

## **Response to the Online Harms White Paper consultation**

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### **1. About the Independent Press Standards Organisation (IPSO)**

1.1 The Independent Press Standards Organisation (IPSO) is the independent regulator of most of the UK's newspaper and magazine industry. We regulate over 1,500 print and 1,100 online titles, comprising 95% of national daily newspapers (by circulation) and the majority of local and regional newspapers, including their online versions.

1.2 IPSO's framework is one of voluntary independent self-regulation underpinned by legally enforceable contractual agreements with our regulated entities. It is not obligatory for publishers to join IPSO but those that have done so set themselves apart by choosing to be independently regulated and held accountable to an agreed set of standards, the Editors' Code of Practice (the Code).

1.3 IPSO investigates complaints about printed and online material that may breach the Code and can order newspapers and magazines to publish corrections or adjudications if the Code has been breached. We monitor standards and require member newspapers and magazines to submit an annual transparency statement. We can investigate standards failings and can fine publishers up to £1 million in cases where they are particularly serious and systemic. We provide advice and guidance to editors and journalists and to the public. We also run a compulsory arbitration scheme where members of the public can make low cost legal claims against participating publishers, and a 24-hour helpline for people who are concerned about press intrusion. More information about our work can be found at [www.ipso.co.uk](http://www.ipso.co.uk)

### **2. About our response**

2.1 Our response draws on our experience as an independent self-regulator of online content and clearly sets out the areas where our member publishers are already regulated in an accountable and proportionate way.

2.2 As the White Paper notes, any future regulator of online platforms/content must balance freedom of expression against protecting the public from harm. IPSO's work involves making these difficult judgements, seeking to maintain this balance. We therefore also offer insights based on our five years of regulatory experience.

2.3 IPSO regulates all online editorial content on sites controlled by member publishers. IPSO also regulates user-generated content on those sites in the specific

circumstances set out at section 5, and social media content in particular instances, also at section 5.

2.4 Whilst we welcome the Secretary of State's reassurance "that journalistic or editorial content will not be affected by the regulatory framework"<sup>1</sup>, we have identified and set out below examples of where there may be both regulatory duplication and unintended consequences for freedom of expression which may occur as part of the proposed model.

2.5 We believe that inclusion of our member publications under the scope of the proposals outlined in the White Paper would be disproportionate, and would subject them to duplicate regulation in areas already covered by IPSO.

2.6 As the White Paper recognises, oversight and existing regulation of online content is already complicated; any solutions should not add further complexity or cause confusion for readers and users.

**3. Question 1: This government has committed to annual transparency reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?**

3.1 Transparency and accountability around decision-making is vital to establishing and maintaining user trust. In the context of online platforms, any transparency reporting should be accessible and easily understood by users.

3.2 IPSO-regulated publishers are already committed to a system of transparency reporting through our annual statements system. They are contractually obliged to submit a yearly report outlining their approach to editorial standards, complaints handling, training, and details of steps taken in response to upheld complaints within the relevant period. Annual statements from our member publications are available on our website.<sup>2</sup>

3.3 It is vital that any transparency reporting demonstrates, not just complaints and their outcomes, but the actions undertaken to avoid repetition of any harms and to make sure the public are protected.

3.4 Learning from mistakes or concerns is a vital part of the process. The actions taken by our member publishers in response to upheld complaints, such as developing bespoke training programmes or revising internal manuals, demonstrate the seriousness with which our members take upheld complaints.

3.5 The IPSO mark is a further demonstration of transparency and accountability. It is a visual symbol that can be used by all IPSO regulated publications in print and online to show their commitment to transparency, professional standards and an

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<sup>1</sup> Letter of 10 April 2019 from Jeremy Wright MP to Ian Murray, President of the Society of Editors copied to IPSO available at <https://www.gov.uk/government/publications/jeremy-wrights-response-to-the-society-of-editors> [accessed June 2019].

<sup>2</sup> <https://www.ipso.co.uk/monitoring/annual-statements/> [accessed 03 June 2019]

edited, regulated product. It is a way for publishers to communicate to readers that their content is regulated and helps the public to distinguish edited and curated content from the morass of unregulated content on the internet, giving them assurances against disinformation and fake news.<sup>3</sup> The mark now features in most national newspapers regulated by IPSO, as well as many local newspapers and magazines.

3.6 Inaccuracy in journalistic content should be considered differently from disinformation and fake news. The IPSO mark, and IPSO membership more broadly, demonstrates that publishers have pledged to take care in relation to avoiding inaccurate and misleading content and when they do get things wrong they will correct their content and explain this to their readers/consumers (see also 7.2).

3.7 The Code takes a realistic view of what is accurate, setting high – but not impossibly high – standards. The Code does not demand infallibility but it does require that care should be taken and, when there is a significant inaccuracy, it expects prompt action to make amends.

3.8 Any complaints process must be simple and straightforward, designed with the user in mind, and transparent about any outcomes.

3.9 Beyond transparency reporting, we would encourage the Government to continue to prioritise media literacy as part of efforts to improve public trust in the industry. Media literacy is a key area of IPSO’s work. We want all citizens to make informed decisions about what sorts of news they would like to access. They should be able to recognise and avoid harmful fake news and disinformation, and know how to identify curated and edited content displaying high-quality journalism. We would also like people to have awareness of the methods available to seek redress from the regulated press when things wrong, and to know that IPSO is the body that they can go to for help.<sup>4</sup>

#### **4. Question 4: What role should Parliament play in scrutinising the work of the regulator, including the development of codes of practice?**

4.1 Parliament gives a “strategic steer” to the Competition Markets Authority and is currently consulting on a “statement of strategic priorities” for Ofcom. Whilst this kind of advice from Government is often described as non-binding, it is not appropriate for the regulation of the press. Any independent self-regulation must be kept beyond “arm’s length” and free of strategic interventions by Parliament.

4.2 Allowing independent regulation to be influenced by Parliamentarians carries serious risks to freedom of expression, especially in the more nuanced ‘grey’ areas of

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<sup>3</sup> For more information on IPSO’s work around disinformation and fake news, please see our submission to the DCMS Commons Select Committee at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/disinformation-and-fake-news/written/72085.pdf> [accessed June 2019].

<sup>4</sup> More on IPSO’s media literacy work at <https://www.ipso.co.uk/news-press-releases/blog/ipso-blog-the-importance-of-media-literacy/> [accessed June 2019].

online harm where there are intentions to limit and regulate certain speech and expression that could be considered harmful or offensive by some, but is not illegal.

4.3 Any code of practice developed should be accessible for users so that they can understand the standards that platforms are held to. The Editors' Code is written in such a way so as to be broadly accessible and understandable to public.

4.4 We believe it is important that both the public and the industry are involved in the development of any regulatory code, and that any code is subject to public consultation.

4.5 The Editors' Code is the regulatory code followed by IPSO members. It is written and revised by the Editors' Code Committee<sup>5</sup> and enforced by IPSO. It covers a broad set of principles including accuracy, privacy, discrimination and intrusion into grief or shock, and is regularly reviewed and publicly consulted upon to ensure it reflects developments in circumstances, technology and public attitudes. It is designed to balance the rights of individuals with freedom of expression and the public's right to know. It is an important element of the self-regulatory system, outlining the standards that the newspaper and magazine industry have set themselves and pledged to accept.

## **5. Question 5: Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?**

5.1 Section 4.2 of the White Paper outlines two main types of online activity that can give rise to the online harms in scope of the proposals:

- hosting, sharing and discovery of user-generated content (e.g. a post on a public forum or the sharing of a video);
- facilitation of public and private online interaction between service users (e.g. instant messaging or comments on posts).

The White Paper also identifies online content that may be considered harmful at Table 1.

5.2 Many of IPSO's member publications facilitate these types of activities. They may also want to investigate and report on instances where harmful content is available online. In this section we will set out areas of user-generated content which may be potentially impacted by any proposed regulatory framework which are already regulated by IPSO. We do not believe it is proportionate for our members to fall under the scope of any new or duplicate regulation. In section 6 we discuss the potential for unintended restrictions to freedom of expression by preventing journalists from reporting on and raising awareness of harmful content such as that set out at Table 1.

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<sup>5</sup> The Editors' Code Committee membership consists of industry figureheads, independent lay members and the Chairman and Chief Executive of IPSO. More information can be found here: <http://www.editorscode.org.uk/index.php> [accessed June 2019].

5.3 All regulation must be proportionate to the risks to be mitigated. The current proposals have the potential to impose excessive regulatory burden on publications already effectively regulated by IPSO.

5.4 Although the Secretary of State has clarified that “where these services [user-generated content online] are already well-regulated, as IPSO and IMPRESS do regarding their members’ moderated comments section, we will not duplicate these efforts”<sup>6</sup>, we would welcome further clarification, particularly that our member publications would not be required to pre-moderate all user-generated comments to avoid falling under the scope of the proposals.

5.5 For information, IPSO regulates online user-generated comments as follows.

- User-generated comments that are pre-moderated before being published online are considered to have gone through a process of editorial control, and therefore would generally fall under the terms of the Editors' Code.
- Most online publications regulated by IPSO do not pre-moderate user-generated comments. However, if problematic comments have been brought to a publication's attention and remain online, they are then considered to have gone through a process of editorial control and are within our remit. Internet users can inform the publication of problematic user-generated comments via the ‘report’ icon. IPSO can then consider complaints about user-generated material, after they have been reviewed or moderated by the publication.

5.6 This approach is consistent with the EU’s E-Commerce Directive.

5.7 Examples of how IPSO regulated publications deal with user generated comments in practice can be found in *Miller v Daily Express* and *Miller vs Mail Online*.<sup>7</sup> These rulings show the proactive steps taken by publications to mitigate online harms.

5.8 User generated comments related to court reporting/criminal trials are a particular area of concern due to risk of harm by identifying individuals who should remain anonymous (such as victims of sexual assault and children) and contempt of court/ prejudicing a trial.

5.9 We are already offering guidance to our member publishers on managing the potential harms of user-generated comments in this area. Last year our well-received guidance on the reporting of sexual offences addressed the issues of how to report these offences while complying with legal and Code obligations.<sup>8</sup>

5.10 We are currently working with the Attorney General’s Office to produce guidance specifically on court reporting, to be published this year to complement our

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<sup>6</sup> Letter of 10 April 2019 from Jeremy Wright MP to Ian Murray, President of the Society of Editors copied to IPSO available at <https://www.gov.uk/government/publications/jeremy-wrights-response-to-the-society-of-editors> [accessed June 2019].

<sup>7</sup> Available at <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=11546-16> and <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01533-15> [accessed June 19].

<sup>8</sup> See <https://www.ipso.co.uk/member-publishers/guidance-for-journalists-and-editors/guidance-on-reporting-of-sexual-offences/> [accessed June 19].

existing guidance. It will pay particular attention to the risks of harm to anonymous victims and to application of justice, including risks posed by user-generated comments.

5.11 IPSO can and does regulate the social media output of our members and journalists' activity on social media when they do it in their capacity as employees of a newspaper/website. Our rules and regulations do not explicitly outline that our members' social media activity falls under our remit, but our interpretation has always been to view social media output as material which could be included in any complaint as it has gone through a process of editorial control.

5.12 We do receive complaints under the Code involving social media posts (tweets, in particular). For example, in 2017, IPSO took forward a complaint against Mail Online under Clause 1 (Accuracy) about an article headlined, "BREAKING NEWS: 'Gunshots fired' as armed police surround Oxford Circus tube station and shoppers flee 'after lorry ploughs into pedestrians'". The article reported on an ongoing incident at Oxford Circus, which at the time, was being treated as a possible terror attack. It transpired later this was not the case. The headline and a link to the article was published on the publication's official Twitter page, therefore publication of a correction on Twitter formed part of the remedial action required.<sup>9</sup>

5.13 Our regulations include the use of social media by journalists under some circumstances. The Code includes protections for individuals against harassment and intrusion from the press. Clause 3 (Harassment) prevents journalists from engaging in intimidation, harassment or persistent pursuit. We could consider complaints about press intrusion or harassment directly via direct/private messaging in the same way that we would consider harassment by repeated phone calls, door stepping or persistent emailing once asked to desist.<sup>10</sup>

5.14 Complaints involving social media or user-generated comments which raise potential breaches of the Editors' Code are relatively rare. Their infrequency supports our position that to include IPSO's members as within the White Paper's proposals would be disproportionate to the risks presented.

## **6. Question 8: What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?**

6.1 IPSO has concerns that the proposals set out in the White Paper could adversely impact freedom of expression, including the right to express opinions and share views that other people may find offensive or challenging.

6.2 In its preamble, The Editors' Code is clear that "it should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor

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<sup>9</sup> 20380-17 Various v Mail Online; <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=20380-17> [accessed 05 June 2019]

<sup>10</sup> More information about how IPSO handles allegations of press harassment can be found at [https://www.ipso.co.uk/media/1539/ipso-harassment-help-leaflet\\_v3.pdf](https://www.ipso.co.uk/media/1539/ipso-harassment-help-leaflet_v3.pdf) [accessed June 2019].

so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest”.

6.3 The White Paper recognises concerns about people existing online in social media bubbles where they are not exposed to a plurality of views. It is important that any model of regulation does not inadvertently reinforce this by being too rigid in its definition of non-illegal harms. Hearing diverse opinions, even if we disagree with them in the strongest possible terms, is part of living in a democratic free society.

6.4 It is important that any regulatory proposals do not fetter public interest reporting on potentially harmful content available online, including the content identified in Table 1 of the White Paper. Journalists play a key role in shining a spotlight on this content and holding public authorities to account for addressing these concerns.

6.5 We are pleased that the White Paper makes reference to protecting freedom of expression. We would like to see further details about how these commitments would work in practice.

6.6 We note that references to protection of freedom of expression within the White Paper tend to be from the perspective of a user of the internet. Freedom of expression must also take into account publishers’ and journalists’ freedom of expression and freedom to publish material that will shock or offend, including freedom to campaign and be partisan.

6.8 The public’s right to know is also an important consideration here, as freedom of expression is about the right to receive, just as much as to impart, information.

## **7. Further points**

7.1 Hate speech and harm have no clear definition in the White Paper. Under UK law, there are a number of offences which are often called “hate speech”. How this definition is formed and implemented in practice will have a significant impact on online speech, with potential risks to freedom of expression.<sup>11</sup>

7.2 Journalistic content is separable from disinformation and should be considered differently. Sometimes things go wrong in journalism but these failures can be measured against a generally agreed set of standards and norms and can be corrected because the process of journalism denotes oversight and accountability. Disinformation and fake news is produced with no regard for standards. The presence of demonstrable accountability is important because it provides the basis for distinguishing journalistic material from fake news; and provides the mechanism by which concerns about legitimate news can be effectively dealt with.

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<sup>11</sup> Further discussion of IPSO’s work, the Code and UK legislation around ‘hate speech’ can be found in our February 2018 letter to the Chair of the Home Affairs Select Committee; <https://www.ipso.co.uk/media/1522/letter-to-rt-hon-yvette-cooper-mp.pdf> [accessed 06 June 2019]

7.3 The Cairncross Review<sup>12</sup> highlights the challenges faced by news publishers in the UK. It sets out some of the many complexities of interactions between online platforms and news publishers. Chapter 2 also sets out some interesting information about how the public are choosing to access their news online via online platforms.

## **8. Conclusion**

8.1 IPSO already delivers effective regulation of online and print content published by newspapers and magazines.

8.2 We would be happy to discuss our response further if required or to appear before any subsequent Committee to discuss our evidence. Please contact Sophie Malleon, Policy and Public Affairs Officer, at [Sophie.malleon@ipso.co.uk](mailto:Sophie.malleon@ipso.co.uk)

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<sup>12</sup> Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779882/021919\\_DCMS\\_Cairncross\\_Review\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf) [accessed June 2019].