# NMA Submission to Consultation on the Leveson Inquiry and Its Implementation: Section 40 and Leveson Part 2

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NMA SUBMISSION TO CONSULTATION ON THE LEVESON INQUIRY AND ITS IMPLEMENTATION: SECTION 40 AND LEVESON PART 2

I) Executive Summary

1. The News Media Association is the voice of Britain’s national, regional and local news media. Our members publish 1,100 titles read by 48 million adults a month, in print and online, including nearly 300 independent local newspapers.

2. The NMA calls for Section 40 of the Crime and Courts Act to be repealed in its entirety immediately. This piece of legislation seeks to enforce state licensing of newspapers and constitutes an unfair and undemocratic attack on free speech which would have a chilling effect on newspapers’ ability to report on matters of public interest. It would cost the national and local press an estimated £100 million a year for telling the truth.

3. This draconian law was introduced in the wake of the Leveson Inquiry as a stick to force British newspapers and magazines into joining a state-recognised regulator. International media and press freedom organisations struggle to understand how it ever found its way onto the statute books in a country traditionally held up as a bastion of free speech.

4. The Leveson Report recommended a system of “voluntary independent self-regulation,” envisaging “a body, established and organised by the industry” which “must be funded by its members”. Lord Justice Leveson said it should include all the major players in the industry – national newspapers and as many regional and local newspaper and magazine publishers as possible - “although I am very anxious that it remain voluntary”.

5. It appears that Section 40 was never certified as compliant with the European Convention on Human Rights before its parliamentary passage. The provision was rushed through Parliament without any proper scrutiny as to its meaning or implications.

6. The NMA’s legal advice is clear: Section 40 unfairly discriminates between different classes of publisher. It is in breach of the European Convention on Human Rights, contravening Article 10 (freedom of expression), Article 14 (arbitrary discrimination) and Article 6 (right to a fair trial). Our leading counsel Lord Pannick QC advises that “publishers have a strong claim that Section 40 is a breach of the ECHR.” (See confidential legal opinions Appendix 2)

7. The triggering of Section 40 by the Secretary of State could be successfully challenged in the Courts by judicial review, and consequently actions flowing from that could be challenged in the courts and in the European Court of Human Rights, in advance of an actual case in which the cost rules were applied, which itself could be challenged.

8. Section 40 is aimed at ‘incentivising’ publishers to join a state-recognised regulator. But even full commencement of Section 40, imposing crippling cost sanctions on those who do not comply, will not work. Not a single national, regional or local newspaper or magazine of any significance is willing, as a matter of principle, to sign up to any regulator recognised under the Royal Charter apparatus. No publisher will be cowed into submitting to statutory press regulation, however arms-length it may appear to be.
9. The only state-recognised regulator, IMPRESS, is in any case not a genuine regulator. It is far from impartial and independent, being funded and run by press reform campaigners and supporters of the Hacked Off lobby group who appear to have set it up purely as a device to trigger Section 40 costs sanctions against the press.

10. The IMPRESS chief executive, a number of its Board members, the chair of its code committee and even members of the appointment panel which selected the IMPRESS Board, have made clear their profound dislike of some of Britain’s most popular newspapers, with repeated public attacks – some of them personally abusive – supporting advertising boycotts on these titles and even calling for them to be banned from sale or closed down. It would be impossible for publishers to ever get a fair hearing from such an organisation.

11. The Leveson Inquiry into the culture, practices and ethics of the press was initiated nearly six years ago, in 2011, following the phone hacking scandal at the News of the World and in the aftermath of the MPs’ expenses scandal. There is simply no public value to be gained from reopening the inquiry and it should be terminated now.

12. The terms of reference of Part 2 of the Inquiry have either been overtaken by events or were already covered during the exhaustive Part 1 and the criminal investigations which together cost the taxpayer some £50 million. It would be time-consuming and hugely expensive to reopen the Inquiry and there is no public appetite for this. Just one per cent of people believe press regulation should be among the government’s priorities at the current time. (YouGov poll results: Appendix 8)

13. Lord Justice Leveson himself has questioned the value to be gained from embarking on Part 2 of the Inquiry which he pointed out would involve “yet more enormous cost” to the public purse and participants and the need to “trawl over material then more years out of date.” He thought it was likely to be even more time-consuming than Part 1 and has reportedly made it clear he has no wish to undertake another inquiry.

14. The police service has undergone significant reform since the Leveson Inquiry, particularly in its relationship with the media. The press has undergone significant changes. The News of the World was closed down. A large number of journalists were arrested. A small number of journalists were convicted and went to prison. There have been numerous police and media reviews and changes to the law. The Crown Prosecution Service has confirmed there is no further action to be taken.

15. The media regulatory landscape has changed. A tough new press regulator, the Independent Press Standards Organisation (IPSO) chaired by the former Court of Appeal judge Sir Alan Moses, replaced the Press Complaints Commission (PCC) in 2014. The vast majority of Britain’s press is regulated by IPSO, with 1,500 print and 1,100 online titles having voluntarily signed up to binding five-year contracts. IPSO’s members include Northern and Shell which had opted out of the former PCC and was seen as the main reason for devising the Section 40 ‘incentive’.

16. The only voices demanding that the Leveson Inquiry be reopened are the small, unrepresentative group of anti-press campaigners behind IMPRESS who have an agenda against some of the UK’s most popular newspapers and want to see them silenced or brought to heel.
II)  **Section 40 Must be Repealed in its Entirety Now**

17. Implementation of Section 40 threatens the UK press and press freedom itself. Its implementation would fuel legal claims, however groundless, against publishers because any claimant would know that they were at no risk of costs if their action failed. Partial implementation would be discriminatory and have a chilling effect on journalism. Section 40 must be repealed in its entirety.

18. The costs provisions would require all publishers who have not submitted to a state-recognised regulator to finance all legal action wrongfully brought against them, at crippling expense. Such a regime would deter editorial investigation and reporting, since the costs of defending and winning cases could bankrupt and close down titles.

19. The NMA and our members remain implacably opposed to the system of state-approved press regulation under the Royal Charter for Press Self-Regulation, the Enterprise and Regulatory Reform Act 2013 and the Crime and Courts Act 2013.

20. We believe that Sections 34 to 42 and Schedule 15 of the Crime and Courts Act, which together set out the new system for exemplary damages and costs, as well as defining those who meet the definition of a ‘relevant publisher’ to whom the new system of exemplary damages will apply, should all be repealed. However, as this part of the consultation is focused specifically on Section 40 and Leveson 2, we will confine our responses to that.

21. The industry has rejected this system because it is fundamentally opposed to state interference in press regulation. The industry did not, however, reject its responsibilities to its readers. It disbanded the PCC. It radically revised the system, introducing legally-based and enforceable self-regulation, with close reference to the recommendations of the Leveson Report. It established a tough independent regulator IPSO to enforce press standards against the Editors’ Code of Practice, with the ability to impose £1 million fines for serious and systemic misconduct. This imposes controls over editorial conduct and publication over and above the general law.

22. The overwhelming majority of NMA members have entered into binding, long-term contracts with IPSO, which started work in September 2014 and so is now in its third year of operation. It is the UK press regulator, recognised by the major players in the news media industry. It regulates over 2,600 print and online titles and covers national, regional and local, newspaper, magazine and digital publishers. It operates a robust complaints system. It is currently trialling a voluntary arbitration system.

23. The legality of the state-approved Royal Charter system of press regulation as a whole has been questioned by leading lawyers. We attach confidential copies of the Opinions of Lord Pannick QC, Desmond Browne QC, Antony White QC and the supplementary Opinion of Antony White QC and Alexandra Marzec, previously made available to the Government on a confidential basis. (Appendix 2)

24. From the start, this state-imposed system has been condemned by freedom of expression groups and press freedom groups at home and abroad. These include Index on Censorship, English Pen, the Committee to Protect Journalists, Commonwealth Press Union Media Trust, European news media and magazine associations, Foreign Press Association, Association of

III) PRP Decision to Recognise IMPRESS Under Legal Challenge

25. The government took until November 2014 to set up the Press Recognition Panel (PRP) under the Royal Charter which has only received one applicant for recognition, in January 2016. After extending the application process to allow this applicant, IMPRESS, more time to revise and resubmit its application, the PRP finally gave its approval in October 2016.

26. The NMA is challenging the legality of the PRP’s decision to recognise IMPRESS, following advice from our solicitors and leading counsel Lord Pannick QC and Iain Steele. The NMA has served a letter on the PRP in accordance with the pre-action protocol for judicial review in respect of that decision.

27. The letter (Appendix 6) explains that IMPRESS cannot be considered a ‘regulator’ within the meaning of the Royal Charter and that its application failed to meet certain specific recognition criteria including that:

- It is not an ‘independent self-regulatory body’ – not a single significant publisher has joined Impress.
- It is not funded by the news industry but by a well-known privacy campaigner with strong views on the press.
- Its source of funding – the Max Mosley family trust – compromises its independence.
- It has no standards code, having ‘adopted’ without permission, the Editors’ Code used by IPSO members, in whose formulation it played no part.

28. The Leveson Report was clear that effectiveness meant that the majority of the press should be behind the regulatory body and specifically recommended that “a new system of regulation should not be considered sufficiently effective if it did not cover all significant news publishers.” In recognising IMPRESS, the PRP has ridden rough shod over Leveson’s intentions.

29. Publishers object in principle to state interference in press regulation. Publishers in membership of IPSO therefore have no intention of breaching their contracts and abandoning IPSO in order to join the only state-recognised regulator IMPRESS.

30. The 2013 Act prohibits the Section 40 costs sanctions from coming into force before any regulator is approved. It is unacceptable on freedom of expression grounds that the PRP’s legally questionable decision to approve an organisation such as IMPRESS should have such profound consequences for press freedom and discriminate in this way against every significant publisher of national, regional and local newspapers, all of whom are outside its membership because they have exercised their freedom to belong to an effective industry regulator not subject to state approval.

31. This situation appears to be totally at odds with the objective of a regulator established by the industry, funded by the industry, attracting membership from across the industry on a voluntary basis, and responsible for its own Code of Practice which was envisaged by the Leveson Report as a successor to the PCC.
32. Currently, IMPRESS has approved for membership some 18 publishers of around 30 mainly hyperlocal titles and multi-author blogs, some established outside the territorial remit of the Royal Charter (Northern Ireland) or the Crime and Courts Act 2013 (Scotland, Northern Ireland). Most appear to be exempted from the Court and Crime Act’s provisions altogether, under the Schedule 15 exclusions applicable to micro businesses. IMPRESS’ membership is entirely unrepresentative of the newspaper and magazine industry and it clearly does not have the support of the majority of the newspaper industry or any of the major players, as required by Leveson.

33. From the first, IMPRESS has declared that its focus is not upon the 90 per cent of the press in membership of IPSO but on the 10 per cent of small publishers which are not in membership of IPSO. It seeks members from the hyperlocal sector, not from the significant, and relevant, national, regional and local newspaper and magazine sector of which it is highly critical. We attach the correspondence arising from a letter from IMPRESS to the NMA chairman, following Select Committee evidence sessions. (Appendix 9)

34. IMPRESS is run and overseen by a group of individuals, many of whom publicly support threats to inflict serious commercial damage on major national newspapers which they dislike for political reasons, calling for advertisers to boycott them and making clear they would like to see them banned or closed down. They have also been critical of any regional and local newspapers run by larger groups. It is difficult to envisage, by any objective measure, how any newspaper of which they disapproved would ever receive a fair complaint hearing under IMPRESS. (Appendix 10)

35. In making their decision to recognise IMPRESS, the PRP made no attempt to ascertain whether the individuals recruited by its founder and chief executive to sit on the appointment panel to select the IMPRESS Board were fit and proper people who could be expected to act impartially. The PRP made no attempt to ascertain whether the individuals who run IMPRESS – its chief executive and Board directors - were fit and proper people who could be expected to act fairly and impartially as an independent press regulator. Indeed, the PRP appeared to go to great lengths to assist IMPRESS to revise, amend and repeatedly resubmit their application until it was in a state which could justify approval. During the final decision-making meeting, the Royal Charter and Leveson criteria were interpreted by the PRP either very narrowly or extraordinarily broadly, to allow them to tick the relevant box. All statements from IMPRESS were taken at face value with barely any interrogation.

36. Critically, IMPRESS fails to meet the Royal Charter requirement that funding for a regulator should be settled in agreement between the industry and the regulator’s board, being instead almost entirely funded from the Independent Press Regulation Trust, a registered charity, which is completely reliant on funding by the Alexander Mosley Charitable Trust, the Mosley family charitable trust whose trustees include Max Mosley and other members of his family. This means that IMPRESS, far from being independent, is in the pocket of one wealthy private individual.

37. Max Mosley became a prominent campaigner for press reform following a newspaper’s exposure of how he organised a sado-masochistic orgy with five prostitutes. He succeeded in his privacy action against the News of the World before the UK courts, though the European Court of Human Rights rejected his case for mandatory pre-publication notification of the subject of publication, enforced by punitive damages and fines, citing its chilling effect on freedom of expression, investigative reporting and political journalism.
38. It is not just Lord Justice Leveson who believed that a press regulator should be funded by the press. The public agrees. According to a poll by YouGov (December 2016), just four per cent of people believe a press regulator should be funded by donations from wealthy individuals and trusts, compared with 49 per cent who believe it should be funded by the newspaper industry. (YouGov poll results: Appendix 8)

39. IMPRESS also fails to meet the Royal Charter criterion that an approved regulator should be responsible for the standards code it enforces. IMPRESS has instead adopted, without permission, the Editors’ Code of Practice: the Code enforced by IPSO, which is drawn up by the Editors’ Code of Practice Committee, on which neither IMPRESS nor its members are represented. Copyright in the Editors’ Code of Practice is owned by the Regulatory Funding Company, the body which collects industry subscriptions for IPSO.

40. IMPRESS refused to enter into any licence offered by the Regulatory Funding Company, as others have done. IMPRESS has recently said that it would be publishing its own Code in 2017, a year after its initial application to the PRP for approval and several months after the PRP approved its application.

41. So far IMPRESS appears not to have ruled on any complaints and has certainly published no adjudications. If it were to make a ruling it would have difficulty doing so because it has no legal right to quote from the Code it purports to enforce. This means that the PRP has granted recognition to a regulator which claims to operate a Code for which it has no responsibility, which it cannot quote, and which in any case is due to be replaced in the very near future with another Code which the PRP has not yet had an opportunity to examine.

IV) An Unacceptable Restraint on Freedom of Expression

42. The Crime and Courts Act 2013 provisions stem from the gravely mistaken assumption by politicians that newspaper publishers would be forced into joining a new state-approved regulator that had been devised with reference to the Leveson Report recommendations. This has been disproved by the establishment of IPSO, which has been operating since September 2014. There is no justification for bringing Section 40 into force and there are compelling grounds for its repeal.

43. IMPRESS and the PRP apparently believe that fear of costs sanctions under the Crime and Courts Act is the only incentive for membership of any approved regulator under the Royal Charter, since they claim it is necessary for the completion of the Royal Charter system.

44. Chillingly, in the executive summary of its annual report on the recognition system (October 2016), the PRP had no qualms in appearing to suggest that, while “it would be premature to introduce statutory regulation” until after the recognition system had been established and fully tested, if Section 40 was not commenced, thereby ‘incentivising’ publishers to sign up to the state-approved system, then statutory regulation of Britain’s press should be considered.

45. It is an unacceptable restraint upon freedom of expression for the 2013 Act to require that publishers who have done absolutely nothing unlawful at all, must have costs awarded against them by the courts for successfully satisfying the courts of the rigour of their journalism.
46. This regime discriminates against all news media publishers but exempts other publishers from its provisions on a discriminatory basis. Only a specific class of publishers – ‘relevant publishers’ - are caught by Section 40. Some publishers are completely outside the system and not exposed to the costs or exemplary damages provisions with no obligation to join any regulator. If a chapter in a book is serialised in a newspaper, a claimant would be at an advantage in suing the newspaper as opposed to the book publisher. If a newspaper website ran a BBC video clip, it is the newspaper which would be sued and not the BBC. It would make joint newspaper and broadcaster investigations into corruption and wrongdoing far less likely to happen. There is no compulsory arbitration system for those bringing a complaint against the BBC or other broadcasters.

47. Section 40 also applies to the thousands of titles whose practices have never caused concern – including the regional and local newspaper sector whom the Leveson report noted had not been criticised but had instead been ‘much praised.’ Rather than being subject to additional burdens as a result of the Report’s recommendations, Leveson recommended that the sector should be helped by the government.

48. This underlines the arbitrary nature of the regime targeted at publishers of newspapers and magazines, as defined by the 2013 Act. There can be no justification for any publisher of lawful, Code compliant journalism to be put at risk of such draconian sanctions, nor for the chilling effect on freedom of expression that would result, simply because it has chosen to join an effective and independent established regulator, which appears to be serving the public and public interest well, outside the Royal Charter construct.

49. Section 40 is contrary to Article 10 (right of freedom of expression) and Article 14 (prohibition of discrimination in the enjoyment of that right). It was deliberately framed by politicians so that news media publishers would have to pay both sides costs, win or lose, in court actions launched against them for libel, breach of confidence, misuse of private information, harassment and malicious falsehood, simply because such publishers are not in membership of a regulator approved under the Royal Charter state-recognised system of press regulation.

50. Section 40’s ‘just and equitable’ proviso does not mitigate the basic ECHR infringements and the chilling effect of the costs provisions which create the expectation that the newspaper will have to pay costs regardless of the outcome of the action. It would be a brave newspaper to bet on a Court exercising this discretion, by publishing, winning a case and then hoping a court would exercise a discretion in its favour. It is exceptionally unlikely that courts would routinely exercise this discretion regardless of the circumstances, as this would undermine the intention behind Section 40.

51. The provisions are designed to be punitive, operating irrespective of legal wrongdoing by the publisher or any misconduct in respect of the proceedings. Such costs would be crippling and could force the closure of titles, despite court vindication of their journalism.

V) Evidence in Support of the NMA’s View

52. There are compelling reasons for immediate repeal of Section 40. The Crime and Courts Act introduces a discriminatory regime aimed at propelling newspaper and magazine publishers into membership of a regulator approved by the Press Recognition Panel under the Royal
Charter by unfavourable treatment through liability for exemplary damages and unfavourable costs provisions if they do not.

53. The Act seeks to impose special controls on newspapers and magazines through its definition of a ‘relevant publisher’. It sets out a list of exclusions from that definition in Schedule 15 which ensures that they are unaffected by the Act. Micro-businesses, broadcasters, public bodies and charities, company news publications, scientific or academic journals, and book publishers are excluded from the definition of relevant publisher.

54. The Act then distinguishes between publishers which do not join a regulator approved by the Press Recognition Panel with a compulsory arbitration scheme and those that do. The former are liable for exemplary damages, the latter are not. Courts must award costs against the non-member publishers in court cases for claims based on the six specified causes of action, win or lose, if membership of an approved regulator and use of the arbitration scheme is available in the relevant case. A member of an approved regulator taken to court instead of arbitration in the relevant circumstances would normally only have to bear its own costs, win or lose, since the court will not award costs against it.

55. Section 40 of the Crime and Courts Act is in breach of the European Convention on Human Rights (ECHR). The attached Opinion of Lord Pannick QC on Section 40 of the Crime and Courts Act is submitted in full as part of the NMA’s response to the consultation (see Appendix 2). This concludes that Section 40 is an unjustifiable and discriminatory provision which breaches Article 10 of the ECHR on freedom of expression and Article 14 on arbitrary discrimination in the enjoyment of fundamental rights, namely freedom of expression.

56. Commencing Section 40 would have a chilling effect on freedom of expression. It would deter investigation and publication because of the fear of costs. It would encourage complainants to take legal action against the press, irrespective of merits, since they would be freed from any risk of incurring costs, their own or the other side’s, in the event of failure of their case.

57. As was consistently made clear in Parliament after the amendments were introduced and throughout the closing stages of the Crime and Courts Bill, and as the Press Recognition Panel’s Annual Report sets out, the Act was deliberately designed to catch international, national, regional and local news media publishers and then require the courts to discriminate between those in membership of an approved regulator and those which are not, applying the markedly less favourable treatment set out in statute to the latter.

58. Lord Pannick QC points out that the act of commencement would in itself be in immediate breach of Article 10 and would give rise to a claim direct to the European Court of Human Rights in Strasbourg.

59. The section should therefore not be implemented but be repealed immediately. If the Secretary of State brought forward a commencement order, then that action by the Secretary of State would be in breach of the ECHR, contrary to the Human Rights Act 1998, and therefore subject to immediate legal challenge. If commenced, any court’s application of the costs regime in accordance with the deliberate policy of that provision will also give rise to legal challenge before Strasbourg.

60. Section 40 may also be in breach of Article 6 (right to a fair trial), in relation to arbitration as compulsory arbitration would prevent newspaper publishers having access to the courts. We
refer you to the Opinion of Anthony White QC and Alexandra Marzec (confidential copy attached).

61. Commencement of Section 40 is not necessary for access to justice. The conditional fee arrangements (CFAs) and after the event insurance (ATE) regime enable claimants to bring legal actions against any publisher. Alternative dispute resolution is already possible. Arbitration can be used, if both parties agree and the case is suitable. IPSO is conducting an arbitration pilot with national and regional publishers. IPSO operates a robust complaints system and publishers deal swiftly and directly with complaints and claims. Litigation is rare.

62. Publishers remain concerned that mandatory arbitration, which would contravene the ECHR as it prevents access to the courts, would also, being free or low cost to complainants, result in a proliferation of claims motivated by the hope of financial compensation, irrespective of merit, as the publisher will always bear the costs of arbitration, however swift the rebuff.

63. The cumulative effect of such claims and costs will also be damaging, especially to local and regional publishers. Local newspaper editors have drawn attention to the financial impact of the IMPRESS scheme on a local title, which would be liable for costs up to £3,500, unless a higher arbitration fee were agreed, and damages of up to £3,000, irrespective of successfully defending itself. It is free for complainants apart from a small administrative fee.

64. Under the IMPRESS compulsory arbitration scheme, if a publisher loses its case, it is liable for £3,500 in arbitration fees and £6,000 costs plus unlimited damages. IPSO’s voluntary arbitration scheme caps damages at £50,000.

65. The potential cost to the industry can be estimated by looking at the 12,278 complaints to IPSO in 2015. A total of 60 of these were upheld. If these had all gone through arbitration, national, regional and local newspapers would have been liable for £3.57 million in costs and damages based on the IPSO cap of £50,000 in damages.

66. If half of the remaining complaints went through arbitration but were judged to be without merit, the publisher would still have to pay £6,500 in arbitration fees and costs, resulting in an annual cost burden to the industry of £39.7 million. The total combined cost of arbitration for publishers could therefore be in the region £43.3 million (if damages were capped at £50,000) for a complaints-handling service which is currently free for both publisher and complainant. However, once members of the public and law firms became aware of the potential to win lucrative damages from a publisher at no risk to themselves, these costs would inevitably escalate.

67. Gary Shipton, editor in chief at Sussex Newspapers, wrote to Baroness Hollins (November 2016) to explain local press concerns about commencement of Section 40, as she was pressing the Government to do by way of amendments tabled to the Investigatory Powers Bill. Martin Trepte, editorial director of Baylis Media and editor of the Prime Minister’s local paper the Maidenhead Advertiser, has written to the DCMS and the PM. (Appendix 3)

VI) The Impact of Section 40 on the News Media and Magazine Industry

68. No significant newspaper or magazine publisher has joined IMPRESS. No NMA member, national, regional or local, has joined IMPRESS. If Section 40 is brought into force, every publisher not signed up to a state-recognised regulator will be liable to pay both sides legal costs, even if they win the case.
69. The NMA endorses the consultation paper’s summary of the impact of bringing Section 40 into force. This is contrary to the principles of fairness and justice. The impact on the press is deeply damaging and goes far beyond some incentive to comply voluntarily with the Royal Charter system.

70. Costs liability for successful defence of any action can run into millions. The cumulative effect of defending and successfully halting actions at the earliest stage can cost tens of thousands. Unmeritorious claims will be encouraged, including complaints diverted from swift resolution by the publishers’ own complaints system or by IPSO.

71. An NMA analysis of figures provided by our members indicates that Section 40 would cost the national newspaper sector around £52 million a year in additional legal costs. The cost to the regional and local press would be around £48 million a year, taking into account the cost of an average number of legal actions, the cost of striking out the estimated number of legal claims currently received in a year together with the cost if just 10 per cent of general complaints against local papers were converted to legal claims.

72. NMA national and regional members have informed us that, if Section 40 was in force and they were liable to pay the claimant’s costs as well as their own for any claim without foundation, they would face costs awards of £40,000 (£20,000 for each side) for successfully striking out an action. The cost of winning a ‘straightforward’ libel trial with little satellite litigation could be over £1 million (costs of both sides of £500,000 each. This excludes any CFA success fee uplift of 100 per cent or ATE premium). Successful resistance of an interim privacy injunction could result in total costs of over £90,000 payable by a title to enable public interest reporting. Such costs could close a regional title – or even a smaller national – after winning its case.

73. Allegations of inaccuracy, privacy and harassment can easily be presented as a ‘relevant claim’ by claimants and their lawyers, who know that they would be protected from paying legal costs. This would be used to put pressure on publishers for financial settlement of such claims, simply for commercial reasons, to curb costs liability. It would have a chilling effect on reporting since such threats would be used to deter investigation, prevent publication or force the take down of material.

74. Counsel has advised that “the provisions apply to all costs orders and would accordingly cover awards of costs at the conclusion of interim applications as much as those made after final judgment.” It will therefore be a powerful tool, applicable to interim injunction to threaten a public interest disclosure as well as any final trial for libel or other relevant cause of action.

75. Publishers will face threats, claims and court action by claimants and their lawyers, able to rack up legal costs under an unreformed legal regime. This already allows claimants to recover costs uncontrolled by the courts, due to interpretation of practice directions, CFAs with 100 per cent success fee uplifts, and exorbitant ATE insurance premiums despite European Court of Human Rights (ECtHR) rulings.

76. News media publishers have raised Article 10 issues and the debilitating financial implications of successful defence of actions brought by legally aided or impecunious claimants, where their own costs were not recoverable.
77. The rich and the powerful are prepared to take high risks in pursuing libel actions. Convictions for perjury and conspiracy to pervert the course of justice have arisen from libel actions - Jonathan Aitken and Jeffery Archer were imprisoned. Senior police officer Gordon Anglesea was awarded £375,000 in libel damages in 1994 after media organisations ran stories about his link to abuse at children’s homes in North Wales. After years of denials, he was eventually convicted in November 2016 for historic sexual abuse between 1982-1987, dying shortly after commencing his 12-year jail term, after lodging an appeal. See Appendix 11 for further examples of stories which Section 40 would have suppressed.

78. The new regime will certainly encourage legal action to deter pursuit of an investigation and publication. Claimants intent on stifling investigation and reporting will no longer have even to gamble on the risk of costs liability. In future, legal threats, claims and actions will be fuelled by claimants’ and lawyers’ knowledge that, however shaky their claim, it will be the publishers who have to bear the costs of any action, at any stage, interim and final.

79. Implementation of Section 40 would be a strong incentive for unmeritorious complaints and for claimant and lawyer to litigate - or force financial settlement - in weak cases, rather than seek other forms of resolution.

80. NMA members have undertaken to observe controls over and above the law, under the Editors’ Code of Practice. They aim to deal swiftly and effectively with all complaints. The new system under IPSO mandates and facilitates fast resolution of complaints under the Editors’ Code of Practice direct by the publisher, but with swift reference to IPSO for resolution or adjudication.

81. Complaints of breach of the law also receive immediate attention – publishers aim to settle fast given the CFA and ATE regime. A settlement following receipt of a single letter can result in a cost claim for £35,000. Regional press publishers report that swift settlement of a relatively minor matter still costs around £30,000 to £40,000. NMA members are responding direct to the DCMS on the deeply damaging impact of Section 40 when such costs payable for rebuff of unmeritorious legal claims will proliferate as a result. Insurance premiums will rise, forcing publishers to settle and inhibiting investigation and reporting.

82. All NMA members, from the smallest family-owned titles to the largest groups, fear the chilling effect on press freedom if Section 40 is brought into force.

83. They anticipate that its implementation will increase the volume of cases brought against them, simply because they are not members of a regulator, with a compulsory arbitration scheme, approved by the PRP under the state-sponsored Royal Charter.

84. This is not because publishers are breaching the law in ways that would give rise to relevant claims. This is not an ‘access to justice’ issue. Legal action against local and regional newspapers is very rare and few cases across the industry reach court. All publishers seek to settle any genuine legal claims as quickly as possible to contain costs, which nonetheless might be substantial and far exceed any damages.

85. All NMA members also have complaints procedures, the vast majority in accordance with IPSO requirements in relation to alleged breaches of the Editors’ Code of Practice, which do not require legal representation on either part. Publishers fear the growth of complaints framed as unmeritorious legal claims, given that litigation would become cost free for claimants, while publishers would bear all the legal costs.
86. Ashley Highfield, chairman of the NMA and CEO of Johnson Press, which publishes the i national newspaper as well as regional and local newspapers, recently gave evidence to the House of Lord’s communications committee about the chilling effect of Section 40 (Extract from evidence: Appendix 3).

87. All editors and publishers of news media organisations and their legal advisors are well aware of individuals, institutions or organisations who are quick to complain, deploy lawyers and appear intent upon obstructing unwelcome investigation, reporting or comment on their activities.

88. David Aaronovitch describes these day-to-day realities of news operations and the impact of Section 40 if brought into force in his column for The Times. Evening Standard and Independent managing editor Doug Wills cites the example of the libel lawsuit brought against the Standard by organised crime boss David Hunt. In total his titles received just over 1700 complaints in 2016. Andrew Norfolk explains the delicate balancing act which newspapers have to get right before publishing a story, like the Rotherham scandal, and how Section 40 would destroy it. (Appendix 3).

89. Our members and their advisors anticipate that Section 40 will encourage a proliferation of legal threats and claims, since complaints can easily be presented as ‘relevant claims’, particularly in libel or privacy.

90. Lawyers’ letters that disclose no legal merit and are primarily aimed at the removal of unwelcome publicity about their client from the public domain, are currently rebuffed. For example, lawyers’ letters might threaten legal action when their only object is the takedown of unflattering material about some businessman from the website.

91. However, publishers and their legal advisors believe they would be forced to take down such material in the future, for commercial reasons, since the lawyers will otherwise pursue litigation, regardless of the merits, knowing the publisher will be liable for their costs.

92. Publishers anticipate claims arising from day to day reporting, even though they would have firm legal defences to allegations of libel. Regional and local news media editors often receive complaints about court reports from individuals and their lawyers, where the real objection is to the fact of reporting and online availability. Instead of swift rebuff, with the benefit of reference to libel defence of a fair and accurate report, or resolution by the editor or referral to IPSO, Section 40 would encourage legal pursuit of such complaints, leaving publishers to bear the claimants’ costs, even if swiftly halted.

93. Similar problems could arise in respect of any reporting critical of an individual or organisation, irrespective of statutory or common law defences specifically intended to facilitate and protect wider reports to the public against legal action for libel, breach of confidence or misuse of private information. Local newspapers could be faced with the legal costs of defending their accurate reporting of local MPs’ hard-hitting statements in Parliament. Publishers could face lawyers’ claims that investigative reporters have harassed or slandered their clients, simply for persisting in investigation and asking questions in a lawful and code compliant manner.

94. Section 40 will be a useful tool for the state and public sector, as well as individuals and corporations, to deter investigation and reporting critical of the police, social services,
prisons, hospitals, government officials and ministers. The prohibitive costs of rebuffing interim injunctions for breach of confidence and privacy will be an additional powerful deterrent to regional and national newspapers.

95. The volume of complaints received varies, but all publishers, local and national, believe that the commencement of Section 40 would lead to dressing up of Code complaints as legal claims irrespective of merit.

96. One publisher in print and online estimates receiving some 1700 complaints of any description in total this year, some framed as legal complaints. It considered that, if Section 40 were brought into force, so that there was no financial risk in taking the matter to court, many non-legal complaints might be re-packaged as libel or privacy claims, notwithstanding they had little or no merit.

97. Another receives around 400-500 complaints each year which are successfully resolved direct, in accordance with the IPSO complaints procedure which encourages early settlement by giving publishers 28 days to resolve complaints before IPSO investigations begin. A tiny fraction, perhaps under five per cent, require any IPSO involvement and resolution, which might then result in mediation or adjudication. Yet Section 40 commencement is likely to lead to attempts to transform such complaints into legal claims.

98. The Press Complaints Commission published statistics and case summaries for public review. The Newspaper Society (NS) reviewed the 5,563 complaints that had been concluded and resolved by the PCC for 2012 and 1,602 for the first quarter of 2013. Of these around 1,500 concerned the local press. It considered that although very few of the complaints against the local press proceeded to adjudication and were upheld, most could be converted into attempts to claim compensation and drafted as legal complaints, even if limited to the ‘relevant claims’ under the Crime and Courts 2013. The NS estimated that around 1,000 claims a year against the local press, irrespective of merit, could be converted and many more engendered (see written evidence to the Culture Media and Sport select committee). Under Section 40, that would raise the prospect of initiation of legal action against the local press, so that they faced the costs of striking out or forced settlement purely for commercial reasons. The local newspaper publisher would therefore face the combined costs of £40,000 (£20,000 each side) for successfully striking out such claims - and the local press an additional costs burden of £4 million a year.

99. IPSO was established in 2014 and has published rulings from 2014 to 2016. Under the new system of regulation, newspapers rather than IPSO initially deal direct with complaints. IPSO’s 2015 Annual Report records receipt of 12,278 complaints and inquiries, of which 407 were investigated: 60 upheld, 183 findings of no breach and 64 resolved by IPSO mediation. It broke down the remainder as: 477 referred or dealt with by the publication, 3,157 rejected, 4,950 out of remit, 519 not pursued and 3,128 multiple complaint. (In recent evidence to the Select Committee, IPSO clarified that multiple complaints about the same point would be recorded as one matter taken forward for investigation and publication of the ruling, as appropriate). Stripping out multiple complaints, complaints received about national publications account for around 60 per cent of all IPSO complaints and those about regional and local publications account for around 40 per cent.
100. IPSO rulings and outcomes are published for 2014-2016, amounting to over 600 published decisions to 31 December, relating to both national and local newspapers. Had Section 40 been in effect, claimants might well have framed a substantial proportion of these complaints instead as ‘relevant claims’ and pursued them as legal claims against both local and national newspapers, irrespective of the actual legal merits of such claims. Local and national publishers would therefore be faced with the additional burden of increased costs of striking out unmeritorious actions or settling claims for commercial reasons rather than incurring greater legal costs. Section 40 would require the publisher would to bear the whole £40,000 costs for successfully striking out an action (£20,000 publisher and £20,000 claimant).

VII) Full Commencement Will Not Incentivise Publishers to Join IMPRESS

101. Full commencement by the Government of Section 40 costs sanctions will not incentivise NMA members to join IMPRESS or any other regulator approved by the Press Recognition Panel under the Royal Charter. The national, regional and local press represented by the NMA remains unwavering in its total opposition to state interference in the regulation of the press as constituted by the Royal Charter, Enterprise and Regulatory Reform Act 2013 and Crime and Courts Act 2013.

102. The industry is united in rejecting the Royal Charter as written by politicians, imposed by politicians and controlled by politicians. It has not been approved by any of the newspapers or magazines that it seeks to regulate. NMA members consider it an unacceptable state interference.

103. Nor will the draconian provisions of Section 40 force publishers into membership of the only state-approved regulator, IMPRESS, which appears to be funded and run by supporters of an anti-press lobby group and which does not, in our view, satisfy the criteria for approval.

104. A tough independent regulator IPSO has been established and practically the entire national, regional and local press have voluntarily subjected themselves to its jurisdiction, observation of the Editors’ Code of Conduct, complaints system and enforcement of standards through its strong powers of investigation and sanction.

105. The overwhelming majority of national, regional and local newspaper publishers have entered into long-term binding contracts with IPSO and collectively assured its long-term funding. IPSO is also trialling an arbitration system which is open to all newspaper publishers. Of past PCC members, only the FT, Guardian and Evening Standard remain outside and not subject to any external regulation but they have all made clear their fundamental objection to the state-sponsored Royal Charter system of press regulation. Northern and Shell, publisher of Express Newspapers which had opted out of the former PCC and was the primary reason cited for the need for ‘incentives’ to join a regulator during the course of the Leveson Inquiry, has signed up to IPSO.

106. The industry’s action long confounded the original premise that incentives might be needed to persuade the industry to establish a new regulator and encourage the majority of newspaper publishers to join it. Although suggested by the Leveson Report, very little consideration was given by the Leveson Inquiry to costs incentives or arbitration. The legislation received scant scrutiny by Parliament; no detailed line-by-line consideration was
given in its passage through Parliament. MPs had not even received copies of the Royal Charter as the clauses on exemplary damages, aggravated damages and costs sanctions were tabled and voted through as late amendments to Crime and Courts Bill in its final stages in Parliament, and subject to rushed debate and ping pong with the House of Lords.

107. When Sections 36-40 were tabled as amendments to the Crime and Courts Bill, the Secretary of State, Government ministers and the Opposition Spokespersons explained that they had been framed to encourage publishers to join an approved regulator. They operated on the assumption that a new regulator would not be set up and publishers would not join it without compulsion. Hence its draconian terms and wide remit, aiming at mainstream international, national, regional and local titles publishing within England and Wales, but excluding ‘micro-businesses’ and other publishers and broadcasters from its impact.

108. In fact, through intensive consultation, national, regional and local newspaper and magazine publishers devised and established IPSO, a new independent regulator of press standards, operating to the benefit of the public. It was framed with reference to the Leveson Inquiry recommendations, set up through an entirely independent appointments process, funded by the industry (as recommended by Leveson) and nearly all significant newspaper publishers have joined it.

109. It upholds the Editors’ Code of Practice, provides a robust complaints system and monitors and enforces standards. The industry has demonstrated its utmost commitment to the new system. Its powers are derived from five-year binding contracts (perpetual contracts are not legally enforceable), its funding is independently assured, with the budget agreed to 2020 and provided by the industry through the Regulatory Funding Company.

110. The new self-regulatory system is working and renders Section 40 entirely unnecessary. It would be a contravention of the right to freedom of expression and press freedom if Section 40 were brought into effect by a combination of the PRP’s legally questionable decision to approve IMPRESS and a commencement order by the Secretary of State. The consequences of implementing Section 40 now only to find that the PRP’s recognition of IMPRESS was held to be invalid would need to be carefully considered.

VIII) The Leveson Inquiry Concluded Four Years Ago – There is no Public Value in Reopening It

111. The NMA believes that the Leveson Inquiry should be terminated. The terms of reference for Part 2 have already been covered by Part 1 of the Leveson Inquiry and the criminal investigations and do not require further investigation. There are no further issues for an Inquiry to address.

112. There have been numerous developments which have addressed the issues raised in the nearly six years since the Inquiry was established and in the four years following publication of the Report. There have been criminal investigations, prosecutions, convictions and acquittals. There have been civil actions which have considered the individual circumstances of any individual claim and reached settlement. Substantial damages have been paid.
113. There were no findings by the Leveson Inquiry or subsequently of endemic police corruption. The UK and US authorities have stated that there are no grounds for legal proceedings or corporate prosecutions against news media companies. The CPS has reviewed its prosecution policy in relation to offences concerning the media. Police governance has been reviewed – with the establishment of the College of Policing, changes to the Independent Police Complaints Commission, and Her Majesty’s Inspectorate of Constabulary (HMIC).

114. Universally applicable guidance on police and media relations is being finalised by the College of Policing after public consultation. There have been legislative changes, new offences, expansion of the powers of the police and sanctions of regulatory authorities. Following Court of Appeal consideration of the law of misconduct in public office, the Law Commission is currently undertaking a major, comprehensive review of the law in this area and all legislation governing the protection of government information, which involves public consultation.

115. Indeed, there is some danger that a culture of official secrecy, contrary to the public interest, public understanding and public oversight, might result instead. There are good grounds for terminating the Inquiry.

IX) Lord Justice Leveson Himself Questioned the Value of Part 2

116. In 2012, Lord Justice Leveson released a statement questioning the value to be gained from a Part 2, given the "enormous cost", the fact that material would be years out of date by then, and that it could take even longer than the first inquiry.

117. He said: “I do not know whether there will be prosecutions but, having regard to the number of arrests and the quantity of material seized, ... it is likely that the process of pre-trial disclosure and trial will be lengthy so that Part 2 of this Inquiry will be delayed for very many months if not longer... If the transparent way in which the Inquiry has been conducted, the Report and the response by government and the press (along with a new acceptable regulatory regime) addresses the public concern, at the conclusion of any trial or trials, consideration can be given by everyone to the value to be gained from a further inquiry into Part 2. That inquiry will involve yet more enormous cost (both to the public purse and the participants); it will trawl over material then more years out of date and is likely to take longer than the present Inquiry which has not over focussed on individual conduct.” – Lord Justice Leveson, 1 May 2012.

118. There appears to be no justification for Part 2, given the investigations that have already taken place and other developments. The DCMS estimates the cost of the investigations as £43.7 million to the public purse. (Part 2 of the Leveson Inquiry would cost around £5.4 million, if similar to Part 1).
X)  A Total of 67 Journalists Arrested: 57 Cleared, 10 Convicted

119. Part 1 of The Leveson Inquiry and Part G of the report examined the relationship between the police and the press. Part 1 of the Inquiry and Part E of the report examined the start of police investigations, from operations that led to Operation Motorman, Operation Caryatid, through to the instigation of Operations Elveden, Tuleta and Weeting.

120. As the consultation paper outlines, Operation Elveden investigated misconduct in public office, Operation Weeting investigated conspiracy to intercept communications and Operation Tuleta investigated computer hacking and other matters.

121. The Metropolitan Police investigations resulted in a huge number of journalists being questioned and large numbers of arrests, many involving dawn raids, followed by no further action. Press Gazette reported in December 2015 that, since the launch of Operation Weeting in 2011, at least 67 journalists had been arrested. Most were cleared, with only 10 convicted.

122. “Over the last five years the UK has arrested more journalists than anywhere else in the Western world,” said Press Gazette. “Globally, the countries that compete with us include the likes of Eritrea and Iran.”

123. Information was issued by the CPS during the course of the investigations on its prosecution decisions and outcomes. As a result of the Leveson Inquiry, prior to its Report, the DPP had drawn up and published Guidelines for Prosecutors on Assessing the Public Interest in Cases Affecting the Media. The CPS published various legal guidance including relevant updates to take account of the Court of Appeal’s review of the law on misconduct in public office. It publicised the outcome of its review of the pending cases, including those which were to be discontinued, through the course of the investigations. It published updates, providing the reasons for decisions to prosecute and decisions to take no further action.

124. In February 2015, it was reported that the United States Department of Justice completed an investigation into voicemail interception and payments to public officials and notified 21st Century Fox and News Corp that it was declining to prosecute either company. In December 2015, the DPP announced that, after detailed consideration of the comprehensive files supplied by the police, no further action would be taken in relation to corporate liability or individual in respect of alleged phone hacking.

XI)  CPS Confirms No Further Action to be Taken

125. Alison Saunders, Director of Public Prosecutions, said: “The CPS has looked in great detail at the comprehensive files submitted to us by the police, both in relation to corporate liability at News Group Newspapers and against 10 individuals at Mirror Group Newspapers for alleged phone hacking. After a thorough analysis, we have decided there is insufficient evidence to provide a realistic prospect of a conviction and therefore no further action will be taken in any of these cases.

126. “There has been considerable public concern about phone hacking and invasion of privacy. Over the past three years, we have brought 12 prosecutions and secured nine convictions for these serious offences. These decisions bring the CPS’s involvement in current investigations into phone hacking to a close.” Statement from the CPS: No further action to be taken in Operations Weeting or Golding
127. The DCMS/Home Office consultation paper gives an overview of the outcome of all the criminal investigations. It states that more than 40 people were convicted, including 11 police officers, police staff, 19 public officials and 10 journalists. Many more were informed, following questioning and or arrest, sometimes after long periods on police bail, that there were no grounds for any action at all to be taken against them. Proceedings were discontinued. There were many acquittals of journalists. The CPS stated that no proceedings were warranted against news media companies.

128. Civil proceedings have also been brought against two newspaper groups. The claims of individuals have therefore been investigated and, where appropriate, settled. Public statements have been issued.

129. There have also been a series of Parliamentary select committee inquiries, receiving updates on the investigations and considering related matters. These include the Home Affairs Select Committee inquiries into tapping and hacking of mobile telecommunications and its later inquiries into phone hacking. The Culture Media and Sport (CMS) Select Committee held an inquiry into News International and phone hacking. There have been hearings and inquiries relating to dealing with complaints against the press and press regulation, such as those recently conducted by the CMS Select Committee and the House of Lords Communications Committee. There have been inquiries and reviews of the private security industry.

130. There have been fundamental reforms of policing, police oversight and public accountability. Police governance is being reformed. The College of Policing with overall responsibility for police standards has been established. It is finalising Media Relations Guidance for all police forces in England and Wales, following public consultation in 2016, to update its 2013 Guidance on Relationships with the Media published after the Leveson Report. The Metropolitan Police updated its media policy in 2014, aligning it to the College of Policing 2013 Guidance, the Leveson Report, the Filkin report and other relevant reports. There have been changes to the IPCC and HMIC. Police misconduct hearings are now open to the public. Legislative change is ongoing. There have been a number of specific police and media reviews (Appendix 7).

131. There is no public demand for the Leveson Inquiry to be reopened. A YouGov poll commissioned by the NMA in December 2016 found that the public overwhelmingly believe the Government should be focussing its attention and resources on areas other than press regulation, which came at the very bottom of a list of 16 issues which people felt the Government should focus on over the next few years.

132. The poll found that just one per cent of respondents thought press regulation should be among the top four Government priorities, after airport expansion (two per cent). The top four priorities were Brexit (53 per cent), health (48 per cent), immigration and asylum (45 per cent) and the economy (44 per cent). (YouGov poll results: Appendix 8)

133. The only people calling for the Leveson Inquiry to be reopened after all this time are a small group of anti-press campaigners who seek ever tighter controls over the newspaper industry.

134. In summary, Leveson Part 2 is not necessary, in view of all the developments since the establishment of the Leveson Inquiry nearly six years ago: the changes to press self-regulation, changes to the law, ongoing legal reviews and forthcoming legislative changes. The Leveson Inquiry should be terminated.
Appendix 1

NMA and Industry Background

The NMA Board:

- Ashley Highfield, CEO Johnston Press plc (chairman)
- David Dinsmore, Chief Operating Officer, News UK (vice chairman)
- Geraldine Allinson, Chairman, KM Group
- Kevin Beatty, Chief Executive, DMG Media
- Henry Faure Walker, CEO, Newsquest Media Group
- Simon Fox, Chief Executive, Trinity Mirror plc
- Jeff Henry, Chief Executive, Archant
- Phil Inman, Chief Executive, Claverley Group
- Murdoch MacLennan, Chief Executive, Telegraph Media Group
- Manish Malhotra, Group Managing Director, ESI Media
- David Pemsel, Chief Executive, Guardian Media Group
- Jeremy Spooner, CEO, Baylis Media.

The UK press is vibrant, lively and diverse. UK news media publishers invest heavily in journalism, more than any other media, accounting for 58% of the total investment in original news content in the UK (Oliver & Ohlbaum 2015). Its agenda setting news, reports, investigations, features, opinion pieces are the original work of the UK news media companies. This continues to serve what is an ever-increasing audience demand for their journalism, in the multiplicity of forms now provided by NMA members’ news brands.

Ninety-one percent of adults consume this original content produced by news brands every month. Seventy-five percent of adults now access news brands digitally every month, with companies’ substantial investment in digital services achieving some 37% increase upon their print readership. UK has the most national newspapers per capita and is second only to the USA in the provision of local newspapers.

The UK press plays a vital role in representing the public and reflecting the public interest. It makes a reality of the principles of public scrutiny and public accountability, open justice and open government, with its role as public watchdog over the actions of the state recognised by the domestic and Strasbourg courts. Its investigations reveal matters of public interest, its editorial campaigns reveal and reform, ensuring that wrongdoing and injustice are addressed. It provides the public forum for news, debate, opinion at all levels, local, regional and national.

Annually, the national press publishes over three million articles and the regional press eight million articles in print and online. Its audiences spend over twice as long reading newspapers in print or digital form - around 31 minutes a day, compared with 14 minutes reading other online news. Over the course of last year (2015) UK news brands drove nearly a billion social media interactions.

The Deloitte report UK News Media: Engine of Original News Content and Democracy (2016) found that, in addition to the sector’s economic contribution to the UK, the journalism invested in by news media publishers has a unique and wide-ranging set of benefits such as boosting
SMEs, improving literacy, enhancing community cohesion, and, crucially, underpinning democracy by holding powerful figures and institutions to account.

The Deloitte report sets out the economic contribution of the national, regional and local news media publishers, including the £5.3 billion gross value added to the UK economy by news media publishers in 2015. Ninety per cent of UK news publishers’ total spend with suppliers remains within the UK, compared to the average of 77 per cent across the economy; The news media industry adds value across the supply chain with the average publisher dealing with nearly 2,600 suppliers. The news media sector supports an estimated 87,500 FTE UK jobs.

However, the industry is facing challenges as it adapts its business model and deals with new global competitors for the revenue that underpins its investment in journalism.

Despite very large audiences, the industry has experienced falling revenues over the past decade. This is partly driven by the shift of advertising spend to online media, the competition for that revenue, declining print revenues, and the early stage of development of print subscription models online. All of these factors have contributed to the current lower monetisation of news brands’ digital audiences as compared to their print audiences.

As the Deloitte report points out, there are now global competitors that impact on news media companies’ engagement with the audience for their news services. The businesses of digital aggregators and platforms benefit greatly from UK publishers’ investment in journalism and news content, but contribute little to it. The concerns about false news, its proliferation and effects, only underline the importance of the continuation of a lively vibrant press whose editorial agenda setting content is fuelled by publishers’ investment in and underwriting of its own original journalism.
Appendix 2: Legal opinions

See attached confidential Legal Opinions from Lord Pannick QC, Antony White QC and Alexandra Marzec, and Lord Pannick QC and Desmond Browne QC. These have already been made available to the government on a confidential basis and are attached as separate confidential documents.

Section 40: Lack of Government Consultation

There was no consultation or proper consideration by Government and Government departments prior to introduction of legislative costs sanctions.

It appears, from Oliver Letwin’s evidence to the Culture Media and Sport Select Committee, that the draconian provisions of section 40 were only framed the day before the clause’s introduction into Parliament in the closing stages of the Crime and Courts Bill, by the Opposition in close consultation with Hacked Off, with no participation or consultation of the newspaper or magazine industry.

“Let me just consult the record for a second. At around 6pm, I met with the Deputy Prime Minister again, if I recall correctly, in his office. The issue that he raised as a result of the discussions that he had had between 3pm and 6pm with the Leader of the Opposition-and, for all I know, although I would not like to speculate exactly, the Deputy Leader of the Opposition and others in the Opposition team—he reported that although there did not seem to be a problem about our proposed Charter, there was an issue about the costs clauses. The proposal that he put was that the costs clauses should be made more directly symmetrical in line with what we had already proposed about the exemplary damages. You will see before you that proposal because it is the one we then brought to Parliament, namely that, as the Committee will be well aware, the costs proposal is now entirely symmetrical. You are either in a hugely favourable position if you are in a recognised regulator, from the point of view of costs, and you are a newspaper, or in a hugely unfavourable position if you are not in a recognised regulator and you will face court action.”
Appendix 3: Industry evidence

Evening Standard letter from Doug Wills, Managing Editor, ESI Media, 22 December 2016

I am writing in support of an online response made by the Evening Standard and Independent (ESI Media) to the Government’s consultation regarding the potential implementation of Section 40 of the Crime & Courts Act 2013 and the possibility of initiating ‘Leveson 2’. It is the view of our group that Section 40 should be repealed immediately; and we do not consider there is merit in returning to the proposed second part of the Leveson Inquiry.

As to evidence of the impact of Section 40 on media companies, there is naturally a good deal of guesswork at play. It seems to us clear (and indeed it is the apparent intention) that if Section 40 is implemented, any publisher which does not have the protection of being a member of a ‘recognised regulator’ is likely to face serious consequences. The cost of defending our journalism is already prohibitive, particularly (but not only) due to the use of Conditional Fee Agreements by claimants and their legal representatives. If Section 40 were to be triggered it is inevitable that the situation would be made worse in this respect.

In the course of this calendar year we have received around 50 threats of legal action in respect of material we have published in either the Evening Standard or The Independent. Each case is dealt with on its merits (via our in-house complaints system): where we have erred we naturally seek to make amends straight away. Many – indeed, we would say the majority – of the threats of legal action we receive are unmerited and we defend letters from claimant lawyers robustly, and in detail, in order to resolve or rebut the complaint as appropriate. Were Section 40 to be implemented, it stands to reason that claimant lawyers would have no reason not to issue proceedings (or threaten to), knowing that we would be most likely to cave in to unreasonable demands (eg for removal of content, publication of retractions or indeed payment of ‘compensation’) rather than fight a costly legal battle.

It is worth noting too that the global number of complaints received about our titles was just over 1,700 in 2015 (overall numbers for this year have not been collated yet but are likely to be broadly similar). In addition to the several dozen which were explicitly framed in legal terms, it is plausible that others could have been. If there is no financial risk involved in taking the matter to court, it seems to us eminently likely that some non-legal complaints would be repackaged as libel or privacy claims, notwithstanding that they might have no merit.

It has been suggested that cases without any merit could be struck out and would not attract the cost penalties envisaged by Section 40. Yet the minimum cost to a publisher of defending a claim to a strike-out hearing is, in our experience, around £20,000. While it may be possible in such cases – at the current time – for publishers to seek repayment of their own costs by the other side, it is not at all certain that judges would, as matter of course, agree to set aside the provisions of Section 40 (if implemented) in relation to successfully striking out a claim. Even if that does happen, our concern is that judges would be less inclined to make costs awards against claimants in the broader context of the new legislation. The cost of successfully striking out a wholly unmerited legal claim could thus prevent our company taking on an apprentice journalist.

You may know that the Evening Standard was sued for libel some years ago by the organised crime boss, David Hunt, over allegations which had been previously reported by the Sunday Times. A stay was put on the Evening Standard case pending the outcome of proceedings against the Sunday Times; the case eventually went the way of the Sunday Times. Had
Section 40 been in play during that case, we would have found ourselves facing a considerable bill for defending a claim which ultimately fell away in light of the outcome in the Sunday Times proceedings. This would have been manifestly unfair.

In our experience, defending an action for libel through to trial typically costs over five hundred thousand pounds in legal fees. If we faced the prospect of paying £1 million or more on top to the claimant (including a ‘success fee’ under a CFA), even where we succeed, our ability to defend important, public interest journalism would be greatly diminished.

Our group is fundamentally opposed to the Royal Charter process which led to the establishment of the Recognition Panel. Notwithstanding that, our view is that the recognition of Impress as a ‘recognised self-regulator’ by the PRP was flawed. Indeed, at its heart we cannot conclude that Impress is self-regulation at all. To talk of us being ‘incentivised’ to join such an organisation is disingenuous – rather, commencement of Section 40 would be an attempt to coerce publishers to go against their principles and, in our view, the interests of the public, in order to save their businesses from an iniquitous financial risk.

In the end, if Section 40 of the Crime & Courts Act is implemented, we will be at the mercy of its provisions, which we regard as against natural justice, freedom of expression and the public interest. We do not believe Section 40 can have anything but a chilling effect on our journalism and be a retrograde step against the cherished Freedom of the Press which is recognised and revered throughout the world.

The second part of the Government’s consultation relates to the possible reopening of the Leveson Inquiry to consider potentially corrupt relationships between the press and the police – so-called ‘Leveson 2’.

The trials that resulted from Operation Elveden examined relations between some journalists and public officials (including police officers). The fact that all the journalists accused of misconduct were either acquitted or had their convictions overturned shows that the press had not in fact acted improperly.

More broadly, Part 1 of the Leveson Inquiry considered concerns raised about relationships between the police and the press. The Inquiry heard from many journalists who noted that, as a result of real or perceived closeness between certain individuals, the wider relationship between press and police had been badly damaged. It remains the case that it is extremely hard for journalists to obtain information from police which it is entirely legitimate for them to have access to. The results of the Leveson Inquiry in this area have been real and lasting, and have adversely affected journalism. We are concerned that reopening an investigation would make matters worse still.

Indeed, there is a more general point against reopening the Inquiry, which is that its scope now looks increasingly irrelevant. The media landscape has altered to a remarkable degree even within the last five years thanks to technological advances, changing consumer habits, the rise of online and social media, and so on. The industry faces intense challenges and is finding innovative responses. To reopen Leveson now, at considerable cost, would be desperately backward-looking.

We trust that this additional information is of use. We stand ready to provide any further documentation necessary or to meet relevant officials to set out our position more fully.
Gary Shipton, Editor in Chief, Sussex Newspapers, letter to Baroness Hollins, November 2016:

At the debate in the House of Lords on the IP Bill, you were reported as saying that ‘the local newspaper threat is a smokescreen’ and that local newspapers were not at risk as they could choose to join a recognised regulator.

As the editor of many highly respected and long-established local newspapers can I say that this is anything but a smokescreen?

In his determination of the phone-hacking inquiry, Lord Justice Leveson made clear that local newspapers were guilty of no wrongdoing and should not be penalised as a result of his report. Yet we face huge financial hardship if the proposed cost sanctions outlined in the Crime and Courts Act 2013 proceed - and similar hardship if we are forced to join a recognised regulator.

The reasons for the former are clear; for the latter, may be less so. Regulation under Royal Charter requires newspapers to participate in compensatory arbitration. In the only approved scheme from IMPRESS this would require us to pay all the costs of an arbitrated complaint, up to £3,500, plus potentially the successful complainant’s costs of up to £3,000, in addition to unspecified damages.

For tiny papers who have seen readers and classified advertisements migrate to entirely unregulated websites and social media, these are enormous sums. It is rare for our titles to incur any legal fees during a year - we have always set the highest standards and when we make a mistake are quick to correct or apologise.

IPSO, our independent regulator of choice, is piloting an independent arbitration scheme without the requirement for the local press to join as it knows we have no need of it and could not afford it.

I have been a local newspaper journalist for 35 years and an editor for 25 of those. I am proud of the service we provide to our communities despite the tiny resources with which we now operate.

In the debate, you acknowledged that small newspapers ‘don’t hack phones’. Nor do large ones. Please do not allow [local] newspapers, a vital component of every local community, to be further eroded because of a scandal which engulfed the News of the World - a title a world away from ourselves.

The views in this letter are not merely my own but reflect those of the editor in chief of Johnston Press Jeremy Clifford who represents some 250 titles across the UK.

NMA Chairman and CEO of Johnston Press: extract from evidence to House of Lords Communications committee, December 2016

“I am very clear that the chilling effect of these punitive costs will stop investigations dead. Even when we know we are right on a case and we know that we will win, we simply cannot afford to rack up the costs, which could be hundreds of thousands of pounds. The fact is that in a case that we know we are going to win—whether it involves a drug baron, a paedophile ring or whatever—the other side knows that to be true and therefore it can sue us and we must pay, win or lose. Even if it is struck out, we will still have to pay. Of course, all publishers make mistakes. When we make mistakes, we usually settle the vast majority of them out of court. Particularly in the case of regional publishers, we usually settle out of court for a few thousand
pounds, or a few tens of thousands of pounds. Knowing that if it goes to court it will cost hundreds of thousands of pounds and we will be forced to pick up the costs of both sides, the other side would have no incentive to go down the mediated route and settle, as we do, out of court for a few thousand or a few tens of thousands. Therefore, even before it ever went to court they could threaten it, knowing they would get their costs paid, and not settle out of court unless the figure was ten times as much as we currently settle for. Given the economics of many of our small papers, from independents such as the Maidenhead Advertiser or the Henley Standard, it would finish them. Even when titles are part of a bigger group, they are run largely independently with their own P&L account. This would make them completely unviable. We know what would happen. They would become extremely risk averse and not hold to account the very people you would wish us to.”

**Nottingham Post editor response to Hugh Tomlinson of Hacked Off**

Senior regional journalists from Trinity Mirror have hit back at an accusation by Hacked Off chairman Hugh Tomlinson that regionals are being manipulated by national publishers in the fight to have Section 40 repealed.

In a blog post, Mr Tomlinson alleged that regional titles are being used as ‘human shields’ by national publishers, and singled out Trinity Mirror’s Nottingham Post for criticism.

Today the editor of the Nottingham Post Mike Sassi said: “The Post is a daily paper that guards its independence jealously. Like most local newspapers it is also proud to serve the local community that it seeks to represent.

“It appears that Mr Tomlinson doesn’t understand local papers. Certainly much of his analysis doesn’t stand up to scrutiny.

“He says only 140 IPSO complaints have been brought against local papers in the last two years. Presumably he is omitting the rest of the 2,896 complaints made against local newspapers because IPSO dismissed them without investigation, deeming them to be either not credible or outside its remit.

“Like all local newspapers, The Nottingham Post receives dozens of complaints every year. The vast majority are dealt with amicably, often by us explaining to complainants how and why something has been reported. A small number are resolved with a swift clarification and, if necessary, an apology.

“However, if Section 40 were to become law, complainants would have a huge financial incentive to pursue us, knowing that even if they lose we have to pay their costs. The number of complaints would inevitably increase.

“Mr Tomlinson says his proposed arbitration scheme would be cheap. He neglects to mention that it would also be compulsory. His throwaway line that ‘costs need not rise above a few thousand’ will raise a wry smile in every local newspaper office, right across our financially-challenged industry.

“The overwhelming cost of dealing with a big increase in complaints, multiplied by ‘a few thousand’ each time, would inevitably lead to us publishing little, if anything, contentious. Local papers like The Post would be paralysed.
“The Royal Charter provision that Mr Tomlinson claims would protect us from financial harm wouldn’t help either. It’s designed only for companies who don’t publish any national papers. Which means that, as part of Trinity Mirror, the Nottingham Post and scores of other local papers would be left unprotected.

“Mr Tomlinson’s blog is simply another tirade against the press. He goes on to make the nonsensical claim that IPSO is controlled by the national press. Really? How can that be? The vast majority of IPSO members are local papers and national magazines. Only two of the 12 IPSO board members represent national newspapers.

“It’s long been obvious that Mr Tomlinson and his supporters are determined to bring down a handful of national newspapers. Now it seems they are prepared to risk destroying the Nottingham Post and the rest of Britain’s local newspaper industry, to achieve their aim.”

Neil Benson, Trinity Mirror’s editorial director regionals, said: “It’s ironic that Mr Tomlinson, supposedly an advocate of high press standards, is playing so fast and loose with the facts.

“The Nottingham Post, like all Trinity Mirror titles, is editorially independent. Content decisions are made - 100 per cent of the time - by the editor and his team. To suggest otherwise is not only inaccurate, it is hugely insulting to our journalists in Nottingham.

“Mr Tomlinson characterises the Free the Press campaign as a national newspaper plot, in which they use regionals as 'human shields'. But there is a cavernous hole in his argument.

“Conveniently, he chooses not to mention that the majority of Britain’s regional newspapers do not have national newspaper sister titles and yet they are also vehemently opposed to Section 40. From the larger groups to the small, independent news publishers, there is unanimous anger and concern.

“That is because the onerous and wholly unfair costs regime that Section 40 would introduce could pose an existential threat to titles which found themselves liable for both sides’ legal costs, despite having done absolutely nothing wrong.

“In addition, as anyone who understands the regional press knows, Section 40 would have a severely chilling effect on local journalism.

“The prospect of being pursued by ambulance-chasing lawyers, representing people with information to hide but with nothing to lose, no matter how spurious their case, and leaving innocent publishers to foot the whole bill, would be bound to curb the pursuit of public-interest stories.

“For all their sound bites, Mr Tomlinson and his friends at Hacked Off have singularly failed to explain how such a patently cock-eyed system would improve the standard of journalism or better serve the interests of the reader.”

Extracts from A free press must not be bullied by the state – (David Aaronovitch, The Times, 14 December 2016)

“Rich men and women threaten, companies threaten, gangsters and dope cheats threaten, aggrieved and time-rich individuals threaten; day in, day out letters before action flow like little streams of menace into our legal department. Almost every single time you expose someone or
something, it happens in the context of legal threats. People don't like it if you tell lies about them and they like it even less if you tell the truth.”

Aaronovitch goes on to write about the impact of implementing Section 40: “What it says is that any publication not agreeing to be regulated by Impress will be subject to the costs of a legal action — even where it wins. Really. That’s what it says. Call the next Lance Armstrong a drugs cheat and even if he loses the case it will cost you hundreds of thousands. Well, no one in those circumstances would take the risk of running the story. These are not days in which newspapers make much if any money and the fastest way to bankruptcy would be to fall foul of Section 40. And that of course is why, as sticks go, it’s a knout, a knobkerrie, a bludgeon. It would have to be because otherwise the British press, from the pinkest metro-sheet to the shoutiest judge-hating tabloid, will not sign up with the government-approved regulator.”

“Leveson came about not because of weakness in press regulation but because a crime had been committed. That crime was prosecuted and people went to prison and others were rightly taken to task for having failed to notice what they should have. What business does government have interfering in the editorial decisions of an independent press on matters unrelated to criminality?

“Let me be even more controversial: what business does any regulator have in seeking to intervene in any legal activity by a publication? It seems to have escaped everyone’s notice that two of our national newspapers — the Financial Times and The Guardian — have, for more than two years now, been entirely self-regulating. They’re not signed up to anyone. Has the sky fallen in on them? No. Has their readers’ trust in them collapsed? It seems not.”

Letter to Secretary of State for Culture, Media and Sport from Martin Trepte, Editorial Director, Baylis Media, 3 January 2017

DCMS Consultation: Section 40 of the Crime and Courts Act 2013 and Leveson Inquiry Part II
I am writing to you in response to the above consultation in my capacity as editorial director of Baylis Media Ltd, the independent publisher of the Maidenhead Advertiser and the Slough and Windsor Express weekly newspapers.

Baylis Media Ltd is not part of any larger publishing group. Indeed, the company is unique in the world of local newspapers in that it is owned by a charitable trust which receives at least 80 per cent of our profits which are then used to support the community served by our publications.

As would be expected from an independent publisher that counts both Her Majesty the Queen and the Prime Minister as residents in the area we cover, Baylis Media Ltd prides itself on its high standards of fair, accurate and balanced public benefit journalism. We champion local causes, provide a voice for our community and hold those in authority to account without fear or favour.

The Maidenhead Advertiser and the Slough and Windsor Express have served their readers respectively since 1869 and 1812. However, we now find ourselves operating in an increasingly difficult financial climate and I genuinely fear the costs sanctions contained in Section 40, if activated, could spell the end of local newspapers like ours.
One of the main reasons people complain about our reporting is because they do not like that we have chosen to run a story – such as a court report about them. Genuine complaints are dealt with quickly and without fuss under our rigorous complaints procedure. If we get it wrong – we put it right in the next available edition.

Section 40 will encourage a flood of risk-free complaints from people who either wish to prevent us from publishing a story about them, or to punish us for already doing so.

Only last week I received a threat of a libel action from lawyers acting for a convicted sex offender over an accurate and privileged report of his conviction, with a menacing reference to the risks we faced if we did not remove the story from our website. Our own lawyers described it as a completely unmeritorious complaint so we refused and said we would fight any action. But it still cost us time and money and serves to highlight what we will face if Section 40 is introduced.

Aside from the fundamental unfairness of having to pay the costs of both sides in a court action – even if we win, those costs will be crippling for a small publisher like ourselves. It is no exaggeration to say we will face being bankrupted in the courts or be forced to avoid covering issues that could lead to a complaint.

Why then, I am sure you will ask, will Baylis Media Ltd not simply join Impress – the new state approved regulator – to avoid the costs sanctions?

There are several reasons. We are already a member of IPSO and consider it to be a robust, effective and independent regulator. We joined IPSO, which has been running for two years now, through choice and we dislike the idea of being bullied into joining Impress by the threat of costs sanctions.

We also have grave concerns about Impress as a regulator. As I’m sure you are aware, it is funded by Max Mosley whose antipathy towards the press is well known. It is not representative of the industry, having only about 30 hyperlocal websites so far signed up to it. It does not have its own editor’s code. And I understand it is yet to adjudicate a single complaint.

Impress also has a compulsory arbitration scheme. While called for by the Leveson Inquiry to allow complaints to the nationals to be resolved without costly recourse to the courts, we consider this to be unnecessary for the local press. With costs of about £6,500 for each complaint before adding ‘compensation’, it is also completely unaffordable and, like Section 40, will encourage more groundless complaints from those seeking financial gain. It should be noted IPSO is also piloting an arbitration scheme but this will not apply to the local press.

In addition we consider Impress - appointed by the PRP which was set up by politicians under a Royal Charter underpinned by statute - to represent state regulation of the press. The Royal Charter can be changed by politicians, so this is completely unacceptable to those of us who prize the freedom of the press.
Some of the campaigners and activists behind Impress have also openly called for major newspapers to be closed down. This raises serious questions about how it could be a fair and effective regulator and has dire implications for freedom of speech in our country.

Local papers were exonerated of any wrongdoing by Leveson. But by referring to ‘The Press’ as a single group, the inquiry has had serious consequences for local papers in terms of damage to trust and reputation.

While neither excusing or defending the practices of the tabloids that were exposed – such as phone hacking and paying officials for stories – it must be pointed out these were already illegal under existing laws. We feel the issues have been addressed by the subsequent court cases and there is no need for a second inquiry with potentially further ‘collateral damage’ to the local press.

In conclusion, the introduction of Section 40 will have dire consequences for a struggling local press, threatening its very existence and undermining the vital part it plays in championing local democracy. If it is not the final nail in the coffin for local papers, it will rob them of their ability to hold those in authority to account and have a stifling effect on freedom of speech.

I’m afraid much of this debate has focussed on the implications for the national press with little attention given to the consequences for local newspapers, particularly the independents of which a significant number still remain.

Baylis Media Ltd would therefore urge you to repeal in full Section 40 of the Crime and Courts Act 2013 and not proceed with the second part of the Leveson Inquiry. I hope you have found the perspective from the independent local press useful and will take our views seriously. I would welcome the opportunity to explain our position in more detail if it would be of assistance to you in coming to your decision.

Andrew Norfolk, The Times, 5 January 2017 - A law that loads the dice in favour of criminals
Section 40 of the Crime and Courts Act threatens the survival of journalism that exposed scandals such as Rotherham.

In the sound and fury surrounding the debate over regulation of the press, it is easy to lose sight of the many hoops that journalists already have to jump through to break the biggest stories.

Their is a job that has never been as free of restraint as those urging a tighter rein on the supposed excesses of the press would have you believe. Those restraints were there long before Milly Dowler and the indefensible, criminal phone-hacking scandal.

In my case, with the help and patience of a large number of dedicated colleagues at The Times, journalism led to the exposure of the Rotherham scandal.

Theresa May publicly praised The Times for its work on that case yet in the near future her government may enact legislation that would choke all future investigations. Those who claim that they seek to punish newspaper wrongdoers may instead succeed in muzzling us all, permanently.
Lots of people hate journalists. To the far left we are the loathed lackeys of the capitalist MSM (mainstream media); to the alt-right, a hated symbol of the liberal elite. Both extremes agree that we are all “lying scum”.

For the rich and powerful, accustomed to having their way, the press can be a particular irritant. Sometimes, investigative journalism leads to the publication of information that causes them displeasure. Criminals who escape detection until they are exposed by a newspaper tend, likewise, to feel less than charitably inclined towards those who bring them to justice.

For all such folk, it may soon be time to break out the champagne. After the January 10 closure of a consultation process, the government must decide whether or not to take a step that would in all likelihood make me redundant.

There has already been much heated argument over state-approved press regulation, the choice of Impress as the officially recognised regulator and the questionable motivation of some of its cheerleaders.

I won’t rehash those. My concern, should the government trigger section 40 of the Crime and Courts Act 2013, is its likely impact on investigative journalism. Under section 40, any newspaper that declines “voluntarily” to join Impress would be forced to pay its opponent’s legal costs in any claim brought for libel or breach of privacy, even if it won the case.

At a stroke, this would destroy the delicate balancing act that invariably surrounds the decision-making process at any responsible newspaper before publishing an article that could expose it to a civil claim in the courts.

Typically, we need to be sure not only that what we are saying is true but that we have the evidence to defend it. Ethics aside, the decision on whether or not to go to print is one that no newspaper can afford to get wrong more than once in a blue moon. The financial costs and reputational damage of losing such a case are enormous.

For this reason, I spend far more time working with our in-house lawyers than I do with editorial colleagues before publishing an investigation. Had section 40 been on the statute book when I became a trainee journalist 27 years ago, countless articles published in this and other newspapers would never have seen the light of day. The risk would have been too great. In fact, it’s barely even a risk. It’s an almost inbuilt guarantee of punitive financial sanctions. Any chancer, multi-millionaire or two-bit criminal would be able to take you to court in the sure and certain knowledge that they and their lawyers would not lose a penny by doing so, even though every word of the published article was demonstrably true.

Since early 2011, The Times has published a series of articles about a hidden pattern of child sexual exploitation involving groups of men and young teenage girls in English towns and cities. We also addressed the repeated failure of child protection authorities in Rotherham to tackle the targeted grooming and pimping of children in the town.

For more than two years, the local council and South Yorkshire police remained in a state of almost complete denial. The dam was breached in August 2013 when, on our front page, we told the story of one Rotherham girl and named a man, Arshid Hussain. We accused him of being a serial abuser of children. He had not even been questioned by police about such offending let alone charged with any offence.
The story triggered such outrage that it forced the council to order the independent inquiry by Professor Alexis Jay which found that 1,400 Rotherham girls were subjected to grotesque abuse from 1997 to 2013. It also prompted a criminal inquiry that led in early 2016 to Hussain’s conviction for multiple sex offences against under-age girls. He was jailed for 35 years but is seeking leave to appeal.

In the brave new world of section 40, the August 2013 article might never have been published. We might not have dared to name Hussain because when that decision was taken we had no expectation that any inquiries would result. We would have faced the prospect of being sued by a man who knew we would be ordered to pay his legal costs, even if we won the case. No story, no inquiries, no justice. Is that what the government really wants?

I wish I could take those who subscribe to the “lying scum” theory of journalism back in time to the summer of 2013, to the endless discussions and boardroom meetings at The Times when we considered the contents of a small mountain of official files and documents about Hussain and his dealings with the girl. It was definitive proof that police and social services knew of his offending but did nothing to stop it. Still we agonised about whether to name him. We approached Hussain to give him an opportunity to comment before the article appeared. We also contacted the council and the police, who made one final attempt to block publication. To go ahead and publish was not a decision taken lightly.

Contrast such an approach, and the self-imposed controls that are already observed by Britain’s self-regulating press, with the post-truth world of online news fakery. Social media, saturated with threats, lies, and insults, is a 21st-century Wild West that swings elections but was declared by Sir Brian Leveson to exist in an “ethical vacuum” beyond regulation.

Be under no illusion. Section 40 ostensibly seeks to protect the weak and the poor, but it would kill investigative print journalism. It would render the rich and powerful unaccountable. To implement such a measure, in a nation that calls itself free and democratic, would be madness. http://www.newsmediauk.org/write/MediaUploads/PDF%20Docs/The_Times_5_January_2017_-_Andrew_Norfolk.pdf
Appendix 4: Leveson Report

The Leveson Report (Part K, Chapter 7, Section 4) recommended voluntary independent self-regulation.

4.1 “By far the best solution to press standards would be a body, established and organised by the industry, which would provide genuinely independent and effective regulation of its members and would be durable. If such a body were to be established, and were to command the support of all the key players in the market, there would be no need for further intervention although I believe that there would remain a need for some further support in relation to ensuring that independence and providing incentives for membership...

Membership

4.11 “Ideally the body would attract membership from all news and periodical publishers, including news publishers online. It is important for the credibility of the system, as well as for the promotion of high standards of journalism and the protection of individual rights, that the body should have the widest possible membership among news providers. Clearly this will be unlikely to include broadcasters who are already covered by the Broadcasting Code. It has been accepted that, although I am very anxious that it remain voluntary, it must involve all the major players in the industry, that is to say, all national newspaper publishers and their online activities, and as many regional and local newspaper publishers, and magazine publishers, as possible. This is not meant to be prescriptive at the very small end of the market: I would not necessarily expect very small publishers to join the body, though it should be open to them to do so on appropriate terms...

Funding

4.16 “I recommend that 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.”

Code

4.21 “I recommend 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.”

The Leveson Report did not actually recommend the introduction of Section 40 in the draconian terms of the Crime and Courts Act 2013. The Leveson Report suggested something quite different and its recommendations ought to be seen in context. The PCC had been entirely voluntary. The industry had proposed a radical new approach: a contract-based system of regulation, with a strong independent, regulator able to police, investigate and enforce standards backed by sanctions of up to a million pounds through individual publishers entering into directly binding long term contract.

Lord Justice Leveson wished to “underline that it is almost universally accepted that all major newspapers should be covered by a new regulatory regime. I have had to address the question of how that can be achieved. By far the best option would be for all publishers to choose to sign up to a satisfactory self-regulatory regime and, to persuade them to do so, convincing incentives are required.”

He had suggested that the civil procedure rules be amended to give the court the discretion at the conclusion of proceedings to take into account membership of a regulator with an
arbitration system, in the absence of an alternative dispute system and such amendment of the civil procedure rules, he suggested adoption of one way costs shifting:

**Executive Summary paras 63-67, footnotes to para 67:**
21. I recommend that the Civil Procedure Rules should be amended to require the court, when considering the appropriate order for costs at the conclusion of proceedings, to take into account the availability of an arbitral system set up by an independent regulator itself recognised by law.

23. So that the significance of this proposal is understood, in the absence of a provision of an alternative mechanism for dispute resolution, available through an independent regulator without cost to the complainant, together with an adjustment to the CPR to require or permit the court to take account of the availability of cost free arbitration as an alternative to court proceedings when considering orders for costs at the conclusion of proceedings, I recommend that qualified one way costs shifting be introduced for defamation, privacy, breach of confidence and similar media related litigation as proposed by Lord Justice Jackson: see Part J Chapter 3 Section 6.

Yet the Leveson Inquiry did not seek or receive detailed submissions on the potential impact of this proposal and its detrimental effect upon the news media. Media organisations not only oppose the Leveson Report proposal and Section 40 but also strongly criticised the government’s consultative proposals on costs capping. The impact of Section 40 is greatly at odds with Lord Justice Leveson’s strong statements in support of the regional press and his concern for its future.

**Impact on the regional and local press**

**Leveson Report 2012 - Executive Summary and Recommendations**

**The commercial background para. 19 page 6:**
19. As to the commercial problems facing newspapers, I must make a special point about Britain’s regional newspapers. In one sense, they are less affected by the global availability of the biggest news stories but their contribution to local life is truly without parallel. Supported by advertisements (and, in particular, local property, employment, motor and personal), this source of income is increasingly migrating to the internet; local councils are producing local newsletters and therefore making less use of their local papers. Many are no longer financially viable and they are all under enormous pressure as they strive to re-write the business model necessary for survival. Yet their demise would be a huge setback for communities (where they report on local politics, occurrences in the local courts, local events, local sports and the like) and would be a real loss for our democracy. Although accuracy and similar complaints are made against local newspapers, the criticisms of culture, practices and ethics of the press that have been raised in this Inquiry do not affect them: on the contrary, they have been much praised. The problem surrounding their preservation is not within the Terms of Reference of the Inquiry but I am very conscious of the need to be mindful of their position as I consider the wider picture.

**Volume 1 Part C The Press Chapter 2 The press: history, governance structures and finances Para. 10 The regional press p.152**

10.12 In relation to regional and local newspapers, I do not make a specific recommendation but I suggest that the Government should look urgently as what action it might be able take to help
safeguard the ongoing viability of this much valued and important part of the British press. It is clear to me that local, high-quality and trusted newspapers are good for our communities, our identity and our democracy and play an important social role. However, this issue has not been covered in any detail by the Inquiry and, although the extent and nature of the problem has been made clear, the Inquiry has heard no evidence as to how it might be addressed. I recognise that there is no simple solution to this issue. I also recognise that many efforts have been made over the years to try to find a solution, and that many of the options for public support that have been canvassed are not appropriate. This does not make the need to find a solution any less urgent. I should also, perhaps, make it clear that the regulatory model proposed later in this Report should not provide an added burden to the regional and local press.
Appendix 5: IPSO: The Solution to Independent Self-Regulation for Britain’s Free Press

IPSO Chairman’s introduction to the latest Annual Statement:

“The striking consequence of Leveson, which it is all too easy to overlook, is that for the first time in the history of the press, publishers have voluntarily agreed to enter into a legally binding contract with a regulator, IPSO. This contract confers legally binding powers on IPSO and imposes legally binding obligations on the regulated press. It is as a result of that contract that IPSO is able to go to court to enforce its actions and as a result of that contract that the 85 publishers with over 1,500 print titles and 1,100 websites, 90 per cent of national newspapers measured by coverage, almost all local newspapers and all the major magazine newspapers publishers are legally required to comply with our rulings.”

IPSO was launched in September 2014. This was a full year before the Press Recognition Panel was ready even to consider applications for approval. In outline, IPSO:

- Ensures that member newspapers and magazines follow the Editors’ Code.
- Investigates complaints about printed and online material that may breach the Editors’ Code.
- Can compel newspapers and magazines publish prominent corrections or adjudications if they breach the Editors’ Code (including on their front page).
- Monitors press standards and requires member newspapers and magazines to submit an annual statement about how they follow the Editors’ Code and handle any complaints.
- Can investigate serious standards failings and can fine publishers up to £1 million in cases where they are particularly serious and systemic.
- Operates a 24-hour anti-harassment advice line which provides advice for editors and journalists.
- Provides training and guidance for journalists so they can uphold the highest possible standards.
- Provides a Whistleblowing Hotline for journalists who feel they are being pressured to act in a way that is not in line with the Editors’ Code.
- Is trialling a voluntary arbitration scheme.

IPSO is independent of the industry and was set up to be so. Its Foundation Group was chaired by Lord Phillips of Worth Matravers, former President of the Supreme Court 2009-2012. The Appointments Committee was chaired by Sir Hayden Phillips, former Permanent Secretary of the Department of Culture Media and Sport and the Lord Chancellors/Constitutional Affairs Departments. IPSO’s chairman is Sir Alan Moses, former Lord Justice of Appeal. Its CEO is Matt Tee, a former Permanent Secretary at the Cabinet Office.

IPSO’s chairman secured publishers’ agreement to effect contractual and constitutional changes that IPSO felt necessary and bolstered yet further its independent powers and procedures within the first year of operation.

An External Review of IPSO for its first 18 months’ operation was recently conducted by Sir Joseph Pilling, a former Permanent Secretary. This external review into the independence and effectiveness of IPSO found it to be an effective regulator which is taken seriously by newspapers and editors but remains sufficiently independent of the industry.

Steps have already been taken to implement the review’s recommendation on changes to the articles of association of the Regulatory Funding Company, extension of the term of the budget
to five years and the constitution of the Editors’ Code Committee— the Chairman of the Code Committee also concluded his term of office in conformity with its recommendation on length of term.

IPSO does not intend to apply for approval under the Royal Charter system by seeking recognition from the Press Recognition Panel.

Commencing Section 40 Crime and Courts Act 2013 will not incentivise NMA members inside and outside IPSO membership to leave IPSO and join IMPRESS or any other regulator that might be established and approved by the Press Recognition Panel.
Appendix 6: PRP Decision to Recognise IMPRESS Under Legal Challenge

The NMA has served a letter in accordance with the pre-action protocol for judicial review upon the PRP in respect of its decision to approve IMPRESS. A copy of the Judicial Review Letter before Claim is enclosed. This challenges the legality of the PRP’s decision to recognise Impress.

It follows from legal advice received from the NMA’s Solicitors, RPC, and its Counsel, Lord Pannick QC and Iain Steele.

Copy of pre-action protocol letter:

Dr David Wolfe QC
Chairman
Press Recognition Panel
Mappin House
4 Winsley Street
London
W1W 8HF

Our ref: GRE/NEW182.4 5 December 2016

Dear Sirs,

Judicial Review Letter before Claim

1. We act for the proposed claimant in this matter, the News Media Association (“NMA”). The NMA is the voice of national, regional and local news media organisations in the UK: a £5 billion sector read by 48 million adults every month in print and online. Its members are the biggest investors in news, accounting for two-thirds of the total spent on news provision in the UK, with most of the remainder spent by broadcasters including the BBC.

2. You will recall that we wrote to you on 31 October 2016, following the announcement on 25 October 2016 of the decision of the Press Regulation Panel (“PRP”) to grant recognition to IMPRESS, purportedly pursuant to the terms of the Royal Charter on Self-Regulation of the Press (“the Charter”, “the Decision”). We noted that no information had, at that stage, been provided about the grounds on which the Decision was made and requested urgent sight of the full reasons for the Decision as well as the information on which it was based. We observed that there was a serious risk of prejudice in the event that the NMA had to wait the full 30 days that the PRP had indicated it would take to provide this material. This was because, based on such information as had been made available, we considered that the Decision was likely to be capable of challenge on public law grounds. We stated that we expected to be writing to you with a formal pre-action letter once we had received the documentation and information requested.

3. Regrettably, it was not until 21 November 2016 that you published the reasons for the Decision on your website, in a document that runs to 190 pages entitled “PRP Board decision in respect of the application for recognition from IMPRESS: The Independent Monitor of the Press CIC” (“the Reasons”).
4. This letter is written in accordance with the Pre-Action Protocol for Judicial Review. It sets out the grounds on which the NMA considers the PRP to have acted unlawfully and the action it expects the PRP to take as a result.

**The proposed claimant**

5. The News Media Association 292 Vauxhall Bridge Road, London, SW1V 1AE.

**The proposed defendant**

6. The Press Recognition Panel of Mappin House, 4 Winsley Street, London, W1W 8HF.

**Details of the matter being challenged**

7. The PRP’s decision dated 25 October 2016 (with reasons given on 21 November 2016) to grant recognition to IMPRESS (“Decision”).

**The issue**

8. The Charter expressly states that the functions of the PRP shall be public functions (Article 4.3) and there is no doubt that the Decision to recognise IMPRESS is amenable to judicial review. The issue is whether the PRP has misinterpreted and misapplied the Charter such that its Decision is vitiated by an error of law, in particular because: (1) IMPRESS cannot be considered a “Regulator” within the meaning of the Charter and hence cannot be eligible for recognition; and (2) IMPRESS’s application failed to meet certain specific recognition criteria.

**Background**

9. The PRP was established by the Charter (Article 1) with the function (Article 4.1) of determining applications for recognition from a “Regulator”, defined at Schedule 4 as meaning an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications. In determining applications, the PRP must apply the 29 “recognition criteria” set out at Schedule 3 to the Charter, which were formulated in light of recommendations made by Lord Justice Leveson in his Report “An Inquiry into the Culture, Practices and Ethics of the Press”, November 2012 (“Levenson Report”).

10. Post-Leveson, many newspapers (including members of the NMA) have established a press regulator, the Independent Press Standards Organisation (“IPSO”), which uses as its code of standards the long-standing Editors’ Code of Practice. The newspapers that formed IPSO do not intend to apply for it to be recognised by the PRP, because in their view it is inconsistent with the freedom of the press from executive interference for a State body, such as the PRP, to have a role in “recognising” or “approving” self-regulatory press bodies. Indeed, the press has been unwavering in its objection to state interference in the regulation of the press. The Charter unacceptably was drawn up by politicians and members of the Hacked Off lobby group without representation from the press and can only be amended by a two-thirds majority in both Houses of Parliament. This is an insurmountable hurdle for any changes initiated by the press, however damaging the Charter might prove to be to the industry and to freedom of expression. Parliament, on the other hand, can remove the underpinning legislation by a simple majority at any time it chooses.

11. However, another organisation, IMPRESS, applied to the PRP for recognition on 20 January 2016. In response to the PRP’s first “call for information”, the NMA made submissions dated 4
March 2016 opposing the application. IMPRESS reacted by providing further information and documents in April 2016. The PRP made a second “call for information” in May 2016, to which the NMA responded on 1 June 2016, and IMPRESS again provided further information and documents.

12. On 15 July 2016, the PRP published on its website an additional section 5 of its “Guidance for Applicants” comprising the PRP’s “interpretation of some terms and elements in the Royal Charter”. Although it was presented as being separate from the particular application made by IMPRESS, the new section 5 in substance responded to points raised by the NMA as a basis for opposing that application, and indicated that the PRP was not minded to accept the NMA’s points. On 15 August 2016, the NMA made a further submission in relation to the PRP’s proposed interpretation. At that stage the PRP moved that new section of the Guidance to a separate section immediately following the Guidance, describing it as the PRP “Board’s indicative view on some elements of the Royal Charter” (the “Indicative View”).

13. The PRP was due to announce its decision on IMPRESS’ application on 23 August 2016, but instead indicated that it would be making a third “call for information”. The NMA made submissions dated 20 and 23 September 2016. The call for information ended on 23 September 2016, after which IMPRESS was given an opportunity to respond to information provided to the PRP. The PRP convened a meeting on 25 October 2016 at which it made its Decision to grant recognition to IMPRESS. As noted above, the PRP did not publish the reasons for its Decision until 21 November 2016.

14. The consequences of recognition of a regulator by the PRP are significant, in particular as a result of section 40 of the Crime and Courts Act 2013. The Government is currently consulting on whether to bring section 40 into force. Section 40 has effect in relation to any “relevant claim” (defined in s. 42(4) as libel, slander, breach of confidence, misuse of private information, malicious falsehood and harassment) relating to publication of news-related material that is made against a “relevant publisher” (defined in s. 41(1)). In summary, if the defendant was a member of an approved regulator at the time when the claim was commenced, the court generally must not award costs against the defendant (s. 40(2)). By contrast, if the defendant was not a member of an approved regulator, the court generally must award costs against it – even if the claim is unsuccessful (s. 40(3)). Further, under section 34, a defendant who was a member of an approved regulator at the material time (defined in s. 42) is generally excluded from liability for exemplary damages. Under section 42(2)-(3), an “approved regulator” means a body recognised as a regulator of relevant publishers by any body established by Royal Charter with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers – i.e. the PRP.

**Ground 1: misinterpretation and misapplication of the concept of “Regulator” and the Criterion 1 requirement of being an “independent self-regulatory body”**

15. In summary, the PRP erred in law in interpreting the term “Regulator” as including a body such as IMPRESS and in concluding that IMPRESS met the Criterion 1 requirement of being an “independent self-regulatory body”.

16. Paragraph 1 of Schedule 2 to the Charter provides:

“The Board of the Recognition Panel shall grant recognition to a Regulator if the Board is satisfied that the Regulator meets the recognition criteria numbered 1 to 23 in Schedule
3, and in making its decision on whether the Regulator meets those criteria it shall consider the concepts of effectiveness, fairness and objectivity of standards, independence and transparency of enforcement and compliance, credible powers and remedies, reliable funding and effective accountability, as articulated in the Leveson Report, Part K, Chapter 7, Section 4 ("Voluntary independent self-regulation").

17. Two important consequences follow from this provision.

18. First, the PRP’s power to grant recognition only applies in respect of a “Regulator”. That term is defined at Schedule 4 to the Charter, as follows:

“Regulator” means an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications.

19. Schedule 4 further provides that “relevant publisher” has the meaning given in section 41 of the Crime and Courts Act 2013, namely “a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material (a) which is written by different authors, and (b) which is to any extent subject to editorial control” (as per s. 41(1), which is subject to exclusions at s. 41(5)-(6) and Schedule 15). It is worth noting that there is nothing to suggest that the PRP has sought any confirmation or comfort that putative members of IMPRESS will be "relevant publishers"; it seems likely that they will not be.

20. Secondly, the mandatory language of paragraph 1 of Schedule 2 (“shall consider”) is such that, in making its decision on whether a body meets the recognition criteria, the PRP must consider the concepts articulated in the Leveson Report. The Charter thus requires the PRP to adopt a purposive approach when applying the criteria and deprecates an unduly narrow or literal (“box-ticking”) approach. A contrast can be drawn with the different approach taken in Schedule 2 to other relevant factors. Paragraph 4 of Schedule 2 identifies other recommendations of the Leveson Report which the PRP “may but need not take into account” in determining an application for recognition and provides that where the PRP is “satisfied” that a Regulator meets the recognition criteria, “it shall not refuse” to grant recognition by reason of a failure to comply with these specified recommendations. Thus, it is for the PRP to decide whether or not to take the paragraph 4 recommendations into account. By contrast, the paragraph 1 concepts are mandatory relevant considerations, which infuse and colour the interpretation of the recognition criteria themselves.

21. Recognition Criterion 1 provides (emphasis added):

“An independent self-regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government. For the avoidance of doubt, the industry’s activities in establishing a self-regulatory body, and its participation in making appointments to the Board in accordance with criteria 2 to 5; or its financing of the selfregulatory body, shall not constitute influence by the industry in breach of this criterion.”

22. In the Reasons (page 10), the PRP rightly identified that in order to be eligible to apply for recognition, IMPRESS needed to meet the definition of “Regulator” at Schedule 4 to the Charter.
However, the PRP erred in law in concluding that IMPRESS met that definition. While the precise circumstances of IMPRESS’ formation remain opaque – in particular the role played by the well-known privacy campaigner Max Mosley, who as set out below is the main source of IMPRESS’ funding – what is clear is that IMPRESS was not formed by relevant publishers: see the factual background at pages 5, 15 and 16 of the August report referred to in the Reasons (page 10). Nor was IMPRESS formed “on behalf of” relevant publishers. Indeed, at the time of its application IMPRESS could only point to 11 very small publishers as members, none of which had played any role in its formation. By the time of the Decision, IMPRESS’ membership remained minimal: 27 very small publishers according to its own website, counting print and online editions twice in some cases (see http://www.impress.press/complaints/regulated-publishers.html, referred to at page 6 of the August report).

23. The PRP’s approach was based on its views that (1) “a regulator is not required to have had members at the time of its creation”, (2) “the Charter anticipated the possibility of multiple regulators and the assertion that a regulator should have the support of a ‘significant proportion of relevant publishers’ would rule out that idea” and (3) “there was nothing in the Charter that precluded an organisation forming and then having members who subsequently join”. The PRP cross-referred to “PRP52(16) Annex C, Section A1”, which is a document entitled “Additional briefing notes for the PRP Board in its assessment of the application for recognition from IMPRESS” (7 October 2016). That document states as follows:

“6. Use of the term “by or on behalf of” in this context implies the regulator should either be formed by “relevant publishers”, or for the benefit of “relevant publishers”. As the Charter provides a framework for self-regulation, there is no statutory body with the power to create a regulator or regulators, and so the initiative to do so needs to come from somewhere. In these circumstances relevant publishers would either need to get together to create a regulator (or regulators), or another body would need to do so on their behalf (or both could happen). The wording can be interpreted as meaning the initiative to create a regulator may be publishers’ or another body’s, but that either approach is acceptable provided that the regulator is created in order to regulate “relevant publishers”.

... Indicative view

• The PRP does not consider that the Charter’s definition of a regulator in Schedule 4 precludes a body from being eligible for consideration for recognition on the basis of the number and size of its members whether at the time of formation, or application or determination of that application.

• A regulator being formed ‘by or on behalf of’ relevant publishers could include a situation where the regulator is formed on behalf of any publishers that might later choose to join.

• Given that the costs protections afforded by Section 40 of the Crime and Courts Act only arise if the publisher is a member of an approved regulator, publishers may choose to wait for a regulator to be approved before joining. The PRP does not interpret the Charter criteria as requiring the regulator to have current members in order to be eligible for consideration for recognition.

• However, an applicant regulator will need to show that they have the relevant procedures in place and that they are ready and able to operate those procedures...”
24. The PRP’s analysis is wrong in law. The Leveson Report and the Charter clearly contemplate that the body applying for recognition by the PRP will already have support from the industry, which is embodied in the Schedule 4 requirement that the body must be “formed by or on behalf of relevant publishers” and in the Criterion 1 requirement that the body must be “self-regulatory”. Further, the Leveson concepts under the heading “Voluntary independent self-regulation” – which as set out above are mandatory relevant considerations for the PRP – include the following (original emphasis in bold, additional emphasis underlined):

“4.1 I now turn to what is required in order to build a genuinely effective independent self-regulatory system. ... What is required is independent self-regulation. By far the best solution to press standards would be a body, established and organised by the industry, which would provide genuinely independent and effective regulation of its members and would be durable. If such a body were to be established, and were to command the support of all key players in the market, there would be no need for further intervention...

4.3 In summary, I envisage that the industry should come together to create, and adequately fund, an independent regulatory body, headed by an independent Board...

4.9 ... It is critically important that the industry, in a fair and open way, get together to identify independently minded people in whom the public can have confidence to make up the appointing panel. It will then be the task of that body to find and appoint a Chair who demonstrably meets the criteria of fair minded and balanced independence to which I have referred. In doing so, the industry will be committing itself to organising independent regulation.

4.11 Ideally the body would attract membership from all news and periodical publishers, including news publishers online. It is important for the credibility of the system, as well as for the promotion of high standards of journalism and the protection of individual rights, that the body should have the widest possible membership among news providers. Clearly this will be unlikely to include broadcasters who are already covered by the Broadcasting Code. It has been accepted that, although I am very anxious that it remain voluntary, it must involve all the major players in the industry, that is to say, all national newspaper publishers and their online activities, and as many regional and local newspaper publishers, and magazine publishers, as possible. This is not meant to be prescriptive at the very small end of the market: I would not necessarily expect very small publishers to join the body, though it should be open to them to do so on appropriate terms. Having said that, however, I have no doubt that there would be advantages in doing so. Ideally it would also include those who provide news and comment online to UK audiences.

4.14 The industry, through Lord Black, has made a principled point that the industry should fund self-regulation without requiring input from the public purse. Certainly, I agree that any industry established independent regulatory body must be funded by its members...

4.16 I recognise that it is not appropriate that the regulator should have a blank cheque, anymore than that the industry should have a strangle-hold on the regulator’s budget. In practice, if the regulator is too expensive, publishers will not join.

I recommend that 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 (which are not as great for a
number of the larger publishers as they are for the smaller, regional press). There should be an indicative budget that 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."

25. It is not difficult to see why Leveson made these clear recommendations or why they are embodied in the Charter. The whole point was that the system of regulation would be self-regulation, to ensure that it is effective. A body such as IMPRESS which is neither formed by nor on behalf of industry (and indeed which the majority of the industry has expressly said it will not join) will not be an effective regulator. Leveson was clear that effectiveness meant that the majority of the press should be behind this body and specifically recommended: "a new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers. The challenge, then, is to find a way of achieving that result".¹ The "incentives" envisaged by Leveson were intended to respond to the exit of Northern & Shell from the PCC in or around January 2011; Leveson was concerned to prevent a small number of publishers from sitting outside a regulatory system agreed by the rest of the industry. In recognising IMPRESS, the PRP has thus ridden rough shod over Leveson's intentions.

26. The PRP's approach to the definition of “Regulator” at Schedule 4 to the Charter denudes the words “by or on behalf of” of any real content by treating it as sufficient that a regulator has been established in the hope that relevant publishers will in future (after the body has been recognised) decide to become members. There is no sense in which a body such as IMPRESS has been formed “by” relevant publishers, nor even “on behalf of” them. As the PRP noted in its letter dated 15 August 2016, the meaning of “on behalf of” “does not include acting independently of, and indeed despite the objections of, those it purports to represent”.

27. Against this background, it can readily be seen that the three points made by the PRP at page 10 of the Reasons are wrong in law. First, the suggestion that “a regulator is not required to have had members at the time of its creation” misses the point that a Regulator must have been formed by or on behalf of the industry in the sense set out above. Secondly, the possibility of multiple regulators is not precluded by requiring that any Regulator must have the support of a significant proportion of relevant publishers. Wherever the boundary may be drawn to demarcate the minimum proportion of publishers whose support is needed, it is clear that IMPRESS falls well short of the line. As the NMA has observed, the handful of publishers who have joined IMPRESS form “a tiny and rather specialised part of the news media in the UK” (letter dated 4 March 2016, paragraph 21) and IMPRESS “does not owe its existence, as a self-regulatory body should, to a desire for self-regulation by any significant part of the industry” (letter dated 1 June 2016, paragraph 9.5). Thirdly, the Charter does preclude an organisation being recognised in circumstances where it has no or only minimal support from the industry: in the definition of “Regulator”, and in the Criterion 1 requirement that the body must be a “self-regulatory” body, and in the Leveson concept of effectiveness to which the PRP is expressly required to give effect.

28. For essentially the same reasons, the PRP further erred in law in concluding that IMPRESS satisfied Recognition Criterion 1. Indeed, it is striking that the PRP’s analysis in relation to Criterion 1 (Reasons pages 11-33) contained no reference whatsoever to the express

requirement that the body must be “self-regulatory”. The PRP instead focused exclusively on the separate issue of whether the body is “independent”, in particular by reference to the source and reliability of its funding. The PRP has misconstrued Criterion 1 by ignoring an important requirement.

Ground 2: misinterpretation and misapplication of Criterion 6

29. In summary, the PRP erred in law in interpreting Criterion 6 as permitting a regulator to be funded other than by the news industry itself, and further erred in law in its approach to the issue of whether the particular source of funding for IMPRESS was such as to compromise IMPRESS’ independence and effectiveness.

30. Recognition Criterion 6 provides:

“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...”

“Settled in agreement between the industry and the Board”

31. In the Reasons (page 77), the PRP concluded that IMPRESS satisfied Criterion 6, notwithstanding that it “relies overwhelmingly on the funding from the IPRT [Independent Press Regulation Trust] and will continue to do so over the next few years” (page 71). The PRP took the view that the requirement that funding should be settled in agreement between the industry and the Board “could not reasonably be deemed to be the whole Industry” and that the NMA was “seeking to introduce a threshold of ‘substantial proportion’ or ‘reasonable proportion’ – a test which was not in the Charter”. The PRP further referred to the fact that IMPRESS had undertaken a consultation on its funding scheme that led to changes to its initial proposals, and concluded that “the process followed by IMPRESS had been sufficient to result in a funding and charging scheme which met the requirements of Criterion 6”.

32. The PRP again cross-referred to the document entitled “Additional briefing notes for the PRP Board in its assessment of the application for recognition from IMPRESS” (7 October 2016), specifically Section A2, which states:

“Indicative view

• In relation to criterion 6, we do not interpret the provision for funding for the system ‘being settled in agreement between the industry and the Board’ as requiring positive agreement to the funding arrangements with the whole of (or any particular minimum threshold of) the news publishing industry (whatever that means). This is because:
  o The Charter envisages that there can be more than one regulator, o Such a requirement could allow publishers an effective veto over the recognition of a regulator when they have no wish to become a member of that (or any recognised) regulator, which is plainly not contemplated; and
  o Given the sheer scale and diversity of ‘relevant publishers’ it would be impracticable to identify or even contact all the relevant publishers that could or might be affected.
However, we bear in mind that the regulator has to ‘take into account the … commercial pressures on the industry’ and is required by criterion 23 to ensure that membership is open to all publishers on fair, reasonable and non-discriminatory terms…. In those circumstances we consider that criterion 6 does, as a minimum, require some form of consultation that the wider industry could respond to if it wished.

We also consider that criterion 6 requires the regulator to provide a rationale for the decisions taken following the consultation including for example, how the regulator will ensure that certain types or sizes of publishers are not precluded from joining at a later stage (and therefore excluded from cost protection) because the fees do not sufficiently reflect the commercial pressures on the industry.

Given that criterion 6 refers to ‘funding for the system’ being agreed and not just the ‘regulatory fees’, we also consider that consultation should be on the whole of the funding arrangements, including any proposals to take funding from third parties.

There is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party ...

33. The PRP’s analysis is wrong in law. Properly construed, Criterion 6 requires that the funding for a Regulator must come from (or at least be sanctioned by) the news industry itself, and not come from third parties who are unconnected with the industry. Criterion 6 must be interpreted and applied in light of the concepts set out in the section of the Leveson Report headed “Voluntary independent self-regulation”, in particular the concepts of “effectiveness” and “reliable funding”. As Leveson stated at paragraph 4.14: “any industry established independent regulatory body must be funded by its members”. That led to the specific recommendation at paragraph 4.16 that “funding for the system should be settled in agreement between the industry and the Board”, which is reproduced verbatim in the Charter at Criterion 6. These provisions reinforce the point made above, that the Leveson Report and the Charter clearly contemplate that the body applying for recognition by the PRP will already have support from the industry. Whilst Leveson recognised that there might be additional sources of funding to cover “start-up costs” (paragraph 4.17), he plainly contemplated that the costs for the ongoing functioning of the body would be paid by the industry itself, as is implicit in a system of “self-regulation”. What Leveson did not contemplate, and what the terms of Criterion 6 do not permit, is a body which “relies overwhelmingly on the funding from [a third party] and will continue to do so over the next few years”, as the PRP acknowledges to be the case regarding IMPRESS.

34. The PRP’s interpretation of Criterion 6 reduces the words “settled in agreement between the industry and the Board” to a mere requirement for a body to consult generally on its financial arrangements and the fees that it proposes to charge. That is not what Leveson or those drafting the Charter intended. As the NMA has noted, the PRP’s approach “negates the plain meaning of the words that have been specified in the Charter and in the Leveson Report, which requires the funding to be from, or at the very least sanctioned by, a substantial proportion of the industry” (letter dated 15 August 2016, paragraph 9b); “It is clear that there needs to be a reasonable proportion of relevant publishers in agreement to satisfy this requirement” (letter dated 22 August 2016, paragraph 4); and “there has been no agreement with any industry member on the IMPRESS funding arrangements” (letter dated 20 September 2016, paragraph 12).
35. The PRP wrongly placed emphasis on the absence of specific provision in the Charter as to what particular proportion of the industry needs to agree to the regulator’s funding arrangements. Plainly the PRP has an evaluative role under the Charter in deciding whether the threshold has been crossed. What the PRP cannot lawfully do is abdicate that responsibility and grant recognition to a body which has not secured agreement from any meaningful proportion of the industry. Contrary to the PRP’s reasoning, this is not to give any particular publisher a “veto” over recognition of a body by the PRP, or to preclude the possibility of more than one body being recognised, but simply to recognise and give effect to the clear intention of Leveson and the Charter that a body must already have support from the industry before being recognised. The practical problems prayed in aid by the PRP equally take it nowhere. An applicant for recognition need not exhaustively trawl the country for all conceivable relevant publishers, but must merely show that it has secured agreement to its funding arrangements from a reasonable proportion of publishers, having regard to factors such as size, circulation and market share. As above, wherever the boundary may be drawn to demarcate the minimum proportion of publishers whose support is needed, it is clear that IMPRESS falls well short of the line. Indeed, it is revealing that even when IMPRESS purported to consult the entire industry on fees, only 12 responses were received (Reasons page 69).

**Lack of adequate safeguards**

36. A separate point arises if, contrary to the above submissions, the PRP’s approach of countenancing third party funding of a regulator is correct. Section A2 of the document entitled “Additional briefing notes for the PRP Board in its assessment of the application for recognition from IMPRESS” (7 October 2016) further stated:

“25. If a regulator subsidised its membership fees with external funding, it would also be necessary to ensure such a funding model could not pose a challenge to the independence of the regulator. The concept of independence in the context of the definition of a regulator is discussed above, and is interpreted as mainly meaning independence from industry and from government. However, in the context of the regulator’s funding a wider interpretation is needed, i.e. independence from anything which might inappropriately influence or distort the decisions of the regulator. There would be clear risks if a funder could exert influence over the decisions of the regulator. There would also be risks if a funder could compromise the credibility or effectiveness of the regulator by withdrawing or reducing funding. These risks would need to be addressed by ensuring appropriate governance and control structures were put in place.

...”

**Indicative view**

There is nothing in the criteria or the Charter which precludes funding for the regulator being provided via or from a third party and such funding does not mean that a regulator is automatically not ‘independent’. It would be possible for third party funding to compromise the independence of a regulator, but whether it does so will be a question of fact and will depend on the safeguards that were put in place to protect independence, such as the terms of the agreement between the funder and the regulator and the regulator’s governance arrangements.”

37. However, having recognised the possibility that third party funding may compromise the independence of a regulator, the PRP then failed to reach a view as to whether adequate “safeguards” were in place in the case of IMPRESS.
38. The section of the Reasons recording the PRP Board’s discussion and conclusions (page 77) does not include any analysis in relation to the issue of safeguards on independence. The discussion solely addresses the issue regarding what is meant by “settled in agreement between the industry and the Board” (first paragraph), the adequacy of IMPRESS’ consultation (paragraph 2), the adequacy of IMPRESS’ indicative budget (paragraph 3) and the period for which IMPRESS had funding in place (paragraph 4). None of this touches on the issue of whether IMPRESS’ funding is sufficiently secure from withdrawal as to allow the PRP to conclude that IMPRESS can properly be considered “independent”. The PRP Board thus failed to engage with or take a decision on a matter which, on its own construction of Criterion 6, was “a question of fact” and an important matter for it to decide.

39. For its part, the PRP Executive had at least considered this issue, recognising that IMPRESS “relies overwhelmingly on the funding from the IPRT and will continue to do so over the next few years” (page 71) and that “the question of the reliability of IMPRESS’ funding arises given its reliance on IPRT and the terms of the funding deed with IPRT” (page 72). The Executive suggested that measures taken by IMPRESS after applying for recognition “go a significant way to reducing any risk in relation to reliability of funding from IPRT” and “given that the clear intention appears to be to fund IMPRESS for the purposes set out in the funding agreement we have no reason to believe that IPRT would exercise [its] powers in an arbitrary or unnecessary way” (page 72). Ultimately, however, the Executive felt unable to make any recommendation as to whether Criterion 6 was met (page 77).

40. Insofar as the PRP Board may rely on its analysis of independence in relation to Criterion 1, that analysis is itself flawed and unsustainable.

41. As the PRP acknowledges, IMPRESS “relies overwhelmingly” on funding from IPRT, which “was set up primarily if not exclusively as a vehicle for IMPRESS to receive funds from AMCT” (page 31). AMCT is the Alexander Mosley Charitable Trust, a charitable trust set up and apparently funded by Max Mosley, a majority of whose trustees are himself and other Mosley family members (page 13). The concern that IMPRESS’ independence may be compromised by its dependence on a particular source of funding is particularly acute in circumstances where in substance it is wholly or substantially funded by one individual, particularly when that individual is a well-known privacy campaigner with strong views on the regulation of the press.

42. Moreover, IMPRESS’ funding agreements and governance arrangements do not allay that concern. In its discussion of Criterion 1, the PRP Board expressed the view that “the legal agreements in place were are [sic] now sufficiently robust to protect against any material influence”, that “the deed of variation between IPRT and IMPRESS had closed an earlier concern about this”, and that “the confirmation that there were formal processes in place to prevent influence provides a sufficient degree of confidence” (Reasons page 33). However, it remains open to Max Mosley to engineer a situation whereby IMPRESS’ funding is terminated, by ensuring that the circumstances for funding are no longer satisfied. The deed of variation relied on by the PRP – which provides that the IPRT’s “catchall” power (Reasons page 20) to terminate, reduce or withhold funding shall only be exercised if IPRT does not itself have sufficient funds to meet its commitments to IMPRESS – is no answer. As the NMA has observed, “the ongoing continuity of IMPRESS from a funding perspective is still at the mercy of AMCT; [IPRT] can be put into a position where there is “insufficiency of funds” at the whim of AMCT” (letter dated 20 September 2016, paragraph 11).
43. For example, AMCT is entitled under clause 3.2(a) of the Grant Agreement to terminate or decrease funding to IPRT on 15 business days’ notice if AMCT’s trustees reasonably consider that the funding is not reasonably required to advance IPRT's purposes. AMCT is not contractually obliged to inform IPRT of its grounds for invoking clause 3.2(a). Even if AMCT does inform IPRT of its grounds, clause 3.2(a) gives AMCT a wide margin of discretion: there could be no challenge to a decision by AMCT to cease payment if the ground on which it was based was one that AMCT, acting reasonably, could reasonably regard as showing that funding was no longer reasonably required for IPRT’s purposes. Even if AMCT states grounds for invoking clause 3.2(a) which are capable of falling within the scope of that clause, it may be impossible for IPRT to know whether those grounds are the true reason for AMCT invoking the clause or whether AMCT has some other, improper, motive. To give an obvious example, AMCT may state that it is invoking clause 3.2(a) on the ground that IMPRESS has attracted too few subscribers and is doomed to fail (which might be a permissible ground), but AMCT might have as its true motive dissatisfaction with the low level of sanctions imposed by IMPRESS for invasions of privacy (which would not be a permissible ground).

Ground 3: misinterpretation and misapplication of Criteria 7 and 8

44. In summary, the PRP erred in law in interpreting Criteria 7 and 8 as permitting a regulator purportedly to “adopt” a code in whose formulation and maintenance it played no part, and further erred in law in concluding that the requirement that “serving editors have an important part to play” was satisfied in IMPRESS’ case.

45. Criteria 7 and 8 provide as follows:

“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. Serving editors have an important part to play although not one that is decisive.”

“8. The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, 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.”

Standards code

46. In the Reasons (pages 84-85), the PRP concluded that IMPRESS satisfied Criterion 7, notwithstanding that IMPRESS is still consulting on its own standards code and in the meantime has merely purported to “adopt” IPSO’s Editors’ Code of Practice. The PRP took the view that
IMPRESS had “adopted and in that sense taken responsibility for the Editors’ Code for the purposes of making its application” and that the concept of “responsibility” “related to the board of the regulator alone being responsible for deciding the rules it intends to apply”. The PRP further took the view that “the question of who owns the legal rights to the code was not an issue for the Board, provided that IMPRESS could in practice use the Code as contemplated”, and noted that “advice from IMPRESS confirmed through the Executive that there were no legal proceedings actioned or threatened to try and prevent IMPRESS using the Editors’ Code, nor any injunction or other formal prohibition against IMPRESS in this respect”.

47. The PRP again cross-referred to the document entitled “Additional briefing notes for the PRP Board in its assessment of the application for recognition from IMPRESS” (7 October 2016), specifically Section A4, which states:

“Indicative View

• The Board has considered the interaction between the wording of the preamble to the Charter which states that ‘the independent regulatory body which is intended to be the successor to the Press Complaints Commission should put forward the Editors’ Code of Practice as its initial code of standards’ and criterion 8 which requires the PRP to assess the regulator’s code. We bear in mind that the criteria are legally operative whereas the preamble simply explains the Charter’s background (providing, at most, an aid to interpretation). Whilst there is nothing in the Charter to prevent a regulator from putting forward the text of the current Editors’ Code as its own code, we would still need to assess that submitted code against criterion 8 (even the preamble only talks of ‘putting forward’).

• We do not consider it part of the PRP’s role to determine any dispute over ownership of the Editors’ Code (or any other code which an applicant submits) provided that that the criteria are met in relation to the standards code which an applicant regulator has properly adopted.

• What matters is whether the Code which is submitted by an applicant regulator complies with the requirements of the Criteria.”

48. The PRP’s analysis is wrong in law. Properly construed, Criterion 7 requires that the body applying for recognition by the PRP must have formulated and adopted its own standards code, which the PRP must then assess by reference to the matters identified in Criterion 8. The concept of a body having “responsibility” for a particular code is left without any meaningful content if it can be satisfied simply by the body “deciding” that someone else’s code contains “the rules it intends to apply”. There is no getting round the fact that “responsibility” for the Editors’ Code lies with the existing Editors’ Code Committee, not with IMPRESS.

49. The PRP further erred in placing emphasis on the fact that no legal proceedings have been taken to prevent IMPRESS from using the Editors’ Code. The issue of “responsibility” cannot properly turn on the presence or absence of litigation of that nature (and in any event, there has been no such action because IMPRESS has not (so far) made any use of the Editors’ Code beyond publishing a link to it on its website; we understand that it has received no complaints and carried out no investigations). As the NMA has noted, the PRP’s interpretation of Criterion 7 “is an artificial construct which appears to try to side step both the ownership of the Editors’ Code and the failure of IMPRESS to meet the requirement under Criterion 7 that the code be their responsibility ... even if IMPRESS was licensed to use the Editors’ Code, it is not IMPRESS’s code
and it has no responsibility for it” (letter dated 15 August 2016, paragraphs 10-11). As a matter of fact, it remains the case that IMPRESS does not even have a licence to reproduce the Code, so cannot circulate it to its members or license them in turn to promulgate it on their websites.

50. Criterion 7 was based on a clear recommendation in the Leveson Report, Part K, Chapter 7, Section 4 (“Voluntary independent self-regulation”), as follows:

“4.18 ... My role is to make recommendations for an effective and independent structure for setting and enforcing standards, not to set those standards. That is properly a role for the independent regulatory body, in consultation with the industry and with the wider public...

4.20 ... In structural terms, whilst it is of course essential that editors should take pride in their Code, and that it should be thoroughly grounded in real world current experience of the industry, it cannot be right that the standards to which the industry are to be held are set without independent oversight.

4.21 In order for the new regulatory regime to have the independence required to secure public trust and confidence, it is essential that it should be the regulator who approves a code of standards to which members must adhere. The Board could well be advised by a Code Committee including serving editors and journalists, but with independent members as well: indeed, I can see no reason why the Code Committee in the amended form as proposed by Lord Black should not be constituted as a formal advisory body to the Board.

I recommend 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.

4.22 As a further step to secure public confidence, it appears to me that it would be valuable if the Board was to satisfy itself that the proposed Code had been subjected to public consultation, albeit on the basis that the Code Committee would then analyse the result of any consultation and provide the Board with the benefit of its experience on issues that might have arisen. Thus the Code would command the confidence of both the public and the industry.”

51. Leveson plainly contemplated that it would be the new regulator itself which formulated the standards code, hence his observation that to “set those standards” was “properly a role for the independent regulatory body”, it being “essential” that the regulator itself “approves a code of standards to which members must adhere”. Further, Leveson envisaged that the new regulator would formulate its code having first carried out “consultation” on a “proposed code”, with the regulator’s Code Committee then being required to “analyse the result” and “provide ... the benefit of its experience on issues that might have arisen” – i.e. the proposed code might be amended in light of the consultation responses. None of this has happened in the case of IMPRESS and the Editors’ Code.

52. Whilst the Preamble to the Charter stated that the new regulatory body which was intended to be the successor to the Press Complaints Commission “should put forward the Editors’ Code of Practice as its initial code of standards”, this envisaged a new regulatory body making a prompt application for recognition after the Charter came into effect. By contrast, IMPRESS delayed its application and had had ample time to devise its own standards code. Further, the Charter evidently did not envisage a situation where a successor body to the PCC that has responsibility
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for and applies the Editors’ Code (i.e. IPSO) was already successfully established prior to an application being made by some other body for recognition by the PRP.

53. In its analysis in relation to Criterion 8, the PRP Executive stated that it had “not assessed IMPRESS’s new draft Code, as it has not yet adopted it and relies on the Editors’ Code for the purposes of this application. When and if IMPRESS decides to adopt a new Code, the PRP will review it at that time” (page 93). This highlights the vice of the PRP’s approach. The PRP has in effect purported to recognise a regulator without knowing the standards against which the regulator will be exercising its powers. However, Criterion 8 requires the PRP to make a judgment on the adequacy of the applicant regulator’s standards code, which cannot properly occur whilst that code remains in draft form and thus subject to amendment. It is no answer to say that the PRP can review the content of IMPRESS’ code once that code has actually been finalised – the point is that the review must occur before recognition is granted, as an important aspect of the decision on recognition.

54. It is inconsistent with Criterion 8 for the PRP to recognise a body which is “adopting” an external Code as a temporary expedient while it consults on its own draft Code which it intends to apply, with the consequence that the PRP is unable to assess the adequacy of that draft and intended Code.

Serving editors

55. The PRP Board’s discussion on Criterion 7 made only passing reference to the requirement in relation to “serving editors”, stating that “the sentence in question was not referring only to the regulator’s code committee but to the process taken overall of formulating and adopting a Code” (page 85). This was evidently an afterthought which post-dated the PRP’s main analysis on the issue of serving editors, as set out in its Indicative View in August 2016 and maintained at Section A3 of the document entitled “Additional briefing notes for the PRP Board in its assessment of the application for recognition from IMPRESS” (7 October 2016):

“Indicative view

We consider criterion 7 as permitting serving editors to be part of the Code Committee and, if they are, to play an important (but not decisive) role in such a committee. However, we do not interpret the criterion as requiring such participation in light of the words ‘may comprise both independent members of the board and serving editors’ in the first sentence. If the criterion had intended a minimum requirement for serving editors this would have been stated more clearly, and we bear in mind our general approach of not implying additional restrictions into the criteria.”

56. The PRP’s analysis is wrong in law. Properly construed, Criterion 7 requires that there must be at least one serving editor on a regulator’s Code Committee. As the PRP notes, the first sentence of Criterion 7 is permissive: it makes clear that the Code Committee may (not must) comprise both independent members of the Board and serving editors. However, the second sentence states in terms that serving editors “have an important part to play”. It is impossible to see how serving editors can properly be said to be playing an important (or indeed any) part in the work of the Code Committee if no serving editors are members of that committee.

57. As the NMA has observed: “[Criterion 7] is very clear in dictating that serving editors have not only a role to play, but an important role, on the Code Committee of any regulator that is to be recognised. ... There is no room to interpret Criterion 7 as not requiring at least one serving editor
to be on the Code Committee” (letter dated 22 August 2016, paragraph 5). “The clear meaning was that serving editors would be involved. The PRP’s interpretation stretches the meaning of “an important part to play” beyond all logic to include having no part to play at all” (letter dated 15 August 2016, paragraph 9c).

58. The PRP’s new suggestion that the relevant sentence in Criterion 7 “was not referring only to the regulator’s code committee but to the process taken overall of formulating and adopting a Code” appears to imply that it is enough that serving editors who have no link to IMPRESS were involved in formulating the Editors’ Code which IMPRESS has now purported to adopt. That is a clear misreading of Criterion 7, which was based on the Leveson recommendation set out above. The recommendation referred in terms to it being the “Code Committee” which “may comprise both independent members of the Board and serving editors” (paragraph 4.21). Criterion 7 carefully strikes the balance identified by Leveson at paragraph 4.20, where he noted that it was “of course essential that editors should take pride in their Code, and that it should be thoroughly grounded in real world current experience of the industry” – hence there should be at least one serving editor on the Code Committee – but that “it cannot be right that the standards to which the industry are to be held are set without independent oversight” – hence Criterion 7 makes clear that serving editors are not to have a “decisive” role.

Details of the action that the defendant is expected to take

59. For the reasons set out above, the PRP has acted unlawfully in purporting to grant recognition to IMPRESS. The NMA accordingly invites the PRP to confirm that it accepts the position in law as set out above and that it will withdraw its purported Decision. Absent such action, the NMA will commence judicial review proceedings seeking relief to the same effect from the Court.

Information and documents sought

60. So that the NMA may properly understand the factual basis underlying the PRP’s Decision, and having regard to a defendant’s duty of candour in judicial review proceedings, please provide us with confirmation that all correspondence, meetings and calls between IMPRESS and the PRP and indeed between either of them and any other potentially relevant parties such as Mr Mosley and the related trusts have been disclosed. If they have not been disclosed, please provide such documents by return.

The legal advisors dealing with the claim and the address for reply and service of court documents

61. RPC of Tower Bridge House, St Katharine's Way, London, E1W 1AA.

62. Please ensure that all correspondence in this matter is marked with the reference above and addressed to Geraldine Elliott.

Interested parties

63. IMPRESS would be an interested party for the purposes of the proposed judicial review challenge.

ADR proposals

64. The NMA is willing to enter into discussions with the PRP regarding this matter.
Proposed reply date

65. Please reply within 14 days of the date of this letter, namely no later than close of business on 19 December 2016.

Yours faithfully

RPC

c.c. IMPRESS
Appendix 7: Why Leveson 2 is Unnecessary - Specific Police and Media Reviews

Part 2 of the Leveson Inquiry was originally intended to consider the relationship between the news media and the police, corrupt payments, use of personal data, and investigations of wrongdoing at newspaper organisations. In the event, all of these issues were covered by Part 1 of the Inquiry, the criminal investigations and various police and media reviews.

The relationship between the police and the press was considered in detail during Leveson Part 1 and recommendations made covering everything from off-the-record briefings and leaks of information to hospitality and whistleblowing.

The College of Policing is finalising its Media Relations Guidance, following public consultation to replace the ACPO guidance. This will contain rule of chief constables, all officers and staff including guidance on communications, recording all contact with the media, speaking terms, taking the media on operations, gifts, hospitality and entertainment and other relevant Leveson issues. In practice, as a result of the Leveson recommendations, police officers have had very little contact with journalists since Leveson with a detrimental reduction in release of information to the public.

This new guidance will update and replace its 2013 Guidance on Relationships with the Media published after the Leveson Report and the ACPO Communication Advisory Group Guidance of 2010.

The Filkin report advised the Metropolitan Police as to the ethical issues arising from the relationship between the police and the media. This was published in 2012.

The Metropolitan Police updated its media policy in 2014, aligning it to the College of Policing 2013 guidance, the Leveson report, the Filkin Report and other relevant reports.

The NMA responded to consultations by the College of Policing on its media relations guidance which is to update and replace the 2013 College of Policing guidance.

There have been changes to the relevant criminal law. The Bribery Act 2010 is now established. New offences of police corruption are set out in the Criminal Justice and Courts Act. There are changes to be effected by the Policing and Crime Bill, including investigation of matters raised by police whistle blowers and enhanced powers of HMIC powers to require information from anyone when conducting reviews of police forces.

The Computer Misuse Act has been updated, most recently by the Serious Crime Act 2015.

In 2012, during the course of the Leveson Inquiry, the CPS issues Guidance for prosecutors on assessing the public interest in cases affecting the media. The CPS issued Additional guidance on cases involving payments made to corrupt public officials by journalists arising out of Operation Elveden. The law relating to disclosure of information in the context of payments for stories was judicially considered as a result of the prosecutions of public officials and journalists and relevant appeals.

The Court of Appeal considered the Law of Misconduct in Public Office as a result of appeals against conviction. The CPS discontinued proceedings as a result and reviewed its legal guidance.
prosecution policy. Journalists were acquitted. The Law Commission undertook a comprehensive review of the law, which includes a public consultation on proposals for reform.

The Law Commission’s consideration of the reform of the Law of Misconduct in Public Office and offences relating to the misuse of information, relevant to journalism, has now been subsumed into its review for the Cabinet Office on the Law on the Protection of Official Data.

The review will also consider: the relationship between the legislative regime and internal disciplinary measures to which public servants and others are subject; the powers available to investigator; the relationship between the criminal law and any civil remedies; the effect of technological change on the way in which data is stored, shared and understood, and determine whether the current law needs to be reformed properly to account for these changes.

It is important that such reviews do not lead to any reduction in public rights to information, prohibit government release of information, or expand the criminalisation of disclosure, irrespective of the public interest.

The Information Commissioner enforces the law on data protection and has acquired additional powers of sanction. The Information Commission consulted and issued guidance on data protection and the media, in accordance with the Leveson Report’s recommendations.

Claimants and their lawyers are aware of the law and increasingly use data protection and other privacy related complaints against the media. The General Data Protection Regulation and related criminal justice directive is to come into force in May 2018 instigating far reaching changes to the legal regime.

The issues relating to wrongdoing at newspaper organisations have been covered through the criminal prosecutions, civil proceedings and numerous police inquiries.

Damages for privacy actions have increased significantly as a result of the civil claims, setting the bar higher for any future redress for claimants.

Her Majesty's Inspectorate of Constabulary (HMIC) produced its report Without Fear or Favour in 2011, followed by Revisiting Police Relationships - A Progress Report in 2012. Its recommendations on guidelines for all police forces have been carried out.

The NMA has always maintained its dialogue with the DPP and appropriate police bodies on various police/media operational protocols and guidance. Examples include longstanding joint protocols with the CPS on release of prosecution material to facilitate court reporting.

This has also included general press/policing guidance, such as the ACPO Communications Group Guidance 2010, intended “to encourage an open, accessible common sense approach that serves the public interest.”

A successful working relationship between the police service and the media is vital for fostering public engagement with the police and public understanding of police work. However, professional guidance must create a framework to help and support police officers in achieving a good relationship, rather than erecting new barriers that entrench police secrecy. Media organisations and editors expressed strong concern during the 2016 public consultation that the consultative draft College of Policing Media Relations Guidance would create such problems.
There have been other developments in the criminal and civil law since 2012 and further reforms under consideration or imminent, that also argue against any necessity for Part 2.

RIPA offences relating to interception of communications and communications data, have been subsumed by the new Investigatory Powers Act 2016.

The police force’s own unjustified use of RIPA to investigate journalists and their sources necessitated official review and change to the law.

The Investigatory Powers Act gives wide powers to the police and other agencies to add to the RIPA surveillance powers, from access to communications data to equipment interference. The new Act includes some specific provisions for the protection of journalistic sources but such protections can be bypassed if some criminal conspiracy concerning the disclosure of information is alleged. The police and other state agencies have acquired enhanced powers to investigate the press under the new statutory framework.
Appendix 8: YouGov Opinion Poll results press release and tables

YouGov Poll: Public Rejects Impress’ Wealthy Donor Funding Model

Just four per cent of people think a press regulator should be funded by donations from wealthy individuals and trusts, the Impress model, compared with 49 per cent who believe it should be funded by the newspaper industry itself, as the Independent Press Standards Organisation is, a new YouGov poll has found.

In his report into the culture, ethics and practices of the press published in November 2012, Lord Justice Leveson said that a regulator for the press should be funded by its members, and IPSO – which is funded entirely by member publishers – was subsequently established to regulate the press.

A new YouGov poll published today has found that the public agree that a press regulator should be funded by the industry (49 per cent) while just four per cent believe that a regulator should be funded by a wealthy individual or trust. Impress, the state-recognised regulator for the press which not a single significant publisher has signed up to, is funded by Max Mosley.

Lynne Anderson, News Media Association deputy chief executive, said: “This survey demonstrates conclusively that a regulatory regime led by Impress - which is completely reliant upon funding from one wealthy individual, Max Mosley - cannot command the confidence of the public.

“IPSO is funded in its entirety by its member national, regional and local newspaper publishers and that is the funding model the public want and expect from an industry which is committed to robust self-regulation.”

“It is also abundantly clear from the poll that there is absolutely no public appetite for further activity from the Government in this area - such as the reopening of the Leveson Inquiry - when there are other much more pressing priorities at hand.”

The YouGov poll also found that the public overwhelmingly believe the Government should be focussing its attention and resources on areas other than press regulation which came at the very bottom of a list of 16 issues the Government should focus on over the next few years.

The poll found that just one per cent of respondents thought it should be among the top four priorities, after airport expansion (two per cent). Top four priorities were Brexit (53 per cent), health (48 per cent), immigration and asylum (45 per cent) and the economy (44 per cent).

Commissioned by the NMA, the poll also found that more than two-thirds (68 per cent) of people believe that news on social media platforms like Facebook – which are currently unregulated - should be subject at least to the same level of regulation as newspapers or even tighter regulation.

Britain’s press is subject to numerous criminal and civil laws covering news gathering and reporting. The vast majority of newspapers and magazines have also signed up voluntarily to a system of tough, independent self-regulation under IPSO.

Poll results table:
http://www.newsmediauk.org/write/MediaUploads/PDF%20Docs/YouGov_Results.pdf
Appendix 9: Correspondence between IMPRESS and NMA
Letter from Jonathan Heawood, IMPRESS CEO, to NMA Chairman Ashley Highfield on 6 December 2016

Dear Mr Highfield,

I watched with great interest the evidence you gave this afternoon to the House of Lords Select Committee on Communications. In the course of your evidence, you said that I, as Chief Executive of IMPRESS, have ‘made it clear’ that I do not want you.

I take it that you believe I do not want either Johnston Press or other members of the NMA to join IMPRESS. I am sorry if I have done anything to give you this impression and I would be grateful if you could point me towards the evidence for this.

For the avoidance of doubt: I do want news publishers in the United Kingdom to subscribe to independent and effective regulation. I believe that this is an important plank in any strategy to ensure the long-term sustainability of this vital industry. I would be delighted if Johnston Press in particular, and other members of the NMA in general, chose to join IMPRESS. I believe that we can help you to regain the public trust which is a necessary part of sustainability. I also believe that the public deserve to have some guarantee that decent news publishers hold themselves accountable to decent standards of journalism. In the era of fake news, it is more important than ever to sort the phonies from the professionals and to point audiences towards the best and away from the worst elements in the news ecosystem.

However, I understand that, at present, you do not wish to join IMPRESS. I hope you agree that this is entirely your own choice. It is certainly not mine.

Yours sincerely,

Jonathan Heawood
Chief Executive Officer

Letter from David Newell, NMA CEO, to Jonathan Heawood on 15 December 2016

Dear Mr Heawood,

Thank you for your letter to the NMA chairman Ashley Highfield in which you appear surprised that he has formed the impression that you have no interest in attracting his company, Johnston Press, or indeed any other member of the NMA into membership of IMPRESS. You ask to be pointed towards the evidence which supports this impression.

We note that you repeated this in a House of Lords Communications Committee evidence session this week in response to a question about whether you would really welcome the Daily Mail and other publications owned by large newspaper groups into IMPRESS given your outspoken comments about the press in the past.

The reason our members have this impression is because you repeatedly attack newspapers, both national and local, in your articles and blogs. You actively support a campaign to persuade advertisers to boycott certain newspapers of which you disapprove in order to pressurise them to change their editorial line.
You have made it clear that, in recruiting members for IMPRESS, you will only talk to the smallest 10% of the press. In a piece for the NUJ entitled ‘Press regulation the IMPRESS way’, you wrote in your capacity as founding director of the IMPRESS project: “IMPRESS gives us an alternative. We don’t have the support of those nine men who own 90% of the press. Instead, we’re talking to the thousands of people who run the remaining 10%...”

It can only be assumed that, in terms of the largest 90% of the press, you were referring to NMA members such as Archant, DMG Media, Johnston Press, Newsquest Media Group, News UK, Telegraph Media Group and Trinity Mirror, who are signed up to IPSO, alongside the publishers of many independent regional and local newspapers and magazines.

In an article for Open Democracy, you attacked the BBC/NMA local news partnership, saying: “...the BBC has got into bed with companies including Archant, Johnston, Newsquest, Tindle and Trinity Mirror, which together own 80% of local newspaper titles, control 85% of revenue in the sector and have arguably done as much as anyone to cause the problem which this scheme purports to address, by closing local and regional newspapers across the UK.”

You even criticise local newspapers for running public notices – a service relied upon by communities across the UK - suggesting that local papers “have had it both ways” for years “receiving hidden subsidies whilst deny any responsibility to public.”

You appear to condemn the commercial business model which supports the vast majority of the UK newspaper and magazine industry and the concentration of ownership in the hands of a “handful of men with wide-ranging business interests.” You would apparently prefer to see the big groups replaced with hyperlocal publishers.

On Twitter, you have repeatedly and vigorously denounced the press and singled out newspapers such as the Daily Mail, The Sun and The Telegraph for their editorial stance. Despite also telling the House of Commons Culture, Media and Sport Committee that you would like to see the Daily Mail join IMPRESS, the reality is that you repeatedly attack the Daily Mail, directing personal abuse at its editor-in-chief, as well as actively supporting the Stop Funding Hate campaign which encourages advertisers to boycott the title. You have even tweeted directly at advertisers encouraging them to pull their ads from selected newspaper titles in NMA membership.

Your views appear to be enthusiastically shared and often repeated by various members of the IMPRESS Board and the IMPRESS code committee. This alone would make it impossible for IMPRESS to be the independent regulator for NMA member newspaper titles.

All this evidence and more suggest that IMPRESS will never be a credible, impartial and independent regulator but has instead been set up by its funders and founding directors as a vehicle to trigger section 40 cost sanctions in order to punish the press which you all view with such contempt.

Yours sincerely,

David Newell
Chief Executive
Letter from Jonathan Heawood to David Newell on 16 December 2016

Dear David,

Thank you for your letter of 15 December in response to mine to Ashley Highfield of 6 December. You have drawn my attention to various comments I have made over recent years. In none of these do I say that I do not want Johnston Press or other members of the NMA to join IMPRESS.

The comments you have cited simply show that I take a keen interest in the role of news publishing in a democratic society. I have nowhere ‘made it clear’ that I do not want Johnston Press or other members of the NMA to join IMPRESS. Instead, I have set out to balance the freedom of the press from political control with the public interest in ethical journalism. Whilst you may not share my conclusions, I hope you can accept that my interest in this field is motivated not by ‘contempt’ for the press, but by belief in its importance.

Yours sincerely,

Jonathan Heawood
Chief Executive Officer
Appendix 10: Profiles on IMPRESS CEO, Board and Appointment Panel members

IMPRESS

IMPRESS is funded by Max Mosley through a series of trusts. It has been recognised by the state-funded Press Recognition Panel as a press regulator. It has the power to establish a standards code to control the editorial content of newspapers, news websites and magazines.

It has a complaints-handling function and the power to decide if a publication has breached the code and to determine sanctions, including fines.

IMPRESS is run by its founder and chief executive Jonathan Heawood and a board of directors that includes Maire Messenger-Davies, Martin Hickman and Emma Jones. Its board was appointed by a panel including Damian Tambini, Aidan White (honorary president of MediaWise) and Caroline Instance. The appointment panel recruitment panel process was managed by Jonathan Heawood.

Messenger Davies chairs the IMPRESS code committee, which also includes Heawood, Jones and Hickman. Gavin Phillipson, Paul Wragg and Mary Fitzgerald are also members of the committee. It is clear from these individuals’ public statements that they have a partisan and anti-press lobbying agenda which is wholly inconsistent with their positions within IMPRESS as independent and impartial regulators.

Set out below are summaries of their recent comments.

Jonathan Heawood (@jheawood)

Jonathan Heawood is the founder and chief executive of IMPRESS. In addition to being its most senior member of staff, he sits on the Code Committee that advises on how to implement its standards code.

- In a one-month period (5 November to 5 December 2016) Heawood tweeted or retweeted over 50 attacks on the Daily Mail, including retweeting views that: “the Daily Mail is adopting an increasingly fascist style of politics. Reverting to its black-shirt supporting history” and that: “the rise of fascism starts with undermining and political capture of democratic institutions, like the Daily Mail tries to do.”

- He has tweeted, retweeted and ‘liked’ tweets in support of an advertising boycott against the Daily Mail and other right-of-centre newspapers. He has a ‘pinned tweet’ having a go at John Lewis for advertising in the Daily Mail and has ‘liked’ a tweet attacking John Lewis for: “bringing its name into disrepute by advertising in a Neo-Fascist rag.”

- Heawood has used social media to hurl abuse at the editor of the Daily Mail, Paul Dacre. On 5 December, he attributed a proposal to him a require immigrants to swear an oath of integration, tweeting: “Swear an oath to live in Britain? If you fucking insist Mr Dacre.”

- He has attacked other titles too, for example tweeting out a link to an article by Paul Mason entitled: “A Reader’s Guide to the Shit the Sun writes.”
On 3 November, he retweeted: “#dontbuythesun or any other ‘newspaper’. Support Leveson, support regulators like Impress. Remove this endemic corruption.” On the same day he retweeted: “The UK media in the round is a barrier to truth, a mockery to freedom of expression, a division of tolerance and a danger to our security.”

Heawood is also critical of local newspapers, appearing to criticise them for taking public notices “Many publishers have had it both ways for years, receiving hidden subsidies whilst denying any responsibility to public.”

He has also, in his capacity as IMPRESS chief executive, attacked the BBC for its public interest reporting partnership with local newspapers.

Máire Messenger Davies (@mairemd)

Máire Messenger Davies is both a director of IMPRESS and the chair of its Code Committee. This Committee will devise its standards code, draft guidance on its interpretation and advise the board on how to implement it.

Messenger Davies has repeatedly endorsed and promoted calls for boycotts of right-wing newspapers, particularly the Sun and the Daily Mail.

- In the month of December alone, she retweeted over 50 attacks on the Sun newspaper such as this one from 27 December: “@TheSun hates the truth and the UK people - including its own readers - caring only for Rupert Murdoch’s ideological agenda.”

- She has repeatedly endorsed calls for a boycott of the Sun and other media outlets owned by Rupert Murdoch. On 26 December retweeted: “Rupert Murdoch’s presence is everywhere and it is giving us a headache so its time to break loose and #BoycottMurdoch.”

- She has also retweeted attacks on Sun readers: “Sun Readers Allowed themselves to be dictated to by unelected American Billionaire #Murdoch. Mugs.”

- On 3 January, she retweeted the reaction of a band called Cabbage to being endorsed by the Sun: “The Sun championed us as a top tip for 2017. WHAT FUCKING MORONS. Read into the lyrics and you’ll fund how much we despise your odious, backward nationalism, Tory sucking cuntishipness. They pay no attention to what is real, they exploit every single one of you and affect the way you think, everyone has a member of family or a friend affected by this awful repeated propaganda. It’s a crime. Don’t buy the Sun. Don’t even walk past it without burning it or spitting on it. They try to tell you what to think and harass true visionaries, artists and anyone who stands up to this fucking web of hate and profit. Murdoch will lead us into worldwide demise. And for what... Money and Power!”
  - In addition to retweeting, she ‘liked’ tweets in praise of this, such as “Every time someone pokes Murdoch and the S*n in the eye, we inch closer to a slightly more decent press.”

- She has also publicised her intense dislike of the Daily Mail, with repeated references to the paper as “scum.”
She has 'liked' a tweet that said: "Need to close down the toxic #MailScum somehow. It’s destroying our democracy."

She has also retweeted Alastair Campbell saying: “Mail. Total scum. Dacre. Evil. Stop reading hate.”

As with Jonathan Heawood, she has shared descriptions of the paper as fascist, retweeting the view that the Daily Mail “appears to have thrown caution to the wind & is now using Hitler and the Nazis methods to attack its enemies #Brexit#Fascists”

Like Heawood, she supports calls for both readers and advertisers to boycott the publication.

- She has repeatedly promoted an advertising boycott of the Daily Mail, retweeting messages such as "The Government spent £1.8m advertising with @DailyMailUK. Our taxes used to foster hatred, division and contempt of law #StopFundingHate."
- She ‘liked’ a tweet that said "my sister gave me the best gift: she deleted her @DailyMailUK app & got all of her friends to do the same."


She also dislikes the mainstream media beyond the press, liking a tweet from an account called Murdoch’s democracy that "we’ve been suffering from #fakenews for decades. #bbcdp #Peston #Murnaghan @SkyNews @BBCNews. How dare they accuse others of their Crimes”.

- On Facebook in July 2015, she has endorsed the view that the media are controlled by banks and are to blame for war.
- She takes part in the partisan online campaign against BBC chief political correspondent Laura Kuenssberg, retweeting the view: “When our great “free press” awards Journalist of the Year” to the @BBCNews Chief propagandist, it tells you everything about their agenda” & retweeting: “Laura Kuenssberg ‘Journalist of the year’. Oh. So THAT’s what journalism means? #Propaganda.”
- She also signed a letter in July 2016 to the Guardian in support of the leader of the Labour Party and attacking the media: “We condemn the unwarranted attacks on his leadership by an unelected media and call on those who want to see meaningful and progressive social change to stand behind Jeremy Corbyn.”

Messenger Davies, whose phone was hacked by the News of the World, is a signatory of the ‘Hacked Off Declaration’ and other campaigning letters by Hacked Off (see here and here)

Martin Hickman (@Martin_Hickman)

Martin Hickman, like Messenger Davies and Jones, is both a Director of IMPRESS and a member of its Code Committee.
• Martin Hickman was funded by Hacked Off to cover the phone-hacking trial of Rebekah Brooks and other co-defendants. In a blog for Channel Four in June 2014, he was described as a ‘Member of Hacked Off’.

• He then covered the trials of Neil Wallis and two Sun journalists for Byline which he funded by asking for donations. The ‘supporters’ page on the Byline website lists the following donations from the following names from Max Mosley (£750); Hugh Grant [Hacked Off board member] (£500); Hugh Tomlinson QC [chair of Hacked Off] (£500); Steven Barnett [Hacked Off board member] (£200); Evan Harris [Hacked Off board member] (£100); and Brian Cathcart [Hacked Off founder and boardmember] (£100).

• He co-authored in 2012 ‘Dial M for Murdoch: News Corporation and the Corruption of Britain’ with Labour MP and now deputy leader of the Labour Party, Tom Watson.

• He also published and edited another book on phone-hacking, this time by Byline’s Peter Jukes’s ‘Beyond Contempt: The Inside Story of the Phone-Hacking Trial.’

Emma Jones (@MsEmma_Jones)

Emma Jones is a director of IMPRESS and sits on the Code Committee that advises the IMPRESS governing board on how to implement the press standards code.

• As with Heawood and Messenger Davies, Emma Jones dislikes right-wing newspapers. In December 2016 she ‘liked’ a tweet made in response to the Evening Standard that read "#BoycottFreeLondonPapers they are rabid rightwing rags".

• As with Heawood and Messenger Davies, she supports an advertising boycott on right-wing newspapers. She has tweeted "Say it with Lego #StopFundingHate" & "Stuck for ideas for Christmas prezzies for kids? Here's one. Spread Love not Hate. Good on Ya #Lego #StopFundingHate."

• In November 2016, she wrote an article for Byline praising the campaign for an advertising boycott on the Daily Mail.

• She reacted to a Daily Mail October 2016 investigation of Max Mosley and IMPRESS’s funding and structure by repeatedly tweeting out links to a blog piece entitled: “Revealed: the extent of the Daily Mail’s support for the British Union of Fascists.”

• On June 16 2016, she ‘liked’ a tweet in relation to the Mail putting the question "Why Did MP Jo Cox die?": "Because #dailymail, you, the government, UKIP and other media incite anger, racism, paranoia, fear. That's why'.

• She has ‘liked’ the accusation that the Sun uses “Nazi language” on Brexit.

• As with Messenger Davies, she has also participated in personal attacks on journalists that she disagrees with:
o On Oct 23rd she 'liked' a tweet that read "Why does Neil Wallis always look in interviews like he's chugged 12 cans of Tennent's Super then slept in his car?"

o On Dec 7th she retweeted "Laura Kuenssberg "Journalist of the year". Oh. So THAT'S what journalism means? #Propaganda"

o On Dec 1 she 'liked' a tweet that read "Laurie Penny. Daughter of a London Lawyer, grew up in Brighton, went to £9,500 PA Brighton College, anorexic teenager. Says it all #bbcqt"

Gavin Phillipson (@Prof_Phillipson)

Gavin Phillipson is a professor of law at Durham University and a member of the IMPRESS Code Committee.

- He appears to support an advertising boycott of the Daily Mail, retweeting the campaigns statements such as: "Well done to @_LEGOGroup leading the way. Ends advertising with Daily Mail after calls for companies to 'stop funding hate' and "Come on @British_Airways stop encouraging hate. Stop giving @MailOnline out for free on your flights." (Nov 5 2016)

- He has retweeted the view that "The Daily Mail keeping true to its heritage" followed by picture of Mail and a Nazi newspaper side by side.

- In the aftermath of the Brexit vote, he tweeted: "One of the saddest things about this is that it's partly a victory for the misinformation and sheer nastiness of the Mail, Sun and Express."

- Regarding public concerns about Bulgarian and Romanian immigration, he tweeted in January 2014: “Much easier solution for worried voters: Stop reading the Daily Mail.”

- In 2013 he tweeted: "is such a shame we can't just ban the Daily Mail - probably the worst aspect of contemporary British culture, after Simon Cowell..."

- His disdain extends to readers of the Daily Mail: "People who read the Daily Mail have a poor grasp of facts and abnormal perception of reality," he tweeted in 2013.

- He has also retweeted an image with “The Sun” misspelled as “The Sunt” and link to a ‘brilliant’ article by Paul Mason called “A Reader’s Guide to the Shit the Sun writes.”

- Gavin Phillipson is a signatory of the ‘Hacked Off’ Declaration.

Paul Wragg (@paulwragg78)

Paul Wragg teaches law at Leeds University and is an IMPRESS code committee member

- He has written on the pro-Hacked Off blog INFORRM about what he calls the “war on press terror”.

- At the time of the Brexit vote, he retweeted the view:“We haven’t voted for Rupert Murdoch to govern this country so don’t let him win now. Vote to #Remain”
• In October 2013 he tweeted “@PaulBernal: I don’t know whether I exactly love Britain but I do know that I hate the Daily Mail”... I couldn’t agree more.”

• He has also retweeted Hugh Grant saying "Who runs Britain? Maybe not Murdoch/Dacre/Telegraph any more. A glimpse of spring."

Mary Fitzgerald (@maryftz)

Mary Fitzgerald has been editor-in-chief of openDemocracy since 2014.

• During the 2015 general election, openDemocracy partnered with the campaigning organisation Avaaz as part of its campaign against Rupert Murdoch and “Britain’s dominant right-wing newspapers” and their “smear and loathing” agenda.

• The product of this partnership was a series of articles on openDemocracy accusing right wing newspapers of plotting a coup against the Labour Party, see: “The newspapers are preparing for a coup, and Labour is doing nothing to stop them” and “The press campaign so far - the 'coup' gathers pace”.

• On her personal Twitter account, Fitzgerald tweeted out links to these pieces as well as indicating her own support for the anti-Murdoch campaign, retweeting the slogan: “let’s ignore the Murdoch and Mail fear agenda. Vote with hope and for what you believe in”.

• In 2013, she also shared on Facebook a change.org petition calling for a boycott of the Daily Mail for editorial reasons.

Damian Tambini (@damiantambini)

Professor of Media Studies at the LSE. Sits on IMPRESS Appointment Panel which appoints members of the board and sets their levels of remuneration.

• Damian Tambini has an overtly partisan and hostile agenda towards newspapers. This is evident in his blogging and social media activity.
  o In January 2017 he published a blog on the LSE Media Policy Project site encouraging 'The Left' to adopt punitive policies in retaliation for its ‘contempt’ of the Leveson process. These include abolishing the zero rate of VAT on newspaper sales and encouraging the unregulated hegemony of online platforms as a means ‘to break the power of the press’. He says “these are volatile, populist times, and the media-politics cabal is the very epicentre of the mistrusted elite. A future rainbow coalition of Greens, SNP, Labour and the Lib Dems could build a coalition in support of such reforms, and they would be justified in taking a more radical approach to the newspapers than ever before.”
  o On 1st January Tambini, as with Messenger Davies, retweeted praise of the call by the band Cabbage to burn or spit on the Sun newspaper and reproduces the statement in full on his twitter account ["The Sun championed us as a top tip for 2017. WHAT FUCKING MORONS.... Don't buy the sun. Don't even walk past it without burning it or spitting on it etc"]]
• Tambini has repeatedly voiced and shared the view that the right-wing press conspires to run the country.
  o On 6th January 2017, "liked" a tweet that stated that the government "is the client of the press."
  
  o On 5th November 2016 tweets out post on OpenDemocracy called "The Media Monarchy: The Press vs the People" by Anthony Barnett, accusing the right-wing press and the Daily Mail in particular of being a partner in a new form of dictatorship: “I have described how Theresa May’s premiership is in effect The Daily Mail taking power... This is the route to a new form of dictatorship: the co-dictatorship of the media and the executive against MPs and, in effect, civil society itself...”

  o On 24th June Tambini tweets: "We’re really screwed now. Britain’s dying newspapers choose next PM. With the other plotting journo as chancellor?"

  o On 17th June tweets: "#Brexit: press power in defence of press power: research evidence" followed by link to a Guardian piece by Martin Kettle entitled "The EU referendum is a battle of the press versus democracy: The questions of who runs Britain is not just about Europe but about a right-wing media that craves power.... Cameron could become the first British prime minister since MacDonalldo be brought down by the British press and, more specifically, to be ousted by the Daily Mail. No newspaper in this country’s history has more consistently, and at times more rabidly, pursued political objectives than the Mail ...by fair means or foul"

  o In June 2014, referring to an article by Chris Huhne on the build-up to the Iraq war, Tambini tweets: "Huhne excellent - tabloid deluded UK serves US interests- constitutional reforms necessary to prevent Blair II."

• He has also repeatedly shared and retweeted views that the tabloids are racist and hateful, including a comparison of the pro-Brexit press to Nazi newspapers of the 1920s and 30s.
  o On 17th August he shares a post on INFORRM by Julian Petley entitled “Poppies, patriots and pro-Brexit propaganda: Revisiting the myths of Britain’s past” about the Daily Mail and other pro-Brexit titles: “this isn’t journalism by any conceivable measure, unless one includes the kind of ‘journalism’ once found in the pages of the Völkischer Beobachter ... England is ever more in thrall to versions of its past which are largely mythical, if not downright delusional, and infected with a virulent strain of nationalism. These, of course, were greatly fostered during the referendum campaign by papers such as the Sun, Mail, Telegraph, Express and Star, which... in certain really quite disturbing ways recall the vehemently right-wing press of the Weimar period.”
  
  o On 5th July he retweeted a passage from a blog by @sjwrenlewis: "But it is not just the Brexit vote that the tabloids are partly responsible for. It is the racism and intolerance that they have helped legitimise...."

• He has retweeted on over 40 occasions in the past 12 months Hacked Off messages and statements from its key figures attacking the press. He does this without qualification or any indication that these are anything other than endorsements. These include:
o On 3rd December retweets Hacked Off Director Steven Barnett attacking the Daily Mail: "Today one unaccountable tabloid editor attempts to undermine the integrity of 11 independent judges. And pretends this is journalism."

o On 27th October retweets Hacked Off Director Natalie Fenton "Don’t believe corporate press. S40 enables access to justice for victims."

o 29th September retweets Hacked Off Director Hugh Grant: "Soft moan of despair for my country: "Theresa May had private meeting with Rupert Murdoch"

o On 30th June, retweets Hacked Off’s Steven Barnett reacting to report that Rupert Murdoch had endorsed Michael Gove in the Conservative leadership race: "In case anyone still believes the declining power of media proprietors."

- On 16th June, he signed Article 19 letter to the OSCE with co-signatories including Hacked Off board directors Fenton, Barnett and Hugh Tomlinson as well as Media Reform Coalition Des Freeman’s and Justin Schlosberg criticising lack of progress on Leveson.
Appendix 11: Examples of Stories That S40 Would Have Suppressed

- The Times reporting of the Rotherham sex abuse scandal.  
  http://www.newsmediauk.org/write/MediaUploads/PDF%20Docs/The_Times_5_January_2017_-Andrew_Norfolk.pdf

- Chew Valley Gazette reporting on a solicitor who had been barred for dishonesty from practising law by the Solicitors Regulation Authority.  

- The Spectator reporting on the Kids Company scandal.  
  http://blogs.spectator.co.uk/2016/12/defence-press-freedom/

- The Sunday Times investigation of Tim Yeo.  
  http://blogs.spectator.co.uk/2016/12/defence-press-freedom/

- Maidenhead Advertiser reporting of a court case involving a convicted sex offender.  
  http://www.windsorexpress.co.uk/news/maidenhead/109524/don-t-let-politicians-kill-of-your-local-papers.html

- Daily Mirror reporting of a man convicted of fraudulently trying to obtain NHS contracts.  
  http://www.mirror.co.uk/news/uk-news/after-20-years-scam-busting-9562148

- Daily Telegraph investigation into MPs expenses.  
  http://www.walesonline.co.uk/news/politics/stories-could-not-been-told-12412262

- Daily Mirror reporting on Philip Green and the sale of BHS.  
  http://www.mirror.co.uk/news/uk-news/you-want-gag-truth-mirror-9553872

- Daily Mirror reporting on Keith Vaz and his use of prostitutes while trying to shape legislation around prostitution. http://www.mirror.co.uk/news/uk-news/you-want-gag-truth-mirror-9553872


- The Sunday Times’ investigation into Lance Armstrong http://www.walesonline.co.uk/news/politics/stories-could-not-been-told-12412262

- The Guardian investigation into HSBC’s Swiss banking arm helping the wealthy to avoid taxes. https://www.theguardian.com/business/2015/feb/08/hsbc-files-expose-swiss-bank-clients-dodge-taxes-hide-millions


- The Sun publication of pictures of the young Queen and Queen Mother appearing to perform Nazi salutes. http://www.newsmediauk.org/write/MediaUploads/Press%20Regulation/Free%20the%20Press/The_Sun.pdf

• The Guardian exposure of some Sports Direct staff receiving less than minimum wage. https://www.theguardian.com/business/2015/dec/09/how-sports-direct-effectively-pays-below-minimum-wage-pay

• The Mail exposure of ex Co-op boss Paul Flowers who was caught buying crystal meth and cocaine. http://www.newsmediauk.org/write/MediaUploads/Press%20Regulation/Free%20the%20Press/The_Sun.pdf
Appendix 12: Selection of coverage on Section 40 and Leveson 2 from campaigners, commentators and newspaper editorials

- **WAN-IFRA** has deplored its impact as a breach of Article 10 and an example to repressive press regimes: “At WAN-IFRA, we strongly believe that such a rule [the implementation of Section 40] would be in breach of Article 10 of the European Convention on Human Rights, that Section 40 of the Crime and Courts Act 2013 should be repealed and the Leveson Inquiry discontinued. We also reiterate the warning to the British authorities from our press freedom delegation that visited the UK in January 2014, that such rules translate to an attempt to control public debate and, if passed in a country that is supposedly a bastion of free speech, will set a dangerous precedent for media freedoms in other, less democratically established parts of the world.” WAN-IFRA, 21 December 2016, [Top 2017 New Year’s resolution: help keep the British press free](#)

- “On behalf of the News Media Alliance and our 2,000 diverse news organizations in the United States, I write to express concern over recent developments in the UK and the global implications for freedom of speech and press freedom. This is not compatible with the principles of a free press and we strongly support UK publishers in resistance to this measure.” David Chavern, President and Chief Executive, News Media Alliance, NMA, 5 January 2017, [Andrew Norfolk: Section 40 Regime Would Suppress Rotherham Scandal Story](#)

- “The dangerous effect of section 40 of course extends beyond UK newspapers. It could apply to any publisher who could find themselves before the courts of England and Wales, who will not sign up to a UK state approved regulator, however unsuitable. It also sets a dangerous precedent, easily adapted for adoption by other states eager to control the press.” News Media Europe, 22 December 2016, [NME response to consultation on the Leveson Inquiry and its implementation](#)

- “The potential harmful impact of section 40 on free speech is clear and demonstrable and the impact on investigative journalism, in particular, would be devastating. We find it unbelievable that the UK could pass a law that means any publisher could be wrongly accused of libel, malicious falsehood or slander, taken to court, win the action and vindicate its journalism — yet still have to pay the legal bills of whoever brought the case, as well as their own.” Angela Mills Wade, Executive Director, European Publishers Council, The Times, 5 January 2017, [Curbs on the press](#)

- **Index on Censorship**: “As a small, independent magazine publisher that is a “relevant publisher” of news-related material as per the definition provided in section 41 of the Crime and Courts Act 2013 and that is not subject to any of the exemptions listed in Schedule 15, Index on Censorship faces the prospect of having to pay the costs for both sides if a claim is brought against us – even in a case we are ultimately successful in winning. This could potentially bankrupt the organisation, effectively silencing a magazine that has for the past 44 years dedicated its existence to the publishing of work by, and information about, censored writers and artists worldwide.”

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“Index on Censorship will not sign up to a regulator that has to be approved by a state-appointed body. Freedom of the press – including total freedom from any state involvement in regulation of the press – is the bedrock of a free and democratic society. Section 40 stands in direct opposition to this principle. Introducing punitive statutory penalties is not an incentive – it is a threat. Forcing publishers to join a recognised regulator or face the threat of punitive costs makes a mockery of the notion that the self-regulator is in any way voluntary.” [https://www.indexoncensorship.org/2016/12/section-40-jeopardises-press-freedom/]

• “If another country had a press law like Section 40, Britain would condemn it for persecuting journalists.” Rachael Jolley, Editor, Index on Censorship, The Telegraph, 3 January 2017, [If another country had a press law like Section 40, Britain would condemn it for persecuting journalists]

• "It is unnecessary, ill-conceived, and must be stopped." Jason MacKenzie, President, CIPR, on Section 40, PR Week, 10 January 2017, [PR will be 'stranded' and 'purposeless' if Section 40 is introduced, comms pros warn]

• “As Britain sets out to reshape its international alignments and re-engage with the Commonwealth, it should be demonstrating that it is raising its game as a world leader in liberal democracy. Instead, it is setting an example that would be an inspiration to some of the most odious regimes on the planet. It need not come to this. The government should drop Section 40 now, before it is too late.” Commonwealth Press Union Media Trust, 10 January 2017, [Response to the DCMS consultation on press regulation]

• "The very idea that all of [independent press regulator] IPSO's 2,500 members would have to cover the costs of libel cases brought against them, even when the newspaper is successful, undermines fundamental legal principles." Francis Ingham, Director General, PRCA, PR Week, 10 January 2017, [PR will be 'stranded' and 'purposeless' if Section 40 is introduced, comms pros warn]

• “Forcing the press – in all its great diversity across magazines, newspapers, and digital platforms – to either face punitive legal costs and spurious libel claims, or to subject themselves to state-backed regulation by an organisation that wishes to see huge swathes of the media shut down, is clearly a grave threat to both press freedom and the commercial viability of the press in the UK.” Owen Meredith, Head of Public Affairs, Professional Publishers Association, 9 January 2017, [Section 40: Why It Should Concern Us All]

• “The cost-shifting provisions in Section 40 are particularly worrying as publishers who don’t sign up to a state-approved regulator could be held liable for the costs of all claims made against them, regardless of merit. This would be crippling for some publishers, and would have a serious chilling effect on free expression.” Rebecca Vincent, Reporters Without Borders, Press Gazette, 28 November 2016, [Snoopers Charter and Section 40 costs threat set to push UK yet further down Reporters Without Borders press freedom index]
• “Press freedom is far too important for the state to insist on such official regulation. If Section 40 were to be brought into force, newspapers would have a choice of agreeing to regulation by an, as yet, unimpressive Impress or facing costs risks that would, in practice, make it impossible for local and national newspapers to take the risk of publishing investigative journalism into the activities of litigious people, or doing other than settle their claims when proceedings are brought.” David Pannick QC, 10 November 2016, The Times, Press freedom is too important to be subject to official regulation.

• Lord Lester QC has fiercely criticised British Politicians’ fashion of “arbitrary, unfair and unlawful press regulation. There is nothing like it in any modern democracy, and it has been condemned internationally.” The Times, 16 December 2016, Freedom of the press and a state regulator

• “Put simply, section 40(3) is a dreadful provision. If it works as intended, it may well have the chilling effect warned of by 89UP. More likely, is a chilling effect caused by no one knowing how it would work, and publishers not wanting to take the risk of what a judge decides is “just and equitable in all the circumstances.” David Allen Green, 29 April 2016, Financial Times, Press regulation: why ‘section 40’ on litigation costs should not be implemented

• “This is an issue that will affect everyone. The decision about the introduction of crippling costs orders would inhibit the ability of people’s favourite papers and magazines to inform their readers of issues that seriously affect their lives.” Bob Satchwell, Executive Director, Society of Editors, 2 December 2016, SoE launches ‘Save your right to know’ campaign against Section 40

• “Commencing Section 40 won’t make a jot of difference to biased reporting, or the political views expressed in some newspapers – both of which are beyond the remit of any press regulator in a democracy. But it may well have a damaging impact on the vast majority of news organisations who do their best to make sense of the world and hold power to account in the face of massive economic and technological challenges.” Dominic Ponsford, Editor, Press Gazette, 2 December 2016, Government allows digital giants to publish with impunity while proposing to regulate newspapers out of existence

• “We have been banging on about the injustice of these proposals since 2012: have your say!” Private Eye, 5 January 2017, Twitter, https://twitter.com/PrivateEyeNews/status/817004178961920

• CapX, 4 January 2017, The British press could soon be at the mercy of its enemies

• “Every major title in Scotland is regulated by IPSO, and proper Scottish representation is guaranteed on all its boards. Impress is simply irrelevant here and from that point alone cannot be a credible regulator for the UK Press as a whole.” John McLellan, Scottish Newspaper Society director, 4 January 2017, Public rejects wealthy donor funding model for Press regulation.
"I strongly object to section 40 of the Crime and Courts Act. This astonishingly illiberal and illogical measure will mean that newspapers can be made to pay huge legal costs for the sin of telling the truth unless they agree to be regulated by the Government’s approved body.” Patrick O’Flynn MEP UKIP Spokesman for the Media, UKIP, 4 January 2017, Political threat to Press Freedom is "astonishingly illiberal and illogical"

“Only a quisling newspaper could agree to be subject to the suzerainty of an organisation tied to someone so thoroughly antithetical to free speech and under the ultimate control of the state. Such a paper would be too spineless to report the truth about the powerful. Yet those who refuse to register with Impress risk bankruptcy if section 40 goes ahead. To preserve our liberty, it must not.” Jacob Rees Mogg MP, The Telegraph, 29 December 2016, Jacob Rees Mogg: Section 40 will kill off the free local press. It must be stopped

“I would ask those on the Left to think twice before agreeing to any draconian action. We are meant to believe in fighting injustice and inequality. We should not take a step that entrenches privilege, protects the rich and conceals corruption — as the implementation of Section 40 surely would.” David Blunkett, Daily Mail, 30 December 2016, David Blunkett: This threat to Press freedom is so wrong - and I speak as a victim of hacking

ConservativeHome, 22 December 2016, Bradley must face down the foes of the free press

Sir Alan Moses, Independent Press Standards Organisation, Evening Standard, 22 December 2016, Alan Moses: We must fight to prevent the coming attack on press freedom

Country Squire Magazine, 21 December 2016, From Undressed to Impress

The Spectator, 20 December 2016, Competition: write a response to the government’s ‘consultation’ on press freedom

“How can a press regulator reasonably regulate an industry if it wants to ban newspapers? How can they come to fair and balanced judgments if its CEO believes they are “neo-fascists”? Impress is the press regulator that hates the press, it is a farce that the government is giving these people the time of day...” Order Order, 20 December 2016, Impress regulators say they "hate" Daily Mail "scum"

“Section 40, in short, is not only akin to blackmail. It’s also the only legislation in the history of this country that deliberately sets out to punish the truth-teller. It’s a wrongdoers’ charter, a law that benefits the guilty, an affront to natural justice and an insult to democracy.” International Business Times, 5 January 2016, Section 40: The only law in British history to punish people for telling the truth

London Press Club, 19 December 2016, London Press Club members are urged to back the campaign for freedom of the Press and oppose Section 40
“The Section 40 proposal violates any basic notion of justice, yet this is the technique that the government would use to force us to sign up to Max Mosley’s regulator, ‘Impress’, rather than Ipso, the independent press regulator. Unless we bend the knee to Mosley’s outfit, which is acting in league with the government’s Orwellian-sounding Press Recognition Panel, we could have to fund the legal bills for every crook, jihadi and general shyster who picks up the phone to Carter Ruck.” Fraser Nelson, The Spectator, 19 December 2016, The new battle for press freedom

Order Order, 19 December 2016, Impress regulators seek to financially ruin three newspapers

“The seriousness of this must not escape us. State regulation of the press would be bad enough, but, with circumstances as they are, Section 40 would create a system whereby state power and punitive damages would be used to compel newspapers to sign up to an ‘independent’ regulator that is run and funded by people who hate the press’s guts.” Tom Slater, spiked, 16 December 2016, Say no to the shackling of the press

Order Order, 16 December 2016, State-backed press regulator wants to ban Daily Mail

“IPSO is supported by most of the press and uses its formidable new powers effectively. When the public consultation ends next month, the culture secretary should not invoke section 40 of the Crime and Courts Act. If Hacked Off brings a legal challenge, I predict that the courts will rule that section 40 is arbitrary, unfair and incompatible with a free press.” Lord Lester, The Times, 16 December 2016, Freedom of the press and a state regulator

John McLellan, Director, The Scottish Newspaper Society, The Herald, 15 December 2016, John McLellan: Regulator that is far from being impartial

The Drum, 4 January 2017, Newspapers rally to protect press freedom by highlighting public disapproval for Max Mosley-backed regulator

“This [Section 40] is, of course, totally contrary to the principle that the Law should treat all parties equally. It would threaten the independence and viability of many local and specialist newspapers, since such a threat would prevent many true stories being published as a newspaper could be financially ruined by the awarding of costs despite being in the right.” Methodist Recorder, 6 January 2017, Recorder Comment: The Year Ahead

“Recently, with the threat of Section 40 hanging over our industry, I’ve been wondering whether it might cause a publisher of today to shrink from the risk of investigating MPS’ expenses. And I fear it might.” Statement from Chris Evans, The Daily Telegraph editor, January 2017, Response from Telegraph Media Group to the DCMS consultation on press regulation.

“The most solid defence against a libel action is that a story is true. Section 40 undermines this crucial pillar of British justice and with it brings the whole house crashing down on the
role of newspapers to inform the public without fear or favour.”
Martin Trepte, Editor, Maidenhead Advertiser, 5 January 2017, Don't let politicians kill off your local papers

- Committee to Protect Journalists, 10 January 2017, UK's Section 40 press law would curb independent, investigative journalism

- “Over the last few years, the Salford Star has had many friendly chats with IMPRESS but has always decided not to sign up, for three reasons. Firstly is the cost. The Star hardly has enough money to keep its website going, never mind paying subscriptions to an organisation that we've never needed.

“Secondly, if we sign up to IMPRESS and any person fancied having a go at us would have to go to what the Government calls 'low cost arbitration' – that would not only take up funds that we haven't got but also time that we just haven't got, with a ridiculously shoestring full-time-ish staff of one!

“Thirdly, there's the ethical argument. As one journalist eloquently put it on the National Union of Journalist's Facebook site, “I believe such a system runs counter to my obligation under the NUJ's code of conduct, which begins: A journalist: At all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed...

“This does not add a caveat 'provided they belong to a privately financed and state sanctioned regulator' or anything like that...

“The Salford Star does not believe that journalists should be subject to state regulation of any description, no matter how it's dressed up.”
Salford Star, 10 January 2017, THE END OF THE SALFORD STAR?

- Nicola Namdjou, senior legal manager, Global Witness, for The NewStatesman, 9 January 2017, If Section 40 goes ahead, it won't just be tabloids that suffer

- The Times, 9 January 2017, State press regulator ‘has major flaws’

- Wales Online, 9 January 2017, Fake news bombards us from every side, public interest journalism is a crucial element of democracy and worth fighting for

- Stoke Sentinel, 8 January 2017, A free press must be defended at all costs

- Isle of Wight County Press, 8 January 2017, A charter for frivolous and malicious court cases

- The Telegraph, 6 January 2017, MPs should be targeting fake news - not the free press

- Yorkshire Post, 6 January 2017, Freedom to seek out the truth in peril

- Western Mail, 6 January 2017, The stories that could not have been told under a controversial new press law

- The Echo, 5 January 2017, Why we need your help on Leveson's Section 40
"Be under no illusion. Section 40 ostensibly seeks to protect the weak and the poor, but it would kill investigative print journalism. It would render the rich and powerful unaccountable. To implement such a measure, in a nation that calls itself free and democratic, would be madness.

Andrew Norfolk, The Times, 5 January 2017, A law that loads the dice in favour of criminals

Daily Mail, 5 January 2017, Revealed, the scare tactics of the men who want to shackle the Press: The head of the world’s most popular gay news website exposes an attempt to bully him into submitting to Max Mosley’s press regulator

“State regulation of the press is repugnant in any true democracy and, besides, there’s already a powerful regulator in the shape of the Independent Press Standards Organisation, IPSO. In all likelihood, the mere threat of litigation under Section 40, however unjustified, would mean that my stories would never run in the first place. After 20 years of fighting your corner, this column would be axed and the conmen and charlatans would be victorious.”

Andrew Penman, Daily Mirror, 5 January 2017, After 20 years of scam-busting, a new law could mean victory for the crooks and the end of my investigations

“Section 40 won’t stop any of the things – big or small – that newspapers sometimes get wrong. What it will achieve is to force newspapers to submit to a regulator funded by a wealthy, powerful man – Max Mosley – or face crippling bills at the whim of anyone who fancies a pop. There’s a job to be done in regulating the press. But this clumsy, ill-conceived reform is not the right tool for the job.” Liverpool Echo, 5 January 2017, This clumsy, ill-conceived reform will do more harm than good

“This is an issue that will affect everyone. The decision about the introduction of crippling costs orders would inhibit the ability of papers like the Cambrian News to inform their readers of issues that seriously affect their lives. We urge everyone, not just journalists and publishers, to respond to the consultation and to write to their MPs, to persuade politicians and the government to step back from a draconian measure that would take us back to the dark ages of press censorship, stifle freedom of expression and the public’s right to know what is done in their name and with their money.” Bev Thomas, Managing Editor, Cambrian News, 4 January 2017, Join us in the crucial fight to protect your right to know

Ipswich Star, 4 January 2017, Poll shows the British public back an industry-funded newspaper regulator

St Albans and Harpenden Review, 4 January 2017, Help us defend freedom of the press in the UK as section 40 puts papers under threat

The Bolton News, 4 January 2017, SECTION 40: Help us fight new law that threatens press freedom
“Activating legislation that will financially punish local newspapers would in no way safeguard their futures. In fact it could force some to close. If it was not for newspapers, waste and inefficiency in public bodies, corruption and other crimes might not be exposed. Whistle-blowers would have nowhere to turn to expose wrongdoings.” Rob Irvine, Editor-In-Chief, Manchester Evening News, 4 January 2017, Newspapers seek to tell the truth, we shouldn’t be punished for that

Swindon Advertiser, 4 January 2017, Government threatens existence of free press through Section 40 of Crime and Courts Act

Leigh Journal, 4 January 2017, YOUR RIGHT TO KNOW: Help us fight section 40 legal threat to your right to be told the truth

Birmingham Mail, 4 January 2017, Just one person in 20 supports press regulation funded by rich and powerful

Borehamwood and Elstree Times, 4 January 2017, Only 4% of people trust the planned new model to regulate the press

Liverpool Echo, 4 January 2017, Poll shows British public back industry funded newspaper regulator

Peterborough Telegraph, 4 January 2017, YouGov Poll: Public Rejects Impress’ Wealthy Donor Funding Model

Press Gazette, 4 January 2017, Majority of British adults support press regulator funded by newspaper industry, survey shows

WalesOnline, 4 January 2017, Only 4% of people trust the planned new model to regulate the press

"It is rare for the Newbury Weekly News to incur any legal fees during the course of a year. We employ journalists who are trained in media law and we set the highest standards of accuracy and fairness. When we do make a mistake we are quick to correct it and apologise. This poorly thought-out law could be the final nail in the coffin for the local press." Newbury Weekly News, 4 January 2017, Public rejects Impress’ wealthy donor funding model

The Times, 4 January 2017, Tighter press controls not priority, say 99% of voters

The Daily Telegraph, 4 January 2017, Mosley rebuffed after public says newspapers should regulate themselves
The Sun, 4 January 2017, CENSORSHIP BLOW Only FOUR per cent of Brits believe the super-rich and wealthy – like tycoon Max Mosley – ‘should fund Press regulator’ and rate it low on priority list for 2017

“That has the potential to cripple not just the giants of the industry but every local newspaper doing its best to highlight wrongdoing.” Metro, 4 January 2017, Don’t let politicians destroy press freedom, act now

City AM, 4 January 2017, That don’t impress me much, say public of Max Mosley-backed press regulator’s funding structure

HoldtheFrontPage, 4 January 2017, Industry claims public backing in Section 40 battle after new poll

Press and Journal, 4 January 2017, Public deeply opposed to press regulators funded by wealthy individuals

Daily Mirror, 4 January 2017, Only 4% back press regulation that is funded by the rich and powerful

“We can, I think, take the egregious injustice of Section 40 as read, together with its complete and utter irrelevance to the real threat to substantive reporting, viz, unreliable online reporting, and the internet news sites which rob journalists of the worth of any exclusive stories they publish within minutes of them appearing.” Evening Standard, 3 January 2017, Karen Bradley needs to stand up to this threat to the press - Melanie McDonagh

The Daily Telegraph, 3 January 2017, If another country had a press law like Section 40, Britain would condemn it for persecuting journalists

Daily Mail, 3 January 2017, Forcing newspapers to pay their opponents legal costs even if they win are 'extremely fair,' insists Max Mosley, who threatens to fund state-backed press regulator for a 'very long time'

Daily Mail, 3 January 2017, Putting this rabble in charge of the Press would be like putting the Kray Twins in charge of the Police Complaints Commission: RICHARD LITTLEJOHN on why we don’t want Left-wing bigots deciding what you can read in your paper

The Times, 3 January 2017, Only the guilty will cheer curbs on the press

“Weere Section 40 to be enabled, however, I seriously fear the impact on our ability to continue to report in the way I have described. The sanction which would see us liable for all costs in a case, even if we won, would in my view incentivise complainants to bypass existing informal and formal routes to trigger litigation immediately. Just one small action resulting
in a costs award of £100,000 could lead to irreparable harm to our finances. Any more may well be fatal.” Marc Reeves, Editor-in-chief, Birmingham Mail, 2 January 2017, Why we cannot give up 200 years of press freedom without a fight

- “Yes, there have been excesses in journalism in the past. But those are long gone. A State-based regulator would be the end of the free press here. Our newspapers would be neutered. Our democracy undermined.” Lloyd Embley, Editor-In-Chief, Daily Mirror, Sunday Mirror and Sunday People, Daily Mirror, 2 January 2017, Do you want to gag the truth? Why new law will silence the free press

- “Essentially it is an attempt to blackmail newspapers into joining the government’s regulator, a state-sponsored regulator, and no self-respecting newspaper worth its salt wants to be part of a state-sponsored regulator because you are then on the road to giving MPs power and the whip hand over the press.” Tony Gallagher, Editor in Chief, The Sun, Huffington Post, 2 January 2017, Sun Editor Tony Gallagher Calls Plan To Bill Newspapers In Court Cases They Win ‘Insane’

- Eastern Daily Press, 2 January 2017, Letter to Editor - Press Freedom is Too Valuable to be Cast Aside So Carelessly

- East Lothian Courier, 2 January 2017, Legal cost plans 'attempt to blackmail press into signing up to regulator'

- The Sunday Times, 1 January 2017, When winning means losing — and the price of publishing becomes too high

- “Make no mistake, it is blackmail. Section 40 was plucked out of the rarefied parliamentary air to bully editors into falling into line; only those who signed up to a new State-sanctioned press watchdog would be spared the massive financial penalties it threatened.” Gary Shipton, Editor in Chief, Sussex Newspapers, Daily Mail, 1 January 2017, Don't let politicians destroy Press freedom: The rotten rogues' charter could cripple local papers like mine, says one editor-in-chief

- “We need as many readers as possible to respond to the Government’s consultation on these grossly unfair proposals to ensure that regional papers like the Shropshire Star can continue to hold those in power to account.” Martin Wright, Editor, Shropshire Star, 31 December 2016, Chance to add voice to Shropshire Star’s fight over newspaper legislation

- The Lancashire Evening Post, 30 December 2016, Is Justice Served if the Press is Silenced?

- The Sun, 30 December 2016, Fight for Right to Save the Truth
Herts and Essex Observer, 30 December 2016, Help us defend freedom of the press in the UK as section 40 puts papers under threat

“What we can quantify about the media’s role in Northern Ireland is that this is the UK region where people are by far the most interested in regional news and most likely to seek it from a regional source, with an above-average choice of such sources by both number and spread of ownership. However, we are also the UK's smallest and second-poorest region, meaning all this choice rests on a fragile economic base. A range of titles are already on notice that lack of libel reform makes them vulnerable to closure. Section 40 is a potential death-knell.” Newton Emerson, Irish News, 29 December 2016, Newton Emerson: Libel law change will lead to stand off

The Spectator, 29 December 2016, Britain’s free press is under threat

Gazette & Herald, 29 December, YOUR newspaper needs YOUR help NOW! Press freedom is under threat.

The Sun, 29 December 2016, Threat to Silence Investigative Journalism

Daily Mail, 28 December 2016, Don’t let politicians destroy Press freedom: Act NOW if you want to help defend the right to read a website like MailOnline

The Times, 26 December 2016, Newspapers in Peril

“In the year of “fake news” few might feel like shedding a tear for journalistic special pleading. Yet polarised as the media is, there is almost unanimity on this subject: the implementation of Section 40 would be a disaster for press freedom in the UK. Much better for this iniquitous provision to be repealed.” Will Gore, Deputy Managing Editor, Independent, 26 December 2016, In 2017, further interference from the state could spell the end for press freedom

Kent Live, 26 December 2016, Government legislation could mean the end of a free press - but you can help

“Britain is unique in the world for having such a massive range of choice. Unlike any other country in the world, we have 11 national daily papers. And we should be proud of that. Instead, we are going to let the Government give the newspaper owners a simple choice. Succumb to state control or go out of business.” Jeremy Clarkson, The Sun, 24 December 2016, JEREMY CLARKSON Help fight the Government’s plan to silence the free Press – and save your own freedom

The Daily Telegraph, 23 December 2016, For hundreds of years, Britain’s commitment to a free press has helped make this country a beacon of freedom for the world... But all this is
now under threat from MPs and Lords’

- Daily Mail, 22 December 2016, Unfair new Press laws would lead to censorship, warn peers

- “If Section 40 is implemented, it is not too dramatic to say that it could destroy media freedom in this country and force publishers out of business. It is an iniquitous provision worthy of the world’s most autocratic regimes. This is not special pleading but about protecting the basics of our democracy. Section 40 must be repealed.” Evening Standard, 22 December 2016, A bad law that must go

- Teesside Gazette, 22 December 2016, You can help us fight back against an attack on press freedom in the UK

- Judge Rinder, The Sun, 22 December 2016, JUDGE RINDER Section 40 law is a threat to the press – it’s there to protect privacy... not celebrities’ right to be hypocrites

- Daily Mirror, 22 December 2016, Stop the snowflake press that the cheats, charlatans and corrupt want you to read

- i, 21 December 2016, New laws will silence brilliant investigative journalism

- MailOnline, 21 December 2016, Don't let politicians destroy Press freedom: Act NOW if you want to help defend the right to read a website like MailOnline

- The Daily Telegraph, 21 December 2016, Ministers should leave the press ‘well alone’, former Supreme Court judge says

- HoldtheFrontPage, 21 December 2016, Regional editorial chiefs hit back over Section 40 ‘human shields’ jibe

- “The overwhelming cost of dealing with a big increase in complaints, multiplied by ‘a few thousand’ each time, would inevitably lead to us publishing little, if anything, contentious. Local papers like The Post would be paralysed.” Mike Sassi, Editor, Nottingham Post, Press Gazette, 21 December 2016, Local press editor hits back at Hacked Off over ‘human shield’ jibe on press regulation

- South Wales Argus, 21 December 2016, Help the press to protect freedom of speech

- i, 21 December 2016, Have your say on the future of press regulation

- “The challenges facing the publishing industry have been well documented. Many of our traditional revenue streams have been hoovered up by Facebook and Google, who enjoy the benefits of publishing our content without any of the associated costs or risks. This proposed legislation could be the final nail in the coffin for many.” Ian Carter, Editorial Director, KM
Group, KentOnline, 21 December 2016, Section 40 of Crime and Courts Act 2013 threatens Britain’s free press - we need your help to stop it

• “In the end it’s pretty simple. A free Press is synonymous with freedom and openness. They inextricably go together. The malign forces seeking to curb newspapers are a threat to a free society — and so a danger to us all.” Stephen Glover, Daily Mail, 21 December 2016, STEPHEN GLOVER: Mad. Immoral. How justice is being subverted to force newspapers to kow-tow to Mosley’s band of Press-haters

• WalesOnline, 20 December 2016 The Government crusade against press freedom and why we should all be fighting it

• “Ministers must now decide whether to implement Section 40, offering the press a stark choice. Bend the knee to Mosley’s stooges or face crippling penalties in the courts. It would be an act of state coercion unseen in this country for three centuries. Britain may be the birthplace of democracy, but democracy cannot work without free speech. And free speech is useless without a free press to report it.” Trevor Kavanagh, The Sun, 19 December 2016, Stop our free speech from being torn to shreds by backing press freedom in face of Max Mosley’s tyranny

• Sunderland Echo, 19 December 2016, Will you have your say on the future of press freedom?

• The Telegraph, 19 December 2016, An unacceptable assault on a free press

• Rod Liddle, The Sunday Times, 18 December 2016, Mosley puts a kinky boot into the press to get his bondage fix

• “Like PPI, Section 40 and the state-backed Press regulator are the end product of a tiny part of the profession behaving very, very badly. And no-one who cares about journalism would deny that. Those who say Section 40 and a state-backed Press regulator are a good thing by citing the errors of a few aren’t just throwing the baby out with the bath water, they’re ensuring no baby will go near the bath again.” David Higgenson, 18 December 2016, Local journalism will die if those who claim to champion a free press get their way

• The Sun, 17 December 2016, THE SUN SAYS The Government must act NOW to protect the free press and keep our important investigative journalism alive

• Fraser Nelson, The Telegraph, 16 December 2016, The battle for press freedom in the UK may have to be fought all over again

• Romsey Advertiser, 16 December 2016, If you value your local paper, help to save it
“If newspapers aren’t bankrupted they will, at the very least, have a paralysing fear of publishing anything which gives unscrupulous people the chance of being able to line their pockets at the paper’s expense. We fervently believe section 40 should be repealed. And now the government has decided to open the issue to the public to gauge your thoughts.” Eastern Daily Press, 14 December 2016, How you can help to defend this country’s free press

“An editor, especially one sitting in a regional office with ever-declining budgets, would certainly think twice about running that story. Regionals, just like the South London Press, would be most bitterly affected. At the South London Press we deal with a vast range of stories, mainly human interest, positive stories about good people doing good things across South London.” Hannah Walker, Managing Director, South London Press, 13 December 2016, Future of local newspapers is at stake

Watford Observer, 13 December 2016, Section 40 powers forcing papers to pay the losers’ costs could cripple local papers

Hampshire Chronicle, 12 December 2016, The future of the free press is now in your hands

East London and West Essex Guardian, 11 December 2016, COMMENT: New laws will cause profound damage to local press

“Either the paper will have to restrict its reporting to cheque presentations and Nativity photographs – and there are a few politicians who might applaud that – or we would sink
under an avalanche of legal fees... Too many people have fought and died over 300 years to prevent that from ever happening for this generation – including myself – to give way to bullyboy tactics now.” Ian Murray, editor in chief, Southern Daily Echo, 10 December 2016, If you value your local paper ... help to save it

- Basildon Echo, 8 December 2016, 'It's for the rich and powerful': MPs raise concerns on press legislation plans

- South London Press, 09 December 2016, Help us stop this legislation which threatens existence of local press

- Nottingham Post, 7 December 2016, Resist this threat to your local newspaper's survival

- Evesham Journal, 7 December 2016, COMMENT: How you can help save local newspapers: Say 'no' to Section 40

- Worcester News, 7 December 2016, COMMENT: How you can help save local newspapers: Say 'no' to Section 40

- Buzzfeed, 30 November 2016, UK's Official Press Regulator Accused Of Using “Scare Emails” To Sign Up Outlets

- “Section 40 is akin to someone throwing a brick through your window - then billing you for not only the window, but the brick too. The nature of newspapers would change forever, public trust in the local press would disintegrate and the economic challenge facing regional publishers would escalate still further. Public scrutiny would be left to internet tittle-tattle or unsubstantiated social media chatter. Credible editorial investigations would be taken on by only the bravest of publishers. In short, it would be a disaster for local democracy.” Keith Harrison, Editor, Express and Star, 25 November 2016. Press freedom: Express & Star Editor KEITH HARRISON on why we need YOU to speak up for us now

- HoldtheFrontPage, 15 November 2016, Editors attack ‘medieval’ regulation as MPs prepare for legal costs vote

- The Argus, 14 November 2016, MP stands up for rights of press over ‘chilling effect’ of proposed new law

- Peter Curtain, PR Week, 4 November 2016, Increased press regulation is not only an affront to free speech - it's bad for PR too

- Ray Snoddy, Mediatel, 2 November 2016, Press regulation: a return to media normality?

- i, 2 November 2016, Section 40: a ruinous penalty on honest journalism
“However much one sympathises with people who have suffered at the hands of the press, and however much I lack sympathy for newspapers guilty of all manner of bad behaviour, I cannot but see section 40 as a retrograde step.” Roy Greenslade, media commentator, 27 October 2016, The Guardian, Press freedom danger if MPs vote in section 40 by the back door

“Under Section 40 the potential plaintiff is relieved of that restraint, while the potential defendant (the newspaper) finds it doubled. The law wants both sets of costs to be paid by the newspaper, even if the case fails. Intolerable? Yes, but those who drafted this legislation knew that. They intended to place newspapers in permanent and unsustainable jeopardy. This is blackmail with a purpose. The threat of ruin is to act as an electric prod that forces every paper to submit — “voluntarily” — to state regulation. If they do so, they are exempted from these provisions.” Matthew Parris, The Times, 22 October 2016, May’s state controls will destroy the press