Submission by the Joseph Rowntree Reform Trust Limited to HM Government on the Leveson Inquiry and its implementation

1. About Joseph Rowntree Reform Trust Limited

1.1. The Joseph Rowntree Reform Trust Limited (the Trust) is not a charity and pays corporation tax. It was set up by Joseph Rowntree with the express intention that it should be able to act politically, outside the limits of charity law.

1.2. In his founding memorandum for the Trust, Joseph Rowntree presciently warned that "*perhaps the greatest danger of our national life arises from the power of selfish and unscrupulous wealth which influences public opinion largely through the press*."

1.3. In its earlier life, the Trust owned newspapers, or parts of them, to rebalance this unscrupulous power. In recent times, the Trust has, by contrast, supported initiatives and political campaigns to bring about a free, plural and accountable press in the United Kingdom.

1.4. In the media field, the Trust has made grants to, among others, Media Standards Trust, the Media Reform Coalition, Hacked Off and IMPRESS.

1.5. The Trust also has a strong track-record of supporting campaigners who defend civil liberties, and resist state power. The Trust presently funds campaigns against the surveillance state, in favour of strengthening digital rights, and in defence of the Human Rights Act. We are therefore unusually well-placed to see the delicate balance which needs to be struck between upholding fundamental freedoms (not least of expression and of the press), and the protection of individuals whose capacity to challenge the power of the press is limited by their incomparably smaller voice, and lesser wealth.

1.6. We therefore agree with Lord Justice Leveson that "*the press is [vital] – all of it – as the guardian of the interests of the public, as a critical witness to events, as the standard bearer for those who have no one else to speak up for the*m" and that to uphold its freedom "*the press is [correctly] given significant and special rights in this country*" And we also agree that "*with these rights…come responsibilities to the public interest: to respect the truth, to obey the law*".

1.7. The experience of the public, and particularly of victims of press intrusion, in recent decades has been not just of an unscrupulous influence of opinion, but of a ruthless drive to sell newspapers no matter whose individual rights to privacy, to decency and to dignity are violated in the process.

1.8. We believe Leveson's recommendations – implemented in their entirety – are a route map to achieving the right balance between upholding a free press in the United Kingdom and keeping that press accountable to the public it serves, without risk of interference by Ministers or politicians of any hue.

2. Section 40

Background and political case

2.1. The Trust notes the express and incontrovertible will of Parliament (and indeed the public) for the Leveson system of independent self-regulation of the press to be implemented in full. When it is implemented, we believe it has every potential to be a success. We therefore support option (b) – the Government should fully commence Section 40 now.

2.2. Plainly, the Leveson recommendations were carefully designed to work as a package. Section 40 is an integral part of that package, and we therefore expressly reject Option (c) – repeal. In this connection, we endorse the words of the then Secretary of State, Maria Miller, who in moving amendments to the Crime and Courts Bill in March 2013, which added Section 40 (among others) to the legislation said, "*Let us be clear: the new provisions on the awarding of costs, coupled with the provisions I have set out on exemplary damages, provide a powerful incentive to join the regulator and for disputes to be resolved through arbitration that meets the standards set out in the royal charter*."[1]

2.3. Meeting the standards set out in the Royal Charter, agreed on a cross-party basis in 2013, remains a priority for the Trust. These standards can only be upheld if there are strong incentives to join a recognised regulator. Section 40 was passed by Parliament on the understanding that it would be commenced, as an integral part of the complete, integrated package of reforms supported by the cross-party agreement. The group of amendments which placed it into the Crime and Courts Bill was agreed to by 530 to 13 (a majority of 517).[2] Formally, Section 40 (debated by the House of Commons as Amendment 27A) was agreed unanimously without a vote. On the same day, Theresa May, then as Home Secretary, concluded debate on the legislation, saying "*The Bill, of course, now goes back to the other place with amendments on press conduct, and I am pleased that these have now been agreed by those on both sides of the House. On that final note, I commend the Bill to the House*."[3]

2.4. The Government's foreword to this consultation boasts of £50m of public money having been spent to "*ensure the transgressions of the past cannot be repeated*". This figure is misleading in that it covers all the costs attached to the various criminal proceedings which have taken place in individual cases, which would (or ought to have) occurred whether or not the Leveson Inquiry had been set up.

2.5. However merely spending money is in any case insufficient. Real and lasting change has to follow. A 15-month judicial inquiry, receiving evidence from hundreds of expert witnesses, recommended that new cost rules to incentivise publishers to join a recognised regulator should be put in place. They have been legislated for, and should now be commenced without delay.

[1] HC Deb, 18 March 2013, Col. 702
[2] HC Deb, 18 March 2013, Division 192, Col. 727
[3] HC Deb, 18 March 2013, Col. 756

Impact on the efficacy of the regulatory regime if Section 40 is not commenced

2.6. Failure to commence Section 40 would amount to a tacit endorsement of non-independent self-regulation by IPSO; essentially, no advance on the position prior to the Leveson Inquiry, during which the discredited Press Complaints Commission was repeatedly used as a shield against a more effective regime.

2.7. This would represent a clear failure of the whole Leveson process in the name of mollifying the industry. It should also be noted that Leveson made extensive efforts to engage with and secure support from media proprietors themselves during his Inquiry. These are referred to at length in Part K, Chapter 2 of the Leveson report. Proposals from Lords Hunt and Black – essentially on behalf of the industry leadership – were demolished by Leveson in Part K, Chapter 3, not least for their inadequacy in protecting the public as well as the press interest, and in demonstrating independence from the industry.

2.8. The institution by the press of the Independent Press Standards Organisation (IPSO) plainly demonstrates too that alternatives to the Leveson regime, proffered by the industry, are inadequate.

2.9. Analysis undertaken by the Media Standards Trust[4] in 2013 showed that the IPSO failed to meet 20 of the 38 Leveson recommendations in respect of independent self-regulators. We submit that it could not reasonably be designated a recognised regulator by the Press Recognition Panel, and – of course – in that same knowledge it has not sought recognition.

2.10. More recent analysis (2015), by Hacked Off, of IPSO's record as a regulator, shows that IPSO's inception has brought about no substantive advance on the position endured by victims of press intrusion during the life of its predecessor, the Press Complaints Commission (PCC). *The Failure of IPSO*[5] is a damning dossier of press intrusion and defamation, and of the limited redress victims still get. The PRP will doubtless have noted the derisory scale and prominence of "corrections and clarifications" IPSO has directed where a story is proved to be wrong.

2.11. The refusal of the IPSO member publishers to set up, or join, a regulator capable of being recognised by the Press Recognition Panel (PRP) is particularly disappointing, given that many of the same publishing groups comply with a similar system of independent self-regulation in the Republic of Ireland.

2.12. Amendments to Section 40 (Option (d) or (e)), or continued 'review' (Option (a)) would represent the very government interference Ministers say they are keen to avoid.

2.12.1. Option (a) leaves a powerful tool in the hand of the Secretary of State – to commence Section 40 if the press does something the Government dislikes.

[4] Media Standards Trust, *The Independent Press Standards Organisation (IPSO): an assessment*, Nov 2013
[5] Hacked Off, *The Failure of IPSO*, September 2015

2.12.2. Options (d) and (e) abandon the principle of cross-party co-operation in favour of freelancing by the Conservative Party while it is in power. This option might create an incentive for another party, once in office, to alter the regime again solely on its own initiative, thereby 'weaponising' press regulation as a political tool.

2.13. Additionally, we do not believe that – as the present Secretary of State told the DCMS Select Committee on 24 October 2016 – we can expect a regulator to live up to the standards set out by the Press Recognition Panel without actually applying to the Panel for recognition. We find extraordinary the Secretary of State's contention that these standards might be judged by "public opinion and…Select Committee opinion"[6], and in the case of the latter would see this as an unacceptable political interference with the press. If a regulator proposes to live up to the standards set out by the PRP, it surely has nothing to fear in applying for recognition, and nothing to gain in failing to do so.

2.14. Only forging ahead with the clear, cross-party agreement – and the principle that change should only ever even be considered, on the same basis as the Royal Charter, by two thirds majority – can both do justice to press victims, and ensure regulation remains independent of government and day-to-day political considerations.

Impact on the press if Section 40 is commenced

2.15. There is a presumption in the consultation document that newspapers will not sign up to a recognised regulator, even with the Section 40 incentives in place, and that therefore many of them will be subject to a flood of baseless, but expensive, actions in the courts.

2.16. However, it was the express intention of the cross-party agreement in 2013, and of the Royal Charter, that newspapers ***should*** join an independent, recognised self-regulator. This policy objective remains, and is the simple remedy for any publication concerned that it might be the subject of vexatious, expensive actions. They need only join IMPRESS (or, for that matter, work with others to set up a competitor, recognised regulator) to enjoy the protections offered.

2.17. We believe the Government should be alive to the possibility that local newspapers are being used as a shield by the large media groups which own them. Since local press has a better reputation than national press, it is in these groups' interests to protect poor practice in their national titles by opining about the financial risks to smaller, local titles. In fact, the Royal Charter protects small titles from financial damage, so long as they are members of a recognised regulator – the clear policy intention of the legislation enacted in 2013.

[6] House of Commons Culture, Media and Sport Select Committee, *Oral evidence: Responsibilities of the Secretary of State*, *HC 764*, Q43 and Q50.

2.18. We note and endorse also the strong view of the Press Recognition Panel itself, which says "*urgent action needs to be taken if the recommendations of the Leveson Report are to be given a chance to succeed. Section 40 should be commenced in England and Wales, and the Scottish Government and Northern Ireland Executive should consider what further action is required to bring about success as contemplated by the Charter. Until this happens free speech and public interest cannot be safeguarded.*"

2.19. In considering whether to commence Section 40 – and thereby provide a considerable incentive to newspapers to join a recognised regulator – it is the public interest which the Government should bear in mind. That interest is plainly served by having a majority of the press subject to an incentive to operate within a system of low-cost arbitration, as an alternative to expensive court actions which are out of the reach of most ordinary citizens.

Likely incentive to publications to join a recognised regulator if Section 40 is commenced

2.20. It is the nature of an incentive that the effect cannot be definitively known until it is in place. However, we can be clear that – at present – the success of IMPRESS as a recognised regulator (and of any potential competitor) is compromised by the failure to enact Section 40. Since only 30 publications are presently members of IMPRESS, it is fairly obvious that the incentives presently in place are insufficient.

2.21. The Government could consider instituting a cross-party review – to coincide with the Press Recognition Panel's first periodic review of IMPRESS itself – to examine the operation of the whole incentives system, and in particular of the provisions on cost awards and exemplary damages. We believe the dire predictions made by the press about the consequences of these are over-stated – and all could be remedied by joining IMPRESS – but this would be a way for the Government to recognise industry concerns, and then to review the position as it had actually unfolded post-implementation, but during this Parliament.[7]

3 Part 2 of the Leveson Inquiry

3.1 The Trust believes that the terms of reference for Part 2 have not been covered by Part 1, and by subsequent police investigations. The decision to handle the two Parts separately was made deliberately and for explicit reasons and nothing has changed to make this decision obsolete.

3.2 While the criminal investigations which delayed the commencement of Part 2 will have shone some light on particular cases, Part 2 remains a crucial part of the process to ensure that systemic abuse, potentially endorsed at the very top of powerful media organisations, is exposed.

3.3 There a number of key points which the Government should consider in choosing between Options 1 and 2 in the consultation:

[7] Paragraph 30 of the Leveson Report executive summary recommends reviews of certified (recognised) regulators every three years, so the first of these would take place during 2019.

3.3.1 The outcome of Leveson Part 2 could have a profound effect on questions of media plurality in the UK, since the Part 2 terms expressly include looking at unlawful and improper conduct in New International. These determinations are crucial for Ofcom to have in making any new assessment of whether James Murdoch, the Chairman of Sky, is "fit and proper" to hold a broadcast licence.

3.3.2 The Dowler Family, and the family of Daniel Morgan, both of whom were central to the impetus for the Leveson Inquiry were promised that Part 2 would take place. As then Prime Minister David Cameron put it in the Commons, "*One of the things that the victims have been most concerned about is that part 2 of the investigation should go ahead—because of the concerns about that first police investigation and about improper relationships between journalists and police officers. It is right that it should go ahead, and that is fully our intention.*"[8] The Government also told Parliament that it remained committed to Leveson Part 2, once criminal investigations were concluded, as recently as January 2016.[9]

3.3.3 Mr Justice Mann found in his judgement in *Gulati vs MGN Limited* that executives from that group misled Part 1 of the Leveson Inquiry.[10] The existing terms of reference for Part 2 will allow misleading statements about criminal matters of this kind properly to be investigated.

3.3.4 Additionally, witnesses at Part 1 of the Inquiry were told they could not ask particular questions because the issues concerned would be dealt with during Part 2. It is therefore a matter of justice that the second part of the Inquiry should take place.

4 Conclusions

4.1 The Joseph Rowntree Reform Trust strongly supported the establishment of the Leveson Inquiry into the culture, practices and ethics of the press – a matter which had concerned our founder at the turn of the twentieth century. We do not regard the Inquiry as concluded without Part 2 having taken place.

4.2 Part 1 of the inquiry was diligently undertaken, with 15-months of evidence, followed by 2000 pages of reporting, and a lengthy, cross-party process to agree implementation. This ten-week consultation is not a substitute for that process, nor should its outcome be to derail the recommendations made.

4.3 The Trust strongly supports proceeding with implementation of the Leveson Inquiry's Part 1 recommendations, the subsequent cross-party process of decision-making and agreement, and the establishment of Part 2.

[8] HC Deb, 29 November 2012, Col. 458
[9] HL Deb, 26 January 2016, Cols 1150-1152
[10] See paras 213(f)(i) and (ii), High Court of Justice, Chancery Division, Gulati vs MGN Limited before Mr Justice Mann

4.4 The industry's continued resistance to any form of independent accountability is a fundamental failure to move with the times, and the very reason the Government must press ahead with implementing Leveson's recommendations in full. In doing so, Ministers would be recognising that self-regulation with independent oversight is no more a threat to press freedom than the many similar professional regulatory regimes which operate in the same way are to their industries.[11]

4.5 In recognising that a free press is a fundamental guardian of a democracy, Leveson's task was to ask "who guards the guardians?". The unscrupulous use of press power, abhorred by our founder, has over decades shown that the answer cannot be "no-one".

4.6 As Leveson himself put it on launching the report, "*this is the seventh time in less than 70 years that these issues have been addressed. No one can think that it makes any sense to contemplate an eighth.*"[12] Allowing the Leveson process to collapse, by removing crucial incentives to join a recognised regulator, and by truncating the Inquiry at a half way stage, will inevitably lead the industry to conclude that it remains uniquely beyond reproach.

4.7 The Government has within its grasp a solution which will uphold press freedom, with self-regulation which is independent both of the industry and politics. Bringing Section 40 into force, and allowing the Leveson Inquiry to conclude through its promised second stage, represent the best ways to seize that opportunity and to do justice to victims of press abuse in the process.

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[11] See Sir Walter Merrick's lecture to the LSE, 21st January 2016, for a comprehensive account of self-regulating industries, whose regulatory bodies are subject to independent oversight.
[12] Lord Justice Leveson, Inquiry report launch, 29th November 2012