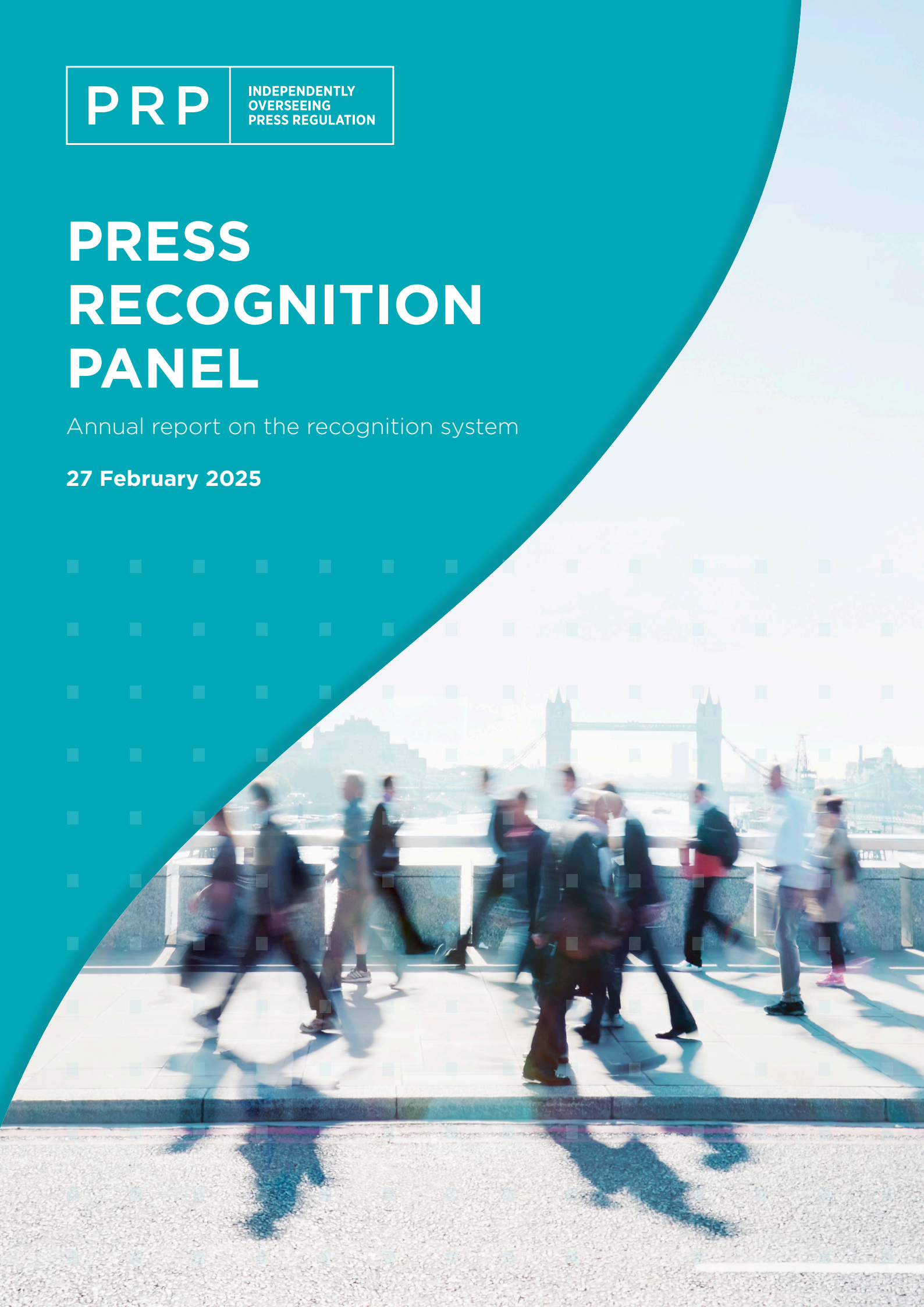
PRP

INDEPENDENTLY OVERSEEING PRESS REGULATION

PRESS RECOGNITION PANEL

Annual report on the recognition system

27 February 2025



Press Recognition Panel Annual Report on the Recognition System

Presented to Parliament by Command of His 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

27 February 2025

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CHAIR'S FOREWORD

In 2013, Parliament agreed to the creation of the Recognition System. A system intended to herald a brave new era of voluntary, independent, rigorous press self-regulation. To balance the rights of the press and news publishers to report freely in the public interest with the need to protect your rights and mine: those of the public.

Alas, this vision has not come to pass. Successive governments have failed to implement the law which would make the system work. A law that would address the main finding of the Leveson Inquiry: that it should not be possible for the press and news publishers to choose not to engage in rigorous independent press self-regulation without consequence.

Many news publishers have opted into the Recognition System. But many, including all the large national titles, have not. As a result, ordinary people have been left vulnerable. The public has been abandoned to the commercial practices of parts of the press that prioritise advertising revenues, all concealed behind the slogan of 'freedom of speech'.

What those who repeat that line often overlook, though, is that freedom of speech is both a right and a responsibility. We have frequently heard those previously in government and sections of the press dismiss the events leading to the Leveson Inquiry as 'historic', insisting 'things have changed'. 'Things' have, of course, changed; the question is whether they have changed for the better. We would say not.

There is no shortage of examples of the harm that press intrusion continues to cause. Claims about historic events have taken more than a decade to resolve, but new reports of harm are all too frequent. They often involve news publishers seeking to monetise grief without regard for the victims or their families. There are also reports of eye-watering settlements being offered to victims to prevent poor press conduct and behaviour from being examined in the civil courts. The free press has an important role in our society. We champion and promote press freedom. But when members of the press harass, distress, and intrude

on people without any regard for their rights and freedoms and with no overriding public interest, we must question whether we, as a society, have got the balance right.

Neither can we be in any doubt that social media has fundamentally changed how we consume and amplify news. The tragic events in Southport and subsequent public disorder last summer illustrate only too alarmingly what can happen when mis- and disinformation are spread on social media. The press, particularly the local press in affected areas, played a vital role, sometimes putting themselves at risk to be a reliable source of information.

However, we must not pretend that the press is divorced from social media. Sections of the press blame social media for spreading mis- and disinformation, disavowing any responsibility. But this ignores the ability of the press to set the tone of the national debate. Just as we recognise the important role a free press plays in protecting our democracy, we must also recognise its ability to normalise prejudice, whether that is a deliberate intention or not.

Yet news publishers, unlike broadcast news organisations, can operate largely unaccountably. That is unless they have chosen to commit to high professional and ethical standards and join Impress. Impress is currently the only Approved Regulator. It has demonstrated its independence, impartiality, and effectiveness. However, a large number of publishers, including all the national titles, have chosen to opt out of independent press self-regulation.

Many prefer to belong to the more forgiving regime of the Independent Press Standards Organisation (IPSO), which does not meet the requirements for independence, impartiality or effectiveness for an Approved Regulator. Others simply do their own thing.

It is a stain on the national conscience that the historic injustices that led to the Leveson Inquiry have not been fully addressed, and new cases continue to emerge. Against this backdrop, we were alarmed by the previous Government's sudden urgency to repeal Section 40 of the Crime and Courts Act 2013 ('Section 40').

Section 40 was a key statutory provision that would have ensured that all news publishers could be held to account, whether they participated in the Recognition System or not. Despite being a manifesto commitment for the Conservative Party since 2017[1], the repeal of Section 40 took six years to bring forward and, in a move which many speculated to be tactical[2], was rushed through immediately before the 2024 general election as part of the 'wash-up procedure' with the support of the Opposition, the Labour Party, performing a volte-face from its previous policy position.

The wider impact on press regulation was barely considered. Despite the best efforts of a range of parties, public awareness of the implications of repeal was drowned out by a powerful industry able to repeat misleading and, on occasion, factually incorrect claims in pursuit of its own interests.

Unless something is done, it can only be a matter of time before another press scandal emerges. With the rise of new technologies, the opportunities for press intrusion and harm are only increasing. We assume we have now moved on from phone hacking. But the potential to access private information on social networking sites, revenue driven by clickbait, amplified stories on social media, and AI 'hallucination' in the generation of content all represent increased levels of risk to the public. And there is no way to hold sections of the press accountable when they lose sight of the public interest in their reporting.

The public deserves better. Action is required now by the Government to close the gaps in this fractured press regulatory landscape.

2 ABOUT THE PRESS RECOGNITION PANEL

The Press Recognition Panel (PRP) was established in 2014 to oversee press self-regulation in the UK. We support and promote a free press while protecting the interests of the public.

We were set up following the Leveson Inquiry (2011–2012) into the culture, practices and ethics of the press in the light of phone hacking, press intrusion, and other criminal activity. Victims of the press included ordinary members of the public as well as celebrities and high-profile individuals.

Following the Inquiry's recommendations, the PRP was established under the Royal Charter on Self-Regulation of the Press[3] ('the Royal Charter') to oversee a wholly independent and effective system of self-regulation with politics playing no part in it. The Royal Charter envisages news publishers establishing self-regulators to act as standard-setting bodies for journalistic and editorial practices and carrying out complaint handling and resolution. News publishers subscribing to such a self-regulatory body are expected to adhere to these standards and be subject to oversight if complaints are not handled satisfactorily. None of these standards, or the criteria in the Royal Charter on which they are based, would cut across freedom of the press as a fundamental public interest issue.

One of the PRP's main roles in this system is to recognise self-regulatory bodies against a set of 29 criteria, ensuring that regulators meet minimum required levels of independence and effectiveness. These criteria are proportionate, operable and are not intrusive to press freedom.

Applying to be assessed by us is voluntary. However, if we assess that a regulator complies with the criteria, it is called an Approved Regulator. This means, among other things, that it:

- is properly independent, including of the Government and the publishers it regulates;
- is equipped with the powers and mechanisms to ensure that those publishers adhere to standards of accuracy and fairness;
- provides the public with proper opportunities to raise concerns about the conduct of those publishers;
- secures access to low-cost arbitration for legal disputes with its publisher members; and
- is adequately funded to do its job.

The Press Recognition Panel's independence

Our independence is protected from political interference by requiring a two-thirds majority of those who vote in the House of Commons, the House of Lords and the Scottish Parliament before any change to our Royal Charter can be made. Additionally, the Royal Charter includes robust requirements ensuring that our Board is appointed entirely independently. Together, this means that we can conduct our work and make decisions entirely independently without influence from politicians or the industry.

Preparing this report

Over the last year, we have met with stakeholders to discuss our work and receive their views, which has helped inform our thinking. We have also commissioned and undertaken analyses to review the case for independent press self-regulation.

From 26 September 2024 to 16 December 2024 we conducted a call for information that invited views on issues related to our work. The responses and correspondence have been published on our website, where we had permission to do so.

We have quoted some respondents in this report. The inclusion of an opinion is not an indication of the weight or importance we have given it. The conclusions that we ultimately draw are entirely our own.

In addition to laying this report before Parliament and the Scottish Parliament, as we are required to do under our Royal Charter, we have also sent copies to the National Assembly for Wales and the Northern Ireland Assembly.

3 SUMMARY OF OUR CONCLUSIONS AND RECOMMENDATIONS

Our Royal Charter requires us to report on any success or failure of the Recognition System. It also requires us to inform Parliament, the Scottish Parliament, and the public annually if there is no recognised regulator or if, in our opinion, the system of regulation does not cover all significant relevant publishers.

The public has been abandoned

We have previously reported that the Recognition System was failing because there are not a sufficient number of news publishers participating in an Approved Regulator's scheme. Last year, we went further and alerted Parliament that if Section 40 of the Crime and Courts Act 2013 ('Section 40') were repealed without any meaningful alternative in place to incentivise participation, there would be little prospect that the Recognition System could succeed as Parliament originally intended.

With the Media Act 2024 receiving Royal Assent on 24 May 2024, it remains open to news publishers not to engage in voluntary independent press self-regulation without consequence. Without any mechanism in place to ensure that news publishers can be held to account whether they participate in the Recognition System or not, the current press self-regulatory landscape cannot protect the public effectively.

A clear roadmap needs to be developed to identify an alternative mechanism to Section 40, which balances news publishers' rights and responsibilities with freedom of speech.

Recommendation 1

The Government must urgently review the incentives for news publishers to participate and the consequences for failing to participate in the Recognition System in the interests of freedom of speech and public protection.

Doing nothing is not an option

The press self-regulatory landscape remains fractured. Access to remedy and redress for members of the public remains arbitrary. 'Historic' abuses relating to politicians and celebrities have dragged through the courts and led to a huge bill for settling redress by the newspapers involved and their owners. However, press intrusion and harm are far from historic issues, and evidence of the challenges that ordinary members of the public face to access justice makes a compelling argument for effective and independent press self-regulation.

While much of the industry has so far chosen not to participate in the Recognition System, it remains open to them to join the Approved Regulator or form a new body that could seek recognition. It would also be open to the Independent Press Standards Organisation (IPSO), if it could gain the support of its funding body, the Regulatory Funding Company (RFC), to review its regulations and reform its structure in line with the requirements of the Recognition System.

It is a sad reflection that a large part of the industry has chosen to reject rigorous independent press self-regulation and that there is no more appetite amongst this section of the industry to commit to high ethical and professional standards than there was immediately in the wake of the Leveson Inquiry. Nevertheless, we repeat our previous recommendation that these news publishers voluntarily take this step. This requires no further Government intervention and carries no threat to news publishers' freedom of speech.

Recommendation 2

News publishers who do not currently participate in the Recognition System should join Impress, work to reform IPSO so that it can meet the recognition criteria, or come together to form a new body which could then seek recognition.

Objections to independent press self-regulation are misconceived

Independent press self-regulation, in the form of the Recognition System, was designed to balance safeguarding news publishers' freedom of speech and protecting the public effectively. The industry has raised a plethora of objections to independent press self-regulation. Our response is simple: 'Consider the source'.

No other industry, including broadcast journalism, enjoys the privileges and protections that 'news publishers' enjoy in law. However, these protections and privileges are not balanced by responsibility or accountability. Even the definition of being a 'news publisher', scattered in disparate sources[4], is so broad as to be meaningless. Yet we somehow place our trust in these organisations to be a vaccine against mis- and disinformation. It is difficult to reconcile this position to the fact that extremist bloggers can style themselves as 'journalists[5]', presumably in an attempt to seek legitimacy from a system designed to safeguard freedom of speech.

In addition to developing a roadmap for the future of independent press self-regulation, the Government needs to review what it means to be a news publisher in law and ensure that the system as a whole works to uphold freedom of speech and protect the public.

Recommendation 3

The Government should ensure consistency in the various definitions of 'news publisher' and relevant 'standards codes' for news publishers, aligned with the Recognition System, to enable press self-regulators, online platforms, the public, and news publishers themselves to understand the rights and responsibilities of the press under the law.

4 TIMELINE OF EVENTS

The mid to late 2000s

People across the UK and worldwide are outraged by revelations that some parts of the British press had engaged in criminal activity, including phone hacking, over many years. Victims of press abuse include ordinary members of the public, as well as high-profile individuals and celebrities.

4 July 2011

It emerges that a private investigator hired by the *News of the World* had intercepted the voicemail of the murdered British schoolgirl Milly Dowler. This had given her parents false hope that she was still alive.

6 July 2011

It is reported that the voicemails of relatives of British soldiers killed in action in the Iraq War and the war in Afghanistan in the 2000s may have been eavesdropped on by the *News of the World*.

10 July 2011

Amid a public backlash and an advertising boycott, News International closes the tabloid *News of the World*.

13 July 2011

In response to the criminal activity and public outcry, Prime Minister David Cameron announces a public inquiry to be led by Lord Justice Leveson (now Sir Brian Leveson).

November 2011 to July 2012

The Leveson Inquiry into the Culture, Practices and Ethics of the British Press holds a series of public hearings where experts give evidence, and victims of press abuse share their experiences. Over 40 days of hearings, the inquiry hears from 184 witnesses, and the statements of 42 other witnesses were read. It costs £5.4 million.

29 November 2012

Lord Leveson publishes his report. Among key recommendations is the creation of 'a genuinely independent and effective system of self-regulation', which would ensure that members of the public have access to low-cost means of legal redress against news publishers.

30 October 2013

The Royal Charter on self-regulation of the press is granted after receiving all-party support from Parliament. The Charter provides for the Press Recognition Panel (PRP) to be the body to oversee UK press regulators.

8 September 2014

The Independent Press Standards Organisation (IPSO) is established as the successor to the Press Complaints Commission (PCC), but in a way that means it cannot meet the Royal Charter's requirements for an independent self-regulator of the press.

3 November 2014

The PRP comes into existence as a legal entity when the PRP Board is appointed following an open process wholly independent from Government, Parliament, and news publishers, as required by the Royal Charter.

3 November 2015

Section 34 of the Crime and Courts Act 2013 (Awards of exemplary damages) comes into force in England and Wales.

25 October 2016

Impress is recognised as an approved regulator, having met all 29 recognition criteria in the Royal Charter.

1 November 2016

The Government consults on whether to commence or repeal Section 40 of the Crime and Courts Act 2013 ('Section 40'), which, among other things, would ensure that members of the public have access to low-cost means of legal redress against news publishers. National newspapers run a 'coupon campaign' encouraging their readers to cut out and send in an expression of support for repeal without meaningful explanation.

12 October 2017

The News Media Association (NMA) attempts to judicially review the PRP's decision to recognise Impress as an approved regulator, which fails when Lady Justice Rafferty DBE and The Hon. Mr Justice Popplewell hand down their judgment[6], ruling that each of the six main arguments put forward by the NMA lacked any foundation. The NMA appeals the decision but subsequently decides to withdraw the appeal, paying the PRP's costs.

1 March 2018

In an oral statement to Parliament, the Government indicates that it intends to ask Parliament to repeal Section 40 at the earliest opportunity (but does not introduce a Bill until November 2023).

16 May 2018

The Government states: 'The Press Recognition Panel remains an important part of the regulatory framework'.[7]

26 March 2019

The PRP completes the first cyclical review of Impress, confirming that it continues to meet the Recognition criteria.

8 April 2019

The Government publishes the Online Harms White Paper, which sets out its plans for keeping UK users safe online.

12 May 2021

The Government publishes the Draft Online Safety Bill, establishing a new regulatory framework to tackle harmful content online.

11 May 2022

The Government indicates that it intends to repeal Section 40 as part of the proposed Media Bill.

21 July 2022

The PRP Board confirms that Impress continues to meet the Royal Charter Criteria following the second cyclical review.

19 April 2023

Following the Government's publication of a draft Media Bill (including a clause to repeal Section 40), the House of Commons Culture, Media and Sport Committee launches pre-legislative scrutiny. The Committee does not reach any conclusions on the merits of Clause 43 of the draft Media Bill, which would repeal Section 40.

23 May 2023

An amendment is proposed tightening the definition of a 'Recognised News Publisher' during the Committee Stage of the Online Safety Bill. The amendment is not moved to a vote.

31 October 2023

The Online Safety Act 2023 receives Royal Assent and becomes law.

8 November 2023

The Government introduces the Media Bill into Parliament, including Clause 50, which would repeal Section 40. The accompanying Impact Assessment concludes that it does 'not foresee any risks or potential unintended consequences resulting from the removal of s.40.[8]' but without any consideration of the role of Section 40 in underpinning the Recognition System.

9 November 2023

Ofcom commences consultation on 'Protecting people from illegal harms online', which includes the need for platforms to consider 'recognised news publishers' as defined in the Online Safety Act 2023.

23 November 2023

Second Reading of the Media Bill in the House of Commons where concerns are raised, by way of an amendment, regarding the effect on the Recognition System, freedom of speech, and public protection by repealing Section 40[9].

5 December 2023

Former MP and Government Minister Chris Huhne reportedly reaches an agreement with News Group Newspapers regarding allegations of unlawful news gathering dating back to 2014, accepting a six-figure settlement in compensation rather than proceeding to trial[10].

15 December 2023

Judgment upholds the claims by The Duke of Sussex, Nikki Sanderson, Michael Turner, and Fiona Wightman that Mirror Group Newspapers employed illegal and intrusive press practices to obtain stories up to 2011 and awards damages to the claimants[11].

8 January 2024

An amendment is proposed to the Media Bill presenting a compromise position on Section 40, retaining the safeguards for freedom of speech for news publishers who have joined an Approved Regulator while repealing the exposure to costs for those news publishers who chose not to. The Government defeats this amendment in a vote.

A further amendment is proposed to add a new clause to the Media Bill requiring the Government to bring forward alternative proposals to encourage publishers or regulators to seek recognition under the terms of the Royal Charter before Section 40 can be repealed. This amendment is not moved to a vote.[12]

22 May 2024

At Committee Stage consideration of the Media Bill in the House of Lords, Baroness Hollins draws Parliament's attention to a letter from Sir Brian Leveson[13] highlighting that freedom of expression was at the core of the Leveson Inquiry's recommendations and that nothing in the report undermines that principle. It aimed to protect individuals without substantial means caught up in public interest events but unable to seek redress for defamation or unlawful intrusion into their privacy simply because they could not afford to challenge the press in the courts. This principle is reflected in Section 40.

Amendments are proposed to retain all or parts of Section 40 as well as an alternative 'right of reply'[14].

23 May 2024

Despite expressing reservations that the issue of press regulation had not been given 'sufficient weight and seriousness', the Labour Opposition agrees that the Media Bill can proceed through the 'wash up' procedure to complete Parliamentary urgent outstanding business prior to the 2024 general election and does not support the amendments proposing to retain all or parts of Section 40.

24 May 2024

The Media Act 2024 receives Royal Assent and becomes law, repealing Section 40.

13 June 2024

The Labour Party Manifesto[15] includes a commitment to address 'historic injustices' arising from public inquiries, acknowledging that 'Without justice and the truth, victims and their families cannot move forward'. It does not directly reference the recommendations of the Leveson Inquiry.

4 July 2024

The Labour Party wins the 2024 general election, and Sir Keir Starmer is elected Prime Minister of the United Kingdom.

22 January 2025

News Group Newspapers (NGN) issues an apology to the Duke of Sussex for intrusion by *The Sun*, including unlawful activities carried out by private investigators. NGN also apologises for phone hacking, surveillance, and misuse of private information by journalists and private investigators at the *News of the World*. Additionally, NGN apologises to Lord Watson for intrusion by the *News of the World*, including surveillance[16].

5 THE PUBLIC HAS BEEN ABANDONED

Immediately following the announcement of the 2024 general election on 22 May, both major political parties concluded that the legislation underpinning independent press self-regulation in the UK should be repealed. This legislation was given priority in the wash-up period despite facing opposition from all parties in the House of Lords. Ultimately, the Lords Opposition Spokesperson maintained, somewhat jarringly, that [17]:

> *"... it is unfortunate that we are having this debate, on this Bill, at the end of a Parliament. It is a great shame, because this part of the Bill does not really sit easily with the rest of it, which is primarily about broadcast and audio media. We should have stuck to that subject matter...*
>
> *With that said, we do not support the amendments ... We now have a settled position and things have moved on since Leveson ...I do not think that sufficient weight and seriousness were paid to the arguments that are being made that we need to look closely at the press and examine how it works ... We are content for the Government to conclude business on this group, which we hope will enable us to make progress on the Bill."*

Baroness Hollins at Report Stage of the Media Bill 23 May 2024

'The principle of access to justice for ordinary people against press abuse, and the freedom of regulated and ethical newspapers to hold wrongdoers to account without fear of expensive litigation, is common sense.'

We are unable to reconcile the assertion that the current situation regarding independent press self-regulation is inadequate at the same time as weakening said system. Nevertheless, we are where we are – Section 40 of the Crime and Courts Act 2013 ('Section 40') has been repealed. Section 40 and Section 34 (Award of Exemplary Damages) of the Crime and Courts Act were the key incentives for news publishers to join an Approved Regulator. Although Section 34 has been implemented, as we will see later in this chapter, news publishers have largely evaded the financial risk or poor conduct and behaviour presented by Section 34 by settling claims in nearly all cases.

Now, without Section 40 or any alternative in place, there is no meaningful advantage for news publishers to participate in independent press self-regulation or consequence for them failing to do so. The current press regulatory landscape remains fractured, and access to justice for the public is greatly diminished in the event of press harm.

The Liberal Democrats DCMS Team also expressed this concern in their response to our Call for Information:

> *'The Liberal Democrats supported the legislation which created the Leveson system, including both the creation of the PRP as a guarantor of regulatory standards, and the incentives contained in Section 40 of the 2013 Crime and Courts Act that were an integral part of the framework.*
>
> *As we said in our submission last year, those incentives have been misrepresented as an unfair measure whose only effect would be to make publishers liable for court costs even when they win. In fact, they would have both protected ordinary people who are victims of press malpractice from powerful and wealthy news publishers; and provided parallel protection to publishers faced with threats by wealthy and powerful litigants. With those incentives now repealed, there is a danger of reverting to a state of unaccountability within an industry that has a long history of breaching agreed professional standards.'*

The Public Interest

In the context of press regulation, 'The Public Interest' means a set of circumstances which justifies breaching the ethical code of standards which normally applies. This, non-exhaustively, includes:

- detecting or exposing crime or serious impropriety;
- protecting public health and safety;
- preventing the public from being seriously misled; and
- the need to protect confidential sources of information.

Importantly, standards must also take account of and balance the importance of freedom of speech *and* the rights of individuals.

Two of the key roles of a free press are to hold our public institutions to account and expose private individuals who might be trying to abuse their position in some way. The press acts in many ways as the public conscience, and we rely on it to act in our interest. The Public Interest.

In return, we give the press several privileges, like exemptions from certain taxes and laws, to enable news publishers to perform these roles using methods that, should an ordinary member of the public use them, might be considered illegal. These include protections in defamation legislation, exemptions from privacy legislation, and specific requirements for the police to obtain a court order before they can access journalistic material or undertake covert surveillance.

However, the press can also have a significant impact on ordinary members of the public. When the press chooses to exercise these privileges and protections, not in pursuit of a public interest matter but in pursuit of other interests, such as increasing circulation (whether print or online) and advertising sales, there needs to be a mechanism to hold news publishers to account.

Many point out that our legal system already includes provisions for dealing with situations where the press steps over the line. The challenge with reliance on this approach is that, except in the most serious of cases, the burden of holding news publishers accountable falls on ordinary members of the public. Many are unaware that it is possible to make a complaint and do not have access to the means and expertise to bring a claim through the courts when they are the victim of press intrusion.

SAMM network member

'My husband … was killed …This turned our families devastation into a media circus. The Press swarmed the village we live in for days. They were knocking on doors and approaching residents in the street trying to get information about him, us, the incident. We didn't dare open our blinds. We didn't dare venture outside.

Sharing our heartbreak is not something we should have to do, yet they act as though the world has a right to witness it. And they don't.'

The harm from press intrusion can be catastrophic for the individuals concerned – frequently damaging their mental health, finances, and career, as well as personal and professional relationships.

In any other industry where one party has an unequal and entirely disproportionate ability to cause harm, another characteristic of a democratic state is to put in place a regulatory framework to act on behalf of the public, determine what constitutes acceptable standards of practice, and adjudicate on cases where a complaint is made that these standards have not been met.

And yet, an effective regulatory framework is almost entirely absent for news publishers, whom we might describe as the 'traditional print media' despite their ever-increasing online and broadcast presence.

The Recognition System was meant to fill this gap. Overseen by the PRP, the model was intended, following the recommendations of the Leveson Inquiry, to reform press self-regulation by setting clear expectations on the independence, financial security, and performance of press self-regulators.

Section 40 has been misunderstood and mischaracterised

Families Outside network member

'They don't care about my life, or my children's lives, all they want to do is get a headline'

The PRP, acting independently of politicians, the industry, or any other third party, was intended to provide assurance to the public that press self-regulators were holding news publishers accountable to the public interest.

Since our establishment, we have not been able to provide such assurance. The Leveson Inquiry identified a key test of success for the design of this self-regulatory system:

> *'... it should not be possible for the industry (and, in particular, those who have a powerful voice in the industry), either in whole or in part, to choose not to engage with independent regulation.[18]'*

To fulfil this test, the Leveson Inquiry recommended that a system of arbitration be built into the independent press self-regulatory model to provide a timely and low-cost alternative to making a claim through the courts. Further, those news publishers participating in independent press self-regulation would be protected in the courts from costs if a relevant claim were brought against them that could have been resolved via arbitration.

This was intended to incentivise news publishers to participate in independent press self-regulation. However, this protection was balanced by a parallel protection for members of the public bringing a relevant claim against a news publisher who had chosen not to participate in independent press self-regulation, denying that member of the public the opportunity to resolve the claim in arbitration.

The intention was to provide affordable access to justice for all members of the public, even where a news publisher had chosen not to engage with independent press self-regulation, while at the same time upholding the rights of news publishers who did participate, protecting them from malicious lawsuits (referred to as Strategic Litigations Against Public Participation or 'SLAPPs') designed to muzzle investigative journalism with the threat of substantial legal costs.

In debates during the passage of the Media Act 2024 in the House of Lords, Sir Brian Leveson wrote an open letter to Baroness Hollins[19] describing the purpose of the recommendation that led to Section 40 succinctly:

> *'My recommendation was intended to be an incentive to the press to join a recognised self regulator and gain protection from SLAPP type behaviour ... while at the same time providing a cheap and reasonable alternative to those without means whose rights may have been infringed.'*

Parliament agreed with this model and, with cross-party agreement, Section 40 was passed, giving legal effect to this cost-shifting regime.

However, the Government included a provision in the Crime and Courts Act that required a further order, known as a Commencement Order, to be made to activate the legislation. It is not clear why this provision was included as the drafting of Section 40 itself envisaged the circumstance that a claim might be made against a news publisher before it was possible to participate in independent press self-regulation under the Recognition System (i.e. no self-regulatory body had been recognised by the PRP as an Approved Regulator). This would ensure that no news publisher would be penalised for failing to engage with a system which did not yet exist. This drafting should have rendered a commencement provision unnecessary unless, as we might speculate, there was also an intention to continue to use Section 40 as a political bargaining chip.

Meanwhile, part of the industry pressed ahead with establishing the Independent Press Standards Organisation (IPSO). IPSO was advertised as a robust new independent press self-regulator with teeth, unlike its predecessor, the Press Complaints Commission (PCC). However, IPSO replicated many of the structural failings that undermined the PCC. IPSO did not conform to the Leveson Inquiry recommendations for an independent press self-regulator. Despite this, IPSO was used to justify a delay in commencing Section 40 and then the repeal of Section 40 entirely.

Lord Watson of Wyre Forest at the Third Reading of the Media Bill on 23 May 2024

'The public need to understand that, if we are going to concede to media barons — and let us not deny that this is what this represents — we need to be seen to do the right thing. In trying to railroad all these amendments through in an afternoon, on the day after the announcement of a general election, you cannot make the case that this is anything other than a venal deal.'

We might infer from this gradual rolling back from implementing the Leveson Inquiry recommendations that the then Government had no intention of regulating the press effectively. Perhaps another symptom of the 'too close' relationship between sections of the press and politicians described in the Leveson Inquiry report[20]. With the repeal of Section 40 now a fait accompli, there is no consequence for news publishers in choosing not to engage with independent press self-regulation. Public protection has been abandoned in favour of the commercial interests of sections of the press.

Arguments presented in favour of repeal by the previous Government and reported with great fervour by supportive sections of the press mischaracterised how Section 40 was intended to work, were misleading in what the effect of Section 40 would be and, in some instances, were factually incorrect.

Annex B to the previous Government's Overarching Impact Assessment accompanying the introduction of the Media Bill to Parliament in November 2023[21] asserted that 'there now exists a strengthened, independent self-regulatory system for the press' and that 'there has been a raising of standards across the industry' such that

Section 40 was no longer necessary and would be contrary to the efforts of the Government to support the sustainability of news publishers as they responded to the disruption of caused by an increasingly online world.

It is unclear what evidence the Impact Assessment relied on to assert that standards have been raised across the industry. In response to previous calls for information, the testimony we received tended to be more equivocal. As Lord Lipsey summarised it to us in 2022:

> *'In some regards press behaviour has improved since Leveson. I doubt widespread hacking still takes place for example. … However there is no guarantee that improvement will last as collective memories fade. With the press facing damaging competition from social media, there will be a constant temptation for it to break the rule.[22]'*

We discuss the issue of news publishers operating online and on social media, and whether the perception that they are 'losing out' in this competition is correct, later in this report. However, the general view that there has been some improvement in press standards was echoed in one of the responses to our Call for Information for this report from Iain Wilson, a partner in Brett Wilson LLP specialising in libel, privacy and harassment:

> *'My personal view is that there was initially some improvement in press standards following Leveson 1. There was some improvement following the Supreme Court's 2016 decision in PJS, which effectively killed the 'kiss and tell' story.*
>
> *…*
>
> *Moreover, the shift to online news consumption and resultant competition from non-legacy media has inevitably reduced revenue and the budget available for journalists/editors, as well as syndicated/ freelance copy. This has arguably resulted in a lowering of journalistic standards and more 'rushed' copy that may be inaccurate and/or not properly verified.'*

As we explore in more detail in the next chapter, the available evidence demonstrates that, whatever improvement there may have been in standards of press conduct, the potential for harm arising from press intrusion remains.

Arguments that Section 40 should be repealed because of its potentially burdensome cost also mischaracterise how it works. Former MP Damian Collins described during the Committee Stage of the Media Bill the risk of:

> *'lawfare, whereby wealthy people, particularly oligarchs, take spurious legal action against newspapers because of content they do not like, without worrying about whether the case meets any kind of threshold.[23]'*

This argument is sometimes referred to as the 'chilling effect[24]' on investigative journalism. However it is described, it is a bizarre argument. If a news publisher were a member of an Approved Regulator, they would be protected from precisely this kind of legal action under Section 40. Sir Brian Leveson highlighted, in his open letter to Baroness Hollins during the passage of the Media Act 2024[25], that his recommendation, which led to Section 40:

> *'was specifically designed to ensure that good journalism was encouraged, providing a quick, relatively inexpensive remedy to those who were defamed or whose privacy was unlawfully invaded without either side having to expend vast resources and energy pursuing in court litigation. At the same time, it provided real protection for the press from those with vast resources who sought to shut down what was legitimate investigative journalism: if such a person sought to use the power of money to litigate, the relevant press organisation would be able to demonstrate that such persons had been able to arbitrate and, having chosen a vastly more expensive route, could properly be required to pay the costs unnecessarily incurred. Far from chilling good journalism and encouraging SLAPPS, an appropriate arbitration scheme equally allowed vexatious claims quickly to be dismissed and meritorious claims to be quickly resolved.'*

The Liberal Democrats DCMS Team also raised the issue that the repeal of Section 40 was disadvantageous for Impress' membership in relation to investigative journalism:

> *'… there is also a significant danger of prejudicing the interests of those 120 plus publishers that have voluntarily chosen to join the only recognised regulator, IMPRESS and abide by their standards of journalistic conduct. Those publishers have now been deprived of the promised protection from wealthy litigants, leaving them potentially vulnerable to the financial risks that difficult investigative journalism often entails. If government is sincere in its commitment to safeguarding the interests of small, independent publishers and their ability to hold power to account with hard-hitting journalism, they should reassess the previous Conservative government's repeal of these measures.'*

In an example of hypocrisy, some news groups have been using a different cost-shifting mechanism, via settlement rather than arbitration, to encourage the timely resolution of cases. No admission of liability settlements are seen as preferable to allowing the facts to be aired in court and, we might imagine, exposing those news publishers to exemplary damages, which, unlike Section 40, has survived into implementation.

Legislation known as Part 36 of the Civil Procedure Rules, a failure to accept a settlement by the claimant exposes the claimant to costs even if they win the case if the award made by the judge is less than the settlement previously offered by the party defending the claim on an indemnity costs basis. This means that news publishers with deep pockets can expose any claimant to pay unreasonable costs on the basis that they were incurred if the claimant does not beat any, usually too good to be true settlement offer that was made before or during the trial itself.

In 2024, Hugh Grant felt forced to accept a no admission of liability settlement offered by News Group Newspapers, reportedly saying:

> *'I don't want to accept this money or settle. I would love to see all the allegations that they deny tested in court … But the rules around civil litigation mean that if I proceed to trial and the court awards me damages that are even a penny less than the settlement offer, I would have to pay the legal costs of both sides.*
>
> *My lawyers tell me that that is exactly what would most likely happen here. Rupert Murdoch's lawyers are very expensive. So even if every allegation is proven in court, I would still be liable for something approaching £10m in costs. I'm afraid I am shying at that fence.[26]'*

Hugh Grant's experience is only one of a number of high-profile cases reaching this outcome in what appears to be, as we reported last year, now a standard tactic. News groups appear quite happy with cost-shifting in court cases as a principle, but only when they can utilise it in their favour to avoid proper accountability by maintaining 'no admission of liability'. The fact is that news publishers are litigating at huge expense and may continue to need to do so for the foreseeable future.

With a few exceptions, the most high-profile being the Duke of Sussex and his co-claimants against Mirror Group Newspapers[27] in December 2023, obtaining justice has proven to be highly challenging even for those individuals with the means to bring a claim through the courts. More recently, even the Duke of Sussex, with Lord Watson, has settled a separate claim against News Group Newspapers, publishers of *The Sun* and the now-defunct *News of the World*[28], rather than proceed through the court. The ordinary public, on the other hand, have been abandoned. If this situation is allowed to continue, we will be sleepwalking into another scandal.

Information recently released under the Freedom of Information Act[29] shows that the Government estimated that there might be 126 cases a year relating to claims for libel, slander, breach of confidence, misuse of private information, malicious falsehood, and harassment, which could add between £12-40m in legal fees. However, this figure pales in comparison to the reported £1.2bn spent on legal fees and settlements by part of the industry over the last 12 years. Of course, the Government's officials noted that this cost would be defrayed by news publishers joining an Approved Regulator, which was exactly the point of Section 40.

However, we recommend caution when reading too much into these numbers. We have used these headline figures to illustrate the gaps in the arguments that were made in favour of repeal on the grounds of cost. Indeed, the Government's officials also advised caution at the time, with one official being very clear that:

> *'…it is indeed pretty complicated and you will note that some assumptions are made from a clear evidence base than others. So I would guard against too much reliance on these figures. And they clearly shouldn't be the sole or even primary factor for decision making.'*

This caution was notably absent from the consultation paper and the then Government's response, which maintained assertions regarding the financial pressure that Section 40 might create and alleged, again without evidence, that this would prevent news publishers from undertaking investigative journalism and have a 'chilling effect' on freedom of speech[30].

Sir Brian Leveson, in his open letter to Baroness Hollins during the passage of the Media Act 2024, summarised the more nuanced position with Section 40:

> *'Neither my recommendation (nor, as I read it, s. 40) 'forces' news publications to pay costs when they win. The recommendation encouraged news publications to establish an independent arbitration mechanism to resolve disputes which would then protect them from oligarchs intent on going to court in SLAPP type litigation while also allowing those without means who have been libelled or whose privacy has been invaded to seek redress without incurring vast costs which could not be afforded. Failure to attempt mediation can be taken into account in costs arguments. In any event, as I recommended, there is an overarching discretion so that the judge can reach a "just and equitable" resolution of any costs issue.'*

Further, in relation to smaller news publishers, Sir Brian said:

> *'The purpose of encouraging all (including small publishers) to be a member of a recognised self regulator is to allow them to offer arbitration and thereby protect them from adverse orders for costs in the event that expensive litigation was chosen in an effort to force a small publisher to retract irrespective of the merits. The absence of some mechanism such as I recommended, however, means that those who, for want of financial means, are unable to 'take on' the press however seriously they have been defamed or their privacy invaded are deprived of all remedy.'*

Making a complaint is a lottery

SAMM network member:

'At the time I didn't complain but I wish I had known there is an independent body who perhaps I could have contacted.'

The argument that there is a strengthened independent self-regulatory system for the press also ignores the fractured nature of the press's self-regulatory landscape. While there is an Approved Regulator, Impress, operating within the Recognition System that continues to demonstrate that it is independent, impartial, and effective at handling complaints, most news publishers, including all the national titles, have chosen to remain outside of the system. Some have preferred to join IPSO, which cannot demonstrate that it is independent of the industry and over whom we have concerns about the effectiveness of its complaints handling. Furthermore, some news publishers have chosen to operate their own in-house standards and complaints handling processes while others operate no standards or complaints handling system at all.

The suggestion that this represents a 'strengthened independent self-regulatory system' is disingenuous in the extreme when it remains a lottery as to whether the public can even access complaints systems outside of those news publishers amongst Impress' membership.

SAMM network member:

'I didn't use the complaints process — didn't know about press regulators/didn't have the energy'

In its response to our Call for Information, the charity Support After Murder and Manslaughter (SAMM), which provides a range of peer support to relatives of victims of murder and manslaughter, offered several examples which illustrate powerfully how press intrusion feels for ordinary people who are vulnerable and caught up in circumstances beyond their control, and how difficult it is to complain or know that it is even possible to do so.

Families outside network member

I was told by my solicitor I couldn't complain about it because he said they will come after you, they will follow you, they will follow your children, they will take pictures of you, so I felt completely vulnerable and violated and I felt like I had no rights at all.

Families Outside, a charity which supports families affected by imprisonment, responded to our Call for Information in 2022, expressing the concern that even when members of the public do know that it is possible to complain, there is a palpable fear of retaliation:

> *'The families we support, however, rarely raise complaints, often because the damage is already done, and they fear attracting more attention and media coverage of the issue.'*

Given this, the further assertion in the previous Government's Impact Assessment that 'There will be no equality impacts resulting from this regulatory change' ignores the Public Sector Equality Duty[1]. The fact that the repeal of Section 40 is, speaking very narrowly, 'neutral' in terms of equality impact because it was never commenced does not respond to the issue that the current press regulatory landscape is ill-equipped to deal with the discrimination and harassment of minority groups. On 8 May 2024, we published our follow-up analysis[31] of IPSO's complaints handling and related matters, focussing on IPSO's rulings. The analysis highlighted that because the *Editors' Code of Practice*[32] only covers discrimination by the press against individuals, not groups, the press can continue to make carefully worded derogatory remarks about groups based on any characteristics without fear of sanction by IPSO.

By contrast, whilst protecting individuals against discrimination, the Impress Code of Conduct also states that publishers must not encourage hatred or abuse against any group based on their protected characteristics.

Given its influence on the Recognition System, there is a clear advantage to the Public Sector Equality Duty in Section 40. However, the Impact Assessment did not even pay lip service to these considerations.

We have been seeking to engage with the current government on the future for independent press self-regulation. In correspondence with the Department of Culture, Media and Sport[33], it appears that the 2024 manifesto commitment to "address historical injustices ensuring that families do not have insult added to injury by years of delay" does not extend to fully implementing the recommendations of Part 1 of the Leveson Inquiry, proceeding with Part 2 of the Leveson Inquiry, or reversing the repeal of Section 40. This is a reversal of previous Labour policy while in Opposition which was reported in the then Government's response to the consultation on the Leveson Inquiry and its implementation[34]:

> *'The Labour Party was the only political party to argue that section 40 must be commenced to meet the commitments made to victims.*

[1] The Public Sector Equality Duty requires public authorities to have due regard to the need to:
1. put an end to unlawful behaviour that is banned by the Equality Act 2010 including discrimination, harassment and victimisation
2. advance equal opportunities between people who have a protected characteristic and those who do not
3. foster good relations between people who have a protected characteristic and those who do not

They also emphasised that this was a cross-party agreement, and that it should be implemented so that it can work properly. They stated that it should not be repealed just because IPSO is refusing to become a recognised regulator.'

It is also hard to see why the Labour Party Manifesto's statement on historical injustices should not include those affected by poor press behaviour, nor does it seem salient that the manifesto was silent on press regulation: there are many things that governments do which have not been spelled out in a manifesto.

The Government maintains that its role is not to arbitrate on the work or governance of independent press self-regulators. We have pointed out that the Government is responsible for ensuring that the system of press self-regulation is coherent and works as intended. As things stand, press self-regulation is not coherent. The Recognition System was never fully implemented, and now, with the repeal of Section 40, it is unlikely to succeed without further policy intervention. There is currently no 'system' as such, but a permissive regime where news publishers can pick and choose whether they wish to act responsibly or not. Some news publishers participate in the Recognition System, some join IPSO, while others do neither.

SAMM network member:

'I didn't know what to [do], how to get help or who I can trust so I didn't do [sic] complain about it.'

This leaves the public in a very difficult position, struggling to understand how to make a complaint to the right body. If they do make a complaint, they are frequently met with obstruction and disinterest about 'yesterday's news'. As we have seen from our analyses, the experience of the various complaints systems, especially as between Impress and IPSO, can be wildly different[35].

While it is not the Government's role to arbitrate on the governance and work of press self-regulators, it is our role, as the body established under Royal Charter, with cross-party Parliamentary support following the Leveson Inquiry recommendations, to do so. However, it is a role we cannot perform effectively without sufficient coverage across the press industry.

Over the last ten years, the Recognition System has demonstrated that it can work in practice. The PRP has established effective systems and processes to provide independent oversight of a press self-regulator. Impress, with over 200 member titles, has continued to demonstrate that genuinely independent press self-regulation works in practice, without impacting on the freedom of the press where that operates in the public interest.

We have an Approved Regulator in place which is ready and fit for purpose but for the participation of the large national news publishers who have chosen not to engage. Unless those news publishers engage, the Recognition System cannot work as intended, and the PRP cannot discharge its role of overseeing the work or governance of all press self-regulators in a meaningful way.

In its response to our Call for Information, Impress also highlighted a risk to the progress that has been made in implementing the Recognition System:

'No national newspaper wanted to be regulated; only one regulator applied for recognition by the PRP; without the participation of high turnover publishers, subscription fees alone could never amount to more than a fraction of a regulator's running costs.

Despite being aware repeatedly of the crippling effect of its charges upon Impress, the PRP has not minimised its own costs. Independent press regulation will not survive if two problems are not addressed: the absence of all high turnover publishers from the regulatory system, and the requirement for the regulator to finance the PRP.'

We disagree that there is much more that the PRP could do to minimise costs. We already operate as a very lean organisation. Neither is it possible to reduce the fees for an Approved Regulator without either an amendment to the terms of the Royal Charter or a change in the regulatory landscape itself, such as another self-regulatory body achieving recognition, which would enable us to reconsider our fees model while still meeting the requirement to seek to recover our full costs.

This risks a retrograde step for press self-regulation

It would, however, be a significant retrograde step for press self-regulation should the only Approved Regulator be forced to withdraw from recognition for financial reasons because the national news publishers have chosen not to participate. Earl Attlee was of the view at the Report Stage of the Media Bill that this is a deliberate intention:

'The truth of the matter is that the opponents of the Leveson reforms want the only approved regulator to wither on the vine[36]'

With the Government recused and the PRP stymied, the only other form of accountability for the system of press self-regulation lies with the House of Commons Select Committee for Culture, Media and Sport ('CMS Committee'). The CMS Committee missed the opportunity to meaningfully scrutinise the provision repealing Section 40 during pre-legislative scrutiny of the

Media Act in 2023. After briefly rehearsing some of the arguments for and against, they rather disappointingly concluded in their report[37]:

> *'We note the conclusion of the Government's review of Section 40 of the Crime and Courts Act and its decision that it should be repealed. However, there can be no room for complacency regarding press standards. We will continue to scrutinise the work of the media industry and hold the press accountable for its reporting'*

The phrase 'continue to scrutinise the work of the media industry and hold the press accountable for its reporting' deserves further consideration. The CMS Committee attempted to perform this role in 2009 when *The Guardian*'s article revealing the scale of phone hacking in the industry came to light. Rather than dealing with the allegations, the PCC reassured the CMS Committee that phone hacking was the work of 'two bad apples'[38]. CMS Committee members came under intense pressure from News International. The BBC podcast '*Phone Hacking, Spying and Politicians*' describes[39] the contact that the then Chair of the CMS Committee had from News International:

> *'bombardment of text and calls that John Whittingdale received from News International. Records which have been read out in court cases show that between February 2010 and December 2011, he received 431 calls and text messages from News International PR's man … about 20 a week … this very high degree of contact during an Inquiry with a Select Committee chair is unexplained.'*

Also reported in the same podcast[40] are claims that several members of the CMS Committee had cause to suspect that they were subsequently the target of phone hacking. Lord Watson was one of these committee members and has just received a settlement and an apology from NGN for being put under surveillance by journalists and those instructed by them at the now-defunct *News of the World*[41].

The PRP was established to take politics out of press self-regulation. This ambition remains beyond our reach. Twelve years after the Leveson Inquiry report, it is all too easy to identify the 'too close' relationship between sections of the press and politicians re-emerging. That politicians may themselves have been victims of this relationship does not seem to have persisted in the Parliamentary memory. It should. Former Prime Minister Gordon Brown appeared on the *Tabloids on Trial*[42] documentary concerned that he was the target of unlawful information gathering and summed up:

> *'it's a lesson for all of us that we're in a democracy and it is the people, not the press, that must rule.'*

Iain Wilson, in his response to our Call for Information, also highlighted that it is not just Parliamentarians who may be exposed to the risk of press harm:

> *'Notwithstanding this, the press obviously has a renewed sense of confidence following the abandonment of Leveson 2 and often pushes boundaries. I have been disturbed by attacks on the judiciary and the rule of law, most notably around Brexit/Article 50 litigation and privacy litigation – where senior judges have been described as 'enemies of the people''*

While scrutiny of the functioning of any judiciary is clearly in the public interest of any democratic state, the risk that some news publishers may be actively seeking to undermine the judiciary where they have a clear commercial conflict of interest requires alertness and critical thinking. We might at this juncture remind ourselves that the Human Rights Act allows restriction of the right to freedom of expression where it is necessary for 'maintaining the authority and impartiality of the judiciary.[43]' This is clearly not a position that the authors of the *Editors' Code of Practice* agree with given it positions freedom of expression as a 'fundamental right[44]' and therefore without any such qualification.

Other policy interventions are available to change the nature of the press and press regulation. Rehearsing a recommendation from the follow-up to the 1989 Calcutt Inquiry, Sir David Calcutt's Review of Press Self-Regulation published in 1993[45] recommended a new statutory regulatory framework, including establishing a statutory regulator.

Establishing a press regulator on a statutory basis would require legislation, and having resiled from Section 40, a much milder intervention than statutory regulation, we do not assess any appetite for this solution. However, it would comprehensively address the issue of non-participation. As Iain Wilson observed in his response to our Call for Information:

> *'The repealed legislation* [Section 40 of the Crime and Courts Act 2013] *adequately addressed the mischief … Another mechanism is a statutory regulator, but this would no doubt be strongly opposed and would, admittedly, raise questions about whether the press is truly free.'*

The issue of statutory regulation was also considered by the Liberal Democrat DCMS Team in their response to our Call for Information:

> *'Leveson himself recommended that, should the industry not be prepared to join a system of voluntary independent self-regulation, Ofcom should be employed as a backstop regulator. This is not our preferred option, given that Ofcom is a statutory regulator and now has*

multiple regulatory obligations (now enhanced through the Online Safety Act). Ofcom may still need to be considered as a last resort.

There are other options which could both enhance journalistic standards and protect members of the public from malpractice. These might include, but are not limited to, a statutory right of reply for those affected by press misrepresentation, a statutory tribunal (perhaps situated within Ofcom), or financial incentives to encourage publishers to join a recognised regulator. We would support effective proposals that would both enhance freedom of the press and ensure the regulatory system is successful.'

Impress, in its response to our Call for Information, also proposed an alternative approach to address the failure of the larger news publishers to engage in independent press self-regulation:

'There is a further option which, at no cost to the public purse, would ensure the viability of independent press regulation and make it freely available to all news publishers, large and small, in print and online. A marginal annual levy on all news publishers above a certain turnover level (perhaps £5m) paid direct to the PRP would cover the costs of its compliance functions over any independent regulator and permit the PRP to subsidise the operations of a regulator whose subscription income falls short of its operating costs. In return for such a levy, high turnover news publishers could, if they wished, join an independent regulator at no additional cost, though they would retain their right not to do so.

Industry-funding of the PRP would not jeopardise a regulator's independence and nor would it compromise the ability of news publishers to remain unregulated if they so choose. It would simply ensure a sound financial basis upon which the independent regulation of a free press could continue in the way that Leveson, Parliament and the British public expected.'

If we look to comparator organisations, such as the Financial Conduct Authority or the Professional Standards Authority for Health and Social Care, then this type of model is likely to require further legislation and/or an amendment to the Royal Charter[46]. In principle, we have not identified any immediate issues with funding the system through a levy. However, just as some firms view the Apprenticeship Levy as 'a stealth tax[47]', it is more than possible that those news publishers who have chosen not to engage to date with independent press self-regulation, will simply carry on and view the levy as a cost of doing business. While this would provide for the long-term financial security of the currently only Approved Regulator, it does nothing to address non-participation by sections of the press who may represent the highest risk.

This would need to be implemented in conjunction with some sort of backstop regulator or requirement in order to address this issue which, as discussed above, is likely to be strongly resisted by sections of the press. Another alternative might be to require news publishers to pay the levy and pay for an independent external audit unless they joined an Approved Regulator. These kind of options do however layer complexity onto the system and are likely to raise the same objections from sections of the industry as statutory regulation.

The Australian Government have taken a different approach to addressing concerns regarding the financial viability of the press. They have legislated for a New Media and Digital Platform Bargaining Code (the 'Bargaining Code') as part of a scheme to address bargaining power imbalances to ensure that digital platforms fairly remunerate news business for the content they generate, thereby helping to sustain public interest journalism in Australia[48].

While the scheme has been driven in an attempt to address wider concerns about market power and the potential for economic harm, the end goal remains the same: to preserve a free press holding an open discourse where the public are protected.

To be eligible to make use of the scheme, news publishers must meet a set of criteria, including a 'Professional Standards test' relating to mechanisms for accepting, adjudicating, and notifying complainants of the outcome of complaints about news content, standards relating to the accuracy and impartiality of news content, and editorial independence. The latter excludes news publishers either owned or controlled by a political party, lobby group, union, or a party with a commercial interest in the coverage being produced[49].

It is worth exploring whether this kind of model could be adapted for the UK context to provide an alternative, robust incentive for news publishers to participate in the Recognition System and Section 40. Membership of an Approved Regulator could serve as a substitute for the eligibility criteria described above, and it could reduce news publishers' reliance on advertising for income. Over time, we would expect this combination of reducing reliance on advertising-driven revenue and effective self-regulation to improve general standards of press conduct and behaviour. At the very least, there would be an obvious financial reward for high editorial standards and ensuring that effective complaints-handling systems are in place, advantaging public protection.

This kind of intervention would still require legislation and, as for other options, it is not clear that the Government places any priority on this area of policy. However, this option is less threatening than statutory regulation or the imposition of a levy and so may be more palatable to the industry, with a clear advantage for them in the online competition.

Press Intrusion and Regulation Report
Case Study 1: Mandy Garner

'They say in Parliament that Leveson was an historical problem, but it is not a historical problem. They have never addressed the issue of clickbait. The change I want is I want them to acknowledge the danger of clickbait. I know there are commercial pressures on newspapers, but clickbait is not the answer. There should be some sense of responsibility because everything goes onto social media now. There is a strong argument for press freedom but, with freedom of the press, there has to be responsibility.'

If Section 40 is not the answer to the Leveson test, another mechanism must be found to ensure that the whole industry can be held to account. As things stand, the Recognition System cannot work. We need to have a discussion that was sadly lacking from the debates during the Media Act's passage around what the future of press regulation should be. Therefore, our first recommendation is that the Government commission a review of the incentives for news publishers to participate in the Recognition System and the consequences of refraining from doing so.

Recommendation 1

The Government must urgently review the incentives for news publishers to participate and the consequences for failing to participate in the Recognition System in the interests of freedom of speech and public protection.

6 DOING NOTHING IS NOT AN OPTION

There is an effective and independent self-regulatory body, Impress, which has proven that the model proposed by the Leveson Inquiry some 12 years ago can and does work in practice. Impress has demonstrated that it meets the standards for an Approved Regulator under the Recognition System, meeting all the requirements, including independence, financial security, and effective complaints handling.

However, much of the industry continues outside of Impress' membership, which, as highlighted in Impress' own response to our Call for Information, raises a risk in the longer term that they will no longer be able to afford recognition unless things change. Many news publishers have instead preferred to join IPSO – which does not conform to the standards for an independent self-regulator under the Recognition System – or operate their own in-house standards and complaints-handling processes, or have none at all.

Even without a mechanism such as Section 40 in place to ensure that all news publishers can be held to account whether they participate in the Recognition System or not, as a voluntary system, it remains open to news publishers to join the Approved Regulator or form a new body which could then seek recognition as an Approved Regulator. It would also be open to IPSO, in collaboration with its funding body, the Regulatory Funding Company (RFC), to reform IPSO's regulations, including producing its own standards code and implementing mandatory arbitration for all its members, so that it can demonstrate that it meets the criteria for an independent press self-regulator following the Leveson Inquiry recommendations.

The table below illustrates some of the differences between IPSO and Impress, which need to be addressed before the public can have confidence in IPSO's independence and effectiveness.

TABLE 1: COMPARISON OF IMPRESS AND IPSO

	IMPRESS	IPSO
Titles include	• National, e.g., The Conversation UK, Prospect Magazine • Local, e.g., Newham Voices, Bath Echo • International e.g., New Internationalist	• National, e.g., The Sun, Daily Mirror • Local, e.g., Dover Express, Grimsby Telegraph • International, e.g., Mail Online
Publishers/titles	Approximately 130 publishers / 230 publications*	Approximately 95 publishers / 1900 publications†
Annual expenditure	£1.22m**	£2,87m††
Meets the Royal Charter criteria	✓	✗
Arbitration scheme	Compulsory for all publishers subscribing to the Impress regulatory scheme	19 publications have joined the compulsory scheme / 11 publications have joined the voluntary scheme / 1 news content creator also participates regardless of where its content appears. Remaining publications do not offer arbitration§
Power to direct apologies	✓	✗
Allows third-party complaints	✓	Infrequently
Complaints system independent of the press	✓	✗
Investigative powers	Serious **OR** systemic breaches of its code	Serious **AND** systemic breaches of its code
Publishes the number of complaints for each title	✓	✗ (Publishes number of complaints by publisher)

Notes *Taken from IMPRESS 2023/2024 Annual Report. Numbers are approximate as membership/number of publications fluctuates.
**Taken from Impress Report and Financial Statements for financial year ended 31 March 2024
†Taken from IPSO 2023 Annual Report members directory. Numbers are approximate as membership/number of publications fluctuates.
††Taken from IPSO Report and Financial Statements for financial year ended 31 December 2023
§Taken from list of publications participating in IPSO's arbitration schemes on IPSO's website

IPSO has, in many quarters, come to symbolise the weaknesses in press self-regulation. However, we must remember that IPSO is only a part of the picture. As we highlighted in our Annual Report on the Recognition System to Parliament last year[50], in contrast to Impress, IPSO is required to enforce a standards code (the *Editors' Code of Practice*) that it only has limited control over. The drafting of the *Editors' Code of Practice* means that, in practice, it is very difficult to successfully make a complaint that a news publisher has breached the code.

This combination of industry control over IPSO's regulations and the *Editors' Code of Practice* means that IPSO lacks the tools to deal effectively with complaints about press standards. In January 2024, we published a review of IPSO's complaints process and related matters. This analysis highlighted that, between 2018–2022, IPSO investigated just 3.82% and upheld 0.56% of the eligible complaints it received[51] (i.e. excluding complaints about matters not within the scope of the IPSO complaints scheme (third party or nonlead complainant, non-IPSO publisher, global jurisdiction, online reader comment, ongoing legal proceedings).

Liberal Democrats DCMS Team response

'There have been multiple examples over the last 12 years both of breaches of press standards and of the failure of the industry-controlled complaints-handler IPSO to deal with breaches in a timely and effective manner. IPSO has failed to mount a single investigation or levy any fines.'

This is a remarkably small number compared to Impress, which, across the period 2018–2023, upheld 21.67% of eligible complaints. This variation is even more remarkable when considering Impress' membership of largely specialised, regional, and local publications vs IPSO's membership, which includes national and tabloid titles.

The review also highlighted that one of the key factors constraining IPSO is its funding situation. The RFC can impose an annual funding deal upon IPSO, meaning that it has no long-term financial security (although IPSO has now managed to negotiate a five-year budget, according to its website[52]). This leaves IPSO potentially vulnerable to interference and undermines its independence. More practically, taking account of inflation, IPSO's budget is not dissimilar from its predecessor, the PCC, which was described in the Leveson Inquiry as 'barely sufficient'.

As we can see in Table 1, IPSO's budget is not even two-and-a-half times that of Impress', despite regulating eight times as many publications including many large national and international titles notably missing as a cohort from Impress' membership. We might, therefore, be unsurprised that IPSO investigates comparatively few complaints and upholds only a tiny proportion of those.

Families Outside network member

'I felt alone there was no one to talk to. I felt judged. I feared for my safety. I was verbally abused. My family home was repeatedly targeted. I had to pack up my whole life and had to give up our home, after living there for 23 years. This was heart-breaking for me, an upheaval which I did not need, especially seen as I hadn't done anything wrong.'

Further to this review, we analysed some of IPSO's regulatory decisions exploring how IPSO's limitations have led to the public remaining unprotected. The lack of an effective regulator means there is no serious deterrent to press intrusion and malpractice[53]. The analysis found serious weaknesses in its regulatory decision-making.

For example, our analysis of four case studies, identified that IPSO had failed to protect children and victims of crime, as well as the public, where a complaint had been upheld. This arises because of IPSO's apparent reluctance to impose sanctions, and when it does, it is no more serious than requiring a news publisher to publish the adjudication. In one instance, despite finding that the children involved had a reasonable expectation of privacy, the news publisher was permitted to continue to publish the article as long as the adjudication was published alongside it.

Any sanction imposed by a regulatory body will, by its nature, be retrospective and inevitably too late to help the original victims. This is why strong powers of deterrence, including fines, are so important. In the small number of cases where a consequence arises from a breach of the *Editors' Code of Practice*, it is so mild that it is difficult to identify any deterrent effect.

SAMM network member

'I was powerless I didn't count or matter, I Complained in [sic] fell on deaf ears has [sic] we have no rights and no choice.'

Without any deterrent effect, the mechanisms in place to prevent press harassment are also severely limited. IPSO has the power to issue notices to its members asking them to respect the privacy of an individual, at an individual's request. However, these are not always effective, even when IPSO has recognised that there may be limited public interest in the matter. In one case involving an actor's private life, despite three

privacy notices being issued by IPSO, 51 articles about the issue were published in under four months, including two in one day and 18 in one week.

While producing these articles, journalists based themselves outside the actor's house and pursued them in cars as they drove around. When a complaint was then made, the IPSO Complaints Committee gave no weight to the issue of privacy, although it did find harassment by the news publisher for ignoring the requests to desist. In any event, the only consequence was again the publication of the adjudication, which one can only assume would fail to register when compared to the revenue created by mounting such a campaign of articles online.

The review also identified cases where circular logic in the *Editors' Code of Practice* — whereby the public interest is interpreted as equating to freedom of speech — has left ordinary members of the public unprotected. In two examples, the review highlights the inclusion of personal data of family members (including names and addresses) that had nothing to do with the story being reported. Yet the IPSO Complaints Committee did not consider this a breach of privacy, just 'simply biographical detail'. There was no consideration of the effect these stories might have on individuals connected to it by a familial relationship (and, in one instance, a relationship that had ended some seven months before the article's publication).

This was a theme also referred to by Families Outside in their response to our 2022 Call for Information:

> *'The printing of addresses and other information that can identify the family continues, however, even when they are not directly relevant to the story, which directly breaches ISPO Editors' Code (2021). In many cases, this is not justifiable or in the public interest but instead directly breaches children's and families' rights.'*

Liberal Democrat DCMS Team response

'Ordinary people still have as little protection from press mistreatment as they did in the days of the discredited Press Complaints Commission.'

Two further themes emerged in the review of note. First, IPSO seems to ignore the impact that a headline can have on people who may only be scanning an article. It can colour peoples' interpretation of the content. Even where the article may be accurate, if the headline leads towards an impression of wrongdoing, it can be extremely damaging. The second issue relates to IPSO's limited ability to deal with complaints about publications that discriminate against groups. While IPSO does now accept third-party complaints, which is a welcome move, it can only deal with cases of discrimination against individuals, not groups. The press can continue to make carefully worded[54] derogatory remarks about groups based on any characteristic without much concern that IPSO would be able to act upon it. By contrast, the *Impress Code of Conduct* explicitly states that publishers must not encourage hatred or abuse against any group based on their protected characteristics.

This technical review of IPSO's inability to deal with complaints in its regulatory decision-making reinforces the view that IPSO, in many ways, replicates the faults that plagued the PCC. However, we must not lose sight of the underlying issue – that news publishers retain the ability to cause harm to the public at scale and, in an increasingly online world, instantaneously.

In its response to our Call for Information, The Press Justice Project, a charity which advises people affected by wrongdoing in the press and seeks to educate the public about their rights in respect of unethical press conduct, echoed these themes, highlighting what they described as a number of specific flaws in the IPSO system of complaints handling, highlighting lack of investigatory process, weaknesses in the Editors' Code (especially around discrimination), weak or inadequate sanctions, failure record breaches, failure to proactively pursue complaints and irrational rulings.

The issue of discrimination was brought into sharp focus by the tragic events that occurred in Southport on 29 July 2024 and the subsequent public disorder. Government ministers have recognised the important role of the press, particularly local publications, in countering dis- and misinformation on social media[55].

The press has been swift to point to social media platforms[56] as being at the root of the issue, enabling 'violent disorder to be whipped up online'. However, the press widely uses social media to gain content for their stories and identify individuals involved. The theme of accessing information from social media was identified in the Leveson Inquiry[57], as were the challenges associated with individuals understanding privacy settings. Additionally, depending on the social media platform, even if you restrict access to your account, it might be shared with someone else in your network who reproduces it without the same privacy settings.

SAMM network member

'The morning after my mother had passed away. They tracked all of 5 of my siblings down and our partners down and hounded us with social media messages. My mother had been violently attacked and left for dead. We were still processing what was happening and did not expect them on the doorstep. They took photos of my mum and family of my mother's social media and printed this with quotes from my families social media.

I felt this was stealing, it made us feel vulnerable and over exposed. Our life had been pulled apart and spread over a newspaper. How is that in the public interest? They do not think of my mum and her dignity. They do not think of the pain the family is in.'

There is also the view that the long-term influence of language used repetitively by the news media (including news publishers) in relation to certain issues normalises attitudes that far-right extremists can then exploit. Appearing on *Good Morning Britain*, Zahra Sultana MP referenced the importance of language used by the media in shaping narratives. Referring to the riots, she said we 'shouldn't be surprised that this has happened, there has been decades of work by right-wing press and by politicians who have fanned the flames of this hate' to 'scapegoat minority groups' including migrants and asylum seekers for political decisions[58].

This long-term shaping of narratives was also the topic that the National Union of Journalists (NUJ) raised with IPSO in relation to both discrimination and disability issues in 2023. Dr Natasha Hirst of the NUJ said[59]:

> *'For IPSO to suggest that persistent negative framing of disabled people is mere 'polemic' demonstrates a shocking disregard for the real-life consequences of this rhetoric.*
>
> *Wilfully dehumanising disabled people in reporting legitimises hate speech and emboldens decision-makers who side-step their obligations to respect people's dignity and human rights. When this style of reporting so easily evades scrutiny, it points to a weak Code and regulator that doesn't care to use its teeth.*
>
> *The NUJ calls on IPSO to start monitoring national newspapers to identify poor framing that intentionally presents groups in a poor light. Our industry must be responsible for the consequences of such reporting instead of dodging accountability.'*

Hacked Off, in its response to our Call for Information, also expressed concern on this point:

> *'This also has wider consequences for society. Press disinformation on issues relating to climate change, marginalised communities, immigration and more is damaging public debate. This leaves citizens misinformed about the most important issues of the day.'*

This is an extremely complex and challenging area. IPSO has described discrimination as 'the greatest issue IPSO has had to grapple with[60]'. However, the fact that the *Editors' Code of Practice* is limited to 'avoid prejudicial or pejorative reference to an ***individual's*** race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability', rather than to groups has been a matter of repeated concern[61]. During the last review of the code, the Editors' Code of Practice Committee rejected submissions to broaden the scope of the relevant clause, saying[62] such an addition:

> *'would inhibit debate on important matters, would involve subjective views and would be difficult to adjudicate upon without infringing the freedom of expression of others.*
>
> *As always, the Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual – in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive.'*

This does not appear to be the view of Impress or its members. The *Impress Standards Code*[63] explicitly prohibits news publishers from encouraging hatred or abuse against any group based on their characteristics.

Wherever the balance might lie, and although IPSO has accepted complaints from representative groups where discrimination is alleged[64], the failure of the *Editors' Code of Practice* to address this point means that we are unlikely to reach a consensus position on this issue, leaving news publishers to act individually according to their own conscience and commercial interest.

With online platforms moving away from fact-checking[65], the role of a free press reporting in the public interest is likely to become increasingly important. However, as users of social media, the risk that the press amplifies misleading, inaccurate or discriminatory social media content also increases.

In May 2024, we published a research report we had commissioned into *Press Intrusion and Regulation*[66]. The report highlighted 10 case studies of press harm and intrusion where ordinary people, many of them already in vulnerable circumstances, found themselves under the gaze of the press, experiencing

harassment, exploitation of grief, and damaged careers. Their stories were told in their own words, which otherwise might have been silenced by inadequate complaints processes and the challenges associated with lengthy and expensive court proceedings. In some cases, these individuals were able to obtain remedy or redress in the courts. Still, the obstacles in their path underline that the concerns regarding the ethics and culture of the press that led to the Leveson Inquiry persist. These case studies occurred between 2010 and 2020 and do not relate to the 'historic' phone hacking issues.

Case studies in the report[67] highlighted how some news publishers use content that deliberately employs observations regarding an individual's faith, sexuality, gender identity, or race, even if inaccurate or irrelevant to the main substance of the story, to attract attention and serve up advertising 'clickbait'. In one case study, a news publisher managed to obtain CCTV footage of a fatal road traffic accident and considered this acceptable to post on its website with no regard for the impact that might have on the victim's family.

The research also disturbingly reports the behaviour of some journalists working for major news publishers in situations of bereavement. Following the Manchester Arena Bombings, parents were finding out about the death of their children from journalists knocking at their door. In one case, a 14-year sibling of one of the victims was interrogated on the doorstep of the family home while his mother was en route to Manchester to try and find out if her older son was alive or dead.

Other examples illustrate how news publishers' have the power to destroy careers with defamatory headlines and vilification. In one case, associating an individual with sex traffickers because he happened to share the same religion and nationality, and in another, taking a convicted fraudster at their word, accusing the prosecuting barrister in the case of suppressing evidence of police corruption and putting an 'innocent man in jail'.

It is difficult to identify where the public interest is in using these journalistic techniques. It is easy to identify the harm. Perhaps unsurprisingly, the report received little attention. Other than *Newsnight*[68] and some social media commentary, there was virtually no public coverage of the report. This again highlights the challenge of raising concerns and exposing misconduct about an industry that controls such a significant proportion of our public communication bandwidth.

Press Intrusion and Regulation Report
Case Study 5: Figen Murray

'We went to the stadium and left my two youngest daughters, the 16 year and 19-year-old at home … my youngest daughter, was downstairs watching the news, and the doorbell went. She opened the door, and there was a woman journalist who said to her, 'Oh, hi. I'm sorry to hear about what happened. Sorry for your loss. Would you like to tell me what Martyn was like? What was he like, your brother.' This journalist, who did not identify herself … assumed that Martyn was dead. The bodies at that time, were on the floor, still dead and nobody had been identified. She couldn't have known for sure that Martyn was dead. But she still decided to tell my youngest daughter the devastating news that her brother had died.'

Press Intrusion and Regulation Report
Case Study 7: Wajed Iqbal

'On the day it came out, I went have a look on the Mail Online app on my mobile phone. I saw my picture, which they had taken off social media. I was in shock. The headline called me 'the fixer' then the story went on to say that I had been giving badges out to the paedophiles that been convicted in Rochdale. I just start crying and when my wife asked me what was up, I had no words. I went to buy a newspaper to have a look at the actual hard copy. There was a double spread and a picture. I contacted my colleagues and they both said the same thing. They have gone for you because you're Asian.'

Support After Murder and Manslaughter (SAMM) responded to our Call for Information with a collection of stories from members of its network, some historic, some more recent, which repeated similar themes. Notably, victims' families being approached on the doorstep, including children. Here is one example:

> *'My mum was murdered 20 years ago - and once the press found out where I lived with my husband and 2 children (aged 13 and 16) we weren't left alone! One particular female knocked on our door many times and often caught my children home alone and plied them with questions and asked for photos! We were constantly rung and emailed after the initial event — this lasted a couple of months then died down until the court case two years later when it started up again. While my husband and I were at the Old Bailey — the press were at our house waiting for our children to return from school. A couple of years later when 'he' killed himself in prison, we again had press knocking at our door, ringing and emailing!'*

Several prominent news publishers belong neither to Impress nor IPSO. These news publishers have set up their own standards and complaints processes. In its response to our Call for Information, Guardian News & Media[69] highlighted:

> *'We have strong self-regulatory standards, including an open and transparent editorial code and guidance that upholds high standards in our journalism. We were also the first UK paper to employ an independent readers' editor (who reports to the Scott Trust, not the* Guardian*) giving readers an independent voice to contact if they feel that our coverage ever falls short of our editorial standards. These are the principles and practices that begin to build trust in journalism and ultimately on anything that we put our name to.'*

The *Financial Times*, in its response to our Call for Information, also disagreed with the premise that any further intervention was necessary given the effectiveness of their in-house standards and complaints processes:

> *'the FT produces the most trusted journalism of any non-broadcast news brand in the UK. We maintain trust in that journalism by ensuring that every piece of journalism we publish accords to the FT Editorial Code. We also have a complaints-handling system that applies to 24 FT group online news titles. Where any complaint under the FT Editorial Code is unable to be resolved by FT senior editors, a complainant can appeal to the Editorial Complaints Commissioner who will review the matter and direct any appropriate redress. In December 2021, the FT's Appointments and Oversight Committee appointed Christina Michalos KC as its new Editorial Complaints Commissioner. The role of Editorial Complaints Commissioner ensures an independent means of overseeing reader and audience complaints. The role is a regulatory one, completely independent of the editor. The Oversight Committee and the Complaints Commissioner are part of FT governance structures that embed and ensure the highest standards in journalism. You can find out more about the policies and processes of the Complaints Commissioner here.*

The reliance on 'trust' as a proxy for evidence of good conduct and behaviour is also problematic. Trust can be misplaced and should not be mistaken for trustworthiness[70]. The fact that publications are trusted in an opinion poll does not provide us with a meaningful gauge as we have no way of assessing whether the respondents to that poll were in a position to make such a judgement. Even where these opinion polls may reflect that a publication is trustworthy, they do not provide objective and system-wide assurance. One test of trustworthiness is 'how to give adequate, useful and simple evidence that you're trustworthy[71]'.

The Recognition Criteria provide us with an objective standard for trustworthiness for press self-regulation. Given that much of the infrastructure described by some publications already reflects many of these requirements, it is unclear what the obstacle is for these publications either to join the Approved Regulator or set up their own self-regulatory body that could then seek recognition, except that it would make these publications vulnerable to genuinely independent scrutiny. Without such vulnerability, there is no meaningful way to assess the degree of trust we should place in these publications.

We would stress that none of this reflects on the conduct or behaviour of *The Guardian* or the *Financial Times*. We would also highlight that neither of these publications has been featured in our analyses or reports on press harm, intrusion, or inadequacies in complaints handling. However, there is also no objective external oversight that their systems are operating effectively to protect the public and deal with complaints effectively. We would also note that none of the news publishers responsible for the behaviour outlined in our various reports and analyses during 2024 participate in independent press self-regulation and belong to Impress.

Although we hold no real expectation that these titles who have featured in our various reports and analyses will suddenly choose to exercise their freedom of speech responsibly, it is nevertheless incumbent upon us to recommend that they, and any other news publishers who are not currently participating in the Recognition System, do so either by joining Impress, forming a new body which can act genuinely independently, or reforming IPSO so that it can do so and come within the Recognition System.

Recommendation 2

News publishers who do not currently participate in the Recognition System should join Impress, work to reform IPSO so that it can meet the recognition criteria, or come together to form a new body which could then seek recognition.

7 OBJECTIONS TO INDEPENDENT PRESS SELF-REGULATION ARE MISCONCEIVED

During the debates on the repeal of Section 40, a range of arguments were used to justify the proposal. Many of these arguments are spurious. As we saw in the first chapter, assertions around cost and freedom of speech cannot be substantiated with any meaningful evidence. We agree with Viscount Astor, in his comments at Report Stage of the Media Act 2024[72], that the reason for repealing Section 40 was more likely that:

> *'with the announcement of the election no Front Bench will put itself on the wrong side of the press'.*

Iain Wilson, in his response to our Call for Information, echoing Viscount Astor, laconically summed up:

> *'Politicians, whether in government or opposition, are terrified of Fleet Street and thus are unlikely to propose or pass meaningful legislation.'*

Other arguments included that these issues are 'historic' and that press standards have improved or that 'state-backed regulation' is anathema to a free press. Sir Brian Leveson remains of the view, expressed in his open letter to Baroness Hollins during the passage of the Media Act 2024[73], that:

> *'Allegations of libel, invasions of privacy, misuse of personal data remain equally as relevant today and are as pressing as ever.'*

There are very clearly historic issues, as highlighted in 2024 by ITV's *Tabloids on Trial*[74] documentary and the BBC's *Phone Hacking, Spying and Politicians*[75] podcast, which put a sharp focus on just how long it can take for the process of justice to run its course, even when celebrities and politicians have the means. If the system cannot even resolve these historical issues in a reasonable timeframe, what hope is there for new cases, such as those we see in the previous chapter, that continue to emerge?

SAMM network member

'Celebrities can sue the press and newspapers so why can't murder victims. Where's our rights our choices there should be a law stopping the press from Sensationalizing murders and the negative further trauma it causes to mother's families, and they should be made to be held accountable.'

As we saw in Chapter 1 of this report that the Public has been abandoned, there is evidence that access to justice is being restricted by a combination of cost and complexity, the inequality of arms between individuals and large news publishers, and the use of processes to reach 'no admission of liability' settlements which resolve the individual claim but do not necessarily achieve accountability.

Liberal Democrat DCMS Team response

'Those publishers in the PRP-approved regulator IMPRESS have pursued robust and difficult investigative journalism, without any compromise to their independent operation. They are living proof that objections of "state interference" have no basis in the real world.'

'State-backed' regulation is also a curious accusation. Many professions are self-regulating. However, when self-regulation is found to be insufficient, as it was in the case of the press in the Leveson Inquiry, it is only the government that can intervene. In this case, that intervention was to maintain a self-regulatory regime for the press, but to ensure that press self-regulators conformed to some minimum standards and were subject to some independent external oversight to ensure that they were meeting these requirements. But there is a wide difference between this and 'state regulation'.

The term 'state-backed regulation' has been used, including by the NMA, seemingly to paint the Recognition System as statutory regulation that would be 'anathema to a free press[76]'. The

Recognition System was carefully and explicitly designed to avoid state regulation of the press, not to implement it. As Sir Brian Leveson pointed out in his open letter to Baroness Hollins[77]:

> *'the suggestion that it [the PRP] is some kind of 'state regulator' of the press flies in the face of all that it was set up to do.'*

The Liberal Democrats DCMS Team, in their response to our Call for Information, also reflected on this theme:

> *'The safeguards enshrined in the Royal Charter in respect of appointments to the PRP guarantee its complete independence, and in particular its distance from both politicians and the industry. Those safeguards are greater than those applied to either the BBC or Ofcom, both of which are still regarded as trusted institutions. Conversely, IPSO is not protected from either political or industry appointments.'*

It is also the case that IPSO and *The Editors' Code of Practice* are also woven into legislation. The Editors' Code of Practice is the recognised industry code of practice to which news publishers must have regard when exercising the various exemptions to data protection legislation available for journalistic, academic, artistic, and literary purposes when processing personal data[78]. Given the way that *The Editors' Code of Practice* misrepresents 'freedom of expression' as a 'fundamental right', contrary to human rights legislation, this status is undeserved. We expand on this topic later in this chapter.

The issue of social media was another prominent argument in the repeal of Section 40, as summarised by Lord Bassam[79], that:

> *'Challenges from the rise of social media, online consumption of media and the consequences of falling advertising revenue mean that we have seen a significant impact on the ability of the press to compete in the market and undertake its vital work.'*

However, as both Hacked Off and the Liberal Democrats DCMS Team pointed out in their responses to our Call for Information, news publishers are very active online:

> *'Meanwhile, the growth of online news consumption has also done very little to dilute the power and influence of the press, relative to other news sources. For example, Ofcom has found that of the 19 most popular news websites, 9 are the websites of newspaper publishers and a further 4 are "magazines" or "online-only" news brands; all of which would qualify as "relevant publishers" under the Crime and Courts Act 2013 (the rest are major broadcasters, whose broadcast content is regulated by Ofcom).'*

We might also look to the example of Sky News, which, as a broadcaster subject to statutory regulation by Ofcom, still manages to win awards for its investigative journalism[80].

A privileged position is being maintained, political influence is being traded

This illustrates that news publishers are not necessarily losing out in the online marketplace, but both gaps and duplications are being created in online safety legislation, blurring regulatory boundaries. The cumulative effect of these legislative decisions is that the system represents a classic Swiss Cheese Model[81] in terms of public safety. The press can choose to maintain its privileged position, arbitraging political influence to maintain its benign regulatory environment[82]. This enables news publishers to pursue their own commercial interests without too much regard for the public interest or exercising their freedom of speech responsibly if they so choose. This cannot be an acceptable outcome.

Liberal Democrat DCMS Team response

'Young people are traditionally regarded as particularly news averse and newspaper averse. But recent research by the newspapers' marketing arm Newsworks suggested that seven out of ten visited publisher news brands (websites or apps from newspaper publishers) during a one month study'

In a further example of the blurring of regulatory boundaries, a government consultation[83] looking at updating the media mergers regime conflates the regulation of broadcast news and the press, contrary to the clear division that has been implemented in other aspects of media regulation, with Ofcom having statutory oversight of broadcasters, while independent self-regulation has been the preferred model for the press. The proposed changes aim to treat all 'news creators' under one definition but then,

Requirements of Standards Code under the Recognition System

Approved Regulators operating within the Recognition System must produce a Standards Code which takes into account the importance of freedom of speech, the interests of the public, the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:

- conduct, especially in relation to the treatment of other people in the process of obtaining material;
- appropriate respect for privacy where there is no sufficient public interest justification for breach; and
- accuracy, and the need to avoid misrepresentation.

somewhat awkwardly, provide different public interest considerations to news publishers vs broadcasters.

The public interest considerations for broadcasters that enable the Secretary of State to intervene in a merger include an assessment of the need for those in control of such enterprises to have a genuine commitment to the attainment of broadcasting standards. For news publishers, there is a much less comprehensive test incorporating only the accurate presentation of news and free expression of opinion – both of which are characteristics required of a Standards Code under the Recognition System but do not represent the totality of the requirement.

The key outcome of the Leveson Inquiry was to design a system that took politics out of press regulation. However, by degrees, successive governments have resiled from this position and created increasing opportunities for political influence to be traded over different legislative issues.

Rather than accepting this position, the current Government should act to address these legislative inconsistencies. In its response to our Call for Information, the campaign group Hacked Off were also of the view that the government needed to act:

> *'It is impossible to say what, genuinely, is the objection of national newspaper owners, but in the absence of any coherent reason from editors and executives themselves, one can only assume that they are resistant to the very principle of accountability. In these circumstances, it is the role of government to step in and ensure that there are safeguards to protect the public.'*

Several specific, simple, and obvious legislative interventions could bind the independent press self-regulation system together, even without an incentive/consequence model such as Section 40 to encourage news publishers to participate. The Government should act on these.

Both *The Guardian*'s and the *Financial Times*' responses referenced existing law as a factor weighing against further regulation for the press.

The Guardian stated that:

> *'It is worth noting again that it was journalists, not politicians or regulators, that broke the phone hacking stories — laws in place at the time are being used today by people seeking access to justice. A healthy and free press is the cornerstone of our democratic society. We welcome the repeal of s40 contained in the Media Act.'*

The *Financial Times*' view was slightly different, noting that the legislative burden was increasing:

> *'Journalism produced by the Financial Times is also subject to an increasing number of laws enforced by regulators who seek to place limits on the use of information to create journalism. The ICO's recent publication of its journalism code is a key example of such regulation in action.'*

The *Financial Times* referenced the ICO's *Data protection journalism code of practice*[84] as a further example of regulation in action. This code rehearses data protection legislation focussing on journalists and, particularly, how to apply the exemptions available to journalists. In the words of the Information Commissioner, who also provided us with a response to our Call for Information:

The Journalism Code

> *As set out above, use of personal data for journalistic purposes is exempt from data protection law subject to certain criteria being met. The Code provides guidance about applying the data protection principles in the context of journalism. It also sets out the legal requirements, information around the application of each of the criteria, and offers clear practical guidance for how these are to be met by those wishing to invoke the exemption, as well as examples of good practice[2].'*

It would therefore appear that this is not an additional regulatory intervention but rather a useful resource in plain English that digests a complex area of existing law for a specific audience. Legislation has existed in its current format since 2018.

The Guardian News & Media Editorial Code[85] and the FT Editorial Code of Practice[86] adopt and enhance the *Editors' Code of Practice*. We have no evidence to suggest that either of these publications are making decisions to exercise exemptions from data protection legislation in anything other than an appropriate manner.

However, it illustrates again a fundamental flaw in the current system, which potentially weights decision-making away from an individual's rights and towards news publishers' freedom of expression given the way that *The Editors' Code of Practice* position freedom of expression as a fundamental, rather than qualified, right. This is not consistent with human rights legislation[87] which is clear that it is a qualified right and must be balanced against other human rights.

Particularly, Article 11 of the Human Rights Act[88], which is the legal basis for freedom of expression, explicitly calls out:

> *'No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or* ***for the protection of the rights and freedoms of others emphasis added****, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'*

[2] data-protection-and-journalism-code-202307.pdf

Sections of the press seem to conveniently forget when they speak of 'freedom of expression', that the 'rights and freedoms of others' include the right to respect for private and family life under Article 8[89] of the Human Rights Act. Given that the *Editors' Code of Practice* has been adopted into data protection legislation, it is particularly concerning that this basic legal point has been insufficiently acknowledged. Only Government can address this.

In contrast, the *Impress Standards Code*[90] makes clear that:

> *'Freedom of expression is a protected right under Article 10 of the European Convention on Human Rights, scheduled to the Human Rights Act 1998 (see Schedule 1 of the Act). Article 10 (2) allows for restrictions on freedom of expression that are necessary and proportionate to protect legitimate goals, including national security, public safety, the administration of justice, preventing disorder or crime, protecting information received in confidence and the reputation and rights of others. This means freedom of expression must be balanced against other fundamental rights, including the right to respect for private and family life (Article 8) and the prohibition of discrimination (Article 14).*
>
> *The concept of 'press freedom', encapsulated in the right to freedom of expression, is not absolute. An expression can be lawfully restricted on the grounds set out in para 2 of Article 10".'*

The Guardian News & Media Editorial Code[91] does incorporate additional text relating to privacy and the need for proper consideration of the public interest, balanced against any privacy rights over and above the *Editors' Code of Practice*, explicitly referencing Article 8 of the European Convention on Human Rights[92]. The *FT Editorial Code of Practice*[93] does not.

In terms of the burden of data protection regulation on news publishers, The Information Commissioner provided us with the following statistics relating to the complaints they had received regarding breaches of data protection legislation by media organisations (recognising that this includes broadcasters as well as news publishers):

Complaint Outcomes	2023	2024*
Informal Action Taken	36	22
No Further Action	169	129
Total	**205**	**151**

Informal action can involve either a compliance outcome with actions, or a more informal request for an organisation to do more. No further action outcomes include finding no compliance concerns, or not having enough information from the complainant to proceed.

**2024 completed cases, year to date.*

This is a very small number of complaints with a smaller proportion where any action was taken. The Information Commissioner also signposted us to their *Outcomes report: The ICO's review of the processing of personal data for the purposes of journalism under the Data Protection Act 2018*[94]. The report highlights that just 0.7% of data protection-related complaints to the ICO in 2022 and 2023 were related to journalism. The Information Commissioner's conclusion from this was that:

> *'The low number of data protection complaints received by the regulators and press monitoring bodies may suggest individuals have a low awareness of data protection and their rights.'*

The report also included a survey which, despite a low number of responses, gives us some indication of the regulatory 'weight' of data protection on news publishers:

> *'• ICO received 11 survey responses; eight from the first survey with those engaged in journalism, and three from the second with parties with an interest in journalism.*
>
> *• With a limited number of responses to the surveys it cannot be concluded that awareness of data protection requirements is high in all areas. Some misconceptions were found in areas including, governance and accountability, training and awareness, lawful bases, DPIAs, data sharing, and individual rights.'*

Further, the report highlights that, amongst complaints received by both Impress and IPSO, the number of complaints upheld in relation to privacy and accuracy is very low. Impress received only a very small number of complaints during the Information Commissioner's Review period. For IPSO, however, the Information Commissioner found that 78% of the complaints relating to accuracy and privacy resulted in a finding of 'no breach' of the *Editors' Code of Practice*. This statistic also needs to be set in the context that IPSO only investigates a small proportion of the complaints it receives[95].

Given these statistics, it is difficult to draw conclusions about the effectiveness of data protection legislation in regulating the conduct and behaviour of news publishers. While the number of laws may be increasing, there is a lack of evidence regarding systematic and consistent enforcement.

Concerns have been expressed about the depth of the review[96] and we assess that it raises more questions than answers. Given this, we would welcome further engagement with the Information Commissioner's Office to develop its approach to the next review to examine the issue in greater detail.

Alongside requiring the ICO to report on these matters, the Data Protection Act 2018[97] requires the Secretary of State to commission a review

into the effectiveness of alternative dispute resolution procedures operated by those bodies providing or enforcing press standards codes. We are concerned that, despite a requirement for such a review to be undertaken every three years, no such review has been commissioned since the Act received Royal Assent in 2018.

The use of the *Editors' Code of Practice* by *The Guardian*, *Financial Times*, and other publishers not part of IPSO's membership illustrates another incoherence in the system. Industry control of the *Editors' Code of Practice* was highlighted as an area of concern in the Leveson Inquiry[98]. Part of the solution to this was to assure, via the Recognition System, the independence of press self-regulatory bodies and require that Approved Regulators be responsible for the standards code they are required to enforce. However, news publishers have little choice but to 'have regard to' the *Editors' Code of Practice* if they are to apply the exemptions to data protection legislation.

The Press Justice Project, in its response to our Call for Information, indicated that it had concerns:

> *'... about IPSO's structure, which we consider to endanger press freedom and create obstacles to meaningful reform at the complaints-handler:*
>
> *...*
>
> *c. The Editors' Code is written by a majority of newspaper editors, and cannot be changed by IPSO. Once again, it is those responsible for transgressions in the press who are setting or controlling the rules. The PJP see no reason why IPSO should not control the Code it is charged with enforcing (albeit, taking into account editorial experience and expertise).'*

We agree with this in principle, and it is a requirement of an Approved Regulator under Criteria 7 of the Recognition Criteria[99]. However, given that many news publishers have rejected the IPSO model, some vociferously,[100] it could be problematic for them to be forced to have regard to a Standards Code promulgated by an organisation which they have publicly rejected.

From a systemic perspective, we might think of this as a house of cards where the *Editors' Code of Practice* serves a critical role. It is a compromise that much of the industry can live with, given it is not a creature of IPSO and avoided the degree of criticism levelled at the PCC by the Leveson Inquiry.

A better alternative, one easily enabled by the drafting of Section 42 of the Crime and Courts Act 2013[101], is to include reference to the 'Standards Code of an Approved Regulator' as a recognised industry code of practice (both in data protection and other legislation) and remove the *Editors' Code of Practice*. Or simpler legislative intervention may be to define the term 'independent regulator' in law as an 'Approved Regulator'. This would incentivise news publishers to participate in independent press self-regulation. However, the status quo, it seems, is preferable to much of the industry.

We are also concerned that the risk to the public may be exacerbated by ongoing discussions regarding further protections for news publishers against Strategic Litigations Against Public Protection ('SLAPPs'). We support the principle that news publishers should be protected from wealthy individuals and organisations misusing the courts in an attempt to bury investigative journalism, where it is in the public interest, in complex and expensive legal proceedings. However, the evidence base for the scale of this problem is not clear to us and neither is the rationale for removing the protection from SLAPPs previously available in law in Section 40.

Iain Wilson, in his response to our Call for Information shared his view that:

> *'... at the moment the press are seeking to undermine finely-balanced defamation and privacy law rights by mounting a misleading campaign against a so-called 'SLAPP' crisis. Whilst abusive litigation and threats of litigation may occur, to suggest it is systemic (or that there is a power balance in favour of victims of press abuse) is, in my opinion, a form of gaslighting. It seems to me to be little short of a landgrab by the already powerful press.'*

The PRP has not examined the evidence relating to the number and seriousness of SLAPPs, nor is it our role to do so. However, given the design of Section 40, it is a matter of interest to us, and we would support an investigation by the Law Commission of England and Wales or another competent authority to undertake a detailed review of the evidence before determining further action.

Both the current and previous governments have made public statements supporting further protections for news publishers against SLAPPs[102], although the current Government has indicated that it does intend to bring forward further primary legislation on this topic at this time[103]. The industry has argued forcefully for further protections against SLAPPs[104]. In its response to our Call for Information, the *Financial Times* were also supportive of further Government action against SLAPPs:

> *'We agree with the recent recommendation of the House of Lords Digital and Communications Committee that we need action on this issue now, in the form of legislation to tackle Strategic Lawsuits Against Public Participation (SLAPPs). This is now essential to ensure that the UK's media ecosystem does not become one in which those who can afford aggressive legal representation are able to escape legitimate scrutiny by journalists and the public.'*

The Solicitors Regulation Authority (SRA) also responded to our Call for Information, highlighting its review looking specifically into SLAPPs, noting:

> *'This* [review] *showed that whilst there was more to be done, there was good understanding of the issue and of our Warning Notice, and that this has led to some changes in practice.'*

The SRA further noted that:

> *'Following the review we updated our warning notice on SLAPPs to the profession, also taking into account of experience from our casework: We investigate complaints that we receive about SLAPPs and have referred some of these to the Independent Solicitors Disciplinary Tribunal to answer, the first of which is due to be heard this month.'*

In December 2024, this case reached a conclusion and while the solicitor concerned was fined £50,000, the Solicitors Disciplinary Tribunal found that it was not a SLAPP[105] illustrating the challenge of identifying what is, and what does not fall under this heading.

In 2024, correspondence was shared with the PRP by the Society of Media Lawyers who wrote to Lord Ponsonby, Parliamentary Under-Secretary of State for Justice, raising the concern that:

> *'Whilst anti-SLAPP legislation has so far received cross-party support, much of this has been based on a misleading narrative presented by the media (and their supporters) who want to reduce the legal protections available to victims of misreporting and invasions of privacy*
>
> *...*
>
> *Many so-called SLAPPs simply involve a disgruntled defendant who will not accept they have unlawfully libelled the claimant, or that the claimant is entitled to vindication. Indeed, it appears that many 'Anti-SLAPP' campaigners are seeking the introduction of a system which would make it almost impossible for victims of misreporting and other media misconduct to rely on their legal rights. This would be incompatible with the UK's obligations under the ECHR and would risk unintended consequences, including lower standards of fact-checking, the proliferation of misinformation and hate speech; and at a time when more than ever facts are being distorted and/or misrepresented.'*

If there is an evidence base to support further legislative interventions to protect news publishers against SLAPPs, we would caution that any such intervention avoids unintended consequences that lower press standards or further restrict access to justice for members of the public who have experienced press harm. Section 40 dealt with this by striking a balance between the two. It safeguarded news publishers against SLAPPs if they were responsible for their actions to an independent press self-regulator. At the same time, it increased access to justice for members of the public who had experienced press intrusion or harm from news publishers not accountable to an independent press self-regulator.

Setting aside that the Government does not view Section 40 as the answer, simply strengthening protections against SLAPPs for news publishers is not enough. Without a corresponding balanced mechanism to ensure that members of the public who have experienced press harm can still access justice, this approach only increases the risk to the public and further insulates news publishers from the consequences of press misconduct.

Recommendation 3

The Government should ensure consistency in the various definitions of 'news publisher' and relevant 'standards codes' for news publishers, aligned with the Recognition System, to enable press self-regulators, online platforms, the public, and news publishers themselves to understand the rights and responsibilities of the press under the law.

8 CONCLUSION

Given the repeal of Section 40 of the Crime and Courts Act 2013, the Recognition System cannot work as intended in the words of the Royal Charter[106]:

> *'as an effective regulatory regime which supports the integrity and freedom of the press, the plurality of the media and its independence, including from government, while encouraging the highest ethical and professional standards.'*

It is a travesty of justice that the progress made after Leveson is being put at risk for, the evidence leads us to believe, the commercial interests of a section of the press. The establishment of the Royal Charter, the PRP itself, and Impress demonstrating that the system works effectively represent significant achievements. Everything is 'ready' and fit for purpose but for the participation of those news publishers who prefer to remain outside of genuinely independent scrutiny.

Over 200 titles have taken the step of committing to high professional and editorial standards by joining Impress. However, those large national titles with the greatest capacity to cause harm have chosen not to. Without any tangible advantage to participating or consequence for failing to participate, there is no motivation for them to change their minds now.

Where does this leave us? There is currently no burning platform prompting calls to strengthen press regulation on the national political stage. Despite our own efforts and those of others to shine a spotlight on the harm of which the press is capable, all too frequently, it is difficult to get airtime through the very channels that have a vested interest in avoiding this type of scrutiny. Politicians seem far more likely to act in response to issues which gain traction in the 24-hour news cycle.

Without any meaningful brake on press conduct and behaviour, what will happen when the next scandal happens? That will be the burning platform, where public ire is turned on news publishers again. There have already been several Royal Commissions, Parliamentary Select Committee Inquiries, and Public Inquiries, of which the Leveson Inquiry was the most recent.

There will be little point in having another one. The pattern is already known. In 2012, the Leveson Inquiry identified a recurring six-stage 'pattern of cosmetic reform[107]' every time a press scandal has emerged over the last 70 years:

1. crisis,
2. the press coming under heavy public and some political pressure,
3. some reforms, usually of a limited nature, being carried out,
4. ephemeral improvement,
5. deterioration in press behaviour, and ultimately
6. another crisis.

We are now commencing stage 5. Without further policy intervention from the government or unless those parts of the industry that do not participate in the Recognition System have a sudden revelation and overcome their objections to independent press self-regulation, it can only be a matter of time until the next crisis.

Both the Government and the industry itself can take action to prevent this from happening. If a clear roadmap for the future of press self-regulation can be agreed, the next crisis may not be a foregone conclusion. However, If the current fractured and blurred regulatory landscape is allowed by Government and the industry to continue, we must not be surprised about the consequences of failing to act at this juncture. The public will suffer, both individually and societally, as the race to the bottom in the competition for our attention online and the pursuit of advertising revenues continues to escalate.

There is a clear choice for the Government:

- does it want freedom of speech working in the public interest?

- or is it content with the status quo, which prioritises the commercial interests of a section of the press regardless over the harm caused?

The choice for the PRP is clear and we will continue to make the case for freedom of speech working in the public interest as well as speaking up for those victims of press intrusion and harm whose voices have been silenced.

Recommendation 1

The Government must urgently review the incentives for news publishers to participate and the consequences for failing to participate in the Recognition System in the interests of freedom of speech and public protection.

Recommendation 2

News publishers who do not currently participate in the Recognition System should join Impress, work to reform IPSO so that it can meet the recognition criteria, or come together to form a new body which could then seek recognition.

Recommendation 3

The Government should ensure consistency in the various definitions of 'news publisher' and relevant 'standards codes' for news publishers, aligned with the Recognition System, to enable press self-regulators, online platforms, the public, and news publishers themselves to understand the rights and responsibilities of the press under the law.

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