



**Submission by the Press Council of Ireland and Press Ombudsman
to the Future of Media Commission**

SUMMARY

Since our establishment in 2008 we have been the regulatory body for the 15 national newspapers (including the Irish editions of UK titles), 55 local newspapers, 17 magazines, 12 student publications and 17 online-only news publications. We are given statutory recognition in Section 44 and Schedule 2 of the Defamation Act, 2009.

We are indirectly financed by the press industry but are independent in our activities both of the press industry and the Government. Our current annual budget is about €350,000.

Our member publications are committed to a Code of Practice. We receive about 350 complaints a year involving breaches of the Code. We provide a free, fast and fair means of providing complainants with a means of redress.

Our members provide a public service within the definition provided by your Commission. This has been particularly the case in the period of the COVID-19 pandemic. We ask that you take account in your deliberations of the difficulties they are currently facing. Among the main difficulties are firstly, the long delay in the much needed reform of the Defamation Act, 2009, secondly, the threat to informed public debate by the unregulated dissemination of information by the social media and thirdly, the threat from the same sources to the financial structure of the press because of the huge inroads made by these media into advertising revenue which traditionally went to the press.

The continuation of the contribution which the press has made to democracy in Ireland is under threat and we look to the work of your Commission and subsequently to Government action to avert this threat.

Introduction

The Press Council of Ireland and Office of the Press Ombudsman welcome this opportunity to make a submission to the Future of Media Commission. A well-functioning democracy requires a vibrant independent and diverse media. An informed citizenry with access to reliable information and balanced debate is an essential element in democratic society. The media (print, broadcasting and online) plays a crucial role by providing news, analysis, context, background, commentary and debate.

Press Council of Ireland and Office of the Press Ombudsman

The Press Council of Ireland and Office of the Press Ombudsman were established under the Companies Acts, and in accordance with the Constitution of the Press Council of Ireland, as an independent regulatory body.

In their operations, policies, and in their application of the Principles of the Code of Practice, the Press Council and the Office of the Press Ombudsman are independent both of the press industry and of government.

The finances of the Press Council and of the Office of the Press Ombudsman, including funding, premises, and staffing are provided for by the Administrative Committee of the Press Council, which is chaired by an independent member of the Council. The members of the Administrative Committee are drawn from Newsbrands Ireland, Irish editions of UK titles, Local Ireland, Magazines Ireland and the NUJ.

Each member publication of the Press Council is levied by the Administrative Committee in accordance with its circulation to meet the funding requirements of the Press Council and the Office of the Press Ombudsman.

The Press Council is responsible for the oversight of the professional principles embodied in the Code of Practice, and with upholding the freedom of the press.

The has 13 members, seven of whom are independent of the interests of media owners and publishers, who are appointed by an independent Appointments Committee following public advertisement, one of whom serves as Chairman. The remaining six members of the Press Council are drawn from the press industry.

The Press Ombudsman is appointed by the Press Council following a public competition and is independent of the Press Council in his function as Ombudsman. He receives complaints from members of the public and seeks to resolve them by conciliation to the satisfaction of everyone concerned. Where conciliation is not possible the Press Ombudsman will make a decision on whether or not the Code of Practice has been breached.

The Press Ombudsman and Press Council are given statutory recognition in Sections 44 and Schedule 2 of the Defamation Act 2009. This strengthens the freedom of expression for member publications because membership of the Press Council and adherence to the Council's Code of Practice allows a publication to avail of an entitlement to the defence of reasonable publication in the case of defamation. Membership of the Press Council also provides a publication with access to the Press Ombudsman's complaints handling service, it indicates that a publication has signed up to the standards of the Press Council's Code of

Practice and sends out a signal to its readers that the publication is confident that its journalism reaches editorial standards which are in accordance with the Code .

All national newspapers including Irish editions of UK newspapers, most local newspapers, many magazines and many online-only news publications are members of the Press Council. There are 15 national newspapers, 55 regional or local newspapers, 17 magazines, 12 student publications and 17 online-only news publications members of the Press Council. All members are committed to upholding the provisions of the Code of Practice of the Press Council and participating in the complaints process of the Office of the Press Ombudsman.

In its 13 years of operation the Office of the Press Ombudsman has received an average of 350 complaints per annum. Many complaints are resolved directly by editors through the Office's conciliation process. In every instance where a formal decision had to be made by the Press Ombudsman and the complaints have been upheld the decisions of the Press Ombudsman and, where relevant, the outcome of appeals to the Press Council have been published in accordance with strict publication guidelines laid down by the Press Council. The level of participation and co-operation by member publications of the Press Council newspapers, magazines and online-only news services in the complaints handling process has been one-hundred per cent. The main concerns of complainants relate to truth and accuracy, distinguishing fact from comment, respect for rights including privacy, the avoidance of prejudice – all hallmarks of responsible news reporting and high quality journalism in a constitutional democracy.

As the print media moves from largely print based operations to a mixed print and digital operating model the Press Council sees its future as continuing to be an independent regulatory body with the flexibility to offer its services wherever journalism is to be found. The Council sees itself operating in a sphere which is separate but complementary to the newly proposed Media Authority whose remit is envisaged as extending to broadcasting, advertising and social media.

Media Landscape

Over the last 13 years since the establishment of the Press Council the media landscape has changed considerably. Today, online platforms are the main source of news and analysis for many people. Reliance on printed newspapers as a source of news has declined. To meet the challenges of the growing dominance of online platforms almost all newspapers today publish both print and digital editions. However, the revenue available from digital publication does not correspond with the revenue lost from declining sales of print editions. A major factor in this is the international aspect of social media organisations. Organisations such as Facebook, Twitter and YouTube increasingly dominate online publication of news and opinion. The vast majority of online advertising revenue goes to the main social media companies. National and local publishers struggle to compete with the economy of scale and the attractive nature of what is offered by international social media operators. Increasingly readers, especially younger readers, are drifting from print and online editions of print to international social media as their primary source of news.

This is likely to have a detrimental impact on public discourse as people are exposed to less national and local news and are therefore less well informed about issues which are important in public life. This is the case for national public life, but also for local public life. The unique role of local newspapers in providing information, commentary and debate on local issues cannot be replaced by either broadcasting or international news publishers. The impact of the shift towards international news sources is that members of the public may become less well informed and the participatory process in public life of citizens may be damaged.

The Press Council and the Office of the Press Ombudsman strongly believe in the value of a vibrant press. Our stakeholders are both our member publications and the general public. We provide a service to the public in ensuring that newspapers, magazines and online-only news publishers are accountable for what they publish. This process provides a level of trust for the general public to allow confidence in the accuracy and ethical nature of what is published in the press.

The press operates in the commercial world and must generate sufficient revenue to enable it to fund its operations. Good journalism is not cheap, detailed and comprehensive reporting requires resources and investment. The decline in resources available to member publications inevitably places considerable strains on publishers trying to maintain standards at times of diminishing resources.

The Council welcomes the publication by the European Commission of the Digital Markets Act and the Digital Services Act. The objective of the proposed legislation is to ensure greater democratic control and oversight of digital platforms and to reduce the risks of manipulation of the public and of disinformation. The Digital Markets Act will check the monopolistic tendencies of the major digital platforms in the EU and require them to be more transparent about their commercial activities. The Digital Services Act will create a safer digital space in the EU to protect the fundamental rights of all users of digital services. It will require the larger platforms to adopt Codes of Conduct. There will thus be a wider context for the work of the proposed Online Safety Commissioner.

Public Service and the Press

The terms of reference of the Commission highlight the public service nature of the media. “Public service” can be understood as the provision of services which benefit all members of the public. The Press Council is absolutely confident that newspapers, magazines and online-only news publishers, whilst operating in the commercial sphere, provide a “public service” which needs to be supported. We are also confident that some of the public service provided cannot be met by other means of publication. Each society has some unique aspects which need to be reflected in the national and local press and which cannot be met by multinational organisations.

The Future of Media Commission website provides a “working definition of Public Service content”. The characteristics identified include

- *Informs, educates and entertains the Irish public with regard to matters of Irish culture, identity, sport, language and other matters inherent to Ireland*
- *Provides the public access to high quality, impartial and independent journalism, reporting on matters of local, regional, national, European and international importance in a balanced way and which contributes to democratic discourse*

The Press Council believes that the output of its member publications - newspapers, magazines and online-only news providers - all fall comfortably within the characteristics described by the Commission. It is the Council's view that reliance on the marketplace will not sustain a viable Irish press and that it is essential that the Commission recommends specific proposals to support press.

Recommendations

The Press Council and Press Ombudsman hopes that the Future of Media Commission will make recommendations which will support Irish newspapers, magazines and online-only news providers. One essential requirement for the press is the reform of the Defamation Act 2009. We are aware that a review of this Act is underway. It is not an exaggeration to say that amendments to the Act are required to protect freedom of the press and delays in reforming the Act have eroded this fundamental freedom. The level of legal costs and awards resulting from defamation actions is having such a detrimental effect on publishers that there is a critical urgency in addressing the issue. With declining revenue from subscription and commercial sources the press can ill-afford the considerable costs required resulting from defamation actions. No one questions the right to one's reputation, but the current defamation regime provides an extremely inefficient and costly means of defending one's reputation.

The Press Council reiterates the main points it made in its submission on the review of the Defamation Act, 2009, which it believes are essential for a vibrant press to continue:

- that consideration be given to taking away the determination of the level of awards from juries and the creation of guidelines for judges in determining awards;
- that consideration be given to imposing a cap on the maximum amount of awards which can be given in defamation actions or alternatively, the establishment of a 'book of quantum' outlining appropriate levels of award;
- that consideration be given to hearing defamation actions in the Circuit Court where plaintiffs have indicated a limit on the damages they are expecting;
- that consideration be given to amending Section 26 of the Act to encourage members of the public to engage in the complaints-handling process offered by the Press Ombudsman and to encourage all publishers to sign up to the Press Council's Code of Practice.

Some of the measures which the press industry has proposed in recent years to address the emerging imbalance between traditional media and social media are the following:

- Making social media companies pay rights fees to newspapers whose reports are carried on social media

- A tax on social media companies with the revenue generated used to promote public service content in print media
- The reduction in VAT on newspapers and magazines
- The creation of a fund similar to the Sound and Vision scheme run by the Broadcasting Authority of Ireland for public service content in print and online
- The subsidisation of training and education for journalists
- Reform of the Defamation laws
- A fair allocation of government-funded advertising to newspapers and magazines

The Press Council does not represent the print industry and therefore does not speak for the industry. However, the Council is firmly of the view that any measures which promote a healthy and diverse press in Ireland should be encouraged.

The Press Council sees its role in the developing media regulatory landscape as continuing to provide a free, fast and fair means of providing citizens with a means of redress where Principles of the Code of Practice have been breached. This along with the other work of the Press Council will contribute to the maintenance of ethical and professional journalistic standards. As newspapers and magazines increase their usage of online as a means of delivery of its journalism the Press Council will adapt its services to ensure that the public will continue to have access to an independent regulatory process. The Council sees its role develop in parallel to the new Media Council whose remit will not extend to the print media and the print media's use of digital platforms. We also see the Council as continuing to be the regulator for online-only news publications which do not have print editions. We see the Council's function including the regulation of video and audio inserts into its members publication. We are confident that as the platforms merge and the distinction between platforms becomes less clear there remains a clear and evident role for the Office of the Press Ombudsman and the Press Council.

The decline in financial resources to fund an independent Press Council is a cause of concern. The Council is funded by an industry which is in serious financial decline. The Press Council's budget has more than halved in its 13 years of operation. Any further reduction in funding would result in the Council being unable to carry out its functions in a professional manner. The Council fully understands the difficulties the industry faces in funding the operations of the Press Ombudsman and the Council, but a tipping point has been reached where any further reduction in resources will undermine the value of the Office of the Press Ombudsman and the Press Council.

The Press Council welcomes the proposed establishment of the Online Safety Commission. This is an important step in ensuring the public good is enhanced by social media.

Conclusion

Recent events such as the Coronavirus pandemic and the debate on the United Kingdom leaving the European Union have highlighted the importance to a small country such as Ireland of the importance of a reliable and responsible press that is grounded in Irish public life. The press in Ireland – newspapers, magazines and online-only news publishers - have delivered to the Irish people information, debate and commentary which have contributed to informed and rational debate and decision-making. The financial structure to support the press has been undermined by the growing dominance of social media and in particular the level of advertising revenue previously available to support print media now diverted to social media. It is imperative that the Commission makes recommendations to address this growing imbalance. It is not an exaggeration to say that the very quality of public life in Ireland is under threat from the distortion of the marketplace.



Seán Donlon

Chairman

Press Council of Ireland



Peter Feeney

Press Ombudsman

January 2021