



Press Recognition Panel

State of Recognition Report 2018

In this submission, we respond to the questions posed by the Press Recognition Panel (PRP) in your Call for Information on the Recognition System. We focus our response on those questions where we have relevant information.

1. To what extent does the new system of genuinely independent and effective system of press self-regulation recommended by Leveson exist today?

- 1.1.** 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.
- 1.2.** IMPRESS: The Independent Monitor for the Press ('IMPRESS') currently regulates 64 publishing companies, which are collectively responsible for 110 news publications across the UK.
- 1.3.** On 25 October 2016, the Press Recognition Panel (PRP) confirmed that IMPRESS meets the criteria for independent and effective regulation derived from the Leveson Report and set out in the Royal Charter on Self-Regulation of the Press ('the Charter').
- 1.4.** 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.
- 1.5.** In his Report, Sir Brian Leveson considered what should be done in such a scenario. He did not make firm recommendations but suggested that options available to the government would be to expand the remit of Ofcom or the

Information Commissioner's Office (ICO) to include direct regulation of the press; or to establish a new body for that purpose.¹ He stated his preference that Ofcom should take on this role, and concluded that, in such a scenario, Ofcom's powers should be extended to apply to the press and 'press like services' provided through digital media.²

1.6. Sir Brian Leveson was right to anticipate that some news publishers would reject independent regulation. He was also 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'.

1.7. 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:

1.7.1. Traditionally distinct forms of print, digital and broadcast media are converging on devices such as smartphones, laptops, tablets and smart televisions.

1.7.2. 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.

1.7.3. 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.

1.7.4. 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.

1.7.5. As a result of these rapid technological changes, consumers are struggling to navigate the media landscape and there is a profound media literacy deficit.

1.7.6. Meanwhile, there are serious regulatory gaps in relation to media content generally, news content in particular, data protection, advertising and political communications.

1.8. 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,

¹ Lord Justice Leveson, *An Inquiry into the Culture, Practices and Ethics of the Press* (2012), Part K, Chapter 8.

² *Ibid*, Part K, Chapter 8, 7.7.

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.

1.9. 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.

1.10. 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.

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

1.12. 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.

2. 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?

2.1. The public can have reasonable confidence in the system of self-regulation that is in place in relation to publishers regulated by IMPRESS.

2.2. 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.

3. 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?

3.1. The Crime and Courts Act 2013 ('the Act') sets out a multi-layered definition of 'relevant publishers'.³

3.2. 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).

3.3. 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.

3.4. 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.

4. Are you aware of any facts or evidence related to the following organisations that would be useful in assessing their compliance with the Royal Charter criteria: BuzzFeed UK, Facebook, the Financial Times,

³ See <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted> last accessed 2 October 2018.

Google, the Guardian, HuffPost, the Independent, IPSO, LADBible, Pink News, Private Eye, Reuters, Snapchat, Twitter, Yahoo! News?

4.1. IMPRESS has not engaged with any of these organisations as a complainant and therefore we do not have direct information about their compliance or otherwise with the Charter criteria.

Appendix A: the post-Leveson policymaking process

1. The Leveson Inquiry into the Culture, Practices and Ethics of the Press was established by the Government in response to the failure of the Press Complaints Commission (PCC) to address widespread breaches of legal and ethical standards of journalism, most notably in the form of so-called 'phone hacking'.⁴
2. In the course of a 17-month-long Inquiry, Lord Justice Leveson took evidence from numerous witnesses, including newspaper editors and executives, who argued that the PCC must be replaced with a new and more effective body. Leveson agreed. He concluded that the PCC's weaknesses were not the fault of any individual, but of a regime in which the regulator was effectively controlled by the industry being regulated.
3. In his report, published on 29 November 2012, Leveson set out detailed recommendations for a future regulatory regime. He expressed a preference for the establishment of a single self-regulatory body ('regulator'), but accepted that separate sections of the press might choose to establish separate regulators.⁵
4. He recommended that any such regulator or regulators should be approved against the criteria set out in his report by an independent body. He suggested that the Office for Communications (Ofcom) should take on this role, alongside its statutory duties in relation to broadcast and telecommunications regulation.⁶
5. Leveson rejected arguments for mandatory regulation. However, he recognised that news publishers might need encouragement to join a regulator that would robustly uphold standards of professional journalism. Therefore, he recommended that those publishers who joined an approved, or 'recognised', regulator should enjoy protections against costs in any legal actions relating to libel, privacy or harassment.⁷ Those publishers who did not join such a regulator should be exposed to the opposite risks.
6. Leveson concluded that a degree of statutory intervention would be necessary to underpin the process of recognition. He was adamant that any statute should include an explicit guarantee of press freedom.⁸
7. Leveson described this model, whereby a regulator is overseen by an independent recognition body, as 'independent self-regulation'. In its essentials,

⁴ See the statement made by the Prime Minister, Rt Hon David Cameron MP, to the House of Commons on 13 July 2011, cited in Lord Justice Leveson, *An Inquiry into the Culture, Practices and Ethics of the Press* (2012), Part A, ch 1, para 1.1.

⁵ *ibid*, Part K, chapter 7, 6.37.

⁶ *ibid*, Part K, chapter 7, 6.23.

⁷ *ibid*, Part K, chapter 7, 5.5.

⁸ *ibid*, Part K, chapter 7, 6.41.

the framework resembles the model of regulation to which many British news publishers submit in Ireland; and Leveson worked on the assumption that the major newspaper publishers, who had engaged closely with his Inquiry, would play their part in implementing his recommendations.

8. During the Inquiry, Lord (Guy) Black gave evidence as chair of the Press Board of Finance (Pressbof), the industry body which coordinated funding for the PCC, and Lord (David) Hunt gave evidence as chair of the PCC. Lords Black and Hunt assured Leveson that moves were underway to establish a new and more robust self-regulatory body. They and other witnesses contemplated the potential role of Parliament in creating statutory provisions related to the role of the regulator.⁹
9. Such evidence might have led Leveson to expect that his recommendation for self-regulation, with statutory underpinning for a recognition body, would be welcomed by the newspaper industry. Indeed, there was extensive dialogue between the Government and the dominant newspaper publishers in the months following the publication of the Leveson Report. In January and February 2013, senior newspaper executives met Oliver Letwin, Minister for Government Policy, on at least 20 occasions and Maria Miller, Secretary of State for Culture, Media and Sport, on at least 17 occasions, to 'discuss Leveson implementation'.¹⁰
10. These meetings culminated in Government proposals to implement Leveson's recommendations in a modified form. In place of Ofcom, a new body would be created to assess whether a regulator or regulators met the Leveson criteria. In place of statute, the Government proposed to incorporate this body through Royal Charter, a mechanism which is normally used to establish independently run bodies with public functions, such as universities and professional associations. Leveson's proposal for a statutory guarantee of press freedom was ditched along with his proposed statute.
11. On 13 February 2013, the trade magazine *Press Gazette* reported that newspaper and magazine publishers 'broadly welcomed' Government plans to underpin press regulation through the Charter mechanism.¹¹ Paul Vickers, Chair of an 'Industry Implementation Group', was reported as saying:

We welcome this very constructive announcement, the fruit of two months of intensive talks involving the newspaper and magazine industry

⁹ *ibid*, Part K, chapter 7, 6.1–7.28.

¹⁰ See Martin Moore, 'How the British Press Distorted Reporting of...the British Press', Free Speech Debate (3 November 2014), < <http://freespeechdebate.com/discuss/how-the-british-press-distorted-reporting-of-the-british-press/> last accessed 2 October 2018.

¹¹ 'Press Owners Welcome Tory Plan for Independent Regulator Underpinned by Royal Charter', *Press Gazette* (13 February 2013) <https://www.pressgazette.co.uk/press-owners-welcome-tory-plan-independent-regulator-underpinned-royal-charter/> last accessed 2 October 2018.

*and all three main political parties. All the framework of the new regulatory body is already in place; today's publication of the proposed Royal Charter and Recognition Criteria is a vital development which means the work of setting it up can begin as soon as the Royal Charter is established.*¹²

12. An editorial in the Daily Mail newspaper also welcomed the proposal to establish the recognition body by Charter, comparing it favourably with attempts to amend the Defamation Bill then going through Parliament to establish a recognition body by statute.¹³
13. However, by the time that a draft Charter with all-party agreement ('the all-party Charter') was published on 18 March 2013, relations between the industry and Government had become more strained. The industry group rejected the all-party Charter – not because they spurned the use of a Charter as a mechanism, but because they objected to certain elements of this particular Charter. Pressbof, the body chaired by Lord Black, petitioned the Privy Council to adopt an alternative Charter ('the Pressbof Charter').¹⁴
14. There are several significant differences between the all-party Charter and the Pressbof Charter:¹⁵
 - 14.1. The Pressbof Charter gave Pressbof itself responsibility for initiating and funding the recognition process.¹⁶
 - 14.2. Whereas the all-party Charter kept politicians at arm's length from the business of press regulation, the Pressbof Charter allowed politically-active members of the House of Lords to sit on the board of the recognition body and the regulator.¹⁷

¹² *ibid.*

¹³ 'A Man of Principle and Political Pygmies', Daily Mail, 12 February 2013 <https://www.dailymail.co.uk/debate/article-2277788/A-man-principle-political-pygmies.html> last accessed 2 October 2018.

¹⁴ Draft Royal Charter for the Independent Self-Regulation of the Press. See <https://privycouncil.independent.gov.uk/wp-content/uploads/2013/05/Press-Standards-Board-of-Finance-Ltd-Petition-and-Draft-Charter.pdf> last accessed 2 October 2018.

¹⁵ See 'The Cross-Party Royal Charter vs the Pressbof Royal Charter: A Comparison' (London: Media Standards Trust, 2013), for a detailed comparison of the two Charters: <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/06/Charter-vs-Charter-23-05-13-PDF.pdf> last accessed 2 October 2018.

¹⁶ *ibid.*, p [5].

¹⁷ *ibid.*, p [4].

- 14.3. Whereas the all-party Charter could only be amended or dissolved with the consent of a two-thirds majority in both Houses of Parliament, the Pressbof alternative gave the industry funding body a veto on any changes.¹⁸
- 14.4. The Pressbof Charter did not require any regulatory investigations to be ‘simple and credible’.¹⁹
- 14.5. And it watered down the requirement on the regulator to provide an arbitration scheme.²⁰
- 15.** These changes did not seem likely to deliver a more independent or effective system of regulation, and Pressbof’s petition was accordingly rejected by the Privy Council on 9 October 2013.
- 16.** Unlike normal Charters, which can be amended at will by the Government, the Royal Charter on Self-Regulation of the Press can only be amended or repealed by a two thirds majority in both Houses of Parliament and, where relevant, the Scottish Parliament, with the unanimous agreement of the Board of the PRP. These provisions, contained within the Charter itself, were reinforced by section 96 of the Enterprise and Regulatory Reform Act 2013, which stipulates that:
- Where a body is established by Royal Charter after 1 March 2013 with functions relating to the carrying on of an industry, no recommendation may be made to Her Majesty in Council to amend the body’s Charter or dissolve the body unless any requirements included in the Charter on the date it is granted for Parliament to approve the amendment or dissolution have been met.*²¹
- 17.** This is designed to put an additional lock on the risk of future political interference in press regulation. It is also possible for any self-regulatory body to withdraw from the scheme of recognition at any time, further mitigating any risk of political interference, however remote.
- 18.** Pressbof sought leave to apply for judicial review of the Government’s rejection of its Charter and for an injunction of the all-party Charter. They argued that the Government’s rejection of their Charter was unfair, as they had not been given any criteria against which their Charter would be judged.²² These applications were rejected at an emergency hearing on 30 October 2013, when the

¹⁸ *ibid*, p [5]

¹⁹ *ibid*, p [6].

²⁰ *ibid*, p [5].

²¹ Available at <http://www.legislation.gov.uk/ukpga/2013/24/section/96/enacted> last accessed 2 October 2018.

²² *Press Standards Board of Finance Ltd, R (On the Application Of) v The Secretary of State for Culture, Media and Sport* [2013] EWHC 3824 (Admin) (30 October 2013), paragraph 7.

Administrative Court ruled that Pressbof had been given an adequate opportunity to understand what was required, both in the course of the Leveson Inquiry and during its aftermath.²³ A final version of the all-party Charter was sealed later the same day.

19. Newspaper coverage has tended to be negative about the use of Royal Charter to establish the recognition body – despite the industry’s own attempted use of a Charter mechanism. Of 1,421 articles on this subject published by national newspapers in the year following Leveson’s report, 61% portrayed Leveson and the all-party Charter as a threat to press freedom.²⁴
20. Peter Wright, Editor Emeritus of Associated Newspapers, has stated that the all-party Charter was ‘agreed by politicians and the Hacked Off lobby group without input from news publishers’.²⁵ The News Media Association has stated that its predecessor bodies, the Newspaper Society and the Newspaper Publishers’ Association, ‘supported the legal proceedings brought by the industry against the Privy Council, marking the industry’s rejection of the Royal Charter for Press Self regulation [sic], including the role and remit of the Press Recognition Panel’.²⁶
21. These statements do not quite capture the nature of those legal proceedings, which – as described above – did not mark ‘the industry’s rejection of the Royal Charter’ so much as the industry’s desire to assert an alternative Charter. In fact, as the record of ministerial meetings and public statements shows, publishers had considerable input into the Charter process.
22. IPSO was conceived as a riposte to the post-Leveson framework when this framework did not evolve in a way that met the demands of certain newspaper publishers. IPSO does not meet the criteria for independent and effective self-regulation of the press, either as set out by Sir Brian Leveson or as these ‘recognition criteria’ were distilled in the Royal Charter on Self-Regulation of the Press.

²³ *ibid*, para 19. Pressbof sought leave to appeal but their application was rejected on 1 May 2014. At that point, the *Guardian* newspaper reported that Pressbof were considering whether to pursue a direct challenge to the all-party Charter: see ‘Press Regulation: Newspapers Lose Court of Appeal Battle over Rival Royal Charter’ (1 May 2014) < <https://www.theguardian.com/media/2014/may/01/press-regulation-newspaper-court-appeal-royal-charter> last accessed 2 October 2018. No such challenge was made.

²⁴ See Gordon Ramsay, ‘How Newspapers Covered Press Regulation After Leveson’ (London: Media Standards Trust 2014) < <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/05/MST-Leveson-Analysis-090513-v2.pdf> last accessed 2 October 2018.

²⁵ Associated Newspapers, ‘Response to Press Recognition Panel Consultation on Proposals for Recognition of Press Self-Regulators’.

²⁶ ‘News Media Association Response to Press Recognition Panel Consultation’.

23. The Board of IPSO is not independent, as their powers are subject to veto by the Regulatory Funding Company (RFC), an industry body which sets IPSO's budget and owns and controls the use of the Editors' Code of Practice, the standards code upheld by IPSO.

24. Representatives of IPSO and the RFC have repeatedly stated that IPSO has not submitted to the oversight of the PRP 'on principle'. It is not entirely clear what principle they have in mind. A number of recent developments suggest that they are not opposed on principle to political or statutory involvement in the business of news publishing.

25. For example:

25.1. Several members of IPSO have accepted public funding for their publications through the BBC Local Democracy Reporter (LDR) scheme. The recipients of LDR funding will be partly subject to regulation under the statutory broadcasting code administered by Ofcom, a statutory regulator. Neither IPSO nor the RFC have objected 'on principle' to this scheme. In fact, the News Media Association (NMA), an industry body which shares premises and personnel with the RFC, was actively involved in lobbying for and establishing the LDR scheme.

25.2. All members of IPSO enjoy a qualified exemption from certain provisions of the Data Protection Act 2018 ('the Act'), through Section 124 of the Act. This part of the Act explicitly recognises the Editors' Code of Practice. As a result, news publishers which subscribe to IPSO, or which are allowed by the RFC to adopt the Editors' Code, enjoy a privileged status in relation to the law. This privilege may be removed or modified at any time through secondary legislation. Neither IPSO nor the RFC have objected 'on principle' to the capacity here for political oversight or influence over the press.

25.3. Section 179 of the Act requires the Secretary of State for Digital, Culture, Media and Sport to report on the use and effectiveness of 'alternative dispute resolution procedures [...] in cases involving a failure, or alleged failure, by a relevant media organisation to comply with the data protection legislation'. Again, neither IPSO nor the RFC have objected 'on principle' to this provision, which appears to pose a risk (however remote) of political interference with the press.

25.4. Section 178 of the Act requires the Information Commissioner to conduct a periodic review of the processing of personal data for the purposes of journalism. In order to conduct this review, the Commissioner has considerable investigatory powers. Neither IPSO nor the RFC have objected

‘on principle’ to this provision, which gives a statutory regulator considerable powers to monitor and intervene in the affairs of news publishers.

- 26.** It is reasonable to conclude that the reasons for IPSO’s non-compliance with the Leveson criteria, as distilled in the Charter, and its failure to submit to the PRP’s oversight are not, in fact, matters of ‘principle’, but pragmatic and political choices. The effect of these choices is to ensure that the news publishers which established IPSO retain control of IPSO’s appointments, powers and standards code.