

## Written evidence submitted by IMPRESS (OSB0092)

### Executive Summary

1. IMPRESS is an independent self-regulatory body for news publishers in the United Kingdom. As of 16 September 2021, IMPRESS regulates 106 news publishers, which are collectively responsible for 183 publications and reaching over 16 million monthly readers. 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. 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 Bill; and (c) IMPRESS itself may also be directly or indirectly affected by these proposals.
3. We agree with the principle of an exemption for news publishers and treatment of news content.
4. We do not agree that these two mechanisms, as they are presently set out in the Bill, are likely to meet the broader policy objectives of reducing harm and ensuring the freedom of expression.
5. There are four reasons for the view above: a) the threshold for what amounts to a recognised news publisher and journalistic content is too low; b) this treats unaccountable and harmful 'journalism' as equivalent to publicly accountable and high-quality journalism c) bad actors will be incentivised by this law as a consequence and will seek to manipulate the new scheme to their advantage d) this will perpetuate the spread of harmful mis/disinformation and not address harm to users.
6. We consider that the two mechanisms to address news publishers and journalism, as they currently stand, must be rectified to ensure that the standards those news publishers must meet to benefit from the exemption are raised.

### Introduction

Journalism is integral to the functioning of our democracy, and it must be protected from undue restriction by government or political interference, and from the unfettered commercial interests of those with a concentration of market power in the communication space. Presently, this market power sits with social media platforms, which determine by

and large what journalism is surfaced on its services for users. As a significant proportion of the British public now receive their news from social media platforms<sup>1</sup>, there must be some regulation of the systemic public interest role social media platforms play in distributing news.

The objectives of the Online Safety Bill are two-fold: a) to reduce harm to users and b) to ensure the freedom of expression. We are pleased to see that the Government has considered how journalism will be impacted by and protected under this Bill. This will have a significant impact on how social media companies conduct themselves, and further, how users interact with news online.

Two mechanisms are set out in the Bill to meet the objectives above. Firstly, recognised news publishers will not be obligated to meet the duties set out in the Bill even where they enable user engagement on their services, by being excluded from the definition of an in-scope service provider. Secondly, service providers in scope will have to give due regard to journalism content where it appears on their services, including by having expedited appeals processes for journalism content decisions. Provisions are also included regarding the protection of democratic content and freedom of expression.

We do not agree that the two mechanisms noted in the Bill, are likely to meet the broader policy objectives for four reasons, set out below. However, we do not consider that the protections should be abandoned; rather, we consider that small but pragmatic amendments to these provisions will better align them with the policy objectives.

The four key reasons for these necessary changes are: a) the threshold for what amounts to a recognised news publisher and journalistic content is too low; b) this treats unaccountable and harmful ‘journalism’ as equivalent to publicly accountable and high-quality journalism; c) bad actors will be incentivised by this law as a consequence and will seek to manipulate the new scheme to their advantage; d) this will perpetuate the spread of harmful mis/disinformation and not address harm to users.

### **How the Bill currently treats News Publishers and Journalistic Content**

The UK already has an approved system of self-regulation of the press agreed by Parliament and enshrined in law by the [Royal Charter on self-regulation of the press](#), open to all publishers, which already defines the characteristics of a “recognised” news publisher; specifically in the Crime and Courts Act 2013. In sections 34 to 40, “relevant publisher” means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—(a) which is written by different authors, and (b) which is to any extent subject to editorial control. “News-related material” means— (a) news or information about current affairs; (b) opinion about matters relating to the news or current affairs; or (c) gossip about celebrities, other public figures or other persons in the news. Further, a person who is not a “relevant publisher” as a result of paragraph 8 of that

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<sup>1</sup> Around half (49%) of UK adults claim to use social media for news and 49% also say they use ‘other websites and apps’ - i.e. any non-social media sources of news, such as websites and apps of news organisations, newspapers or other apps (OFCOM, News Consumption Report, 2021).

Schedule (micro-businesses) is nevertheless to be regarded as such if the person was a member of an approved regulator at the material time.

Any regulation of news in the digital space needs to properly account for the existing systems of law and regulation, to avoid overlaps, loopholes, and inconsistencies. It would be entirely reasonable and proportionate for the Government to adopt this definition that already exists in law, for the purposes of this Bill. Instead, it proposes a new definition titled 'recognised news publishers', and those that meet the definition are those who the Government intends to be exempt from the new law.

A recognised news publisher under this Bill:

- (a) has as its principal purpose the publication of news-related material, and such material (i) is created by different persons, and (ii) is subject to editorial control;
- (b) publishes such material in the course of a business (whether or not carried on with a view to profit);
- (c) is subject to a standards code;
- (d) has policies and procedures for handling and resolving complaints;
- (e) has a registered office or other business address in the United Kingdom;
- (f) is the person with legal responsibility for material published by it in the United Kingdom, and;
- (g) publishes— (i) the entity's name, the address mentioned in paragraph (e) and the entity's registered number (if any), and (ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of that person's registered or principal office and that person's registered number (if any)).

It is clear the Government intends to mimic aspects of approved press regulation by mirroring some of the characteristics of the news publisher set out in the Crime and Courts Act 2013. The Bill also includes the requirement that a news publisher must have a standards code and policies and procedures for handling and resolving complaints. However, the Bill does not set out the form or manner of these requirements. There is no minimum threshold these standards or policies must meet and, importantly, no oversight of their implementation to ensure these standards or policies are being adhered to. In effect, this will amount to a window dressing exercise for those websites that wish to demonstrate that they are a news publisher for the benefit of the exemption. Most news publishers would or will be able to easily meet these criteria by merely updating text on a webpage. Reviewing the criterion will amount to a rubber stamp exercise, and thereafter the news publisher can proceed without any further checks and balances on their conduct.

**The Bill lowers the thresholds for professional journalism and increases risk of harm to the public**

The exemption criterion offers little to no protection to the public and cannot ensure that they will be free from harm when they engage with news and information on social media platforms. Ofcom's public surveying found that misinformation is the most prevalent harm the UK public encounters online, far outstripping their interaction with violent, racist or sexual content.<sup>2</sup> The prevalence of misinformation is highest on Facebook; but news aggregators still account for 7% and online mid-market tabloids 5% (this is at least equivalent to WhatsApp, Instagram and YouTube). There have been recent high-profile examples of where the social media platforms (of their own volition) have had to intervene to prevent news publishers with high brand recognition (and who would already meet the Bill's criteria) from spreading harmful misinformation.<sup>3</sup> According to recent polling (August 2021) by Compassion in Politics, Clean Up The Internet and Glitch: 1 in 5 Britons think that misinformation should be the priority harm addressed by the Bill; 62% want to see social media platforms act to prevent the circulation of misinformation and fake news; the same proportion believe social media platforms should be preventing the spread of hate on their platforms.

Importantly, 48% of the public believe it would be unfair to create exemptions in the Online Safety Bill for journalists. The government would need to make a strong case for why journalists should be exempt in light of such strong public opposition to such a proposal; if journalists have more freedom to engage in hate and misinformation online than the average user under the proposed framework with no checks and balances on these practices, this will significantly undermine public confidence in the proposal.

It is difficult to square the objectives of this Bill with the evidence of harm, the public's views, and its current treatment of news publishers. Platforms and recognised news publishers would be held to different regulatory benchmarks by this Bill, creating gaps where harmful misinformation can thrive. The Bill does not set out a clear roadmap for how the most prevalent online harm to the public (misinformation), will be dealt with by a sector (news publishers) which shares an equal level of responsibility for its prevalence, as the targets of the Bill (social media companies).

Under the architecture of this Bill, not only would mitigating harmful misinformation shared by news publishers not be required by social media companies, but the Bill also actively disincentivises social media platforms from removing harmful misinformation where it is regarded as 'journalistic content from recognised news publishers', lest they fall foul of provisions regarding the treatment of journalistic and democratic content. Social media companies will have to account for this in system design, so one likely outcome is that systemic processes and development of present and future algorithms will simply be designed away from managing content presenting as journalism. This under capture will have serious negative consequences for the general health of the information space.

### **The Bill creates false equivalence between accountable and unaccountable news sources**

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<sup>2</sup> 23% of people surveyed had encountered misinformation, compared to 6% who had encountered violent content or videos and 3% who had encountered sexual or pornographic content (OFCOM, Online Nation Report, 2021).

<sup>3</sup> <https://www.pressgazette.co.uk/google-blocks-advertising-on-piers-morgan-mail-online-simone-biles-column-over-racist-comments/> and <https://edition.cnn.com/2021/08/02/media/sky-news-australia-youtube-suspension-intl-hnk/index.html>.

As above, the UK already operates a successful system of approved press regulation, where hundreds of titles operate in the public interest and their 16 million readers are protected from harm.

Publishers who adopt approved self-regulation must not only adhere to ‘a standards code’, but one which is recognised in law as balancing the freedom of the press with the rights of individuals; and one which must deal with inaccuracy, discrimination, and press intrusion. Further, publishers must demonstrate to the regulator that they have internal governance systems in place to manage editorial and ownership conflicts, handle complaints and review compliance, and they must report annually on their complaints and compliance failures to the regulator for oversight. Finally, they are contractually obligated to submit to free arbitration to ensure members of the public have a legally binding option for redress, to ensure access to swift justice and alleviate an already overburdened justice system. IMPRESS has seen a 30% uptake in the use of its regulatory services this past financial year – demonstrating the public are increasingly engaged in utilising regulatory services for addressing inaccuracy and other harmful press practices.

However, these publishers only represent 15%<sup>4</sup> of the news market, as approved regulation has actively been disincentivised by this Government, relegated in favour of ongoing political interference in press regulation. The majority of the news market sits outside of any form of independent and effective self-regulation. This already creates an uneven playing field, where a significant minority of the market are publicly accountable, and the remainder are free to pursue their agendas with impunity. The most significant loser on this uneven playing field is the public, who are not encouraged to engage critically with the legitimacy of their news sources, and have no option for redress where they are harmed or encounter inaccurate content and misinformation.

This Bill could redress the lack of incentives for publishers to adopt approved regulation, which would level up the professional accountability of the industry and thereby improve the quality of the news market. However, provisions on existing press regulation are completely absent from the Bill and the explanatory notes. The irony is that the Bill sets out the most significant effort in recent history by any government to effectively license news publishers and journalism. Ofcom, as the nominated regulator, will have to assess news publishers for their compliance with the s 40 criterion of the Bill for the purposes of excluding them – this amounts to a government body acting as a certifier of news publishers and, their content, as journalism. Publishers must seek to meet these criteria or be subject to Ofcom oversight. So, while press regulation is an integral part of this Bill, it is not transparently framed as such.

As it stands, this Bill treats unaccountable non-regulated news publishers as equivalent to those who do submit themselves to independent and effective oversight. There would be two different and competing definitions of news publishers under law which offer different incentives and protections. This lack of coherence requires careful pre-legislative and parliamentary scrutiny. The effect this will have on the quality of news output will be even

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<sup>4</sup> 15% of registered news market; 5% of news brands and 1% of commercial market share/turnover.

more significant. As the Bill criterion sets a lower standard than approved regulation it is likely to become the benchmark by which news quality is assessed, driving down overall standards across the press industry. We are concerned that this real risk is not accounted for in the Bill and must be rectified.

### **The Bill admits bad actors into the scheme**

As IMPRESS and other civil society and advocacy organisations have raised, the low thresholds to the scheme are likely to incentivise bad actors who will exploit it to their advantage and use the “recognised news publisher” exemption as a shield to host harmful content and harmful user engagement on their platforms to gain a competitive advantage in the social media space.

It is very clear, on the face of the Bill, that any bad faith actor could set up a news website tomorrow, publish their own code of conduct and complaints process and be exempt from any future legislation. This gives little to no protection to the public. The law should not create loopholes whereby bad faith actors are encouraged to use the law to perpetuate harm. Serious consideration should be given to building in safeguards to ensure the future legislation cannot be exploited for malicious purposes. It is important for the integrity of the profession and the information ecosystem that journalism only be able to benefit from additional legal protections where it is publicly accountable.

### **The Bill does not deal with misinformation/disinformation**

Social media platforms have a critical role to play at a systemic and content level in the distribution of and engagement with information. While inaccuracies about innocuous subjects are unlikely to require regulatory intervention, inaccuracy about matters integral to civic participation and public health and safety have profound effects on social cohesion and daily life. There is plenty of documented evidence of harm that stems from inaccurate information, particularly at scale and enabled by system design. The Institute for Strategic Dialogue in a recent study concerning Germany and Covid-19 information, were able to find 400,000 pieces of false Covid-19 information from more than 1,000 social media users and found that targeted influencing by these actors of the public vaccination debate has been successful in parts of the population.

There is no law in the UK that criminalises the publication of inaccurate information (outside of civil liability for reputational inaccuracy, i.e., defamation or malicious falsehood), whether the publication is intentional or accidental. Statutory broadcast regulation and approved self-regulation offer the public meaningful protection from the harm of inaccuracy when and if published by licensed broadcasters or regulated publishers. This Bill is an opportunity to address the harms that flow from system design of platforms, but it is not clear how the Bill will regulate platforms to deal with falsehoods from unregulated sources (including exempt news providers) and at scale.

This Bill is also an opportunity to raise the standards of trusted news sources available to the public, at a time when it is desperately needed. However, it is difficult to square incentivising platforms to take action to reduce harm from mis/disinformation with the

absence of clear legal duties to do so and alongside the news exemption as it stands. Rather, platforms are likely to take a highly cautious approach to taking any steps to redress information quality, lest they fall foul of the triad obligations regarding freedom of expression, democratic content, and journalist content. The effect of this is that mis/disinformation is not going to be addressed by this Bill, nor by any other legal mechanism available in the UK.

### **Recommendations**

- We agree with the principle of an exemption for news publishers and treatment of news content.
- We consider that the two mechanisms to address news publishers and journalism, as they currently stand, must be rectified to ensure that the standards those news publishers must meet to benefit from the exemption are raised. This is based on the evidence of the public's exposure to harm, particularly harmful misinformation.
- The provisions should include higher thresholds and incorporate accountability and oversight.
- Such amendments would effectively plug the gap the low thresholds would create to allow harmful misinformation to perpetuate. It would also ensure that there is some accountability or backstop whereby news publishers are at least held to the equivalent standards of in scope platforms.
- Such amendments would better protect the public from harm.

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