The Independent Press Standards Organization – A Genuinely Independent Alternative to the PCC, or More of the Same?

*Drawing on a report just released by the Media Standards Trust as well as other analysis, **Gordon Ramsay**, Research Fellow at the MST, makes the case that the plans made for a new press self-regulator by many in the industry do not comply with the recommendations made by Leveson.*

On 24th October, sections of the press published the finalised plans for a new self-regulator, the Independent Press Standards Organisation (IPSO). The next day, full-page adverts appeared in several newspapers promoting the new body with the claim that it "will deliver all the key elements Lord Justice Leveson called for in his report."

However, a close analysis of each of the documents underpinning the IPSO scheme demonstrates that the claim that "all the key elements" will be delivered is false. An assessment by the Media Standards Trust, published today shows that, of the 38 Leveson recommendations applicable to a new self-regulatory body, IPSO satisfies 12, and fails 20 – more than half. For the remaining six, it is unclear on current information whether they will be satisfied.

The IPSO plans contain some significant improvements – internal complaints and compliance mechanisms within members, a whistleblowing hotline for journalists, and protection for journalists from disciplinary action if they refuse to breach the Code of Practice – but the recommendations it fails to comply with encompass many of the core components of Leveson's vision for a new regulatory system. Of these, three stand out: independence, arbitration, and complaints

IPSO is far from independent

It is unfortunate that the 'I' in IPSO stands for 'Independent', as the system invests a huge amount of power in the new Regulatory Funding Company (the successor to the Press Standards Board of Finance – PressBoF). These powers go far beyond what might be reasonably expected for a funding body for a regulator.

Beyond the expected responsibility to set, levy and distribute the funding for the IPSO Regulator, the powers of the RFC include:

- A veto over any changes to the regulations, through an override of any proposal supported by the Board of the regulator and its member publications (IPSO Contract, Article 7.1);
- A veto over any Arbitration Service (IPSO Contract, Article 5.4);
- Ownership of the Code of Practice (RFC Articles of Association, 2.2);
- Influence over appointees to the regulatory Board and Complaints Committee (IPSO Articles of Association, 22.5 and 27.4; Regulation 34);
- Payment of, and directing, the salaries of Board, Complaints Committee and Appointment Panel members (IPSO Articles of Association 24.2, 26.8 and 27.6)
- Direct control over funding for investigations by the regulator (IPSO Contract, Article 10)

There is no conceivable justification for a funding body having considerably more powers than the regulator, and it repeats one of the fundamental problems with the Press Complaints Commission singled out by Leveson:

"The PCC is constrained by serious structural deficiencies which limit what it can do. The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means

that the PCC is far from being an independent body" (p1,576, Leveson Report).

Yet the IPSO scheme sees even more powers being given to the successor to PressBoF, granting dominance of a supposedly Independent body to an industry group.

Arbitration: optional, and on a case-by-case basis

Leveson's concern that fair and affordable legal remedies should be available to ordinary people was behind his proposal that a system of arbitration should be a fundamental component of any new system. This is particularly salient due to the imminent changes (currently delayed) to Conditional Fee Agreements ('no-win, no-fee' arrangements), which will make the cost of challenging media organisations in defamation cases prohibitive for all but the wealthiest of claimants.

The IPSO scheme gives the appearance of complying with Leveson's recommendation but, as Article 5.4 of the IPSO Contract shows, the chance of obtaining affordable access to justice under IPSO is minimal:

1. First, Arbitration can only be established after 'due consideration and consultation';
2. Second, it must be subject to a pilot scheme;
3. Third, it must be agreed with the Regulatory Funding Company (the RFC veto);
4. Fourth, even if these hurdles are passed, Arbitration is optional for any member of IPSO;
5. Fifth, even if a member has opted in, any Arbitration case can only proceed if the member agrees to it.

So, rather than being a core component, an Arbitration Service is unlikely to exist at all, and even if it does, the IPSO member can opt out entirely, or on a case-by-case basis.

Complaints: mediation and not regulation – again

As Regulations 7-39 of the IPSO scheme show, the complaints system of IPSO remains almost exactly the same as that under the PCC. Not only does this mean that the system remains mediation rather than regulation (since breaches of the Code of Practice are not recorded unless mediation fails), but they undermine the benefits of one of the improvements produced by IPSO – internal complaints and compliance.

Since the regulator under IPSO – as with the PCC – is unable to record how many breaches of the Code have taken place (except in the tiny amount of cases where an individual pursues a complaint all the way to adjudication), it is unable to regulate effectively on the basis of observance of the Code.

To illustrate, as this analysis shows, in 2012 there were 109 complaints accepted by the PCC against the *Daily Mail*. 107 were resolved, and in 101 of those the resolution included an amendment, a correction, or an apology, suggesting a possible Code breach under at least Section 1 (accuracy). Yet, the number of recorded Code breaches – since each of these was 'resolved' before adjudication – was zero.

This system is replicated under IPSO, and could make the process even more drawn out than before, as a publisher who joins IPSO would have nothing to lose by drawing out their internal complaints process for as long as possible and deterring a complainant from taking it further. If IPSO had the power to determine Code breaches in every case that was elevated to the Regulator to its members, then this would be discouraged.

Conclusion

So, IPSO is far from independent, given the raft of powers given to an industry body that should be responsible for little more than gathering and allocating the Regulator's funding. It also does not solve the problem of access to justice for ordinary victims who wish to bring a civil claim

against a publisher. Nor does it improve on the complaints system under the previous PCC system. Given that IPSO fails to satisfy the claims made in its own advertisement, it is difficult to see how it will gain the public confidence necessary to rebuild trust in journalism.

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

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