

HACKED*OFF*

Campaign for a free + accountable press

The Media Bill Committee

Submission of the Hacked Off Campaign

December 2023

1. This submission comments exclusively on clause 50 of the Bill, which proposes to repeal section 40 of the Crime and Courts Act (CCA) 2013.

Background

2. Section 40 of the CCA is a measure which would enhance press freedom and protect the rights of the public. It provides benefits to newspapers and news websites which join an independent regulator.
3. Section 40 was enacted on a cross-party basis in 2013 by an overwhelming majority in Parliament. The section was subject to ministerial commencement and was due to be commenced after the establishment of an independent media regulator. Such a regulator has now been established. However, there was a change in policy by the incoming 2015 Government on section 40, which opted not to commence it. It has consequently never been brought into effect.
4. Specifically, the provision applies to media claims brought against non-broadcast news publications and would operate alongside the arbitration arm of an independent media regulator. Section 40 would discourage claimants from pursuing suitable claims outside of the arbitration arm, by directing courts to ordinarily award the claimant's costs against them in any claim (regardless of the outcome of the case). It would also permit claimant costs to be directed against defendant publications, where those publications have refused to make cheap arbitration available through an independent regulator, and the Judge considers it appropriate in the circumstances of the case.
5. As such, section 40 is a complete solution to the threat of expensive litigation faced by news publishers, unlawful conduct in the media faced by the public, and the broader issue of the fact that non-broadcast media is, anomalously, unregulated in the UK, which has adverse impacts on working journalists, the wider news industry, and the rights and interests of the general public.
6. Section 40 is opposed by national newspapers because they would need to join an independent regulator to access the benefits of the provision. In defiance of Parliament, they have instead set up their own complaints handler, the Independent Press Standards Organisation (IPSO) which they own and control.

The full effects of Section 40

7. In the UK, broadcast media are regulated by Ofcom and citizens' use of social media is now regulated, through the Online Safety Act, by tech platforms overseen by Ofcom. For the largest newspapers and news websites, however, there is no independent accountability.

8. As a result, such newspapers & news websites can, with impunity
 - Publish factual inaccuracies about matters of public debate, public policy, politicians, private individuals and anything else;
 - Intrude into the grief of ordinary people;
 - Intrude into peoples' private lives;
 - Publish content which is discriminatory towards marginalised groups;
 - Publish content that falls short of recommended standards on the reporting of domestic violence, suicide, and other areas.
9. In 2013, in response to multiple instances of press abuse, Parliament legislated for a system of independent self-regulation to apply to all of the largest newspapers and news websites. Regulators which comply with this system must offer cheap arbitration to process legal claims, which would both deter meritless litigation by wealthy individuals ("SLAPPs") and simultaneously protect the public's access to justice against wealthy publishers.
10. Over 200 newspapers are signed up to an independent self-regulator, which complies with the system, called Impress. These are mainly local and investigative newspapers and news websites. They were promised by Parliament that, in return for joining an independent self-regulator, they would benefit from the court cost advantages of section 40.
11. But national news publications, and local publications owned nationally or internationally, which operate collectively through the corporate press lobbying body the "NMA", have refused to join the independent system Parliament legislated for.
12. Their industry association and complaints-handler IPSO upholds in full fewer than 1% of the complaints it receives. It has never carried out a standards investigation into a newspaper. It has never fined a newspaper. It is an outdated system based on the discredited PCC, it is manifestly unfit for purpose, and it has been criticised by free speech campaigners for the fact that it has installed a politician as its Chairman. It does not protect the public, and it does not protect ethical, investigative journalism.
13. Section 40 would reward newspapers which, instead of IPSO, join an independent regulator like Impress or establish an alternative, by protecting them from having to pay claimants' costs in any court cases brought against them – even if the newspaper loses the case. This would be a powerful deterrent to any claimant contemplating a meritless claim (a "SLAPP") and a vital protection for those publishers without the resources to defend themselves in court. At the same time, ordinary people would have access to justice against abuses by wealthy publishers, because they could progress claims through the mandatory arbitration system of the independent regulator.
14. Under this system, those publishers that still *refused* to join an independent regulator would leave ordinary people without affordable access to justice, because they would not be offering independent, low-cost arbitration to victims of press illegality. Under these circumstances, Section 40 provides that the newspaper should pay the claimant's legal costs because it did

not provide an opportunity for resolution through low-cost arbitration. This only applies in cases where the Judge feels it is fair in the circumstances and the claim was not spurious.

15. Thus, just as publishers would be protected from the threat of huge court costs by wealthy and powerful individuals, section 40 would ensure that ordinary members of the public were protected from the threat of huge court costs by wealthy and powerful publishers.

16. If section 40 were enacted, therefore:

- Newspapers and the public would be incentivised to use cheap arbitration to resolve legal disputes. This would mean an end to SLAPPs, greater protection for publishers, and better access to justice for ordinary people affected by press illegality.
- Publishers would be incentivised to join an independent regulator, which would protect the public from intrusions, inaccuracies and other abuses in the press. Newspapers would be protected from political interference, which is banned under the independent regulatory system.

17. The British public suffer the consequences of an unregulated press every day, in the inaccuracies encountered in national newspapers and websites, while dozens of individuals face intrusions and other more personal abuses every week. The press, too, suffers. The UK has by far the least trusted press in Europe and, under IPSO, the vast majority of national newspaper journalists are now ultimately accountable to a politician. Section 40 would help address low standards and low public confidence in the industry.

18. We recommend that the Bill Committee either removes clause 50 from the Bill, or puts forward an alternative mechanism which:

- Protects regulated newspapers from meritless litigation,
- Protects the public from illegal media conduct, and,
- Incentivises news publications to join an independent regulator to protect the public from all forms of media wrongdoing and to increase public trust in the industry.

Nathan Sparkes, on behalf of Hacked Off.