To what extent does the new system of genuinely independent and effective system of self-regulation recommended by Leveson exist today?

The mechanisms which allow news publishers to be independently and effectively self-regulated exist and have proven themselves to function well and in the interests of the public. IMPRESS is a well-established regulatory body, which now regulates over 100 publishers.

That said, most publishers are not members of a recognised regulator. Sir Brian Leveson was very clear that the system should only be considered effective once all “significant publishers” were members of a recognised regulator.

In our view, the Panel has no option but to report the failure of significant news publishers to join or establish an independent, recognised regulator this year.

In order to give proper effect to the Leveson recommendations, Government and Parliament must introduce legislation designed to ensure that all such publishers join a recognised regulator.

Is the system of self-regulation that exists today more or less independent and effective system than three years ago? What evidence do you have to support your view?

There are multiple “systems” of self-regulation in effect at present: “IPSO”, the body set up by most of the major publishers in defiance of Leveson; the independent regulator IMPRESS; and several in-house complaints-handling systems at different titles.

The Recognition system, as recommended by Leveson, requires regulators to be tested impartially and expertly against a specific set of criteria. It is unnecessary to speculate on the quality of regulators beyond the question of whether they have been recognised or not. IPSO, which handles complaints for most significant publishers, is not recognised. It therefore cannot be said to be independent or effective. It is impossible to judge conclusively whether IPSO has improved over the last three years. It remains unrecognised so, in terms of the Royal Charter system, nothing can be said to have changed.

It should be noted, however, that the Media Standards Trust (“MST”) has carried out a recent analysis of IPSO’s compliance with the Recognition criteria. It updates their original, and as yet unrebutted, analysis of ISPO’s compliance with the criteria in 2014. The MST found that IPSO satisfied fewer criteria than in 2014, and in particular that six criteria which it could not judge in 2014 were now not satisfied.

How much confidence can the public have in the systems that are currently in place to protect it from potential harm caused by the press and news publishers?

None, unless the publisher is a member of IMPRESS.

The criteria for independent and effective regulators were drawn up to address the abuses which Sir Brian Leveson heard about from witnesses over the course of the public inquiry he chaired. Bodies which do not meet those criteria cannot be trusted not to subject their readers, and the wider public, to those same abuses and harms.
In particular, Hacked Off have drawn attention to a number of high profile press abuses over the last 12 months alone. Any attempt to quantify the extent of press abuse committed by news publishers is likely lead to it being underestimated, because many victims do not complain (in part as a result of the obviously inadequate redress available through IPSO) and details are rarely exposed. IPSO counts only a fraction of infringements against the Editors’ Code in their statistics, while the code itself does not cover all potential abuses.

How satisfied are you with the mechanisms and processes that are in place to challenge misinformation and mistruths in the press?

Hacked Off is not satisfied by the mechanism provided by IPSO. The failure of IPSO to meet the Leveson criteria for an effective regulator, means that it routinely permits “misinformation” and “mistruths” to be published without correction by its member news publishers. It also permits coverage where there is evidence of disinformation (false information which is published in the full knowledge it is or is likely to be false).

This occurs for at least seven reasons. We have only summarised these here as we are conscious that the Panel’s Charter mandate is only to consider whether publishers are members of a recognised regulator.

1. IPSO fails to properly apply the Editors’ Code on accuracy. Clause 1.1 prohibits the publication of carelessly inaccurate material. Clause 1.2 requires that significant inaccuracies be remedied by a correction and, in some cases, an apology. Although the “significance” test only applies to 1.2, IPSO consistently applies it to all accuracy breaches including those which may be careless but which it does not deem to be significant. Such cases are still a breach of clause 1.1, but IPSO fails to recognise this.

2. IPSO’s is institutionally biased towards the press industry rather than the complaint. This often results in newspapers being “given the benefit of the doubt” and findings which are prejudiced and unreasonable.

3. The adjudications and corrections published after rulings from IPSO are consistently given far less prominence than the offending coverage. As a result, there is no deterrence to publishing further misinformation and disinformation, and the false accounts originally published (and potential damage to public knowledge and understanding) are not appropriately corrected.

4. IPSO’s attritional complaints process causes complainants to give up on complaints throughout the process. This results in no adjudication.

5. IPSO is disinclined to take forward complaints proactively, meaning that if no one person complains no remedy can be secured despite a manifest code breach.

6. IPSO often insist on the testimony or consent of an individual to whom an inaccuracy may relate before a complaint can progress. Sometimes this is withheld, is impractical, or simply not possible. The inaccuracy therefore goes uncorrected.

7. When there are repeated or serious inaccuracies, an effective recognised regulator would launch an investigation with a view to establishing the cause and, where necessary, imposing serious sanctions on to deter further such offences and to set an example to other publishers. IPSO’s threshold for such investigations is unreasonably high and, even when met, results in no action whatsoever.
Is there anything else that you would like to tell us?

There are two further points we would like to address.

1. **How “Failure” should be dealt with**

The Panel has previously advised on the next steps which should be taken to ensure “failure”, as defined by the Royal Charter, is not repeated next year. The Panel has consistently argued that the full recognition system has not yet been brought into effect because section 40 of the Crime and Courts Act 2013 has not yet been implemented; and that the next step to ensure success for the system should be commencement of that section.

In Hacked Off’s view the Panel should recommend further statute is necessary to secure significant publishers’ participation in the recognition system, in the form of a backstop regulator.

The Leveson Report recommends that the failure of newspapers to participate in the recognition system after a period of one year of the Panel being open for applications should require a “backstop” to be put in place, to ensure publishers do not remain unregulated. In doing so he makes no reference to the operation of incentives.

The Panel has argued that the incentives form part of the “system”. A more accurate characterisation would be to consider them mechanisms designed to encourage participation in the system (while, in the case of section 40, also providing access to justice for victims and court costs advantages to publishers who are members of a recognised regulator). It would be possible for the system to function without them. Any publisher could freely join IMPRESS at any point, with or without section 40. The Leveson Report does not require that incentives need to be in effect in order for the backstop to be necessary.

It is therefore entirely consistent with Leveson to move, at this stage, towards the backstop solution.

Furthermore, in his justification for the backstop, Sir Brian Leveson makes the critical point that the public cannot be expected to suffer further press abuse on account of the failure of the industry to accept independent self-regulation. Yet this is exactly what has happened: members of the public have been subject to continuing press abuses over the last five years because of the industry’s persistence with IPSO.

In Sir Brian Leveson’s view, this is wholly unacceptable. The Panel should recognise that, after five years, the period for considering and advocating the introduction of incentives is long past. The Panel should reflect Sir Brian Leveson’s intention that publishers must be independently regulated without undue delay, and advocate for a backstop solution.

That solution may operate by, for example, Ofcom creating a sub-committee which becomes recognised by the Panel, and which subsequently becomes the default regulator of all news publishers which meet a certain turnover threshold. Publishers would retain the option of joining or establishing an alternative recognised regulator. The Panel need not develop a comprehensive proposal for a backstop solution (which has already been done to a large extent by Sir Brian Leveson in his report), but should recommend that such a solution be put in place.

2. **Providing a framework for independent regulation for publishers of User Generated Content**
Both the Panel’s and the Hacked Off Campaign’s responses to the Government’s consultation on its Online Harms White Paper highlighted how the recognition system is as applicable to social media publishers as it is to traditional media publishers.

The Charter system is the gold standard of media regulation. It is the only system of media regulation in the UK which protects freedom of speech from all risks of political interference, however slight, whilst also protecting the public from abuse.

As such, it presents a far more appropriate model of regulation than that proposed in the Government’s White Paper.

To prepare for the possibility that the Government may rely on the recognition system for UGC publisher regulation, we recommend that the Panel takes immediate steps to provide guidance on its website on how it would interpret the Charter criteria in respect of social media companies.