Arbitration service: IPSO vs Leveson

IPSO has recently announced the third version of its arbitration scheme. With each announcement new gimmicks and spin are added, without making the necessary improvements to the scheme.

This time IPSO has announced that it is “creating a compulsory version” of its low cost arbitration scheme. But has not published the supporting documentation for the changes they are claiming to make.

In fact, IPSO cannot create a compulsory scheme. Article 5.4 of IPSO’s Scheme Membership Agreement (SMA) with publishers explicitly promises:

“No [member publisher] shall be obliged to participate in the Arbitration Service.”

There is no suggestion that this SMA will be changed.

The newspapers will cherry pick whether to offer arbitration. The MailOnline, one of the biggest offenders in terms of libel and privacy, has already said it will not join the scheme.

No one has ever used IPSO’s arbitration scheme. There are six good reasons why it will not be used in the future.

TOP SIX REASONS IPSO’s ARBITRATION SCHEME WILL CONTINUE NEVER TO BE USED BY CLAIMANTS

1. IPSO’s scheme is in the hands of the newspaper publishing companies
   
   Leveson: arbitration must be a condition of regulators getting “recognised” status, and regulators must be independent of the industry.
   
   IPSO: the Regulatory Funding Company, a newspaper industry-only body, which controls the rules and regulations of IPSO, can pull the plug on the arbitration scheme at any time.

2. IPSO worse for publishers, win or lose:
   
   Leveson: as above; arbitration should be a cheaper and more efficient way to resolve disputes for both parties.
   
   IPSO: scheme costs publishers £10,200 (£3,500 + VAT for preliminary and further £5,000 + VAT for final ruling) in fees. This is very expensive for modestly financed publications. If a publisher loses a claim under IPSO, they are liable for the £10,200 (their fees) + up to £20,000 (recoverable costs) = £30,200 plus their own costs of up to £20,000, plus damages.
3. IPSO’s scheme is run by a biased organisation
   **Leveson:** regulators must meet basic criteria for independence and effectiveness. The arbitration service should be run by the independent regulator, for the benefit of the public.
   **IPSO:** not independent or fair by any measure and has not been independently assessed as independent or fair. It cannot run a fair arbitration system; the scheme on offer, like IPSO’s complaints-handling function, is biased in favour of the press. The plan is to hold arbitration hearings at IPSO’s offices.

4. IPSO’s scheme bars appeals on a point of law
   **Leveson:** it did not even occur to Leveson that the industry would seek to prevent appeals on the basis of a point of law.
   **IPSO:** won’t even allow appeals on this basis.

5. IPSO’s scheme allows wealthy publishers to vastly outspend claimants
   **Leveson:** arbitration should be fair for both sides.
   **IPSO:** claimants can only claim back a maximum of £10,000 or £20,000 in costs, but there is no limit on how much newspapers can spend on expensive legal representation, or how many in-house lawyers they can deploy. This is not “equality of arms”

6. IPSO’s scheme caps damages
   **Leveson:** the purpose of arbitration was to reduce costs, not affect possible remedy.
   **IPSO:** sets an arbitrary damages cap of £60,000. There is no reason to do this because arbitration is supposed to provide the same remedy as court and in serious cases of intrusion or libel, damages can be more than this.

**Notes**
- Arbitration will always be cheaper than court to both defend and to bring claims. There is no evidence that arbitration leads to a rise in claims, and is used in a number of other industries.
- All claims must be valid before an independent regulator refers them.
- The following torts are covered by the scheme: Defamation (libel and slander), breach of confidence, misuse of private information, malicious falsehood, harassment, breach of data protection.