

NI Group Limited
J. M. Witherow
Second Statement
"JMW3-5"
29 November 2011

**IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND
ETHICS OF THE PRESS**

**SECOND WITNESS STATEMENT
OF
JOHN MOORE WITHEROW**

I, John Moore Witherow, c/o The Sunday Times, Times Newspapers Limited, 3 Thomas More Square, London E98 1XY, will say as follows:

- 1** I am the Editor of The Sunday Times.
- 2** I have read the first witness statement of Richard Thomas and make this statement in response to paragraphs 35 and 36.
- 3** I can confirm that the leader dated 29 October 2006 to which Mr Thomas refers in paragraph 36 of his statement was not published as a result of any direction from Les Hinton or anyone on the Executive of News International as Mr Thomas suggests. Mr Hinton was scrupulous in maintaining the confidentiality of his meetings and he would not have told me of such an encounter. To the best of my recollection, I never discussed leaders with Mr Hinton both before or after publication.
- 4** I also can confirm that the leader was not published after discussion with either the then Editor of The Times, Robert Thomson, or the columnist Magnus Linklater, who wrote the article referenced in paragraph 36 of Mr Thomas' statement. I have never discussed leaders or stories in advance with The Times, which is editorially an entirely separate newspaper.
- 5** I only have an incomplete recollection of the circumstances leading to the writing of this editorial five years ago. I edit The Sunday Times every weekend and cannot recall the detail surrounding every leader. But I have been able to piece together the background which influenced my decision to take this line in the editorial.
- 6** The leader makes reference to an interview with Mr Thomas published that weekend in The Times, on 28 October 2006 (Exhibit JMW3). I would have naturally seen that interview.

The article talks of the tussle between the right to privacy and the need for freedom of information, which would have captured my interest. The opening sentence of the leader directly refers to the "surveillance society" which the interview contemplates. We also carried a story (Exhibit JMW4) summarising Mr Thomas' report. This story cross-referenced to the leader.

- 7** More significantly, on 29 October 2006 we had a front page story about Lord Levy and the "cash for honours" scandal. (Exhibit JMW5). This story was particularly pertinent to Mr Thomas because it went to the heart of freedom of expression. In 2000, we had published an article about the tax affairs of Lord Levy. He had sought to injunct The Sunday Times and failed because the judge decided that publication of the information was firmly in the public interest. Subsequently, Mr Thomas had sought to interview me under caution about the Lord Levy story. Again this was rebuffed because of our public interest defence. Now, some years later, Lord Levy was at the heart of the "cash for honours" story, in which we had revealed that the Labour party had introduced a loan scheme for donors. Many of these individuals were then offered honours and peerages. We regarded this as a legitimate area to investigate in the public interest.
- 8** The then Sunday Times lawyer, Alastair Brett, and I would have discussed this story about Lord Levy and Mr Thomas' interview. Mr Brett rightly had strong concerns about the introduction of prison sentences for breaches under s.55 of the Data Protection Act by an amendment to legislation which was being proposed. I understand that Mr Brett had been discussing the same concerns with my then Managing Editor, Richard Caseby, since publication of the first report "What Price Privacy?" in May 2006. I cannot recall the exact details of the conversations that I had with Mr Brett the weekend the leader was published, but it is very likely he would have told me that a consultation by the DCA was closing that week (30 October 2006) and that the consultation concerned whether or not penalties of imprisonment for offences contrary to the Data Protection Act would be introduced. It was good timing to run a leader.
- 9** The leader points out that prison sentences inevitably have a chilling effect on free speech. Of particular concern to journalists was the issue of whether that was a real threat even if a public interest story was being pursued. I was advised that it was a threat even in those circumstances, because a journalist could have difficulty in making out a public interest defence.
- 10** The main concern was if the proposal would take into account whether a journalist following a lead believed that the information was in the public interest. During the course of an investigation a reporter can follow a strong lead, but it is often not possible to guarantee it will go somewhere or that the reporter has been following the right story. It is a drastic penalty to imprison a journalist who has had the misfortune to misjudge a lead.

- 11** As I set out in my first statement, The Sunday Times has a strong tradition of investigative journalism. A proposal to change the law which could inhibit the ability to investigate would always be a matter of concern. This was particularly relevant to the 'cash for honours' investigation that weekend. It seemed especially worrying if this kind of detailed investigation might be hampered in the future. Furthermore, whether the ICO considered fully the public interest was particularly a concern because of their request to interview me.
- 12** The publication of the second report of the Information Commissioner in December 2006 included for the first time the figures collated by the ICO relating to newspapers. The focus in 2011 is of course on the troubling instances of unwarranted invasions into privacy and the ability of the authorities to investigate and newspapers to be accountable. However, at the time of the leader in October 2006, the list had not been published and the current concerns were not to the fore.

I believe that the facts stated in this witness statement are true.

Signed

Dated

[Redacted signature box]

[Redacted date box]

29/11/11