

## Briefing Note

### Time to Repeal Section 40 of the Crime and Courts Act 2013

The News Media Association (the “NMA”) is the voice of UK national, regional and local news media in all their print and digital forms - a £4 billion sector read by more than 47.9 million adults every month. Our members publish around 900 news media titles - from The Times, The Guardian, The Daily Telegraph and the Daily Mirror to the Manchester Evening News, Kent Messenger, and the Monmouthshire Beacon.

1. Section 40 of the Crime and Courts Act 2013 has been sitting on the statute books for nine years but has never – for good reason - been brought into force. If enacted, it would force publishers to pay both sides’ costs in court actions - win or lose - creating an unprecedented barrier to justice.
2. Even if a publisher won the action, because the court was satisfied that the article was true, had been lawfully published, was in the public interest, and that publisher, editor and reporters had all acted lawfully, the publisher would still have to pay the losing claimant’s costs and its own.
3. It would create state licensing of newspapers and constitute an undemocratic attack on free speech which would have a chilling effect on reporting on matters of public interest. It would cost the national and local press an estimated £100 million a year for telling the truth.<sup>1</sup> This would be particularly devastating for struggling local publishers.
4. The Conservative Party gave manifesto pledges in 2017 and 2019 to protect the freedom and integrity of the press, and specifically the role of local newspapers in speaking truth to power, by repealing Section 40. The Conservative 2019 manifesto promised: *“To support free speech, we will repeal section 40 of the Crime and Courts Act 2014 (sic), which seeks to coerce the press”* (see section entitled ‘Protect our Democracy’ promises).<sup>2</sup>
5. This commitment was spelt out in the Queen’s Speech on 10 May 2022, which identified repeal of Section 40 as one of the five main benefits of the new Media Bill: *“Removing a threat to the freedom and sustainability of the press by repealing Section 40 of the Crime and Courts Act 2013.”*<sup>3</sup>
6. This draconian provision was introduced in the wake of the Leveson Inquiry as a stick to force British newspapers and magazines into joining a state-recognised regulator. There was no parliamentary scrutiny of its terms nor any consultation with the press or the public. It allows politicians to interfere in the regulation of the very voices which hold them and others in authority to account on behalf of their readers and to investigate cases of corruption and wrongdoing.
7. International media and press freedom organisations struggle to understand how this legislation ever made it to the statute books in a country traditionally held up as a bastion of free speech.
8. The Leveson Report recommended a system of *“voluntary independent self-regulation,”* envisaging *“a body, established and organised by the industry”* which *“must be funded by its members”*. Lord Justice Leveson said it should include all the major players in the industry –

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<sup>1</sup> The NMA, *“the Leveson Inquiry and its Implementation: Section 40 and Leveson Part 2”*, December 2016.

<sup>2</sup> Pg. 48 The Conservative Party, *“Conservative Party Manifesto 2019”*, November 2019.

<sup>3</sup> Prime Minister’s Office, *“Queen’s Speech 2022”*, 10 May 2022.

national newspapers and as many regional and local newspaper and magazine publishers as possible - *“although I am very anxious that it remain voluntary”*. The Royal Charter and interlocking legislation in the Crime and Courts Act is the polar opposite of that recommendation.

9. Section 40 was aimed at ‘incentivising’ publishers to join a state-recognised regulator. But even full commencement of Section 40, imposing crippling cost sanctions on those who do not comply, will not work. Not a single national, regional or local newspaper or magazine of any significance is willing, as a matter of principle, to sign up to any regulator recognised under the Royal Charter apparatus. No reputable independent publisher will be cowed into submitting to statutory press regulation, however arms-length it may appear to be.
10. The media regulatory landscape has fundamentally changed since Section 40 was introduced. Publishers and editors have faced up to their responsibilities. The Press Complaints Commission was disbanded. A tough new regulator, the [Independent Press Standards Organisation](#) (“IPSO”), was established in 2014, with real powers based in civil law allowing it to extract real penalties including £1 million fines for the most serious breaches of the Editors Code.<sup>4</sup>
11. IPSO has also brought about a [transformation](#) in the internal complaints handling procedures at all newspaper companies. IPSO regulates 2,300 print and online titles including the vast majority of UK national, regional and local newspapers and magazines. An independent review by Sir Joseph Pilling found it to be effective and independent.<sup>5</sup>
12. Britain’s press is already subject to numerous criminal and civil laws that inform news gathering and reporting. There are statutes covering everything from defamation, harassment, contempt of court, court reporting restrictions, data protection, official secrets to phone hacking. There is simply no need for further statutory intervention into press regulation.
13. The NMA and press freedom organisations worldwide have long urged the UK Government to repeal Section 40. Reporters Without Borders and English PEN wrote to the Prime Minister in 2018 to stress that *“the continued presence of Section 40 is one of many current threats to press freedom in the UK.”*<sup>6</sup> They saw it as part of *“a worrying trend that resulted in the UK dropping to 40th out of 180 countries”* in the World Press Freedom Index.
14. The British public is also overwhelmingly opposed to giving politicians control over press regulation. In one of the largest ever responses to a government public consultation, conducted in 2016, 79 per cent of direct responses favoured full repeal of Section 40, compared with seven per cent who favoured commencement. The most common reason given for repealing Section 40 was concern for the ‘chilling effect’ it would have on the freedom of the press.
15. Hundreds of national, regional and local editors and publishers across the UK are united in their opposition to Section 40 and the threat it poses to press freedom and UK financial sustainability.
16. It is time for that threat to be removed once and for all, and for Section 40 to be repealed in its entirety, even if this is a one-line standalone bill before the end of this Parliamentary session.

**October 2022**

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<sup>4</sup> IPSO, [Clause 13](#) Editors’ Code of Practice.

<sup>5</sup> Sir Joseph Pilling, [“The External IPSO Review”](#), October 2016.

<sup>6</sup> Reporters Without Borders, [“RSF and English PEN Urge Theresa May to fulfil Pledge to Repeal Punitive Law”](#), January 2018.