



The Independent Press Standards Organisation (IPSO)

An assessment

November 2013

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Summary of analysis

Overall: IPSO vs. Leveson summary recommendations

The organisations establishing IPSO have claimed publicly that it “will deliver all the key elements Lord Justice Leveson called for in his report.”

- Lord Justice Leveson made 47 recommendations for press regulation in his Report of November 29th 2012. Of these 47, 38 relate to self-regulators
- According to this analysis, of these 38 Leveson recommendations, IPSO satisfies 12, and fails to satisfy 20. It is unclear, given the information provided to date, whether IPSO satisfies the other 6
- Of the 12 recommendations that IPSO satisfies, some should substantially improve the current system, especially with regard to internal complaints and compliance, and protection for whistleblowing journalists
- However, of the 20 recommendations that IPSO fails, many are key elements of the Leveson system, including independence from industry, access to justice, and complaints

Assessment: Improvements

There are aspects of IPSO that do improve on the Press Complaints Commission (PCC), most notably with respect to:

- Encouraging improved internal governance and complaints procedures at news organisations
 - The contract stipulates that each publisher should ‘implement and maintain internal governance practices and procedures with the aim of ensuring compliance with the Editors’ Code and the Regulations’ (Scheme Membership Agreement 3.3.3)
 - It also states that each publisher should ‘implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints’ (Scheme Membership Agreement 3.3.4)
- Providing a whistleblowing hotline for journalists
 - IPSO shall provide ‘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 Regulation 4.8)
- Protecting journalists from disciplinary action when they refuse to breach the code of practice
 - In future employment contracts publishers have to agree not to take disciplinary action against 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 believes is

contrary to the Editors' Code' (Scheme Membership Agreement 3.3.6)

These would represent considerable improvements to the current system of self-regulation, and should mean better protection for both journalists and members of the public within news organisations themselves.

Assessment: Shortcomings

IPSO falls far short of many of Lord Justice Leveson's recommendations, particularly with respect to:

- ***Independence***
At almost every level the regulator is dependent on the industry, such as to give the industry significant influence and even control over the regulator. This control and influence is exercised through a new company called the 'Regulatory Funding Company' or RFC. The RFC has a substantial role not just in funding but in appointments, regulations, investigations, sanctions, arbitration, and voting. It is not clear why the RFC should have any functions beyond calculating, gathering and distributing membership fees
- ***Arbitration***
One of Leveson's key concerns was that ordinary people should have access to justice through arbitration, especially with recent legislative changes to Conditional Fee Agreements due to be implemented soon. IPSO does not deliver this central element of Leveson's recommendations. IPSO can only offer arbitration after due consideration and consultation, after a pilot, and after agreement by the RFC (the industry funding body). Even then, each publisher will have the option to sign up to the arbitration service and, even if it does, the publisher has the option to decline arbitration on a case by case basis.
- ***Complaints***
The IPSO complaints process is remarkably similar to that of the PCC. As such it is predicated on mediation, not regulation. Indeed there is an apparent risk that pursuing a complaint will take longer than under the PCC, since complainants have to complain to the publisher before going to IPSO. While Leveson recommended that complainants should first go to the publisher, under the IPSO system there is no time limit set on the internal process within publishers, nor is any account taken of the internal process if the complaint is escalated to IPSO.
- ***Investigations and Sanctions***
The investigations process is not 'simple and credible' as Leveson said it ought to be. It allows for up to six interventions by the publisher. In contrast, there is no opportunity for the victim to intervene.
- ***The Code of Practice***
Responsibility for writing the Standards Code is given to the Editors' Code of Practice committee, as with the PCC. This committee is itself a

subcommittee of the RFC. This contravenes Leveson's recommendation that the Code should be the responsibility of the Board.

- ***Sustainability***

Leveson criticised the plans put forward by Lord Black on behalf of the industry in 2012 as being unsustainable. That system of regulation depended on five year commercial contracts, after which time there was no indication as to what would occur. The IPSO plan is based on similar commercial contracts, and is subject to the same uncertainty once the initial contractual period ends.

The system set up through IPSO should lead to a substantial improvement in the complaints and compliance systems within member news organisations.

However, IPSO fails to deliver most of the other key elements of Leveson's report and recommendations.

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

IPSO will be reliant on, and directed by, the largest publishing groups in the industry – through the Regulatory Funding Company (RFC). IPSO's budget, its rules, its code, its sanctions, its investigations, will all be controlled by the RFC. It will not be able to offer an arbitration service, or make changes to the system of regulation, without the agreement of the RFC. This does not constitute independence from the industry. Rather, it constitutes acute dependence on the industry.

The second most significant failure is with respect to access to legal redress. The newest and arguably most constructive element of Leveson's recommendations is arbitration. Arbitration would provide a means for ordinary people to gain legal redress – redress which is unaffordable to them through the High Court. At the same time it would provide a means for news publishers to avoid the ruinous costs of High Court libel and privacy actions. Yet members of IPSO will have no obligation to give the public access to arbitration.

IPSO vs the 38 Leveson recommendations – Summary

(for explanation and notes see Appendix 1 on Page 26 of this report)

Leveson Recommendation	Status
1	Not satisfied
2	Not satisfied
3	Not satisfied
4	Not satisfied
5	Not satisfied
6	Not Satisfied
7	Not Satisfied
8	Not satisfied
9	Satisfied
10	Satisfied
11	Not satisfied
12	Satisfied
13	Not satisfied
14	Satisfied
15	Not satisfied
16	Not satisfied
17	Satisfied
18	Not satisfied
19	Unclear/insufficient information to date
20	Not satisfied
21	Not satisfied
22	Not satisfied
23	Satisfied
24	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	Unclear/insufficient information to date
35	Satisfied
36	Not satisfied
37	Satisfied
38	Not satisfied
39	Unclear/insufficient information to date
40	Not satisfied
41	Satisfied
42	Not satisfied
43	Unclear/insufficient information to date
44	Satisfied
45	Unclear/insufficient information to date
46	Satisfied
47	Satisfied

Introduction

On Thursday 24th October a number of newspaper publishers announced a final version of plans for the 'Independent Press Standards Organisation' (IPSO). This is a new regulator set up by sections of the newspaper industry, in place of the Press Complaints Commission (PCC).

Immediately following the announcement of IPSO, some national newspapers published a full-page IPSO advertisement, claiming that it would be 'the toughest [regulator] in the Western world'. Specifically, the ads claimed that it 'will deliver all of the key elements Lord Justice Leveson called for in his report.' A new website setting out information on IPSO makes a further link with the Leveson Report, quoting:

'By far the best solution to press standards would be a body, established and organized by the industry, which would provide genuinely independent regulation of its members...' (p.1,758).

The advertisement listed seven distinct benefits it claimed IPSO would deliver: tough sanctions; upfront corrections; investigative powers; genuine independence; no cost to the public; the support of the newspaper and magazine industry, and the safeguarding of free speech.

The IPSO publicity makes no reference to the agreed Royal Charter designed to underpin a new self-regulatory system for the press. Separately, spokespeople for the newspaper industry and for various publishers have made clear that they do not accept the validity of the Royal Charter. Those setting up IPSO, however, appear to accept the legitimacy of the Leveson Report and recommendations.

This is despite that fact that the Royal Charter maps closely to Leveson's recommendations. A separate Media Standards Trust analysis shows that, particularly with respect to the basic standards that need to be met by any recognized self-regulatory body – as IPSO is intended to be - the wording in the Royal Charter is very close to that in the Leveson report (see '[A Story of Eight Charters](#)').

However, since the industry claims to comply with Lord Justice Leveson's recommendations for a future independent self-regulatory system for the press, but not for the Royal Charter, this report examines the extent to which IPSO does, as its sponsors claim, 'deliver all of the key elements' of Leveson.

We consider how each of Leveson's recommendations are addressed in the IPSO documents (set out in full in Appendix 1).

We also assess IPSO according to six key elements of the Leveson system:

- Independence
- Complaints
- Arbitration

- Investigations and sanctions
- The Code
- Sustainability

The analysis has three aims:

1. To test the claims, made by those setting up IPSO, that it delivers all the key elements Leveson called for in his report
2. To show, given the extent to which IPSO complies with Leveson, whether a system of recognition and review established through Royal Charter is – or is not – essential to the creation of a credible new press regulator
3. To judge how much a system of press regulation delivered by IPSO is likely to work for the public in the wake of previous failures

Leveson was very conscious of the need to protect the freedom of the press to report in the public interest. At the same time he said repeated that the system has to work for the public as well as for the press.

He was also determined to avoid the pattern of cosmetic reform that has characterised the aftermath of each of the previous six inquiries into the press since the Second World War. This report shows the extent to which that pattern is being repeated or broken.

Although the report deliberately measures IPSO against the Leveson report and recommendations – in order to judge it against criteria on which there appears to be consensus – the analysis also indicates the degree to which IPSO would satisfy the criteria set out in the Royal Charter on self-regulation of the press. This is because the recognition criteria in the Royal Charter (Schedule 3) map closely to Leveson’s regulatory recommendations.

Assessing IPSO

There are aspects of IPSO that go further than the previous system of press self-regulation (the PCC). For example, it would, for the first time, conduct investigations where there is evidence of serious failings and systemic breaches of the code (though there are significant flaws in the proposed investigative process— see below).

IPSO will also provide, for the first time, a confidential whistleblowing hotline for journalists. Moreover it will require members to include in their employment contracts that they will not take disciplinary action against employees who use the hotline, or employees who refuse to act in a manner which they reasonably and in good faith believe is contrary to the Editors' Code.

However, IPSO falls far short of Lord Justice Leveson's recommendations. It certainly does not 'deliver all the key elements Lord Justice Leveson called for in his report', as claimed by those setting it up.

Most notably, as this section shows, they fail to deliver Leveson with respect to:

- Independence
- Arbitration
- Complaints
- Investigations & sanctions
- The Standards Code
- Sustainability

Independence

Any new system, Leveson said, has to be independent of the press as well as independent of politicians. The system led by the PCC was characterised by ‘A profound lack of any functional or meaningful independence from the industry that the PCC claimed to regulate’. This, Leveson said ‘lay at the heart of the failure of the [previous] system of self-regulation for the press’ (p.1,520).

Central to this lack of independence was the dominance of the funding body, the Press Standards Board of Finance (PressBoF):

“The PCC is constrained by serious structural deficiencies which limit what it can do. The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means that the PCC is far from being an independent body.”(p.1,576)

PressBoF was formed in 1990 in order to fund the PCC. The Board historically had ten members (currently nine), all senior figures in the news industry. For reasons not apparent in the context of regulation, PressBoF’s powers went far beyond issues of funding. It was responsible for appointing the Chair of the PCC, for convening the Editors’ Code of Practice Committee, and for how the regulator worked. Leveson was highly critical of both the extent of its powers and how it used them to limit the effectiveness of the PCC:

‘It is also clear to me that the funding made available to the PCC is barely sufficient to enable it to conduct its complaints handling functions effectively. Further, in so limiting the funding available to the PCC, the organisation was unable to exercise other functions that might be properly expected of a regulator, for example, in relation to investigations into industry conduct, and the promotion of standards’ (p.1521)

It also meant that ‘a few powerful individuals have been able to dominate the system’ of press regulation (p.1,625). This, Leveson said, was one of the previous system’s key failings.

When PressBoF Chair Lord Black submitted industry plans for a new regulatory system to Lord Justice Leveson in 2012, the judge said these plans suffered from the same lack of independence from the industry:

‘The powers of the Independent Funding Body [the proposed successor to PressBoF], which run throughout this proposal, undermine claims to independence of the regulatory system’ (p.1,630)

And for this reason the ‘model presented by Lord Black fails to offer genuine independence from the industry’ (p.1,750).

Leveson could not understand why PressBoF (or the Industry Funding Body as it was called in Lord Black's plans) retained so much power, or indeed why it was even necessary.

'In my opinion' he wrote, 'there is no need for such a body [as PressBoF] to exist at all' (p.1,761-1,762).

He concluded that:

'the extent of industry control within the proposed [Lord Black] system is a fundamental flaw' (p.1,750).

Yet, despite this being the fundamental flaw in Lord Black's 2012 plans, and at the heart of the failure of the previous system, in the IPSO rules the industry has as much, if not more, control of the system. This power is held primarily by PressBoF's successor, called the Regulatory Funding Company (RFC). At almost every level the regulator is dependent on the industry and the RFC.

The Powers of the Regulatory Funding Company (see also Appendix 2, p41)

Funding

- **Membership fee:** the RFC decides what each regulated entity pays (Scheme Membership Agreement, Article 1.1 & Article 24)
- **Membership fee collection:** the RFC collects the levy from the participating news organisations (IPSO, Articles of Association, Schedule: 1.34)
- **IPSO budget:** the RFC sets the overall budget of IPSO annually, not by 4-5 year settlements as Leveson recommended (RFC Articles of Association 24.4)
- **Initial budget:** the RFC determines the initial budget of IPSO (RFC Articles of Association 24.4 & Schedule: 1.10)
- **Increases in budget:** the RFC decides on increases in the budget, and, in addition, any special funding required (RFC Articles of Association, 24.4)

Appointments

- **Regulatory Board:** the appointment of the five industry members of the regulatory board needs to be agreed with the RFC (IPSO Articles of Association 22.5)
- **Pay of the Board:** the RFC determines the pay of the directors of the Board (IPSO Articles of Association 24.2)
- **Complaints Committee:** the industry members of the Complaints Committee need to be agreed with the RFC ('Regulations' 34, and Articles of Association 27.4)
- **Pay of Complaints Committee:** the RFC determines the pay of members of the Complaints Committee (IPSO Articles of Association 27.6)

- **Pay of Appointments Panel:** the RFC determines the pay of the 'independent' members of the Appointment Panel (IPSO Articles of Association 26.8)
- **RFC members' independence:** membership of the RFC (or a regulated entity) is not considered to compromise an individuals independence (IPSO Articles of Association 19.5)

The Standards Code

- **RFC subcommittee:** the IPSO Code Committee will, like the previous Code Committee, be a subcommittee of the RFC (RFC Articles of Association 2.2 & 10.9)

The Regulations

- **Regulations veto:** the RFC has a veto over changes to the regulations (Scheme membership agreement Article 7.1)

Investigations

- **Funding investigations:** the RFC determines the amount paid into the enforcement fund which pays for investigations (Scheme Membership Agreement Article 10)

Sanctions

- **Writing sanctions guidance:** the RFC writes the Financial Sanctions Guidance which determine the amount of any fines (Scheme membership agreement Article 1.1)

Arbitration

- **Arbitration veto:** the RFC has a veto over the very existence of any arbitration scheme (Scheme Membership Agreement 5.4.3)

Voting

- **Determining votes:** rather than one publication one vote, the number of votes of each publisher is determined by how much it pays towards the RFC, which is determined by the RFC. The secretary of the RFC then has discretion over the allocation of votes, and the criteria by which this allocation is made

Political Interference in IPSO

Separate to this, but also compromising IPSO's independence, the IPSO rules allow for politicians to participate in the regulator. Party political peers and MEPs are not excluded from IPSO. Party political peers and MEPs can be on the Board of IPSO (IPSO Articles of Association 22.1.4), on the Appointment

Panel (IPSO Articles of Association 26.6), and on the Complaints Committee (IPSO Articles of Association 27.2.5).

Arbitration

Leveson was particularly concerned that ordinary people should have access to fair legal remedies with regard to media abuse (chiefly with respect to libel and unlawful privacy intrusion). He was very conscious that recent changes to the law on court costs 'will put access to justice in this type of case [libel and privacy] in real jeopardy, turning the clock back to the time when, in reality, only the very wealthy could pursue claims such as this' (p.1,507).

Therefore he recommended an arbitration service that would play a dual role of providing access to legal redress for ordinary people who would otherwise be unable to gain access, and protecting publishers from expensive legal action by corporations and wealthy individuals:

'An arbitral arm of a new regulator could provide such a mechanism which would benefit the public and equally be cost effective for the press.' (p.1,507).

Yet, IPSO does not deliver this central element of Lord Justice Leveson's recommendations.

IPSO can only deliver an arbitration scheme:

- After 'due consideration and consultation' **and**;
- After it has carried out a pilot scheme, **and**;
- Only after the agreement of the RFC (Scheme Membership Agreement Article 5.4)

The RFC therefore has an effective veto on any scheme, even after consideration, consultation and trial.

Even if these three hurdles are achieved (which is likely to take years), then participation in the arbitration scheme will be optional for each publisher. Even those publishers who choose to offer arbitration can then choose whether or not to use the scheme on a case-by-case basis (Scheme Membership Agreement Article 5.4).

From the perspective of the public this effectively removes the option of arbitration except when it suits the publisher.

A publisher could, for example, see that a member of the public was not wealthy, then decide not to offer arbitration, in the knowledge that the person simply could not afford to go to court.

The primary purpose of Leveson's recommendation, access to justice, is not provided for under IPSO.

Complaints

Mediation vs. regulation

Leveson said that the PCC acted as a mediator for complaints, rather than as a regulator. It would mediate (via correspondence) between the complainant and the publisher where a complainant alleged the publisher was in breach of the Editors' Code of Practice.

Only if, often after protracted correspondence, a resolution could not be reached, would the PCC adjudicate. And only if the complaint was upheld at adjudication would the PCC record a code breach by the publication.

This limited its role to that of middleman rather than regulator in the view of Leveson:

'The structures and practices of the PCC have constrained it to acting as a mediator in respect of complaints, rather than having any enforcement role that is consistent and effective. The failure to identify any code breaches where a mediated settlement could be reached, or to provide meaningful statistics in relation to complaints brought and how they were resolved, means that there is no authoritative picture of just how often breaches have occurred and where they have occurred' (p. 1,749)

Throughout the process the PCC would seek to find agreement through a resolved settlement. This required the PCC to seek, sometimes over a period of months, a consensus between the complainant and the publisher. Leveson saw this as a serious failure of the complaints system:

'the fundamental flaw at the heart of the relationship between the PCC and the entities that it was supposed to be regulating, that uniquely it depends on an element of consent and collaboration between these parties' (p. 1,555)

This flaw led to 'too many negotiated settlements' and 'the fiction that only a handful of breaches of the code occur each year' (p.1,632). Leveson acknowledged that publishers and complainants may prefer to resolve matters through mediation, though this did not remove the need to record code breaches, even for mediated cases.

For this reason Leveson recommended that the 'regulator must have a clear sense of the scale of code breaches that it is dealing with both in relation to individual publishers and in relation to the industry as a whole' and that 'mediated complaints are recorded, with code breaches identified'. Otherwise 'It is difficult to see how systemic failures in code compliance could be detected' (p.1,633).

The proposed process in the Lord Black plan put forward by the industry in 2012 appeared, Leveson said, ‘to mirror closely the existing PCC approach’ (p.1,602), and suffered from the same flaw.

Yet despite his criticisms of the PCC process, and of the plans put forward by Lord Black in 2012, the complaints service outlined in IPSO again mirrors the existing complaints service.

If the complaint is accepted, then 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’ (IPSO Regulations 8-29).

Where a complaint is resolved, or sufficient remedial action is offered, then no code breach will be recorded, exactly as before (IPSO Regulations 18, 32 & 39). As such it represents a continuation of mediation, not regulation, and will not make transparent the scale of code breaches by publication.

The chief difference is that, within the IPSO system, it is liable to take even longer to resolve complaints, since the complainant needs to exhaust the publisher’s internal complaints system before going to the regulator. There is no time limit set on the internal complaints system of publishers, nor does this internal process appear to be taken into account subsequently.

Corrections and apologies

“It is”, Leveson wrote, “frankly absurd that the regulator should not have the power to determine the location of an adjudication or apology”(p.1,633).

For this reason Leveson recommended that:

‘the power to direct the nature, extent and placement of apologies should lie with the Board’ (p.1,767)

Yet, IPSO has no provision for requiring – let alone directing – apologies at all. Neither can IPSO direct corrections and adjudications, though it can require them to be published.

The IPSO regulations say that if a complaint is upheld by the Complaints Committee then a Regulated Entity can be required to publish a correction and/or adjudication (unless the Complaints Committee decides this is not necessary). The ‘nature, extent and placement’ of these can be determined by the Regulator, as long as it acts ‘proportionately’ and takes into account ‘the nature of the Regulated Entity and its Publications’ (IPSO Articles of Association 22).

The power to hear complaints whoever they come from

Leveson was very clear about complaints from third parties or representative groups:

‘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, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach, or a third party seeking to ensure accuracy of published information’ (p.1,765).

Leveson also wrote:

‘[B]odies representing the interests of groups or minorities cannot complain to the PCC about discriminatory or inaccurate coverage. These are points which have been repeatedly identified as a weakness in the self-regulatory system’ (p.1,577).

The judge said that the PCC’s failure to accept complaints from third parties across the board prevented the PCC from acting: ‘as a regulator properly so called’ (p.1,577).

Yet, in the IPSO regulations, obstacles are deliberately put in the way of complainants that are contrary to Leveson’s recommendations and would prevent almost all complaints from representative groups.

A representative group complaint has to be a “significant” code breach, and there has to be “substantial” public interest in taking the complaint (IPSO Regulation 8). This is such a high bar that very few complaints from these groups are ever likely to make it through.

This is an even higher bar than currently exists at the Press Complaints Commission. In 2011, for example, a third party complaint from Carmathenshire County Council against the South Wales Guardian regarding a breach of Clause 6 (Children) was accepted and upheld.¹ 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.² These complaints are likely to be rejected by IPSO without proper consideration.

Third party complaints are also made more difficult as, in the IPSO regulations, an inaccuracy has to be ‘significant’ before it can be accepted from a third party (IPSO Regulation8). There is no definition given of what

¹ <http://presscomplaints.org/case/4689/>

² <http://presscomplaints.org/case/4539/>

'significant' means. Nor is it made clear how a judgment may be made of the significance of an inaccuracy before the complaint has been considered.

Investigations and sanctions

Leveson said that:

‘the failure by the PCC to initiate its own investigations’, coupled with its failure to accept complaints from third parties across the board, meant that it was not able to act as a proper regulator (p.1,577).

The introduction of investigations to any new system will, therefore, be a significant difference from the previous system.

However, the proposal for investigations put forward by the industry to Leveson in Lord Black’s plan of 2012 was so lengthy, and allowed for so many representations by the publisher, that Leveson doubted it could ever be used effectively:

‘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’ (p.1,636).

The process was constructed in such a way that:

‘it could be so drawn out and so hedged about with appeals that I doubt it could ever be used effectively’ (p. 1,750).

Leveson wrote:

‘[I]f there is to be any value in the investigations process, which is itself the only genuinely new part of this proposal from the industry, then it is essential that it should be capable of operating without continually being frustrated by those subject to regulation’ (p.1,636).

Yet the process of investigation laid out in the IPSO rules remains little changed from the process described in the industry proposals of 2012.

There are still six opportunities for the publisher to make representations:

1. Board decides to start investigation and writes to regulated entity(s) with reasons and remit - **PGRE (Publisher Group Regulated Entity – a member of the regulatory scheme) has 14 days to respond** (IPSO Regulation 42)
2. Panel invites representatives of PGRE to a meeting at which **PGRE can make oral representations** (IPSO Regulation 46)
3. At any point during the investigation the **PGRE can dispute the scope of the investigation** or the need for documentary evidence, which is then referred to the Board (IPSO Regulation 48)
4. Draft report is sent to **PGRE who then has 28 days to respond** (IPSO Regulation 50)

5. When a decision is made **the PGRE can request that the decision be reviewed** (IPSO Regulation 53)
6. The review panel will then prepare a note of its review of the decision and send it to **PGRE which will have 14 days to comment on the draft** (IPSO Regulation 60)

Furthermore, if, following the investigation, the Board decides to impose a fine on the publisher, then there has to be another hearing with the publisher (IPSO Regulation 64).

After this the publisher can apply for judicial review.

Leveson also noted, of Lord Black's plan put forward on behalf of the industry in 2012 that

'[T]he investigations process is entirely between the regulator and the publisher. There is no role at all for the victim, or victims, of the behaviour that has given rise to the investigation' (p.1,636).

In the IPSO papers there is still no role for the victim, or victims, in the investigations process.

The Standards Code

Leveson said that:

'A new system must have an independent process for setting fair and objective standards' (p.1,649).

To do this he recommended that:

'The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee which may comprise both independent members of the Board and serving editors' (Leveson Report Executive Summary, Recommendation 7, p.33).

He did not accept that a majority of editors, acting in more than an advisory capacity, would allow for standards to be set independently:

'The continuation of the Code Committee with a majority of serving editors, acting in more than an advisory role, does not allow for independent setting of standards' (Leveson Report, p.1,750).

He went further and thought that giving responsibility to serving editors to set standards would be 'quite wrong':

'Whilst I recognise the importance of having a strong editorial voice advising on standards, it seems to me quite wrong that editors should actually be responsible for setting standards' (Leveson Report, p.1,624)

He did not accept that only serving editors had enough experience to define the code, or that serving editors were not affected by self-interest:

'Lord Black denied that serving editors would have a degree of self-interest in how the standards set in the code... He argued instead that only serving editors would have the practical day-to-day understanding of what life was like in newsrooms and how the rules needed to change to reflect that. I simply do not accept that' (p.1,624).

For this reason he was clear that responsibility for the Code should lie with the Regulator, and that any proposal that gave those in charge of the regulated publishers control of the code should not be accepted:

'the suggestion that those in charge of the regulated entities should be responsible for the code pursuant to which they are regulated is not one that would (or should) command support' (p.1,627).

This did not preclude an advisory committee on the Code, with serving editors on it (though not necessarily required):

'I do not accept that the concept of 'self-regulation' requires the presence of serving editors either on the body that sets the standards, although, as I have indicated, I recognise that it would certainly be desirable that serving editors should have an advisory role in standards setting' (p.1,625).

He rejected Lord Black's 2012 plan on behalf of the industry for these reasons:

'I have already set out my views on the extent to which it is inappropriate to have serving editors responsible, albeit subject to the approval of the Board, for setting the standards to which they are expected to adhere. I do not, therefore, regard the Code Committee, in a standards setting capacity, as sufficiently independent of industry' (p.1,627).

Yet IPSO gives the code committee, explicitly called the 'Editors' Code of Practice Committee', responsibility for writing the Code:

The Editors' Code of Practice Committee is 'the body responsible for writing the Editors' Code of Practice which shall comprise both Independent members and serving editors that are or could be Regulated Entities' (IPSO Articles of Association 1.23).

This directly contravenes the Leveson recommendation that a Code Committee be advisory, and that the Board be responsible for the Code:

'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' (Leveson, Summary of Recommendations, Recommendation 7, p.32).

Furthermore, the IPSO Editors' Code of Practice Committee is a subcommittee of the Regulatory Funding Company (PressBoF's successor).

The RFC convenes the Editors' Code of Practice Committee, and then gives that committee control of appointments. These appointments, it should be noted, do allow Independent Members for the first time (IPSO Articles of Association, Schedule: 1.23 – to be read in conjunction with IPSO Articles of Association, Schedule: 1.26). Although it is not clear how many will be allowed. There is no commitment to public consultation, as Leveson called for.

It is difficult to see how this could be considered 'an independent process for setting fair and objective standards'.

Sustainability

Leveson was concerned that any system of press regulation would be sustainable. He did not want a system that began to fracture within a few years.

To ensure compliance and sustainability the industry proposed, in Lord Black's plan of 2012, a system of commercial contracts. Members of the regulatory system would sign five year contracts binding them to the regulator and regulations.

Leveson saw the use of contracts as helpful, but did not think they would, in themselves, keep publishers within the system.

'The regulated entities have no contractual liability towards each other. The Regulator has no liability for failure to exercise its powers and functions' (p.1,601).

Nor would contracts provide long-term stability for the system, Leveson said:

'[A] five year contract would bind members into the club for that period, but there is no guarantee that the system would continue to operate beyond the first five year term' (p.1,750).

Contracts were also unlikely to provide reassurance to the public, who would have no rights under the contract. Leveson wrote that:

'[T]hird parties have no rights under the contract, so victims of press abuse and those complaining about press behaviour have no enforceable rights under this system' (p.1,601).

'It is important to note that the proposal put forward by Lord Black gives no rights of any sort to members of the public. The contracts are between the publishers and the regulators. Third parties have no rights under the contract and nothing else in the proposal gives those who are either customers of the press or victims of press behaviour any rights in relation to complaints or redress' (p.1,622).

IPSO relies, just like the Lord Black plan put forward by the industry in 2012, on five year commercial contracts. There remain no rights for the public under IPSO, nor any method for ensuring stability beyond the first five years.

Conclusion

This analysis – the first external assessment of IPSO – shows that the Independent Press Standards Organisation (IPSO) will not deliver ‘all of the key elements Lord Justice Leveson called for in his report’ as its sponsors have claimed.

A direct comparison of Leveson’s 38 applicable recommendations for a press regulator and the IPSO documents shows that IPSO fully satisfies less than one-third of them. It fails over half of them.

The elements that IPSO does not satisfy include some of the most critical in Leveson’s report, most notably with respect to effectiveness on behalf of the public:

Access to justice: IPSO does not deliver access to justice through arbitration. Members of the public will not be able to choose to have accessible, quick and inexpensive legal redress under IPSO. This will mean, especially once changes made to Conditional Fee Arrangements pass into law in 2014, that only the very wealthy will be able to pursue legal claims

Effective complaints regulation: IPSO retains the same complaints process as the PCC. As such it remains mediation, not regulation, even though complaints have to be dealt with first at the publisher concerned.

On this basis IPSO, like the Lord Black plan submitted to Leveson on behalf of the industry in 2012, will not be effective on behalf of the public.

With respect to independence from industry:

Lack of independence: IPSO is, at almost every level, dependent on the industry. The industry’s control and influence is exercised through the Regulatory Funding Company (RFC) which not only determines the funding of IPSO but has a key role in appointments, regulations, investigations, voting, the standards code, sanctions and arbitration. It is not clear why the RFC should need to have these functions, most of which go beyond the reasonable powers needed to raise a levy to allow a self-regulatory body to function. Equally, it is not clear why in any self-regulatory regime, the funding body should have more power than the regulator itself.

An editors’ code: IPSO’s code remains the responsibility of editors, overseen by senior news executives on the Regulatory Funding Company. The IPSO Board simply adopts the code. There is no commitment to involve journalists or members of the public in the definition of the code, nor a commitment to public consultation.

On this basis IPSO, like the Lord Black plan submitted to Leveson on behalf of the industry in 2012, will not be independent of the industry.

Lord Justice Leveson said of the Lord Black 2012 plan that 'it does not come close to delivering, in the words of the submission itself, 'regulation that is itself, genuinely, free and independent both of the industry it regulates and of political control' (Leveson statement on publication of the report, 29/11/12). As this assessment demonstrates, the same may be said of IPSO.

Appendix 1: IPSO vs the 38 Leveson recommendations – Detail

Key:

Leveson recommendation is satisfied in IPSO Scheme
Insufficient information to date to determine whether Leveson recommendation is satisfied
Leveson recommendation is not satisfied in IPSO Scheme

Establishing an independent self-regulatory regime

Independence: Appointments

1. An independent self regulatory body should be government 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 (three independent members, including the Chair of the Appointment Panel; two with senior experience in publishing, including one serving editor; and the Chair of the Board of the Regulator).

The inclusion of a serving editor on the Appointment Panel is compliant with Leveson Recommendation 3(d). However, the nomination of the five industry members of the Board will be 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 that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.

The Appointment panel could technically contain ‘independent members’ that are party-political peers, which would contravene Leveson’s requirement for political independence (IPSO Articles of Association 26.6).

In addition, the members of the Appointment Panel who are not involved with one or more Regulated Entities will be paid by the RFC “provided that no relationship of employee and employer shall be created between any of the members of the Appointment Panel and the [RFC]” (IPSO Articles of Association 26.8).

It is not clear how this can demonstrate independence from the industry, as ‘independent’ members of the IPSO Appointment Panel are to be paid, and their pay determined by, the industry funding body. This compromises their independence from industry.

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.

The IPSO Article 26 fulfils (c) and (d), but the fact that the RFC pays, and determines the pay of, all the members of the Appointment Panel – except for those employed by a Regulated Entity – undermines the scope of independence from the press as set out in (b).

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.

The Board will comprise 12 Directors (7 independent, including Chair; 5 Industry). Industry members must have recent experience in publishing, and must represent five sectors: national mass market newspapers; national 'broadsheet' newspapers; Scottish newspapers; regional newspapers; magazines) (IPSO Articles of Association 22).

The "views of the RFC as to the suitability of" the five industry members must be taken into account by the Appointment Panel (IPSO Articles of Association 22.5). While there are no serving editors on the Board, the vetting of industry candidates by the RFC compromises the independence of the process.

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 Article 22 provides for all of these points, but also 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 (IPSO Articles of Association 22.1.4).

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.

Under the IPSO rules, the Directors of the RFC agree the budget for regulation (RFC Articles of Association 24.4) and the subscription fees for members (Article 24.5, RFC). The budget is set annually, rather than for a “four or five year period”, and the Board of the regulator has no involvement in certifying its suitability.

The RFC has full powers to alter its own rules, including those governing “the admission of members of the company and the benefits conferred on such members; and any subscriptions, fees or payments to be made by members” (RFC Articles of Association 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.

The Editors’ Code of Practice Committee is a subcommittee of the RFC (Article 2.2, RFC). The composition and methods of the committee, and the promulgation of the code, is delegated entirely to the Committee (RFC Articles of Association 10.9).

The Editors’ Code of Practice Committee is responsible for ‘writing’ the code, rather than ‘advising’, as Leveson recommended (IPSO Articles of Association, Schedule: 1.23)

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 process 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.

Though the the existing PCC Code of Practice is the starting-point of any new Code under the IPSO scheme (IPSO Articles of Association 1.1), this does not ensure that the Code under IPSO will be compliant with Leveson’s recommendation.

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.

The members of IPSO (Publisher Group Regulated Entities - PGREs) “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” (Scheme Membership Agreement 3.3.3).

Although there is no reference to transparency on internal governance processes, publishers are separately responsible for publishing brief details of the compliance process in their annual statement to IPSO (IPSO Regulations, Annex A: 3). In the absence of more detail, it is assumed that these will satisfy the Leveson recommendation.

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.

Each PGRE “shall implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints”.

These will be used “in relation to the handling of any complaint”, and there will be compliance with the requirements specified by the Regulator from time to time “acting in a reasonable and proportionate manner, in relation to the content, implementation and operation of complaints procedures” (Scheme Membership Agreement 3.3.4)

Although there is no specific direction as to how fast complaints need to be dealt with, otherwise this appears to satisfy the Leveson criteria.

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.

“The Regulator may, but is not obliged to, consider complaints: (a) from any person who has been personally and directly affected by the alleged breach of the Editors’ Code; or (b) 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; or (c) from a third party seeking to correct a significant inaccuracy of published information. In the case of third party complaints the position of the party most closely

involved should be taken into account. The Regulator may reject without further investigation complaints which show no prima facie breach of the Editors' Code and/or are without justification (such as an attempt to argue a point of opinion or to lobby) and/or vexatious and/or disproportionate" (IPSO Regulation 8).

This adds substantial hurdles to complaints by representative groups, by adding the qualifiers "significant" and "substantial" to (b). With these hurdles the Regulator could only hear complaints from representative groups in exceptional circumstances.

It also adds the qualifier "significant" to inaccuracies in (c). This grants the Regulator the discretion to choose between different instances of inaccuracy. It is not clear what the criteria may be, and this represents a further hurdle for complainants.

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

Decisions will be made by consensus within the Complaints Committee (IPSO Regulation 19).

The IPSO Regulations state that "The Regulator's Board shall at all times remain responsible for, and shall have ultimate discretion in relation to, the decisions of the Complaints Committee" (IPSO Regulation 30). In addition, a Complaints Reviewer will be an independent member of the Regulator's Board (IPSO Regulation 35).

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.

The Complaints Committee is established by the Board (IPSO Articles of Association 27.1), and no-one other than the Chair of the Board will be drawn from the Board of the Regulator. There will be 6 Independent members and 5 industry members, plus the Chair of the Board (independent) (IPSO Articles of Association 27.2). However, the RFC will have its views taken into account when the 5 industry appointments are made. Each of the 5 will represent the 5 publishing sectors described in #4 above (IPSO Articles of Association 27.4). In addition, members of the Complaints Committee will be funded by the RFC (IPSO Articles of Association 27.6).

The IPSO Complaints Committee contains no serving editors, and the composition both reflects the Board and has an independent majority.

All members of the Complaints Committee are paid by, and their pay determined by, the RFC. This compromises their independence from the industry.

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

This is provided for in the IPSO structure (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.

The IPSO scheme empowers the Board of the Regulator to impose remedial action in the case of breaches affecting individuals, and in the cases of both groups of people and matters of fact where no single individual has been affected (IPSO Regulation 23)

The IPSO regulations make no reference whatsoever to apologies in relation to remedial action. The IPSO documents also contain no mention of “directing”, and state only a “requirement” of publication of a correction or Adjudication (IPSO Regulation 22).

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

In the IPSO documents, the Board has no power to direct the nature, extent and placement of apologies (see also #15, above).

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.

The IPSO Board has no pre-publication powers. A function of the Regulator will be to provide “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 8.1.5; IPSO Regulation 4.5)

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.

The IPSO Regulator will have the power to perform “the investigation of and adjudication on serious and systemic breaches of the Editors’ Code and other such matters as may be provided for in the Regulations” (IPSO Articles of Association 8.1.2(b)).

Investigations can take place in one or more of 5 circumstances: Serious and systemic code breaches; one or more failures to comply with the Board; in exceptional circumstances, where substantial legal issues or Code compliance issues are raised; in response to the contents of an annual statement by a Regulated Entity; where statutory authority reports indicate code compliance issues at a regulated entity (IPSO Regulation 40). The member will be obliged to comply with the Regulations (Scheme Membership Agreement 3.3.2)

The wording of the IPSO documents differs from Leveson’s recommendation regarding triggers for investigations, in that ‘serious or systemic’ is replaced by ‘serious and systemic’. This significantly raises the hurdle for investigations. It is far from clear that IPSO will have ‘sufficient powers’ to carry out investigations, since the funding of investigations is the responsibility of the RFC.

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.

The IPSO Regulator has the power to publish adjudications, require a Regulated Entity to pay fines, require a Regulated Entity to pay costs of a Standards Investigation, and terminate membership of the Regulator (IPSO Regulation 63).

Fines are issued (if a Regulated Entity’s conduct is deemed ‘sufficiently serious’) in accordance with the Financial Sanctions Guidance, which makes provisions for max £1m fines (up to 1% of UK annual turnover) (Financial Sanctions Guidance Article 2).

There is no mention of apologies in IPSO’s system of remedial action (see also #15 and #16, above).

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 RFC 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 (see #18, above), and around sanctions and remedial action, whether or not IPSO satisfies this recommendation.

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.

The IPSO regulations remove 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 inappropriate” (IPSO Regulation 4.3). There are several opportunities for a code breach to go unrecorded.

It is not clear at which point a ‘Code breach’ will be acknowledged. It is apparent that the Regulator will have the power to close complaints without the complainant’s agreement at a stage before a code breach is determined: “If a Regulated Entity offers a remedial measure to a complainant which the Regulator or, if applicable, the Complaints Committee considers to be a satisfactory resolution of the complaint, but such measure is rejected by the complainant, the Regulator or, if applicable, the Complaints Committee shall notify the complainant of the same and that, subject to fulfilment of the offer by the Regulated Entity, it considers the complaint to be closed and a summary of the outcome shall be published on the Regulator’s website” (IPSO Regulation 32). Such complaints will not be regarded as substantial complaints (IPSO Regulation 39.2.4).

This allows the regulator to pronounce that no code breach has occurred without the agreement of the complainant, whether or not a code breach has occurred.

Such that a Regulated Entity must disclose in its annual reports the “Editorial complaints which the Complaints Committee determines” (IPSO Regulations Annex A: 3.4), these are subject to Regulation 19: “If the complaint cannot be solved by mediation, the Complaints Committee shall determine whether or not there has been a breach of the Editors’ Code and shall notify the complainant and any relevant Regulated Entity of its decision”.

This is, however, undermined by Regulation 32, which records mediation as successful even in cases where the complainant has not been satisfied. In addition, Regulation 39.2 demonstrates that several circumstances remain in which actual code breaches will not be recorded.

Reporting

21. The Board should publish an Annual Report identifying:

- (a) The body’s subscribers, identifying any significant changes in subscriber 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 processes and procedures adopted by subscribers;
- (e) Information about the extent to which the arbitration service has been used

In the IPSO system, (a), (c), (d) and (e) are provided for (Regulations 39.1, 39.3, 39.4 and 39.5, respectively).

In terms of (b) – numbers of complaints – those complaints which: (1) are not pursued by the complainant; (2) are rejected on the basis of not being received in time (IPSO Regulation 11); (3) where a complainant and Regulated Entity reach

agreement (IPSO Regulation 31); or (4) where the Regulator decides that the Regulated Entity's remedial measure is sufficient, whether or not the complainant agrees (IPSO Regulation 32), the Regulator will not record the complaint, whether or not a code breach has occurred.

This will substantially reduce the recording of instances of actual code breaches, and hamper public understanding of the effectiveness of the system and the performance of the Regulated Entities.

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 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.

In the IPSO scheme, there may be an Arbitration System, but it can only be set up once the Regulator has given it due consideration and consultation, then been subject to a pilot scheme, and, finally, obtained the agreement of the RFC (which exercises a veto).

Even if the Arbitration Service passes these three criteria, it is then entirely optional for Regulated Entities to choose whether or not they will participate.

Even if a Regulated Entity chooses to participate, it can then choose, on a case by case basis, whether or not it agrees to arbitration (Scheme Membership Agreement 5.4)

Encouraging Membership

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

The IPSO Regulator will regulate such Regulated Entities as have entered into the Scheme Membership Agreement (Scheme Membership Agreement 1.1). This will consist of 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" (IPSO Articles of Association 7.2; IPSO Regulation 2).

It therefore seems to be in compliance with the Leveson recommendation, taking into account that Leveson's definition of 'relevant publishers' is relatively narrowly drawn, as is IPSO's definition of 'significant news publishers'.

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.

The IPSO Articles state that “The Company shall not be entitled to refuse participation in the Regulatory Scheme to any such entity [see definition in #23 above] in a way that is unfair, unreasonable or discriminatory” (IPSO Articles of Association 7.2; IPSO Regulation 2).

However, Article 3.2 of the Scheme Membership Agreement states that the Publisher (who has entered into the Scheme Membership Agreement) “shall be, and at all times during the terms of this Agreement remain, members of the Regulatory Funding Company”. Yet the members of the RFC (who must all contribute via subscriptions) must be allocated to one or more ‘Sectors’ at the discretion of the RFC Directors (RFC Articles of Association 24.5). However, these Sectors are in all places defined as: (a) National Newspapers; (b) Regional Newspapers; and (c) Magazines (see RFC Articles of Association 24.12 and Scheme Membership Agreement Article 1.1). There is no initial provision for non-newspaper-affiliated publishers to be allocated to any other than these three Sectors, although the RFC has the sole discretion to establish new Sectors (Scheme Membership Agreement 6.1.3).

There is no provision to make membership potentially available on different terms for different types of publisher, other than the provision that eligible Regulated Entities may solely participate for the purpose of using the Arbitration Service only (IPSO Articles of Association 7.2).

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 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, the court could take the view that, even where the defendant is successful, 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

There are no explicit provisions within the IPSO scheme that any Regulated Entity should publish compliance reports in their own pages. Instead, annual reports will be submitted directly to the Regulator (Regulation 36; Scheme Membership Agreement 3.3.7). These annual reports will be published online by the Regulator, rather than in the pages of the Regulated Entities, although the Regulator ‘may require’ that that they are accessible to the public (Regulation 37).

Concerning part (b), under Article 3.3.9 of the Scheme Membership Agreement: “Each PGRE shall ensure 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 IPSO system may satisfy (a), though it is unclear whether Article 3.3.9 of the Scheme Membership Agreement satisfies (b), since the scope of responsibility of the senior named individual is not clarified. This is written into the IPSO Regulations, which can only be changed with the agreement of the RFC.

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 the IPSO Articles of Association:

“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” (IPSO Articles of Association 8.1.7)

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.

“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” (IPSO Regulation 9)

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 #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.

“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) which 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” (Scheme Membership Agreement 10).

Aside from the receipt of fines, the RFC maintains full control over the size of the makes provision, in terms of its budget, for “any contingency or exceptional funding may reasonably required” (RFC Articles of Association 24.4).

There is no reference to ring-fencing, except in that this ‘contingency or exceptional funding’ would not be considered part of the ‘Initial Budget’ (RFC Articles of Association, Schedule:1.10), or related to the formula used to increase the Initial Budget (RFC Articles of Association 24.4)

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.

Rather than an outward-facing service of advice for the public, the IPSO scheme states that a function of the Regulator will be “at the discretion of the Regulator, notifying and advising Regulated Entities about their activities in cases where an individual has raised concerns regarding undue press intrusion. Such notification and advice shall be confidential and non-binding and shall not restrict the freedom to publish” (IPSO Regulation 4.6; IPSO Articles of Association 8.1.6).

This does not fulfil Leveson’s recommendation that there be an advice service for the public, nor is there a provision that other relevant parties will be warned in such circumstances.

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 will be decided at the discretion of the Editors' Code of Practice Committee, convened by the directors of the RFC (RFC Articles of Association 10.9). There is, therefore, no current provision or clear intent for the regulatory body to provide guidance on the interpretation of the public interest.

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.

There is no provision for this in the IPSO scheme. To the extent that the Regulator has any involvement with the public interest, it is in a confidential, non-binding advisory role (IPSO Articles of Association 8.1.5; IPSO Regulation 4.5) (see #44 below). It is unclear whether any record will be available, or - if so - the extent of its confidentiality.

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 4.5)

Regulated Entities will be obliged to provide details of how they deal with pre-publication advice in their annual reports (IPSO Regulations, Annex A: 3.1,)

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, so it is unclear whether this will be fulfilled.

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).

It is not clear how this affects existing contracts in force at the time of the Effective Date.

References: Where the various documents in the IPSO Scheme are referenced, the following shorthand is used:

- "IPSO" = The Articles of Association of Independent Press Standards Organisation C.I.C.
- "RFC" = The Articles of Association of Regulatory Funding Company
- "Scheme Membership Agreement" or "SMA" = Scheme Membership Agreement between Independent Press Standards Organisation C.I.C. and Regulatory Funding Company and [Publisher]
- "Regulations" = Regulations

Appendix 2: The powers of the Regulatory Funding Company (RFC)

The RFC, whose board – based on past precedent – will be entirely composed of senior figures from within the industry, will control the funding, the voting, the sanctions, the Code committee and the regulations, while having a veto on an arbitration scheme, and a central role in all key appointments.

Funding

- The RFC decides what each regulated entity pays:
 - ‘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’ (Scheme Membership Agreement 1.1)
 - Membership subscription paid to, and determined by, the Regulatory Funding Company (Scheme Membership Agreement 24)
- The RFC collects the levy from the participating news organisations
 - The RFC is ‘the body which raises levy on the Regulated Entities to finance the Company’ (IPSO Articles of Association, Schedule: 1.34)
- The RFC sets the overall budget of IPSO annually:
 - ‘The directors [of the RFC] shall agree a budget for the company annually having regard to the funding requirements of the Regulator, the Editors’ Code of Practice committee and the company (RFC Articles of Association 24.4)
- The RFC determines the initial budget of IPSO:
 - ‘In considering the funding requirements of the Regulator, the directors shall take into account the Initial Budget’ (RFC Articles of Association 24.4)
 - ‘Initial budget: 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’ (RFC Articles of Association, Schedule: 1.10)
- The RFC decides on increases in the budget, and, in addition, any special funding required:
 - In considering the funding requirements of the Regulator, the directors shall take into account... a formula for increases, and any contingency or exceptional funding which may reasonably be required (RFC Articles of Association 24.4)

Appointments

- The appointment of the five industry members of the regulatory board effectively 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' (IPSO 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' (IPSO Articles of Association 24.2)
- The industry membership of the Complaints Committee effectively needs to be agreed with the RFC:
 - 'In appointing the members of the Complaints Committee referred to in Regulation 33.3, the Regulator's Board shall take account of the views of the Regulatory Funding Company as to the suitability of the candidates' (IPSO Regulation 34, and IPSO Articles of Association 27.4)
- The RFC determines the pay of members of the Complaints Committee
 - 'The members of the Complaints Committee are entitled to such remuneration as may be approved by the Regulatory Funding Company' (IPSO Articles of Association 27.6)
- The RFC determines the pay of the 'independent' members of the Appointment Panel:
 - 'The members of the Appointment Panel (other than any that are Connected with one or more Regulated Entities) are entitled to such remuneration as may be approved by the Regulatory Funding Company' (IPSO Articles of Association 26.8)
- Nor is membership of the RFC (or a regulated entity) considered to compromise an individuals 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' (IPSO Articles of Association 19.5)

The Code

- The IPSO Code Committee will, like the previous Code Committee, be a subcommittee of the RFC:
 - 'The objects of the [Regulatory Funding] company are':... 'To convene an Editors' Code of Practice committee, the function of which shall be to formulate and keep up to date a code of practice' (RFC Articles of Association 2.2).

- 'The directors [of the RFC] shall convene an Editors' Code of Practice committee to formulate and keep up to date a code of practice' (RFC Articles of Association 10.9)

The Regulations

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

Investigations

- The RFC determines the amount paid into the enforcement fund which pays for investigations:
 - '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) which shall be payable on demand to the Regulator to be used as, or as part of, the Enforcement Fund' (Scheme Membership Agreement 10)

Sanctions

- 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 Company in consultation with the Regulator regarding the imposition of fines or awards of costs by the Regulator following a Standards Investigation' (Scheme membership agreement, Interpretation 1.1)

Arbitration

- The RFC has a veto over the very existence of any arbitration scheme:
 - 'The Regulator may, provided it has first:... obtained the agreement of the Regulatory Funding Company... establish and maintain a service (the Arbitration Service)' (Scheme Membership Agreement 5.4.3)

Voting

The Regulatory Funding Company has a veto over any variations to the Regulations of the self-regulatory system. According to the Scheme Membership Agreement, the Regulations can only be amended if three criteria have been fulfilled (Scheme Membership Agreement 7.1):

- The agreement of the Regulatory Funding Company;
- The agreement of the Regulator;
- A Majority Vote

The definition of a Majority Vote illustrates the power the RFC and, by extension, large publishers have over the IPSO system.

Rather than one publication one vote, the number of votes of each publisher is determined by how much it pays towards the RFC, which is determined by the RFC. The secretary of the RFC then has discretion over the allocation of votes, and the criteria by which this allocation is made

A Majority Vote occurs where: not less than 66% of the overall total eligible votes cast by Regulated Entities are in favour; and 66% of votes within two or more of the three 'Sectors' are also in favour (Scheme Membership Agreement 6.2). A majority vote can be vetoed by the RFC.

Sectors are designated by the RFC. There will initially be three, representing National newspapers, Regional Newspapers, and Magazines (RFC Articles of Association 24.12). The RFC also decides how to allocate members to the appropriate Sector (Scheme Membership Agreement 6.1.1)

The number of votes each member is entitled to is directly proportionate to the size of subscription fee they are obliged to supply to the RFC, which is determined by the RFC (see below). This formula will also apply in respect of votes within the Sector to which the publication has been allocated (Scheme Membership Agreement 6.1.4)

The actual proportion of the subscription fee that each member is obliged to pay is at the determination of the RFC Secretary (RFC Articles of Association 24.7-24.9). The criteria used to make this decision are not made public in the IPSO documents.

Assuming that the metric used to calculate the proportion of fees is calculated on the basis of some combination of revenue and circulation, it is clear that smaller publishers, such as Guardian News and Media, Financial Times Ltd, Independent Print Ltd, or any smaller regional newspaper publishers will have no appreciable influence, even in combination, at either the aggregate level, or in any of the Sectors in which they will be allocated.

This enshrines the principle that any changes to the Regulations will, on top of the RFC veto, be determined by the largest publishers.