

Leveson Inquiry

Fourth Witness Statement of Richard Thomas CBE

1. This Witness Statement comments on certain matters raised in the Witness Statement of Mr Alec Owens dated 5/10/11.

Investigating journalists

2. Although I accept full responsibility for everything that happened during my tenure as Commissioner, I was not normally involved in discussions about the operational handling of particular cases. The formal chain of command was that Mr Owens reported to Jean Lockett who reported to Francis Aldhouse, who (as Deputy Commissioner) reported to me. In practice, however, at that time the Investigations Unit (later re-constituted) was a largely self-contained unit which worked closely with the Legal Department.
3. The informal meeting to which Mr Owens refers took place in this instance because (understandably) the team wished to share the nature and scale of their success with me. I recall that meeting as the occasion when I was informed about the volume and nature of the materials – the “treasure trove” - which had been discovered. I recall congratulating Mr Owens and the team for a job well done. I do not, however, recall any course of action being formally or informally recommended by Mr Owens or anyone else, let alone being “bemused”. Specifically, I do not recall any proposal, on that or any other occasion, that any journalists – nor indeed any other customers of Steve Whittamore and his associates - should be investigated. I do not recall even any suggestion that any further investigations were under consideration. One of my central memories of that meeting is a recognition of the challenge presented for a very small team by the sheer bulk of the evidence, without any suggestion that even more should be obtained. I do not recall whether Francis Aldhouse was at that meeting, but I do not ever recall hearing the words attributed to him.
4. I do recall being told that the materials which had been obtained would be evaluated (what Mr Owens describes as the “laborious task of sifting through all the paperwork in detail”) so that appropriate prosecutions would follow where the evidence led. The “targets” for prosecution were seen as Steve Whittamore, his three or four private investigator associates and the corrupt officials who were supplying confidential information. In this context I recall reference to a “spider’s web” of suppliers and I believe that a diagram may have been produced to illustrate the apparent inter-relationships.
5. It was my understanding that the case would be pursued in line with established Office practice – prosecutions led by the in-house legal team, advising and acting upon the evidence obtained by the Investigations Unit. I was subsequently kept broadly abreast of developments, notably that the

CPS were taking over the prosecutions and then that trial had resulted in major disappointment. The ICO lawyer with lead responsibility was Phil Taylor.

6. As set out in my 3rd Witness Statement, I do not have any recollection or awareness whatsoever of preventing any Investigating Officer, or anyone else, from interviewing any journalist or not allowing such interviews or further investigations. There was no such discussion at the informal meeting. Nor do I have any recollection of making any later "decision" or issuing any sort of instruction that journalists should not be spoken to or interviewed. I note that Mr Owens does not state who "informed" him of any such decision, nor when. Nor was I aware at any time of any grievance, challenge or protest from him on such a matter.
7. Mr Owens is right to state, as I have described in my main Witness Statement, that I decided to approach the Press Complaints Commission. This started with my letter of 4th November 2003 – Exhibit RJT 3. That letter set out the position, as at that time, in some detail and the reasons for hoping that the PCC and its Code Committee "would put an end to these unacceptable practices across the media as a whole". That letter does state that I was "considering whether to take action under the Data Protection Act against individual journalists and/or newspapers". It concluded that "the approach I have in mind could provide a more satisfactory outcome than legal proceedings". Although I cannot recall any discussion – then or later - about the actual possibility of prosecuting any journalists, I think that a more general understanding developed that the Office would see how the case against the investigators and public officials turned out before actively considering any further enforcement action. I was also conscious that any action against journalists would be a major logistical, evidential and legal challenge, would almost certainly be strongly resisted and would be very expensive for an Office with very limited resources. In the event - as recorded at paragraph 6.8 of *What Price Privacy?* - the outcomes of the prosecutions which were brought extinguished any remaining possibility (however theoretical) of prosecuting journalists.
8. I recognise, in the light of events, that perhaps there *should* have been discussion about whether to investigate the journalists. The fact is that there was not. However, even with the benefit of hindsight, I am doubtful that any such investigations would have been productive, or that any prosecutions would have been either easy or effective. In any event, my concern was primarily prevention. I remain of the view that recourse to the self-regulatory mechanisms should have been the best way forward. I also remain of the view that our reports, and follow-up to them, did in fact have beneficial remedial and deterrent effects.
9. If the Inquiry needs or wishes to probe these aspects in greater detail, I suggest that Phil Taylor be asked to submit evidence. He left the Office in 2007 to become Counsel at the Alderney Gambling Control Commission, but I do not know whether he is still there.

Rationale for *What Price Privacy?*

10. I entirely reject the suggestion that *What Price Privacy?* was published to pre-empt or deflect criticism of the ICO, whether because of the impending Mulcaire/Goodman scandal or otherwise. The rationale for that Report, and the extensive efforts to promote it, have already been described. The initiative started in October 2005. The report was published in May 2006. The first time I had any awareness at all of the Mulcaire/Goodman scandal was on the radio whilst on holiday in Cornwall in August 2006. Nor am I aware that anyone else at the ICO had any awareness of that matter before then.

The League Table in *What Price Privacy Now?*

11. I regret that – beyond the material set out in my 2nd Witness Statement and in Exhibits RJT 47 and 48 - I am unable personally to assist the Inquiry in any detail with the claim made by Mr Owens that the league table in *What Price Privacy Now?* understated the total number of transactions. I was aware that all the published figures were compiled with very considerable care from the source material by one of the ICO investigators, Jim Adams, under the leadership of Mick Gorrill, a former GMP Detective Superintendent, who had been recruited to lead the reformed Regulatory Action Division into which the Investigations Unit was incorporated. Not least because this was to be a Parliamentary report, I had confidence that great care was being taken to compile and publish accurate and meaningful figures drawn from reliable data, which were explained by the accompanying text of each report.
12. As previously explained, a very thorough re-check in January 2007 revealed only one error - wrongly attributing some News of the World transactions to the Sunday Times: see Exhibit RJT 29. I recall being told at that time by Mick Gorrill that Jim Adams was a very conscientious investigator who had effectively volunteered the error and was “mortified” at this one mistake.
13. If the Inquiry needs or wishes to review the figures in detail, I suggest that the ICO be asked to supply the original evidence which it still holds so that the Inquiry can independently undertake or commission such a review.

Performance, Disciplinary and Grievance issues

14. Mr Owens has made a number of allegations about me and the ICO. It is therefore necessary for me to alert the Inquiry to the fact that there were a number of performance, disciplinary and grievance issues between Mr Owens and the ICO. Some – perhaps all - of these apparently arose in connection with necessary changes introduced by Mick Gorrill. I was aware that there had been previous concerns about the conduct and performance of Mr Owens, that matters had escalated and taken a formal turn, that he was absent on an extended period of sick leave and that this

(and anxieties about his reliability as a witness) were secondary factors which influenced the advice from Counsel to withdraw the ICO prosecution against Whittamore and others.

15. I was also aware that Mr Owens subsequently resigned and claimed constructive dismissal, and that (in part because the case had not been well handled procedurally) a settlement was agreed.
16. I was not informed about the detail of the various issues, mainly because (as Commissioner) I would be the ultimate arbiter of any internal appeal process. Quite rightly, I still do not know the detail. But I understand that the current Commissioner stands ready to provide as much detail as has been retained should the Inquiry so wish.

I believe the facts in this Witness Statement are true,

Richard Thomas CBE
21st November 2011