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# MEDIA INFLUENCE MATRIX: UNITED KINGDOM

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**Government, Politics & Regulation**

## About CMDS

The **Center for Media, Data and Society (CMDS)** is a research center for the study of media, communication, and information policy and its impact on society and practice. Founded in 2004 as the Center for Media and Communication Studies, CMDS is part of Central European University's Democracy Institute and serves as a focal point for an international network of acclaimed scholars, research institutions and activists.

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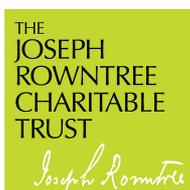
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## About the Report

Research carried out by Leo Watkins for the **Media Reform Coalition** and as part of the Center for Media, Data and Society's Media Influence Matrix, set up to investigate the influence of shifts in policy, funding, and technology on contemporary journalism. The UK component of Media Influence Matrix is coordinated in partnership with **Goldsmiths, University of London** and is funded by the **Joseph Rowntree Charitable Trust**.

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*The Media Influence Matrix Project is run collaboratively by the **Media & Power Research Consortium**, which consists of local as well as regional and international organizations. The consortium members are academic institutions (universities and research centers), NGOs, journalism networks and private foundations.*

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## LEGAL OVERVIEW

Journalism in the United Kingdom is regulated both externally and internally. Courts and sectoral regulators impose several laws and codes of conduct on media organizations, while certain media organisations have also established their self-regulatory editorial guidelines, which are primarily aimed at ensuring compliance with legal and regulatory obligations, but in some cases exceed them.

### *UK Law: Forms and Processes of Formation*

The UK has an ‘unwritten’ constitution: there is no single document that sets out the fundamental laws of the country. The Parliament at Westminster is sovereign. As an important consequence, there is no guarantee of freedom of expression embedded in Britain’s constitution to which citizens can appeal when they wish to challenge legislation passed by Parliament. For instance, there is no UK equivalent of the First Amendment of the United States Constitution.

As long as the UK was a member of the European Union, EU law directly applied to the country. However, the UK has now left the EU and it remains to be seen whether UK law will continue to align with EU law.

Alongside statutory legislation passed by Parliament, the UK has common law, which is the law derived by the judicial interpretation of statutes, custom and precedent. Common law can be replaced or superseded by legislation, which takes precedence. In addition to statutes set out in Acts of Parliament, some parts of the law concerning journalism in the UK are contained in the common law, such as rules on the reporting of court proceedings.

The UK has three main jurisdictions: England and Wales, Scotland and Northern Ireland. Each has its own laws and court system. Laws applying in one jurisdiction may apply equally or similarly in others, especially if they come from legislation of the UK Parliament (as opposed to judicial decisions). Whereas courts in these three jurisdictions may rule differently, the UK Supreme Court is the final court of appeal in all of them.

There are three democratically-elected institutions to which the Parliament at Westminster has devolved power over some areas of legislation and policy, such as health and education. These are the Senedd Cymru (the Welsh Parliament) at Cardiff, the Northern Ireland Assembly at Stormont, Belfast, and the Scottish Parliament at Holyrood, Edinburgh. Although media policy remains an area reserved for Westminster, Scotland and Northern Ireland have slightly different laws in some areas concerning journalism, such as defamation law.

The common law is a matter of judicial interpretation. Consequently, judges have historically played a role in determining the laws that apply to journalism in the UK, albeit one constrained by precedent. For example, before the Defamation Act came into force in 2013, the House of Lords established the so-called ‘Reynolds defence’ in the case of *Reynolds v Times Newspapers Ltd*, which protected freedom of expression in cases where a published allegation turned out to have been wrong but where its publication had nevertheless, in the known circumstances, been in the public interest.

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[1] *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, available online at <https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd991028/reyn01.htm> The House of Lords was the court of last resort in the United Kingdom before its replacement by the UK Supreme Court in 2009.

Statutes are made by the two Houses of Parliament, the House of Commons and the House of Lords, which pass legislative bills by simple majority votes. Most legislation is introduced by the government, whose majority of seats in the Commons guarantees control over the House's business. The government's Department for Digital, Culture, Media and Sport (DCMS) is responsible for media policy-making and is represented in the Cabinet by the Secretary of State for Digital, Culture, Media and Sport. Legislation affecting the media mostly come from the DCMS. Occasionally, other government departments may make policy decisions or be responsible for legislation that affects the media. The Home Office, which is in charge of matters related to counter-terrorism and security, may be involved in the drafting of legislation concerning official secrets laws, for example. The Ministry of Justice's remit covers the courts and the judicial system, freedom of information and data protection, and human rights and civil liberties.

Prior to the government introducing a bill to Parliament, a government department publishes a white paper, which sets out the government's plans and invites responses from individuals, businesses and civil society groups during a defined consultation period that usually lasts several months. Communications and Digital Committee.[4] Both committees regularly hold inquiries on issues relating to media and journalism.

For instance, the Communications and Digital Committee recently held an inquiry on "The future of journalism".[5]The Committees can influence Parliamentary opinion and the making of government policies, they have no formal role in the legislative process. In 2019, the House of Lords established a new **Select Committee on Democracy and Digital Technologies** [6] and the Commons DCMS Committee set up a **Sub-Committee on Online Harms and Disinformation**.[7]

Sometimes a "joint committee" composed of members of both Houses from across the main political parties, is set up to consider whether legislation is needed in a given area. Two recent important examples that relate to media policy are the 2011 Joint Committee on the Draft Defamation Bill [8] and the 2011-12 Joint Committee on Privacy and Injunctions. [9] Finally, there are also All-Party Parliamentary Groups (APPGs) for a wide range of issues. Whereas the Lords and Commons have separate Committees, and party 'whips' decide their composition, membership of APPGs is open to all members of both Houses. However, APPGs, which are more like informal discussion groups, do not hold hearings and inquiries, publish reports, or summon people to give testimony. There are currently APPGs related to Media, Media Freedom, Social Media, Broadband and Digital Communication, the BBC, and Children's Media and the Arts.[10]

[2] If successful in a random ballot, MPs and peers can introduce Private Members' Bills. Most fail come into effect but one recent example that affected journalism was Lord Lester of Herne Hill's Defamation Bill, introduced in May 2010, which the Ministry of Justice used as its basis for the Bill that eventually became the Defamation Act 2013 – discussed below.

[3] See, for instance, the consultation on the Online Harms White Paper, which ran between 8 April 2019 and 1 July 2019, available online at <https://www.gov.uk/government/consultations/online-harms-white-paper>

[4] <https://committees.parliament.uk/committee/378/digital-culture-media-and-sport/>  
<https://committees.parliament.uk/committee/170/communications-and-digital-committee/>

[5] <https://committees.parliament.uk/work/28/the-future-of-journalism/> The Committee's a report, "Breaking News? The Future of UK Journalism" published on 27 November 2020, is available online at <https://committees.parliament.uk/publications/3707/documents/36111/default/>

[6] <https://committees.parliament.uk/committee/407/democracy-and-digital-technologies-committee/>

[7] <https://committees.parliament.uk/committee/438/digital-culture-media-and-sport-subcommittee-on-online-harms-and-disinformation/>

[8]The Joint Committee on the Draft Defamation Bill, Draft Defamation Bill 12 October 2011, available online at <https://publications.parliament.uk/pa/jt201012/jtselect/jtdefam/203/203.pdf>

[9] The Joint Committee on Privacy and Injunctions, Privacy and Injunctions 12 March 2012, available online at <https://publications.parliament.uk/pa/jt201012/jtselect/jtprivinj/273/273.pdf>

[10] The register of All-Party Parliamentary Groups is available online at <https://publications.parliament.uk/pa/cm/cmallparty/200924/contents.htm>

## UK Laws Affecting Journalism

### *Freedom of Expression*

The closest thing to a statutory guarantee of rights protecting freedom of expression in the UK is the Human Rights Act 2000 (HRA), which brought the European Convention on Human Rights (ECHR) into UK law and requires judges to consider the decisions of the European Court of Human Rights. New UK legislation must be compatible with convention rights as interpreted by the Court, and UK judges are obliged to construe new and existing legislation in a manner that conforms to those rights. Two ECHR's articles are particularly important for journalism: Article 8, "the right to respect for private and family life", and Article 10, "the right to freedom of expression". [11]

The Convention is independent from the European Union, and therefore unaffected by the UK's withdrawal from the EU. Nevertheless, certain right-wing national newspapers and Conservative MPs have long been calling on the UK to withdraw from the ECHR. [12] In 2006, David Cameron promised that the Conservative Party would, on its return to power, repeal the HRA and replace it with a 'British Bill of Rights'. The 2015 Conservative Party manifesto repeated this pledge. However, Cameron left within a year of the 2015 General Election and his successors were preoccupied with Brexit. According to media coverage from 2020, during its negotiations with the European Union, the UK government had expressed a wish to commit

formally to applying the ECHR.[13] It was also reported that Prime Minister Boris Johnson would prefer the UK to 'opt out' of certain parts of the ECHR concerning deportations of asylum seekers and prosecutions of British soldiers. [14] At this point in time, it is unclear whether this will prompt any legislative action. So far, no white paper has been published on the matter.

### *Privacy and Breach of Confidence*

Since the introduction of the HRA, judges in the UK have interpreted Article 8 of the ECHR, which protects the right to respect for privacy and family life, to limit journalists' and media organizations' freedom to publish material that infringes on that right in cases where there is no overriding public interest for the publication. In such cases, claimants can seek injunctions which even prevent the publication of the material in question, and so-called 'super-injunctions', which also forbid the publication of the fact that an injunction exists (in cases where doing so is likely to cause media speculation and public comment that may undermine someone's legitimate right to privacy).[15]

In March 2012, a report compiled by a joint committee of the House of Commons and Houses of Lords endorsed the 'law of privacy' as developed by judges interpreting the HRA since 2000, rejecting calls for Parliament to introduce a privacy law. [16]

[11] See the European Convention on Human Rights, p. 10-11, available online at [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf) Where convention rights, such as those in Articles 8 and 10, conflict, courts must use a 'balancing test' to work out which should prevail, focusing on the comparative importance of the specific rights being claimed in the individual case, the justifications for interfering with or restricting each right, and the test of 'proportionality'. See *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, paragraph 17, available online at <https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd041028/inres-1.htm>

[12] See, for instance, Martin Howe, "We will not bow to Brussels over the European Convention on Human Rights" *The Telegraph* 5 March 2020, available online at <https://www.telegraph.co.uk/politics/2020/03/07/will-not-bow-brussels-european-convention-human-rights/>

[13] Jon Stone, "Boris Johnson refuses to commit to keeping UK in human rights convention" *The Independent* 5 March 2020, available online at <https://www.independent.co.uk/news/uk/politics/boris-johnson-brexit-human-rights-convention-echr-michel-barnier-a9378141.html>

[14] Peter Stubley, "Boris Johnson 'plans to opt out of human rights laws' amid Brexit row" published by *The Independent* on 13 September 2020, available online at <https://www.independent.co.uk/news/uk/politics/brexit-human-rights-act-uk-europe-convention-boris-johnson-b433013.html>

[15] For a commentary on a recent, high-profile 'super-injunction' case, see Iona Millership, "Case Comment: *PJS v News Group Newspapers Limited* [2016] UKSC 26" *UKSC blog* 20 May 2016, available online at <http://uksblog.com/case-comment-pjs-v-news-group-newspapers-limited-2016-uksc-26/>

[16] The Joint Committee on Privacy and Injunctions, *Privacy and Injunctions - Session 2010-12*, 12 March 2012, available online at <https://publications.parliament.uk/pa/jt201012/jtselect/jtprivinj/273/273.pdf>

The committee concluded that “a privacy statute would not clarify the law. The concepts of privacy and the public interest are not set in stone, and evolve over time. We conclude that the current approach, where judges balance the evidence and make a judgment on a case-by-case basis, provides the best mechanism for balancing article 8 and article 10 rights.” [17] While Parliament may not have introduced any further legislation related to privacy since the HRA, some parts of the British press have consistently argued that British judges have interpreted the HRA in a way that the balance between Article 10 (the right to freedom of expression) and Article 8 (the right to privacy and family life) has tipped further and further in favour of the latter, increasingly favouring the rights of those who do not want their personal lives to be the subject of press reporting over the freedom of the press. [18]

In response, others argue that press freedom should not entail an unrestricted freedom to publish any details of individuals’ private lives, since many violations of the right to privacy committed by the press have little to do with any legitimate public interest, and much more to do with either selling more newspapers for profit, or influencing and even intimidating public figures - including politicians - by threatening them with the publication of sensitive personal information. One example of a recent, high-profile legal case involving the claim of privacy infringement by the British press has been the successful claim brought by the Duke and Duchess of Sussex – Prince Harry and Meghan Markle – against the Mail on Sunday and its publisher Associated Newspapers.[19]

## *Defamation*

The jurisdiction of England and Wales has long been internationally infamous for having some of the most restrictive defamation laws of any liberal democracy.

These, coupled with loose rules on jurisdiction, have encouraged ‘libel tourism’: individuals and organisations choosing the UK as the most favourable jurisdiction in which to claim they have been defamed in order to seek the restriction of others’ speech in the UK and elsewhere.[20] However, the Defamation Act 2013 reformed and liberalised this law, introducing a new threshold of “serious harm” to prevent trivial claims and to require bodies trading for profit to demonstrate serious financial harm when bringing a claim. The Act introduced a range of new defences, and updated and codified a number of existing ones. Jurisdictional rules were tightened in order to limit libel tourism. The presumption in favour of jury trials was reversed. The overall aim of the legislation was to afford more legal protections for various forms of legitimate speech, including peer-reviewed academic articles and publications on matters of public interest, and to decrease the legal costs defamation cases entail by reducing their average duration.[21]

[17] Privacy and Injunctions - Session 2010-12, p. 5

[18] See for instance i) The keynote speech given by the then-editor of the Daily Mail to the Society of Editors in 2008. Paul Dacre, “The threat to our press”, The Guardian 10 November 2008, available online at <https://www.theguardian.com/media/2008/nov/10/paul-dacre-press-threats> (ii) A recent analysis by the Telegraph’s crime correspondent.

Martin Evans, “Privacy vs Freedom of Expression: How the law has developed”, The Daily Telegraph 18 July 2018, available online at <https://www.telegraph.co.uk/news/2018/07/18/privacy-vs-freedom-expression-law-has-developed/>

[19] Caroline Davies, “Meghan wins privacy case against Mail on Sunday” The Guardian 11 February 2021, available online at <https://www.theguardian.com/uk-news/2021/feb/11/meghan-markle-father-duchess-sussex-mail-on-sunday-wins> For coverage of the case as it unfolded see the blog of the International Forum for Responsible Media, available online at <https://inform.org/tag/meghan-markle/>

[20] A famous case exemplifying this issue was McDonald’s Corporation v Steel & Morris [1997] EWHC QB 366 (available online at <https://www.bailii.org/ew/cases/EWHC/QB/1997/366.html>), popularly known as “the McLibel case”. A documentary about the case, McLibel, was made in 1997; an extended version of the film was released in 2005.

[21] The Defamation Act 2013 is available online at <https://www.legislation.gov.uk/ukpga/2013/26/contents/enacted>

For a guide to the contents of the Act, see Joanna Dawson, “Research Briefing: Defamation Act 2013” House of Commons Library, available online at <https://commonslibrary.parliament.uk/research-briefings/sn06801/> See also Mark Hanna and Mike Dodd, McNaë’s Essential Law for Journalists, 25th Edition (Oxford University Press 2020), part 3: defamation and related law

## Access to Information

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### *Laws Regulating the Reporting of Crime, Policing, the Courts, the Security Services and Leaked Government Information*

Common law, precedent and statute collectively regulate the reporting of crime, policing, the courts and the security services. Police inquiries, criminal and civil court cases, coroners' inquests, tribunals and public inquiries all have specific rules governing the disclosure of information and reporting on their proceedings. The common law offence of 'contempt of court', and the broader law of contempt, is applied to protect against actions, including certain news reporting,—which may prejudice or compromise the administration of justice. The law is set out partly in case law and partly in the **Contempt of Court Act 1981**.

Common law protects the principle of open justice, which has been repeatedly affirmed by case law.[22] There must be an overriding justification for any departure from this principle, usually involving damage to the process of justice. However, the Magistrates' Courts Act 1980, which requires magistrates to sit in open court in most cases, was heavily qualified by the Criminal Justice and Courts Act 2015, which introduced the 'single justice procedure'. Under this, magistrates may try minor cases in private, in the defendant's absence, and impose fines on conviction. The purpose of this new system is to save the government court costs. These cases usually involve low-level offences, but sometimes such cases can relate to matters of public interest – for instance, when the defendant is an important public figure. On these grounds, some organisations, such as the Magistrates' Association, have objected to the new procedure.[23]

The **Official Secrets Acts of 1911 and 1989** are justified by the claim that they help protect national security by criminalising the disclosure of secret information vital to it. Although this legislation is not used routinely to prosecute journalists, it has been occasionally.[24] In 2018, two reporters working in Northern Ireland, Trevor Birney and Barry McCaffrey, were arrested and threatened with prosecution, although the case against them was later dropped.[25] The legislation has more often been used for the prosecution of civil servants and others who have given journalists sensitive information, including in cases where information has been leaked on grounds of conscience to shed light on controversial government policies. Under the legislation, police are entitled to search the home and newsroom of a journalist who they believed to have broken the law, to seize their records and to attempt to identify their source.[26] Whistleblowers can also be prosecuted under data protection legislation or the common law offence of 'misconduct in public office' (discussed in more detail below). In 2015, the Cabinet Office asked the Law Commission to review the effectiveness of official secrets law and develop proposals to 'update it for the digital age'.

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[22] Hanna and Dodd, McNae's Essential Law for Journalists, chapter 15: open justice and access to court information

[23] Hanna and Dodd, McNae's Essential Law for Journalists, p. 195

Dan Sabbagh, "Journalists' union criticises plans for new official secrets laws", The Guardian, 20 December 2019, available online at [24] <https://www.theguardian.com/uk-news/2019/dec/20/journalists-union-criticises-plans-for-new-official-secrets-laws>

[25] Rory Carroll, "Police drop investigation into journalists who made Loughinisland film", The Guardian, 4 June 2019, available online at <https://www.theguardian.com/uk-news/2019/jun/04/loughinisland-journalists-police-investigation-dropped-redacted-document-no-stone-returned>

[26] Hanna and Dodd, McNae's Essential Media Law for Journalists, p. 426

The Commission's initial consultation proposals included extending maximum prison sentences from two to fourteen years and expanding the definition of espionage to potentially cover not only those who leak but those who obtain or handle official secrets as well. Several media and civil society organisations heavily criticised these proposals when they were published in February 2017 on the basis that they would criminalise legitimate public interest journalism, and could have been used to prosecute *The Guardian* over its publication of information about mass government surveillance leaked to them by Edward Snowden.[27] The new Conservative government led by Theresa May immediately backed away from the proposals.[28] In September 2020 the Law Commission published a new set of proposals.[29] These still include longer sentences for those who disclose sensitive information but a public interest defence has been introduced as well, which would be available to anyone charged with unauthorised disclosure. [30]

### *Freedom of Information (FOI)*

The **Freedom of Information Act 2000** established a public “right of access” to information held by public bodies. Members of the public can make requests to public bodies for the release of information unless the information in question is covered by a range of exemptions; for instance, one relates to national security. The Act's provisions came into effect in 2005. The application of the Act is overseen by the Information Commissioner's Office (ICO). Information disclosed as a result of a FOI request has often been an important source of many news reports. However, public bodies often resist the disclosure of such information for illegitimate as well as legitimate reasons - for instance, to prevent political embarrassment or frustrate public accountability. Those who request access to public interest information on the basis of the Act can appeal to the ICO if their FOI request is denied, but the appeals process is lengthy and complicated. According to a recent report by the *openDemocracy* website, compliance with the Act by public bodies has noticeably worsened in recent years, with longer waiting times and the increased use of ‘stonewalling’ and other tactics aimed at delaying or preventing the disclosure of information to which the public is legitimately entitled.[31] Both the *openDemocracy* report and the ICO's report from 2019 have argued that since outsourcing to private companies is more and more frequently used in the provision of public services, FOI rights should be extended to cover those private companies and other organisations to whom such services are outsourced.[32]

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[27] Rob Evans, Ian Cobain and Nicola Slawson, “Government advisers accused of ‘full-frontal attack’ on whistleblowers” *The Guardian* 12 February 2017, available online at <https://www.theguardian.com/uk-news/2017/feb/12/uk-government-accused-full-frontal-attack-prison-whistleblowers-media-journalists> See also, “The Guardian view on official secrets: new proposals threaten democracy” *The Guardian* 12 February 2017, available online at <https://www.theguardian.com/commentisfree/2017/feb/12/the-guardian-view-on-official-secrets-new-proposals-threaten-democracy>

[28] Owen Boycott and Rowena Mason, “No 10: Official Secrets Act proposals ‘project of previous prime minister’” *The Guardian* 13 February 2017, available online at <https://www.theguardian.com/law/2017/feb/13/uk-government-law-commission-report-outlaw-whistleblowers-investigative-journalism>

[29] Law Commission, *Protection of Official Data - Report*, 1 September 2020, available online at <https://www.lawcom.gov.uk/project/protection-of-official-data/>

[30] Owen Boycott, “Call for UK's ‘antiquated’ Official Secrets Act to be updated” *The Guardian* 1 September 2020, available online at <https://www.theguardian.com/law/2020/sep/01/call-for-antiquated-uk-official-secrets-act-to-be-updated>

[31] Jenna Corderoy and Lucas Amin, “How the UK government is undermining the Freedom of Information Act” *openDemocracy* 27 November 2020, available online at <https://www.opendemocracy.net/en/freedom-of-information/how-uk-government-undermining-freedom-information-act/> Lucas Amin, *Art of Darkness: How the government is undermining Freedom of Information*, *openDemocracy* November 2020, available online at <https://beta.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>

[32] Information Commissioner's Office, *Outsourcing Oversight? The case for reforming access to information law - Report of the Information Commissioner to Parliament*, 2019, available online at <https://ico.org.uk/about-the-ico/what-we-do/outsourcing-oversight/>

*Data Protection*

The **Data Protection Act 2018**, which updated and replaced the Data Protection Act 1998 and harmonised UK law with the EU General Data Protection Regulation, provides the legal framework for data protection in the UK. It was amended on 1 January 2021 by regulations under the European Union (Withdrawal) Act 2018 to reflect the UK's status outside the EU. It now sits alongside and supplements the UK General Data Protection Regulation, which also came into effect on 1 January 2021.[33] The **Information Commissioner's Office (ICO)** is responsible for monitoring compliance with the Act.

During the 2000s, police investigations uncovered evidence of an extensive trade in confidential personal information by private investigators who had often obtained the private information through illegal methods. In many cases, they were acting on behalf of clients in the UK press. These methods routinely involved breaching of the Data Protection Act 1998 – for instance, by accessing confidential medical records or bribing public officials to provide data from the databases of public bodies. The evidence was extensively analysed in two reports published by the ICO in 2006, which shed light on thousands of transactions involving the UK press. However, for complex reasons examined in the Leveson Report, no journalist was ever prosecuted.[34] The fact that no journalist was ever prosecuted, or even sacked, for engaging in what were clear violations of the Data Protection Act 1998 - usually without the slightest suggestion of acting in the public interest - may have contributed to a feeling among some journalists and executives that they would be above the law when it came to other criminal offences too, like phone hacking.[35]

*Bribery and the Interception of Communications*

The 2011 'phone hacking scandal' revealed that in the 2000s journalists at national tabloid newspapers routinely intercepted the mobile voicemail messages of prominent public figures and ordinary citizens featured in news stories, either directly or by paying others to do so. This illegal activity occurred on an industrial scale in order to uncover juicy exclusives about politicians, celebrities and other people in the news that would help titles sell more copies in the UK's aggressively competitive national newspaper market. It was prohibited under the **Regulation of Investigatory Powers Act 2000**, which was primarily intended to regulate public bodies' entitlement to carry out surveillance and investigation, but which also regulated the interception of communications – including by private individuals. In many newspaper phone hacking cases, there was not the slightest suggestion of a public interest defence.

The information obtained was usually of a private and personal nature; journalists were usually listening in to their targets' voicemails just to see what on them, not to provide supporting evidence for important stories they had uncovered by other, legal means.

The first case of a journalist's prosecution for phone hacking happened in 2007, when Clive Goodman, the Sunday tabloid *News of the World's* royal editor was arrested and jailed for hacking into the voicemails of members of the Royal Household. At the time, the paper's parent company News International - the UK subsidiary of News Corporation - insisted that Goodman was just 'one rogue reporter'.

[33] For more about the Act and the UK GDPR, see the guide to data protection on the website of the Information Commissioner's Office, available online at <https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/about-the-dpa-2018/>

[34] Lord Justice Leveson, An Inquiry into the Culture, Practices, and Ethics of the Press, November 2012, Volume 3, Part H, Chapter 3, section 1: Criminal proceedings in respect of journalists, p. 1031-1040, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=48>

[35] For a comprehensive analysis, see Lord Justice Leveson, An Inquiry into the Culture, Practices, and Ethics of the Press, November 2012, Volume 3, Part H: The press and data protection, p. 998-1113, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=16>

However, in 2009 and 2010, new claims started to emerge showing that other people's phones had also been hacked – people with nothing to do with Clive Goodman's area of reporting, which clearly indicated News International's 'one rogue reporter' defence was false. Rather than mount an internal investigation to find out of the extent of the criminality, News International dealt with these new claims by reaching confidential, out-of-court financial settlements. Eventually, in July 2011, when *The Guardian* revealed that in 2002 *News of the World* journalists working with a private investigator hacked into the voicemail of a schoolgirl, Milly Dowler, who had been abducted and murdered, and they listened to the messages left by her parents [36], it caused a national outcry and dominated news headlines. The revelation caused a wave of public outrage and politicians, regulators, the police and news editors and producers had no chance to ignore it or play it down, no matter how keen they were to do so.

The 2011 scandal resulted in the closure of the *News of the World* (though it was later relaunched as *The Sun on Sunday*), the resignation of a number of senior News International executives and the withdrawal of News Corp's bid to buy Sky (discussed in a case study at the end of this chapter). Additionally, the scandal also led to an avalanche of civil claims by victims of phone hacking, mostly against two major newspaper publishers: News UK (formerly News International) and Mirror Group Newspapers (a subsidiary of Reach plc, which at the time was called Trinity Mirror), where journalists also hacked phones. Even today, a decade after the first civil litigation, civil claims based on phone hacking allegations continue to be brought periodically against News UK. The scandal also led to several major police investigations, which resulted in a long sequence of prosecutions against journalists and editors working at a number of tabloid newspapers. Many of them pled guilty and some served prison terms, including Andy Coulson – the former editor of the *News of the World* (2003 to 2007), director of communications for the Conservative Party (2007 to 2010) and then personal director of communications for the then-Prime Minister David Cameron (2010 to 2011).[37]

The most famous trial, *R v Coulson, Brooks and others* (sometimes referred to simply as 'the phone hacking trial') took place at the Old Bailey (the Central Criminal Court of England and Wales) between October 2013 and June 2014. The charges included phone hacking, conspiracy to commit misconduct in public office (i.e. authorising the payment of public officials for stories) and conspiracy to pervert the course of justice (by destroying devices and notebooks that the prosecution alleged contained evidence of criminal conduct). The trial resulted in the conviction of Coulson for conspiracy to hack phones, while Rebekah Brooks, former editor of the *News of the World* (2000 to 2003) and *The Sun* (2003 to 2009) and subsequently CEO of News UK (2009 to 2011), was acquitted on all charges, as were the other five defendants (including Brooks's husband and her personal assistant). In September 2015, after the victory of the Conservative Party in the General Election earlier that year, News Corporation reappointed Brooks to her job as CEO of News UK.[38]

[36] Nick Davies and Amelia Hill, "Missing Milly Dowler's voicemail was hacked by News of the World" *The Guardian* 4 July 2011, available online at <https://www.theguardian.com/uk/2011/jul/04/milly-dowler-voicemail-hacked-news-of-world>

[37] [https://en.wikipedia.org/wiki/News\\_International\\_phone\\_hacking\\_scandal#Criminal\\_charges\\_and\\_convictions](https://en.wikipedia.org/wiki/News_International_phone_hacking_scandal#Criminal_charges_and_convictions)

[38] Daniel Boffey, "Return of Rebekah Brooks is 'two fingers up to British public' – shadow minister" *The Guardian* 29 August 2015, available online at <https://www.theguardian.com/media/2015/aug/29/rebekah-brooks-return-news-uk-chief-campaigners-attack-report-rupert-murdoch>

During the police investigation into phone hacking offences, a large number of company emails were handed over to investigators by the management of News International. They were desperate to prove their cooperation with police in order to avoid the risk of a corporate prosecution. This evidence led the police to uncover evidence of the widespread practice of journalists illegally bribing public officials to acquire exclusive information from them. Many public officials and journalists were prosecuted under the common law offence of ‘misconduct in public office’, or conspiracy to commit the same, and several trials were mounted. During these trials, juries tended to convict the public officials who sold the stories but they acquitted the journalists who paid for them. For example, Bettina Jordan-Barber, a civil servant who worked for the Ministry of Defence and had the highest grade of security clearance, was paid a total of £100,000 between 2004 and 2012 to give *The Sun* exclusive information. She was found guilty of the offence but the journalists who were alleged to have paid her, or to have authorised others to pay her (including Rebekah Brooks), were acquitted.

**The Bribery Act 2010** has repealed past statute and common law relating to bribery and introduced a new legal framework, which includes a corporate offence of ‘failure to prevent bribery’ by lacking the proper procedures to prevent it. There is no public interest exemption in the Act for journalists. Journalists can be prosecuted for bribery and the companies they work for can be prosecuted for corporate failure to take reasonable steps to prevent them from bribing public officials. However, most of the prosecutions for illegal payments to public officials that resulted from the phone hacking scandal related to offences committed before the introduction of the 2010 Act, and were therefore prosecuted under the offence of “conspiracy to commit misconduct in public office.” This caused considerable difficulties for juries at trial.[40]

### *Media Coverage of Legal Developments*

Specialist legal correspondents are increasingly rare in UK newsrooms. The BBC has a home and legal correspondent, Dominic Casciani [41], the *Financial Times* employs a legal correspondent, Kate Beioley [42], and *The Times* has a legal editor, Jonathan Ames. [43] However, no other national newspapers have specialist legal correspondents. [44] Alongside commentary in the established news media, some online sources provide commentary on developments in media law and notable cases; the most comprehensive is the blog ran by the International Forum for Responsible Media. [45]

[39] Lisa O’Carroll, “MoD ‘mole’ Bettina Jordan-Barber jailed over Sun leaks” *The Guardian* 20 March 2015, available online at <https://www.theguardian.com/uk-news/2015/mar/20/mod-mole-bettina-jordan-barber-jailed-over-sun-leaks>

[40] See, for example, Lisa O’Carroll, “Sun payments trial: when is a leak a crime?” *The Guardian* 20 March 2015, available online at <https://www.theguardian.com/uk-news/2015/mar/20/sun-payments-trial>

[41] <https://www.bbc.co.uk/news/topics/cezlkpje5zkt>

[42] <https://www.ft.com/kate-beioley>

[43] <https://www.thetimes.co.uk/profile/jonathan-ames>

[44] David Allen Green, “The last of the legal correspondents, and the true crisis in the public understanding of law” *The Law and Policy Blog* 3 January 2021, available online at <https://davidallengreen.com/2021/01/the-last-of-the-legal-correspondents-and-the-true-crisis-in-the-public-understanding-of-law/>

[45] <https://inform.org/>

## Platform-Specific Media Regulation

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### *Broadcast Media*

The **Communications Act 2003**, the most important piece of legislation regulating media in the UK, established Ofcom, the UK's communications regulator, introduced new regulations governing the approval of media takeovers and mergers, and set out the regulatory architecture for TV and radio, including TV and radio licensing requirements, broadcasting standards requirements, and public service broadcaster remits and programming quotas.[ 46] Section 88 of the Digital Economy Act 2017 amended the 2003 Act by adding to Ofcom's list of statutory duties the responsibility for regulating the BBC. [47]

One of the then-New Labour government's intentions for the Act was to deregulate the rules governing media ownership in the UK. The Act achieved this in some areas, for instance by abolishing restrictions on the foreign ownership of UK broadcasters that were introduced by the Conservative government in the 1990s. However, during the course of the legislation's passage through the House of Lords, the Labour peer, Lord David Puttnam successfully led a backbench rebellion, which strengthened the protections provided by the legislation against media mergers that may be detrimental to the plurality, quality or broadcasting standards of UK media.[48]

**Section 375 of the Communications Act 2003** amended the Enterprise Act 2002 to introduce a range of 'media public interest considerations' on the basis of which a Secretary of State (previously the Business Secretary, now the DCMS Secretary) can intervene in media mergers. [49] Under this legislation, the Secretaries of State intervened in both of the two bids to buy the UK satellite broadcaster Sky plc by companies run by Rupert Murdoch – first News Corporation in 2010-11, then 21st Century Fox in 2016-18 –and subjected the bids to regulatory scrutiny on the grounds that the bid posed a threat to the plurality of the UK news media. [50] The second bid was blocked on plurality grounds. (Both of these bids are analysed in a case study at the end of this chapter.)

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[46] <https://www.legislation.gov.uk/ukpga/2003/21/contents>

[47] <https://www.legislation.gov.uk/ukpga/2017/30/part/6/crossheading/regulation-and-functions-of-bbc/enacted>

[48] For a narrative of the events leading up to the passage of the Act, see Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapter 5, Section 5: Communications Act 2003, p. 1278-1298, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=293>

## *Digital Platforms*

There is currently no regulator in the UK with specific responsibility for regulating online content, or for regulating digital platforms. The government has, however, declared its intention to introduce legislation assigning to Ofcom the task of regulating digital platform providers, in order to ensure that they fulfil a statutory ‘duty of care’ to prevent their users from being harmed by content distributed through their platforms.[51] The government’s actions follow in the wake of years of news reports about ‘online harms’, and inquiries and reports on the matter by the Lords Communications and Digital Committee, the Lords Democracy and Digital Technologies Committee and the Commons DCMS Subcommittee on Online Harms and Disinformation.[52]

## *The Press and Non-Broadcast Digital Media*

**The press and non-broadcast digital media** are not regulated by specific statutes in the UK. Following the Leveson Report (2012), Parliament agreed in 2013 that the Privy Council (in practice, the Cabinet) should establish the **Royal Charter on Self-Regulation of the Press**. This sets out standards of adequacy for press self-regulation, after the failure of the previous press self-regulator, the Press Complaints Commission, to prevent not just major failures of press standards but large-scale criminality as well. The Royal Charter agreed by Parliament established the **Press Recognition Panel (PRP)**, whose members are appointed through an independent process with no ministerial involvement. The PRP’s task is to assess press regulators that put themselves forward for assessment, and to ‘recognise’ those that meet the criteria of adequacy defined by the Royal Charter, which are themselves derived from the criteria for an adequate press self-regulator set out in the Leveson Report. [53]

Most of the British press are members of the **Independent Press Standards Organisation (IPSO)**, which was set up and remains funded by the industry, and has chosen not to apply for recognition by the PRP. [54] Its creation was the initiative of three major right-wing national newspaper publishers: News UK, Telegraph Media Group and DMG Media. [55] IPSO and its supporters claim to reject state oversight of press self-regulation on principle – even in the arms-length form of oversight of IPSO by the PRP.

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[49] The second bid was also intervened in on the grounds of the need to ensure that media enterprises are controlled by people with a genuine commitment to the broadcasting standards objectives set out in Section 319 of the Communications Act 2003 (discussed below in the section on Ofcom).

[50] See the Communications Act 2003, Section 375: Media public interest considerations, available online at <https://www.legislation.gov.uk/ukpga/2003/21/section/375> and the Enterprise Act 2002, Section 58: Specified considerations (2C), available online at <https://www.legislation.gov.uk/ukpga/2002/40/section/58>

[51] <https://www.gov.uk/government/news/government-minded-to-appoint-ofcom-as-online-harms-regulator>

[52] House of Lords Select Committee on Communications, *Regulating in a digital world - 2nd Report of Session 2017-19*, 9 March 2019, available online at <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf> House of Lords Select Committee on Democracy and Digital Technologies, *Digital Technology and the Resurrection of Trust - Report of Session 2019-21*, 29 June 2020, available online at <https://committees.parliament.uk/publications/1634/documents/17731/default/> The Commons DCMS Subcommittee on Online Harms and Disinformation has an ongoing inquiry into “Online harms and the ethics of data”. The inquiry page is accessible online at <https://committees.parliament.uk/work/560/online-harms-and-the-ethics-of-data/>

[53] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 4, Part K, Chapter 9: Recommendations for a Self-Regulatory Body, p. 1795-1799, available online at <https://discoverleveson.com/levesonarticle/4/Leveson%20Report%20078#page=330> An independent analysis has shown that “[i]n almost all key respects the Charter very closely resembles Lord Justice Leveson’s regulatory recommendations. Where there are material differences from Leveson they are almost all for clarification or for the benefit of the press.” See “Royal Charter vs Leveson” Media Standards Trust 21 March 2013, available online at <http://mediastandardstrust.org/mst-news/royal-charter-vs-leveson/>

[54] IPSO maintains a database of publications it regulates, available online at <https://www.ipso.co.uk/complain/who-ipso-regulates/>

[55] Dominic Ponsford, “Guardian rejects IPSO press regulator claiming it will be controlled by Telegraph, Mail and News UK” *Press Gazette* 6 August 2013, available online at <https://www.pressgazette.co.uk/guardian-rejects-ipso-press-regulator-claiming-it-will-be-controlled-telegraph-mail-and-news-uk/>

Others claim that the rejection of oversight is motivated by these publishers' desire to avoid being subjected to sufficiently robust and independent regulation. Here it is worth noting that the Leveson Report rejected the proposal for a new self-regulator that these publishers presented to the Leveson Inquiry, at length and in detail [56] – and that IPSO does not conform to the Royal Charter's criteria.

Some smaller titles – mostly local newspapers and new, digital-only outlets – are members of another regulator, the **Independent Monitor on the Press (IMPRESS)**, which was established to promote the reform and improvement of press standards. [57] Publishers of a number of major titles including *The Guardian* (and *The Observer*), the *Financial Times*, *The Independent* and the *Evening Standard* have rejected membership of both IPSO and IMPRESS, and are not members of any regulator. They have justified their absence from these regulatory bodies by arguing that they reject both any state oversight of press self-regulation and IPSO's claims of independence from the 'big three' right-wing publishers who founded it.

IMPRESS applied for recognition by the PRP and was granted it in 2016. IPSO has never applied for PRP recognition. An external analysis by the Media Standards Trust carried out in 2013 (and updated in 2019) has shown that its structure does not meet most of the criteria set out in the Leveson Report. [58] The majority of the press is covered by a regulator that the PRP—the statutory body established by Parliament to assess the adequacy of press self-regulation—has not certified as adequate, and which does not meet the requirements of the Royal Charter that the PRP is required to apply. This complex situation is explained in more detail in the below section on 'Print media regulators'. [59]

The '**Editors' Code of Practice**', the prevalent code of journalistic practice in the newspaper industry, adherence to which is often included in journalists' employment contracts, is maintained and enforced by IPSO [60], while IMPRESS has its own **Standards Code**. [61] The two are similar but have some differences. [62] However, the standards the press should be required to meet is one aspect of the controversy around press regulation but by no means the only one. Two other key aspects, discussed in more detail in the 'Print media regulators' section below, are (i) the independence and robustness of regulatory enforcement, and (ii) whether, in view of the past serious failures of press self-regulation, a body accountable to Parliament should have oversight of, and report regularly on, IMPRESS and IPSO's enforcement performance.

[56] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 4, Part K, Chapter 3: Analysis of the Model Proposed by the PCC and Pressbof, p. 1614-1650, available online at

<https://discoverleveson.com/levesonarticle/4/Leveson%20Report%20078#page=149>

[57] IMPRESS maintains a list of regulated publications, available online at <https://www.impress.press/regulated-publications/>

[58] The Media Standards Trust's initial assessment of IPSO in 2013 found it satisfied only 12 of the Leveson Report's 38 recommendations for an independent and effective press self-regulator. See "IPSO: An assessment by the Media Standards Trust" 15 November 2013, available online at

<http://mediastandardstrust.org/mst-news/ipso-an-assessment-by-the-media-standards-trust/> Its second analysis, in 2019, found that IPSO still only satisfied 13 of the 38 recommendations. See "The Independent Press Standards Organisation (IPSO) – Five Years On" 11 October 2019, available online at

<http://mediastandardstrust.org/mst-news/the-independent-press-standards-organisation-ipso-five-years-on/>

[59] For a summary of the events that followed the publication of the Leveson Report, see the report of the House of Lords Select Committee on Communications, *Press Regulation: where are we now? - 3rd Report of Session 2014-15*, 23 March 2015, Chapter 3: Where are we now?, p. 18-35, available online at

<https://publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/135/135.pdf>

[60] The Code is set out in full on the website of the Editors' Code of Practice Committee, available online at

[http://www.editorcode.org.uk/the\\_code.php](http://www.editorcode.org.uk/the_code.php)

[61] The IMPRESS Standards Code is available online at <https://www.impress.press/standards/>

[62] For a two-part, comparative analysis of the two codes in international context, see Damian Carney, "Up to standard? A critique of IPSO's Editors' Code of Practice and IMPRESS's Standards Code: Part 1" *Communications Law* 2017, 22(3), 77-88, available online at

<https://uk.westlaw.com/Document/IEDFF5EA0A82211E7AC2387D797E8A7E8/View/FullText.html> and "Up to standard? A critique of IPSO's Editors' Code of Practice and IMPRESS' Standards Code: Part 2" *Communications Law* 2017, 22(4), 112-123, available online at

<https://uk.westlaw.com/Document/IOEDFA290F15911E7BCE1AD55206F142A/View/FullText.html>

## REGULATORY AUTHORITIES

This section outlines the remit, structure and funding of the most significant public bodies in UK media: some of these are regulators, but some are publicly owned broadcasters. The latter are not only regulated by the broadcasting regulator, Ofcom, but by Parliamentary scrutiny of their performance against their legally defined remits.

In the UK, the regulation of broadcasters is a much more straightforward matter than the regulation of the press, reflecting the long-standing agreement between Parliament and the broadcasting sector that broadcasting can and should be regulated by the state, even if questions about the purpose of that regulation have been more contested.

There are two publicly-owned broadcasters – the BBC and Channel 4 – whose boards are at least partly appointed by the Secretary of State for Digital, Culture, Media and Sport. Nevertheless, even privately-owned commercial broadcasters such as ITV, Channel 5 and Sky are subject to regulation by a state body, Ofcom, which was established by legislation in 2003 as the successor to previous state bodies that were tasked with regulating broadcasting in the public interest.

In comparison, the current system for regulating British newspapers is a mess. The reason is simply that there is a lack of any similar agreement about whether Parliament has a right to regulate the press. In 2013, following the publication of the Leveson Report, Parliament established a system to *monitor* press self-regulation. However, most newspaper publishers reject Parliament's right even to monitor the way the press regulates itself. Since 2013, the entire national press and much of the local press has chosen to boycott the system established by Parliament, creating an impasse that Parliament has not resolved. Consequently, more attention is paid in this report to the complex state of press regulation than to the comparatively straightforward regime of broadcasting regulation.

## Broadcast Media & Frequency Spectrum

### OFCOM

#### *Remit & Tasks*

Ofcom is the UK's communications regulator, responsible for a wide range of functions. It was established by the **Communications Act 2003**, which comprehensively reformed the regulation of UK broadcasting and telecoms. Before the Conservatives' return to power in 2010, the party leader David Cameron declared that "Ofcom as we know it will cease to exist".<sup>[63]</sup> In fact, since returning to government, the Conservatives have sought its advice and assigned new functions to the body, and they are now planning to expand its regulatory scope to cover digital platforms too.



Under the 2003 Act, Ofcom has statutory responsibility for granting TV and radio spectrum licences, and for setting the conditions that licensees are obliged to meet. (For instance, holders of prominent TV channels such as ITV—holder of the Channel 3 licence—Channel Four and Channel Five are subject to 'Public Service Broadcasting' requirements as conditions of their licence.) Ofcom also applies a 'fit and proper test' to holders of broadcasting licences. It famously published an assessment of whether Rupert Murdoch and James Murdoch were 'fit and proper persons' in 2012 after the phone hacking scandal raised serious questions about whether they had known about the cover-up of large-scale criminality at their UK newspaper subsidiary.<sup>[64]</sup> Ofcom revisited its assessment in light of 21st Century Fox's proposed takeover of Sky plc in 2017.<sup>[65]</sup>

Section 319 of the 2003 Act sets out the broadcasting standards, and it is Ofcom's statutory duty to uphold them through the maintenance and enforcement of the Ofcom Broadcasting Code, which applies to all holders of broadcasting licences in the UK.<sup>[66]</sup> Ofcom's Content Board is the primary body responsible for enforcing the Code, which applies to television and radio and covers standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. Among other requirements, the Code regulates all broadcasters for "due impartiality" and "due accuracy" in the provision of news and current affairs programming. Ofcom regularly publishes a bulletin, where it lists its Broadcasting Code enforcement decisions and actions.<sup>[67]</sup> Ofcom has withdrawn licences from TV channels and radio stations when it has deemed them to be in flagrant breach of UK broadcasting rules. For instance, in 2012 the Iranian news channel Press TV had its licence revoked for breaching rules about the editorial control of the channel.<sup>[68]</sup>

[63] Leigh Holmwood, "Ofcom hits back at David Cameron" *The Guardian* 6 July 2009, available online at <https://www.theguardian.com/media/2009/jul/06/ofcom-david-cameron>

[64] "Ofcom decision on fit and proper assessment of Sky" Ofcom 20 September 2012, available online at <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2012/ofcom-decision-on-fit-and-proper-assessment-of-sky>

[65] "Update on fit and proper assessment of Sky" Ofcom 13 March 2017, available online at <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/update-on-fit-and-proper-assessment-of-sky>

[66] Communications Act 2003, Section 319: Ofcom's standards code, available online at <https://www.legislation.gov.uk/ukpga/2003/21/part/3/chapter/4/crossheading/programme-and-fairness-standards-for-television-and-radio> The Ofcom Broadcasting Code (with the Cross promotion Code and the On Demand Programme Service Rules), available online at <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

[67] Ofcom Broadcast and On Demand Bulletins are available online at <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>

[68] "Iran's Press TV loses UK licence" *BBC News* 20 January 2012, available online at <https://www.bbc.co.uk/news/entertainment-arts-16652356> The full decision is available online at [https://www.ofcom.org.uk/\\_\\_/data/assets/pdf\\_file/0031/67198/press-tv-revocation.pdf](https://www.ofcom.org.uk/__/data/assets/pdf_file/0031/67198/press-tv-revocation.pdf)

In February 2021, Ofcom revoked China Global Television Network’s licence to broadcast on UK television on the grounds that Ofcom had determined that editorial control over the channel resided with the Chinese Communist Party, instead of the UK licence holder Star China Media Limited.[69]

Some broadcasters—like the BBC, Channel Four and Sky News—have their own sets of published editorial guidelines that incorporate Ofcom’s Code and in some respects even go beyond it, for instance, by including guidelines on journalists’ social media output, which Ofcom does not regulate. [70]

In March 2016, following a series of high-profile scandals at the BBC, an independent review of the BBC’s governance and regulation commissioned by the Secretary of State for Culture, Media and Sport recommended that the BBC Trust—the body set up in 2007 to provide governance and oversight of the Corporation—should be abolished and replaced by a unitary BBC Executive Board, and that the BBC should be externally regulated by Ofcom.[71] The review’s recommendations were accepted by the government. Since April 2017 Ofcom has been responsible for the external regulation of the BBC. Ofcom publishes an annual review of the BBC’s performance against the mission and public purposes laid out in the BBC’s Royal Charter.[72]

## *Structure*

Ofcom is composed of:

- the Ofcom Board, its main decision-making body
- a Senior Management Team, which oversees its workforce of around 1,000
- the Content Board, responsible for enforcing content standards
- other committees, boards and panels, including advisory panels for each of the UK’s nations.

## *The Ofcom Board*

The **Ofcom Board** is composed of a chair and a mix of executive and non-executive members, up to a maximum of ten in total, including up to three executive members. The Board has a central governance function, exercising oversight over Ofcom’s fulfilment of its general duties and specific statutory responsibilities, its overall funding and expenditure, and its adherence to the ethos of a public service organisation. The Board meets at least monthly (except in August). Agendas, summary notes and minutes of its meetings are published on Ofcom’s website.[73]

[69] “Ofcom revokes CGTN’s licence to broadcast in the UK” Ofcom 4 February 2021, available online at <https://www.ofcom.org.uk/about-ofcom/latest/media-releases/2021/ofcom-revokes-cgtn-licence-to-broadcast-in-uk>

[70] The BBC’s Editorial Values and Standards guidelines, available online at <https://www.bbc.co.uk/editorialguidelines/> Channel Four editorial and compliance protocol, available online at

[https://www.channel4.com/media/documents/commissioning/ONLINE/Online\\_Editorial\\_Compliance\\_Protocol\\_FINAL.pdf](https://www.channel4.com/media/documents/commissioning/ONLINE/Online_Editorial_Compliance_Protocol_FINAL.pdf) Sky News editorial guidelines, available online at [https://components.news.sky.com/files/editorial\\_guidelines.pdf](https://components.news.sky.com/files/editorial_guidelines.pdf)

[71] David Clementi, A Review of the Governance and Regulation of the BBC March 2016, available online at

<https://www.gov.uk/government/publications/a-review-of-the-governance-and-regulation-of-the-bbc> Clementi, a former business executive and Deputy Governor of the Bank of England, went on to be appointed the first chair of the new BBC Executive Board, stepping down in 2020.

[72] The most recent review, covering 2019–20, is available online at <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework/performance/bbc-annual-report>

[73] An overview of the Ofcom Board, its functions and role, agendas and minutes of Board meetings, and a list of current Board members is available online at <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/ofcom-board>

All Board members are directly appointed by the Secretary of State for Digital, Culture, Media and Sport including the Chief Executive Officer, who is appointed for a term of indefinite length. Other Board members are appointed to four-year terms, subject to renewal by the Secretary of State. All Board members are required to abide by a code of conduct.[74] Ofcom is required to report to Parliament annually, and its Chief Executive and Chair are sometimes invited to give evidence to the Commons DCMS committee on Ofcom's work. The committee routinely holds pre-appointment hearings with new Chairs and Chief Executives.

### *Current Board Members [75]*

- **Terry Burns, Baron Burns of Pitshanger.** Chair, standing down in 2021. Former senior civil servant at the Treasury; member and chair of the boards of several retail and financial corporations; chair of the Channel Four Board 2010-2016. [76] Crossbench peer in the House of Lords. [77]
- **Melanie Dawes.** Chief Executive. Former senior civil servant.
- **Kevin Bakhurst.** Executive member. Ofcom Group Director for Broadcasting and Online Content. Former broadcasting executive at RTÉ and the BBC, and an editor at BBC News. Member of the Ofcom Content Board.
- **Maggie Carver.** Deputy Chair. Professional non-executive director on the boards of a range of public, private and non-profit organisations. Executive career in investment banking, television production, broadcasting and retail.
- **Graham Mather.** Former broadcasting and competition regulator. President of the European Policy Forum and Chair of its Regulatory Best Practice Group.
- **Ben Verwaayen.** General partner at an investment fund, holder of various board positions and a former telecoms executive.
- **Tim Suter.** Consultant at Communications Chambers specialising in media policy and regulation who has held positions on a number of independent public bodies. Former regulator at Ofcom and senior civil servant at the DCMS, where he was responsible for the Communications Act 2003 and the creation of Ofcom. Former programme producer and journalist at the BBC. Member of the Ofcom Content Board.
- **Bob Downes.** Board Member for Scotland. Former telecoms executive, chair of the Scottish Environment Protection Agency; chair of the Irish Commission for Communications Regulation's Independent Oversight Body. Member of the Ofcom Content Board.
- **Angela Dean.** Audit and Risk Board Member. Former financial services executive and member of several trusts, including chair of International House Trust, a provider of English language education.
- **David Jones.** Board Member for Wales. Former technology company executive, ICT consultant and member of the boards of several public sector organisations.

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[74] Ofcom, "Code of conduct for: Ofcom Board" March 2019, available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0019/55045/members\\_code\\_of\\_conduct.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0019/55045/members_code_of_conduct.pdf)

[75] <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/ofcom-board>

[76] House of Commons Digital, Culture, Media and Sport Committee, Appointment of the Chair of Ofcom - First Report of Session 2017-19 13 December 2017, p. 7 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/508/508.pdf>

[77] Terry Burns is standing down this year and his replacement is due to be announced in the near future. The Government has, through the press, floated Paul Dacre, the former editor of the *Daily Mail*, as his possible replacement. Reasons why Dacre is unfit to be chair of Ofcom are included in Brian Cathcart, "10 Reasons why Paul Dacre is Unfit to be the New Ofcom Chair" 4 February 2021, available online at <https://bylinetimes.com/2021/02/04/10-reasons-why-paul-dacre-is-unfit-to-be-the-new-ofcom-chair/>

Ofcom maintains a register of disclosable interests and commitments for all those who sit on its boards, committees and panels, and the interests of their partners and any dependents. Members that have declared interests in companies regulated by Ofcom have provided assurances that they will not trade these shares while they remain a member of one of Ofcom's boards, committees or panels.[78] Ofcom's **Content Board** is responsible for setting and enforcing quality and standards for television and radio, and for advising Ofcom's Board.[79] Four of the Board's members are appointed to represent each of Scotland, Wales, Northern Ireland and the English Regions. The Content Board is assisted by staff, who are responsible for content standards, licensing and enforcement.

### *Current Content Board Members [80]*

- **Aled Eirug.** Content Board member for Wales. Freelance strategic policy adviser, former member of the S4C authority, former journalist and broadcaster at ITV and the BBC.
- **Janey Walker.** Former Channel Four commissioning executive, with experience working in the independent production sector and at the BBC, and in managing television training for the independent sector.
- **Robin Foster.** Former strategy executive at the BBC, Independent Television Commission and Ofcom. Consultant on media policy, regulation and strategy at Communications Chambers. Competition regulator.
- **Kevin Bakhurst.** Ofcom Group Director for Broadcasting and Online Content. Executive member of the Ofcom Board. Former broadcasting executive at RTÉ and the BBC, and an editor at BBC News.
- **Tim Suter.** Chair of the Content Board. Non-executive member of the Ofcom Board. Consultant at Communications Chambers specialising in media policy and regulation who has held positions on a number of independent public bodies. Former regulator at Ofcom and senior civil servant at the DCMS, where he was responsible for the Communications Act 2003 and the creation of Ofcom. Former programme producer and journalist at the BBC.
- **Monisha Shah.** Former broadcasting and digital media executive, who has served on a range of public and commercial boards. Board member of the Office for Students, the regulator for Higher Education in England. Member of the Committee on Standards in Public Life.
- **Jonathan Baker.** Former journalist at local newspapers and the BBC, former Head of the College of Journalism, responsible for training BBC journalists. Former Professor of Journalism at the University of Essex.
- **Angelina Fusco.** Content Board member for Northern Ireland. Independent media and journalist training consultant based in Northern Ireland. Former BBC journalist.
- **Maggie Cunningham.** Content Board member for Scotland. Leadership and executive coach. Former journalist and editor at the BBC.
- **Bob Downes.** Non-executive member of the Ofcom Board. Former telecoms executive, chair of the Scottish Environment Protection Agency; chair of the Irish Commission for Communications Regulation's Independent Oversight Body.
- **Sophie Morgan.** Television presenter, entrepreneur and consultant on disability representation.
- **Stephen Nuttall.** Former executive and consultant in the sports, media and digital industries, including at YouTube and Sky.
- **Alison Marsden.** Ofcom's Director of Content Standards, Licensing and Enforcement.
- **Peter Horrocks:** Former BBC journalist, editor and director of the World Service, and vice chancellor of the Open University.

[78] <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/register-disclosable-interests>

[79] Ofcom, "Terms of reference for: Content Board", available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/69184/content-board-terms-of-reference.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/69184/content-board-terms-of-reference.pdf)

[80] <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/content-board>

- **Dekan Apajee.** Former BBC journalist and producer; involved in cultural organisations.
- **Anna-Sophie Harling.** Managing Director of NewsGuard, a browser extension, which labels the trustworthiness of digital news sources. Former German newspaper journalist, who has also worked for a technology company and an international law firm.
- **Kim Shillinglaw.** Former senior BBC executive and independent TV production executive.
- **Rachel Coldicutt.** Director of a tech research consultancy and former media executive focusing on new technology.
- **Tobin Ireland.** Former media industry executive, including at BSkyB.

### *Funding*

Ofcom is funded by fees and penalties charged to the sectors that it regulates, mostly derived from telecommunication companies. As a result, it raises far more than the cost of its annual budget, and therefore makes a net contribution to the UK Treasury. In 2019/20, it collected £373.3m in fees and penalties, retaining £56.8m to fund spectrum management and other duties. 62% percent of its £124m budget for the year was spent on staff costs.[81]

## Print Media Regulators

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As mentioned before, the system for regulating the British press is complicated, and the main reason for this is that in the aftermath of the publication of the Leveson Report in 2012, members of the press and Parliament have engaged in a heated debate on how the press should be regulated, and this disagreement remains unresolved today.

In its recent history, the UK has not had any laws that set out a specific regime of regulation for the press. It has long been a central part of the historical narrative that the British press tells about itself that it is not directly regulated by Parliament. This is the triumphant result of a centuries-long struggle to emancipate the press from state censorship and control.[82] Instead, the press has been constrained only by the regulation it has applied to itself: a regime of self-regulation.[83]

Naturally, the press is controlled by the law in general. Defamation, copyright law, the law of contempt and the other laws set out above have de facto regulated press activity for a long time. Nevertheless, the British press has always been strongly opposed to Parliament passing any law that establishes sector-specific regulation of newspapers (or their online equivalents), thereby establishing Parliament's right to regulate newspapers more directly and specifically.

[81] Ofcom, "Annual Report and Accounts 2019/20", p. 53, available online at

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0032/198770/ofcom-annual-report-and-accounts-2019-20.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0032/198770/ofcom-annual-report-and-accounts-2019-20.pdf)

[82] For an alternative view of the history of the British press, see the standard textbook by James Curran and Jean Seaton, *Power Without Responsibility: Press, Broadcasting and the Internet in Britain*, 8th Edition (Routledge 2018), Part I: Press history, especially p. 3-43

[83] For a detailed history of press self-regulation up to 2000, see Tom O'Malley and Clive Soley, *Regulating the Press* (Pluto Press 2000), Part I: The History of Self-Regulation, p. 7-141. For a shorter history up to 2012, see the Media Standards Trust's submission to the Leveson Inquiry, *A Free and Accountable Media – Reform of press regulation: report and recommendations* (2012) <http://mediastandardstrust.org/wp-content/uploads/downloads/2012/06/MST-A-Free-and-Accountable-Media-21-06-12.pdf>

Since 1945, there have been five major Royal Commissions and inquiries into the press and its conduct: Royal Commissions in 1947, 1962 and 1974; the Calcutt Committee in 1990 (and 1993); the Leveson Inquiry into the Culture, Practices and Ethics of the Press in 2011. Each time the press has sought to stave off the threat of Parliament creating a regulatory system that would be accountable to Parliament and independent from press control, by offering a reformed system of self-regulation.

In 1991, in response to the first report of the Calcutt Committee and the possibility that Parliament could establish a system of press regulation, the press set up the Press Complaints Commission – a complaints-handling body with no investigative or enforcement powers, wholly funded and controlled by the industry. In his second report in 1993, Calcutt came to the conclusion that the PCC was “not...an effective regulator of the press...it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.”[84] It was on the PCC’s watch that, during the 2000s, industrial-scale lawbreaking and a range of other abuses were committed by a number of national tabloid newspapers. The Leveson Report found that “In practice, the PCC has proved itself to be aligned with the interests of the press...When it did investigate major issues it sought to head off or minimise criticism of the press.”[85]

The Leveson Inquiry was established in mid-2011 in response to the public outcry generated by the phone hacking scandal (see above). The Inquiry’s hearings lasted for nine months between autumn 2011 and summer 2012. The Leveson Report was published in November 2012. Running to nearly 4,000 pages, its centrepiece was a series of recommendations for a new system of press regulation to replace the PCC, which had not only failed to uncover the scandal, but actually criticised those who did.[86]

Throughout the Inquiry, the press strongly objected to Parliament ‘crossing the Rubicon’ and passing legislation, which would, for the first time, establish a system for press regulation in statute. The press also objected to ‘statutory underpinning’ – for instance, an arrangement where the press established its own regulator, which was monitored for independence and robustness by another body established in statute. The press attacked the arrangement as ‘the thin end of the wedge’, breaching the principle that statute could not be used to regulate the press in any way. If any government had been really determined to limit press freedom, it would have found absolutely no constitutional barriers to limit freedom of expression, given the UK’s lack of a written constitution and a bill of rights – except for the European Convention on Human Rights and the Human Rights Act 1998 – as long as it had secured enough votes in Parliament to pass such legislation. However, the parts of the press that are the most strongly opposed to ‘crossing the Rubicon’ on press regulation are the same who have most frequently argued that Parliament should repeal the HRA and the UK should withdraw from the ECHR, such as the *Daily Telegraph* and the *Daily Mail*.

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[84] House of Lords Select Committee on Communications, Press Regulation: where are we now? - 3rd Report of Session 2014-15, 23 March 2015, p. 11-12, available online at <https://publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/135/135.pdf>

[85] Quoted in: House of Lords Select Committee on Communications, Press Regulation: where are we now? - 3rd Report of Session 2014-15, 23 March 2015, p. 16

[86] Nick Davies, “Only serious blow is to watchdog’s credibility” The Guardian 9 November 2009, available online at <https://www.theguardian.com/media/2009/nov/09/nick-davies-responds-pcc-report>

The Leveson Report rejected the press's argument about 'crossing the Rubicon'. It argued that the need for properly robust and independent oversight of press self-regulation to outweigh the risks identified by the press. To that end, it first set out a long list of criteria for an adequate press self-regulator, requiring it to: (i) be independent of the press, (ii) carry out complaints-handling and investigations functions, (iii) have the power to direct the publication of prominent corrections and apologies for standards infringements; (iv) provide a low-cost arbitration service so that both the public and regulated publishers could avoid having to go through lengthy and expensive civil court proceedings. Second, the Report proposed 'statutory underpinning' of press regulation: it concluded that Ofcom (a statutory body) should be given responsibility for monitoring the self-regulator(s) established by the press, and assessing them against the criteria of adequacy, which were to be set out in statute. If a self-regulator met the above-mentioned criteria, Ofcom would 'recognise' it. Publishers that were members of a recognised regulator would be entitled to certain legal cost protections if they were ever taken to court by claimants who rejected the use of the regulator's low-cost arbitration service. This would have the double benefit of (i) reducing the scope for wealthy litigants to use the excessively high cost of court proceedings with the intention to try and intimidate legitimate and important investigative journalism, while also (ii) improving access to justice for ordinary members of the public by providing them with a low-cost means of bringing a (valid) civil claim against publishers.

The Report went further. Arguing that it would be unacceptable for publishers to be able to reject any standards regulation at all, or to reject legitimate public oversight of self-regulation, it concluded that, in the event that a substantial part of the press refused to join a recognised regulator, there may be a need for a 'backstop' regulator to regulate those publishers. That is, the 'backstop' regulator would regulate recalcitrant publishers directly. As a public body established in statute and accountable to Parliament, with a good record of regulating the TV, radio and telecoms sectors since 2003, the Report recommended Ofcom as the public body best suited to fulfil that function. The Report was adamant that the press should no longer get to determine whether or not it is regulated – even while it agreed that the press should continue to play a major role in determining what the standards and methods of its own regulation should be.[87]

This final recommendation of the Report was prescient, for what has happened because since its publication is quite simply that the entire national press in Britain has, in one way or another, elected to boycott the monitoring system established by Parliament – a system whose criteria for an adequate self-regulator are actually a watered-down version of the Leveson Report's recommendations. The dilution of those recommendations was driven by the Conservatives – the party closest to major national newspaper publishers – but accepted by the other two main political parties (Labour and the Liberal Democrats) in cross-party negotiations, precisely in order to assuage the concerns of the national press; even though those concerns had already been given a hearing during the Leveson Inquiry, considered in the Report and refuted at length.

When the Report was published, David Cameron (on behalf of the Conservatives) immediately indicated that he was against using Ofcom both to monitor press self-regulation and as a 'backstop' regulator.[88] The other two main parties conceded on that point in order to preserve a 'cross-party consensus' on the wider issue. In fact, it was plain at the time that the Conservatives (and the press) wanted a considerably watered-down version of Leveson's recommendations. However, as they were governing in coalition with the Liberal Democrats and lacked a Parliamentary majority of their own, breaking with the other two main parties always posed the risk of being outvoted by them in the Commons.

[87] Lord Justice Leveson, An Inquiry into the Culture, Practices, and Ethics of the Press, November 2012, Volume 4, Part K, Chapter 8, sections 7.1-7.7, p. 1793-1794, available online at <https://discoverleveson.com/levesonarticle/4/Leveson%20Report%20078#page=318>

[88] David Cameron, HC Deb, 29 November 2012, c452, available online at <https://hansard.parliament.uk/commons/2012-11-29/debates/1211295800004/LevesonInquiry#contribution-12112958001426>

The Conservatives' initial response to the situation was to try and kick the whole issue of press regulation into the long grass. However, that strategy failed when peers in the House of Lords demonstrated that they were prepared to start passing amendments to government bills that would introduce Leveson's recommendations into law and it became clear there was a majority in both Houses of Parliament in support of the peers' (relatively unprecedented) actions. The Conservatives (and their allies in the press) faced the immediate prospect of total defeat.

At this point, a Conservative minister, Oliver Letwin, found a way to revive cross-party cooperation. He proposed the use of a Royal Charter to establish the system for monitoring press self-regulation, as an alternative to the use of statute that might be more palatable to the press (since it could be harder to amend than ordinary statute). A Royal Charter is a medieval constitutional device that is used to incorporate certain public bodies such as the BBC and many universities. It is not typically used as a surrogate for legislation. Royal Charters are granted by the Queen acting on the advice of the Privy Council – in practice, the Cabinet. Therefore, the Royal Charter on the regulation of the press not be able to be amended by Parliamentary majorities alone – for instance through a backbench rebellion against the government; it would also require Cabinet approval. Moreover, legislation was proposed that any changes to the Charter should receive the approval of two-thirds majorities in both Houses of Parliament: a higher voting threshold than is required to change any piece of legislation or any other part of the British constitution.

Eager to preserve 'cross-party agreement' on the way forward, Labour and the Liberal Democrats agreed to the Conservative proposal to use a Royal Charter for the necessary 'statutory underpinning'. The Charter was, nevertheless, accompanied by some clauses that were added to other legislation that happened to be passing through Parliament at the time, and which were necessary to give legal effect to two key parts of the system – the two-thirds majorities requirement, and the incentives for publishers to join a recognised regulator.

The 2013 Royal Charter on Self-Regulation of the Press set out criteria for appropriate press regulation and established the Press Recognition Panel (PRP), a board appointed by an appointments panel itself appointed by the Commissioner for Public Appointments. As a result, the PRP is independent from control by government ministers. The PRP has two tasks: (i) it is responsible for assessing press self-regulators that claim to meet the Charter's criteria, and if they do so, it is obliged to 'recognise' them;<sup>[89]</sup> (ii) it is required to regularly report to Parliament on the functioning of the press self-regulation system. The Royal Charter is protected against amendment by Section 9 of the Charter, combined with Section 96 in the Enterprise and Regulatory Reform Act 2013, which gives it statutory effect.<sup>[90]</sup>

As outlined earlier, the UK has two press self-regulators: the **Independent Press Standards Organisation (IPSO)** and the **Independent Monitor for the Press (IMPRESS)**. Only IMPRESS has ever applied for PRP recognition, which was granted on 25 October 2016.<sup>[91]</sup> IPSO does not meet the Charter's criteria and has never sought recognition. IMPRESS covers 97 publishers, publishing 161 publications in the UK; IPSO covers over 2,600 publications, including the majority of the national press.<sup>[92]</sup> Publishers regulated by IPSO agree to be regulated by signing contracts with the regulator (see below).

[89] The Charter Recognition Criteria are set out in Schedule 3 of the Charter, available online at <https://pressrecognitionpanel.org.uk/the-royal-charter/>

[90] Enterprise and Regulatory Reform Act 2013, Section 96: Royal Charters: requirements for Parliamentary approval, available online at <https://www.legislation.gov.uk/ukpga/2013/24/section/96/enacted>

[91] Press Recognition Panel, "PRP Board recognises IMPRESS" 25 October 2016, available online at <https://pressrecognitionpanel.org.uk/impres-2/>

[92] The list of publications regulated by IMPRESS is available online at <https://www.IMPRESS.press/regulated-publications/> The most recent figure for IPSO comes from IPSO, "Annual Report 2019", p. 4, available online at <https://www.ipso.co.uk/monitoring/annual-reports/>

**Section 40 of the Crime and Courts Act 2013** contains provisions on the awarding of costs in court cases where a legal claim is made against a publisher of “news-related material”.<sup>[1]</sup> These provisions are the crucial means of incentivising publishers to join not just any press self-regulator, but specifically one whose adequacy and independence from publishers’ control has been independently verified (by the PRP). However, Section 40 currently remains ‘uncommenced’ by government ministers and is therefore without any legal effect.

The importance of Section 40 lies in what went wrong with the previous press regulator, the Press Complaints Commission. The major national newspaper publishers had control over the PCC and ensured it remained a toothless ‘fig leaf’ regulator, which took publishers’ denials of wrongdoing at face value and criticised those who investigated and uncovered the truth about phone hacking.<sup>[2]</sup> This is why Leveson and Parliament both insisted on a mechanism – the PRP – for monitoring the adequacy of any self-regulator established by the press. However, Leveson recognised that there was a need for a system of incentives – a mixture of ‘carrots’ and ‘sticks’ – to ensure that the press actually joined a regulator which submitted to monitoring, rather than rejecting any monitoring and simply setting up their own, new fig leaf regulator. These incentives are included in Section 40.

In short, Section 40 says that courts must not award costs against publishers that are members of self-regulators with official PRP recognition, if the issues raised by the claim could have been resolved by the regulator’s arbitration scheme—unless it is “just and equitable in all the circumstances of the case” to do so. Conversely, if the claim is made against a publisher which is not a member of an approved regulator, the court “must” award costs against the defendant, unless there is no recognised regulator with an arbitration scheme for it to join. However, since the PRP recognised IMPRESS in 2016, there has been and remains such a recognised regulator. Therefore, if Section 40 were to be commenced, all national newspapers – which are either members of IPSO or not members of any regulator – would find themselves having to pay higher legal costs in court cases. The right-wing publishers’ strategy of boycotting the Royal Charter system and claiming they are adequately regulated by IPSO would fail. Either they would have to try and reform IPSO to meet the Royal Charter criteria so that it could gain recognition by the PRP, or publishers would have to join IMPRESS, or they would have to set up a new, Royal Charter-compliant regulator. Whichever way they responded, the end result would be the more robust and independent standards regulation that a substantial part of the press has always rejected.

Opinions differ on Section 40. As well as much of the press, some civil society groups that campaign for freedom of expression, such as Index on Censorship, Reporters Without Borders and English PEN, have criticised Section 40, claiming it poses a threat to freedom of expression by forcing the press into a system of ‘state-backed regulation’ they reject. On the other hand, many media reform groups and some distinguished journalists have expressed support for Section 40. They argue that news media should welcome regulation which protects and upholds high journalistic standards, especially in view of past industry abuses, in order to restore some public trust in the profession. Furthermore, they argue that for those who join a recognised regulator, the legislation actually provides useful legal cost protection in cases where wealthy individuals or large corporations who are the subjects of legitimate, public-interest journalism try to use the often-exorbitant cost of court cases to intimidate publishers and prevent publication.

[93] Crime and Courts Act 2013, Part 2: Courts and Justice, Section 40: Awards of costs, available online at <https://www.legislation.gov.uk/ukpga/2013/22/section/40/enacted>

[94] See Nick Davies, “Only serious blow is to watchdog’s credibility” *The Guardian* 9 November 2009, available online at <https://www.theguardian.com/media/2009/nov/09/nick-davies-responds-pcc-report> See also Nick Davies, *Hack Attack: How the Truth Caught Up with Rupert Murdoch* (Chatto & Windus 2014), p. 128-131 and p. 202

The 2019 Conservative Manifesto included a commitment to repeal Section 40. In February 2020, Baroness Morgan—who at the time was Secretary of State for Digital, Culture, Media and Sport—told the House of Lords that the government was “looking for a suitable legislative vehicle” to repeal it. [95] As a government manifesto commitment, under the ‘Salisbury Convention’ the House of Lords must not oppose this piece of legislation at second or third reading,[96] and it is therefore highly likely to enter into law once that suitable legislative vehicle has been identified.

## THE PRESS RECOGNITION PANEL (PRP)

### *Remit & Tasks*

The PRP has two tasks: first, to assess press self-regulators that put themselves forward for recognition under the Royal Charter, against the criteria for adequate self-regulation included in Schedule 3, “Recognition Criteria”[97]; second, to report periodically to Parliament on the functioning of the recognition system.[98] It is not within the PRP’s remit to assess a regulator that has not applied for recognition, or a media outlet that is not a member of a recognised regulator.

### *Structure*

The PRP Board was initially selected by an independent appointments committee, itself chosen by the Commissioner for Public Appointments. Subsequently, the PRP Board has recruited its own members, with the process monitored by the Commissioner.[99]

The Board must meet at least five times each financial year. Initially it met monthly; since April 2017 it has moved to meeting bi-monthly.[100] There is a published register of members’ interests.[101] The Board is served by a small staff led by a chief executive.

#### **Current Board composition:**

- **David Wolfe QC.** Chair of the PRP. Barrister specialising in public law; founding Board member of the Legal Services Board, which oversees the operation of the self-regulators of lawyers and other legal professionals; former member of the Board of the then Legal Services Commission.
- **Harry Cayton CBE.** Independent consultant specialising in professional regulation and governance; former chief executive of the Professional Standards Authority, former director at charities and the Department of Health.

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[95] Baroness Morgan of Cotes, HL Deb, 6 February 2020, c1935, available online at <https://www.theyworkforyou.com/lords/?id=2020-02-06d.1922.0#g1935.0>

[96] For an explanation of the Salisbury Doctrine or “Convention”, see <https://www.parliament.uk/site-information/glossary/salisbury-doctrine/>

[97] Schedule 3 of the Royal Charter is available online at <https://pressrecognitionpanel.org.uk/the-royal-charter/>

[98] The most recent report is: Press Recognition Panel, “Report on the Recognition System - March 2020”, available online at <https://pressrecognitionpanel.org.uk/report-on-the-recognition-system-march-2020/>

[99] The Commissioner for Public Appointments, “Appointments to the Press Recognition Panel”, available online at <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/appointments-to-the-press-recognition-panel/>

[100] <https://pressrecognitionpanel.org.uk/board-meetings/>

[101] <https://pressrecognitionpanel.org.uk/register-of-relevant-interests/>

- **Emma Gilpin Jacobs.** Strategic communications consultant; senior director, UK and Europe at The Pew Trusts; former executive at the FT Group and Time Inc.
- **Carolyn Regan.** Chief executive of West London NHS Trust (2015-); former chief executive of the Legal Services Commission; former chief executive of a number of major NHS bodies.
- **Harry Rich.** Business and not-for-profit leader, executive coach and advisor, specialising in ‘strategy, innovation, governance and regulation’. Former member of the Government’s Creative Industries Council; former external member of the Press Complaints Commission’s Charter Compliance Panel.

## Funding

The PRP was initially funded by the government, and also receives annual fees payable by the self-regulator it recognises, which is currently IMPRESS. The PRP was created as a legal body in November 2014, and the Charter required the government to give the PRP sufficient money to set up and operate for its first three years. It was granted £3m. The PRP’s expenditure in the year ending 31 March 2020 was £293,010. According to its 2020-21 business plan, its budget is planned to be £345,120.[102] Its annual reports, financial statements and business plans are available on its website. [103]

## THE INDEPENDENT PRESS STANDARDS ORGANISATION (IPSO)



Following the winding-up of its predecessor, the Press Complaints Commission (PCC), IPSO was established in September 2014 by three major national newspaper publishers: DMG Media (which publishes the *Daily Mail*, *Mail on Sunday*, *Metro* and *The I*), Telegraph Media Group (which publishes *The Daily Telegraph* and *The Sunday Telegraph*) and News UK (which publishes *The Sun*, *The Sun on Sunday*, *The Times* and *The Sunday Times*).

IPSO has stated that it will not seek recognition by the PRP. Hacked Off—the campaign for press regulation set up by victims of phone hacking, current and former journalists, and other campaigners for press reform—is critical of IPSO and has called it a “sham” regulator. In 2013, the Media Standards Trust published an assessment of the industry’s plan to establish IPSO against the recommendations for adequate self-regulation set out in the Leveson Report.[104] It found that IPSO satisfied only 12 of the 38 Leveson recommendations. The key problems it identified were that IPSO was not independent of the industry; that it cemented the power of the largest publishers through its funding body, the Regulatory Funding Company; that it lacked an arbitration system (although one was established later, it appears never to have been used); that its complaints-handling system was “virtually unchanged” from the heavily criticised practice of its predecessor, the PCC.

[102] Press Recognition Panel, “Business Plan 2020/21”, available online at [https://pressrecognitionpanel.org.uk/wp-content/uploads/2020/04/Business\\_plan\\_2020\\_21-Final.pdf](https://pressrecognitionpanel.org.uk/wp-content/uploads/2020/04/Business_plan_2020_21-Final.pdf)

[103] <https://pressrecognitionpanel.org.uk/annual-reports-and-business-plans/>

[104] Media Standards Trust, “IPSO: An assessment by the Media Standards Trust” 15 November 2013, available online at <http://mediastandardstrust.org/mst-news/ipso-an-assessment-by-the-media-standards-trust/>

### *Remit & Tasks*

IPSO's main function is to provide a complaints-handling service for members of the public who believe that something published by one of IPSO's member publishers has violated its Editors' Code of Practice. It also maintains the Editors' Code of Practice Committee, which determines the contents of the Code and accompanying guidance for journalists. Even though IPSO has an investigations arm for looking into serious and sustained breaches of the Code, it has never launched any investigations. And while it also has an arbitration service for members of the public to use as an alternative to court proceedings, it appears never to have been used.

### *Structure*

IPSO has a 12-member Board, chosen by an Appointments Panel. The majority are required to have no connection to the newspaper and magazine industry. It also has a twelve-member Complaints Committee, which rules on complaints and decides on remedial action if it concludes that a breach of the Editors' Code of Practice has occurred. The majority are independent and have no connection to the newspaper and magazine industry. Others have had recent senior experience of the industry but are not currently serving editors. IPSO has 20 professional staff, responsible for handling complaints and arbitration, among other matters. IPSO also has journalist and reader advisory panels.[105] Its handling of complaints can be assessed by an independent complaints reviewer – though only if a request for review is made and IPSO decides that the complaint should be reviewed. If the reviewer concludes that the process was flawed, the complaint returns to the Complaints Committee for reconsideration, which then makes a final decision.[106]

### *Current Board Composition*

- **Lord Edward Faulks.** Chair. Professional barrister, QC since 1996; cross-bench member of the House of Lords since 2010; former Minister of State for Civil Justice and Legal Policy (2014-2016).
- **Ruth Sawtell.** Deputy chair. Professional board member at various public and regulatory bodies, including in the health sector.
- **Lara Fielden.** Author and media regulation policy analyst; visiting fellow at Oxford University's Reuters Institute for the Study of Journalism since 2011; her 2012 report *Regulating the Press: A Comparative Study of International Press Councils* [107] was cited extensively in the Leveson Report; she has published a comparative assessment of the Royal Charter[108]; standards enforcement and review of the Broadcasting Code at Ofcom (2005-10); former current affairs and documentaries producer at the BBC.
- **Charles Garside.** Former newspaper journalist editor who has worked across the press, ending as managing and then assistant editor of the *Daily Mail*. On the board of the Society of Editors.
- **Eddie Gray.** Former executive at pharmaceutical and biotechnology companies.
- **Matthew Lohn.** Lawyer specialising in public and regulatory law. Former member of IPSO's Complaints Committee.

[105] <https://www.ipso.co.uk/what-we-do/people/>

[106] <https://www.ipso.co.uk/what-we-do/people/independent-complaints-reviewer/#AboutIPSOsReviewProcess>

[107] Lara Fielden, *Regulating the Press: A Comparative Study of International Press Councils*, Reuters Institute for the Study of Journalism April 2012, available online at <https://reutersinstitute.politics.ox.ac.uk/our-research/regulating-press-comparative-study-international-press-councils>

[108] Lara Fielden, *A Royal Charter for the Press: How does it measure up to regulation overseas?*, Reuters Institute for the Study of Journalism 2013, available online at <https://reutersinstitute.politics.ox.ac.uk/our-research/royal-charter-press>

- **Brendan McGinty.** Former newspaper journalist and editor, most recently editor of the *Sunday Mail* (a Scottish tabloid newspaper distinct from DMG Media's *Mail on Sunday*).
- **Ian MacGregor:** Former newspaper journalist and editor, now editor emeritus of *The Telegraph*. Chair of the Society of Editors.
- **Mehmuda Mian.** Former solicitor specialising in commercial and professional indemnity work who has served on, or worked for, a range of bodies including the Law Society, the Independent Police Complaints Commission, the BBC and the Independent Safeguarding Authority.
- **Barry McIlheney.** Former magazine editor and publisher, and former CEO of the PPA, the magazine industry's trade association.
- **Claire Singers.** Public relations consultant.
- **Martin Trepte.** Former local newspaper journalist and editorial director of a local publisher.

### *Complaints Committee Composition*

The Complaints Committee comprises twelve members: five former journalists (including the deputy chair), six independent 'lay' members, and the chair of IPSO.

- **Lord Edward Faulks.** Chair of the Complaints Committee and Chair of IPSO. Professional barrister, QC since 1996; crossbench member of the House of Lords since 2010; former Minister of State for Civil Justice and Legal Policy (2014-2016).
- **Nazir Afzal OBE.** Former chief crown prosecutor in the North West of England.
- **Andy Brennan QPM.** Former senior police officer and deputy director of the National Crime Agency.
- **Janette Harkess.** Former journalist and cultural and sports administrator.
- **David Hutton.** School inspector and former secondary school head teacher.
- **Alastair Machray.** Media consultant, former national and local newspaper journalist and former editor of *The Liverpool Echo*.
- **Helyn Mensah.** Barrister specialising in intellectual property law.
- **Asmita Naik.** Independent consultant on international development and human rights. Formerly worked at the United Nations.
- **Andrew Pettie.** Consultant, contributing editor and writer. Former journalist and editor, including at Telegraph Media Group and the BBC.
- **Mark Payton.** Former journalist and editor, including as editorial director of a major magazine publisher. Now compliance consultant working for a project promoting transparency and accountability in the global news industry.
- **Miranda Winram.** Former management consultant and executive at Forest Enterprise (now Forestry England), responsible for managing and promoting forests in England. Chair of IPSO's Readers' Panel.
- **Peter Wright.** Editor emeritus at Associated Newspapers, former editor of the *Mail on Sunday*. Former commissioner and later director of the Press Complaints Commission, and member of the Editors' Code of Practice Committee. Served on the Advisory Panel of the Cairncross Review into the future of journalism.

*Editors' Code of Practice Committee Composition*

The Editors' Code of Practice Committee comprises 15 members: 10 representatives from newspaper and magazine publishers, three independent 'lay' members (Sarah de Gay, Christine Elliott and Kate Stone), IPSO's chair, and its chief executive.

- **Neil Benson.** Chair. Former senior editor at *Trinity Mirror* (now Reach plc) with responsibility for regional titles.
- **Ian Carter.** Editorial director, Iliffe Media (a local newspaper publisher)
- **Sarah de Gay.** General counsel and head of compliance at Slaughter and May, a law firm.
- **Charlotte Dewar.** Chief executive of IPSO.
- **Christine Elliott.** Chair of the Health and Care Professions Council.
- **Chris Evans.** Editor of *The Daily Telegraph* and Director of Content at Telegraph Media Group.
- **Lord Edward Faulks.** Chair of IPSO. Professional barrister, QC since 1996; crossbench member of the House of Lords since 2010; former Minister of State for Civil Justice and Legal Policy (2014-2016).
- **Anna Jeys.** Audience and Content Director for Midlands, Cheshire and Lincolnshire at Reach Plc
- **Gary Jones.** Editor of the *Daily Express*.
- **Donald Martin.** Editor-in-chief of Newsquest Scotland; editor of *The Herald*, *The Herald on Sunday* and *The Evening Times*.
- **Gary Shipton.** Editorial director at JPI Media, a local newspaper publisher.
- **Kate Stone.** Engineer who was the subject of intrusive press reporting in 2014 and had her complaints successfully upheld. [109]
- **Emma Tucker.** Editor of *The Sunday Times*.
- **Harriet Wilson.** Director of Editorial Administration & Rights, Condé Nast Publications
- **Ted Young.** Editor of *Metro*.

*Funding*

IPSO is funded by the Regulatory Funding Company (RFC), which raises a levy on those newspaper and magazine publishers that have agreed to be regulated by IPSO. The RFC's Board is composed of representatives from the national press, regional press and magazine industry.

From the national press:

- **Kevin Beatty.** Chair. Chief executive of DMG Media.
- **Guy Black,** Baron Black of Brentwood. Vice Chair, Telegraph Media Group. (See 'Influencers' section).
- **Neil Jagger.** Chief Operating Officer (Nationals Division), Reach Plc.
- **Pia Sarma.** Editorial Legal Director, Times Newspapers, News UK.

[109] "Stag gore victim Kate Stone to help regulate the press" BBC News 23 February 2015, available online at <https://www.bbc.co.uk/news/uk-england-cambridgeshire-31590051>

[110] <http://www.regulatoryfunding.co.uk/>

**From the regional press:**

- **Jeremy Clifford**. Editor-in-chief, JPI Media
- **Dominic Fitzpatrick**. Managing Director, *Irish News*.
- **Victoria Hewitt**. Director of Operations, *The Barnsley Chronicle*.
- **Ellis Watson**. Chief Executive Officer, DC Thomson Publishing.

**From the magazine industry:**

- **Albert Read**. Managing Director, Conde Nast Publications.

**THE INDEPENDENT MONITOR ON THE PRESS  
(IMPRESS)***Remit & Tasks*

IMPRESS was established in 2015 as an attempt to create a regulator that fully complied with the Royal Charter criteria. It was recognised by the PRP as meeting those criteria in October 2016. Its task is to handle complaints against publishers who have signed up to be regulated by it, enforcing the IMPRESS standards code. It also provides an arbitration service as an alternative to going to court, a whistleblowing hotline, a service to provide advisory notices to publishers on behalf of those suffering press intrusion, and regular conferences and consultations on regulation.

*Structure*

IMPRESS is governed by a Board, which is appointed by an Appointments Panel – an independent subcommittee of the Board. The Appointments Panel also appoints members of Regulatory Committees. Regulatory Committees meet to adjudicate on complaints submitted to, or initiated by, IMPRESS. Regulatory Committees are typically composed of some of the board members and others appointed by the Appointments Panel. There is also a Code Committee, which advises the Board on the IMPRESS Code.

*Board Composition [111]*

- **Walter Merricks CBE**. Chair. Former head of the Financial Ombudsman service; has worked in regulation and dispute resolution in a range of industries, and also as legal journalist and academic.
- **Deborah Arnott**. Chief executive of Action on Smoking and Health, an anti-smoking charity. Former print and TV journalist, and financial service regulator.
- **Cordella Bart-Stewart**. Solicitor focusing on equality, human rights, family and immigration law.
- **Debrah Harding**. Market research executive.
- **Shelina Janmohamed**. Author, public speaker and newspaper columnist who also works in advertising and branding.
- **David Leigh**. Former investigations editor of *The Guardian* newspaper and journalism academic.

[111] <https://www.impress.press/about-us/our-board.html>

- **David Robinson.** Treasurer and Senior Independent Board Member. Professional non-executive director on the board of a range of corporate and charitable organisations.
- **Pam Vick.** Commercial business development and strategic consultant, and former corporate executive.
- **Andrea Wills.** Independent expert in broadcasting regulation and standards investigations.

### *Code Committee Composition*

- **Vanessa Baird.** Journalist and co-editor of *New Internationalist* magazine.
- **Gavin Phillipson.** Professor of Law at the University of Bristol, specialising in issues of media law.
- **Matt Walsh.** Senior lecturer in journalism at Cardiff University School of Journalism, Media and Culture, former broadcast journalist at ITN and the BBC and former Times journalist.
- **Paul Wragg.** Professor of Media Law at the University of Leeds, specialising in press regulation and press freedom.
- **Emma Jones.** Writer and journalist, including at The New European. Former magazine editor, news and show-business reporter, and live TV presenter.

### *Funding*

IMPRESS's research and development was carried out by the IMPRESS Project, a separate company supported by grants and donations from a range of sources, including support from the Joseph Rowntree Reform Trust, the Andrew Wainwright Reform Trust and the Alexander Mosley Charitable Trust, and large donations from private individuals including J.K. Rowling and Lord David Sainsbury.

## Internet Regulators

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Currently, the UK has no dedicated digital or internet regulator. However, in February 2020, the Department for Digital, Culture, Media and Sport announced that the government is considering to appoint Ofcom as the new 'online harms' regulator, responsible for enforcing a statutory duty of care on digital platforms to protect their users from "harmful and illegal terrorist and child abuse content."<sup>[112]</sup> The Government announced its decision to appoint Ofcom the regulator for online harms in December 2020 but the necessary legislation to establish the new framework has not yet been published. <sup>[113]</sup>

<sup>[112]</sup> Alex Hern and Jim Waterson, "Ofcom to be put in charge of regulating internet in UK" The Guardian 12 February 2020, available online at <https://www.theguardian.com/media/2020/feb/12/ofcom-to-be-put-in-charge-of-regulating-internet-in-uk> Department for Digital, Culture, Media and Sport, "Government minded to appoint Ofcom as online harms regulator" 12 February 2020, available online at <https://www.gov.uk/government/news/government-minded-to-appoint-ofcom-as-online-harms-regulator>

<sup>[113]</sup> Ofcom, "Ofcom to regulate harmful content online" 15 December 2020, available online at <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/ofcom-to-regulate-harmful-content-online>

## Data Protection Regulators

### THE INFORMATION COMMISSIONER'S OFFICE (ICO)



#### *Remit & Tasks*

The Information Commissioner's Office (ICO) is the regulatory body responsible for data protection in the UK, and for enforcing the Freedom of Information Act 2000. It was first established by the Data Protection Act 1998, which has now been largely superseded by the Data Protection Act 2018 – the UK's implementation of the EU's General Data Protection Regulation (GDPR). The ICO's functions are defined in Part 5 of the Act.[114]

The ICO's remit is to uphold information rights in the public interest, which is primarily done by defining and explaining the public's information and data rights, by addressing enquiries, concerns and complaints from the public, and by seeking to improve the information rights practices of organisations, including how public bodies handle Freedom of Information requests. In cases where organisations breach the law, the ICO provides advice and instruction to improve future practice. In the most serious cases, it can even take enforcement action including monetary penalties of up to €20m or 4% of annual worldwide turnover, whichever is higher.[115] The ICO also provides grants to support independent research into privacy and data protection issues, and to develop privacy-enhancing solutions. [116]

There are two key areas where the ICO's remit relates to journalism. First, as shown above, private investigators acting on behalf of clients in the national press have engaged in a trade of illegally obtained personal information, in breach of data protection legislation. When evidence of this practice first emerged in the early 2000s, the ICO investigated and published two important reports about it. However, the ICO's then-leadership proved reluctant to pursue the enforcement of the Data Protection Act against journalists (as opposed to private investigators), for reasons that are examined in the Leveson Report.[117] In short, the ICO is—or ought to be—the public's defence against the illegal acquisition of personal information by journalists (or by private investigators acting on behalf of news media clients) for purely commercial—rather than public interest—purposes. Second, as the body responsible for upholding the public's right to use the Freedom of Information Act to access information held by public bodies, the ICO's performance has considerable bearing on journalists' ability to acquire information that is vital to public interest journalism. On the one hand, the ICO has at times been critical of public bodies, including government departments, for failure to meet their FOI obligations.[118] On the other hand, it has recently been argued that the ICO is too passive and does not employ its powers as much as it could to improve public bodies' compliance with the Act.[119]

[114] Data Protection Act 2018, Part 5: The Information Commissioner, available online at <https://www.legislation.gov.uk/ukpga/2018/12/part/5/enacted>

[115] <https://ico.org.uk/about-the-ico/what-we-do/how-we-handle-concerns/>

[116] <https://ico.org.uk/about-the-ico/what-we-do/grants-programme/>

[117] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part H: The press and data protection, p. 998-1113, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=16>

[118] Jenna Corderoy and Peter Geoghegan, "British government slammed by regulator over 'unacceptable' FOI failures" openDemocracy 10 February 2021, available online at <https://www.opendemocracy.net/en/freedom-of-information/british-government-slammed-by-regulator-over-unacceptable-foi-failures/>

[119] Lucas Amin, *Art of Darkness: How the government is undermining Freedom of Information*, openDemocracy November 2020, p. 29-32, available online at <https://beta.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>

*The Information Commissioner's Office Management Board Composition [120]***Executive directors:**

- **Elizabeth Denham.** The Information Commissioner. Former Information and Privacy Commissioner for British Columbia, Canada, and Assistant Privacy Commissioner of Canada. [121]
- **Paul Arnold.** Deputy CEO and chief operating officer (Corporate Strategy and Planning Service).
- **James Dipple-Johnstone.** Deputy commissioner and chief regulatory officer. Former director at the Solicitors Regulatory Authority responsible for investigating reports of professional misconduct, with a background in regulatory investigation, appeals and complaints handling at several public regulatory bodies.
- **Steve Wood.** Deputy commissioner and executive director of the regulatory strategy service. Leads the work of the Policy Directorate, having previously held a range of other roles at the ICO. Former Senior Lecturer in Information Management at Liverpool John Moores University.
- **Simon McDougall.** Deputy commissioner for regulatory innovation and technology. Leads the work of the Technology Policy and Innovation Directorate. Formerly led a global privacy consulting practice.

**Non-executive directors:**

- **Nicola Wood.** Senior independent director. Former solicitor and ombudsman with experience on a number of boards.
- **Alisa Beaton OBE.** Former accountant, corporate executive and consultant; now holds non-executive roles.
- **David Cooke.** Former head of the British Board of Film Classification and civil service director.
- **Jane McCall.** Chair of a NHS Foundation Trust and an external commissioner on the House of Commons Commission. She has had a career in the social housing sector, with senior management roles including as chief executive of a housing trust.
- **Peter Hustinx.** Former European Data Protection Supervisor 2004-2014, head of the Dutch Data Protection Authority 1991-2004 and chair of the EU's Article 29 working party 1996-2000, with a background in law.

*Funding*

The ICO is mostly funded by organisations that pay the data protection fee, which all organisations processing personal data must pay under the Data Protection Act 2018 (unless they are exempt from it). This makes up 85-90% of the ICO's budget, with the rest of its funding coming from a grant-in-aid from the government. In 2019-20, the ICO collected roughly £46.5m through the data protection fee and received roughly £4.6m in grant-in-aid money from the government. The financial penalties that the ICO issues go to the Treasury, not the ICO. [122]

[120] <https://ico.org.uk/about-the-ico/who-we-are/management-board/> For an outline of the ICO's decision-making structure, see <https://ico.org.uk/about-the-ico/who-we-are/decision-making-structure/>

[121] <https://ico.org.uk/about-the-ico/who-we-are/information-commissioner/>

[122] <https://ico.org.uk/about-the-ico/who-we-are/how-we-are-funded/>

## DECISION-MAKING

The two key decision-makers in the UK media policy process are usually the Secretary of State for Digital, Culture, Media and Sport and the Prime Minister. Prime Ministers have tended to take a fairly close interest in media policy because it has a direct bearing on the interests of major media organisations, which have a direct influence on how the government is perceived by the public.<sup>[123]</sup> However, the degree of influence that the Prime Minister has over media policy decisions varies, depending on the Prime Minister, the Secretary of State, the particular policy issue and the kind of decision being taken. If the decision concerns a person's appointment to a senior leadership role at a major public institution like the BBC or Ofcom, recent history suggests that the Prime Minister will play a major role. However, if the decision is over a more minor public body, it is more likely that the Secretary of State will decide alone. There are certain decisions that the Secretary of State is formally required to make alone: for example, their 'quasi-judicial' role in media mergers. There is no evidence of either David Cameron or Theresa May seeking to intervene, as Prime Minister, in the decision-making process of the Secretary of State during the 2010-11 News Corp-Sky or 2017-18 Fox-Sky merger inquiries. However, there is no such formal requirement on most media policy issues, so the respective role played by the Prime Minister and the Secretary of State is likely to be flexible and variable.

Since its creation in 2003, Ofcom has become an increasingly important decision-maker in media policy by virtue of the expanding range of roles it has been asked to take on by successive governments.

It decides how to enforce broadcasting standards, it regulates the BBC, it plays a role in media merger inquiries and in future it will be responsible for regulating digital platforms. Nevertheless, these expanding responsibilities have generally not been actively sought by Ofcom itself. Indeed, when the Leveson Report's recommendations were published, Ofcom was openly averse to being given responsibility for monitoring press self-regulation or to functioning as a 'backstop' regulator of the press. It can hardly be accused of being power-hungry. The two press self-regulators, IPSO and IMPRESS, play an important decision-making role in two key areas: deciding on complaints against the press titles they regulate, and determining the code of practice that their regulated titles must abide by.

[123] The closeness of Prime Ministerial interest in the area is attested to by the case studies of media policy examined in the Leveson Report. See Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapters 5 and 6, p. 1233-1413, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=248>

## Key Decision-Makers

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The **Department for Digital, Culture, Media and Sport (DCMS)** [124] is the government department responsible for media policy. It belongs to the smaller government departments by budget and personnel, with around a staff of 900 people. The most senior civil servant at the DCMS is the Permanent Secretary, **Sarah Healey**. There is a government ministerial team attached to the Department, consisting of a Secretary of State – who attends Cabinet – two Ministers of State (‘junior ministers’) and three Parliamentary Under Secretaries of State. Currently, these are:

- **The Rt Hon. Oliver Dowden MP.** Secretary of State for Digital, Culture, Media and Sport.
- **Caroline Dinenage MP.** Minister of State for Digital and Culture.
- **The Rt Hon. John Whittingdale MP.** Minister of State for Media and Data. Former chair of the Commons Culture, Media and Sport Select Committee (2005-2015) and Secretary of State for Culture, Media and Sport (2015-2016).
- **Matt Warman MP.** Parliamentary Under Secretary of State for Digital Infrastructure.
- **Nigel Huddleston MP.** Parliamentary Under Secretary of State for Sport, Tourism and Heritage.
- **The Rt Hon. The Baroness Barran MBE.** Parliamentary Under Secretary of State for Civil Society.

The DCMS has policy responsibility for a number of public institutions, including the BBC, Channel Four, Ofcom, S4C and the S4C Authority, and the Arts Council. Culture, sport and tourism are devolved matters, so in these areas the DCMS is responsible only for policy covering England; corresponding departments in the Scottish government, Welsh government and Northern Ireland Executive are responsible for those areas in each of their respective nations. However, media policy, including broadcasting regulation, is not devolved but reserved to Westminster.

The **Secretary of State** has the power to decide whether to intervene in media mergers on a range of public interest grounds.[125] If they do so, a formal regulatory review of the merger is launched. Once the regulators report on the implications of the merger, the Secretary of State takes the final decision whether to block the merger, approve it, or approve it subject to undertakings from the parties. The Secretary of State is expected to perform this function in a ‘quasi-judicial’ manner, and their decisions can be judicially reviewed if they are believed to have acted improperly. Responsibility for media mergers formerly rested with the Secretary of State for Business, but it was transferred to the Secretary of State for DCMS. (See the case study below, which examines the News Corp-Sky and Fox-Sky merger inquiries, reflecting on how the Secretary of State’s power has been employed in these cases.)

An important power currently resting with the Secretary of State is the power to commence **Section 40 of the Crime and Courts Act 2013** (see *Print media regulators in this report*)– the key piece of legislation that would give effect to legal cost incentives for publishers to join a PRP-recognised press regulator (i.e. IMPRESS), or make IPSO Royal Charter-compliant. ‘Commencement’ is generally a merely formal process, whereby ministers give effect to particular statutory provisions at particular times (for instance, to give people time to adjust to new laws). Even though the Act received Royal Assent seven years ago, its Section 40 still remains uncommenced. This is a highly unusual case, albeit one with important ramifications for news publishers in the UK.

[124] The DCMS began as the Department of National Heritage established by the Conservative Government in 1992. It was renamed the Department for Culture, Media and Sport by the new Labour Government in 1997, with ‘Digital’ being added in 2017.

[125] See the paragraph on the Communications Act 2003 in the section above on platform-specific regulation of broadcast media

The Secretary of State for DCMS is ostensibly one of the more junior or minor Cabinet ministerial roles: the DCMS has a small staff and its departmental budget was not immune from the 2010-15 coalition's austerity programme. Politicians have often passed through the DCMS portfolio on their way to more senior ministerial positions: the Health Secretary Matt Hancock, the former Foreign Secretary and Health Secretary Jeremy Hunt, and the former Chancellor and Home Secretary Sajid Javid are all former DCMS Secretaries; the latter two both ran for the Conservative leadership in 2019.

The DCMS's most important formal role may be the appointment of people to senior positions at a number of important public bodies. The Department effectively appoints the senior leadership of many of the most important institutions in UK media, culture and sport, including the BBC, Channel Four, Ofcom, the Information Commissioner, the Arts Council England, the Charity Commission, the Gambling Commission, UK Sport, the British Museum and other public museums and galleries.

Although the DCMS is the formal locus of government decision-making over media policy, in recent history **Prime Ministers** often appear to have played an important role in this area. For example, it was the then-Prime Minister, David Cameron, who established the Leveson Inquiry, and it was Cameron who presented the coalition government's response to the Leveson Report's recommendations. Likewise, though the DCMS is formally responsible for many appointments, some – such as the leadership of the BBC and Ofcom – are so significant that the Prime Minister's office may play an important role in determining them. In October 2020, in the run-up to Richard Sharpe's appointment as the new BBC Chair, *The Times* reported that the final decision over the appointment would be “made by the culture secretary with the approval of No. 10.”[126]

In the Cameron government – first as the coalition with the Liberal Democrats (2010-15) and then as a majority Conservative government (2015-16) – the **Chancellor of the Exchequer**, George Osborne, played an important role in determining the funding of the BBC. He led negotiations with the BBC leadership over the licence fee settlement: in 2010, in line with general government austerity, he imposed a five-year freeze on the level of the licence fee, which meant a substantial cut to BBC funding in real terms between 2010 and 2015. In 2015, through private negotiations with the BBC leadership that were strongly criticised at the time, Osborne succeeded in making the BBC 'agree' to assume the cost of some items formerly funded by central government in return for an increase in the licence fee in line with inflation. [127] The Chancellor of the Exchequer's intrusion into the area of media policy was relatively unusual but it reflects both the potential power that a determined Chancellor can wield, and the degree of flexibility and indeterminacy in the distribution of ministerial power.

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[126] Matthew Moore and Francis Elliott, “Rishi Sunak's former boss Richard Sharp in line for BBC chairmanship” *The Times* 22 October 2020, available online at <https://www.thetimes.co.uk/article/rishi-sunak-s-former-boss-richard-sharp-in-line-for-bbc-chairmanship-fkjzpkjrc>

[127] Paul Farrelly, a Labour MP on the Commons DCMS Select Committee called the deal a “drive-by shooting” in *The Guardian*, 7 July 2015: <https://www.theguardian.com/media/2015/jul/07/bbc-licence-fee-deal-john-whittingdale-george-osborne> See also Patrick Barwise and Peter York, *The War Against The BBC: How an Unprecedented Combination of Hostile Forces Is Destroying Britain's Greatest Cultural Institution...and Why You Should Care* (Penguin 2020), p. 60-61 and 91-92

Legislation affecting media may, in some cases, be the responsibility of other government departments. For instance, the Bill which became the Defamation Act 2013 was handled by the **Ministry of Justice (MoJ)** and led through Parliament by the then-Secretary of State for Justice, Kenneth Clarke. Likewise, the reform of law and procedures affecting court proceedings, and media reporting of those proceedings, would primarily be the responsibility of the MoJ, not the DCMS. The planned reform of the official secrets legislation (discussed above) may be handled by the **Home Office**.

### *Key Decision-Making Regulators*

As an unelected, arms-length, state body, **Ofcom** has usually sought to avoid an overt role in the making of UK media policy, and instead largely confined itself to pointing out potential areas where Parliament may wish to act. However, Secretaries of State (and others) have often taken the view that various decisions and areas of media regulation are best handed over to Ofcom. Consequently, the scope of its responsibilities as a regulator has steadily expanded since its creation in 2003. Some examples of this dynamic include:

- **Defining and measuring media plurality.** During the Leveson Inquiry, the question of how to define ‘media plurality’ was raised. Currently, UK law allows the Secretary of State to intervene in media mergers where they believe the merger may have a detrimental impact on ‘plurality’. But the concept was never actually defined either in legislation or in accompanying statutory guidance issued by the DCMS (the obvious solution to a lack of legislative clarity). The DCMS Secretary at the time of the Inquiry, Jeremy Hunt, asked Ofcom to determine how ‘plurality’ could be measured, which effectively required Ofcom to define ‘media plurality’ (in order to suggest how it could be measured). Ofcom did so with reference to speeches made in the House of Lords debate from which the relevant legislation (which had started life as backbench amendments to the government’s Communications Bill) originated. [128]
- **The ‘backstop’ regulator for the press.** The Leveson Report recommended making Ofcom the body responsible for ‘recognising’ regulators that met the Report’s criteria, as well as the ‘backstop’ regulator for newspaper publishers who failed to join a ‘recognised’ regulator. However, the coalition government rejected this recommendation and so Ofcom has no role in administering the Royal Charter system.
- **External regulation of the BBC.** During the course of BBC Charter renewal in 2016-17, the Conservative government decided to replace the BBC Trust—the BBC’s quasi-regulator which had become discredited after some high-profile scandals at the BBC—with a BBC board, externally regulated by Ofcom.
- **Regulating digital platforms.** The current government has announced that it is giving Ofcom the responsibility of regulating digital platforms to ensure they have proper internal mechanisms in place to prevent ‘online harms’. (See the section above on the regulation of digital platforms.)

[128] Ofcom, *Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport*, 19 June 2012, available online at <https://www.ofcom.org.uk/consultations-and-statements/category-1/measuring-plurality> Ofcom was subsequently asked by the next Secretary of State to finalise a media plurality measurement framework, so that regular ‘market reviews’ of media plurality could take place. Following a consultation, the final framework was published in November 2015. It is available online at <https://www.ofcom.org.uk/consultations-and-statements/category-1/media-plurality-framework> No ‘market review’ of media plurality in the UK has ever taken place.

Ofcom already takes a number of critically important decisions that affect UK media. The most important of these include:

- Granting, renewing and revoking broadcasting licences, including setting the conditions of licence renewal. This includes the licences of the commercial Public Service Broadcasters: ITV, Channel Four and Channel Five. Ofcom also has a statutory duty to ensure that all holders of UK broadcasting licences are ‘fit and proper’ to do so, and if a holder is not believed to be ‘fit and proper’, Ofcom can withdraw its licence. The definition of ‘fit and proper’ is not spelt out in legislation or guidance, and therefore remains at Ofcom’s discretion. How it interprets the requirement can best be seen from two decisions it made in relation to Sky in 2012 and 2017.[129]
- Launching investigations into and ruling on complaints that broadcasters have breached the Ofcom Broadcasting Code. Serial breaches of broadcasting standards can lead to the withdrawal of a broadcasting licence.
- Assessing the performance of the BBC and Channel Four, including conducting Market Impact Assessments of proposed new BBC services. Where Ofcom determines that a new BBC service would have an adverse impact on the commercial sector, it can block that new service. For instance, Ofcom blocked the BBC launching a ‘BBC One + 1’ channel (i.e. a channel showing BBC One on a one-hour delay), after commercial broadcasters argued that the channel would have an unfair impact on the viewing of their channels at peak times.
- When the Secretary of State for DCMS intervenes in media mergers on ‘public interest’ grounds, Ofcom is the body responsible for conducting a ‘phase 1’ investigation to determine whether the merger may raise public interest concerns, and whether it warrants further investigation. In the 2010-11 proposed News Corp acquisition of Sky, Ofcom concluded that the merger ‘may’ raise concerns, and the Secretary of State then sought to negotiate undertakings with News Corp and Sky, in lieu of reference to a longer and deeper ‘phase 2’ investigation. In the 2017-18 proposed Fox acquisition of Sky, Ofcom again decided the merger ‘may’ raise concerns; and at that time, the Secretary of State did refer the case to a ‘phase 2’ investigation. However, ‘phase 2’ investigations are not carried out by Ofcom but by the **Competition and Markets Authority** – the UK’s main competition regulator.

The **two press self-regulators** have important decision-making power in two main areas. First, the formulation of their respective codes of practice (and associated guidance), which is largely the responsibility of dedicated committees: **IPSO’s ‘Editors’ Code of Practice Committee’** and **IMPRESS’s ‘Code Committee’** (although the latter only advises the IMPRESS Board on its code, whereas the former has sovereignty within IPSO over its code). Since IPSO covers far more of the news industry, the members of IPSO’s Editors’ Code of Practice Committee have important decision-making power over the standards set for British journalism. Second, the handling of complaints and enforcement of corrections and apologies, based on their respective codes of practice. (For the composition of the committee responsible for managing these processes, see above.)

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[129] The 2012 decision is available online at <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2012/ofcom-decision-on-fit-and-proper-assessment-of-sky> The 2017 decision is available online at <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/findings-fox-sky-merger>

*Transparency in Decision-Making*

The Leveson Report strongly criticised the relationship between politicians and the press on the grounds that it was not only “too close,” but lacked transparency as well. The Report therefore recommended that all government departments should keep records of all ministerial meetings with “media proprietors, newspaper editors or senior executives” and publish them on a quarterly basis. [130] Government departments followed the recommendation, which has enabled civil society organisations to keep track of the number of meetings between senior government ministers and, for instance, News Corp executives. [131] Minutes of the board meetings of important public bodies including Ofcom, the BBC, Channel Four, the Press Recognition Panel, IMPRESS and IPSO are often published. Cabinet papers and records of Cabinet meetings usually remain classified to the public for thirty years. Certain formal processes and mechanisms followed by Parliament and government departments provide some transparency and accountability in decision-making. If the government intends to introduce a new legislative bill, the relevant department publishes a ‘white paper’ outlining the government’s plans, launches a consultation inviting responses from the public that will usually run for several months, then publishes its response to the consultation before bringing legislation to Parliament. In addition, the DCMS ministerial team faces monthly Parliamentary questions in the House of Commons, while the two Select Committees with responsibility for media policy hold regular inquiries into a range of current subjects, in the course of which they take evidence from ministers, MPs, regulators, industry executives, academics and others. These inquiries illustrate where different parties stand on current policy issues, providing some level of transparency. The Commons Select Committee also holds regular hearings with the leadership of important public bodies in the media sphere, such as Ofcom, the BBC and Channel Four, to review their recent work.

Alongside these formal processes, most of the major UK newspapers have media correspondents who report on issues of media policy. Generally, *The Guardian*, the *Financial Times* and *The Times* provide the most thorough coverage. *Press Gazette* provides good journalism news. BBC Radio 4’s *The Media Show* is a weekly 45-minute programme featuring news and discussion about the latest issues in the media sector and current media policy issues, presented by the BBC’s Media Editor Amol Rajan. The International Forum for Responsible Media Blog, or *Inform*, provides extensive coverage of issues and cases of media law.

In practice, government deliberations about media policy occur largely in private: even if the fact of meetings between government ministers and senior media figures or owners may be disclosed, the content of these meetings is kept opaque. For example, in 2020 the government announced the appointment of a **Public Service Broadcasting Advisory Panel**, to advise the Secretary of State and the Minister for Media. The panel was appointed by the ministers and will meet six times a year but its proceedings and discussions will remain confidential. [132] A recent study analysing lobbying in the UK has argued that, while the UK ranks number one in the world for the openness of its government data, “when it comes to lobbying, the UK is still quite opaque” and the UK needs a more robust lobbying regime. [133]

[130] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapter 8, section 5.31, p. 1457, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=443>

[131] See, for instance, “Murdoch’s lobbying efforts are increasing, new analysis finds” Media Reform Coalition, 5 February 2017, available online at <https://www.mediareform.org.uk/featured/murdochs-lobbying-efforts-increasing-new-analysis-finds> and Sam Bright, “Rupert Murdoch in Series of Meetings With Boris Johnson and High-Profile Ministers” Byline Times 8 February 2021, available online at <https://bylinetimes.com/2021/02/08/rupert-murdoch-meetings-boris-johnson-high-profile-ministers/>

[132] <https://www.gov.uk/guidance/public-service-broadcasting-advisory-panel-terms-of-reference>

[133] Amy Melissa McKay and Antal Wozniak, “Opaque: an empirical evaluation of lobbying transparency in the UK”, *Interest Groups & Advocacy* 9 (2020), 102–118, available online at <https://link.springer.com/article/10.1057/s41309-019-00074-9>

## INFLUENCERS

Who has the most influence over a media policymaking process that is often opaquely conducted at the highest level of Government is sometimes hard to determine. The influence different players seek will vary depending on the issue at hand and the interests at stake. With those caveats, it can be said in general terms that by far the most important influence over media policy in the UK is the national press. No other industry in the UK would have been able simply to boycott the system established for its regulation by Parliament. Since 2016 the press has also, through a combination of lobbying and editorialising, largely been successful in reorienting the media policy debate away from the need to regulate the press to raise its standards and towards (a) ways the Government might be able to support the ‘commercial sustainability’ of the press, and (b) issues of digital platforms and online harms, including ‘fake news’ and disinformation online.

The Leveson Inquiry was prompted by a scandal, and as the Inquiry’s report concluded, this scandal’s root causes included the fact that senior politicians from both major political parties had, over the preceding three to three-and-a-half decades, got ‘too close’ to editors, executives and owners in the national press. “I think on all sides of the House there is a bit of a need to say, hand on heart, that we all did too much cosyng up to Rupert Murdoch”, said David Cameron, the Prime Minister between 2010 and 2016, to the House of Commons in April 2012.[134] Yet despite the frank acknowledgements that the relationship between politicians and the press got ‘too close’, little has changed since. Newspaper owners and editors continue to enjoy privileged access to senior politicians.[135]

Consider, by contrast, the BBC, which over the last decade has been unable to prevent successive Governments imposing major real-terms cuts to its funding – cuts that, in the most recent case in 2015, appear to have been imposed following private meetings between the Chancellor of the Exchequer and the newspaper owner with the largest share of the national newspaper market – Rupert Murdoch.

None of this means that the interests of the national press as a whole, or News UK in particular, have total, exclusive sway over media policy decisions. There are areas where other interests clearly come into play: the BBC, for example, has been able to draw on considerable reserves of public support to resist attempts to shrink its scale and scope. The state has interests of its own that may come into play in policy areas like Freedom of Information and clash with those of the press. In 2010-11, a broad coalition of media organisations was mobilised to collectively oppose News Corp’s bid to acquire Sky, in recognition of a common interest in preventing the UK news media becoming too dominated by one media owner.

### Internal

#### PARLIAMENT

There are two longstanding Parliamentary committees with remits covering media policy: one composed of MPs, the other of peers. These committees can, at times, influence media policy in important ways.

[134] David Cameron, HC Deb 25 April 2012 c950, available online at <https://hansard.parliament.uk/Commons/2012-04-25/debates/12042542000041/contribution-12042542000211#contribution-12042542000211>

[135] Sam Bright, “Rupert Murdoch in Series of Meetings With Boris Johnson and High-Profile Ministers” Byline Times 8 February 2021, available online at <https://bylinetimes.com/2021/02/08/rupert-murdoch-meetings-boris-johnson-high-profile-ministers/>

The **House of Commons Digital, Culture, Media and Sport Committee** is a cross-party Select Committee. The main political parties in the Commons meet to apportion seats on each Select Committee and decide which party should hold the committee chair. Committee members are then elected from within each party through a secret ballot, as are committee chairs. Committee chairs are backbench MPs who do not hold government roles, and they receive a higher salary than ordinary MPs. Currently, the DCMS Committee has 11 members, of whom a majority – six – are Conservative MPs, reflecting the Conservatives' substantial majority of Commons seats. Of the remaining five members, four are Labour MPs and one is a SNP MP.[136] The Committee chair is a Conservative MP, **Julian Knight**, who unseated the previous (2016-2020) Conservative chair of the committee, Damian Collins, in a vote of Conservative MPs in January 2020. Knight promised to use the DCMS Committee to service as “an unofficial ‘Royal Commission’ on the future of the [BBC]”. [137] He is a former local newspaper, BBC and *Independent on Sunday* journalist.

The current Minister for Media, **John Whittingdale**, was chair of the DCMS Committee between 2005-2015. The Committee's 2015 report on the *Future of the BBC* then fed into the BBC Charter Renewal process conducted in 2015-2016, after the Conservatives won an overall majority in the May 2015 General Election and during which Whittingdale was the DCMS Secretary of State, and which issued in the BBC's current Royal Charter. In general, the Committee's reports are often influential on Government policy. Under Damian Collins's chairmanship, the Committee focused heavily on the issues of ‘fake news’, ‘disinformation’ and ‘online harms’ – an agenda which is now reflected in recent Government proposals to establish a new regulatory regime covering digital platforms.

The Committee has held important public hearings that have generated significant media coverage and provided scrutiny of senior figures in a number of institutions, especially when those institutions have been involved in scandals. Some examples from the past ten years are: (i) allegations of doping in British cycling, (ii) allegations of racism in British football, (iii) allegations of a cover-up by senior executives at News International over phone hacking (the occasion of a famous appearance in front of the Committee by Rupert and James Murdoch), (iv) several scandals at the BBC, including the BBC's employment of Jimmy Savile, excessive executive pay-offs, and failures over equal pay.

Usually following extensive written and oral evidence-gathering (the Committee's hearings are broadcast on Parliament's website), the DCMS Committee issues substantial reports collating evidence and reaching conclusions on a given issue, including recommendations for changes to public policy. The government, through the DCMS department, publishes a formal response to each DCMS Committee report, usually some months afterwards. Subjects of the Committee's recent inquiries and reports include: (i) the impact of Brexit on UK creative industries, (ii) immersive and addictive technologies, (iii) garden design and tourism, (iv) disinformation and ‘fake news’, (v) combatting doping in sport, (vi) BBC pay.

In February 2019, the Commons DCMS Committee published a report on *Disinformation and ‘fake news’* following a major inquiry into the subject. [138]

[136] Information on the current membership of the Committee is available online at <https://committees.parliament.uk/committee/378/digital-culture-media-and-sport/membership>

[137] Charlotte Tobitt, “Former BBC journalist who backs licence fee reform elected DCMS Committee chairman” Press Gazette 30 January 2020, available online at <https://www.pressgazette.co.uk/former-bbc-journalist-who-backs-licence-fee-reform-elected-dcms-committee-chairman/>

[138] House of Commons Digital, Culture, Media and Sport Committee, *Disinformation and ‘fake news’: Final Report - Eighth Report of Session 2017-19*, 18 February 2019, available online at <https://old.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/fake-news-17-19/>

In April 2019, the Committee launched a Sub-Committee to continue its investigation of this area, now called the Sub-Committee on Online Harms and Disinformation. [139] All the members of the DCMS Committee are members of the Sub-Committee, which is currently conducting an inquiry into 'Online harms and the ethics of data'. [140]

Even though the **House of Lords Communications and Digital Committee** is less influential than the Commons DCMS Committee, its reports and recommendations can still have an influence on government policy in some cases. The fundamental reason for the Committee having less influence than its Commons counterpart is that its composition is less dominated by the governing party and more cross-party; therefore, the conclusions it reaches are less likely to be in line with the governing party's politics. The party with a majority in the Commons does not have a majority in the Lords – the Lords Committee merely reflects the different composition of the upper house.

Currently, the Committee has thirteen members. Four are Conservative, four are Labour, two are Liberal Democrat, two are crossbench (of whom one is a hereditary peer) [141], and one is a bishop. [142] The Committee's chair is the Conservative life peer **Stephen Gilbert, Baron Gilbert of Panteg**, a longstanding Conservative Party campaign officer, who has served as Deputy Chairman of the Conservative Party, political secretary to David Cameron during his premiership (a link between the Prime Minister and the Conservative Party), and as head of the 2017 Conservative election campaign. [143]

Subjects of the Committee's recent inquiries and reports include: (i) Public service broadcasting, (ii) regulating digital platforms, (iii) advertising, (iv) the talent pipeline for theatre, (v) children and the internet, (vi) the privatisation of Channel Four, (vii) BBC Charter Review, (viii) the future of journalism. In 2019, a new, temporary **Lords Select Committee on Democracy and Digital Technologies** was established. [144] The Select Committee produced a report, *Digital Technology and the Resurrection of Trust*, at the end of June 2020, to which the government published its response in early September. [145] The Committee was chaired by the backbench Labour peer and former film producer **David Puttnam, Baron Puttnam of Queensgate**.

The work of the Commons and Lords select committees on disinformation, online harms and the tech platforms has occurred in the context of developing concern globally, including in Westminster and Whitehall, about a variety of harms occurring on digital platforms. The current government intends to legislate in this area, and the Parliamentary committees are seeking to play a role in shaping the eventual legislation. To what extent they will do so is an open question, though, and ultimately depends on to what extent their thinking accords with, or influences, the government's own.

[139] <https://committees.parliament.uk/committee/438/digital-culture-media-and-sport-subcommittee-on-online-harms-and-disinformation/>

[140] <https://committees.parliament.uk/work/560/online-harms-and-the-ethics-of-data/>

[141] A substantial number of Lords peers are either 'crossbench' (i.e. appointed by the House of Lords Appointments Commission and not affiliated to any political party), Bishops of the Church of England, or hereditary peers who owe their seat to their aristocratic family lineage.

[142] Information on the current membership of the Committee is available online at <https://committees.parliament.uk/committee/170/communications-and-digital-committee/membership/>

[143] Tom McTague, "Welcome to Theresa May's campaign war room", Politico 4 May 2017, available online at <https://www.politico.eu/article/theresa-may-campaign-war-room-conservative-stephen-gilbert-lynton-crosby/>

[144] <https://committees.parliament.uk/committee/407/democracy-and-digital-technologies-committee/>

[145] House of Lords Select Committee on Democracy and Digital Technologies, *Digital Technology and the Resurrection of Trust - Report of Session 2019-21*, 29 June 2020, and Department for Digital, Culture, Media and Sport, *Government Response to the House of Lords Democracy and Digital Technologies Committee Report on Digital Technology and the Resurrection of Trust*, September 2020. Both are available online at <https://committees.parliament.uk/work/5/democracy-and-digital-technologies/publications/>

## INDUSTRY PLAYERS

In the UK, some media companies have long played an outsized role in influencing the direction of Government media policy. The most important, by far, are the national newspaper publishers. Through the widespread perception among politicians that the national press has considerable capacity to influence the public, they hold considerable influence over public policy in a range of areas, not just media policy.

Media policy is not an area usually central to, or prominent in, electoral politics, but it is obviously of enormous importance to media institutions. Media policy therefore represents an essential concern for any government which hopes to maintain good relations with the press. Unlike the BBC, the government has no direct power over the press's funding or its senior leadership. Indeed, the press has traditionally fought extremely hard against any attempts to introduce regulation via statute, either directly or indirectly. That does not, however, mean that relationships of mutual interest, ideological affinity and political alliance have not developed between politicians and the press. Indeed they have. In fact, British politics as a whole is hard to comprehend without an appreciation of the fundamental and often decisive role that the press play, or are at least widely believed to play, in Westminster politics.

The Leveson Inquiry extensively considered the question of relations between the press and senior politicians, in a way that has never occurred for any other sector of the media, because of the widespread perception that newspaper publishers – and in particular Rupert Murdoch's UK newspaper subsidiary, News International – had acquired undue influence over the political process. That influence, it was widely believed, contributed to the reluctance of various bodies – including the police – to investigate evidence of the widespread use of illegal news gathering methods by several national newspapers.

The question is often asked whether the influence of national newspapers over public opinion, and therefore the importance of their editorial positions to politicians, is in decline as a result of the internet. An affirmative answer to that question would begin by citing the print circulations of national newspapers, which have been decreasing for decades. In the 2010s, the advent of the mobile internet prompted an even sharper fall in newspaper circulation. Newspapers are not what they once were. On the other hand, declining print circulations have been accompanied by the building of news websites of considerable reach – in some cases allowing newspapers to reach far larger audiences, including new international audiences, than their print editions ever did. Mail Online, the website of the *Daily Mail*, and thesun.co.uk, the online version of *The Sun*, are two such examples.<sup>[146]</sup>

The national press remains central to UK politics, as the 2016 Brexit referendum result demonstrated. During the campaign, the leaders of both of the main political parties supported Remain. On the other hand, the three most important national newspaper publishers – DMG Media, News UK and Telegraph Media Group – and the titles they publish – the *Mail*, *Sun*, *Telegraph* and *Times* – all supported Leave.<sup>[147]</sup> Leave won.

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[146] According to ComScore data for December 2020, *Mail Online* and thesun.co.uk both had in the region of 37m unique UK visitors to their sites that month. Aisha Majid, "Top 50 online news publishers in the UK: Reach now bigger than BBC, Comscore", *Press Gazette* 17 December 2020, available online at <https://www.pressgazette.co.uk/audience-data-legacy-newsbrands-still-out-ahead-uk/>

[147] With the slight exception of the *Sunday Times*, which supported Remain. Leave was also supported by the *Express*.

The question of how much influence the national press really holds over public opinion remains debated in media, politics and academia. What few would dispute is that the belief the press in particular has enormous perception-shaping, agenda-forming power is widespread among politicians at Westminster: a perception which the Brexit referendum and recent General Election results would appear to support. Since 1979, the Labour Party has never won a General Election when it has not had the support of The Sun.

None of this is to say that the national press is always decisive in public policy – merely that insofar as any part of the UK media can be said to influence public policy, and especially media policy, it is the national press that has long had the strongest claim to such influence.

It is worth noting here the conclusions of the Leveson Report, which examined the relationship between the press and UK politicians: “the evidence clearly demonstrates that the political parties of UK national government and UK official opposition have had or developed too close a relationship with the press. This assessment relates to the period of the last thirty to thirty-five years but is likely....to have been much longer than that. Although this relationship has fluctuated over time, the evidence suggests there has been a perceptible increase in the proximity of the relation over this period. I do not believe this has been in the public interest.”[148]

## *The Press*

### INDUSTRY ORGANISATIONS

The UK press is represented by a trade group, the News Media Association (NMA), which was formed out of a merger between the Newspaper Society, the regional newspaper trade association, and the Newspaper Publishers Association, the national newspaper trade association, in 2014. Its chief executive is David Newell, formerly director of both of those trade associations. He also sits on a number of industry boards, including the World Association of Newspapers and News Publishers, the Advertising Standards Board of Finance, and News Media Europe. He is also a solicitor and former academic. In September 2020 he announced that he would retire in June 2021. His successor will be Owen Meredith, the current CEO of the Professional Publishers’ Association, which represents the magazine industry. Meredith stood as a parliamentary candidate for the Conservative Party in 2017. [149]

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[148] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapter 8, section 3.5, p. 1439, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=443> Appendix 5 of the Report (in Volume 4, p. 1955-1987) collates all the Inquiry evidence relevant to this conclusion. It is available online at <https://discoverleveson.com/levesonarticle/4/Leveson%20Report%20078#page=483> It is worth noting that the evidence cited in Appendix 5 is drawn overwhelmingly from senior politicians, newspaper journalists or editors, and newspaper owners themselves.

[149] News Media Association, “NMA Appoints Owen Meredith As Next Chief Executive” 17 February 2021, available online at <http://www.newsmediauk.org/Latest/nma-appoints-owen-meredith-as-next-chief-executive>

The NMA's **Legal, Policy and Regulatory Affairs Committee** is responsible for lobbying the government, regulators and courts over issues that affect press interests. It is chaired by the Conservative peer and deputy chairman of Telegraph Media Group, Lord Black of Brentwood (see below). [150] The NMA has campaigned on a range of issues relating to press regulation, Part Two of the Leveson Inquiry, data protection legislation, online harms and the future funding of journalism. In his previous capacity as head of the Newspaper Society, David Newell argued against full implementation of the Leveson Report's recommendations.[151] Despite its members' opposition to state intervention, the NMA lobbied for additional funding from the government during the coronavirus pandemic to compensate for falling advertising revenue. In the end, it helped to secure £35m for its 'All in, all together' advertising campaign to deliver government health messages, 70% of which was channelled into newspaper groups with a revenue of more than £20m a year.[152]

The **Society of Editors** represents editors across newspapers, magazines, radio and television, and has nearly 400 members.[153] It campaigns on a range of media policy issues. In recent years, it has opposed the commencement of Section 40 of the Crime and Courts Act,[154] argued for news media's exemption from the proposed new framework to require digital platforms to address online harms [155] and campaigned against 'fake news'.[156] The Society's president is Alison Gow, Audience and Content Editor for the North West with Reach plc; its chair is Ian MacGregor, editor emeritus at Telegraph Media Group and a member of the board of IPSO; its executive director is Ian Murray, a former local journalist and editor of the *Southern Daily Echo*. The Society's Board includes editors from across the UK news industry, including the BBC, Sky News, *Daily Mail*, the *Independent*, the Press Association, and the local and regional press.[157]

## NEWSPAPER PUBLISHERS

**News UK** is the UK newspaper subsidiary of **News Corp**, the American media and publishing company founded by **Rupert Murdoch**, who remains its executive chairman. The company publishes newspapers in the US and Australia as well as the UK, together with books across the world through its subsidiary HarperCollins, and pay-TV and TV news in Australia. News UK publishes four newspapers: *The Sun*, *The Sun on Sunday*, *The Times* and the *Sunday Times*. Its chief executive is **Rebekah Brooks**, who rejoined the company in September 2015 having resigned from it in July 2011 during the phone hacking scandal. Brooks stood trial in 2013-14 on a range of criminal charges stemming from the scandal, and she was acquitted on all of these charges.

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[150] He is assisted by the NMA's Legal, Policy and Regulatory Affairs Director, Sayra Tekin – an experienced legal advice and litigation lawyer at the BBC, formerly a dispute resolution lawyer at Slaughter and May. News Media Association, "Sayra Tekin Starts Work As NMA Legal, Policy and Regulatory Affairs Director", 17 December 2020, available online at <http://www.newsmediauk.org/latest/Page-9/sayra-tekin-starts-work-as-nma-legal-policy-and-regulatory-affairs-director>

[151] Hugh Tomlinson, "*Leveson, Arbitration and the Local Press: Three Misconceptions*" Media@LSE 28 May 2013, available online at <https://blogs.lse.ac.uk/medialse/2013/05/28/leveson-arbitration-and-the-local-press-three-misconceptions/>

[152] "EXCLUSIVE: £35m Covid Cash Fund Dominated by Big Media While Small Publishers Struggle" Byline Investigates 3 June 2020, available online at <https://www.bylineinvestigates.com/mail/2020/6/2/exclusive-35m-covid-cash-fund-dominated-by-big-media-while-small-publishers-struggle>

[153] For the different categories of membership, see <https://www.societyofeditors.org/join/membership-categories/>

[154] [https://www.societyofeditors.org/soe\\_campaigns/freethepress/](https://www.societyofeditors.org/soe_campaigns/freethepress/)

[155] [https://www.societyofeditors.org/soe\\_campaigns/online-harms-white-paper-campaign/](https://www.societyofeditors.org/soe_campaigns/online-harms-white-paper-campaign/)

[156] [https://www.societyofeditors.org/soe\\_campaigns/campaign-for-real-news/](https://www.societyofeditors.org/soe_campaigns/campaign-for-real-news/)

[157] <https://www.societyofeditors.org/about/>

Before becoming CEO of News UK in 2009, she worked as editor of the *News of the World* from 2000 to 2003, and *The Sun* from 2003 to 2009. Before the 2011 scandal, Brooks was widely known as one of the most connected and influential media industry figures in British politics, socially close to three prime ministers: Tony Blair, Gordon Brown and David Cameron. Since her return to News UK in 2015 she has maintained a relatively low media profile but the published logs of ministerial meetings show that she has resumed meeting with senior Conservative politicians.

The influence of the Murdochs and their businesses over UK politics has long been alleged and contested. However, there are three strong pieces of evidence to suggest that this influence is real and considerable.

**First**, the section of the Leveson Report on Rupert Murdoch, which noted that “all the politicians who gave evidence before the Inquiry said that Mr Murdoch exercised immense power and that this was almost palpable in their relations with him.” To the claim that Murdoch had not explicitly asked for favours from British politicians, the Report responded as follows. “Sometimes the very greatest power is exercised without having to ask, because to ask would be to state the blindingly obvious and thereby diminish the very power which is being displayed ... the influence exercised by Mr Murdoch is more about what did not happen than what did. To reiterate: a case by case examination of the policies which were introduced over this long period fails to demonstrate that politicians compromised themselves or their policies to favour Mr Murdoch’s business interests directly. Where a decision pleased Mr Murdoch, there would always be other public-policy reasons for it. At least one administration introduced many policies to which, by any stretch of the imagination, Mr Murdoch would not have been well disposed. But no government addressed the issue of press regulation, nor of concentration of ownership.” [158]

**Second**, even after the Leveson Report and the phone hacking scandal, senior government ministers continued to have a high number of meetings with Rupert Murdoch and News UK executives.[159] Indeed, the Media Reform Coalition published an analysis showing that he and his executives had more meetings with government ministers during the period when BBC Charter Renewal negotiations were ongoing than did BBC executives. In the words of the Leveson Report, “Mr Murdoch fully understood the value of personal interactions, the value of the face-to-face meeting.”[160] In June 2015, the then-chancellor (and prospective future Conservative Party leader) George Osborne had meetings with Rupert Murdoch in the run-up to imposing a controversial and damaging funding deal on the BBC.[161]

[158] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapter 8, sections 2.1-2.13, p. 1430-1433, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=443>

[159] “Murdoch’s lobbying efforts are increasing, new analysis finds” Media Reform Coalition, 5 February 2017, available online at <https://www.mediareform.org.uk/featured/murdochs-lobbying-efforts-increasing-new-analysis-finds>

[160] Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, November 2012, Volume 3, Part I, Chapter 8, section 2.13, p. 1432, available online at <https://discoverleveson.com/levesonarticle/3/Leveson%20Report%200780#page=443>

[161] Jasper Jackson and Jane Martinson, “George Osborne met Rupert Murdoch twice before imposing BBC cuts” *The Guardian* 18 December 2015, available online at <https://www.theguardian.com/media/2015/dec/18/george-osborne-rupert-murdoch-bbc-cuts-news-corp>

**Third**, in 2018, at the end of its review of the proposed Fox-Sky merger, the Competition and Markets Authority concluded in its final report that the merger should be blocked because it would give the Murdoch Family Trust “too great a degree of control over the diversity of viewpoints consumed by audiences in the UK, and...too much influence over public opinion and the political agenda.” It did so noting that “members of the Murdoch family and representatives at News Corp have historically had greater access to government ministers than other comparable news providers, and the scope for access and influence could be increased following the Transaction”, and that the Murdoch Family Trust “is already in a particularly strong and in some respects unique position in relation to its control of media enterprises in the UK across a number of platforms”.<sup>[162]</sup>

**DMG Media** is a UK media company, which publishes the *Daily Mail*, the *Mail on Sunday*, *Metro*, *i* newspaper and their digital equivalents, Mail Online, Metro.co.uk and inews.co.uk, through its subsidiary, Associated Newspapers. The company’s controlling shareholder is **Jonathan Harmsworth, the 4th Viscount Rothermere**. The Harmsworths are the oldest major newspaper dynasty in Britain. Alfred Harmsworth (the 1st Viscount Northcliffe) created the *Daily Mail* in 1896 (as well as the *Daily Mirror*); on his death in 1922 the *Mail* was inherited by his younger brother Harold Harmsworth, the 1st Viscount Rothermere – Jonathan Harmsworth’s great-grandfather – and then passed down several generations of the family.

*The Mail* is perceived in political circles to have an enormous influence on public opinion and the news agenda, and that influence appears to have given DMG Media some weight in some issues of media policy. However, it appears that Jonathan Harmsworth has not typically sought to wield this influence directly. Instead, DMG Media lobbies politicians on issues that affect the interests of its newspapers, often through **Peter Wright**, a former editor of the *Mail on Sunday* (1998-2012) and now editor emeritus at the company. He was one of the industry representatives involved in negotiating with the government over press regulation in the aftermath of the Leveson Report, and has appeared at a number of Parliamentary committee hearings – most recently, at the Communications and Digital Committee’s inquiry into the future of journalism.<sup>[163]</sup> He also sits on IPSO’s complaints committee, and sat on the Cairncross Review’s Advisory Panel.<sup>[164]</sup> For eight years Paul Dacre, who edited the *Daily Mail* from 1992-2018, was chair of IPSO’s (formerly the PCC’s) Editors’ Code of Practice Committee from 2008-2016.

**Telegraph Media Group** is a UK media company which publishes *The Daily Telegraph* and *The Sunday Telegraph* along with the telegraph.co.uk website. It is a subsidiary of Press Holdings, which also owns the art magazine *Apollo* and the conservative political magazine *The Spectator*, and is owned by the **Barclay Brothers**, a pair of British billionaires whose commercial interests have ranged across shipping, retail and hospitality as well as media. Their combined wealth is estimated at around £7bn (putting them 17th in the *Sunday Times Rich List 2020*) and they own the island of Brecqhou in the Channel Islands. *The Daily Telegraph* has long been the ‘house newspaper’ of the Conservative Party: the current Prime Minister, Boris Johnson, is a former Telegraph reporter and latterly one of its star columnists.

[162] Competition & Markets Authority, 21st Century Fox, Inc and Sky Plc: A report on the anticipated acquisition by 21st Century Fox, Inc of Sky Plc, 1 May 2018, paragraphs 95, 96 and 105, available online at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718920/CMAFoxSky\\_report\\_nonconfidential.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718920/CMAFoxSky_report_nonconfidential.pdf)

[163] House of Lords Select Committee on Communications and Digital, “Corrected oral evidence: The future of journalism - Witnesses: David Dinsmore, Chief Operating Officer, News UK; Peter Wright, Editor Emeritus, DMG Media” 23 June 2020, available online at

<https://committees.parliament.uk/oralevidence/580/pdf/>

[164] The Cairncross Review: a sustainable future for journalism, 12 February 2019, p. 119, available online at

<https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>

The deputy chairman of TMG is **Guy Black, Baron Black of Brentwood**, who sits as a Conservative peer in the House of Lords. Black is the former Director of the Press Complaints Commission (1996-2003), and former chairman of its funding body, the Press Standards Board of Finance. His association with the Conservative Party goes back to the 1980s, when he worked in the Conservative Party's Research Department; between 2003 and 2005, he was press secretary to the then-leader of the Conservative Party, Michael Howard, and director of communications for Conservative Central Office. Together with another peer, the former Conservative cabinet minister David Hunt, Baron Hunt of Wirral (who became chairman of the Press Complaints Commission in October 2011), Black presented a plan for a new form of contractual press self-regulation to the Leveson Inquiry in 2012. Leveson rejected the plan as inadequate on a number of grounds, but Black nevertheless involved himself in setting up IPSO, which then boycotted the Royal Charter system that Parliament established to monitor and ensure adequate press self-regulation. [165]

Today, in addition to his position at TMG and his membership of the House of Lords, Guy Black sits on the board of the Regulatory Funding Company (IPSO's funding body) and chairs the News Media Association's Legal, Policy and Regulatory Affairs Committee.[166] He is also on the supervisory board of WAN-IFRA (the World Association of News Publishers), as well as being the Vice-President of News Media Europe, the Chairman of the Commonwealth Press Union Media Trust, the President of the Institute of Promotional Marketing, and a member of the Advertising Standards Board of Finance, the funding body for the Advertising Standards Authority. Black is one of the figures who link the Conservative Party to the right-wing national newspapers, connecting the party in Parliament to what the political scientist and historian of the Conservative Party Tim Bale has called "the party in the media." [167]

## BROADCASTERS

The **Royal Television Society** is an educational charity, which organises regular meetings and seminars on issues arising in the television industry, and publishes the monthly industry magazine *Television*. Its biennial convention at King's College, Cambridge is a major event for the industry. The Society is more of a venue for discussion than an industry association or lobby group, but its events have often provided the platform for important figures in the industry to make speeches or give lectures that intervene in public policy debates – for instance, on the future of public service broadcasting. Another major venue for such interventions is the annual **Edinburgh International Television Festival**, where the James MacTaggart Lecture is usually given by an important industry figure on issues of the day. [168]

The UK's major broadcasters are often engaged in issues of media policy and competition policy. The **BBC**, in particular, is often involved in discussions and negotiations with the government over its Charter and its funding levels. The BBC's weight in, and reach across, British life makes the Director General and the Chair of the BBC Board both significant figures in their own right.[169] The BBC is often a standard-setting organisation for the rest of the sector.

[165] For the chapters of the Leveson Report outlining and analysing the Hunt-Black proposal, see Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press*, Volume 3, Part K, Chapters 2-3, p. 1595-1650, available online at <https://discoverleveson.com/levesonarticle/4/Leveson%20Report%20078#page=130>

[166] <https://www.guyblack.org.uk/about>

[167] Tim Bale, *The Conservative Party: From Thatcher to Cameron* (Polity Press 2011), p. 2

[168] For a list of past MacTaggart lectures, see

[https://en.wikipedia.org/wiki/Edinburgh\\_International\\_Television\\_Festival#The\\_MacTaggart\\_Lecture](https://en.wikipedia.org/wiki/Edinburgh_International_Television_Festival#The_MacTaggart_Lecture) The most recent MacTaggart lecture was given by the historian and broadcaster David Olusoga. "David Olusoga: his Edinburgh television festival speech in full" *The Guardian* 24 August 2020, available online at <https://www.theguardian.com/media/2020/aug/24/david-olusoga-his-edinburgh-television-festival-speech-in-full>

[169] See above for more information on the BBC's senior leadership.

Other broadcasters have sought to influence the direction of broadcasting policy, and the direction of Ofcom's decisions, on media policy issues that directly affect them – for instance, the public service broadcasting requirements. In 2015-16, when the Conservative government considered privatising **Channel Four**, its board was an important force in opposing the idea. The commercial broadcasters **ITV** and **Sky** have at times lobbied against the expansion of certain BBC services, such as the BBC's plans to introduce a 'BBC One +1' catch-up channel, and against increases in BBC funding.

The **Creative Industries Council** is a government consultative body, which includes major companies and institutions from across the 'creative industries', including the BBC and Channel Four, but its focus is mostly on issues that represent 'barriers to growth' for the sector, "such as access to finance, skills, export markets, regulation, intellectual property (IP) and infrastructure". [170]

## TECH COMPANIES

Debates around media policy increasingly focus on the question if and how tech companies should be regulated. As a result, tech companies are increasingly important players in UK media policy. As the tech companies that play the biggest role in content intermediation, **Google** and **Facebook**, and to a slightly lesser extent **Twitter** have been the focus of political attention. Representatives from their public policy teams are regularly invited to give evidence at Select Committee inquiries into digital issues. These people are often figures with professional backgrounds in politics or the civil service.



**Google's** global vice president for public policy and government relations is Karan Bhatia, an American attorney, former senior official in the Bush Administration and former Deputy U.S. Trade Representative. Google's President for Business and Operations in Europe, the Middle East and Africa is Matt Brittin, former managing director of Google UK, who previously worked in media and marketing, including as director of strategy and digital for Trinity Mirror (now Reach plc). Google's government affairs and public policy manager for the UK is Tom Morrison-Bell, who previously worked at Microsoft, Google and techUK – the trade association for the UK's tech industry.



**Facebook's** head of global affairs is Nick Clegg, the former leader of the Liberal Democrats and Deputy Prime Minister in the Conservative-Liberal Democrat coalition government 2010-15. Its most senior figure in the UK is Nicola Mendelsohn, a former advertising executive and Facebook's vice president for Europe, the Middle East and Africa since 2013. Facebook's communications director for Northern Europe, Alex Belardinelli, is a former special adviser to Ed Balls, the former Labour shadow chancellor under Ed Miliband. Facebook's UK director of public policy, Ed Bowles, is a former bank lobbyist, civil servant at the Ministry of Justice and barrister.[171]



**Twitter's** global head of policy, strategy and development is Nick Pickles, the former director of the Big Brother Watch pressure group on privacy issues, and a former Conservative parliamentary candidate. Katy Minshall is Twitter UK's head of government, public policy and philanthropy.

[170] <https://www.gov.uk/government/groups/creative-industries-council>

[171] Stephen Morris, "Facebook hires British bank lobbyist ahead of cryptocurrency launch" Financial Times 14 June 2019, available online at <https://www.ft.com/content/8440e5ee-8df7-11e9-a1c1-51bf8f989972>

[172] Charles Arthur, "Privacy campaigner Nick Pickles to become Twitter UK policy chief" The Guardian 1 May 2014 <https://www.theguardian.com/technology/2014/may/01/privacy-campaigner-nick-pickles-to-become-twitter-uk-policy-chief>

## CIVIL SOCIETY GROUPS

The **National Union of Journalists** is the trade union for journalists in the UK. In addition to defending the interests of its members at work, it runs campaigns on a range of issues which affect working journalists, and it also gives evidence to inquiries and consultations. Since 2011, the general secretary of the NUJ has been **Michelle Stanistreet**.

There are a number of civil society organisations that, either partly or exclusively, campaign on issues relating to media policy in the UK. The two most significant organisations focused primarily on media reform are Hacked Off and the Media Reform Coalition. **Hacked Off**, the campaign group set up in response to the phone hacking scandal, has enjoyed the support of many victims of phone hacking and other press abuses, and it has campaigned for better regulation of the press, the implementation of the Leveson Report recommendations, and the commencement of Part Two of the Leveson Inquiry. Its chair is **Hugh Tomlinson QC**, a barrister, who has represented a number of victims of phone hacking and other press abuses. Its policy director is Nathan Sparkes.

The **Media Reform Coalition** is a campaign group based at the Leverhulme Media Research Centre, which is itself based at the Department of Media, Communications and Cultural Studies at Goldsmiths, University of London. Its co-ordinating committee includes academics mostly working in the field of media studies and representatives from a range of campaigning organisations with an interest in media reform. The MRC's current chair is Natalie Fenton, Professor in Media and Communications at Goldsmiths, and its deputy chair is Tom Mills, Lecturer in Sociology and Policy at Aston University. Civil society organisations represented on its co-ordinating committee include the NUJ, Hacked Off, Avaaz and 38 Degrees. Avaaz and 38 Degrees are online campaigning organisations, primarily based in the US and UK respectively, which run campaigns on a range of issues including climate change, global peace, human rights, animal rights, poverty, democracy, corruption and the media.

A range of civil society organisations campaign either narrowly on issues of freedom of expression, or on a broader range of civil liberties or human rights issues including freedom of expression. Of the former, the most important are **English PEN** and **Index on Censorship**. Of the latter, the most important are **Liberty** and **Amnesty International**.

## THINK-TANKS

The UK has a large constellation of think-tanks, which have played an important role in developing policy proposals that not always but often find their way into the platforms of political parties, and then into government policy.[173] For instance, in the 1970s, three think-tanks on the neoliberal right became increasingly important to Conservative Party thinking: the **Institute for Economic Affairs**, the **Adam Smith Institute** and the **Centre for Policy Studies**. Some, though by no means all, of their ideas fed into the policy programmes of the Thatcher and Major governments, including in the area of broadcasting policy. These think-tanks continue to produce occasional reports on media policy. Their most consistent long-term objective has been the conversion of the BBC from a publicly- to a privately-funded service – i.e. the abolition of the licence fee as the BBC’s primary funding mechanism and its replacement with some form of voluntary subscription funding. A key figure of the political right, who has consistently articulated this view, is **David Elstein**, a former TV programme producer at the BBC and in the independent commercial sector, as well as the former head of programming at BskyB and Channel Five’s first chief executive. In 2004 he was the lead author on the conservative Broadcasting Policy Group’s report *Beyond the Charter: The BBC After 2006*, which advocated replacing the licence fee with subscription funding.[174] He has also argued for the privatisation of Channel Four.[175]

Today, along with the three mentioned above, there are a number of other right-wing think-tanks that contribute to the development of Conservative Party policy in a range of areas. Of these, the most important and wide-ranging are probably **Policy Exchange** and the **Social Market Foundation**. None of these think-tanks treat media policy as a central area of their focus, but all take some interest in the area and have published reports on issues in media policy.

On the Labour side, the most important think-tank during Labour’s last spell in government, 1997-2010, was the **Institute for Public Policy Research**, which has very occasionally produced reports on media policy over the years, including an early blueprint for New Labour communications policy in its 1996 report, *New Media, New Policies*. [176] The IPPR hosts the **Oxford Media Convention**, an important annual gathering of senior figures from politics, regulation, academia and the media, where media policy issues are discussed.[177] Other important left-wing think-tanks include the **Fabian Society**, the **Resolution Foundation** and **Common Wealth**. The first covers a range of related policy areas including culture and technology, but has not usually intervened in media policy. The second is influential but more narrowly focused on living standards. The third, established in 2019, is more on the left of the party than the others, and has published a few reports addressing policy issues related to the media, technology and data.[178]

[173] [https://en.wikipedia.org/wiki/List\\_of\\_think\\_tanks\\_in\\_the\\_United\\_Kingdom](https://en.wikipedia.org/wiki/List_of_think_tanks_in_the_United_Kingdom)

[174] Owen Gibson, “Scrap BBC licence fee, Tories told” *The Guardian* 24 February 2004, available online at <https://www.theguardian.com/media/2004/feb/24/broadcasting.politicsandthemedial>

[175] David Elstein, “Channel 4: the case for privatisation” *openDemocracy* 1 March 2016, available online at <https://www.opendemocracy.net/en/ourbeeb/channel-4-case-for-privatisation/>

[176] Cristina Murrone and Richard Collins, *New Media, New Policies: Media and Communications Strategies for the Future* (Polity Press 1996)

[177] <https://oxfordmediaconvention.com/>

[178] See for instance: Dan Hind, *The British Digital Cooperative: A New Model Public Sector Institution*, *Common Wealth* 20 September 2019, available online at <https://www.common-wealth.co.uk/reports/the-british-digital-cooperative-a-new-model-public-sector-institution> and Thomas Hanna, Mathew Lawrence and Nils Peters, *A Common Platform: Reimagining Data and Platforms*, *Common Wealth* 2 December 2020, available online at <https://www.common-wealth.co.uk/reports/common-platform-tech-utility-antitrust>

## RESEARCH INSTITUTIONS AND CONSULTANCIES

In addition to public bodies and civil society organisations, the main producers of research that bears on issues of media policy, are universities and commercial consultancies.

### *Universities*

There are many research centres and media studies, communications and/or journalism departments at universities across the UK, employing many academics who contribute to debates in media policy. These include:

- The **Department of Media, Communications and Cultural Studies at Goldsmiths, University of London**.<sup>[179]</sup> The **Goldsmiths Leverhulme Media Research Centre** is connected to the Department, and hosts the **Media Reform Coalition** (as well as the Media Influence Matrix project).<sup>[180]</sup>
- The **Department of Media and Communications at the London School of Economics**.<sup>[181]</sup> **Media@LSE** is the Department's blog for encouraging discussion around media and communications issues.<sup>[182]</sup> **Polis** is the LSE's media and journalism think-tank.<sup>[183]</sup>
- The **Reuters Institute for the Study of Journalism** and the **Oxford Internet Institute (OII)**, both at the **University of Oxford**.<sup>[184]</sup> The Reuters Institute publishes an influential annual **Digital News report** alongside reports on a wide variety of public policy issues connected to journalism. The OII publishes a wide range of research on the impact of the internet and digital technologies on society.
- The **Department of Culture, Media and Creative Industries at King's College, London**.<sup>[185]</sup> Connected to the Department is the **Centre for Media, Communications and Power**, run by **Martin Moore**, former director of the Media Standards Trust.<sup>[186]</sup>
- The **School of Journalism, Media and Culture at Cardiff University**.<sup>[187]</sup> Connected to the Department is the **Centre for Community Journalism**, which provides research on and training for hyperlocal and community journalism.<sup>[188]</sup>
- The **Department of Journalism at City, University of London**.<sup>[189]</sup>
- The **University of Westminster's School of Media and Communication**.<sup>[190]</sup> The **Communication and Media Research Institute (CAMRI)** is situated within the School.<sup>[191]</sup>
- The **Glasgow Media Group**, a group of scholars and specialists in the field of communications based at the **University of Glasgow**.<sup>[192]</sup> The Group has been producing the 'Bad News' series – studies analysing and critiquing biases in British TV, radio and print news on a range of topics – for over thirty years.

[179] <https://www.gold.ac.uk/media-communications/>

[180] <https://www.gold.ac.uk/media-research-centre/>

[181] <https://www.lse.ac.uk/media-and-communications>

[182] <https://blogs.lse.ac.uk/medialse/>

[183] <https://www.lse.ac.uk/media-and-communications/polis>

[184] <https://reutersinstitute.politics.ox.ac.uk/> <https://www.oii.ox.ac.uk/>

[185] <https://www.kcl.ac.uk/cmci>

[186] A think-tank that has produced reports on media policy issues, including important work on press regulation around the time of the Leveson Inquiry.

[187] <https://www.cardiff.ac.uk/journalism-media-and-culture>

[188] <https://www.communityjournalism.co.uk/>

[189] <https://www.city.ac.uk/about/schools/arts-social-sciences/journalism>

[190] <https://www.westminster.ac.uk/media-and-communication-courses>

[191] <https://camri.ac.uk/>

[192] <https://www.glasgowmediagroup.org/>

### *Commercial Consultancies*

The UK is home to a number of major professional services firms, which provide services to the public sector and the media industries, including Deloitte, EY, KPMG and PricewaterhouseCoopers. Alongside these, there are some more specialist firms that produce research on developments in media and technology, provide consultancy to clients in the media and technology sectors, sometimes contribute to public policy debates in these areas, and are often quoted in the press or invited to provide commentary on TV and radio news and current affairs programmes. These consultancies include:

- **Communications Chambers**, a consultancy specialising in telecoms, media and technology, which advises on issues of strategy, policy and regulation.[193] Its senior advisors **Robin Foster**, **Kip Meek** and **Tim Suter** all have regulatory backgrounds, including at Ofcom. Robin Foster and Tim Suter are both on Ofcom's Content Board, and Tim Suter is also on Ofcom's main Board. [194]
- **Enders Analysis**, a research and consulting firm specialising in telecoms, media and technology. [195] Its main output is a subscription research service to which most major companies in the UK media industry subscribe, alongside consultancy work. Its founder is **Claire Enders**, a former media executive and an influential figure in the media industry who, in 2010, played an important role in lobbying the Business Secretary Vince Cable to intervene in the 2010-11 News Corp bid to buy BSkyB, and in organising industry opposition to the bid.[196]
- **Mediatique**, a strategic advisory firm specialising in the media and communications industries. [197]It has been commissioned to produce important research on developments in news and media for, among others, Ofcom, the BBC, IPSO and the DCMS.[198] Its director, **Mathew Horsman**, was formerly media editor of *The Independent*.

## EXTERNAL

The most important external influence on UK media policy in recent decades has been the **European Union**, in a range of areas, including the **Audiovisual Media Services Directive** and the **General Data Protection Regulation (GDPR)**. Additionally, other areas of EU law and regulation also impact on UK media – for instance, the European competition regime. However, as a result of Brexit, the future relationship between law and regulation in the EU and in the UK, across all these areas, is an open question. Future UK trade agreements with the EU and other countries may also have an impact on the regulations affecting UK media. For instance, the US government has, in the past, clearly stated its opposition to the introduction of a digital services tax in the UK that would have negative impact on the big US digital platforms such as Google and Facebook.[199]

[193] <http://www.commcham.com/>

[194] <http://www.commcham.com/our-members/>

[195] <https://www.endersanalysis.com/>

[196] James Robinson, "Rupert Murdoch's Sky takeover should be blocked, Vince Cable told" *The Guardian* 3 September 2010, available online at <https://www.theguardian.com/media/2010/sep/13/rupert-murdoch-bskyb-claire-enders>

[197] <http://www.mediatique.co.uk/>

[198] [http://www.mediatique.co.uk/Independent\\_Research](http://www.mediatique.co.uk/Independent_Research)

[199] "US says 'no free trade deal with UK unless digital tax scrapped'" *Sky News* 3 August 2019, available online at <https://news.sky.com/story/us-says-no-free-trade-deal-with-uk-unless-digital-tax-scrapped-report-11776240>

# IMPACT: CASE STUDIES OF DECISION-MAKING AND INFLUENCE

## 1. THE 2010-11 NEWS CORP-SKY MERGER & THE 2016-18 FOX-SKY MERGER

In 2010, Rupert Murdoch's American media conglomerate, News Corporation, launched a bid to acquire Sky plc, a satellite broadcaster. Sky had long been the leading pay-TV provider in the UK, the primary holder of FA Premier League TV rights and a major importer of American films and TV series. News Corp owned a 39.1% stake in Sky, which gave it material influence over the company but not full control. Rupert Murdoch's son James Murdoch had been CEO of Sky between 2003 and 2007, and he was non-executive chairman from 2007 until 2012 (succeeding his father, Rupert), then returning again as chairman in 2016.

Under the Communications Act 2003, the Secretary of State for Digital, Culture Media and Sport can intervene in media mergers on a range of defined 'media public interest' grounds (see above). In late 2010, the Business Secretary Vince Cable issued a notice of his decision to intervene in the merger on the grounds of concern about its impact on media plurality in the UK. Ofcom conducted an initial, 'phase 1' investigation of the merger on these grounds and concluded that the bid did raise 'initial concerns'. In the meantime, the Secretary of State for Culture, Media and Sport, Jeremy Hunt had taken over ministerial responsibility for the bid after Cable was exposed by a newspaper for making comments on the bid, which was incompatible with his 'quasi-judicial' role in the process. Hunt then negotiated undertakings, in lieu of reference to the competition regulator for a much longer 'phase 2' investigation, with News Corp and Sky, taking advice from Ofcom.

The undertakings involved carving out Sky News from the rest of the company in such a way that News Corp would continue to provide funding for it but would only own a minority stake in it commensurate with its existing 39.1% holding in Sky.

In July 2011, while regulators were negotiating with News Corp on its undertakings, the phone hacking scandal exploded into the news. Public revulsion was so overwhelming that a House of Commons motion calling on Murdoch to withdraw the bid was supported by all parties and passed without a vote. Just before the motion was passed, News Corp withdrew its bid for Sky.

For years afterwards, the Murdochs and News Corp were dogged by the legal and reputational damage of the scandal, which made them effectively unable to mount a renewed bid for Sky. However, in 2013, James Murdoch declared the takeover of Sky "unfinished business", signalling their intention to return for a second go. Finally, in December 2016, 21st Century Fox – one of the two successor companies that were created in 2014 when the Murdochs split News Corp in two – launched a new bid for Sky.[200]

In 2010, the merger was challenged on the grounds that it posed a threat to the existence of sufficient plurality in the ownership and control of UK news media. In early 2017, the DCMS Secretary, Karen Bradley, intervened in the bid on two grounds: the same plurality ground as in 2010, but also the need to ensure that broadcasting licence holders have a genuine commitment to upholding UK broadcasting standards.

[200] "News Corp withdraws bid for BSkyB" BBC News 13 July 2011, available online at <https://www.bbc.co.uk/news/business-14142307>

The chief plurality concern generated by the bid was that if 21st Century Fox acquired whole ownership of Sky, they would acquire full control of Sky News, one of the most important and highly-rated news brands in the UK, with a presence on TV (via the second most watched 24-hour news channel in the UK after BBC News), radio (as the main supplier of news bulletins for commercial radio stations) and online (as the provider of one of the most visited news websites and apps in the UK). Backed by the enormous financial resources of 21st Century Fox (at that time, a company with several times the annual revenue of the BBC), Sky News could acquire an even stronger position in the UK's news media landscape. This would have given the Murdochs enormous influence over public opinion, in addition to the influence they have already held through the UK newspapers owned by their other company, (the new) News Corp – i.e. *The Times*, *The Sunday Times*, *The Sun* and *The Sun on Sunday*. They would have had the ability to set the news agenda by determining the editorial priorities of key news media across all four major news platforms: print, TV, radio and online.

Once the Secretary of State intervened on those two media public interest grounds, the first step of the review process was for Ofcom to conduct initial, 'phase 1' reviews of the mergers on both grounds. These are normally given a month to be completed but in the course of Ofcom's review, Theresa May called a General Election for June 2017, and the publication of the reviews was postponed until after the election had concluded.

Ofcom's job in the 'phase 1' reviews was not to reach a definitive judgement on whether the merger should be blocked but to ascertain whether there were 'initial concerns' warranting a second, longer and deeper investigation. Ofcom determined that there were such concerns around plurality, but not around broadcasting standards.

Then, as in 2011, Karen Bradley consulted with the parties of the bid whether they could provide undertakings that would assuage the concerns raised by the regulator. However, she eventually decided instead to refer the bid to the Competition and Markets Authority for a deeper 'phase 2' investigation on both plurality and broadcasting standards grounds. In the background, a scandal was unfolding in the United States at 21st Century Fox's biggest source of profit, Fox News, over allegations of sexual harassment, payoffs and a corporate cover-up: a sequence strikingly redolent of News International's initial corporate response to the phone hacking allegations. The emerging scandal added to the pressure on the Secretary of State to ensure the bid faced the fullest regulatory scrutiny.

The Competition and Markets Authority then began a 6-month long 'phase 2' investigation into both of the public interest concerns about the merger. Its inquiry took written and oral testimony from a wide range of parties, including the parties to the bid, independent industry experts and analysts, representatives from a range of campaigning organisations opposed to the bid. These included Avaaz, 38 Degrees, Hacked Off and the Media Reform Coalition, and a cross-party group of politicians such as the former Labour leader Ed Miliband, the Labour peer and former cabinet minister Charlie Falconer, the Conservative MP and former cabinet minister Ken Clarke, the former cabinet minister and then-leader of the Liberal Democrats Vince Cable, and the backbench Labour peer David Puttnam – the very person responsible for the media public interest clauses of the Communications Act, as the peer who led a backbench Lords rebellion against the then-Labour government's bill to ensure greater protection for public interest concerns in media mergers.[201]

[201] The merger inquiry page on the UK government website includes a complete collection of the evidence submitted at all stages of the inquiries and the reports published by the regulators. It is available online at <https://www.gov.uk/cma-cases/twenty-first-century-fox-sky-merger-european-intervention-notice>

Having examined the evidence arrayed from a wide range of perspectives for over six months, the CMA concluded that the merger did raise public interest concerns relating to plurality, but not relating to broadcasting standards. A new round of consultation by the CMA ensued on the question of potential remedies Fox and Sky could provide that would allow the CMA to clear the bid. Opponents of the bid argued that none of the remedies offered by Fox and Sky sufficiently mitigated the dangers arising from the power that the Murdochs would acquire over Sky News through its ownership, especially given their history of actively seeking influence over the news agenda as a tool to acquire special favours from politicians – including the deregulation of rules that obstructed their ability to acquire even more influence.

While the process of regulatory scrutiny at the CMA was ongoing, and in fact before the CMA had even published its initial conclusions about the merger, the Murdochs announced that the majority of 21st Century Fox – primarily its TV entertainment and film assets – would be sold to Disney, including its 39.1% stake in Sky. Disney would thus take over the Fox bid for Sky which, if approved, would mean that Disney would be its eventual owner. However, this deal was still in the process of being completed at the time when the CMA delivered its decisions. Consequently, the CMA could not approve the deal on the basis that Disney, not Fox, would be Sky's owner.

The CMA rejected the remedies offered by Fox and Sky, concluding that while Fox's bid for Sky should simply be blocked, Disney's acquisition of Sky would not raise the same plurality concerns as Disney did not own any UK news assets. Nevertheless, while the regulators were scrutinising the bid, a rival US media conglomerate, Comcast, decided to launch its own bid for Sky. Comcast outbid Fox/Disney and acquired full ownership of Sky, including Fox/Disney's stake, and Sky is now a wholly-owned subsidiary of Comcast, which owns NBC News in the US but no other news assets besides Sky News in the UK.

The Murdochs continue to own *The Times*, *The Sun* and their Sunday editions through their UK subsidiary, News UK. News UK has recently launched *Times Radio*, and reportedly plans to launch a right-wing video news service in the UK soon, although whether it will be shown live on terrestrial TV remains unclear.

### *Impact on Journalism in the UK*

The 2017-18 Fox-Sky case represents the first and only time that a media merger has been blocked by regulators on the grounds of media public interest. Although the British press is the least trusted in Europe, British broadcasters remain comparatively well-rated by the British public for the quality of their reporting (although trust in the broadcasters, and the BBC in particular, has also fallen in recent years). In any study of the reasons for the deterioration of journalistic standards at British newspapers, and of low public trust in British journalists, Rupert Murdoch and his impact on the UK newspaper market must stand out as one of the principal causes, for much the same reasons that apply to the impact of Fox News on US broadcast news. The danger of Murdoch's proposed takeover of Sky was always that he would turn Sky News into a 'Fox News UK', using Sky News' established position and brand to start a 'race to the bottom' in the journalistic standards of UK broadcast news, while flooding the online news market in the UK with the same low-grade content. News UK's plans to launch a right-wing video news service in the UK indicate that Murdoch's desire to create a 'Fox News UK' did not end with his regulatory defeat. However, the regulator's decision means that Murdoch will have to start a new channel from scratch, with none of the brand power, reputation or name recognition accumulated by Sky News over decades of broadcasting – clearly a more formidable task than merely reorienting the editorial direction of a well-established major UK news brand.

## 2. FOX NEWS AND OFCOM, 2017

For years, the Fox News channel had been available to watch in the UK via the Sky satellite platform (although not on Freeview). However, at the end of August 2017, 21st Century Fox decided to stop broadcasting the channel in the UK and surrender its licence to Ofcom. At the time, Fox's official explanation was that 'poor ratings' meant it was "not in our commercial interest to continue providing Fox News in the UK".[202] But the timing and context suggested a more plausible explanation. At that time, 21st Century Fox was in the middle of trying to acquire Sky and needed to convince the UK regulators that it had a 'genuine commitment' to upholding UK broadcasting standards (see the case study above on the Fox-Sky merger). At the same time, it was becoming increasingly clear, through a series of regulatory decisions reached by Ofcom, that Fox News's content was regularly in breach of the Ofcom Broadcasting Code:

- In January 2015, Ofcom found Fox News in breach of the Code for broadcasting the assertion that Birmingham was a "no-go zone" for non-Muslims (in the aftermath of the *Charlie Hebdo* attack in Paris), concluding that this was "clearly misleading".[203]
- In August 2016, Ofcom found Fox News had committed two further breaches of the Code: by breaching the rules governing election coverage in the run-up to the EU referendum in June 2016, and by breaching impartiality rules in a discussion of abortion in April 2016.[204]
- In August 2016, during the US presidential election campaign, Ofcom conducted routine monitoring of the Fox News channel. It reviewed several episodes of '*Hannity*', Sean Hannity's regular evening talk show. In November 2016, it ruled that the show clearly breached the Broadcasting Code's provisions on 'due impartiality' in its discussion of the Democratic candidate Hillary Clinton. Even taking into account the audience's expectation that *Hannity* would provide a conservative viewpoint, Ofcom judged that the degree of bias on display in *Hannity*'s remarks went beyond what was permissible under the UK code.[205]
- In December 2016, Ofcom ruled that a segment on the Fox News show *Fox & Friends* in June 2016 breached the Code by failing to maintain a clear enough distinction between editorial content and advertising.[206]

[202] A link between the decision and concern about the deal was drawn across most contemporaneous media reporting. See: "Fox News Goes Off The Air In Britain As U.K. Scrutinizes Company's Bid To Buy Sky" NPR 30 August 2017, available online at <https://www.npr.org/sections/thetwo-way/2017/08/30/547290745/as-21st-century-fox-seeks-to-take-over-sky-fox-news-goes-off-the-air-in-britain> "Sky stops broadcasting rightwing US channel Fox News in UK" *The Guardian* 29 August 2017, available online at <https://www.theguardian.com/business/2017/aug/29/sky-to-stop-broadcasting-rightwing-us-channel-fox-news-in-uk> "Fox News Goes Dark In UK: Is It About Ratings, Or The Sky Deal?" [203] Ofcom, *Broadcast Bulletin Issue 288*, 21 September 2015, available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0017/50507/issue\\_288.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0017/50507/issue_288.pdf)

[204] Ofcom, *Broadcast and On Demand Bulletin Issue 311*, 22 August 2016, available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/88750/Issue\\_311\\_of\\_Ofcoms\\_Broadcast\\_and\\_On\\_Demand\\_Bulletin.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/88750/Issue_311_of_Ofcoms_Broadcast_and_On_Demand_Bulletin.pdf)

[205] Ofcom, *Broadcast and On Demand Bulletin Issue 317*, 21 November 2016, available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0023/94271/Issue-317.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0023/94271/Issue-317.pdf)

[206] Ofcom, *Broadcast and On Demand Bulletin Issue 319*, 19 December 2016, available online at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0018/96012/Issue-319-of-Ofcoms-Broadcast-and-On-Demand-Bulletin,-to-be-published-on-19-December-2016.pdf)

- In March 2017, Ofcom ruled that certain Fox Extra segments shown in August 2016 and at other times breached the Code by promoting – by giving undue prominence to – products within programming.[207]
- In November 2017 (by which time 21st Century Fox had removed the Fox News channel from the Sky platform), Ofcom ruled that there had been two further breaches of the code by Fox News, in January and May 2017. In January, the Hannity programme breached impartiality rules in its coverage of the debate around Donald Trump’s executive order restricting travel to the US from seven majority-Muslim countries – the so-called ‘Muslim ban’. In May, Tucker Carlson’s programme breached impartiality rules in its coverage of the Manchester terrorist attack, which took place on 22 May 2017.

Over the period between January 2015 and May 2017, Ofcom found Fox News to have committed eight separate breaches of the Broadcasting Code, four of which were breaches of impartiality rules. These figures must be seen in context. Although some of them result from routine monitoring, most of Ofcom’s broadcasting standards investigations are triggered by audience complaints to the regulator. When it withdrew the channel from the Sky platform, 21st Century Fox claimed that the channel had only had a very small audience of around 40,000 viewers. Therefore, the pool of potential complainants was also very small compared to the main UK TV channels. Equally, a channel with so few viewers is likely to be a lower priority for Ofcom’s routine standards monitoring. Therefore, there is a strong likelihood that the number of breaches of UK broadcasting rules that Ofcom failed to detect may be even higher. The reason for this is that the smaller viewership compared to other channels with more UK viewers resulted in fewer complainants, and the channel was not being monitored as often as the main UK channels. The advent of the Fox-Sky merger case put Fox at risk of greater regulatory attention regarding its compliance with UK broadcasting standards, both by viewers concerned about Fox News and by Ofcom itself.

Anyone familiar with the content of Fox News can see that its highly polemical and vociferously conservative programming is often going to be incompatible with the impartiality requirements of UK broadcasting regulation. As the regulatory decisions above illustrate, Ofcom found that to be the case on several occasions in a relatively short period.

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The short-term impact of Ofcom’s enforcement action is clear: despite Fox’s denials at the time, it seems overwhelmingly likely that Ofcom’s decisions and the context of the Fox-Sky bid were what led 21st Century Fox to withdraw the channel from the Sky platform. However, the long-term impact on UK journalism seems likely to be much more limited.

As the Fox News channel was watched by so few people in the UK, its withdrawal was not a major news story or the occasion for much commentary. The major UK broadcasters all accept UK broadcasting standards regulation and do not seem to regard deregulation as a priority. According to survey evidence, the British public prefer those news providers whose output is presented in a more impartial and objective manner. Even if deregulation were to occur, the BBC would likely continue to present news in that manner. Moreover, as Ofcom itself acknowledges, regulation for impartiality does not preclude some editorialising through the selection and prioritisation of different news stories. The Fox News case did not lead to calls for the Broadcasting Code to be changed.

[207] Ofcom, *Broadcast and On Demand Bulletin Issue 324*, 6 March 2017, available online at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/98031/Issue-324.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/98031/Issue-324.pdf) 29 August 2017, available online at <https://deadline.com/2017/08/fox-news-goes-dark-uk-ratings-sky-deal-1202157801/>

However, the public's media consumption habits – including their news consumption habits – are shifting away from broadcast TV, which Ofcom regulates on the basis of fairly strict standards, and towards the internet, which is largely unregulated for such standards. YouTube videos, Netflix documentaries and so on are not regulated for any content standards save those imposed by the platforms themselves, such as they are. Even the government's proposed 'online harms' legislation is not intended to impose the kinds of standards, such as impartiality and accuracy to which Ofcom holds broadcasters, and especially broadcast news. Reflecting this regulatory difference between TV and online, Fox News recently returned to the UK as a subscription streaming service – as such, it does not require a broadcasting licence and is not regulated for conformity to Ofcom's Broadcasting Code. [208]

In mid-2020, two rival efforts to launch a Fox News-style 'opinionated' current affairs TV channel in Britain were announced. [209] One is called 'GB News' and has already been awarded a licence to broadcast by Ofcom. Its founders apparently intend to provide a (right-wing) rival to the BBC and Sky News. The other is being developed by News UK, which already runs some radio stations in the UK including Times Radio (launched in June 2020), and which was granted a licence to run a TV channel by Ofcom in December 2020. [210] Both of these new services are intended to provide right-wing news and comment, and they therefore seem likely to test the robustness of Ofcom's enforcement of the Broadcasting Code rules on impartiality in particular.

### 3. THE TIMES, ANDREW NORFOLK AND IPSO, 2017-19

In 2017-18, *The Times* published three separate series of articles by its chief investigative reporter, Andrew Norfolk, a former winner of the Paul Foot Award and the Orwell Prize for his journalism. Each of these article series contained serious inaccuracies, the common denominator of which was that they all involved the presentation of Muslims as threatening, or of local authorities so warped by political correctness that they engaged in actions which either risked, or actually led to, Muslims causing harm to vulnerable people.

Norfolk had won awards for a series of reports in 2011, which exposed "a repeated pattern of sex offending in towns and cities across northern England and the Midlands involving groups of older men who groom and abuse vulnerable girls aged 11 to 16 after befriending them on the street." Norfolk reported that "[m]ost of the victims are white and most of the convicted offenders are of Pakistani heritage," and alleged a "culture of silence" where police forces, charities and agencies "denied publicly that ethnicity has any relevance" to the problem of on-street grooming. In short, Norfolk's reporting claimed that the fear of inflaming sensitivities around race had inhibited authorities from more effectively tackling the problem by acknowledging that men of south Asian heritage were overrepresented in on-street grooming cases.

[208] Jesse Whittock, "Fox News streamer headed to UK" Broadcast 12 August 2020, available online at <https://www.broadcastnow.co.uk/broadcasters/fox-news-streamer-headed-to-uk/5152257.article>

[209] Jim Waterson, "Rivals plan Fox News-style opinionated TV station in UK" *The Guardian* 29 August 2020, available online at <https://www.theguardian.com/media/2020/aug/29/rivals-plan-fox-news-style-opinionated-tv-station-in-uk>

[210] Jim Waterson, "Rupert Murdoch's News UK TV channel given approval to launch" *The Guardian* 1 December 2020, available online at <https://www.theguardian.com/media/2020/dec/01/rupert-murdochs-news-uk-tv-channel-given-approval-to-launch>

Since then, a study commissioned by the Home Office and only recently published in response to a Freedom of Information request by *The Independent* concluded that links between men of south Asian heritage and grooming cases could not be proven: “Based on the existing evidence, and our understanding of the flaws in the existing data, it seems most likely that the ethnicity of group-based CSE offenders is in line with child sexual abuse more generally and with the general population, with the majority of offenders being white.”[211] There is no evidence of a similar police reluctance, for instance, to use stop and search tactics against young black British men for fear of offending racial sensitivities.

By contrast, there is evidence of widespread police failures across the UK to properly record and investigate sexual crimes, especially where the victims are vulnerable women. As one commentator has argued, “This overall inadequacy when it comes to rape and sex offence cases across the UK has nothing to do with race. There are many reasons why working-class and vulnerable girls who have been subjected to abuse would fail to get help when even the cases of rape that are brought to the attention of the police rarely get prosecuted in the UK.”[212]

Whatever the merits of Norfolk’s 2011 reporting, three of his subsequent stories involving British Muslims have since been shown to contain serious inaccuracies. A 72-page report by two independent journalists in June 2019 catalogued these in detail. [213] The first story, published in August 2017, involved false allegations that Muslim foster carers mistreated a child put in their care by a local authority. The second story, published in July 2018, alleged that a human rights charity – most of whose trustees were Muslims – published a report about an MP so scathing that it led to death threats against the MP. As a result of the story, the charity was forced to close. *The Times* later admitted that there was no evidence that the report had led to death threats. The third, published in November 2018, alleged that a local council had encouraged a convicted rapist who is a British Pakistani to seek the legal right to visit and play a role in the upbringing of his vulnerable son. It has since emerged that the council merely followed the required court rules in providing the father with notification of care proceedings and provided no ‘encouragement’ to him to participate in them. In all three articles, the report by two independent journalists found “facts that would have led readers to question central elements of what was being alleged – facts which we are satisfied any responsible reporter would have established before publishing – tended to be minimised or ignored. ... Norfolk appears to us to have shown a tendency to stress information that was critical of Muslims and to ignore or give little weight to information which was not.” [214]

Just as importantly, the report highlighted not only that *The Times* had “not apologised for or corrected the significant inaccuracies in any meaningful way, still less...taken down articles from its website,” but that the press self-regulator of which *The Times* is a member – IPSO – had “failed to respond effectively to complaints or to ensure that the correct facts were placed before *Times* readers.” [215]

[211] Lizzie Dearden, “Grooming gangs come from ‘diverse backgrounds’, says Home Office as review finally published” *The Independent* 15 December 2020, available online at <https://www.independent.co.uk/news/uk/crime/grooming-gangs-review-race-religion-home-office-b1774161.html>

[212] Aniqah Choudhri, “Fear of racism isn’t to blame for the police’s failure to stop grooming gangs – they fail abuse victims across all kinds of cases” *The Independent* 22 January 2020, available online at <https://www.independent.co.uk/voices/manchester-grooming-gangs-racism-police-sexual-abuse-a9297336.html>

[213] Brian Cathcart and Paddy French, *Unmasked: Andrew Norfolk, The Times Newspaper and Anti-Muslim Reporting - A Case to Answer*, June 2019, available online at [https://pressganguk.files.wordpress.com/2019/06/norfolk\\_report\\_tce\\_t2\\_all\\_lo.pdf](https://pressganguk.files.wordpress.com/2019/06/norfolk_report_tce_t2_all_lo.pdf)

[214] Cathcart and French, *Unmasked*, p. 4-5

[215] Cathcart and French, *Unmasked*, p. 6

The case demonstrates three of IPSO's major weaknesses as a regulator. First, its rules on who can make a complaint that will be investigated are narrow: the complainant must be someone personally involved in the story that the complaint refers to. Consequently, if a complaint only refers to a certain part of an article containing inaccuracies about the complainant, IPSO investigates and requires correction only of these inaccuracies even if there are other significant inaccuracies that nobody with the relevant standing has complained about. This is what happened in the case of the first story, published in August 2017, when the local council submitted a complaint. The independent journalists noted that "[m]ore than 250 individuals and organisations complained about [the] 'Muslim foster care' [story]" but IPSO "refused to consider any of these complaints".[216] Instead, it only considered the council's complaint. As a result, "[a]lthough the paper was found guilty of distortion it was only on the very limited point of the council's 'failure' as alleged in one article on the third day of Norfolk's coverage. Thus IPSO, having rejected 250 complaints, addressed just one and upheld one aspect of it. By choice it only nibbled at the edge of the problem".[217]

Second, and closely related to the first flaw, IPSO's standard code doesn't cover what is arguably the most significant area of contemporary press misconduct: discriminatory reporting about social groups. Although Clause 12 of IPSO's 'Editors' Code of Practice' covers discrimination and says that the press "must avoid prejudicial or pejorative reference to an individual's race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability", it explicitly excludes prejudicial or pejorative references to groups of people defined by such characteristics – e.g. transgender people in general.[218] So not only is the scope of who can complain too narrow – so too is IPSO's definition of discriminatory reporting. This leaves vast areas of contemporary British press misconduct effectively excluded from (self-)regulatory enforcement. The third inaccurate story has never been the subject of any ruling by IPSO. Moreover, its rules effectively preclude it from even identifying, let alone investigating or criticising, an obvious pattern of discriminatory reporting across the three stories. IPSO has never formally found any article published by the titles it regulates to have breached the section of its code covering discrimination.

Third, even in cases where IPSO does consider a complaint from someone with the standing to make a complaint about a breach of its code of practice by one of its members, IPSO's judgements sometimes go to considerable lengths to absolve its members of blame. In their report, the independent journalists even found that IPSO's judgement on the accuracy of the second story, about alleged death threats, was actually more lenient than *The Times's* own: on one key point of inaccuracy "*The Times* pleaded guilty...but IPSO declared it innocent." [219]

Fourth, even where IPSO does rule in a complainant's favour and insist on the publication of an apology or correction in the offending title, it is often satisfied with apologies and corrections that are small, lack prominence, published on days or at times when they are unlikely to be noticed by many people, and lack a proper account of the decision reached. In the case of the second story, *The Times* published only a partial correction, on page 24 of its edition on 24 December 2018 – Christmas eve, when it was unlikely to be noticed by many people.

These flaws in IPSO's enforcement were predictable: they are a reflection of some of the specific ways in which the Leveson Report's recommendations for a new system of press regulation were watered down by politicians who were influenced by newspaper publishers' lobbying.

[216] Cathcart and French, *Unmasked*, p. 53

[217] Cathcart and French, *Unmasked*, p. 55

[218] <https://www.ipso.co.uk/editors-code-of-practice/#Discrimination> According to one IPSO complaints officer, "For me, there's a difference between directing a pejorative (contemptuous or disapproving) term at a specific, named person, and directing it at a group as a whole: the effect of the language on any one member of the group is diluted." John Buckingham, "How Clause 12 (Discrimination) works" IPSO Blog 16 March 2018, available online at <https://www.ipso.co.uk/news-press-releases/blog/ipso-blog-how-clause-12-discrimination-works/>

[219] Cathcart and French, *Unmasked*, p. 56

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The impact of this case on journalism in the UK is hard to determine precisely. What it illustrates above all is the weakness of IPSO as a regulatory enforcer of journalistic standards in the British press, especially in comparison to Ofcom's relatively robust enforcement of broadcasting standards. Ofcom is a statutory body. IPSO was set up by some of the biggest newspaper publishers. The comparison between their respective enforcement practices goes to show why those newspaper publishers were so opposed to Parliament establishing a system which more closely followed Leveson's recommendations: they were, above all, opposed to the more robust regulatory enforcement of the standards to which they ostensibly subscribe.

A particularly important sticking point for the publishers during the negotiations was the issue of who could make complaints and whether complaints about discriminatory reporting on groups would be considered. The case of the inaccurate Norfolk/*Times* stories perfectly demonstrates the kind of reporting failures that the effort to reform press regulation sought to address, and which the effort to stop that reform by the press sought to protect a degree of impunity for.

It is hard to demonstrate empirically the effects that the weak regulatory enforcement of standards has on the industry as a whole. But the whole premise of the Leveson Inquiry which the newspaper publishers themselves appeared to accept – at least while the Inquiry was ongoing – was that the lack of an adequate system of press regulation contributed to the development of the widespread use of unethical and illegal newsgathering practices in the newspaper industry, the publication of harmfully inaccurate or misleading stories, and the frequent harm of ordinary members of the public who were unlucky enough to find themselves caught up in news stories. It therefore seems plausible to conjecture that one future impact of inadequate regulatory enforcement like in the case of Norfolk/*Times* may be to allow a repeat of those failings.

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[193] <http://www.commcham.com/>

[194] <http://www.commcham.com/our-members/>

[195] <https://www.endersanalysis.com/>

[196] James Robinson, "Rupert Murdoch's Sky takeover should be blocked, Vince Cable told" *The Guardian* 3 September 2010, available online at <https://www.theguardian.com/media/2010/sep/13/rupert-murdoch-bskyb-claire-enders>

[197] <http://www.mediatique.co.uk/>

[198] [http://www.mediatique.co.uk/Independent\\_Research](http://www.mediatique.co.uk/Independent_Research)

[199] "US says 'no free trade deal with UK unless digital tax scrapped'" *Sky News* 3 August 2019, available online at <https://news.sky.com/story/us-says-no-free-trade-deal-with-uk-unless-digital-tax-scrapped-report-11776240>

## CONCLUSION

Broadly speaking, there are three areas of media regulation in the UK: those covering broadcasting, the press and online. Broadcasting is the most heavily regulated, and has remained so over the last twenty years, apart from some deregulation of the Public Service Broadcasting output requirements on the main terrestrial broadcasters in the 2000s. Having been largely unregulated (except by general laws like defamation and the law of contempt) for most of the twentieth century and the first decade of the twenty-first, the question whether and how to regulate the press became the defining media policy issue of the early 2010s. Press regulation remains a contested and unsettled area, even if the media policy agenda at Westminster and in Whitehall has moved on from it. The internet is almost totally unregulated in the UK and Parliament has, on the whole, been very slow even to comprehend the nature of the online world, let alone to consider seriously the question whether and how to regulate it.

After several decades of a general moving towards deregulation in the field of media policy, the last decade has witnessed a (contested) step towards more regulation of the press, and widespread agreement that the online world cannot go on being totally unregulated, even if the debate about how precisely the internet and especially the big digital platforms should be regulated has really only just begun in the last four or five years. In other areas of law that affect the media, the last decade has been a mixed one. On the one hand, there was a long overdue reform of defamation law to give more protection to various forms of free speech. On the other hand, the public's access to information held by public bodies via Freedom of Information law appears to have regressed. Other areas of law like data protection are now set to be much more determined by decisions taken at Westminster, compared to the time when the UK was still an EU member state and followed EU regulations in this area. However, for the time being it appears that the decision Westminster has taken is to maintain alignment with the EU GDPR.

Three major issues stand out as most likely to define the media policy agenda during the 2020s. First, **the regulation of the internet**. Clearly, this is an issue with many dimensions: the protection of data and privacy online; regulation of social media and other platforms to prevent 'online harms'; regulation of video content provided by major new online players including YouTube, Netflix and Amazon Prime Video that barely existed when the 2003 Communications Act was introduced; issues of monopoly and oligopoly in online markets, particularly the online advertising market, which is dominated in the UK by Facebook and Google. Over the last five years, some of these issues have begun to be considered by public bodies and Parliamentary committees but no major legislation has been passed yet.

The second major issue likely to define the 2020s is **the continued commercial decline of the press**, and its impact on both the employment of journalists and the original production of news in the UK – especially in less 'commercial' news genres like local news and investigative journalism. This matter was considered by the Cairncross Review in 2019, but given the scale of the emergent problem the Review's proposals to address it were comparatively minor. The most significant proposal – a publicly-funded Institute for Public Interest News to award grants for public interest journalism – was rejected by the government.

It is highly likely that at least one major national newspaper will cease print production during the 2020s, and quite likely that several will do so. In the absence of a business model for news online that can sustain the commercial production of journalism for all but a small, affluent, subscribing minority of the UK public, the problems for informed democracy and civic accountability posed by contracting resources for original news production, and the increasingly desperate measures that news publishers may be forced to resort to (native advertising etc.), suggest that the future of commercial news production will become an even more important issue than it has been over the past decade.

The third major issue is **the rise of online video streaming**, which has meant that the disruptive effects felt by the press as news consumption moved online in the 2000s and 2010s have begun to be felt in the broadcasting sector, especially in the last five years. The future of the BBC and Channel 4, the UK's two publicly owned broadcasters, is more uncertain than at any time in their history. In the BBC's case, decades of underfunding have left it increasingly struggling to match the ballooning content budgets of its new, mostly American, digital competitors. Meanwhile, Channel 4's advertising-based funding model looks increasingly ill-suited to any future as a digital provider of longform video content. The next five years of media policy debate, especially in the lead up to the BBC's next Royal Charter in 2026-2027, look likely to focus heavily on the question of what future these important features of British national cultural life should have in the digital age.



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