

Data Protection Bill

Written evidence submitted by the Press Recognition Panel

14 March 2018

Introduction

1. The Press Recognition Panel (PRP) is concerned about misinformation and misunderstanding about the system of press regulation that Parliament agreed for England and Wales in 2013 following the Leveson inquiry.
2. We note the outcome of the Government's consultation on the Leveson Inquiry and its implementation.
3. It remains the PRP's view that section 40 of the Crime and Courts Act 2013 should be implemented in England and Wales in order to:
 - a) Give everyone, not just the rich, access to legal remedies to challenge alleged press illegality;
 - b) Protect the press from the chilling effect of threats of large legal costs by those who wish to stifle free speech and investigation; and
 - c) Remove political influence from press regulation.

The Leveson Inquiry

4. A key Leveson recommendation was the creation of a genuinely independent and effective system of press self-regulation. The new system received cross-party support in the form of the Crime and Courts Act 2013. The Act sits alongside the Royal Charter which created the PRP and includes the assessment framework we apply.
5. Although we and others use the word "press" as a convenient short-hand, the Charter and linked legislation (in England and Wales) are equally applicable to online news publications and websites (whether connected to printed publications or entirely freestanding). It is wrong to suggest that Leveson did not cover online news sites, or that the new system does not do so.

The new independent system that Parliament agreed

6. The Charter established the PRP as a uniquely-independent body to oversee press regulators. The PRP is entirely independent, including of politicians, the press and other interests.

7. The Charter specifies 29 criteria which, if met, ensure that press regulators who comply with them are, among other things:
 - a) Independent;
 - b) Properly funded;
 - c) Able to protect the public; and
 - d) Secure freedom of speech.
8. The criteria are based on the recommendations of the Leveson Report. The PRP is not aware of any ongoing controversy about the criteria or their appropriateness for assessing regulators.
9. The PRP's powers are specific and limited. When it comes to regulators, the PRP simply ensures that approved self-regulators meet and continue to meet the criteria.
10. The PRP:
 - a) Is not a regulator;
 - b) Has no control over the press or any publisher;
 - c) Cannot tell any press organisation, publisher or regulator what to do;
 - d) Does its job without any politicians, media organisations or others having any ability to influence its actions or assessments.
11. The PRP board was appointed through an entirely independent process with absolutely no press or political involvement. The Charter itself can only be changed (or any board members removed) by a two-thirds majority of those who vote in each of the House of Commons, the House of Lords and the Scottish Parliament, and with the unanimous agreement of the PRP board. That gives the PRP unique protections to secure the independence of its decisions. It is untrue and misleading to claim that the PRP is a government organisation or under the influence of government.

Assessing press regulators

12. The PRP is the only independent body established to assess press regulators against the Charter criteria. It would clearly not be appropriate for the government or politicians (nor the press, nor anyone appointed by them) to judge or assess press regulators. As all parties agree, politicians should not interfere with the running of the press or have any undue influence over it. Genuinely independent assessment is essential.
13. The 29 criteria interact, and all must be met to provide effective public safeguards. Regulators cannot pick and choose which criteria they wish to meet

and which to ignore. A regulator cannot be almost compliant. It follows that the PRP cannot recognise a regulator which does not meet all the criteria, nor refuse recognition to a regulator which does. The PRP can neither under-enforce nor gold plate the criteria. Making an application involves being open and transparent and demonstrates a commitment to protecting the public in the way that Leveson recommended and that Parliament agreed was needed.

14. There can be more than one approved regulator and the PRP is prepared to accept future applications.

IMPRESS

15. In October 2016, IMPRESS became an “approved regulator” following a rigorous, independent, and transparent assessment by the PRP against all 29 criteria. Members of the public and those opposed to IMPRESS and the recognition system had, and took, full opportunity to comment on IMPRESS and its operations. We took all views into account.

16. IMPRESS is funded by a trust that receives charitable donations. When the PRP assessed it, we looked carefully at its funding arrangements, as the Charter requires. IMPRESS provided us with all the information we required. We formally invited and received public comments on that information. We were satisfied that there were no mechanisms in place for anyone to have any undue influence over IMPRESS - a key consideration in ensuring independence of funding.

17. In October 2017, a Judicial Review of our decision upheld the legality of all our conclusions, and wholly dismissed criticism of the way the PRP went about the assessment.

18. The PRP is aware of press reports regarding IMPRESS’ funding. Nothing we have seen there, or in other communications directly to us on that and other issues, suggests that the Charter threshold for an “ad hoc review” of our decision about IMPRESS has been reached. In particular, we have seen nothing to suggest any compromise on the independence of its funding.

19. Later this year, in the “cyclical review” of IMPRESS which the Charter requires, we will transparently and openly review all aspects of IMPRESS’ continuing compliance with all 29 Charter requirements.

Mandatory access to arbitration – protecting ordinary people

20. A key Leveson recommendation was that ordinary members of the public needed affordable access to justice if they think they have been legally wronged by a news publisher – for example in civil cases of libel, slander breach of confidence, misuse of private information, malicious falsehood or harassment. The Charter sets out minimum standards for such a system.

21. That is needed because ordinary members of the public cannot currently afford the high legal costs usually associated with action in the courts. Arbitration by a

Charter-compliant scheme would secure proper access to legal redress for all.

22. The Charter requires a filter system to ensure an arguable case to take a claim forward and block vexatious or frivolous challenges.
23. Under the Charter, it is mandatory for an approved regulator to provide access to arbitration for anyone who has a proper claim to bring. Without that fundamental mandatory protection, no arbitration system delivers this bedrock of the Leveson proposals. It follows that, to meet those requirements, it must not be possible for publishers or regulators to choose which cases they allow through to arbitration.
24. Only IMPRESS currently offers an arbitration scheme that meets the Charter's standards. Other regulators could be established (or adapt themselves) to meet those requirements. But no others do so at present.

IPSO

25. The 29 Charter criteria have overwhelmingly been accepted as the appropriate assessment framework, even by those unhappy with the Leveson recommendations.
26. Notably in that regard, on 12 March 2018 at the Oxford Media Convention, the Secretary of State stated that he wanted to see IPSO's low cost arbitration system "working, so anyone, of whatever means can get redress. It can't be right that, in some places, a large front page mistake can still get a tiny page 18 correction."
27. IPSO has not been independently assessed against the Charter criteria by the PRP. However, we have observed a number of public comments about the organisation, including by politicians, which are based on a misunderstanding of the Charter requirements and their application through a process of open, transparent and independent assessment. We pick up here on just three examples.
 - a) Even the review which IPSO commissioned into its own compliance did not claim it to be fully compliant. And even where it considered there to be substantive compliance, its approach needs to be treated with caution. For example, under the Charter, an approved regulator must have the ability to conduct investigations on its own initiative if there is evidence of serious or systemic breaches of its standards code. IPSO's reviewer regarded that requirement as substantively met on the basis that IPSO can initiate investigations if there is evidence of serious and systemic breaches of its standards code. That is not Charter-compliant, and it would not meet the minimum requirement for public protection as we would independently interpret and assess them.
 - b) The information – for example about its funding – which IPSO chose to make available for that reviewer was also far less than we would require to enable us to assess key matters such as independence of any regulator. It was certainly much less than what we required from IMPRESS. The information made available to the reviewer would be inadequate for the PRP to reach a

properly informed and transparently considered decision about IPSO's compliance with the Charter requirements. Without more information, the only independent conclusion would be a 'deemed fail'.

- c) As above, a Charter-compliant arbitration scheme must be mandatory: publishers cannot choose which cases to deal with that way (forcing others into court). We understand that IPSO runs a voluntary arbitration scheme so that not all its members are part of it; even members who have joined the scheme can apparently select which cases go to arbitration.

Section 40 – incentivising and protecting publishers

- 28. Leveson anticipated that incentives would be required to encourage news publishers to form or sign up to approved regulators while at the same time offering an alternative route to access to justice in relation to those who chose not to do so.
- 29. The mechanism provided by section 40 of the Crime and Courts Act 2013 in England and Wales has not yet been commenced. The Government now plans to ask Parliament to repeal section 40 whilst at the same time apparently still hoping that IPSO will become compliant. And of course, even if IPSO were to do that it would have no impact on the large sections of the press and online media which have nothing to do with IPSO.
- 30. Section 40 would also give financial protections to publishers who are members of an approved regulator. This is because anyone wanting to bring legal action against those publishers could raise the issue through arbitration and avoid a costly court case. If someone still chose to pursue the matter through the courts, those publishers would be protected from paying any legal costs. Section 40 supports investigative journalism and removes the chilling effect brought about from the threat of legal action that journalists often face.
- 31. It is wrong to suggest that commencement of section 40 would leave publishers with a choice of facing costs, win or lose, or joining IMPRESS. There is nothing to stop other regulators being established which meet the Charter requirements.

Protecting the local press

- 32. The new system of independent regulation includes special protections for the local and regional press to avoid causing them financial hardship. Leveson was completely aware of the particular position of local and regional publishers and built in protections for them.
- 33. If a financial problem arose, the PRP is empowered to dis-apply the arbitration requirements for local and regional publishers.

Affected publishers

- 34. The new system of regulation applies to what the Crime and Courts Act 2013 terms 'relevant publishers'; namely businesses that publish news-related material that is written by different authors and that is subject to editorial control. This

includes international, national, regional, local and hyperlocal titles, operating across print or online or both. It encompasses what might be termed the 'traditional print press' as well as the range of newer publications that are proliferating due to the internet.

35. The new system of regulation applies to any and all news publishers that can be sued in the courts of England and Wales. For global companies established overseas, if they have a legal base in England or Wales sufficient for them to be subject to the jurisdiction of the courts here, the system applies to them. It would be wrong to focus only on IMPRESS and IPSO and their membership.

Social media

36. It appears to the PRP that several social media platforms may well fall within the Crime and Courts Act 2013 definition of 'relevant publisher'. If so, then a framework for regulating them already exists in the form of the recognition system. Social media platforms that are relevant publishers should be subject to the same domestic legal structures as all other relevant publishers. It will ultimately be for the courts to decide whether such social media platforms are indeed relevant publishers.

Political activity

37. The new system of regulation was intended to prevent politicians from interfering with press regulation. The Government's proposal that Parliament should repeal section 40 shows that political involvement is continuing, and the public is being denied access to independently verified, affordable justice.
38. It is the independent view of the Press Recognition Panel that section 40 should be commenced immediately to bring the political involvement to an end and provide the public protections that were agreed by Parliament.

The Data Protection Bill

39. Leveson recognised the role that data protection regulation could have in press regulation.
40. The Data Protection Bill lists exemptions to the protection of personal data for special purposes that include journalism. Part 5, paragraph 24 states the codes of practice and guidelines the controller must have regard to in determining whether it is reasonable to believe that publication would be in the public interest and would therefore be entitled to exemptions.
41. It is the PRP's contention that 'any code which is adopted by an approved regulator as defined by section 42(2) of the Crime and Courts Act 2013,' should be added to the list. This wording should be used, rather than name a specific approved regulator or code, otherwise the system agreed by Parliament to oversee press regulation is being disregarded.
42. The proposed inclusion of a power to allow a Minister to decide, following consultation, to add additional codes to those specified in the Act itself has no

relevance at all at this stage when Parliament is deciding what should be explicitly specified in the Bill itself.

Contact details

43. Please contact us if you would like more information:

office@pressrecognitionpanel.org.uk.

44. Our policy is to meet on an open basis with anyone interested in our work. We would be happy to do that here including, in particular, to explain or expand on any of the points above.