

IMPRESS and the Future of Press Regulation in the UK: Lecture by Walter Merricks CBE



*The **report of the Leveson Inquiry** in November 2012 following the phone hacking scandal was a critical moment in the history of the UK press, and the question of how precisely to design an effective, independent system of self-regulation is still being fought over to this day. Walter Merricks, Chair of **Impress**, which bills itself as “the first truly independent press regulator in the UK”, speaking here at a **public event** organised by the Media Policy Project, announces the first members of his organisation and explains why – unlike the **Independent Press Standards Organisation** which regulates most major UK newspaper publishers – Impress has decided to apply for external recognition as a regulator by the **Press Recognition Panel**. A podcast of the event, including a Q&A with members of the audience, is available to listen to [here](#).*

The future of press regulation is a rather portentous title, and if you are expecting me to lay out in detail what the future of press regulation in the UK will look like over the next five or ten years, I will have to disappoint you. No one really can say with certainty what the future will hold in this field. It is to say the least, quite contentious. One can only say with some confidence that that the future landscape won't look like the past, and it won't look like the present. And one of the reasons it won't look like the present, is because of the advent of IMPRESS.

There are of course many other reasons. The world of journalism and news publishing is changing rapidly. The proportion of people who get their daily news from printed newspapers is declining every day. Even the notion that people “get their daily news” already sounds an outdated concept. We are all consuming information (not necessarily what we might define as news) from increasingly diverse sources – from online news sites to global media giants and this information is both immediate and ever-changing. Digital media, social media, broadcast media are rapidly eroding what used to be the primacy of hard copy national news. To protect themselves, these national newspapers have ventured into the digital space with varying degrees of success, some behind paywalls, but whether any can really make sufficient money from ads or subscriptions to turn a lasting profit is doubtful. And the increasing use by readers of ad-blocking software is posing a serious threat to the business model of online publishing.

This is a challenging time for the press. Many local and regional titles have disappeared, and others are fragile. I still read a daily printed newspaper over my breakfast every day, but most people in this country now get their news online. They're not paying the news publisher for this. Instead, the money goes to the mobile phone companies, the broadband providers, the search engines and the social media platforms.

At the same time, there are reasons for optimism. Just as the internet has disrupted the familiar business model for newspapers, it has created new opportunities. In this country we've a great tradition of a vibrant and innovative press. Across the UK, small, independent publishers are creating new titles, both online and in print, to meet the public hunger for good journalism. They have begun to be called hyper-locals.

Titles like The Ferret, based in Scotland, which has broken major stories about nuclear safety, police spying and – yes – parliamentary expenses.

Titles like the Port Talbot Magnet, which was launched after the big newspaper groups pulled their reporters out of the town. As the reporters went, so did Port Talbot's voice in local affairs. [Now](#),

Rachel Howells and her team at the Magnet are turning that situation around, with a paper that speaks to and for the local community – a community that has just been hit by the loss of 750 jobs at the steelworks.

Titles like the Lincolnite, which has grown in six years from a one-man band into a quarter of a million pound business with more than half a million monthly visitors.

In some respects, hyperlocal news sites are the same as traditional local newspapers. They run stories which might not make the national news, but are important to people in these communities – events, fundraising, local services, traffic, crime.

In other respects, hyperlocals are a radical new force in the British media. Estimates of the number of hyperlocal sites vary from 400 to more than 2,000. Around 6.5 million people visit a hyper-local site at least once a week. About half of hyper-locals have published investigative journalism in the last two years and more than two-thirds have campaigned on local issues. Advertising expenditure on hyper-locals adds up to £23m annually – a great indication of the health and vibrancy of this sector.

Hyper-locals and other new publishers are part of the future of British journalism, and I'm proud to announce that the first members of IMPRESS include hyperlocals like the **Caerphilly Observer** and **Port Talbot Magnet** in South Wales; the **Lincolnite** in the East Midlands; **A Little Bit of Stone** in Staffordshire; **On the Wight** on the Isle of Wight; the **Southport Reporter** in Merseyside; **View Digital** in Northern Ireland; and **Your Thurrock** in Essex. Our first members include investigative journalism sites like **Byline**, based in London, and the **Ferret**, based in Edinburgh – and generalist publications like the **New Internationalist** and **Positive News**. Old and new, print and digital, England, Scotland, Wales and Northern Ireland – these publishers see the benefits of what we at IMPRESS are offering.

Daniel Ionescu at the Lincolnite told us: *'I am happy that after half a decade running an independent digital news organisation, we will finally have an independent body to be part of, looking after our interests as well as arbitrating any issues we might run into as a growing publisher.'*

Rachel Howells at the Port Talbot Magnet said: *'Independent regulation means we can continue carrying out robust journalism for the public good, enables us to be taken seriously by readers and the establishment, and demonstrates our ethical commitment to reporting sensitively and well.'*

And Simon Perry at On the Wight, one of Britain's most dynamic news sites, said: *'Hyperlocal news producers can be vulnerable to attempts to stifle news coverage through threats of legal action. Anything that can help tackle that bullying has to be welcomed for a free press.'*

At least 30 other publishers have already said they are interested in joining us. Some we are in discussion with, others would prefer to join us only when we have been recognised, and that is fine.

Whilst we will regulate these titles robustly, we will also support them in their desire to publish truly great journalism. This is what makes IMPRESS distinctive.

The business of news and information is a rapidly evolving market; at the same time the appetite and need for original journalism and investigative reporting remains strong, has arguably never been stronger, and of course the risks that accompany this can be substantial. Publishers and individual journalists need protection from the risks they face. There's always the possibility of targeting the wrong person, developing a story on sources that turns out to be unsupported, or omitting key facts that would change the fairness of a report. Equally those who've been the victims of shoddy or malicious journalism, or well-intentioned errors, need to know they have someone to turn to.



News organisations large and small need an efficient, cost effective and impartial body to help resolve complaints. There's never been a greater need for modern, authoritative, transparent, fair and impartial complaint handling and regulation.

As it happens I have spent the last 20 years of my professional life in the development of modern, authoritative, transparent, fair and impartial complaint handling and regulation. After a career that included being an academic lawyer, a legal journalist, and Assistant-Secretary General of the Law Society, in 1996 I became the Insurance Ombudsman. This was the first scheme in the UK to develop an independent self-regulatory system for resolving complaints between consumers and businesses. Interestingly it was the insurers who took the initiative, aware that the courts and the judicial system were hopelessly designed to deal with disputes involving ordinary people. The legal and court costs are prohibitive and potentially ruinous for individuals or small businesses. So with the help of the consumers association they jointly designed a scheme that largely kept lawyers out, where organisations (such as insurers) that had deep pockets gained no advantage against the individual, and leveled the playing field between firms and consumers. The model they came up with – that allowed consumers to take a claim, cost free and risk free, to an independent authority – has been widely followed.

When the Insurance scheme was joined up with those for banking, building societies, investment firms, and stockbrokers, I became the first head of the Financial Ombudsman Service, which became the largest ombudsman scheme in the world. During my time I was responsible for key decisions: awarding compensation to half a million consumers for missold mortgage endowments, to thousands following the Equitable Life collapse, and the misselling of PPI – compensation that is now costing the banks some £26 billion – and counting. And that of course is a fraction of the profits the banks have made from selling PPI.

Now, apart from financial services we take for granted the existence of ombudsman schemes in the fields of phone companies and internet service providers, energy companies, estate agency and surveying, removal firms, higher education, legal professionals, copyright licensing and hundreds of smaller specialist areas. I've worked with many of these schemes, which all now have to comply with standards for independence and effectiveness.

We can see two important features here. First that members of the public who have a dispute are not expected to have to take a court case against the company responsible for loss or damage they've suffered in order to obtain justice. And second that where the scheme is managed by a trade, professional or industry body that represents its members (what we call a self-regulatory body), it is subject to oversight and approval to ensure that it is independent.

This need for justified confidence and credibility also applies to rule-making self-regulatory bodies. The modern approach is that they are supervised or approved by an oversight body; the self-regulators for solicitors, barristers, doctors, nurses, dentists, social workers, accountants, actuaries and auditors, all are supervised by an oversight body. Even judges are subject to the Judicial Conduct and Investigations Office.

Whether we are talking about pure complaint handlers/ombudsman schemes, or industry self-regulators, the public is rightly mistrustful of bodies that claim to police themselves, but refuse to be accountable for what they do or how they do it.

So there is now hardly any significant trade or professional body in the UK that claims to regulate its members or to handle public complaints that does not have some external oversight or accountability relationship. Except for the press.

Given this modern approach to what one could call “accountable self-regulation”, it was hardly surprising that this is what was established in an authoritative Charter following the Leveson Report. The press is to be governed by self-regulatory bodies that are overseen and approved by a body established for the purpose (it's called the Press Recognition Panel) that can ensure that



any self regulatory organisation is truly independent and can justifiably claim to deserve public confidence.

That is why I announced last year that IMPRESS would be applying to the Recognition Panel for approval of our scheme. As John Whittingdale, Secretary of State for Culture Media and Sport recently said, the Panel is “key to delivering the Leveson reforms, assuring that press self-regulators are independent and effective, properly funded and able to protect the public.”

It has taken us a while to complete our application for recognition, but I am pleased to say that earlier today we delivered it to the Panel together with the 40 files of supporting evidence. This is an important moment for us and one which has taken a lot of hard work to achieve; we believe that we meet the 23 criteria for recognition and we will now wait to see if the Panel accepts that we are independent and effective, properly funded and able to protect the public.

That is why we say that IMPRESS will be the first – and maybe the only – truly independent press regulator in the UK.

So now let me tell you a little about how we will work. As you would expect, for anyone with a grievance we will be open to receive complaints about by publishers that join us, only after the publisher has had a chance within 21 days, to respond to the matter. We will then decide whether or not the complaint is justified. If it is, we can require an apology or correction to be printed, what that correction should say and whereabouts in the publication it should appear, and in the case of a website, for how long. We'll publish the results of our decisions on our website. We don't award people compensation even if their feelings have been hurt.

But where something more serious is alleged, a complainant may say that the published material has been defamatory or that it, or the way it was obtained, constituted a breach of privacy. These are civil wrongs and courts can award cash compensation for defamation or breach of privacy. As I have mentioned, in my view the courts and the legal system are totally unsuitable and potentially ruinous for individuals or small organisations involved in such cases.

So our scheme requires that if requested by a complainant, our publishers must cooperate in such disputes being resolved by arbitration, and in partnership with one of the most respected bodies in the field, the Chartered Institute of Arbitrators, we have designed a simple arbitration scheme.

It can be scary for a small publisher, pursuing an investigative inquiry into the affairs of a powerful organisation or individual, to be threatened with a libel action. Faced with this sort of bullying intimidation, the options are either to drop the investigation or to brave it out and risk bankruptcy.

Leveson and the Charter have a solution for the small publisher. It is to say that regulated publishers should offer arbitration to resolve this sort of claim, and aggressive claimants who refuse to use the arbitration that's offered and threaten to take a regulated publisher to court, should not be able to recover legal costs, even if they win. That would nullify the intimidation threats.

Now that costs rule is contained in **section 40 of the Crime and Courts Act**, a provision that is on the statute book, but which as yet hasn't been brought into force by Culture Secretary, John Whittingdale. He says he is thinking about it. Section 40 would have another benefit. It would allow people who bring a defamation or privacy case against publisher which is not independently regulated to claim back their costs whether they win or lose. Kate and Gerry McCann recently had to take the Sunday Times to court about false reports it made about them. After having to fight a court case they said, *“Despite the history of admitted libels in respect of our family by so many newspapers, the Sunday Times still felt able to print an indefensible front page story and then force us to instruct lawyers – and even to start court proceedings – before it behaved reasonably”*. They went on:



This is exactly why parliament and Leveson called for truly effective independent self-regulation of newspapers – to protect ordinary members of the public from this sort of abuse. The fact is that most families couldn't take the financial and legal risk of going to the high court and facing down a big press bully as we have. That is why News UK and the big newspapers have opposed Leveson's reforms and the arbitration scheme which is a necessary part of it."

At this moment IMPRESS is the only body with any prospect of becoming a recognised regulator and thereby offering these protections.

It's worth saying that a number of major newspaper publishers seem particularly worried by these, as yet unimplemented, cost provisions. Trinity Mirror, publisher of the Daily and Sunday Mirror, for example has said that *"a disturbing chilling effect on freedom of speech would occur if a financially vulnerable publisher was forced to join an approved regulator about which it had concerns for the sole reason of avoiding the devastating effect of damages and costs sanctions."* We would be pleased to talk to Trinity Mirror to allay any concerns it might have about joining us. Associated Newspapers, publishers of the Mail titles, said that what it called these "penal costs provisions" would contravene the right to freedom of expression.

These colourful protestations just remind me of the huge furore and resistance the legal profession and the judiciary put up in 1990 when the Government presented some modest reforms to make the profession more accountable. The Lord Chief Justice went completely off the deep end, saying said that the proposals represented the most sinister document that had ever emerged from Government. "Oppression" he said, "does not stand on the doorstep with a toothbrush moustache and a swastika armband." People facing even modest change can whip themselves up into such a frenzy that they obscure the valid points they could be making. We too stand for freedom of expression, and we'd like nothing more than to work with these publishers. Our doors – and our minds – are open.

But as yet these costs provisions in section 40 haven't been brought into force. I can understand why John Whittingdale is thinking hard about whether to do so. As Chair of IMPRESS, I would like to see the costs protection for small publishers who join us brought in. As a law reformer, I would like to see people with privacy or defamations claims enabled to use a risk-free out of court scheme to have their disputes decided, and not be placed in the position the McCanns were.

RECOGNITION

In order to be recognised we have to fulfil the criteria of independence in relation to appointment and funding so let me tell you about that now.

I and my fellow board members have been appointed by an independent appointments panel following an open recruitment process. No one tapped me on the shoulder or asked me to apply. I saw the ad and applied because I was really interested.

How you may ask have we been funded, and is our future funding secure? A not unreasonable question. We are certainly an unusual self-regulator. Most regulators are funded either from public funds (like the Food Standards Agency) or from fees from the bodies being regulated (like the Gambling Commission, of which I am member). IMPRESS has had to bring itself into existence without any public funds or regulatory fees. Who would have an interest in funding and promoting a press regulator? There are some non-profit foundations, like the Joseph Rowntree Reform Trust and the Andrew Wainwright Reform Trust, which have supported us as part of their commitment to a vibrant and fair society. There are also many individuals who share this vision. Many people contributed to our initial crowd-funding appeals. Some, like JK Rowling and Max Mosley, have the reason and the resources to support decent standards of journalism, and we are grateful to them for helping to get IMPRESS off the ground.

But we can't and won't be beholden to anyone, and we can't allow ourselves to be in a position where our funding could be removed if we offended a funder. So an independent body ~~has~~ been

created – the Independent Press Regulation Trust, a charity. Its trustees are professionals with experience of law, fund management and the running of charitable trusts. Its aim is:

to promote high standards of ethical conduct and best practice in journalism

and it is empowered to provide:

financial assistance towards the establishment and support of an independent press regulator or independent press regulators to be established and conducted in accordance with the recommendations and principles set out in the Leveson Report.

This body operates “at arms’ length” as a buffer between any donor from whom it receives funds and any self-regulator, like ourselves that applies to it. To be clear, funding from the trust could be available to any other self-regulator. The funding agreement we have in place with Trust guarantees funding of £950,000 a year for at least four years. This funding could only be ended during this period in extreme specified circumstances, such as the bankruptcy of our organisation. In three or four years we could reasonably expect to be self-sustaining from a mix of charitable grants from the Trust and others, and regulatory fee income.

This funding we have in place will allow small publishers to join us at very modest cost – for the smallest it is £50 a year – and for those small publishers we will be able to subsidise the cost of any arbitration that may be needed.

CODE

To regulate publishers we must adopt a standards code. The Charter makes specific reference to a regulator having as its initial code the Editors’ Code of Practice. This has been built up over the years by editors of the national, local and magazine sectors, and it has now been adopted by IPSO, a regulator to which most of the mainstream press belong, although significantly the Guardian, the Independent and the FT do not. It’s the code that is taught to students in journalism schools, and has been subject to all sorts of interesting analysis and comment. It’s freely available on the website of IPSO, and of the body that drafts it – the **Editors’ Code Committee**. Its principles cover accuracy, privacy, harassment, intrusion into grief or shock, reports about children, the use of clandestine devices and subterfuge, and a number of other areas. In some of these areas there are “public interest” exceptions.

You might think that those who have developed this code would be proud of it and want us to use it. But no. The body that funds, stands behind and controls the rules of IPSO claims copyright in this code. It has offered to license the code to us – only on the condition that we do nothing that ‘contradicts or is otherwise inconsistent with any application of the Editors’ Code by IPSO’. In other words, only on the condition that we sacrifice our autonomy and independence. Does this move have a shred of public interest justification? Or is it just an attempt to obstruct us getting off the ground? Members of the House of Lords Communications Committee certainly seemed to think so, as did MPs on the Commons Culture Committee in hearings last year. Even IPSO’s own chairman, Sir Alan Moses, agreed; when asked about it by both committees he said he thought it would be “absurd” to prevent us using the code.

Good though the Editors’ Code may be, there are gaps. For instance, in the past few years a number of journalists have recently been arrested by the police– and in the main acquitted – after paying sources for official information. And it was their publishers who handed over their confidential sources to the police. The Code has little to say to publishers and journalists on these issues. We’ve recently analysed the codes used in 50 other countries around the world and there are at least 30 issues that other countries regard as important but aren’t in the Editors’ Code. So we won’t be using it for very long and I can announce tonight that we plan to develop our own. We will shortly be launching a consultation on what ought to be included in a new code. Input from our member publishers will be important. And we won’t claim copyright, we will be delighted if others choose to use ours.

SO WHERE ARE WE NOW?

We have a strong team in place under Jonathan Heawood our chief executive, the man whose idea IMPRESS was. Ed Procter is our chief operating officer, currently completing his term as chief executive of Sport Resolutions, the dispute resolver for sport in the UK. We're supported by a policy and complaints officer, a company secretary and a head of business development.

I am also delighted to announce that we have two new board members joining us:

Martin Hickman, former Deputy News Editor of the Independent and Westminster correspondent for the Press Association. He is co-author of a bestselling book about the phone-hacking scandal, Dial M for Murdoch, and runs his own publishing company; and

Emma Jones, former columnist at the Sun and a news and features writer at the Sunday Mirror. She worked her way up to become Deputy Editor of the 'Bizarre' showbiz column at the Sun, and claims the distinction of having been sacked by Rebekah Brooks.

WHAT IS OUR STRATEGY?

We aim to build membership from the ground up, working with hyperlocal and other niche publications first. In addition to our independent, Leveson-compliant approach, the attraction for smaller news organisations is that IMPRESS is cheaper. Our fees are transparent and banded according to turnover.

We see a role for a new independent regulator even if John Whittingdale decides not to implement section 40 for the time being, although it is obvious that the protection we could offer small publishers would be dramatically strengthened if he does. But we'd prefer that publishers see IMPRESS as a destination of choice, and an organisation they want to be part of, rather than one they feel they have to join out of fear.

We expect to work in a supportive way with our publishers. We'll be totally independent when adjudicating on a complaint, but we'll be happy to give journalists and publishers without prejudice advice if they are uncertain what to do. That advice won't influence the outcome of a complaint because by then we'll have heard both sides of the story. IMPRESS wants to help publishers tell their stories and we want to assist the emerging network of hyper-local sites to grow within a strong ethical framework. For us, raising and supporting ethical standards of journalism isn't just a reactive job of dealing with complaints. Being a standards regulator is not just about punishing transgressions, it's also about helping those being regulated to get it right first time, as our members have told us they want to do. We look forward to following the stories, investigations and campaigns our members are running, watching their sites, reading their copy. By the time a complainant contacts us, it's likely we'll already have a good idea what they are talking about.

We aim to be at the heart of a network of publishers, journalists, unions, academics, trainers, researchers and businesses sharing best practice and cultivating excellence.

Do we expect those major publishers outside IPSO – the Guardian, the Independent and the FT – to join us? It is of course significant that they haven't joined IPSO. They would be welcome to join us, but I understand why, however distinguished our board, however impressive our staff team, they are wary of joining a regulatory body with no corporate track record of press regulation that hasn't been officially recognized yet. Whether and for how long they will feel comfortable regulating themselves, only time will tell. We'll be there for them, if one day they need us.

Where do we stand in these heated debates about press regulation? We share an interest, with the Media Standards Trust, the National Union of Journalists and many other groups in wanting to prevent a repeat of the scandals that triggered the Leveson Inquiry. It's fair to say that we agree with Hacked Off that the Charter framework of accountable self-regulation is the right **model** for

future press regulation – as do the NUJ, Sir Harry Evans, (and you should see the film about the thalidomide scandal the he exposed – The Last Nazi War Crime) the free-speech body Article 19, and the Government and all parties in Parliament. Most of the national newspaper titles have so far have rejected the Charter framework. As we begin the process of bringing the framework to life with our recognition application, things will begin to stir. How fast, how far, we shall see.

FINALLY, what does the future look like for IMPRESS?

We aim for the IMPRESS mark to become a trusted and recognised brand in ethical journalism. At the same time IMPRESS regulated publications would be seen by readers and the public as stand-out trustworthy titles. IMPRESS publications should attract innovative editors and reporters.

A true measure of our success will be when advertisers understand the commercial value of the IMPRESS mark and are prepared to pay more for space in publications that carry it.

I said at the start of this lecture that the future of press regulation in the UK won't look like the present. My prediction is that alongside the myriad of other forces at work – commercial, technological, social and political – the advent of IMPRESS will be seen as having made a significant impact. Just how far that impact will reverberate, I will not dare to predict. I will leave that assessment to you.

Thank you for listening.

This blog 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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