Leveson Inquiry

Witness Statement of Richard Thomas CBE

Summary

I was the Information Commissioner from 2002-9. This Statement is primarily directed at the Inquiry's review of the extent to which there was a failure to act on previous warnings about media misconduct. But my evidence has relevance to other parts of the terms of reference, notably relationships between national newspapers and politicians and the effectiveness of the data protection and wider regulatory framework.

This Statement summarises the background and content of the two Parliamentary reports which I published as Information Commissioner in 2006. These reports documented a widespread and pernicious trade in confidential personal information, with private investigators supplying such information to a very wide range of journalists and to clients in other sectors. Following an intensive promotional and follow-up programme – which this Statement records in detail - our concerns quickly became familiar to all key players at the most senior levels in the political and press arenas and to many others. No serious attempts were made by anyone to dispute the thrust of our findings, which were explicitly accepted for example by Les Hinton, the Chief Executive of News International. The government rapidly accepted our main recommendation to introduce a prison sentence for the offence. This made good progress through Parliament, until a legislative campaign led by press organisations – reaching the Lord Chancellor and the Prime Minister - jeopardised the reform and resulted in a compromise outcome. Despite this setback, awareness was raised and some deterrent on the lines proposed has been created. There are at least anecdotal indications that press misconduct of this nature has reduced substantially since 2006.

This Statement includes detailed evidence of how the press were able to assert substantial proprietorial and editorial influence on public policy and the political processes. Despite the experience recorded in this Statement, I have never advocated a statutory privacy law and – informed by my parallel experience with the Freedom of Information Act - I am personally opposed to a regulatory framework that would threaten legitimate journalism which, provided it can be justified in public interest terms, plays a key role in holding governments and others to account. My Statement concludes with some suggestions for regulatory reform.

Personal

1. I am currently the part-time Chairman of the Administrative Justice and Tribunals Council and a consultant to the Centre for Information Policy Leadership, a think tank associated with Hunton & Williams, the international law firm. I am also Deputy Chairman of the Consumers Association (publishers of Which?), a trustee of the Whitehall & Industry Group and a member of the Management Board of the International Association of Privacy Professionals.

2. From November 2002 until June 2009 I held office as the Information Commissioner. I qualified as a solicitor in 1973 and my previous career included Director of Public Policy at Clifford Chance, Director of Consumer Affairs at the Office of Fair Trading and Legal Officer and Head of Public Affairs at the National Consumer Council. I have also held various non-executive and public appointments.

Structure of Witness Statement

3. This Statement is structured as follows:

A. The Information Commissioner's Office and its regulatory functions;
B. What Price Privacy? and What Price Privacy Now?
C. Follow-up and response to the ICO reports
D. The response from government and the legislative processes
E. Press knowledge and influence
F. Press Complaints Commission
G. The current situation.
H. Regulatory Reform.

4. The Statement concentrates on my personal involvement. I have prepared a comprehensive Timeline of events and this is attached as Annex A. I have prepared both Statement and Timeline from my diaries and personal notes, from public domain material and from my own recollection. They also draw on ICO-held material to which I have had access for this purpose. A separate Annex documents in more detail the political and legislative developments which led to dilution of the Criminal Justice and Immigration Bill. Both the body of the Statement and the Annexes refer to various Exhibits – mainly from ICO records - which are all set out together in broadly chronological order in Annex A. There is considerable detail in this Statement and in its Annexes and Exhibits, but I believe that this is necessary to tell the full story and to shed light on the issues which the Inquiry is reviewing.

A. The Information Commissioner's Office (ICO) and its regulatory functions

5. Although the original role was created in 1984, the main formal functions of the Information Commissioner are now set out in the Data Protection Act 1998 and the Freedom of Information Act 2000. The independence of the Commissioner from government and others, both as regulator and in a quasi-judicial role, is fundamental. Although the various duties and powers are vested in the Commissioner, they are largely discharged through some 300 staff who are employed by the Commissioner and who constitute the Information Commissioner's Office (ICO). I understand that the current Commissioner, Christopher Graham, will provide the Inquiry with more detail about the Commissioner's functions and the ICO.

6. It is important to make a number of points at the outset:

- The Commissioner has no powers under the Regulation of Investigatory Powers Act 2000 ("RIPA") or any further statutes.
- In particular, the Commissioner has no powers to regulate phone hacking, whether intercepting live phone calls or accessing voicemails.
- The Commissioner is not a regulator of the press as such. The Data Protection Act imposes fair processing and other obligations on "data controllers". This includes all media organisations, but section 32 of the Act introduces various exemptions where personal data are processed for journalistic or other special purposes.

7. The Inquiry is likely to find Section 55 of the Data Protection Act ("DP Act") as most relevant to its terms of reference. In summary, the section (which originated with the Criminal Justice and Public Order Act 1994) makes it a criminal offence, subject to certain defences, to knowingly or recklessly obtain or disclose personal data (or procure such a disclosure) without the consent of the data controller.

8. This is a largely self-contained part of the Act and is notable in that:

- The DP Act primarily regulates data controllers. But "any person" can commit an offence under section 55;
- Section 55 creates criminal offences. The Act otherwise largely relies upon administrative sanctions to regulate data controllers;
- An offence can be committed by three different types of actor, and frequently more than one will be involved in each incident :
    - the person who wrongfully obtains the information ;
    - the person who wrongfully discloses it; and/or
    - the person who procures the disclosure.
- Search warrant powers are available to the Commissioner (under Schedule 9 of the DP Act) to assist investigations.

- A public interest defence can be used to protect legitimate investigative journalism.

9. It can be said that there are two victims whenever a section 55 offence is committed – the "data controller" (typically an organisation holding personal data on a database) and the individual to whom the data relates. Public bodies holding personal information about individuals include government departments and agencies, local authorities, the National Health Service and the police. In the private sector, ever-increasing amounts of information about individuals are held by banks, supermarkets, telephone companies - to say nothing of social networks and other online services.

10. Section 55 enforcement was the responsibility of a small Investigations team which also investigated cases where data controllers had not notified the ICO of their processing activities (the other criminal offence created by the DP Act). This team, composed of former police and customs officers, was reorganised during my tenure and placed under the command of a former Detective Superintendent recruited from Greater Manchester Police to lead the Regulatory Action Division.

11. A section 55 offence is often at least as serious as phone hacking, and may be even more serious. Interception of a telephone call or message is widely and rightly seen as highly intrusive. But a great deal more information can usually be obtained about individuals by stealing their electronic or written records (such as financial, health, tax or criminal records) than from a conversation or message. And their entire daily activities can be available if e-mail accounts or social network sites are illicitly accessed.

12. When I started as Commissioner, I was briefed by members of the Investigations team of their belief that extensive networks of private investigators were engaged in activities which necessarily involved commission of section 55 offences. In 1997 the Office had successfully prosecuted a private investigator whose clients included at least three or four national newspapers. Shortly before my appointment in 2002, the team had played the leading role in producing the "Blaggers Beware!" Video, a short film explaining the dangers of blagging and intended to help companies and other organisations alert and train their staff – especially front-line call-centre staff - to be on their guard. During the early months of my appointment the video was being freely distributed to companies and received positive feedback.

13. The team – and in this they were backed up by internal legal advisers – also told me of the difficulties of obtaining hard evidence about the illegal trade in personal information and their frustration at the very light penalties imposed when convictions were obtained (tabulated in Annex A of *What Price Privacy?*). During the first year of my appointment, I was told about a "treasure trove" of evidence which the team had obtained under a search warrant as part of "Operation Motorman", which

had followed police investigations into misuse of the Police National Computer. There was a feeling that the material was of sufficient quality and quantity to make this a major case which would bring home the seriousness of the offence. In view of allegations of associated criminality of a more serious nature, corruption, conspiracy and data protection prosecutions were led by the Crown Prosecution Service at Crown Court level. However, on April 15 2005, the only conviction – for the data protection offence - resulted in a Conditional Discharge for the main defendant, Steve Whittamore. When I heard this, I can recall personally and strongly sharing my team's feelings of frustration.

14. We were subsequently advised by external Counsel that the leniency of the sentence meant that it would not be the public interest to continue or pursue parallel and further prosecutions. It was then my personal decision to commission a report to be presented to Parliament under section 52(2) of the DP Act. The power had not been previously used by me or any of my predecessors. The report - *What Price Privacy? The unlawful trade in confidential personal information* ("WPP") - was published on 13 May 2006 and the follow-up progress report - *What Price Privacy Now?* ("WPPN") - was published on 13 December 2006.

B. What Price Privacy? and What Price Privacy Now?

15. These two reports are attached as Exhibits RJT 1 and RJT 2 respectively. Included with each Exhibit are the accompanying press releases (RJT 1A and 2A). The first report documents the ICO's experience with section 55. The second report documents all the responses to the first. Although the detailed material was assembled by ICO staff and (in the case of the first report) edited by a consultant, I was personally involved in the preparation and follow-up to both reports. Nothing in the intervening years has caused me to depart from any point made in those reports.

16. I wish formally to adopt the totality of each report as part of my evidence to the Inquiry. It serves little purpose to repeat the full substance of these reports in this Statement. But, drawing on the Executive Summary, the following key points are worth highlighting from *What Price Privacy?*:

This report revealed evidence of an extensive unlawful trade in confidential personal information. Putting a stop to this trade was the report's primary purpose.

Investigations by the ICO and the police had uncovered evidence of a widespread and organised undercover market in confidential personal information. Much more illegal activity lay hidden under the surface.

Such activity is outlawed by section 55 of the DP Act, but offences are only punishable by a fine - up to £5,000 in a Magistrates' Court and unlimited in the Crown Court.

The ICO had received a steady number of complaints from individuals who felt that personal data about them had been illegally obtained. Many more cases had come to the attention of the ICO through joint working protocols with bodies such as the Department for Work and Pensions (DWP), HM Revenue & Customs (HMRC) and police forces around the country.

The evidence uncovered by the ICO and the police formed the core of the report - with details about how the unlawful trade in personal information operated, who the buyers were, what information they were seeking, how that information was obtained for them, and how much it cost.

Among the 'buyers' were many journalists. The evidence obtained as part of Operation Motorman included records of information supplied to 305 named journalists working for a range of newspapers. Other cases involved finance companies and local authorities wishing to trace debtors; estranged couples seeking details of their partner's whereabouts or finances; and criminals intent on fraud or witness or juror intimidation.

The personal information included current addresses, details of car ownership, ex-directory telephone numbers or records of calls made, bank account details and health records.

Paragraphs 5.6 to 5.11 of the report summarised what the ICO had discovered about press misconduct through use of search warrant powers:

- Paragraph 5.6 described the primary press-related documentation seized from the premises of the private detective – "*correspondence (reports, invoices, settlement of bills etc) between the detective and many of the better-known national newspapers – tabloid and broadsheet – and magazines. In almost every case, the individual journalist seeking the information was named, and invoices and payment slips identified leading media groups, Some of these even referred explicitly to 'confidential information'.*"

- Paragraph 5.7 described the sort of information supplied – "*details of criminal records, registered keepers of vehicles, driving licence details, ex-directory telephone numbers, itemised telephone billing and mobile phone records, and details of 'Friends & Family' telephone numbers.*"

- Paragraph 5.8 referred to the secondary documentation seized ("*the detective's own hand-written personal notes and a record of work carried out, about whom and for whom*") and recorded that a total of 305 journalists were named.

- Paragraphs 5.9 to 5.11 described some of the victims who had been interviewed and their reactions. As well as celebrities and others in the public eye, they included those with no obvious newsworthiness, such as a greengrocer, a hearing-aid technician and a medical practitioner.

The 'suppliers' almost invariably worked within the private investigation industry: private investigators, tracing agents, and their operatives, often working loosely in chains with several intermediaries between ultimate customer and the person who actually obtained the information.

Suppliers used two main methods to obtain the information: through corruption, or more usually by some form of deception, generally known as 'blagging'. Blaggers pretend to be someone they are not in order to wheedle out the information they are seeking, usually through a series of telephone calls.

The evidence showed that many private investigators and tracing agents were making lucrative profits from this trade, with one agent invoicing up to £120,000 per month.

Prosecutions had resulted in low penalties: either minimal fines or conditional discharges. Between November 2002 and January 2006, only two out of 22 cases produced total fines amounting to more than £5,000.

The report made a series of central and directed recommendations, including:

- To discourage this undercover market and to send out a clear signal that obtaining personal information unlawfully is a serious crime, the Lord Chancellor should bring forward proposals to raise the penalty for persons convicted on indictment of section 55 offences to a maximum two years' imprisonment, or a fine, or both; and for summary convictions, to a maximum six months' imprisonment, or a fine, or both.

- The Press Complaints Commission should take a much stronger line to tackle press involvement in this illegal trade. (The report also warned that the Commissioner would not hesitate to prosecute journalists identified in previous investigations who continue to commit these offences.)

The report concluded by inviting a number of named media, financial and professional bodies to respond to specific questions about the steps they will take to raise awareness and improve good practice.

The Commissioner would publish a follow-up report 6 months after the publication of the report, documenting responses and progress.

17. The second report - *What Price Privacy Now?*- set out developments between May and December 2006. The following key points are worth highlighting from that report:

The circumstances leading to the guilty pleas in November 2006 from Clive Goodman and Glenn Mulcaire for offences under the Regulation of Investigatory Powers Act 2000 ("RIPA") were documented and the report recorded that they "appear to have parallels with the section 55 offence and to reinforce the evidence gathered during Operation Motorman".

The report tabulated the newspapers and magazines that employed the 305 journalists which the first report said had been identified as customers during Operation Motorman. For each publication, the table (as corrected in February 2007) set out the number of transactions identified and the number of journalists. [More is said about this table, and the background to it, in section F below.]

The first report had received a little more media attention than had been expected, especially during the later months, though with some articles suggesting that

"journalists should be treated differently". Some quotations from media articles were included in the second report.

The report stated that "overwhelmingly the responses indicate support for the proposals [of the first report]." A particular welcome was expressed for the Lord Chancellor's consultation (issued in July 2006) on the intention to increase the penalties for section 55 in line with the ICO recommendations.

Most other bodies were commended for their positive responses to the problem.

But the collective response of the main newspaper and magazine bodies, which was summarised, was described as "disappointing".

C. Follow-up and Response to the ICO reports

18. The ICO put heavy effort into promoting the two reports. The main aim was to secure implementation of our recommendations - especially custodial sentences which were primarily seen in terms of deterrence – but also to raise awareness about the nature and scale of the illegal trade and get it taken much more seriously. The technique of announcing the intention to produce a second (progress) report was deliberately part of this strategy.

19. I was personally involved in this promotional activity to a very considerable extent. The Commissioner – as the personification and leader of the ICO – is obviously expected to be a visible part of all major activity. In this case, I attached particular priority to the issue and also viewed promoting the reports as a tangible way of fulfilling a wider ambition to get data protection taken more seriously. On some occasions staff accompanied me to meetings and on other occasions staff attended meetings or (for example) gave presentations without my involvement.

20. The activity took place at a very busy time for the ICO. In particular, 2006 was the second (and very demanding) year of implementing the Freedom of Information Act and was the year in which we were raising wider concerns (including hosting the International Commissioners' conference) on a "Surveillance Society". In November 2006, the government announced that HMRC had lost two discs with 25 million child benefit records and many other cases of data loss came to light in the following few months. This heavily engaged me and the Office and also cast its own shadow over the section 55 debates.

21. We were aware from the outset that the media would probably ignore or show hostility to our reports. This presented two problems:

- The media usually play an important and influential role in any campaign by an independent body to secure legislative and other change. In this case we anticipated hostility through both editorial and proprietorial influence.

- We had worked very hard to secure a "good press" for the ICO across a very wide range of other DPA and FOI functions and had been largely successful. There was a real fear that this could be jeopardised.

22. As *What Price Privacy Now?* records, we were very pleased with most initial responses and we were aware that our report was making a real impact, particularly in the world of private investigators, their clients and their targets. No serious attempts were made by anyone – including press organisations - to dispute the thrust of our findings.

23. We worked hard to raise awareness and secure support for our proposals. It is difficult to know what more we could or should have done particularly within the very limited resources available to the ICO. Quite apart from dealings with press organisations and the PCC (which are documented in section F below), our activities included for example:

- Sending copies of both reports to all relevant organisations and actively chasing responses.
- Issuing press releases to publicise the reports, which at least attracted immediate BBC website attention – Exhibit RJT 11 .
- I raised the matter at my regular meetings with the Lord Falconer, then Lord Chancellor. For example my handwritten note of my meeting with him on July 24th 2006 records his words on this issue as "Right behind you... Disgraceful".
- We discussed the issues in more detail with DCA (now MoJ) officials at most, if not all, of the regular ICO liaison meetings with them.
- I gave evidence on the matter to the following Select Committees, whose subsequent reports all broadly endorsed our approach:
  - Culture, Media and Sport – March 6th 2007
  - Health – March 14, 2007
  - Justice – December 4th 2007
  - Home Affairs – May 1st 2007.
- I had previously sought the support of the Director of Public Prosecutions, having met Sir Ken MacDonald on January 19th 2006.
- I had also previously met officers from the Metropolitan Police who suspected that certain private investigators were unlawfully obtaining personal information for organised criminals with a view to "nobbling" jurors and witnesses.
- We secured the support of Richard Grainger, then leading the NHS Electronic Records project.
- I raised the subject at the "Wednesday meeting" of all Permanent Secretaries to which I was invited on February 20th 2008, primarily to discuss governmental data losses.
- I covered the topic in almost all data protection speeches I made at the time (as many as once a week) to a wide range of audiences. I used a standard PowerPoint slide (Exhibit RJT 35), summarising key points from WPP and WPPN for most of these speeches.

- I covered the topic in much more detail on other occasions, notably in speeches on June 14th, July 26th and July 27th 2007: See for example Exhibit RJT 35A.

D. The response from government and the legislative processes

24. We were delighted with the swift initial response of the government. The DCA consultation paper proposing to legislate in line with our recommendations was issued on July 24 2006.

25. We were even more pleased that the Criminal Justice and Immigration Bill contained clause 75 which would introduce custodial sentences for section 55 offences. The Bill received its Second Reading in the House of Commons on October 8th 2007, less than 18 months after the publication of the recommendation in *What Price Privacy?*. Clause 75 did not generate any serious controversy as the Bill passed through the Commons towards the end of 2007.

26. However in the early part of 2008 I became aware that press organisations were engaged in a powerful campaign against the proposal which (due to unrelated changes to the Bill) had become clause 129. Over January – April 2008 events moved fast. For ease of reference, the detailed sequence of events is set out at Annex B. On two separate occasions, I was phoned by the then Lord Chancellor (Jack Straw) and told first that the entire clause was likely to be withdrawn and then that it would be withdrawn. On both occasions I expressed dismay and, after the second, I wrote to him indicating that I would feel obliged to lay a third report before Parliament (Exhibit RJT 39). Matters escalated and I was asked at short notice to meet the then Prime Minister (Gordon Brown). At that meeting, he made clear (Exhibit RJT 40) that – while agreeing that the illegal trade in personal information was entirely unacceptable - he wished to strike the right balance with protecting freedom of the press. He said that the clause would have to be withdrawn unless a compromise between the two sides could be achieved (and Parliament was given the same message that same day). I subsequently wrote to the Prime Minister (Exhibit RJT 41) to record the arguments against withdrawal. My letter spelt out that this is a pernicious, and largely hidden, illegal market, which damages individuals, organisations and society. I argued that withdrawal of the clause would be highly damaging symbolically and substantively

27. Over the next three weeks I was asked to attend three meetings with the Permanent Secretary at the Ministry of Justice who was charged with brokering a compromise. At the second of these meetings I was told that media interests were lobbying the Conservative Opposition (amongst others) heavily in favour of removing the clause. The Bill was eventually amended so that the prison sentence could only be introduced after a Ministerial Order and this had to be preceded by consultation with media

organisations and other interested parties. The public interest defence was also amended to become subjective.

28. This was clearly the end of this particular road. I saw the compromise in "half a loaf" terms and – although very disappointed - recognised that it would still serve some deterrent and awareness-raising purpose, though less direct or powerful than originally envisaged. This remains the position and the clause has not yet been activated.

E. Press knowledge and influence

29. This section of my Statement describes the engagement with press organisations, signposts the extent of press misconduct and knowledge about it and concludes with relevant evidence about the editorial and proprietorial influence of the press.

30. Although media coverage was limited, the reference to 305 journalists certainly did not go unnoticed. The second report - *What Price Privacy Now?* - included a table on page 9 which set out the titles of each publication featured in the material seized under search warrant and the numbers of transactions and journalists identified. The names of the journalists themselves, however, had to remain withheld. The accompanying text recognised that some of the cases may have raised public interest or similar issues, but also noted that no such defences were raised by any of those interviewed and prosecuted in Operation Motorman.

31. The report noted the dominance of tabloid publications, but certain magazines also featured prominently and some broadsheets were represented. Although 228 transactions - involving 23 journalists - were associated with the News of the World, that newspaper featured fifth in the table. Significantly more transactions and journalists were associated with the Daily Mail, the Sunday People, the Daily Mirror and the Mail on Sunday. I am aware that shortly after the table was published, the publishers of the Mail newspapers said that the report was "utterly meaningless" as it was based on material seized from only one source and that, more recently, the Trinity Mirror Group has said that all its journalists work within the criminal law. I can only surmise this to mean that, if any of their journalists had been prosecuted, a public interest defence would have been attempted. But, as noted above, no such defence was raised by any of the investigators who were prosecuted and convicted.

32. Was the type of press misconduct described in *What Price Privacy?* both widespread and widely acknowledged? Certainly the table suggested heavy involvement across the tabloid press at least. I have always recognised that the material seized in Operation Motorman came only from one group of investigators and may have been entirely isolated. Equally, many other private investigators were known to be active and it is difficult to believe the investigators raided by the ICO were the only ones with press clients. This view is strengthened by the quite separate

Goodman / Mulcaire prosecutions which came to light after the first ICO report and which had parallels with the section 55 offences and reinforced the evidence gathered during Operation Motorman.

33. There has been much interest in "Who knew what?". The extent of knowledge across the press can be gauged in part by the substance of most of my exchanges with press representatives. The general line, surfacing in many conversations, was to accept that some journalists "did these things", to indicate that we had uncovered details of what everyone knew was going on, to talk in terms of "cleaning up our act", but to resist any increase to the section 55 penalties as inhibiting investigatory journalism. Through numerous meetings, no attempt was ever made to deny the activities that we had exposed. Even if there had been ignorance in some relevant quarters before our reports were published, there can have been little afterwards or by the end of our promotional activity.

34. Our reports were mainly covered in the Guardian, Observer, Press Gazette and Private Eye. There was obviously much interest in the various Select Committee hearings, the DCA consultation paper and the Parliamentary processes. As shown within Annex A there were many meetings, conferences and other developments involving people at the highest levels of newspaper management, with a bewildering range of press and with other press-related organisations. The main purposes of these engagements from my perspective was to make sure everyone knew what was going on, to ensure condemnation, to discuss our legislative proposals, to explore the scope for better self-regulation and to improve the guidance given to journalists. I have no doubt that, by late 2006, most – if not all - proprietors and editors at national level knew all about the material we had published. The same is likely to be true for many tabloid and broadsheet journalists and across regional press and relevant magazines. Although it involved phone-hacking and not personal information, it always struck me as strange that the Goodman / Mulcaire case was described as an isolated incident.

35. Of particular interest for this Inquiry, I need to highlight the meeting hosted at News International in Wapping on October 27th 2006 by Mr Les Hinton, in his capacity as Chairman of Editors Code of Practice Committee. The handwritten notes which I made for and during that meeting are attached as Exhibit RJT 22. Although this is not explicit in the ICO meeting note, the opening words on the second page are "Hinton. Accept = Problem. S/thing radical will happen". I highlight this because it confirms knowledge of the misconduct at the highest level. But I also highlight this meeting because of the immediate aftermath.

36. The meeting was, in the circumstances, civilised and reasonably constructive. Mr Hinton made quite clear that he and his colleagues were opposed to prison sentences, but talked a lot about the efforts which would be made to tackle misconduct. Nobody from the editorial side of any newspaper attended the meeting, which took place at 4.00pm on a Friday. I was extremely surprised two days later to see a hostile and personalised

leading editorial in the Sunday Times of October 29th attacking me and our stance. This was followed by a further hostile article in the Times on Wednesday, November 1st. These articles and my response are attached as Exhibit RJT 23. At that time, nothing else was appearing in the mainstream press about the "little noticed report" to prompt these attacks. The episode raised questions in my mind about proprietorial influence on editorial independence and freedom.

37. Whatever was precisely known about the nature and extent of press misconduct across the industry as a whole, it became increasingly clear that the press were able to assert very substantial influence on public policy and the political processes. I have, throughout my career, been involved in a wide range of activities where it has been essential to attract media attention and, better still, active media support. The ICO press team was very effective at giving strategic, tactical and practical advice and securing favourable media coverage on many occasions. But, in the matters covered by this Statement, the press had a direct interest and a hostile attitude which made it very difficult to achieve our objectives. The history of the campaign over the Criminal Justice and Immigration Bill, as set out in section D and Annex B left me in no doubt about the power of the press. I can recall saying to my colleagues in 2007 and 2008 that, with hindsight, it may have been a mistake on our part to have highlighted press misconduct in our reports. We may have made better progress if we had concentrated more on breaches of section 55 by other sectors.

38. Press power and influence in this matter were confirmed in the speech given on November 9th 2008 - more than a year after these events - by Paul Dacre, Editor-in-Chief of Associated Newspapers, at the Society of Editors annual conference in Bristol. Although we did not meet on any of these occasions, I was aware that Mr Dacre had been leading the press team at the "compromise" meetings chaired by the MoJ Permanent Secretary. Mr Dacre's speech tells the story set out in this Statement from his side of the fence, describing our proposals as "truly frightening", the Prime Minister as "hugely sympathetic" and the Conservatives in the Lords as "[coming] out against the jail sentences". The full extracts from this speech are in Exhibit RJT 46.

F. Press Complaints Commission

39. The meetings, events and developments set out in Annex A include various meetings and exchanges with the Press Complaints Commission (PCC). These had been initiated with my letter of November 4th 2003 – well before the Motorman prosecutions - to Sir Christopher Meyer, Chairman of PCC to alert him to the evidence and forthcoming prosecutions. This led to two meetings before the end of 2003 and a further exchange of correspondence in late 2004. The matter was taken more seriously at the second meeting (convened at their request), but I was disappointed at the apparent lack of commitment to take strong action. Even attempts to draft an advice note during 2004 ran into the sand (Exhibits RJT 7 and 8).

40. Further exchanges took place after publication of *What Price Privacy?* at which we were directed to the Editors Code of Practice Committee as the "rule-makers" (Exhibit RJT 13)

41. Overall - with only the limited progress recorded on page 19 of *What Price Privacy Now?* - I was disappointed by the response from the PCC and the Editors' Code of Practice Committee before and during 2006. I had hoped for much stronger and louder condemnation of wholly unacceptable misconduct, an explicit change to the Code, and more focussed guidance. Instead, there seemed to be a "Catch-22" view that the conduct was already illegal and that therefore not much – if anything - could be done by way of self-regulation. The exchanges did lead to guidance (with which the ICO assisted) on data protection law at large and some discussion about possible changes to the Code, but this increasingly seemed directed as much as heading off tougher sentences.

42. I was also at least implicitly criticised by the PCC and others for neither prosecuting any journalists, nor for providing the PCC with their names or evidential details of their activities. This ignored the advice from Counsel that public interest considerations prevented us from continuing with any further prosecutions after the first case had resulted in a conditional discharge. It also ignores section 59 of the DP Act which imposes disclosure restrictions on the Commissioner and ICO staff which stopped us from providing PCC with details of material seized under warrant. In any event I did not think it right in principle to hand over such material where we had not prosecuted and the journalists had not had the chance to defend themselves. And my goal was that the PCC should be more active in stamping out the misconduct for the future - which did not need details of past misconduct.

G. The current situation

43. I understand that my successor as Information Commissioner, Christopher Graham, will be giving evidence to the Inquiry on events since my retirement in July 2009 and with views about data protection legislation and the effectiveness of the ICO.

44. I should, however, add one observation about the current situation. My impression – and this was reinforced anecdotally by what my team were telling me between 2006 and 2009 – is that press misconduct of the type set out in the two ICO reports and in this Statement largely ceased after 2006. The 2nd ICO report included a quotation from the Independent of 10 August 2006:

> "You could also get a complete itemised bill until a few months ago, when the Information Commissioner threatened custodial sentences. The work was all outsourced and there was one firm that was probably making £8,000 a week. It became a basic check...Papers have their 'dark arts' reporters and many editors don't want to know, but what was a flood of stories stood up this way is now a trickle."

Paul Dacre's speech – quoted at length in Exhibit RJT 46 – went on to say:

> "....The industry has been warned. We must make sure our house in order. Under the auspices of PressBoF, we have produced a guidance note on DPA that has been sent to every paper in Britain. Now it is up to all of us to ensure that our journalists are complying with the Act. At Associated, we are holding seminars on the subject and have written compliance with the Act into our employment contracts.

45. What Paul Dacre said then was consistent with what he had told me when he asked to see me on 4th June 2008 and with his letter to me of 25th July 2008 (Exhibit RJT 44). It is also consistent with what Les Hinton, Murdoch MacLennan and Bob Satchwell had told me on previous occasions.

46. I cannot say whether the apparent improvement in press conduct continued after 2009, or will be maintained. I doubt that misconduct has disappeared altogether. But I have noted that most - if not all - of the allegations that surfaced in and since July 2011 appear to pre-date 2006.

H. Regulatory Reform

47. I do not consider that the events described in this Statement, or covered more widely by the Inquiry's remit, call for wholesale changes to the UK's data protection regulatory framework. In any event, imminent and more comprehensive legislative proposals from the European Commission will form the main focus of reform here.

48. The main reform, in my view, should be an immediate ministerial Order to activate the prison sentence for section 55 offences. The public controversy of the last two months, and public outrage at press misconduct, make the case for that reform more pressing than ever. Even if there has been improvement in press conduct since 2006 there is still no guarantee that this will remain indefinitely and I understand that illegal activity remains rife in other sectors. A strong deterrent is needed and it is vital that a clear signal should be sent that section 55 offences are not trivial or "technical".

49. There is already a public interest defence to protect legitimate investigative journalism. I supported the legislative change to bring this closer in line with the subjective wording of section 32 of the DP Act - so that the defence applies if the journalist (or anyone else) has a reasonable belief that what they are doing is necessary in the public interest. I do not consider that it would be necessary or desirable to elaborate the public interest on the face of the statute. But there remains a case for the ICO to publish a Statement of Prosecution Policy along the lines of that we drafted in early 2008 (Exhibit RJT 36).

50. Although the press felt threatened by the proposals made in the two ICO reports, I have always been fully aware of the importance of a free press. In Human Rights terms, it is vital to secure the right balance between Article 8 and Article 10 considerations. I believe that section 55 achieves that balance. Throughout my tenure as Commissioner I never advocated a statutory privacy law and – informed by my parallel experience with the Freedom of Information Act - I am personally opposed to a regulatory framework that would threaten legitimate journalism which, provided it can be justified in public interest terms, plays a key role in holding governments and others to account.

51. But a free press must be a responsible press. The activities documented in the ICO reports, this Statement and elsewhere show that – even where the criminal law is engaged – the press have not shown sufficient responsibility and the current self-regulatory arrangements have not proved to be effective. That is not to condemn self-regulation or co-regulation as concepts. Especially where there is (a) a statutory backstop, or the real threat of such and (b) a genuine commitment on the part of the industry, forms of self or co-regulation can work to deliver defined results. During some of the discussions documented in this Statement I questioned – without ever getting answers - why the PCC governance arrangements could not be brought closer to those developed for the Advertising Standards Authority or the Banking and Insurance Ombudsmen (now part of the Financial Ombudsman Service). During my earlier career (at the NCC and OFT) I had had close involvement with all these schemes. I attached particular importance to the composition of the governing body with a strong independent majority, to effective sanctions and to the backstop of ultimate recourse to the courts or the statutory regulator. I believe that there is still validity in the basic analysis set out in a paper which I wrote for the National Consumer Council in 1986 and revised in 1999 – *Models of Self-Regulation*[1]. I would be happy to elaborate on these aspects if the Inquiry would find that helpful.

I believe the facts in this Witness Statement are true.

[redacted]

Richard Thomas CBE, 6th September 2011

[redacted]

[1] [redacted]re.co.uk/articles/ncc_models_self_regulation.pdf