Standards Authority, the Information Commissioner's Office and the Electoral Commission.

Before any such audit is launched, we urge all stakeholders to learn the lessons from the media policymaking process that followed the Leveson Inquiry.

In this process (which we summarise at Appendix A), the views of certain industry stakeholders were allowed to overwhelm the interests of other stakeholders, such as journalists and members of the public; and weak claims about 'principled' objections to independent and effective regulation were wrongly taken at face value. (IMPRESS)

Public confidence

As part of the call for information specific to this report we asked: how much confidence can the public have in the systems that are currently in place to protect it from potential harm caused by the press?
We received the following responses:

> *The public can have reasonable confidence in the system of self-regulation that is in place in relation to publishers regulated by IMPRESS.*
> *It is impossible to say how much confidence the public should have in the systems that are in place in relation to other publishers. It may be that some publishers have excellent systems in place and that others have appalling systems. Without independent oversight, as anticipated in the Leveson Report and the Charter, there is no way of knowing, with any certainty, how effective these systems may be.* (IMPRESS)

> *With the exception of those publications regulated by Impress, the public can have little or no confidence in the systems currently in place to protect it from harm caused by the press.*

> *The civil and criminal law remains an inadequate system for the protection of the public. The civil law is expensive and out of the range of ordinary victims of press abuse. Furthermore, it can only provide "after the event" remedies, usually in the form of damages. The criminal law depends on decisions of the prosecuting authorities who are, in general, extremely reluctant to bring cases against the press. In both cases the law is a blunt instrument which cannot ensure compliance with a code of conduct and cannot provide guidance to those who are subject to it to ensure that harm is prevented or minimised.*

> *Individual publishers which have established internal mechanisms for independent scrutiny – such as the Guardian and the Financial Times – may command greater confidence from their readers because they tend not to be the miscreant publications with a long history of causing harm to members of the public which the Leveson system was designed to address. Nevertheless, these processes are not truly independent, and there is no reason why these publications should be exempt from a system designed to address industry practices as a whole.*

> *IPSO has not, to date, engaged in any regulation of its members. Its complaints investigations show a consistent preference for protecting the press from adverse findings rather than protecting the public from harm. Its inadequacies are manifest and almost identical to those of the PCC analysed in the Leveson Report. (Hacked Off)*

> *The chief flaw in the system – willingly tolerated by the Government – has been the refusal of major print news publishers to submit IPSO, the self-regulator that they have created and financed, to the independent oversight of the PRP. This continuing unwillingness to accept independent oversight, together with continuing lapses and abuses by IPSO members, means the public continues to lack confidence in how IPSO works as a regulator. (Liberal Democrats DCMS team)*

> *The challenge for Parliamentarians is to ensure a system of regulation is in place and provides a basis for public confidence. Such a system was delivered through the Leveson recommendations and is embodied by Impress. For Impress publications, we can have considerable confidence that effective protections exist both for members of the public who feel aggrieved and -importantly -for journalists working on those publications.*

> *By contrast, IPSO does not meet those recommendations, and has instead established a body that is controlled by the industry and is barely distinguishable from the discredited PCC which it replaced. Given the record of that body, there is no basis for public confidence.* (Independent and crossbench Members of the House of Lords)

One respondent offered a view on the approved regulator IMPRESS.

> *I sense the [IMPRESS] is regarded by most as a joke since it only appears to have in membership a few very minor publications and simply provides a platform for its Chief Executive to expound his entirely sensible views, largely unreported.*
>
> *[...]*
>
> *[IMPRESS] should be dismantled until such a time that the ineptness surrounding Brexit and its all-consuming focus have ceased, whereupon matters of considerable importance which have been neglected for far too long, including meaningful, important press regulation should be addressed once more.* (Sue Stapely)

Social media publishers

As part of the call for information, we asked: to what extent and in what way are social media platforms that publish news "relevant publishers" for the purposes of the Crime and Courts Act 2013 and what implications, if any, does that have for them, the PRP and/or the public?

The responses we received included the following:

The Crime and Courts Act 2013 ('the Act') sets out a multi-layered definition of 'relevant publishers'. Section 41 of the Act defines a 'relevant publisher' as follows:

(1) In sections 34 to 40, "relevant publisher" means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—
(a) which is written by different authors, and
(b) which is to any extent subject to editorial control.

This is subject to subsections (5) and (6).

(2)News-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—

(a) the content of the material,
(b) how the material is to be presented, and
(c) the decision to publish it.

(3) A person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site.

(4) The fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of subsection (3).

The effect of the paragraphs numbered (3) and (4) appears to be that social media platforms are not relevant publishers for the purposes of the Act.

Nonetheless, there is clearly an urgent need to clarify the responsibilities and liabilities of social media platforms, both in relation to the publication of news- related material and in relation to their activities more generally, and we reiterate the recommendation above for a Digital Accountability Audit. (IMPRESS)

The increasingly blurred line between the print media and social online media makes it imperative that attempts are made to ensure that the regulatory framework reflects the needs of our times in protecting individual citizens, robust and independent journalism, and our democratic institutions. (Liberal Democrats DCMS team)

The definition of "relevant publisher" is contained in section 41 of the Crime and Courts Act 2013, with further details in Schedule 15 of the Act. This definition requires a relevant to publisher to exercise some editorial control over the material which it is published. There is a clear argument that social media sites meet the definition in section 41 and thus are subject to section 40 (when brought into force).

When bodies publish news-related material and are otherwise captured by the section 41 definition, they are capable of regulation by a recognized self-regulator if they do not fall under any of the exemptions in Schedule 15. The model can therefore be extended to social media.

We must emphasise, however, that despite declining hard copy circulation the traditional mainstream newspaper publishers retain a dominant position in online news published and are the most likely source of public harms. Thus, while the Leveson system applies to social media platforms, we believe that the press – both in hard copy and online – must remain the priority. (Hacked Off)

This is a question which goes to the terms of the Crime and Courts Act 2013. But until the relevant incentives are introduced, it is academic. The major publishing companies, which Leveson identified as requiring independent regulation in order to address problems of journalistic abuse, have avoided the established framework; thus, talk of regulating further organisations is premature. (Independent and crossbench Members of the House of Lords)

Political interference

Some respondents shared their views on political interference in press regulation:

> *The treatment of the PRP, and press reform more broadly, by this minority government is an affront to the carefully built and agreed political consensus in this highly sensitive area. To date, the PRP has done an admirable job in standing its ground, and the call, in its last Annual Report to Parliament for the urgent completion of the legislation was timely and appropriate. With the industry arguing that completion of the Leveson Inquiry is 'timed out', and that sufficient reforms have been made, it is easy to feel a sense of futility. But the PRP's achievements are significant – if under-reported and under-appreciated.* (Anonymous)

Views on some publications outside both IPSO and IMPRESS

As part of the call for information, we asked publishers to share information related to some publications that were not members of IPSO or IMPRESS.

Hacked Off stated:

> *Most – though to our knowledge not all – of the publishers quoted have some form of complaints mechanism, with varying degrees of efficacy. It may be useful to undertake an assessment of those systems' operational effectiveness; to our knowledge, no such exercise has been undertaken, and informal reports suggest that the complaints processes of social media platforms, in particular, offer little comfort to complainants and little protection from harm or abuse.*
>
> *However, in respect of almost all other aspects of the Charter criteria – such as independent oversight, safeguarding of standards, affordable arbitration – there is little evidence of compliance in the listed publications or platforms. Different issues arise in relation to each of these bodies. None are subject to independent regulation and insofar as they are not based in the United Kingdom (for example, Facebook, Google, Snapchat and Twitter) they are not subject to most of the provisions of English civil and criminal law.* (Hacked Off)

Views on IPSO

Some respondents shared their views on the complaints body, IPSO:

> *As to IPSO, both we and the Media Standards Trust (MST) have conducted extensive research on IPSO. IPSO and its owner publishers, the Regulatory Funding Company (RFC) have published some of the documents which set out the bodies' regulations and processes on their websites. Their failure to meet the Royal Charter criteria is manifest.*
>
> *To date, the only independent analysis is that conduct by the MST in 2013 which found that IPSO could conclusively be said to have fulfilled just 12 of the 38 criteria. The failure to meet even half of the criteria demonstrates how deeply and profoundly inadequate the IPSO system is. Minor changes announced by IPSO over the last five years have been largely cosmetic.*
>
> *This is confirmed by experience of victims of press abuse and members of the public who deal with IPSO, or otherwise suffer the consequences of an unregulated press. Our recent publication, "Thrown to the Wolves", documents several case studies from the last 12 months of continuing press abuse, and we urge the Panel to read it.*
>
> *In our view, partial compliance is no better than no compliance because the criteria operate collectively. It would be pointless for a self-regulator to satisfy 36 criteria if, for example, its Board were not appointed independently, or its editorial code was not subject to Board approval. It is for precisely this reason that the PRP operates as a bulwark to protect the public from disingenuous or dishonest claims that a regulator is protecting the public interest. Further, the process of formal recognition is not in itself sufficient. While assessing a regulator as compliant is a crucial first step, a vital element of the Leveson framework was protection against industry backsliding. The public therefore requires the assurance of periodic checks to insure against reversion to the kind of industry dominated system which historically has led to a renewed cycle of wrongdoing and abuse.* (Hacked Off)
>
> *IPSO's record is poor. Despite recording in 2017 20,000 complaints, and investigating 398 of these, it has not launched a single investigation into any of its member publications, nor has a single complainant chosen to use its arbitration scheme. In 2017 they upheld 68 complaints with rulings but the process is lengthy and onerous. Although small amendments have been made to its Editors' Code of Practice, this remains in the hands of editors rather the regulator itself as Leveson recommended and as the PRP demands as best regulatory practice. Moreover, problems with the code remain, in particular its refusal to recognise discrimination as a legitimate cause for a group complaint.*
>
> *We were particularly disappointed, following a highly critical report of press behaviour in the Kerslake Report on the Manchester Arena bombing and the subsequent cases of Grenfell Tower victims, that IPSO took no action as a regulator. Despite publicising its own ability to intervene and impose sanctions for breaches of its Code, it has never done so.*

Despite these shortcomings, the media regulation debate would be transformed were IPSO willing to bring itself within the fold of the Royal Charter and PRP oversight. Such compliance is not and never was "state control of the press". Indeed, should a Government come to power less subservient to the wishes of the newspaper proprietors, the Royal Charter would represent the greatest guarantor of press freedoms and protection of the integrity of individual journalists. (Liberal Democrat DCMS team)

What should happen next?

Some respondents made recommendations for actions that they suggested the PRP and others should take:

That the PRP takes on responsibilities to assess the claims of IPSO and other would be regulators, whether or not they apply for recognition.
We also recommend that the PRP joins with the ICO, Ofcom, ASA and the Electoral Commission to examine the regulatory overlaps, gaps and inconsistencies which prevent proper oversight whilst present confusions exist. Until such proactive considerations are underway, the public can have little confidence that systems are in place to protect them from potential media abuse, both offline and online. (Liberal Democrats DCMS team)

Another respondent stated:

It is essential that the PRP continues to stand its ground in the interests of individual citizens, as well as those working to hold this powerful industry to account. So long as there is a PRP recognised Regulator, the PRP is at the heart of the moderate, rationale process, designed by Leveson, to hold the press accountable for their actions and give citizens a low cost means of redress. The PRP's role in this 'press reform ecology' is pivotal. Each organisation plays a different role, but in terms of overall effectiveness the sheer existence of the PRP, poses a challenge to un-recognisable, sham Regulators, and, taken with the requirement on the PRP to report annually to Parliament, it means that the toehold on reform that was achieved in 2011-13, cannot be fully rolled back. (Anonymous)

[...]

In order to consolidate the gains, it has made over the last years and prevent the backsliding seen after earlier press inquiries:

(i) information provision: the industry has abused its dominance of the channels of debate about press reform to distort and mislead the public. While the PRP cannot, and should not, enter the political arena, it could do more to make clear the factual basis of the Leveson reforms. Publishers have unlimited ability to distribute news – _individuals and the public need to be able to hold these powerful industries to account for what they publish. Clear, authoritative information and analysis, is essential for the public to appreciate the important role of the PRP.

(ii) scope of regulation: Leveson's focus, for understandable reasons, was the newspaper industry. His recommendations were, however, 'media-blind'. As the industry evolves to be increasingly web-based, the PRP needs to make sure the conduct of its role is 'fit for purpose'. Any opportunity to engage with news sources publishing on the internet should be taken, and the role of the PRP in protecting the public explained.

(iii) education: informing the British conversation about press accountability with accurate information on, for example, press regulatory regimes in other countries, in particular, those who lead in the international indices of press freedom is much needed. Authoritative, factual information would make an important contribution to maintaining momentum for effective press accountability in the UK. (Anonymous)

We have been extremely disappointed by the Government's failure to implement the recommendations of the Leveson Report. We have supported amendments in the House of Lords to give effect to the Leveson framework for independently audited self-regulation.

We believe that the work of the Press Recognition Panel is as important today as when it was first established. As the Kerslake Review into the Manchester Arena Attack graphically demonstrated, some journalists are still engaging in the kinds of shocking intrusion and misconduct described at the Leveson inquiry.

It is essential that the integrity of the Charter model is retained, so that a future Government can follow through on

Leveson's recommendations.

[...]

In view of the vital role given by Parliament to the PRP as an independent guarantor of press standards, entirely free from both government and industry influence, the Government should urgently review its funding to ensure it continues to have the resources it needs to fulfil its statutory public interest remit. (Liberal Democrats DCMS team)

Conclusions and recommendations

The recognition system

The Leveson Report made a series of recommendations for independent press regulation that were embodied in the Royal Charter and the recognition system.

There is one recognised regulator – IMPRESS – and we remain ready to accept applications for recognition from other regulators.

Larger publishers are resisting joining the recognition system and it does not cover all significant relevant publishers. Although we have fulfilled our role, the system has not been fully implemented by the Government and it has not been given an opportunity to succeed.

Until the recognition system is fully implemented, no-one could judge its success or failure. Success would then be when all or most significant relevant publishers were members of one or more recognised regulators.

Section 40

There is still political involvement in press regulation in the UK. We are completely opposed to this, and it is one of the reasons we support commencement of section 40 of the Crime and Courts Act 2013. The law would take press regulation out of the hands of politicians and give the public the protections that were intended following the Leveson inquiry.

The Government's announcement that it plans to ask Parliament to repeal section 40 comes before the legislation has been commenced and given an opportunity to operate. There is no evidence to suggest that section 40 would harm the press and the reasons for repealing it do not bear scrutiny. There are safeguards in the Charter to protect local publishers.

The Government's delay in commencing the legislation undermines the protection of the public and supports only the interests of those who oppose it. The position of ordinary people and the public interest (including securing freedom of speech for journalists and publishers) in the proper operation of the recognition system has become marginalised.

Section 40 would provide the incentives needed to encourage publishers to sign up to the recognition system.

Publishers outside the recognition system

In order to determine the success or failure of the recognition system, we considered the standards and behaviour of IPSO and some publishers outside the system. This has provided an insight into the variety of approaches to complaints and self-regulation that exist and into how organisations deem themselves a relevant publisher or not.
Having section 40 on the statute books has seemingly led to improved standards and processes amongst IPSO and some publishers. Nevertheless, partial compliance is non-compliance, and IPSO does not meet the Charter criteria, and it does not provide the public with the protections intended following the Leveson Inquiry.

The Financial Times, The Independent, the Evening Standard and The Guardian have instigated their own internal complaints handling systems, however these systems have not been independently reviewed to test the quality, rigour and independence of the service they are providing to the public. The information needed to conduct such a review is not in the public domain.

In terms of social media platforms, it appears to us that there are some that are likely to be relevant publishers in at least some of what they do, however, this is a matter for the courts to clarify.

The lines between the press and social media platforms are continuing to blur. Ironically, the mainstream press continues to resist the system of regulation that was established following the Leveson Inquiry to protect the public, but on the other hand it is leading calls for social media platforms to be regulated. The UK Government (and others around the world) is currently considering how to do this. An unintended consequence of this campaign is that a system of state regulation for social media platforms could be implemented that is subsequently applied to the press.

If it is determined that social media platforms are relevant publishers, then a system of regulatory oversight already exists in the form of the recognition system. All relevant publishers,

including the press should consider applying for recognition.

Recommendations

(1) Lord Leveson recommended that if (but only if) the new system of regulation was considered to have failed then Parliament should consider statutory action. It would be premature to consider introducing statutory regulation. The recognition system must be established first and properly tested: Section 40 of the Crime and Courts Act should be commenced immediately.

(2) We will engage with stakeholders to discuss what role, if any, we might have in a system of regulation that applied to social media platforms that were deemed to be relevant publishers.

(3) Social media platforms who recognise themselves to be relevant publishers should consider moving under the recognition system voluntarily.

(4) We will continue to share our learnings and experience with stakeholders, including those involved in the planning of new systems of regulation for social media platforms that are deemed to be relevant publishers.

(5) The Government acknowledges that the PRP is an important part of the regulatory framework, however it has pledged to remove the incentives that would complete the framework. We would welcome a meeting with the Government to understand its rationale.

7

ANNEX 1 – THE CREATION OF THE PRESS RECOGNITION PANEL

Background to the Royal Charter

There have been ongoing concerns about press standards in the UK for over 70 years.[52]

Since the 1940s, concerns over editorial standards, ethics and privacy have led to a series of reviews and reforms. However, recommendations for statutory regulation have always been rejected.[53] In the 1980s, there was a rise in sensationalised news stories including victims of crime, public figures, politicians and ordinary members of the public. Concerns about press intrusion heightened further in the 1990s due to the increase in tabloid stories generated through unethical and sometimes illegal means.

The now defunct Press Complaints Commission (PCC) was formed in 1991.[54] However, concerns about press behaviour continued into the first decade of this century. 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 (now Sir Brian Leveson).[55]

This was the seventh time in 70 years that a government-commissioned inquiry was instigated to deal with concerns about the press.

Lord Leveson published his report into the culture, practices and ethics of the press five years ago in November 2012. Among the key recommendations was the creation of 'a genuinely independent and effective system of self-regulation'.[56]

Lord Leveson anticipated that some might reject his recommendations and argue that they introduced statutory regulation - a charge that he contested strongly:

'Despite what will be said about these recommendations by those who oppose them, this is not, and cannot be characterised as, statutory regulation of the press. What is proposed here is independent regulation of the press organised by the press, with a statutory verification process to ensure that the required levels of independence and effectiveness are met by the system in order for publishers to take advantage of the benefits arising as a result of membership.'[57]

Discussions on how to implement Lord Leveson's recommendations took place between politicians from all parties, the press and other interested parties.[58] On 30 October 2013, the Charter was granted.[59] The Charter was backed by the Conservatives, Liberal Democrats and Labour.[60]

The Charter provided for the PRP to be the body to oversee UK press regulators. We came into existence as a legal entity on 3 November 2014 when the PRP Board was appointed following an open process that was independent from Government, Parliament, and news publishers, as required by the Charter.[61]

The PRP Board has a unique and unprecedented independence. The Charter itself can only be changed by a two thirds majority of those who vote in the House of Commons, the House of Lords and the Scottish Parliament, and with the unanimous agreement of the PRP Board.[62]

On 10 September 2015, following a public consultation, we announced that we could receive applications for recognition from regulators and we published guidance to support the application process.

Ongoing Royal Charter responsibilities

Following the recognition of a regulator, the Charter requires us periodically to review that regulator's continued compliance with the recognition criteria and the scheme of recognition. The Charter also allows us to undertake 'ad hoc' reviews in exceptional circumstances and where there is a significant public interest in doing so. In August 2016, following a public consultation, we published our approach for conducting these cyclical and ad hoc reviews. In May 2017, again following consultation, we published an amendment to the processes for these reviews.

The Charter provided that we would initially be funded by a grant from the Exchequer. It was anticipated that we would become self-funding through the charging of fees to regulators applying for recognition and fees to recognised regulators. We consulted on our fee charging regime in spring 2017. In August 2017, we published the outcome of that consultation and our fee-charging scheme.

8 ANNEX 2 – RELEVANT PUBLISHERS

The Charter makes clear that its provisions apply to 'relevant publishers' as defined by section 41 of the Crime and Courts Act 2013, which was enacted on the day after the Charter was sealed. Section 41 states:

> (1) "'relevant publisher' means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—
> (a) which is written by different authors, and
> b) which is to any extent subject to editorial control."

'News-related material' also has a specific definition under the Act:

> (2) News-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—
> (a) the content of the material,
> (b) how the material is to be presented, and
> (c) the decision to publish it.
>
> (3) A person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site.
>
> (4) The fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of subsection (3).

The range of news-related publications available in the UK is diverse and includes international, national, regional, local and hyperlocal titles, operating across both print and online.

Technology is continually evolving news publishing, and the market for national, regional and local UK printed news publications is generally characterised by falling circulation.

The picture is more positive amongst the websites of UK national newspapers. The internet has enabled publishers to increase their readership and they are reaching more people directly, via their websites, and indirectly, via social media. However, newspapers have found it difficult to make money from online audiences.

The internet has supported the proliferation of new online-only titles such as HuffPost UK, Buzzfeed, Vice and Vox. Some of these news brands are challenging established publications as they achieve scale, but some are also struggling to break even. Increasingly, news and current affairs programmes on TV and Radio are expanding their newspaper reviews to include significant stories from relevant and influential online sites.

News is increasingly being accessed via social media platforms such as Facebook, Twitter, and Snapchat. However, while they provide publishers with a means to distribute content, it has been argued that they also reduce publishers' advertising revenues.[63]

9

ANNEX 3 – THE ROYAL CHARTER AND THE WIDER LEGAL FRAMEWORK

In his report, Lord Leveson 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. The recognition system was designed to provide such incentives and to offer public protections where publishers fail to sign up.

England and Wales

In England and Wales, the recognition system includes both the arrangements outlined in the Charter and the statutory provisions in the Crime and Courts Act 2013 (CCA 2013).

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

A. Section 34: Awards of exemplary damages

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 members of an approved regulator face 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 are protected against the risk of exemplary damages in either case.[65]

B. Section 40: Awards of costs

To take effect, section 40 needs to be brought into force through the making of a commencement order.

Other than in exceptional circumstances, a person who sued a publisher member of an approved regulator rather than raising the point through the approved regulator's arbitration system would pay their own costs and those of the publisher, win or lose.

Publishers who choose not to join an approved regulator would (other than in exceptional circumstances) pay both sides' costs in legal cases whether they win or lose.[66]

Both section 34 and section 40 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.

The intended impact of the incentives

The court's judgment in the Judicial Review (see Annex 4) articulated how section 34 and section 40 operate, and explained that membership of an approved regulator is optional:

> "Approval of IMPRESS does not oblige any publisher to join it. It does encourage all publishers to support and to subscribe to an alternative regulator should they wish. No publisher is obliged to do either. If, as is its entitlement, NMA opts to do neither then it does not enjoy the benefits of ss. 34 and 40, and endures the detriments of s.40.'
>
> 'This model promotes Leveson's explicit objective of industry-wide self-regulation.'[67]

The incentives were intended to support the recognition system. With reference to IMPRESS' initial four-year funding arrangements, the judgment explains:

> 'Given the incentive structure of the scheme, and that an initially recognised regulator might for a considerable period have a small actual or prospective membership whilst incentives bite, there is no requirement for IMPRESS in the first four years to be funded by members. The more the incentives kick in, the more likely IMPRESS could fund itself from members before the end of that period.'

Scotland and Northern Ireland

In Scotland and Northern Ireland there are no equivalent linked statutory provisions, so there is no recognition system in those countries.

Following the publication of the Leveson Report, Lord McCluskey was invited by the then Scottish First Minister, Alex Salmond, to consider 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.'[68] This proposal was not accepted by the Scottish Parliament.[69]

Data Protection Act 2018

The Data Protection Act received Royal Assent in May 2018.

The Act lists exemptions to the protection of personal data for special purposes that include journalism. It states the codes of practice and guidelines that the courts and the Information Commissioner must have regard to in determining whether it is reasonable to believe that publication would be in the public interest and would therefore be entitled to exemptions. The codes of practice and guidelines in the Act are:

> (a) BBC Editorial Guidelines;
> (b) Ofcom Broadcasting Code;
> (c) IPSO Editors' Code of Practice

Standards Codes adopted by approved regulators are not on the list.[70] The Act omits the independent system that Parliament agreed would oversee press regulation in the UK. The Secretary of State may by regulations amend the list.

Under the Act, the Information Commissioner must review the processing of personal data for the purposes of journalism every four years, and the Secretary of State (or an appropriate person) must produce a report on the effectiveness of the media's dispute resolution procedures (in relation to data protection cases) every three years.

The Commissioner must also produce a data protection and journalism code and produce guidance for the public on how to seek redress against a media organisation that it considers to be failing to comply with data protection legislation.

10

ANNEX 4 – THE JUDICIAL REVIEW OF OUR DECISION TO RECOGNISE IMPRESS

The News Media Association (NMA) applied for a Judicial Review of our decision to recognise IMPRESS.

On 12 October 2017, the High Court rejected all the NMA's arguments. The judges found that their arguments lacked any legal basis and the judgment confirmed that we acted independently, transparently and lawfully when we recognised IMPRESS. The NMA was ordered to pay our costs and the High Court denied the NMA permission to appeal.[71]

The NMA said that IMPRESS should not be recognised due to the scale and nature of its membership. However, the court held that:

> 'There is simply no size requirement in the Charter biting on a Regulator.'

The NMA argued that IMPRESS should not have been recognised because it is funded by an independent trust and it relies on third party funding. Rejecting this, the court held that:

> 'The Charter's plain language shows that funding **by** the members of a Regulator is not required, only **agreement as to** funding from that section of the industry which agrees to be regulated by it. Members of IMPRESS so agree when signing up.'

The NMA contended that because of its funding arrangements, IMPRESS lacked the appearance of independence and so we should not have recognised it. Dismissing this, and endorsing the rigour of our assessment process, the court explained that:

> 'There was before us no suggestion that the PRP applied the wrong approach.'

The NMA argued that the IMPRESS board lacked impartiality. Dismissing that, the court explained that:

> 'In our view the PRP's function is not to appoint, or approve appointment of, members of the Board. That is for the appointment panel. NMA's argument is hopeless on the facts. The Panel dealt with this issue properly.'

Another of the NMA's arguments related to the fact that when IMPRESS applied for recognition, it had adopted the Editors' Code as its initial standards code. Referring to the preamble in the Charter, the court held that:

> 'There was no requirement to adopt the Editor's code save as an initial code. That is what IMPRESS did.'

The NMA also argued that IMPRESS was required by the Charter to have a serving editor on its code committee. Referring to the Charter, the court held that:

> 'The requirement for which NMA argues is simply not found within Criteria 7: "may" means may. … Nothing in the Charter requires the editor's publication to be by a "relevant publisher" or to be a member of IMPRESS.'

Overall, we cannot do anything other than apply the Charter. In particular, we cannot recognise a regulator that does not meet the 29 criteria in full, nor refuse recognition to a regulator which does. The court confirmed the primacy and effect of the Charter when it stated that 'It is plain that the Charter means what it says and does not mean what it does not say.'

We were awarded our costs and the NMA was refused permission to appeal the decision.

On 1 November 2017, the NMA made an application to the Court of Appeal seeking permission to appeal the decision.

In April 2018, the NMA was granted permission to appeal to the Court of Appeal. The appeal order stated:

> 'I do not find either ground of appeal very compelling, but I do not feel able to decide on a summary basis that they have no realistic prospect of success. Any doubt about permission should in any event be resolved in the Appellant's favour in view of the important public interests potentially involved.'

The case was listed for hearing on 17 January 2019, but on 5 December 2018, the NMA abandoned its case and agreed to pay the PRP's legal costs.

The outcome of the Judicial Review confirms that our interpretation on the Charter was sound.

We remain ready to receive applications for recognition from regulators.

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ANNEX 5 – POLITICS AND PRESS REGULATION

In October 2015, Secretary of State John Whittingdale explained that he would not commence section 40 because he was 'not convinced the time is right for the introduction of these costs provisions.' He added:

'I would like to see the press bring themselves within the Royal Charter's scheme of recognition. What is key is that we should have a regulator that is tough, independent, fully subscribed and that commands confidence.'[72]

In November 2016 Secretary of State Karen Bradley, announced a consultation on section 40 of the Crime and Courts Act 2013 and Part 2 of the Leveson Inquiry.[73]

The consultation document put forward four options:

a) Government should not commence any of section 40 now, but keep it under review and on the statute book;

b) Government should fully commence section 40 now;

c) Government should ask Parliament to repeal all of section 40 now;

d) If Government does not fully commence section 40 now, Government should partially commence section 40, and keep under review those elements that apply to publishers outside a recognised regulator.

We provided a response stating that section 40 should be commenced immediately if the recognition system was to be given an opportunity to succeed.[74]

We also stated that continuing to keep section 40 commencement under review suggests a view that there is a need for further evidence to justify putting the recognition system properly into effect. This goes against Lord Leveson's recommendation that incentives were needed, and it undermines the principle that politicians should not be involved in press regulation.

Our response also explained that if section 40 was repealed, there would be no significant mechanism for incentivising publishers to sign up to the recognition system and there would be no inexpensive means for ordinary people to challenge illegality by publishers.

Furthermore, not applying section 40 to publishers outside a recognised regulator system means that there would be no requirement for them to have (among other things) an independent and guaranteed arbitration system. The public would therefore still be dependent on the courts for seeking justice in relation to such publishers but without the costs provisions of section 40 to make that affordable.

Some publishers opposed to the recognition system mounted a national campaign through which misinformation about us, the role of section 40, and the new system of regulation was shared. To address this, we produced an information document that provided facts about

the recognition system,[75] an updated extract from which is attached as Annex A to this report.

In its February 2017 response to the Government's consultation, the House of Commons Culture, Media and Sport Committee stated that it did not believe section 40 should be repealed, and that without secure legal and financial incentives to participate, any system of regulation is likely to falter. The Committee explained:

> 'All of us are of the view that the press have been allowed enough time to create a fully Leveson-compliant regulator; it has chosen not to do so. We all consider there is a significant advantage in partial commencement of Section 40 (2) now, which would allow publications a valuable opportunity to legal protections to bolster their investigative journalism if they sign up to an approved regulator. This would be a time-limited concession, to enable the press to create a fully Leveson compliant regulator—for instance, by reforming Ipso, if its members decided not to join another body.'

The Committee proposed a clear timetable and recommendation for action:

> 'If IPSO itself were to fall short of what is expected of it under Leveson, the Committee would support the full commencement of section 40 in one year's time.'[76]

However, the Committee did not indicate who it thought might determine whether IPSO was Charter-compliant for the purposes of that exercise. We are the only body set up to determine recognition following an application. As explained elsewhere, it is clear that, even on the basis of the limited information publicly available, IPSO does not meet the Charter criteria in many respects.

In April 2017, Prime Minster Theresa May announced that a general election would be held on 8 June 2017. Subsequently, the main parties published their manifestos and made pledges about press regulation.

The Conservative Party pledged to repeal section 40, stating that the legislation would 'force media organisations to become members of a flawed regulatory system or risk having to pay the legal costs of both sides in libel and privacy cases, even if they win.'[77]

In its manifesto, the Labour Party pledged to implement the recommendations of the Leveson Report, stating that 'victims of phone hacking have been let down by a Conservative government that promised them justice, but failed to follow through.'[78]

The Liberal Democrats stated: 'In light of the press's failure to engage in effective self-regulation, [we will] seek to ensure delivery of independent self-regulation.'[79]

Labour and the Liberal Democrats both subsequently clarified that their manifesto pledges included a commitment to commence section 40.[80]

Following the election, the Conservative Party formed the current government. Karen Bradley was reappointed as Secretary of State for Culture, Media and Sport.[81]

The subsequent Queen's Speech did not include measures to repeal section 40.[82]

In October 2017, Karen Bradley appeared in front of the Digital, Culture, Media and Sport Committee. During proceedings, she informed the Committee that the Government's decision and response to the consultation would be published before the end of the year.[83]

The Secretary of State was asked what harm could be caused by implementing section 40 and she stated a number of concerns. We subsequently wrote to the Secretary of State to clarify that the new system of regulation includes specific protection for local and regional publishers to avoid causing them financial hardship. We also explained that the Leveson Inquiry and the new system of regulation considered the full range of relevant publishers, including online and print publications, and that the system was intended to work for all relevant publishers that exist today. We also outlined how the system of incentives was intended to operate, and that publishers were unlikely to sign up to the recognition system without them.[84]

In January 2018, Matt Hancock was appointed as Secretary of State for Digital, Culture, Media and Sport.

In March 2018, Matt Hancock announced the outcome of the Government's consultation on section 40 of the Crime and Courts Act 2013 and he stated that the Government intended to ask Parliament to repeal section 40 of the Crime and Courts Act at the earliest opportunity.

In May 2018, in response to a parliamentary question, the Government stated:

> 'The Press Recognition Panel remains an important part of the regulatory framework.'[85]

In June 2018, the Government launched the Cairncross Review. Led by Dame Frances Cairncross, the review is looking at how to sustain

the production and distribution of high-quality journalism in a changing market. The review is focused on investigating:

- The overall state of the news media market
- Threats to financial sustainability
- The role and impact of digital search engines and social media platforms
- How content and data flows are operated and managed
- The role of digital advertising

We responded to the review to explain that a sustainable press requires a system of independent self-regulation that protects both the public and the industry. The Press Recognition Panel (PRP) is a vital part of that system and we support high-quality journalism.[87]

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ANNEX 6 – MYTHS AND FACTS ABOUT THE RECOGNITION SYSTEM

Some of those opposed to the Press Recognition Panel (PRP) have given a false impression of the PRP and the recognition system. This Annex addresses some of that misinformation.

Myth

The Charter and the PRP amount to state control.

Fact

The Government and politicians have absolutely no say or involvement in how the PRP is run or in its decisions, and not even any ability to influence it. The Charter completely separates the Government, Parliament, and politicians from press regulation.

The Charter can be only be amended by a two-thirds majority of each of the House of Commons, the House of Lords and the Scottish Parliament, and with the unanimous agreement of the PRP Board.

The PRP has no say in how the press operates or how regulators are run. The PRP's only role is to assess regulators who choose to apply for recognition. The system of recognition and the PRP do not provide any means for the state, for Government or for politicians to prevent publishers exercising free speech.

Myth

The Charter and the recognition system do not cover digital and online publications.

Fact

This is a misunderstanding of the scope of the recognition system. The recognition system applies equally to publications available online, in print, and both. Generally, if a publication can be sued for what it publishes (online or in print) in England and Wales, the new system of regulation applies to it.

Myth

Bringing section 40 into force would make publishers have to choose between paying all the legal costs of anyone who challenged them in court ,or joining IMPRESS.

Fact

Relevant publishers can choose to set up their own regulator and that regulator can apply for recognition. The Charter envisages multiple approved regulators.

Myth

Section 40 would impact on press freedom and limit investigative journalism.

Myth

Section 40 and arbitration schemes could bankrupt the local press because joining an approved regulator to avoid facing costly legal challenges would instead lead them to face costly arbitration challenges.

Fact

Arbitration is designed to be cheaper than legal challenges in the court. The new system of regulation also includes specific protection for local and regional publishers to avoid causing them financial hardship if the problem occurred. The PRP has a specific power to disapply the arbitration requirements for local and regional publishers.

Additionally, as with the courts, there is a filter system for arbitration, and claimants would need an arguable case before they could take a claim forward through arbitration. Vexatious or frivolous challenges would be filtered out.

Myth

It is not necessary for all 29 criteria to be met by a regulator as some criteria are more important than others. IPSO meets most of the Charter criteria and that is all that is required.

Fact

The recognition criteria are interlinked, and none is more important than another. If a regulator does not meet one or more of the criteria, it cannot be recognised by the PRP. Unless all criteria are met, the freedom of the press and the public interest are not protected.

In accordance with the Charter and the legal framework surrounding it, only the PRP can assess, grant and remove recognition. IPSO has not applied to be independently assessed by the PRP.

As part of our consideration of the success or failure of the recognition system, we have reviewed some aspects of IPSO. Based on limited publicly available information, IPSO does not meet the charter criteria, and it does not provide the public with the levels of protection intended following the Leveson Inquiry.

Myth

If the public had access to low-cost arbitration, the section 40 incentives and the rest of the Charter would be unnecessary.

Fact

The option of low-cost arbitration alone would not be enough to provide the public protection which the Charter provides for. For any arbitration process to be an effective alternative to the courts for ordinary people, it would need to be mandatory for the publishers concerned and sit within the wider framework required by the Charter.

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ANNEX 7 – TIMELINE OF THE HISTORY OF THE PRESS RECOGNITION PANEL

July 2011	Prime Minister announces public, judge-led inquiry into the culture, practices and ethics of the press.
Nov 2012	Lord Justice Leveson publishes his report and recommendations for the future regulation of the press.
Feb 2013	Proposals for a draft Royal Charter are published.
Oct 2013	The Royal Charter creates the Press Recognition Panel (PRP) to independently oversee press regulation.
Nov 2014	The PRP board is appointed and the PRP formally comes into existence.
Jun-Jul 2015	The PRP consults on its approach to receiving and assessing applications for recognition from regulators.
Sept 2015	The PRP announces that regulators can apply for recognition.
Oct 2015	Secretary of State for Culture, Media and Sport, John Whittingdale says that it is not the right time to commence section 40 of the Crime and Courts Acts.
Nov 2015	Section 34 of the Crime and Courts Act (exemplary damages) comes into force.

Jan 2016	IMPRESS applies to the PRP for recognition.
Feb-Sept 2016	Three public calls for information on IMPRESS' application for recognition.
Aug 2016	The PRP publishes its approach to reviewing approved regulators.
Oct 2016	The PRP publishes its first report on the recognition system.
Oct 2016	The PRP recognises IMPRESS as an approved regulator.
Nov 2016	Secretary of State for Culture, Media and Sport, Karen Bradley, announces a consultation on the Leveson Inquiry and its implementation.
Dec 2016	The News Media Association (NMA) informs the PRP that it intends to apply for a Judicial Review of the PRP's decision to recognise IMPRESS.
Jan 2017	The Government's consultation on the Leveson Inquiry and its implementation closes.
May 2017	The PRP publishes amendments to its approach to reviewing approved regulators.
June 2017	General election held.
Aug 2017	The PRP publishes its fee charging structure.
Sept 2017	Data Protection Bill has its first reading in the House of Lords.
Oct 2017	High Court judgment: The PRP successfully defends Judicial Review proceedings brought by NMA.
Oct 2017	Secretary of State for Digital, Culture, Media and Sport, Karen Bradley, appears in front of the Digital, Culture, Media and Sport Committee.
Nov 2017	The PRP publishes its second annual report on the recognition system.
Mar 2018	Government announces the outcome of its consultation on Section 40 of the Crime and Courts Act.
May 2018	Data Protection Act receives Royal Assent.
Dec 2018	NMA abandons its Judicial Review case and agrees to pay the PRP's costs.

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