

HACKED OFF: SUBMISSION TO IPSO'S 'EXTERNAL REVIEW'

If the External Reviewer chooses to cite this paper, Hacked Off's published work, policy positions and/or criticisms of IPSO, it should make clear in so doing that we do not accept the legitimacy of the review process.

INTRODUCTION

1. Hacked Off campaigns for a free and accountable press. Set up in the wake of the phone hacking scandal in 2011, in the last five years we have:
 - Campaigned for the independent Public Inquiry into press abuses – the Leveson Inquiry
 - Encouraged individuals and organisations to give evidence to the Inquiry
 - Endorsed the Leveson proposals for recognised and independently-governed self-regulation of the press, backed by a statutory recognition system
 - Accepted the compromise agreed with the press industry for a Royal Charter recognition system to avoid statute, except for the underpinning required to safeguard the Charter from political interference and to provide incentives to join the system
 - Campaigned to ensure that the Royal Charter accurately reflected Sir Brian Leveson's recommendations - working with all major political parties to secure cross-party agreement
 - Campaigned against the press industry's subsequent rejection of, and challenge to, the Royal Charter
 - Continued to keep the issue in the public eye and give a voice to the victims of press abuse, while demonstrating that such abuse continues unabated, and highlighting the fact that it extends far beyond phone hacking and other criminal conduct

2. In relation to IPSO, we have campaigned to ensure that the public is aware that IPSO is not Leveson-compliant regulator and is neither independent nor effective. In particular, we have:
 - Promoted an [independent academic analysis](#) by the Media Standards Trust (MST) of the extent to which IPSO fails to meet the majority of Leveson's recommendations
 - Published rebuttals, of IPSO's false claims around independence and effectiveness (such as being the "toughest regulator in the western world")
 - Published a dossier (September 2015) which highlighted: IPSO failures to deal with continuing press abuse and the way in which industry control of IPSO, its lack of powers and its failure to use its limited powers means it is unable and unwilling to provide adequate remedy for victims and complainants.

3. Hacked Off believes that the public needs independent and effective

redress for press abuse, and that this can only be achieved when all major newspapers sign up to a recognised press regulator, in line with the recommendations of the Leveson Inquiry, as reflected in the Royal Charter agreed by all parties and overwhelmingly endorsed by both Houses of Parliament.

THE ILLEGITIMACY OF THE REVIEW PROCESS

4. Sir Brian Leveson reached the clear and unequivocal conclusion that in order to meet public concern, the responsibility for recognition and certification of a regulator shall rest with a recognition body *independent of the press and of politicians*.
5. No other individual or body can have legitimacy in attempting to assess a regulator's independence or effectiveness, least of all one which has been commissioned and funded by the very regulator which is being "reviewed".
6. It is our view, and that of the victims of press abuse with whom we work, that if IPSO wishes to maintain its claim that it is independent and effective it should submit itself to the Press Recognition Panel. This is the only body that can legitimately determine whether IPSO meets the requirements for recognition as set out in Part K, Chapter 7, Section 4 of the Leveson Report.
7. The press industry cannot, directly or indirectly, assess the independence and effectiveness of the body which it has established. It is not proper or legitimate for IPSO to be assessed by an individual – whether a press reform campaigner, a politician, or a retired civil servant. The assessment mechanisms are set out in the Royal Charter, which was itself the product of a transparent and properly independent judge-led public inquiry.

THE FAILURES OF IPSO

8. Although this review is illegitimate as a matter of courtesy we responded to an invitation to meet IPSO's appointee Sir Joseph Pilling to explain why IPSO is neither independent nor effective.
 9. In the Hacked Off publication, [The Failure of IPSO](#), published to mark the first year of IPSO's operation, we made the following observations. Please note that what follows is a concise summary of some of IPSO's failures; it is not exhaustive. For more details of some of these failures please see our [website](#) and the [papers](#) we prepared for the House of Lords Communications Committee in 2015.
- (1) IPSO is not what Leveson proposed and is not Leveson-compliant.**
10. An advert claiming that IPSO delivers '*all the key elements Leveson called for*' was branded 'misleading' by the Advertising Standards

Authority. In fact, the Media Standards Trust (“MST”) has assessed IPSO as satisfying only 12 of the 38 criteria for an independent and effective press regulator as set out by the Leveson Inquiry. Sir Alan Moses, IPSO’s chair, has said that he accepts that it does not meet the Leveson standard.

(2) IPSO is not independent.

11. Sir Brian Leveson said real independence was essential. All previous attempts at press regulation failed because the self-regulators were controlled by the major newspaper groups. Despite this:
 - The MST’s comprehensive analysis (which has never been rebutted by IPSO or the industry) found that IPSO was wholly dependent on the newspaper industry, which has influence - and often a veto - over almost every aspect of the system
 - That veto extends to the appointment of board members of IPSO, and of the chair
 - Contrary to a key Leveson recommendation, power over the regulator still lies with an industry body like Press Board of Finance (“PressBoF”), now reformed as the Regulatory Funding Company (“RFC”). The RFC is comprised exclusively of representatives of the industry; mostly senior editors and executives for the largest and most powerful newspaper companies. Its meetings are held in secret and no records are published
 - The Code is still written and controlled by a Committee dominated by editors sitting in a committee chaired by Paul Dacre of the Daily Mail - editor of the newspaper known to breach the Code more than any other paper. It has failed to engage in any proper public consultation over code changes
 - No serious, independent or effective regulator would allow those who are regulated to dictate every aspect of the regulatory process – from appointments, through standards investigations (via its veto), to the Standards Code

(3) IPSO is not an effective regulator.

12. As Sir Brian Leveson made clear, an effective regulator does not wait for the public to point out problems and then address complaints in isolation. Instead it seeks to uphold an agreed industry code in any way that will maintain standards, educate the industry and give protection to the public. It acts on its own initiative; it draws attention to patterns of bad behaviour; it bears down on repeat offenders; it protects complainants from being victimised by newspapers. IPSO does none of these things: like the PCC before it, it is little more than an industry-owned and industry-controlled complaints-handling body. It has no power to require apologies, and does not even ask; and, though it claims to have the power to demand “equal prominence” corrections, it does not do so.

13. For example, in those cases where even the IPSO complaints system rules that newspapers have breached the Code on their front-page, IPSO has never required a correction or adjudication to be set out on the front page - let alone with equal prominence. IPSO claims that a small reference on the front page to an adjudication published on an inside page. This is a deceit. In the most notorious case of a “buried” correction – following the Sun’s blatantly unsubstantiated “Queen Backs Brexit” headline – there was not even a front page reference and most readers would only have become aware of IPSO’s ruling when it was publicly rejected by the Sun’s editor, who readily admitted that the remedy was so light touch that he would happily run the story again.

(4) IPSO is not transparent

14. IPSO is not transparent about its activities, in particular:
- It appears that IPSO does not collect data on the total number and type of complaints made to it - rendering its annual summary meaningless
 - IPSO does not have an independent appeals process. It used to have an internal review process but refuses to say how many complaints have been dealt with, and how many, if any, were upheld
 - IPSO’s chair and board were initially appointed only after its published procedures were secretly amended, allowing the appointment process to be secret, unfair and lack independence
 - The body which is supreme to IPSO, the RFC, does not publish minutes of its meetings. Following the forced resignation of its previous chair, it has not even updated the public record of his successor.

(5) IPSO is not an improvement on the PCC.

15. The way IPSO handles its complaints system is virtually unchanged from the universally-condemned PCC This is perhaps unsurprising given IPSO was set up in the same offices as the PCC, with the same staff, the same rules - and even the same company number. In particular:
- IPSO will not assist a complainant in formulating a complaint even when the code breach is obvious
 - IPSO requires the explicit authorisation of the subject of a story before any complaint about discrimination can be made. This was not even required by the PCC, and leaves minority groups virtually helpless to get redress for racism and other forms of discrimination or abuse in the press
 - Complainants are required to seek to ‘resolve’ complaints with the newspaper before IPSO will investigate; this can delay getting a ruling from IPSO without any clear benefit.
 - Despite claiming to have the power to fine newspapers after a standards investigation IPSO has never done so. Despite many instances of multiple code breaches, there has not been a single

investigation.

(6) IPSO is bad for free speech and journalists.

16. Sir Brian Leveson's recommendations offered protection for journalists against rich litigants who sought to exert pressure to prevent the publication of important stories. Because IPSO is not recognised those protections are not available. The proprietors and editors of some of the big national newspapers have a poor record on free speech. The respected chief political commentator of the Telegraph resigned in 2015, accusing his paper of editorial censorship due to covert advertiser pressure. IPSO said nothing and there has been no suggestion of a Code change to tackle this problem.
17. Two important recommendations to protect journalists do not appear to have been properly implemented by IPSO.
 - The "whistle-blowing hotline" was only introduced after the issue was raised with Sir Alan Moses by a Parliamentary Select Committee. The status and effectiveness of this "hotline" is not clear. At its 2016 Annual Delegates Meeting, the National Union of Journalists dismissed IPSO's hotline as "little more than lip service". Subsequent to that, IPSO announced that it had outsourced the hotline, to "ensure confidentiality and protection for whistle-blowers", but IPSO's own website admits that "a report will be passed to the appropriate senior manager within IPSO within 24 hours who will then decide upon the next course of action" meaning that the outsourcing may not be as independent as it appears. It is also not clear what would happen to that complaint or how IPSO is equipped to deal with it. At the very least journalists have not had access to a reliable hotline for the last two years and this may still be the case. To our knowledge, the effectiveness of the hotline has not been tested
 - It appears that conscience clauses are still not required in journalists' contracts to give them protection from acting against the code. Sir Brian Leveson recommended that this be considered, but IPSO appears to have taken no steps to implement this.

OTHER OBSERVATIONS

18. We have a number of other concerns about the Pilling Review which we wish to put on the public record.
19. The process which led to the appointment of Sir Joseph Pilling was not independent. This is compounded by the 'back door' process (non-transparent and non-consultative) by which the Terms of Reference were developed and the continuing absence of a Declaration of Conflicts of Interest from the External Review.
20. It is also our view that the External Review methodology, as described to

us, is wholly unreliable and inadequate as a proper audit of effectiveness. IPSO's own categorisation of complaints cannot be trusted because of their biased and incoherent decision-making.

21. Sir Joseph Pilling indicated to us that he would not treat the Leveson criteria as "holy writ" and also volunteered that most of the complaints that IPSO received were about "the missing Sunday colour supplement." IPSO Chairman Sir Alan Moses has previously used both of these phrases in his public speeches. This suggests that the External Reviewer's approach is strongly influenced by the IPSO Chair, who appointed him.
22. More importantly, the decision not to assess IPSO by applying the Leveson criteria of independence and effectiveness is a clear indication that IPSO, and the External Reviewer it has appointed are both ignoring the conclusions of the Leveson Inquiry. Instead, IPSO seeks to develop its own set of benchmarks whilst simultaneously assessing its performance against them. A truly considered and independent review of a press regulator, would plainly utilise the product of a public inquiry set up to establish precisely for this purpose.
23. The External Reviewer asked whether Hacked Off would be prepared to facilitate consultations between him and dissatisfied IPSO complainants and victims of press abuse. Both groups have indicated to us that they wish to make their own submissions if they chose to engage at all with a consultation which they regard as flawed and insulting.
24. If the External Reviewer chooses to cite this paper, Hacked Off's published work, policy positions and/or criticisms of IPSO, it should make clear in so doing that we do not accept the legitimacy of the review process.