



The Independent Press Standards Organisation (IPSO) – Five Years On

A reassessment

October 2019

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Summary

This report is a follow-up to the Media Standards Trust’s assessment of the original documentation on a new regulatory system proposed by parts of the UK’s newspaper industry in 2013. The documentation set out the articles¹ and regulations² of the Independent Press Standards Organisation (IPSO), as well as the reconfiguration of the previous industry funding body into the Regulatory Funding Company (RFC).

The 2013 Media Standards Trust report assessed the extent to which the IPSO system satisfied the 38 recommendations that the 2012 Leveson Report laid out in support of a “genuinely independent and effective system of self-regulation.” The 2013 report showed that IPSO satisfied just 12 of the 38 recommendations, failing to satisfy 20, with six cases where there was insufficient evidence to decide whether IPSO satisfied the recommendation or not. The report also found an unnecessarily high degree of industry control over the IPSO system via the RFC.

Five years have passed since IPSO began its operations in September 2014. The parts of the system that were unclear in the original 2013 articles and regulations have now been given sufficient time to demonstrate whether they satisfy the relevant Leveson Recommendations or not. There have also been some changes to IPSO’s powers and capabilities that have implications for whether and how the regulatory system satisfies the recommendations. These changes and their effects are outlined in part 3 of this report.

This report reassesses the extent to which the IPSO system meets the minimum criteria set out in the Leveson Report for genuinely independent and effective regulation after five years.

Overall: IPSO vs the 38 Leveson Recommendations

- Of the 38 Leveson recommendations for a regulatory system, IPSO in 2019 satisfies 13 – just over one-third – and fails 25.
- Of the six cases for which there was insufficient evidence in 2013 to determine whether or not IPSO satisfied the Leveson recommendation, subsequent evidence shows that IPSO fails to satisfy any.
- There were two instances of changes to the IPSO system resulting in the regulator now satisfying recommendations it was previously judged not to satisfy; conversely, there was one case where IPSO now fails to satisfy a recommendation that was previously met.
- In seven cases there have been changes to articles and regulations that relate to the satisfaction of recommendations, but in each case the regulator continues to fall short of doing so.

(The detailed justifications for these decisions are set out in full in Parts 4 and 5 of this report.)

¹ <https://www.ipso.co.uk/media/1814/ipso-articles-of-association-2019.pdf>

² <https://www.ipso.co.uk/media/1815/ipso-regulations-2019-v-sep19.pdf>

IPSO vs the 38 Leveson Recommendations

(For explanation and notes see Appendix I of this report)

Leveson Recommendation	Current Status (2019)	Previous Status (2013)
1	Not satisfied	Not satisfied
2	Not satisfied	Not satisfied
3	Not satisfied	Not satisfied
4	Not satisfied	Not satisfied
5	Not satisfied	Not satisfied
6	Not satisfied	Not satisfied
7	Not satisfied	Not satisfied
8	Not satisfied	Not satisfied
9	Not satisfied	Satisfied
10	Satisfied	Satisfied
11	Not satisfied	Not satisfied
12	Satisfied	Satisfied
13	Satisfied	Not satisfied
14	Satisfied	Satisfied
15	Not satisfied	Not satisfied
16	Not satisfied	Not satisfied
17	Satisfied	Satisfied
18	Not satisfied	Not satisfied
19	Not satisfied	Unclear/Insufficient information to date
20	Not satisfied	Not satisfied
21	Not satisfied	Not satisfied
22	Not satisfied	Not satisfied
23	Satisfied	Satisfied
24	Not satisfied	Unclear/Insufficient information to date
25	Relates to the Information Commissioner – not relevant here	
26	Relates to court costs – not relevant here	
27	Relates to the recognition panel – not relevant here	
28	Relates to the recognition panel – not relevant here	
29	Relates to the recognition panel – not relevant here	
30	Relates to the recognition panel – not relevant here	
31	Relates to the recognition panel – not relevant here	
32	Relates to the recognition panel – not relevant here	
33	Relates to the recognition panel – not relevant here	
34	Not satisfied	Unclear/Insufficient information to date
35	Satisfied	Satisfied
36	Not satisfied	Not satisfied
37	Satisfied	Satisfied
38	Not satisfied	Not satisfied
39	Not satisfied	Unclear/Insufficient information to date
40	Satisfied	Not satisfied
41	Satisfied	Satisfied
42	Not satisfied	Not satisfied
43	Not satisfied	Unclear/Insufficient information to date
44	Satisfied	Satisfied
45	Not satisfied	Unclear/Insufficient information to date
46	Satisfied	Satisfied
47	Satisfied	Satisfied

Table 1: IPSO Satisfaction of Leveson Recommendations - 2019 vs 2013

Developments Since 2014

Changes to IPSO's Capabilities

As noted in the previous report, in several ways IPSO marked an improvement on the previous Press Complaints Commission system. Such changes as improved internal governance and complaints procedures within member news organisations, the creation of a whistleblowing hotline and protection for journalists from disciplinary action when refusing to breach standards codes were all welcome additions to a new self-regulatory system.

Since 2014 IPSO has announced some further substantive changes to the regulator's articles and regulations, as well as the articles of the RFC, that signify further improvements on the system as set out in 2013. Changes announced by IPSO in 2016 were:

- The power “in appropriate circumstances” to investigate in the absence of a complaint (IPSO Regulation 17);
- The power to control and write its own complaints procedures (Scheme Membership Agreement³ Clauses 7.1 and 7.2; IPSO Regulations Annex C)
- The power to demand quarterly statements from publications as a sanction for serious Code breaches (Regulations 47-51)
- A simplification of the rules for launching and carrying out a standards investigation (Regulations 55, 56, 63 and 71-77)
- The power of the regulator to issue its own financial sanctions guidance (Regulation 68);
- A shift of the responsibility for remuneration of Board and Complaints Committee members from the RFC to the IPSO appointments panel (IPSO Articles 24 and 27.9)

While changes to the regulatory system that empower the regulator at the expense of industry control are to be welcomed, the cumulative effect of these changes in most cases does not translate into IPSO satisfying the recommendations set out following the Leveson Report, and do not ameliorate the extensive control the industry can exert through the Regulatory Funding Company and through those aspects of the IPSO Articles and Regulations that present extremely high hurdles for standards investigations and which allow publications to repeatedly intervene in the investigations process. Though outside the scope of this analysis, IPSO's inability to implement a single standards investigation over five years of operation is one additional key indicator of its lack of regulatory powers and independence.

A significant addition to the IPSO system is the introduction in 2018, after four years of operation, of an arbitration service. In principle this is another development to be welcomed, but certain aspects of the system, including the fact that membership is not compulsory (so that certain large titles, such as Mail Online remain outside the system) mean that it continues to fall short of the recommendations set out in the Leveson Report.

In September 2019 IPSO announced that it had secured additional changes to its Regulations, outlined as:

- An expectation that member publishers carry the IPSO mark in print and online to denote their membership and commitment to high quality journalism (Regulation 5.7);
- Setting out specific requirements about what should be included in publishers' annual compliance statements to IPSO (Annex A, Clause 3);

³ <https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf>

- Strengthening the complaints process by clarifying that IPSO can deal with any complaint made after its usual time periods if the complaint was made in time to the publisher and is still active (Regulation 11).

The effect of the first of these – on the use of the IPSO mark – is unclear. Regulation 5.7 has gone unchanged between the 2013, 2016 and 2019 iterations of the IPSO Regulations, stating that Regulated Entities “are entitled to display a mark or badge determined by the Regulator to denote adherence to the Editors’ Code and the Regulations.” It is therefore not clear how this constitutes a material change to the Regulations.

The second announced change to the IPSO Regulations seems to mark a dilution of the existing obligations on IPSO members regarding the information required for annual statements. The 2016 version of Annex A specified five areas to be covered in the member’s information about their compliance processes. In the 2019 Regulations, three of these have been removed (“Pre-publication guidance under Regulation 4.5 [now 5.5]”; “Verification of stories”; and “Training of staff”).

The third announced change appears to resolve an issue whereby complaints could not be passed to the Regulator if the time limit had been exceeded, even if the complaint had been made to the Regulated Entity within that time limit. It is not clear how widespread a problem this had been previously, but the change seems to strengthen the complaints process only to the extent that it corrects an existing defect.

Continued Shortcomings

Overall, there are a few areas where IPSO’s capacity to satisfy the Leveson recommendations has declined over the past five years; many of the changes in the present analysis denote areas where there was insufficient evidence to judge whether or not IPSO satisfied the recommendation and where subsequent evidence has confirmed that it does not (and therefore never did). The reforms which have been implemented, as noted above, do not translate in most cases to satisfaction of recommendations that IPSO was previously judged to fail in the 2013 analysis.

The Regulatory Funding Company continues to exert an unnecessary degree of control over the IPSO system. As the Leveson Report noted, there is no need for such a body to exist at all, other than perhaps to collect and pass on members’ fees. The powers of the funding body over the previous Press Complaints Commission system were determined by Leveson to represent a serious structural deficiency to the previous regulatory system; the fact that this structural issue continues to affect the IPSO system remains a concern. While the RFC now has reduced powers over arbitration and financial sanctions guidance,⁴ in addition to powers over funding it retains control of the standards code and influence over appointments, regulations, the investigations fund and voting within the IPSO system. This substantially compromises the independence of IPSO from the industry.

As well as requiring independence, the Leveson Report stipulated that a new regulatory system had to be effective on behalf of the public and set out recommendations to ensure this. Yet IPSO continues to be hampered by structural deficiencies that hamper its effectiveness as a regulator, including hurdles to launching a standards investigation so high that it remains vanishingly unlikely that IPSO’s often-cited power to levy fines will ever be exercised (see Part 4 and Appendix I below). In practice, IPSO has yet to launch a standards investigation in five years of operation. Though partially simplified, the rules governing a standards investigation continue to allow publishers multiple opportunities to intervene in the process, with no opportunities for complainants. On IPSO’s monitoring and enforcement powers, there continue to be a large number of exemptions to cases where IPSO must record a Code breach, including cases where IPSO can consider a mediation

⁴ <https://www.ipso.co.uk/media/1042/financial-sanctions-guidance.docx>

successful even where the complainant does not accept the offer made by a publisher. As such, like the PCC, IPSO does not compile a full picture of the extent of code breaches by member publications.

The 2016 Pilling Review, IPSO and the Leveson Recommendations

In 2016, IPSO commissioned a Review of the regulator by Sir Joseph Pilling.⁵ Sir Joseph noted that his purpose was “much more limited” than the Leveson Inquiry and based his review largely on interviews, of which the majority were with employees of IPSO itself or with news organisations.⁶

On key differences between IPSO and the PCC, including investigations and fines, Sir Joseph acknowledged that he was unable to make a judgement, and the review did not contain any substantive examination of the roles of the Regulatory Funding Company.

Annex C of the Pilling Review contained a review of IPSO’s compliance with the Leveson Recommendations and reached a very different conclusion to the previous (2013) MST analysis and the present analysis, judging that IPSO satisfies 32 out of the 38 Leveson Recommendations for a self-regulatory system. Appendix 2 of this analysis explores the reasoning behind the Pilling Review’s scoring, finding that the Review rarely considered the role of the Regulatory Funding Company at any level of the IPSO system, in multiple cases gives IPSO credit for developments concerning the standards code over which the regulator has little or no power, and with several recommendations judges IPSO to have “adopted in full” recommendations that it has in fact unilaterally rejected as “impracticable.”

The present analysis does not consider the arguments of the Pilling Review persuasive with regard to IPSO’s satisfaction of the Leveson recommendations.

⁵ https://www.ipso.co.uk/media/1278/ipso_review_online.pdf

⁶ <https://www.kcl.ac.uk/policy-institute/assets/cmcp/cmcp-consultation-dcms.pdf>

Changes to IPSO’s Satisfaction of the Leveson Recommendations

There are nine changes to the assessment of IPSO’s satisfaction of the Leveson Recommendations between 2013 and the present report:

- Six cases where there was insufficient evidence to make a judgement in 2013, but subsequent evidence shows IPSO failing to satisfy the recommendation;
- One case where IPSO is now judged to fail to satisfy a recommendation it previously satisfied; and
- Two cases where IPSO is now judged to satisfy a recommendation where it previously failed to do so.

This section outlines the justifications for these changes. A full list of justifications for all 38 recommendations is included in Appendix I of this report.

From ‘Insufficient evidence’ to ‘Not satisfied’

Recommendation 19

Leveson Recommendation:

The Board [of the regulator] should have the power to impose appropriate and proportionate sanctions, (including financial sanctions up to 1% turnover with a maximum of £1m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.

Conclusion of 2013 Assessment:

The 2013 report noted that IPSO Regulation 63 (now Regulation 66) and Financial Sanctions Guidance Article 2 gave IPSO the power to:

- Publish adjudications;
- Require a Regulated Entity to pay fines;
- Require a Regulated Entity to pay the costs of a Standards Investigation;
- Terminate membership of the Regulator;
- Issue fines of up to 1% annual turnover, to a maximum of £1m.

The report also noted, however, that IPSO’s system of remedial action contains no mention of apologies (Regulation 30; previously Regulation 22). It also noted that:

Fines can only be imposed following an investigation in which there are up to six opportunities for the publisher to intervene, and then only after a further hearing regarding the fine. The [Regulatory Funding Company] is responsible for, and can make changes to, the Financial Sanctions Guidance. It is unclear, given the complexity of the investigation process, the questions regarding funding of investigations [...], and around sanctions and remedial action, whether or not IPSO satisfies this recommendation.

As a result, it was decided that there was insufficient evidence available at that time to adequately assess whether or not IPSO satisfied the recommendation.

Revision of Assessment

IPSO's Regulation 53 (previously Regulation 40), outlining the triggers for the commencement of a standards investigation, is worded in such a way that the possibility of an investigation taking place is extremely unlikely (as evidenced by the commencement of no full standards investigations of any members in five years of operation).

This is in large part due to a subtle change of wording from the Leveson recommendation. While Leveson stipulated that sanctions should be provisional on a member being found responsible for "serious or systemic" breaches of the standards code, this was changed in the IPSO regulations to "serious and systemic" breaches (Regulation 53.1; IPSO Articles of Association 8.1.2(b)). This significantly raises the threshold for commencing an investigation and increases the capacity for a member to dispute the commencement of an investigation due to the lack of any definition in the IPSO regulations of what constitutes a "serious" or "systemic" breach.

IPSO Regulation 67 stipulates that "The Regulator's Board will only impose fines or costs where the Regulated Entity's conduct is sufficiently serious" (this is repeated in Financial Sanctions Guidance 1.2). IPSO Regulation 53.1 defines "serious and systemic breaches of the Editors' Code" as "a **Systemic Failure**" (emphasis in original). This definition is then mentioned in Financial Sanctions Guidance clause 2.1 as follows:

Subject to paragraph 2.2 below [on the maximum monetary value of financial sanctions], the Regulator's Board shall have the power to fine a Regulated Entity up to 1% of its UK annual turnover relating to the Publication(s) (both print and electronic) which is/are, following a Standards Investigation, found to have committed a Systemic Failure (as defined in the Regulations).

At no point in the IPSO documents (comprising the Articles of Association; Regulations; Scheme Membership Agreement and Financial Sanctions Guidance) are "serious" or "systemic" defined in detail, thus leaving any interpretation open to dispute by an IPSO member subject to investigation.

As noted in the 2013 report, the regulations relating to investigations allow members six opportunities to intervene in the process. These opportunities remain in place, with some minor amendments:

1. At the commencement of an investigation IPSO will notify the Regulated Entity of the terms of reference and "will take into account any comments received in response before finalizing the terms of reference" (Regulation 55). This corresponds to Regulation 42 original 2013 IPSO Regulations, which also set out a 14-day time limit for Regulated Entities to respond; this limit has been removed. It is not clear whether this serves to prolong or shorten the investigation process.
2. The Regulated Entity is invited to attend a meeting where they can make oral representations to the Investigation Panel (Regulation 59; previously Regulation 46).
3. At any stage during the investigation the Regulated Entity can dispute "matters including the scope of the investigation or the need for documentary evidence" (Regulation 61; previously Regulation 48).
4. The Investigation Panel provides a draft report to the Regulated Entity which then has 28 days to respond (Regulation 63; previously Regulation 50).
5. When a decision has been made the Regulated Entity can request that the decision be reviewed (Regulation 71; previously Regulation 53).

6. The appointed Reviewer (previously Review Panel) will prepare a note of the decision and send it to the Regulated Entity, which has 14 days to comment on the draft (Regulation 76; previously Regulation 60).

In contrast, the process allows for no participation or representation of complainants. Following the completion of the investigation process, if the Regulator imposes financial sanctions, the Regulated Entity is given the opportunity to attend a hearing “at which the potential imposition of a fine or requirement to pay costs will be considered” (Regulation 67; previously Regulation 64).

Regulation 53 also sets out other circumstances where an investigation may take place, including:

- One or more failure or failures by a Regulated Entity to comply with the requirements of IPSO’s Board (Regulation 53.2);
- In exceptional circumstances, where legal issues or Editors’ Code compliance issues are raised (Regulation 53.3);
- Where an annual statement identifies significant issues of concern in relation to an incident, compliance processes or “a pattern of significant, serial or widespread breaches of the Editors’ Code” (Regulation 53.4);
- “Where, on analysis of statutory authority reports into press standards, in the view of [IPSO] there have been substantial Editors’ Code compliance issues identified at one or more Regulated Entity” (Regulation 53.5).

The extent to which IPSO has the capacity to enforce definitions of “exceptional circumstances,” “significant issues of concern,” or “substantial... compliance issues” is not clear.

Leveson Recommendation 19 specified “serious or systemic breaches of the standards code or governance requirements of the body” as offering grounds for sanctions. The substitution of “serious and systemic” in IPSO’s definition of “Systemic Failure” means that the first criteria is not satisfied. While Regulation 53.2 suggests that breaches of “governance requirements” may potentially be used by IPSO as justification for an investigation, this has remained untested in five years of operations, as have the circumstances outlined in Regulations 53.3-53.5. The capacity of Regulated Entities to intervene in the investigation process, combined with lack of clarity on key definitions in Regulation 53, means that the chances of IPSO imposing sanctions via this route remain vanishingly small.

Recommendation 24

Leveson Recommendation:

The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.

Conclusion of 2013 Assessment:

The 2013 report noted that IPSO’s Articles and Regulations state that the regulator “shall not be entitled to refuse [membership/participation] to any [eligible] entity in a way that is unfair, unreasonable or discriminatory” (Articles of Association 7.2; Regulation 2 (now Regulation 3)).

It also noted that Clause 3.2 of the Scheme Membership Agreement between IPSO and Regulated Entities restricts membership only to members of the Regulatory Funding Company (RFC). Members of the RFC were to be allocated at the discretion of the Secretary to one of three sectors:

- a) National newspapers;
- b) Regional newspapers, including (as sub-sectors) newspapers originating in the United Kingdom (excluding Scotland), the Channel Islands and the Isle of Man; and newspapers originating in Scotland; and
- c) Magazines (RFC Articles of Association⁷ 24.12 (now Article 24.14): IPSO Scheme Membership Agreement Clause 1.1).

Article 7.2 of IPSO's Articles of Association clarifies that an entity is eligible for participation in the regulatory system if it "publishes a printed newspaper or magazine and/or editorial content on electronic services in the United Kingdom, the Channel Islands and the Isle of Man, or targets such newspaper, magazine or electronic content at an audience in the United Kingdom, the Channel Islands and the Isle of Man." There is, however, nothing in the RFC documents to indicate to which sector – national newspapers, regional newspapers or magazines – a digital-native news organization would be allocated, or how its interests would be served if represented as a member of one of these groups.

Clause 6.1.3 of the Scheme Membership Agreement between IPSO and its members stated that "the Regulatory Funding Company may, in its sole discretion, establish new sectors," though there is no mention of this in the RFC Articles of Association, which – in Schedule 1, clause 1.18 (now clause 1.23) defined 'Sector' only as "any of the sectors specified in Article 24.13" (now Article 24.15). This referred to the three sectors outlined above.

This confusion over whether and how IPSO, via the RFC would incorporate new members that were not traditionally part of the national newspaper, regional newspaper or magazine sectors as defined by the RFC meant that – notwithstanding issues surrounding discriminatory voting structures with the RFC/IPSO system – there was deemed to be insufficient evidence to decide whether IPSO did or did not satisfy the Leveson Recommendation 24.

Revision of Assessment

In the five years since IPSO began operations, the Regulatory Funding Company has not created any new sectors. The list of member publications in the 'National Newsbrands' sector of the RFC site continues to include solely legacy print publishers: Associated Newspapers; News Corp UK & Ireland; Reach Plc; Telegraph Media Group, as well as the Press Association agency. The 'Regional Newsbrands' members' list also consists largely of legacy print publications, but with some digital-native publishers such as Updates Media Limited.

To the extent that the RFC has not created new sectors, membership of the regulatory system in the current three-sector structure cannot be said to be entirely "fair, reasonable and non-discriminatory." Within the IPSO system, voting is not calculated on the basis of one member, one vote. Rather, the number of votes each member has is determined by how much they pay in subscription to the RFC.

RFC Articles 24.4-24.8 outline that the directors of the RFC agree an annual budget to cover IPSO, the Editors' Code of Practice Committee (overseen by the RFC) and the RFC itself, divided across sectors "in such proportions as the directors determine" (Article 24.5). Each sector's proportion of the total budget is divided between members "in accordance with the methodology specified by the directors in respect of that sector" (Article 24.6). In practice the RFC Secretary determines the amount of each member's subscription on the basis of information supplied by the member on the basis of "the methodology applicable to the sector or sectors to which the member is designated" (Article 24.7). The methodology is not specified in the RFC Articles of Association, though it is

⁷ http://www.regulatoryfunding.co.uk/write/MediaUploads/15840651-v1-final_rfc_articles.pdf

difficult to imagine that the size of each member's subscription is not entirely or largely dictated by revenue.

This arrangement has implications for fairness and non-discrimination within the RFC-IPSO system. RFC Article 36.6 states that "Subject to Article 36.10 [disqualifying voting by members with overdue payments to the RFC], every member shall have one vote for each £1 of subscription payable by that member in the year of the vote." Article 36.7 states that this system is also used for votes within each sector.

On this basis, the current iteration of the regulatory system requires new members to be allocated to one of three pre-existing sectors. Digital-native sites, on joining the system would – if operating at the national level – be allocated to a group in which legacy newspapers have overwhelming control over voting on the basis of their share of the sector budget and its linkage to members' subscriptions. In the regional news sector, sites would find themselves competing with publishers such as Reach Regionals Plc and JPi Media, both of which publish hundreds of local titles.

While the membership of the IPSO system is theoretically "open to all publishers" as Leveson envisaged, the current structure of the RFC's role in the regulatory system means that membership for new publishers is unlikely to be "fair, reasonable and non-discriminatory."

Recommendation 34

Leveson recommendation

In addition to Recommendation 10 above [on the need for an adequate complaint handling mechanism], a new regulatory body should consider requiring:

- a) That newspapers publish compliance reports in their own pages to ensure that their readers have easy access to the information; and
- b) As proposed by Lord Black, that a named senior individual within each title should have responsibility for compliance and standards.

Conclusion of 2013 Assessment

The 2013 report found insufficient evidence to determine whether or not the IPSO system satisfied both parts of Recommendation 34. It noted that the IPSO Regulations and Scheme Membership Agreement made provision for annual compliance reports to be submitted directly to the regulator (Scheme Membership Agreement Clause 3.3.7; Regulation 36 [now Regulation 43]). IPSO Regulation 37 (now Regulation 45) states that "...the Regulator may require that these statements are accessible to the public by the Regulated Entities through their websites or Publication(s)." In respect of this, the 2013 report withheld judgement on the basis that only the operation of the IPSO system over time would clarify whether this part of Leveson Recommendation 34 was met.

Regarding part (b) of Recommendation 34, clause 3.3.9 of the Scheme Membership Agreement reads:

Each PGRE shall, and shall use its reasonable endeavours to procure that all its employees, officers, agents and sub-contractors comply with the requirements of this Agreement and the Publisher shall, on behalf of the PGREs, appoint a senior individual who will report annually to the Regulator as required under clause 3.3.7.

The 2013 report judged that since this definition did not clarify the scope of responsibilities of the senior individual, it was not clear whether or not part (b) of Recommendation 34 was satisfied, and allowed time for potential rule changes to clarify how this part of the IPSO system would work in practice.

Overall, the 2013 report claimed that there was insufficient evidence at that time to determine whether parts (a) or (b) of Recommendation 34 were satisfied.

Revision of Assessment

A reevaluation of the Regulations and Scheme Membership Agreement of the regulatory system determines that there is now sufficient evidence to judge that IPSO has been shown to fail part (a) in practice, and that the wording of SMA Clause 3.3.9 means that IPSO did not satisfy part (b) in 2013 and continues not to do so today.

IPSO requires only that its members submit an annual statement to the regulator; there is no obligation for members to publish the statements in their own pages; nor is there any record or evidence of whether or not members do so. While some publications such as *The Times* have published annual lists of corrections and clarifications in recent years, this does not include the information required in Annex A of IPSO's Regulations. In addition, the Pilling Review (Paragraph 124) also recommends that members should publish their statements online due to the lack of space restrictions that might apply to print media. In practice, the IPSO system fails part (a) of Recommendation 34.

Scheme Membership Agreement Clause 3.3.9 contains several components that demonstrate the failure of IPSO to satisfy part (b) of Recommendation 34. First, the "senior individual" in Clause 3.3.9 is not "named" as suggested in Recommendation 34 (though in practice many members do specify a named individual in their annual reports). Second, the senior individual is appointed by "the Publisher, on behalf of the PGRs [Publisher Group Regulated Entities]" whereas Recommendation 34 states that there should be a named senior individual "within each title." Finally, there continues to be no description of the scope of responsibilities of the "named individual" other than that they "report annually to the Regulator as required under Clause 3.3.7," which states simply that each publisher shall provide an annual statement to IPSO.

Recommendation 39

Leveson Recommendation

A new regulatory body should establish a ring-fenced enforcement fund, into which receipts from fines could be paid, for the purpose of funding investigations.

Conclusion of 2013 Assessment

The 2013 report took note of Clause 10 of the Scheme Membership Agreement, which stated:

The Regulated Entities which publish national newspapers shall, if required to do so by the Regulator, guarantee a payment (which amount shall be determined by the Regulatory Funding Company) shall be payable on demand to the Regulator to be used as, or as part of, the Enforcement Fund. Any monies received by the Regulator from fines and costs contributions will also be placed in the Enforcement Fund.

The Enforcement Fund was defined in the Interpretation of the Scheme Membership Agreement as “a fund to be used solely for the purposes of contributing towards the costs and expenses of the Regulator in bringing enforcement actions against, or carrying our investigations into the conduct of, Regulated Entities as referred to in clause 10.”

In 2013 the Regulatory Funding Company, not the regulator, had sole responsibility for setting the annual budget of the regulator, the Code Committee and the RFC itself. Article 24.4 of the RFC set out this power and added “In considering the funding requirements of the Regulator, the directors shall take into account the Initial Budget, a formula for increases, and any contingency or exceptional funding which may reasonably be required.”

There was at that time no reference to ring-fencing, except in that this “contingency or exceptional funding” would not be considered part of the Initial Budget, defined in Schedule 1.10 (now Schedule 1.14) of the RFC Articles as “the directors’ estimate of the costs of the Regulator fulfilling its responsibilities during the one year period after the date on which the first Scheme Membership Agreement has come into force in accordance with its terms.” Nor was it related to the formula used to increase the Initial Budget.

On the basis of the information available at the time, it was not clear whether or not the “contingency or exceptional funding” would be used to establish an enforcement fund. As a result, the 2013 report ruled that there was insufficient evidence to determine whether the IPSO system satisfied Recommendation 39.

Revision of Assessment

In 2016 IPSO and the RFC agreed a four-year budget, detaching IPSO from the annual cycle of dependence on the industry funding body. In September 2019 IPSO announced a subsequent funding agreement to run until 2025. However, Clause 10 of the Scheme Membership Agreement and RFC Article 24.4 remain in place.

As SMA Clause 10 shows, IPSO can “require” that Regulated Entities which publish national newspapers guarantee a payment “determined by the Regulatory Funding Company” to constitute or form part of the Enforcement Fund. The RFC therefore continues to have full control over the size of the fund apart from funds raised through enforcement in the form of fines levied on members after a standards investigation. These monies received through enforcement are the only part of the Enforcement Fund budget that can be said to be “ring-fenced”, though the lack of any standards investigations to date means that this continues not to be demonstrated in practice.

RFC Article 24.4 continues to set out the powers the RFC has over the size of the budget through control of subsequent increases to the initial budget which the RFC established, and to the amount of “any contingency or exceptional funding which may reasonably be required.”

The current IPSO Enforcement Fund consists of a power by the regulator to require payments by Regulated Entities which publish national newspapers (rather than from all members). There is no evidence to date that IPSO has exercised this power, and should it do so the RFC would have full discretion over the size of the payment.

The review of the IPSO system by Sir Joseph Pilling established that IPSO (in 2016) had only £100,000 in its budget to conduct standards investigations and concluded that the RFC’s power over the size of the payment “would certainly limit the extent to which IPSO could claim to be independent” (Paragraph 115).⁸ The Pilling Review goes on to claim – without supplying evidence –

⁸ https://www.ipso.co.uk/media/1325/ipso_review.pdf

that the £100,000 would be sufficient given that IPSO would have enough evidence at the beginning of any standards investigation to satisfy it that the “serious and systemic test had been met” and therefore “concluding the investigation in those circumstances should not be particularly expensive” (Paragraph 116). This makes no reference whatsoever to the six opportunities for regulated entities to intervene in any standards investigation, including to dispute the grounds of the investigation or request a review of the findings (see Recommendation 19, above). Without a consideration of the potential costs of that process – and it is not clear why the Pilling Review did not investigate this – those conclusions are unconvincing.

Evidence therefore suggests that IPSO has only a small fund available to constitute an Enforcement Fund, that the RFC has discretion over the size of any additional payments to establish a significant fund should IPSO request them, and so – given the additional control the RFC exercises over the size of IPSO’s budget – it cannot be said that the regulator has the power to “establish” such a fund independently. The extent to which the fund is “ring-fenced” is also not clear, given the RFC’s power to determine the size of payments, the fact that IPSO has not yet launched a standards investigation from which fines could be allocated to establish the maximum amount required in the fund. As such, it is apparent that the IPSO system currently does not satisfy Recommendation 39.

Recommendation 43

Leveson Recommendation

A new regulatory body should consider being explicit that where a public interest justification is to be relied upon, a record should be available of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached.

Conclusion of 2013 Assessment

The 2013 report concluded that there was at the time no provision for this in the IPSO scheme. The extent to which the regulator had any involvement with the public interest, this was set out in IPSO Article 8.1.5 and Regulation 4.5 (now Regulation 5.5), both of which listed a function of IPSO as “providing guidance to Regulated Entities on matters concerning the Editors’ Code, including public interest considerations. Such guidance shall be confidential and non-binding and shall not restrict the freedom to publish.”

It was unclear in 2013 whether any record of such guidance would be kept by the regulator or – if so – the extent of its confidentiality.

Revision of Assessment

In the intervening years there have been no changes to the IPSO Articles of Association or Regulations relating to considerations of the public interest, and Article 8.1.5 and Regulation 5.5 remain unchanged.

Definitions of the public interest as it relates to news content published by members of the IPSO system are determined by the Editors’ Code of Practice committee and incorporated into the Code.⁹ As the Editors’ Code of Practice Committee is convened by the Regulatory Funding Company (RFC Article 2.2) and the RFC also has the power to:

⁹ https://www.editorscode.org.uk/the_code.php

- Set the budget for the Code Committee (RFC Article 24.4);
- Determine the composition of the Committee including the balance of industry and independent members (RFC Article 10.9);
- Approve or veto changes to the Code (RFC Article 10.11)

It is evident that the regulator in this instance has no control over the application of public interest justifications and no capacity to provide a record of public interest applications, and therefore does not satisfy Recommendation 43.

Recommendation 45

Leveson Recommendation

A new regulatory body should consider encouraging the press to be as transparent as possible in relation to the sources used for stories, including providing any information that would help readers to assess the reliability of information from a source and providing easy access, such as web links, to publicly available sources of information such as scientific studies or poll results. This should include putting the names of photographers alongside images. This is not in any way intended to undermine the existing provisions on protecting journalists' sources, only to encourage transparency where it is both possible and appropriate to do so.

Conclusion of 2013 Assessment

The 2013 report noted that the IPSO system as set out in 2013 contained no provision for this, and so determined that at that stage there were no grounds to judge whether or not the new regulatory system would satisfy Recommendation 45 in practice.

Revision of Assessment

It remains the case that there is no provision in the IPSO system for the fulfilment of this Recommendation.

It is conceivable that the Editors' Code Committee could provide supplementary guidance to IPSO-regulated members on the issues covered by Regulation 45, but historically the Code has not been designed to serve this purpose. Even were it to do so, this would be under the powers of the Regulatory Funding Company and not the regulatory body, and therefore Recommendation 45 is not satisfied.

From 'Satisfied' to 'Not Satisfied'

Recommendation 9

Leveson Recommendation

The Board [of the Regulator] should require, of those who subscribe, appropriate internal governance processes, transparency on what governance processes they have in place, and notice of any failures in compliance, together with details of steps taken to deal with failures in compliance.

Conclusion of 2013 Assessment

The 2013 assessment acknowledged that Clause 3.3.3 of the Scheme Membership Agreement set out the obligation on internal governance with which PGREs shall comply:

Each PGRE shall implement and maintain internal governance practices and procedures with the aim of ensuring compliance with the Editors' Code and the Regulations. Each PGRE shall ensure that such practices and procedures comply with any requirements specified by the Regulator from time to time.

This definition does not include any references to what may be designated "appropriate" governance as specified in Recommendation 9. The Leveson Report itself specified that while a regulator would not necessarily be expected to define exact governance processes, "it may choose to set principles" (Volume IV, Part K, Para 4.25). No principles are set out in the IPSO documentation, though the 2013 report assumed that these may be made apparent as a matter of course.

SMA Clause 3.3.3 also does not refer to transparency of internal governance practices and procedures, though Article 8.1.2 (a) of the IPSO Articles of Association specifies that a function of the regulator regarding standards and compliance is "the monitoring of compliance with the Editors' Code including through the provision by Regulated Entities of annual statements" (repeated in Regulation 4.2.1). The relevant content to be included in these annual statements was set out in Annex A of the IPSO Regulations, of which Paragraph 3 read:

3. Brief details of the compliance process, including how the Regulated Entity deals with:

- 3.1 - Pre-publication guidance under Regulation 4.5
- 3.2 - Verification of stories
- 3.3 - Compliance with the Editors' Code, including any adverse findings of the Regulator and steps taken to address such findings
- 3.4 - Editorial complaints which the Complaints Committee determines under Regulation 27 [i.e. Complaints Committee determines whether a code breach has been committed]
- 3.5 - Training of staff

The publication of these annual statements by IPSO as set out in Regulation 45 was interpreted in the 2013 report to provide transparency as set out in Recommendation 9, though it was noted that only in the absence of sufficient detail as would be provided by the operation of IPSO over a significant period of time could the IPSO system be proven to satisfy this Recommendation.

Revision of Assessment

The 2013 assessment did not consider the extent to which IPSO has the power to enforce compliance regarding the internal governance processes of its members. There has been no change to Scheme Membership Agreement Clause 3.3.3 or IPSO Article 8.1.2, neither of which establish any capacity to act in the event of non-compliance by a member. Regulations 43-46 cover standards and compliance as they relate to the annual statements of Regulated Entities. Regulations 43, 44 and 45 deal, respectively, with: the submission of annual statements containing the information set out in Annex A of the Regulations; the Regulator's power to set a specified date of submission of annual statements; and the publication of the statements on IPSO's website.

Regulation 46 contains the powers that the regulator has over potential non-compliance in the area of internal governance process as set out in annual statements. It reads:

The Regulator shall review these statements and identify any areas of concern. Any such concerns shall be notified to the relevant Regulated Entities, who shall respond to any queries raised within 21 days. On receipt of these responses, the Regulator may prepare a confidential report identifying any issues of concern and listing any points that require further investigation and shall send a copy of the report to any Regulated Entity concerned.

This regulation contains no powers of enforcement, other than to supply a confidential written report to a member found to be in breach of the obligations set out in Annex A.

In the IPSO complaints process, Regulation 30 outlines that, in the instance of a Regulated Entity's "arrangements for enforcing standards and compliance have been found to be at fault" the Regulator can inform the Regulated entity in writing that action is needed.

Neither Regulation 46 nor Regulation 30 provide any more powers than the ability to notify, confidentially, a member on the basis of faults in reporting on its internal compliance process or in the conduct of its compliance processes during a single complaint.

Regulation 53.4 – on the commencement of a Standards Investigation – specifies that “where an annual statement identifies significant issues of concern, either in relation to a single incident, a Regulated Entity’s compliance processes or a pattern of significant, serial or widespread breaches of the Editors’ Code” an investigation may be commenced. The definitions of “significant”, “serial” or “widespread” breaches are not set out in the IPSO documents, and the Financial Sanctions Guidance specifies that the power for the Regulator to fine a Regulated Entity on the completion of a standards investigation is limited to only those cases where a “Systemic Failure” has been found to have been committed. As noted above, the threshold for a Systemic Failure – “serious and systemic breaches of the Editors’ Code” – is so high as to make the likelihood of any such punishment remote. As the Leveson Report noted:

Internal governance is likely to be very effective in circumstances where it is genuinely in the interest of the organization to secure compliance with the standards. It is less likely to be effective if there are competing incentives (for example if the financial benefits of breaching the standards are significant) (Volume IV, Part K, Para 2.12).

In addition, over five years of operation there continues to be no definition within the IPSO documents of any specific requirements for internal governance in member publications. While not in and of itself a disqualification of the IPSO system regarding the satisfaction of Recommendation 9, the combination of an inability to define, or to enforce compliance with, internal governance procedures means that there is no benchmark by which to establish whether those processes are “appropriate” as specified in Recommendation 9.

The 2013 assessment noted that the operation of this part of the IPSO system would provide evidence by which to clarify the extent to which Recommendation 9 was satisfied. IPSO’s publication of annual statements by its members does allow for some transparency on internal governance processes, as the detailed submissions by some larger members such as Associated Newspapers¹⁰ and News UK¹¹ demonstrate. It is not clear what IPSO does in the event of a publication not providing the information set out in Annex A of the Regulations. The submission by *The Spectator* in 2017¹² fails to supply specific details other than brief mentions in several areas, including:

- 2: Copies of internal manuals, codes or guidance used by journalists;

¹⁰ <https://www.ipso.co.uk/media/1617/associated-newspapers-annual-statement-2017-for-publication.pdf>

¹¹ <https://www.ipso.co.uk/media/1657/news-uk-annual-statement-2017-for-publication.pdf>

¹² <https://www.ipso.co.uk/media/1682/the-spectator-annual-statement-2017-for-publication.pdf>

- 3.1: Pre-publication guidance under Regulation 4.5 (other than to state that the publication has not sought, and will not seek, it);
- 3.2: Verification of stories;
- 3.5: Training of staff.

It is not clear whether this was subject to a review by IPSO as set out in Regulation 46, but since the annual statements supplied by the same member in 2015¹³ and 2016¹⁴ contained similar lack of detail with regard to Annex A, this suggests that IPSO has either not raised concerns with the publication, or has and was unable to enforce any improvement between 2015 and 2017.

While the Pilling Review (Paragraph 123) notes that “IPSO advises that when considering the level of detail to be included in a Regulated Entity’s annual statement, it will take into account the nature of the Regulated Entity, including its size, the number of staff employed, number of publications, circulation figures of the publication(s) and annual turnover.” It is not clear, however, how Spectator Limited (turnover of £13,211,000 in 2018¹⁵) should be permitted a cursory annual statement while Newbury News Limited (turnover of £2,230,627 in 2018¹⁶) supplies a detailed annual statement that is fully compliant with Annex A.

On 17th September 2019 IPSO announced that it had secured changes to its regulations, including “setting out specific requirements about what should be included in publishers’ annual compliance statements to IPSO.” In practice, this took the form of a revision of Paragraph 3 of Annex A such that it specified the information on the compliance process to be supplied by publishers was limited to:

- 3.1 Compliance with the Editors’ Code;
- 3.2 Any adverse findings of the Regulator and steps taken to address such findings;
- 3.3 Training of staff.

In practice, this marks a reduction in the obligations for publishers, with the removal of the previous clauses 3.1 (Pre-publication guidance under Regulation 4.5); 3.2 (Verification of stories); and 3.4 (Editorial complaints which the Complaints Committee determines under Regulation 27).

The 2013 report adjudged IPSO to satisfy Regulation 9 on the basis that subsequent details would be likely to outline the regulator’s capacity to require and enforce appropriate and transparent internal governance processes in members. The lack of powers for the regulator to specify the minimum requirements of such processes or to sanction members who fail to meet them, combined with evidence that IPSO does not enforce Annex A of the Regulations regarding the content of annual statements, means that IPSO cannot be said to have such capacities as set out in Regulation 9.

From ‘Not Satisfied’ to ‘Satisfied’

Recommendation 13

Leveson Recommendation

Serving editors should not be members of any Committee advising the Board on complaints and any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.

¹³ <https://www.ipso.co.uk/media/1047/the-spectator-annual-statement-2015-for-publication.pdf>

¹⁴ <https://www.ipso.co.uk/media/1416/the-spectator-annual-statement-2016-for-publication.pdf>

¹⁵ Companies House link [here](#)

¹⁶ Companies House link [here](#)

Conclusion of 2013 Assessment

The 2013 report noted that the IPSO Complaints Committee set out in the 2013 documents included – in IPSO Article 27.6 – the statement that:

The members of the Complaints Committee are entitled to such remuneration as may be approved by the Regulatory Funding Company in respect of their service as members of the Complaints Committee provided that no relationship of employee and employer shall be created between any of the members of the Complaints Committee and the Company.

Since under this formulation all members of the Complaints Committee were to be paid by, and to have their pay determined by, the Regulatory Funding Company. As this is an industry body, this was interpreted as compromising the independence of the non-industry members of the Complaints Committee, therefore failing to satisfy the stipulation in Recommendation 13 that a majority of the people on the Committee must be independent of the press.

Revision of Assessment

In 2016 changes were made to certain Articles and Regulations, including to the remuneration of the Complaints Committee.¹⁷ The specific change is noted in Article 27.9 of the current IPSO Articles, which reads:

The members of the Complaints Committee are entitled to such remuneration as may be approved by the Board [of the Regulator] in respect of their service as members of the Complaints Committee provided that no relationship of employee and employer shall be created between any of the members of the Complaints Committee and the Company. Increases in remuneration will be index-linked by reference to the Retail Prices Index.

As a result, the link between non-industry Complaints Committee members and the Regulatory Funding Company has been removed and IPSO now satisfies Recommendation 13.

Recommendation 40

Leveson Recommendation

A new regulatory body should continue to provide advice to the public in relation to issues concerning the press and the Code along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

Conclusion of 2013 Assessment

The 2013 report noted that IPSO Article 8.1.6 and Regulation 5.6 did not specify an outward-facing service of advice for the public, and instead only provide for “notifying and advising Regulated Entities about their activities in cases where an individual has raised concerns regarding undue press intrusion.” This alone did not satisfy the recommendation, and so IPSO was judged to fail to satisfy it.

¹⁷ <https://www.ipso.co.uk/news-press-releases/press-releases/ipso-announces-new-rules-and-regulations/>

Revision of Assessment

While not obliged to do so on the basis of the relevant Articles and Regulations, in practice IPSO does provide advice for the public on issues of press harassment, including the provision of a 24-hour emergency harassment helpline. Since part of this service provides advice on the aspects of the Editors' Code that relates to press intrusion and the rights of the public in such situations it can be said that recommendation 40 is largely satisfied.

IPSO Changes Not Affecting Satisfaction of Recommendations

In a number of instances IPSO has made changes to its Articles that do not impact upon whether it satisfies the Leveson Recommendations or not. In total, there are seven cases where IPSO comes closer to satisfying the relevant Recommendation but continues to fail to do so.

Recommendation 2

Leveson Recommendation

The appointment of the Chair of the Board should be made by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.

2013 Assessment and New Assessment

The 2013 report cited Article 26.6 of the IPSO Articles Association as allowing working peers to sit on the appointment panel, where the application of the party whip where that party is in government would represent government influence on a panel member. This Article is still in place.

Changes to IPSO's remuneration processes so that members of the Appointment Panel are now paid by the Board of the regulator rather than by the Regulatory Funding Company means that a previous objection to Article 26.8 as compromising the independence of Panel members is no longer valid.

While the Article 26.8 has been amended, Article 26.6 has not, and so the IPSO system continues to fail to satisfy Recommendation 2.

Recommendation 3

Leveson Recommendation

The appointment panel:

- (a) Should be appointed in an independent, fair and open way;
- (b) Should contain a substantial majority of members who are demonstrably independent of the press;
- (c) Should include at least one person with a current understanding and experience of the press;
- (d) Should include no more than one current editor of a publication that could be a member of the body.

2013 Assessment and New Assessment

The 2013 report judged IPSO to fail parts (a) and (b) of this recommendation due to the fact that the industry's roles in funding and agreeing appointments compromised the independence of the process.

While the changes to the remuneration of Appointment Panel members means that the Regulatory Funding Company no longer pays members, the requirement that Board appointments to the Appointment Panel can only be finalized on the basis of consensus (Article 26.3) means that the industry component of the Board continues to hold an effective veto over appointments, failing to guarantee a fully independent process.

Recommendation 6

Leveson Recommendation

Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.

2013 Assessment and New Assessment

The original judgement that Recommendation 6 was not met was based on Article 24.4 of the Regulatory Funding Company Articles of Association which specified that the RFC directors would agree an annual budget encompassing the budget for the regulator, the Editors' Code Committee and the RFC itself.

IPSO subsequently agreed a four-year budget with the RFC in 2016, though the process of "negotiation" with the RFC for future budget is still not written into the RFC Articles of Association or IPSO's Articles or Regulations, and the RFC retains the ability to make, repeal or alter rules relating to subscriptions and fees according to RFC Article 11.2.2. According to the Review of IPSO by Sir Joseph Pilling, the funding agreement is "subject to review each September" and IPSO is required to provide monthly accounts to the RFC (Annex C, Paragraph 30).¹⁸ It is not clear why annual reviews should be necessary, The capacity of the RFC to alter its own rules, the continuation of the RFC's power to set budgets annually in its own Articles of Association, and the Company's annual review of the budget means that Recommendation 6 continues not to be satisfied.

Recommendation 7

Leveson Recommendation

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

2013 Assessment and New Assessment

Although changes to the composition of the Editors' Code Committee in 2015 introduced lay members and added the Chair and Chief Executive of IPSO to the Committee, the Code continues not to be the responsibility of IPSO and the Editors' Code of Practice Committee continues to be a subcommittee of the Regulatory Funding Company (RFC Article 2.2), and so Recommendation 7 continues not to be satisfied.

¹⁸ https://www.ipso.co.uk/media/1278/ipso_review_online.pdf

Recommendation 15

Leveson Recommendation

In relation to complaints, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to require a correction and an apology must apply equally in relation to individual standards breaches (which the Board has accepted) and to groups or people or (or matters of fact) where there is no single identifiable individual who has been affected.

2013 Assessment and New Assessment

The 2013 report noted that IPSO Regulation 22 at that time contained no mention of “directing” appropriate remedial action, instead stating only a “requirement” of publication of a correction or adjudication. This Regulation has since been amended (now Regulation 30), giving the regulator the power to determine “the nature, extent and placement of... corrections and adjudications.”

There continues to be no reference to any regulatory powers relating to the publication of apologies in the Regulation 30 or elsewhere in the IPSO regulations, and so Recommendation 15 is not satisfied.

In addition, Regulation 31.2 in the current IPSO regulations empowers the regulator to impose remedial action in respect of “groups of people as described in Regulation 8 where there is no single identifiable individual who has been affected.” The Editors’ Codebook, as produced by the Editors’ Code of Practice Committee, states that in relation to Clause 12 of the Editors’ Code concerning Discrimination, “The Code does not cover generalized remarks about groups or categories of people.”

Recommendation 22

Leveson Recommendation

The Board should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair, quick and inexpensive, inquisitorial and free for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.

2013 Assessment and New Assessment

The 2013 judgement that the IPSO system did not satisfy Recommendation 22 was based on the fact that the iteration of an arbitration system in the original IPSO documents allowed for a veto by the Regulatory Funding Company for any such scheme, the fact that it was entirely optional for members to choose whether or not to participate and, even if a member chose to participate they could then opt out on a case by case basis (Scheme Membership Agreement Clause 5.4).

In August 2018 IPSO launched a new arbitration scheme. The scheme does not cover all members, and while one stream of the scheme is titled the “Compulsory Scheme” it is in fact not compulsory for publications to participate in it. Clause 5.4 of the Scheme Membership Agreement remains in place, including the original claim that “No PGRE shall be obliged to participate in the Arbitration Service.” Although IPSO claims “All IPSO’s national newspaper members are members of the compulsory scheme,”¹⁹ in practice Mail Online does not participate in the scheme.

As Clauses 14.1 and 14.2 of the IPSO arbitration scheme rules show,²⁰ although the arbitrator technically has the power to hold oral hearings, publications wield a veto since hearings can only go ahead with agreement from both parties.

While the addition of an arbitration system to the IPSO system is a substantial change to the conditions noted in 2013, the system that the regulator has introduced does not satisfy Recommendation 22.

¹⁹ <https://www.ipso.co.uk/arbitration/#WhatIsTheIPSOscheme>

²⁰ <https://www.ipso.co.uk/media/1582/arbitration-scheme-rules-310718.pdf>

Appendix I– IPSO vs the 38 Recommendations (Detail)

Key:

Leveson recommendation is satisfied in IPSO scheme

Leveson recommendation is not satisfied in IPSO scheme

Establishing an independent self-regulatory scheme

Independence: Appointments

1. An independent self regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government

Under IPSO (IPSO Articles of Association 26 and 22), the Chair and Board are to be appointed by the Appointment Panel.

The nomination of the five industry members of the Board is vetted by the RFC (IPSO Articles of Association 22.5).

It is not clear why the RFC has oversight here, or how this constitutes independence from the industry.

2. The appointment of the Chair of the Board should be made by an appointment panel. The selection of the panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of government.

While IPSO has secured amendments to Article 26.8 such that Appointment Panel members are now paid by the Board rather than the RFC, Article 26.6 continues to allow party-political peers to be members of the Appointment Panel, contravening the requirement for independence from Government.

3. The appointment panel:

- a) Should be appointed in an independent, fair and open way;
- b) Should contain a substantial majority of members who are demonstrably independent of the press;
- c) Should include at least one person with a current understanding and experience of the press;
- d) Should include no more than one current editor of a publication that could be a member of the body.

IPSO's amendment to Article 26.8 removing the dependence of the Appointment Panel on the RFC for remuneration means that IPSO now satisfies (b), (c) and (d) of the Recommendation 3.

However, the requirement for Board appointments to the Appointment Panel to be made on the basis of consensus (IPSO Articles of Association 26.3) means that the industry component of the Board continues to hold an effective veto over appointments, therefore not guaranteeing a fully independent process.

4. The appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The requirement for independence means that there should be no serving editors on the Board.

IPSO Article 22.5 (see Recommendation #1 above) continues to compromise the independence of the appointment process, with the requirement of consultation of the RFC over the appointment of industry members.

Article 26.3 (see Recommendation #3 above) also continues to give the industry component of the Board an effective veto over potential Appointment Panel members.

5. The members of the Board should be appointed by the same appointment panel that appoints the Chair, together with the Chair (once appointed), and should:

- a) Be appointed by a fair and open process;
- b) Comprise a majority of people who are independent of the press;
- c) Include a sufficient number of people who are independent of the press;
- d) Not include any serving editor; and
- e) Not include any serving member of the House of Commons or any member of the Government

IPSO satisfies parts (a), (b), (c) and (d) of Recommendation 5.

Part (e) is not met, as IPSO Article of Association 22.1.4 allows party political peers (of which those affiliated to the governing party of the day will be subject to the Government whip) to serve on the Board which compromises the requirement for political independence.

Independence: funding

6. Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.

IPSO agreed a four-year budget with the RFC in 2016, removing for the duration of the budget the RFC's capacity to set the annual budget for the regulator, RFC and Editors' Code Committee. In 2019 IPSO announced a subsequent settlement lasting until 2025.

Article 24.4 of the RFC Articles of Association continues to include the reference to annual budgets. As the Review of IPSO by Sir Joseph Pilling established (Annex C, Paragraph 30), the budget is still subject to annual review by the RFC which requires monthly accounts from IPSO. It is not clear why this is necessary.

The RFC also retains the ability to make, repeal or alter rules relating to subscriptions and fees (RFC Article 11.2.2)

Functions

Standards Code and Governance Requirements

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

Although changes to the composition of the Editors' Code Committee in 2015 introduced lay members and representation for IPSO, the Code continues not to be the responsibility of IPSO and the Editors' Code of Practice Committee continues to be a subcommittee of the RFC (RFC Article 2.2).

8. The code must take into account the importance of freedom of speech, the interests of the public (including the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled) and the rights of individuals. Specifically, it must cover standards of:

- a) Conduct, especially in relation to the treatment of other people in the conduct of obtaining material;
- b) Appropriate respect for privacy where there is no sufficient public interest justification for breach and
- c) Accuracy, and the need to avoid misrepresentation.

The IPSO scheme contains no substantive reference to the content of the Code.

While the Code at present meets the requirements set out by Leveson, the regulator does not control the Code and does not have the capacity to amend it.

9. The Board should require, of those who subscribe, appropriate internal governance processes, transparency on what governance processes they have in place, and notice of any failures in compliance, together with details of steps taken to deal with failures in compliance.

IPSO was judged to satisfy this recommendation in 2013, on the basis of the fact that – in the absence of further detail – IPSO's Scheme Membership Agreement Clause 3.3.3 on Regulated Entities' requirement to implement and maintain internal governance practices, and IPSO Regulations Annex A: 3, which set out the responsibility for Regulated Entities to publish information on compliance processes in their annual reports.

On reassessment, it is clear that there is no evidence that IPSO has any real powers to enforce compliance on these matters or to specify minimum requirements of internal governance processes, and subsequent evidence has shown that IPSO has not enforced the fulfilment of Annex A of the Regulations for all members; nor has it sanctioned those that do not meet IPSO's guidelines in this area.

Complaints

10. The Board should require all those who subscribe to have an adequate and speedy complaint handling mechanism; it should encourage those who wish to complain to do so through that mechanism and should not receive complaints directly unless or until the complaints system has been engaged without the complaint being resolved in an appropriate time.

IPSO satisfies this recommendation via Clause 3.3.4 of the Scheme Membership Agreement which specifies that Regulated Entities shall implement and maintain their own complaint handling procedures.

11. The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board should have the power (but not necessarily in all circumstances the duty) to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a third party seeking to ensure accuracy of published information. In the case of third party complaints the views of the party most closely involved should be taken into account.

IPSO Regulation 8 continues to add substantial hurdles to complaints by representative groups in the IPSO scheme, by adding the qualifiers “significant” and “substantial”. It also adds the qualifier “significant” to third party complaints about inaccuracies.

In addition, the current Editors’ Code prevents representative groups from bringing complaints under Clause 12 (Discrimination), a rule that IPSO has no capacity to reform.

12. Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.

Regulation 38 (previously Regulation 30) gives the Board ultimate discretion over the decisions of the Complaints Committee.

13. Serving editors should not be members of any Committee advising the Board on complaints and any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.

IPSO’s changes to the remuneration of Complaints Committee members set out in Article 27.9, transferring the RFC’s powers over remuneration to the Board means that this Recommendation is now satisfied by the IPSO scheme.

14. It should be the case that complainants are free to bring complaints free of charge.

This is provided for by IPSO Regulation 7

Powers, Remedies and Sanctions

15. In relation to complaints, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to require a correction and an apology must apply equally in relation to individual standards breaches (which the Board has accepted) and to groups of people (or matters of fact) where there is no single identifiable individual who has been affected.

Regulation 30 (previously Regulation 22) now empowers IPSO to determine the “nature, extent and placement” of corrections. However, the IPSO regulations make no reference whatsoever to apologies in relation to remedial action. The Editors’ Codebook applying the Code of Practice also partly negates IPSO’s Regulation 31 (previously 23) by not allowing representative groups to bring complaints over alleged breaches of Clause 12 (Discrimination).

16. The power to direct the nature, extent and placement of apologies should lie with the Board.

As with Recommendation #15, IPSO does not satisfy this as it has not power to direct the nature, extent and placement of apologies.

17. The Board should **not** have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance which editors, in their discretion, can deploy in civil proceedings arising out of publication.

IPSO Article 8.1.5 and Regulation 4.5 ensure that the IPSO Board has not pro-publication powers and so this Recommendation is satisfied.

18. The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. Those who subscribe must be required to cooperate with any such investigation.

IPSO Regulation 53 (previously Regulation 40) sets out the five circumstances in which a standards investigation can take place. Regulation 53.1 sets out the definition for a “systemic failure” but changes the trigger for an investigation on the basis of code breaches from “serious or systemic” breaches to “serious and systemic”. This significantly raises the hurdle for investigations such that it is far from clear that IPSO will have “sufficient powers” to carry out investigations on this basis.

19. The Board should have the power to impose appropriate and proportionate sanctions, (including financial sanctions up to 1% turnover with a maximum of £1m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.

IPSO Regulation 67 and Financial Sanctions Guidance Clause 1.2 state that the Board can only impose fines or costs if the Regulated Entity’s conduct is “sufficiently serious”, and Financial Sanctions Guidance Clause 2.1 states that the 1% of Turnover/£1m fines can only be imposed after a “systemic failure” which, as Recommendation #18 above shows, can only be determined on the basis of “serious and systemic” code breaches – a definitional change in the IPSO scheme that makes such an investigation extremely unlikely.

Regulations 55, 59, 61, 63, 71 and 76 also show the multiple points at which Regulated Entities can intervene in the investigation process.

20. The Board should have both the power and a duty to ensure that all breaches of the standards code that it considers are recorded as such and that proper data is kept that records the extent to which complaints have been made and their outcome; this information should be made available to the public in a way that allows understanding of the compliance record of each title.

Regulation 4.3 of the IPSO scheme removes the “power and...duty” to record “all breaches”, instead describing a function of the Regulator as “recording and publishing breaches of the Editors’ Code, save that the Regulator may in its discretion determine that there are circumstances where this is appropriate.”

There are also several opportunities for a code breach to go unrecorded. It is not clear at what point a ‘code breach’ will be acknowledged. Regulation 40 (previously Regulation 32) allows complaints to be closed without a breach being recorded, against the wishes of the complainant.

Regulation 52.2.4 (previously Regulation 39.2.4) allows such complaints to be omitted from the recordable category of “substantial complaints”. Regulation 52.2 also defines other areas in which code breaches will not be recorded.

Regulation 40’s provision that even where the complainant has rejected an offer the mediation may be recorded as “successful” also undermines Regulation 27 (previously 19) which outlines the Complaints Committee’s power to determine whether or not a code breach has taken place.

Reporting

21. The Board should publish an Annual Report identifying:

- a) The body’s subscribers, identifying any significant changes in publisher numbers;
- b) The number of complaints it has handled and the outcomes reached, both in aggregate for all subscribers and individually in relation to each subscriber;
- c) A summary of any investigations carried out and the result of them;
- d) A report on the adequacy and effectiveness of compliance processors and procedures adopted by subscribers;
- e) Information about the extent to which the arbitration service has been used.

Parts (a), (c), (d) and (e) are met, respectively, by IPSO Regulations 52.1, 52.3, 52.4 and 52.5.

Part (b) is not met, as Regulation 52 – which requires the publication of such statistics in principle – sets out a list of exemptions which would result in complaints not being recorded. These exemptions exist for complaints that:

- Are not pursued by the complainant (Regulation 52.2.1)
- Are rejected under Regulation 12 [not in remit; does not disclose code breach] (Regulation 52.2.2)
- Are disposed of by agreement between the complainant and the Regulated Entity outside of the complaints process and duly notified in accordance with Regulation 39 (Regulation 52.2.3)
- Are considered closed under Regulation 40 by the Regulator of Complaints Committee following an offer by the Regulated Entity of a remedial measure (Regulation 52.2.4)

Regulation 52.2.4 also exempts such complaints where the complainant has rejected the offer by the Regulated Entity.

Arbitration Service

22. The Board should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair, quick and inexpensive, inquisitorial and free for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous and vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.

IPSO’s arbitration scheme launched in August 2018 does not cover all members and it is not compulsory for members to participate, as Scheme Membership Agreement Clause 5.4 continues to show. Certain IPSO members have the capacity to opt out of one (voluntary) part of the scheme on a case-by-case basis (IPSO Arbitration Scheme Rules Clause 1.2).

Clauses 14.1 and 14.2 of IPSO’s Arbitration Scheme Rules allows participants to veto an oral hearing, which can only take place with agreement from both sides.

Encouraging Membership

23. A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers.

IPSO satisfies this Recommendation via Scheme Membership Agreement Clause 1.1, IPSO Articles of Association 7.2 and Regulation 3, covering entities who publish “a traditional printed newspaper or magazine and/or editorial content on electronic services in the United Kingdom, the Channel Islands and the Isle of Man, or targets such newspaper, magazine or electronic content at an audience in the United Kingdom, the Channel Islands and the Isle of Man.”

24. The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.

Members of the IPSO system must also be members of the RFC (Scheme Membership Agreement Clause 3.2). Members of the RFC are allocated by the RFC Secretary to one of three sectors (RFC Articles of Association 24.14; Scheme Membership Agreement Clause 1.1) – national newspapers, regional newspapers or magazines.

Clause 6.1.3 of the Scheme Membership Agreement specifies that the RFC can establish new sectors, though there is no mention of this in the RFC Articles of Association.

The RFC has also has full discretion over the size of subscriptions that each member is charged (RFC Article 24.7). The size of the subscription fee for each member determines their voting power within the IPSO scheme and within their respective sectors (RFC Articles 36.6 and 36.7).

New members are therefore allocated to sectors at the discretion of the RFC, within which their voting rights are limited relative to the size of existing members of that sector.

25. In any reconsideration of the powers of the Information Commissioner (or replacement body), power should be given to that body to determine that membership of a satisfactory regulatory body, which required appropriate governance and a transparency standards from its members in relation to compliance with data protection legislation and good practice, should be taken into account when considering whether it is necessary or proportionate to take any steps in relation to a subscriber to that body.

Since Recommendation 25 relates to the powers of the Information Commissioner, it is not relevant in the context of assessing a regulator.

26. It should be open [to] any subscriber to a recognised regulatory body to rely on the fact of such membership and on the opportunity it provides for the claimant to use a fair, fast and inexpensive arbitration service. It could request the court to encourage the use of that system of arbitration and, equally, to have regard to the availability of the arbitration system when considering claims for costs incurred by a claimant who could have used the arbitration service. On the issue of costs, it should equally be open to a claimant to rely on failure by a newspaper to subscribe to the regulator thereby depriving him or her of access to a fair, fast and inexpensive arbitration service. Where that is the case, in the exercise of its discretion, absent unreasonable or vexatious conduct on the part of the

claimant, it would be inappropriate for the claimant to be expected to pay the costs incurred in defending the action.

Since Recommendation 26 relates to the issue of costs subject to Recommendation 22 on Arbitration, it is not relevant in the context of assessing a regulator.

Recognition

NB: Leveson Recommendations 27-33 all relate to the formation and functions of an independent recognition body. The IPSO scheme does not contain any reference to a recognition body.

Recommendations for a self-regulatory body

Internal Governance

- 34.** In addition to Recommendation 10 above, a new regulatory body should consider requiring:
- a) That newspapers publish compliance reports in their own pages to ensure that their readers have easy access to the information, and
 - b) As proposed by Lord Black, that a named senior individual within each title should have responsibility for compliance and standards.

In practice, IPSO's members do not systematically publish compliance reports in their own pages, and IPSO does not require members to do so.

Clause 3.3.9 of the Scheme Membership Agreement does not specify a "named" individual, and while Recommendation 34 (b) specifies an individual "within each title", Clause 3.3.9 refers to individuals appointed by "the Publisher, on behalf of" titles. There is also no description of the scope of responsibilities of the individual other than that they "report annually to the Regulator as required under Clause 3.3.7," which states simply that each publisher should provide an annual statement to IPSO.

Incentives to membership

- 35.** A new regulatory body should consider establishing a kite mark for use by members to establish a recognised brand of trusted journalism.

This is provided for in IPSO Article of Association 8.1.7, which specifies "if thought fit by the Board following due consideration and consultation, operating a system whereby Regulated Entities are entitled to display a mark or badge determined by the Company to denote adherence to the Editors' Code and the Regulations.

The Code

- 36.** A regulatory body should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards expected of editors and journalists.

There is no explicit provision in the IPSO scheme for a thorough review of the Code, or public consultation. Full control over the code is given to the Editors' Code of Practice Committee, appointed by the RFC Directors (RFC Articles of Association 10.9), so it is therefore at the

discretion of that body, rather than the Regulator, whether any review or consultation takes place.

Powers and sanctions

37. A regulatory body should be prepared to allow a complaint to be brought prior to commencing legal proceedings if so advised. Challenges to that approach (and applications to stay) can be decided on the merits.

IPSO Regulation 9 specifies that “The Regulator may, at its discretion, allow a complaint to be brought notwithstanding that legal proceedings (whether civil or criminal) may later be brought concerning the subject matter of the complaint.”

This is partly contradicted in the case of IPSO’s Arbitration Scheme Rules, which state that “Claimants will not be entitled to pursue a Claim simultaneously with a Code Complaint which relates to the same subject matter” (Clause 5.6), though it appears that this is resolved at the point at which the Claimant decides whether to pursue a complaint or an arbitration claim.

38. In conjunction with Recommendation 11 above, consideration should also be given to Code amendments which, while fully protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting, and in so doing reflect the spirit of equalities legislation.

There is no explicit provision in the IPSO scheme to direct how code amendments are made (see Recommendation #36 above). Such an amendment to the code would be at the total discretion of the Editors’ Code of Practice Committee, rather than the Regulator. There is no reference to discriminatory reporting or equalities legislation in the IPSO documents.

39. A new regulatory body should establish a ring-fenced enforcement fund, into which receipts from fines could be paid, for the purpose of funding investigations.

Clause 10 of the Scheme Membership Agreement and RFC Article 24.4 continue in place from 2013. These define the powers of the RFC to set the budget for the Regulator, the RFC and the Code Committee. While IPSO secured a shift from annual budgets to a four-year budget in 2016, the RFC articles continue to provide the company with annual responsibility for budgets going forward.

The RFC has full control over the size of the enforcement fund as Clause 10 confirms, apart from funds raised through enforcement in the form of fines.

Evidence supplied by the Pilling Review suggests that IPSO has only a small fund available to constitute an Enforcement Fund, and the RFC has discretion over the size of any additional payments should IPSO request them. Given the additional control the RFC exercises over the size of IPSO’s budget, it cannot be said that the regulator has the power to “stablish” such a fund independently. The extent to which the fund is “ring-fenced” is also not clear, given the RFC’s power to determine the size of payments.

Protecting the public

40. A new regulatory body should continue to provide advice to the public in relation to issues concerning the press and the Code along with a service to warn the press, and other relevant

parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

IPSO Article 8.1.6 and Regulation 5.6 do not specify an outward-facing service of advice for the public, and instead only provide for “notifying and advising Regulated Entities about their activities in cases where an individual has raised concerns regarding undue press intrusion.” In practice, IPSO does provide information on those aspects of the Code that relate to harassment as well as a 24-hour advice line for members of the public subject to harassment by journalists.

41. A new regulatory body should make it clear that newspapers will be held strictly accountable, under their standards code, for any material that they publish, including photographs (however sourced).

Article 7.1 of the Articles of Association of IPSO states that the Remit of the Regulator is to regulate material consisting of: “editorial content in a traditional printed newspaper or magazine”, or “editorial content on electronic services operated by Regulated Entities such as websites and apps, including text, pictures, video, audio/visual and interactive content” (IPSO Articles of Association 7.1.1 and 7.1.2). Article 7.3 of IPSO then sets out the exclusions to this rule, including “complaints about ‘user generated content’ posted onto Regulated Entities’ websites which has not been reviewed or moderated by the Regulated Entity” (IPSO Articles of Association 7.3.6). The issue of accountability under the standards code is at the discretion of the Editors’ Code of Practice Committee.

The public interest

42. A regulatory body should provide guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the Code. This must be framed in the context of the different provisions of the Code relating to the public interest, so as to make it easier to justify what might otherwise be considered as contrary to standards of propriety.

Contents of the Code are decided at the discretion of the Editors’ Code of Practice Committee which is convened by the RFC (RFC Article 10.9). As all Leveson Recommendations relating to the application of the Code are predicated on the regulator having the capacity to set the contents of the Code and subsequently advise members of its application (for example, Volume 4, Part K, Paragraph 4.24 of the Leveson Report which anticipates the regulator adopting interpretations and definitions when applying the Code).

IPSO offers advice on Code definitions set at the discretion of a separate body and therefore does not satisfy the Recommendation.

43. A new regulatory body should consider being explicit that where a public interest justification is to be relied upon, a record should be available of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached.

This is a matter for the RFC which, through ownership of the Code Committee and the Code, has ultimate responsibility for code content, including public interest definitions (RFC Article 2.2). The regulator in this instance has no control over the application of public interest justifications and no capacity to provide a record of public interest applications.

44. A new regulatory body should consider whether it might provide an advisory service to editors in relation to consideration of the public interest in taking particular actions.

This is provided under the IPSO scheme: one function of the Regulator shall be “providing guidance to Regulated Entities on matters concerning the Editors’ Code, including public interest considerations. Such guidance shall be confidential and non-binding and shall not restrict the freedom to publish” (IPSO Articles of Association Article 8.1.5; IPSO Regulation 5.5).

Access to information

45. A new regulatory body should consider encouraging the press to be as transparent as possible in relation to the sources used for stories, including providing any information that would help readers to assess the reliability of information from a source and providing easy access such as web links, to publicly available sources of information such as scientific studies or poll results. This should include putting the names of photographers alongside images. This is not in any way intended to undermine the existing provisions on protecting journalists’ sources, only to encourage transparency where it is both possible and appropriate to do so.

There is no provision in the IPSO scheme for this.

Protecting Journalists

46. A regulatory body should establish a whistleblowing hotline for those who feel they are being asked to do things which are contrary to the code.

This is provided for in the IPSO scheme. A function of the Regulator shall be “providing a confidential whistleblowing hotline for individuals who have been requested by, or on behalf of, a Regulated Entity to act contrary to the Editors’ Code.” (IPSO Articles of Association 8.1.8).

47. The industry generally and a regulatory body in particular should consider requiring its members to include in the employment or service contracts with journalists a clause to the effect that no disciplinary action would be taken against a journalist as a result of a refusal to act in a manner which is contrary to the code of practice.

This is provided for in the Scheme Membership Agreement: “Employment contracts: No PGRE shall take any disciplinary action against any of its employees on the grounds that he or she has used the Regulator’s whistleblowing hotline (provided that such use is appropriate and proportionate) or has refused to act in a manner which he or she reasonably and in good faith is contrary to the Editors’ Code and each PGRE shall include a term to this effect in all contracts of employment it enters into after the Effective Date” (Scheme Membership Agreement 3.3.6).

Appendix 2 – The Pilling Review and the Leveson Recommendations

The review of the IPSO system by Sir Joseph Pilling conducted in 2016 and published in October of that year contains a section (Annex C) that assesses the IPSO system's compliance with the Leveson Report's recommendations for an independent and effective self-regulatory system.

The Pilling Review reached different conclusions from the MST's 2013 analysis on half of the recommendations (19 out of 38), and overall offers a considerably more favourable opinion on the capacity of IPSO (as it was at the time of the Review): overall, the Pilling Review judged that IPSO satisfied 32 of the 38 recommendations.

The discrepancy between the outcomes reached by the present analysis (and, where applicable the 2013 analysis on which it builds) is shown in Table 2 at the end of this section.

There are some themes within the Pilling Review's reasoning for each recommendation that demonstrate how such a different outcome has been arrived at, most notably a lack of consideration of the role of the Regulatory Funding Company in the IPSO system. In a small number of cases the Pilling Review reaches close, but different, interpretations of where IPSO does and does not satisfy the Leveson Recommendations, but in many cases the reasoning behind the decisions presented in Annex C of the Pilling Review is contestable and – it is argued here – flawed.

The discrepancies between the Pilling Review's conclusions and those of this report can be explained in part by the approach taken by the Review, which appears to have considered the Leveson recommendations to be guidelines for a regulator to follow, rather than minimum requirements for an independent and effective self-regulatory body. Leveson made further recommendations which may be considered "guidelines", and which are not discussed in this report.

This Appendix investigates the reasons for different judgements being reached by the present study and the Pilling Review, where applicable, and assesses the Review's arguments. The full text of all Leveson Recommendations and the MST conclusions are included in Appendix I above.

Recommendation 1

The Pilling Review does not consider the RFC's role in vetting industry members of IPSO's Board (as set out in IPSO Article 22.5) to constitute industry influence, despite the fact that the members of the RFC are all representatives of the industry. The present analysis disagrees with this interpretation.

Recommendation 2

The Pilling Review does not consider the fact that party-political peers may be appointed to the IPSO Appointment Panel as potentially allowing Government influence. The present analysis disagrees, as party-political peers affiliated with the governing party are subject to the Government whip.

Recommendation 3

The requirement that appointments to the Appointment Panel must be made by consensus offers the industry (via the RFC which is consulted on industry Board appointments) an effective veto. The Pilling Review does not consider the RFC's role in this process when reaching its decision.

Recommendation 4

The Pilling Review acknowledges IPSO Article 22.5 which gives the RFC influence over appointments but does not consider this to constitute industry influence. As with Recommendation 1, the present analysis disagrees with this interpretation.

Recommendation 5

On the implication of the potential for party-political peers to sit on the Board of IPSO, the Pilling Review argues that since “there are no members [of the House of Lords] at present on the Board,” Part (e) of Recommendation 5 has been met. The present analysis disagrees with this reasoning.

Recommendation 6

The Pilling Review acknowledges that the RFC’s Articles of Association continue to show the Company holding the power to set annual budgets for IPSO and other components of the regulatory system, as well as the RFC’s requirement of IPSO to supply monthly accounts. The Review does not acknowledge the relevance of the RFC’s capacity to set members’ subscriptions and fees. The present analysis views this as compromising the Regulator’s capacity to set and negotiate its own budget.

Recommendation 8

This recommendation relates to contents of the standards code which, as the Pilling Review acknowledged in its opinion that IPSO failed to satisfy Recommendation 7 (in agreement with the present analysis), is ultimately the responsibility of the RFC. The IPSO scheme makes no substantive reference to the content of the Code, yet the Pilling Review judges that IPSO satisfies this recommendation.

Recommendation 9

The Pilling Review argues that IPSO satisfies this recommendation on a regulator requiring members to have appropriate and transparent internal governance processes. The present analysis argues that the lack of specified minimum requirements on such processes in the IPSO system and evidence that IPSO does not enforce its rules on annual statements from members means that the recommendation is not satisfied. However, the Pilling Review was conducted at a comparatively early stage in IPSO’s operation when less information on annual statements was available.

Recommendation 11

The present analysis judges that the additional qualifiers inserted into the IPSO system make it harder for groups and third parties to bring complaints. The current Editors’ Codebook also rules out group complaints on Clause 12 (Discrimination). The Pilling Review acknowledges the qualifiers but does not consider them to contravene the Leveson Recommendation.

Recommendation 18

The Pilling Review states that the change of wording to “serious and systemic” in regard to the triggers for a standards investigation is a “minimal” change. The present analysis strongly disagrees with this interpretation.

Recommendation 20

The Pilling Review dismisses the ways in which IPSO can fail to record code breaches, including where a mediated settlement is reached, even if the complainant rejects the settlement, as “not material to IPSO’s compliance” with the Leveson recommendation. The present analysis strongly disagrees with this.

Recommendation 21

The present analysis judges that IPSO fails to satisfy Part (b) of this recommendation due to the number of exemptions in the IPSO system limiting the amount of code breaches recorded by the regulator. The Pilling Review notes the imprecision added by the definition “substantive complaints” inserted into the IPSO Regulations, and notes that this contributes to IPSO “not fully adopt[ing] this recommendation,” but proceeds to judge IPSO to have “largely” adopted the recommendation.

Recommendation 24

The present report views the fact of compulsory membership of the RFC for new members, the RFC's control (and lack of action) over creating new sectors and imposition of a voting system disproportionately weighted to larger members as compromising IPSO's capacity to meet this recommendation. The Pilling Review notes the issue of fees relating to capacity for dominance of members, but judges IPSO to satisfy the recommendation.

Recommendation 34

The present analysis noted that IPSO's members do not in practice publish compliance reports in their own pages, and IPSO does not require members to do so. Each title is also not required to appoint a senior individual in charge of compliance; instead, the publisher does this. The IPSO scheme sets no minimum responsibilities for the named individual, other than the provision of annual reports. The Pilling Review concludes that IPSO's only responsibility was to "consider" the first part of the recommendation (which it subsequently decided not to implement), and does not acknowledge the fact that publishers, not titles, appoint responsible individuals. The present analysis does not agree with the reasoning that IPSO "considering" and rejecting all Leveson recommendations that contain the phrase "should consider" automatically denotes that the recommendation is satisfied - the end result in such cases is that IPSO does not implement the recommended action.

Recommendation 36

This relates to the regulator engaging in a review of the Code with the aim of developing "a clearer statement of the standards expected of editors and journalists." As the present analysis notes, IPSO does not have the capacity to do this as the RFC is ultimately responsible for the Code. The Pilling Review decided that since the RFC's Code Committee subsequently launched a consultation of the Code, that "IPSO has adopted this recommendation in full." It is not clear on what basis this decision was reached.

Recommendation 38

This recommendation concerns the capacity of the regulatory body to consider Code amendments that "equip the body with the power to intervene in cases of allegedly discriminatory reporting, and in so doing reflect the spirit of equalities legislation." The present analysis noted that since IPSO does not have responsibility for the Code, it automatically fails to satisfy the recommendation. In addition, the Code Committee also rules that the relevant Clause (12) of the Code does not cover "generalised remarks about groups or categories of people." The Pilling Review does not consider the fact that IPSO, in not controlling the Code, cannot satisfy the recommendation. Instead, it judges that in "having given... due consideration" to the issue alongside the Code Committee (that has full discretion over any such changes to the Code) "it appears that IPSO has adopted this recommendation in full." The present analysis believes this interpretation to be comprehensively wrong.

Recommendation 39

This recommendation relates to the ring-fenced enforcement fund, which the present analysis interprets as being neither "established" by IPSO nor fully "ring-fenced," and heavily influenced by the RFC. The Pilling Review again does not consider the role of the RFC in the process and deems IPSO to satisfy the recommendation as a result.

Recommendation 43

This recommendation refers to the regulator's capacity to require members to provide a record of reasons for relying on public interest justifications. The present analysis noted that the regulator has no capacity to define the public interest as specified in the Code and does not require members to provide such a record, and therefore judged IPSO not to satisfy the recommendation. The Pilling Review notes that IPSO decided that to do so would be "impracticable" but then rules that "As

IPSO has considered” (but subsequently rejected) the Leveson recommendation that it “has adopted the recommendation in full.” Again, the present analysis disagrees entirely with this interpretation.

Recommendation 45

This recommendation relates to the regulatory body encouraging the press to be as transparent as possible in relation to the sources used for stories, including links to studies and polling results, and attribution of photographs. There is no provision in the IPSO scheme for this, and so the present analysis views IPSO as not satisfying the recommendation. The Pilling Review again accepts IPSO’s decision that to do so would be “impracticable” and again rules that “as it appears that IPSO has considered” the recommendation, it is in fact “adopted in full.”

Leveson Recommendation	MST Analysis (2019)	Pilling Review (2016)
1	Not satisfied	Satisfied
2	Not satisfied	Satisfied
3	Not satisfied	Satisfied
4	Not satisfied	Satisfied
5	Not satisfied	Satisfied
6	Not satisfied	Satisfied
7	Not satisfied	Not satisfied
8	Not satisfied	Satisfied
9	Not satisfied	Satisfied
10	Satisfied	Satisfied
11	Not satisfied	Satisfied
12	Satisfied	Satisfied
13	Satisfied	Satisfied
14	Satisfied	Satisfied
15	Not satisfied	Not satisfied
16	Not satisfied	Not satisfied
17	Satisfied	Satisfied
18	Not satisfied	Satisfied
19	Not satisfied	Not satisfied
20	Not satisfied	Satisfied
21	Not satisfied	Satisfied
22	Not satisfied	Not satisfied
23	Satisfied	Satisfied
24	Not satisfied	Satisfied
25	Relates to the Information Commissioner – not relevant here	
26	Relates to court costs – not relevant here	
27	Relates to the recognition panel – not relevant here	
28	Relates to the recognition panel – not relevant here	
29	Relates to the recognition panel – not relevant here	
30	Relates to the recognition panel – not relevant here	
31	Relates to the recognition panel – not relevant here	
32	Relates to the recognition panel – not relevant here	
33	Relates to the recognition panel – not relevant here	
34	Not satisfied	Satisfied
35	Satisfied	Satisfied
36	Not satisfied	Satisfied
37	Satisfied	Satisfied
38	Not satisfied	Satisfied
39	Not satisfied	Satisfied
40	Satisfied	Satisfied
41	Satisfied	Satisfied
42	Not satisfied	Not satisfied
43	Not satisfied	Satisfied
44	Satisfied	Satisfied
45	Not satisfied	Satisfied
46	Satisfied	Satisfied
47	Satisfied	Satisfied

Table 2: IPSO and the 38 Recommendations: MST vs Pilling Review