

## **MST analysis of proposals for Independent Press Standards Organisation (IPSO)**

As drawn up by the Industry Implementation Group, July 2013

### Introduction

On Monday 8<sup>th</sup> July four news publishing associations – the Newspaper Society, the NPA, the Scottish Newspaper Society and the PPA – released plans for a new body to replace the PCC called the ‘Independent Press Standards Organisation’ (IPSO). These plans ‘follow the criteria set out in the Royal Charter put forward by the industry’. In other words, they are based on the criteria in the PressBoF Royal Charter submitted to the Privy Council on 30<sup>th</sup> April 2013 – not the cross-party Royal Charter passed by Parliament on 18<sup>th</sup> March 2013.

### Analysis

There are aspects of IPSO that go further than the previous system of press self-regulation. For example, unlike the PCC, IPSO would monitor coverage as well as react to complaints. It would also, for the first time, do investigations where there is evidence of serious failings or systemic breaches of the code (though the proposed investigative process is deeply flawed – see below). It might provide an arbitration service, though this is dependent on the successful completion of a pilot scheme, and then will be optional for publishers.

However, the IPSO plans fall far short of Lord Justice Leveson’s recommendations. Indeed, they do not even achieve the so-called broad ‘Leveson principles’ described by the Prime Minister, David Cameron, on 29<sup>th</sup> November 2012)

These IPSO proposals:

1. Will not provide speedy and up-front corrections and apologies for people who have suffered press abuse
2. Will not provide fair redress for ordinary people who have been libeled or had their privacy seriously intruded upon
3. Will not take complaints on their merit
4. Will not be able to impose serious sanctions on major publishers
5. Demonstrate a profound lack of any functional or meaningful independence from the industry that IPSO seeks to regulate

### **1. No speedy corrections and no power to demand up-front, prominent apologies**

The complaints process set out in the IPSO documents is drawn out, complicated, and requires IPSO to mediate on behalf of the complainant. It is, as with the PCC, mediation not regulation.

These proposals force the complainant to go, in the first instance, to the publication concerned. Though this is as recommended by Leveson, there is no deadline specified for internal complaints, nor are there circumstances outlined where it would be unsuitable for it to go to the publication. Only when the internal complaints procedure of that publication has been exhausted does the complaint then go to IPSO.

At this point IPSO engages in an exchange of letters between the complainant and the publication concerned. If it looks as though there is a breach of the code then 'the Complaints Committee shall aim to find a satisfactory resolution to the complaint by facilitating mediation, including, if appropriate, by negotiating with a Regulated Entity to agree publication of a correction and/or an apology' (see IPSO, 'Regulations', paragraphs 10-25).

This sort of negotiation is the same as occurs with the PCC. It is drawn out and deprives IPSO – and by extension the complainant – of power.

If, after this process is exhausted, the complaint cannot be resolved, only then can IPSO decide some sort of remedial action is necessary – a decision that can be appealed by the publication concerned.

If this appeal is unsuccessful, then remedial action may, or may not, include a requirement to publish a correction or adjudication (not an apology), the nature, extent and placement of which 'will be determined by the Regulator acting proportionately and taking into account the nature of the Regulated Entity and its publications' ('Regulations', 22).

This process of mediation is essentially the same as now, although it will take longer than at present since the complainant is first obliged to go to the news outlet concerned.

It goes directly against the Leveson recommendation that:

'the Board [of the regulator] should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies... [and] The power to direct the nature, extent and placement of apologies should lie with the Board' (Recommendations 15 & 16)

It also goes directly against the views of the public. 76% believe a regulator should be able to direct corrections and apologies on the same page as the original article, against 4% who oppose this (YouGov, May 2013, 1,851 sample).

## **2. Lack of access to legal redress for ordinary members of the public**

Leveson recommended that the press should provide an arbitration process to provide inexpensive and effective legal redress for those who had suffered abuse but could not afford to go to the High Court. Arbitration should also,

Leveson said, protect publishers from wealthy, and potentially abusive, claimants.

The IPSO Charter only commits to running a pilot arbitration scheme after a pilot (Self-Regulation Contract, 5.4.2), and then makes arbitration optional to each publisher (Self-Regulation Contract 5.4). Moreover, after the pilot the press funding body reserves the right to veto the scheme (Self-Regulation Contract 5.4.3).

Again, this goes directly against Leveson, who recommends that:  
‘The Board should provide an arbitral process in relation to civil legal claims against subscribers’ (Recommendation 22)

Once again it also goes against the views of the public. Only 18% of the public think an arbitration process should be optional, against 53% who believe it should be obligatory (YouGov, May 2013, 1,851 sample).

### 3. Complaints not taken on merit

Leveson said that complaints should be taken on merit, not according to who has made them:

‘The Board should have the power (but not necessarily in all cases depending on the circumstances the duty) to hear complaints whoever they come from’ (Recommendation 11).

Yet, the IPSO plans deliberately make it difficult for those who are not directly referenced in the article to complain.

With respect to those not personally and directly affected by the alleged breach, the IPSO plans say that:

‘The Regulator may, but is not obliged to, consider complaints... where an alleged breach of the Editors’ Code is **significant and there is substantial public interest** in the Regulator considering the complaint, from a representative group affected by the alleged breach’ [emphasis added] (‘Regulations’, paragraph 8)

It is harder, in the IPSO plans, for representative group or organisation to complain than it is currently. In 2011, for example, a complaint from Carmathenshire County Council against the South Wales Guardian regarding a breach of clause 6 (children) was accepted by the PCC and upheld. In the same year the Samaritans complained to the Wrexham Leader about the level of detail in the coverage of a suicide. The claim was accepted by the PCC and resolved. Other complaints accepted and resolved by the PCC in 2011 came from the Asbestos Victims’ Support Groups’ Forum UK, Brighton & Hove City Council, Croydon Council, Haringey Council and the Association of Osteomyology. Under the proposed IPSO system it is highly unlikely that these complaints would be accepted.

#### 4. No million pound fines are ever likely to be imposed

Fines can only be imposed following an investigation (Contract 5.5):

5.5 'The Regulator shall be entitled to impose sanctions and fines in respect of any Standards Investigation only or require remedial action of the Publisher as prescribed in the Regulations

Yet the investigations process proposed in the IPSO plans is so lengthy, and provides so many opportunities for the publisher to object, that there is very little chance a fine will ever be imposed.

The investigation plans are virtually the same as those contained in the proposals put forward to Leveson by Lord Black in 2012. In response to those Leveson said:

The "process described above [in the Lord Black proposal] appears somewhat extreme and could be thought to give so many opportunities to the regulated entity to challenge every single step so as to frustrate the investigation and make it very difficult for the regulator to reach a conclusion, particularly if that conclusion was adverse.' (The Leveson Report, p.1,636)

There are seven opportunities for challenges to be made by the publisher in the IPSO plans.

Summary of steps in an investigation (the opportunities for publisher intervention are numbered in brackets) – from 'Regulations' paragraph 39-65:

- IPSO decides that an investigation should take place (where there is already evidence of serious failure)
- IPSO decides on remit and writes to publisher explaining why investigation happening
- **Publisher has 14 days to respond (1)**
- IPSO appoints investigations panel
- Panel notifies publisher about investigation, remit etc
- Compiles a first report which it sends to news publisher
- **Publisher has 28 days to respond in writing (2)**
- **Publisher then invited to respond orally to investigation (3)**
- Investigative panel comes to preliminary conclusion
- **Sends preliminary conclusion to news publisher which has 14 days to respond (4)**
- Investigative panel reaches a decision
- **Publisher may request a review of decision within 14 days (5)**
- If requested, review panel reviews investigation panel decision and sends review to publisher
- **Publisher has 14 days to respond to review (6)**
- Conclusions of investigation passed to IPSO Board for sanction
- **'No fine or costs will be imposed unless the Regulated Entity has first been given the opportunity to attend a hearing' (7)**

In addition, the investigations fund is overseen by the Regulatory Funding Committee – PressBoF’s successor, and is not ring fenced. It can therefore be starved of the funds it needs to investigate (Self-Regulation Contract 10.2) – another concern raised by Leveson about the previous plan.

Finally, the guidance on sanctions (including fines) is written by those same major news publishers on which the fines will be imposed:

‘Financial Sanctions Guidance: any guidance issued from time to time **by the Regulatory Funding Committee** in consultation with the Regulator regarding the imposition of fines by the Regulator following a Standards Investigation’ (from Self-Regulation Contract).

## **5. A profound lack of any functional or meaningful independence from industry**

IPSO is far from independent. Indeed at almost every level it is dependent on the industry and the industry’s Regulatory Funding Committee (RFC), the successor to the Press Board of Finance (PressBoF).

Lord Justice Leveson made clear in his report that “a profound lack of functional or meaningful independence from the industry... [lay] at the heart of the failure of the system of self-regulation of the press” (Volume IV, Part J, Para 3.1, p1,520). The central cause of this lack of independence was, Leveson said, PressBoF.

Yet these plans essentially make the successor of PressBoF – the Regulatory Funding Committee – the controller of the new system.

There is no evidence to suggest the RFC will not be constituted in the same way as PressBoF and composed of the same individuals. A number of those involved with PressBoF have been in place for over 20 years already. There is no indication that they would not remain involved in the RFC.

### Responsibilities of the Regulatory Funding Committee (RFC)

#### Funding:

- The RFC decides what each regulated entity pays:
  - o ‘the mechanism for determining the amount and frequency of the fee paid by each Regulated Entity shall be at the reasonable discretion of the Regulatory Funding Committee’ (Self-Regulation Contract, 10.1)
- The RFC collects the levy from the participating news organisations
- The RFC enforces non-payment of fees:
  - o ‘The Regulatory Funding Committee may on behalf of the Regulator enforce non-payment of the fee’ (Self-Regulation Contract 10.1)
- The RFC sets the initial budget of IPSO

- 'Initial Budget: the Regulatory Funding Committee's estimate of the costs of the Regulator fulfilling its responsibilities during the Initial Period' (Self-Regulatory Contract, Interpretations)

#### Appointments:

- The appointment of the five industry members of the regulatory board needs to be agreed with the RFC:
  - 'In nominating Industry Directors, the Appointment Panel shall take account of the views of the Regulatory Funding Committee as to the suitability of the candidates' (Articles of Association 22.5)
- The RFC determines the pay of the directors of the Board:
  - 'Directors are entitled to such remuneration as may be approved by the Regulatory Funding Committee for any service which they undertake for the Company' (Articles of Association 24.2)
- The membership of the Complaints Committee needs to be agreed with the RFC:
  - 'In appointing the Complaints Committee, the Regulator's Board shall take account of the views of the Industry Funding Body as to the suitability of the candidates' ('Regulations' 33, and Articles of Association 27.4)
- Nor is membership of the RFC (or a regulated entity) considered to compromise an individual's independence:
  - 'In respect of any decision affecting Regulated Entities generally, an Industry Director shall not be regarded as having a Conflict of Interest solely on the ground that he or she is Connected with a Regulated Entity or the Regulatory Funding Committee' (Self-Regulation Contract 19.5)

#### Voting

- The RFC sets the voting criteria (which are calculated according to fees paid to the RFC – which are calculated according to circulation. In other words the largest selling newspaper groups would have many more votes than their smaller selling competitors):
  - 'The Regulatory Funding Committee will be responsible for determining, by reference to the Publisher's Publications, the Sector or Sectors of which the Publisher is a member for the purposes of voting in respect of matters contemplated by this Agreement' (Self-Regulation Contract 6.2)

#### Investigations

- The RFC determines the amount paid into the enforcement fund:
  - '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 Committee' (Self-Regulation Contract 10.2)
- The RFC writes the Financial Sanctions Guidance which determine the amount of any fines:
  - 'Financial Sanctions Guidance: any guidance issued from time to time by the Regulatory Funding Committee in consultation with the Regulator regarding the imposition of fines by the

Regulator following a Standards Investigation' (Self-Regulation Contract, Interpretations)

#### Regulations

- The RFC has a veto over changes to the regulations:
  - o 'The Regulations shall only be amended by the agreement in writing of the Regulatory Funding Committee, the Regulator and by a Majority Vote' (Self-Regulation Contract, 7.1)

#### Arbitration

- RFC has a veto over arbitration (Self-Regulation Contract 5.4.3)

The RFC, in other words, effectively controls the funding, the voting, the sanctions, and the regulations, while determining the financing of an arbitration scheme, having a veto on an arbitration scheme, and have a central role in key appointments.

This is, of course, separate to the additional powers the RFC has via the PressBoF Charter. In this Charter, PressBoF would constitute the initial recognition panel, would fund – on an annual basis – the subsequent recognition panel, and would control changes to the recognition process.

### **Conclusion**

There are differences between the plans for self-regulation put forward by IPSO and the current system of self-regulation.

However, the additional powers in the system are so circumscribed and qualified that there will be minimal material change. It is a long way away from the system Leveson recommended.

Most importantly, from the perspective of the public, little will change as regards press accountability:

- people will not have access to a fast complaints service that can provide them with up-front corrections and apologies
- people will not be guaranteed any access to legal redress via arbitration
- people who experience significant and serial abuse by a news publisher will almost certainly not see that publisher sanctioned with a proportionate fine
- the system will appear, from the perspective of the public, to be run by the press for the press