The creation of the Ipso system

As chapter 2 explains, the Ipso system – created and funded by most of the UK’s major newspaper and magazine groups - is in some respects based on what Lord Justice Leveson recommended in his 2012 report on press regulation.

But these groups and others in the media opposed a key element of the regulatory framework Leveson proposed – that statute should be created to ‘underpin’ an overseeing ‘recognition’ body to approve (‘recognise’) and periodically review press regulation systems. That opposition was unsuccessful, but – as explained in chapter 2 and below – the regulatory environment which has been created by statute had not been fully implemented by August 2016 (when this additional material for chapter 2 was written).

Why some of Leveson’s recommendations were so fiercely opposed

Leveson said in his report: ‘In order to meet the public concern that the organisation by the press of its regulation [should be] by a body which is independent of the press, independent of Parliament and independent of the Government, that fulfils the legitimate requirements of such a body and can provide, by way of benefit to its subscribers, recognition of involvement in the maintenance of high standards of journalism, the law must identify those legitimate requirements and provide a mechanism to recognise and certify that a new body meets them.’

Responsibility for recognising and certifying a regulator should rest with a recognition body. This should be Ofcom, he said, although a ‘less attractive alternative’ would be a ‘Recognition Commissioner’ supported by Ofcom officials.

The idea that broadcast regulator Ofcom, or a Commissioner linked to it, should have powers to scrutinise a body funded by the newspaper and magazine press to regulate its journalism, and to refuse or remove ‘recognition’ from such a body, was anathema to many in the press industry. This ‘recognition’ proposal smacked to them as being a move towards State regulation of the press, and so a potential threat to press freedom. Ofcom, as chapter 3 of McNae’s explains, is a statutory regulator which has operational independence but duties which are prescribed by Parliament in legislation. The Ofcom board is appointed, in effect, by the Government. The concern in the press was that such a ‘recognition body’ might seek to dictate the content of a press regulator’s code of ethics, and might seek, in this and other ways, to influence its decisions on complaints against the press. Many editors and journalists felt that such a framework offered both the temptation and opportunity for politicians and future Governments to try to exercise influence on the press by amending the legislation defining the recognition body’s role. This temptation might prove strong, it was argued, if at some time in the future politicians felt that the press was proving ‘troublesome’ in scrutinising political matters or scandals in politicians’ private lives.

Prime Minister David Cameron responded in November 2012 to these objections, telling the House of Commons that he had ‘serious concerns and misgivings’ about Leveson’s call for legislation to create such a ‘recognition’ body.

He added: ‘The issue of principle is that, for the first time, we would have crossed the Rubicon of writing elements of press regulation into the law of the land. We should be wary of any legislation that has the potential to infringe free speech and a free press. In this House, which has been a bulwark of democracy for centuries, we should think very, very carefully before crossing that line.’

The Royal Charter

The extent to which Leveson’s recommendations on press regulation should be implemented led to months of fierce political debate – see the House of Commons Library briefing papers listed in Useful Websites, below. Eventually the Government did cross ‘the Rubicon’ by agreeing that legislation was needed. It rejected Leveson’s recommendation that Ofcom should play a ‘recognition role’, but in 2013,
with cross-party support in the House of Commons, it created a legal framework for a model of press regulation for England and Wales close to that Leveson had proposed. This framework was made law by means of a Royal Charter and by parts of the Enterprise and Regulatory Reform Act 2013 and the Crime and Courts Act 2013. The Charter – in theory a decree granted by the Queen through the Privy Council, but in reality drawn up to meet Ministers’ specifications – provided for the creation of a ‘Recognition Panel’ to approve and periodically review any body set up to regulate the press.

The Charter says no serving or former editor, relevant publisher, or any MP or Minister can sit on the Panel. It also sets out ‘recognition’ criteria which include that a recognised regulator must offer an arbitration service to people who assert that they have civil claims – such as for libel or breach of privacy – against the press, and that this service must be free for complainants to use.

The idea of putting a Royal Charter at the centre of the regulatory framework did not come from Leveson. But the Ministers and wide range of MPs who supported the Charter plan saw it as an attractive compromise between his recommendation for a ‘recognition’ process underpinned by statute and the objections from major press groups to any statutory underpinning of regulation. Politicians saw the Charter idea as suitable because – as chapter 3 of McNae’s outlines – the legal system which underpins the BBC is based on a Royal Charter and an accompanying Agreement, a form of law which means the Government is not involved in the BBC’s operational decisions, only in decisions made every 10 years about how it is funded and the overall remit of its activities. Supporters of a Royal Charter element in press regulation argued that the BBC’s Charter kept the BBC’s journalism independent of the Government, and that therefore the press had nothing to fear from the Charter created to introduce a ‘recognition’ process in a regulatory framework. But critics of that view would argue that the rows about the BBC’s future which attended consideration of the renewal of its Charter in 2016 demonstrate the serious potential for government interference with both the Royal Charter on the Press and the free press itself.

The Enterprise and Regulatory Reform Act 2013 says the Royal Charter (and therefore the ‘recognition’ process it enshrines) can only be changed with the approval of two-thirds of both Houses of Parliament. This, it was argued, was a safeguard against any future Government using further legislation, which if the Charter did not exist would only need a simple majority in each House, to amend a ‘recognition’ process to exercise influence or control over the press. But this argument ignores the possibility that the 2013 Act itself could be amended to repeal the ‘two-thirds’ safeguard.

The ‘Hacked Off’ pressure group, which says any press regulator must be fully independent of editors and publishers, welcomed the Charter plan as the ‘recognition’ model it enshrined seemed to mean there would be periodic scrutiny, as Leveson wanted, of whether any regulatory body had sufficient independence, including from the press organisations which funded it, to rule fairly on complaints about them.

But critics of the ‘recognition’ model point out that the BBC, despite the protections of its own Royal Charter system, tends to be more cautious in its journalism than the press, and that the BBC has, at some times in its history and despite this Charter provision for its independence from Government, been subject to intense pressure from Ministers and their aides about how it should report the news – see Useful Websites, below, for the BBC’s own account of such times of tension.

Major newspaper groups failed to persuade the Government to amend its Royal Charter on press regulation. They put forward a version of their own which they argued would be more likely to withstand any future attempts at political interference in press regulation processes. After the Government rejected this version, these groups launched in May 2014 an unsuccessful legal battle to try to compel the Government to consider their proposals.
The ‘carrot and stick’

As chapter 2 explains, the Crime and Courts Act 2013 encourages the press to seek ‘recognition’ under the Royal Charter for any regulation body it establishes. This is because part of the Act follows the ‘carrot and stick’ legislative model Leveson advocated.

The ‘stick’ is that under the Act any press organisation which has not signed up to a ‘recognised’ regulation system is exposed to a greater likelihood of having to pay ‘exemplary’ (punitive) damages in privacy and libel cases they lose in the courts. The Act could lead to a press party which wins a case being deprived of the right to recover their costs from the losing party – so even if a newspaper were to win in a libel trial, it might have to pay most or all of the huge costs of the trial. This costs proposal has so far been kept on hold.

The ‘carrot’ in the Act is that press organisations signed up to a recognised regulator will not be subject to such punitive measures. The assumption behind this part of the Act, which follows the assumption Leveson made in his report, is that willingness to be subject to such an officially ‘recognised’ form of regulation means a press organisation is usually responsible in its journalism, and so should not be punished harshly by the courts for any lapse.

The Act also enshrines a Leveson proposal that a press organisation should normally be deprived of recovering costs in such lawsuits, even when it wins them, unless it has signed up to an arbitration scheme approved under a ‘recognition’ process. Leveson wanted such a scheme to enable people with a civil claim against the press – for example, for libel or breach of privacy – to seek financial redress without the need for costly actions in the courts. The 2013 Royal Charter enshrines his recommendation that such an arbitration scheme should be ‘free for complainants to use’ (although it does permit a regulator to charge them a ‘small administration fee’ for an initial assessment of a claim).

Currently there seems little prospect of the Royal Charter’s ‘recognition’ model of press regulation becoming operative to any major extent, if at all, as mainstream newspaper and magazine publishers are refusing to sign up to it. Instead, as chapter 2 explains, most of the major newspaper and magazine groups agreed to establish and fund Ipso – a system with no statutory element. The press groups backing Ipso oppose the Charter model, arguing that it could be the start of a slippery slope towards Government control of the press, and Ipso itself has said it will not seek ‘recognition’ under the Royal Charter. It seems likely that the first time a major press publisher falls foul in a lawsuit of the ‘stick’ elements of the 2013 Act, should they become operative, this punitive law will be challenged in the courts as breaching the media’s rights of freedom of expression under Article 10 of the European Convention of Human Rights – see McNae’s chapter 1 – though the Government claims that the 2013 Act is Convention compliant.

A particular objection among regional and local press groups to the Charter’s ‘recognition’ model is that they fear that a free arbitration service, which the Charter says must be offered by any ‘recognised’ regulator, will prove costly for them. They say it could encourage complainants – for example, those alleging libel or breach of privacy - to seek financial compensation through arbitration rather than settle for the publication of an apology or correction, or for an undertaking that there will be no further intrusion into the private information. The Charter does allow a ‘recognised’ regulator to exempt regional and local publishers from such an arbitration scheme, but only if the Recognition Panel concludes that the scheme is causing them ‘serious financial harm’.

By early 2014, the Government, recognising the opposition among the press to the Charter model, had signalled that Ipso should be given the chance to prove its worth outside the Charter framework, perhaps for some decades – in effect, it resigned itself to the press’s boycott of the ‘recognition’ system and dropped the idea of creating any further ‘sticks’ measures to encourage them to accept it.
Nevertheless, the Recognition Panel was established, with a large budget of taxpayers’ money. See Useful Websites, below, for the Panel’s site.

As chapter 2 explains, in January 2016 the Impress Project applied to the panel for recognition as a regulator. It had 10 publishers signed up, most of which were hyperlocal publishers, and none of which was a major local, regional or national newspaper (whereas Ipso’s annual report for 2015 said it had 85 publishers in its membership, covering over 1,100 print titles and 1,500 websites, ‘90% of national newspapers measured by coverage’, almost all regional and local newspapers and all the major magazine newspapers publishers).

The application by Impress – the Independent Monitor for the Press – prompted the News Media Association, which represents national, regional and local newspapers, to object to possible recognition on a number of grounds – see the Late News section of McNae’s. But Impress, should it become a regulator, and even if ‘recognised’, will only be able to consider complaints against publishers in its membership (that is, those funding Impress and agreeing to be bound by its decisions), so it will have no power to adjudicate on complaints against most of the major press organisations in England and Wales, because they have signed up to Ipso.

Further detail about the Ipso system
As chapter 2 of McNae’s explains, Ipso has replaced the PCC. In some respects it operates in a similar way to the PCC as regards considering and deciding on complaints. Also, the Regulatory Funding Company – the company run by press industry representatives which provides the mechanism whereby Ipso is funded by the industry, and which sets Ipso’s annual budget – operates in a similar way to PressBoF, the body through which the industry funded the PCC. The Editors’ Code of Practice Committee, which reviews the terms of the Code, and can propose changes, was a sub-committee of Pressbof and under the new system is convened by the Regulatory Funding Company rather than by Ipso.

The structure and powers within the Ipso system are set out in Articles of Association for Ipso and those of the Regulatory Funding Company, and in Ipso’s regulations. See Useful Websites below. Under its Articles the Company’s directors can only approve changes to or replacement of the Code - and therefore changes to the ethical rules it enshrines - if they reasonably believe there is a consensus for this among the press groups which, through the Company, fund (and are members of) the Ipso system. Critics of the system say this structure fails to meet Leveson’s criteria for a regulator independent of the industry – and, since it started work in autumn of 2014 have slated Ipso as being nothing more than a PCC Mark II. But Ipso’s launch has marked a new era in press regulation in the UK, because of the important differences between it and the old PCC system.

As chapter 2 of McNae’s outlines:

- Ipso has the power – because of the contracts press groups sign to be part of its system – to ‘fine’ these groups up to £1 million for serious or systemic breach of the Editors’ Code, whereas the PCC could not impose financial sanctions.
- The Editors’ Code Committee includes Ipso’s chair and director, and three other ‘lay’ people – who are not from the press – as well as 10 editors. Under the old PCC system all the committee members were editors.
- Ipso may in future adopt an arbitration process to offer an alternative means of dispute resolution, with the possibility of financial compensation, to people who might otherwise sue publishers in the courts for defamation or breach of privacy. But the Ipso system does not oblige a publisher to take part in the arbitration process.

In the summer of 2016 Ipso began a pilot, arbitration scheme due to run for 12 months, with costs for any claimant using it capped at £2,800 (+VAT), though if a case is resolved after a preliminary ruling it will only cost the claimant £300 (+VAT). Those national newspapers in the Ipso system and a magazine group agreed to take part in the pilot, but the only regional newspaper taking part was the Liverpool Echo.
Ipso’s 12-member board does not include people who are currently editors, and neither does its complaints committee, whereas serving editors constituted a minority of the PCC board (which decided on complaints). This change means that Ipso, though its board may include former editors or former editorial executives among its five ‘industry’ members, can claim to be constitutionally more independent of the press industry than the PCC board was. As was the case with the PCC board, the chair of and majority on Ipso’s board are ‘lay’ people who do not have press backgrounds.

**Compliance**

Ipso’s contract with publishers makes clear that it places more specific responsibility than the PCC did on publishers having internal governance practices to ensure that editors and journalists comply with the Editors’ Code of Practice. Publishers are required to provide Ipso with annual statements so their ‘standards and compliance’ can be regularly monitored. These can be read on the Ipso website.

Apart from considering individual complaints, Ipso’s contract also gives it powers to conduct more sweeping ‘standards investigations’ in various circumstances, including if it suspects – for example, from ‘hotline’ information, see below, or the annual statements – that there might have been serious and systemic breaches of the Editors’ Code by one or more of these publishers, or if ‘substantial legal issues’ are raised about their conduct. This means Ipso has specific powers to be more proactive than the PCC was to delve into suspicions of press misconduct, even when there has been no complaint from the public about a particular issue or case. Ipso’s regulations say that it can pursue a ‘standards investigation’ by means of an ‘investigation panel’ with the power to oblige publishers to provide documents and powers to question editors and journalists in taped interviews.

Ipso also provides a ‘confidential whistleblowing hotline’ so journalists who believe they have been requested by, or on behalf of an editor, to do something in breach of the Code can raise the alarm. The system also gives some employment protection to such individuals and any others who in good faith refuse to obey a request or instruction they believe would lead to a Code breach.

Ipso’s regulations give it more leeway than the PCC did to consider ‘group’ or ‘third party’ complaints from the public or organisations – for example, about a newspaper’s portrayal of a particular ethnic minority, even if no individual was named in the coverage – whereas the PCC rarely considered a complaint unless it was made by or on behalf of an individual specifically mentioned or portrayed in the coverage.

Sir Alan Moses became Ipso’s first chair in May 2014, after retiring as a Court of Appeal judge. Ipso started work in September 2014.

**Useful Websites**

[http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06535](http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06535)
House of Commons Library briefing paper on implementation of the Leveson Report, including how this led to the Royal Charter ‘recognition’ model

House of Commons Library briefing paper on ‘Press Regulation after Leveson - unfinished business?’

The BBC and the Government; Challenges and Controversy

[http://www.ipso.co.uk/](http://www.ipso.co.uk/)
Ipso

[http://www.regulatoryfunding.co.uk/](http://www.regulatoryfunding.co.uk/)
Regulatory Funding Company

http://www.editorscode.org.uk/index.php
Editors' Code of Practice Committee

http://pressrecognitionpanel.org.uk/
Press Recognition Panel

http://impressproject.org/
The Impress Project

http://hackinginquiry.org/
Hacked Off