

Sir Alan Moses Society of Editors Lecture 8 November 2014

"Since it is Sunday you are, no doubt, expecting a sermon. Something stern and formidable, delivered from on high, in tones of rebuke, threatening hell- fire, damnation and warning you that you are all going to burn. You are after all the newspapers and I am, after all, your regulator. I am sorry but I am going to disappoint you. This is the first opportunity I have had as Chairman of Ipsos to address you directly and you might agree that by now there has been, like the public swimming baths, quite enough noise at the shallow end: perhaps it is suitable that I should speak on the Sabbath because it is, as Ipsos starts, a moment for rational and, at least somewhat more measured reflection.

"So what is my text? We do not want a boring defensive press: we want a free fair and unruly press ruled only by an independent regulator Ipsos who will support you and encourage you to remain so.

"One of the few things I learnt as a judge for about 19 years, perhaps the only thing since judges form the habit of expecting other people to learn from their wisdom and are not all that good at learning from others, was that it is far more persuasive, far more convincing to grapple with and answer your opponents' arguments rather than kicking his shins, that the best weapon is always reason and not the boot. Those who have in the past had their lives turned upside down by breaches of standards to which the press has publicly committed itself, the standards in the Editors' Code, were promised the earth...not by me, not by you but by Government. Whatever was not "bonkers" would be delivered. You cannot be surprised at the despair and anger, the misery and rage that continues when that promise was not delivered. And they have waited and waited and finally have been given what, shrouded by their veil of tears, looks to them like a sham.

"Now the answer to criticism is not, as I have ventured to suggest, to hurl abuse, it is argument and reason... It is true that at birth the new regulator was lauded, by some, mostly those who were to be regulated, to the skies..."praise be... we have an independent regulator with an independent judge"...perhaps the praise has been premature perhaps the praise has been a little too fulsome...for you of all people, press and journalists, do not need to be reminded of the myth of the fall of Icarus, who flew his chariot too close to the sun, in order to recall that the higher you are raised, the further down you will be dragged. It has been left to us, at Ipsos, to attempt to answer our critics...it is we who have had to face those who call us fakes. Now, used as I became, in the past, as a judge to daunt others rather than be daunted myself, I am not frightened to speak to and argue with those who doubt the ability of Ipsos to regulate. But words and expressions of intent are like beating the wind, something more, far more is needed.

"But what is it? How do you judge, how will you judge Ipso? What measure, in an age which delights in the pointless audit, the setting of meaningless targets or KPIs, of costing that which cannot be costed, can be used to judge us, at Ipso? The number of complaints...hardly: too few and it would look as if no-one thought we were of any use...too many and it would seem the Press, who now are the first call for the resolution of a complaint, were not doing their job. What action, what is it that will establish Ipso as the truly independent regulator it wishes to be and that you the Press assert you want?

"There are those who say..."you will be judged by your first big case, that will be your test"...not so when people say such and such a case is going to be your first really big test what they really mean is you must decide it the way they want it to be decided. People like to judge by results...but what is a result? Findings may go either way...just as in court the result will not please both the opposing sides...the court cannot decide both ways, even if when you read some judgments it appears that the signposts are pointing in opposite directions. Somebody is going to be disappointed, someone is going to disagree. But what both sides are entitled to is fair and proper consideration of the evidence and a fair conclusion clearly reasoned.

"To consider the evidence fairly, requires the parties to co-operate, to lay their cards face up on the table: you reporters and editors know that what skews a contest, what leads to injustice...whether in court or in regulation is the card-sharp, with the ace up his sleeve. In short what any successful adjudication requires, what fair and plausible regulation needs is the open co-operation of those who have submitted to that process. And fairness, as we at Ipso recognise, is not a one-way street...in an age when your resources grow ever more limited, when competition becomes ever more keen, you do not have the luxury to send your reporters all over the country or all over the world to investigate and discover the truth. You to your discomfort are forced to rely on sources, official sources, government sources, lobbying sources, promotional promoting and self-promoting sources...even or at least until someone had the revolutionary idea that greasing the palm of a copper with a copper or three, might be unlawful, the police. And so with an irony that may enter your soul, we acknowledge you are often more spinned against than spinning.

"Ipso's ability to be a genuine regulator will not depend so much on the nature of its conclusions: breach or no breach but on the processes and procedures by which they are reached...and rules that can clearly and simply provide us with the means to find out the evidence and consider it. Ipso's strength and independence will not be demonstrated by merely flexing its muscles: what a sign of weakness it is when the playground bully needs to show some pumped up bicep. When Ipso was launched we were all told how different the regulatory regime would be now that there was power to fine up to a million pounds or 1% of annual turnover. And they said, "there you are...now you can show your mettle by fining someone a million pounds, that's what you need". You only have to say that to see how unlikely that is....proper, successful independent regulation will not be established by manic firing of a big bazooka...and anyway we don't know how to fire it: the instruction booklet for the use of so novel a weapon is rather too complicated for we ordinary mortals at Ipso to understand.

"But behind the weapon and the instructions lies something that is remarkable and should be a source not just of wonder but of pride that so diverse a number of

publications, great and small, national and regional, producing such a diversity of material some delivered on a shoestring and others produced despite a daily diminishing take; such rivals in strenuous competition should come together at all and agree to be bound by a code of conduct, by a set of short and powerful standards. For the first time ever, newspapers and magazines have reached agreement to come under the jurisdiction of an independent regulator, and to be bound, legally, by the regulator's decisions as to whether they have breached the standards they have set themselves or whether they have not. And it should be a source of praise, not of criticism. That what should have been received with undiluted praise has had if not cold at least tepid water poured over it, may, however, be due to two particular features.

"First, the label that has been provided. Unattended language...as you all know so well...can be as dangerous as unattended luggage. Many legal disputes, of which I am so happily rid, revolve around problems of definition caused by people peeling off any old label readily to hand and sticking it on some other item on the shelf to which it should never be attached...After all, a four-pronged gardening tool does not change its nature, however strong the glue by which you fix the label "spade". Self-regulation is not a happy label. Self-regulation has nothing to do with marking your own exams: Ipso is described as part of self-regulation of the press but the reality is that it is by an independent regulator you have agreed to be governed and bound.

"The second feature which has caused criticism is the volumes of rules and regulations themselves. I need to say again and underline in red that it should not be a source of blame that they are so complicated and difficult to understand. If the organs of the press were to sign up to anything they wanted to know where they stood and so it was the lights burned late and long, while representatives and lawyers worked to satisfy so many different and conflicting interests. You would not wish the task of drafting in committee, and accommodating the desires of those it represents, on your worst enemy.

"Let me stress what I am talking about...I am not speaking of the Code of Conduct I am not speaking of the Standards by which you have agreed to be bound. All I am talking about are rules of procedure, the rules by which Ipso is to consider whether there have been breaches of the code, the rules by which Ipso ensures compliance with the standards you have set yourselves. It is no secret that I wish to simplify them, that Ipso wishes to understand them and it wants to be in a position to be clear and straightforward about how it wants to go about the business of ensuring compliance. It needs to do so to establish its independence, its integrity and its effectiveness: it cannot be fair, it cannot reach reasonable decisions, if no-one can simply speedily and readily understand the procedural rules it is going to apply. It cannot act as the independent regulator you have created, enmeshed in a network of interlocking rules which require an analysis that would do credit to any rabbinical study of the Talmud. But I am looking to remove complexity and obscurity in the rules, to make them, effective not to turn them upside-down.

"So I believe that the answer to the question how can we judge the success of Ipso lies in the procedures and processes by which it reaches its conclusions. As I have sought to stress, its conclusions can never please everyone; how could they when some of the issues are of eye-watering difficulty? Many involve judgments as to what is in the

public interest...no-one has defined what that means; no-one could or should define it since it is designed to cover so many situations which can never be foreseen. Important principles often lose their usefulness if confined within the straitjacket of definition. If you design what is supposed to be a definition to cover every eventuality you can bet a lemon in Limehouse that the next day some unforeseen dispute will rear up and turn your well-honed phrase in to a blunt and useless implement.

"Judgments on such issues as public interest are also judgments which allow many different and opposing conclusions...all of which are reasonable, all of which may properly be defended and all of which contradict each other. There will often be no right answer...but Ipso will give, on such occasions, the answer by which you have agreed to be bound.

"But the independent authority which Ipso seeks to demonstrate will come, not so much from its decisions, but from the way it reaches its decisions, by the procedures it will deploy, by the reasons it gives. It should be and, I hope, will be judged, by the strength and independence of its procedures, by the clarity and effectiveness of its process. It is by the procedures at its command that it will establish trust and authority.

"And it is not just its trust and authority which is at stake...it is yours. Your agreement to sign up to the notion of an independent regulator stemmed, I suggest, from your recognition that the press needs and wants authority. And authority comes only with trust. You have understood that come the day when no-one believes in you, when you are no more than a woe-begone troll, no-one will want you.

"But if the public know your commitment to the Code, to the highest professional standards has at its heart a commitment to be governed by the independent regulator you have created, why then the public will trust your regulator and trust you. And with that trust will come your authority.

"Our decisions will be, from time to time, unpopular...but we are not here to be popular we are not here only to secure agreement, but to manage disagreement. Of course, it is important that there should be urgent and speedy resolution of complaints. Publications should be encouraged to settle disputes, with fairness, clarity and above all without delay. Delay is the enemy of any successful resolution of a complaint...the days when journalists would rather shove the complaint in the drawer than answer it, when editors would do anything rather than answer a protest or criticism should go and there are signs they are going. Already complaints are being settled to the satisfaction of complainants far more quickly than before.

"But there will be issues of compliance with the standards which will not disappear with the resolution of an individual complaint; there will be some complaints which cannot be settled and should not be settled. Some complaints will simply not be within the jurisdiction of Ipso...because they could not in a month of Sundays give rise to any breach of the Code, others will be too trivial or far-fetched or silly to warrant more than a polite but firm dismissal and Ipso should save you all much time and money in recognising that. But there will be others which are of public concern, complaints which have implications far beyond the facts of a particular issue.

"The Ipso you have created has functions way beyond those of a complaints handler; it must monitor standards and do its best to ensure compliance. Those complaints which raise significant issues of standards do not merely belong to the complainant, they concern us all. Ipso needs to have at its disposal the means to learn what is going on, of asking questions and obtaining your co-operation in answering those questions. None of this should be a cause for anxiety or fear. Ipso wants no more than the means of ensuring it can monitor and ensure compliance with the standards you have devised and set and with which you have agreed to comply.

"While I protest that you have nothing to fear, I recognise that none of this is comfortable. You fight and strive for freedom of the press and that means freedom from control by anyone...it is you the editors and you the journalists who judge what is to go in your newspapers and magazines. Your content is your responsibility.

"A fearless press can also be a fair press. Every submission to independent regulation involves the voluntary compromise of some sovereignty, some loss of control. And by your agreement you have placed in the hands of Ipso not control over your content but control over your procedures. The pornographer Stockdale accepted the Duke of Wellington's invitation to publish and be damned; he did publish Harriette Wilson's memoirs, and he was damned, ruined by suits for libel. You can and you should publish.

"If you breach the code, Ipso, now, has the right to tell you so and to make you acknowledge publicly and prominently that you have done so... Mistakes and errors of judgment will always occur.

"But if you do so deliberately, flagrantly, without caring one jot whether you break the code or not, Ipso will damn you. Never let it be forgotten that regulation is as much a support and comfort to the regulated as to anyone else. Effective independent regulation affirms and enhances the regulated. But the freedom of expression you assert which is, after all, our freedom as well, a freedom to receive information, is subject to your release of control; the right you have given to us at Ipso to make a judgment subsequently on your procedures, on your decisions, for the sake of enhancing and underlining the precious place you play in our lives. The crucial element that must never be forgotten is that we all want the same thing: readers and publications, the public and the press...the right to be heard and the right to listen, because freedom, true freedom, means a freedom from fear, and the public, your readers, want that as much as you do. Ipso, exercising its role as regulator, provides a voice for those fearful of standing up to you as much as you want a voice free from the control of others. It will supervise and put in place a means of providing financial redress in modest sums to those who cannot afford to go to court. I know the regional press is worried about that, with so few resources, but there is no reason why a trial scheme should not be put in place which excludes the regional press.

"But it is the vital role you play in our society I wish, above all, to recognise and which Ipso wishes to underline and to support. I am, I confess, a little world weary, at the banality of the comment that Ipso is the Press's final drink at the last chance saloon. It is not a particularly apt cliché after all...the last chance saloon was a reference to some drinking tavern in those states who had not signed up to Prohibition, on the borders with those which had. And the Volstead Act is hardly a promising or

successful example of proscriptive legislation. I have the strongest doubts whether there is any real progress to be gained by those who fear the worst excesses of the press by waving sticks or offering carrots, particularly if the rods to beat you with are as yet sallow rushes, damp and weedy and liable after some years of flexing to snap in the courts in Strasbourg (I would not to be too ready to quit the safeguards the Strasbourg Court has traditionally and continually offered the press, if I were you). I believe that the greatest protection for us all, you and we the readers, editor, proprietor, and regulator is the encouragement and support Ipsos will offer you in your enterprise. Can we imagine, just imagine, our lives without what remains, despite all the excesses and outrage, despite the agonisingly diminishing returns, the most popular, readable and rumbustious press in the world.

"In the jangling cacophony on the internet, you the press and your readers want more than noise and flatulence...they want sounds which resonate, they want to laugh with you and not at you, they want to rage with you and not at you and they want to cry with you and not because of you. We need you to stimulate, to probe and to expose fairly and with authority and Ipsos will help and encourage you to do so. And we want you to entertain us. Just remember if you will Archie Rice, Osborne's Entertainer...the tired old fading music hall performer...at what turned out to be his last performance... as he died, in the theatrical sense, in front of a paltry audience...

"Let me know where you're working tomorrow night and I'll come and see you".

"And we at Ipsos will, but we'll come armed with a slim, clear book of rules and not with an iron fist."