HOUSE OF LORDS

Unrevised transcript of evidence taken before

The Select Committee on Communications

Inquiry on

PRESS REGULATION - WHERE ARE WE NOW?

Evidence Session No. 3 *Heard in Public* *Questions 42 - 67*

TUESDAY 27 JANUARY 2015

3.30 pm

Witnesses: Hugh Tomlinson QC, Joan Smith and Dr Evan Harris

Paul Vickers

Dr Martin Moore and Professor Chris Frost

USE OF THE TRANSCRIPT

1. This is an uncorrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

2. Any public use of, or reference to, the contents should make clear that neither Members nor witnesses have had the opportunity to correct the record. If in doubt as to the propriety of using the transcript, please contact the Clerk of the Committee.

3. Members and witnesses are asked to send corrections to the Clerk of the Committee within 7 days of receipt.

Members present

Lord Best (Chairman)
Baroness Bakewell
Lord Dubs
Baroness Fookes
Baroness Hanham
Baroness Healy of Primrose Hill
Lord Horam
Lord Razzall
Baroness Scotland of Asthal
Lord Sherbourne of Didsbury

Examination of Witnesses

Hugh Tomlinson QC, media law expert and Chair of the Hacked Off board**, Joan Smith**, Executive Director, Hacked Off, and phone hacking victim, and **Dr Evan Harris**, Associate Director, Hacked Off

Q42 The Chairman: Welcome, Joan Smith, Hugh Tomlinson and Dr Evan Harris. We thank all three of you very much indeed for joining us. You have picked up what we are doing; we are not trying to repeat Leveson and do a new inquiry, we are trying to find out exactly what is going on. We want to ensure that we and the world outside understand the current position exactly. We are very grateful to Hacked Off for giving us a lot of written evidence, too, which we can study at our leisure. It is much appreciated. We are being televised today. There will be a transcript of the proceedings, but you are on the record and because of that it would be helpful if you introduced yourselves one by one and said very briefly what your background is and where you are coming from in this inquiry. My final remark is that, having done that, we will go round the table and ask you various questions. Do not feel that all of you have to answer all the questions. Feel free to accept what your colleagues have said, if that suits.
Perhaps Joan Smith you could start us off by telling us a bit about your background and how that fits into our inquiry.

Joan Smith: Thank you. I have been a journalist for nearly 40 years. I started in local papers and worked briefly in radio. I went to the *Sunday Times* quite early in my career and did investigative journalism there. Later I became freelance and I have been a columnist on most national papers by now—the *Guardian*, the *Independent*, the *Independent on Sunday*—and I write for the *Telegraph* and so on. I have been involved in free speech campaigns for many years. I am also an author; I write novels and non-fiction. For four years I chaired the PEN

Writers in Prison Committee. We looked after people who had been imprisoned and their families, usually in about 50 countries at any one time, with regard to exercising their right to free expression. That is my background.

I am now executive director of Hacked Off, but only since last summer. I got involved in Hacked Off because I was told by the police that my phone had been hacked in quite curious circumstances in 2004. I had had no idea about it. I was writing columns for the *Times*, and the police came to me in 2011, I think it was, and told me that while I was writing for the *Times* my mobile phone was being hacked by the *News of the World* because my then partner was a Minister. His daughter had been killed in a terrible skydiving accident in Australia and he went out there to organise her funeral. When he came back, the *News of the World* realised that we were in a relationship, although we were both divorced, and started hacking our phones. I was one of the first people to sue News International.

As I say, I have been a journalist all my working life, and I am absolutely passionate about journalism and the role it plays in a democratic society. I am really distressed and angry about what happened in certain sections of the press, because the press should be holding the powerful to account. It should not become powerful and start abusing ordinary people whose children have been killed, and that kind of thing. I got involved in Hacked Off because I thought that here was a real chance to represent victims, ordinary people who had had these kinds of experiences and who have not had a voice in the past, not to stop journalism or anything like that but to get better journalism.

Hugh Tomlinson QC: I am Hugh Tomlinson. I am a barrister, a human rights lawyer and the chair of Hacked Off. I was the lead counsel for the claimants in the phone-hacking litigation, and I have been involved in media law for many years. Professionally I have seen over the years how the media have abused their position, and particularly how victims have had great difficulty in making themselves heard and in standing up for themselves. I became involved in the established of Hacked Off originally to try to get a public inquiry into what had happened. In fact, the public inquiry was launched on the same day as the campaign was launched. It was the most successful political campaign I have ever seen. We then continued to monitor the inquiry and to try to represent the rights of victims in relation to press abuses.

Dr Evan Harris: I was a Member of Parliament from 1997 to 2010, and during that time I specialised to a degree in human rights issues and free speech issues. I should declare that I was a colleague of Lord Dubs on the Joint Committee on Human Rights for several of those years, and I pursued that through founding the Libel Reform Campaign, which you will remember led to the reforming, liberalising Defamation Act 2013. I was responsible for

abolishing the laws on blasphemy and criminal defamation through Parliament, and I am now a trustee of Article 19, which campaigns against impunity for those who would attack journalists and journalism throughout the world.

I was brought in to help with the campaigning side of Hacked Off at the outset, partly because the victims and the organisation recognise that there is a history of failure of either independent inquiries or indeed Select Committee recommendations to be implemented, and because of the corrupt nexus between some politicians and some parts of the press. There is huge pressure on politicians not to do what has been recommended. We saw that with Calcutt, as John Major said very eloquently of the Leveson inquiry, so I have been asked to advise on how we can ensure that when a commitment is made to deliver the outcome of a public inquiry it is actually delivered in the end and not allowed to fail yet again for the fifth or sixth time in 50 years.

The Chairman: Thank you very much. I guess it is down to the chairman, Hugh Tomlinson, to answer this question, which is really just to give us the background for the creation of Hacked Off. You might just add what the constitution comprises that you have brought together.

Hugh Tomlinson QC: I think I already mentioned that we were originally established as a campaign to set up a public inquiry into phone hacking, because that was obviously the tip of a very large iceberg, and I think it is now acknowledged that there was a lot of illegal activity going on in the press in the 1990s and early 2000s that had not been properly investigated. We originally campaigned for an inquiry. When the Leveson inquiry was established, we supported victims through that inquiry. Our constitution is that we are a not-for-profit company with a board of directors and a wide network of supporters, and a lot of people who have been victims of press abuse are associated with the organisation.

Q43 Baroness Healy of Primrose Hill: Obviously you are a very successful campaigning group, but in the interests of transparency we are quite interested to know how you are funded. Is it through crowdsourcing and not just the victims? We would be grateful for as much information as you can give the Committee.

Hugh Tomlinson QC: We are funded from a variety of sources. We have some grants from grant-giving bodies such as the Joseph Rowntree Reform Trust. We have donations from a wide variety of individuals. As you say, we have crowdsourcing, fund-raising events and donations from individuals that are large and small. We try to be as transparent as we can about our funding, but unfortunately as you might expect, when individuals are named as our donors they get attacked in the press. That has happened on many, many occasions, and as a

result some individuals who donate money to us say, "We don't want our names to be made public", and we respect those confidences.

Baroness Healy of Primrose Hill: I see. Thank you.

Dr Evan Harris: When some people get damages from suing the newspapers for these abuses, they often pass them on to us, so in part because of what has happened we are funded by Mr Murdoch and others. We probably ought to be grateful for that in a way, but we would rather it did not happen in the first place.

Baroness Healy of Primrose Hill: But do you have to publish accounts?

Dr Evan Harris: Yes, we do. We file with Companies House. We are under an obligation to respect the confidentially of donors who ask for it, otherwise we would be breaking the law. As I say, we set out the breakdown. We have 100,000 supporters online, and when we go to them we get several thousand pounds.

Just to come back to the Chairman's first question, this is a unique campaign—you mentioned that it was successful—because in any other campaign on regulatory failure or industrial-scale industry wrongdoing, the people at the forefront of the campaign are, as well as parliamentarians, the press. This is unique in that not only do the press not report on their misbehaviour generally, with a few notable exceptions, but they intimidate people who put their head above the parapet. It is therefore triply unique and difficult to do what we have done, and we have had to become thick-skinned, but we urge everyone, especially Parliament, to recognise that if you only read the newspapers about us or, more importantly, about the issues at stake, you are not going to get a fair representation of the issues, as you are probably aware. That is why we welcome your interest in going deeper into the issue than simply seeing what is said in the papers.

Lord Dubs: Is not what you are saying about people who are donors feeling too intimidated to say who they are a rather shocking indictment of what is going on?

Hugh Tomlinson QC: It is a shocking indictment. On a number of occasions there have been leaks. People have said, "Oh, these people are donors to Hacked Off", including some very well known individuals, and then there have been articles in the newspapers going into their background and attacking them. It is a shocking indictment, and one of the things that we are concerned about in particular is that the press abuse their power to defend their own position in that way.

Lord Dubs: Does that go for all the press, or are there some better ones among them?

Hugh Tomlinson QC: No, it is obviously only certain sections of the press. It does not apply to every newspaper.

Dr Evan Harris: We are pretty sure from what we know of individual journalists that they are acting on instruction. You will be talking to the NUJ later, and it generally supports our position. In no way are we hostile either to the freedom of the press or to journalists at the coalface. Indeed, much of what Leveson recommended would give them things like a confidential hotline and conscience clauses, which we support but the editors do not. When several of the witnesses at Leveson put their heads above the parapet they were libelled in the *Daily Mail*. Sheryl Gascoigne won damages for being libelled in an article that said, "Look who is popping up at Leveson to give evidence". It does deter people. Steve Coogan is down as a donor. He matched some public donations, and he said he could do that only because there is no more that they could do to him. We will see if that is correct.

Joan Smith: It is also worth saying that some journalists say privately that they feel bullied and pushed into doing illegal and unethical things, and some will privately say that they support some or all of our aims, but it is quite unusual for journalists to put their head above the parapet. I think I am quite unusual in being somebody who will make this critique of the press and say, "I want a better press".

Q44 Lord Razzall: I am going to ask three questions, which I think we all know your answers to because we have read your written material, but bearing in mind that we are being broadcast this is an opportunity for you to put this on the record. Perhaps, Mr Tomlinson, you would be the appropriate person to answer my question and to put on record a summary of your views. First, obviously looking from the point of view of victims, who you are representing, what was your assessment of the recommendations made by Leveson? Secondly, what were the subsequent interpretations of those recommendations? Thirdly—we have recently had some written evidence from you—how would you describe the behaviour of the press since Leveson and the creation of IPSO et cetera? I think we know your views, but it would be useful if you could put them on the record.

Hugh Tomlinson QC: We thought that Lord Justice Leveson had reached a very careful, balanced conclusion. On one hand, he had decided not to impose statutory regulation on the press. Of course, broadcasters are subject to statutory regulation, but there has always been a concern about regulation of the press by statute. On the other hand, he had recognised the failures of self-regulation, so to square the circle he introduced a system that I like to call an auditing system. He said to the press, "You set up your self-regulator, but it has to be independently audited to see whether it is actually effective". He set down a number of criteria that such a body had to meet. That seems to us a very careful and sensible balance that balanced on the one hand the rights of victims and on the other hand the obvious free speech

rights of the public and the press. We thought that Leveson had done a very good job in the circumstances.

Your second question is about the subsequent interpretation. When the report was published, all the party leaders announced that with certain very small qualifications they agreed with its recommendations, but the Prime Minister had an issue with using statute to do that. Although we did not agree with the Prime Minister, our position was that if it could be done equally effectively without statute, we had no objection to doing it in that way. The model of the royal charter was devised on the model of the BBC, because the BBC has a royal charter and people think that the BBC is an obviously independent media organisation. The royal charter sets up the independent recognition body, which was crucial to Leveson's recommendations, in such a way that the recommendation criteria which Leveson laid down have to be satisfied by a self-regulator that is recognised. Although we would have preferred it to be done by statute, because Leveson made it clear that that is what he preferred, in the end we supported the royal charter route. So far so good, in the sense that it has not gone as quickly as we would have liked, but that body has been set up. There is a press recognition body in place—I know you have heard evidence from it. The thing that we are very disappointed about is that the press have chosen to ignore not just the recommendations of the inquiry but the will of Parliament in implementing those recommendations. They went to the Leveson inquiry and said, "This is our proposal for reformed press regulation: the so Hunt-Black plan". Leveson said, "No, that is not good enough". He analysed it with great care in his report. They have done exactly the same; they have in effect done what Leveson said that they should not do and have now said, "We won't go along with the recommendations of the inquiry. We won't apply for recognition". That is very disappointing, and we hope that they will see the error of their ways, but ultimately if they do not, action will have to be taken.

Dr Evan Harris: Before Joan comes in, I shall fill in one bit before she deals with the attitude of the press now. The royal charter was a concession to the press. Mr Letwin came up with it after discussions with the press, and the press said, "Yes, it won't cross the Rubicon, because a charter is not statuted and cannot be amended in Committee and at Report, or at Third Reading in your House, so politicians won't be interfering with the criteria". Indeed, they put in their own royal charter, so they cannot have a theological objection to royal charters. The royal charter came from a concession to them, which they endorsed. What they have clearly objected to is a royal charter that delivers the Leveson recommendations, because their royal charter was the Hunt-Black one. We feel very strongly, because we had a meeting with politicians, which we publicised, where we asked them whether they would accept a royal

charter. The victims spoke for themselves—the McCanns and the Dowlers—and they said that they would accept one only if it did not dilute or cherry-pick from the Leveson recommendations, otherwise what was the point of running a year-long public inquiry with the authority of that judge? That was what the royal charter that was passed delivered. It was not Leveson-lite. In fact, the criteria map across exactly to the Leveson recommendations; it is not true what you may have heard: that they are different. They are not different—and you will hear witnesses later who will analyse this in even greater detail. So we are very disappointed that the press now say that they do not accept a royal charter, when they agreed to a royal charter as a compromise for the press because it did not involve statute. It is very clever, but it is disappointing.

Lord Razzall: But that is a structural point, and I well understand the Hacked Off arguments and those made by others that the proof of the pudding is in the eating as to how the press are behaving and will behave. I will be interested in what Joan has to say on that.

Joan Smith: One thing that we are doing in the Hacked Off office is to read the print editions of all the papers every day and monitor them for any change in behaviour and whether there are fewer breaches of the code. What is frankly astonishing is how little the newspapers have changed. I have just brought a little selection of articles. Here we have a notorious headline from the *Sun* in the summer, "Magaluf girl", about a young British woman who was 19. She was very drunk in a bar and was offered a prize if she had sex with roughly 24 men. Somebody in the bar filmed this without her knowledge and posted the film on the internet, where it was viewed only about 15,000 times—although that is bad enough. Then it was put on the front page of the *Sun*. I have covered up her photograph, but the *Sun* covered only her eyes, and in hours she was identified and her name and her background were all over the internet. We managed to track down not her family but friends of her family, who said that she comes from a very religious family, who were very shocked, and that she was absolutely distraught about what had happened. There is a very obvious privacy issue here; the young woman was drunk because she did not know that she was being filmed. She should not have ended up on the front page of the *Sun*.

Lord Razzall: What happened with that complaint?

Joan Smith: I am not sure that she made a complaint. What happens with some of these people is that they are so distressed that they put their heads down. You will all remember the Christopher Jefferies case—and Christopher is our patron. Here is "Slaughtered in paradise by a Brit", which is another horrible story. This is the *Sun* again, although the *Sun* is by no means the only culprit. It is a story about two young British backpackers who were murdered very

horribly in Thailand in the summer, and the girl was raped. The story talks about how their friend is wanted. It does not stand it up—it simply says, "We want to speak to this chap". We are in touch with this family as well, and they are so upset that they have been treated like this. Of course, now the Thai police have charged two Burmese migrant workers with murder. The boy is home, but they are so distressed that I do not think they have made a complaint.

Lord Razzall: They have not complained either?

Joan Smith: No, I do not think so. On this story, there was a complaint. As you will know, there are provisions in the Editors' Code about the treatment of suicide. One thing that it absolutely says is that you must not speculate on the reasons for suicide. This is the *Sun* again, although a number of newspapers had this one, including the *Daily Mail*, whose headline was, "Man who feared travellers were surrounding his home shoots dead wife and himself". This is a tragic story about an elderly couple. The woman was very ill and the husband shot her and killed himself. There as an application from a young traveller, Zoe Lee, to set up one caravan in a field with which her family had had associations for years. Four different papers covered the story. The *Telegraph* had a headline about a devoted husband who was fighting a gypsy camp next door and was driven to murder and suicide. There was a complaint in this case, which got somewhere.

Lord Razzall: Can you remember how the complaint was dealt with?

Joan Smith: I think it was upheld. Can you remember, Evan?

Dr Evan Harris: When there are complaints, there are small online corrections. Neither the PCC nor IPSO accept Leveson's judgment on equivalence.

Hugh Tomlinson QC: It is important to understand that in that case there was no evidence at all that the Traveller caravan had anything to do with the suicide. It was just pure speculation, which was repeated as fact by a number of newspapers.

Joan Smith: I have masses of these stories, but this last one is notorious. The headline is "Boy, 4, has mark of devil". This is the famous "devil-boy" story from the *Sun* in the summer. This little boy is only four and has a very serious medical condition. The *Sun* paid his parents to photograph him with a bare torso, showing a strange mark. I think you could actually have complained on grounds of accuracy, because I would like to see the *Sun's* evidence that there is such a personality as the devil who goes around putting marks on children. In fact, Sarah Wollaston, a Conservative MP, made a complaint about the treatment of children. The little boy's name was given, his school was identified and his face was not pixelated. A four year-old child cannot consent to this kind of intrusion into his privacy. This will be in online editions for years and years. This was actually the first resolution that appeared on the IPSO

website, so it was dealt with under the PCC rules because the story appeared just before IPSO was set up. Basically, a resolution appeared on IPSO's website, and it turned somersaults to avoid finding a code breach. The *Sun* published an absolutely tiny apology on page 2. It says: "The newspaper agreed to publish the following statement on page 2"—remember that the story is on page 1 and page 5. It says: "The Sun is proud of our record standing up for children and we believe we make a real difference. We have listened to the concerns about a story we ran on 29th July headlined 'Boy, 4, has mark of devil' and we accept that, on this occasion, we didn't get it right. As a result, we have tightened our procedures on all stories involving children, including the issue of paying parents". There was then a link on page 2—a single paragraph to the resolution going into the background on IPSO. But in no sense is that anything like the prominence that the story got, and it does not recognise the damage that had been done.

Dr Evan Harris: The Editors' Code says that parents must not be paid for stories about children unless it is manifestly—or a word like that—in the interests of the child. So you do not have to interpret the Editors' Code, you just have to read it, and the *Sun* is on the Editors' Code committee. It is extremely problematic. As it happened, most people think on looking at the photo that it is a hairdryer burn from the inner workings of a hairdryer. That clearly raises issues. We see this pattern time and again of people being paid for stories that feature their children.

Q45 Baroness Hanham: In your Hacked Off campaign for full industry participation in the charter, which I think you said had substantial benefits for new publishers, are you actually in favour of the potential regulators seeking recognition under the royal charter from the Press Recognition Panel? I understand that neither has done so at the moment. What benefits do you see for one main organisation to be working under the royal charter, which I see that they are not? The Press Recognition Panel was appointed in November. In spring 2015 it plans to start consulting about how it should go about its tasks, and what it should do, in dealing with applications for recognition under the royal charter. It may not have a lot to do at the moment, but there we are. It wants to be in a position to receive positive applications. So, first, what is your view about whether the organisation should work under the royal charter—what do you see as the advantage—and what do you think will happen subsequently?

Hugh Tomlinson QC: We have no doubt at all that an effective and independent press self-regulator should be applying for recognition under the royal charter. Those are the fundamentals of the Leveson system. There are a number of reasons for that, but the most important reason is that Leveson laid down certain criteria according to which the

effectiveness and independence of a self-regulator should be measured. Those are the criteria in the royal charter, and for a regulator to be effective and independent it must comply with those criteria. IPSO does not comply with them, and I think that Sir Alan Moses has admitted that. What complying with those criteria means is that the self-regulator actually has powers to do what a self-regulator needs to do; it acts independently of the people whom it is regulating; and it commands public confidence. The public know that, if you get a regulator that is approved under the charter, it is one that is truly independent and effective. Those are very important advantages. Leveson subtly built into his system some sticks and carrots. Something that we have so far not mentioned, but which is quite important from my perspective as a lawyer, is that there is a terrible difficulty for both press and difficulty about litigation, because lawyers are ridiculously expensive and litigation takes a long time. The question is how you get over that, and Leveson's idea was to have a system of arbitration that could be cheaper, quicker and more effective and would help both victims and poor publishers. It would mean that bullying oligarchs who were trying to attack the press would be forced into the system of arbitration. People are put into the system of arbitration through the provisions of the Crime and Courts Act that deal with legal costs. If there is a regulator in place and you are a member, if the person who is suing you does not use the arbitration system, they do not get their costs. Equally, if you are not a member, you end up paying your costs whatever happens. We have set it out in a table, copies of which have been supplied to the Committee, and I shall not go into it in detail now. But that system of incentives is intended to encourage people to be in the regulator but also to protect regulated publishers from bullying by rich claimants. Apart from the public and the publishers, there are also advantages for journalists. One of them is that Leveson said that there should be a whistleblowers' hotline to go to the regulator. The point has already been made that journalists are very often pushed by their management to do things that they do not want to do. You heard it in the evidence on the phone-hacking trials. The idea of a hotline is that they can go to a regulator and say, "Look, I am being asked to write this kind of article, to stake this person out and to steal their information, and I do not want to do it. What can I do?". IPSO is supposed to have a hotline, but it does not. It says in its founding documents that it will have one, but it does not.

Dr Evan Harris: In January 2013, Lord Hunt said that there would be a hotline—that is, 18 months ago—and in July 2013, when IPSO's articles were drafted, Mr Vickers, who I think you are hearing from, said, "This is going to have a hotline". You can buy a hotline service from Public Concern at Work; it is not difficult. Yet four months after IPSO was formed, a

journalist whom I spoke to yesterday said that he tried to get confidential advice from IPSO and that there was no one there who could provide that—no one in the building. This is four months on. That is one example why we do not think that IPSO, despite the personalities involved, who can be quite engaging, is serious even about what it said that it would do.

Joan Smith: There is also the question about the editors' code. If we had a proper independent regulator that was independently audited, one thing that it might have to do is allow people other than editors to be involved in drawing up that code. It is really important that journalists who are working every day looking for stories and dealing with members of the public should be included in drawing up the code that they have to work by.

Hugh Tomlinson QC: On the second question, the Press Recognition Panel chaired by my colleague David Wolfe is a unique body in British public life. It is completely insulated from any kind of outside influence; it is not allowed to have politicians on it, and it has a system to ensure that there will be no political influence over it, and no influence from outside bodies such as the press. The purpose of that is, as I have said before, that it is an auditing function. You want your auditor to be completely independent of outside pressures, and the Press Recognition Panel, although it has been slow in being set up, has been set up in exactly the right way. All its mechanisms are in place. That body can uniquely say to a regulator, "Yes, you've got this right", or, "No, you haven't got that right", from a completely independent perspective. That is crucial.

Dr Evan Harris: One extra point that I would like to add to that is why this point is critical. The panel does not allow politicians on its appointments panel or on the process that appoints the appointments panel, whereas the IPSO scheme was designed by two party-political Peers, who have been named. They are entitled to do it, but the system should not allow politicians to be involved in such a system. Even worse, it cannot be said that the Press Recognition Panel and the royal charter is in any way subject to political influence, because unlike the BBC royal charter there is no financial negotiation or renegotiation of the charter; it is for ever. It is the only royal charter where the Executive are barred from acting in the Privy Council without a two-thirds parliamentary majority and the unanimous support of the independent recognition panel, which was appointed without any politicians on the appointments panel or the appointers of the appointments panel. It is more independent, therefore, than judges, because there is a politician at the beginning of the process, for the Judicial Appointments Commission.

Q46 Lord Horam: I want to ask you about IPSO and IMPRESS. I understand well enough what you will say about the present situation, but you will have seen that Alan Moses, the

chief executive of IPSO, came before us last week. He gave us evidence and told us what IPSO was doing. You will have heard what he said about the need to improve various aspects of IPSO. Taking IPSO for the moment separately from IMPRESS, is there any way in which the IPSO regulator could meet the requirements that you think are reasonable in these circumstances?

Hugh Tomlinson QC: Sorry, it is not a question of what we think is reasonable; it is a question of what Sir Brian Leveson, after having heard evidence for over a year, thought was reasonable. He put down a set of criteria, and at the moment IPSO cannot meet those criteria, because it has not been appointed in the right way, and its constitution is repugnant. As I said before, its constitution is exactly what Sir Brian Leveson said should not be done; it is under the control of an industry-funding body that has a veto over the way in which it works. Of course, it could be reconstituted and its rules could be rewritten from the start, and its appointment procedure could be redone from the start.

Lord Horam: As you will be aware, Sir Alan Moses said that he was rewriting the rules and redlining various things.

Hugh Tomlinson QC: We have the greatest respect for Sir Alan Moses, who was a fine judge and a man put in a very difficult position. He is bound by a set of rules that completely circumscribe what he can do. Unless those rules are changed fundamentally and IPSO applies for recognition, and is subject to the independent scrutiny, which is crucial, only then can it be the regulator that we all want to see.

Lord Horam: So from what you are saying, there is no way that it could ever be—

Dr Evan Harris: There is one way. What Sir Alan Moses could do is to ask the Regulatory Funding Company—this would be the simple thing to do—for control of their articles and regulations and of every part of the contract except how much the regulated entities pay, because Leveson said that clearly the industry was funding it so it should decide how much the nationals and regionals contributed. It should have full control, and then it could change its own rules. Then all that it has to do is to change its rules to comply with the Leveson recommendations, which have been set out by the Media Standards Trust. To his credit, Sir Alan has accepted that in 26 areas out of 38 IPSO does not meet the criteria at the moment. He has not yet indicated that in the name of transparency he is going to publish either the changes that he would ask the Regulatory Funding Company to make—because it is the only body that can change the articles—or that he is asking it to transfer control of the articles to the regulator, as no other regulator has the regulated entities controlling its regulations and

constitution and those parts of the contact that they make with those people. But he has not done that.

Lord Horam: Thank you for that on IPSO. What about IMPRESS—does that impress you more?

Hugh Tomlinson QC: IMPRESS is a body that has some very distinguished journalistic supporters. It is trying to set up a truly independent self-regulator, and we say good luck to it. If it is able to apply and obtain recognition, it will then be the independent, effective self-regulator that Leveson envisaged. Then we would hope—if IMPRESS or another such body were to be set up—that the national newspapers would see that that was the only way forward and would join that body.

Lord Horam: What do you feel about the independents, such as the *Financial Times* and the *Guardian*? As you know, the *Guardian* came to us and said that it had a watertight system that worked properly, and it could not see why it should do anything more.

Hugh Tomlinson QC: These are not people who are, say, are acting in bad faith—the *Independent*, the *Financial Times* and the *Guardian*. But I am a barrister, and I am subject to professional regulation. I do not think that I break the rules, but I have an independent body that decides whether I am complying with them or not. It seems perfectly proper to us that however much those newspapers try to obey the rules, they ought to be, along with the other newspapers, subject to the rulings of a truly independent self-regulator.

Lord Horam: And if they are not and if they carry on as they are, the situation that led to the creation of Hacked Off could happen again?

Hugh Tomlinson QC: It certainly could happen. Obviously, the *Guardian*, the *Independent* and the *Financial Times* were not the newspapers that gave rise to the crisis in the first place. There are other newspapers that are much more problematic. However, I have absolutely no doubt at all that if the *Daily Mail*, the *Sun*, the *Mirror* and the other newspapers that have caused the difficulties do not in the end subject themselves to an independent self-regulator, exactly the same problem will arise. One or two members of this Committee will have memories that perhaps go even further back than mine, and they will remember David Mellor and the last chance saloon. So this was a situation that we went through once before, in the early 1990s, and the newspapers then said, "Of course we'll put everything right and set up this wonderful new body called the PCC, and it'll all be fine". That as we now know was a complete disaster. I regret to say that despite the best efforts of Sir Alan Moses, unless IPSO subjects itself to the recognition panel, that is exactly what will happen again.

Q47 Lord Sherbourne of Didsbury: Can I ask you whether you think that the Crime and Courts Act and the sticks and carrots over exemplary damages and costs are potentially helpful?

Hugh Tomlinson QC: It is certainly potentially helpful. The idea is to encourage publishers to join to gain advantages from being in a regulator that they would not have if they were outside. That is very helpful.

The strange thing is that the original proposal to have an arbitration system originally came from the newspapers, because the newspapers themselves recognised that the legal costs were completely out of control and legal cases were potentially hugely expensive, and the best way in which to deal with that was to have a low-cost arbitration system.

Lord Sherbourne of Didsbury: So you think that it is potentially effective?

Hugh Tomlinson QC: It is potentially effective. Of course, if a newspaper wants to take the costs hit and stay outside the system it could do that—but if those incentives are in place, once an independent regulator is set up, it is potentially effective. I shall just mention one other point that may be useful. One or two people have said that those incentives are in some way unlawful, but I have absolutely no doubt that they are lawful. The exemplary damages provisions were designed by the Law Commission in effect to be compliant with Article 10, and are very carefully calibrated. I have no doubt either that the costs provisions, and that kind of incentive, are the proper way in which to encourage people to subject themselves to regulation.

Dr Evan Harris: Can I just make the point about who wins out of this? It is good to note that with the cost protection and the immunity from exemplary damages that the Crime and Courts Act delivers to people inside a regulator, it is a win-win-win-lose situation. It is a win for the industry, because they never have to pay costs if sued, because they are either in arbitration or they have full cost protection if sued by an oligarch. It is a win for the journalists, because they can write closer to the edge without the chill of the legal costs, which many of you will know from libel reform debates are one of the biggest things that the last Act did not deal with. It is a win for the public, because they can use arbitration and they get cost protection if they are suing someone who refuses to offer arbitration. The loss is for the lawyers, who lose out—and that is why, when people say that the Media Lawyers Association does not like the arrangement it is not a surprise, because they do not get paid under this system. It is cheaper.

Q48 Baroness Scotland of Asthal: I just wanted to ask a general question. We are aware that those who set up IPSO would have had the opportunity to take advice from the best media lawyers available—Paul Vickers himself as the legal director. Do you think that there

was any way in which a competent lawyer could have structured IPSO in the way that it has been structured if they were minded to comply with the Leveson principles at all?

Hugh Tomlinson QC: I think there is a very short answer to that question: it is no. I have no doubt that IPSO was designed in such a way as to provide the maximum influence for the industry over the operation of the regulator. It was not designed to comply with the Leveson recommendations.

Q49 Baroness Fookes: What do you see as the future for Hacked Off? Is it short term, longer term?

Joan Smith: It is very hard to work that out because this issue comes and goes in the public mind. Sometimes people say to me, "Whatever happened to the Leveson inquiry? Did we ever get regulation?"

It is such a slow process. There have been six or seven such public inquiries, starting long before I was a journalist, so I never thought that we would get an independently audited self-regulator overnight. This time we have a chance, but we feel that we have a commitment to victims of intrusion and abuse to carry on the campaign if the major publishers do not join an independently audited self-regulator. So I think in some form the campaign has to carry on. It would be very nice for all of us if it did not.

Dr Evan Harris: It is fair to say that, for us, it is not about the future of Hacked Off. The victims would like this to go away; they want to get on with their lives and there are other things for people working in the campaign to do. The question is how we achieve the Leveson report. If you remember, the Press Recognition Panel issues a report a year after it opens for business—so a year after this spring, probably—that will say whether it happens or not. We will send you a note about this because there is no time now, but Leveson said that if there is a failure, Parliament must not again allow this industry to escape—he quoted John Major in this—even a milder form of the same regulation that it insists is imposed on other industries, and that the will of Parliament must prevail because the public cannot be let down again. There are parts of the Leveson report where he says what should happen in those circumstances. What the victims have asked us to do, and a letter from them was circulated to you, is to say to the politicians who promised them—on oath, in the case of the Prime Minister at the Leveson inquiry—that they should deliver the Leveson inquiry. The politicians said face to face and in our presence to people like the McCanns, Christopher Jefferies and the Dowler family: "We will deliver Leveson's recommendations". All three party leaders said that. David Cameron said that he would do so if the report was "not bonkers"—and no one has suggested that it is bonkers. They have asked us, and we are asking you, to make sure that

the politicians are held to those promises, because there is a real fear out there that this is one area where there is outstanding "corruption" in the system, whereby there is not even light-touch regulation for one industry after near unanimity in Parliament and a year-long public inquiry.

Q50 Baroness Bakewell: Given the evidence that you have since given, Joan, are you still acquiring new victims?

Joan Smith: Oh, yes. It is actually a very sensitive area of work, because we see what is happening to people. We sometimes blog about the most egregious cases. Then we try to contact people. Some of them are very distressed, and you have to talk to them. Their instinct is to hunker down and just hide, because people feel awful when this kind of thing goes on. You have to assure them that you will do not anything that they have not agreed to. One thing that struck me since doing this job is how much time I spend with incredibly distressed people: for example, the relatives of people whose children have been kidnapped or killed, or whose friends have been murdered and so on. Hacked Off tends to be portrayed as a celebrity-driven organisation. I actually spend a lot of time with ordinary people who have been thrust into the limelight by catastrophic and tragic events.

Baroness Bakewell: Are you not pressuring them?

Joan Smith: Oh, no.

Baroness Bakewell: Because there might be a risk of that.

Joan Smith: I am incredibly conscious of that. When I started my career as a very young journalist, one of the very first stories I covered was the Yorkshire Ripper murders. There was a 24-hour period in my life where I interviewed three women who had survived attacks by Peter Sutcliffe, although we did not know who he was at the time. Every time I did that, I would approach the person, say who I was and be up front about it. I would say, "I would like to talk to you. I know this is distressing. If you want me to go away, I will go away". Nobody has ever said to me, "Go away", because you empower people by saying, "I would like to hear your story. There is a purpose to it". People feel a part of that. It is very important when we talk to victims that they feel part of this group of people. We can put them in touch with other victims as well who can talk about their experiences and make them feel less alone.

The Chairman: We have gone way over time, as we thought we might. Thank you very much indeed. Thank you also for the written material which we have by us and will study with the greatest care.

Joan Smith: Thank you for this opportunity.

Examination of Witnesses

Paul Vickers, Chairman, Regulatory Funding Company

Q51 The Chairman: Now we switch to the chairman of the Regulatory Funding Company, Paul Vickers. Thank you very much for joining us. For the record, as we are being broadcast and there will be a transcript of everything that happens, will you tell us briefly about yourself and your engagement with the issue today?

Paul Vickers: I am, as you say, the chairman of the Regulatory Funding Company. Until about two weeks ago, I was the secretary and group legal director of Trinity Mirror. I was made redundant just before Christmas, but I continue in my industry role for the moment.

I was asked to become chairman of the RFC because I was very heavily involved with working with the industry to create what became IPSO. I was chairman of a group that changed its name on a couple of occasions but ended up as the industry implementation group. At the core of that were about 20 people from different parts of the newspaper and magazine industries, national and regional newspapers. Before that I was part of a small group, which again changed in number, but there were four of us who were there all the time who engaged with Government and with all political parties soon after Leveson to see whether we could come up with what Leveson had recommended—an industry solution for a new voluntary, independent, self-regulatory system. So I was involved really from that; I gave written evidence to Leveson and ran the Trinity Mirror dealings with Leveson. As you will see from my draft biography, I was also the director of PressBoF, the funding group for the old PCC. I was not on that for very long—only about three years. Just in case it is raised later on, I am the only person who was the director of PressBoF who is also now a director of the RFC.

Q52 The Chairman: Thank you for that. Could you explain the Regulatory Funding Company, what it comprises and what its budget is?

Paul Vickers: I was asked if I wanted to make an opening statement, and I said that I did not, but one point is worth clarifying right at the beginning, which will lead in to answering your question. They are portrayed by Evan Harris as the Hunt-Black proposals to Leveson, but while Guy and David had their names on that piece of paper it was a document that was produced after wide consolation within the industry. One key proposal that we put to Leveson which he accepted was that whatever regulator, whatever form it took, should have the ability in certain circumstances to impose what we have for shorthand purposes called fines. The famous £1 million fine came from a recommendation in that industry submission, and was

adopted by Leveson. I know there are many, many lawyers on the Committee. You will know that there are only really two ways in which to impose a fine. The first is by statue. Short of statute or common law, you need to find a system to be able to impose a fine, and the only other way in which to do that is by a contract. You need to get people to agree that they will put themselves into a position in which they are prepared to pay money. You need to have a system of enforcing that agreement to pay money, again through a contract. So if someone has agreed to a contract to pay a certain amount of money in certain circumstances and fail to do so, you can use the courts to enforce the contract.

If you accept—I know that some do not, but most do—that we should not be on a statutory route, the only vehicle left to set up a voluntary independent self-regulator is by a contract. Lots of the things that people complain about in the complexity of the system that we have created come mainly from that issue: that to get there and to be able to get to the fines you need a contractual system. The RFC is technically a company, and it is limited by guarantee. Its members are IPSO members and shareholders, and signatories to the contract with IPSO. So you have two parties to the contract: IPSO on one side and 96 parties on the other side who are the publisher signatories to the IPSO contract. Again, we recognised that it would be ridiculously cumbersome to be in a position where, if there needed to be any change, amendments or discussion between the parties to those contracts, we had to set up IPSO on one side with all the 96 parties. So the RFC was created as a vehicle to enable those discussions to take place. It was also thought by some—and you can have a debate on this—that it was repugnant for a regulator to deal directly with those that it regulated in relation to raising money. So the RFC is put between IPSO and its individual members, but made up of those members, to collect the money from the members. So if someone was in default of payment, it would not be IPSO that pursued them but the RFC. We raise the money from the members of IPSO and pay it over. The RFC board is made up of nine people, unfortunately all men. There are four from the national newspapers, four from the regional newspapers and one from magazines. Each person is nominated by their sector. In future, we expect to have elections, if necessary, but the first time round we got the right number of people who were nominated, and they were directly appointed. I was directly appointed from the national sector and the other directors asked me to chair the board, but I am elected by the other members of the board of the RFC. That is a bit of a monologue, but I hope that that gives you the picture.

The Chairman: Yes. The budget?

Paul Vickers: The RFC's budget is £2.5 million per annum, most of which, around £2.4 million, is going to be paid over to IPSO. The other £100,000 is to cover the RFC's admin

costs. We have a secretariat; we hire some people to do that for us. It is also to pay the costs, when there are any, of the Editors' Code committee.

The Chairman: And that funding comes from the 96 signatories.

Paul Vickers: Yes. It is split, roughly, 63% from the nationals, 32% from the regionals and the remainder from the magazines. Again, someone suggested that this is confidential; I do not think it is. Within each sector, the intention is that the share within the 63% and so on would be on a revenue share basis. We have set up a system whereby companies can submit their unpublished revenue figures in confidence, add up the total and divide it appropriately. Just for absolute clarity, that is not the system that is being used for the first year. Everybody has their favourite bit of Leveson, and I shall quote my bit in a moment. But the regionals' favourite passage in Leveson is that any new system of regulation should not cost them a penny more than they were paying before. We agreed for year one at least, and hopefully for the future, that the individual regional companies, per company, would not pay any more than they were paying before. That applies to the magazines as well.

Q53 Baroness Scotland of Asthal: You very helpfully told us that you were the legal director and company sectary at Trinity Mirror, and from what you have indicated you were one of the architects, if not the architect, of the structure that IPSO then took over. Am I correct?

Paul Vickers: I would not want to claim in any way that I was the architect. A document was produced by the industry, heavily negotiated—four of us negotiated it with the Government—and then it changed. I was certainly involved.

Baroness Scotland of Asthal: Heavily involved, so my phrase "one of the architects" would be accurate. So from your legal experience you were, I am sure, very well aware of the concerns expressed by Calcutt in his two reports and you would have followed very closely the information and recommendations made by Sir Brian Leveson in his report as to the nature of a body that should then take on the role of regulator. Can you just help me, because I am a little perplexed, as to how you argue that the structure that you created in IPSO was capable of meeting the Leveson criteria?

Paul Vickers: I do not know why you would be perplexed. We do not recognise the Media Standards Trust analysis of the various different points of failure. By a judgment against either the broad thrust of Leveson—and we must remember that Leveson was not holy writ—or the majority of individual recommendations, our system would comply. One thing that is absolutely clear is that it does not, and by the end was not intended to, comply with the very tight requirements of the recognition criteria in the royal charter. There was a point when we

were in negotiations when we thought there was a royal charter proposal that most of the industry would be able to accept, and I think that we would have got there with a structure. When we thought that we had a deal—we had not shaken hands on it, but as good as—things were changed after that point, and from that point on we no longer tried to devise a system that would meet the royal charter recognition system. But for what Leveson was trying to solve, the broad thrust of what he was recommending, we feel that we got there.

Baroness Scotland of Asthal: I just want to make sure that I heard you. You said that you no longer tried to satisfy—

Paul Vickers: That was after whatever it was—the pizza meeting at 3 o'clock in the morning, where frankly we felt bitterly let down. We had done a deal and managed to get most of the industry together and agreed with very senior politicians, but then we were not consulted in the last 48 hours. From that point on, we said that we had done our best and that what we should now do was create a system that worked. So that is what we tried to do.

Baroness Scotland of Asthal: So what is your relationship with IPSO now?

Paul Vickers: It is as cordial as it can be. We are certainly not in each other's pockets. You have met Sir Alan Moses and read some of his comments over the last year. He is very robust; he is super-independent—he slightly shoots from the hip, but he says what he thinks. We have a perfectly professional relationship with him. One of the things that we stress to him, which he says that he hears, is that it took a long time to negotiate with as many parties as we did to get the structure that we eventually managed to get. There were loads of people who did not want to be part of this system, and compromises were made along the way. One of the parties that we bent over backwards most to accommodate was, in fact, the *Guardian*. So lots of the features of IPSO that are there at the moment are there because the *Guardian* asked for them, and it is perhaps overcomplicated partly because of some of those things. As you will know, once you are signed up to a contract, it should be impossible in law for one party to that contract to unilaterally change the terms of that contract. So when Sir Alan says that he is going to put a red line through a whole load of things, he cannot do that. We have said, "Come and talk to us when you've got some experience of running the system as it was designed to be set up and, if things are not working, we will talk about it and see whether through the signatory members of the industry we can change the system". We are open to that. We had one meeting with Sir Alan and that team on that very point a couple of weeks ago. We are due to meet him again on Friday this week, but we are waiting to see his very detailed proposals for changes to regulation. I hope that we get them before Friday, and we can have a proper discussion with him then.

Baroness Scotland of Asthal: So which publications do you raise the levy on at the moment? Can you help us a little bit about how that levy is set?

Paul Vickers: I do not carry a list in my head, but it is all the nationals other than the famous three; the *Guardian*, the *Independent* and the *FT* are not signatories. It is the vast majority of the regional press—I would say 99% of the regional press have signed on; there are some very small publishers who have not signed on. Then it is the big magazine publishers. Magazines have a very long tail of small publishers, so we have some small publishers and some web-only publishers, although unfortunately just a couple. But it is the vast majority by number and circulation of the British printed press.

Baroness Scotland of Asthal: Were you aware when you were creating this system that concerns and complaints were being made by Mark Lewis about your own newspaper?

Paul Vickers: Of course I was.

Baroness Scotland of Asthal: The *Mirror* admitted on 24 September last year the liability in relation to phone-hacking. Did that experience influence the way in which you crafted the regulatory framework?

Paul Vickers: Not particularly. Obviously, all that was in the background—not the *Mirror* as such, but phone-hacking was the thing that caused Leveson to be set up. That was the atmosphere in which all this was being discussed, and of course that was in the background. I do not think anything is in the IPSO documents that relates to anything in particular that Mark Lewis had to say at this stage.

Baroness Scotland of Asthal: One of the fundamental things that came up through Leveson was the need for independence—the need for clarity, and for those who paying the piper not to call the tune, so there was some separation between the two. Bearing in mind that you knew about the difficulties that all the different publications were having, including yours, why did you believe that that lack of separation was not as fundamentally important as it appeared to Sir Brian Leveson and others, who said that that separation was essential?

Paul Vickers: I struggle with the way in which you are putting the question, because I think you are conflating two completely separate things. Mark Lewis and others made some claims which, at the point when they were originally made, the *Mirror* could not establish were true. That was going on in one place. I should have said at the very beginning that I am no longer authorised to speak on behalf of the *Mirror*; I am not a director there any more, but I was obviously around during that period. Following a very detailed investigation and Dan Evans's guilty plea, the *Mirror*—actually, it was mainly the *Sunday Mirror*—accepted that there had

been some phone-hacking going on. That was going on from one side. The discussions around IPSO had nothing to do with that; they had nothing to do with those discussions.

The Chairman: I need to bring in Lord Razzall and the independence question that he is pursuing.

Q54 Lord Razzall: I must say that I am intrigued by one of the things that you said to Baroness Scotland. As you will appreciate, at the core of complaints coming from the other side is that the press are, to use her phrase, paying the piper and calling the tune. If you are naive, or from Mars, you might assume that a company that is called the Regulatory Funding Company was just about funding the regulator. That is what the name says. Yet in your answer to Baroness Scotland, you say that if Sir Alan Moses wanted to take a red pen to a lot of the code you will not let him do so. That seems to blur the distinction between what the regulator does and the funding company—because the world would assume that the Regulatory Funding Company was so named because it provides the funding, and the regulator, IPSO, got on with the regulation. But your answer seems to imply that that is not the view of your board, or indeed of yourself. In the context of that answer, how do you claim to be independent, and how do you safeguard your independence?

Paul Vickers: IPSO will regulate.

Lord Razzall: You said that if Sir Alan comes along and takes a red pen, as he told us that he would like to do, it has nothing to do with him.

Paul Vickers: IPSO will regulate. The basis on which it has been asked to regulate is on an agreed set of regulations, which are set up to enable it to in effect police the Editors' Code.

Lord Razzall: Which you own, not them.

Paul Vickers: Which we own.

Lord Razzall: But why do you own it if you are just the Regulatory Funding Company?

Paul Vickers: The answer is in the title. It is the Editors' Code. The code committee was convened by the Regulatory Funding Company—that has been our last involvement in it—and we own the copyright on the code.

Lord Razzall: But why, is my question? If you are the Regulatory Funding Company, what does the code have to do with you? Surely it has to do with the regulator.

Paul Vickers: No, because the regulator has been set up to regulate on the basis on which it has been set up. We have set it up, and we have said, "This is the set of rules under which the majority of the press have agreed that they should act. This is the set of rules under which we ask you to regulate us. Please now get on and regulate us".

Lord Razzall: But I am sure you understand, if that is your approach, why people are sceptical about your claim to be independent.

Paul Vickers: I think the important elements of independence are the people involved, the process by which they are put in place, and their ability, once they have been in place, to regulate without interference. All those structures are in place. One of the big criticisms that people have made in the past is that one of the things that you will be able to do is to deny them the funds to regulate. We had a very amiable discussion with Sir Alan Moses and Matt Tee about the amount of money that they needed. We had a little gentle arm wrestling over one or two things, and they got what they asked for. We, and they, recognise that this first year is a bit "suck it and see". We hope that their costs will come down.

Lord Razzall: I am not worried about your ability to starve them of money, I am much more worried about your ability not to allow them to amend the Editors' Code of Practice in the way that they are required to, in their view, to regulate the press properly.

Paul Vickers: Focusing on the Editors' Code of Practice is one of the very few things that was part of the old system that came out almost unscathed from Leveson. It has been very highly praised. On one level, if it ain't broke, don't fix it. One thing that we have done under the new system—

Lord Razzall: But as you know, that is not Sir Alan Moses' view.

Paul Vickers: He is now part of the code committee, as is Matt Tee. As a new feature, three laymen will be appointed to that code committee as well. They will have much more involvement than they had in the past. As Sir Alan said in his evidence to you—I would not quite use the word that he used, which was "veto"—there cannot be any changes to the code itself unless the board of IPSO agrees with them. There are quite a lot of checks and balances in there, but it comes back to a fundamental principle: I am not a journalist, as has been pointed out, but when very many journalists say that journalists themselves should be the ones who create the code under which they think they should write. It comes back to their understanding of issues of freedom of speech. If you start handing it over to other people, it is being done by people other than journalists.

The Chairman: Can we stay with the code? Baroness Bakewell, you had another point.

Q55 Baroness Bakewell: I am interested in the ownership of this code. You have said that you have the copyright of a code which journalists feel journalists should shape and that should govern the industry. Will you share it with other regulators?

Paul Vickers: We have not been asked to, and it will not be my decision, but if asked it is something that we would consider. It has not been widely publicised, but we have already

licensed it to the *FT*. The *FT* says that it is not a British newspaper; it is an international digital information service. In the UK, they would like their journalists to be governed by the code. We have said, "Fine". We have granted them the licence on the strict terms that if they want to use the code, they use the code as it stands. They do not play with it, they do not amend it, they do not substitute parts of it. The *FT* is now using it under licence.

Baroness Bakewell: Let us suppose that another existing regulator came to you and said, "The code is for journalists. Journalists obeying a good code is good for the press in Britain across the board", what would your considerations be in deciding whether to share it with them? What would inhibit you?

Paul Vickers: It would not be my decision on my own. One of the thing that we would be concerned about is, as I have just said, that on the code committee there will be representation from the board if IPSO. We would not want to expand that, because it would dilute it, unless we added to the number of journalists on the committee for every person who was a non-journalist.

Baroness Bakewell: Would there be any objection to that?

Paul Vickers: You would end up with a very, very big body. There are some practical issues with that sort of proposal, but we have not set our faces against others using it. We question why, if people were so keen on the code, they did not join IPSO. It is not something that we currently propose to use as some sort of weapon or tool.

Baroness Bakewell: Do you believe the code can be improved?

Paul Vickers: Yes, everything could be improved.

Baroness Bakewell: So it will steadily improve—

Paul Vickers: Yes.

Baroness Bakewell: —at people's suggestions, but those suggestions will come from members of IPSO?

Paul Vickers: Actually the code committee periodically consults the public on changes to the code. In the old days it consulted within the industry. In the future it will be among the signatories to IPSO. It consults its members, it consults more widely, it has taken into account the views of IPSO through the members of the code committee, and if amendments are agreed they will be made.

Baroness Bakewell: You said that you consult the public?

Paul Vickers: Yes.

Baroness Bakewell: How do you do that?

Paul Vickers: They put notices on the website and announce a public consultation.

Baroness Bakewell: Have you done that so far?

Paul Vickers: Not recently. They launched a public consultation two or three years ago.

Baroness Bakewell: When will the next one be?

Paul Vickers: I do not know, because I am not on the code committee. I have no influence in any way over the code committee.

Baroness Bakewell: But you anticipate there being another one?

Paul Vickers: I imagine there will be, yes. I think they have to decide how much of the last public consultation they will take into account. I cannot imagine there will be one very soon, but they do do them.

Lord Dubs: You might have answered this already, but do you see the evolution of the code as a dynamic process where there is a full review of the code at intervals, or do you see it as just making minor changes at the margins?

Paul Vickers: I think it is somewhere between the two. I do not think there is any desire to rip it up and start from scratch, but certainly if things are shown to be not working, are imprecise or difficult to understand, or need to be brought up to date, they will be.

Q56 Lord Horam: You explained, Mr Vickers, how the board of the RFC is constituted. In what way does the RFC differ from PressBoF?

Paul Vickers: Under the old PressBoF system, the directors of PressBoF were nominated and appointed through the trade associations. The Newspaper Publishers Association had the right to nominate I think three people, as did the Newspaper Society. The directors were directly appointed by the newspaper and magazine trade associations.

Lord Horam: And now?

Paul Vickers: Now the members of the RFC who are the signatories to IPSO will nominate people to the board. If there are more than the four from the nationals, four from the regionals and one from the magazines, we will hold elections. It is £1, one vote, as part of that process.

Q57 Lord Sherbourne of Didsbury: Can I return to the question of the funding of IPSO? Sir Alan may come to you and say, "I need more money than is in the budget in order to do my work effectively", and no doubt there will be discussions about whether or not the RFC agrees with that and how it can meet his requirements. If there is disagreement between the RFC and Sir Alan, and he says, "I need the money", and you do not agree, who has the final word?

Paul Vickers: No one has the final word.

Lord Sherbourne of Didsbury: How would that be resolved then?

Paul Vickers: They will carry on with the budget that we agreed beforehand, and I suppose there will be a stand-off.

Lord Sherbourne of Didsbury: So in that event, if you do not increase the budget to Sir Alan once, he will not able to do the job that he needs to do.

Paul Vickers: Arguably yes.

Lord Sherbourne of Didsbury: You would exercise a veto over him in that sense.

Paul Vickers: I do not think it is exercising a veto; it is simply not agreeing.

Lord Sherbourne of Didsbury: Yes, but what I mean is that if he says, "I need to do that piece of work", and you say, "I'm not giving you the money to do it", you are stopping him doing him what he wants to do.

Paul Vickers: It depends on what the piece of work is. There has been some debate about standards investigations and a sum of money has been agreed that is ring-fenced for the nationals—I think it is only £100,000—to enable him to launch his first standards investigation. There is a separate fund for that. We obviously hope that there will be no fines in the future, and there is a lot of debate about whether it would be a good or a bad thing for the first £1 million fine to be levied. The fines go into a pot for him to use for future investigations, so he will build up a kitty, almost, out of which to fund future standards investigations.

Lord Sherbourne of Didsbury: I understand that, but I will put the question more simply. Imagining that there is what you have called the possibility of a stand-off, the stand-off simply means not giving him the money?

Paul Vickers: Yes.

Lord Sherbourne of Didsbury: Okay, thank you.

Baroness Hanham: I just want to understand this. The people who are funding you are basically the IPSO sign-ups: the people who are supporting IPSO. What do you base your budget on? Are there four layers of subscription? What do you do? Do you say, perhaps not having discussed it with IPSO, "This year, we are going to raise a certain amount of money and these are the subscriptions that we are going to ask for from the various organisations"? If that is based on the budget you are going to give IPSO, that seems to be something that needs to be properly negotiated. If it is something that you think is the most you can raise from the members of IPSO who are giving their money to you to give back to IPSO, how does the system work?

Paul Vickers: I hope we have demonstrated to Sir Alan that there will be reasonableness, and perhaps we ought to shine a brighter light on it, but this is where there is a slight divergence

from what was formally set out in the contract. The contract said that an initial budget should be agreed for year one.

Baroness Hanham: Between the two of you?

Paul Vickers: Between IPSO and the RFC. That budget would apply for the subsequent five years. When the contracts were entered into, there was a yet to be agreed mechanism for agreeing the rate of annual increase. We agreed with Sir Alan that he would in effect inherit, for the first six months of operation for the last year, the basis of the budget that was there before. He has not complained that he has not been able to do his job.

Baroness Hanham: So he is inheriting the PCC's budget?

Paul Vickers: Not the PCC's budget but the level of funding while he got his foot under the table and, with Matt Tee, who was appointed from outside, got to understand the system and to work out what they needed. They have done that. After a few months of operation, they have come forward with their proposed budget for 2015. There are a couple of things in there over which we have raised an eyebrow, but other than that we have basically agreed the amount of money that will be paid for operations in 2015. Sir Alan was very keen that IPSO should set up in its own offices. He did not simply want to move into what were, to be frank, the quite nice offices that the PCC had. There was a bit of concern about whether that was unnecessary expenditure, but he is moving to his new offices, and the industry is funding that. As I think Matt Tee mentioned, there is an extra £500,000, which had not been taken into account, which is being funded to enable him to do that. He is not being stopped from doing anything. He has engaged Matt. I do not think I can tell you what Matt is paid, but it is a very generous salary. It is significantly more than the director of the PCC was ever paid. I do not know whether you saw in the *Sunday Times* over the weekend that he is advertising for three more senior staff, all on really quite generous salaries. He is not being starved of funds. Actually, I do not think he claims he is being starved of funds.

Q58 The Chairman: We heard in the earlier session that there was hope for a hotline for journalists who felt pressurised in IPSO. Is the fact that there has not—

Paul Vickers: It should be there. As you know, I came in slightly late, but I heard that. If I have the right to be cross, I am very cross that that is not there. In my role, I do not have the right to be cross.

The Chairman: It is not a constraint of the financial arrangements?

Paul Vickers: No, it should be there. I do not have the status to ring Sir Alan up and say, "Why haven't you done it? Do it", but if I did I would do that; I would have a quiet word. It should be there. I do not know why it is no.

The Chairman: Okay, thank you for that. Any final remarks that you would like to make?

Paul Vickers: Just one thing: the differences between the old system and the new system. It is on a note that David passed forward. David, who is the director of two of the trade associations, was a director of PressBoF. Somebody in his role is expressly excluded from being on the board of the RFC. It has to somebody from the industry. One of the big differences between the new system and the old system is that PressBoF itself appointed the chairman of the PCC. I am pretty certain he was an employee of PressBoF. The contract was with PressBoF. It is a completely different system under Sir Alan. I do not have time to go into it now, but one of the most cumbersome parts of the IPSO process was the appointment of the chairman and the board. We had the famous Foundation Group, chaired by Lord Phillips. The Foundation Group was wholly independent, although it had representatives of the press on it. It then appointed the appointments panel, which then appointed Sir Alan, who joined the appointments panel and appointed the rest of his board. The RFC did not do that.

The Chairman: Thank you very much indeed for that, Paul Vickers. Thank you for joining us.

Examination of Witnesses

Dr Martin Moore, Director, Media Standards Trust, and **Professor Chris Frost**, Chair of Ethics Council, National Union of Journalists

Q59 The Chairman: Welcome, Professor Chris Frost and Dr Martin Moore. Thank you very much for joining us—and for doing so earlier, which means that I do not have to explain that I am not another Leveson but that we are trying to shed light, which I am sure that both of you will be very much part of doing this afternoon. Would you just introduce yourselves for the record and say where you are coming from in terms of this inquiry?

Professor Chris Frost: Yes, I am Professor Chris Frost, professor of journalism in Liverpool John Moores University. I am also a member of the NUJ and I sit on the NUJ's national executive committee, as well as chairing the NUJ's ethics council. I have been heavily involved in our Leveson work over the past few years.

Dr Martin Moore: My name is Martin Moore. I am director of the Media Standards Trust. I have worked in the media for about 20 years and have been director of the Media Standards Trust since 2006. We do research into a number of different areas, particularly the news media. We also produce tools to help people to navigate the media. Since 2006, we have also been looking at the whole issue of the self-regulation of the press. We published a report back in 2009 that was critical of the system of self-regulation with the PCC. We published a subsequent report the following year and made quite a lengthy submission to the Leveson inquiry, in which we made a number of recommendations, some of which he seems to have taken account of. More recently, in November 2013, we published an assessment of IPSO based on its founding documents, published in October 2013.

Q60 The Chairman: Thank you both very much. You do not both have to answer every question that comes, so between the two of you perhaps you can decide for yourselves which one to go for. You can then spend more time on the questions that you answer. The first question probably does require something from both of you—your assessment of the important things in Leveson and what has happened to them over the past few months and years.

Professor Chris Frost: I am happy to, my Lord Chairman. We felt that the self-regulatory sections of the Leveson report introduced a large number of things that we welcomed, particularly the idea that every newspaper should be a member of the new body, whatever that turned out to be. There was the idea that all of them should be members and they should be obliged to adhere to what is going on. That had not happened before. This is often presented

as a mix of the public and the industry. We want to make it absolutely clear that from our perspective the industry is always being represented as the publishers, who have very different interests to other sectors of the industry, particularly journalists. This has been mentioned already by several of you around the table, and quite rightly. The way in which journalists view what is going on is entirely different from the way in which publishers view it. Publishers are there to publish their newspapers and to make money. There is nothing wrong with that, but they should have no more freedom to do that than anybody else who is manufacturing something for sale—whether that is selling drink, food stuffs, or whatever it might be. There is a whole raft of regulation to control how that is done. We cannot see any reason why the commercial side of publishing should not be controlled in very similar ways.

The difficulty that this Committee and Leveson are looking at is the journalism side of it—the idea that there should be a free press, able to say things that are important. That comes from journalism, so journalists have a major part to play in that, and we cannot understand why that is being consistently ignored. We were very pleased that Leveson did not ignore that; he wanted to look particularly at things that a whistleblower hotline and a conscience clause, so that journalists could say when they believed that something breached the code of practice and that therefore they did not want to do it. So it is very disappointing to see that IPSO has picked up on none of those things yet. We have already tried with one or two test cases, where our members have been in very difficult circumstances, and we have contacted IPSO only to find that nothing was happening there. It was very good to hear Paul Vickers confirm that that has not happened yet. In our view, it is typical that IPSO should leave that till very much later and that there should be no pressure from the Regulatory Funding Company. Journalism, as far as we are concerned, is the most important issue, and that is being ignored. We do not think that IPSO will be able to pick that up, and we think that there will be another Leveson in five or maybe 10 years' time, if we are lucky.

Dr Martin Moore: First, on your question about the Leveson report and its recommendations, there were two particularly valuable things about the report and recommendations. The first was the findings of the report itself, and the exposure of the existing system. We tried to do that ourselves but Leveson did it in significant depth and took significantly more evidence. Leveson demonstrated particularly the lack of independence of the existing system with the PCC, and the human cost of those failings. It was very good that you had Hacked Off earlier, because that was crucial to the inquiry itself. As for the recommendations, I would highlight three structural changes that Leveson recommended, which would make a significant difference to this whole area. The first was the low-cost arbitration system, which I know that

you have already spoken about but which perhaps we will talk more about. The second was the idea of regular audit of the system to ensure that it is working effectively and to avoid the historical cycle of failure that we have been through every 10 to 15 years since the Second World War. That was an attempt by Leveson to do something different from many previous royal commissions and inquiries, and that is why the recognition system is so central to the sustainability of the system that he proposed. The third was his basic list of what independence and effectiveness means from the perspective of the public—the basic criteria that any self-regulator ought to adhere to. It can do anything that it wants to above and beyond that, but it should adhere to those basic criteria in order to justifiably be able to call itself independent and effective on behalf of the public. Those are the three areas that were significant structural changes.

As for what we have done in observing what has happened since the Leveson inquiry, we have very closely followed, and at some stages got involved in, the discussions around the implementation of the inquiry. We looked at every version that there is of the various charters that were published and did a very close textual analysis of them, including the industry charters as well as the other ones. That is published online and is called *The Story of Eight Charters*. It shows the closeness of different charters to Leveson and particularly the closeness of the final agreed version with the Leveson criteria. You can virtually map one to the other. The other thing that I did, which I mentioned, was that when the final documents for IPSO were published we did an assessment of IPSO. The thing that triggered that assessment particularly was when an ad was taken out in some national newspapers by, I think, industry representatives, although we never found out exactly two took it out, claiming that IPSO delivered Leveson, and all the key elements that Leveson recommended. In order to assess the degree to which that was true, we went through and assessed all the 38 different recommendations that Leveson made for an independent and effective self-regulator. We measured IPSO against them, which was quite a difficult process. I do not know whether you have seen that there are many different founding documents—articles of association, regulations and the scheme membership agreement. We went through it and assessed them all and found that IPSO satisfied 12 of the 38 recommendations, failing 20, with six that on the information then available we could not make a judgment. Many of the ones that it failed on were really fundamental, with regard to independence, arbitration and complaints. We can talk more about those specifically. Since November 2013, we have continued to follow closely both the implementation of IPSO and of IMPRESS, and we have published two

lengthy and comprehensive analyses of the coverage of the Leveson inquiry and its aftermath by the national press.

Q61 Lord Horam: Could IPSO ever be satisfactory from a Leveson point of view? You mentioned the 38 points and that it has managed to get right only 12 of them so far. Is it irremediably so far out that it could never happen?

Dr Martin Moore: There are aspects to that. IPSO is already set up, so it has already been through certain aspects, such as appointments and so on. So over and above re-establishing it, there are certain things that IPSO has already done which contravene Leveson in his recommendations. Of course, IPSO, from the beginning and constitutionally has set its face against recognition, which was another crucial aspect of Leveson.

Lord Horam: On independence in particular, your third point was about independence and self-regulation. Can the self-regulation that IPSO embodies be truly sufficiently independent?

Dr Martin Moore: In the written submission that I gave to the inquiry, I tried to be as clear as possible about 10 changes that IPSO could make that would fundamentally alter its independence and effectiveness on behalf of the public. Many of those are to do with removing some of the constraints on IPSO that are set into its articles of association.

Lord Horam: It would be useful if you could give us an example of the sort of thing that you have in mind.

Dr Martin Moore: Absolutely. The very first one, which you have already discussed, is if it was to remove the veto that the Regulatory Funding Company has to any changes to the regulations and any changes to the editorial code, as well as its veto over any system of arbitration.

Lord Horam: Just to recap, if Alan Moses had perfect freedom to do all that, would it satisfy your criteria about independence?

Dr Martin Moore: No, that is the first point. The problem that we have here is that, built into all the constitutional documents in the formation of IPSO is a very significant degree of control by the industry, mostly through the Regulatory Funding Company but also through its sub-committee, the Editors' Code committee. That puts such constraints and such processes in the way of Sir Alan Moses, which he talked about in front of this Committee, that make it extremely difficult for him to do the job that he has been asked to do. He talked specifically about investigations. I have not mentioned investigations, but that was supposed to be one of the main differences between the PCC and IPSO—that it could conduct these standards investigations. But the way in which the process has been set out is so byzantine and allows for so many formal interventions by a publisher that the chances of him ever getting to a point

when he is in a position to try to impose a fine, after which there is then another opportunity for review and appeal, are very small.

Q62 Lord Horam: We talked about the editorial code, as you may have heard. IPSO would say that it is fundamental to press freedom that the journalists decide the editorial code on which they are judged. You are saying that, no, Sir Alan Moses must determine that. So that is damaging press freedom.

Dr Martin Moore: No, I am not saying that at all.

Lord Horam: I am just putting that argument to you.

Dr Martin Moore: Leveson spent an awful long time looking at the issue of the code from the perspective of the process, not the content. He was very specific; he did not feel that it was his job to dictate any of the content of the code, but he felt that it was his responsibility to talk about the way in which the code was created. He concluded that while he absolutely took on board the need for the industry to be intimately involved in creating a code, he did not think that giving editors the ownership of the code and depriving the regulator of the ability to make changes to it was adequately independent. That was particularly with regard to this whole issue, which he felt that the inquiry focused on at enormous length, which was the definition of the public interest. He felt that it was not adequately described because many people within the industry had very different ideas as to what the public interest meant and how it should be interpreted.

Lord Horam: That is very helpful.

Professor Chris Frost: You mentioned a couple of things that are very important to us, one of which is that journalists have to sign up to the code of conduct, or that it is part of their contract of employment, or has been. Yet journalists are not included in the code of conduct committee. It is another one of these things that the industry keeps putting forward. They say that journalists are on the code of conduct committee but what they mean is that editors are. I understand that editors are and have been journalists, but they have other responsibilities as well—managerial responsibilities and supervisory responsibilities as well as responsibilities through the board to the shareholders, which means that their approach is, or quite often can be, different from that of the journalists themselves. We feel that it is very important that journalists as well as the public sit on the code of conduct committee, and it is really unfortunate that that is not happening.

Lord Horam: Is there any difference between IMPRESS and IPSO from your point of view?

Dr Martin Moore: Yes. It is important to say that IMPRESS has not published its final document yet, so we have very deliberately not conducted the same assessment against the

Leveson criteria, although we hope to do so once we have published those final documents and we can go through them. If I could just highlight a few critical difficulties right from the start, which are apparent from the draft documents that have been put online and elsewhere. It has no comparable body to the Regulatory Funding Company. Leveson said that he could understand the need to have a funding body but not the need to have a funding body that had anything like the powers that PressBoF previously have and that the RFC now has. The IMPRESS board has responsibility for the code; it is advised by a code committee but it has responsibility for the code. IMPRESS is committed to providing an arbitration service, unlike IPSO. I can continue—but there are substantial differences between the two.

Q63 Lord Razzall: If I can change the subject and come on to the effect of the Crime and Courts Act 2013, which brings in in November this year exemplary damages, with a possible defence if a publisher is a member of an approved regulator. Under Section 40 of the Crime and Courts Act there would be a defence against a costs award, but that does not apply until a body is first recognised as an approved regulator. What do you make of these incentives for people to sign up to a regulator that we would all approve of? Would they provide any incentives for any publisher to sign up to the royal charter?

Professor Chris Frost: From the NUJ's perspective, we certainly felt this was a useful carrot to give to publishers to prevent them facing those kinds of damages, if they belong to an appropriate regulatory body. It is not entirely dissimilar to the situation that operates in Ireland, where a recognised regulator is able to put that forward as a defence. In some instances at least, it makes the public interest defence much easier to put, because you would be using the code that a recognised regulator had and would be following the public interest defence as laid down in the code.

Lord Razzall: I understand that was the idea of it, but do you think in practice it will have any effect?

Professor Chris Frost: Until somebody actually sets up a regulator that can seek verification, it is a moot point. I think that it can, but we would have to see the details.

Lord Razzall: We have no evidence that anybody is going to sign up to get that.

Professor Chris Frost: No.

Dr Martin Moore: One of the particularly difficult things to assess here is that it is very hard to judge the degree to which there will be financial incentives. We know from what many publishers have said that the reasons for not signing up to the charter are not simply financial. Some of them are ideological or, as Sir Alan Moses says, theological. I am sure that there are other reasons as well. We went back and tried to do an evaluation of the potential savings that

publishers would make or not make, which is extremely difficult to do. It is very rare that publishers are subject to legal action on a regular basis and particularly legal action by large corporations or otherwise. They are black swan events, so you cannot figure on an annual basis how much you are likely to save or not save. So the decision is beyond financial.

Lord Razzall: I think the simple answer from both of you is no.

Dr Martin Moore: Certainly there is no evidence. In the case of court costs, there is reason to believe that it would be a powerful incentive to participate, but there is no evidence as yet.

Q64 Baroness Fookes: Most of the discussions have centred on IPSO, but of course IMPRESS has been mentioned, which makes two regulators in the market. What might be the effect of having more than one regulator? What is the effect likely to be on the industry and, indeed, on the consumer?

Professor Chris Frost: We think there are good reasons for having more than one regulator, and some of these reasons will come up in some of the questions that are likely to follow. For instance, to have one to regulate the national press and one to regulate the regional press would solve a lot of the problems that the regional press faces at the moment. They are very concerned, for instance, that an arbitration system, as suggested by Leveson, would be very expensive for them because they would end up funding a system that would spend most of its time, effort and energy looking at claims that have gone to the national newspapers. If we look at some of the figures for complaints to the Press Complaints Commission, we can see a stark difference between those at the top of the league table and those at the bottom. I have just finished looking—and I think that the figures were in the evidence that we gave you—at all the statistics that the PCC has put out, at every complaint that came in that the PCC sees as a prima facie case. The *Daily Mail* is way up at the top, although the *Sun* is pretty close behind—there is not a huge surprise there—with the other nationals fairly close. Then we look at the regional press, and it is way behind. A separate regulator simply for the regional press would solve a lot of their problems. So I do not think there is a problem about having more than one regulator. The publishers have a problem with that, because they want to keep the costs in-house. We have to remember that there are very few publishers of newspapers. Five or six major groups control most of the newspapers in the UK, and it makes sense for them to fund that, regardless of whether there are regionals or not. But the regional newspapers find that very difficult. We have been in talks with IMPRESS, and I have to say that we are quite impressed with what it is suggesting—but, like Martin, we have not seen sufficient detail to be certain yet. But we are certainly talking to IMPRESS, and we welcome that. We just wish that the publishers had talked to us about IPSO.

Dr Martin Moore: Just to add to that, I think there are benefits to allowing for more than one regulator, particularly in a digital environment, where we have a huge and growing variety of publishers. There are two potential disadvantages: one, that it might be more confusing to the public and, secondly, as was raised in another session, that the regulator may try to cut corners and offer a more low-cost and low-responsibility alternative. There are two ways in which to mitigate that, both of which Leveson included. The first was to oblige publishers to make it very clear how to complain and what rights the complainant had, and the second was to set out very clearly the basic criteria to which all regulators had to adhere, which Leveson did in his report.

The Chairman: Even if we have more than one regulator, do we need to have more than one code?

Professor Chris Frost: That is an interesting question. We feel that journalists ought to be represented more clearly on the code, so it would not be beyond the bounds of possibility to have a committee that would draw up a code and then pass it on to the appropriate regulators to do with it as they wish. IMPRESS is talking about having an advisory committee to do precisely that, and there is no reason why that could not be shared. Having said that, if you look at the codes in the UK, none of them is that different from the other. If you have an advisory code that a particular regulator would pick up and the differences are finally imposed, I do not think it would be likely to be any more different than the codes that exist now.

Dr Martin Moore: Once the basic safeguards are in place, you might find that particular regulators want to distinguish themselves by having codes around areas in which they specialise and want to have higher standards.

Baroness Hanham: The PCC has gone, and IPSO is just operating while IMPRESS is not operating. What is the current position on complaints? Do the public know who to complain to now? Do they have anybody to complain to? If they have someone to complain to, is somebody telling them how they do it?

Dr Martin Moore: The whole situation in many ways at the moment is unsatisfactory, from the perspective of the public. It is not where one would hope we would be. We have a relatively complicated situation whereby we have one regulator that does not comply with Leveson and does not aspire to. In our judgment, it is not independent or effective. We have some organisations standing outside any kind of regulation apart from their own internal complaints and compliance mechanisms, and we have an alternative regulator being set up. So it is confusing for the public, and that, I suppose, is compounded by the fact that one of the

biggest changes from the perspective of the public from the PCC to this system is that they are obligated to go first to the newspaper concerned. That is a considerable change. That recommendation was made because it was felt that the newspaper was in a better position to resolve the matter quickly, but if one looks across the board there are some organisations providing clear and detailed information as to how to complain, how it will be dealt with and the role of IPSO, while there are others that are not doing so. At the moment we do not have any data, because again the publishers themselves are not obligated to publish data about the number of complaints that are made—so it is very difficult to judge. Certainly, looking at it from the outside as a potential complainant, it is unclear, confusing and inconsistent.

Q65 Baroness Scotland of Asthal: Could you tell us about the definition of "publisher" in the Crime and Courts Act 2013? Do you think that we have got it right? Is it clear enough? Does it encompass all the people whom it should encompass and exclude people who should be included, particularly when we are living in a digital age? Do you think that definition is right?

Professor Chris Frost: We certainly think it is a good working definition. As the Bill went through, we did not feel that there were any significant problems. It is one of those things on which, until we start working with the system, it will be difficult to tell—and since we think, and others largely agree, that it will be some years before that actually happens, we have not concentrated that heavily on it. But I think that you have largely got it right and it is a good definition that will largely be quite useful.

Dr Martin Moore: I agree that there are elements of it that are clear, but I am not a lawyer and much of the law does not read particularly clearly to me. There are certainly parts of it that I find ambiguous and difficult to interpret. I do not understand the definition of "blog", for example. I am sure that there will be more discussion over it, but there are elements of it that will need to be clarified.

The Chairman: We may have to go at a bit of a canter for our last set of questions, but before we get on to them, Lord Dubs wanted to say something.

Lord Dubs: I want to get in on the previous question about complaints and ask two things. One is, as you have just said, that there is an obligation on newspapers to keep statistics on how many complaints they have had, what they have done with them and so on.

Dr Martin Moore: At the end of the year they are supposed to give IPSO some sort of annual report about the complaints, but it is very unclear how they record them, in what detail and particularly how they distinguish between a formal and an informal complaint. If one goes to certain sites at the moment as a complainant, you are offered the opportunity to make either a

formal or an informal complaint. I do not understand the distinction there, but nowhere does it say whether formal or informal complaints will be reported to the regulator, or whether making a formal complaint means that it is somehow cordoned off and not made known to the regulator. It is opaque.

Lord Dubs: May I just follow up on that very quickly? I appreciate that time is against us. As regards the remedies to the public, one of the points that was made to us by other people earlier this afternoon, for example, is that if a newspaper accepts that it erred in a large article, maybe on the front page, and tries to satisfy the complainant by three lines at the bottom of a page in the middle of the newspaper, surely that is not satisfactory. What can be done about that?

Professor Chris Frost: It depends on whether it is a formal or an informal complaint. Normally someone will contact the newspaper and there will be some kind of discussion about an appropriate correction. I would assume, but I may have got this wrong, that only if those talks broke down would it be become a formal complaint, initially to the newspaper and then on to IPSO. IPSO has the power to say where in the newspaper that correction can go. We have not yet seen it use that power in any real sense, but I think it has only dealt with 11 or 12 complaints so far.

Dr Martin Moore: They say they have that power to direct, but they deliberately do not have that power to direct apologies. They say they have that power to direct a correction, but as Chris said we have not seen them use that power yet.

Lord Dubs: So not for apologies?

Professor Chris Frost: No, not for apologies.

Baroness Healy of Primrose Hill: Very briefly, because I think you have already talked about it, Mr Moore, you have said in your written submission, "Currently, access to legal redress in media cases is comparable with the situation prior to the Leveson Inquiry", so we have not really moved any further. Would you briefly expand on that, please?

Dr Martin Moore: I can try but unfortunately not very briefly, because it is a long-standing issue. It goes to the whole discussion on conditional fee agreements and the attempted of conditional fee agreements prior to the Leveson inquiry following the Jackson review. The Government went further than the Jackson review in their reforms in the Legal Aid, Sentencing and Punishment of Offenders Bill, so much further in fact that effectively in media cases conditional fee agreements would not be accessible to ordinary members of the public because of non-recoverability of insurance premiums and effectively no success fees. They would disappear in those cases. Because no alternative was in place and because of the

hacking scandal, and in fact because of pressure from the House of Lords, the Government suspended those clauses in the Bill, they are still accessible but they hang by a thread. In a way, we have exactly the same situation that we had previously, because there is no alternative. Should those suspensions disappear, so will access to justice for almost any ordinary person in legal cases and legal action in media cases.

Baroness Scotland of Asthal: So you are really saying that you would advocate solidifying that position so that we go back to pre-Leveson conditional fee agreements?

Dr Martin Moore: Clearly the best thing would be to move forward in terms of what Leveson proposed, which was to help both publishers and ordinary victims—

Baroness Scotland of Asthal: Mediation.

Dr Martin Moore: —by having an arbitration system. That was the answer that he came up with. Unfortunately we are no closer to having that arbitration system. Until we have that, unless all access to justice is cut off, then yes, it has to continue.

Q66 Baroness Fookes: You suggested earlier on that you found opaque the difference between the formal complaint and the informal complaint. Looking at other organisations, let us say a parent complains about something to do with a school. They might well go informally to the head teacher and try to sort it out. If they remain dissatisfied, they move to a formal procedure. Would it not be something like that with the newspapers?

Dr Martin Moore: It would. The particular thing that I do not understand, and I do not understand why it was set up in this way, is that the IPSO system works such that the complaint is made to a newspaper. If it is not resolved within 28 days, it is supposed to escalate to IPSO, although the mechanisms for how it escalates and how an individual member of the public is to know how to escalate it are quite unclear to me. At the point at which it escalates, it would seem entirely logical to me that IPSO adjudicated, made a judgment as to whether or not the complaint breached the code and took some action. According to the IPSO regulations, however, at the point at which it escalates, IPSO then starts the process of mediation—the exchange of letters et cetera—all over again, which is what the PCC did and what Leveson said was the problem with the PCC: that it was a mediator and not a regulator. From the perspective of a member of the public with a complaint, in many ways this system could take longer. They could end up spending a month at the publisher concerned and then start the process all over again once they got to IPSO.

Baroness Fookes: In other words, it needs streamlining.

Professor Chris Frost: It needs clarifying.

Dr Martin Moore: It needs significant clarification and significantly more transparency, particularly for members of the public.

Q67 Lord Sherbourne of Didsbury: Do you think that the change to the new regime will impact in any significant way on the regional press?

Professor Chris Frost: No, not really. If we look at the figures that affected the PCC with their adjudications, the regional press are really only a small blip. There are a lot of them, so there are a lot of blips, but they are quite small. The kind of complaints that the PCC was dealing with were very largely to do with a lack of appropriate supervision, a lack of training or a lack of experience among the journalists working in the regional press. The mistakes that were often made for which complaints were upheld were really quite serious howlers, but they were the kind of one-off mistake which the newspapers themselves had already recognised and apologised for and which the PCC dealt with. Those will undoubtedly continue. I cannot see IPSO fining for those, because they are simply not systemic or deliberate in any way, and the number is very small. So the regional press's interface with IPSO will, I suspect, continue to be relatively small.

Dr Martin Moore: From the regional press's perspective, the difference between IPSO and the PCC will be very minor indeed. We heard Paul Vickers say earlier that the cost of it will be the same, the processes will be extremely similar, and indeed many of the staff are similar. So from the regional press's perspective, the system of regulation set up by IPSO is incredibly similar to that of the PCC.

The Chairman: The true of you have brought tremendous knowledge and expertise in this field. Thank you very much for that. Are there any final remarks that you would like to make, I have to say rather briefly as we are running well over time?

Dr Martin Moore: Just one thing, really. I know this inquiry is not planning to make recommendations, but it would be of great service if this inquiry showed where we are now, particularly how unsatisfactory the status quo is, and to show how far the status quo is from what was recommended by Leveson. One of the things that has been apparent to me, certainly for the last two years, is that many people have put on the cloak of Leveson and have talked about Leveson compliance and about going very close to Leveson, but actually when one looks at it in detail, we are a very long way away.

Professor Chris Frost: I certainly agree with that. I would just remind you that we feel that journalists have largely been excluded from a lot of this, despite the fact that they play a major part in what is going on. I also just wanted to mention that a view is continually put that the Editors' Code is brilliant. Somebody asked whether it could be improved. Yes, it most

certainly could be, and taking third-party complaints against the code but having more in the code about principles rather than just individual harm would be a major improvement.

The Chairman: Great. Thank you both very much indeed. It has been really useful.