WRITTEN EVIDENCE FROM THE PRESS RECOGNITION PANEL

Submission to the Media Bill Committee

Introduction

1. The Press Recognition Panel (PRP) was established to provide independent oversight of the system of press self-regulation in the UK known as the 'Recognition System'. The Recognition System was designed so that news publishers could establish self-regulatory bodies who could seek recognition from the PRP to be 'Approved Regulators'. The PRP recognises such bodies as Approved Regulators if they can meet the minimum standards by demonstrating that it is able to act independently from the industry and the Government, is adequately funded to its job, has effective systems to manage complaints and provides a timely and low-cost arbitration scheme for resolving disputes.
2. Section 40 of the Crime and Courts Act ('Section 40') was enacted in 2013, with cross-party support, to underpin the Recognition System by incentivising news publishers to join, or form, an Approved Regulator. Clause 50 'Award of Costs' of the Media Bill ('Clause 50') would repeal Section 40 ('Section 40') of the Crime and Courts Act 2013. This would fundamentally undermine the Recognition System and mean that news publishers are able to continue to act almost entirely unaccountably unless an individual or organisation has the means to challenge them through the courts.
3. Repealing Section 40 would abandon the majority of ordinary people to increased risk from intrusive and harmful press practices. Without an alternative in place, it would also significantly undermine independent press self-regulation and Clause 50 should be removed from the Media Bill.

Background to the PRP

4. Established following the recommendations of the Leveson Inquiry into the culture, practices and ethics of the British press, the PRP guards the guardians of the press which followed extensive abuse and alleged criminality by large sections of the press. We apply minimum (but high) standards to protect the public, while helping to ensure that the press can operate freely, openly and without state interference within the rule of law.
5. Our role is to ensure that press self-regulators do their job fairly and independently, that they protect the public from intrusion, unfair treatment or abuse and that they report responsibly. We do this by recognising organisations as 'Approved Regulators of the Press'. This follows an assessment against a set of minimum standards and then monitoring their ongoing compliance against those standards. News publishers can then join an Approved Regulator, agreeing to abide by their standards code, requirements for complaints handling and resolution as well as participating in their arbitration scheme.
6. However, the system of independent self-regulation envisaged by Parliament following the Leveson recommendations has never been fully implemented. This leaves the public at risk and, in many cases, unable to seek redress outside of expensive and complex legal proceedings.

7. The Recognition System is a voluntary system of self-regulation designed to balance public protection with news publishers' freedom of speech. While many news publishers have joined the sole Approved Regulator currently recognised under the system (Impress), many more have chosen to remain outside of this independent self-regulatory scheme. This means that complaints systems are arbitrary and that, in many cases, redress is out of reach for all but the wealthiest who have the means to pursue a claim through the courts.

8. Because we are established under Royal Charter, which cannot be amended without the unanimous decision of the PRP Board and a two-thirds majority vote in Parliament and the Scottish Parliament, we can act independently without undue influence from Government, the industry itself or any other party. This also protects the freedom of the press as the standards expressed in the Royal Charter are safeguarded from further extension to the regulatory framework removing the risk of regulatory over-reach.

How does Section 40 work?

9. Section 40 provides news publishers who are members of an Approved Regulator with protection from costs in the event that a relevant claim (for example libel or harassment) is made against them which could otherwise have been resolved by the self-regulatory body's arbitration scheme.

10. This is a powerful protection against those who might seek to stifle investigative journalism by misusing the courts to bring a Strategic Litigation Against Public Participation ('SLAPP') attempting to bury the news publisher in costs.

11. Equally, Section 40 provides affordable access to justice for members of the public who have experienced harmful or intrusive press practices by removing the obstacle of costs, win or lose, from bringing a claim against a news publisher who is otherwise unaccountable via an Approved Regulator.

12. In this way, Section 40 underpins the Recognition System by incentivising news publishers to participate in independent press self-regulation with additional protections for freedom of speech and assuring that there is a mechanism for members of the public to seek redress should a news publisher not choose to do so.

What about freedom of speech?

13. Concerns about freedom of speech and the potential 'chilling effect' that Section 40 might have on public interest journalism are misleading and factually incorrect.

14. News publishers would only be exposed to costs if they chose not to join an Approved Regulator. There is nothing in the Royal Charter or the requirements placed on Approved Regulators which cut across freedom of speech. However, being a member of an Approved Regulator which has been recognised as an independent press self-regulatory bodies does mean that those member news publishers are held to account.

15. Further, the repeal of Section 40 would remove the intended protection for freedom of speech that was promised to news publishers who are committed to high standards of press reporting and taken the step of joining an Approved Regulator.

16. Freedom of speech, enshrined in Article 10 of the Human Rights Act as freedom of expression, is not an absolute right must not be exercised in a way which infringes on the human rights of others. Neither should freedom of speech be used as an excuse for misinformation or enabler of disinformation. Being accountable does not compromise freedom of speech but it does uphold standards of reporting and public protection.

17. Ultimately, the Recognition System exists to protect the public — independently from political interference or industry interests — by holding the press accountable *to* the public interest. Repealing Section 40 is not simply a case of removing a single clause of legislation, it is an attack on the wider Recognition System and an attack on the public interest in a free press which is honest, competent and reliable.

What about public protection?

18. Abandoning Section 40 means abandoning public protection. As discussed above, without Section 40, seeking redress from a news publisher who is not a member of an Approved Regulator in the event of intrusive and harmful press practices will continue to be out of reach of all but the wealthiest in our society.

19. Currently, there is only one Approved Regulator, Impress, which over 100 news publishers have joined. Impress underwent its Second Cyclical Review by the PRP in 2022 continuing to demonstrate that it meets the standards for an independent press self-regulator. Impress has demonstrated that independent self-regulation as envisaged under the Recognition System does work and work well, even for small and local titles.

20. However, most news publishers do not belong to Impress. A number have joined an industry body known as the Independent Press Standards Organisation (IPSO). IPSO cannot demonstrate that it is independent of the industry given the terms of its funding and neither can it be said to be responsible for the standards it is required to enforce which are overseen by a separate Editors' Code Committee.

21. Other news publishers belong neither to Impress nor IPSO operating their own in-house standards and complaints systems or operating no standards or complaints systems at all.

22. In our Seventh Annual Report to Parliament on the Recognition System in February 2023 we highlighted how variation in the press self-regulatory landscape creates significant challenge for public protection. Further detail in the report can be found at:

    https://pressrecognitionpanel.org.uk/wp-content/uploads/2023/02/DIGITAL-PRP-Annual-Recognition-Report-Feb-2023-FINAL.pdf

23. The report's main conclusion is that, without Section 40, it is unlikely that enough news publishers will join an Approved Regulator, meaning the system for complaints will remain arbitrary and the public will continue to be at risk of harm.

24. However, the risks to public protection go wider than this. News publishers enjoy a range of privileges in law to protect their freedom of speech. Existing

legal definitions of what constitutes a 'news publisher' are very broad but to summarise include that the organisation:

- publishes news related material as part of its business on a regular basis
- publishes news related material from more than one contributer operating under editorial control
- publishes subject to a standards code
- has policies and procedures for managing complaints
- has a registered office in the United Kingdom
- is not a sanctioned or proscribed entity

25. These requirements, without further clarification particularly of 'publishes subject to a standards code' and 'has policies and procedures for managing complaints' allow for a wide interpretation. In the context of the Online Safety Act 2023 for example, this creates a regulatory gap which may include or exclude different news publishers from protective measures arbitrarily.

26. This could result in genuine news publishers being denied the protections for freedom of speech that they should be entitled too on the one hand, or, on the other, malicious actors setting themselves up as 'news publishers' to take advantage of those protections.

What will be the impact of repealing Section 40?

27. The Impact Assessment accompanying the Media Bill[1] makes assertions that there will be no impact from the repeal of Section 40 because it has never been commenced. Particularly, the Impact Assessment states:

    'We do not foresee any risks or potential unintended consequences resulting from the removal of s.40.'

28. This fails to consider the wider impact on Recognition System that the repeal of Section 40 would entail. Without Section 40, or an alternative mechanism, there is little prospect that news publishers will engage with the Recognition System. Repealing Section 40 would be a retrograde step for public protection, re-creating the benign regulatory environment that enabled the harmful press practices to emerge which ultimately resulted in the Leveson Inquiry.

29. We have repeatedly made representations to the Government and to Parliament regarding the importance of Section 40 to incentivising participation in the Recognition System and that repealing it, without an alternative mechanism is in place, would seriously undermine this system of independent press self-regulation. From this statement we can only conclude that it is the Government's intention for news publishers not to participate in the Recognition System enabling regulatory capture and for the press to regulate themselves in their own interests, not the public interest.

[1] Assessment of Impacts: Repeal of Section 40 of the Crime and Courts Act 2013 (publishing.service.gov.uk)

30. The Impact Assessment only considers two options which fail to address the underlying policy intention that Section 40 was originally designed to achieve, that of incentivising participation in the Recognition System. These options are:

- Do nothing
- Repeal Section 40

31. Even within the limited confines of Section 40 itself, there are three further options:

- commencing the provision as is;
- maintaining the protections for freedom of speech and repealing the public protection provision; or
- vice versa.

32. Even the ‘do nothing’ option in the Impact Assessment does not consider the potential improving effect of Section 40, even if no commenced, in signalling the expectations of what press self-regulation should be as envisaged by the standards in the Royal Charter. It seems there is little interest in exploring the wider options that may be available to achieve the original underlying policy intent.

33. The Impact Assessment presentation of the costs on news publishers is also misleading. It states:

    ‘If it were to be commenced, there could be legal costs to news publishers,’

34. This is to mischaracterise Section 40. News publishers are already exposed to legal costs. Section 40 would protect news publishers from costs if they participated in independent press self-regulation. News publishers who are committed to high standards of reporting in the public interest and joined an Approved Regulator would be protected from these costs. This would have particularly advantaged smaller publications who lack the means of larger titles to defend any malicious claims in the courts. This potentially acts to protect the vested interests of larger ‘traditional’ print media limiting the opportunity for competition from smaller titles.

35. The Impact Assessment also asserts:

    ‘there have been improvements to the independent system of self-regulation since the publication of the Leveson Inquiry. Many publishers are now members of IPSO, which has taken a number of steps in line with the recommendations made by Leveson, while publishers' own governance frameworks have undergone reform. Members of IPSO and IMPRESS now have access to low cost arbitration.’

36. While this statement resonates as regards Impress, IPSO cannot demonstrate independence from the industry. Equally, while Impress’ arbitration scheme is mandatory for all its members, for IPSO this is not the case. However, even if all IPSO’s members did participate in their arbitration scheme, many more titles belong to neither IPSO nor Impress. Without Section 40, routes to redress for ordinary members of the public, either through arbitration or through the courts, will remain largely unavailable.

37. It is particularly concerning that the Impact Assessment accompanying the Media Bill asserts that under the section entitled ‘Equalities Impact Test’:

‘There will be no equality impacts resulting from this regulatory change’

38. This statement ignores the Public Sector Equality Duty which requires public authorities to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

39. Just considering one aspect of reporting relating to the criminal justice system in which we know that black people are over-represented at every stage[2] and the evidence we received ourselves regarding the potential impacts press reporting arising from criminal proceedings for our report last year[3], it seems extraordinary to conclude that there would be ‘no equality impacts’ arising from denying affordable access to redress through the courts.

What are the alternatives to Section 40?

40. The PRP’s position is that none of the alternatives to Section 40 which have been suggested both incentivise participation by news publishers in the Recognition System by balancing protections for freedom of speech while also ensuring that there is affordable access to justice for members of the public who have experienced press harm at the hands of news publishers who are otherwise unaccountable through an Approved Regulator. Consequently, we believe that Section 40 should be commenced as is.

41. However, setting aside the benefits to freedom of speech and to public protection that Section 40 provides, it may be possible to incentivise participation in the Recognition System using alternative mechanisms.

42. Membership of an Approved Regulator provides a binary test as to whether a news publisher is, in fact, a news publisher operating under a standards code that takes account of freedom of speech and the interests of the public.

43. The National Security Act 2023, the Data Protection Act 2018, the Economic Crime and Corporate Transparency Act 2023 and the Online Safety Act 2023 include definitions of a ‘recognised news publisher’ or otherwise engage issues relating to freedom of speech.

44. By unifying the definition of a ‘recognised news publisher’ as ‘a member of an Approved Regulator’, this would provide clear and unambiguous protections for

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[2] Black people, racism and human rights - Joint Committee on Human Rights - House of Commons (parliament.uk)

3 https://pressrecognitionpanel.org.uk/wp-content/uploads/2023/02/DIGITAL-PRP-Annual-Recognition-Report-Feb-2023-FINAL.pdf

news publishers exercising their freedom of speech in a way which is accountable to the public interest.

Conclusion

45. The model of press self-regulation, over statutory regulation, was chosen deliberately to avoid undermining the principle of freedom of speech while protecting the public. However, a voluntary self-regulatory system can only function if the relevant organisations participate. Where there is no tangible advantage to participating, organisations are unlikely to do so, and the regulatory benefits to public protection lost.

46. Without enough news publishers joining an Approved Regulator, the balance between freedom of speech and public protection is skewed away from the public and towards news publishers, who write their own code of conduct and complaints processes. This leaves only the wealthy able to seek redress through the courts. Section 40 was designed to create a more equitable balance. But without it, this imbalance will continue with arbitrary and inconsistent complaints handling processes across the industry, resulting in highly variable responses when concerns are raised.

47. This issue did not receive detailed scrutiny during Pre-Legislative Scrutiny of the Draft Media Bill. By fast-tracking this legislation in the final full-session of Parliament before a general election, the Government is sending a clear signal to certain sections of the press that it is prepared to trade political influence by abandoning public protection and denying the intended protections in law for the freedom of speech of those news publishers who have committed to high standards of press reporting by joining the Approved Regulator.

48. With weaknesses in the drafting of the definitional clause in the Online Safety Act exempting content generated by recognised news publishers from the safety duties imposed on online platforms by Ofcom, the opportunity for press harm is greater than ever. Without Section 40, there is little prospect that the Recognition System can work as intended to hold news publishers to account in an environment of increasing risk.

49. The consequence will be regulatory capture with news publishers regulating themselves in their own interests. Having spent nearly 18 months and invested £5.4 million[4] in the Leveson Inquiry to produce recommendations for an effective system of press regulation, to renege on this at the stroke of a pen without providing a complete analysis appears to us an example of wilful blindness.

50. We would be very happy to explore these issues further in oral evidence should the Committee find that helpful.

4 December 2023

[4] https://assets.publishing.service.gov.uk/media/5a97cce6ed915d57d1335b3b/GOVERNMENT_RESPONSE_TO_THE_CONSULTATION_ON_THE_LEVESON_INQUIRY_AND_ITS_IMPLEMENTATION_.pdf