

## **Media Bill: Time to Repeal Section 40 of the Crime and Courts Act 2013** **House of Lords 2<sup>nd</sup> Reading, 28<sup>th</sup> February 2024**

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 46.1 million adults every month. Our members publish around 900 news media titles - from The Times, The Guardian, Daily Telegraph and Daily Mirror to the Manchester Evening News, Kent Messenger, and Monmouthshire Beacon.

1. Section 40 of the Crime and Courts Act 2013 has been sitting on the statute books for over 10 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 the 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 amount to effective 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 to tell the truth.<sup>1</sup> This would be particularly devastating for local publishers.
4. The wave of spurious legal claims from the rich and powerful unleashed by Section 40 would amount to state sanctioning of strategic lawsuits against public participation (SLAPPs). The government has committed to legislation to combat SLAPPs - legal actions brought with the intention of harassing, intimidating, and financially exhausting opponents – but Section 40 would give a free pass to those who seek to suppress public interest journalism.
5. Supporters of state-backed regulation have sought to argue that Section 40 would in fact protect publishers from SLAPPs, as publishers signed up to a state-backed regulator would be protected from paying claimants’ costs in legal cases against them. However, this argument ignores the fact that SLAPPs are generally brought against individual journalists, rather than publishers themselves, as individuals are considered more vulnerable to intimidation.
6. Added to this, not a single national, regional or local newspaper or magazine of any significance is willing, as a matter of principle, to sign up to state regulation. Therefore, far from suppressing SLAPPs, Section 40 would make reputable publishers much easier targets for censorious lawsuits, whilst doing little to protect the handful of titles willing to subject themselves to state-backed regulation.
7. Even retaining the so called ‘carrot’ in Section 40 – 40(2), the provision that would protect state regulated publishers from court costs – whilst repealing the ‘stick’ that threatens independently regulated publishers would not offer proper protections against SLAPPs. Reputable publishers

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<sup>1</sup> Paragraph 71 the NMA, “[the Leveson Inquiry and its Implementation: Section 40 and Leveson Part 2](#)”, December 2016.

should not have to choose between journalistic freedoms and security from ruinous legal fees. Indeed, even absent the ‘stick’, the commencement of 40(2) would still represent a clear attempt to coerce publishers into becoming state regulated by introducing a far less favourable for costs regime for independently regulated publishers.

8. Retaining the ‘carrot’ would also fail to protect individual journalists who are often the target of SLAPP cases and may make it more likely that they are targeted (instead of the publisher), creating a strong disincentive for individual journalists to pursue cases against the rich and powerful. Instead, a standalone Anti-SLAPP Bill is necessary to prevent publishers from being deterred from undertaking public interest journalism. The Government has committed to introducing legislation that will see SLAPP cases dismissed at the earliest possible stage.
9. The Conservative Party gave manifesto pledges in both 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 this draconian provision. Repeal should not be delayed by consultation of alternative mechanisms to compel publishers to become state regulated: any legal incentive that privileges publishers willing to submit themselves to state regulation is antithetical to the principles of press freedom.
10. This commitment was spelt out in the Queen’s Speech in May 2022, which identified repeal of Section 40 as one of the five main benefits of the new Media Bill, since published in draft in March 2023: *“Removing a threat to the freedom and sustainability of the press by repealing Section 40 of the Crime and Courts Act 2013.”*<sup>2</sup>
11. Section 40 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.
12. 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. It is likely that commencement of Section 40 would be incompatible with Article 10 of the European Convention on Human Rights, given its arbitrary penalisation of certain types of publishers exercising their rights to free speech, rather than penalising specific types of conduct.
13. 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 – 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.
14. 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>3</sup>

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<sup>2</sup> [The Queen’s Speech 2022](#), 10 May 2022.

<sup>3</sup> IPSO, [“Standards Investigations”](#), accessed 15 May 2023.

15. IPSO has also brought about a [transformation](#) in the internal complaints handling procedures at all newspaper companies. IPSO regulates over 1,900 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>4</sup> A second review by Sir Bill Jeffrey in 2023 found ‘its supportive but challenging engagement to improve standards [was] exactly what an effective regulator should be doing’.<sup>5</sup>
16. 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 and phone hacking. There was never any need for further statutory intervention in press regulation.
17. 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 2017 World Press Freedom Index.
18. 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.<sup>7</sup> The most common reason given for repealing Section 40 was concern for the ‘chilling effect’ it would have on the freedom of the press.
19. 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 financial sustainability. The Media Bill will now enable that threat to press freedom to be removed once and for all.

February 2024

News Media Association  
Legal, Policy and Regulatory Affairs

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<sup>4</sup> Sir Joseph Pilling, “[The External IPSO Review](#)”, October 2016.

<sup>5</sup> Sir Bill Jeffrey, “[Independent External Review of IPSO](#)”, 26 April 2023

<sup>6</sup> Reporters Without Borders, “[RSF and English PEN Urge Theresa May to fulfil Pledge to Repeal Punitive Law](#)”, 10 January 2018.

<sup>7</sup> DCMS and Home Office, “[Consultation on the Leveson Inquiry and its Implementation](#)”, 1 March 2018.