
The

External

IPSO

Review

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Introduction

1. The Independent Press Standards Organisation (IPSO) took over from the Press Complaints Commission (PCC) in September 2014. Its stated role is to regulate the press but it is more specific than that. IPSO regulates those publishers of print media who sign up, and accept regulation. While it took over from the PCC, its role and membership are markedly different from the predecessor body. But as with the PCC, IPSO's funding comes from national and local newspapers and from magazines; in short, from its members with whose standards it is concerned. As will be familiar to those who follow the news, IPSO was established by its members as an alternative to regulation under what is described as the Royal Charter.¹ It is not surprising then that IPSO's members are only members on condition that it does not seek recognition from the body set up for the purpose of recognising would-be regulators of the press under a Royal Charter, the Press Recognition Panel (PRP).

2. In July 2011 the Rt Hon Lord Justice Leveson was asked to conduct a judicial inquiry into the culture, practice and ethics of the British press following the News International phone-hacking scandal. He reported in November 2012 and his report, *An inquiry into the culture, practices and ethics of the press* (Leveson Report), was followed by a great deal of work by the major political parties and, for the most part separately, by the industry. The response from the government was the establishment of the Royal Charter and the PRP. For the industry, IPSO was one outcome of that work. Its members include a great majority of, although notably not all, publications in the UK.

3. The idea of IPSO commissioning an external review of its work seems to have emerged within the organisation during its first year. It was February 2016 by the time arrangements were in place for the external review to begin. I have worked on it part-time since then and have been helped, also part-time, by Zoe Gannon of 11KBW. We have

both been paid by IPSO. In the circumstances there was no other feasible way of having a review undertaken. It is for readers to decide for themselves whether this report reads and feels like the wholly external and independent report IPSO said it wanted and that I intended from the beginning it should be. I have never felt under the slightest pressure from within IPSO to reach any particular conclusion though, of course, most of those who have given us evidence have held strong views and told us what they are. This is my report. It has been published in full without any change from the version that I finally gave to IPSO.

4. The review's '*short title*' was to review the independence and effectiveness of IPSO, but I agreed with IPSO at an early stage that it would help to have rather fuller terms of reference. Those were agreed between us and are set out in full at Annex A.

5. The controversy surrounding press conduct has scarcely diminished since 2012. The very existence of IPSO is controversial. No one should draw any conclusions one way or the other about what I think about how the press should be regulated from the fact that I agreed to undertake this review. When I worked full-time as a civil servant I was used to accepting as given the policies and values of the government of the day. If I had ever felt that I could not stomach them it was open to me to resign. I agreed to do this work because IPSO is the only vehicle through which complaints about the press can be addressed in practice at present, because I believed in IPSO's motives for seeking an independent review and because by suggesting worthwhile changes and encouraging individuals to complain when they felt they had a legitimate grievance there seemed to be a reasonable prospect of increasing levels of trust in IPSO.

6. My role and scope have been much more limited than Lord Justice Leveson's. Anyone who has begun to read this report expecting that it might be Leveson revisited should stop now. They will only be disappointed.

7. The work of this review has proceeded in a conventional way. We invited evidence by advertisement, by a website, by writing to individuals and organisations whom we knew to have an interest in press regulation and by an opinion survey of complainants. I observed two meetings of the IPSO Complaints Committee, one meeting of the IPSO Board and, by invitation, one meeting of the Editors' Code of Practice Committee and one seminar on the Code and IPSO's enforcement of the Code for journalists at Associated News. We had access to any IPSO papers that we wanted to read. IPSO is a small organisation and we met most people involved with it, including two groups of staff, groups from the Board and the Complaints Committee and, of course, Sir Alan Moses, the Chairman, and Matt Tee, the Chief Executive.

8. We received some written evidence and met a lot of people. A list of those who provided evidence is at Annex B. We are very grateful to everyone who took the trouble to communicate with us. Their contribution to the review was indispensable. Much will emerge in later chapters about what we heard but it may help to make a few generalisations at this stage. Complainants tended to be grateful or critical and this tended to reflect how pleased they were with the outcome of their complaint. The industry seemed to take IPSO very seriously, unless they worked on a title that received very few complaints, but we detected little enthusiasm for more changes to IPSO and the system of regulation as it stood. We did not hear from anyone who had been critical of IPSO from the start and who had subsequently changed their mind. Unsurprisingly, the most nuanced evidence, with a mixture of pride in the way IPSO worked and suggested improvements, came from within IPSO itself.

9. The terms '*the industry*', '*press*' or '*print media*' are used interchangeably in this

¹ On 30 October 2013, a Royal Charter on press self-regulation was granted: Royal Charter On Self-Regulation Of The Press.

report to refer to what were traditionally the newspaper and magazine industries but which now also includes online news sources. This does not include the BBC, which is regulated by the BBC Trust, nor does it include other broadcast media providers, which are regulated by Ofcom. Nor indeed does it cover new media, social media or exclusively online media or blogs. These forms of new media are effectively unregulated (in the sense that they are not required to comply with an ethical standard other than that required by the law). BuzzFeed, Yahoo.com and the Huffington Post all fall outside the regulated milieu, albeit online-only print media organisations could join IPSO should they so choose.

10. The press industry considers there to be five distinct sectors of the press in the UK: (i) national broadsheets, (ii) national tabloids, (iii) local/regional newspapers, (iv) magazines and (v) Scottish newspapers. Each sector has specific regulatory requirements and interests. Some features are common throughout. They are all against state regulation. With varying degrees of strength and cogency they articulate their concern about state regulation of the press and with equal variation in cogency and conviction agree that some form of self-regulation is acceptable, desirable and necessary.

STRUCTURE OF THIS REPORT

11. This report is divided into nine chapters, and a section on findings and recommendations. Chapter 1 covers how IPSO was established and a brief background. The second chapter looks at IPSO's structure. In these first two chapters I also consider IPSO's independence. The third chapter concerns IPSO's independence more generally, and what I consider to be meant by '*independence*': specifically it looks at IPSO's relationship with the RFC. The fourth chapter is the largest and deals with what amounts to the bulk of IPSO's work: handling complaints about members. The fifth chapter looks at a second limb of IPSO's work:

upholding and improving standards in the industry. This includes the conduct of a standards investigation, the annual statements that IPSO members are required to produce, Privacy Advisory Notices and IPSO's whistleblowing hotline. The sixth chapter examines IPSO's arbitration pilot scheme, which is currently in its very early stages. Chapter 7 deals with public awareness of IPSO. Essentially this deals with IPSO's engagement with the public more generally, as well as groups that have a particular interest in upholding press standards. The eighth chapter concerns IPSO's membership, which in short looks at how much of the print media is covered by IPSO. Chapter 9 looks at the future of regulation of the print industry. This is less ambitious than it sounds but is intended to provide some, limited, assistance as IPSO works to ensure that it remains an effective regulator in the context of an industry that is experiencing significant change. The report's findings and recommendations are in the last chapter and may be the place that most people start.

12. At Annex A, readers can find the terms of reference. Annex B includes the list of those who gave evidence to the review both orally and in writing. In addition my own analysis of the extent to which IPSO has adopted the recommendations set out in the Leveson Report can be found at Annex C. Finally, at Annex D is a summary of the conclusions I drew from the survey of complainants that was conducted as part of this review process.

ACKNOWLEDGMENTS

13. Everyone at IPSO has been scrupulous about not interfering in the review but we could have made no progress at all without a great deal of practical help from members of staff and some members of the Board and Complaints Committee. I am particularly grateful to Matt Tee and Michelle Kuhler for prompt and constructive responses to numerous appeals for help.

14. Lee Cutler, the First Junior Clerk of 11KBW, had the thankless task of arranging – and rearranging – many meetings. He kept to himself any frustration and impatience that he felt and seemed unreasonably cheerful throughout. My main and very considerable debt of gratitude is owed to Zoe Gannon, of Counsel and also of 11KBW, who attended virtually every meeting, made many valuable suggestions and drafted much the greater part of this report. Any blame attaches to me, but the task would have been far more difficult and nothing like as enjoyable without her help.

Chapter 1

Establishing

BACKGROUND TO THE ESTABLISHMENT OF IPSO

15. IPSO was launched in September 2014, two years after the final report of the Leveson Inquiry had been published in November 2012. The final report published at the conclusion of the Leveson Inquiry included a set of recommendations. Those recommendations related to the role and powers of the press regulator, as well as a recommendation that the said press regulator seek what is described as ‘*recognition*’ by a statutory body. The recommendations envisaged that membership of the regulator would be voluntary but that membership would be incentivised with a series of carrots and sticks. An analysis of the extent to which the recommendations made by Lord Justice Leveson have been adopted by IPSO is at Annex C.

16. Between November 2012 and September 2014 it became clear that much of the print media would not be willing, regardless of the promised carrots or threatened sticks, voluntarily to join a regulator which sought recognition under the Leveson proposals.

THE ESTABLISHMENT OF IPSO

17. During the review the process of establishing IPSO was explained by those who had been involved: chiefly Lord Black of Brentwood, an Executive Director of the

Telegraph Media Group; Mr Peter Wright, Emeritus Editor of the Daily Mail, and former Editor of the Mail on Sunday; and Sir Hayden Phillips, Chairman of the Appointments Panel. I was informed that the industry had worked hard to devise an independent process for setting up a body ‘*at arms length*’, so to speak, from the industry that would fund it.

18. The first stage involved establishing a ‘*Foundation Group*’ in March 2013. The Foundation Group was chaired by Lord Phillips of Worth Matravers, former President of the Supreme Court, and included Lord Butler of Brockwell, a retired Cabinet Secretary; Sir Simon Jenkins, newspaper columnist and former Editor of The Times and of the Evening Standard, and former Chair of the National Trust; Trevor Kavanagh, former Political Editor of the Sun; Lord Smith of Finsbury, former Labour Secretary of State for Culture, Media and Sport; and Dame Sue Tinson, former TV executive at ITN.

19. The role of the Foundation Group was to appoint the Appointments Panel, which would ultimately go on to appoint the Chairman of IPSO and the Board of IPSO. It was initially hoped that the Commissioner for Public Appointments would assist the Foundation Group in making the appointments. In the event that Foundation Group was advised by Dame Janet Gaymer, a former Commissioner for Public Appointments between 2006 and 2010, who then joined the Foundation Group.

20. This process of establishing a separate distinguished body seems to have been a sensible way of limiting any perception that the industry were choosing their own gamekeepers. The membership of the Foundation Group, which notably included a former Commissioner for Public Appointments and the former President of the Supreme Court, must be sufficient to inspire public confidence.

21. In November 2013 it was announced that Sir Hayden Phillips, former Permanent

Secretary, would serve as Chairman of the Appointments Panel. In January 2014 it was announced that Sir Hayden would be joined on the Appointments Panel by the former Supreme Court judge, Lord Brown of Eaton-under-Heywood; the former Manchester Evening News editor, Paul Horrocks; the former Chair of the Commission for Social Care Inspection, Dame Denise Platt; and the current editor of The Times, John Witherow. As with the Foundation Group, I consider that the Appointments Panel, as originally constituted, and as currently constituted, is such that the public can feel confident that the process of appointing the IPSO Board and Chair, when Sir Alan steps down, is sufficiently independent of the industry.

22. The Appointments Panel was assisted by a recruitment consultancy firm in finding a Chair of IPSO. After public advertisement potential candidates were identified and interviewed.

23. The Appointments Panel, after interview, appointed Sir Alan Moses, former Lord Justice of Appeal, as Chairman of IPSO. Sir Alan then joined the Appointments Panel and the full Appointments Panel, including Sir Alan, appointed the Board of IPSO (the Board). The Board then appointed the Complaints Committee.

24. It was of course the industry that designed the structure of IPSO (although not the staffing, which was only decided once Sir Alan had been appointed). This included drafting the articles of association and other founding documents and determining the terms of the Scheme Membership Agreement. It was then open to the Chairman of IPSO to renegotiate those terms where he considered it necessary and appropriate, and indeed that was exactly what occurred. Those negotiations were concluded in 2015 and I was informed by Sir Alan that he and the IPSO Board were satisfied with the changes that had been agreed.

Appointments Panel (September 2016)

Sir Hayden Phillips (Chairman)
Sir Alan Moses, Chairman of IPSO
Lloyd Embley, Group Editor-in-Chief at Trinity Mirror
Wendy Harris, former civil servant
Jeremy Horner, accountant and former chief executive officer (CEO) of professional services companies
Adrian Jeakings, former CEO of Archant and Chairman of News Media Association

Chapter 2 Structure

25. This section of the report sets out how IPSO is structured. While many readers of this report will be very familiar with IPSO, others will not; this section is to inform them. It will make the later sections of the report more comprehensible to the ordinary reader.

26. IPSO is a company limited by guarantee. Its power to require publishers to print corrections and adjudications and, should IPSO launch an investigation into a member's standards, issue a fine comes from a contractual relationship between IPSO and its members, described as the Scheme Membership Agreement, that all publishers who agree to be regulated by IPSO are required to sign (the Agreement). In this way it is distinct from the PCC, which was entirely voluntary and non-contractual.

27. The major change from the PCC to IPSO is the contractual relationship that now exists between the regulator and the regulated. The importance of this change and the powers it gives to IPSO should not be understated. That said, the contractual structure also has its downsides, namely that it makes any changes to the current arrangements extremely hard work. A contract cannot be changed unilaterally but can only be changed with the consent of both parties. Any changes cannot be imposed on the industry by IPSO, they must be negotiated.

28. IPSO's funding comes from the Regulatory Funding Company (RFC), also a company limited by guarantee, whose members are the same members as IPSO. In addition, the RFC is responsible for establishing the Editors' Code of Practice Committee (often referred to as the Editors' Code Committee), which produces the Editors' Code of Conduct (the Code) that sets the standard by which IPSO regulates. In conducting this review it was necessary to consider both the Editors' Code Committee and the RFC. To have done otherwise would have been to look at only part of the structure that forms the regulatory system, and would in truth have limited

the review to considering only IPSO's effectiveness and not its independence.

THE REGULATORY FUNDING COMPANY

29. The RFC has two roles: to fund IPSO, which includes collecting the levy from all the members, and to establish and convene an Editors' Code of Practice Committee. The directors of the RFC are elected by the members of IPSO (the regulated publishers). The review was informed that there had not been a contested election to the RFC, but as the RFC was less than 18 months old that was not surprising. The board of directors of the RFC can include up to four directors elected by the members of the national newspaper sector, four from the regional newspaper sector (which must include one director who is elected by the Scottish

newspaper sector) and one director from the magazine sector.

30. Directors of the RFC are elected by ordinary resolution at a meeting of the members. Directors can serve for three consecutive terms, of three years per term, and are then required to take a break of at least one year.

31. The RFC board of directors is responsible for determining the level of funding for IPSO under article 24.4 of the RFC's articles of association. This is agreed annually by the RFC, having regard to the funding requirements of IPSO and the Editors' Code of Practice Committee.

32. The RFC is then responsible for determining how much each member should contribute, and for collecting the annual

Directors of the Regulatory Funding Company (September 2016)

Magazines

Albert Read: Deputy Managing Director, Condé Nast Publications
(Date of re-appointment: 12 May 2015)

Regional

Michael Gilson: Group Editor, Newsquest Sussex
(Date of appointment: 10 May 2016)

David King: Chief Financial Officer, Johnston Press
(Date of appointment: 10 May 2016)

Brian McCarthy: Chief Financial Officer, Archant
(Date of appointment: 10 May 2016)

Ellis Watson: Chief Executive Officer, DC Thomson Publishing
(Date of re-appointment: 12 May 2015)

National

Kevin Beatty – RFC Chairman: Chief Executive, DMG Media
(Date of appointment: 10 May 2016)

Paul Ashford: Group Editorial Director, Northern & Shell
(Date of appointment: 12 May 2015)

Pia Sarma: Editorial Legal Director, Times Newspapers
(Date of appointment: 10 May 2016)

Murdoch MacLennan: Chief Executive, Telegraph Media Group
(Date of re-appointment: 12 May 2015)

fees. The exact level or indeed the percentage that is paid by each sector is considered by directors of the RFC to be confidential. It is not made public and it is not disclosed to IPSO. The reason given by directors of the RFC for not making the information public is that it is considered to be commercially sensitive.

THE EDITORS' CODE OF PRACTICE COMMITTEE

33. The starting point for all work by IPSO on standards and on complaints is the Editors' Code of Conduct (the Code), which guides journalists and editors by inference as to what might be published and by explicit prohibition as to what should not be published. The current Code may be seen on IPSO's website. The Editors' Code of Practice Committee, established by the RFC, is responsible for the Code. It is reviewed at regular intervals and each review provides an opportunity for interested parties to press for any changes to the Code that they believe to be desirable.

34. Alongside other changes when IPSO replaced the PCC there were important changes to the arrangements for the Code.

In particular:

- the Chairman and Chief Executive of IPSO are *ex officio* members of the Editors' Code Committee, as distinct from being in attendance;
- there are three other independent members of the Committee appointed by IPSO's Appointments Panel; and
- changes may only be made to the Code if they have been agreed by IPSO's Board.

35. Despite the changes made two years ago it is right for the Committee's name to make it clear that the Code is the responsibility of editors. The five non-editor members are comfortably outnumbered by the ten members from the industry and it is chaired by an editor elected by the industry members of the Committee. As well as the need for any change to the Code to be approved by IPSO, it must also be approved

by the Regulatory Funding Company, the Editors' Code Committee's parent body.

36. The three independent members are Ms Christine Elliott, Mr David Jessel and Dr Kate Stone. Ms Elliott is Chief Executive of the Institute for Turnaround and one-time director of Bletchley Park. She is said to have '*experience of being involved in high profile media stories*'. Mr Jessel has broadcast media experience and experience in the regulatory environment from the Advertising Standards Authority (ASA). He also served as a Commissioner at the Criminal Cases Review Commission for ten years. Mr Jessel is also a member of the Complaints Committee for IPSO, although this was not the reason for his appointment. Dr Stone is the founder of Novalia, a Cambridge-based technology company and had personal experience of press intrusion when she was involved in a serious accident.

37. Under the RFC's articles of association '*independent*' is defined as: '*not Connected with the Regulator or one or more bodies being or capable of being Regulated Entities; and not Connected with the company except by virtue of being a member of the Editors' Code of Practice Committee*'. In turn, '*Connected*' has the same definition as under IPSO's articles of association: '*(a) being an officer, agent, partner or employee of such body; (b) being the holder of more than 5% of the capital in such body; or (c) owing any duty of loyalty to such body*'. At present, David Jessel, who sits on the IPSO Complaints Committee, would, contract dependent, owe a '*duty of loyalty*' to IPSO and as such arguably is not an independent member. I do not see why an independent member of the Editors' Code Committee need be unconnected with IPSO. I recommend that this be revised accordingly. **The Editors' Code Committee should consider whether it is necessary to revise its constitution to allow persons connected with IPSO to sit as independent members.**

38. By invitation I attended and observed a meeting of the Editors' Code Committee, which happened to take place during the review. It was a normal meeting that proceeded in the normal way and was not an occasion for me to discuss this review. The Committee meets between once or twice a year. At those meetings it discusses and decides whether to recommend any amendments or revisions to the Code. Once the Editors' Code Committee has agreed to amendments, all amendments must be approved by both the Board of IPSO and the RFC before any changes can be incorporated into the Code (article 10.11 of the RFC's articles of association).

39. The Editors' Code Committee invites on its website suggestions on amendments from interested parties and members of the public. In late 2012 the Editors' Code Committee launched a public consultation on the Code. That consultation resulted in a report that was shared with IPSO and the review but was not published more broadly. The consultation led to a number of amendments to the Code. During my review few people, inside or outside the industry, advised that specific changes to the Code were needed. **I have found that there are few if any criticisms of the contents of the Editors' Code.** Those who criticised the Code did so on the vague basis that it should be more ambitious, or cover matters of taste and decency. If a specific point of criticism were to be identified it was that the Editors' Code Committee should revise its position in relation to discrimination (clause 12) to include discrimination against a group rather than only discrimination against an individual. This issue is difficult; I am informed that the Committee intends to consider it in its next public consultation. Generally, people, even those critical of IPSO, were of the view that **as a standard of expected behaviour the Code is well regarded and appears comprehensive.**

40. There is no requirement in IPSO's articles of association, the RFC's articles of

The Editors' Code of Practice Committee Members
(September 2016)

- Paul Dacre (Chairman of the Editors' Code Committee), Daily Mail
- Sir Alan Moses, Chairman of IPSO
- Damian Bates, Aberdeen Press and Journal
- Neil Benson, Trinity Mirror Regional Newspapers
- Christine Elliott, independent lay member
- Chris Evans, Daily Telegraph
- David Jessel, independent lay member
- Ian Murray, Southern Evening Echo
- Mike Sassi, Nottingham Evening Post
- Dr Kate Stone, independent lay member
- Matt Tee, Chief Executive of IPSO
- Hannah Walker, South London Press
- Hugh Whittow, Daily Express
- Harriet Wilson, Condé Nast Publications
- John Witherow, The Times

association or the Scheme Membership Agreement that requires the Editors' Code Committee to consult the public or other interest groups. It seems that the public consultation conducted by the Editors' Code Committee in 2012 and 2013 was extensive and received a large number of submissions that were carefully considered by the Committee. The Editors' Code Committee plans to repeat this exercise about once every two years. As there does not appear to be any good reason to the contrary I recommend that **a requirement to complete a consultation exercise and have regard to the conclusion of that consultation should be included in the Editors' Code constitution. A summary report of any such consultation should also be made available to the public.** This would increase public confidence in and understanding of the work of the Committee.

41. I considered carefully whether IPSO's independence and effectiveness would be significantly improved by moving the lead responsibility for the Code to IPSO itself. I discussed the case for a change with most of the witnesses from the industry who met me. On independence there is an obvious case in terms of both substance and presentation for IPSO to have final responsibility for the terms of the Code by which they regulate the industry. Although I see the case in terms of independence as obvious, it was pressed by very few people. Most of the people I spoke to favoured the *status quo*. The industry see a separation between writing law, or standards, and enforcement as well precedented in our society. They point, for example, to the respective roles of Parliament and the courts.

42. Pretty well everyone from the industry believes that the Code's effectiveness depends on its being, and being seen to be, principally the responsibility of editors who know the business and have a working lifetime of experience of considering when and why the freedom of the press should be curtailed. Given that ultimate judgments as to whether the Code has been breached are

made independently by IPSO, the content of the Code itself is what remains of self-regulation to which many people from the industry attach great weight. They are ready to accept limits on that freedom when they are imposed by colleagues they know to value press freedom as highly as they do themselves, but they see any other arrangement as putting press freedom unnecessarily and unacceptably at risk. I heard argument, which I found not entirely convincing, that the Code would be taken less seriously if it were an IPSO Code rather than an Editors' Code. There is plenty of evidence that IPSO is taken seriously and I don't doubt that a code for which IPSO was ultimately responsible would also be taken seriously.

43. I find the arguments quite finely balanced and I have concluded that **the Code should continue to be the responsibility of the Editors' Code Committee as presently constituted.** If I had recommended a change, I would have suggested that an IPSO Committee responsible for the content of the Code should have a strong representation of working editors, unlike other bodies within IPSO. In effect, it would feature much the same representation as the current Code Committee but with a majority of independent members and with the IPSO Chairman in the chair. I have stopped short of recommending this largely for two reasons:

- the present arrangements, which are distinct from those under the PCC, have hardly been in force long enough to have had a fair trial and I saw nothing to suggest that they are failing; and
- evidence to the review included very little criticism of the Code itself, which suggested that, whatever the theoretical defects in the present arrangements, they are not working badly in practice.

44. Should the industry face in the future another crisis of confidence on the part of its readers the arguments on this issue might

be seen to tip decisively in favour of an IPSO lead on the content of the Code as well as on how it is applied.

45. Although the constitution of the Code Committee was revised relatively recently it is somewhat old-fashioned in one respect by comparison with what has become common practice in the business world and in the third sector. The constitution provides that *'Each of the members other than the Chair and chief executive officer of IPSO (who serve ex officio) shall be elected or appointed for renewable three year terms'*. The ten industry members are elected by the members of the Regulatory Funding Company and the three independent members other than the Chair and Chief Executive of IPSO are appointed by the IPSO Appointments Panel. It is now considered good practice to impose a time limit on an individual's service on a committee or board. I recommend that **the Code Committee's constitution should limit the length of time that anyone may serve on the Committee save for the Chair and Chief Executive of IPSO.**

46. A model that works reasonably well in my experience is a normal maximum of two three-year terms with an extension to three three-year terms in exceptional circumstances. Transitional arrangements would be needed to make sure that there was enough continuity in the early years if this change is made. I make this recommendation both because, as with other bodies, it will help to make sure that the Committee is refreshed at regular intervals and, in the case of this Committee in particular, which is the subject of considerable public interest, it will increase confidence in its work.

IPSO'S INTERNAL STRUCTURE

47. IPSO has a main board (the Board) and a separate Complaints Committee. The Board is responsible for financial management as well as overseeing IPSO in the normal way for a board. It also has responsibility for

adopting the Editors' Code and overseeing the work of the Complaints Committee. The Complaints Committee is responsible for dealing with complaints in accordance with IPSO's procedures. Both the Board and the Complaints Committee share the same Chairman.

IPSO's Chairman

48. IPSO's Board and the Complaints Committee are chaired by Sir Alan Moses, former Lord Justice of Appeal. He was appointed by the Appointments Panel, having applied and been interviewed for the role. He was described to me by a number of people as a *'Guardian reader'* and a *'maverick'*. He is, by all accounts, and by observation, independent-minded and a man of integrity. Having been at the Bar and sat on the Bench for most of his career, he has an unblemished record. The Appointments Panel could hardly have chosen a more independent-minded chair. There can be no doubt that he is a person in whom the public can place a great deal of confidence.

IPSO's Board of Directors

49. There are 12 directors of the Board. The directors of the Board are either *'industry directors'* or *'independent directors'*. The IPSO Board has a majority of *'independent directors'*. *'Independent'* is defined in IPSO's articles of association as not being *'Connected'* to the RFC or a Regulated Entity. In turn, *'Connected'* is defined as being an employee or agent, owning 5 per cent or more in equity, or owing a duty of loyalty. This is a relatively narrow definition of *'independent'*. A former employee (including a former editor) of a Regulated Entity, who no longer owed a duty of loyalty but had for their entire working lives been employed in the industry, could still meet this definition of independent. In practice, at present there are seven members of the Board who have not previously been employed by the print industry. I recommend that **IPSO considers revising its**

articles of association to define independent, for example, to exclude anyone who has been employed in the industry in the previous 20 years. If the intention of this change can be achieved more elegantly using a different form of words that would be equally acceptable.

50. There are seven independent directors and five industry directors of the Board. Both the industry directors and the independent directors of the Board are appointed by the Appointments Panel. In appointing the industry directors the Appointments Panel is required to take into account the views of the RFC (article 22.5 of IPSO's articles of association).

51. The Board's pay is also set by the Appointments Panel and increases are capped by reference to the retail prices index (under article 24.2 of IPSO's articles of association).

IPSO's Complaints Committee

52. The Complaints Committee has the same make up as the Board: seven *'independent members'* and five *'industry members'*. The Complaints Committee members are appointed by the Board of IPSO (under article 27.2.1). The Board is required to have regard to the recommendations of the RFC in appointing the industry members. The pay of the Complaints Committee is determined by the Board under IPSO's articles of association (article 27.9).

53. It is clear that careful thought was put into ensuring that both the Complaints Committee and the Board had sufficient expertise, including industry experience, but had a majority of lay members to ensure public confidence in its independence. I recommend that **IPSO and the Appointments Panel continue to strive to ensure that appointees have the necessary mix of skills and experience to regulate the press effectively and inspire public confidence in the organisation's independence.**

IPSO's Staff

54. IPSO is a relatively small organisation. It employs 22 people. They include the Chief Executive, Matt Tee, and the Operations Director, Charlotte Dewar. It also employs seven complaints officers (including two joint Head of Complaints) who handle all the complaints that IPSO receives. There is a small standards team and a small communications team, and a team of people to provide administrative support.

55. I spoke to most of the people who work for IPSO and found them to be highly committed to ensuring the organisation worked efficiently. The complaints officers clearly strove to provide assistance to complainants and to ensure that the Complaints Committee had all the necessary information required to make a fair and well-informed decision.

56. Observation led me to ask whether IPSO has yet developed a code of conduct for staff and for members of the Board and the Complaints Committee. The average member of IPSO's staff is young by the standards of most organisations. Some of the appointees to the Board and Complaints Committee have extensive experience at similar levels in the public and private sectors, but not all. This means that one cannot take for granted that everyone involved will know instinctively from previous experience what behaviour is expected in their role at IPSO. A written code is not the only way, or even the best way, of encouraging high standards of conduct, but I recommend that **IPSO gives reasonable priority to drawing up an appropriate code or codes of conduct for staff and members of the Board and the Complaints Committee.** The process of drawing up and agreeing a code will help all concerned to think through the obligations imposed by their role in IPSO and, once it exists, it will provide a useful introduction for new recruits, whether to the staff or to the Board and the Complaints Committee.

Chapter 3 Independence

57. Because of the need for funding (see paragraph 61 below), absolute or complete independence from both the industry and government is not possible. What is required of a regulator of the press is sufficient independence. To be an effective regulator it must be perceived as providing a fair hearing to those who complain and seek redress through it. This perception of independence is inseparable from the structure and practical functioning of the organisation.

58. There are three elements of an organisation's independence. Those are whether its establishment was independent, whether it is financially independent and whether it is structurally independent. I address a number of points about IPSO's relationship with the industry and government in the section on the structure of IPSO and how it was established. There is no need to repeat those points here, but anyone reading this report should also look to those two chapters of this report when considering IPSO's independence. This chapter only covers its relationship with the funding body, the RFC.

59. It is clear, and should be said early on, that **to date and throughout this process of review I have seen no evidence of IPSO's decision-taking being improperly influenced by the industry.** It is, of course, the case that many people in the industry have strong views about IPSO, and make those views known. I see no material issue with this. IPSO is scrupulous in ensuring it engages with those outside the industry, as well as within the industry, and I have not heard any suggestion that those outside the industry who wish to engage with IPSO have been denied that opportunity.

60. That said, **it is to be noted that it is an uphill task for IPSO to prove that it deserves to be trusted as an independent regulator. Decisions made by those in charge of the PCC led to its demise and a collapse in public trust. This is only compounded by the fact that IPSO is funded, and was established, by the**

industry. In these circumstances, it is no easy task to gain the public's trust.

FINANCIAL INDEPENDENCE

61. IPSO is funded by the industry. Regulators cost money to run. Put simply, there are two options: either the industry (and by proxy the consumers of newspapers and magazines) pay, or the public at large pay through taxation. Any other option would not be viable or secure over the medium to long term. The industry gain a certain benefit by dint of the regulator. It was described by one industry member as a type of 'kite mark'. It implied a higher standard of accuracy and ethics than that which can be expected from other unregulated news sources. This benefit should be paid for by the industry.

62. During my interviews I was told by those representing the industry and others that, particularly in its final years, the PCC had lived a rather hand-to-mouth existence. It is unclear what the financial agreement was between the PCC and PressBoF (the Press Standards Board of Finance, equivalent under the previous PCC system to the RFC). In any event, any unexpected funding would need to be requested. An example given was that the PCC needed to ask PressBoF for money to paint the toilet. True or not, it illustrates the difficulty of the relationship of dependency between the funded and the funder. When this was put to those familiar with the PCC and PressBoF, they said that, in practice, the PCC was never refused funding. That may have been the case, but I accept that the very process of asking, and the uncertainty which surrounded the budget, created an impression of a lack of independence and, indeed, could have contributed to a heightened sense of dependence on the goodwill of those the PCC was seeking to regulate.

63. On being established, IPSO agreed a one-year funding agreement with the RFC. In 2015 IPSO agreed a further four-year funding agreement. This will ensure funding

for the remaining term of the contract (to 2019 inclusive). I note that the contract will automatically renew, subject to an objection on the part of a member or IPSO, at the end of the term. The funding agreement was reached orally and confirmed by email between the Secretary of the RFC and the IPSO Chief Executive – having been approved by the IPSO Board – and ultimately in a signed letter. This process of agreeing funding proceeded in what would be the ordinary way: IPSO presented the RFC with a budget, the RFC representative suggested some revisions, some of which were accepted by IPSO and some were not. The budget was then finalised and agreed.

64. Agreeing a four-year budget has allowed those acting for the regulator a greater independence, in that the positions of those employed by IPSO will not be in doubt when it challenges the behaviour of its paymasters. IPSO considers its funding to be adequate and there is no reason to doubt that it is in the best position to determine its needs. The funding is greater than it was under the PCC. The letter setting out the funding agreement also states an intention that in 2019, the last year of the current contract, the RFC will begin negotiations for a five-year funding agreement. The RFC continues to have monthly oversight in the meantime to ensure that IPSO is not over- or underspending to any marked degree. This is a prudent measure, and not one that affects IPSO's independence to any material extent.

65. In practice, the process followed by IPSO and the RFC of reaching an agreement about funding and ultimately agreeing to a four-year funding agreement appears reasonable. But, it is important to note that this agreement on funding is not included in the contractual agreements, and nor is there an obligation on either IPSO or the RFC that funding is agreed on a five-yearly basis in future. Indeed, under the articles of association for the RFC the funding of IPSO is determined on an annual basis:

'24.4. The directors shall agree a budget for the company annually having regard to the funding requirements of the Regulator, the Editors' Code of Practice Committee and the company. In considering the funding requirements of the Regulator, the directors shall take into account the Initial Budget, a formula for increases, and any contingency or exceptional funding which may reasonably be required.'

66. It is largely dependent on the Chair of IPSO and the directors of the RFC to agree to reach such an agreement. While I have made clear at other points in this report that I consider the current Chairman of IPSO, Sir Alan Moses, to be independent-minded, and likely to resign if he considers that IPSO is not sufficiently independent or sufficiently funded, there is no guarantee that the next Chair of IPSO will be so inclined.

67. Those I spoke to from the industry made very clear that they were committed to ensuring that IPSO succeeds and were well aware of the likely effect of Sir Alan's resignation. The possibility of his resignation is an effective restraint. That said, I do not consider it to be a satisfactory way of ensuring independence. It would be preferable and I recommend that **an obligation to reach full-term funding agreements be included in IPSO's articles of association and the RFC's articles of association.** It will encourage confidence in the independence of IPSO if the RFC is obliged in its articles of association to negotiate funding over a four- or five-year period. Given that IPSO currently has in place a four-year funding agreement this is not a desperately urgent change, but should be implemented at the next available opportunity.

Chapter 4 Complaints

INTRODUCTION

68. Handling complaints against the member publishers of IPSO makes up what is the majority of IPSO's work. A relatively small team of complaints officers (five complaints officers and two joint Head of Complaints) deal with a large volume of complaints. During my review I met the complaints officers; I also met Charlotte Dewar, the Operations Director, and reviewed a separate external report commissioned by IPSO into its complaints-handling procedures. IPSO's complaints-handling process is set out in an internal document entitled '*IPSO Complaints Procedure*'. The most recent version is dated 12 February 2016. I also observed, and received relevant documentation for, two meetings of the Complaints Committee, and, with the assistance of IPSO, conducted a survey of a random selection of complainants, the conclusions of which are at Annex D.

69. In short, these are the following broad features of the complaints-handling process:

- Initial Assessment: where complaints which are outside IPSO's remit are closed (i.e., complaining about a non-member or complaining about a matter which is not covered by the Editors' Code or where there is no possible breach of the Code), the complainant is notified and the complaint '*closed*' (subject to a request by the complainant for a review).
- Referral: all remaining complaints are referred, unless they have already been considered by the Regulated Entity, to the Regulated Entity for resolution for a maximum period of 28 days.
- Investigation and Mediation: if the Regulated Entity cannot reach a settlement with the complainant, IPSO will investigate the complaint and attempt to mediate. If a mediated settlement is reached then the complaint is considered to be resolved and is closed.

- The Complaints Committee: all complaints which are not resolved by mediation proceed to consideration by the full Complaints Committee; the Committee will consider the complaint either by correspondence or at a meeting of the full Committee.
- Decision: the Committee can require the Regulated Entity to print a correction and an adjudication. It cannot fine the Regulated Entity for a single breach of the Code or require the member to issue an apology.
- Review: either party can request a review of the procedure. A review will only be upheld where there has been a substantial error in procedure.

70. In terms of timing, IPSO endeavours to inform within two days a complainant whose complaint is outside IPSO's remit, to inform within 15 days about a complaint that raises no possible breach of the Code and to complete an investigation within 90 days from the date that it commences.

INITIAL ASSESSMENT

71. Complaints can be made in any form but they are ordinarily made in writing by email. Each complaint is logged on the system and a standard acknowledgment, which sets out the complaints process, is sent to the complainant. It is free for complainants to complain to IPSO. IPSO will attempt to ensure that only one member of the complaints team deals with all correspondence with the complainant, although it will not always be possible for this to be the case.

72. The complaints officer will first review: (i) whether it falls within IPSO's remit; and (ii) whether it raises a possible breach of the Code. This involves considering the following:

- If the publisher is a Regulated Entity/ member of IPSO: IPSO will only consider

a complaint relating to a member. If the publisher is not regulated then IPSO will inform the complainant and close the complaint.

- If it is covered by the Editors' Code: whether the concern '*appears to relate to an issue covered under the Editors' Code of Practice*'. What this involves in practice is a complaints officer considering the facts of the complaint and considering whether the concerns are within any of the clauses of the Code and whether it raises a possible breach of the Code. There is not an official description of what this process involves. IPSO relies on the experience of its complaints officers to know a potential breach of the Code when they see it.
- Delay: IPSO will ordinarily only consider a complaint that has been made in time, namely within four months from the date of the conduct complained of or publication of the article. IPSO has a discretion to enable it to consider a complaint about material that remains published within 12 months of publication, but only where it considers it is still possible to investigate and adjudicate fairly having regard to the period of time since first publication. In determining whether to exercise this discretion, IPSO's guidance states that it will have regard to any reason given by the complainant for the delay.
- Standing to bring the complaint: if the complaint is made by a third party, that is a party not directly affected by the alleged breach of the Code, then the complaint will not be permitted to proceed except where it relates to accuracy, which is covered in clause 1 of the Editors' Code. If the complaint does relate to accuracy the complaints officer will not automatically consider it. Instead, in determining whether it should proceed the complaints officer will have regard to: (i) the seriousness of the alleged breach; (ii) whether IPSO can investigate the accuracy adequately; (iii) whether there is a first party who could have commenced the complaint; and if so,

(iv) whether the first party has complained and (v) whether the investigation would represent an intrusion on or an infringement of the first party's privacy. If the complaints officer determines not to proceed, the matter is put before the Complaints Committee to consider. A complaint can also be brought by a *'representative grouping'* where the alleged breach of the Code is *'significant'* and there is a *'substantial public interest'*. The staff will make a recommendation to the Committee and the Committee will determine whether to investigate the complaint.

- Potential or concurrent legal proceedings: although IPSO is not precluded from investigating a complaint where there are concurrent legal proceedings it will not ordinarily consider doing so. IPSO does not require a complainant not to engage in legal proceedings, but if they do so while a complaint is ongoing IPSO asks the complainant to inform IPSO.
- Other complaints on the same issue: if IPSO receives a substantial number of complaints about the same issue (substantial is classed as ordinarily over 20) a senior complaints officer will consider whether special measures are required to ensure that the complaints can proceed efficiently. This may include considering whether they should be included into a single *'lead'*, also referred to as a *'summary'* complaint. If there are a large number of complainants it is likely that the complaint related to accuracy (clause 1) and is being brought by third parties, and the principles outlined above will apply.
- Exhausted the internal procedure with the member: under regulation 13 of the Independent Press Standards Organisation C.I.C. Regulations (Regulations) IPSO will not commence consideration of a complaint until the earlier of: (i) the exhaustion of the Regulated Entity's complaints procedure; (ii) a request by the Regulated Entity for IPSO to consider the complaint; or (iii) 28 days from the date that the

Regulated Entity received the complaint, unless IPSO considers that its earlier involvement is *'essential'*. In determining whether the entity's complaints procedure has been exhausted IPSO may take into account whether a complaint in similar terms was made to the publication, whether the complaint was clear such that the publication could respond and whether the complainant has engaged with the publication's correspondence. IPSO will consider if it is *'essential'* to commence investigations earlier where: (i) the complainant is unable to engage; (ii) where there are specific sensitivities which mean it is inappropriate for the complainant to be required to engage with the publication; (iii) the complainant has reasonable and specific grounds for believing the publication may abuse the complaints process; or (iv) the public interest would be harmed by any delay in investigating. Where appropriate, IPSO will refer the matter to the publication. If IPSO refers the matter back to the publication then a named complaints officer will be identified and will be available to assist the publication and the complainant.

73. I have found that **the staff of IPSO are very proud of the way they engage informally and helpfully with complainants who do not understand the system. I consider the assistance they lend to be of a high quality. I have also seen the correspondence between IPSO and complainants; in large part it is of a very high standard.** However, it would be advisable for IPSO to take another look at its standard letters. **The brusque nature of the letters stands out even more in comparison to the engaging one-off correspondence I have seen and revisions should be considered.**

74. During the review I was variously informed that the complaints officers are too supportive of the complainant and not supportive enough. I have been told equally that their relationship with the industry is too close and not close enough. In conversation with IPSO it has become very clear that it is

aware that there is a danger in both positions. IPSO appreciates that the repeated and often long-term interactions with newspaper complaints-handlers can encourage a bias, or at least the appearance of bias, and is cautious to guard against it. It is also aware that the experience and seniority of those in the industry who deal with complaints can create pressure on the complaints officers, who are comparatively young, and have less experience of the industry and the application of the Code.

75. Equally, IPSO and the complaints officers are not the complainant's friend, but should be there to support them in making their complaint to IPSO. Indeed, a positive working relationship with both sides is essential, not least because it remains an important part of IPSO's role to mediate complaints. That said, having looked at the correspondence I do consider that on occasion it is both too formal and too informal in relation to both complainants and members alike. **In considering how IPSO engages with both complainants and the industry I recommend that it should consider how complaints officers encourage and facilitate consistency in terms of address.**

76. It was put to me during the review that there was a substantial inequality of arms. This was based on the seniority and experience of those dealing with the complaints on behalf of the newspapers. The complaints officers at IPSO are invariably very committed and competent individuals. But it is also right to note that they have limited or no formal legal training, and only one of the complaints officers has any experience in the print industry. I recommend that **IPSO should consider the introduction of formalised training programmes for both new and more experienced complaints officers.** There are some specific and challenging skills which IPSO should obtain outside help to develop, which include ensuring a full and thorough investigation has been completed as well as managing and investigating direct conflicts

of evidence. In addition, **the introduction of more systematic supervision, particularly in a person's early months, will assist in ensuring a consistently high standard and provide staff with additional support.**

77. I am advised by IPSO that it expects complaints officers to remain in the organisation for three to five years. Given the level of skill and experience required for the role this may be a little short. I recommend that **IPSO should aim, and budget, for staff to remain in position for five to seven years to ensure that the relevant skill and experience needed can be developed and retained in the organisation.** This would mean roughly an annual turnover of one complaints officer a year, which will result in less organisation disruption and help IPSO to invest in training for their staff.

REFERRAL TO REGULATED ENTITIES

78. As part of the IPSO procedure the members are given the opportunity to resolve the complaint in house before the complaint is investigated and determined by IPSO. The standard period is 28 days, although this can and has been shortened if IPSO considers it essential or either party requests for it be shortened.

79. The purpose of the 28-day referral period is to place the emphasis on the need for publishers to take more responsibility internally for compliance and for dealing with complaints about standards. Those from the industry emphasised that since IPSO took over from the PCC they had improved the quality of their complaints-handling processes and strengthened internal compliance systems.

80. It has been put to me by most, although not all, in the industry that they find this period useful as it enables them to resolve straightforward complaints quickly. IPSO considers that the 28-day referral period acts as an incentive, in that it encourages publishers to resolve complaints quickly and avoid an IPSO adjudication. Those critical of

IPSO informed me that the referral period enabled newspapers to obfuscate and delay, and to intimidate and frustrate complainants; at best it was described as a battle of attrition. When I discussed this with the staff in IPSO they informed me that IPSO regarded any attempt to intimidate or abuse the internal procedure on the part of the publication to be an extremely serious breach of its standards. Any attempt would be referred to the Chief Executive and the Operations Director.

81. If, during a referral to the publication, the complainant ceases to respond to correspondence and the member notifies IPSO, an IPSO complaints officer will write to the complainant advising them that unless the complainant objects within seven days, the complaint will be considered to have been closed. The complainants are advised to engage with the publication for the remainder of the referral period (28 days from the date of the receipt of a complaint). The same policy will apply if IPSO is informed by the publication that the complaint has been resolved.

82. There is no structured record kept by IPSO on the outcome of the referrals: that is, IPSO only knows that a complaint that has been referred was resolved or abandoned, it does not know what resolution was agreed, or indeed how long it took to reach that agreement. It is important for assessing the effectiveness of the referral period for IPSO to keep an accurate record of the outcome of the referral. I recommend that **IPSO and the industry should monitor how long on average it takes for newspapers to deal with complaints and, depending on the facts, should consider revising the 28-day period, to prescribe a shorter maximum, either 14 days or 21 days.** It may be possible to encourage members to do this on a voluntary basis. Alternatively, regulation 31 of IPSO's Regulations may need to be amended to require publishers to keep IPSO updated.

INVESTIGATION AND MEDIATION

83. Once IPSO determines, based on the above procedures, that it is appropriate to proceed with its investigation it will inform both the publication and the complainant. The complaints officer will first consider whether the matter would be appropriate for mediation and whether it requires any further information from either party or whether the complaint needs further clarification.

84. If the complaints officers consider that a mediated settlement is possible they may at this stage make suggestions to either party with the aim of mediating a satisfactory resolution. Where a complaint is resolved, or sufficient remedial action is offered, then no code breach will be recorded but a summary of the complaint will be published on IPSO's website.

85. Subject to a complainant's objection, all correspondence between IPSO and either party is shared with the other party. Where the complainant refuses to allow IPSO to share correspondence with the publication, the Complaints Committee cannot consider that evidence in determining whether there has been a breach of the Code.

86. IPSO will request as part of the investigation that all *inter partes* correspondence is sent to the complaints officer. In considering the complaint the complaints officer will then request evidence from the publisher to prove that there was no breach of the Code. IPSO's position is that it is for the publication to demonstrate that it has complied with the Editors' Code and to provide adequate evidence to substantiate its position.

87. During an investigation IPSO expects both parties to respond in a timely manner and will generally request that parties respond within seven days, although this can be shortened or increased depending on the circumstances.

88. If a complainant does not respond within seven days, IPSO will give them a further seven days on notice to respond. If no response is received then IPSO will consider that the complainant is not pursuing the complaint and close it. Where a complaint is closed IPSO will only reopen it where the reason for the delay is explained and where it would be unreasonable to refuse the request.

Anonymity

89. If complainants do not wish an adjudication to include identifying or other details they are advised by the complaints officer that they will need to notify IPSO. Any request for anonymity is referred to the Complaints Committee. Requests are considered on a case-by-case basis but the presumption is that all adjudications are published in full. This presumption will not apply in cases involving privacy and complaints of an intrusion into privacy or where the complainant is alleging that they have a legal right to anonymity. The complainant will be informed of the Committee's decision and be provided with the opportunity to withdraw their complaint should they so wish. This appears to be a sensible approach to dealing with issues of privacy and for ensuring that the remedy offered by IPSO is not undermined by the publication of its decision.

Confidentiality

90. IPSO asks complainants and publications not to disclose correspondence which has been sent by IPSO to either party without the other party's permission.

91. IPSO's internal guidance states that this does not prevent either party from disclosing information about the complaint to third parties in order to seek assistance with the complaints process, so long as they take reasonable steps to ensure that third parties are aware of and will respect the confidentiality of the process. Significant, repeated or deliberate disclosure of information by a

publication in breach of this policy may be considered by IPSO as raising concerns about the publication's standards. Equally, significant, repeated or deliberate disclosure of information by a complainant in breach of this policy may be considered by IPSO as vexatious behaviour by a complainant, and will be addressed in accordance with IPSO's policy on '*Unacceptable behaviour by complainants*'.

92. This procedure for ensuring confidentiality during the complaints-handling procedure appears appropriate and balanced. I was informed during the review that some complainants do not understand who they can share the correspondence with and why the correspondence is treated as confidential. I recommend that **IPSO should consider how it can improve its communications to complainants about confidentiality.**

THE COMPLAINTS COMMITTEE

93. If a complaint is not settled by mediation it will always be considered by the full Complaints Committee. The Committee will either consider the complaint in correspondence or at a meeting of the full Committee. A senior complaints officer will determine which is appropriate in the first instance. A complaint will be considered by the full committee where: (i) the staff are recommending the publication of an adjudication; (ii) the complaint has been circulated in correspondence and there is an unresolved disagreement among the Committee members; or (iii) the matter raises a novel or important issue in relation to the application of the Editors' Code.

94. Complaints Committee meetings take place ten times per year. All members of the Committee are expected to attend and participate. A minute of the outcome of its deliberations is retained and made publicly available on the IPSO website. Members of the staff attend as observers and may be asked to clarify points of fact relating to the complaint or the Code.

95. Members of the Complaints Committee play no part in the consideration of complaints in which they have a conflict of interest that could create a bias or an appearance of bias.

96. In conducting this review I observed two meetings of the Complaints Committee. The process followed at the Complaints Committee is as follows:

- The papers for the meeting are circulated in advance of the meeting. The papers include the correspondence between IPSO and both parties as well as *inter partes* correspondence. The complaints officer will have drafted a proposed decision. The complaints officers will also have prepared a chart containing any comments they received from Committee members in advance of the meeting in correspondence.
- The meeting is chaired by Sir Alan Moses. During the meeting all members of the Committee were invited to give their views and where it is required the complaints officers are available to respond to any questions. During the two meetings that I attended, Peter Wright made a distinct contribution because of his experience as an Editor, and his in-depth understanding of the Code and its application. He and other industry members of the Complaints Committee seemed to me to display no bias in favour of the publication. For example, in a case I observed, Peter Wright found himself in a minority arguing that there had been a breach of the Code. I recommend that **IPSO should continue to work to ensure that the Complaints Committee includes individuals with recent day-to-day experience of the practical application of the Editors' Code.**

97. Having observed the Complaints Committee, met the complaints officers and met separately with four members of the Complaints Committee, I make the following observations:

- First, the size of the Complaints Committee makes it difficult for all voices to be heard, and makes it difficult to reach a collective view. The Committee is reluctant, for reasons with which I agree, to resort to voting and seeks to reach a consensus position and to avoid minority views. This means that sometimes the reasoning behind the Committee's decision is obscured. This lack of clarity has on occasion been reflected in the decision notices.
 - Second, I recommend that **where the full Committee meets, the Chairman or the executive should summarise more fully the conclusions of the Committee.** This should assist the staff in redrafting the decision in line with the position of the Committee.
 - Third, IPSO does not consider itself bound by previous decisions. As there is no appellate authority, binding precedent would be problematic and prevent the Complaints Committee from changing its mind as the facts changed. Other regulators such as Ofcom, the Information Commissioner and the ASA all act free of binding precedent. That said, there is a significant value in the Committee at least being aware of the fact that it may be taking a line that is different from a line taken previously in a similar case. For that to happen, I recommend that **the staff should ensure that they provide the Committee with previous decisions of the Committee where they are relevant.** This should enable the committee to have a clearer understanding of their previous applications of the Code and enable a greater clarity in its reasoning.
- 98.** In the early stages of IPSO's development as a regulator it was not possible for it to produce guidance on the application of the Code. At that stage IPSO did not know how the Committee would interpret much of the Code. The Code is a short document and many of the clauses are open to a broad range of interpretations. Members of the

public and publishers should not be expected to trawl through previous decisions to deduce what the Committee understands is meant by certain clauses of the Code. I recommend that **IPSO should now work on producing its own guidance on the application of the Code.** I appreciate that the Editors' Code Committee produces the Codebook, which functions as guidance. But it is ordinary practice for regulators to produce their own guidance. IPSO's own guidance should be made freely accessible to the public on its website, with hard copies available on request for a small administrative fee. When this is up and running there may still be a case for the Codebook to continue. That is a matter for the Editors' Code Committee.

DECISION

99. Under regulation 22, if a complaint is upheld the Committee may impose the following remedies: (i) a requirement for the publication to publish a correction; or (ii) a requirement for the publication to publish an adjudication. A correction is exactly what one might expect, a correction to a factual inaccuracy, and is used when there is a breach of clause 1 of the Code (accuracy). An adjudication is used in all other breaches and is a statement as to IPSO's final decision.

100. **IPSO's upholding of a complaint is taken very seriously by the industry, and by editors specifically. The newspapers and magazines want to have as few complaints upheld as possible.**

Due Prominence

101. In the case of either a correction or adjudication, the nature, extent and placement of the remedy will be determined by the Committee, acting proportionately and taking into account the seriousness and nature of the breach, as well as the nature of the publisher and its publications. Since its establishment, IPSO has determined on 13 occasions that a newspaper should be

required to publish a correction on the front page. This is considered by IPSO and the industry to be the most serious of sanctions, and is embarrassing for editors.

102. *'Due prominence'* is an elusive concept. IPSO does not produce any internal or external guidance on what is meant by due prominence, and it is effectively what the Complaints Committee decides it should be on the day in question. I recommend that **IPSO should produce guidelines on its application of 'due prominence'. That guidance should include case studies and explain why in those cases IPSO believed that the adjudication or correction was given due prominence.** This guidance is important to manage public expectations and to ensure that editors understand the likely consequences of their actions and as such can act as a more effective deterrent. The sanction to be applied at the end of the process should not be a surprise to either party. By ensuring that parties understand at the beginning how due prominence will be applied, should the complaint be upheld, complainants are less likely to feel disappointed at the end of the process.

Publications of Decisions

103. IPSO publishes all determinations made by the Committee as soon as is reasonably possible following the conclusion of the complaints-handling procedure, generally on a weekly basis. IPSO is in the process of developing its recording and publication of its decisions online. There has been some recent substantial improvement in the search functions on the website which make it easier to find decisions on particular topics. For example, it is now possible to refine the search by publication, clause of the Code, date and outcome. This means that it is possible to search for all upheld complaints relating to a particular clause against a particular newspaper. This is a useful resource for anyone interested in IPSO, which increases its transparency and, in turn, trust in the organisation.

REVIEW

104. Paragraphs 32 to 37 of IPSO's Regulations provide for an independent review of a decision made by the Complaints Committee at the instigation of the complainant or the publication, within 14 days of the date of the decision being issued. A review may only be sought on the ground that the process by which the Complaints Committee's decision was made is substantially flawed. It is not possible to obtain a review on the ground that the Complaints Committee reached the wrong decision even though it followed the right process.

105. I didn't hear a convincing justification for this distinction. No one suggested that the Complaints Committee was incapable of reaching a wrong decision. I heard suggestions that if the scope for seeking a review were widened, many people would push their case on to that stage even though it had no merit and that this would add to delays and increase costs unnecessarily.

106. I am sympathetic to the importance of a speedy resolution of complaints and to the desirability of keeping costs down but I see a strong case for allowing for reviews on grounds of substance as well as process. The most important consideration is that any decision-taking body is liable to make mistakes and human beings are always likely to be more careful if there is a chance that their work will be reviewed. A secondary consideration is that many complainants are puzzled by the distinction between process and substance and that distinction weakens confidence in the whole complaints system. Complainants were not the only ones apparently confused by the current system: a member of the Complaints Committee advised me that it was equivalent to judicial review when it plainly is not. I recommend that **it should be possible to seek a review on the ground of substance as well as process.**

107. I don't envisage an expensive and cumbersome appeals structure. If this recommendation is accepted, I suggest that those responsible for changing the Regulations should look at the paragraphs on a request for an Independent Review of a ruling by the Advertising Standards Authority. They include features which IPSO's members may find reassuring. For example:

- the review must be sought within 21 days unless there are exceptional circumstances;
- the grounds for a review are limited to extra relevant evidence becoming available or to an allegation of a substantial flaw in the decision;
- the review is the responsibility of a single individual;
- there must be no oral hearings or meetings between the reviewer and a party to the complaint;
- there are arrangements for the reviewer to consult two Assessors; and
- the reviewer may invite the ASA Council to reconsider its ruling; it must then do so but is not obliged to accept the reviewer's recommendation.

108. This process results in only a handful of cases being reconsidered by the ASA Council, but in those cases it normally results in some change in the original decision. There is no reason to follow the ASA model slavishly but something on those lines ought not to be threatening to the industry, should be a useful safety net for some of the less straightforward cases, and should further improve confidence in the complaints system.

Chapter 5 Standards

109. To define itself as more than merely a competent complaint-handling body IPSO must also act to improve standards across the industry. It proposes to do this in four ways: first, with the threat of a '*standards investigation*'; second, with the establishment of a whistleblowing hotline; third, by requiring all members to produce an annual statement setting out their compliance; and fourth, through Privacy Advisory Notices.

STANDARDS INVESTIGATION

110. IPSO can launch what is described as a standards investigation. The investigation can be launched by the IPSO Board where:

- IPSO reasonably believes there may have been serious and systemic breaches of the Editors' Code;
- there has been one or more failure or failures to comply with the requirements of IPSO's Board; or
- an annual statement identifies significant issues of concern.

111. A standards investigation may be commenced on the Board's initiative or in response to recommendations from the Complaints Committee. Where the Board determines to commence a standards investigation it shall write to each of the Regulated Entities that are likely to be the subject of an investigation. The Regulated Entities subject to investigation are then given a fixed period to respond. The investigation is conducted by an Investigation Panel rather than the Board of IPSO.

112. The Investigation Panel can determine what information is required for the purposes of the investigation. It has the power under the Scheme Agreement to compel the production of documents (except where to do so would jeopardise the protection of sources, regulation 69, and privilege, regulation 72). IPSO can in theory commence legal proceedings under the contract to compel the production of documents. In addition, the Regulated Entities are under an obligation to cooperate with IPSO

in the conduct of its duties: which would include during a standards investigation.

113. The publisher may make written submissions to the Investigation Panel. Once the Panel has reached a decision the publisher can request a review of that decision on the basis that the decision or process was *‘substantially flawed’*. In any event, if there is no review or on review the decision is upheld, the Board can: (i) publish an adjudication; (ii) require the Regulated Entity to pay a fine; (iii) require the Regulated Entity to pay costs; and/or (iv) terminate the Scheme Membership of the Regulated Entity.

114. Any fine will be determined in accordance with the Financial Sanctions Guidance. The Financial Sanctions Guidance is produced by IPSO and agreed by the Board. No fine will be imposed without allowing the Regulated Entity to make oral representations to the Board.

115. In the early weeks of the review I became concerned that IPSO has only £100,000 in its budget to conduct a standards investigation when it finds evidence of a serious and systemic failure to meet the prescribed standards in the case of a particular publication. I imagined that it would have to take on additional resources, which might be very expensive because of the skills that might be required. In years to come this problem might not arise because any fines imposed following a standards investigation would go into this enforcement fund. But, unless and until investigations had resulted in fines, IPSO would have to go to the RFC to seek additional funds if it were not able to manage with £100,000. There is no reason to believe that the RFC would refuse to meet a reasonable request in those circumstances but it would certainly limit the extent to which IPSO could claim to be independent.

116. The longer I thought about this issue and the more people I talked to, as the review went on, the less concerned I was about the £100,000. In some circumstances

where IPSO launched an investigation it would have enough evidence already to satisfy it that the serious and systemic test had been met. That would probably have emerged as a result of complaints cases where the complaint had been upheld. Concluding the investigation in those circumstances should not be particularly expensive. In other cases where there were anxieties about a serious and systemic failure to meet standards the first step would probably be to approach the police and to allow the police to take the lead. Whatever action it might be appropriate for IPSO to take when the police had closed their file, it would be unlikely to involve it in an investigation costing more than £100,000. I recommend **that the funding arrangements for a standards investigation remain as they are.**

117. Those opposed to IPSO are often of the view that the fact that IPSO has not yet launched a standards investigation is evidence that it has failed to regulate the press. Given the significance of a standards investigation IPSO ought not to feel under pressure to launch one. **It would be a serious mistake to launch a standards investigation on relatively flimsy grounds. It ought to be exceptional.**

118. I have refrained from making any further recommendations about the conduct of a standards investigation. IPSO has put a great deal of effort into preparing to launch its first one. This should not be undertaken lightly but, in circumstances where one has not yet taken place, it is not possible for me to say one way or the other whether it will be effective and independent. One point I would make is that the industry are very concerned about the threat of a standards investigation and take it extremely seriously. They see it as inevitable that one will be launched shortly and each publication was very keen for it not to be them under investigation.

WHISTLEBLOWING HOTLINE

119. IPSO is required to and does provide a confidential whistleblowing hotline for journalists who are concerned about the behaviour of their employer. I note also that as part of the Scheme Membership Agreement all future employment contracts must include clauses where the publisher agrees not to take disciplinary action on the grounds that the employee used the whistleblowing hotline or refused to act in a manner which he or she reasonably and in good faith believes is contrary to the Editors’ Code.

120. IPSO initially ran a whistleblowing hotline in house. Calls were answered by members of staff. This has now been replaced by a Journalists’ Whistleblowing Hotline that is provided by an external third party. Journalists can use the hotline to raise concerns that they have been asked to act contrary to the Editors’ Code. The hotline is an anonymous and independent reporting service. It is available 24 hours a day, seven days a week.

121. I have concluded that this service is important, and that **the procedure IPSO now has in place is more than adequate to ensure confidentiality and enable journalists to be confident about using it.**

ANNUAL STATEMENTS

122. All members are required under the Regulations to produce an annual statement. The statements are then reviewed by IPSO and published on IPSO’s website. If the annual statement identifies significant issues of concern IPSO can launch a standards investigation. The annual statements must include the following information:

- Factual information about the Regulated Entity (one or two paragraphs):
- A list of its titles/products.
- The name of the Regulated Entity’s responsible person.

- A brief overview of the nature of the Regulated Entity.

- Copies of any internal manuals, codes or guidance used by journalists.
- Brief details (one–three pages in most instances) of the compliance process, including how the Regulated Entity deals with:
 - pre-publication guidance under regulation 4.5;
 - verification of stories;
 - compliance with the Editors’ Code, including any adverse findings of the regulator and steps taken to address such findings;
 - editorial complaints which the Complaints Committee determines;
 - training of staff.
- Details of the steps taken by the Regulated Entity in response to any adverse adjudications by the regulator during the previous year.

123. IPSO advises that when considering the level of detail to be included in a Regulated Entity’s annual statement, it will take into account the nature of the Regulated Entity, including its size, the number of staff employed, number of publications, circulation figures of the publication(s) and annual turnover.

124. The principle of requiring newspapers to self-report on their compliance with the standard expected by the regulator is a good one. It is also useful for the public to be able to access the statements through IPSO’s website. Members are not required to publish the statements on their own website or inform their readers of where the statements can be found. I recommend that **IPSO should consider requiring that members publish the statements on their own website.** The vast majority of publishers will have a web presence of some sort so this requirement should not cause much difficulty. Where the publisher does not have a

web presence they could as an alternative run a notice in their publication directing readers to the IPSO website.

125. The required content of the statement appears to cover most of the right issues but I am of the view that it is, certainly in places, a little unclear as to what is required. For example, it must be challenging to cover the ground identified under ‘*Brief details*’ in the one–three pages indicated, particularly for the larger Regulated Entities. Not least because it is possible for IPSO to launch a standards investigation where a report reveals significant issues of concern, it is important that what it is that the publishers are required to include in the report is set out in detail. I recommend that **IPSO should consider revising the Regulations setting out the required content to ensure greater clarity.**

126. I also recommend that **IPSO considers requiring the publishers to record and include in the annual statements data about the number of complaints received by the publisher that were not dealt with by IPSO, and the outcome.** When a publisher deals with a complaint that they receive directly or during the referral period there will be no record of that complaint. This will help IPSO ensure that it has good understanding of the extent to which the Code is complied with, whether a complaint is ultimately made to IPSO or not, across all of its members.

PRIVACY ADVISORY NOTICES

127. A further service offered by IPSO is the distribution of Privacy Advisory Notices and pre-publication advice. In the meetings with industry members it was emphasised that they take the Privacy Advisory Notices extremely seriously. The notices are received by the responsible person and circulated as appropriate. The industry recognise that where there has been a Privacy Advisory Notice, IPSO will take very seriously any breach of the Code in relation to privacy and a repeated breach in that respect could trigger a standards investigation.

128. IPSO ensures that it will have a member of staff available to assist out of office hours. This assistance can be provided immediately. IPSO issued Privacy Advisory Notices to assist members of the public with pre-publication concerns (about harassment, intrusion or inaccuracy) on 76 occasions and made four proactive approaches. **This appears to be a well-run and highly valued service. I would not make any recommendations for changes.**

Chapter 6 Arbitration

129. The third limb, so to speak, of IPSO’s responsibilities and obligations is to establish an arbitration service for complainants. IPSO’s Regulations state that it is able, but not obliged, to provide an arbitration service. Under the Agreement IPSO is required first to consult on the establishment of an arbitration scheme and establish an arbitration pilot scheme, prior to establishing a permanent arbitration scheme. The Agreement states that Arbitration cannot be compulsory. Members can choose not to participate in the service. But, if a member does participate in the service it is possible for IPSO to establish an arbitration scheme that the members cannot decide to engage in on a case-by-case basis (clause 5.4 of the Agreement).

130. The aim of IPSO’s arbitration pilot scheme is to provide a cheap, and fast, method of resolution outside the courts while preventing frivolous or vexatious claims. IPSO ran a public consultation on its arbitration pilot for 12 weeks from 15 June 2015.

131. Those from the industry who engaged with the review had all signed up to the arbitration pilot. They were of the view that few, if any, cases would be appropriate for arbitration. Many were of the view that, despite attempts to make arbitration a cheap alternative, on most occasions it would be appropriate to pay for representation, and, while it would be cheaper than court, it would still be costly to engage in. Further, most cases that are brought in the courts against print media publications are either pursued because of a point of principle, or because they involve complex factual scenarios or large volumes of evidence: all of which would render them inappropriate for arbitration under the current pilot scheme.

132. Given the very early stage of the arbitration pilot it is not possible for this review to reach any conclusions on its effectiveness. It has been put to me that unless the system is free to complainants it

cannot be effective. I see no reason why an administrative fee should not be paid by complainants who wish to commence arbitration, provided that this can be recovered if they are successful. The current fee is set at £300 (plus VAT) to commence arbitration, with a further £2,500 (plus VAT) payable should the claimant wish to proceed to a final resolution. The payment of fees is common in many courts and tribunals and is generally accepted.

133. Given the very early stage of the pilot scheme it was not surprising that there had been no matters determined by it. I recommend that **should the arbitration pilot have very few or no cases, it may suggest that the fee has been set too high and may need to be reconsidered.**

Chapter 7 Awareness

134. For IPSO to be effective the general public must be aware that they can complain to it about concerns relating to editorial standards in member organisations, and trust that it will deal with those complaints effectively and fairly. Public awareness and public trust can be improved through effective communication and engagement, using its website and any other publicly available information about how the organisation works.

COMMUNICATION AND ENGAGEMENT

135. IPSO's public affairs team functions in the normal way. They communicate through press releases, speeches, interviews and attempts to engage with interest groups. Certainly IPSO has made a lot of effort to engage with its critics. It does not seem to have changed its more vocal critics' minds, but that is not perhaps surprising. Those who argue about press regulation now have very entrenched positions and it is unlikely that those will change in the short term. That does not mean that this is not a valuable activity and I recommend that **IPSO should continue to engage with those interest groups that represent individuals or groups affected by press intrusion or other failures to comply with the Code.**

136. The public at large are using IPSO to complain about the press. All those I spoke to from IPSO and the industry informed me that the volume of complaints had increased since the establishment of IPSO. It is difficult to demonstrate this increase because the PCC did not consistently publish what might be considered comparable statistics about the number of complaints and also regulated a different group of publishers. Indeed, this increase may be the result of other factors; for example, the longevity of news stories has increased now that they are searchable online indefinitely. Certainly IPSO has been used in high-profile cases, including complaints made by Buckingham Palace, Tony Blair and Nicola Sturgeon. This may reflect a growing public trust generally in

IPSO, and it certainly helps increase public awareness of the work that IPSO does, and the assistance that it can offer to individuals affected personally by the press as well as those concerned with upholding press reporting standards more generally.

137. There does appear to be a certain degree of disconnection between IPSO's power as a regulator and public expectation. Complainants often appear to feel that IPSO can or should be able to fine a newspaper for a single breach of the Code, order an apology or prevent a story being published: it cannot. I recommend that **IPSO should continue to work towards increasing public understanding, including the limits on its powers.**

IPSO'S WEBSITE

138. IPSO has invested in a new website, which increases accessibility to IPSO's decisions. These are now searchable. All relevant documents, including the articles of association, Regulations and the Scheme Membership Agreement are also available on IPSO's website. IPSO's internal guidance states that it publishes information about its complaints procedures and the outcomes of complaints, including: (i) minutes of Committee meetings in which complaints are considered; (ii) rulings by the Complaints Committee on complaints; and (iii) statistics on the numbers and nature of complaints and inquiries it receives. IPSO recently started publishing all this information on its website.

PUBLISHED INFORMATION

139. Through its annual report IPSO can also communicate to the general public, and interested groups, how it has been working. IPSO's annual report includes key data on the numbers of complaints received, investigated and upheld by IPSO. It also sets out how many complaints about each publication it has dealt with and whether they have been upheld, not upheld or resolved in other ways.

140. It is clear that one of the most effective methods of improving standards is the threat of an unfavourable adjudication. The members of IPSO repeatedly emphasised that the embarrassment of receiving an IPSO adjudication was a stick to ensure that they focused on improving standards. I recommend **IPSO should produce an annual table of adjudications and complaints against each member, which is also broken down by publication.**

Chapter 8 Membership

141. Coverage of the industry by the PCC varied from time to time but there were certainly times when it included every national daily and Sunday newspaper. IPSO's members publish around 95 per cent of the national newspapers measured by circulation.

142. Among others, the Financial Times, the Guardian, the Observer and ESI Media, which publishes the Independent online and the Evening Standard, are not regulated by IPSO. It has not been part of the work of this review to investigate why IPSO's coverage is less than was the PCC's. Publications that have chosen not to be members of IPSO have their own procedure for handling complaints. It is possible that those procedures are already influenced and/or may in future be influenced by the way that IPSO and the Editors' Code Committee do their work. But there is no doubt that IPSO is less effective as a press regulator to the extent that publications choose not to be members and are thus not covered by IPSO.

143. I have not investigated the independence and effectiveness of the procedures that each non-Regulated Entity uses. They may or may not be as good as IPSO's. What is undeniable is that **it would be simpler for readers who want to complain if IPSO's coverage were closer to 100 per cent.** Part of the evidence for this is the number of complaints that come directly to IPSO about publications that IPSO does not regulate. In light of this **I welcome the continuing contact between IPSO and publications that have chosen not to be members.** It may be that over time, as the new arrangements have a longer track record, greater trust will develop in IPSO, the Editors' Code Committee and the RFC, and publications that rely on their own procedure will give further thought to the case for membership of IPSO. The renewal of contracts after the first five years will present everyone with an obvious opportunity to think again about this.

Chapter 9 Future

144. As part of the terms of reference I was asked to consider what might fairly be described as the future of regulation in the print industry: that is the growth of online media, the decline in circulation of newspapers, and the consolidation of the market. All regulatory bodies must be alive to the changes in the industry that they seek to regulate. In many ways the changes that the print media is facing are no different to those experienced by other industries. Most are seeing some form of disruption to traditional methods through the growth of online technologies. Similarly, consolidation of providers is common in many industries.

145. Unlike other regulators which are governed by statute IPSO's relationship with its members is governed by a contract. This contract is arguably a significant development for non-governmental voluntary regulation. It ensures that members cannot readily leave, as Northern & Shell Media Group (publisher of the Daily Express) did with the PCC, if they do not like a decision of IPSO. It also empowers IPSO to fine its members, and gives IPSO regulatory powers by consent. Further, the contract enables IPSO to enforce the terms of the contract, to some extent, through the courts if necessary. Finally, the term of the contract, five years, gives IPSO greater institutional stability. Because IPSO's funding has been negotiated for that period IPSO is able to plan for the medium term.

146. The price paid for this medium-term stability and enforceable power is inflexibility. Any change in the relationship between the regulated (represented by the RFC) and the regulator cannot be enacted by IPSO acting unilaterally. It can only be done through a negotiated agreement between the parties to vary the terms of the contract. IPSO and the RFC, since the establishment of IPSO, agreed to one renegotiation of the Agreement and foundation documents. That negotiation was concluded at the start of 2016. All parties felt that compromises had been made but informed me that they were satisfied with

the completion of the negotiations and confident that IPSO had obtained the changes that would enable it to act as an effective and independent regulator. That said, the negotiations were protracted. By their nature, being contractual, they required the involvement of lawyers on both sides. This was both costly and, all parties agree, very time consuming.

147. Should IPSO wish to renegotiate the terms of the contracts again it is highly likely that a protracted period of renegotiation and redrafting would ensue. Given the breadth of interests involved I cannot see how it would be otherwise.

148. Inflexibility is particularly unwelcome in a fast-changing context. **IPSO should already be planning for the next renegotiation, which should reflect the changing milieu in print media publishing.** To make any specific recommendations as to what these plans should involve would be to overstep the remit of this review and my expertise. A sensible procedure for such a planning process might be a working group, which could include members of the Board and senior members of IPSO staff and be advised by experts.

DIGITAL MEDIA

149. In the early days of press complaints the question of which publications a UK body should cover or aspire to cover was relatively straightforward. If a paper was published in the UK it was in, or potentially in, and if it was published elsewhere it would not be covered even if copies were available in the UK. The internet and global competition have complicated the issue. One can identify some at least of the possibilities:

- a print publication owned and produced in the UK and available only in the UK or additionally in a limited number of places in other countries;

- a publication owned and produced in the UK and available online everywhere;

- a publication owned in the UK and produced partly in the UK and partly elsewhere and available online everywhere;

- a publication owned elsewhere and produced partly elsewhere and partly in the UK and available online everywhere;

- a publication owned and produced elsewhere and available online everywhere.

There may well be other possibilities in practice or in theory.

150. This development raises tricky questions both of law (what is the effect of the current terms of the contract on the role of IPSO in relation to the online or international publications of its members?) and of policy (what should IPSO cover?). These questions were mentioned in some of the conversations we had with witnesses. I am obviously not equipped to comment on a legal question and, despite those conversations, I have concluded that I am not well-enough informed to make recommendations about the policy question which, in any case, could well change very rapidly as technology changes. The policy question will continue to be considered closely by the industry and by IPSO. It is important that both continue to give weight to the interests of people in the UK who read publications in print or online or who are mentioned in editorial material.

Findings and Recommendations

As will be clear from the body of this report, IPSO is in its early stages. While arguably a review that starts less than 18 months into the life of a regulator is coming a little early – as is demonstrable from the fact that some aspects of IPSO work can only be analysed in theory rather than practice – it is clear that already there are some important achievements. These achievements and the commitment from all of those involved for IPSO to be a success can be built on. These recommendations are not an attempt to save a failing organisation, rather they are intended to help a new regulator, which demonstrates early achievement, promise and commitment, to develop into a trusted, experienced regulator.

INDEPENDENCE

1. To date and throughout this process of review I have seen no evidence of IPSO's decision-taking being improperly influenced by the industry. (paragraph 59)

2. It is to be noted that it is an uphill task for IPSO to prove that it deserves to be trusted as independent regulator. Decisions made by those in charge of the PCC led to its demise and a collapse in public trust. This is only compounded by the fact that IPSO is funded, and was established, by the industry. In these circumstances, it is no easy task to gain the public's trust. (paragraph 60)

Funding

3. An obligation to reach full-term funding agreements to be included in IPSO's articles of association and the RFC's articles of association. (paragraph 61–67)

IPSO's Board

4. IPSO considers revising its articles of association to define independent, for example, to exclude anyone who has been

employed in the industry in the previous 20 years. (paragraphs 49–51)

5. IPSO and the Appointments Panel continue to strive to ensure that appointees have the necessary mix of skills and experience to regulate the press effectively and inspire public confidence in the organisation's independence. (paragraphs 49–53)

6. IPSO gives reasonable priority to drawing up an appropriate code or codes of conduct for staff and members of the Board and the Complaints Committee. (paragraphs 54–56)

COMPLAINTS

Editors' Code Committee

7. I have found that there are few if any criticisms of the contents of the Editors' Code. (paragraphs 39, 43)

8. As a standard of expected behaviour the Code is well regarded and appears comprehensive. (paragraph 39)

9. The Code should continue to be the responsibility of the Editors' Code Committee as presently constituted. (paragraphs 41–44)

10. The Code Committee's constitution should limit the length of time that anyone may serve on the Committee save for the Chair and the Chief Executive of IPSO. (paragraphs 45–46)

11. The Editors' Code Committee should consider whether it is necessary to revise its constitution to allow persons connected with IPSO to sit as independent members. (paragraphs 35–37)

12. A requirement to complete a consultation exercise and have regard to the conclusion of that consultation should be included in the Editors' Code constitution. A summary report of any such consultation should also be made available to the public. (paragraphs 39–40)

Complaints Officers

13. The staff of IPSO are very proud of the way they engage informally and helpfully with complainants who do not understand the system. I consider the assistance they lend to be of a high quality. (paragraphs 55, 68, 73)

14. I have seen the correspondence between IPSO and complainants; in large part it is of a very high standard. (paragraph 73)

15. The brusque nature of the letters stands out even more in comparison to the engaging one-off correspondence I have seen and revisions should be considered. (paragraph 73)

16. In considering how IPSO engages with both complainants and the industry I recommend that it should consider how it encourages and facilitates consistency in terms of address. (paragraph 75)

17. IPSO should consider the introduction of formalised training programmes for both new and more experienced complaints officers. (paragraph 76)

18. The introduction of more systematic supervision, particularly in a person's early months, will assist in ensuring a consistently high standard and provide staff with additional support. (paragraph 76)

19. IPSO should aim, and budget, for staff to remain in position for five to seven years to

ensure that the relevant skill and experience needed can be developed and retained in the organisation.
(paragraph 77)

Complaints Handling

20. IPSO should consider how it can improve its communications to complainants about confidentiality.
(paragraph 90–92)

21. IPSO’s upholding of a complaint is taken very seriously by the industry, and by editors specifically. The newspapers and magazines want to have as few complaints upheld as possible.
(paragraphs 8, 100)

22. IPSO and the industry should monitor how long on average it takes for newspapers to deal with complaints and, depending on the facts, should consider revising the 28-day period to allow for a shorter period of time, either 14 days or 21 days.
(paragraphs 78–82)

23. IPSO should now work on producing its own guidance on the application of the Code.
(paragraph 98)

24. IPSO should produce guidelines on its application of ‘*due prominence*’. That guidance should include case studies and explain why in those cases IPSO believed that the adjudication or correction was given due prominence.
(paragraphs 101–102)

Complaints Committee

25. IPSO should continue to work to ensure that the Complaints Committee includes individuals with recent day-to-day experience of the practical application of the Editors’ Code.
(paragraphs 93–96)

26. Where the full Committee meets the Chairman or the executive should

summarise more fully the conclusions of the Committee.
(paragraph 97)

27. The staff should ensure that they provide the Committee with previous decisions of the Committee where they are relevant.
(paragraph 97)

Reviewing the Complaints Committee’s Decision

28. It should be possible to seek a review on the ground of substance as well as process.
(paragraphs 104–108)

STANDARDS

Standards Investigations

29. The funding arrangements for a standards investigation should remain as they are.
(paragraphs 110–116)

30. It would be a serious mistake to launch a standards investigation on relatively flimsy grounds. It ought to be exceptional.
(paragraphs 117)

Whistleblowing Hotline

31. The procedure IPSO now has in place is more than adequate to ensure confidentiality and enable journalists to be confident about using it.
(paragraph 121)

Annual Statements

32. The required content for the annual statements appears to cover most of the right issues but I am of the view that it is, certainly in places, a little vague as to what is required.
(paragraph 125)

33. IPSO should consider revising the Regulations setting out the required content to ensure greater clarity.
(paragraph 125)

34. IPSO should consider requiring the publishers to record and include in the annual statements data about the number of complaints received by the publisher that were not dealt with by IPSO and the outcome.
(paragraph 126)

35. IPSO should consider requiring that members publish the statements on their own website.
(paragraph 124)

Privacy Advisory Notices

36. This appears to be a well-run and highly valued service. I would not make any recommendations for changes.
(paragraphs 127–128)

ARBITRATION

37. Given the very early stage of the arbitration pilot it is not possible for this review to reach any conclusions on its effectiveness.
(paragraphs 129–133)

38. Should the arbitration pilot have very few or no cases, it may suggest that the fee has been set too high and may need to be reconsidered.
(paragraphs 129–133)

AWARENESS

39. IPSO should continue to engage with those interest groups that represent individuals or groups affected by press intrusion or other failures to comply with the Code.
(paragraph 135)

40. IPSO should continue to work towards increasing public understanding, including on the limits of its powers.
(paragraph 135–137)

41. IPSO should produce an annual table of adjudications and complaints against each

member, which is also be broken down by publication.
(paragraphs 139–140)

MEMBERSHIP

42. It would be simpler for readers who want to complain if IPSO’s coverage were closer to 100 per cent.
(paragraphs 141–143)

43. I welcome the continuing contact between IPSO and publications that have chosen not to be members.
(paragraphs 141–143)

THE FUTURE

44. Should IPSO wish to renegotiate the terms of the contracts again it is highly likely that a protracted period of renegotiation and redrafting would ensue.
(paragraphs 144–147)

45. IPSO should already be planning for the next renegotiation, which should reflect the changing milieu in print media publishing.
(paragraphs 144–148)

Annex A: Terms of Reference

The External IPSO Review will report on how IPSO is fulfilling its role as regulator of the UK newspaper and magazine industries. It will examine the effectiveness of IPSO's functions, and the extent to which it operates independently. In looking at this, the reviewer will test the degree to which IPSO has been faithful to its publicly stated principles and values.

The review will consider:

- 1.** the independence of IPSO's Board and Complaints Committee, including appointment, composition and management of conflicts of interest;
- 2.** IPSO's funding, including consideration of the quantum of funding and the mechanism by which funding is agreed and received;
- 3.** the relationship between IPSO and its members and any issues arising from the nature and range of those publications in membership and those which are not;
- 4.** the relationship with the Regulatory Funding Company;
- 5.** the relationship with the Editors' Code Committee and any issues arising from the use of the Editors' Code as the standard that IPSO enforces;
- 6.** the accessibility of IPSO's functions to the public, the quality of its customer service and the degree to which it acts to protect the public and be on the public's side, and the degree to which it is seen by the public as doing so;
- 7.** the effectiveness of the complaints system, its timeliness, the quality of the judgements reached and the appropriateness of the remedies required;
- 8.** the establishment and effectiveness of IPSO's other functions:
 - i. Standards (including standards investigations, compliance and the whistle-blower hotline);
 - ii. Arbitration;

- iii. Advisory notices;
- iv. External affairs;

9. the effect on industry regulation of issues including declining circulation and advertising revenue, consolidation of publishers and titles, increased digitisation and convergence;

10. other related matters that arise in the course of the review.

The External IPSO Review will be conducted by Sir Joseph Pilling and published in his name; the aim will be to complete the review within six months.

Annex B: List of Witnesses

ORAL EVIDENCE

Xavier Bastin, IPSO
Richard Best, IPSO
Ciaran Cronin, IPSO
Charlotte Dewar, IPSO
Niall Duffy, IPSO
Lara Fielden, IPSO
Isabel Gillen-Smith, IPSO
Alistair Henwood, IPSO
Richard Hill, IPSO
Robyn Kelly, IPSO
Mehmuda Mian, IPSO
Tonia Milton, IPSO
Sir Alan Moses, IPSO
Holly Pick, IPSO
Liam Tedds, IPSO
Matt Tee, IPSO
Charlotte Urwin, IPSO
Sir Hayden Phillips, IPSO
Hugo Wallis, IPSO
Neil Watts, IPSO
Charles Wilson, IPSO
Lord Black of Brentwood,
Telegraph Media Group
Jess McAree, Telegraph Media Group
Rob Willnett, Telegraph Media Group
Ian Brunskill, The Times
Pia Sarma, The Times
John Witherow, The Times
Ian Carter, KM Media Group
Hugh Comerford, The Stage
Daisy Cooper, Hacked Off *
Dr Evan Harris, Hacked Off *
Paul Dacre, Daily Mail
Jonathan Grun, the Editors' Code Committee
Liz Hartley, Daily Mail
Peter Wright, Daily Mail
Lloyd Embley, Daily Mirror
Paul Mottram, Trinity Mirror PLC
Murray Foote, Scottish Daily Record
& Sunday Mail
Angela McCracken, Scottish Daily Record
& Sunday Mail
Jonathan Russell, Scottish Daily Record
& Sunday Mail
Mike Gilson, Brighton Argus
Will Gore, ESI Media
Doug Wills, ESI Media
Geordie Greig, Mail on Sunday
Ian Hislop, Private Eye

Lord Lipsey of Tooting Bec **
Magnus Llewellyn, The Herald
Barclay McBain, The Herald
Dr Martin Moore, King’s College London
David Newell, RFC
Baroness O’Neill of Bengarve
Mark Payton, Haymarket Media Group
Holly Perry, Press Recognition Panel
Tim Suter, Press Recognition Panel
Susie Uppal, Press Recognition Panel
David Wolfe QC, Press Recognition Panel
Gill Phillips, Guardian News & Media
Matt Rogerson, Guardian News & Media
Alan Rusbridger, Guardian News & Media (former)
Dr Gordon Ramsay, King’s College London
Michelle Stanistreet, National Union of Journalists
Ian Stewart, The Scotsman
Chris Walker, Liverpool Echo
Harriet Wilson, Condé Nast Publications

WRITTEN EVIDENCE

Jenny Album
Richard Black, The Energy and Climate Intelligence Unit
Brian Cathcart *
Peter Clifton, The Press Association
Dugal Heath
Peter Jones
Oliver Low
Barry McKay
Mishcon de Reya
David Rawson

* Mr Cathcart and representatives of Hacked Off met with or wrote to the review but explicitly stated that they were not engaging with the review process.

** As well as an evidence session alone, Lord Lipsey facilitated a meeting of his fellow Peers. A number of comments were made during that meeting which were very helpful to the review process.

Annex C:
The Leveson
Inquiry
Recommendations

- 1.** Lord Justice Leveson made a number of recommendations for how the press might be regulated in future. These recommendations are contained in full in the Leveson Report in the ‘*Summary of Recommendations*’ section.
- 2.** What follows is an analysis of the extent to which those recommendations have been adopted by IPSO.

INDEPENDENCE: APPOINTMENTS

- Recommendation 1.** 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.
- 3.** IPSO’s Board was appointed by an Appointments Panel. The Appointments Panel initially (it is noted that it now has different members with the same chairman) contained Sir Hayden Phillips (Chairman); former Supreme Court judge Lord Brown of Eaton-under-Heywood; the former Manchester Evening News editor Paul Horrocks; the former Chair of the Commission for Social Care Inspection, Dame Denise Platt; and the current editor of The Times, John Witherow. On his appointment as Chairman of IPSO, Sir Alan Moses joined the Panel. The Appointments Panel contains a current serving editor, in accordance with IPSO’s articles of association (IPSO AoA), of which more is said below.
- 4.** The positions on the Board are publicly advertised and appointments are made based on IPSO’s Appointments Principles. The RFC is permitted under IPSO’s AoA to recommend the industry members of the Board, of which there are no more than five (of a total of 12 members). The decision to appoint Board members is ultimately that of the Appointments Panel.

5. Given that there is a serving editor on the Appointments Panel it is not possible to say that the Board is appointed without any influence from the industry but Lord Justice Leveson considered that one member of the Panel should have current experience, and as such apparently considered this degree of influence to be appropriate and acceptable, of which more is said below.

6. Members of the House of Commons, the Government, the Welsh Assembly and the Scottish Parliament are prohibited from appointment to the Appointments Panel (article 26.6 IPSO AoA) and there is no official process by which the Government could influence appointments. It is noted that members of the House of Lords could join the Appointments Panel, even if they were party affiliated.

7. The positions are advertised publicly so the process is open. The names of the Appointment Panel, and the experience and roles of each of the Panel members, with the exception of Sir Hayden, are set out on the IPSO website. This again is both open and transparent. While it is possible for the industry to influence the appointment of the industry board members, and a serving editor sits on the Appointment Panel, this was considered by Lord Justice Leveson in his final report to be acceptable.

8. It seems likely that IPSO has adopted this recommendation in full.

Recommendation 2. The appointment of the Chair of the Board should be made by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.

9. The appointment process for the Appointments Panel involved the establishment of the Foundation Group, which

consisted of Lord Phillips of Worth Matravers, former President of the Supreme Court, and included Lord Butler of Brockwell, a former Cabinet Secretary; Sir Simon Jenkins, newspaper columnist and former Editor of The Times and of the Evening Standard, and former Chair of the National Trust; Trevor Kavanagh, former Political Editor of the Sun; Lord Smith of Finsbury, former Labour Secretary of State for Culture, Media and Sport; Dame Sue Tinson, former TV executive at ITN; and Dame Janet Gaymer, who was Commissioner for Public Appointments between 2006 and 2010. The Foundation Group was established by the industry entirely independent of the government.

10. Once the Appointments Panel had appointed the Board, the Board became responsible for approving the Appointments Panel. Under article 26.3 of the IPSO AoA the members of the Appointments Panel are appointed by the Board of IPSO for terms not exceeding six years.

11. The Leveson recommendations note that the Appointments Panel must be appropriately independent, and independent of the government and the industry. It is noted that Lord Justice Leveson advised the industry to *‘get together to identify independently minded people in whom the public can have confidence to make up the appointing panel’*.² It is likely that the establishment of a Foundation Group, of which the majority of members were independent of government and the industry, combined with the fact that the Appointments Panel must be approved by the Board would be sufficient to satisfy the requirements of being *‘appropriately independent’* recommended by Lord Justice Leveson. Further specific requirements are set out below under Recommendation 3.

12. It appears that IPSO adopted this recommendation in full.

Recommendation 3. The appointment panel:

- (a) should be appointed in an independent, fair and open way;
 - (b) should contain a substantial majority of members who are demonstrably independent of the press;
 - (c) should include at least one person with a current understanding and experience of the press;
 - (d) should include no more than one current editor of a publication that could be a member of the body.
-

13. The Appointments Panel was initially appointed by the Foundation Group: which included a majority of independent members (with no previous direct experience of being employed by the print industry). Under IPSO’s AoA it would then be for the Board, once appointed, to approve the Appointments Panel. It is not clear what is required for the appointments process of the Appointments Panel to be considered *‘independent’*, *‘fair’* and *‘open’* as recommended by Lord Justice Leveson. What degree of fairness or openness is not specified. As above, it is noted that in the body of the report he states that *‘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’*.³ In any event, the process included the establishment of a Foundation Group (whose names were publicised and included people in whom the public can have confidence, such as a former Public Appointments Commissioner). The process initially involved the assistance of Saxton Bampfylde. It is common in the appointment of executives or board members in the private, public and third sectors to use an executive search company to identify a long list for interview. It is not clear but appears highly likely that this would be sufficiently independent, fair and open, and that IPSO

can be said to have adopted Recommendation 3(a) in full.

14. The majority of the members of the Appointments Panel are individuals who are demonstrably independent of the press and in whom the public can have confidence. Four of the six members (including the Chairman of IPSO and the Chairman of the Appointments Panel) have no experience of, or demonstrable connection with, the print media industry (see article 26.2 of the IPSO AoA). It is not clear what Lord Leveson intended by the phrase *‘substantial majority’*. As two-thirds of the Appointments Panel are demonstrably independent of the print industry it likely that this would meet the definition of *‘substantial majority’*. It appears that Recommendation 3(b) has been adopted.

15. Two of the six members of the Appointments Panel have experience of the print media industry and of those two members, one is a current serving editor (see clause 26.2 of the IPSO AoA). Again it appears that Recommendation 3(c) and 3(d) have been adopted by IPSO.

16. It appears that IPSO has adopted this recommendation in full.

Recommendation 4. The appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The requirement for independence means that there should be no serving editors on the Board.

17. All Board members are appointed by the Appointments Panel in accordance with the Appointments Principles (article 22 of IPSO AoA). I was informed that all Board positions are publicly advertised. No person shall be nominated to the Board of IPSO by the Appointments Panel unless the Panel reaches a consensus view that: (i) they can

² Leveson Report, Vol.4, Part K, Chapter 7, p.1760.

³ Leveson Report, Vol.4, Part K, Chapter 7, p.1760.

act fairly and impartially; and (ii) if they are an industry director *'he or she has a genuine understanding and knowledge of the press industry, gained through working in it at a senior level'* (see article 22.6 of the IPSO AoA).

18. There are 12 members of the Board of IPSO. Of those 12 members, seven, including the chair, must be *'independent'*, of which more is said below. In practice, there are seven members of the Board of IPSO with no experience of the print industry.

19. According to article 22.1.3 of IPSO's AoA, none of the Board members can be serving editors.

20. Of the 12 Board members, five should be what is defined as *'Industry Directors'*, which is a member nominated in accordance with article 22.5 of the IPSO AoA. Under article 22.5 the Appointments Panel must have regard to the recommendations of the RFC and is required to aim to have at least five members of the Board with recent senior experience in publishing. The Appointments Panel is also required to aim to ensure that what are described as the five *'sectors'* of the industry are represented, namely: national mass market, national broadsheet, Scottish, regional and magazines.

21. It appears that IPSO has adopted this recommendation.

Recommendation 5. The members of the Board should be appointed by the same appointment panel that appoints the Chair, together with the Chair (once appointed), and should:

- (a) be appointed by a fair and open process;
- (b) comprise a majority of people who are independent of the press;
- (c) include a sufficient number of people with experience of the industry who may include former editors and senior or academic journalists;
- (d) not include any serving editor; and

(e) not include any serving member of the House of Commons or any member of the Government.

22. The Board of IPSO is appointed by the same Appointments Panel that appoints the Chair, together with the Chair, once appointed, so IPSO has adopted this aspect of Recommendation 5.

23. As above, the review was informed that Board positions are advertised openly and the appointment is based on the Appointments Principles. The Board members were all interviewed by the Appointments Panel. It is understood that the process was competitive, in that there were more applications received than appointments made. It appears that IPSO has adopted Recommendation 5(a).

24. Of the IPSO Board, seven must be *'independent'* members. Independent is defined in the IPSO AoA as not being *'Connected'* to the RFC or a Regulated Entity. In turn, *'Connected'* is defined as being an employee or agent, owning 5 per cent or more in equity, or owing a duty of loyalty. This is a relatively narrow definition of *'independent'*. A former employee (including a former editor) of a Regulated Entity, who no longer owed a duty of loyalty, but had for their entire working lives worked in the industry could still meet this definition of independent. In practice, at present there are seven members of the Board who have not previously been employed by the print industry as well as meeting the definition of independent in the IPSO AoA. It appears that in practice IPSO has adopted Recommendation 5(b).

25. Five members of the Board are *'industry directors'*, that is they have recent senior experience of working in the print media industry and are appointed in accordance with article 22.5 of the IPSO AoA, as set out above. Lord Justice Leveson stated that this might include senior journalists or academic

journalists. This is permissive rather than a specific requirement. It appears that IPSO has adopted Recommendation 5(c).

26. None of the Board members can be serving editors of a company that is, or could be, a Regulated Entity (article 22.1.3 of IPSO AoA). IPSO has adopted Recommendation 5(d).

27. According to article 22.1.4 of the IPSO AoA, none of the Board members can be serving members of the House of Commons, the United Kingdom Government, the Scottish Parliament, the Scottish Government, the Welsh Assembly, the Welsh Government, the Northern Ireland Assembly or the Northern Ireland Executive. It is possible for a member of the House of Lords to be a member of the Board, although there are no members at present on the Board. It appears that IPSO has adopted Recommendation 5(e).

28. It appears that IPSO has adopted this recommendation in full.

INDEPENDENCE: FUNDING

Recommendation 6. Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.

29. The funding is agreed between the RFC, which represents the Regulated Entities in negotiations, and the IPSO Board. Initially, funding was based on a one-year funding agreement between 2014 and 2015. A four-year funding agreement has now been reached. That funding agreement lasts until the renewal period for the contract, namely

the end of 2019. The funding agreement was reached in 2015. A signed letter from the RFC confirming that agreement was provided in 2016. The signed letter, which sets out the terms of the funding agreement, was provided to IPSO on 15 July 2016 (15 July Letter). Before this the terms had been agreed orally, and confirmed by email.

30. The funding agreement as set out in the 15 July Letter provides for an annual budget, with monthly payments of £199,000.00. Funding is index-linked to the Consumer Price Index. According to the signed agreement from the RFC the funding is subject to review each September and IPSO is required to provide monthly accounts to the RFC. Although, arguably, the funding agreed for the first contract period was not agreed *'well in advance'* it is understood that in future that will be the case. The 15 July Letter expresses a commitment to commence negotiations for IPSO funding for the second contract period, that is 2020 to 2024 inclusive, at the start of 2019.

31. There are no requirements in the RFC's articles of association (RFC AoA), or the IPSO AoA, or any other binding document to require four–five year funding periods. Rather, under article 24.4 of the RFC AoA the funding is to be determined annually by the Directors of the RFC.

32. The Chair of the Board and the members of the Board confirmed that they were of the view that the funding was adequate to meet the needs of IPSO.

33. On the basis of this analysis it appears that IPSO has adopted this recommendation.

FUNCTIONS

Standards Code and Governance Requirements.

Recommendation 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.

34. The Editors' Code is the responsibility of the Editors' Code Committee (Code Committee). The Code Committee is not an advisory body of IPSO but is established by the RFC in accordance with the RFC AoA. It could be argued that because under article 10.12 of the RFC AoA there can be no changes to the Code without the agreement of IPSO's Board, it must effectively be adopted by IPSO. In addition, article 11.4 of the IPSO AoA states that the adoption of the Editors' Code cannot be delegated by the Board, and the definition of the Editors' Code is a code which is adopted by the IPSO Board. But, it would not be correct to say that the standards code is ultimately the responsibility of the Board. Rather, it is the responsibility of a separate body formed by the RFC, under the RFC's AoA.

35. The Code Committee in practice currently contains both '*independent*' members (three independent members and two *ex officio* members) and serving editors (ten). At present it contains one '*independent member of the board*', namely the Chair of IPSO. Under article 10.10 of the RFC AoA there shall be '*independent members*' of the Editors' Code Committee who shall make up not more than a third of the total members. There is no minimum number of '*independent*' members, only a maximum. There is also no requirement for independent members of the Board of IPSO also to be members of the Code Committee.

36. Under the RFC AoA '*independent*' is defined as: '*not Connected with the Regulator or one or more bodies being or capable of being Regulated Entities; and not Connected with the company except by virtue of being a member of the Editors' Code of Practice Committee.*' In turn '*Connected*' has the same definition as under the IPSO AoA: '*(a) being an officer, agent, partner or employee of such body; (b) being the holder of more than 5% of the capital in such body; or (c) owing any duty of loyalty to such body.*' At present David Jessel who sits on the IPSO Complaints Committee may, contract dependent, owe a '*duty of loyalty*' to IPSO and, arguably, is not an independent member.

37. In any event, IPSO has not adopted this recommendation.

Recommendation 8. The code must take into account the importance of freedom of speech, the interests of the public (including the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled) and the rights of individuals. Specifically, it must cover standards of:

- (a) conduct, especially in relation to the treatment of other people in the process of obtaining material;
- (b) appropriate respect for privacy where there is no sufficient public interest justification for breach and
- (c) accuracy, and the need to avoid misrepresentation.

38. Under this recommendation Lord Justice Leveson recommends a number of elements that should be covered by the Code. These include, the public interest, the importance of freedom of speech, the expected conduct of journalists in relation to obtaining material, the importance of respect for privacy, where it is not outweighed by a sufficient public interest, and the need for accuracy in reporting. Lord Justice Leveson does not

prescribe the format of any specific formulation for these elements of the Code, but rather recommends that the Code take them into account. For example, Lord Justice Leveson does not in his recommendations specify what the appropriate '*conduct*' in relation to the process of obtaining material would be. He states that '*I have no particular desire to comment on the actual content of the Code*'.⁴

39. The Editors' Code states in the preamble that: '*It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression.*' The preamble is expressly included in the Code. The Code also has a definition of the '*public interest*', which includes: 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 Code also permits certain clauses of the Code to be breached where required in the public interest. Those are the clauses on: privacy (clause 2), harassment (clause 3), reporting suicide (clause 5), children (clause 6), children in sex cases (clause 7), hospitals (clause 8), reporting of crime (clause 9), clandestine devices and subterfuge (clause 10), and payments to criminals (clause 10).

40. The Code also covers the process for obtaining material and the treatment of other people in obtaining that material. In particular see clause 10 on clandestine devices, clause 2 on privacy and clause 3 on harassment.

41. It appears that IPSO has adopted this recommendation in full.

Recommendation 9. The Board should require, of those who subscribe, appropriate internal governance processes, transparency on what governance processes they have in place, and notice of any failures in compliance, together with details of steps taken to deal with failures in compliance.

42. Under Recommendation 9, Lord Justice Leveson states that the board of the regulator should require that members have in place the appropriate internal governance processes, transparency on what those governance processes are, and give notice of any failures in compliance and steps taken to deal with those failures. It is noted that in the body of the report Lord Justice Leveson states, in relation to Recommendations 9 and 10, which concern the same issues, that '*I am not seeking to be dogmatic as to how the aim is achieved*'.⁵

43. Under the Scheme Membership Agreement (Agreement), it is an express term of the contract that all members implement and maintain internal governance practices and procedures with the aim of ensuring compliance with both the Editors' Code and Regulations produced by IPSO in accordance with the Agreement (clause 3.3.3 of the Agreement).

44. Further, under clause 3.3.7 of the Agreement the publisher must produce an annual statement that sets out its compliance with, among other things, clause 3.3.3. The specific requirements for the annual statement are set out in the Independent Press Standards Organisation C.I.C. Regulations (Regulations), in particular at regulation 43 to 46. In addition, under regulation 4.2.1 of the Regulations IPSO is required to monitor compliance with the Code, in particular through the provision of the annual statements.

⁴ Leveson Report, Vol.4, Part K, Chapter 7, p.1763.

⁵ Leveson Report, Vol.4, Part K, Chapter 7, p.1764.

45. It appears that IPSO has adopted this recommendation in full.

COMPLAINTS

Recommendation 10. The Board should require all those who subscribe to have an adequate and speedy complaint handling mechanism; it should encourage those who wish to complain to do so through that mechanism and should not receive complaints directly unless or until the internal complaints system has been engaged without the complaint being resolved in an appropriate time.

46. Under clause 3.3.4 of the Agreement all members of IPSO are required to implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints. As above, under clause 3.3.7 of the Agreement the member must produce an annual report that sets out the extent to which it has complied with clause 3.3.4.

47. Under regulation 13 of IPSO's Regulations IPSO will not commence consideration of a complaint until the earlier of: (i) the exhaustion of the Regulated Entity's complaints procedure; (ii) a request by the Regulated Entity for IPSO to consider the complaint; or (iii) 28 days from the date that the Regulated Entity received the complaint, unless IPSO considers that its earlier involvement is 'essential'. IPSO will, if it receives a complaint directly that has not been dealt with by the Regulated Entity, refer it to the Regulated Entity.

48. It appears that IPSO has adopted this recommendation in full.

Recommendation 11. The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board should have the power (but not necessarily in all cases depending on the circumstances

the duty) to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach, or a third party seeking to ensure accuracy of published information. In the case of third party complaints the views of the party most closely involved should be taken into account.

49. Under regulation 4.1 of the Regulations IPSO can consider complaints about breaches of the Editors' Code. Complaints are not considered by the Board of IPSO. They are determined by the Complaints Committee, which is appointed by the Board in accordance with the Appointments Principles.

50. The Complaints Committee has the power, but not the duty, to consider complaints from what it describes as parties not directly affected by the published material. These complaints are described by IPSO as third party complaints and are covered by regulation 8 of the Regulations. A third party can only complain to IPSO about the accuracy (clause 1 of the Editors' Code) of the article. Under regulation 8 the view of the first party, that is a person directly affected by the article, must be taken into account.

51. A complaint can also be brought by a '*representative grouping*' where the alleged breach of the Code is '*significant*' and there is a '*substantial public interest*'. The staff will make a recommendation to the Committee and the Committee will determine whether to investigate the complaint (regulation 8 of the IPSO Regulations).

52. It is clear that Lord Justice Leveson envisaged that there would be a single board of the regulator that would also consider complaints as well as oversee the day-to-day running of the regulator. As the Complaints Committee is established by the Board and has the same Chairman as

the Board it is difficult to see why it would be problematic for complaints to be considered by an entirely separate committee.

53. Although complaints are dealt with by a separate committee it appears likely that IPSO can be said to have adopted this recommendation in full.

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

54. As above, it is clear that Lord Justice Leveson envisaged a single board structure rather than a separate Complaints Committee established by the Board, possibly because the PCC had a single board structure. It is noted that Lord Justice Leveson envisaged that appropriate delegation to officials could be made and indeed, as is clear from recommendation 13, Lord Justice Leveson envisaged that there could be a separate committee advising the Board on complaints. The Board of IPSO does have ultimate responsibility for the conduct of the Complaints Committee but would not intervene or consider complaints on a case-by-case basis. IPSO has established a Liaison Committee between the IPSO Board and the Complaints Committee and members of the Board regularly attend the Complaints Committee meetings as observers. As there is a separate Complaints Committee, it is not possible to say that IPSO has adopted this recommendation but it is difficult to see how this structural difference could be problematic.

55. Complaints officers who handle the complaints do attend the meeting of the Complaints Committee and are available to advise the Complaints Committee at the request of the Complaints Committee.

56. It appears likely that IPSO has adopted this recommendation in substance.

Recommendation 13. Serving editors should not be members of any Committee advising the Board on complaints and any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.

57. Neither the Board of IPSO (article 22.1.3 of the IPSO AoA), nor the Complaints Committee (article 27.2.4 of the IPSO AoA) can include current serving editors of members, or organisations that could be members, of IPSO.

58. The composition of the IPSO Complaints Committee mirrors that of the main Board (see articles 22.1 and 27.2 of the IPSO AoA): there are 12 members of both the Board and the Complaints Committee, of which seven are independent members and five are industry members.

59. IPSO has adopted this recommendation in full.

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

60. IPSO offers a complaints-handling service to complainants about Regulated Entities free of charge (regulations 7 and 8 of the Regulations).

61. IPSO has clearly adopted this recommendation in full.

POWERS, REMEDIES AND SANCTIONS

Recommendation 15. In relation to complaints, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to require a correction and an apology must apply equally in relation to individual standards breaches (which the Board has accepted) and to groups of people (or matters of fact) where there is no single identifiable individual who has been affected.

62. Under clause 3.3.8 of the Agreement the member must comply with the decision and directions of IPSO where those decisions or directions fall within IPSO's remit. Under regulation 30 of the Regulations where a complaint has been upheld IPSO can order that the member publish a correction and/or adjudication. This applies equally to breaches in relation to individuals and groups of people where there is no single identifiable individual who has been affected but there is a significant inaccuracy. It is not clear whether Lord Justice Leveson was of the view that trivial or minor complaints of inaccuracy should be considered by the regulator where no single identifiable individual has been affected. It would be surprising if Lord Justice Leveson had intended IPSO to consider all complaints by third parties even when the complaint was trivial. While IPSO can only consider a 'significant' inaccuracy it seems unlikely that this would make any material difference to whether or not IPSO should be considered to have adopted this aspect of the recommendation.

63. In any event IPSO cannot direct that a member issue an apology of any kind. Where it has identified a breach of the Editors' Code, it can only order a correction or adjudication.

64. While IPSO has adopted this recommendation in large part it is not possible to say that IPSO has adopted it in full.

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

65. As above, under clause 3.3.8 of the Agreement the member must comply with a decision of IPSO and under regulation 30: *'The nature, extent and placement of such corrections and Adjudications will be determined by the Regulator acting proportionately and taking into account the nature of the Regulated Entity and its Publications.'*

66. Again as above, this decision is not taken by the Board but by the Complaints Committee. It is difficult to see why that would be problematic.

67. As IPSO cannot order an apology, it is not possible to say that IPSO has adopted this recommendation in full, although it clearly has adopted it in large part.

Recommendation 17. The Board should not have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance which editors, in their discretion, can deploy in civil proceedings arising out of publication.

68. Under article 8.1.5 and 8.1.6 of the IPSO AoA, IPSO can offer the Regulated Entities non-binding advice including advice on potential breaches of privacy. Under the same articles it cannot prevent publication of any material. It is not clear to what extent Regulated Entities would rely on IPSO's pre-publication advice in civil proceedings, but there is nothing in the Regulations which would prevent their doing so.

69. It appears that IPSO has adopted this recommendation in full.

Recommendation 18. The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. Those who subscribe must be required to cooperate with any such investigation.

70. IPSO has the power to launch what is described as a 'standards investigation'. The decision to launch a standards investigation is the responsibility of the Board (article 11.4.6 of the IPSO AoA). A standards investigation can be launched under the Regulations in the following situations:

'53.1 where the Regulator reasonably considers that there may have been serious and systemic breaches of the Editors' Code (a Systemic Failure);
53.2 where there has been one or more failure or failures to comply with the requirements of the Regulator's Board;
53.3 in exceptional circumstances, where the Regulator reasonably considers that an investigation is desirable because substantial legal issues or Editors' Code compliance issues are raised about the practices of a Regulated Entity or Regulated Entities;
53.4 where an annual statement identifies significant issues of concern, either in relation to a single incident, a Regulated Entity's compliance processes or a pattern of significant, serial or widespread breaches of the Editors' Code;
53.5 where, on analysis of statutory authority reports into press standards, in the view of the Regulator there have been substantial Editors' Code compliance issues identified at one or more Regulated Entity.'

71. It appears that IPSO has the powers to examine serious and systemic breaches of the Code, a single or pattern of incidents which are of significant concern, and a failure or failures to comply with a requirement of the Board.

72. Arguably, as IPSO states that the breach must be serious 'and' systemic under regulation 53.1, it is not technically adopting this recommendation. But, as set out above, the Board can also launch an investigation where there is a significant issue of concern in the annual statement, or where there was a failure to comply with a direction of the Board, which can relate to a single incident or where there are widespread breaches of the Code. The difference between IPSO's terminology and that recommended by Lord Justice Leveson appears to be minimal.

73. Under regulation 58 the Investigation Panel, which conducts the investigation, can request documents, answers to questions, access to personnel for meetings and taped interviews. Under clause 5.2 of the Agreement IPSO can compel a member to provide to the Investigation Panel such documents and materials as it may reasonably determine are required, provided that to do so would not breach any applicable law or regulation. Arguably, this clause of the Agreement empowers IPSO to obtain documents. It is not clear on what contractual basis IPSO can compel the production of personnel for taped interviews. There is, under clause 3.3.5 of the Scheme Membership Agreement, an obligation on the Regulated Entity to cooperate with IPSO. Arguably, a failure to meet a reasonable request for access to personnel could be in breach of this general obligation to cooperate.

74. In any event it appears likely that IPSO has adopted this recommendation in full.

Recommendation 19. The Board should have the power to impose appropriate and proportionate sanctions, (including financial sanctions up to 1% of turnover with a maximum of £1m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.

75. Under regulation 66.2 of the Regulations the Board of IPSO can impose a fine following a decision of the Investigations Panel. Any fine will be in accordance with the Financial Sanctions Guidance as issued by the IPSO Board. Clause 4.5 of the Agreement also states that when imposing a fine IPSO must act in accordance with the Financial Sanctions Guidance which is published by IPSO's Board. Clause 5.5 empowers IPSO to impose sanctions and fines or award costs in respect of any standards investigation. Any such sanction would also need to be proportionate.

76. The fine that IPSO can impose is in theory up to £1 million, but in practice is capped at 1 per cent of the annual UK revenue of the publication that is being investigated: as opposed to the international revenue of the whole group (see paragraphs 2.1 and 2.2 of the Financial Sanctions Guidance). It appears likely that this limitation would not meet the requirement in Recommendation 19, as it appears that the 1 per cent relates to the subscriber, i.e. member, not individual publication. However, this point is not clear as it may have been the case that Lord Justice Leveson envisaged that individual publications would become members, rather than groups. This is perhaps the preferable interpretation as, while ambiguous, it seems unlikely that Lord Justice Leveson was referring to group

turnover. Whether Lord Justice Leveson also envisaged that the sanction should be limited to UK turnover is also unclear.

77. IPSO can require the publication of a correction and adjudication, but cannot require the publication of an apology (regulation 30 of the Regulations).

78. In some important respects IPSO should be considered to have adopted this recommendation but it cannot be said that it has been adopted in full.

Recommendation 20. The Board should have both the power and a duty to ensure that all breaches of the standards code that it considers are recorded as such and that proper data is kept that records the extent to which complaints have been made and their outcome; this information should be made available to the public in a way that allows understanding of the compliance record of each title.

79. Under IPSO's AoA IPSO is required to record and publish breaches of the Editors' Code. IPSO is not obliged to publish all decisions and can at its discretion decide not to do so (article 8.1.3).

80. It is noted that where IPSO reaches a mediated settlement between the parties it is not recorded as a breach of the Code. This is not material to IPSO's compliance with this aspect of the recommendation.

81. IPSO does ensure that proper data are kept that record the extent to which complaints have been made and their outcomes. This information was published in IPSO's annual report. In addition, IPSO's annual report included a list of all Regulated Entities, which includes the number of complaints that were 'Resolved', 'Upheld' and 'Not Upheld'.

82. It appears that IPSO has adopted this recommendation in full.

REPORTING

Recommendation 21. The Board should publish an Annual Report identifying:

- (a) the body's subscribers, identifying any significant changes in subscriber numbers;
- (b) the number of complaints it has handled and the outcomes reached, both in aggregate for the all [sic] subscribers and individually in relation to each subscriber;
- (c) a summary of any investigations carried out and the result of them;
- (d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by subscribers; and
- (e) information about the extent to which the arbitration service had been used.

83. IPSO published its first annual report in August 2016, nearly two years after it was launched in September 2014. It is understood that in future IPSO will publish a report annually.

84. Under article 8.1.4 of the IPSO AoA the IPSO Board is responsible for publishing an annual report in accordance with the Regulations. Regulation 52 sets out the requirements for an annual report as follows:

'52. Each year, the Regulator shall publish an annual report which shall include:
52.1 the identity of the Regulated Entities and a record of any significant change in the number of Regulated Entities;
52.2 the number of articles in relation to which the Regulator has handled substantive complaints and the outcomes reached, both in aggregate for all the Regulated Entities and in relation to each Regulated Entity; provided that for these purposes complaints which:

52.2.1 are not pursued by the complainant;
52.2.2 are rejected under Regulation 12;

52.2.3 are disposed of by agreement between the complainant and the Regulated Entity outside of the complaints process and duly notified in accordance with Regulation 39; or
52.2.4 are considered closed under Regulation 40 by the Regulator or Complaints Committee following an offer by the Regulated Entity of a remedial measure shall not be regarded as substantive complaints;

52.3 a summary of any Standards Investigations carried out and the outcome of such investigations;
52.4 a report on the adequacy and effectiveness of the compliance processes and procedures adopted by the Regulated Entities; and
52.5 any information about the Arbitration Service, including the extent to which the Arbitration Service has been used.'

85. In short, it appears likely that IPSO's annual report would meet Lord Justice Leveson's recommendation with a caveat. While Lord Justice Leveson recommended that a record of all complaints handled be published in the annual report, IPSO's Regulations state that it will only publish the total number of articles about which the regulator has handled 'substantive complaints'. It is understood that IPSO receives a large proportion of complaints which are either trivial, unrelated to the Code or are about an unregulated organisation. While it may provide a fuller picture to include information about what are described as 'substantive complaints' it is not clear why this cannot be provided in addition to figures on the total number of complaints received rather than in the alternative. The number of substantive complaints received by IPSO is also broken down by publisher.

86. In practice, IPSO's annual report does include the total number of complaints received. It is noted that the report does not break down the figure for total number of

complaints by reference to the Regulated Entities. It may be that to do so would not provide any meaningful information to readers, but in so doing it has not fully adopted this recommendation.

87. It appears that IPSO has largely adopted this recommendation with the caveat explained above.

ARBITRATION SERVICE

Recommendation 22. The Board should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair, quick and inexpensive, inquisitorial and free for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.

88. Under regulation 4.9 of the Regulations IPSO's Board is required to provide an arbitration scheme. That scheme must be in accordance with the terms of the Agreement. Under clause 5.4 of the Agreement, IPSO, prior to establishing an arbitration scheme, must consult with the members, run a pilot and obtain the agreement of the RFC. Clause 5.4 states that members are not obliged to participate in the scheme.

89. IPSO has now established a pilot scheme. That pilot scheme is not free to the complainant who is required to pay a fee. The fees are as follows: in order for an arbitrator to be appointed and provide a preliminary ruling, complainants will be

required to pay an administrative fee of £300 plus VAT. If complainants decide to continue to a final ruling they will be required to pay a final ruling fee of £2,500 plus VAT. Further fees could also apply if an oral hearing is required.

90. In other respects it appears that IPSO has adopted much of Lord Justice Leveson's recommendation, although it is only a pilot scheme. The Arbitrator can determine the proper process that will be followed, which can include the holding of a hearing with the agreement of the parties (Arbitration Pilot Rules 10.1–10.2 and 11.1–11.5). Under rule 16 the Arbitrator can strike out a claim which is wholly without merit or vexatious. In addition, the system used under the pilot scheme is inquisitorial and should be completed within 90 days of the appointment of the Arbitrator.

91. As the arbitration service is only currently being provided as a pilot and complainants will be charged a fee, IPSO cannot be said to have adopted this recommendation in full.

ENCOURAGING MEMBERSHIP

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

92. The review was informed that IPSO covers 95 per cent of newspapers if measured by circulation. What is defined as all '*significant news publishers*' is not clear. In the full report Lord Justice Leveson also refers to '*all major news publishers*' and refers to the phrase, used by Lord Hunt in evidence, '*big fish*': referring to Northern & Shell. It is not clear whether Lord Justice Leveson refers to '*significant*' in terms of readership, geographical coverage or influence.

93. While it is not clear what would amount to a '*big fish*', major news publisher or significant news publisher, it should be noted that the Guardian, the Observer, Independent Online, the Financial Times, the Evening Standard and Private Eye are not regulated by IPSO. Nor for that matter are BuzzFeed, Yahoo.com, the Huffington Post and other online-only blogs or news publishers. Whether all of the above would be defined as '*significant news publishers*' is not clear, but some certainly would.

94. Despite the lack of clarity around the use of '*significant news publishers*' it seems unlikely on an ordinary reading that IPSO has been able to adopt this recommendation, although it is understood that IPSO continues to work towards full adoption.

Recommendation 24. The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.

95. Under article 7.2 of the IPSO AoA, IPSO is not entitled to refuse participation in the regulatory scheme to a publisher of a magazine, a newspaper or online editorial in a way that is unfair, unreasonable or discriminatory. It is understood that the fee that members pay towards the costs of funding IPSO varies, depending on the size and the readership of the member.

96. It appears that IPSO has adopted this recommendation in full.

Recommendation 25. This recommendation concerns the Information Commissioner's Office and as such is not relevant to this review.

Recommendation 26. This recommendation concerns what is described as costs shifting, which would result in publishers being required to pay a claimant's costs whether the publisher won or lost the claim. This is not relevant to this review and as such has not been considered.

RECOGNITION

Recommendations 27–33. These recommendations concern Lord Justice Leveson's recommendations on the establishment of a process whereby a regulator can seek recognition from a certified recognition body. As IPSO has not sought recognition under the Royal Charter, and does not intend to do so, it is not relevant to consider these recommendations. Suffice it to say, IPSO has not adopted these recommendations.

RECOMMENDATIONS FOR A SELF-REGULATORY BODY

INTERNAL GOVERNANCE

Recommendation 34. In addition to Recommendation 10 above, a new regulatory body should consider requiring: (a) that newspapers publish compliance reports in their own pages to ensure that their readers have easy access to the information; and (b) as proposed by Lord Black, that a named senior individual within each title should have responsibility for compliance and standards.

97. IPSO considered whether it would be appropriate for publishers to be required to publish their annual statements (which are equivalent to compliance reports) in their own pages to ensure that the readers have easy access to the information. Ultimately, IPSO decided against this for practical reasons. Some of the annual statements

are very long (Trinity Mirror PLC's statement is over 50 pages). In those circumstances IPSO considers that it would not be appropriate to require Trinity Mirror to publish its annual statement in its own pages. IPSO has informed the review that it is currently considering whether to require publishers to give readers easy access to the annual statements through their own websites.

98. Under clause 3.3.9 of the Agreement all Regulated Entities must appoint a *'responsible person'*, who must be a senior individual in the organisation, who will report annually to the regulator.

99. It appears that IPSO has adopted this recommendation in full, in that it has considered adopting recommendation 34(a), which is all that is required, and has adopted recommendation 34(b).

INCENTIVES TO MEMBERSHIP

Recommendation 35. A new regulatory body should consider establishing a kite mark for use by members to establish a recognised brand of trusted journalism.

100. Under article 8.1.7 of the IPSO AoA, IPSO has the power to operate, following due consideration and consultation, what would be described as a *'kite mark'* for use by members to establish a recognised brand of trusted journalism. At present IPSO has not yet established such a kite mark, but it is understood that it is under consideration.

101. It appears that IPSO has adopted this recommendation in full, in that it is considering establishing a *'kite mark'*.

THE CODE

Recommendation 36. A regulatory body should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards expected of editors and journalists.

102. In 2013 the Editors' Code Committee launched a public consultation on amendment of the Code. That consultation concluded in 2014. It received over 200 responses of varying length, from one-line emails on a single subject to composite submissions of 32,000 words. In 2016 amendments to the Code were announced, having been agreed by the Editors' Code Committee (which at that time included three lay independent members and Sir Alan Moses and Matt Tee as *ex officio* members), the IPSO Board and the RFC. A further consultation and review is currently being established and it is understood will be launched in the Autumn of 2016. It is understood that IPSO plans to engage fully in this public review.

103. On that basis it appears that IPSO has adopted this recommendation in full.

POWERS AND SANCTIONS

Recommendation 37. A regulatory body should be prepared to allow a complaint to be brought prior to commencing legal proceedings if so advised. Challenges to that approach (and applications to stay) can be decided on the merits.

104. Under regulation 9 of the Regulations IPSO has the discretion to allow a complaint to be brought prior to the commencement of legal proceedings (whether criminal or civil) and each complaint is determined on its individual merits.

105. It appears that IPSO has adopted this recommendation in full.

Recommendation 38. In conjunction with Recommendation 11 above, consideration should also be given to Code amendments which, while fully protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting, and in so doing reflect the spirit of equalities legislation.

106. Under the Editors' Code the press are required to avoid prejudicial or pejorative reference to an individual's race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability (clause 12). This protection does not extend generally to groups of people of a particular race, colour, religion or sexual orientation, etc. This was an issue that arose on a number of occasions during the review process. It is clear that IPSO and the Editors' Code Committee are alive to the issues, particularly in relation to extending the protection offered to other groups recognised in equalities legislation (namely: age, marital status or pregnancy) and have given it due consideration.

107. As IPSO and the Editors' Code Committee have considered such amendments to the Code it appears that IPSO has adopted this recommendation in full.

Recommendation 39. A new regulatory body should establish a ring-fenced enforcement fund, into which receipts from fines could be paid, for the purpose of funding investigations.

108. Under article 11.4.7 of the IPSO AoA, the Board has a duty to establish an Enforcement Fund. Under clause 10 of the Agreement any monies received by the regulator from fines and costs contributions where it has conducted a standards investigation will also be placed in the Enforcement

Fund. The Enforcement Fund is defined in the Agreement as *'a fund to be used solely for the purposes of contributing towards the costs and expenses of the Regulator in bringing enforcement actions against, or carrying out investigations into the conduct of, Regulated Entities'*.

109. It appears that IPSO has adopted this recommendation in full.

PROTECTING THE PUBLIC

Recommendation 40. A new regulatory body should continue to provide advice to the public in relation to issues concerning the press and the Code along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.

110. Under regulation 4.6 of the Regulations IPSO has the discretion to notify and advise the Regulated Entities about their activities in cases where an individual has raised concerns regarding undue press intrusion. In such circumstances IPSO can also advise members of the public in relation to privacy issues and any potential breaches of the Editors' Code. Such notification and advice is confidential and non-binding and cannot restrict the freedom to publish. These are regularly produced by IPSO and are described as Privacy Advisory Notices. IPSO cannot investigate the actions of an organisation that is not a member of IPSO, but a number of broadcasters and non-member publications do choose to participate in the pre-publication and anti-harassment services operated by IPSO.

111. IPSO also offers general advice on its website and by email and the telephone to the public about issues concerning the press and potential breaches of the Code.

112. It appears that IPSO has adopted this recommendation in full.

Recommendation 41. A new regulatory body should make it clear that newspapers will be held strictly accountable, under their standards code, for any material that they publish, including photographs (however sourced).

113. Under regulation 1 of the Regulations, and article 7.1 of the IPSO AoA, it states that IPSO will regulate the following:

*‘7.1.1 editorial content included in a printed newspaper or magazine.
7.1.2 editorial content on electronic services operated by Regulated Entities such as websites and apps, including text, pictures, video, audio/visual and interactive content.’*

114. There is no definition of editorial content in any of the foundation documents (IPSO’s articles of association, the Agreement, or the Regulations). In practice, editorial content is generally considered to be everything in the paper or magazine (including pictures) which is not advertising (which would be regulated by the Advertising Standards Authority).

115. It appears that IPSO has adopted this recommendation in full.

THE PUBLIC INTEREST

Recommendation 42. A regulatory body should provide guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the Code. This must be framed in the context of the different provisions of the Code relating to the public interest, so as to make it easier to justify what might otherwise be considered as contrary to standards of propriety.

116. IPSO does not produce non-binding guidance on the interpretation of the public interest. Arguably, this is covered by the

Codebook, a non-binding guidance document produced by the Editors’ Code Committee, on which it is noted the Chair of IPSO and the Chief Executive of IPSO sit. The latest version of the Codebook was produced by the Editors’ Code Committee in consultation with IPSO.

117. As IPSO is not producing the guidance it is not possible to state that IPSO has adopted this recommendation in full.

Recommendation 43. A new regulatory body should consider being explicit that where a public interest justification is to be relied upon, a record should be available of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached.

118. IPSO informed the review that it had considered whether it would be appropriate explicitly to require publishers to keep a pre-publication written record of the factors for and against publication and the reasons for reaching the decision to publish. IPSO informed the review that it was of the view that requiring publishers to produce such a record, as standard practice, would in most cases be impracticable. IPSO added that in the past it has required the production of such a paper trail where, in the circumstances, IPSO was of the view that a record should have been produced at the time of the decision.

119. As IPSO has considered being explicit that where a public interest justification is to be relied upon a record should be available, it appears that IPSO has adopted this recommendation in full.

Recommendation 44. A new regulatory body should consider whether it might provide an advisory service to editors in relation to consideration of the public interest in taking particular actions.

120. IPSO did consider whether it might provide an advisory service to editors in relation to consideration of the public interest in taking particular actions. It is understood by the review that IPSO does offer this service to editors in a non-binding capacity. The advice is offered by the IPSO staff and any advice given does not bind the Complaints Committee.

121. It appears that IPSO has adopted this recommendation in full.

ACCESS TO INFORMATION

Recommendation 45. A new regulatory body should consider encouraging the press to be as transparent as possible in relation to the sources used for stories, including providing any information that would help readers to assess the reliability of information from a source and providing easy access, such as web links, to publicly available sources of information such as scientific studies or poll results. This should include putting the names of photographers alongside images. This is not in any way intended to undermine the existing provisions on protecting journalists’ sources, only to encourage transparency where it is both possible and appropriate to do so.

122. IPSO did consider whether to encourage the press to be transparent in relation to sources used for stories. Ultimately it decided against doing so at this time as it was considered impracticable. IPSO informed the review that it would ensure that the issue was considered as part of the public consultation being conducted by the Editors’ Code Committee.

123. As it appears that IPSO has considered encouraging the press to be more transparent in relation to sources used for stories, it appears that IPSO has adopted this recommendation.

PROTECTING JOURNALISTS

Recommendation 46. A regulatory body should establish a whistleblowing hotline for those who feel that they are being asked to do things which are contrary to the code.

124. Under article 8.1.8 of the IPSO AoA, IPSO is required to establish a confidential whistleblowing hotline. The same obligation is repeated under regulation 4.8 of the Regulations.

125. IPSO has established a confidential whistleblowing hotline. This has been commissioned by IPSO from a third party provider. The hotline is available 24 hours per day seven days per week. The provider does not have the capability to trace or record calls and there is no 1471 facility or call line identifier. Callers can use the service anonymously if they choose. The purpose of the hotline is to enable journalists to report concerns over breaches of the Code.

126. It appears that IPSO has adopted this recommendation in full.

Recommendation 47. The industry generally and a regulatory body in particular should consider requiring its members to include in the employment or service contracts with journalists a clause to the effect that no disciplinary action would be taken against a journalist as a result of a refusal to act in a manner which is contrary to the code of practice.

127. Under clause 3.3.6 of the Agreement all Regulated Entities are prohibited from taking disciplinary action against an employee who has used the whistleblowing hotline or, reasonably and in good faith, refused to act in a manner that is contrary to the Editors’

Code. Clause 3.3.6 of the Agreement also requires that all Regulated Entities include a clause to that effect in all future contracts of employment.

128. It appears that IPSO has adopted this recommendation in full.

Annex D: Survey of Complainants

1. As part of the review process a survey of 250 complainants was conducted. In conducting the survey, IPSO organised for a random sample of complainants to be contacted. The random sample was weighted towards those who had had more contact with IPSO, namely those whose complaint had been investigated. This was necessary because the majority of complaints received by IPSO, by a significant multiple, are complaints which either concern an organisation not regulated by IPSO, or which concern questions of taste and decency.

2. That survey of 250 complainants resulted in 80 responses. Some responses were not complete. From that survey the following observations can be drawn:

- **Sanctions and consequences:** the most common complaint related to the sanctions available. This included concerns that IPSO was unable to fine members for a single breach of the Code, and that the correction or adjudication was not given sufficient prominence. A number of people who complained about the prominence of the correction also complained that the reasons for the prominence decided were unclear or opaque. One complainant stated that they found it difficult to understand why a news story that was on page one could have a correction that was on page 24. Another commented that the online correction should have been at the top of the page rather than the bottom. It was regularly stated that the correction or adjudication should have equal prominence to the original article.
- **Independence:** a number of people stated that they felt that IPSO was biased in favour of the industry. Most of those who commented on bias or preference towards the industry did not explain why they were of the view that IPSO was biased in favour of the industry. Where they did comment it was linked to self-regulation as a concept. Others were of the view that IPSO's independence was called into question

because of the funding of the organisation. That said, a number of complainants stated that they found the process to be fair. Unsurprisingly, this was mostly, but not exclusively, those complainants who were successful in their complaint.

- **Procedure:** a number of people commented that they considered IPSO to have dealt with their complaint promptly. Others stated that IPSO took too long to deal with their complaint. A small number of complainants stated that they found the process to be time-consuming. When comments related to the complaints officers, most of those who commented on it were of the view that the complaints officers were efficient and polite. The complaints officers were described as *‘user friendly’* and *‘polite and punctual’* and *‘very well organised and efficient’*. Two of those surveyed had been the lead complainant – where there were 20 or more complaints about a single story – and they both commented that they found it to be a significant pressure and were unclear as to why they had been selected as lead complainants. One complainant stated that he did not have easy access to email and so found it challenging to engage with IPSO during the investigation.
- **Review:** of those (which was a small number) who mentioned the review process they all found it unsatisfactory. One of those who complained apparently expected the review to be a complete review of the decision rather than a review of the procedure and was accordingly very disappointed.

