



Submission to House of Lords Communications Committee Inquiry into the status of press regulation

January 2015

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This is a brief submission made prior to giving oral evidence to the Inquiry on 27th January 2015. Separate to this submission the Lords Communications Committee may find some existing Media Standards Trust publications and articles on this subject helpful, most notably:

- *IPSO: An assessment by the Media Standards Trust* (November 2013) – available at <http://mediastandardstrust.org/mst-news/ipso-an-assessment-by-the-media-standards-trust/>
- *How newspapers covered press regulation after Leveson – Media Standards Trust Analysis* (September 2014) – available at <http://mediastandardstrust.org/mst-news/how-newspapers-covered-press-regulation-after-leveson-media-standards-trust-analysis/>
- ‘Can newspapers convince the public IPSO is not a ‘sham’?’ (Huffington Post, September 8th 2014) – available at http://www.huffingtonpost.co.uk/martin-moore/ipso-press-regulation_b_5782812.html
- ‘New Appointments Further Increase IPSO's Dependence on Powerful Industry Figures’ (Huffington Post, November 3rd 2014) http://www.huffingtonpost.co.uk/martin-moore/ipso_b_6081726.html

The public

Since press self-regulation must first and foremost work on behalf of the public, it seems appropriate to start with where things stand from the perspective of the public.

From the perspective of the public:

- A large, but not comprehensive, number of national and local newspapers and magazines have established a system of self-regulation that does not – nor does it seek to – comply with the criteria set out by Lord Justice Leveson for an independent and effective system of self-regulation
- A small, but respected and influential, number of newspapers have chosen to remain outside any system of press self-regulation, beyond their own complaints and compliance mechanisms
- Currently, access to legal redress in media cases is comparable with the situation prior to the Leveson Inquiry. However, this is only due to a suspension of clauses within the Legal Aid Sentencing and Punishment of Offenders Act (2012). Once this suspension has been lifted a member of the public’s access to justice via the courts will be far more restricted than it was before Leveson.
- An alternative regulator is being established – IMPRESS – that aims to adhere to Leveson’s criteria (but which may or may not seek to validate this claim through independent review by the Recognition Panel), but is not yet relevant to the public since it is still being set up and has – to date – no named members

The situation is therefore, from the perspective of the public, quite dispiriting. Indeed it may be argued that the situation for the public is worse than it was prior to the Leveson Inquiry, except insofar as the failings of the previous system have been exposed, and guidelines for an independent and effective new system have been set out by an independent judge. Yet no such system has, to date, been established.

IPSO

When IPSO published its founding articles and associated constitutional papers in the autumn of 2013 the Media Standards Trust (MST) assessed these against the criteria set out by Leveson in his report (*IPSO: An assessment by the Media Standards Trust*, November 2013).

This assessment found that IPSO satisfied 12 of Leveson's 38 recommendations for an independent and effective self-regulator.

As the 2013 assessment states:

'Of the 12 recommendations that IPSO satisfies, some should substantially improve the current system, especially with regard to internal complaints and compliance, and protection for whistleblowing journalists. However, of the 20 recommendations that IPSO fails, many are key elements of the Leveson system, including independence from industry, access to justice, and complaints.'

'The most substantial failings of IPSO' the assessment goes on 'are with respect to its lack of independence – especially from the newspaper industry – and its failure to provide access to legal redress for ordinary people.'

This assessment was not rebutted at the time or since. We have, as yet, seen nothing that would lead us to alter the assessment made in that report.

Developments in IPSO since November 2013

Dependence

There have been no structural developments since November that alter the fundamental dependence of IPSO on the publishers it seeks to regulate.

IPSO is reliant on, and directed by, the largest publishing groups in the industry – via the Regulatory Funding Company (RFC). IPSO's budget, its rules, its code, its sanctions, its investigations process, are all ultimately controlled by the RFC and its subsidiary, the Editors' Code of Practice Committee. IPSO cannot offer an arbitration service, or change the code, or make changes to the system of regulation, without the agreement of the RFC. IPSO is therefore acutely dependent on the publishers it regulates.

Although IPSO Chair Sir Alan Moses has stated he intends to make substantial changes to the IPSO system (though has not detailed what these changes are), the barriers to any such changes are significant.

After identifying the changes the IPSO Chair will need to:

- i. Convince the IPSO Board they are necessary
- ii. Convince the nine industry directors of the RFC of the need for the changes
- iii. Win a vote of RFC members (votes are dependent on the levy which is calculated – opaquely – on the basis of circulation and revenue – as a consequence of which voting is dominated by the largest publishing groups)

If any changes are agreed and member publishers vote to enact them, the contracts signed by each publisher will need to be altered to take account of the change. Each publisher will then, presumably, need to re-sign the contract.

As yet, neither the directors of the RFC nor the large publishers themselves have shown any outward inclination to alter their founding documents. Indeed given the care that was put into drafting these documents, the deliberate differences between IPSO and the Leveson recommendations, and given past precedent, it is highly unlikely that the large publishers should agree with Sir Alan Moses on the need for these changes. It is also within their power to negotiate and delay, as well as to refuse.

Even should changes be made it is within the power of the RFC to reverse the changes at a later date.

IPSO Members' Internal Complaints and Compliance

The MST November 2013 assessment stated that 'The system set up through IPSO should lead to a substantial improvement in the complaints and compliance systems within member news organisations.' This was based on stipulations within the Scheme Membership Agreement, which stated that:

- each publisher should 'implement and maintain internal governance practices and procedures with the aim of ensuring compliance with the Editors' Code and the Regulations' (Scheme Membership Agreement 3.3.3)
- also that each publisher should 'implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints' (Scheme Membership Agreement 3.3.4)

Reform of internal complaints and compliance systems is the chief distinction between the IPSO system and the system overseen by the PCC. Significantly improved internal complaints and compliance systems are particularly important to the IPSO system since complainants are now required to go to the publication concerned before a complaint can be dealt with by IPSO.

Yet, at this stage, from the perspective of the public, the reforms remain inconsistent, unclear and untested. It is not possible properly to examine the number of complaints made direct to newspapers, or the manner in which they are dealt with, since individual newspapers have not, to date, released details.

However, based on the procedures set up online and in print, it is already apparent that, depending on which news organization a member of the public complains to, they could find complaining easier than before, or more time consuming and more difficult.

Some IPSO members, like *The Times*, have a prominent graphic on the front page of their website reading 'How to complain about an article in The Times'. This then leads to a page which makes clear *The Times* adheres to IPSO regulations and the Editors' Code (and links to both), sets out its complaints policy (including the 28 day limit), and has an online form that can be filled out.

Other systems, however, could make the process of pursuing a complaint more difficult for a member of the public than under the PCC.

There is a danger, for example, that complaints made to *The Daily Mail* could go unrecorded by IPSO, could remain at the Mail longer than the 28-day time limit, or could be summarily rejected by the Mail. This is because:

- *The Daily Mail* distinguishes between ‘formal’ and ‘non-formal’ complaints. It does not indicate whether IPSO will be made aware of either formal or non-formal complaints nor how the public should interpret these distinctions
- It is not made clear to the complainant that the newspaper has only 28 days to resolve the complaint to the satisfaction of the complainant before it escalates to IPSO. This makes the timing and circumstances in which a complaint escalates to IPSO opaque
- The Corrections and Clarifications page online states that a complaint cannot be started ‘until we [*The Daily Mail*] have received all supporting documentation you wish to submit, including correspondence with the journalist concerned’. Based on this one must assume the 28-day time limit does not begin until all documentation, as defined by the paper, has been received. This, again, could lengthen the time before it escalates to IPSO
- There is no link or address or phone number for IPSO on the Corrections and Clarifications page

The Daily Mail also ascribes to itself the right, acting at its own discretion, to reject any complaint if it judges that ‘there is no apparent breach of the Editors’ Code, or if they [complaints] are without justification (such as an attempt to argue a point of opinion or lobby), vexatious or disproportionate’. It also makes clear that the paper is likely to reject a complaint unless the complainant is the first party (consistent with IPSO rules but contrary to Leveson).

It should be noted that a number of complaints forms, *The Daily Mail* included, require the complainant to add personal details, including a home address. People making complaints – particularly under Clause 3 (Privacy) – may feel understandably reluctant to give to these personal details to a newspaper about which they are complaining.

IPSO has stated that it is currently reviewing the new complaints and compliance procedures of its members. This ought to highlight some of the shortcomings of some of these systems. It is not clear, however, how IPSO will ensure these systems are changed.

The Editorial Code

In his report Lord Justice Leveson recommended that changes be made to the ownership of the code of practice, to the composition of a code committee, and that the code itself be reviewed.

Since the Leveson Report was published, there has been little meaningful change in the structures and processes of standards-setting, and no substantive changes to the code.

The current industry members of the Editors’ Code of Practice Committee all predate the Leveson Inquiry. The code remains unaltered despite promises of specific changes following a public consultation. Most significantly, the industry retains ownership of the code and the standards-setting Committee contains a substantial majority of serving editors.

Code Committee Membership

The Editors' Code of Practice Committee currently consists of the following members:

Member	Affiliation	Year appointed/Approx. Tenure
Paul Dacre (Chair)	Industry (National)	2008 / 7 years
Ian Beales (Secretary)	Industry (former Regional)	1990 / 25 years
John Witherow	Industry (National)	c.1998 / Min. 17 years
Ian Murray	Industry (Regional)	2001 / 14 years
Harriet Wilson	Industry (Magazines)	2004 / 11 years
Jonathan Grun	Industry (National)	2007 / 8 years
Neil Benson	Industry (Regional)	2008 / 7 years
Hannah Walker	Industry (Regional)	2009 / 6 years
Geordie Greig	Industry (National)	2010 / 5 years
Mike Sassi	Industry (Regional)	2010 / 5 years
Sir Alan Moses	IPSO (Chair)	2014
Matt Tee	IPSO (Chief Executive)	2014
TBC	Proposed lay member	N/A
TBC	Proposed lay member	N/A
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As of writing, the Industry Members (including the Secretary, who had previously served as a regional representative) have an average tenure of service of approximately ten years, and each was in place before the Leveson Inquiry was announced. Many predate the phone-hacking revelations published in 2009 (and subsequent discredited PCC investigation), and four Industry Members have been in place since before the original phone-hacking convictions of Clive Goodman and Glenn Mulcaire in 2006.

The 2014 Constitution of the Editors' Code of Practice Committee states that all members (other than the IPSO representatives) are "elected or appointed for three year terms." (<http://www.editorscode.org.uk/downloads/minutes/Editors-CC-Constitution-Final-IPSO.pdf>). There is, however, no evidence on when the three-year terms began or ended, and Paragraph 14 of the Constitution states that an Industry Member shall cease to be a member of the Committee when he or she ceases to hold a qualifying position in the national, regional, Scottish or magazine press. There is no statement in any of the minuted meetings on the Editors' Code of Practice Committee website of renewals of terms of office.

It is not clear whether, since the establishment of the RFC in 2014, these members have simply continued their terms of office or been re-appointed by the Regulatory Funding Company. At the beginning of the IPSO Scheme Membership Agreement, the definition of 'Editors Code of Practice Committee' reads: "the committee of that name established under the Articles of Association of the Regulatory Funding Company". This Code Committee should, therefore, be a new Committee established by the RFC. However, the industry members remain the same as previously and there has been no announcement of a new Committee or re-appointment.

Failure of Code Committee to implement 2012 commitments

On 14th December 2012 the then Editors' Code of Practice Committee published a formal 'Response to the Leveson Report', which outlined four actions to be undertaken by the Committee. These were (to quote):

1. The Code's definition of the public interest will be revised with urgency, in light of the Leveson Report, to take into account the definition of the public interest published by the Director of Public Prosecutions in his recent Guidelines for Prosecutors.
2. The Committee also agreed to take up Lord Justice Leveson's recommendation to appoint lay members. The committee at present comprises 13 editors, plus the Chairman and Director of the Press Complaints Commission as observers. In future it is proposed the number of editors will be reduced by three, to 10, with five lay individuals – including the Chairman and Director of the new regulator – joining the Committee as full members.
3. The Committee proposes to add a new Compliance Clause to the Editors' Code. Under this clause all editors must offer readers a clear and effective means of making complaints, and publish corrections and apologies promptly, preferably without recourse to the new Regulator. In cases where it is not possible to reach agreement by negotiation, the clause will make it clear that editors will have to publish adjudications, and approved corrections and apologies, in positions required by the Regulator.
4. The Committee will also, as recommended by Lord Justice Leveson, undertake a review of the Code. It will invite suggestions from the public and, for the first time, newspapers and magazines will be encouraged to urge their own readers to contribute. At the same time the Committee will review the Editors' Codebook to ensure – in the light of the Leveson Report – it gives editors and journalists the best possible guidance on agreed practice.

From http://www.editorscode.org.uk/downloads/press_releases/CodeReview-14-12-12.pdf

Over two years later, two of these have been partially fulfilled – (2) and (4) – and two – (1) and (3) – do not appear to have been undertaken at all, or have not been made public.

1. Revision of the definition of the public interest:

The definition of the public interest in the current edition of the Code of Practice (published in September 2014) is identical to the version which was in place when the Committee published its response to Leveson, except for the substitution of the term 'Regulator' for references to the Press Complaints Commission.

2. Appointment of lay members to the Committee

The Chair of IPSO and its chief executive have been appointed to the Committee. Three other lay positions were advertised in November 2014 but have not, as yet, been appointed. This commitment, it should be noted, was made by the Code Committee seven months prior to the Leveson report, in April 2012 (Code Committee Minutes, April 2012).

3. A new 'Compliance Clause'

As with the definition of the public interest, the remainder of the Editors' Code has remained unchanged since Leveson, with the exception of replacements of the term 'Regulator' for the references to the Press Complaints Commission.

4. A review of the Code including public consultation

Following Leveson the Code Committee invited suggestions on changes to the code by February 17th 2013. It then extended this deadline to 17th April 2013. The Code Committee has not published the results of the consultation. Minutes from a Committee meeting of May 2014 suggest that deliberation on "broad issues raised by the Code Review" would be deferred until the re-constitution of the Committee (Minutes, May 2014). It is not clear what is meant by 're-constitution'. No suggestions have been published and no changes have yet been made to the code.

Ownership of the Code

The constitution of the Editors' Code of Practice Committee, published August 2014, refers to Leveson's recommendation on the Code:

'I recommend that the standards code must ultimately be the responsibility of, and adopted by, the Board advised by a Code Committee which may comprise both independent members of the Board and serving editors.'

Yet in almost all constitutional respects the Committee goes against the spirit and wording of the Leveson report.

'The standards code' Leveson wrote, 'must ultimately be the responsibility of, and adopted by, the Board' (Executive Summary, p.33). Yet the code to which IPSO members adhere 'belongs to and is the responsibility of the newspaper and magazine publishing industry' (Constitution of the Editors' Code of Practice Committee, May 2014). The Code is not the responsibility of the IPSO Board, it is the responsibility of the Editors' Code of Practice Committee.

Regulated members of IPSO should not, Leveson said, own the code by which they are regulated: '[T]he suggestion that those in charge of the regulated entities should be responsible for the code pursuant to which they are regulated is not one that would (or should) command support' (Leveson Report, Volume IV, p.1,627). Yet the code to which IPSO members adhere is owned by the Regulatory Funding Company (RFC) and any proposed changes can be vetoed by the RFC.

The Board, Leveson said, may be 'advised by a Code Committee'. The Editors' Code of Practice Committee does not advise the IPSO Board, it presents it with a Code which IPSO must adopt.

The Code Committee, Leveson said, 'may comprise both independent members of the Board and serving editors'. Yet, Leveson said 'The continuation of the Code Committee with a majority of serving editors, acting in more than an advisory role, does not allow for independent setting of standards'. The Editors' Code of Practice Committee has a substantial majority of serving editors.

Therefore, constitutionally, the Code Committee breaches almost all of the tests that Leveson set for independent standards-setting.

Future changes to IPSO

Lord Justice Leveson said that any new system of self-regulation had to be independent and effective on behalf of the public. IPSO is neither independent of the industry, nor demonstrably more effective on behalf of the public.

Sir Alan Moses has stated, on a number of occasions, that he wishes to make substantial changes to IPSO, though he has not given details as to what these changes would be. He has set out seven broad principles to which he thinks IPSO should adhere, some of which contradict existing structures. For example, 'The procedural rules and regulations will be those of the regulator and not those of the regulated', is contradicted by the IPSO contract which states that the Regulatory Funding Company has a veto over any changes to the regulations.

Rather than us seek to translate these seven broad principles into actions it would be helpful if IPSO publicly set out what changes it aims to make.

In the absence of such a public statement, we have identified ten changes that could significantly enhance IPSO's independence and effectiveness:

1. **Remove RFC vetoes on:**
 - i. Regulations (IPSO Contract, Clause 7.1)
 - ii. Editorial Code (RFC Articles 10.11, IPSO Contract 7.2)
 - iii. Arbitration (IPSO Contract, Clause 5.4.3)
2. **Give IPSO the obligation to record all breaches of the Code that cannot be resolved at the publisher concerned** (change IPSO Regulations 14-21)
3. **Make arbitration compulsory to IPSO members** within the terms of the Scheme Membership Agreement
4. **Make the investigations process 'simple and credible'**, based on the investigations process of other regulators like the Financial Conduct Authority
 - Change IPSO Articles of Association 8.1.2.b, and entirely rewrite IPSO regulations 40-75
5. **Give IPSO - and the public - a proper say in the Code of Practice**
 - Make the Code Committee a subcommittee of IPSO (change RFC Articles 2.2 and 10.9)
 - Make IPSO responsible for appointments (change RFC Articles 10.10)
 - Oblige IPSO to conduct a formal, open consultation with the public and journalists on an annual or biennial basis (add to IPSO Articles)
6. **Free IPSO from direct financial control by the industry**
 - Recalculate the budget for IPSO and tell the RFC – publicly – how much IPSO needs to do its job properly, removing responsibility for defining IPSO's budget from the RFC (change to RFC Articles of Association 24.4 & Schedule: 1.10)
 - Make the industry's budget commitment for a minimum of four years - so that it does not need renegotiation on an annual basis (change to RFC Articles of Association 24.4)
 - Make clear that it is IPSO's responsibility, not the RFC's to determine the pay of Board members, members of the Complaints Committee, and members of

the Appointment panel (requires changes to IPSO Articles 24.2, 26.8, and 27.9)

7. **Make investigations affordable and sustainable**
 - Give IPSO responsibility for proposing the size of a ring-fenced investigations fund (change IPSO Contract 10, add ring-fencing, add to IPSO Articles)
 - Make the subject of investigation pay
8. **Give IPSO the freedom to accept complaints on their merit**, not based on who they come from (change IPSO Regulation 8)
9. **Remove the requirement that IPSO take account of the views of the RFC when making appointments**, either to the Board (via the Appointments Panel) or the Complaints Committee (change IPSO Articles of Association 22.5 and 27.4 and Regulations 34)
10. **Show IPSO has ‘teeth’**
 - Give IPSO the freedom to direct the placement and prominence of apologies where it deems that one is appropriate (change IPSO Regulation 22)
 - Give IPSO control of financial sanctions guidance (change IPSO Contract, Clause 1.1)

There has been not been any outward sign, as yet, of industry enthusiasm to make these, or other, substantial changes.

Even should Sir Alan Moses and the IPSO Board make some, or all, of these changes, IPSO has set itself against recognition and therefore will not be audited by an external body established for that purpose. This will deprive it of public legitimacy both in the short and longer term, and preclude it from taking advantage of the legal incentives set out in the Crime and Courts Act (2013).

IMPRESS

An alternative press self-regulator, IMPRESS, has stated its intention to achieve the criteria set out in the Leveson report and in the Royal Charter for Self-Regulation of the Press (2013).

Reading its draft documents and following its progress it appears to be proceeding in this direction.

Once it has published its final documents we aim to review these in order to assess how many of the 38 recommendations in the Leveson report it achieves.