

(1) Paul Jenkins
(2) First
(3) 11 June 2012

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

WITNESS STATEMENT OF PAUL JENKINS

I, PAUL JENKINS, of One Kemble Street, London WC2B 4TS, will say as follows:

1. I am the Treasury Solicitor and Head of the Government Legal Service and have held this position since August 2006. I have been a member of the Government Legal Service since 1979. For the last 20 years I have been the principal legal adviser to various Government Departments: from 1992 to 1998 – the Department of National Heritage/Culture, Media and Sport; from 1998 to 2004 – the Lord Chancellor's Department/Department for Constitutional Affairs; and from 2004 to 2006 – the Departments of Work and Pensions and Health.
2. The Treasury Solicitor is one of three Permanent Secretaries with responsibility for legal matters; the others are the Director of Public

Prosecutions and First Parliamentary Counsel. The Treasury Solicitor is the Government's most senior legal official advising on civil legal issues.

3. I make this statement in response to the Inquiry's request to the Prime Minister to disclose the legal advice he makes reference to at paragraph 171 of his witness statement dated 4 May 2012. I set out my best recollection of the legal advice I gave and the circumstances in which it was provided.
4. The legal advice was provided by me to the then Cabinet Secretary Sir Gus (now Lord) O'Donnell on the afternoon of 21 December 2010 following the publication of comments made by the Secretary of State for Business, Innovation and Skills, Dr Vince Cable, about the Murdoch family and News Corporation's bid for an increased shareholding in BSkyB. My legal advice was provided directly to Sir Gus over the telephone.
5. I have checked my diary from the time and it shows I was on annual leave on 21 December 2010. However, the nature of my role means that I am frequently called on to provide advice and assistance when on leave and this was one such occasion. I was at home during the afternoon. My telephone records show, and I recollect, that I was in contact by telephone from approximately 4.30pm to 5.30pm with a number of senior officials, including Sir Gus, dealing with issues arising from the publication of Dr Cable's comments.
6. In the course of these telephone calls, and having discussed the matter with Rachel Sandby-Thomas, the Legal Adviser to the Department for Business, Innovation and Skills, I confirmed to Sir Gus that it was my opinion that Dr Cable could no longer properly discharge his functions under the Enterprise Act 2000 in relation to the BSkyB bid because, whilst seized of the matter, he had made statements of a kind that tainted, irrevocably, his ability to discharge his functions in a quasi-judicial manner. I was aware at the time from my discussions with Ms Sandby-Thomas that the Enterprise Act 2000 gave the Secretary of State decision-making powers in respect of the bid and

that the Secretary of State could intervene if there were media plurality concerns. I also advised Sir Gus that, in the particular circumstances of the case, the option of delegating the decision-making responsibility to a junior Minister in the Department for Business, Innovation and Skills would give rise to significant legal risks and this option was not pursued.

7. In these circumstances the obvious alternative was for the functions to be transferred to another Secretary of State; and the obvious Secretary of State was the Secretary of State for Culture, Media and Sport. I was aware from the discussions that the Prime Minister was considering this as the natural option. My advice was being sought in order to ascertain if there was a legal impediment to such a transfer. Specifically, I was informed during the discussions that Jeremy Hunt had made public comments which needed to be considered.
8. I understood from Sir Gus that Jeremy Heywood, the then Permanent Secretary to Downing Street, was in telephone contact with officials at the Department for Culture, Media and Sport to ascertain the extent of the public comments made by Jeremy Hunt. I have reviewed the witness statement of Jonathan Stephens, the Permanent Secretary to the Department for Culture, Media and Sport, dated 22 May 2012, and he describes, at paragraph 19, the conversations he was having with Jeremy Heywood. Jonathan Stephens states:

"I was rung by Jeremy Heywood ... He explained the background and that the Prime Minister was minded to transfer responsibility. He asked for an immediate view as to whether Jeremy Hunt had made any public comment on the proposed merger which might appear to be pre-judging it. I was aware only of the Secretary of State's public comments on 15th June, the day the bid was announced. I spoke to the Secretary of State to check whether he was aware of any other comments; he was not. My office also checked with Special Advisers. At this stage, until I told Jeremy Hunt, he was unaware that responsibility might be

transferred. I passed those public comments back to Jeremy Heywood, who was consulting lawyers and the Cabinet Secretary. An official announcement transferring responsibility was made by No 10 shortly thereafter."

9. I was provided with the gist of the comments made by Jeremy Hunt by Sir Gus over the telephone. I have now seen the comments attributed to Jeremy Hunt collected at paragraph 172 of the Prime Minister's statement. I believe that the gist as relayed to me fairly summarised the content of those comments.

10. For the reasons subsequently stated by Sir Gus in his note to the Prime Minister of 22 December 2010, I advised that the comments that I was made aware of did not in my view constitute a legal impediment to Jeremy Hunt discharging the Enterprise Act 2000 functions in relation to the bid in a proper manner.

11. So far as I can recall, the core factors that led me to that view were as follows. To properly apply powers such as those in question under the Enterprise Act 2000, a Secretary of State has to approach the evidence before him with an open and independent mind, free from bias actual or apparent, and to set aside any personal opinions he may hold on the issues and the parties involved. Moreover, any decision taken by a Secretary of State pursuant to the Enterprise Act 2000 has to be procedurally fair and otherwise taken in accordance with general public law principles.

12. The comments as described to me did not seem to me to amount to a pre-judging of the issues that still had to be determined. The comments attributed to Jeremy Hunt were very different from the comments of Dr Cable. They were not made at a time when he was actively seized of the issues. They were also very much milder than those of Dr Cable. They represented simply personal views accompanied by a recognition that these were in effect regulatory issues (as the wording, as set out at paragraph 172 of the Prime

Minister's witness statement, now indicates). I took the view that senior politicians in the office of Secretary of State should be credited with the ability to put aside such personal views, expressed before their holding of a decision-making power, so that they can approach the decision-making process, on advice and with a fresh mind. I did not think that Jeremy Hunt's comments were of a nature that indicated that they could not be put aside; nor that a reasonable and informed person would conclude that they could not be put aside. I acknowledge that there will be occasions when a politician does make such a comment but I do not think this was one.

13. I was well aware of the strength of opposition to the News Corporation bid and the risk of judicial review to the transfer of functions to Jeremy Hunt. I advised Sir Gus that in my opinion any such judicial review would fail.

14. I am aware that Jonathan Stephens was specifically asked questions on a hypothetical basis about an "*update note*" provided privately to the Prime Minister by Jeremy Hunt, dated 19 November 2010. I had not seen this note before and it was not something that I was made aware of or shown when I provided my advice to Sir Gus on 21 December 2010. While I would not normally consider it of any practical value to volunteer a view on a hypothetical situation, in the light of the questions put to Mr Stephens, I have reviewed the relevant sections of this note as set out at paragraph 182 of the Prime Minister's witness statement and to the extent that it may assist I will comment on whether my advice would have been different had I known about it at the time.

15. I am quite clear that my advice to Sir Gus would not have been any different had I seen the note at the time. Jeremy Hunt appears to have been providing his personal opinion to the Prime Minister at a time when he had no decision-making powers in respect of the bid. Just as in his public statements he offers personal views on the plurality issues. Just as in his public statements he also acknowledges that these are in effect regulatory issues to be taken quasi-judicially. I thus do not think there is anything in the note to indicate that

Jeremy Hunt could not have properly set aside his personal views and considered the bid on the basis of the evidence, advice and expert opinion before him once he had inherited the relevant powers.

Statement of Truth

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

Signed:



(Paul Jenkins)

Dated: 11 June 2012