Online Harms White Paper

IMPRESS submission

1 July 2019

About IMPRESS

1. IMPRESS is an independent self-regulatory body for news publishers in the United Kingdom. As of 1 July 2019, IMPRESS regulates 72 news publishers, which are collectively responsible for 128 publications. These include local and hyperlocal news publications, specialist publications and investigative journalism sites, all of which have voluntarily subscribed to the most rigorous and accountable ethical standards of public interest journalism. Most IMPRESS members publish online; some publish both online and in print; and a small number publish in print only. Of those who publish online, 100% use social media platforms to disseminate their content and engage audiences.

2. Between 2016 and 2017, IMPRESS conducted a wide-ranging public consultation on a new standards code. The IMPRESS Standards Code reflects international best practice and addresses emerging issues in news publishing. It sets out to balance press freedom with other rights and interests in order to ensure that news publishers regulated by IMPRESS produce high-quality journalism in the public interest.

3. The IMPRESS Code is only one of a handful of press codes from around the world to address issues relating to digital journalism. It is periodically reviewed, and the IMPRESS Code Committee monitors issues that may have a bearing on the Code or its Guidance. The Code is owned by the IMPRESS Board, which has expertise in regulation, human rights, media law and ethics.

4. IMPRESS has a strong interest in this consultation in that (a) IMPRESS has relevant expertise as an independent self-regulatory body for the media; (b) IMPRESS-regulated publications may be directly or indirectly affected by the proposals set out in the White Paper; and (c) IMPRESS itself may also be directly or indirectly affected by these proposals.

5. In this submission, we address issues that are relevant to the White Paper as a whole, and in particular to questions 4, 5 and 8.

6. We would be happy to provide further evidence and to address any questions that may arise from this submission.

Executive Summary

7. We agree in principle that a new duty of care should be imposed on a range of companies to ensure that they take responsibility for identifying and mitigating the risk of harm to users of their services and to society more broadly. We refer in this paper to companies within scope of the new duty of care as 'social media platforms', although we recognise that in practice the scope may be broader.

8. This duty of care is, by its nature, a second-order responsibility. It is not analogous to the direct responsibility that a publisher or broadcaster holds for their content. It is closer in essence to the duty of an employer or the owner of a public venue. An employer cannot anticipate exactly what every employee will do in every circumstance, and therefore cannot mitigate all risk of harm; but they can take reasonable steps to foresee and mitigate likely risks. Under the duty of care model, a platform would be obliged to take comparable steps to foresee and mitigate the risk of harm to its users and others.

9. The White Paper proposes to make platforms accountable to a regulator for maintaining and upholding effective procedures under this duty of care. It does not propose to make platforms directly accountable for the content they host. We support this proposal, which would help to strike a balance between supporting freedom of expression and mitigating the risk of harm. However, we are concerned that the distinction between procedural regulation and content regulation is not set out in the White Paper with sufficient consistency or clarity.

10. As well as setting out, at a high level, the government's proposals for procedural accountability, the White Paper also describes a range of harms that may be caused by the content on a platform. These harms include some that are already defined in law and some that are not. The White Paper includes three such harms under the collective heading of 'threats to our way of life': online disinformation; online manipulation; and online abuse of public figures. We agree

that these are highly problematic phenomena, but we are concerned that the proposed solution may do too little to address any substantive threat to democracy, whilst chilling legitimate democratic debate.

11. The White Paper proposes to bring a very broad range of companies within the scope of the new regulatory framework. On the face of it, news publishers would fall within scope, alongside social media platforms. However, we have received assurances from the Secretary of State that news publishers, and editorial and journalistic material, will not be within scope. The White Paper does not provide any distinction between publishers and platforms and it is not clear how any such distinction will be drawn in practice. We are concerned about the risk of perverse consequences if the distinction is drawn without sufficient thought about the interrelationship between the new regulatory framework for social media platforms and the existing regulatory framework for news publishers.

12. The White Paper also suggests that all platforms within scope will be subject to a single code, that this code will set out expectations in relation to harmful content (including so-called 'threats to our way of life'); and that parts of this code might be changed at the discretion of the Secretary of State. We are concerned that this would politicise the framework for media regulation, and unduly constrain the plurality and diversity of the media economy.

13. In response to these concerns, we encourage the government to ensure that any new regulatory framework:

    - Is tightly focused on the procedural responsibilities of platforms;
    - Is operationally independent of government and Parliament; and
    - Applies only to companies whose dominant purpose is to provide social media platforms, and not to news publishers.

14. In the remainder of this submission, we set out these points in more detail.

Part One: Procedural Accountability

15. The online harms set out in the White Paper are extremely wide-ranging. Those harms described as 'threats to our way of life' are likely to engage international freedom of expression standards and would certainly come into tension with the expectation that journalists and citizen journalists should be free to act as a 'watchdog' on public life.

16. The White Paper identifies three forms of online harm as 'threats to our way of life': disinformation; manipulation; and the abuse of public figures.

Online disinformation

17. The White Paper describes the threat of online disinformation as follows:

> *'There is […] a real danger that hostile actors use online disinformation to undermine our democratic values and principles. Social media platforms use algorithms which can lead to "echo chambers" or "filter bubbles", where a user is presented with only one type of content instead of seeing a range of voices and opinions. This can promote disinformation by ensuring that users do not see rebuttals or other sources that may disagree and can also mean that users perceive a story to be far more widely believed than it really is.' (Executive Summary, paragraph 4)*
>
> *'The UK's reputation and influence across the globe is founded upon our values and principles. Our society is built on confidence in public institutions, trust in electoral processes, a robust, lively and plural media, and hard-won democratic freedoms that allow different voices, views and opinions to freely and peacefully contribute to public discourse.' (1.22)*
>
> *'Inaccurate information, regardless of intent, can be harmful – for example the spread of inaccurate anti-vaccination messaging online poses a risk to public health. The government is particularly worried about disinformation (information which is created or disseminated with the deliberate intent to mislead; this could be to cause harm, or for personal, political or financial gain).' (1.23)*
>
> *'Disinformation threatens these values and principles [set out at 1.22], and can threaten public safety, undermine national security, fracture community cohesion and reduce trust.' (1.24)*
>
> *'When the internet is deliberately used to spread false or misleading information, it can harm us in many different ways, encouraging us to make decisions that could damage our health, undermining our respect and tolerance for each other and confusing our understanding of what is happening in the wider world. It can also damage our trust in our democratic institutions, including Parliament.' (7.25)*

18. Through a close reading of these sections of the White Paper, we can extract a wide range of harms that are alleged to flow from disinformation, as follows:

- *Undermining our democratic values and principles;*
- *Presenting users with only one type of content instead of a range of voices and opinions;*
- *Ensuring that users do not see rebuttals or other sources that may disagree;*

- *Leading users to perceive a story to be far more widely believed than it really is;*
- *Threatening the UK's reputation and influence across the globe;*
- *Threatening confidence in public institutions;*
- *Threatening trust in electoral processes;*
- *Threatening a robust, lively and plural media;*
- *Threatening democratic freedoms that allow different voices, views and opinions to freely and peacefully contribute to public discourse;*
- *Risking public health;*
- *Threatening public safety;*
- *Undermining national security;*
- *Fracturing community cohesion;*
- *Reducing trust;*
- *Encouraging us to make decisions that could damage our health;*
- *Undermining our respect and tolerance for each other;*
- *Confusing our understanding of what is happening in the wider world; and*
- *Damaging our trust in our democratic institutions, including Parliament.*

19. These putative harms are extremely varied. Seeking to address them may not be compatible with international freedom of expression standards, as set out in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

20. Some of these harms correspond to areas of law where international law allows freedom of expression to be curtailed – 'risking public health'; 'threatening public safety'; and 'undermining national security' – so long as any limitations are necessary, proportionate and subject to legal certainty. Where the law in these areas is settled, it may be appropriate, under the duty of care model, to expect social media companies to mitigate the risk of unlawful activity by users of their platforms.

21. However, some of these harms relate to broad societal impacts that would be extremely difficult, if not impossible, to capture in law or regulation – 'reducing

trust'; 'undermining our respect and tolerance for each other'; and 'confusing our understanding of what is happening in the wider world'.

22. Some of the harms listed here should on no account form the basis of legal or regulatory restraints – 'threatening the UK's influence and reputation across the globe'; 'threatening confidence in public institutions'; and 'damaging our trust in our democratic institutions, including Parliament'. These are areas of public discourse which should be afforded the greatest latitude for freedom of expression.

23. Some of the harms described here undoubtedly pose a threat to democracy. However, others are *constitutive of* democracy. The White Paper does not acknowledge any distinction between these different forms of harm and does not show why it would be appropriate for government to intervene in democratic discourse.

24. The White Paper proposes that the regulator should adopt a code of practice setting out how companies should fulfil the duty of care in relation to disinformation. It suggests that the code should cover the following areas:

    - *'The steps companies should take in their terms of service to make clear what constitutes disinformation, the expectations they have of users, and the penalties for violating those terms of service.*
    - *Steps that companies should take in relation to users who deliberately misrepresent their identity to spread and strengthen disinformation.*
    - *Making content which has been disputed by reputable fact-checking services less visible to users.*
    - *Using fact-checking services, particularly during election periods.*
    - *Promoting authoritative news sources.*
    - *Promoting diverse news content, countering the 'echo chamber' in which people are only exposed to information which reinforces their existing views.*
    - *Ensuring that it is clear to users when they are dealing with automated accounts, and that automated dissemination of content is not abused.*
    - *Improving the transparency of political advertising, helping meet any requirements in electoral law.*
    - *Reporting processes which companies should put in place to ensure that users can easily flag content that they suspect or know to be false, and which enable users to understand what actions have been taken and why.*

- *Processes for publishing data that will enable the public to assess the overall effectiveness of the actions companies are taking, and for supporting research into the nature of online disinformation activity.*

- *Steps that services should take to monitor and evaluate the effectiveness of their processes for tackling disinformation and adapt processes accordingly.' (7.28)*

25. The White Paper also states that 'companies will be required to ensure that algorithms selecting content do not skew towards extreme and unreliable material in the pursuit of sustained user engagement.' (7.30)

26. The proposed code of practice does not suggest that the regulator should be responsible for removing democratically legitimate content. Nonetheless, we are concerned that, by listing such harms in the context of legislation, the government could create the expectation that the regulator should act against social media companies that provide a platform for legitimate democratic debate.

Online manipulation

27. The White Paper describes the threat of online manipulation as follows:

    'Propaganda and false information have long been used to persuade and mislead, but the internet, social media and AI provide ever more effective ways to manipulate opinion.

    The tolerance of conflicting views and ideas are core facets of our democracy. However, these are inherently vulnerable to the efforts of a few to manipulate and confuse the information environment for nefarious purposes, including undermining trust. A combination of personal data collection, AI based algorithms and false or misleading information could be used to manipulate the public with unprecedented effectiveness.

    The distinction between legitimate influence and illegitimate manipulation is not new. The government took action to prevent subliminal broadcast advertising in the Broadcasting Act 1990. The government gave the Independent Television Commission (replaced by Ofcom) a duty to ensure that licensed services complied with requirements not to include technical devices which convey messages or influence individuals without them being aware. We believe the government should make sure there are similar boundaries between legitimate and illegitimate practices online. The techniques and practices used are still emerging. We are developing a better understanding of the nature and scale of the potential problem and effective interventions.' (Box 13)

28. We agree that online manipulation of the kind described here may have harmful consequences. However, it is not yet clear how we might distinguish between

'legitimate' and 'illegitimate' influence. The example of subliminal broadcasting does not read across to online manipulation, which is not necessarily subliminal – or at least no more subliminal than conventional targeted advertising or political communications.

29. The White Paper does not suggest any measures to fulfil the duty of care in relation to online manipulation. We assume that this is because the government views the harm of online manipulation as a function of the harm of online disinformation, which is addressed above.

30. We reiterate our concern that, by listing such harms in the context of legislation, the government could create the expectation that the regulator should act against social media companies that provide a platform for legitimate democratic debate.

31. At the same time, we share the government's belief that political communications should be transparent and accountable, and that regulatory inconsistency should not allow bad actors to game the system.

32. Therefore, we recommend that the government should pursue these policy goals through a coherent legal and regulatory framework that applies appropriately both online and offline – working with existing regulators with a remit in this area, such as the Electoral Commission, the Information Commissioners Office, the Advertising Standards Authority, Ofcom, IMPRESS and IPSO – and not, in the first instance, through a parallel regulatory framework that applies only to some online communications.

Online abuse of public figures

33. The White Paper describes the threat of the online abuse of public figures as follows:

'In recent years we have seen a worrying rise in the amount of abuse, harassment and intimidation directed at those in public life. Much of this abuse happens on social media.

There are too many stories of public figures closing their social media accounts following waves of abuse.

This abuse is unacceptable – it goes beyond free speech and free debate, dissuades good people from going into public life, and corrodes the values on which our democracy rests.

The new regulatory framework will make clear companies' responsibility to address this harm.' (Box 14)

34. Whilst the abuse of public figures is undoubtedly a problem, it is not clear that there is a straightforward regulatory response. Nor is it clear where this abuse 'goes beyond free speech and free debate', except insofar as it engages existing legal standards in relation to harassment and hate speech.

35. Like the harms of disinformation and manipulation outlined above, the harm of 'abuse of public figures' does not map neatly onto existing legal or regulatory norms.

36. Both IMPRESS and IPSO apply regulatory codes that aim to mitigate any risk of harassment by a news publisher. The IMPRESS code also addresses the threat of hate speech against vulnerable groups. In addition, IMPRESS administers (in partnership with the Chartered Institute of Arbitrators) an arbitration scheme that allows members of the public, at no cost, to sue IMPRESS-regulated publishers under the laws of defamation, misuse of private information, breach of confidence, harassment and data protection.

37. The IMPRESS and IPSO schemes apply to companies that have chosen, on a voluntary basis, to subscribe to self-regulation. The White Paper, by contrast, proposes to apply a code of practice across the entire social media industry. This would, by default, apply to anyone who uses one or more of these platforms. Thus, the code would indirectly regulate the speech of all citizens and would engage their fundamental human right to hold, receive and impart information and ideas.

38. The White Paper suggests that the code should cover the following areas:

- *'For all users, including public figures, it is important that there are easy-to-use tools that allow them to take control over the privacy and visibility of their account and who is able to contact them.*

- *Tools companies can provide to help users experiencing abuse, such as the ability to mute, block or stay hidden from other users, and to manage and control access to particular services and content.*

- *Clear guidance in the company's terms of use on the type of activity which will be treated as unacceptable and the actions the company will take in response to such activity, which is available to users when they sign up to use the service.*

- *Measures to ensure that reporting processes are fit for purpose to tackle this harm, such as the ability to report a high volume of messages in bulk to reduce the burden on victims suffering from a campaign of online abuse, and a prompt to use the tools to block the other user while the report is being investigated.*

- *Services have effective and transparent processes for moderating this type of content and activity. Users are kept up to date with the progress of their report.*

- *Steps companies should take to ensure harms are dealt with rapidly, such as removing content which is illegal, blocking users responsible for illegal activity, enforcing and upholding the service's relevant terms and conditions and, where appropriate, supporting law enforcement efforts.*

- *Processes companies should have in place to ensure that users can appeal the removal of content or other responses, in order to protect users' rights online.*

- *Steps companies should take to limit anonymised users using their services to abuse others.*

- *Steps to prevent banned users creating new accounts to continue the abuse.*

- *Steps to ensure that users who are affected by abusive comments and activity are directed to, and are able to access, adequate support.' (7.37)*

39. We support the principle that the government should act to mitigate the threat of harassment and hate speech against all citizens, not just public figures. However, we believe that the government should take consistent steps to mitigate this threat, whether it occurs online or offline.

Conclusion to Part One

40. The harms described as 'threats to our way of life' include a blend of democratic and anti-democratic forms of discourse. By grouping them together in this way, the White Paper gives rise to two related concerns:

    - Firstly, that the regulator may be encouraged to act against companies that are providing a platform for legitimate democratic debate; and

    - Secondly, that the government may take insufficient action against the most serious forms of anti-democratic discourse, whether or not these manifest on social media platforms.

41. We recommend, therefore, that the government clarifies that the proposed regulator is a procedural regulator and not a content regulator; and that it will have no power to remove or downgrade content on a social media platform.

42. We also recommend that the proposed regulator should not impose a single content-related code across the entire social media industry. Instead, the regulator should ensure that all significant social media platforms:

- Adopt a code that meets minimum requirements in relation to illegal content;

- Take effective steps to enforce their code or codes transparently and consistently through self-regulatory arrangements (either at an individual company level or between companies acting at an industry level); and

- Are accountable to the regulator for their transparent and consistent enforcement of this code or codes.

43. To be clear: social media platforms should be free to adopt different codes, which set different expectations of their users, so that, for instance, one platform might provide an opportunity for robust political debate, subject only to the standards imposed by law in relation to defamation, harassment, hate speech and so on, whilst another platform might require users to display a high degree of courtesy to each other.

44. We also recommend that, where there is evidence of a threat to democracy and/or harm to individuals, in the form of abuse or the deliberate dissemination of false information with harmful intent; and where this threat is not adequately addressed under existing laws and regulations; then the government should consider whether to create new laws or enhance the powers of existing statutory regulators such as the Electoral Commission; the Information Commissioners Office and Ofcom.

45. In this way, the law can develop in an evidence-based way, targeted on the most serious harms, without creating a regulator with unduly sweeping or vague powers.

Part Two: Companies within Scope

46. The White Paper states that 'there are two main types of online activity that can give rise to the online harms in scope or compound their effects:

    - *'Hosting, sharing and discovery of user-generated content (e.g. a post on a public forum or the sharing of a video).*

    - *Facilitation of public and private online interaction between service users (e.g. instant messaging or comments on posts).' (4.2)*

47. The White Paper goes on to state that 'companies of all sizes will be in scope of the regulatory framework', which 'will include companies from a range of sectors, including social media companies, public discussion forums, retailers that allow users to review products online, along with non-profit organisations, file sharing sites and cloud hosting providers.' (4.3)

48. We refer to these activities in this submission as ‘platform-like’ services, as it is clear that the White Paper does not intend to limit the scope of the regulatory framework to platforms *per se*.

49. The White Paper states that ‘the application of the regulatory requirements and the duty of care model will reflect the diversity of organisations in scope, their capacities, and what is technically possible in terms of proactive measures’. The White Paper also states that ‘all companies will be required to take reasonable and proportionate action to tackle harms on their services.’ (4.5)

50. In effect, therefore, any company that provides platform-like services, however incidental those services may be to their dominant purpose or purposes, will fall within the scope of the regulatory framework. On the face of it, this will bring news publishers within scope, to the extent that they provide platform-like services (which almost all news publishers do).

51. The Cairncross Review highlighted the economic challenges facing publishers of news that serves the public interest, and recommended the creation of an ‘innovation fund’ to stimulate digital innovation in news publishing. It is in the nature of innovation that we cannot anticipate exactly what the future may bring. However, it is reasonable to assume that publishers will explore the potential to combine platform-like services with publisher-like services in new and exciting ways. For this reason, <u>any overlap that currently exists between news publishing and platform-like services is only likely to increase in the future</u>.

52. Furthermore, news publishers do not post content solely to their own sites. They also post content on platforms. It is difficult for platforms to distinguish between journalistic material and other forms of content – particularly in a context where journalistic material is not subject to statutory regulation, and therefore is not obliged to carry any kind of kitemark.

53. We note the Secretary of State’s assurances that the government does <u>not</u> consider news publishers to fall within the scope of this regulatory framework. We are grateful for the letter he sent us on 10 April, in which he stated that where online services ‘are already well regulated, as IPSO and IMPRESS do regarding their members’ moderated comment sections, we will not duplicate those efforts.’ He also stated that ‘journalistic or editorial content will not be affected by the regulatory framework.’

54. We understand from this that the Secretary of State proposes to exempt both (a) news publishers *per se*, where they provide platform-like services; and (b) journalistic and editorial material, where that is hosted by companies that <u>do</u> fall within the scope of the new regulatory framework.

55. We are concerned that this proposed ‘carve-out’ poses considerable challenges, whether it applies to news publishers and/or journalistic and editorial material.

A carve out for news publishers

56. In order to identify and exempt publishers from the regulatory framework, any legislation flowing from the White Paper would need to provide a viable definition of news publishers and/or journalistic and editorial material.

57. Unlike broadcasters, publishers of news in print and digital form are neither licensed nor subject to statutory regulation. As a result, there is no definitive list of news publishers in the United Kingdom and no settled definition of journalistic or editorial material.

58. News publishers are of course bound by a range of legal requirements, but they enjoy a qualified exemption from many of these requirements, for example in relation to privacy, defamation and data protection. These exemptions rely on open definitions that are in practice left to the courts to apply.

59. For example, section 12, paragraph 4 of the Human Rights Act 1998 asks the court to have regard to ‘any relevant privacy code’ when balancing the right to privacy against the right to freedom of expression. In practice, this means the code of a regulator that covers journalistic material and conduct such as IMPRESS, IPSO or Ofcom.

60. The Data Protection Act 2018 takes a similar approach. Schedule 2, paragraph 26 of the Act creates a qualified exemption from the data protection regime for the purposes of journalism. Once again, the Act does not define journalism, but asks a data controller to have regard to ‘any of the codes of practice or guidelines […] that is relevant to the publication in question.’ The codes of practice and guidelines listed in the Act are the BBC Editorial Guidelines; the Ofcom Broadcasting Code; and the Editors' Code of Practice.’[1]

61. Likewise, the Defamation Act 2013 does not define a ‘news publisher’ or ‘journalistic or editorial material’. When determining whether a defamatory statement was in the public interest, the Act simply asks the court to ‘make such allowance for editorial judgement as it considers appropriate (section 4, paragraph 4).

[1] IMPRESS has applied to the Secretary of State for the IMPRESS Code to be added to this list, in order to avoid any doubt that IMPRESS-regulated publications are also eligible for this qualified exemption. We understand that this application is being processed.

62. In all of these examples, the court is required to exercise judgement in determining whether or not a person is a news publisher, let alone whether that person's conduct is in the public interest.

63. In our view, this approach is not appropriate in relation to the new regulatory framework, because (a) it is increasingly difficult to distinguish news publishers from other content providers; and (b) the impact of mislabelling publishers will become much more serious when this involves sanctions such as personal criminal liability for the directors of companies within scope.

64. In the past, the courts were only asked to consider whether someone was a publisher in the context of specific litigation. The new regulatory framework will radically redraw the responsibilities and legal liabilities of platforms and platform-like services. Therefore, it will be important for companies and other stakeholders to know *at the outset* whether a particular company is or is not within scope.

65. In his letter of 10 April, the Secretary of State suggested that news publishers regulated by IPSO or IMPRESS would be exempt from the regulatory framework. This exemption is not set out in the White Paper, but we assume that, in line with the Secretary of State's assurances, it would be written into any legislation that flows from the White Paper.

66. Such an exemption would no doubt be welcomed by publishers that are regulated by IPSO and IMPRESS, but it would leave other publishers with an ambiguous status in relation to the regulatory framework.

67. Despite the recommendations of the Leveson Inquiry, publishers in the UK are not incentivised to submit to independent and effective self-regulation. Therefore, any social media platform that wishes to evade the new regulatory framework set out in the White Paper would – in theory – be free to redefine itself as a publisher, and thereby enter a regulatory blind spot.

68. Moreover, a blanket exemption for publishers that are regulated by IPSO and/or IMPRESS would create challenges of its own.

69. IPSO is an entirely self-regulatory body, accountable to the news publishers that are responsible for its funding, its rules and its powers. Membership of IPSO is open to news publishers at the discretion of the Regulatory Funding Company (RFC), a body that shares premises and personnel with the News Media Association (NMA), a lobbying organisation. There is no public framework to guarantee IPSO's independence or effectiveness as a regulator, or to ensure that IPSO only regulates news publishers.

70. Therefore, an exemption based on membership of IPSO would be inappropriate.

71. IMPRESS, by contrast, is accountable to the public, via the Press Recognition Panel (PRP), an arm's-length independent public body that audits IMPRESS's compliance with the criteria for independent and effective regulation set out in the Royal Charter on Self-Regulation of the Press.

72. To the extent that IMPRESS complies with the terms of the Royal Charter, membership of IMPRESS must remain open to all 'relevant' news publishers on fair, reasonable and non-discriminatory terms, as required by the Royal Charter, Schedule 3, criterion 23.

73. The meaning of relevant publisher is set out in Section 41 of the Crime and Courts Act 2013, which defines a relevant publisher as a person who, 'in the course of a business (whether or not carried on with a view to profit), publishes news-related material which is written by different authors, and which is to any extent subject to editorial control.'

74. Section 41 goes on to state that 'news-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the content of the material, how the material is to be presented, and the decision to publish it.'

75. The Act states clearly that 'a person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site'; and that 'the fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of [this] subsection'. In other words, platforms are not publishers, and vice-versa.

76. Section 42 of the Act defines 'news-related material' as 'news or information about current affairs, opinion about matters relating to the news or current affairs, or gossip about celebrities, other public figures or other persons in the news.'

77. To the extent that IMPRESS provides a form of regulation that has been successfully audited by the PRP (known as 'approved' or 'recognised' regulation), it can provide an assurance to the public that the publishers it regulates are (a) relevant publishers as defined in the Crime and Courts Act 2013 and (b) held appropriately accountable for their actions.

78. The PRP assesses the IMPRESS Code against minimum criteria, but it has no control over the Code or its implementation by IMPRESS. The PRP's interventions are limited to systemic failures that engage the recognition criteria. There are robust safeguards to prevent political interference.

79. Any other self-regulatory body, such as IPSO, can also apply to the PRP for recognition under the criteria set out in the Royal Charter. There is no limit on the number of self-regulatory bodies that may be recognised under this framework,

which was carefully designed to ensure that news publishers remain entirely free of state control, whilst their regulators are subject to clear standards of independence and effectiveness. This creates an exemplary model of regulation which is simultaneously independent and effective, and which allows for a plural media ecosystem.

80. The only practicable way of exempting news publishers from the new regulatory framework would be by reference to their membership of a PRP-approved regulator in general, and not to any regulator in particular.

81. In addition, the PRP framework provides an example of procedural media regulation, which should be used as a model for the new social media regulatory framework.

Conclusion to Part Two

82. The White Paper proposes to impose statutory regulation on all companies that provide platform-like services. On the face of it, this would include news publishers. However, the Secretary of State has signalled his intention to exempt news publishers and journalistic and editorial material from the new regulatory framework.

83. We are grateful for this, but we remain concerned that this carve-out will be impossible to achieve in practice without incurring perverse consequences.

84. There is no definitive list of news publishers and no settled definition of journalistic and editorial material on which the new regulator can rely. In the absence of a statutory definition, the regulator may be forced to rely on self-definitions by companies that present a blend of platform-like services with journalistic and editorial material.

85. This creates the risk that some platforms might choose to redefine themselves as publishers, in order to take themselves outside the scope of the regulatory framework. This would be a perverse consequence of a policy that is intended to make the UK ‘the safest place in the world to go online’ (Executive Summary, 1).

86. Conversely, some news publishers might choose not to develop platform-like services, even where this is necessary for their commercial viability. This would be a perverse consequence of a policy that is intended to make the UK ‘the best place to start and grow a digital business’ (Executive Summary, 1).

87. Either way, there is a risk that some social media platforms would evade regulation, by redefining themselves as news publishers and entering a regulatory blind spot; or that some news publishers would be mislabeled as platforms, and exposed to double regulation.

88. We recommend, therefore, that, rather than seeking to create a carve-out for news publishers, the government should tighten the scope of the new regulatory framework, so that it applies only to significant social media platforms, defined as companies for which providing a platform for user-generated content is a dominant purpose.

89. Alternatively, we recommend that news publishers should be exempt from the new regulatory framework only if they belong to a regulator approved by the Press Recognition Panel as meeting the criteria for independent and effective regulation as set out in the Royal Charter on Self-Regulation of the Press.

90. Either way, the PRP framework for procedural media regulation should be used as a model for the new social media regulatory framework.

91. We would be happy to provide further information or ideas in relation to any of the points raised in this submission.