

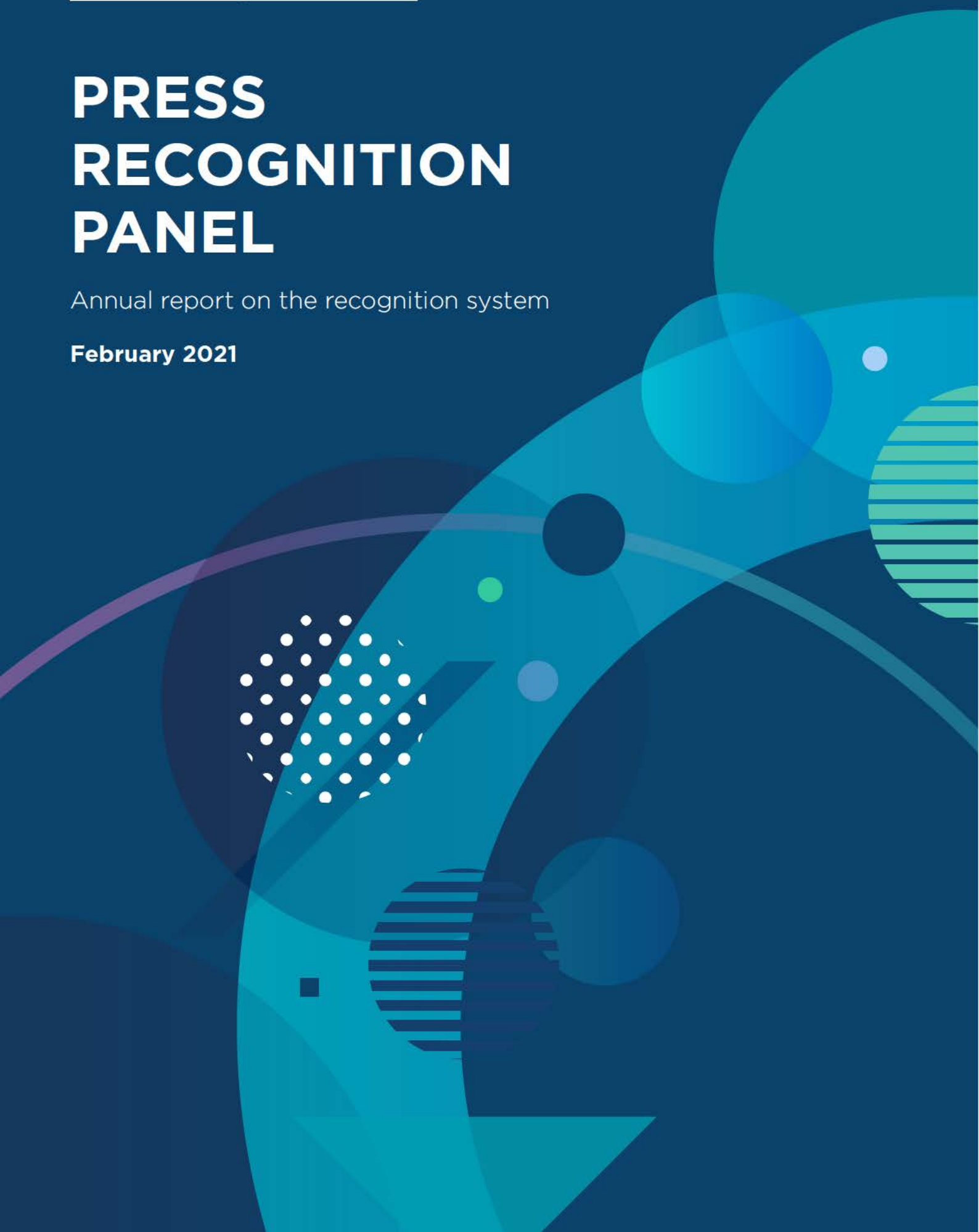
PRP

INDEPENDENTLY
OVERSEEING
PRESS REGULATION

PRESS RECOGNITION PANEL

Annual report on the recognition system

February 2021



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

10 February 2021

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CHAIR'S INTRODUCTION

Lord Justice Leveson (now Sir Brian Leveson) published his report into the culture, practices and ethics of the press in November 2012. At the Leveson Inquiry, victims of press abuse shared their experiences of intrusiveness, inaccurate reporting and unethical behaviour by news publishers. The inquiry heard from hundreds of witnesses, and experts gave evidence and views.

The Leveson Report made clear recommendations that would protect both the public and the public interest in freedom of speech. It proposed a genuinely independent and effective system of self regulation, with processes in place to ensure that regulators meet the minimum required levels of independence and effectiveness.

However, in this, our fifth annual report on the regulation of news publishers in the UK, we again report that the system intended to protect the public is still not in place. Section 40 of the Crime and Courts Act has still not been commenced. That provision would provide an incentive for publishers to join or form an approved regulator, and also protect the public including the public interest in the freedom of speech.

It is now clear the Government does not intend to put those public protections in place. That political interference and involvement means that the recognition system still does not cover the majority of news publishers (as the Leveson Report had intended) and so is failing.

Parliament should now consider how to protect the public as was agreed following the Leveson Report. The forthcoming online harms legislation could be an opportunity for that. However, it is important that the regulation of social media through that legislation does not lead to overlapping or inconsistent regulatory systems. Within the confines of our role and the Royal Charter, we commit to working with all interested parties to ensure the regulation of news published via social media is consistent with the recognition system, protects the public as was intended following the Leveson Report, and defends freedom of speech.

Our 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 of the Press Recognition Panel

EXECUTIVE SUMMARY

The Leveson Inquiry

1. In the mid to late 2000s, people across the UK and around the world were shocked and outraged by revelations that some parts of the British press had engaged in criminal activity, including phone hacking over many years. From murdered schoolgirl Milly Dowler to Prince Charles, victims of press abuse included ordinary members of the public, as well as high profile individuals and celebrities.
2. In 2011, in response to the public outcry, a judicial public inquiry was launched: The Leveson Inquiry into the Culture, Practices and Ethics of the British Press. A series of public hearings were held throughout 2011 and experts gave evidence and views. Victims of press abuse shared their experiences of intrusiveness, inaccurate reporting and unethical behaviour by news publishers.
3. In response to the revelations, Lord Justice Leveson (now Sir Brian Leveson) proposed a genuinely independent and effective system of self regulation, with processes in place to ensure that regulators met the minimum required levels of independence and effectiveness. He recommended that there should be a system of incentives to encourage the press and news publishers to participate, and mechanisms to ensure the public had low cost access to redress in relation to those publishers that chose not to do so. He also said that politics should play no part in press regulation.

The Royal Charter

4. In response to the Leveson Report, the Press Recognition Panel (PRP) was established in 2014 by Royal Charter independently to oversee press regulation in the UK. The Royal Charter had cross party support and was granted to give effect to the Leveson Inquiry's recommendations. It sets out 29 criteria based on Lord Leveson's recommendations.

The story of Milly Dowler

On 21 March 2002, Amanda Jane "Milly" Dowler, a 13 year old English schoolgirl, was reported missing by her parents after failing to return home from school.

On 23 June 2011, Levi Bellfield, who was already serving three life sentences for the murders of Marsha McDonnell and Amélie Delagrangé, and the attempted murder of Kate Sheedy, was found guilty of abducting and murdering Dowler and sentenced to an additional whole life tariff.

That same year, it was revealed that journalists from the now defunct tabloid newspaper News of the World had accessed Dowler's voicemail after she was reported missing, giving her parents false hope she was still alive. The resulting outcry from the British public contributed to the closure of the newspaper and led to a range of investigations and inquiries into phone hacking and media ethics in British media.

5. One of the PRP's roles is to assess regulators against the Royal Charter criteria. Applying to be assessed is voluntary. However, if a regulator complies with the criteria, it means among other things that it is:
 - properly independent, including of Government and the publishers it regulates;
 - equipped with the powers and mechanisms to ensure that those publishers adhere to standards of accuracy and fairness;
 - providing the public with proper opportunities to raise concerns about the conduct of those publishers; and
 - adequately funded to do its job.

The PRP's independence

Changing the Royal Charter requires a two thirds majority of those who vote in the House of Commons, the House of Lords and the Scottish Parliament and the unanimous agreement of the PRP Board. Along with the fact that we were appointed entirely independently, this gives the PRP a unique and unprecedented independence and prevents politicians from interfering with our work and decisions.

IMPRESS

6. In October 2016, we recognised IMPRESS as an approved regulator because it met all 29 Recognition criteria.
7. We completed the first Cyclical Review of IMPRESS in March 2019, which confirmed that IMPRESS continued to meet the criteria.
8. We continue to oversee IMPRESS, and it is subject to our processes for Ad Hoc and Cyclical Reviews.
9. IMPRESS currently regulates 104 publishers, who produce 174 diverse titles across the UK in print and online. These include local, regional, national and international titles. IMPRESS has extended self regulation to areas of news publishing that were previously unregulated.
10. The remainder of the press and news publishing industry has chosen not to move under the recognition system and not engage with the system of properly independent regulation that was devised to protect the public following the Leveson Inquiry.

Other approaches

11. The Financial Times, The Independent, the Evening Standard and the Guardian have instigated complaint handling systems. These systems have not been independently reviewed to confirm the quality and independence of the service being provided to the public. However, by their nature, they are not independent of their publishers, and this is not the same as an effective system of independent regulation. They are therefore not Royal Charter compliant.
12. That leaves most (online and print) news publishers with no regulation or external complaints handling process.

IPSO

13. 88 publishers have joined the complaints body IPSO, which has said it does not intend to apply for recognition.
14. IPSO is not a regulator and it manifestly does not meet the Royal Charter criteria. It does not provide the public with the necessary levels of protection intended following the Leveson Inquiry even for those publishers signed up to it. IPSO is not independent of the industry, and it is not possible to discern a full and clear picture of the complaints it receives.

Social media publishers

15. Social media platforms perform as news publishers when they produce, edit and distribute news. For that activity, a regulatory framework already exists in the form of the recognition system, of which the Royal Charter and the PRP are part. Under this system, social media news publishers could join or form an independent self regulator. That regulator could apply to be independently assessed by the PRP to confirm that it protects the public and upholds freedom of speech.

The wider legal framework

16. Although the Royal Charter applies to the UK, press regulation is a devolved matter. In England and Wales, the recognition system includes the arrangements put in place by the Royal Charter as well as the intended system of incentives and protection for publishers, and the protections for the public, provided for in the Crime and Courts Act 2013.
17. The two critical elements of the law 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. That provides powerful support for free speech by publishers. 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.

18. The provisions relating to exemplary damages came into force automatically on 3 November 2015. However, the Government has not commenced section 40.

Consequences of the failure to commence section 40

19. The public receive news from a broad range of publishers that are not subject to independent regulation and there continue to be concerns about the behaviour of some parts of the press. However, inaction by government since 2013 means the public is not protected from harm as was intended. There is, at present, only one approved regulator providing an effective system of self regulation that protects the public IMPRESS.
20. IMPRESS continues to grow and attract a diverse range of members. However, the absence of section 40 means there is limited incentive in place for people bringing complaints against its member publishers to use IMPRESS's arbitration scheme to settle disputes. This maintains the chilling effect on free speech (which section 40 would remove) as it means that even IMPRESS publishers may still have to defend costly libel actions through the courts rather than through IMPRESS's arbitration process.
21. The failure to commence section 40 also means there are limited incentives to encourage publishers to sign up to the recognition system and no low cost way for the public to raise legal complaints against the vast majority of news publishers. It has also paradoxically kept a political presence in place. Politicians should not be involved in press regulation, other than in legislating for independent regulation. Full implementation of the recognition system would safeguard against ongoing political interference.
22. The arguments which have been deployed politically against the commencement of section 40 have focussed on the concern that, by choosing not to join an approved regulator, a publisher risks facing court costs in a legal case even if they win. We disagree with this argument.

23. The press and news publishers could consider joining IMPRESS as it is the only regulator that meets the standards that the Charter lays out. Alternatively, they could choose to set up an alternative which could apply for recognition. The Royal Charter envisages multiple approved regulators.

24. Social media news publishers should also consider moving under the recognition system voluntarily in relation to their news publishing activities.

Conclusions

25. The Royal Charter requires us to report 'on any success or failure of the recognition system'. Success would then be when all or most significant relevant publishers were members of one or more approved regulators.
26. The establishment and recognition of IMPRESS has led to an increase in standards and public protections with regards to its members. However, this is limited as a significant number of publishers are not covered by IMPRESS, and the section 40 protections are not in place.
27. We conclude that ongoing Government interference means that the recognition system is failing because it does not yet cover all significant relevant publishers.
28. Lord Leveson recommended that if the new system of regulation was considered to have failed then Parliament should consider statutory action.
29. Given that there continue to be concerns about press standards and a significant proportion of the news publishers have not moved under a system of genuinely independent regulation, our independent recommendation is that Parliament should now consider how to protect the public as was agreed following the Leveson Inquiry.

INTRODUCTION

Background to the Press Recognition Panel

In 2011, against a background of 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).¹

Victims of the press included ordinary members of the public as well as celebrities and high profile individuals. This was the seventh time in fewer than 70 years that a government commissioned inquiry was instigated to deal with concerns about the press.²

Lord Leveson published his report into the culture, practices, and ethics of the press in November 2012. Among the key recommendations was the creation of 'a genuinely independent and effective system of self regulation'.³

In his report, Lord Leveson proposed a wholly independent and effective system of self regulation with politics playing no part in it. He made it clear that he was not recommending statutory regulation at that time. 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, and a statutory backstop if the system of self regulation failed.

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'.⁴

Discussions on how to implement Lord Leveson's recommendations took place between politicians from all parties, the press, and other interested parties.⁵ On 30 October 2013, the Royal Charter

was granted.⁶ The Royal Charter received all party support in Parliament.⁷

The Royal 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 wholly independent from Government, Parliament, and news publishers, as required by the Royal Charter.⁸

The Royal Charter gives us 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 our Board. This prevents politicians from interfering with our work and decisions.⁹

The Royal 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;
- equipped with the powers and mechanisms to ensure that publishers adhere to standards of accuracy and fairness;
- providing the public with proper opportunities to raise concerns about the conduct of the regulator's members;
- adequately funded to do its job.

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

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

THIS REPORT

The 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’.¹⁰

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 the Royal 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.¹¹

The Royal Charter requires us to take a view on which ‘relevant publishers’ are ‘significant’. However, clarification of the definition of relevant publisher is in the end a matter for the courts.

We have also sent copies of this report to the National Assembly for Wales and the Northern Ireland Assembly.

APPROACH

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

From 8 September 2020 to 21 October 2020, we conducted a call for information that invited views, including on the extent to which the recognition system had succeeded in its purpose.

At their request, we have met with stakeholders to inform them about the recognition system and receive their views. 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 some respondents in this report. Inclusion of an opinion is not an indication of the weight or importance that we have given it. The conclusions we ultimately draw are entirely our own.

To determine the success or failure of the recognition system, we must consider the position of publishers both inside and outside the system. As in previous reports, to help inform our thinking, we have considered a sample of significant publishers¹ as well as the complaints body IPSO² with reference to some areas that the Royal 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.

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IMPRESS

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 set out in the Royal Charter.¹² It is currently the only approved regulator.

The News Media Association (NMA) brought a Judicial Review of our decision to recognise IMPRESS. The High Court rejected all their arguments and awarded us our costs. The judges confirmed that we acted independently, transparently and lawfully when we recognised IMPRESS.¹³

In March 2019, in accordance with the Royal Charter, we conducted a Cyclical Review of IMPRESS. Following a detailed and thorough re examination, we determined that it continued to meet the 29 criteria.¹⁴

We continue to oversee IMPRESS, and the approved regulator is subject to our processes for Ad Hoc and Cyclical Reviews, which were agreed following public consultation.¹⁵

When IMPRESS applied to be recognised it had 14 members. It currently regulates 104 publishers, accounting for 174 titles¹⁶, collectively reaching more than 15 million readers each month.¹⁷ These include local, regional, national and international titles.

IMPRESS estimates that 20% of news publishers operating in the UK are members of IMPRESS, 20% are members of complaint handling bodies such as IPSO and 60% do not subscribe to any such body at all.¹⁸

Hacked Off notes that:

'The number of publishers (as opposed to publications) who are presently members of IMPRESS is 97. According to their latest annual report, IPSO has fewer than 90 members. In this respect, IMPRESS has achieved real weight and is responsible for a larger share of publishers than IPSO.'

The Media Fund has stated concerns that some small, independent publishers have about joining IMPRESS:

'Some organisations also have concerns about having to bear the cost of every complaint that's made against them. These are small organisations with no budget. That's why the Media Fund exists. Big organisations like the New Internationalist are regulated by IMPRESS because they've got a dozen staff and enough money coming in because of a £1 million fundraiser, whereas many titles like the Salford Star don't have these levels of financial backing.'

The Royal Charter provides that an approved regulator must have the power to investigate 'serious or systemic' breaches of an approved regulator's editors' code.

If IMPRESS becomes aware of a serious or systemic breach of its Standards Code or internal governance requirements by a regulated publication, it has powers to investigate a matter on its own initiative.

In the year ending 31 March 2018, IMPRESS initiated its first two investigations,¹⁹ and it concluded another in the year ending 31 March 2020.²⁰

IPSO

As part of our assessment, we must consider the behaviour of all significant publishers following the publication of the Leveson Report.

88 publishers have joined IPSO. Together they cover over 2,600 titles.²¹ IPSO was set up on 8 September 2014, as successor to the Press Complaints Commission.²²

On 9 September 2019, IPSO announced that ‘all major publishers in membership – which includes most national and almost all local newspapers and magazines – have chosen to remain part of the IPSO system’ for a further five years.²³ These publications are expected to follow IPSO’s Editors’ Code of Practice.²⁴

On several occasions, the PRP has corrected statements made by others regarding IPSO’s independence and ability to protect the public as was intended following the Leveson Inquiry. In December 2020, in answer to a parliamentary question from Liz Saville Roberts MP, John Whittingdale, Minister of State for Media and Data, stated that IPSO is an ‘independent and effective regulator’. We wrote to both MPs to provide a fuller analysis of IPSO in terms of the Royal Charter and the protections that were intended following the Leveson Inquiry.²⁵

That same month, in response to a parliamentary question from Rupa Huq MP, the minister also stated:

‘The media landscape has changed significantly since the Leveson Inquiry, and with it, the system of press self regulation. We now have a stronger system through The Independent Press Standards Organisation (IPSO).’

Again, we wrote to both MPs to clarify the current situation.²⁶

We have published those letters on our website along with other corrections and clarifications we have issued.

As we are required to report on the system of regulation, this report also addresses issues and misinformation relating to IPSO. This is intended to give the fullest independent picture possible. As in other aspects of this report, we also refer to information and insights that others have shared with us.

The Liberal Democrats DCMS team told us that: ‘IPSO is not a regulator’ and point out that ‘in more than 5 years it has carried out no investigations nor imposed any sanctions.’²⁷

IPSO is a trade complaint handling body with no independent oversight. It has not been independently assessed in the same way that IMPRESS has (nor could it be as it has not provided the information that would be needed to assess it), so the extent of the protections offered to the public has not and could not be determined. However, based on publicly available information, it is possible to compare some parts of IPSO’s operations to the standards in the Royal Charter. (See Annex 3 for more information.)

IPSO does not meet the Royal Charter criteria. That same conclusion was drawn by the Media Standards Trust’s study in October 2019.

The Media Standards Trust assessed the extent to which the IPSO system meets the minimum criteria set out in the Leveson Report for genuinely independent and effective regulation. It found that of the 38 Leveson recommendations, IPSO in 2019 satisfies 13 – just over one third – and fails 25.

The study finds that structural problems in the IPSO system identified in the Media Standards Trust’s 2013 assessment concerning independence, complaints, investigations and sanctions and the Code of Practice remain largely in place.²⁸ We agree with the Media Standards Trust in its conclusion that IPSO continues to lack independence from the industry.

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 each criterion is met, the freedom of the press and the public interest are not protected.

It is not possible to discern full and accurate pictures of complaints made to IPSO. The Royal Charter requires that ‘proper data is kept that records the extent to which complaints have been made and their outcome; this information should be made available to the public in a way that allows understanding of the compliance record of each title.’²⁹ However, IPSO regulation 52 allows the following to be not recorded as either complaints or Code breaches:

- complaints that have been resolved during the process;
- complaints where the publisher has made an offer that the Complaints Committee considers should have been accepted; and
- complaints which are not pursued, or which are rejected on receipt by IPSO.³⁰

The Royal Charter provides that an approved regulator must have power to investigate ‘serious or systemic’ breaches of its Editors’ Code.

IPSO provides a much more restrictive test than the Royal Charter in that the breaches have to be both 'serious and systemic' for it to launch an investigation. As far as we are aware, IPSO has never initiated an investigation into code breaches.

The Media Fund shared their view of IMPRESS and IPSO in their response to our call for information:

'We need to make sure that the news media organisations we support are producing trustworthy content. To do that, they need to be regulated.'

'However, IPSO doesn't meet a standard that would be acceptable. In cases where independent titles are regulated, it is done by IMPRESS. I would like to see regulation covering more independent outlets. However, IMPRESS is not very well known.'

IPSO has informed us that it does not plan to apply to the PRP to be assessed against the Royal Charter criteria: 'we have not sought, nor are we seeking, any recognition or assessment by the Press Recognition Panel of our work'.³¹

In response to our call for information, the Society of Editors stated:

'The vast majority of the Society's members are involved in news organisations that are contracted to the Independent Press Standards Organisation (IPSO) which has wide support from the industry

'The Society is on record as saying that it does not believe that there is a role for the Press Recognition Panel and we remain opposed to the system of press regulation imposed by the Royal Charter.'³²

Commenting on the resistance from some news publishers to come under the recognition system, the Liberal Democrats' Digital, Culture, Media and Sports (DCMS) team says: 'We still see this as a major flaw in the system.'³³

In August 2019, IPSO announced that Lord Faulks had been appointed as its Chairman, with effect from 1 January 2020. Lord Faulks was appointed to the House of Lords in 2010 and served as Justice Minister from 2013-2016.³⁴ Lord Faulks resigned the Conservative whip ahead of his appointment being announced, and he now sits in the House of Lords as an unaffiliated peer.³⁵

Under the Royal Charter, a member of the House of Lords cannot be a board member or chair of an approved regulator if they have had an 'official affiliation' with a political party in the past five

years.³⁶ This appointment calls the independence of IPSO into question. To secure free speech, politics and politicians should have no role in press regulation. We have raised these points with IPSO directly.

Some respondents share concerns about the Editors' Code that IPSO uses and the difficulties they have had when raising complaints.

MEND (Muslim Engagement and Development) is a not for profit company that helps to empower and encourage British Muslims within local communities to be more actively involved in British media and politics. In response to our call for information, they said:

'IPSO's complaints process is difficult because it's guided by the code itself and we have a problem with the code. We believe the code is ineffective and doesn't work and hence why the process fails. When it comes to complaints, IPSO doesn't have room to manoeuvre because, from our experience, they've always given the benefit of the doubt to the publisher itself rather than looking into the complaint. The onus is on the complainant themselves to investigate and provide evidence to IPSO. IPSO won't actually do the investigation. IPSO approach things on the basis that the complainant has to make out their case and prove their case, rather than saying, "There's something here that we have to look into," and then looking into it.'

MEND added:

'IPSO and the publishers have a whole team of people that are being paid purely to bat away these complaints. The individual has no power against the media industry.

'It almost seems like it's IPSO and the press against the individual, rather than IPSO sitting somewhere in the middle and being an unbiased complaints handler. IPSO is essentially a post box service.'

Mermaids is a charity that supports transgender, nonbinary and gender diverse children, young people, and their families. In response to our call for information, they told us:

'We have stopped raising complaints with IPSO because it's pointless regardless of however we frame it. In the first instance we would go directly to the publisher to raise an issue, because we have to. Then if we escalate it to IPSO it seems that there's always a way of avoiding doing anything. That's what we've found. It's really frustrating.

The last time Mermaids complained to IPSO about a newspaper misrepresenting Mermaids, they took nearly eight months to come back with an outcome. We had to get a press lawyer to help us with the case. And the resolution itself that IPSO came back with was that other people had written the same sort of thing, so it was okay.’

Hacked Off stated that:

‘A form of misreporting which detrimentally affects the wider public is the failure of the Editors’ Code to cover cases of group discrimination. Although there are dozens of areas in the Code which unreasonably curtail the ability of those affected by press misconduct to bring a complaint, this loophole is in violation of one of the recognition criteria. As a result, groups of people which share a religion, ethnicity or another attribute are subject to press discrimination without recourse.’

Publishers outside both IMPRESS and IPSO

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

In terms of the ‘traditional press’, The Independent, the Financial Times, the Guardian, and the Evening Standard operate internal complaints and standards processes.

Most digital only publishers like Bloomberg, HuffPost UK, Vice and Pink News, are not members of a regulator, nor are hundreds of printed and online hyperlocal titles. They also operate their own in house complaints systems.

These complaints systems have not been independently assessed to determine how effectively they protect the public. However, by their nature, they are not independent of their publishers and this is not the same as an effective system of independent regulation. They are therefore not Royal Charter compliant.

See Annex 6 of our March 2020 report on the recognition system for more information on publishers outside both IMPRESS and IPSO, including their responses to our requests for information.³⁷

Social media platforms

The way in which news is published and accessed continues to change, and social media continues to disrupt traditional print models. Lord Leveson anticipated this 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.’³⁸

The Liberal Democrats’ DCMS team states:

‘The need to prevent the amplification of misinformation and to provide adequate remedy for inaccuracy or distortion is essential, regardless of the publisher and regardless of the nature of the online platform’³⁹

The recognition system, including the Royal Charter criteria, is equally applicable to these emergent news publishers.

Social media platforms generally operate internal complaints systems and have their own standards with which people posting material are asked to comply.⁴⁰

In April 2019, the Government set out plans in its Online Harms White Paper for ‘a world leading package of measures to keep UK users safe online’ and launched a public consultation.⁴¹

We responded because the White Paper is concerned in part with news, ‘fake news’ and disinformation.⁴² We explained that social media platforms perform as news publishers when they produce, edit, and distribute news. They meet the definition of ‘relevant publisher’ in section 41 of the Crime and Courts Act (see Annex 1).

Although many platforms use algorithms to edit and share content, some also use humans. Facebook, for example, has employed a team of journalists to curate news content.⁴³ The platform has also announced plans to pay UK news publishers for content that is not already on it.⁴⁴ In January 2021, Facebook launched a dedicated section for news content on its site, in the UK.⁴⁵ Facebook said that it would pay news publishers for the content it shares.

Explaining Facebook’s investment in journalism, Nick Clegg, Vice President of Global Affairs and Communications at Facebook, said:

‘This speaks to a wider debate about how exactly we should define social media companies such as Facebook. It is neither a publisher – at least not in the traditional sense – nor is it a utility.

‘There is no editor dictating the front page

headline millions will read. Instead there are billions of “front pages”, each personalised to our individual tastes and preferences, and consisting of content created and shared by users themselves.

‘But Facebook is not passive either. It can and does remove harmful content from its platform, and people too – as it did recently when suspending president Trump – and where content is considered borderline or misinformation, it reduces its distribution.

‘The reality is Facebook and other social platforms are something entirely new – and should be regulated as such.’⁴⁶

LinkedIn has a newsroom of journalists.⁴⁷

Twitter has a feed that shares the latest news and it also removes content that does not meet the platform’s standards and flags tweets containing disinformation.⁴⁸

Indeed, there are some high profile examples of when Twitter has exercised editorial control by removing content or banning users. Permanent bans in 2020/21 include:

- British media personality and columnist Katie Hopkins for “violations of the hateful conduct policy”
- Television writer Graham Linehan for repeated acts of platform manipulation and hateful conduct towards transgender individuals
- Musician Wiley for antisemitic comments
- British conspiracy theorist and former broadcaster David Icke for violating Twitter’s rules on COVID 19 misinformation.⁴⁹

In January 2021, Twitter suspended the account of US President Donald Trump ‘due to the risk of further incitement of violence’.⁵⁰ In response, UK Health Secretary, and former Culture Secretary, Matt Hancock said:

‘I think it raises a very important question, which is it means that the social media platforms are taking editorial decisions.

‘And that is a very big question because then it raises questions about their editorial judgments and the way that they’re regulated.

‘It is obviously one for the Culture Secretary – but as a former culture secretary I can tell you that I think it does lead to very interesting questions about the role of social media and the role of the social media companies in the decisions, in the editorial decisions that they take.’⁵¹

Also, in January 2021, speaking at a scrutiny session with senior MPs, Prime Minister Boris Johnson was asked by foreign affairs committee chairman Tom Tugendhat whether he was ‘comfortable that a U.S. company controls how you communicate with your electorate’ or whether he believed social media companies should be subject to similar regulation to newspapers* and TV stations. He responded:

‘I do think there’s a real debate now to be had about the status of the big internet companies and whether they should be identified as mere platforms or as publishers, because when you start editorializing then you’re in a different world.

‘It’s time we had a frank conversation about the boundaries that we want to be set, including the role of these companies in what they choose to publish and what they choose not to publish.’⁵²

A view on social media platforms

A respondent to our call for information shared their views about social media platforms and regulation:

The operators of Social Media have the technical capacity to identify account holders, their followers and extended audience. This is proven by their ability to conduct highly targeted advertising campaigns and ban users if required.

However, an issue that really ought to be resolved is misrepresentation and slander, especially when conducted by persons with high numbers of followers, or when messages receive high visibility through volume of shares.

Misrepresenting important issues can be very damaging to society, whilst a person who is slandered or misrepresented in any way, will have to fund legal action if the offender refuses to remove the slanderous message.

However, even in the case of an apology on Social Media, has the situation been remedied fairly? Very often, a slanderous message can be retweeted and shared many times by those with their own slanted agenda, whilst an apology for such slander will not. In addition, an apology can be deliberately timed to coincide with ‘quieter’ Social Media activity times.

Amanda Williams.

* It should be noted that only newspapers that are members of IMPRESS are regulated.

For these platforms, when they act as news publishers themselves, a regulatory framework already exists in the form of the recognition system, of which the Royal Charter and the PRP are part. Under this system, social media news publishers could join or form an independent self regulator. That regulator could apply to be independently assessed by the PRP to confirm that it protects the public and upholds freedom of speech.

We also explained that the Government should not overburden news publishers and social media platforms by creating a new regulatory system, since a system already exists. Nor should they operate within a system different to that which applies to other news publishers (including the 'traditional press').

IMPRESS has outlined the risks that it sees with the proposed legislation:

'There is a great risk that the Government's proposed Online Harms legislation will impact on the regulation of the press and the Royal Charter. Content produced by news websites may come within the scope of a new Online Harms regulator in three main ways. First where they host user generated content (UGC). Second where they publish and distribute editorial content through social media channels and third where editorial content is shared by third parties via social media channels. In our view, membership of an approved regulator should exempt an online publisher from coming within the scope of statutory Online Harms regulation.'⁵³

The view of the Liberal Democrats' DCMS team is that:

'There is no basis for an exemption (currently proposed by the Government) for powerful unregulated online publishers, such as newspaper websites and their comment sections or the social media accounts of those publishers, to be exempt from regulation aimed at tackling online harms.'

It adds:

'It is not an acceptable policy objective, or legislative outcome, for the social media accounts of ordinary citizens to be subject to greater regulation than the wide reaching publications or social media posts of powerful newspaper companies.'⁵⁴

Hacked Off has also shared a view on this:

'To date, the Government has stated that there will be exemptions from the new regime

for publishers which are members of IMPRESS or IPSO. This suggests that the Government believe IMPRESS and IPSO to both be sufficiently capable of regulating comment sections.

'This is false. IPSO suffers from serious biases and flaws which affect its ability to regulate editorial content. The same flaws will affect its ability to regulate UGC, evident in the fact that Hacked Off research has revealed dozens of examples of racism and fake news in newspaper UGC which has not been addressed.'⁵⁵

Social media companies that publish news meet the criteria of relevant publisher, and they could choose to move under the recognition system.

The Liberal Democrats' DCMS team has proposed a way forward:

'The forthcoming Online Harms Bill could provide the platform for further discussion on how to tackle this anomaly. We 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.'

It adds that:

'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.'⁵⁶

IMPRESS has shared its views on how the online harms challenge should be tackled:

'The post Leveson framework is unlikely to address emerging challenges in relation to social media. We consider these challenges are likely to be addressed by statutory regulation, namely online harms legislation, if news publishers are classified as 'in scope service providers' under such legislation. This legislation is likely to consider the regulation of news publishers by social media platforms, and the increasing editorial role social media platforms play with respect to news content.'

It adds:

'The regulatory scheme set out in the Royal Charter is not designed with these platforms in mind, and the current Government internet regulation policy fails to acknowledge the Royal Charter and any future role it may play with respect to news publishers online.'⁵⁷

In December 2020, the Government published its full response to its consultation on its Online Harms White Paper.⁵⁸ It confirms plans for a:

‘new regulatory framework establishing a duty of care on companies to improve the safety of their users online, overseen and enforced by an independent regulator.’

It also confirmed that Ofcom will be named as the regulator in legislation and set out the intended policy position.

In relation to journalism produced on a publisher’s own site, the response states that:

‘Content and articles produced and published by news websites on their own sites, and below the line comments published on these sites, will not be in scope of legislation. In order to protect media freedom, legislation will include robust protections for journalistic content shared on in scope services. The government is committed to defending the invaluable role of a free media and is clear that online safety measures must do this.’

And:

‘Freedom of expression is at the heart of the regulatory framework and there will be strong safeguards to ensure that media freedom is upheld. Content and articles produced and published by news services on their own sites do not constitute user generated content and so are out of scope. The government recognises the importance of below the line comments for enabling reader engagement with the news. User comments below articles on news publishers’ sites will be explicitly exempted from scope.’

In relation to the sharing of news content via social media sites (which will though be ‘in scope’), it explains:

‘Journalistic content is shared across the internet, on social media, forums and other websites. Journalists use social media services to report directly to their audiences. This content is subject to in scope services’ existing content moderation processes. This can result in journalistic content being removed for vague reasons, with limited opportunities for appeal. Media stakeholders have raised concerns that regulation may result in increased takedowns of journalistic content.

‘In order to protect media freedom, legislation will include robust protections for journalistic content shared on in scope services.’

Accordingly, it seems that a different approach will be taken to news material shared by social media sites compared to material disseminated in other ways. Ofcom will oversee the regulation of the former, but not the latter. But even for that overseen by Ofcom, ‘journalistic content’ will be subject to different rules. In its discussion about ‘journalistic content’, the Government does not make clear whether that content must be subject to regulation or even how it might be defined. It is also unclear how the definition of ‘journalistic content’ interacts with the definition of ‘relevant publisher’.

That appears to mean that some news content will be subject to mandatory statutory regulation from Ofcom and some (potentially overlapping) will be within scope of the Royal Charter Recognition System, but, while section 40 remains un-commenced, this leaves some regulated by IMPRESS, some within IPSO, and some entirely outside all of that. That would appear to be extremely unsatisfactory from a public interest perspective.

The current media environment

Concerns about the ethics and behaviour of the press and news publishers have not gone away. Citing the conduct of newspapers around the Manchester Arena bombing and the New Zealand mosque terror attack as examples, the Liberal Democrats’ DCMS team told us that press abuse by the large corporate publishers that prompted the Leveson Inquiry is continuing to take place.⁵⁹

They stated that ‘there remains no proper remedy or safeguards for disinformation in the press, including on vital public health issues such as Covid.’

Several celebrities and prominent individuals have initiated legal action against media outlets including some that belong to the complaints trade body IPSO.⁶⁰

Taking action against the press when you consider they have acted unlawfully can be very expensive, so ordinary members of the public are often unable to get access to justice.

According to the Digital News Report, in the UK, trust in the news fell from 51 per cent in 2015⁶¹ to 28 per cent in 2020.⁶²

Political activity

In November 2016, the Government announced a consultation on the Leveson Inquiry and its implementation, which included reviewing section 40.⁶³ This was the eighth review into press issues in 70 years. It came before the system that

Parliament agreed following the Leveson Inquiry had been fully implemented.

In March 2018, the Government stated that it intended to ask Parliament to repeal section 40 at the earliest opportunity.⁶⁴ It has not done so.

Hacked Off told us of ‘the government of the day’s hostility or indifference to the Royal Charter system’. It said that:

‘The lack of independent regulation for significant publishers has serious and detrimental effects for the wider public.

‘The impacts of reckless or deliberate press inaccuracy, which is inadequately remedied by IPSO, include:

- a) Damage to the integrity of public debate; for example, dozens of inaccuracies about the European Union appeared in the run up to the public referendum;
- b) Risks to public health; for example, Full Fact have recorded multiple examples of false stories in IPSO member publications about the Coronavirus; and,
- c) Risks to national security; for example, evidence has been found of white supremacist forum users (of the kind used by the perpetrators of terrorist attacks) circulating and disseminating false newspaper stories attacking Muslims and immigrants.’⁶⁵

Responding to our call for evidence, Mandy Cormack stated what she thinks should happen next:

‘Lord Justice Leveson was quite clear in his Report that the press ought to sign up to a recognised regulator, and if they did not do so there would be a report of “failure” from the PRP a year later, and compulsion would be necessary (irrespective of the operation of the incentives). Significant publishers missed that deadline five years ago. The public, for five years and counting, has suffered ongoing press abuses and inaccuracies because of the press’ failure to regulate themselves independently. In recommending further steps, the PRP must stick to what the Leveson Report said, and call for a backstop form of regulation to be brought into effect on a compulsory basis, so that the public is protected.’⁶⁶

Hacked Off also shared with us its view on what next steps should be:

‘Previous [reports by the PRP] have called for section 40 of the Crime and Courts Act

2013 to be commenced to address industry non compliance. Although this incentivising provision would have introduced welcome new protections on freedom of expression for publishers and improved access to justice for the public, there is no need according to the Leveson Report or the Royal Charter to go through that interim process. Instead, the Panel should call for compulsion to be introduced immediately.’⁶⁷

In May 2018, the Government stated:

‘The Press Recognition Panel remains an important part of the regulatory framework.’⁶⁸

IMPRESS has stated its view of the current political situation:

‘A lack of Government support for the Royal Charter system of approved regulation and continued political interference in press regulation more generally has continued to undermine it. This is demonstrated in two ways. First by the Government’s stated intention to repeal s40 of the Crime and Courts Act 2013, which provides the legal and commercial incentives for publishers to subscribe to an approved self regulatory body, without consulting on any alternatives. Second by the Government denying subsidies and other means of support to publishers who have subscribed to an approved regulator.’⁶⁹

See Annex 8 of our March 2020 report on the recognition system for further background information on political interference in press regulation.⁷⁰

CONCLUSIONS AND RECOMMENDATIONS

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

There is so far only one approved regulator IMPRESS. It has though continued to expand and has established itself as an effective independent regulatory body that is attracting members. It now has 104 members, compared to IPSO's 88.

Importantly, IMPRESS has extended independent regulation to areas of news publishing that were previously unregulated.

Some publishers are resisting joining the recognition system, and it does not cover all significant relevant publishers.

Concerns about press standards remain

There continue to be widespread concerns about the behaviour and ethics of some news publishers. A system of low cost arbitration recommended by Lord Leveson would ensure everyone, not only the rich, could seek redress when news publishers have wronged them. People of modest means are still being denied access to justice.

Section 40 supports press freedom

We continue to fulfil our role within a proposed system, but the Government has not implemented that system fully. Although it is on the statute books, section 40 of the Crime and Courts Act has not been commenced.

The Government could do this at any time but is has chosen not to for five years. This means there continues to be political involvement in press regulation in the UK.

We are entirely opposed to this political involvement, and it is one of the reasons we support the commencement of section 40. The law would take press regulation out of the hands of politicians.

Section 40 supports fearless journalism and enables press freedom. There are safeguards in the Royal Charter to protect local publishers.

Section 40 protects ordinary people

The Government has not stated how the public would be protected if section 40 were repealed.

Section 40 would give every citizen access to affordable justice if they were wronged by the press or a news publisher.

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

The Government's delay in commencing the legislation undermines the protection of the public. The position of ordinary people, and the public interest in the proper operation of the recognition system, including securing freedom of speech for journalists and publishers, has become marginalised.

IPSO is not independent, and it is not a regulator

Despite the Government's assertions about IPSO, it is clearly not an independent regulator.

IPSO manifestly does not meet the Charter criteria, and it does not provide the public with the protections intended following the Leveson Inquiry.

IPSO is a complaints body. As far as we are aware, it has never initiated an investigation into a breach of its standards code. IPSO places the burden of investigation on complainants, which makes it difficult for ordinary people to argue their case.

We note that IPSO has moved closer towards meeting some parts of some Charter criteria. It has introduced two arbitration schemes. One is compulsory, and the other is voluntary. IPSO describes the mandatory scheme as being 'fully Leveson Compliant' (as distinct from 'Royal Charter compliant'). In practice, the major national newspapers that belong to IPSO have signed up to the compulsory scheme, but other IPSO members have not. However, the fact that there is not a fully compulsory scheme in itself means that IPSO does not meet the Royal Charter criteria.

Some news publishers previously stated that an arbitration scheme would bankrupt them; however, this has not happened to members of either IMPRESS or IPSO, and there is no evidence to suggest this is likely.

IPSO has appointed Lord Faulks as its Chair. Under the Royal Charter, a member of the House of Lords cannot be a board member or chair of an approved regulator if they have had an 'official affiliation' with a political party in the past five years. This appointment calls the independence of IPSO into question, and on this point alone IPSO would fail to meet the Royal Charter criteria. Our view is that politics and politicians should have no role in press regulation other than in legislating for independent regulation.

Social media news publishers could come under the Royal Charter system

We welcome the Government's commitment to protecting press freedom in its response to its consultation on online harms. However, it is important that the forthcoming legislation does not create confusion for the public when it comes to the regulation of news content and news publishers.

Social media platforms act as news publishers when they produce, edit and distribute news. For these platforms, a regulatory framework already exists in the form of the recognition system. The system was built with online platforms in mind. Under this system, social media news publishers could join or form an independent self regulator. That regulator could apply to be independently assessed by the PRP to confirm that it protects the public and upholds freedom of speech.

It appears that news content shared via social

media sites is to be subject to mandatory statutory regulatory oversight by Ofcom, other than where it is 'journalistic content'. In its discussion about 'journalistic content', the Government does not make it clear whether that content would be subject to any regulation. It is also unclear how the definition of 'journalistic content' interacts with the definition of 'relevant publisher'. Some social media platforms employ news editors and editors. It is not clear how the content they produce would be regulated, if at all. That would appear to mean that different approaches will be taken to the regulation, or not, of news content depending on who produces it and how it is disseminated.

As the Better Regulation principles outline, all regulation should be proportionate, consistent, accountable, transparent, and targeted only where needed.

It would appear to be inconsistent and inappropriate with these principles to create an additional, parallel or overlapping regulatory system for the social media platforms which would be more intrusive, and/or burdensome, and/or less independent than the system that is already in place for other relevant publishers.

The Government should not overburden news publishers and social media platforms by creating a new regulatory system. Nor should they operate within a system different to that which applies to other news publishers (including the traditional 'press'). The PRP commits to working with the Government, Ofcom and other bodies to ensure there is no overlap between regulatory systems to uphold freedom of speech and protect the public.

Conclusions

1. Hundreds of witnesses and experts gave evidence and testimony at the Leveson Inquiry. However, the public is still not protected as Parliament agreed it should be.
2. Taking action against the press when someone considers they have acted unlawfully can be very expensive, so ordinary members of the public are often unable to get access to justice.
3. The public receive news from a broad range of publishers that are not subject to independent regulation. Although many operate their own inhouse complaints systems, this is not the same as an effective system of independent regulation. In these cases, the public is not protected as was intended and the absence of section 40 means there is no incentive to encourage these publishers

to put the protections in place and join or form an approved regulator, nor is it available to protect free speech by journalists, as intended.

4. IMPRESS is the only approved regulator. The public can have trust and confidence in IMPRESS's independence and effectiveness.
5. The press and news publishers should consider joining IMPRESS. Alternatively, publishers could choose to set up their own regulator, and that regulator could apply for recognition. The Royal Charter envisages multiple approved regulators.
6. Social media news publishers who recognise themselves to be relevant publishers should also consider moving under the recognition system voluntarily. We will seek to engage with organisations involved in discussions about online harms to ensure there are no regulatory gaps or overlaps and that the public are protected from harm.
7. IMPRESS continues to grow and attract a diverse range of members. However, the absence of section 40 means there is limited incentive in place for people bringing complaints against one of its member publishers to use IMPRESS's arbitration scheme to settle disputes.
8. The delay commencing section 40 has kept a political presence in press regulation. Politicians should not be involved in press regulation, other than legislating for independent regulation. Full implementation of the recognition system would safeguard against political interference.
9. The arguments which have been deployed against the commencement of section 40 have focussed on the concern that, by choosing not to join an approved regulator, a publisher risks facing court costs in a legal case even if they win the case. We disagree with this argument.
10. The Royal Charter requires us to report 'on any success or failure of the recognition system'. Success would be when all or most significant relevant publishers were members of one or more approved regulators.
11. The establishment and recognition of IMPRESS has led to an increase in standards and public protections with regards to its members. However, this is limited as a significant number of relevant publishers are not covered by IMPRESS, and the section 40 protections are not in place.
12. We conclude that ongoing Government interference means that the recognition system is failing because it does not yet cover all significant relevant publishers.
13. After five years of calling for the recognition system to be implemented, we have to conclude that the Government is unwilling to fulfil the promises made to those who participated in the Leveson Inquiry, and give the public the protections that were agreed and that continue to be needed. The Government does not intend to follow or implement the findings of the Leveson Report and seemingly has no will to put in place an effective system of regulatory oversight.
14. Lord Leveson recommended that if the new system of regulation was considered to have failed then Parliament should consider statutory action.
15. Given that there continue to be concerns about press standards and a significant proportion of news publishers have not moved under a system of genuinely independent regulation, our independent recommendation is that Parliament should now consider how to protect the public as was agreed following the Leveson Inquiry.

MYTHS AND FACTS ABOUT THE RECOGNITION SYSTEM

Some of those opposed to protection of the public as envisaged by the Leveson Report have given a false impression of the PRP and the recognition system. This chapter addresses some of that misinformation.

Myth

The Royal 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 Royal Charter completely separates the Government, Parliament, and politicians from press regulation.

The Royal 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 Royal 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 Royal Charter envisages multiple approved regulators.

Myth

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

Fact

Section 40 would protect relevant publishers that are members of approved regulators, their

journalists, and the public. The law would support investigative journalism. Claimants with a genuine legal case would be offered arbitration, and if they turned this down, the claimant would be likely to have to bear all the court costs.

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 Royal 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 Royal 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 Royal 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 Royal Charter would be unnecessary.

Fact

The option of low cost arbitration alone would not be enough to provide the public protection which the Royal 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 Royal Charter.

ANNEX 1 - RELEVANT PUBLISHERS

The Royal 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 Royal 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. 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, Instagram, 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.⁷¹

ANNEX 2-

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.⁷² 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 Royal 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.⁷³

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.⁷⁴

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 of our decision to recognise IMPRESS 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.’⁷⁵

The incentives were intended to support the recognition system. With reference to IMPRESS’s 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.'

against a media organisation that it considers to be failing to comply with data protection legislation.

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'.⁷⁶

The Scottish Parliament did not accept this proposal.⁷⁷

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.⁷⁸ The Act omits the independent system that Parliament agreed would oversee press regulation in the UK. The Secretary of State may by regulation 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

ANNEX 3 - IPSO

Funding and independence

IPSO is funded by the Regulatory Funding Company (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.'

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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 candidates⁸⁰

The first of the Royal 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 of 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), and the Board members are not 'nominated by a process that is fair and open' (criterion 5).

Complaints

IPSO allows complaints to be brought free of charge, as required by the Royal 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.⁸¹

The Code is not the responsibility of the complaints body, as recommended by Lord Leveson and included in criterion 7 of the Royal 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.⁸²

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

When appointing the Complaints Committee, IPSO has to take into account the views of the RFC in relation to the suitability of the candidates.⁸³ The RFC also has a veto over the existence or continued existence of any arbitration scheme.⁸⁴

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',⁸⁵ 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.⁸⁶ However, there may be procedures of which we are unaware.

Criterion 11 of the Royal 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.⁸⁷

IPSO's complaints system has an emphasis on mediation between the parties in relation to a complaint.⁸⁸ 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.⁸⁹

Sanctions and remedies

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

IPSO's approach to corrections appears to match the Royal Charter criteria requirements. IPSO's Complaints Committee has the power to order corrections in cases where it upholds a complaint.⁹⁰

Investigations

With regards to investigations, the Royal Charter provides that an approved regulator must have power to investigate 'serious or systemic' breaches of the Code. IPSO provides a much more restrictive test than the Royal Charter in that the breaches have to be both 'serious and systemic for it to launch an investigation.⁹¹

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.⁹²

Arbitration

IPSO offers both a compulsory and a voluntary arbitration scheme. IPSO describes the compulsory scheme as being 'fully Leveson Compliant' (as distinct from 'Royal Charter compliant').⁹³ In practice, the major national newspapers that IPSO regulates have signed up to 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.⁹⁴

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:
 - Harassment⁹⁵

Criterion 22(e) of the Royal 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 £50 100 to complainants,⁹⁶ 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.'

In October 2019, the Media Standards Trust (MST) conducted a study into IPSO.

It assesses the extent to which the IPSO system meets the minimum criteria set out in the Leveson Report for genuinely independent and effective regulation. It found that of the 38 Leveson recommendations, IPSO in 2019 satisfies 13 just over one third and fails 25.

The study finds that structural problems in the IPSO system identified in the MST's 2013 assessment concerning independence, complaints, investigations and sanctions and the Code of Practice remain largely in place.⁹⁷

ANNEX 4 - REFERENCES

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