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The Times admission about computer hacking

Posted by David Allen Green - 17 January 2012 15:52

But were the results of computer hacking used in any published story?



Over the course of four witness statements to the Leveson inquiry, the Times has disclosed that there was an incident of attempted computer hacking in 2009.

From the formal witness statements -- all prepared for and approved by senior managers and lawyers at the Times -- the following details have now been placed into the public domain: there was a computer hacking incident in 2009; the reporter was male; the computer hacking was in the form of unauthorised access to an email account; a disciplinary process was commenced after concerns from the newsroom; the reporter admitted the unauthorised access during the disciplinary process; it was held that there was no public interest in the attempted hacking; the incident was held to be "professional misconduct" and the reporter was disciplined; and the reporter is no longer with the business having been dismissed on an unrelated matter.

There is already speculation over the identity of the reporter. But to a large extent, the actual identity may not be important. What would be interesting to know is whether any fruits of the attempted or actual computer hacking were used in any published story by the Times.

David Allen Green is legal correspondent of the New Statesman

Tags: The Times Phone hacking scandal Leveson Inquiry NightJack

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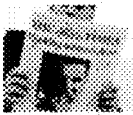
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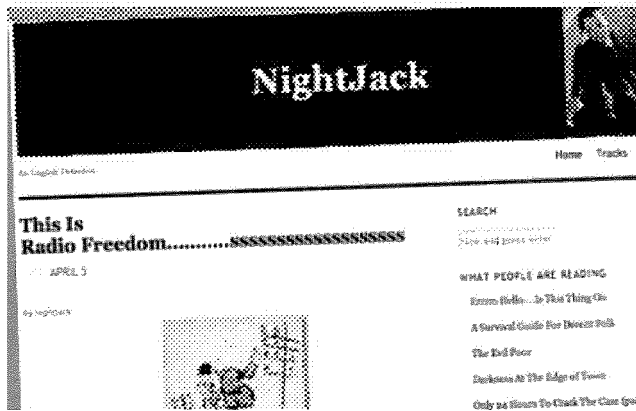
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What did the Times know about computer hacking and when?

Posted by David Allen Green - 18 January 2012 15:01

The Guardian disclosure raises serious questions about the 2009 NightJack case.



In 2009, the Times "outed" an anonymous blogger. It was a strange exercise at the time. A "quality" newspaper devoted its resources to forcing into the public domain the identity of the author of the popular and extremely well-written police blog known as "NightJack".

Not only did the Times seek to expose the blogger, they even went to the High Court to defend an attempt by the blogger to protect his anonymity. In a detailed witness statement of 56 paragraphs and with 56 pages of exhibits, the journalist purported to show how by using considerable investigative skill and amazing detective work he was able to use minute details over several blogposts to piece together the identity of the blogger.

This witness statement (which I possess, but will not publish as it contains personal information about the blogger and his family) was impressive enough to change the course of the court case. As the case report states clearly at paragraph 3:

It was asserted in the Claimant's skeleton [argument - the summary of the claim] for the hearing of 28 May that his identity had been disclosed to The Times in breach of confidence. By the time the matter came before me, on the other hand, Mr Tomlinson [the blogger's barrister] was prepared to proceed on the basis that the evidence relied upon from Mr Patrick Foster, the relevant journalist, was correct; that is to say, that he had been able to arrive at the identification by a process of deduction and detective

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work, mainly using information available on the Internet.

The concession by the blogger's barrister was in my view determinative of the case. If there was no breach of confidence -- or no wrongful act of any kind in obtaining the information -- then there was really no inherent privacy which the blogger to assert. There was no need therefore for the judge Sir David Eady to see whether the interference with the privacy right was proportionate or lawful; there was no privacy right to begin with. And, as Eady said, blogging is essentially a public activity.

However, witness statements and exhibits do not come about easily. There is considerable input by lawyers. The decision to fight the case would also not have been made by the journalist in question, but by his senior managers. High Court litigation is uncertain and expensive. The decision to fight the case would not have been made lightly. And key to the advice given to senior managers and the decision they made would have been that witness statement. It would have been their decision to put this evidence before a High Court judge, and not that of the journalist.

The decision looked like it paid off. They won, and the *Times* duly ran the exclusive. *Times* columnists assured us ponderously that something rather splendid had been done in the public interest. And, in the meantime, the blogger pulled his blog and faced disciplinary action from his employer. The loss of the blog was particularly unfortunate, as it robbed the public of a brilliant insight into the daily lives of police officers written by perhaps the best writer the blogging medium has ever produced.

In my view, there was always something not quite right about what the *Times* did. The explanation offered smacked to me of being retrospectively compiled and reverse engineered, as if someone had solved a maze by starting at the centre and then worked outwards. I do not know if this was or was not the case. Soon it was clear that these doubts were shared. Just as "everyone" in Fleet Street knew that there was something not quite right about Johann Hari's journalism or the tabloids' use of mobile telephony, it was widely held that something about the exposure of NightJack did not stack up.

But even when it became known that the journalist in question had been disciplined as an undergraduate for [hacking into his university computer network](#) (but was still hired by News International anyway), that could not take anything away from the evidence sworn and put before the High Court. The managers and lawyers at Times Newspapers Limited has confidently assured the High Court that their young reporter had single-handedly pulled a journalistic feat comparable to what took over a hundred commenters at [Jack of Kent to do for "David Rose"](#).

And so nothing happened, until last week.

Lord Justice Leveson's inquiry team sent out questionnaires to all the newspapers. One of the standard questions was about computer hacking. This clearly caused a bit of an issue for the *Times*. [Over four witness statements](#) the *Times* admitted the following facts: that there had been a computer hacking incident in 2009 by a male reporter; the computer hacking was in the form of unauthorised access to an email account; a disciplinary process had been commenced after concerns from the newsroom; the reporter admitted the unauthorised access during that disciplinary process; it was held that there was no public interest in the attempted hacking; the incident was held to be "professional misconduct" and the reporter was disciplined; and the reporter is no longer with the business having been dismissed on an unrelated matter.

What was most striking about all this was the date: 2009. Was it possible that the computer hacking was in respect of the exposure of NightJack? This would be a serious matter, for not only would it raise issues under the Computer Misuse Act, it may be that there had been perjury in the case at the High Court. Had computer hacking been admitted to the court then there would have been little doubt that it would have affected the outcome of the case.

So a careful process was commenced. I blogged [here yesterday putting together what the witness statements told us](#) whilst Paul Waugh at Politics Home [made connections between the new evidence and the NightJack case](#), about which he had previously written. Tom Watson MP, the blogger Old Holborn, and others, asked questions on Twitter. But what was missing was a firm connection: there was no direct link between the new evidence and the NightJack case. It may not have been the same journalist, and it may not have had anything to do with a published story. I sent an email query to the *Times* (it remains unanswered).

And then, last night, the *Guardian* [stated](#) that the 2009 incident was in respect of NightJack. So, instead of answering a formal email request or properly disclosing it to the Leveson inquiry, a "source" leaked it to David Leigh of the *Guardian*. This was an odd move, not least because the journalist in question

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now writes regularly for the *Guardian* on media matters. (Yes, that irony is indeed correct: the *Guardian* uses a media correspondent with a record of computer hacking.)

One cannot be certain that the *Guardian* is correct without further evidence or an open admission. But if it is right, then this opens up some extremely serious questions for the *Times*. At some point in 2009 the internal managers and lawyers at the Times became aware that the High Court had proceeded on a flawed basis in dealing with the NightJack injunction. This information may have come out before the court hearing or afterwards. They would also have become aware that a major exclusive had been based at least in part on computer hacking. If the *Guardian* revelation is sound, then it would appear that the *Times* needs to explain who knew what and when, and why nothing has been done about it until Lord Justice Leveson's questionnaire.

In all this, one should not blame the journalist too much (and you may notice he has not been named in this post other than in the quotation from the case report). He did what one suspects many young and ambitious journalists would do if they could get away with it. The real failure here would appear to be -- as with Hari at the *Independent* -- one made by managers at the *Times*, and perhaps those who advise them. If the *Times* did throw its financial and legal might behind a story which they knew to be based on computer hacking and did not inform the court -- or found out later, and still told no one about it -- then that, in my view, would be a scandal perhaps comparable to the tabloids' abuse of phone hacking.

David Allen Green is legal correspondent of the *New Statesman* and writer of the *Jack of Kent* blog

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15 comments from readers

Peter Jukes

18 January 2012 at 15:19

Thank you, David. Brilliant put together. I've been trying to push this story in the US, but you summarise with a killing blow

<http://www.dailykos.com/story/2012/01/17/1055767/-UPDATED-FO...-How-NewsCorp-Blacked-Out-Prize-Winning-Blog-through-Hacking?via=siderec>

"If the Times did throw its financial and legal might behind a story which they knew to be based on computer hacking and did not inform the court -- or found out later, and still told no one about it -- then that, in my view, would be a scandal perhaps comparable to the tabloids' abuse of phone hacking."

Perfect. The silencing of Nightjack - especially on this day when the internet goes dark thanks to corporate threats in the US - was dark moment for good writing and freedom of speech.

And he was silence by the editor who was whining about the chilling effect of legislation only yesterday

Kernow Castellan

18 January 2012 at 15:25

We shouldn't blame the journalist too much?

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Sorry, I don't agree. He broke the law and should be tried and punished. Blaming the big bad culture does not absolve individuals of their responsibility. (And the Guardian should definitely not have hired him straight after he was sacked)

Richard Morris

18 January 2012 at 15:56

What a cracking piece this is. What are the repercussions for NI if this is found to be true?

Sean Jones

18 January 2012 at 16:17

I can just about see why you might be prepared to indulge his hacking as youthful hi-jinks, but what about the small matter of his apparent perjury? Was the witness statement in his name?

Jane Carnall

18 January 2012 at 16:25

David, I think you might clarify that the journalist works for the Guardian on a freelance basis - at least so his profile says. All sorts of people have written for the Guardian on a freelance basis, some of them much more morally questionable than this scummy man who exposed NightJack.

David Alden

18 January 2012 at 16:34

Since April 2011 when he last wrote for the Times up until 5 Jan 2012, according to his own website this journalist has had 17 stories published by the Telegraph and an overlapping 31 by the Guardian, mainly about the BBC.

James

18 January 2012 at 19:31

I'm curious: if Eady said that even if the blogger could have claimed he had a right to anonymity, he would have ruled against him on public interest grounds.

So, if that's the case, surely any illegal activity including hacking of email could be said to have been done in the public interest? In which case, I'm having a hard time understanding your apparent outrage over this. It was a "fair cop" as it were.

James

18 January 2012 at 20:49

Oh and even if the hacking occurred during the investigation, who's to say it was a significant part of the process of unmasking NightJack?

Apparently, he was openly discussing the blog with his brother on Facebook and posted a link to a jujitsu club website where he was the only detective member. A little bit of detective work and anyone could've put that one together.

I suspect your case is going to be a tad difficult to prove.

Bob O'H

18 January 2012 at 21:10

James - if Eady thought it was a matter of public interest, why is The Times telling Leveson it wasn't? They seem to be trying to have it both ways (assuming the hacking was of Nightjack).

Peter Jukes

18 January 2012 at 22:42

Two more points to James

That Facebook identification seems to be retroactive. In other words he was only identifiable on facebook or jujitsu once you knew who he was

And the Times' case seems to rest on this fact of easy identifiability through normal public means. They do not seem to have disclosed the real - and illegal - source of their information

Whatever any final ruling about the publicness of anonymous blogging (anonymity being a right that goes back to 18th Century pamphleteers), the Times seem to have perjured themselves

James

19 January 2012 at 02:16

@Bob O'H Could you give me the context of the claim you say The Times made? I've not read it.

@Peter Jukes I'm not sure that The Times is claiming he was particularly

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easily identifiable. Supposedly it took a fair bit of detective work. Obviously if it could be proved that the Facebook stuff was retrospectively discovered as a result of the hacking then they've got a problem. How you would prove that, however, is a different kettle of fish although, presumably, with access to internal documentation a timeline could be established.

As I've already said, the legality or otherwise of any hacking would hinge on the public interest test. It could be argued, surely, that a police officer leaking details of ongoing investigations on the web is a public interest matter I'd have thought.

David Allen Green

19 January 2012 at 04:53

@James

"As I've already said, the legality or otherwise of any hacking would hinge on the public interest test."

The Times itself, in the disciplinary hearing, held there was no public interest in the hacking.

James

19 January 2012 at 10:52

@David Allen Green Ah, ok. Not in a court of law though. Perhaps they'll change their minds!?

Neuroskeptic

19 January 2012 at 11:03

Despicable stuff from the Times - fantastic work by David.

I've got a lovely feeling this could be the start of someone's downfall.

Simple Simon

23 January 2012 at 13:23

Whether by accident or design, you make this sound like perjury. If so, it could be referred to the DPP. If not it could be made clear that no crime has been committed.

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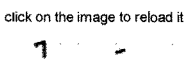
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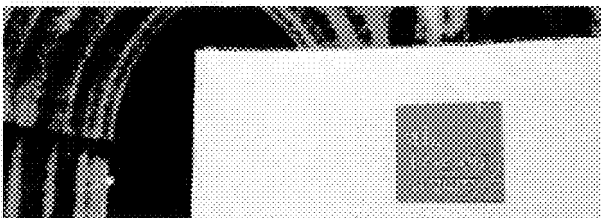
Posted by [David Allen Green](#) - 20 January 2012 16:01

The *Times* finally admits that a blogger's email account was hacked.

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The Times and the NightJack case



The *Times* of London is regarded as a form of flagship. For a few it is still the "paper of record" for the United Kingdom. And for News International and perhaps for Rupert Murdoch, it shows that they were able to promote a different and more responsible form of journalism than that practiced at its tabloid sister papers, with their grubby phone hacking, private investigators, and intrusive reporting.

But yesterday there was an admission. The *Times* admitted that a former reporter used computer hacking as part of an investigation. And not only did the reporter hack into a person's private email account, he also told his managers he had done so. Faced with this, the *Times* published the story based on that investigation even though they were "unclear" as to the role of computer hacking in the reporter's investigation.

You would have thought that the managers would have wanted to know the exact scope of the unauthorised access used in this investigation before they published what was a significant story -- a story that severely infringed someone's privacy. But the *Times* yesterday told us the managers simply did not know.

The story was about "NightJack", a popular and extremely well-written blog about the reality of police life. It was written under the pseudonym of "Jack Night" and described the goings on in the fictional world of Smallville and Bigtown. No one who read the blog at the time knew where it was set; indeed, part of its power was that it could have been any urban conurbation, and Jack Night could have been any policeman. Even those hostile to the police in general could gain an understanding of the predicaments which police officers routinely faced in their duties.

And so on 22 April 2009 Jack Night won the first Orwell Prize for blogging, an award hitherto given only to journalists and for books. For a blog to win a

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major literary prize was noteworthy and, naturally, there was particular interest that the author was not known. A young reporter at the *Times* then decided to see if he could work out the identity of Jack Night.

Was this a valuable journalistic exercise? Should newspapers be devoting resources to exposing the authors of blogs and those using social media more generally? In some circumstances this sort of exposure would be appropriate. For example, at Jack of Kent over a hundred commenters together identified Johann Hari as using "David Rose" as an alias which was used in a systemic exercise over many years to dishonestly promote his own reputation and to maliciously smear those with whom he disagreed.

Was there any similar public interest in exposing Jack Night? There was certainly a public interest in maintaining his blogs written under anonymity: the posts were fascinating and thought-provoking.

The reporter at the time claimed that there were two ways in which public interest was engaged. First he claimed that it could be that the Orwell Prize was duped by a fabricated blogpost. However, this was not convincing, as the Orwell Prize had openly said it had conducted its own checks and was completely satisfied.

The other public interest claimed (in the reporter's witness statement) was that "a policeman was revealing information he had obtained in the course of his police work and was also offering detailed guidance on how to frustrate the attempts of the police, in breach of the police Code of Conduct." (One rather suspects that this articulation of the public interest was informed by legal advice.)

It is not clear if this actually was the case. There is no reason why police officers cannot discuss their work in public, as the legions of police officers now on Twitter show. Jack Night did once post a delightful piece where he advises anyone arrested to do a variety of things, which would actually not be very helpful at all ("show no respect to the legal system or anybody working in it", was one remarkable tip). Some of the posts did feature incidents drawn from real cases, but it was never possible to identify any real incident unless one knew what to look for in an elaborate news archival search.

In fact, there was no public interest in identifying the author of the NightJack blog. The author was not engaged in any exercise of dishonesty or malice, systemic or trivial.

There was instead a public interest in having insightful and carefully-crafted blogs like this. And there was also a public interest in the principle of anonymity and protecting sources. Jack Night was his own source, and one would have hoped journalists and editors at the *Times* would have valued the importance of protecting anonymity when it is a pre-condition of publishing information in the public interest.

However, the *Times* decided to out the author against his will. But how did they identify him? The reporter in question provided a witness statement of some 56 paragraphs and with 56 pages of exhibits which showed a brilliant piece of intellectual detective work. Bits of NightJack blogposts were compared with snippets from obscure Ju-Jitsu sites and the Facebook page of the blogger's brother in Houston, Texas. There is also reference to non-internet sources, including the name the blogger used on a list of ex-directory numbers. Everything which could be known about the blogger from any source seemed to have been found out.

So what role did the computer hacking play in this investigation? The *Times* said yesterday that the role was "unclear" (but also somehow confidently asserted the investigation was "a legitimate process of deduction based on sources and information publicly available on the internet").

Perhaps we will never know. The newspaper is refusing to confirm or deny whether it has retained the relevant records of the incident and their press officer told me today that she has been "advised that we are making no further comments on this matter".

What the *Times* did decide, however, was that there was no public interest in the computer hacking which occurred. Once it was known that there had been the unauthorised access of an email account there was a disciplinary exercise, and the journalist was given a formal warning. In making that punishment the newspaper decided that there had been no public interest in the hacking.

But what makes this entire incident especially problematic is that before publication the *Times* had to resist an injunction application by the blogger to retain his privacy. It is not clear whether managers at the *Times* knew about their reporter's computer hacking before or after the hearing. In any case, it certainly was not told to the Court.

In my opinion, this has two highly significant implications for the High Court case on the injunction. First, the blogger's barrister was forced to concede crucially that the application would proceed on the basis that there had been

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no breach of any confidentiality or privacy right in the investigation. Second, and even more importantly, the judge determined at paragraph 33 that the blogger had no reasonable expectation of privacy.

Would the *Times* still have won the case had the computer hacking been disclosed? This is possible, as the judge was persuaded that there was a strong public interest in identifying a blogging police officer. But we do not know. A breach of privacy by means of computer hacking is a serious matter, and it would certainly have been relied upon by the blogger's legal team had it been disclosed to them. It is a general principle of both law and common sense that wrongdoing is not rewarded.

It would appear that a decision must have been made by a senior manager at the *Times* not to tell the High Court and the defence about what was clearly a relevant and material matter to the injunction case. Even if the computer hacking was not known about on the date of the hearing of 4 June 2009 it was known by the date of the judgment of 17 June 2009, the day before the *Times* published its story.

So at some point before judgment was handed down the *Times* must have taken a decision not to disclose its knowledge about the computer hacking. It may well be that there was no strict legal duty to disclose that information -- such disclosure obligations can be technical in scope. But no sensible person would dispute that in a hearing of this kind that it really should have been made available to the judge and the applicant. There had been computer hacking in the investigation to uncover the blogger's identity, and the *Times* knew about it and said and did nothing about it.

And no one would ever have known had it not been for the Leveson inquiry. Even then, the *Times* played it down and it was left to others to make a connection. The newspaper's managers realised something wrong had happened but they never told or apologised to the blogger whose email account was hacked.

Overall, the hacking of NightJack matters not only because it tells us something about dark journalistic practices but that such practices are rarely willingly or openly acknowledged when they occur, even at flagship titles like the *Times*. Computer hacking was used, a person's privacy was invaded, a court was not told, but the *Times* published anyway.

David Allen Green is legal correspondent of the New Statesman and author of the Jack of Kent blog.

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11 comments from readers

Malcolm Bradbrook
20 January 2012 at 16:15

I still smart on a daily basis that such a perfect example of a blog was taken from use but a mainstream, and allegedly quality, newspaper.

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The only rationale in my view was jealousy - The Times simply did not like what it saw as competition from the web.

To discover that underhand means were used to deprive us of NightJack is all the worse.

Des Demona

20 January 2012 at 16:18

I did not know anything or ask any questions seems to be the standard defence for newspaper editors.

Jo

20 January 2012 at 16:21

The Times' story on NightJack left a very bad taste in the mouth, and the paper's attempts to defend its (in my view indefensible) actions were flimsy, even at the time. It now seems all but certain that Patrick Foster got the story via hacking - meaning the Times has, at very best interpretation, been less than forthright. Hardly the actions of a trustworthy and honourable news source.

Was the 'scoop' - such as it was - really worth the damage it has caused? Not just to NightJack's professional life (and it must have taken a toll on his personal life, too), but also to the reputation of the "paper of record". I'd say not.

Times editors: we're waiting for a full, open and honest account of what "really" happened. Please don't try and fob us off with obfuscation, half-truths, and misdirection.

Peter Jukes

20 January 2012 at 17:16

What Jo said above

Graham Anderson

20 January 2012 at 17:51

Considering the you-scratch-my-back relationship between NI and the police, I wonder whether or not The Times was acting as an agent for a copper that NightJack had rubbed up the wrong way?

north london geezer

20 January 2012 at 19:10

There is a rumour that the 7.7 attacks were coordinated through hacked BBC computers. If the Police had been doing their job rather than taking backhander and disclosing confidential information to private investigators the attacks might have been averted.

BobRocket

21 January 2012 at 00:18

Hacker is guilty under the computer misuse act 1992

Managers who knew about this committed offences under the Serious Crime Act 2007, part 2 of which created a general offence of encouraging or assisting crime

If the servers of the blog were in the US then they should all extradited.

Simon

21 January 2012 at 09:02

"Public interest" as a justification has become mere humbug.

I'm glad I stopped buying anything tainted by Murdoch decades ago.

Graham Lowell

21 January 2012 at 09:08

The worrying thing is that this was not a unique incident. Dr Brooke Magnanti has written about an incident during the period when there was a great deal of speculation about the identity of the author of the 'Belle de Jour' blog when she was sent a computer virus (which she fortunately opened on a library computer on holiday in Florida) which she believes originated from a UK newspaper.

Chris Gilliver

21 January 2012 at 11:17

Very good article, and agree with all the above comments (for a change).

David Allen Green

22 January 2012 at 13:43

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I have just posted a detailed chronology on NightJack and computer hacking more generally at my Jack of Kent blog: <http://jackofkent.blogspot.com/2012/01/nightjack-and-compute...>

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Why the Times should apologise over NightJack

Posted by David Allen Green - 22 January 2012 21:02

The emerging questions over the hacking of a blogger's email account.



James Harding, editor of The Times newspaper, leaves the High Court in central London, 17 January 2012. Credit: Getty Images

It is today reported that Tom Watson MP is calling for James Harding, the editor of the *Times*, to return to the Leveson inquiry to answer questions about the hacking of the email account of NightJack.

But what should the questions be?

Over at [Jack of Kent](#) I have started to put together a detailed chronology of the hacking of the NightJack account together with information about other computer hacking. Looking carefully at what can so far be established, there are a number of questions which at least could usefully be posed to the editor of the *Times*.

It may be that the specific hacking incident is less important than the decisions -- taken by managers and executives -- which followed. After all, the journalist admitted the incident to his managers, and he was disciplined. There is no point making him the scapegoat for this, even though there might be a natural tendency for culpable senior figures to shift the blame downwards.

On the basis of the information so far collected, it would appear to me that three particular managerial or editorial issues need to be addressed.

First, why were NightJack's lawyers and the High Court not informed of the hack? The *Times* has admitted that it knew of the hack before publication. As the story was eventually published the day after the court handed down judgment, this can only mean that the *Times* knew while the litigation was live or during the period the paper was waiting for the judge to deliver the judgment.

In either case, it would appear to me that the fact of the computer hacking really should have been disclosed. There can be no doubt that the blogger's

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lawyers would have sought to rely on it. As it was, the blogger's lawyers were forced to concede that there had been no invasion of privacy or breach of confidentiality.

Second, there does seem to be uncertainty as to who within News International knew about the incident and it seems odd that it was not disclosed to the Department of Culture Media and Sport select committee in November 2011.

Here dates are important. The hacking incident was disclosed to the Leveson inquiry in those three witness statements dated 14 October 2011. (One of these statements -- from the CEO of News International, Tom Mockridge -- contains a material inaccuracy which was corrected by a further witness statement of 16 December 2011, which refers interestingly to "further enquiries".)

But on 10 November 2011 James Murdoch appeared at the DCMS committee and was asked a number of detailed questions by Tom Watson about computer hacking. It is clear from the answers that Murdoch either was completely unaware of the computer hacking incident (notwithstanding the three witness statements submitted to the Leveson inquiry only the month before) or was being very careful not to tell the committee about it when being directly asked.

Third, it is clear that the Leveson inquiry has so far been told relatively little about the 2009 computer hack. It was only by comparing four witness statements that one could work out any detail about what happened. No mention was made in those statements as to whether the hack had been in relation to a published story, or (perhaps significantly for Leveson) that there had actually been privacy litigation relevant to the story which was published.

Given that following the coverage here, and by David Leigh at the *Guardian*, the *Times* volunteered such details in an article published at the end of last week, one wonders why these significant details could not have also been provided to the Leveson inquiry itself.

The *Times* is a great newspaper, with many excellent columnists and outstanding reporters. But something very wrong happened when NightJack was outed, and this wrong may well have been compounded by subsequent decisions made by senior managers. There could be a perfectly satisfactory explanation as to all what happened, but it would be good to hear it either at the Leveson inquiry, or elsewhere.

And there should be an immediate apology to the blogger whose email was hacked. The *Times* itself ruled internally that the hack equated to professional misconduct and that it should not have happened. The paper should have promptly informed the blogger and apologised. It is difficult to see any good reason why that was not done.

The *Times* should now apologise to the blogger without further delay.

David Allen Green is legal correspondent of the New Statesman and author of the Jack of Kent blog.

Tags: [NightJack](#)

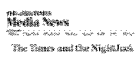
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2 comments from readers

Steffan John

22 January 2012 at 23:21

It's also worth remembering that at the time, The Times wheeled out quite a few of it's star columnists to defend the publication. Oliver Kamm was a staunch defender of the decision; Danny Finkelstein, their Comment Editor, also made a point to defend the publication and ridiculed their critics.

Given his position as Comment Editor, did he know about the apparently fraudulent means the story was discovered, and subsequently in effect lied about it - or was he kept completely in the dark, or was he told later?

There are important questions for reasons you gave, but it inevitably asks additional questions for the honesty and reputations of the public intellectuals who defended the decision at the time, and did not backtrack later (either because they remained ignorant, or because once they did know, they decided to keep quiet).

As usual, the cover-up is worse than the crime, and it comes down to 'what did they know, and when did they know it.'

The journalist in question and his management staff are not the only ones with questions to answer.

Silican

23 January 2012 at 15:21

The judge was told that the story was a result of crack investigative journalism when, in fact, it was obtained through a criminal act. This leaves us with the crime of computer hacking compounded by the crime of perjury. An apology seems a rather lame punishment in the circumstances.

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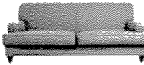
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JACK OF KENT

A LIBERAL AND CRITICAL BLOG BY DAVID ALLEN GREEN

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SUNDAY, 22 JANUARY 2012

A NightJack - and computer hacking - timeline

I set out below a chronology of the NightJack case and computer hacking by newspapers more widely.

Please suggest further events and/or links, as it is intended that this post will be updated - significant additions will be noted in the comments at the end of the post.

You will notice that I do not mention the journalist by name (unless quoting from a document). There is no reason for this to be a witch-hunt. The journalist admitted the computer hacking incident to his managers, and he was disciplined for it. The far more important issue is about what his managers did or did not do with this information. As far as I can I tell, they knew before publication, decided to publish, decided to oppose an injunction, did not tell the High Court or the defendant's lawyers, and told the Leveson inquiry as little as possible.

They also have never apologised to the blogger.

You will see I also do not mention the blogger's real name (again, unless quoting from a document). However, I regard "Jack Night", the author of the NightJack blog, as the best writer the blogging medium has so far produced (even if he and I have - *ahem* - different views on many policing and social issues). The loss of his blog was needless and unfortunate. He was one of the two kind judges when *Jack of Kent* was shortlisted for the Orwell Prize. I hope the below helps get him the apology he greatly deserves.

Key

Judgment - the judgment of the High Court in *The Author of a*



THE JACK OF KENT BLOG

"...one of the best bloggers in Britain" - Nick Cohen

Welcome to my personal blog, where you will find critical and liberal views, usually on legal and policy issues.

I am **David Allen Green**, a lawyer and writer working in London.

I now regularly blog at the *New Statesman*.

I am also convenor of *Westminster Skeptics*.

You can follow me on *Twitter* and *Facebook*.

Blog v Times Newspapers Limited dated 16 June 2009

PF - the witness statement of the journalist dated 2 June 2009

22 April 2009

"NightJack" awarded 2009 George Orwell Prize for blogging.

This is the first year that the prize is awarded for blogging.

Reported at the Guardian here.

At some point after the award the journalist "resolved to try and uncover the identity of its author, for the purpose of a news story" (PF para 5).

21 May 2009

The *Independent* publishes an article confirming that the author of the NightJack blog is a serving police officer but that he does not wish to be identified.

27 May 2009

A *Times* journalist telephones the blogger to put to him allegation that he is author of "NightJack" intending to publish allegation next day. (PF para 52)

The blogger's lawyers contact the *Times* and a decision is made not to publish the story in the next day's edition (PF para 56).

Two things are currently not clear in respect of the intended original publication date of 28 May 2009: (a) whether the editor/managers knew at that point hacking had took place and (b) how far the journalist's investigation had got to by this point. None of the print-offs exhibited to the witness statement are dated before 28 May 2009, though that - of course - does not mean that the searches had not occurred by then. Unfortunately, the PF witness statement does not date when the searches were made.

28 May 2009

Awarded *Pod Delusion Blogger of the Year 2009* (by Crispian Jago).

One of *The Times Five Best Blogs* - 5 November 2009.

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Like the BBC, this Blog is not responsible for the content of external internet sites.

I can be emailed at jackofkent [at] gmail.com.

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Date of some print-offs of the NightJack blog in the exhibits to the PF witness statement.

29 May 2009

The journalist telephones Monday Books (publishers) in an attempt to obtain evidence that people knew of identity not bound by confidentiality (PF para 1(b)(ii)).

Date of further print-offs of the NightJack blog in the exhibits to the PF witness statement.

1 June 2009

Date of the "Factiva" (electronic news archive) search print-offs in the exhibits to the PF witness statement linking real-life cases to NightJack posts. (This does not mean the searches had not taken place before 1 June 2009, just that they had not been printed off.)

Date of the print-offs from various Ju-Jitsu sites featuring blogger's real name. (Again, date of print-off not necessarily same as date of discovery.)

2 June 2009

Date of the PF witness statement (PF, page 1)

4 June 2009

Private hearing by Sir David Eady of application for injunction (judgment, para 1)

The defence and the High Court are not told that the journalist's investigation included the hacking of the blogger's email.

The defence is forced to concede that the case be decided on the basis that there had been no breach of privacy rights of the blogger (judgment, para 3).

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A NightJack - and computer
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Computer Hacking at The
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▶ 2011 (80)

▶ 2010 (169)

▶ 2009 (155)

▶ 2008 (84)

▶ 2007 (3)

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Science

16 June 2009

The judgment is handed down.

The injunction application by the blogger fails.

The judge decides, on the basis of the evidence put before him, that the blogger had no expectation of privacy (judgment, para 33).

17 June 2009

The Times publishes identity of the author of NightJack

The *Times* later admit they were aware of the hacking at the time of publication.

Reaction to publication:

Jean Seaton (Director of the Orwell Prize)

Graeme Archer (who was to win the same blogging prize in 2011)

Carl Gardner (leading legal blogger at "Head of Legal")

At some point the journalist is disciplined for the hack and receives a formal warning.

The blogger faced disciplinary action and possible dismissal, but is given a written warning.

Then nothing for two years...

...and the phone hacking scandal erupts.

10 June 2011

The Metropolitan Police establish a team to look into computer hacking. This is called Operation Tuleta (Wikipedia page).

11 July 2011

Deserted Vastness (Jon Treadway)

Dr Aust

Dr Petra Boynton

Gia Milinovich

Gimpy

Graeme Archer at Centre Right

Graeme Archer's Personal Site

Heresy Corner

Holford Watch

House of Comments (podcast)

Joanne Cash

Jourdemayne

Little Atoms (podcast)

Nick Cohen

Pod Delusion (podcast)

PodBlack Cat

Richard Wiseman

Righteous Indignation (podcast)

Simon Singh

Skeptic Zone (podcast)

Skepticat

Skeptics with a K (podcast)

The Lay Scientist

The Quackometer

The Rather Friendly Skeptic

Vagina Dentata

Zeno's Blog

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The highly respected Graham Cluley blogs about computer hacking concerns at the *Sunday Times* (but not the *Times*). This is also picked up at *The Register*.

13 July 2011

The Leveson Inquiry is announced.

18 July 2011

Lord Grabiner QC is appointed chairman of a new management and standards committee set up by News Corporation.

19 July 2011

Department of Culture, Media and Sport select committee question Rupert and James Murdoch. Tom Watson mentions allegations of computer hacking at other titles.

Q207 Mr Watson: Are you aware that there are other forms of illicit surveillance being used by private investigators, which were used by News International?

Rupert Murdoch: Other forms of?

Q208 Mr Watson: Illicit surveillance. Computer hacking, tracking on cars.

Rupert Murdoch: No. I think all news organisations have used private detectives, and do so in their investigations from time to time, but not illegally.

Q209 Mr Watson: If it can be shown to you that private investigators working for newspapers in News International used other forms of illicit surveillance like computer hacking, would you immediately introduce another investigation?

Rupert Murdoch: That would be up to the police, but we would certainly work with the police. If they wanted us to do it, we would do it. If they wanted to do it, they would do it.

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14 October 2011

Date of first witness statement of Thomas Mockridge, CEO of News International, to the Leveson Inquiry.

20. Have you, or The Times, The Sunday Times, The Sun or The News of the World (to the best of your knowledge) ever used or commissioned anyone who used "computer hacking" in order to source stories, or for any other reason?

20.1 As with my answer to question 12 above, I shall restrict my response to this question to my knowledge of The Times, The Sunday Times and The Sun.

20.2 Neither I nor, to the best of my knowledge, The Sunday Times or The Sun has ever used or commissioned anyone who used "computer hacking" in order to source stories or for any other reason. In relation to The Times, I am aware of an incident in 2009 where there was a suspicion that a reporter on The Times might have gained unauthorised access to a computer, although the reporter in question denied it. I understand that that person was given a formal written warning as a result and that they were subsequently dismissed following an unrelated incident.

Date of witness statement of Times editor James Harding to the Leveson Inquiry.

The Times has never used or commissioned anyone who used computer hacking to source stories. There was an incident where the newsroom was concerned that a reporter had gained unauthorised access to an email account. When it was brought to my attention, the journalist faced disciplinary action. The reporter believed he was seeking to gain information in the public interest but we took the view he had fallen short of what was expected of a Times journalist. He was issued with a formal written warning for professional misconduct.

Date of interim Director of Legal Affairs at NI Group Limited Simon Toms' witness statement to the Leveson Inquiry.

Explain whether you, or The Times, The Sunday Times, The Sun or The News of the World (to the best of your knowledge) ever used or commissioned anyone who used 'computer hacking' in order to source stories, or for any reason.

I am not aware that any NI title has ever used or commissioned anyone who used "computer hacking" in order to source stories. I have been made aware of one instance on The Times in 2009 which I understand may have involved a journalist attempting to access information in this way. However, I also understand that this was an act of the journalist and was not authorised by TNL. As such, I understand it resulted in the journalist concerned being disciplined.

10 November 2011

Over a month after the above witness statements are submitted to the Leveson Inquiry, James Murdoch is asked about computer hacking at the DCMS select committee. It is clear he either does not know of or is careful not mention the incident already described in the witness statements already submitted to the Leveson Inquiry.

Computer hacking is first mentioned in general:

Q1546 Mr Watson: There are allegations of phone-hacking, computer-hacking, conspiring to pervert the course of justice and perjury facing this company and all this happened without your knowledge.

James Murdoch: As I have said to you, Mr Watson, and to this Committee on a number of occasions, it is a matter of great regret that things went wrong at the News of the World in 2006. The company didn't come to grips with those issues fast enough. We all recognise that.

I have also acknowledged that evidence to this Committee was given without full possession of the facts in the past and that is something that I am very sorry for. What I can tell you, though, is that when evidence came to light and when we finally achieved the transparency that is appropriate, we have acted, and the company has acted, with great zeal and diligence, to get to the bottom of issues, to improve the processes to make sure they don't happen again, and to make sure that our co-operation with the

police, with this Committee and the like is such that we can bring any wrongdoers, if they are proven to be so, to account.

And then in more depth (I have added emphasis):

Q1670 Mr Watson: [...]Can you let me know whether the company admitted liability to e-mail hacks during any of the settled civil cases? I am thinking of Taylor, Miller or Clifford.

James Murdoch: I do not believe so. I am not aware of any of that.

Q1671 Mr Watson: If it is subsequently found, could you go back and let us know if that's the case and write to us if you did accept liability? You've got some lawyers with you.

*James Murdoch: I will consult with counsel about that to hopefully clarify those things, but **I am not aware of any of the computer hacking that you have talked about in the past.***

Mr Watson: Your lawyers behind you might be able to let you know whether that's a yes or a no.

James Murdoch: Would you like me to talk to them now, or can I write to you at some point in the future?

Mr Watson: Yes, if you just ask them now. We've got a bit of time. Yes or no.

James Murdoch: They would like to get back to us. They are not aware.

Q1672 Mr Watson: Okay. At the News Corp AGM a few weeks ago, board director Viet Dinh told me that he would investigate allegations of computer hacking. Has he discussed that with you?

James Murdoch: No. Mr Dinh has oversight authority at a board

level for the work that the management and standards committee is doing, and I would understand that it's on the agenda for the management and standards committee and is being pursued with vigour.

Q1673 Mr Watson: Are you aware that former Army intelligence officer Ian Hurst has now had it confirmed that he is a victim of computer hacking?

James Murdoch: No, I am not aware of that.

Q1674 Mr Watson: And that 16 others associated with him have had their e-mails illicitly read?

James Murdoch: No.

Chair: Tom, I am advised that you are straying into areas that could relate to the police investigations.

1 December 2011

The law firm representing News Corporation's Management and Standards Committee write to the Select Committee, and include information on the email interceptions mentioned in the exchange between Watson and Murdoch:

You have asked about the admission of liability for the interception of emails in the Taylor, Miller and Clifford cases. The MSC understands that neither Mr Taylor nor Mr Clifford made allegations that there had been e-mail hacking. Ms Miller did make a late amendment to her claim to allege e-mail hacking. This is a technical legal matter but the MSC has been advised that the order recording the settlement and the statement made in open court did not include any admission in relation to that late amendment.

16 December 2011

Thomas Mockridge, CEO of News International provides a correction to his earlier witness statement

At paragraph 20.2 of my first witness statement of referred to a reporter at The Times who might have gained unauthorised access to a computer in 2009. At the date of my first witness statement, it was my understanding that the reporter in question had denied gaining such access. Following further enquiries, I now understand that the reporter in fact admitted the conduct during disciplinary proceedings, although he claimed that he was acting in the public interest. The journalist was disciplined as result, he was later dismissed from the business for an unrelated matter.

It is interesting that this correction was issued. It may have been that there was a simple mistake. Or it could mean that Thomas Mockridge had not been provided with full information. But by December 2011 the mistake had been noticed and that "further enquiries" had been made into the the hacking of the #NightJack account at a senior level at News International.

9 January 2012

The witness statement of Simon Toms is published on the Leveson site.

10 January 2012

The Press Gazette notice the reference to computer hacking and publish a brief post. It mentions the date of the incident as 2009.

I see the Press Gazette post and wonder whether the 2009 incident could relate to the outing of NightJack.

16 January 2012

I do a quick post drawing attention to the evidence and the Press Gazette post. However, at this stage I have no idea who the journalist was or even if it related to a published story. (I update that post when the other witness statements become available.)

17 January 2012

The witness statements of Tom Mockridge and James Harding are published on the Leveson site.

Taking the four witness statements together it is evident:

- the incident was in 2009;
 - the reporter was male ("he");
 - the computer hacking was in the form of unauthorised access to an email account;
 - a disciplinary process was commenced after concerns from the newsroom;
 - the reporter admitted the unauthorised access during the disciplinary process;
 - the incident was held to be "professional misconduct" and the reporter was disciplined;
- and
- the reporter is no longer with the business having been dismissed on an unrelated matter.

I add the above analysis to my earlier post.

Paul Waugh at Politics Home (who had been deeply sceptical of the *Times* story in 2009) makes a possible link with NightJack case. The *Times* admission is also noticed by Fleet Street Blues.

I do a post at *New Statesman* asking whether the *Times* has used the hacking in a published story. I email same question to the *Times* but get no reply.

In the meantime, Tom Mockridge and James Harding had given oral evidence at the Leveson inquiry.

Mockridge is asked specifically about the computer hacking incident:

Q. [...] Can I ask you to clarify paragraph 5. This is the access to a computer by a reporter at the Times. Are we talking about an internal computer or are we talking about a third party's computer?

A. I believe it was a third-party computer.

He is also asked about issues wider than phone hacking:

Q. Are there any specific issues which have caused you concern since you took over as chief executive officer outside the ambit of phone hacking, issues which you've discovered which you would like to draw to the Inquiry's attention?

A. I don't think there's anything I would draw to the Inquiry's attention separately from the investigations which are progressing and which I think in time results of which will be notified to the authority ...to the Inquiry.

Q. This is the internal investigation --

A. The internal investigation.

LORD JUSTICE LEVESON: This is the one chaired by Lord Grabiner?

A. Correct.

However, it does not appear that Harding is asked directly about the incident.

In the evening, a source tells David Leigh at the Guardian that the admitted hacking was regarding the NightJack case. The journalist is also named. David Leigh also tweets that hacking was used in the exposure.

18 January 2012

The *Times* publishes the following article, which I set out in full for the purposes of reporting current events and review.

The Times and the NightJack case

The Times published a report exposing the identity of an anonymous police blogger after a journalist at the newspaper had hacked into his e-mail account.

The report in 2009 revealed the identity of the author of NightJack, a popular blog by a police officer who gave behind-

the-scenes insights into frontline policing.

The Times's decision to expose the Lancashire detective Richard Horton was widely criticised at the time but the newspaper said there was a public interest in doing so because his blog contained details that could be traced back to actual prosecutions. A High Court judge agreed that there was a public interest in naming him and overturned an injunction Mr Horton had obtained against The Times.

The e-mail hacking has come to light because James Harding, Editor of The Times, and Tom Mockridge, Chief Executive of the paper's parent company, News International, were asked questions by the Leveson inquiry about computer hacking.

Mr Harding referred to the incident in his statement, dated October 14 last year: "The Times has never used or commissioned anyone who used computer hacking to source stories. There was an incident where the newsroom was concerned that a reporter had gained unauthorised access to an e-mail account.

"When it was brought to my attention, the journalist faced disciplinary action. The reporter believed he was seeking to gain information in the public interest but we took the view he had fallen short of what was expected of a Times journalist. He was issued with a formal written warning for professional misconduct."

The witness statement was made public after Mr Harding's appearance at the inquiry on Tuesday.

Mr Mockridge made two witness statements, the second correcting what he had said in the first about the computer-hacking incident. His first statement, also dated October 14, said there had been a "suspicion" that a reporter from The Times "might have gained unauthorised access to a computer". The statement added that the reporter had denied doing so but had been given a formal written warning.

However, the reporter, Patrick Foster, who has since left the paper, had in fact informed his managers before the story was published that he had, on his own initiative, hacked into Mr Horton's e-mail account. The incident raised issues about the approval process for newsgathering at the newspaper.

The role the hacking played in Mr Foster's investigation remains unclear. Mr Foster identified Mr Horton using a legitimate process of deduction based on sources and information publicly available on the internet.

Mr Mockridge's second witness statement, dated December 16, said: "Following further enquiries, I now understand that the reporter in fact admitted the conduct during disciplinary proceedings, although he claimed that he was acting in the public interest. The journalist was disciplined as a result. He was later dismissed from the business for an unrelated matter."

In his original injunction application, Mr Horton said his identity had been disclosed to The Times "in a breach of confidence". In his ruling overturning Mr Horton's injunction, Mr Justice Eady said that Mr Horton's barrister "was prepared to proceed on the basis that the evidence relied upon from Mr Patrick Foster was correct; that is to say, that he had been able to arrive at the identification by a process of deduction and detective work, mainly using information available on the internet."

Mr Harding said: "The newspaper published the story in the strong belief that it was in the public interest even though concerns emerged about the conduct of the reporter. After the judge handed down his judgment overturning the injunction on the grounds of public interest, we published. We also took the decision to look into the reporter's conduct and he was subsequently disciplined."

The crucial points arising from the *Times* admission appeared to me to be that managers did know about the hack before publication on 17 June 2009, that they were "unclear" about the role it played in the journalist's investigation, and that the High Court and the blogger's lawyers were not told about the hacking.

19 January 2012

In another case, the High Court is told that the *News of the World* hacked into the emails of Christopher Shipman. Michael Silverleaf, QC, for News Group Newspapers, told the court that the company offered its "sincere apologies ... for the damage, as well as the distress caused to him by the unlawful interception of his emails and obtaining private and confidential information".

This seems to be the first formal admission by News International that computer hacking took place on any of its titles.

20 January 2012

I do a follow on post at the *New Statesman* establishing that senior managers at the *Times* knew the blogger's email account had been hacked that but did not tell the High Court.

22 January 2012

The *Independent on Sunday* reports that Tom Watson MP is calling for James Harding to be recalled to the Leveson Inquiry to give evidence on the computer hacking.

22 January 2012

I summarise the emerging three key questions at the *New Statesman* as being why the court and blogger's lawyer's were not told, why the DCMS select committee were not told in November 2011, and why the Leveson inquiry was not given fuller information.


I also call for the *Times* to apologise for the hacking, which it has already accepted at the internal disciplinary was misconduct and should not have happened.

23 January 2012

Tom Watson MP calls for a police investigation. Also reported in the *Press Gazette*.

COMMENTS MODERATION

No purely anonymous comments will be published; always use a name for ease of reference by other commenters.

BY JACK OF KENT AT 08:38 

5 COMMENT(S):



vjohn82 said...

Thanks for setting out the timeline David. It's a truly intriguing case.

22 JANUARY 2012 13:30



Jack of Kent said...

Added

1 December 2011 - letter from Linklaters to the Select Committee

There are still some typos, and I am sorry, but these should be cleared up shortly.

22 JANUARY 2012 13:41



Jack of Kent said...

Added

- Link to blogger's disciplinary case.
- Links to reactions by Graeme Archer and Jean Seaton.

22 JANUARY 2012 17:13



Jack of Kent said...

Added

- Link to Carl Gardner post
- Link to David Leigh confirmatory tweet

22 JANUARY 2012 18:03



Jack of Kent said...

Added

- My 23 January 2012 NS post
- link to Tom Watson's site and Press Gazette article on the call for a police investigation

23 JANUARY 2012 11:26

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