Community Policy Forum

THE MEDIA BILL: BRIEFING FOR THE HOUSE OF LORDS SECOND READING

FEBRUARY 2024

Community Policy Forum is an independent think-tank specialising in the structural inequalities facing Muslim communities in the UK. Our work centres around promoting evidence-based and community-centred approaches to policymaking that are inclusive of both lived experiences and robust academic analysis.

In a recent submission to the Communications and Digital Committee, we argued that bias and disinformation found across the UK's news media landscape is eroding trust and alienating Muslim and other minoritised communities. Meanwhile, current press regulation mechanisms are failing to sufficiently address press abuses, thereby further alienating Muslims from the industry as a whole.

While the Media Bill provides a potential route to a modernised public service media landscape that is more accountable and democratic, Clause 50 (the repeal of Section 40 of the Crime and Courts Act 2013) will serve to reverse progress made since the Leveson Inquiry to tackle press abuses, and instead further entrench a regulatory system that is currently not fit for purpose.

As such, we urge members of the House of Lords to amend or remove Clause 50 of the Media Bill to either immediately commence Section 40 of the Crime and Courts Act 2013 or implement an equivalent mechanism to protect the freedom of speech and hold the press to account under an independent system of self-regulation.

The importance of Section 40 of the Crime and Courts Act 2013.

The Leveson Inquiry (2011-2012) concluded that British newspapers were not effectively regulating themselves, thereby leaving the public vulnerable to abuse, including intrusions, inaccuracies, and harassment. The Leveson recommendations led to a new regulatory framework that was designed to be independent of both the Government and industry to protect the interests of the public. Central to this new regulatory order was Section 40 of the Crime and Courts Act 2013, which was designed as a carefully calibrated mechanism to ensure that all news publishers can be held to account either through an approved regulator or through the courts. It underpins the system by:

- Providing an incentive for newspapers to voluntarily become members of a Leveson compliant regulator.
- Providing a disincentive for newspapers not to become members of a Leveson compliant regulator.
- Providing a low-cost route to justice for victims of press abuses.

- Protecting newspapers from expensive legal threats from wealthy claimants.

Ultimately under Section 40, if a newspaper is regulated by an approved regulator and a relevant legal case is brought against them, the claimant is liable for the costs (win or lose) if they refuse the implemented arbitration system. On the other hand, if a newspaper is not party to an approved regulator (and therefore not part of a low-cost arbitration system) the newspaper would be liable for claimant's costs, win or lose (unless this is considered inappropriate by a judge).

The current regulatory system and the impact of repealing Section 40.

As noted by the Press Recognition Panel, if Clause 50 of the Media Bill is enacted without a meaningful alternative to Section 40 in place, it will "fundamentally undermine the system of voluntary independent press self regulation that was agreed cross-party following the recommendations of the Leveson Inquiry. This abandons the public to intrusive and harmful press practices unless they can afford to challenge such conduct through the courts. Even when individuals do have the means to challenge the press through the courts, these processes are expensive and can take years to resolve."

Without the enactment of Section 40 or a suitable alternative, the only Leveson compliant press regulator is IMPRESS, which includes a membership of roughly 120 titles that are largely small, specialist or local in nature. In comparison, the Independent Press Standards Organisation (IPSO)'s membership includes almost every major news publication in the UK, as well as a large number of local, regional, and special interest publications. However, as will be discussed below, research has consistently demonstrated that IPSO is ineffective and unfit for purpose. As a result, the UK public have been left "as unprotected as ever from potential press harms." This lack of protection is particularly felt by Muslims and other minoritised communities, who are frequently the target of discriminatory and incendiary press attacks. Consequently, until Section 40 or a meaningful alternative is enacted, there is little protection for victims of press abuses.

Criticisms of Section 40.

Criticisms of Section 40 have been soundly and robustly countered by the Press Recognition Panel in their briefing on the Media Bill:

***The current regulation system is fit for purpose*:** The Press Recognition Panel recently published a report highlighting the misleading claims made in UK Parliament about the efficacy and independence of IPSO. The report concludes that "the Government has stated on a number of occasions that the existence of [IPSO] as the regulator of large sections of the UK newsprint press has removed the need for the measures to ensure independent press regulation that Parliament voted for following the Leveson enquiry and report. And yet, a

comprehensive review of available data demonstrates that IPSO is not a fully operating regulator of the UK press."

The Royal Charter System is too close to the Government: Such assertions appear wholly disingenuous. The system is specifically designed to be independent of political interference, with safeguarding incorporated into the composition of the Press Recognition Panel (the independent body that is designed to ensure that press regulators are independent, appropriately resourced, and working effectively). These safeguards include prohibitions of politicians from holding Board positions – in comparison to IPSO which is chaired by Lord Faulks, a life peer and former Government Minister.

Section 40 would stifle freedom of speech: Criticisms of Section 40 often centre around the damage to the press' freedom of speech should those not aligned with an approved regulator be confronted by spurious claims and be required to pay the legal costs. However, it is precisely to protect against such claims that Section 40 contains explicit judicial discretion. Moreover, such costs only apply to those publishers that refuse to become members of an approved regulator.

Alternatives to repealing Section 40.

There have been a variety of suggestions for alternatives to the complete repeal of Section 40 found in Clause 50. However, we are currently unaware of any proposed alternatives that sufficiently protect the freedom of speech for publishers, encourage publishers to join an approved regulator, and provide protection to the public simultaneously. Consequently, at minimum, the repeal of Section 40 should be delayed until meaningful alternatives can be implemented by Westminster and the Scottish Parliament.

Conclusion.

The current system of regulation is failing to protect the public from press abuses because, without the enactment of Section 40, there is a lack of incentive to join a regulator capable of functioning effectively.

Therefore, if the rights of publishers and the rights of the public are to be properly balanced, we urge members of the House of Lords to amend or remove Clause 50 of the Media Bill and either immediately commence Section 40 of the Crime and Courts Act 2013 or implement an equivalent mechanism to protect the freedom of speech and hold the press to account under an independent system of self-regulation.

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