



Impress Submission to the Draft Media Bill Call for Evidence 2023

1. Summary and Recommendations

- 1.1. The Government has made various commitments to preserve press freedom. Most recently, the Government referred to Strategic Lawsuits Against Public Protection (SLAPPs) as “a growing threat to freedom of speech and a free press” which themselves are “fundamental liberties that are the lifeblood of our democracy” and committed to an inquiry to develop recommendations to deal with this practice. The Government is intent on cracking down on SLAPPs and preserving press freedoms that are integral to modern democratic life. With the Media Bill, the Government has an opportunity to advance these interests simply by preserving one part of Section 40 of the Crime and Courts Act 2013, which is otherwise set for repeal.
- 1.2. Preserving the cost-protection for self-regulated publishers, would incentivise claimants to use the alternative dispute resolution procedures offered by approved self-regulatory bodies such as Impress, preventing wealthy would be litigants from weaponising legal processes to suppress press freedom.
- 1.3. If Section 40 is fully repealed, alternative proposals should be made to protect UK news publishers from the damaging effects of SLAPPs, and encourage publishers outside of any form of regulation into self-regulation, while promoting press freedom and protecting democratic life in the UK.

2. About Impress

- 2.1. Impress is a champion for news that can be trusted. We work to ensure that our members can publish with integrity; so that the public can engage with confidence in an ever-changing media landscape. We operate a recognised scheme of independent press self-regulation that works in the public interest to protect freedom of expression, individual rights, and public safety.
- 2.2. Independent self-regulation ensures that the news sector can meet legal and ethical news publishing standards. The press has a powerful and influential role in UK society. Therefore, it is important that there is independent oversight of the impact the news publishing sector has on individuals and society, whilst maintaining robust mechanisms to prevent state and commercial interests from having any involvement in that oversight. Improving press standards is hugely popular among the UK public, and has been ever since the Leveson Inquiry into culture and practice of the press. Extensive public engagement research carried out by the Universities of Leeds and Derby has shown that 80% of the UK public continue to support effective, independent press self-regulation of the press to this day.

Who we regulate

- 2.3. Impress provides self-regulatory services to over 200 news brands, which reach 20% of the UK population each month; these publishers have voluntarily subscribed to the model of Royal Charter approved self-regulation since Impress first became recognised in October 2016. This includes a significant number of online news publications that specialise in investigative journalism. These publishers play a vital role in the news ecosystem by uncovering stories that often go on to appear in the national and international media.
- 2.4. Impress-regulated publishers tend to be small-to-medium sized businesses, charities, not-for-profits and cooperatives who do not generally have the resources to defend legal claims made against them by the rich and powerful. This makes them especially prone to the chilling effects of SLAPPs. Publishers are free to decide whether to sign up to Impress and do so on ethical and commercial grounds – because it mitigates their legal risks and helps build audience trust. It also enables them to head off vexatious claimants through checks and balances built into the self-regulatory system.

The Royal Charter on self-regulation of the press

- 2.5. The Royal Charter system of self-regulation is fully independent of state and commercial interests, ensuring those interests cannot interfere in the regulation of news and journalism.
- 2.6. Since 2016, Impress has been assessed as meeting the 29 criteria of independence and effectiveness set out in Schedule 3 of the Royal Charter on self-regulation of the press. We are monitored and assessed by the Press Recognition Panel (PRP) to ensure our ongoing compliance with the recognition criteria. Impress' status as a self-regulatory body for the press has since been recognised in law. By following the Royal Charter, we can demonstrate that our regulatory scheme is fair, open and non-discriminatory to all publishers who wish to subscribe and that the public can be confident that those publishers are meeting the highest standards of journalism in the UK. Our regulatory scheme also supports publishers and members of the public to resolve disputes through a free-to-access complaints handling service and our arbitration scheme.
- 2.7. The provision of alternative dispute resolution procedures is a requirement of the Royal Charter, which Impress delivers under Section 8 of its Regulatory Scheme. These services actively protect the free press from the intimidating effects of SLAPPs.

3. The Media Bill & SLAPPs

- 3.1. Impress proposes that, through the Media Bill, the Government can protect press freedom and deter the anti-democratic effects of SLAPPs. The policy legislation required for achieving these objectives has already been drafted, in part of Section 40 of the Crime and Courts Act 2013. If retained, this section can offer real-terms protection to news publishers who have voluntarily adopted self-regulation.

- 3.2. Section 40 was intended to incentivise publishers into Royal Charter self-regulation with the goal of improving press standards and practices, while protecting publishers from exorbitant legal challenges. It is comprised of two key parts which determine which party in a civil case will pay the claimant's costs. They are as follows:

s 40(2): publishers which subscribe to an approved regulator are not expected to pay the claimant's costs in a legal action for defamation, intrusion into privacy or harassment, even when the publisher loses the case.

s 40(3): publishers which do not subscribe to an approved regulator are expected to pay the claimant's costs in any such action, even when the publisher wins the case.

The above components served separate functions: the former provided a cost protection for self-regulated publishers, while the latter created a cost-shifting burden for those publishers who didn't sign up for approved regulation. The latter came under heavy criticism, leading to the now proposed wholesale repeal of Section 40.

- 3.3. Repealing the cost protection for self-regulated publishers directly undermines the objectives set out by the Government to protect press freedom in the UK and mitigate the damaging effects of SLAPPs. It does this by exposing self-regulated publishers to greater, unnecessary legal risks that impact on their ability to operate freely as journalists in democratic society.
- 3.4. We suggest that by retaining the cost protection, the Government can achieve its goals of protecting the free press, while the cost-shifting burden can be repealed to not penalise those publishers that do not intend to sign up for Royal Charter self-regulation.

4. Legal incentives for regulation

- 4.1. If the Government fully repeals Section 40 without retaining the cost protection for self-regulated publishers, then it removes the only protection and incentive in law for news publishers who voluntarily adopt self-regulation and ethical standards.
- 4.2. If repealed, alternative protections should be put in place to protect the industry from the anti-democratic effects of SLAPPs. Unlike the existing cost protection in law, these are not ready made. Instead of undermining this cost protection for self-regulated publishers, this bill should be used as an opportunity to require litigants to first exhaust self-regulation procedures (such as Alternative Dispute Resolution) before they can make civil claims for damages against news publishers and journalists.

5. Conclusion

- 5.1. SLAPPs detrimentally affect all of news publishing and deeply threaten press freedom. Smaller newsrooms and journalists are particularly exposed to civil

claims by wealthy claimants as they are very often without the resource afforded by legal teams and experts to defend themselves adequately. By positively incentivising these publishers into self-regulation, the Media Bill can protect these publishers while supporting and protecting the UK's free press. This can be achieved by preserving the cost protection for self-regulated publishers from Section 40(2) of the Crime and Courts Act 2013 rather than repealing it wholesale alongside the cost-shifting burden.

- 5.2. If the Government repeals the cost protection for self-regulated publishers, then alternative options could mitigate some of the chilling effects of SLAPPs while incentivising publishers into approved self-regulation, but these would need to be created from scratch.
- 5.3. Any moves by the Government that simultaneously preserve press freedoms and improve press standards will be hugely popular across the public. With the Media Bill, the Government has a unique opportunity to deliver on its commitments to press freedom in the UK via the mitigation of anti-democratic SLAPPs, by amending the bill to preserve the cost-protection for publishers that choose to adopt self-regulation.