

POLITICAL UNCERTAINTY AND SECTION 40

The Conservative Party's 2017 manifesto made it clear that the decision had been taken not to proceed with Part 2 of the Leveson Report and to repeal section 40 of the Crime and Courts Act 2013. Section 40 requires courts to award costs against defendant publishers in cases where a claim has been made against them by an individual concerning the publication of news-related material and the defendant publisher was not a member of an approved regulatory organisation. The manifesto pledge and subsequent re-election of the Conservative Party has summarily curtailed the debate over section 40, which was the subject of a consultation mounted by Culture Secretary Karen Bradley last November. A report is still awaited, and to that extent the arguments for and against implementation of the section remain unresolved, but once the new government took office it appeared that a policy decision had been taken and appropriate action would soon follow.

A slightly different picture was painted by John Whittingdale when delivering the Second Annual Independent Press Standards Organisation (IPSO) Lecture on 6 July. Mr Whittingdale, the former Culture Secretary and chairman of the Culture, Media and Sport Committee, said the reality of the situation was that Conservative Party's lack of a Parliamentary majority meant any immediate attempt to fulfill its manifesto commitment to repeal section 40 could be defeated. There were other areas of vulnerability, such as the attempt before the election to legislate through the House of Lords. In Mr Whittingdale's view the case for introducing penalties under section 40 for publications not belonging to a recognised regulator was even weaker than when he was not minded to go ahead. The economics of the newspaper industry have continued to decline, making publishers even less inclined to take risks when threatened with large bills for damages and costs combined. However, the industry should not sit back and it faced the task of making its arguments against section 40 once again.

While welcoming the creation of IPSO, which he felt went a long way towards delivering what Leveson wanted from a press regulator, Mr Whittingdale highlighted a number of concerns over the current system of regulation. The Press Complaints Commission (PCC), IPSO's predecessor, did not command confidence inside or outside Parliament, and was discredited when it appeared to turn a blind eye when evidence of abuse mounted during the inquiry into phone hacking. IPSO was promoted as being more independent and having sharper teeth than the PCC, with real penalties available to it and the power to initiate investigations. Unfortunately, IPSO's adjudications look remarkably similar to those carried out by the PCC, and the public found it difficult to believe that in IPSO's two years of existence no newspaper had done anything that merited independent investigation or the imposition of a fine.

Three major publication groups – the Independent, Guardian and Financial Times – remain outside IPSO. Their continued refusal to join weakens the system IPSO is trying to

Articles

Reconstructing judicial review for the advancement of justice and good governance 2

The legal framework governing business organisations in China: gaining an understanding of its general evolution 6

Institute News 10

Articles (cont'd)

Recent trends in legislation and jurisprudence in Europe: how can scholarship help to improve regulatory quality? 21

implement, as Mr Whittingdale acknowledged. He enjoyed a dig at the former Chancellor, George Osborne, who as editor of the London Evening Standard presides over a newspaper that has declined to sign up to IPSO or the official press regulator, IMPRESS, and therefore operates entirely outside the system set up by the government of which he was a leading member. Mr Whittingdale reiterated his previously expressed view that Parliament never envisaged a situation where the vast majority of the printed media would refuse to join a recognised regulator. It is hard to believe that so many MPs ignored or disbelieved journalists and the organisations represented them when the printed media declared its opposition to the creation of the Royal Charter on press regulation. The same MPs also apparently forgot that the authority of the PCC, a voluntary regulator, was flouted by a major media player, the Express Group, which withdrew a number of its titles.

Although the section 40 issue will continue to rumble on, Mr Whittingdale issued a reminder to his audience that a more pressing challenge to the newspaper industry comes from the digital revolution. Government is taking this seriously – on 3 July the Department for Culture, Media and Sport changed its name to the Department for Digital, Culture, Media and Sport to reflect its growing involvement with the digital sectors. These include parts of the media and creative industries in addition to other matters such as telecommunications, data protection and internet safety. Mr Whittingdale drew attention to the high quality journalism provided by the newspaper industry, and the “increasing cacophony of competition” for the provision of information from news aggregators, user generated content, blogs and the generators of fake news. All this has increased the pressure on newspapers, with local titles in particular suffering shrinking newsrooms and a consequent reduction in coverage of courts, councils and other key local activities. The BBC has addressed criticism that it competes unfairly with local newspapers by putting aside £8 million a year from the licence fee to fund 150 reporters who will work for regional news organisations throughout the UK and share their stories with the Corporation. This is a pragmatic arrangement which should benefit everyone, although it raises some regulatory issues.

Julian Harris

Deputy General Editor, Amicus Curiae