

N Davies

xx September 2011

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

WITNESS STATEMENT OF NICK DAVIES

I, Nick Davies, of Guardian News and Media Limited, Kings Place, 90 York Way London, N1 9GU, WILL SAY as follows:

1. I am a freelance journalist who has worked under part-time contract for Guardian News and Media Limited since 1989. Unless stated otherwise, the facts stated in this witness statement are within my own knowledge and belief. In this witness statement I refer to documents that are exhibited to this statement in an exhibit marked ND1.
2. I make this statement in response to a Notice dated 5 August 2011 served on me under section 21(2) of the Inquiries Act 2005 and the Inquiry Rules 2006, by Lord Justice Leveson, as Chairman of the Inquiry. These require me to provide evidence to the Inquiry Panel in the form of a written statement and/or to provide documents as requested in the Notice.
3. I do not waive privilege. Accordingly anything I say in this witness statement is not intended to waive privilege and should not be read as doing so. In this context I refer to paragraph 3 of Mr Rusbridger's witness statement.
4. **Q (1) Who you are and a brief summary of your career history in the media**

I am a freelance journalist. For the most part, I work for the Guardian as special correspondent. I also write books, make TV documentaries and have written feature film scripts.

I trained as a journalist from 1976 to 1978 with a scheme for university graduates which was run by the Mirror Group, based in Devon and Cornwall. Since then, I have worked as a Fleet Street reporter, specialising first in crime and home affairs and more recently in long-term investigations of social issues including poverty in the UK; failing schools; the criminal justice system; tax avoidance; falsehood and distortion in the news media.

In 2008, Chatto and Windus published my book, Flat Earth News, which was about falsehood and distortion in media coverage generally.

In it, I reported on the extent of the use of private investigators by British journalists from the early 1990s onwards. During the course of my researches I spoke to numerous reporters, and several private investigators. They told me of the techniques which had become commonplace in some newsrooms - including "blagging" - persuading people to reveal confidential data - phone-hacking and even computer-hacking. I started working on the phone-hacking story in January 2008. I published my first story about it in July 2009, disclosing the Gordon Taylor settlement and the assessment of police sources that there were thousands of victims in the affair. Since then I have written more than 80 stories about it.

5. **Q (2) How you understand the system of corporate governance to work in practice at the newspaper where you were/are employed with particular emphasis on systems to ensure lawful, professional and ethical conduct**

The Guardian has a particularly clear commitment to ethical journalism. In formal terms, that consists of a requirement to follow the code of conduct of the Press Complaints Commission and the National Union of Journalists. In practice, it is unusual for either the PCC or the NUJ to become involved in directly enforcing their codes. The day-to-day reality is that the editorial executive who has commissioned a particular piece of work is the person who would act on a breach or potential breach.

6. **Q (3) What your role is/was in ensuring that the corporate governance documents and all relevant policies are adhered to in practice. If you do not consider yourself to have been/be responsible for this, please tell us who you consider to hold that responsibility and why**

I am accountable to the editorial executive for whom I am preparing a story (usually the news editor) and through him to the editor-in-chief, Alan Rusbridger. If I were worried that I might be about to overstep the line, I would talk to them to clarify the right way forward. That does happen from time to time, because there are genuine difficulties about interpreting the meaning of our codes of conduct. The concept of public interest is particularly slippery - and particularly important. As a reporter, I have a vested interest in that kind of consultation so that if I do take a step which is contentious, I am not isolated.

7. **Q (4) Whether the documents and policies referred to above are adhered to in practice, to the best of your knowledge**

As a freelancer, I work from home, so I am not well informed about what goes on in the office but, based on long experience of working for the paper, I would say that there is a very high degree of compliance. I think it is the defining characteristic of the Guardian that it belongs to a trust, not to a corporation. This ownership of the Guardian means that

the sort of commercial pressures which may drive reporters to behave in unethical or illegal ways are significantly reduced.

8. **Q (5) Whether these practices or policies have changed, either recently as a result of the phone hacking media interest or prior to that point, and if so, what the reasons for the change were**

I am not aware of any recent change as a result of the phone-hacking scandal. Some five years ago, when I was researching Flat Earth News, my book about falsehood and distortion in the media, I discovered that a private investigator, Steve Whittamore, was working for the Guardian's sister paper, the Observer. Since I knew that Whittamore had been convicted of illegal information-gathering for media clients, I told Alan Rusbridger, who explains in his witness statement what steps he then took.

9. **Q (6) Where the responsibility for checking sources of information lies (including the method by which the information was obtained): from reporter to news editor/showbiz editor/royal editor to editor, and how this is done in practice (with some representative examples to add clarity)**

It is my responsibility as a reporter to check facts and sources before I submit a story to the paper.

If the story is legally contentious, an in-house lawyer would always double check my work, asking what evidence I have to support contentious facts, suggesting deletions or changes in wording. Reporters frequently argue with lawyers, and these conversations can sometimes be tense. But no sane reporter lies to the lawyer and, at the end of the day, the lawyer's word counts for more than the reporter's. It would be a striking breach of routine if a legally contentious statement were allowed into the paper without being checked by the lawyer in this way.

However, where a story is not legally contentious, the lawyer would read and approve the story without becoming actively involved. That does create a structural weakness in all newsrooms: stories which are not legally contentious are not subjected to the same degree of scrutiny and may well be published even if they contain significant errors. Sub-editors should pick up errors of commonplace fact - bad spelling, wrong titles etc - but they are unlikely to identify errors in relation to new information. To put it another way, if there had been a serious legal risk in writing stories which claimed that the world's computers were going to crash on millennium eve, or that Iraq was bristling with weapons of mass destruction, or that millions of people were about to be killed by bird flu or swine flu or SARS, news organisations generally would probably not have published and broadcast them.

10. **Q (7) To what extent a reporter or journalist such as yourself is aware, and should be aware, of the sources of the information which make up the central stories featured in your newspaper each day (including the method by which the information was obtained)**

Other than public sources, I would not expect to be aware of the sources of information for stories which have been written by other reporters on the paper, and I would not expect other reporters to be aware of my confidential sources.

11. **Q (8) The extent to which you consider that ethics can and should play a role in the print media, and what you consider 'ethics' to mean in this context**

Ethics are essential to news reporting.

First, all reporters have to make selective judgements about what subjects to cover, what angles to take, what language to use, what prominence in the paper to give to each story. All too often, those judgements are made on commercial grounds: newspapers select stories and angles etc which are cheap and quick to cover and which are likely to increase sales of the paper. Good journalism makes those judgements on ethical grounds - this story is important, this angle needs to be explored etc.

Second, having made the selective judgements about what they are trying to cover, all reporters then need to conduct their research within an ethical framework. The pure logic of reporting is ruthless and if that logic is allowed to unfold without inhibition, the reporter will lie and cheat and break any moral rule that obstructs his or her progress. There have to be boundaries.

12. **Q (9) The extent to which you, as a reporter, felt any financial and/or commercial pressure from the proprietors of your newspaper, the editor or anyone else, and whether any such pressure affected any of the decisions you made as a reporter (such evidence to be limited to matters covered by the Terms of Reference)**

As above, the defining feature of the Guardian is its non-commercial ownership. There is still some commercial pressure: the paper has to survive in the market place. But the primary objective of the trust which owns the paper is to safeguard it. It owns subsidiary businesses whose profit is used to subsidise the paper. There are no shareholders to be paid. All of this means that the commercial pressures are significantly mitigated in the Guardian. The same is true of the BBC.

13. **Q (10) The extent to which you, as a reporter, had a financial incentive to print exclusive stories (NB. It is not necessary to state your precise earnings)**

I have no financial incentive to publish an exclusive. My income remains the same whether the story is exclusive or not.

14. **Q (11) Whether, to the best of your knowledge, your newspaper used, paid or had any connection with private investigators in order to source stories or information and/or paid or received payments in kind for such information from the police, public officials, mobile phone companies or others with access to the same: if so, please provide details of the numbers of occasions on which such investigators or other external providers of information were used and of the amounts paid to them (NB. You are not required to identify individuals, either within your newspaper or otherwise)**

I do not know of any occasion when the Guardian has paid private investigators to source stories. I should say that the mere hiring of an investigator would not in itself be worrying in any way. I would be perfectly happy to hire an investigator to engage in physical surveillance, to use special skills in collecting information from the public domain, or to provide any other forms of assistance which was lawful and ethical.

Similarly, I have never come across the Guardian paying police, public officials or mobile phone companies.

For the sake of completeness, I should make clear that I am happy to buy a drink or a meal for a source, even if that source is a policeman or a public official. I see that as a matter of maintaining goodwill. And certainly I would expect to reimburse all essential expenses for anybody who is helping us with a story, particularly if they are hard up - travel costs, hotel, phone bills. I do not see why people should be out of pocket simply because we are asking them to help us. I have also occasionally paid cash to buy PAYG mobile phones and supplied them to particularly sensitive sources, to allow us to communicate without the contact being traceable.

15. **Q (12) What your role was in instructing, paying or having any other contact with such private investigators and/or other external providers of information**

My only experience of using an investigator was years ago, in the mid 1980s, when we had an allegation that a meeting hall, which was used by left-wing groups to organise entirely lawful activity, had been bugged by a state agency. I hired a private investigator to use specialist equipment to check every square inch of the room in search of listening devices. He found nothing.

16. **Q (13) If such investigators or other external providers of information were used, what policy/protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on)**

N/A

17. **Q (14) If there was such a policy/protocol, whether it was followed, and if not, what practice was followed in respect of all these matters**

N/A

18. **Q (15) Whether there are any situations in which neither the existing protocol/policy nor the practice were followed and what precisely happened/failed to happen in those situations. What factors were in play in deciding to depart from the protocol or practice?**

N/A

19. **Q (16) The extent to which you are aware of protocols or policies operating at your newspaper in relation to expenses or remuneration paid to other external sources of information (whether actually commissioned by your newspaper or not). There is no need for you to cover 'official' sources, such as the Press Association**

The Guardian has an Editorial Code which refers to payments. Other than this, I am not aware of a specific protocol about paying sources to talk to us.

20. **Q (17) The practice of your newspaper in relation to payment of expenses and/or remuneration paid to other external sources of information (whether actually commissioned by your newspaper or not). There is no need to cover 'official' sources such as the Press Association**

The Guardian generally does not pay sources of information for talking to the paper unless they are small "tip" fees, for example to diary tipsters, who are paid a small fee, whether they are journalists or not, simply to encourage them to make the effort to get in touch with the diary column with their tip about a story. I am happy for that to happen for journalist contributors and for others.

As I see it, the problem with payment is not ethical but practical. At worst, a source who has been paid has been given an incentive to fabricate. At best, a source who has been paid is not genuinely motivated to help and will give what they have to give but no more. But on rare occasions, there are circumstances where other practical considerations make it sensible to pay. I should make clear here that I am not talking here about making payments to police or public officials.

For example, in the mid 1990s, working on stories and a book about poverty in the UK, I interviewed children who were working as street prostitutes. I carried a letter to prove that I was conducting legitimate research and picked children up in my car while they were selling themselves. I would then agree to pay them the cash which they would otherwise have earned from a punter. I did that for two reasons - first that I thought it was better for them to earn the money by talking to me than by allowing somebody to sexually abuse them; second that it seemed fair to them, if I was depriving them of 'working time', that I should compensate them for their loss. The amounts involved were pathetically small - never more than £20.

But occasions like that are rare exceptions. Generally I prefer to work without payment and by building relationships with sources who will then actively support my research. See also my answer to Q 11.

21. **Q (18) In respect of editorial decisions you have made or participated in to publish stories, the factors you have taken into account in balancing the private interests of individuals (including the fact that information may have been obtained from paid sources in the circumstances outlined under paragraph 11 above) against the public interest in a free Press. You should provide a number of examples of these, and explain how you have interpreted and applied the foregoing public interest**

The most important point that needs to be made about the concept of public interest is that nobody knows what it means. I am not referring to the confusion between 'the public are interested in X' and 'the public have an interest in being told about X'. I am saying that nobody knows where the boundary lines are. For years, generally speaking reporters have operated in a kind of ethical mist where it wasn't particularly clear exactly what the rules were because nobody was asking us to be particularly clear. In 35 years, I think I've only twice been called to account by the PCC (and both times I have been acquitted).

For example, I believe that those journalists who claim that it is a matter of public interest that we be told about the sex lives of public figures, particularly when they are in breach of established conventions are speaking sincerely. I profoundly disagree with them. I think there is no public interest in the disclosure of people's sex lives unless there is evidence of crime.

I don't think that judicial decisions have succeeded in clarifying this in day-to-day operational terms. There are some cases where the boundaries are clear but many where they are not. One result of this enduring confusion is that I don't think I know of a single serious journalist who dares to try to take advantage of the public interest defence in Section 55 of the Data Protection Act.

Recent examples where I have weighed up privacy and public interest:

When I gave evidence to the culture, media and sport select committee in July 2009, I gave the committee copies of an internal News of the World email which contained the transcript of some 35 voicemail messages. I felt that it was in the public interest that that email be disclosed because it appeared to reveal evidence of crime and of dishonesty about that crime. However, I did not believe that that justified breaching the privacy of those whose voicemail messages were reproduced in the email. So I redacted them.

More recently, the Guardian was offered a story about a former Cabinet minister whose voicemail was hacked. The raw material for that story included details of messages which had been exchanged between him and a woman friend. I argued that we should not publish those messages - they were intrusive, and it was perfectly possible to expose the important point, that this minister had been a victim, without breaching his privacy.

The same kind of balance was raised by the story of the hacking of Milly Dowler's voicemail, which I brought in in July 2011. I was sure that it was a matter of public interest that that should be revealed, but I had some concern that publication would breach the Dowler family's privacy by exposing them to yet more publicity. Because the public interest element was so strong, I chose to go ahead with publication and tried to mitigate the impact on the Dowler family by sending them a detailed message via Surrey police, to explain what I was doing.

22. **Q (19) Whether you, or your newspaper ever engaged in or procured others to engage in 'computer hacking' in order to source stories, or for any reason**

I have never come across computer hacking at the Guardian.

23. There is a danger that the legitimate role of investigation in the public interest may be lost in the tide of disapproval for the journalistic abuse which has been uncovered in the phone-hacking affairs. There are decent private investigators and there are decent investigative journalists. They want to be able to uncover important information, whether for the resolution of civil disputes or simply for publication. They need to be protected by clear law.

I believe that the contents of this witness statement are true.

[Redacted Signature Box]

Nick Davies

27.9.11

Date

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