

IPSO: REGULATOR OR COMPLAINTS HANDLER?

HOW UK NEWS
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SET UP THEIR
OWN REGULATOR
TO AVOID SCRUTINY



GORDON RAMSAY
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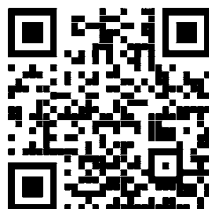
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FOREWORD: WHY THIS REPORT MATTERS

Virtually every major trade or industry – from plumbing to policing, from banking to broadcasting – is subject to some form of regulatory framework. Effective regulation stands alongside the law as an essential means of upholding professional standards, promoting confidence in practitioners, and holding individuals and powerful corporations to account for negligence or wrongdoing.

This study examines the background, structure and performance of the Independent Press Standards Organisation (IPSO), which since 2014 has been presented by large parts of the press industry as the principal regulator of print and online journalism in the UK. It concludes that IPSO is deliberately constrained by the newspaper industry from acting as an effective, independent regulator that can uphold professional standards and command public respect.

In fact, this report shows, for the first time, how the IPSO structure was essentially created by the industry *in advance of* – and not in response to – the Leveson Report. It was designed to perform the function of a complaints handler rather than a genuine industry regulator, much like its discredited predecessor the Press Complaints Commission (PCC). It was therefore never intended, nor is it able, to operate according to the clear principles for effective and independent self-regulation laid down by Lord Justice Leveson.

For journalism, the consequences of absent or ineffectual regulation can be profound. It is unfair to the public who see injustices go unchallenged. It is unfair to the vast majority of working journalists who care about standards and follow agreed professional codes, but see poor practices ignored and misconduct go unpunished. And crucially, it undermines trust in a vital democratic institution at a time that professional newsgathering and accurate reporting is under huge pressure from social media platforms.

There are further consequences of this deficient regulation for imminent legislative initiatives around online harm and digital markets. In attempting to differentiate between social media platforms and news publishers, these initiatives will seek to protect certain journalistic privileges by reference to regulatory bodies that purport to implement codes of practice. **Those bodies will effectively be interpreted as guarantors of professional journalistic standards.** It is clear from this study that IPSO is not in a position to fulfil this regulatory responsibility.

Parliament has legislated for an independent process of press self-regulation, as recommended by Lord Justice Leveson in his landmark report. The Press Recognition Panel was established precisely to act as a guarantor of regulatory standards in which the public and journalists can have faith, and has since recognised IMPRESS as a self-regulator that meets those standards. As long as IPSO chooses to remain outside the framework of independent scrutiny, there can be no assurance that it acts as a genuinely independent arbiter of professional standards.

Both the British public and working journalists deserve regulation that is effective without inhibiting a free press, is genuinely independent, and commands public respect; future public policy interventions must take account of the continuing determination of the industry to avoid proper scrutiny and accountability.

Gordon Ramsay & Steven Barnett
21 May 2021

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KEY POINTS

Part 1 – Independence and Effectiveness: The Creation of IPSO

- IPSO was largely created from draft proposals submitted by the newspaper industry to the Leveson Inquiry in July 2012. It was rejected as an effective plan by Sir Brian Leveson.
- Of 84 components of the draft industry proposal, three-quarters were incorporated into the governance documents of IPSO, despite Leveson's explicit rejection.
- In some areas, the industry actually weakened its own Leveson proposals when transferring them to IPSO. These dilutions included the definition of a 'systemic failure' necessary for IPSO to launch a standards investigation and levy fines on members.
- IPSO bypassed the vast majority of Leveson's recommendations, but its creation was accompanied by a comprehensive lobbying operation from news publishers designed to create the opposite impression.

Part 2 – Enforcement: Standards Investigations and Sanctions

- A last-minute wording change inserted by the newspaper industry ensures that IPSO has almost no ability to launch a standards investigation or impose financial sanctions.
- IPSO's inability to deploy a credible enforcement function essentially reduces its regulatory powers to that of a complaints-handling body. It does not satisfy the definition of a regulator.
- A series of case studies – on IPSO's response to clear examples of discrimination, inaccuracy and journalistic subterfuge – illustrate its lack of power in enforcing journalistic standards.

Part 3 – Monitoring, Complaints-Handling and Transparency

- IPSO does not record code breaches in members' internal complaints processes; it therefore cannot effectively monitor compliance with the Editors' Code.
- There are significant problems in how IPSO's complaints-handling balances interests of members against those of complainants.
- IPSO's annual reports do not fully satisfy their own regulations: they fail to include information on the adequacy and effectiveness of members' compliance processes.
- Several IPSO members – including one of the largest local publishers – do not supply sufficient information on their websites for members of the public to make an informed complaint.
- Published annual statements by IPSO members fail to satisfy regulatory obligations, despite IPSO acknowledging that reform in this area was needed.

SUMMARY

REPEATING THE CYCLE BY EVADING REFORM

The newspaper industry's response to the Leveson Inquiry was not – as with previous public inquiries into systemic failures of press regulation – an exercise in cherry-picking and selective reform. Instead, the industry itself produced a new system in July 2012, months before any public recommendations. It then effectively ignored the recommendations of a judicial inquiry in favour of its own system.

IPSO and the industry's July 2012 draft plan are not exact matches, but the adoption of three-quarters of its proposals into the IPSO documentation demonstrates a clear lineage between the two, as does replication of some passages word for word. Furthermore, some elements of the industry plan were accepted by Leveson, only then to be weakened or effectively removed when IPSO's documents were finalised.

This refusal to take notice of a year-long judicial inquiry in response to a collapse in professional standards is compounded by the industry's behaviour in acting as lobbyist and propagandist to further its own self-interest through the columns of its newspapers. In the event of further public interventions in this area – which history suggests are almost inevitable – any subsequent inquiry should consider this analysis when engaging with the industry.

It is perfectly possible that IPSO will perform all of its duties and functions impeccably (though Parts 2 and 3 of this report demonstrate clear deficiencies), and that its staff are diligent in fulfilling their responsibilities. But IPSO's regulatory powers are determined by the governance documents that set out its articles, its rules and regulations, and its contractual agreement with its members. As this report shows, the key components of this framework were produced by the industry in advance of Leveson's report and retain industry influence over its own regulation.

Without major structural reform – as advocated by Leveson in his comprehensive rejection of the industry's proposed plan – IPSO cannot be anything other than a body that is, as the second Calcutt Report eloquently described the Press Complaints Commission in 1993, 'set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.'¹

¹ Department of National Heritage (1993), *Review of Press Self-Regulation*, London: HMSO, Para 5.26, p. 41.

COSMETIC CHANGE WITH SERIOUS IMPLICATIONS

Vital components of Leveson's framework were the new regulator's powers of investigation and the ability to impose meaningful sanctions on miscreant publishers. These would ensure that the public had recourse to a genuine regulator rather than simply a complaints-handling regime of the kind operated by the old PCC.

Ostensibly, the IPSO framework provides for such powers. However, on proper examination, it is clear that the Regulatory Articles are drafted in such a way as to render those powers virtually worthless. Crucially, the 'serious and systemic failure' formulation – inserted at the last minute into IPSO's regulations by industry representatives – significantly raises the bar by which an investigation may be proactively launched, and thus weakens a core regulatory function. It remains unclear why representatives of IPSO, in public statements that in many ways echo those of the PCC, defend those parts of its constitutional documents that significantly limit its own powers.²

It is still possible for the 'serious and systemic' definition to be tested but – as the case studies outlined here demonstrate – even in very high-profile cases IPSO either lacks the ability to intervene (as with discrimination) or has elected not to do so, even when presented with significant evidence of potential wrongdoing. Whether such inaction is due to an intentionally high bar imposed by the industry when drafting IPSO's regulations, or to institutional resistance by IPSO itself, a power that remains unused whatever the circumstances is as redundant as a power that cannot be invoked. Both outcomes suggest that IPSO in its current form cannot call itself 'a regulator as that term is commonly understood.'³ It is in that respect virtually no different from the discredited PCC.

BLIND SPOTS IN MONITORING AND OPACITY IN TRANSPARENCY

Documentary and empirical evidence demonstrates that IPSO is structurally unable to fulfil a comprehensive monitoring role via its recording and handling of complaints, and fails to satisfy the transparency commitments laid down in its own governance documents.

2. IPSO (2019) 'Response to the Media Standards Trust report', ipso.co.uk: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf

3. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (p. 1541).

Shortcomings in IPSO's complaints-handling functions demonstrate the system's inability to monitor effectively the industry it is supposed to hold to account. Moreover, its failure to obtain or publish any information about the extent of code breaches handled in members' own internal complaints processes – a problem noted and criticised by its own internal review in 2016 – further diminishes IPSO's ability to assess compliance of its members with the standards it purports to be policing. It is also hampered by its own regulations which specify various circumstances where code breaches cannot be recorded. In terms of IPSO's own transparency – publication of annual reports summarising its own activities and those of its members – IPSO does not provide all the information called for in its own regulations. In particular, the absence of information on the 'adequacy and effectiveness of the compliance processes and procedures' of publishers, as required by IPSO's governing documents, severely limits a proper assessment of whether the regulatory regime is working even within its own narrow terms.

Just as IPSO itself fails to fulfil its transparency commitments, so do its members. While the websites of most national newspapers contain relevant information and links for potential complainants, this material is less readily available across the hundreds of local newspapers published by the UK's largest regional publishers. A lack of relevant information on some members' mobile apps is an additional oversight. IPSO members are also inconsistent in the extent to which their annual statements fulfil information obligations.

Leveson specified that enforcement of standards was integral to effective regulation and that 'compliance ... should be transparent and demonstrable to the public.' The analysis in Part 3 suggests that the IPSO system is not equipped to monitor industry compliance with the Editors' Code, and does not fully satisfy its own commitments to transparency. Perhaps more importantly, the absence of adequate monitoring powers demonstrates that IPSO, like the PCC before it, cannot satisfy the definition of a regulator.

INTRODUCTION

In July this year it will be ten years since the Leveson Inquiry was launched. Set up by David Cameron's coalition government in response to *Guardian* revelations about phone hacking at the *News of the World*, the 14-month judicial investigation exposed a raft of legal and ethical wrongdoing across large areas of the UK's national press. It culminated in a number of recommendations to replace the discredited Press Complaints Commission – the industry self-regulator first established in 1991 – with a reformed framework for independent and effective self-regulation. The new system was carefully designed to reassure both the public and journalists that there would be genuine accountability for industry misconduct while preserving freedom of the press.

Most of the industry, however, rejected key elements of the Leveson framework, and in September 2014 created the Independent Press Standards Organisation (IPSO), covering 90% of national newspapers by circulation and the majority of the UK's regional newspapers and magazines.⁴ Though launched in defiance of the main Leveson recommendations, IPSO was hailed by the industry as 'the toughest regulator ... in the developed world'⁵ and proclaimed itself to be 'based upon the Leveson recommendations.'⁶

In nearly seven years of operation, IPSO has faced criticism from a variety of sources, including Parliamentary committees,⁷ think tanks,⁸ pressure groups and rival regulatory bodies.⁹ Perhaps the most damning verdict came from the 2021 annual report of the Press Recognition Panel (PRP), the body established by Royal Charter in 2013 – as agreed by Parliament – to determine whether press self-regulators met Leveson criteria. The PRP was unequivocal about IPSO's failings:

IPSO is not a regulator and it manifestly does not meet the Royal Charter criteria. It does not provide the public with the necessary levels of protection intended following the Leveson Inquiry even for those publishers signed up to it. IPSO is not independent of the industry, and it is not possible to discern a full and clear picture of the complaints it receives.¹⁰

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4. IPSO's governing documents were first published in full in October 2013; the regulator began operating 11 months later.
 5. Burrell, Ian (2013) 'Press announces timetable for "toughest regulator in the world",' independent.co.uk, 24 October 2013: <https://www.independent.co.uk/news/media/press/press-announces-timetable-toughest-regulator-world-8902402.html>
 6. IPSO (n.d.) 'IPSO response to the DCMS and Home Office Consultation on the Leveson Inquiry and its implementation,' ipso.co.uk: <https://www.ipso.co.uk/media/1295/ipso-response-to-the-dcms-and-home-office-consultation-on-the-leveson-inquiry-and-its-implementation.pdf>
 7. House of Lords Communications and Digital Committee (n.d.) 'Press regulation inquiry,' old.parliament.uk: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/parliament-2010/press-regulation---where-are-we-now/>; House of Commons Digital, Culture, Media and Sport Committee (n.d.) 'Dealing with complaints against the press inquiry,' old.parliament.uk: <https://old.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/complaints-against-the-press-16-17/>; House of Commons Home Affairs Committee (n.d.) 'Hate crime and its violent consequences inquiry,' old.parliament.uk: <https://old.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/inquiry3/>
 8. Media Standards Trust (2019) *The Independent Press Standards Organisation (IPSO) – Five Years On*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/2019/10/MST-IPSO-2019-Final-Version.pdf>
 9. Heawood, Jonathan (2013) 'Why the Impress Project wants to talk about press regulation,' theguardian.com, 9 December 2013: <https://www.theguardian.com/media/2013/dec/08/impress-project-press-regulation-ipso>
 10. Press Recognition Panel (2021) Annual report on the recognition system, February 2021, <https://pressrecognitionpanel.org.uk/wp-content/uploads/2021/02/PRP-Annual-Recognition-Report-Feb-2021-FINAL.pdf>, London: Press Recognition Panel, p. 8.

This report focuses on three important areas where IPSO has been deficient in both its creation and its performance. There are both practical and theoretical reasons for this critique.

In practice, history has shown that selective industry-led reforms have followed all seven public interventions in press self-regulation since 1947 (including Leveson), in every case to the industry's benefit and the public's detriment – thus sowing the seeds for each subsequent collapse in industry standards. The sheer predictability of this cycle obliges us to monitor the latest incarnation of industry-led reform to determine whether the same structural weaknesses are present again.

Theoretically, the interventions of IPSO-affiliated newspapers during and after Leveson – exploiting their journalism platforms to act as both lobbyists and propagandists for their own interests while frequently distorting the facts – raise profound questions about the interplay of journalism and democratic policy-making, and the potentially corrosive role of the industry in media policy debates.

This report therefore explores three key areas of IPSO's operation which are highly relevant to those considerations: to what extent was IPSO ever designed to be 'based upon the Leveson recommendations?' How did a small but highly significant wording change compromise IPSO's ability to act as a regulator? And to what extent is it genuinely able to hold the industry to account? Our conclusion in all three cases is that IPSO's hands have been tied by the industry, and that it simply does not have the tools to fulfil the task of genuinely independent and effective self-regulation.

STRUCTURE OF THE REPORT

PART 1 traces the origins of the IPSO system. It is the first systematic analysis of how the newspaper industry bypassed, rather than adapted, the Leveson recommendations in order to implement its own premeditated regulatory system. It shows how IPSO incorporates almost three-quarters of the structural components of a system submitted by the newspaper industry to the Leveson Inquiry – a system that was comprehensively rejected by Leveson because of the constraints it placed on the regulator's independence and effectiveness.

PART 2 investigates a crucial last-minute change to IPSO's regulations that effectively nullifies its ability to launch investigations into breaches of the standards code – precisely the regulatory lever that was supposed to differentiate IPSO from the discredited PCC. The industry's simple substitution between July and October 2013 of 'serious and systemic' for 'serious or systemic' in defining the context for launching a standards investigation was a sleight of hand that renders IPSO's regulatory powers virtually worthless. This part uses case studies to demonstrate the real-world impact of this subtle change on IPSO's responses to demonstrable code breaches.

PART 3 assesses IPSO's ability to monitor its members' compliance with its own standards code, and to what extent it fulfils its own commitment to transparency. It reveals significant gaps in IPSO's ability to measure code breaches and therefore to conduct the core regulatory function of enforcing standards. After analysing annual statements from IPSO and its member publishers, and auditing available information for potential complainants, it concludes that IPSO is unable to provide key information called for in its own regulations, including levels of compliance from member publications. It also shows how information on how to use the regulatory system can be difficult to find for potential complainants.

PART 1: INDEPENDENCE AND EFFECTIVENESS

- THE CREATION OF IPSO

KEY POINTS

- IPSO was largely created from draft proposals submitted by the newspaper industry to the Leveson Inquiry in July 2012. It was rejected as an effective plan by Sir Brian Leveson.
- Of 84 components of the draft industry proposal, three-quarters were incorporated into the governance documents of IPSO, despite Leveson's explicit rejection.
- In some areas, the industry actually weakened its own Leveson proposals when transferring them to IPSO. These dilutions included the definition of a 'systemic failure' necessary for IPSO to launch a standards investigation and levy fines on members.
- IPSO bypassed the vast majority of Leveson's recommendations, but its creation was accompanied by a comprehensive lobbying operation from news publishers designed to create the opposite impression.

CYCLICAL FAILURES OF PRESS SELF-REGULATION: THE ROAD TO THE LEVESON INQUIRY

While revelations of illegal phone hacking at the UK's highest circulation newspaper, the *News of the World*, were the immediate trigger for creation of the Leveson Inquiry in 2011, the inquiry itself heard evidence of wide-ranging misconduct and ethical lapses in the press. This ranged from breaches of data law by private investigators linked to major newspapers to gross invasions of privacy and other abuses of professional practice which, in the words of Leveson himself, 'wreaked havoc in the lives of ordinary people.'

Underlying all of this evidence was a fundamental systemic problem: the comprehensive failure of the newspaper industry's self-regulatory body, the Press Complaints Commission, to hold the industry to account.

This collapse in effective regulatory oversight was not an unusual event in British press history: the Leveson Inquiry marked the seventh major public intervention into press regulation since the Second World War.¹¹ Royal Commissions reporting in 1949 and 1962, the Younger Committee on Privacy (1972), a third Royal Commission in 1977, the Calcutt Committee of 1990 and its follow-up report in 1993 were all convened in order to deal with ethical lapses by the press and the shortcomings of existing regulatory regimes. Following each investigation and report, an almost identical sequence of events played out: 'after each public intervention the industry procrastinated before instituting reforms, often delaying until legislation was threatened, and then only introducing reforms selectively.'¹²

11. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume I*, London: The Stationery Office: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270939/0780_i.pdf (Volume I, Part D, Chapter 1, pp. 195–218)

12. Ramsay, Gordon and Martin Moore (2019) 'Press Repeat: Media self-regulation in the United Kingdom after Leveson,' in

In every instance, that selectivity involved unilateral rejection of recommendations deemed by the industry to be especially inconvenient or detrimental to its own interests. In each case, the root causes of the problem were left unresolved.¹³

Thus, when the industry set up the Press Complaints Commission (PCC) in the wake of the 1990 Calcutt Report, it simply ignored those recommendations it disliked. In his own review of the PCC after two years of its operation, Sir David Calcutt himself was scathing:

The Press Complaints Commission is not, in my view, an effective regulator of the press. It has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. It is not the truly independent body which it should be. As constituted it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.¹⁴

Between Calcutt and Leveson, therefore, the newspaper industry had avoided recommended reforms and created a system independently judged to further its own interests rather than act as a regulator for the public. It faced down a Conservative government which ultimately decided not to enforce the recommendations of the Inquiry.¹⁵

Leveson's critique of the PCC was couched in similar terms to Calcutt's, this time informed by nearly two decades of evidence. He concluded that the PCC was 'constrained by serious structural deficiencies which limit what it can do,' including a lack of independence from the industry via an over-powerful funding body; insufficient powers to launch investigations or even to investigate breaches of the standards code; and a willingness to act only 'to head off criticism of the press or self-regulation.'¹⁶ Leveson's final summary of the PCC system echoed those of Calcutt:

The failings which have fatally undermined the PCC and caused policy makers and the public to lose trust in the self-regulatory system are not new. They have been consistently identified by external scrutiny for at least a decade. The twin failure of both the self-regulatory system and the industry to address these problems is itself evidence that there has been no real appetite for an effective and adequate system of regulation from within the industry, in spite of a professed openness to reform and self-criticism. It is difficult to avoid the conclusion that the self-regulatory system was run for the benefit of the press not of the public.¹⁷

Tobias Eberwein, Susanne Fengler and Matthias Karmasin (eds.) *Media Accountability in the Era of Post-Truth Politics: European Challenges and Perspectives*, London: Routledge (pp. 85–86)

13. Media Standards Trust (2012) *A Free and Accountable Media – Reform of press self-regulation: report and recommendations*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/downloads/2012/06/MST-A-Free-and-Accountable-Media-21-06-12.pdf> (p. 10)
14. Department of National Heritage (1993) *Review of Press Self-Regulation*, London: HMSO (p. 41)
15. Ramsay, Gordon and Martin Moore (2019) 'Press Repeat: Media self-regulation in the United Kingdom after Leveson,' in Tobias Eberwein, Susanne Fengler and Matthias Karmasin (eds.) *Media Accountability in the Era of Post-Truth Politics: European Challenges and Perspectives*, London: Routledge (p. 87)
16. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf*, Part J, Chapter 8, pp. 1576–1579
17. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf* (p. 1579)

The PCC was therefore both a repetition of the cycle of selective and cosmetic reform by the newspaper industry seen in the previous six attempts to improve UK press regulation, and a primary factor in the regulatory collapse that led to the seventh attempt – the Leveson Inquiry. In fact, as Leveson concluded, the way in which the industry had set up its own self-regulatory body in 1991 meant that the PCC was not a regulator ‘as that term is commonly understood’ and ‘little more than a complaints-handling body.’¹⁸

LEVESON’S RESPONSE

In order to prevent a repetition of this cycle, Leveson set out the criteria for a regulatory solution:

1. Effectiveness
2. Fairness and objectivity of standards
3. Independence and transparency of enforcement and compliance
4. Powers and remedies
5. Funding – to ensure sufficient finance for operational independence and scope.¹⁹

His final report contained 47 recommendations for a new regulatory system, of which 38 applied to the regulator itself.²⁰ It accepted the principle of non-compulsory self-regulation, but underpinned by legislation to ensure that self-regulators remained genuinely independent and effective, and to incentivise membership. Leveson argued that the industry should be given 12 months to adopt this system, with statutory regulation implemented if it failed to do so.

The system can be summarised as follows:

- A regulator (or regulators) set up by or on behalf of publishers, in accordance with the Leveson criteria for a regulatory system, backed up by:
 - A mechanism of independent verification to ensure that the regulator(s) met, and continued to meet, those criteria;
 - An arbitration service providing low-cost resolution of civil claims between members of the public and publishers;
 - Changes to existing law or guidelines to give force to incentives for members of a recognised regulator (and by definition denied to non-members).²¹

18. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (p. 1541)

19. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (Chapter 1, pp. 1583–1584)

20. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (Part L, pp. 1803–1809)

21. These changes would cover i. Awards of legal costs in cases where a claimant or publisher chooses to bypass the low-cost arbitration system; and ii. An extension of exemplary damages in media cases where a publisher has shown wilful disregard of standards, but removal of such damages for members of a recognised regulator: Ramsay, Gordon and Martin Moore (2019) ‘Press Repeat: Media self-regulation in the United Kingdom after Leveson,’ in Tobias Eberwein, Susanne Fengler and Matthias Karmasin (eds.) *Media Accountability in the Era of Post-Truth Politics: European Challenges and Perspectives*, London: Routledge (p. 89)

This system was designed both to prevent another collapse in professional standards, and to avoid the structural deficiencies of a self-regulatory system in which the interests of the regulator, the industry funding body, and the Editors' Code of Practice Committee were so closely aligned. Those inherent structural problems included: constraints on the regulator's independence posed by the wide-ranging powers of industry funding body PressBoF;²² insufficient powers for the regulator to investigate alleged breaches of its own code;²³ and inadequate sanctions to dissuade members from repeating transgressions or to satisfy complainants that wrongs had been redressed.²⁴

His report drew attention to industry intransigence in responding to previous calls for reform, and anticipated the likely nature of industry opposition:

Despite what will be said about these recommendations by those who oppose them, this is not, and cannot be characterised as, statutory regulation of the press. What is proposed here is independent regulation of the press organised by the press, with a statutory verification process to ensure that the required levels of independence and effectiveness are met by the system in order for publishers to take advantage of the benefits arising as a result of membership.²⁵

THE PRESS RESPONSE TO LEVESON: PREPARING THE GROUND FOR IPSO

Most press coverage was as ferociously critical as Leveson had predicted. An analysis of newspaper coverage during the Inquiry conducted by the Media Standards Trust found that 76% of all articles expressing an opinion were negative, with hostility increasing dramatically in the 100 days prior to publication. The Inquiry itself was portrayed as a potential threat to press freedom or as fundamentally flawed in its terms of reference and execution. While the press actively promoted the industry's own proposals for a new regulatory model, alternative draft models went almost entirely unreported.²⁶

While using their newspaper columns to attack the Inquiry, an influential group of publishers launched an intense lobbying campaign, including the creation of an industry lobby group, the 'Free Speech Network.' Its activities included running an advertising campaign with full page ads in multiple titles which portrayed the forthcoming (and to date unspecified) Leveson recommendations as 'state control of the press' alongside photographs of dictators such as Kim Jong-Un and Robert Mugabe.²⁷

22. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part J, Chapter 4, Part 8, Paragraph 8.1 (p. 1576)

23. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part J, Chapter 4, Part 8, Paragraphs 8.4 and 8.7 (p. 1577-1578)

24. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part J, Chapter 4, Part 8, Paragraph 8.9 (p. 1578)

25. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Executive Summary*, London: The Stationery Office: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf, Paragraph 73, p17

26. Ramsay, Gordon (2013) *Analysis: Press Coverage of Leveson, Part I: The Inquiry*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/05/MST-Leveson-Analysis-090513-v2.pdf>

27. Greenslade, Roy (2012) 'Newspapers urge Cameron to put press back in the Last Chance Saloon,' theguardian.com, 26 November 2012: <https://www.theguardian.com/media/greenslade/2012/nov/26/national-newspapers-leveson-inquiry>

In the year following publication of the Leveson Report on 29 November there were a number of key events, including the creation of IPSO:²⁸

- 29 November 2012: immediately after publication, Prime Minister David Cameron rejected any use of statute to underpin the proposed framework;
- 12 February 2013: after one of Cameron's colleagues proposed using a Royal Charter in place of legislation, this was negotiated in secret with the newspaper industry before finally being made public. It contained multiple concessions to the press;²⁹
- 14 March 2013: cross-party talks between the three main political parties to finalise the Charter broke down, while three national newspaper publishers – covering the *Financial Times*, the *Guardian/Observer* and the *Independent* – detached themselves from the rest of the industry that had been leading negotiations;
- 15 March 2013: the Conservative Party put forward its own Charter retaining many of the concessions to the newspaper industry. With opposition from both Labour and the Liberal Democrats, however, it was clear that this would be defeated in the House of Commons;
- 17 March 2013: the Prime Minister, Deputy Prime Minister Nick Clegg, leader of the Liberal Democrats, and Ed Miliband, leader of the Labour Party, agreed a final version of the Charter that was considerably closer to Leveson's original recommendations. The House of Commons overwhelmingly approved this version and the legal incentives that gave it force;
- 25 April 2013: publishers engaged in devising IPSO proposed a rival draft Charter designed to delay ratification of the Charter agreed in Parliament. Their version was further from Leveson's recommendations than anything previously published and placed significant and permanent powers in the hands of the industry;
- 24 October 2013: a number of newspaper publishers announce a final version of their plans for IPSO;³⁰
- 30 October 2013: a slightly amended version of the Charter agreed in Parliament was published, agreed and sealed at a meeting of the Privy Council.

There was no pretence at fair or balanced reporting of these events in newspapers published by the creators of IPSO: their coverage of the Leveson Report and Cross-Party Charter was extensive and overwhelmingly hostile.

Over 2,000 articles were published in the year following publication of Leveson, and a comprehensive analysis demonstrated that in the pro-IPSO titles there were over eight 'negative' articles about the report and Charter for every 'positive' article compared to a ratio in non-IPSO titles of approximately 1:1.³¹ These

28. Ramsay and Moore (2019) Op. Cit. (pp. 90–93); Media Standards Trust (2013) 'The Story of Eight Charters,' mediastandardstrust.org, 20 June 2013: <http://mediastandardstrust.org/mst-news/the-story-of-eight-charters/>

29. This was laid out in a 4 January letter from Peter Wright, a representative of Associated Newspapers (publishers of the *Daily Mail*). Wright was subsequently appointed a member of IPSO's Complaints Committee when it was created in September 2014.

30. These publishers were DMG Media (Mail newspapers); Northern & Shell (*Express* newspapers); Trinity Mirror (*Mirror* newspapers); Telegraph Media Group (*Telegraph* newspapers) and News UK (*Sun* and *Times* newspapers).

31. Nearly three-quarters of all articles (73%) in IPSO titles depicted Leveson and the Charter as a threat to press freedom, compared with 34% in non-IPSO titles. Ramsay, Gordon (2014) *How Newspapers Covered Press Regulation after Leveson*, London: Media Standards Trust, <http://mediastandardstrust.org/wp-content/uploads/2014/09/Final-Draft-v1-040914.pdf> (pp. 27–46)

titles' editorial line was equally partisan: of 159 leader articles about Leveson or the Charter, 145 (91%) were wholly negative compared to a single positive article. By contrast, their coverage of the industry's own Royal Charter and regulatory system that would become IPSO was highly positive.³²

Any suggestion that these publishers were simply reflecting a widespread antagonism to the proposed regulatory system amongst their readers was undermined by public opinion surveys. In most polls, there were clear majorities for the principle of legal underpinning, for the cross-party Royal Charter agreement, and for its specific provisions. These views were found even in the readerships of the publications whose reporting on Leveson and the Charter had been almost entirely hostile. When asked specifically if they wanted their newspaper to join the Leveson system, readers of IPSO titles were in favour.³³

Such deliberately one-sided and frequently misleading coverage by those newspapers involved in setting up IPSO raises serious concerns about the role of journalism in media policy-making. Publishers deployed powers not available to even the most well-resourced industry lobbyists: the capacity not only to lobby privately, but also to shape messaging and influence readers through their newspapers. Their excessively negative coverage of Leveson and the Charter, coupled with interventions in the Charter process designed to stymie reforms agreed in Parliament and the secretive creation of an entirely separate alternative system, reveal an industry determined to evade external reform even after a high-profile collapse of standards. They could not even claim public support for their own proposals.

IPSO'S SHORTCOMINGS

Once IPSO had been announced and the governance documents underpinning its structure, articles and regulations had been published, a systematic analysis by the Media Standards Trust (MST) assessed to what extent its framework met the 38 recommendations for an independent self-regulatory system set out by Leveson. It found that IPSO satisfied just 12 out of 38 and failed to satisfy 20, with insufficient evidence available for a definitive view on the remaining 6. Of the 20 recommendations that IPSO failed to satisfy, the MST concluded that many were key elements of the Leveson system, including independence from the industry, access to justice, and complaints-handling. The powers of the Regulatory Funding Company – the industry body set up to fund and administer IPSO – were found to be unnecessarily broad and extensive, echoing the role of PressBoF in undermining the effectiveness and independence of the PCC.³⁴

A reassessment by the MST in October 2019 painted an even bleaker picture. **After five years of operation – in which IPSO had secured some amendments to its Articles and Regulations – the MST had sufficient evidence to make a definitive assessment on all 38 Leveson recommendations. It found that IPSO satisfied just 13 and failed to satisfy 25.**³⁵

^{32.} 58% of articles about the newspaper industry's Charter were positive, as were 65% of articles expressing a view about IPSO. Ibid. (pp. 44–50)

^{33.} Ramsay, Gordon (2014) *How Newspapers Covered Press Regulation after Leveson*, London: Media Standards Trust, <http://mediastandardstrust.org/wp-content/uploads/2014/09/Final-Draft-v1-040914.pdf> (pp. 73–95)

^{34.} Media Standards Trust (2013) *The Independent Press Standards Organisation (IPSO): An Assessment*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/11/MST-IPSO-Analysis-15-11-13.pdf>

^{35.} Media Standards Trust (2019) *The Independent Press Standards Organisation (IPSO) – Five Years On: A Reassessment*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/2019/10/MST-IPSO-2019-Final-Version.pdf>

In defiance of Leveson, Parliament and public opinion, IPSO began operating in September 2014. Subsequently, Theresa May's majority Conservative government unilaterally cancelled the second part of the Leveson Inquiry and announced in March 2018 that they would not be implementing the legal incentives designed to underpin a Leveson-compliant system.³⁶ The public was therefore left with a regulatory system covering 90% of national newspapers by circulation that failed to satisfy the majority of the recommendations laid out by a year-long public inquiry, and which retained many of the structural deficiencies that had been shown to 'fatally undermine' the previous system.

The publishers who set up IPSO presented it as a principled adaptation of Leveson, rather than a move to bypass it in favour of their own system. An advertisement placed in *The Times* on 25 October 2013 by the Free Speech Network claimed that IPSO would deliver 'all the key elements Lord Justice Leveson called for in his report.' The ad was subsequently banned by the advertising industry's self-regulator, the Advertising Standards Authority, for including this misleading claim,³⁷ but its intention was clear: to assert that IPSO was indeed a concession to the Leveson proposals.

In their highly selective approach to Leveson's recommendations, these publishers followed the pattern of every previous public intervention in the wake of regulatory failure. But as the following section demonstrates, the creation of IPSO marked a different strategy: the bypassing of a public intervention endorsed by Parliament in favour of a premeditated industry plan.

EVADING REFORM: THE 2012 INDUSTRY PLAN AND THE PRE-EMPTION OF THE LEVESON REPORT

There was an important difference between the Leveson Report and its aftermath and the previous six attempts to reform press self-regulation: this time the newspaper industry presented a detailed draft plan outlining their own proposed new system. Their proposal was submitted to the Leveson Inquiry in July 2012 by Lord Guy Black, then chair of the newspaper industry funding body PressBoF³⁸ and former Director of the Press Complaints Commission (it is referred to below as 'the Black plan'). It was produced following a period of consultation with newspaper and magazine industry trade bodies³⁹ and submitted to the Inquiry in several documents and clarified at an oral hearing.⁴⁰

The plan allows for a comparison both with the system advocated by Lord Justice Leveson and with the articles, regulations and contractual documents that underpin the IPSO system. **Since the Black plan predates the Leveson recommendations by some months, it is clear that the construction of IPSO post-Leveson was not a matter of selective adaptation of his recommendations, but a rejection of them in**

36. Walker, Peter (2018) 'Leveson inquiry: government confirms second stage axed,' theguardian.com, 1 March 2018, <https://www.theguardian.com/media/2018/mar/01/leveson-inquiry-part-2-cancellation-condemned-by-labour-as-breach-of-trust>

37. Press Association (2014) 'Publisher-backed Free Speech Network has "misleading" IPSO ad banned by the ASA,' pressgazette.co.uk, 25 June 2014, <https://pressgazette.co.uk/publisher-backed-free-speech-network-has-misleading-ipso-ad-banned-asa/>

38. Lord Black was appointed a Director of the Regulatory Funding Company, the replacement to PressBoF, in May 2018: <http://www.regulatoryfunding.co.uk/>

39. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 1, Part 1, Paragraph 1.3 (p. 1596)

40. The relevant documents and oral evidence (9 July 2012) can be accessed at <https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black>

favour of a predetermined industry plan. This is a substantial change even from the pattern of selective reform that followed earlier inquiries.

Leveson analysed the Black plan in detail across 55 pages in Part K of his Report, comprehensively rejecting the vast majority of its components. His report noted that '[t]his proposal does not, in its current form, meet any of the criteria I set out in May.'⁴¹ The broad conclusions were that the proposal suffered from a profound lack of independence due to the extensive powers of the new funding body (named the Industry Funding Body in the Black plan), including control over the setting of standards.⁴² In addition, said Leveson, the proposed system failed on a number of effectiveness criteria: its standards and compliance arm, its power to impose remedies and to identify and record code breaches, its investigations process, and having insufficient incentives to attract members.⁴³ The further rejection on grounds that it was unlikely to cover all significant publishers⁴⁴ has been borne out by the refusal of the *Financial Times*, *Guardian* and *Independent* to participate in the IPSO system. Overall, Leveson said, the proposed system prioritised industry interests:

[T]he proposal is structured entirely around the interests and rights of the press, with no explicit recognition of the rights of individuals. The system gives no rights at all to complainants and the regulator is set up without any remit to protect the rights of third parties.⁴⁵

In summary, Leveson concluded that the Black plan failed each of his main criteria for a regulatory solution – on effectiveness; fair and objective standards; independence and transparency of enforcement and compliance; powers and remedies; and funding. He also drew attention to criticism of the independence and effectiveness of the proposed system by victims of press abuse and politicians,⁴⁶ as well as reservations from two serving national newspaper editors.⁴⁷

He rejected the proposed funding body's extensive powers, and questioned the need for any such body: 'In my opinion ... it would be perfectly possible for the regulator to set its own fees and collect them directly

41. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 8, Paragraph 8.1 (p. 1648)

42. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 8, Paragraphs 8.7 and 8.13 (pp. 1649-1650)

43. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 8, Paragraphs 8.5, 8.9, 8.11 and 8.12 (pp. 1649-1650)

44. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 8, Paragraphs 8.2 and 8.3 (p. 1649)

45. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 8, Paragraph 8.6 (p. 1649)

46. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 2, Paragraphs 2.36 and 2.37 (p. 1621)

47. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 7, Paragraph 7.5 (p. 1643)

from its members, taking account of the financial position of the industry.⁴⁸ His pointed criticism about prioritising industry interests echoed similar comments by Sir David Calcutt about the creation of the PCC over 20 years earlier.

COMPARING THE JULY 2012 LORD BLACK PLAN WITH IPSO

Given Leveson's comprehensive rejection of the Black plan, a close analysis of the correspondence between that plan and IPSO is instructive. This analysis represents the first comprehensive comparison between the pre-Leveson industry plan and the industry's own post-Leveson regulator covering most of the UK's national and regional press by circulation.

The broad outline of the plan set out by Lord Black describes five key features:

1. The creation of a new self-regulatory body, under an independent Trust Board, with greater independence from the industry than the PCC and the power to impose fines for particularly serious or systemic failures;
2. A contractual relationship between the regulated body and each of the publishers to provide for medium term commitment to the system;
3. A continuation of the complaints-handling role of the PCC;
4. The creation of a separate arm of the regulator with powers to investigate serious or systemic failures; and
5. The establishment of a new industry funding body to provide financial stability for the regulatory body.⁴⁹

The proposal was submitted in four documents comprising a written submission by Lord Black, draft Articles of Association, draft Regulations and a draft contractual framework.⁵⁰

The five key features and documentation match the general outline of the IPSO system. IPSO's contractual system is set out in the Scheme Membership Agreement between Regulated Entities and the regulator.⁵¹ The new regulatory body – with a standards arm to investigate serious failures, the capacity to impose fines, and a continued complaints-handling and mediation system expanding on the PCC system – are set out in the Articles⁵² and Regulations⁵³ of IPSO. The new funding body – the Regulatory Funding Company (RFC)⁵⁴ – was established in parallel, with its own Articles of Association.⁵⁵

This is a broad-brush comparison (and IPSO has more components and functions than the five features

48. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 7, Part 4, Paragraph 4.14 (p. 1761)

49. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 2, Part 2, Paragraph 2.1 (p. 1596)

50. Leveson Inquiry (2012) 'Evidence - witness: Lord Black,' [levesoninquiry.org.uk: https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black](https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black)

51. IPSO (2019) Scheme Membership Agreement, [ipso.co.uk: https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf](https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf)

52. IPSO (2019) *Articles of Association*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1814/ipso-articles-of-association-2019.pdf>

53. IPSO (2019) *Regulations*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1815/ipso-regulations-2019-v-sep19.pdf>

54. Regulatory Funding Company (n.d.) 'Homepage,' [regulatoryfunding.co.uk: http://www.regulatoryfunding.co.uk/](http://www.regulatoryfunding.co.uk/)

55. Regulatory Funding Company (n.d.) *Articles of Association*, London: Regulatory Funding Company: http://www.regulatoryfunding.co.uk/write/MediaUploads/15840651-v1-final_rfc_articles.pdf

listed above), but the Leveson Report lists details of the system and discusses them in full.⁵⁶ As Appendix 1 of this report shows, the Leveson Report considers 84 separate components⁵⁷ of the Black plan, broken down into seven sections:

- Governance and Structures (24 components)
- Complaints (15 components)
- Standards and Compliance (33 components)
- Potential for Growth (1 component)
- Funding (3 components)
- The Code and the Code Committee (1 component)
- The Industry Funding Body (7 components)

APPENDIX 1 contains full details of each component, the paragraphs in the Leveson Report in which they were considered, and their presence in the IPSO system alongside the articles in the IPSO documentation that demonstrate their inclusion. It also lists whether and where the components were ultimately incorporated into the Leveson recommendations or specifically rejected. Table 1 condenses the content of Appendix 1 **and shows that out of the 84 components of the Black plan assessed by Leveson in his critique, 63 are included in the current IPSO system.**

Section	No. of Components	Included in IPSO	Incorporated into Leveson Recommendations	Rejected by Leveson
Governance and Structures	24	19	7	15
Complaints	15	11	1	4
Standards and Compliance	33	23	7	11
Potential for Growth	1	1	1	0
Funding	3	2	0	2
The Code and the Code Committee	1	1	0	1
The Industry Funding Body	7	6	0	7
Overall	84	63 (75%)	16 (19%)	40 (48%)

Table 1: Lord Black Plan Components in IPSO and Leveson (figures do not sum to total number of components because Leveson did not incorporate or explicitly reject all components. See appendix for details)

56. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 2, pp. 1595-1613

57. Excluding duplicated aspects of the system due to the section summarising the powers of the proposed funding body (pp. 1610-1611) and excluding incentives to membership due to their speculative and untested nature in July 2012 (though ultimately the 'kite mark' incentive was incorporated into both the Leveson recommendations and IPSO).

The direct link between IPSO and the Black plan is confirmed by the use of identical language in parts of both documents. The stated objects of the new regulator proposed by Lord Black in his evidence to Leveson read:

The objects of the Company are to carry on activities which benefit the community and in particular to promote and uphold the highest professional standards of journalism in the United Kingdom, the Channel Islands and the Isle of Man, including by [...] having regard at all times to the importance in a democratic society of freedom of expression and the public's right to know.⁵⁸

This was rejected by Leveson for its focus on industry interests and the absence of any reference to the rights of individuals or the public interest beyond freedom of expression.⁵⁹ However, the statement of IPSO's objects outlined in Article 5 of its Articles of Association reads:

The objects of the Company are to carry on activities which benefit the community and in particular to promote and uphold the highest professional standards of journalism in the United Kingdom, the Channel Islands and the Isle of Man, having regard at all times to the importance in a democratic society of freedom of expression and the public's right to know.⁶⁰

In Annex A of the IPSO Regulations, the clauses setting out the obligatory content to be included by regulated entities in their annual statements match those in Lord Black's proposed plan as reviewed by the Leveson Report.⁶¹ Specific figures, such as the £1,000,000 or 1% of turnover cap for fines and the £100,000 fund for investigations (rejected by Leveson for being insufficient) are replicated in the IPSO system, as are passages of text from Lord Black's submitted proposals⁶² and IPSO's governance documents.⁶³

As Table 1 shows, Leveson accepted just 16 of the 84 components in the Black plan. Of those 16, only 13 were included in the final iteration of IPSO after three components were removed prior to IPSO's launch. In all three cases, removal weakened the powers of the regulator or the obligations of its members. Two relate to a last-minute industry decision to substitute the phrase 'serious *and* systemic' for the original 'serious *or* systemic' in the definition of a systemic failure (a major shift whose implications are explored in Part 2 of this report). The third reduced the obligation for a named compliance officer from every title to every publisher.⁶⁴

58. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 2, Part 2, Paragraph 3.2 (p. 1597)

59. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 3, Part 4, Paragraph 4.7 (p. 1626)

60. IPSO (2019) *Articles of Association*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1814/ipso-articles-of-association-2019.pdf> (Article 5, p1)

61. *Leveson Report Volume IV*, Part K, Chapter 2, Part 5, Paragraph 5.3 (p. 1604). A revision of IPSO's Regulations in September 2019 removed several of the obligations that had been present in the 2013 and 2016 iterations of the IPSO regulations. The Black Plan content was largely replicated in the 2013 and 2016 documents and some remain in the weakened 2019 Annex A: <http://mediastandardstrust.org/wp-content/uploads/2019/10/MST-IPSO-2019-Final-Version.pdf> (Part 3, pp. 5-7)

62. Leveson Inquiry (2012) 'Evidence – witness: Lord Black,' [levesoninquiry.org.uk: https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black](https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black)

63. IPSO (n.d.) 'What we do,' [ipso.co.uk: https://www.ipso.co.uk/what-we-do/](https://www.ipso.co.uk/what-we-do/)

64. IPSO (2019) *Scheme Membership Agreement*, ipso.co.uk: <https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf> Clause 3.3.9

While the IPSO system essentially follows the Black plan, it does include some concessions to the Leveson Report. Some appointment processes have been amended to reduce the direct influence of the industry through the new funding body (the RFC in the IPSO system, the Industry Funding Body in Lord Black's proposal), while the Complaints Committee no longer contains serving editors – a provision rejected explicitly by Leveson.⁶⁵

In several cases, however, these concessions do not lead to IPSO satisfying the Leveson recommendations in full. As noted above, the MST analysis demonstrated that IPSO fails 25 of Leveson's recommendations and passes just 13. A closer analysis of those 13 shows that most were in fact elements of the Black Plan that Leveson endorsed and incorporated, rather than outright concessions by the industry to Leveson.

Table 2 (**overleaf**) shows the Leveson recommendations that IPSO satisfies and their relation to the Black plan. Overall, 7 of the 13 relate to components already included in the Black plan and accepted by Leveson, and one – relating to the inclusion of a whistleblowing hotline – was suggested to Leveson by the then Chair of the Press Complaints Commission, Lord Hunt.⁶⁶

This analysis further underlines our conclusion that the creation of IPSO was informed considerably more by the ready-made plan set out by Lord Black than by industry accommodation of Leveson's recommendations. It shows that even the modest extent to which IPSO satisfies the recommendations set out in the Leveson Report is undermined by the knowledge that this accommodation involved very few amendments to the industry's pre-Leveson plan.

65. IPSO (2019) *Articles of Association*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1814/ipso-articles-of-association-2019.pdf> (Article 22.5)

66. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf, Part K, Chapter 2, Part 3, Paragraph 3.14 (p. 1600)

Leveson Rec	Recommendation Description	Originally in Black Plan
10	Internal complaint-handling mechanisms to be put in place by members for initial consideration of complaints prior to escalation to Regulator	Yes (Paragraph 4.2, p1601 of Leveson Report)
12	Decisions on complaints ultimately to be the responsibility of the Regulator's Board rather than the Complaints Committee	No
13	No serving editors to be members of the Complaints Committee and the Committee composition should have a majority of independent members	No
14	It should be the case that complainants are free to bring complaints free of charge	Yes (Paragraph 7.1, p1609)
17	The Regulator's Board should have no powers to prevent publication of any material, by anyone, at any time	Yes (No pre-publication powers set out in Lord Black submitted documents) ⁶⁷
23	A new system of regulation should not be considered effective if it does not cover all significant news publishers	Yes (Paragraph 3.4, p1598)
35	A new regulatory body should consider establishing a kite mark for use by members to establish a recognised brand of trusted journalism	Yes (Paragraph 10.1, p1611)
37	A regulatory body should be prepared to allow a complaint to be brought prior to commencing legal proceedings if so advised	Yes (Paragraph 5.13, p1635)
40	A new regulatory body should continue to provide advice to the public in relation to issues concerning the press and the code, with a service to warn the press	No
41	A new regulatory body should make it clear that newspapers will be held strictly accountable for any material that they publish, including photographs	No
44	A new regulatory body should consider whether it might provide an advisory service to editors on consideration of the public interest in taking particular actions	Yes (Paragraph 17 of the third witness statement of Lord Black) ⁶⁸
46	A regulatory body should establish a whistleblowing hotline for those who feel they are being asked to do things which are contrary to the code	No, but included in Leveson on suggestion of PCC Chair Lord Hunt
47	Members should include a clause in employment contracts preventing journalists being disciplined for refusing to act in a manner contrary to the code	No

Table 2: IPSO, the Black plan, and the satisfaction of Leveson's Recommendations

67. Leveson Inquiry (2012) 'Evidence - witness: Lord Black,' levesoninquiry.org.uk: <https://web.archive.org/web/20130513074900/http://www.levesoninquiry.org.uk:80/evidence/?witness=lord-black>

68. Third Witness Statement of Lord Black of Brentwood (9 July 2012). Available at: <https://web.archive.org/web/20121122192823/http://www.levesoninquiry.org.uk/evidence/?witness=lord-black> (p. 8)

SUMMARY: REPEATING THE CYCLE BY EVADING REFORM

The newspaper industry's response to the Leveson Inquiry was not – as with previous public interventions following systemic failures in press self-regulation – an exercise in cherry-picking and selective reform. Instead, the industry itself produced a new system months before any public recommendations, based entirely on internal consultations between personnel involved in the failed PCC/PressBoF system and the industry itself. In the end, it effectively ignored the judicial inquiry in favour of its own system.

IPSO and the industry's July 2012 draft plan are not exact matches, but the adoption of three-quarters of the industry's plan into the IPSO documentation demonstrates a clear lineage between the two, as does replication of some passages word for word. That some of the provisions in the industry's plan were accepted by Leveson and then subsequently weakened or effectively removed when IPSO's documents were finalised only amplifies the industry's indifference to external reform.

Taken in isolation, the refusal of an industry to accept recommendations for reform in response to a collapse in standards, produced by a large-scale public inquiry and with widespread political and public support, would be troubling. However, the industry's behaviour in acting both as a lobbyist and a propagandist – separately, but with remarkable consistency across multiple companies – raises profound concerns about the democratic role of journalism and the legitimacy of the industry's self-imposed regulator.

In the event of further public interventions in this area – which history suggests are almost inevitable – any commission or inquiry should consider this analysis when engaging with the industry or its regulator. The direct correspondence of the PCC/PressBoF and the IPSO/RFC systems – including many of the same people and the sharing of personnel between both regulatory structures and the industry's trade bodies – suggests a determination by the industry to coordinate efforts and evade any meaningful regulatory reform.

It is perfectly possible that IPSO will perform all of its duties and functions impeccably (though Parts 2 and 3 of this report demonstrate clear deficiencies), and that its staff are diligent in fulfilling their responsibilities. But the nature of IPSO is decided almost entirely by the governance documents that set out its articles, rules and regulations, contractual agreement with its members and relationship with the Regulatory Funding Company. These documents were explicitly created to evade external reforms designed to reduce industry influence over the regulatory system.

Without major structural reform – as advocated by Leveson in his comprehensive rejection of the industry's proposed plan – IPSO cannot be anything other than a body that is, as the second Calcutt Report eloquently described the PCC/PressBoF system in 1993, 'set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.'

PART 2 – ENFORCEMENT: STANDARDS INVESTIGATIONS AND SANCTIONS

KEY POINTS

- A last-minute wording change inserted by the newspaper industry ensures that IPSO has almost no ability to launch a standards investigation or impose financial sanctions.
- IPSO's inability to deploy a credible enforcement function essentially reduces its regulatory powers to that of a complaints-handling body. It does not satisfy the definition of a regulator.
- A series of case studies – on IPSO's response to clear examples of discrimination, inaccuracy and journalistic subterfuge – illustrate its lack of power in enforcing journalistic standards.

STANDARDS INVESTIGATIONS: THE 'SERIOUS AND SYSTEMIC' BARRIER

As indicated in Part 1, the IPSO mechanism for triggering standards investigations means that the chances of an investigation being launched and completed is vanishingly small, and the chance of a member being subjected to financial sanction even more so. The Leveson Report identified the key structural failing of the Press Complaints Commission system to be the fact that the PCC 'was not a regulator as that term is commonly understood' and was 'little more than a complaints-handling body.'⁶⁹ This explained the comprehensive failure of the PCC system, whose capabilities had been misrepresented by the PCC itself and the newspaper industry:

Despite the obvious deficiencies in its constitution and make up, the PCC and PressBoF presented the self-regulatory system as a whole as if it were a regulator. This self-presentation took the form both of explicit assertions and the deliberate adoption of the language of regulation in the description of its functions and powers. The effect of this was two-fold. First, it helped to reinforce the perception that the press was subject to an effective system of regulation [...]. Second, the over-statement of its powers weakened the arguments for reform.⁷⁰

IPSO's ability to monitor and enforce standards among its members is therefore key to assessing whether it can be evaluated as a regulator 'as that term is commonly understood' or whether it remains essentially a complaints-handling body. When the new body was set up, the power to initiate standards investigations and impose financial penalties for serious breaches was loudly proclaimed by the industry to be a substantial

69. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (p. 1541)

70. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report, Volume IV*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf (p. 1542)

improvement on the PCC. Full-page advertisements were published claiming that IPSO would be ‘the toughest [regulator] in the Western world.’⁷¹

In principle, the proposed investigations and sanctions indicated something approaching a genuine regulatory body. The wording of IPSO’s Regulations, however, and its record over six years of operation between 2014 and 2020 suggest that IPSO’s proposed sanctions are purely notional, and that there is only the smallest chance of any investigation being initiated and pursued to completion.

INVESTIGATIONS AND SANCTIONS IN THE IPSO REGULATIONS

IPSO Regulation 53 states that the Regulator may require that a Standards Investigation take place if one or more of the following criteria are met:

- 53.1:** Where the Regulator reasonably considers that there may have been serious and systemic breaches of the Editors’ Code (a **Systemic Failure**) [emphasis in original];
- 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.

Crucially, though, only the first criterion invoking ‘serious and systemic breaches’ can attract financial sanctions. Paragraph 2 of the IPSO Financial Sanctions Guidance specifies that the Regulator has the power to issue fines only if a Regulated Entity has been ‘found to have committed a Systemic Failure (as defined in the Regulations).’⁷² This can therefore only be applied to Regulation 53.1. We address below the separate issue of how IPSO’s unannounced last-minute wording change around ‘serious and systematic’ has seriously prejudiced its ability to launch an investigation.

Aside from 53.1, the other triggers for a Standards Investigation set out in Regulation 53 do not suggest extensive and proactive regulatory powers. Regulation 53.2 allows for an investigation in the event of a failure or multiple failures by a Regulated Entity to comply with the Regulator’s requirements, which should be a minimum expected function of a regulatory body. Regulations 53.3 and 53.5 allow for an investigation on the basis of evidence supplied by external entities (‘legal issues,’ the raising of compliance issues, and statutory authority reports) rather than monitoring by the regulator.

Regulation 53.4 refers to issues of concern raised in annual statements by Regulated Entities. As Part 3 of this report shows, however, it is not clear that the information supplied in annual statements could reveal such issues of concern, for three reasons.

71. Press Association (2014) ‘Publisher-backed Free Speech Network has “misleading” IPSO ad banned by the ASA,’ pressgazette.co.uk, 25 June 2014: <https://pressgazette.co.uk/publisher-backed-free-speech-network-has-misleading-ipso-ad-banned-asa/>

72. IPSO (n.d.) Financial Sanctions Guidance, [ipso.co.uk: https://www.ipso.co.uk/media/1042/financial-sanctions-guidance.docx](https://www.ipso.co.uk/media/1042/financial-sanctions-guidance.docx)

First, Regulated Entities do not supply information on code breaches detected by their internal complaints processes, because this information is not recorded. Second, IPSO members in many cases supply partial or incomplete information on their compliance processes in their annual statements (see Tables 6 and 7 below), and IPSO itself does not supply information on the compliance processes of its members in its own annual reports (Table 3, below). Third, it is not clear what a ‘single incident’ recorded in an annual statement might look like, since the information on breaches of the Editors’ Code recorded by Regulated Entities consists only of a summary of any upheld adjudications by IPSO (by definition, previously dealt with by IPSO).⁷³

THE ORIGIN AND EFFECTS OF ‘SERIOUS AND SYSTEMIC’

The unannounced alteration of IPSO regulations that substantially raised the threshold for a Standards Investigation took place between July and October 2013. No reasoning or justification has ever been offered for the change.

In July 2012, the industry’s proposal submitted during the Leveson Inquiry (see Part 1 above) included the following statement under ‘Powers and remedies’:

[W]here there have been systemic breakdowns in ethical behaviour or internal governance, the Trust Board will be able to levy proportionate fines of up to £1,000,000. [...] The new Regulator will have effective investigatory powers, guaranteed by contracts, to look into **serious or systemic** ethical breakdowns (emphasis added).⁷⁴

This was produced in response to the Leveson Inquiry’s ‘Draft Criteria for an effective Regulatory Regime’ issued in April 2012,⁷⁵ adopted in the Leveson Report’s final recommendations. Recommendations 18 and 19 state:

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.

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 [...] (emphasis added).⁷⁶

Volume IV of the Leveson Report – in which the future of press regulation is considered – contains 19 references to ‘serious or systemic’ breaches, and no references to ‘serious *and* systemic’ breaches. In negotiations following the Leveson Inquiry, multiple iterations of Royal Charters were introduced

73. IPSO Regulations Annex A, Clauses 3.3 and 3.4 – from 2016 version of IPSO Regulations

74. Third Witness Statement of Lord Black of Brentwood (9 July 2012). Available at: <https://web.archive.org/web/20121122192823/http://www.levesoninquiry.org.uk/evidence/?witness=lord-black>

75. Leveson Inquiry (2011) ‘Draft criteria for a Regulatory Decision,’ www.levesoninquiry.org.uk: <https://web.archive.org/web/20121025154253/http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Draft-Criteria-for-a-Regulatory-Solution.pdf>

76. Leveson Inquiry (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Executive Summary*, London: The Stationery Office: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf

as vehicles to implement Leveson's recommendations.⁷⁷ The first full draft Charter published by the Conservative Party in February 2013 refers to investigations and sanctions on the basis of 'serious or systemic' breaches of the code,⁷⁸ as did the Charter produced in April 2013 by newspaper publishers hoping to forestall the Charter that had been agreed in Parliament in the interim.⁷⁹ Those same publishers ultimately set up the IPSO system, which was first announced on 8 July 2013 with 'the power to impose £1m fines for **serious or systemic** wrong-doing (emphasis added).'⁸⁰

Between this initial announcement of IPSO and publication of the first comprehensive documents outlining IPSO's Articles and Regulations on 23 October 2013, this wording was changed to 'serious and systemic' (Regulation 40.1 of IPSO's original Regulations).⁸¹

The substitution of a single word in this instance has a transformative impact on the ability of IPSO to hold its members to account. It substantially raises the threshold for a Standards Investigation, with profound implications for the effectiveness of IPSO as a regulatory body.

At a stroke, the re-worded statement doubles the number of criteria that must be met before IPSO can launch a Standards Investigation. Nowhere in the governance documents of IPSO are the definition of 'serious' or 'systemic' breaches specified. Both concepts are therefore separately contestable by any regulated entity that is the subject of a standards investigation.

It is not clear what would need to occur in order for 'serious and systemic' breaches of the code to be recorded. Short of a comprehensive breakdown of standards there is a degree of mutual exclusivity inherent in the term. A single incident representing a high-profile or well-publicised code breach with implications for public life, for example, is not likely to be defined as 'systemic,' while a consistent pattern of low-level breaches indicating poor observance of aspects of the Editors' Code would be unlikely to be determined as 'serious' breaches.

IPSO has explicitly stated that it sees no difference between the two definitions, claiming in a November 2019 statement that 'IPSO does not agree that there is a significant difference between "serious or systemic" and "serious and systemic": both imply serious wrongdoing at a publisher.'⁸² No evidence was adduced to support this assertion, nor any explanation offered for the original change of wording. IPSO does not acknowledge the manifest consequence that two criteria must now be fulfilled to launch a standards investigation, neither of which are defined in its documentation and each of which is potentially contestable by the subject of a proposed investigation. The net result is that this wording change significantly hampers the regulator's power to be proactive in exercising proper regulatory oversight.

77. Media Standards Trust (2013) 'The Story of Eight Charters,' [mediastandardstrust.org](http://mediastandardstrust.org/mst-news/the-story-of-eight-charters/), 20 June 2013: <http://mediastandardstrust.org/mst-news/the-story-of-eight-charters/>

78. UK Government (2013) Draft Operative Provisions for a Royal Charter: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136347/RC_Draft_Royal_Charter_12_February_2013.pdf (Schedule 3, Clauses 18 and 19)

79. Press Standards Board of Finance(2013) Draft Royal Charter for the Independent Self-Regulation of the Press: <http://privycouncil.independent.gov.uk/wp-content/uploads/2013/05/Press-Standards-Board-of-Finance-Ltd-Petition-and-Draft-Charter.pdf> (Schedule 3, Clauses 18 and 19)

80. Newspaper Society (2013) 'Independent Press Standards Organisation,' newspapersoc.org.uk, 8 July 2013: <https://web.archive.org/web/20130716082254/http://www.newspapersoc.org.uk/08/jul/13/independent-press-standards-organisation>

81. IPSO (2013) *Regulations*: <http://mediastandardstrust.org/wp-content/uploads/2019/10/IPSO-Regulations-Oct-13.pdf>

82. IPSO (2019) 'Response to the Media Standards Trust report,' [ipso.co.uk: https://www.ipso.co.uk/media/1841/response-to-the-media-standards-trust-report.pdf](https://www.ipso.co.uk/media/1841/response-to-the-media-standards-trust-report.pdf)

In practice, IPSO has not instigated a standards investigation in over six years of operation from 2014 to the present, despite several high-profile code breaches involving one or more of its member publications. IPSO's failure in this respect can be illustrated by three case studies. Each one is summarised below, with full details outlined in Appendix 2.

STANDARDS INVESTIGATIONS IN PRACTICE: CASE STUDIES

Case Study 1: Discrimination (Clause 12)

Clause 12 of the Editors' Code states that:

- I. The press must 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.
- II. Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.⁸³

It is clear from IPSO statements and adjudications that it applies this clause only to individuals making complaints about language directed specifically at them, and that it stands aside when its members use inflammatory language about groups of people. As IPSO itself acknowledges, 'stories that criticise groups or report them in a bad light' can have an impact upon those groups and on society as a whole, but – short of hate crime legislation – there is no avenue of redress for those groups.⁸⁴

In April 2015, the *Sun* published an opinion piece by Katie Hopkins in which – among other things – she described migrants as 'cockroaches' and 'a plague of feral humans,' advocating the use of military gunships to stop them.⁸⁵ The article led to over 400 complaints to IPSO and a petition calling for Hopkins' column to be removed by the *Sun* which attracted over 300,000 signatures;⁸⁶ it also provoked a response from the UN Human Rights Commissioner, who cited 'anti-foreigner abuse' and 'incitement to hatred' in the British press as an area of concern.⁸⁷ IPSO rejected all complaints about the article on the grounds of Clause 12 (Discrimination) and investigated one complaint on the grounds of Clause 1 (Accuracy). The ruling noted that the article could not have been in breach of Clause 12 of the code because no identifiable individual was criticised.⁸⁸

IPSO is powerless to change its own code, because the Editors' Code is controlled by the Regulatory Funding Company.⁸⁹ This was underlined by IPSO's then Chair, Sir Alan Moses, in June 2016, when he acknowledged

83. Editors' Code of Practice Committee (2021) 'The Code in Full,' editorscode.org.uk: https://www.editorscode.org.uk/the_code.php

84. Buckingham, John (2018) 'IPSO Blog: How Clause 12 (Discrimination) works,' ipso.co.uk, 16 March 2018: <https://www.ipso.co.uk/news-press-releases/blog/ipso-blog-how-clause-12-discrimination-works/>

85. Osborne, Simon (2015) 'Katie Hopkins has just written a piece so hateful that it might give Hitler pause - why was it published?' independent.co.uk, 20 April 2015: <https://www.independent.co.uk/voices/katie-hopkins-when-is-enough-enough-10186490.html>

86. Change.org (n.d.) 'Remove Katie Hopkins as a Columnist': <https://www.change.org/p/the-sun-newspaper-remove-katie-hopkins-as-a-columnist>

87. BBC (2015) 'Tackle tabloid "hate speech", UN commissioner urges UK,' bbc.com, 24 April 2015: <https://www.bbc.com/news/uk-32446673>

88. IPSO (2015) '02741-15 Greer v The Sun,' ipso.co.uk, 20 July 2015: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02741-15>

89. Under the IPSO system, the code is the property of the Editors' Code of Practice Committee, a subcommittee of the Regulatory Funding Company (IPSO Articles, Schedule 1.23). Amendments to the code can be proposed only by the code of Practice Committee, of which 10 of 15 members represent publishers, three are independent lay members, and

that he was unable to exert influence on the Editors' Code Committee in relation to Katie Hopkins' comments, a situation that 'seemed ... absolutely to demonstrate a certain impotence in regulation.'⁹⁰

Another high-profile discrimination case arose with a column on 18 July 2016 by the *Sun* columnist and former editor Kelvin MacKenzie criticising *Channel 4 News* for having Muslim presenter Fatima Manji present a report on a terrorist attack in France while wearing a hijab. The column prompted over 2,000 complaints to IPSO, including one from Manji herself, as well as criticism from Channel 4 News and the National Union of Journalists.⁹¹ IPSO rejected the complaints, arguing that while the article did mention the complainant as an individual, the reference was relevant and a legitimate expression of the author's opinion.

At the time of writing, the complaints statistics page on the IPSO website has been disabled.⁹² Prior to its removal, the searchable database indicated the extent to which Clause 12 lies almost outside the regulator's powers. An analysis in September 2019 found that, of 16,317 complaints received by the regulator between October 2014 and December 2018⁹³ in which Clause 12 was raised, only two were upheld.⁹⁴ Over half (8,605) were deemed to be outside the regulator's remit, and a further 6,807 were rejected. Overall, therefore, almost 95% of all Clause 12 complaints were not considered by the regulator at all (a further 768 were not pursued by the complainant). For comparison, of complaints citing Clause 1 (Accuracy), around 80% of 22,723 complaints were not considered and just under 1% were upheld.⁹⁵

In response to an open letter from a combination of Parliamentarians, civil society groups and public figures criticising 'racist and faith-based attacks against communities,'⁹⁶ IPSO's Chair confirmed that IPSO's role is confined to recording breaches of the Editors' Code.⁹⁷ **His statement effectively acknowledged that, as the code is currently written, it is almost impossible for members of IPSO to breach Clause 12 without publishing discriminatory information about a named individual who then brings a complaint personally to IPSO.** In the meantime, IPSO can neither change the code despite

the remaining two places are reserved for the Chair and Chief Executive of IPSO (https://www.editorscode.org.uk/about_us.php). The regulator therefore has only minimal control over any amendments to the code. In the event of a proposed code amendment, the Regulatory Funding Company has the power to veto the amendment (Article 10.11) and the publisher members of IPSO can reject the amendments following a vote (Article 10.11.2).

90. The Media Society (2016) 'Sir Alan Moses, IPSO Chair at Media Society Summer Drinks,' <https://soundcloud.com/user-932454463/sir-alan-moses-ipso-chair-at-media-society-summer-drinks> (13:36–14:43)
91. Plunkett, John (2016) 'Katie Hopkins' migrants column was in bad taste – but IPSO doesn't cover that,' [theguardian.co.uk](https://www.theguardian.com/media/2016/jul/28/katie-hopkins-migrants-ipso-sun-cockroaches), 28 July 2016: <https://www.theguardian.com/media/2016/jul/28/katie-hopkins-migrants-ipso-sun-cockroaches>
92. IPSO (n.d.) 'Complaints Statistics,' [ipso.co.uk](https://www.ipso.co.uk/rulings-and-resolution-statements/complaints-statistics/): <https://www.ipso.co.uk/rulings-and-resolution-statements/complaints-statistics/> (accessed 16 May 2021); information on rulings continues to be available.
93. IPSO's statistics for 2019 at that time appeared to be incomplete, recording only 11 complaints including Clause 12 between January and July.
94. IPSO (2015) '00572-15 Trans Media Watch v The Sun,' [ipso.co.uk](https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15), 5 May 2015: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15>; IPSO (2018) '18685-17 Evans v The Argus (Brighton),' [ipso.co.uk](https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=18685-17), 12 January 2018: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=18685-17>
95. The inclusion of multiple cited clauses in IPSO complaints means that it is difficult to clarify where Clause 12 in isolation was unsuccessful, but of the 20 upheld complaints between 2014 and 2019 of which Clause 12 was part of the complaint, in all but one of the cases (mentioned above) the part of the complaint about Clause 12 was not upheld (Retrieved from IPSO rulings (<https://www.ipso.co.uk/rulings-and-resolution-statements/>), search parameters: all upheld complaints from October 2014 to July 2019 including 'Clause 12' in code provisions).
96. Hacked Off (n.d.) 'Demand IPSO protect targeted groups against press discrimination,' [hackinginquiry.org](https://web.archive.org/web/20200511224528/https://hackinginquiry.eaction.org.uk/discrimination-ipso): <https://web.archive.org/web/20200511224528/https://hackinginquiry.eaction.org.uk/discrimination-ipso>
97. Walker, James (2019) 'Senior politicians accuse UK press regulator of "turning a blind eye" to racism in the media,' [pressgazette.co.uk](https://www.pressgazette.co.uk/senior-politicians-accuse-uk-press-regulator-of-turning-a-blind-eye-to-racism-in-the-media/), 28 February 2019: <https://www.pressgazette.co.uk/senior-politicians-accuse-uk-press-regulator-of-turning-a-blind-eye-to-racism-in-the-media/>

its own stated reservations, nor record the breaches of the code that would be necessary to launch an investigation on the grounds of ‘serious and systemic’ breaches in this area.

Case Study 2: Accuracy and *The Times* ‘Muslim foster care’ story

This high profile 2017 story attracted two external analyses in 2019 – by former journalists Brian Cathcart and Paddy French,⁹⁸ and by BBC journalists in Radio 4’s 11 October episode of *The Corrections*.⁹⁹

Both alleged serious shortcomings in newsgathering procedures and reporting by *The Times* over a series of stories about the placing of a child in foster care by Tower Hamlets Borough Council. The story gained nationwide prominence and details were repeated by multiple IPSO members. The prominence of the story, the subject matter, and the allegations of systemic flaws in the fact-gathering process should have made this story a legitimate and appropriate focus for investigation by a regulatory body tasked with policing standards.

Details are given in Appendix 2, but both investigations found that a series of facts available to the journalist but omitted from the story undermined the story’s central focus and resulted in a misleading headline and report. These included the facts that the child was considered to be in immediate danger when taken into care by the police; that the child’s mother had alcohol and substance abuse issues; that the child’s court-appointed guardian had reported that the child was ‘well cared for’; and that, to the satisfaction of all parties, arrangements were in hand for the girl to live with her maternal grandmother, who was Muslim.

IPSO handled one complaint from Tower Hamlets Borough Council in relation to a follow-on story published by *The Times* on 30 August 2017, but did not consider any of the more than 250 substantive complaints about inaccuracies in the original 28 August story. In reply to Cathcart and French, IPSO said: ‘Without the involvement of an individual in the position to know the facts of this case, we considered that it would be difficult to effectively investigate the alleged inaccuracies.’¹⁰⁰

Serious allegations of inaccuracy from two forensic and independent analyses in such a high-profile and emotive case would surely dictate a Standards Investigation from an effective regulator. But the terms of IPSO’s Regulation 53 relating to serious *and* systemic breaches would have rendered such an investigation virtually impossible.

Case Study 3: Subterfuge and IPSO’s quasi-investigation

On 27 September 2014 a Conservative government minister, Brooks Newmark, pre-emptively resigned before publication the following day of a story outlining inappropriate behaviour towards a supposed young Conservative activist via private messages on social media.¹⁰¹ It quickly transpired that the story,

98. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf

99. BBC Radio 4 (2019) *The Corrections – The Carbonara Case*, 11 October 2019: <https://www.bbc.co.uk/programmes/m000950v>

100. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf (page 53)

101. Moss, Vincent and Matthew Drake (2014) ‘Tory minister Brooks Newmark quits over sex scandal,’ *mirror.co.uk*, 27 September 2014: <https://www.mirror.co.uk/news/uk-news/tory-minister-brooks-newmark-quits-4335398>

written by a journalist acting in a freelance capacity and published by the *Sunday Mirror*, was the result of a months-long investigation in which multiple Conservative or former Conservative MPs had been targeted by the (male) journalist using a fake social media account to pose as a young female Conservative activist, using images of real women without their permission.¹⁰²

The journalist engaged in text conversations with Newmark over an extended period, culminating in an exchange of sexually explicit images. This exchange formed the basis of the story, and prompted Newmark's resignation. Another MP also targeted as part of the investigation, Mark Pritchard, complained to IPSO alleging a breach of Clause 10 of the Editors' Code.¹⁰³ The relevant part of Clause 10 states that 'Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.'¹⁰⁴ A finding that the investigation was a 'fishing expedition,' as alleged in Pritchard's complaint (in other words, that it was speculative and not based on information), would have constituted a breach of the code. A number of other concerns were raised about the story, detailed in Appendix 2.

The *Sunday Mirror* quickly reached a confidential settlement with Pritchard, which involved a donation to charity and closure of his complaint to IPSO.¹⁰⁵ As a result, IPSO has no record of the nature of the (withdrawn) complaint.

Despite the withdrawal of the complaint, IPSO decided to proceed with a semi-official inquiry. It did not invoke any of the Regulation 53 clauses, almost certainly because the issue in question did not meet the very high threshold for a formal investigation – particularly when there was no formal complaint on which to adjudicate. Instead, it launched an ad hoc inquiry that was retroactively legitimised by a revision to its regulations two years later.¹⁰⁶ Given this inquiry's lack of formal status, in the event of IPSO finding the *Sunday Mirror* guilty of a code breach, it would have had no powers to sanction the publication.

In fact, IPSO found that the *Sunday Mirror* was justified in using subterfuge and that publication was in the public interest.¹⁰⁷ Both the ruling itself and the conduct of its investigation raised a number of issues, not least the fact that the *Sunday Mirror* provided incomplete information on its newsgathering process, and that at least two other newspapers (the *Sun* and the *Mail on Sunday*) had rejected the story.

102. Waterson, Jim and Alan White (2014) 'Swedish model upset after her Instagram selfie was used by *Sunday Mirror* to bring down Brooks Newmark,' *buzzfeed.com*, 27 September 2014: <https://www.buzzfeed.com/jimwaterson/brooks-newmark-resignation#36cp4wh>

103. Patrick Wintour, Alexandra Topping and Josh Halliday (2014) 'MP refers *Sunday Mirror* to police and press regulator over sex sting,' *theguardian.co.uk*, 29 September 2014 : <https://www.theguardian.com/politics/2014/sep/29/sunday-mirror-complaint-ipso-press-regulator-sex-sting>

104. Editors' Code of Practice Committee (2021) 'The Code in full,' *editorscode.org.uk*: <https://www.editorscode.org.uk/the-code.php>

105. Greenslade, Roy (2014) 'Why did the *Sunday Mirror* settle with Tory MP who complained to IPSO,' *theguardian.co.uk*, 22 October 2014: <https://www.theguardian.com/media/greenslade/2014/oct/22/sundaymirror-ipso>

106. IPSO (2016) 'IPSO announces new rules and regulations,' *ipso.co.uk*: <https://www.ipso.co.uk/news-press-releases/press-releases/ipso-announces-new-rules-and-regulations/> 'IPSO now has the explicit power – in appropriate circumstances – to investigate in the absence of a complain [sic]'

107. Julian, Vikki (2015) 'Brooks Newmark *Sunday Mirror* case: IPSO decision,' *ipso.co.uk*, 26 March 2015: <https://www.ipso.co.uk/news-press-releases/news/brooks-newmark-sunday-mirror-case-ipso-decision/>

Whatever the outcome, it was clear that IPSO was forced to finesse its own rules in order to mount any kind of inquiry, and that the power invested in it by Section 53 remains ineffectual. **If any further evidence were needed, the lack of a single Standards Investigation throughout IPSO's history illustrates the impotence of its powers in this area.**

SUMMARY: COSMETIC CHANGE WITH SERIOUS IMPLICATIONS

The addition of investigatory and monitoring functions and the ability to impose meaningful sanctions were key to ensuring that, post-Leveson, the UK public would have recourse to a genuine regulator rather than an ineffectual complaints-handling regime of the kind operated by the Press Complaints Commission. The Leveson Report deemed such powers to be essential to the definition of 'an independent self-regulatory body.'

Ostensibly, the IPSO framework provides for such powers. However, on proper examination, it is clear that the Regulatory Articles are drafted in such a way as to reduce such powers to the point that they become almost worthless. It remains unclear why representatives of IPSO, in public statements that in many ways echo those of the Press Complaints Commission, defend those parts of its constitutional documents that significantly limit its own powers.¹⁰⁸ **The 'serious and systemic' formulation inserted at the last minute into IPSO's regulations by industry representatives significantly raises the bar by which an investigation may be proactively launched, and thus weakens a core regulatory function.**

It is still possible for the 'serious and systemic' definition to be tested but – as the case studies outlined here demonstrate – even in very high-profile cases IPSO either lacks the ability to intervene (as with discrimination) or has elected not to do so even when presented with significant evidence of potential wrongdoing. Whether its inaction is due to an intentionally high bar imposed by the industry when drafting IPSO's regulations, or to institutional resistance by IPSO itself, a power that remains unused whatever the circumstances is as redundant as a power that cannot be invoked. Both outcomes suggest that IPSO in its current form cannot call itself 'a regulator as that term is commonly understood.' It is in that respect virtually no different from the discredited PCC.

108. IPSO (2019) 'Response to the Media Standards Trust report,' ipso.co.uk: <https://www.ipso.co.uk/media/1841/response-to-the-media-standards-trust-report.pdf>

PART 3 – MONITORING, COMPLAINTS-HANDLING AND TRANSPARENCY

KEY POINTS

- IPSO does not record code breaches in members' internal complaints processes; it therefore cannot effectively monitor compliance with the Editors' Code.
- There are significant problems in how IPSO's complaints-handling balances interests of members against those of complainants.
- IPSO's annual reports do not fully satisfy their own regulations: they fail to include information on the adequacy and effectiveness of members' compliance processes.
- Several IPSO members – including one of the largest local publishers – do not supply sufficient information on their websites for members of the public to make an informed complaint.
- Published annual statements by IPSO members fail to satisfy regulatory obligations, despite IPSO acknowledging that reform in this area was needed.

A vital characteristic of any effective regulator is that it has access to accurate and relevant data on whether regulated entities are abiding by agreed codes of conduct, and that it provides rigorous and transparent information on its own regulatory performance and that of the publishers it regulates. On both counts, IPSO falls short. This section looks first at IPSO's ability to perform an adequate monitoring and complaints-handling role; and then at how member publishers and IPSO itself perform on issues of transparency and public access to relevant information.

MONITORING AND COMPLAINTS-HANDLING

Regulation 5 of the IPSO Regulations sets out the primary functions of the Regulator as:

- Handling complaints about breaches of the Editors' Code (Regulation 5.1); and
- Monitoring and investigating issues of standards and compliance with the Editors' Code (Regulation 5.2).

There are therefore two components of the IPSO complaints-handling process to be evaluated: the effectiveness of IPSO's decision-making processes when assessing potential breaches of its code; and to what extent it is able to record sufficient information for its monitoring role, in particular whether there may be significant gaps in its record of probable breaches of its code. These are covered here in reverse order.

SERIOUS GAPS IN COMPLAINTS MONITORING

There are two obstacles to IPSO's ability to perform an adequate monitoring function. First, there is no detailed record of complaints made to Regulated Entities, and therefore no means of assessing potential code breaches before complaints are resolved or not pursued. Second, IPSO's Regulations allow for a number of exemptions by which complaints escalated to the regulator are not recorded as having breached the code. Each of these is dealt with in turn.

Failure to Record Code Breaches in Regulated Entities' Internal Complaints-Handling

As recommended by the Leveson report, complainants must first go through a member publication's internal complaints process; IPSO is only engaged if, once that internal process has been exhausted, the complainant remains unsatisfied.

However, IPSO does not require members to record or publish any information on their own internal complaints statistics; nor does it publish an annual summary of internal compliance systems (this is covered in more detail below). As a result, it is difficult to see how IPSO can effectively monitor compliance with the Editors' Code or identify where there might be potentially serious standards issues.

A good example is Associated Newspapers' 2019 annual statement. Under the paragraph 'Details of other incidents' the publisher states:

Any complaints which arrive outside the IPSO system are normally settled without admission of liability. Although they are investigated internally, they do not go through an independent process of investigation and adjudication, so it would be unfair to both the complainants and the journalists involved to offer a view on whether there was a breach of the Code in individual cases. In addition some complainants choose not to use the services of IPSO because they prefer to resolve their complaint with us privately, and we must respect that.¹⁰⁹

Thus, if complaints are resolved or abandoned before being escalated to IPSO, there is no mechanism by which actual or potential code breaches can be recorded and IPSO has no power to compel members to keep such a record, even on a confidential basis. **This removal of potentially thousands of complaints from regulatory scrutiny actually represents a reduction in regulatory powers compared to the old PCC; it creates an entire tranche of complaints alleging possible code breaches about which the regulator has no knowledge.** As we illustrate in more detail below, it means that IPSO cannot provide information on the internal compliance processes of its members.

Disregarding Code Breaches in the IPSO Complaints Process

As well as being unable to monitor complaints and potential code breaches by member publishers, IPSO's own complaints-handling process provides a number of exemptions which excuse it from recording a code breach even if one has taken place.

¹⁰⁹. Associated Newspapers (2019) Annual statement to the Independent Press Standards Organisation 2019, ipso.co.uk: https://www.ipso.co.uk/media/1877/associated-newspapers-annual-statement-2019_for-pub.pdf (p. 9)

IPSO Regulation 52.2 (on the complaints statistics to be published by the regulator as part of its annual reports) sets out the following criteria by which complaints will not be regarded as substantive and will therefore be excluded from any records:

- [Those which] are not pursued by the complainant;
- Are rejected under Regulation 12 [having been deemed not to fall under the Regulator's remit or not to disclose a possible breach of the Editors' Code];
- 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
- Are considered closed under Regulation 40 by the Regulator or Complaints Committee following an offer by the Regulated Entity of a remedial measure.

Regulation 40 reads as follows:

If a Regulated Entity offers a remedial measure to a complainant which the Regulator or, if applicable, the Complaints Committee considers to be a satisfactory resolution of the complaint, but such measure is rejected by the complainant, the Regulator or, if applicable, the Complaints Committee shall notify the complainant of the same and that, subject to fulfilment of the offer by the Regulated Entity, it considers the complaint to be closed and a summary of the outcome shall be published on the Regulator's website.

In practice, therefore, Regulation 40 allows IPSO to close a complaint without recording a code breach **even if one has taken place, and even when the complainant has not accepted an offer of resolution by the publisher.**

While there may be legitimate reasons for not including data on complaints that were voluntarily dropped or deemed to be outside the code, there is no good reason to exclude complaints on the second two criteria of Regulation 52.2 where clear breaches of the code have occurred. Combined with IPSO's inability to collect reliable data on complaints first submitted to publishers and dealt with internally, it is difficult to see how the public can have any faith in its ability to monitor industry compliance effectively.

IPSO'S COMPLAINTS-HANDLING

There are also concerns about IPSO's apparent inclination to side with publishers over complainants, first raised in a 2015 Hacked Off report which looked at a number of cases in IPSO's first year of operation.¹¹⁰ Similar concerns have been raised since, and three examples are presented in Appendix 6. Each of these is summarised briefly below:

- **BELCHER V THE TIMES (APRIL 2019).**¹¹¹ IPSO concluded that a quote manufactured by a publisher did not break its code on accuracy because it represented a 'summation' of the journalist's interpretation of advice by activists.

^{110.} Hacked Off (2015) The Failure of IPSO: <https://hackinginquiry.org/wp-content/uploads/2017/09/the-failure-of-IPSO.pdf>

^{111.} IPSO (2019) '07454-18 Belcher v The *Times*,' ipso.co.uk, 15 March 2019: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07454-18>

- **TOWER HAMLETS BOROUGH COUNCIL V THE TIMES (APRIL 2018).**¹¹² Although accepting that the main thrust of a story about the Borough's placement of a child into foster care was distorted, IPSO accepted the newspaper's case that highly relevant information was omitted to avoid identification of a child. Subsequent investigations which exposed the report's inaccuracy have corrected the record without compromising the child's identity.
- **PREVENT WATCH V SUNDAY TELEGRAPH (JULY 2016).**¹¹³ IPSO dismissed all complaints of inaccuracy by a group identified by the newspaper as 'Muslim extremists' and which described two named individuals as Islamist activists. In a subsequent libel case, one of the named individuals received financial damages and an apology from the *Telegraph* for the article's inaccuracy.

TRANSPARENCY

TRANSPARENCY IN IPSO

Annual Reports

IPSO is obliged to publish an annual report with information as outlined in Regulation 52 (below).

Regulation 52 largely transcribes recommendation 21 of the Leveson Report, with some minor changes to wording and the addition of exemptions for recording complaints.

While for the most part IPSO fulfils the obligations set out in its own Regulations, in one significant respect it does not. Regulation 52 sets out nine separate areas that IPSO is obliged to cover in its Annual Reports:

1. Identity of Regulated Entities
2. Significant change in the number of Regulated Entities
3. Number of articles in relation to which the Regulator has handled substantive complaints
4. The outcomes reached in aggregate for all the Regulated Entities
5. The outcomes in relation to each Regulated Entity
6. Summary of any Standards Investigations carried out
7. The outcomes of such investigations
8. Report on the adequacy and effectiveness of Regulated Entities' compliance processes
9. Information about the Arbitration Service, including the extent to which it has been used

Excluding numbers 6 and 7 relating to Standards Investigations (since there have been none), this leaves seven areas. Table 3 below shows the extent to which each of the five Annual Reports available at the time of writing covers each one.¹¹⁴ In four out of seven areas IPSO does provide the necessary information,

112. IPSO (2018) '20480-17 Tower Hamlets Borough Council v The *Times*,' ipso.co.uk, 5 April 2018: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=20480-17>

113. IPSO (2016) '00615-16 Prevent Watch v The *Sunday Telegraph*,' ipso.co.uk, 15 July 2016: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00615-16>

114. A detailed breakdown of information used to determine whether or not each Annual Report fulfilled these obligations is included in Appendix 4.

REGULATION 52

- 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*, that is, where IPSO determines that a complaint is either outside its remit or does not represent a possible breach of the Editors' Code;
 - 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 [giving IPSO the power to consider such complaints closed]; or
 - 52.2.4.** Are considered closed under Regulation 40 [where IPSO's Complaints Committee can consider a complaint closed when the remedial measure offered to a complainant by a Regulated Entity is deemed to be acceptable by IPSO, even if rejected by the complainant] 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.

* Regulation 12 reads: 'Subject to Regulation 11 [which sets the time limit after publication of an article within which a complaint about that article can be accepted], on receipt of a complaint, the Regulator shall review the complaint to ensure that (a) it falls within the Regulator's remit; and (b) discloses a possible breach of the Editors' Code. If the Regulator is not satisfied that the complaint should proceed, it shall write to the complainant to explain why and shall reject the complaint. A complainant can ask the Regulator to review any rejection decision, but must make this request within 7 days of receiving written confirmation of rejection. The Regulator may re-open the complaint following such review.'

where applicable. Significant changes in membership were not relevant until 2019 when several additional members joined IPSO.

IPSO supplies information on identities of Regulated Entities each year, but there are discrepancies between the publishers listed in IPSO's Annual Reports and the list of annual statements published by IPSO each year. Thus, IPSO's information in this case is not fully accurate.

This leaves one important area where none of the IPSO Annual Reports has yet contained any substantive information: the adequacy and effectiveness of publishers' compliance processes. In this respect IPSO's Annual Reports have not been compliant with its own Regulations.

	ANNUAL REPORT YEAR				
Regulation 52 Component	2015 ¹¹⁵	2016 ¹¹⁶	2017 ¹¹⁷	2018 ¹¹⁸	2019 ¹¹⁹
Identity of Regulated Entities (REs)	Yes	Discrepancy between publishers and annual statements	Discrepancy between publishers and annual statements	Discrepancy between publishers and annual statements ¹²⁰	Discrepancy between publishers and annual statements ¹²¹
Significant change in the number of REs	N/A	N/A	N/A	N/A	Yes (reports nine additional members)
No. of articles where IPSO has handled complaints	Yes	Yes	Yes	Yes	Yes
The outcomes reached in aggregate for all REs	Yes	Yes	Yes	Yes	Yes
The outcomes in relation to each RE	Yes	Yes	Yes	Yes	Yes
Report on REs' compliance processes and procedures	No	No	No	No	No
Information about the Arbitration Service and its use	N/A	Yes	Yes	Yes	Yes

Table 3: IPSO's Annual Statements and the Fulfilment of Regulation 52

¹¹⁵. IPSO (2016) *Annual Report 2015*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1300/ipso-ar.pdf>

¹¹⁶. IPSO (2017) *Annual Report 2016*, London: Independent Press Standards Organisation: https://www.ipso.co.uk/media/1462/ar_2016_.pdf

¹¹⁷. IPSO (2018) *Annual Report 2017*, London: Independent Press Standards Organisation: https://www.ipso.co.uk/media/1569/ipso_annual_report_2017e.pdf

¹¹⁸. IPSO (2019) *Annual Report 2018*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1823/ipso-annual-report-2018.pdf>

¹¹⁹. IPSO (2020) *Annual Report 2019*, London: Independent Press Standards Organisation: https://www.ipso.co.uk/media/1968/ar_2019_.pdf

¹²⁰. Listed publishers in *2018 Annual Report*: 80; No. of annual statements submitted in 2018: 76

¹²¹. Listed publishers in *2019 Annual Report*: 88; No. of annual statements submitted in 2019: 76

TRANSPARENCY IN PUBLISHERS

Information for Complainants – Desktop and Mobile

The IPSO system follows the Leveson recommendation that members of a regulatory system should have their own internal complaints-handling mechanism to which complainants should first be directed.¹²²

The Scheme Membership Agreement between IPSO and its members obliges each Regulated Entity to ‘implement and maintain effective and clear procedures for the reasonable and prompt handling of complaints.’¹²³

While neither the Leveson recommendations nor the IPSO Regulations outline detailed obligations about the requisite information or the process itself – beyond the benefits of displaying a ‘kite mark’ to establish ‘a recognised brand of trusted journalism’¹²⁴ – it should be a basic function of an effective regulatory system to ensure that such information is both accessible and clear.

In order to assess whether potential complainants were given access to sufficient information on the IPSO system and the internal complaints processes at IPSO members, the desktop sites of a range of local, regional and national newspaper members were analysed for the following information:

- The presence of a badge signifying IPSO membership on the title’s homepage
- The presence of a ‘how to complain’ link, or equivalent, on the title’s homepage
- An external direct link to the Editors’ Code of Practice or details of the Code within the site
- Details of how the internal complaints process operates
- Information on internal complaint procedure timelines
- An external link to the IPSO website

Table 4 shows how a selection of different titles provide this information online. With the exception of the *i* newspaper, the websites of the UK’s national newspapers regulated by IPSO generally provide sufficient information for potential complainants, with links to both IPSO and the Editors’ Code. The *Daily Mail* and *Sun* sites do not – as of February 2021 – include the IPSO badge on their homepage, and while the *Sun* site includes a dedicated page for its internal complaints process, there is no information setting out timelines for complainants.¹²⁵

Some larger regional and local publishers regulated by IPSO – accounting for a significant proportion of the UK’s local newspapers – are much less likely to provide information on their complaints processes or to direct potential complainants to IPSO. While Reach Regionals provides the same complaints information as its national titles, JPI Media publications (owned from January 2021 by National World) provide very

122. Leveson Inquiry (2012) *Executive Summary and Recommendations*, London: The Stationery Office: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf (Recommendation 10; p33)

123. IPSO (2019) Scheme Membership Agreement, ipso.co.uk: <https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf> (p. 4)

124. Leveson Recommendation 35; IPSO Regulation 5.7

125. The *Sun* (2016) ‘Editorial Complaints,’ thesun.co.uk, 6 June 2016: <https://www.thesun.co.uk/editorial-complaints/>

little information on either the title’s internal complaints procedures, or information about the IPSO system. Four titles explored for this study – the *Yorkshire Post*, the *Lancashire Evening Post*, the *Morpeth Herald* and the *Buxton Advertiser* – all included a short section of text in the ‘contact us’ section of the website stating that the title is a member of IPSO, and that complaints about inaccuracy or intrusion should be addressed to the editor. They gave IPSO’s postal address, phone number and inquiries email address, but no hyperlinks or direct links to the IPSO site.¹²⁶

Newsquest, which publishes over 200 local daily and weekly newspapers, also applies a consistent site template in both its larger and smaller titles. However, the Newsquest sites reviewed for this analysis contain no information for users on their internal complaints mechanisms. Moreover, while information on the publisher’s membership of IPSO includes a link purporting to lead to information on how to complain to the editor, it actually leads to the site’s contacts page that in some cases contains no such information.¹²⁷

Smaller independent local newspaper publishers Barnsley Chronicle Ltd and Wyvex Media (publisher of the *Arran Banner* as well as other West of Scotland titles) also had limited information on how complaints were handled within their respective titles.

Title	IPSO Badge on Homepage	Homepage Complaint Link	Code Link or Details	Internal Complaint Process	Internal Complaint Timeline	External Link to IPSO
NATIONAL						
<i>Daily Mail</i>	No ¹²⁸	Yes	Yes	Yes	Yes	Yes
<i>Daily Star</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Express</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>i</i>	No	No	No	No	No	No
<i>Mirror</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Sun</i>	No	Yes	Yes	Yes	No	Yes
<i>Telegraph</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Times</i>	Yes	Yes	Yes	Yes	Yes	Yes
LARGE LOCALS						
<i>JPI/NW - Large City Titles</i> ¹²⁹	Yes	No	No	No	No	No
<i>JPI/NW - Smaller Titles</i> ¹³⁰	Yes	No	No	No	No	No

^{126.} Appendix 5 contains an example of a complaints policy and procedure statement at JPI/National World title.

^{127.} For example, the contacts page for the *Glasgow Times*, one of Newsquest’s large city newspapers, contains no information that could be used to submit a complaint electronically: <https://www.glasgowtimes.co.uk/contact/>. The Penarth Times, covering a smaller community in South Wales, follows the same template, though the contacts page in that instance includes an email address for the editor (but no information on internal complaints processes (see Appendix 5).

^{128.} All information in this table gathered February 2021

^{129.} Sampled titles: the *Yorkshire Post* and *Lancashire Evening Post*

^{130.} Sampled titles: the *Morpeth Herald* and the *Buxton Advertiser*

Newsquest - <i>Glasgow Times</i>	Yes	No	No	No	No	Yes
Newsquest - <i>Penarth Times</i>	Yes	No	No	No	No	Yes
Reach Regionals	Yes	Yes	Yes	Yes	Yes	Yes
INDEPENDENT LOCALS						
<i>Barnsley Chronicle</i>	No	No	No	No	No	Yes
Wyvex Media - <i>Arran Banner</i>	Yes	No	No	No	No	No

Table 4: Public-Facing Regulatory Information by Selected IPSO Members

Within the IPSO system, therefore, individual publishers and titles provide varying levels of information for potential complainants. Generally the national newspaper websites – the *i* excluded – comply with basic requirements, while Newsquest and JPI Media/National World among regional publishers provide very little information beyond supplying contact details for editorial staff and for IPSO.

Provision of relevant information on member publishers’ mobile apps is also patchy.¹³¹ Table 5 shows that, of the mobile apps of all eight national newspaper publishers regulated by IPSO, three contain no in-app information about internal complaints processes. The *Daily Mail* (MailOnline) app has no complaints function at all, requiring a user to follow menus through ‘settings,’ ‘general,’ ‘send us feedback’ and ‘editorial feedback’ only to be faced with the option to open an auto-generated blank email. The MailOnline app also contains no reference or link to IPSO. The Sun Mobile app only allows the user to generate a blank email through the ‘make a complaint’ function accessed through the ‘contact us’ option on the app’s main menu, and also contains no mention of IPSO. The app for the *i* newspaper contains no information on internal complaints processes, and mentions IPSO only in a mobile version of its desktop information page (which has no links to the IPSO site or the Editors’ Code).

Title	Information on Internal Complaints ¹³²	Information about or links to IPSO
<i>Daily Mail/Mail Online</i>	No	No
<i>Daily Star</i>	Yes	Yes
<i>Express</i>	Yes	Yes
<i>Mirror</i>	Yes	Yes
<i>i</i>	No	Info, but no link
<i>Sun</i>	No	No
<i>Telegraph</i>	Yes	Yes
<i>Times</i>	Yes	Yes

Table 5: Public-Facing Regulatory Information on Mobile Apps of IPSO’s National Newspaper Members

^{131.} The Android versions of apps are tested here.

^{132.} All information verified 2 February 2021

Publishers of local news sites perform worse than their national counterparts, with the exception of those published by Reach Plc, which follow the same template as Reach's national titles. The apps for Newsquest's *Glasgow Times*, for example, includes no references to complaints mechanisms, nor do the *Yorkshire Post* or *Lancashire Evening Post*, owned by JPI Media before the publisher's purchase by National World.

As UK news audiences increasingly favour smartphone over desktop access to online news,¹³³ the absence of relevant information to potential complainants on a number of mobile apps is a significant shortcoming.

Annual Statements of Regulated Entities

In September 2019 IPSO made adjustments to Annex A of its Regulations (relating to the content of members' annual statements). The most recent submitted annual statements at the time of writing (covering the calendar year of 2019) are the first to have been compiled under the new guidelines. Previous analysis has shown that these changes amounted to a significant relaxation of the obligations for IPSO's members, leading to a likely reduction in the quality of information made available to the public.¹³⁴ This section will assess the extent to which IPSO's members meet the new (post-September 2019) obligations in their 2019 annual statements, and conclude with a comparison with compliance figures from 2017, when the previous regulations were in effect.

Regulation 5.2.1 of IPSO's updated Regulations¹³⁵ states that a specified function of the Regulator is 'the monitoring of compliance with the Editors' Code including through the provision by Regulated Entities of annual statements.' Regulations 43–46 in the 'Standards and Compliance' section of the Regulations also indicate that these annual statements form a core aspect of IPSO's monitoring role. These Regulations set out obligations for publishers to submit annual statements by a specified date and for IPSO to publish those statements on its website.

Information to be included in each publisher's annual statements are specified in Annex A of IPSO's Regulations. As of September 2019, each annual report must include:

2. Copies of any internal manuals, codes or guidance used by journalists
3. Brief details of the compliance process, including how the Regulated Entity deals with:
 - 3.1 Compliance with the Editors' Code;
 - 3.2 Any adverse findings of the Regulator and steps taken to address such findings;
 - 3.3 Training of staff
4. Details of the steps taken by the Regulated Entity in response to any adverse adjudications by the Regulator during the previous year

^{133.} Newman, Nic, Richard Fletcher, Antonis Kalageropoulos and Rasmus Kleis Nielsen (2019) *Reuters Institute Digital News Report 2019*, Oxford: Reuters Institute for the Study of Journalism: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-06/DNR_2019_FINAL_0.pdf (p. 69)

^{134.} Media Standards Trust (2019) *The Independent Press Standards Organisation (IPSO) – Five Years On*, London: Media Standards Trust: <http://mediastandardstrust.org/wp-content/uploads/2019/10/MST-IPSO-2019-Final-Version.pdf> (p. 19)

^{135.} Corresponding to Regulation 4.2.1 in the 2013 and 2016 iterations of IPSO's Regulations.

National Publisher	Annex A Clause				
	2	3.1	3.2	3.3	4
Associated Newspapers ¹³⁶	Yes	Partial	Yes	Yes	No
News UK & Ireland ¹³⁷	No	No	Partial	Yes	No
Reach Plc ¹³⁸	No	Partial	Yes	Yes	No
Telegraph Media Group ¹³⁹	Yes	No	Yes	Yes	No

Table 6: IPSO’s National Newspaper Members’ Annual Statements and Fulfilment of Annex A (2019)

Table 6 shows to what extent the 2019 annual statements from IPSO’s national publishers satisfy the stipulated disclosure criteria (supporting evidence is listed in Appendix 4). While all members provide information on relevant staff training, none provide full information on their titles’ compliance with the regulatory system.

Two publishers – News UK & Ireland and Telegraph Media Group – do not include any figures on the number of complaints dealt with via internal compliance processes, and none of the publishers provide information on whether and how often their internal complaints processes detected breaches of the standards code. The Associated Newspapers statement includes the claim that ‘it would be unfair to both the complainant and the journalists involved to offer a view on whether or not there was a breach of the Code in individual cases.’

Similarly, the Reach Plc statement says that ‘Complaints that are received by Reach Plc either through its Complaints Form or from IPSO are recorded and assessed with regard to whether the Code has been engaged and which clauses have been addressed.’ Code breaches are not mentioned and appear not to be recorded. News UK & Ireland and Telegraph Media Group make no mention of code breaches in internal complaints.

Publishers’ annual statements were recorded as fulfilling a clause if the required information was included in full or where detailed descriptions of the relevant processes were included. They were recorded as ‘partial’ if information was incomplete, and as not fulfilled if there was no supporting evidence or the issue was not mentioned.

Taking one publisher as an example, the statement supplied by News UK & Ireland (publisher of the *Sun*, *The Times* and *Sunday Times* and the *Times Literary Supplement*) complies with Annex A to the following extent:

- (Clause 2) – Does not include any internal manuals within its publicly accessible statement. It does refer (page 12) to an e-learning module introduced in 2019, but without any details: **Not fulfilled**

¹³⁶. Associated Newspapers (2019) Annual statement to the Independent Press Standards Organisation 2019, ipso.co.uk: https://www.ipso.co.uk/media/1877/associated-newspapers-annual-statement-2019_for-pub.pdf

¹³⁷. News UK (2019) News Corp UK & Ireland Limited’s IPSO Annual Statement 2019, ipso.co.uk: https://www.ipso.co.uk/media/1916/news-uk-ipso-annual-statement-2019_for-pub.pdf

¹³⁸. Reach Plc (2019) Annual Statement to the Independent Press Standards Organisation (IPSO), ipso.co.uk: https://www.ipso.co.uk/media/1926/reach-plc-2019-ipso-annual-statement-2019_for-pub.pdf

¹³⁹. Telegraph (2019) IPSO Annual Report 2019, ipso.co.uk: https://www.ipso.co.uk/media/1936/telegraph-annual-statement-2019_for-pub.pdf

- (Clause 3.1) – Pages 9–11 list all complaints in which IPSO was involved, but provide no data on complaints handled by internal processes. There is thus no information on code breaches or compliance within each title: **Not fulfilled**
- (Clause 3.2) – The lists of complaints handled by IPSO on pages 9–11 include all instances where IPSO produced adverse findings. Because these are presented only as URLs, there is no information about the nature of complaints or their outcomes. These lists are accompanied by limited information on steps taken in response: **Partially fulfilled**
- (Clause 3.3) – Pages 12–13 outline staff training across all publications: **Fulfilled**
- (Clause 4) – No information is included on changes made in response to adverse findings by IPSO in the previous year: **Not fulfilled**

Table 7 provides the same information for larger publishers of local newspapers and specialist news outlets (such as current affairs magazines in the case of the *Spectator* and national titles in the case of the *Jewish Chronicle*). In their 2019 annual statements, none of the sampled publishers included details on their compliance with the Editors’ Code in terms of statistics on internal complaints handled or recorded code breaches. In many cases the publishers included a statement committing to the observance of the code, but this was not supported by information on how internal complaints-handling systems performed.

Regional/Specialist News	Annex A Clause				
	2	3.1	3.2	3.3	4
<i>Archant</i>	Yes	No	Yes	Yes	No
<i>DC Thomson</i>	Yes	No	Yes	Yes	Yes
<i>Highland News & Media</i>	No	No	N/A ¹⁴⁰	Yes	No
<i>Iliffe Media</i>	No	No	N/A	No	No
<i>Irish News</i>	N/A ¹⁴¹	No	N/A	Yes	No
<i>Jewish Chronicle</i>	Yes	No	Yes	Yes	No
<i>Johnston Press</i>	No	No	Yes	Yes	No
<i>MNA</i>	Yes	No	Yes	Yes	No
<i>Newsquest Media Group</i>	No	No	Yes	Yes	No
<i>The Spectator</i>	N/A	No	Yes	No	No
<i>TES Global Ltd</i>	No	No	N/A	No	No
<i>Tindle Newspapers</i>	No	No	Yes	Yes	No
<i>Wyvex</i>	No	No	N/A	Yes	No

Table 7: IPSO’s Regional Members’ Annual Statements and Fulfilment of Annex A (2019)

IPSO’s own internal review of its operations, The Pilling Review, acknowledged in 2016 that this lack of information in annual statements represented a shortcoming and recommended that IPSO should

140. ‘N/A’ denotes the fact that the publisher did not incur any adverse findings from IPSO in 2019

141. ‘N/A’ is used here when the publisher states that no training manuals are used beyond the Editors’ Code

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.’¹⁴² IPSO committed to reviewing this recommendation with members, but its revised Regulations in September 2019 made no change in this respect. We must therefore assume that IPSO, or its members (or perhaps the Regulatory Funding Company), have rejected this recommendation.

There is no consistency in the level of detail provided by IPSO members.¹⁴³ The annual statement of the *Spectator* in 2019 consisted of a three-page document missing much of the information requested in Annex A.¹⁴⁴ The Regulated Entity in this instance publishes a national news magazine with a turnover in 2019 of over £14 million and declared print circulation of over 88,000 with over 2 million annual unique online users.¹⁴⁵ Conversely, Newbury News Limited (turnover of £2.2 million in 2018)¹⁴⁶ which publishes two small local papers in Berkshire, supplied in 2019 a five-page document with considerably more detail.¹⁴⁷

IPSO’s September 2019 revisions to its Regulations¹⁴⁸ amount, in practice, to a scaling-back and simplification of the obligations for publishers. Prior to the change, member publishers were obliged to include the following information each year:

2. Copies of any internal manuals, codes or guidance used by journalists
3. Brief details of the compliance process, including how the Regulated Entity deals with:
 - 3.1 Pre-publication guidance under Regulation 4.5;
 - 3.2 Verification of stories;
 - 3.3 Compliance with the Editors’ Code, including any adverse findings of the Regulator and steps taken to address such findings;
 - 3.4 Editorial complaints which the Complaints Committee determines under Regulation 27;
 - 3.5 Training of staff
4. Details of the steps taken by the Regulated Entity in response to any adverse adjudications by the Regulator during the previous year

Three criteria were removed by the changes (on pre-publication guidance, verification of stories, and the recording of complaints on which the IPSO Complaints Committee determined a code breach). Of the three, one (on Complaints Committee determinations) is a constructive simplification, as this may be covered under ‘adverse findings’ in the new Clause 3.2. The other two changes simply remove the obligation for publishers to supply information.¹⁴⁹

142. Pilling, Joseph (2016) *The External IPSO Review*, London: Independent Press Standards Organisation: https://www.ipso.co.uk/media/1278/ipso_review_online.pdf (Paragraph 126, p31)

143. Clause 5 of Annex A states that, when considering the level of detail to be included in a publisher’s annual statement, it will take into account ‘its size, the number of staff employed, number of publications, circulation figures of the publication(s) and annual turnover.’ How this is applied is not clear.

144. *Spectator* (2019) The *Spectator* annual statement 2019, ipso.co.uk: https://www.ipso.co.uk/media/1933/spectator-statement-for-2019_for-pub.pdf

145. From Companies House (Annual Report 2019)

146. From Companies House (Annual Report 2018)

147. Newbury News & Media (2019) Annual IPSO Report 2019, ipso.co.uk: https://www.ipso.co.uk/media/1915/newbury-news-annual-statement-2019_for-pub.pdf

148. Fenech, Hanno (2019) ‘Press regulator announces changes to its rules and regulations,’ ipso.co.uk, 17 September 2019: <https://www.ipso.co.uk/news-press-releases/press-releases/press-regulator-announces-changes-to-its-rules-and-regulations/>

149. There is no information on whether ‘compliance with the Editors’ Code’ should cover internal complaints, and the overlap between Clause 4 and the new Clause 3.2 (previously part of 3.3) remains.

IPSO has not published the reasoning behind this change, noting only that the revision of its regulations include '[s]etting out specific requirements about what should be included in publishers' annual compliance statements to IPSO.' **The end result suggests a reduction in transparency given that less information is likely to be made available to the public.**

SUMMARY: BLIND SPOTS IN MONITORING AND OPACITY IN TRANSPARENCY

Documentary evidence suggests that IPSO is structurally unable to fulfil a comprehensive monitoring role via its recording and handling of complaints, and fails to satisfy the transparency commitments laid down in its own governance documents.

Shortcomings in IPSO's complaints-handling functions demonstrate the system's inability to monitor effectively the industry it is supposed to hold to account. Moreover, its failure to obtain or publish any information about the extent of code breaches handled in members' own internal complaints processes – a problem noted and criticised by its own internal review – further diminishes IPSO's ability to assess compliance of its members with the standards it purports to be policing. It is also hampered by its own regulations which specify various circumstances where code breaches cannot be recorded.

In terms of IPSO's own transparency initiative – publication of annual reports summarising its own activities and those of its members – IPSO does not provide all the information called for in its own regulations. In particular, the absence of information on the 'adequacy and effectiveness of the compliance processes and procedures adopted by the Regulated Entities,' as required by Regulation 52 of IPSO's own governing documents, severely limits any meaningful assessment of its performance.

Just as IPSO itself fails to fulfil all its transparency commitments, so do its members. While the websites of most national newspapers contain relevant information and links for potential complainants, this material is less readily available across the hundreds of local newspapers published by the UK's largest regional publishers. A lack of relevant information on some members' mobile apps is an additional oversight. IPSO members are also inconsistent in the extent to which their annual statements fulfil information obligations, with regional publishers in particular underperforming.

Among Leveson's criteria for an independent and effective regulatory system was the stipulation that it must be deemed credible and effective by the public. Leveson further specified that enforcement of standards should command public respect and 'compliance ... should be transparent and demonstrable to the public.' **The analysis in Part 3 demonstrates that the IPSO system is not equipped to monitor industry compliance with the Editors' Code, and does not fully satisfy its own commitments to transparency, undermining any claims to both effectiveness and therefore credibility.** Perhaps more importantly, the absence of adequate monitoring powers demonstrates that IPSO, like the PCC before it, cannot satisfy the definition of a regulator.

APPENDIX 1 – IPSO REPLICATION OF 2012 LORD BLACK PLAN COMPONENTS

Leveson Part K Section ¹⁵⁰	Lord Black 2012 Plan Component	Leveson Part K Chp 2	In IPSO?	IPSO Documents	In Leveson Plan? ¹⁵¹	Rejected by Leveson ¹⁵²	Rejection Info (Part K Chp 3)
Governance and Structures	Regulator created as a Community Interest Company	3.2	Yes	IPSO Article 3 ¹⁵³	Yes	No	N/A
Governance and Structures	Objects of Company to ‘carry on activities which benefit the community ...’ with specific objects on regulation, compliance, mediation, investigation, adjudication, publications and sanctions	3.2	Yes	IPSO Articles 5, 7 & 8	No	Yes	Para 4.7, p1626
Governance and Structures	Main decision-making body will be Regulator’s Board with a Complaints Committee and an Investigations and Compliance Panel	3.3	Yes	IPSO Article 27	Yes	No	N/A
Governance and Structures	CEO supported by Head of Complaints and Head of Standards and Compliance	3.3	No	IPSO Chair heads Complaints Committee; Head of Standards not defined in IPSO documents	No	No	N/A
Governance and Structures	Regulator will cover companies in the UK, Channel Islands and Isle of Man who are responsible for print and online newspapers and magazines	3.4	Yes	IPSO Article 7	Yes	N/A	N/A

150. From Volume IV of the *Leveson Report*, Part K (‘Regulatory Models of the Future’). Chapter 2 (pp. 1595–1613) sets out the plan submitted by Lord Black: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf

151. As set out in Part L of Volume IV (pp. 1803–1809)

152. Chapter 3 of Part K (pp. 1614–1650) consists of Leveson’s appraisal of Lord Black’s plan.

153. IPSO (2019) *Articles of Association*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1814/ipso-articles-of-association-2019.pdf>

Governance and Structures	Funding body will have ultimate discretion to refuse membership even if a publisher falls within the definition of a regulated entity	3.4	Yes	RFC Article 11.2.2; ¹⁵⁴ Clause 3.2 Scheme Membership Agreement (SMA) ¹⁵⁵	No	Yes	Para 2.44, p1623
Governance and Structures	Regulatory Board: Responsible for business, governance, finance, appointment of independent members and liaison with industry trade associations	3.9	Yes	IPSO Article 10	Yes	N/A	N/A
Governance and Structures	Regulatory Board: No role in the investigation of individual complaints from members of the public	3.9	Yes	Regulation 14	Yes	No	N/A
Governance and Structures	Regulatory Board: Responsible for triggering investigations, establishing appeal panel and exercising sanctions	3.9	Yes	Article 11.4; Regulation 32 (via Appointment Panel)	Yes	No	N/A
Governance and Structures	Regulatory Board: Responsibility for changes to the Regulations which must be approved by the Funding Body	3.10	Yes	Clause 7.1 SMA	No	Yes	Para 4.22, p1630
Governance and Structures	Regulatory Board: No responsibility for Editors' Code except capacity to ratify proposed changes	3.11	Yes	RFC Article 10.11-10.12	No	Yes	Para 3.5, p1624
Governance and Structures	Regulatory Board: Composition of 7 members, 4 independent and 3 industry; 3-year terms renewable once; OMOV	3.12	No	IPSO Article 22 (12 Board members)	No	Yes	Para 4.11, p1627

154. Regulatory Funding Company (n.d.) *Articles of Association*, London: Regulatory Funding Company: http://www.regulatoryfunding.co.uk/write/MediaUploads/15840651-v1-final_rfc_articles.pdf

155. IPSO (2019) Scheme Membership Agreement, ipso.co.uk: <https://www.ipso.co.uk/media/1813/ipso-scheme-membership-agreement-2019-v-sep19.pdf>

Governance and Structures	Regulatory Board: Appointment of Chair by 4-person panel with 2 industry members appointed by the Funding Body	3.13	No	IPSO Article 26 (5-person panel; indirect industry influence)	No	Yes	Para 4.20, p1627
Governance and Structures	Regulatory Board: Independent members to be appointed by Regulatory Board itself	3.14	Yes	IPSO Article 22 (via Appointment Panel)	Yes	No	N/A
Governance and Structures	Regulatory Board: Industry appointments to be made directly by the Funding Body; no serving editors	3.14	No	IPSO Article 22.5	No	Yes	Para 4.22, p1630
Governance and Structures	Contracts: Compulsory for members; requirements for compliance with code and regulations, investigations, decisions and funding	3.15	Yes	Clause 3.3 SMA	No	Yes	Para 2.32, p1620
Governance and Structures	Contracts: Regulations will set out remit and functions of the Regulator, including complaints, investigations, sanctions and annual certification	3.16	Yes	Regulations document	No	Yes	Para 2.32, p1620
Governance and Structures	Contracts: 5-year initial length, followed by annual rolling basis	3.17	No	Not specified in SMA but in practice 5 yearly renewals	No	Yes	Para 2.29, p1619
Governance and Structures	Contracts: Regulator has power to terminate a contract	3.17	Yes	Clause 11.5 SMA	No	Yes	Para 2.32, p1620
Governance and Structures	Contracts: Individual regulated entities have no power to terminate a contract	3.17	Yes	Clause 11 SMA	No	Yes	Para 2.32, p1620
Governance and Structures	Contracts: Majority of parties can agree to terminate the contract or to vary the contract	3.17	Yes	Clause 8.2 and 11.9 SMA	No	No	N/A
Governance and Structures	Contracts: System of weighted votes to constitute a 'Majority Vote' in the terms of the agreement	3.18	Yes	Clause 6.1 SMA; RFC Articles Schedule 1.15	No	Yes	Para 2.32, p1620

Governance and Structures	Contracts: Regulator has no liability for failure to exercise its powers or functions	3.19	Yes	Clause 9.1 SMA	No	Yes	Para 2.32, p1620
Governance and Structures	Contracts: Third parties (victims and complainants) have no rights under the contract	3.19	Yes	Clause 14 SMA	No	Yes	Para 2.41, p1622
Complaints	Complaints Committee composed of 13 members: Chair, 7 independents; 5 serving editors	4.1	No	Regulation 41	No	Yes	Para 4.5, p1625
Complaints	Independent Complaints Committee members to be appointed by Regulator's Board; editors nominated by trade associations	4.1	No	Regulation 41	No	Yes	Para 4.5, p1625
Complaints	Complaints to be handled within Regulated Entities before being escalated to the Regulator	4.2	Yes	Regulation 7	Yes	No	N/A
Complaints	Complaints accepted from individuals directly affected and from third parties where there has been 'a significant breach' and 'substantial public interest'	4.3	Yes	Regulation 8	No	No	N/A
Complaints	A complaint must be made within 2 months of publication or 2 months from end of correspondence between complainant and publisher	4.4	No	Strengthened in Regulation 11	No	N/A	N/A
Complaints	Where disputed article is online, and remains online at time of complaint, the complaint may be considered	4.4	No	Weakened in Regulation 11	No	N/A	N/A
Complaints	Approximation of PCC complaints-handling process and mediation	4.5	Yes	Regulations Annex C	No	Yes	Para 5.3, p1632

Complaints	Complaints Committee to decide whether code breach has taken place	4.6	Yes	Regulation 27	No	No	N/A
Complaints	Complaints Committee rules whether sufficient remedial action has been taken in case of a breach	4.6	Yes	Regulation 30	No	No	N/A
Complaints	If remedied, outcome may be published on the Regulator's website	4.6	Yes	Regulation 40	No	No	N/A
Complaints	If not remedied, the Committee will make a public ruling and the company will be obliged to publish it 'with due prominence'	4.6	Yes	Regulation 30	No	N/A	N/A
Complaints	Regulator's Board has no powers to insist on location or prominence of an adjudication	4.7	Yes	Regulation 30	No	Yes	Para 5.8, p1633
Complaints	Regulator has no power to award compensation or levy a fine unless an investigation is triggered	4.8	Yes	Regulation 30	No	No	N/A
Complaints	The complainant will have the right within 14 days to appeal the decision, to confirm or refer the decision back to the Committee with a different decision	4.9	Yes	Regulation 32	No	N/A	N/A
Complaints	The reviewer will be appointed by the Regulator's Board, cannot be a member of the Complaints Committee or connected to the industry	4.10	Yes	2013 Regulation 35; specification removed from later Regulations	No	N/A	N/A
Standards and Compliance	Ad hoc Investigations and Compliance Panel with ongoing core functions including monitoring and certification	5.1	No	Regulation 56 announces Investigation Panel and 53 gives some of the functions to the Regulator	No	No	N/A

Standards and Compliance	Investigations and Compliance Panel to make recommendations to the board on basis of monitoring functions	5.2	No	No 'Head of Investigation and Compliance' in IPSO	No	No	N/A
Standards and Compliance	Annual statement to be submitted by each regulated entity	5.3	Yes	Regulation 5.2.1 and 43-46	Yes	No	N/A
Standards and Compliance	Annual statement content: information about publisher (titles, circulation, compliance officer)	5.3	Yes	Regulations Annex A 1	No	N/A	N/A
Standards and Compliance	Annual statement content: copies of relevant manuals, codes or guidance	5.3	Yes	Regulations Annex A 2	No	N/A	N/A
Standards and Compliance	Annual statement content: details on compliance processes, inc. pre-publication advice, verification, compliance and training	5.3	Yes	Regulations Annex A 3	No	N/A	N/A
Standards and Compliance	Annual statement content: details on any incidents involving code or regulatory breaches, and measures taken in response	5.3	Yes	Regulations Annex A 3	No	N/A	N/A
Standards and Compliance	Annual statement content: details of the steps taken in response to any adverse adjudications during the year	5.3	Yes	Regulations Annex A 4	No	N/A	N/A
Standards and Compliance	Regulator given discretion over publication of annual statements	5.4	Yes	Regulation 45	Yes	No	N/A
Standards and Compliance	Regulator to review annual reports through Head of Standards and Compliance	5.5	No	No 'Head of Investigation and Compliance' in IPSO	No	No	N/A

Standards and Compliance	Requirement for a named compliance officer within each regulated entity	5.6	No	Regulation 34 and Clause 3.3.9, though not at publishers rather than regulated entities	Yes	No	N/A
Standards and Compliance	Regulator has own proactive powers of investigation	5.7	Yes	Regulation 54	Yes	No	N/A
Standards and Compliance	Regulator investigation trigger: 'where it appears there have been significant systemic breaches' of the code or ethical behaviour	5.7	No	Regulation 53.1 nullifies this	Yes	N/A	N/A
Standards and Compliance	Regulator investigation trigger: 'where serious breaches of the criminal law have been found by the courts'	5.7	Yes	Regulation 53.3	No	N/A	N/A
Standards and Compliance	Regulator investigation trigger: 'where annual certification identifies significant and substantive issues of concern'	5.7	Yes	Regulation 53.4	No	N/A	N/A
Standards and Compliance	Board of Regulator to decide remit and terms of reference for an investigation, inform subject and take response into account	5.9	Yes	Regulation 55	Yes	No	N/A
Standards and Compliance	Regulator's Board must appoint an Investigation Panel (3 people; 2 public representatives and 1 industry representative)	5.10	Yes	Regulation 69	No	No	N/A
Standards and Compliance	Investigations can request documents, answers and access to personnel, and can note refusals	5.11	Yes	Regulations 58 and 60	No	No	N/A
Standards and Compliance	Disputes in investigations to be referred to the Board of the Regulator; Board can use legal proceedings to compel specific performance	5.12	Yes	Regulation 62	No	Yes	Para 5.25, p1627

Standards and Compliance	Following completion of the investigation, a report is submitted to the subject with a 28-day deadline for a written response, after which a meeting takes place	5.13	Yes	Regulation 63	No	Yes	Para 5.20, p1636
Standards and Compliance	The meeting will hear a presentation from the Head of Standards and Compliance	5.14	No	No 'Head of Investigation and Compliance' in IPSO	No	Yes	Para 5.20, p1636
Standards and Compliance	At the meeting the panel can request further work or reach a preliminary conclusion with a range of available conclusions	5.15	Yes	Regulations 64-65	No	Yes	Para 5.20, p1636
Standards and Compliance	The decision is to be sent in draft to the subject, who has 14 days to make comments on any mistakes or misunderstandings	5.16	No	No draft decision stage	No	Yes	Para 5.20, p1636
Standards and Compliance	Subject can request a review of the final decision on basis of a flawed process or decision; if accepted, a Review Panel will be created with no members from original investigation panel	5.17	Yes	Original 2013 Regulation 66-68; since removed	No	Yes	Para 5.20, p1636
Standards and Compliance	Review Panel would consider all existing and any new evidence; subject has 14 days to respond to Review Panel's conclusions	5.18	Yes	Original 2013 Regulation 60; 2019 Regulation 76	No	Yes	Para 5.20, p1636
Standards and Compliance	Review Panel will reach a final decision against which there is no further right of appeal	5.19	Yes	Original 2013 Regulation 62; 2019 Regulation 77	No	Yes	Para 5.20, p1636
Standards and Compliance	Complainants will not be aware of any investigation until a final decision is published	5.19	Yes	Regulation 63	No	Yes	Para 5.21, p1636

Standards and Compliance	The decision of the Investigation Panel or – if applicable – the Review Panel, and the reasons for it, would be published	5.20	No	Publication may be imposed, but is not mandatory	No	N/A	N/A
Standards and Compliance	Sanctions: ‘to reprimand the subject of the investigation’ (may concern publication of findings; otherwise unclear)	5.21	No	Clarified as publication of adjudication and remedial action in Regulation 66.1	No	N/A	N/A
Standards and Compliance	Sanctions: determination of a ‘systemic failure’ (‘serious or systemic failure’)	5.22	No	Changed to ‘serious and systemic’ – i.e. weakened	Yes	N/A	N/A
Standards and Compliance	Sanctions: criteria for fines to be set at 1% of turnover up to maximum of £1,000,000	5.23	Yes	Financial Sanctions Guidance 2.1 and 2.2 ¹⁵⁶	No	Yes	Para 5.22, p1637
Standards and Compliance	Sanctions: fine determined by: nature of entity; nature of failure; inadvertent or deliberate; aggravating factors; adjustments for deterrence; and discounts for early settlement	5.24	Yes	Financial Sanctions Guidance 2.3	No	Yes	Para 5.22, p1637
Standards and Compliance	Sanctions: Regulator’s Board can require the regulated entity to make a contribution to costs	5.25	Yes	Regulation 66.3	No	N/A	N/A
Potential for Growth	Arbitral arm to be added	6.1	Yes	Clause 5.4 SMA	Yes	No	N/A
Funding	Fully funded by industry through membership fees to £2.25m budget	7.1	Yes	RFC Articles 24.4–24.13	No	Yes	Para 6.10, p1640
Funding	Funding body to publish a list of members and an annual record of funding proportions	7.4	No	N/A	No	N/A	N/A

156. IPSO (n.d.) Financial Sanctions Guidance, ipso.co.uk: <https://www.ipso.co.uk/media/1042/financial-sanctions-guidance.docx>

Funding	Initial ring-fenced fund of £100,000 for investigations and compliance	7.6	Yes	Not in articles, but revealed in Pilling Review paragraph 115 ¹⁵⁷	No	Yes	Para 6.4, p1639
Code and Code Committee	Code Committee consists of serving editors, plus Chair and Chief Executive of the Regulator and 3 public members	8.1	Yes	Editors' Code Committee Website ¹⁵⁸	No	Yes	Para 3.5, p1624
Industry Funding Body	Continuity of funding body after PressBoF	9.2	Yes	RFC Articles	No	Yes	Para 6.14, p1641
Industry Funding Body	Funding body sets overall level of funding and distribution of funding	9.3	Yes	Clause 10 SMA	No	Yes	Para 6.10, p1640
Industry Funding Body	Funding body has power to enforce contract between publisher and regulator regarding membership fee	9.4	Yes	Clause 10 SMA & RFC Art 11.2.2	No	Yes	Para 6.10, p1640
Industry Funding Body	Funding body responsible for Editors' Code; regulatory Board approval of changes	9.5	Yes	RFC Article 2.2	No	Yes	Para 3.5, p1624
Industry Funding Body	Funding body responsible for appointing 2 industry members of the appointment panel	9.6	No	N/A	No	Yes	Para 4.22, p1630
Industry Funding Body	Funding body must approve any changes to the Regulations	9.7	Yes	Clause 7.1 SMA	No	Yes	Para 4.22, p1630
Industry Funding Body	Funding body responsible for Sanctions Guidance used for fines	9.8	Yes	Regulation 68 (changed in 2016 - power given to Regulator's Board)	No	Yes	Para 4.22, p1630

157. Pilling, Joseph (2016) *The External IPSO Review*, London: Independent Press Standards Organisation: https://www.ipso.co.uk/media/1278/ipso_review_online.pdf

158. Editors' Code of Practice Committee (n.d.) 'About us,' editorscode.org.uk: https://www.editorscode.org.uk/about_us.php

APPENDIX 2 – STANDARDS INVESTIGATIONS CASE STUDIES

Case Study 1: Discrimination (Clause 12) – IPSO’s inability to act due to the RFC’s ownership of the Editors’ Code

Since IPSO opened in 2014 the nature of Clause 12 of the Editors’ Code which deals with Discrimination, and the circumstances in which it does not apply, have been a continuous source of controversy for certain IPSO members and for the regulator itself. The Clause itself is concise:

- III. The press must 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.
- IV. Details of an individual’s race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.¹⁵⁹

The codebook accompanying the code, however, adds the caveat that ‘the Code does not cover generalised remarks about groups or categories of people. This would inhibit debate on important matters, would involve subjective views and would be difficult to adjudicate upon without infringing the freedom of expression of others.’¹⁶⁰

The balance between expression and restraint is difficult for media regulators to police, and the distinction between harm and offence is fundamental to free speech in democratic society. But the combination of IPSO’s codebook caveat and its limited response to complaints and high-profile incidents means that the regulator effectively plays no role when its members use inflammatory language about groups of people. As IPSO itself acknowledges, ‘stories that criticise groups or report them in a bad light’ can have an impact upon those groups and on society as a whole, but – short of hate crime legislation – there is no avenue of redress for those groups.¹⁶¹

IPSO’s first major test in this area came in April 2015, when then-columnist for the *Sun* Katie Hopkins published an opinion piece in the midst of a general election campaign in which – among other things – she described migrants as ‘cockroaches’ and ‘a plague of feral humans,’ advocating the use of military gunships to stop them.¹⁶² The article led to over 400 complaints to IPSO and a petition calling for Hopkins’ column to be removed by the *Sun* which attracted over 300,000 signatures;¹⁶³ it also provoked a response from the UN Human Rights Commissioner, who cited ‘anti-foreigner abuse’ and ‘incitement to hatred’ in the British press as an area of concern.¹⁶⁴ IPSO rejected all complaints about the article on

159. Editors’ Code of Practice Committee (n.d.) ‘The Code,’ editorscode.org.uk, https://www.editorscode.org.uk/the_code.php

160. Editors’ Code of Practice Committee (2021) *The Editors’ Codebook: The handbook to the Editors’ Code of Practice*, London: The Regulatory Funding Company: <https://www.editorscode.org.uk/downloads/codebook/codebook-2019.pdf> (p. 96 – accessed 22 March 2021)

161. Buckingham, John (2018) ‘IPSO Blog: How Clause 12 (Discrimination) works,’ ipso.co.uk, 16 March 2018: <https://www.ipso.co.uk/news-press-releases/blog/ipso-blog-how-clause-12-discrimination-works/>

162. Osborne, Simon (2015) ‘Katie Hopkins has just written a piece so hateful that it might give Hitler pause – why was it published?’ independent.co.uk, 20 April 2015: <https://www.independent.co.uk/voices/katie-hopkins-when-is-enough-enough-10186490.html>

163. Change.org (n.d.) ‘Remove Katie Hopkins as a Columnist’: <https://www.change.org/p/the-sun-newspaper-remove-katie-hopkins-as-a-columnist>

164. BBC (2015) ‘Tackle tabloid “hate speech”, UN commissioner urges UK,’ bbc.com, 24 April 2015: <https://www.bbc.com/news/uk-32446673>

the grounds of Clause 12 (Discrimination) and investigated one complaint on the grounds of Clause 1 (Accuracy). The ruling noted that the article could not have been in breach of Clause 12 of the code because no identifiable individual was criticised.¹⁶⁵ In doing so it was acting entirely in line with the rules and regulations governing the regulator.

Unfortunately, even if IPSO believed the code to be inadequate in this respect, it is powerless to change it. Despite the Leveson recommendation that the standards code governing members would be the responsibility of the regulator's Board, under the IPSO system it is controlled by the Regulatory Funding Company; IPSO is restricted to an extremely limited role in effecting reforms or changes.¹⁶⁶

In the case of the *Sun* column the then Chair of IPSO, Sir Alan Moses, demonstrated the regulator's lack of power in a public address to the Media Society in June 2016, where he acknowledged that he did not believe that Clause 12 works in practice, but that as only 'one of twelve' on the Code Committee he was unable to exert influence on the Committee in relation to Katie Hopkins' comments, a situation that 'seemed ... absolutely to demonstrate a certain impotence in regulation.'¹⁶⁷

Developments since IPSO ruled on the *Sun* column on migrants have shown that discrimination continues to be both an area of public concern and an issue that IPSO seems to acknowledge as a fundamental problem. Coverage of the EU Referendum campaign by IPSO members in May and June 2016 was found to have contained widespread negative coverage of migrants of different nationalities, including the use of dehumanising language and stereotyping and widespread associations with criminality and constraints on public spending.¹⁶⁸ The European Commission against Racism and Intolerance (ECRI) reported in October 2016 that '[h]ate speech in some traditional media, particularly tabloid newspapers, continues to be a problem, with biased or ill-founded information disseminated about vulnerable groups, which may contribute to perpetuating stereotypes.'¹⁶⁹ Announcing the report, the Chair of the ECRI stated 'It is no coincidence that racist violence is on the rise in the UK at the same time as we see worrying examples of intolerance and hate speech in the newspapers, online and even among politicians.'¹⁷⁰

Between the referendum and the ECRI report, another high-profile discrimination case arose with a column on 18 July 2016 by the *Sun* columnist and former editor Kelvin MacKenzie criticising *Channel*

165. IPSO (2015) '02741-15 Greer v The Sun,' ipso.co.uk, 20 July 2015: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02741-15>

166. Under the IPSO system, the code is the property of the Editors' Code of Practice Committee, a subcommittee of the Regulatory Funding Company (IPSO Articles, Schedule 1.23). Amendments to the code can be proposed only by the Code of Practice Committee, of which 10 of 15 members represent publishers, three are independent lay members, and the remaining two places are reserved for the Chair and Chief Executive of IPSO (https://www.editorcode.org.uk/about_us.php). The regulator therefore has only minimal control over any amendments to the code. In the event of a proposed code amendment, the Regulatory Funding Company has the power to veto the amendment (Article 10.11) and the publisher members of IPSO can reject the amendments following a vote (Article 10.11.2).

167. The Media Society (2016) 'Sir Alan Moses, IPSO Chair at Media Society Summer Drinks,' <https://soundcloud.com/user-932454463/sir-alan-moses-ipso-chair-at-media-society-summer-drinks> (13:36-14:43)

168. Moore, Martin and Gordon Ramsay (2017) 'Brexit and discrimination in the UK press,' in John Mair, Tor Clark and Neil Fowler (eds.) *Brexit, Trump and the Media*, Bury St Edmunds: Abramis (see also: <https://www.inpublishing.co.uk/articles/brexit-and-discrimination-in-the-uk-press-551>)

169. Council of Europe (2016) *ECRI Report on the United Kingdom* (fifth monitoring cycle), European Commission against Racism and Intolerance, <https://rm.coe.int/fifth-report-on-the-united-kingdom/16808b5758> (Paragraph 40, Page 18)

170. BBC (2016) 'Human rights report warns over "anti-foreigner sentiment",' [bbc.com](https://www.bbc.com/news/uk-politics-37539281), 4 October 2016: <https://www.bbc.com/news/uk-politics-37539281>

4 News for having Muslim presenter Fatima Manji present a report on a terrorist attack in France while wearing a hijab. The column drew criticism from Manji – who complained, unsuccessfully, to IPSO under three code clauses, including Clause 12 on Discrimination – from *Channel 4 News*, the National Union of Journalists, and prompted over 2,000 complaints to the Regulator.¹⁷¹ In its ruling, IPSO stated again that Clause 12 does not cover ‘prejudicial or pejorative references to a particular religion’ and claimed that while the article did mention the complainant as an individual, the reference was relevant and a legitimate expression of the author’s opinion:

17. The article did refer to the complainant. But it did so to explain what triggered the discussion about a subject of legitimate debate: whether newsreaders should be allowed to wear religious symbols. In the Committee’s view, the columnist was permitted to identify what prompted his discussion, rather than merely raising it in the abstract. Furthermore, he was entitled to express his view that, in the context of a terrorist act which had been carried out ostensibly in the name of Islam, it was inappropriate for a person wearing Islamic dress to present coverage of the story.¹⁷²

The Complaints Committee’s decision on Clause 12 is contestable and arguably makes significant interpretations in favour of the columnist, but the nature of the case clarifies the narrowness of the grounds on which IPSO can record a code breach on grounds of discrimination, particularly in comment pieces. The episode also produced an almost farcical coda when IPSO Board member and fellow *Sun* columnist Trevor Kavanagh was obliged to apologise to the regulator after supporting MacKenzie’s claims about Manji in another column for the *Sun*, published while her complaint was being considered by the Regulator’s Complaints Committee.¹⁷³

At the time of writing the complaints statistics page on the IPSO website has been disabled.¹⁷⁴ Prior to the removal of the page, the searchable database indicated the extent to which Clause 12 lies almost outside the regulator’s powers. A preliminary analysis in September 2019 found that, of 16,317 complaints received by the regulator between October 2014 and December 2018¹⁷⁵ in which Clause 12 was raised, only one was upheld.¹⁷⁶ Over half (8,605) were deemed to be outside the regulator’s remit, and a further 6,807 were rejected. Overall, therefore, almost 95% of all Clause 12 complaints were not considered by the regulator at all (a further 768 were not pursued by the complainant). For comparison, of complaints citing Clause 1 (Accuracy), around 80% of 22,723 complaints were not considered and just under 1% were upheld.¹⁷⁷

171. Plunkett, John (2016) ‘Katie Hopkins’ migrants column was in bad taste – but IpsO doesn’t cover that,’ *theguardian.co.uk*, 28 July 2016: <https://www.theguardian.com/media/2016/jul/28/katie-hopkins-migrants-ipso-sun-cockroaches>

172. IPSO (2016) ‘05935-16 Manji v The Sun,’ *ipso.co.uk*, 29 September 2016: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05935-16>

173. Ponsford, Dominic (2017) ‘IPSO board rebuke for Sun’s Trevor Kavanagh as complaint against him is upheld,’ *pressgazette.co.uk*, 24 February 2017: <https://www.pressgazette.co.uk/ipso-board-rebuke-for-suns-trevor-kavanagh-as-complaint-against-him-is-upheld/>

174. IPSO (n.d.) ‘Complaints Statistics,’ *ipso.co.uk*: <https://www.ipso.co.uk/rulings-and-resolution-statements/complaints-statistics/> (accessed 8 February 2021); information on rulings continues to be available.

175. IPSO’s statistics for 2019 at time of writing appear to be incomplete, recording only 11 complaints including Clause 12 between January and July.

176. IPSO (2015) ‘00572-15 Trans Media Watch v The Sun,’ *ipso.co.uk*, 5 May 2015: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15>

177. The inclusion of multiple cited clauses in IPSO complaints means that it is difficult to clarify where Clause 12 in isolation was unsuccessful, but of the 20 upheld complaints between 2014 and 2019 of which Clause 12 was part of the complaint, in all but one of the cases (mentioned above) the part of the complaint about Clause 12 was not upheld (Retrieved from IPSO rulings (<https://www.ipso.co.uk/rulings-and-resolution-statements/>), search parameters: all upheld complaints from October 2014 to July 2019 including ‘Clause 12’ in code provisions).

IPSO as an organisation has acknowledged publicly that there is a problem with Clause 12. From January 2018 the regulator began to publish the results of ‘Clause 12 monitoring,’ whereby the regulator publishes quarterly summaries of all cases where more than 10 complaints citing Clause 12 have been received. The accompanying statement acknowledges that ‘cases where IPSO received more than ten complaints tend to raise broader issues around editorial standards.’¹⁷⁸ The statistics show 28 cases between January 2018 and June 2019 in which more than 10 complaints have been received. The analyses contain little more information than the nature of the complaint and the reason why it was deemed not to be a code breach.¹⁷⁹

IPSO’s wider Editorial Standards Monitoring – in which IPSO looks at a sample of all complaints closed each quarter – noted in its January to April 2019 release in response to a factually incorrect article about Muslim immigrants in France that ‘[t]he reporting of Islam is a priority for IPSO this year. Guidance for journalists will be published later this year.’¹⁸⁰ The regulator’s monitoring functions – both of editorial standards as a whole and of Clause 12 – therefore note that there are systematic issues with how the regulatory system can deal with discrimination, even to the point of voluntarily allocating resources to a Clause 12 monitoring function. The monitoring, however, consists of little more than signposting that there is a problem.

Finally, an open letter signed in March 2019 by a combination of Parliamentarians, civil society groups, academics and public figures, and coordinated by the Media Diversity Institute and The Hacked Off Campaign criticised ‘Racist and faith-based attacks against communities.’¹⁸¹ The statement in response by IPSO’s Chair confirmed that IPSO’s role is confined to recording breaches of the Editors’ Code.¹⁸²

That statement effectively acknowledges that, as the code is currently written, it is almost impossible for members of IPSO to breach Clause 12 without publishing discriminatory information about a named individual who then brings a complaint personally to IPSO. While the single upheld Clause 12 case was brought by a civil society group, it was acting with the consent of the named individual.¹⁸³ IPSO’s inability to influence the code, despite public admissions that there are problems with how groups have been portrayed by members and the creation of a monitoring system for the operation of Clause 12, means that there will be no change in this area unless the Regulatory Funding Company wishes it. As such, IPSO will not be recording the code breaches that would be necessary for any decision about ‘serious and systemic’ breaches in this area to be made.

178. IPSO (n.d.) ‘Clause 12 monitoring,’ ipso.co.uk: <https://www.ipso.co.uk/monitoring/clause-12-monitoring/>

179. In 17 cases this was because a group and not an individual was mentioned, in nine cases the complaints were invalid because they were made by third parties, and the remaining two cases consisted of one where the issue allegedly being discriminated against is not covered by Clause 12 and one where the analysis is incomplete (<https://www.ipso.co.uk/media/1700/clause-12-oct-to-dec1.pdf> – Case headline ‘Prison Service apologises for sending transgender rapist to women’s prison’)

180. IPSO (2019) ‘Quarterly analysis of standards themes arising,’ ipso.co.uk: <https://www.ipso.co.uk/media/1703/standards-themes-q1-2019.pdf>

181. Hacked Off (n.d.) ‘Demand IPSO protect targeted groups against press discrimination,’ hackinginquiry.org: <https://web.archive.org/web/20200511224528/https://hackinginquiry.eaction.org.uk/discrimination-ipso>

182. Walker, James (2019) ‘Senior politicians accuse UK press regulator of “turning a blind eye” to racism in the media,’ pressgazette.co.uk, 28 February 2019: <https://www.pressgazette.co.uk/senior-politicians-accuse-uk-press-regulator-of-turning-a-blind-eye-to-racism-in-the-media/>

183. IPSO (2015) ‘00572-15 Trans Media Watch v The Sun,’ ipso.co.uk, 5 May 2015: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15>

Case Study 2: Times ‘Muslim foster care’ story – IPSO inaction despite multiple external investigations highlighting issues

This 2017 story became a particularly high-profile case that subsequently attracted two external analyses in 2019 – by former journalists Brian Cathcart and Paddy French¹⁸⁴ and by BBC journalists in Radio 4’s 11 October episode of *The Corrections*.¹⁸⁵

Both analyses allege serious shortcomings in newsgathering procedures and reporting by The Times over a series of stories about the placing of a child in foster care by Tower Hamlets Borough Council. The story gained nationwide prominence and was repeated in the coverage of multiple IPSO members, including the *Daily Mail*. The prominence of the story, the subject matter, and the allegations of systemic flaws in the procedures by which the story came to be published in its final form – as well as the award-winning reputation of the journalist who broke the story, Andrew Norfolk – all suggest that it would be a legitimate and appropriate focus for investigation by a regulatory body tasked with policing standards.

The salient features of the story as presented in the original article published on 28 August 2017 on the front page of *The Times* are set out in the headline and the first two paragraphs of the story:

CHRISTIAN CHILD FORCED INTO MUSLIM FOSTER CARE

Concern for girl who ‘had cross removed and was encouraged to learn Arabic’

A white Christian child was taken from her family and forced to live with a niqab-wearing foster carer in a home where she was allegedly encouraged to learn Arabic.

The five-year-old girl, a native English speaker, has spent the past six months in the care of two Muslim households in London. The foster placements were made, against the wishes of the girl’s family, by the scandal-ridden borough of Tower Hamlets.¹⁸⁶

The BBC investigation into the story as part of the series *The Corrections* includes the following assertions from a former journalist and a representative of a fostering charity about that passage:

- The headline is inaccurate;
- The description of the child as ‘white Christian’ is wrong;
- The verb ‘forced’ is used, when ‘placed’ would more accurately describe the process;
- The child was not encouraged to learn Arabic;
- Important information about the child’s linguistic background was omitted.

Both the investigation by Cathcart and French¹⁸⁷ and the BBC investigation found that a series of omissions in the story produced a misleading picture of events. For example, on the day the article was published by *The Times* the case was still actively being considered by the courts. In response to ongoing

184. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf

185. BBC Radio 4 (2019) *The Corrections – The Carbonara Case*, 11 October 2019: <https://www.bbc.co.uk/programmes/m000950v>

186. Norfolk, Andrew (2017) ‘Christian child forced into Muslim foster care,’ [thetimes.co.uk](https://www.thetimes.co.uk/article/christian-child-forced-into-muslim-foster-care-by-tower-hamlets-council-3gcp6l8cs), 28 August 2017: <https://www.thetimes.co.uk/article/christian-child-forced-into-muslim-foster-care-by-tower-hamlets-council-3gcp6l8cs>

187. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf (p. 16)

speculation, the judge made additional information available to prevent harm to the child.¹⁸⁸ This significant and clarifying information was not included in *The Times* story, including the following details:

- The original foster placement had been made as an emergency measure, because the child was considered to be in immediate danger when taken into care by the police;
- The child's mother had alcohol and substance abuse issues;
- The child's guardian, appointed by the court, had reported that the child was 'well cared for';
- To the satisfaction of all parties, the girl was to go and live with her maternal grandmother, who is Muslim.

The omitted information undermined the central points of the story. While both investigations raise other concerns about the newsgathering process of both the journalist and *The Times*, Cathcart and French outline how the availability of this information to the journalist raise deeper concerns about the journalistic procedures leading to publication:

In our view all of this information was accessible to Norfolk and a responsible journalist would have made it his or her business to have found it out before publication. To have included these facts in his article, with due prominence, would without doubt have altered his readers' understanding of the case. The black-and-white picture would have appeared, far less dramatically, in shades of grey. But the matter of omission is not simple, because to have disclosed this information at this stage would in some cases have been a breach of the court's legal confidentiality requirements. In other words, Norfolk was not free to paint the picture in all its shades. This did not, however, justify publishing the article as it appeared, indeed in our view a fair-minded journalist seeking to present readers with an accurate account of the case would have recoiled from publishing so unbalanced an account.

As shown in Appendix 3 below, IPSO handled one complaint from Tower Hamlets Borough Council about a follow-on story published by *The Times* on 30 August 2017, but did not handle any of the more than 250 complaints about inaccuracies in the 28 August story considered here. An approach from Cathcart and French to IPSO received the reply that 'Without the involvement of an individual in the position to know the facts of this case, we considered that it would be difficult to effectively investigate the alleged inaccuracies.'¹⁸⁹

When a regulator is prevented from using its complaint-handling function in such a high-profile and emotive case in which potential serious inaccuracies have been identified in two detailed and independent investigations, a Standards Investigation would seem to be the natural course of action. IPSO has to date not engaged in such an investigation.

Regulation 53, on the triggers available for IPSO to launch a Standards Investigation make the likelihood of an investigation in a case like this extremely small. The 'serious and systemic' hurdle again blocks any potential investigation, while none of the other triggers apply. The end result is that a high-profile and emotive story that led to several front-page articles but which collapsed under external scrutiny could not be investigated by the regulator.

188. Judiciary.uk (2014) Case Management Order – No. 7 : <https://www.judiciary.uk/wp-content/uploads/2017/08/case-management-order-lbtw-cd-and-ors-20170830.pdf>

189. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf (p. 53)

Case Study 3: *Sunday Mirror* Brooks Newmark story – IPSO’s quasi-investigation

In the weeks after beginning operation in September 2014, IPSO was presented with a story published by one of its members in which there appeared to be prima facie evidence of questionable newsgathering techniques potentially in breach of Clause 10 of the Editors’ Code on Clandestine Devices and Subterfuge. IPSO chose to conduct a semi-official inquiry (something that was not provided for in the IPSO Regulations at that time, but included in subsequent versions) in which the result, while contestable, was arrived at transparently but the processes by which the inquiry was conducted contained significant flaws that exposed the regulator’s lack of power. The unofficial inquiry also deflected attention from the inherent difficulty of launching a proper Standards Investigation, which would likely not have been possible under the circumstances.

On 27 September 2014 a Conservative government minister, Brooks Newmark, pre-emptively resigned before the publication the following day of a story outlining inappropriate behaviour towards a supposed young Conservative activist via private messages on social media.¹⁹⁰ It quickly transpired that the story, conducted by a journalist in a freelance capacity and published by the *Sunday Mirror*, was the result of a months-long investigation in which multiple Conservative or former Conservative MPs had been targeted by the (male) journalist using a fake social media account to pose as a young female Conservative activist, created using images of real women without their permission.¹⁹¹

The journalist engaged in text conversations with Newmark over an extended period, culminating in an exchange of sexually explicit images. This exchange formed the basis of the story, and prompted the ministerial resignation. Another MP also targeted as part of the investigation, Mark Pritchard, made complaints to the police and to IPSO alleging a breach of Clause 10 of the Editors’ Code.¹⁹²

The relevant part ii) of Clause 10 states that ‘Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.’¹⁹³ Allegations that the investigation was a ‘fishing expedition,’ as alleged in Pritchard’s complaint due to the fact that multiple MPs were targeted in the investigation, would have constituted a breach of the code (following the precedent of a 2010 ruling by the Press Complaints Commission) due to the lack of a public interest justification in an investigation ‘designed solely to entrap members of parliament.’¹⁹⁴

Beyond the potential deployment of a fishing expedition to entrap MPs, several additional concerns were raised about the nature of the story, including:

190. Moss, Vincent and Matthew Drake (2014) ‘Tory minister Brooks Newmark quits over sex scandal,’ *mirror.co.uk*, 27 September 2014: <https://www.mirror.co.uk/news/uk-news/tory-minister-brooks-newmark-quits-4335398>

191. Waterson, Jim and Alan White (2014) ‘Swedish model upset after her Instagram selfie was used by *Sunday Mirror* to bring down Brooks Newmark,’ *buzzfeed.com*, 27 September 2014: <https://www.buzzfeed.com/jimwaterson/brooks-newmark-resignation#36cp4wh>

192. Wintour, Patrick, Alexandra Topping and Josh Halliday (2014) ‘MP refers *Sunday Mirror* to police and press regulator over sex sting,’ *theguardian.co.uk*, 29 September 2014 : <https://www.theguardian.com/politics/2014/sep/29/sunday-mirror-complaint-ipso-press-regulator-sex-sting>

193. Editors’ Code of Practice Committee (n.d.) ‘The Code,’ *editorscode.org.uk*, https://www.editorscode.org.uk/the_code.php

194. Martinson, Jane (2014) ‘Brooks Newmark sex sting : Ipsa to investigate *Sunday Mirror*,’ *theguardian.com*, 29 September 2014 : <https://www.theguardian.com/politics/2014/sep/29/sunday-mirror-complaint-ipso-press-regulator-sex-sting>

- That the story had previously been offered to other newspapers who had rejected it;¹⁹⁵
- That the use of subterfuge involved sending sexually explicit pictures to the MP to elicit a response in kind;¹⁹⁶
- That the journalist conducting the investigation created the fake social media account using an image pulled from the Instagram profile of a Swedish woman without her permission;¹⁹⁷
- That the *Sunday Mirror* quickly reached a confidential settlement with Pritchard, which involved a donation to a charity of his choice and the closure of his complaint to IPSO.¹⁹⁸ As a result, IPSO has no record of the nature of the (withdrawn) complaint.

Despite the withdrawal of the complaint, IPSO decided to proceed with an inquiry even though its Regulations at the time only allowed IPSO to consider complaints about alleged code breaches and launch Standards Investigations on the basis of the triggers outlined above.

To recap, Regulation 53¹⁹⁹ contains two potential triggers relevant in this case: a ‘Systemic Failure’ due to ‘serious and systemic breaches’ (Regulation 53.1), and ‘in exceptional circumstances’ where legal issues or Editors’ Code compliance issues ‘are raised about the practices of a Regulated Entity or Regulated Entities’ (Regulation 53.3). It is unlikely that either of these could have been invoked as a justification for a Standards Investigation by IPSO: in the former case because the potential breach could not be ruled as such in the absence of a complaint (and it could not be described as serious and systemic); in the latter because no legal issues were to be flagged, and code compliance issues could not be confirmed without prior evidence of breaches.

Therefore, with neither prerequisite for further action met, the regulator chose instead to conduct an ad hoc inquiry that was retroactively legitimised by a revision to IPSO’s regulations two years later. In the event of IPSO finding the *Sunday Mirror* guilty of a code breach the regulator would have had no powers to sanction the publication.

Ultimately, this did not represent a significant problem because IPSO found the *Sunday Mirror* to have been justified in using subterfuge at each stage of the investigation, and found that publication was in the public interest.²⁰⁰ IPSO’s ruling is detailed and open to public scrutiny. There are, however, certain aspects of the ruling that show the weakness of the regulator relative to its members or which cast doubt on the processes by which the investigation was conducted and its conclusions were reached.

Paragraph 6 of the ruling, for example, consists of the following:

The *Sunday Mirror* maintains that IPSO does not have the power to make formal inquiries, leading to an adjudication, about this matter, in the absence of a complaint from a directly involved party. It

195. Moss, Vincent and Matthew Drake (2014) ‘Tory minister Brooks Newmark quits over sex scandal,’ *mirror.co.uk*, 27 September 2014: <https://www.mirror.co.uk/news/uk-news/tory-minister-brooks-newmark-quits-4335398>

196. <https://www.mirror.co.uk/news/uk-news/tory-minister-brooks-newmark-quits-4335398>

197. Waterson, Jim and Alan White (2014) ‘Swedish model upset after her Instagram selfie was used by *Sunday Mirror* to bring down Brooks Newmark,’ *buzzfeed.com*, 27 September 2014: <https://www.buzzfeed.com/jimwaterson/brooks-newmark-resignation#36cp4wh>

198. Greenslade, Roy (2014) ‘Why did the *Sunday Mirror* settle with Tory MP who complained to Ipsos?’ *theguardian.com*, 22 October 2014 : <https://www.theguardian.com/media/greenslade/2014/oct/22/sundaymirror-ipso>

199. Regulation 40 in the version of the IPSO Regulations in use at the time of the Brooks Newmark story

200. Julian, Vikki (2015) ‘Brooks Newmark *Sunday Mirror* case: IPSO decision,’ *ipso.co.uk*, 26 March 2015: <https://www.ipso.co.uk/news-press-releases/news/brooks-newmark-sunday-mirror-case-ipso-decision/>

emphasised, however, that it did not seek to avoid addressing IPSO's concerns. The newspaper cooperated with the investigation, making full submissions. IPSO does not accept the newspaper's contention, but does acknowledge that this power needs to be more explicitly stated in its regulations. Accordingly, this is the determination of the Committee and is not an adjudication under the existing rules.

The *Sunday Mirror* was, under the circumstances, correct to assert that IPSO had no power to produce an adjudication in this case. IPSO contests this opinion without evidence and acknowledges that the ruling does not constitute an adjudication, and therefore would have held no power if the regulator's decision had gone against, rather than for, the publication. The publisher therefore had the power to withdraw from the inquiry at any stage. Under IPSO's post-2016 Regulations, the inquiry could have resulted in an adjudication but not the additional sanctions available to the regulator on completion of a Standards Investigation.

As well as having the power to withdraw from the inquiry, the *Sunday Mirror* was also under no obligation to provide access to the journalist or to documentation. As media commentator and former editor of the *Daily Mirror* Roy Greenslade noted, IPSO 'did not interview or communicate in any way with Wickham' during the inquiry.²⁰¹ This has implications for one of the main pieces of evidence cited by IPSO in reaching its conclusion clearing the *Sunday Mirror*. As noted in Paragraph 10 of IPSO's ruling, while the journalist 'had received information about several individuals, the focus of the investigation, from the start, according to the *Sunday Mirror*, was Mr Newmark.' It is not at all clear how IPSO confirmed or corroborated this claim without contact with the journalist. No evidence is supplied or referred to in support of the claim.

IPSO also concedes that the *Sunday Mirror* only supplied a redacted version of the correspondence between the journalist and Newmark leading to the exchange of explicit images. As Paragraph 20 of the ruling states:

During IPSO's inquiries, the Sunday Mirror declined to provide full details of the messages exchanged between the reporter and Mr Newmark, without Mr Newmark's consent. It did provide a redacted version of the exchange which quoted the chronology of the messages published in the article, including those quoted above. Given its own duty of confidentiality, IPSO questions the need for the full exchange to have been withheld or redacted, but appreciates the need to take into account Mr Newmark's privacy. Nonetheless, IPSO had sufficient information about the exchange of direct messages to reach the above conclusion.

The final assertion here, that IPSO had sufficient evidence despite questioning the need for redaction, is not clarified in further detail. The 'above conclusion' is that the journalist was justified in 'accelerating the subterfuge' to the point at which the target of the investigation reciprocated in sharing a sexually explicit image. It is central to the final ruling by IPSO – that subterfuge was justified at each stage, and that the public interest test of 'exposing serious impropriety by an MP' was met – and yet the conclusion was reached on the basis of unnecessarily redacted material.

There are three further issues with IPSO's justification for its conclusions on the basis of the evidence apparently supplied by the *Sunday Mirror*. The first is the question of whether the publisher supplied any further information to the regulator than simply the contents of its original story published on 28

²⁰¹ Greenslade, Roy (2015) 'Ipsos ruling on the *Sunday Mirror* over Brooks Newmark sting is flawed,' theguardian.com, 26 March 2015: <https://www.theguardian.com/media/greenslade/2015/mar/26/ipsos-ruling-on-the-sunday-mirror-over-brooks-newmark-sting-is-flawed>

September 2014. The above quote from paragraph 20 of IPSO's response appears to assert that IPSO received no further information about the exchange of information between the journalist and the MP than that laid out in the original story as published.

The section of the IPSO ruling headed 'Misrepresentation and subterfuge after Brooks Newmark initiated private communication' consists of only two paragraphs, of which only the second (Paragraph 17) deals with the private exchanges between Newmark and the journalist after the first direct message. It reads:

After a number of messages had been exchanged, including a suggestion by Mr Newmark that they meet, he had asked 'Sophie' to send a photograph of herself. Following an exchange of several pictures, 'Sophie' suggested that they 'take it to the next level'. Mr Newmark agreed and, having received an explicit image, requested a further image in a different pose in exchange for 'something in return.' The newspaper says that he later sent an explicit image of himself.

This exchange recounts exactly the version of events in the *Sunday Mirror's* original story with no additional information.²⁰² While IPSO does not explain what evidence it did receive, the similarities between the original article and IPSO's description suggests that the regulator's decision was made with no more information about the exchange than was made available to the public six months before the ruling was published.

The second issue is the fact that IPSO accepted the *Sunday Mirror's* assertions that the withholding and redacting of evidence about the above exchanges were necessary to protect Mr Newmark's privacy (Paragraph 20, above), and that evidence to substantiate the claims that there was a public interest justification in pursuing the investigation by means of subterfuge in the public interest should also be withheld from IPSO (Paragraph 27). IPSO has a duty to confidentiality, as the ruling notes in Paragraph 20, and so these assertions are both false and demonstrative of the lack of power of the regulator not only in accepting the lack of evidence, but in deciding that it was not necessary to reach its conclusion.

Finally, the ruling – in accepting this – also fails to acknowledge or to inquire about the fact that at least two newspapers (the *Sun* and the *Mail on Sunday*) rejected the story before it was picked up by the *Sunday Mirror*. As Roy Greenslade noted at the time, 'I am aware of the reasons that [the journalist] was turned away by the *Sun* and I believe IPSO should have made an effort to discover them.'²⁰³ The regulator, however, did not do so.

Overall, the informal IPSO inquiry into the *Sunday Mirror* story highlighted the regulator's lack of powers while masking its inability to launch a Standards Investigation or to record a code breach where the affected individual did not complain. The inquiry allowed the publisher to refuse to provide full information on the newsgathering conducted for the story, and then exonerated the publisher on the basis of the incomplete information that it did choose to provide, much of which appears to have been in the public domain. Perhaps more significant than the regulator's choice to initiate such an inquiry without any powers at the time to do so is the fact that – in the five years since – there has been no Standards Investigation and no further inquiries.

²⁰² Moss, Vincent and Matthew Drake (2014) 'Tory minister Brooks Newmark quits over sex scandal,' *mirror.co.uk*, 27 September 2014: <https://www.mirror.co.uk/news/uk-news/tory-minister-brooks-newmark-quits-4335398>

²⁰³ Greenslade, Roy (2015) 'Ipsos's ruling on the *Sunday Mirror* over Brooks Newmark sting is flawed,' *theguardian.com*, 26 March 2015: <https://www.theguardian.com/media/greenslade/2015/mar/26/ipsos-ruling-on-the-sunday-mirror-over-brooks-newmark-sting-is-flawed>

APPENDIX 3 – IPSO COMPLAINT-HANDLING CASE STUDIES

Case Study 1: Belcher v *The Times* (April 2019)²⁰⁴

In this case, where a complaint was brought against *The Times* alleging breaches of the Editors' Code clauses on accuracy and discrimination, IPSO decided that no breach had taken place.

The article complained about was an opinion piece in which the columnist discussed comments made by the complainant regarding media coverage of transgender issues, as well as the opinions of the columnist about how activists referred to the suicide rate of transgender people. A key part of the complaint was the attribution in the article of the quote 'Better a living daughter than a dead son' to activists advising parents of trans teenagers considering medical intervention. The complainant claimed that this quote had been invented. The newspaper submitted no evidence that the quote was real, instead claiming that it 'summarised' sentiments advanced by activists.

IPSO accepted the newspaper's explanation, reaching the following conclusion:

The article's claim that some trans activists tell parents, 'Better a living daughter than a dead son', was a summation of advice parents of transgender children had claimed to have received. The newspaper had provided accounts of activists warning parents of the potential suicide risk if they did not listen to or act on their child's comments on gender identity. Summarising the advice of activists in this way was not misleading, as the sentiment behind the remarks – i.e. that a child may take their own life if parents do not act on their child's remarks – was accurately conveyed. The newspaper had taken care over the accuracy of this statement. There was no breach of Clause 1 [Accuracy] on this point.

IPSO's finding – that an invented quote can fail to represent an inaccuracy – suggests substantial leniency over what could be considered an inaccurate statement in a newspaper article.

Case Study 2: Tower Hamlets Borough Council v *The Times* (April 2018)²⁰⁵

This complaint referred to a high-profile case in which *The Times* reported on the placing of a child in foster care by Tower Hamlets Borough Council. The story was widely reported following the initial *Times* articles, given the story's central allegation that a Christian child had been 'forced into Muslim foster care.' Subsequent investigations into the story by Brian Cathcart and Paddy French,²⁰⁶ and by the BBC²⁰⁷ found several aspects of the story to have been misleading (see Appendix 2 above).

The complaint by Tower Hamlets Borough Council took several parts. The first, on the claim by *The Times* in one of the articles that the Council was guilty of a 'failure' in its placement of a child with a foster carer, was upheld by IPSO as inaccurate. A second part of the complaint concerned the failure of *The Times*

²⁰⁴. IPSO (2019) '07454-18 Belcher v *The Times*,' 15 March 2019: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07454-18>

²⁰⁵. IPSO's handling of this story in relation to the regulator's capacity to launch standards investigations is examined in Part 1 of this report.

²⁰⁶. Cathcart, Brian and Paddy French (2019) *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting – A Case to Answer*, London: Hacked Off: https://hackinginquiry.org/wp-content/uploads/2019/06/Norfolk_Report_Unmasked.pdf

²⁰⁷. BBC Radio 4 (2019) *The Corrections – The Carbonara Case*, 11 October 2019: <https://www.bbc.co.uk/programmes/m000950v>

to make clear that the child's grandmother was a Muslim – a key detail given the focus of the story on the religious differences between the child and the foster parents, and one which considerably alters the significance of the main claims of the articles. IPSO's response to that aspect of the complaint reads:

The concern raised in the previous two days' coverage was that foster placements organised by the complainant were not culturally matched with the child, due to the religious practices of the foster parents. It appeared to be accepted by all parties however that the grandmother was not a religiously observant Muslim, and that she was a culturally appropriate placement. For these reasons, the Committee did not find that the omission of information about the grandmother's background in the article constituted a failure to take care over the accuracy of the article.

The regulator also accepted the newspaper's explanation that a desire to avoid the possible identification of the child drove the omission of relevant information. The investigation by Brian Cathcart and Paddy French suggests that by failing to identify the religious background of the grandmother (and by extension the religious heritage of the child) *The Times* was able to sustain the allegation that the foster placing was inappropriate: 'The implication of IPSO's ruling, therefore, was that it was legitimate for *The Times* to present an inaccurate picture of the case because some of the information might have been confidential.'

The subsequent BBC investigation of the case, broadcast on the Radio 4 programme *The Corrections* on 11 October 2019, also set out the extent to which information omitted by *The Times* in the original reporting of the case rendered many aspects of the high-profile story potentially misleading.

Case Study 3: Prevent Watch v *Sunday Telegraph*²⁰⁸

This complaint concerned an objection by a group identified by the *Sunday Telegraph* as 'Muslim extremists' and 'Islamic activists' and accused of 'using coordinated links to mainstream news organisations, including the BBC, to spread fear and confusion in Muslim communities about the Government's anti-terror policy, Prevent.' The article named two individuals linked to Prevent Watch. The complaint had several parts, but IPSO summarised the central component as follows:

The complainant said that it was inaccurate for the article to describe Prevent Watch as 'Islamist activists', and to say that it was 'linked' to the organisations Cage and Mend, which the newspaper had described as 'a group known to sympathise with terrorists' and 'an extremist front group' respectively. It said that it was also inaccurate to state that the mother named in the article was a Prevent Watch 'activist'; the complainant said that she was in fact a client, and that there was no 'activist' position in Prevent Watch. The complainant was also concerned that it was inaccurate to suggest that the father was acting in bad faith as an 'activist' when he had criticised the local council; he was entitled to express his views about Prevent regardless of his association with Prevent Watch.

IPSO found in favour of the newspaper in all aspects of the complaint, including on the status of the named individuals.

Subsequently, the 'father' named in the case received financial damages and an apology from the *Telegraph* after suing the newspaper for the same story that IPSO had found to be in no way misleading.²⁰⁹ The *Telegraph's* apology as a result of the legal case accepted that the story had been misleading in accusing the individual of supporting Islamic extremists.

²⁰⁸ IPSO (2016) '00615-16 Prevent Watch v The *Sunday Telegraph*,' 15 July 2016: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00615-16>

²⁰⁹ Ponsford, Dominic (2017) '*Sunday Telegraph* pays £20,000 in libel damages to man wrongly described as "Islamic activist",' *pressgazette.co.uk*, 8 August 2017: <https://www.pressgazette.co.uk/sunday-telegraph-pays-20000-in-libel-damages-to-man-wrongly-described-as-islamist-activist/>

APPENDIX 4 – IPSO ANNUAL REPORT COMPLIANCE WITH REGULATION 52

List of components in Regulation 52:²¹⁰

1. Identity of Regulated Entities
2. Significant change in the number of Regulated Entities
3. Number of articles in relation to which the Regulator has handled substantive complaints
4. The outcomes reached in aggregate for all the Regulated Entities
5. The outcomes in relation to each Regulated Entity
6. Summary of any Standards Investigations carried out
7. The outcomes of such investigations
8. Report on the adequacy and effectiveness of Regulated Entities’ compliance processes
9. Information about the Arbitration Service, including the extent to which it has been used

Excluding 6 and 7 which do not apply due to the lack of any Standards Investigations having been carried out at the time of writing, this leaves seven components.

EVIDENCE FOR CONCLUSIONS

2015 Annual Report

Regulation 52 Component	Reason for decision
Identity of Regulated Entities (REs)	Yes – list of publishers on pages 23 and 24
Significant change in the number of REs	N/A – First Annual Report
No. of articles where IPSO has handled complaints	Yes – page 22
The outcomes reached in aggregate for all REs	Yes – page 22
The outcomes in relation to each RE	Yes – pages 23 and 24, although not detailed information: only includes Upheld/Resolved/Not Upheld
Report on REs’ compliance processes and procedures	No
Information about the Arbitration Service and its use	Yes, though only on consultation as the Arbitration Service had not yet been set up

210. IPSO (2019) *Regulations*, London: Independent Press Standards Organisation: <https://www.ipso.co.uk/media/1815/ipso-regulations-2019-v-sep19.pdf>

2016 Annual Report

Regulation 52 Component	Reason for decision
Identity of Regulated Entities (REs)	Yes - pages 16-17 and 30-31. Discrepancies exist between IPSO list of publishers and annual statements by regulated entities, however
Significant change in the number of REs	N/A - net change of one regulated publisher from previous year
No. of articles where IPSO has handled complaints	Yes - page 10
The outcomes reached in aggregate for all REs	Yes - page 10
The outcomes in relation to each RE	Yes - pages 16-17
Report on REs' compliance processes and procedures	No
Information about the Arbitration Service and its use	Yes - pages 22-23

2017 Annual Report

Regulation 52 Component	Reason for decision
Identity of Regulated Entities (REs)	Yes - pages 22-23 and 34-40
Significant change in the number of REs	N/A - though significant discrepancies between annual statements and list of publishers
No. of articles where IPSO has handled complaints	Yes - page 21
The outcomes reached in aggregate for all REs	Yes - page 21
The outcomes in relation to each RE	Yes - pages 22-23
Report on REs' compliance processes and procedures	No
Information about the Arbitration Service and its use	Yes - page 17

2018 Annual Report

Regulation 52 Component	Reason for decision
Identity of Regulated Entities (REs)	Yes - pages 30-37
Significant change in the number of REs	N/A
No. of articles where IPSO has handled complaints	Yes - pages 16-17
The outcomes reached in aggregate for all REs	Yes - pages 22-23
The outcomes in relation to each RE	Yes - pages 22-23
Report on REs' compliance processes and procedures	No
Information about the Arbitration Service and its use	Yes - page 15

2019 Annual Report

Regulation 52 Component	Reason for decision
Identity of Regulated Entities (REs)	Yes - pages 13-14
Significant change in the number of REs	Yes - page 5
No. of articles where IPSO has handled complaints	Yes - page 10
The outcomes reached in aggregate for all REs	Yes - pages 13-14
The outcomes in relation to each RE	Yes - pages 13-14
Report on REs' compliance processes and procedures	No
Information about the Arbitration Service and its use	Yes - page 9

APPENDIX 5 – SELECTED COMPLAINTS POLICY INFORMATION


Complaints Policy Page, *i* Newspaper²¹¹

The **i** newspaper
2 Derry Street
London, W8 5TT
United Kingdom

Complaints policy and Ipsos

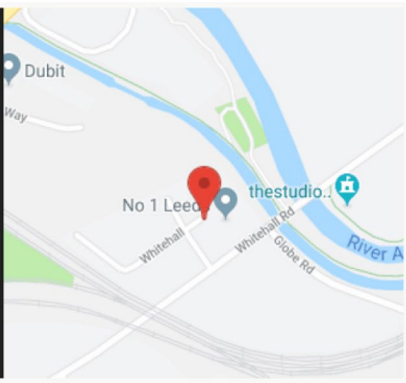
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JPI Media/National World – *Yorkshire Post*²¹²

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211. iNews (n.d.) 'Contact Us,' [inews.co.uk](https://inews.co.uk/contact-us): <https://inews.co.uk/contact-us> (accessed 2 February 2021)

212. Yorkshire Post (n.d.) 'Find Us,' [yorkshirepost.co.uk](https://www.yorkshirepost.co.uk/contact-us): <https://www.yorkshirepost.co.uk/contact-us>

Newsquest Homepage Footer (taken from *Glasgow Times*)²¹³

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Newsquest - *Glasgow Times* (Contacts Page, following 'contact the editor here' link)²¹⁴

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Letters - letters@glasgowtimes.co.uk



The image shows the front page of the Glasgow Times newspaper. The masthead reads 'Glasgow Times' with 'Evening' in a smaller font. Below the masthead, there is a headline: 'Fire guts tenement building' with a sub-headline: 'Second blaze just as community was getting back on to its feet'. The main image is a photograph of a large, multi-story building with a fire visible on the roof. Other text on the page includes 'REVIEW: TOP MARKS FOR TAKEAWAY' and 'NOBODY KNOWS OUR CITY BETTER'.

²¹³. Glasgow Times (n.d.) 'Homepage,' glasgowtimes.co.uk: <https://www.glasgowtimes.co.uk/> (the Evening Times rebranded as the Glasgow Times in December 2019)

²¹⁴. Glasgow Times (n.d.) 'Contact Us,' glasgowtimes.co.uk: <https://www.glasgowtimes.co.uk/contact-us/>

Newsquest – *Penarth Times* (Contacts Page)²¹⁵

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²¹⁵. Penarth Times (n.d.) 'Contact Us,' penarthtimes.co.uk: <https://www.penarthtimes.co.uk/contact/>

APPENDIX 6 – PUBLISHER ANNUAL STATEMENT COMPLIANCE WITH ANNEX A

National News Publishers’ Fulfilment of Annex A Requirements (2019)

Annex A Requirement	Publisher	Fulfilment
Clause 2: Copies of any internal manuals, codes or guidance used by journalists	Associated Newspapers	Yes – included in Appendices 5 & 6 (pp. 26-30)
	News UK & Ireland	No – not included
	Reach Plc	No – not included
	Telegraph Media Group	Yes – included in pp. 9-12
Clause 3.1: Compliance with the Editors’ Code	Associated Newspapers	Partially included – internal complaints statistics included (pp. 9-11), but no recording of code breaches (p. 9)
	News UK & Ireland	No – no internal complaints statistics included, or details on code breaches at level of internal compliance processes
	Reach Plc	Partially included – complaints statistics included on p. 12, but no recorded code breaches
	Telegraph Media Group	No – compliance mentioned on p. 6, but no evidence or statistics of numbers of complaints or of numbers of breaches
Clause 3.2: Any adverse findings of the regulator and steps taken to address such findings	Associated Newspapers	Yes – adverse findings listed on p. 7, with steps taken outlined on p. 8
	News UK & Ireland	Partially included – URLs only of IPSO cases listed on pp. 10-11. Limited information on steps taken in response
	Reach Plc	Yes – included on pp. 13-20
	Telegraph Media Group	Yes – list of adverse findings and responses on pp. 7-8
Clause 3.3: Training of staff	Associated Newspapers	Yes – included on p6
	News UK & Ireland	Yes – included on pp. 12-13
	Reach Plc	Yes – included on pp. 11-12
	Telegraph Media Group	Yes – included on p. 6
Clause 4: Details of the steps taken by the Regulated Entity in response to any adverse Adjudications by the Regulator during the previous year	Associated Newspapers	No – no references to steps taken in response to performance in previous year
	News UK & Ireland	No – no evidence included
	Reach Plc	No – no evidence included
	Telegraph Media Group	No – no evidence included

ABOUT THE AUTHORS

Dr Gordon Ramsay is Visiting Researcher at the University of Westminster. He has conducted research on media regulation since 2011 and co-authored the Media Standards Trust's submission to the Leveson Inquiry in 2012²¹⁶ and the first assessment of the Independent Press Standards Organisation in 2013.²¹⁷ In 2015 he co-founded the Centre for the Study of Media, Communication and Power at King's College London and continues to conduct research on media policy and regulation, digital disinformation and the provision of local public interest journalism.

Professor Steven Barnett is Professor of Communications at the University of Westminster. He has directed a number of research projects on the structure, funding, and regulation of communications in the UK and other countries, and specialises in media policy, regulation, and the theory and practice of journalism. Over the last 35 years, he has advised ministers and shadow ministers across the political spectrum, and has been invited to give evidence to numerous parliamentary committees, as well as the Leveson Inquiry and the European Parliament. He has acted as specialist advisor to the House of Lords Communications and Digital select committee on several occasions, most recently for its 2019 inquiry into public service broadcasting. He has been a freelance writer and broadcaster for nearly 40 years, and was for many years an *Observer* columnist. Books include *The Rise and Fall of Television Journalism* (Bloomsbury, 2011) and *Media Power and Plurality* (with Judith Townend, eds., Palgrave, 2015).

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216. Media Standards Trust (2012) *A Free and Accountable Media*, London: Media Standards Trust <http://mediastandardstrust.org/wp-content/uploads/downloads/2012/06/MST-A-Free-and-Accountable-Media-21-06-12.pdf>

217. Media Standards Trust (2013) *IPSO: An Assessment*, London: Media Standards Trust <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/11/MST-IPSO-Analysis-15-11-13.pdf>