The Leveson Inquiry

culture, practices and ethics of the press

AN INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

REPORT

The Right Honourable Lord Justice Leveson

November 2012

4 volumes not to be sold separately
Volume I

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Royal Courts of Justice
Strand, London
WC2A 2LL

Tel: 020 7947 7361
www.levesoninquiry.org.uk

The Rt Hon David Cameron
The Prime Minister
Downing Street
London
SW1A 2AA

29 November 2012

Dear Prime Minister,

On 13 July 2011, you announced to the House of Commons that I was to be appointed to Chair an Inquiry into the culture, practices and ethics of the press and, by letter dated 28 July from Baroness Browning, Minister of State at the Home Office and the Rt Hon Jeremy Hunt MP, Secretary of State for Culture, Olympics, Media and Sport, I was appointed under s3(1)(a) of the Inquiries Act 2005. On 22 November 2012, you wrote to me and invited me to submit my Report to you and I do so.

The Inquiry was set up with two parts. I confirm that, pursuant to s14(1)(a) of the Act that the Inquiry has fulfilled its terms of reference in relation to Part 1. As I am sure you will appreciate, for Part 1, I have had to exercise care not to prejudice ongoing criminal investigations with the result that some aspects of the subject matter of the Inquiry (in particular around the extent to which involvement in or knowledge of phone hacking reached within the News of the World) are not covered: no relevant questions were addressed to anyone who was then known to be subject to investigation and the Inquiry was similarly constrained in relation to what might have been known by those whose means of knowledge were likely to have come from such persons. I have exercised similar restraint in relation to other aspects of the Inquiry but I do not believe that this has significantly impaired its work. In particular, I have not felt that I was unable to reach conclusions that covered the Terms of Reference of Part 1 and do not consider that any further evidence would in any way affect the conclusions I have reached or the recommendations I have made.

As for Part 2, you will be aware that the first trials are now fixed for September 2013 and, at the date of this letter, investigations are by no means complete; a large number of persons are presently on bail awaiting decisions as to prosecution. In the circumstances, I am quite unable to say when it might be possible even to consider Part 2, let alone to decide how much more needs to be known about the subject matter which forms its basis.

I commend the Report to you.

Yours sincerely,

Brian Leveson

The Rt Hon Lord Justice Leveson

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PART A

THE INQUIRY

CHAPTER 1
THE ANNOUNCEMENT

1. Introduction

1.1 On, 13 July 2011, the Prime Minister made a statement to the House of Commons in these terms:[1]

> *"In recent days, the whole country has been shocked by the revelations of the phone hacking scandal. What this country—and the House—has to confront is an episode that is, frankly, disgraceful: accusations of widespread lawbreaking by parts of our press: alleged corruption by some police officers; and, as we have just discussed, the failure of our political system over many, many years to tackle a problem that has been getting worse. We must at all times keep the real victims at the front and centre of this debate. Relatives of those who died at the hands of terrorism, war heroes and murder victims—people who have already suffered in a way that we can barely imagine—have been made to suffer all over again.*
>
> *I believe that we all want the same thing: press, police and politicians who serve the public. Last night the Deputy Prime Minister and I met the Leader of the Opposition. I also met the Chairs of the Culture, Media and Sport Committee, the Home Affairs Committee and the Justice Committee to discuss the best way forward. Following these consultations, I want to set out today how we intend to proceed: first, on the public inquiry; secondly, on the issues surrounding News International's proposed takeover of BSkyB; and thirdly, on ethics in the police service and its relationship with the press.*
>
> *Before I do that, I will update the House on the current criminal investigation into phone hacking. I met Sir Paul Stephenson last night. He assured me that the investigation is fully resourced. It is one of the largest currently under way in the country, and is being carried out by a completely different team from the one that carried out the original investigation. It is being led by Deputy Assistant Commissioner Sue Akers, who I believe impressed the Home Affairs Committee yesterday. Her team is looking through 11,000 pages containing 3,870 names, and around 4,000 mobile and 5,000 landline phone numbers. The team has contacted 170 people so far, and will contact every single person named in those documents. The commissioner's office informed me this morning that the team has so far made eight arrests and undertaken numerous interviews.*
>
> *Let me now turn to the action that the Government are taking. Last week in the House I set out our intention to establish an independent public inquiry into phone hacking and other illegal practices in the British press. We have looked carefully at what the nature of the inquiry should be. We want it to be one that is as robust as possible—one that can get to the truth fastest and also get to work the quickest, and, vitally, one that commands the full confidence of the public. Clearly there are two pieces of work that have to be done. First, we need a full investigation into wrongdoing in the press and the police, including the failure of the first police investigation. Secondly, we need a review of regulation of the press. We would like to get on with both those elements as quickly as possible, while being mindful of the ongoing criminal investigations. So,*

[1] HC Hansard, 13 July 2011, vol 531, col 311-312

after listening carefully, we have decided that the best way to proceed is with one inquiry, but in two parts.

I can tell the House that the inquiry will be led by one of the most senior judges in the country, Lord Justice Leveson. He will report to both the Home Secretary and the Secretary of State for Culture, Media and Sport. The inquiry will be established under the Inquiries Act 2005, which means that it will have the power to summon witnesses, including newspaper reporters, management, proprietors, policemen and politicians of all parties, to give evidence under oath and in public. …

Starting as soon as possible, Lord Justice Leveson, assisted by a panel of senior independent figures with relevant expertise in media, broadcasting, regulation and government will inquire into the culture, practices and ethics of the press; its relationship with the police; the failure of the current system of regulation; the contacts made, and discussions had, between national newspapers and politicians; why previous warnings about press misconduct were not heeded; and the issue of cross-media ownership. He will make recommendations for a new, more effective way of regulating the press—one that supports its freedom, plurality and independence from Government, but which also demands the highest ethical and professional standards. He will also make recommendations about the future conduct of relations between politicians and the press. That part of the inquiry we hope will report within 12 months.

The second part of the inquiry will examine the extent of unlawful or improper conduct at the News of the World and other newspapers, and the way in which management failures may have allowed it to happen. That part of the inquiry will also look into the original police investigation and the issue of corrupt payments to police officers, and will consider the implications for the relationships between newspapers and the police. Lord Justice Leveson has agreed to these draft terms of reference. I am placing them in the Library today, and we will send them to the devolved Administrations. No one should be in any doubt of our intention to get to the bottom of the truth and learn the lessons for the future."

1.2 The Terms of Reference were then the subject of further discussion both with the devolved administrations of Scotland, Wales and Northern Ireland and other interested parties. The Prime Minister returned to the topic on 20 July 2011, when announcing the appointment of the Assessors. He said:[2]

"We have made some significant amendments to the remit of the inquiry. With allegations that the problem of the relationship between the press and the police goes wider than just the Met, we have agreed that other relevant forces will now be within the scope of the inquiry. We have agreed that the inquiry should consider not just the relationship between the press, police and politicians, but their individual conduct too. We have also made it clear that the inquiry should look not just at the press, but at other media organisations, including broadcasters and social media if there is any evidence that they have been involved in criminal activities."

1.3 Thus, the Terms of Reference of the Inquiry, as finally drafted, are:

Part 1

1. To inquire into the culture, practices, and ethics of the press, including:

[2] HC Hansard, 20 July 2011, vol 531, col 919

(a) contacts and the relationships between national newspapers and politicians, and the conduct of each;

(b) contacts and the relationship between the press and the police, and the conduct of each;

(c) the extent to which the current policy and regulatory framework has failed including in relation to data protection; and

(d) the extent to which there was a failure to act on previous warnings about media misconduct.

2. To make recommendations:

(a) for a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from Government, while encouraging the highest ethical and professional standards;

(b) for how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities, including Parliament, Government, the prosecuting authorities and the police;

(c) the future conduct of relations between politicians and the press; and

(d) the future conduct of relations between the police and the press.

Part 2

3. To inquire into the extent of unlawful or improper conduct within News International, other newspaper organisations and, as appropriate, other organisations within the media, and by those responsible for holding personal data.

4. To inquire into the way in which any relevant police force investigated allegations or evidence of unlawful conduct by persons within or connected with News International, the review by the Metropolitan Police of their initial investigation, and the conduct of the prosecuting authorities.

5. To inquire into the extent to which the police received corrupt payments or other inducements, or were otherwise complicit in such misconduct or in suppressing its proper investigation, and how this was allowed to happen.

6. To inquire into the extent of corporate governance and management failures at News International and other newspaper organisations, and the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International

7. In the light of these inquiries, to consider the implications for the relationships between newspaper organisations and the police, prosecuting authorities, and relevant regulatory bodies – and to recommend what actions, if any, should be taken.

1.4 By letter dated 28 July 2011,[3] as responsible Ministers under the Inquiries Act 2005, the Rt Hon Jeremy Hunt MP (then the Secretary of State for Culture Media and Sports) and Baroness Browning (then a Minister of State at the Home Office) appointed me to Chair the Inquiry pursuant to s3(1)(a) of the Act. On the same date, their appointment having previously been announced by the Prime Minister, acting pursuant to s11(2)(a) of the Act, the Ministers appointed six Assessors with a wide range of professional experience to assist the Inquiry.

[3] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Lord_Justice_Leveson_Redacted.pdf

These were Sir David Bell,[4] Shami Chakrabarti CBE,[5] Lord (David) Currie,[6] Elinor Goodman,[7] George Jones[8] and Sir Paul Scott-Lee.[9]

1.5 From the day of the announcement of my appointment, it was necessary to identify appropriate support. A Director General with a legal background and experience at the Home Office, the Ministry of Justice and the Office of the Deputy Prime Minister, Rowena Collins Rice was an ideal appointment as Secretary to the Inquiry. Kim Brudenell, a senior solicitor from the Treasury Solicitor's office was appointed Solicitor to the Inquiry; Amanda Jeffery (from the Judicial Office) and Rachel Clark (from the Department of Culture, Media and Sport and previously the Department for Business, Innovation and Skills) were appointed as Heads of Administration and Research respectively. With an eye on prudent financial management, suitable civil servants from across Government were recruited to staff the Inquiry and ensure that it could proceed expeditiously and efficiently.

1.6 I also set about appointing counsel. With the assistance of the Treasury Solicitor, I selected Robert Jay QC to be Counsel to the Inquiry; with my approval he nominated David Barr and Carine Patry Hoskins as junior Counsel, later adding Lucinda Boon for Module 2 (concerning the relationship between the press and the police). Counsel were assisted by junior members of the Bar in relation to the necessary research for both preparing the examination of witnesses and the subsequent collation of the evidence.

1.7 At the very beginning of this Report, it is appropriate to record my enormous gratitude to the Assessors, to Counsel and to the entire Inquiry team (whose names are set out in Appendix A to this Report) for their unstinting commitment to the Inquiry and the prodigious effort that has been put into ensuring that it proceeded smoothly, to budget and, most important, was able appropriately to address the Terms of Reference within a time frame that allows early consideration to be given by the Government and Parliament to the way forward.

2. Role of the Assessors

2.1 From the outset, challenges were mounted by a number of press interests to the way in which the Inquiry was set up and, in particular, to the experience, role and responsibility of the Assessors. Having obtained cross party support for their appointment, when identifying them by name,[10] the Prime Minister said of them *"these people have been chosen not only for their expertise in the media, broadcasting, regulation and policing, but for their complete independence from the interested parties."*

2.2 At the opening session of the Inquiry, I spoke of the Assessors having "a central role in the work" so that the report would be a "collaborative effort" and that if a particular recommendation was not unanimous, "I shall make the contrary view clear." It was argued that this would make the Assessors into members of the panel pursuant to s4 of the Inquiries Act 2005 and that they lacked balance on the basis that their number included nobody with tabloid or mid-market newspaper experience.

[4] http://www.levesoninquiry.org.uk/people/assessors/sir-david-bell/
[5] http://www.levesoninquiry.org.uk/people/assessors/shami-chakrabarti/
[6] http://www.levesoninquiry.org.uk/people/assessors/lord-david-currie/
[7] http://www.levesoninquiry.org.uk/people/assessors/elinor-goodman/
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[9] http://www.levesoninquiry.org.uk/people/assessors/sir-paul-scott-lee/
[10] HC Hansard, 20 July 2011, vol 531, col 918; see also columns 922, 941, 944

2.3 In a ruling of 17 October 2011,[11] I rejected the view that the Assessors were a hybrid between assessors within the meaning of s11 of the Inquiries Act 2005 and members of the determining panel (as set out in s4). I set out the role for assessors in para 3 of the Assessor Protocol in these terms:[12]

> *"An assessor will take such part in the proceedings of the Inquiry as the Chairman may request, and in particular the Chairman may at any time request an assessor to:*
>
> *(a) Attend the whole or part of any hearing, seminar or briefing; and/or*
>
> *(b) Chair the whole or part of any seminar in an area of his or her expertise; and/or*
>
> *(c) Prepare a report for the Chairman on any matter relevant to the Inquiry within the area of expertise of the assessor; and/or*
>
> *(d) Provide to Counsel to the Inquiry suggested lines of questioning for witnesses, in respect of any matters within his or her expertise; and/or*
>
> *(e) Provide the Chairman with any other assistance, or advice, on any matter relevant to the Inquiry within the expertise of the assessor."*

2.4 In the event that an Assessor prepared a report that I intended to take into account, paragraph 4 of the Protocol made it clear that it should be disclosed to the Core Participants (who could submit observations upon it) and thereafter published as part of the evidence. In the event, I have not asked any Assessor to prepare a report that I intend to take into account; there is no question of any providing me with 'evidence' or other material which it is appropriate to share with Core Participants in order that they may make submissions about it. The extent to which the Assessors would take part in or impact upon my conclusions was also explained in my ruling which includes a description of their role and responsibilities in these terms:[13]

> *"30. The assessors also bring an understanding of the practical implications of potential ways forward – what may, or may not, work in the fields of their respective expertise. It is that to which I refer when I speak of being collaborative and 'striving for unanimity'. There is absolutely no point in my suggesting a way forward (if different from the present system) that everyone decries as unworkable; if that were my provisional view, I would want to be told. The process I envisage would entail, amongst other things, seeking the assistance and advice of my assessors but, as I have also explained, I may also test out possible solutions in further seminars. Again, with fairness as my touchstone, if I believe that new material is generated, that material will be shared so that all can make submissions upon it.*
>
> *31 Ultimately, however, as I have made very clear, my conclusions shall be solely my conclusions. There is no question of publishing concurring views. In the spirit of openness and transparency, however, I shall identify the fact that one or more of the assessors disagrees with my conclusions and I shall explain the nature of the disagreement: in that way, those who read my report will be able to make up their own minds."*

2.5 The Assessors have been scrupulous to follow the approach set out in the Protocol and ruling. They have assisted in relation to avenues of investigation and lines of enquiry both generally and to specific witnesses. Although there has been repeated criticism of the Inquiry for not

[11] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-the-role-of-the-assessors-PDF-102-KB.pdf
[12] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Assessor-Protocol-17-October-2011.pdf
[13] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-the-role-of-the-assessors-PDF-102-KB.pdf

engaging an assessor with experience of tabloid or mid-market newspapers (along with suggestions that nobody working in a broadsheet newspaper would be able to understand the dynamics of tabloid or mid-market journalism), nobody has suggested in evidence that the approach to ethical issues should be different. In any event, far from ignoring the different interests to which tabloid and mid-market newspapers appeal, the Assessors with experience of journalism have been assiduous to keep me aware, both in advance and as I was hearing the evidence, of the arguments that have in fact been put forward in favour of the needs of this profitable sector of the market. In doing so, they have continuously emphasised the perspective that was trailed particularly by Trevor Kavanagh and Kelvin MacKenzie in the seminars and underlined by editors and journalists working for titles from these sectors when they gave evidence. They have kept at the front of my mind the ways in which those titles appeal to their very large readership and the vital importance of ensuring that it is taken into account in full measure – which I have done.

2.6 The role of the Assessors was described by me in my ruling of 17 October 2011, when I said:[14]

> *"27. It is obviously desirable (as the Prime Minister and others have identified) that I obtain advice and assistance from those who have made their lives and careers in the various areas covered by the Inquiry, in particular in relation to dealings between the press and the public, the press and politicians and the propriety of press contact with the police. Not least, this is because I would be keen to understand any flaws or unintended consequences that might flow from suggestions that are advanced that my lack of experience would not otherwise identify. That is not to make the assessors advocates for any particular cause and that is not how I (or they) see their role."*

2.7 Neither has any of the Assessors sought to act as an advocate. It has recently been suggested in a number of press reports that, in the some way, I have been subject, on the part of my Assessors, to hidden lobbying, political partisanship or self-interested influence with specific agendas in mind. That is untrue. Having spent over 40 years seeking to persuade or influence, or listening to others trying to do the same, if it had been attempted or even crept in unconsciously, I would have detected it very quickly. I have found the assistance of my Assessors, in their areas of expertise and experience, invaluable. They will, however, not mind my saying here what I have assured them of many times as we have gone along: that my task in response has been to sift, weigh and test what they have said and make such use of it as seems to me right.

2.8 It should be remembered that the Assessors were selected by the Prime Minister who, I repeat, described them as having been chosen *"for their complete independence from the interested parties".* The Leader of the Opposition welcomed the Inquiry and *"indeed the panel members chosen by the Prime Minister".* After they were nominated, I spoke to each at length and satisfied myself that the Prime Minister was right.

2.9 Full declarations of possible conflict were made by each before the start of the Inquiry: along with their CVs, these have been published on the Inquiry website throughout. When challenging the position of the Assessors in the argument that led to the ruling to which I have referred, Jonathan Caplan QC for Associated Newspapers Ltd submitted that the three journalist Assessors were not representative of the industry but made it clear, in terms, that he recognised that there was no statutory requirement that an Assessor be impartial.[15] I

[14] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-the-role-of-the-assessors-PDF-102-KB.pdf
[15] *Ibid*, paragraph 20

underline that. It is an Assessor's task to offer me the benefit of his or her personal perspective, expertise and experience. It is mine to take the impartial view.

2.10 The duty of confidence which the Assessors owe by law in relation to the internal deliberations of the Inquiry is there to enable them to provide their expertise fully and frankly and to protect them from external pressures. In fact, nothing that the Assessors have said or done during the course of the Inquiry would allow anyone to suggest that they had gone any further than precisely to perform the role set out in my ruling. I make one further point about the Assessors. None has been concerned with or involved in any the decisions of fact, where I have had to make my mind up about what I considered had been established to the relevant standard. Those parts of the Report that depend only on a forensic analysis of issues of fact or issues outside their expertise (for example, Part I Chapter 6 in relation to the bid for the shares of BSkyB plc), have not even been seen prior to publication of the Report.

3. Visits

3.1 In an effort, at least in part, to assuage concern that I had no experience or perception of the issues faced by the newspaper industry and the way in which newspapers operate, I have been very willing to receive evidence on the topic. Additionally, I offered to undertake private visits to any newspaper title that invited me. I was clear that one such newspaper should be regionally based and, prior to the commencement of the Inquiry, I visited the Southern Daily Echo in Southampton, the offices of Associated Newspapers Ltd (The Daily Mail and The Sunday Mail), Trinity Mirror plc (The Daily Mirror, The Sunday Mirror and The People) and News International Ltd (The Sun, The Times and The Sunday Times). I was treated with courtesy at each and shown not only the layout and operation but also aspects of the production of online editions.

3.2 Towards the end of the hearings, I was invited to the offices of the Press Complaints Commission: having regard to the very extensive evidence that I had received both as to the operation of the Commission and the approach of its staff, I felt that to do so could give rise to misunderstanding and, furthermore, did not consider that it would add to my understanding of the issues. In the circumstances, I declined that invitation.

CHAPTER 2
THE APPROACH

1. Setting up and preliminaries

1.1 This Inquiry is unlike any other for a number of reasons. The principal reason concerns the way in which Inquiries are generally conducted. Usually, an event such as a disaster or other type of incident giving rise to public concern occurs. The natural anxiety is to learn, first of all, what precisely has caused the event to happen and, thereafter, what should be done to prevent repetition. Albeit based on an inquisitorial model (with Counsel to the Inquiry conducting the forensic investigation), a judicial inquiry will thereafter proceed rather as any judicial investigation or trial might. Witnesses to the incident will be called and the Inquiry panel will then exercise the usual functions of a judge sitting alone and 'find' the facts, that is to say, on the balance of probabilities, reach conclusions as to what actually happened. This exercise will usually involve deciding precisely what, as a matter of fact, caused or led to the event, who was responsible for making what decisions and what impact those decisions have had.

1.2 A civil (or criminal) trial would then go further and determine the standard required by the civil (or criminal) law and decide whether that standard has been met. If it has not, civil (or criminal) liability will result. In the former case, damages or some other remedy will follow to benefit those who have suffered injury or financial loss as a consequence. A conviction in a criminal trial will lead to the imposition of a sanction or sentence. An Inquiry, however, does not lead to these consequences. Although the facts will be found as to what has happened and why, an Inquiry will go on to recommend steps that might be taken in the future to avoid similar problems. There is and will be no determination of civil or criminal liability.[1]

1.3 The difference in the case of this Inquiry is the fact of the criminal investigations being undertaken by the Metropolitan Police Service (MPS). The most important are Operation Weeting (into the interception of mobile telephone messages), Operation Elveden (into the payment of police officers, and, indeed, others holding public office or position, by the press) and Operation Tuleta (into other forms of computer hacking). These and other subsidiary investigations are proceeding apace and, during the course of the Inquiry, there have been a large number of arrests with journalists and others being bailed for further inquiries to be made. In a number of cases, criminal prosecutions have been commenced; these are presently awaiting trial and I anticipate that there will continue to be developments in the period which follows the publication of this Report. This is the reason for the Inquiry being split into two parts (with the question "who did what to whom" generally falling within Part 2, which is intended to follow the conclusion of any criminal prosecutions). One consequence, however, is that any investigation of the facts has inevitably been circumscribed, in particular, by an inability to investigate the full detail of specific criminality in the core areas of interception of mobile telephone voice mail messages and alleged bribery of public officials.

1.4 This limitation must be put in context. Concern about this type of activity constituted an important factor leading to the establishment of this Inquiry and the issue cannot be ignored: it is one of the central reasons for public concern about the conduct of the press (or sections of it). In relation to each of those who have been charged or arrested, however, criminal proceedings are active (within the meaning of the Contempt of Court Act 1981).

[1] s2(1) Inquiries Act 2005

1.5 This has two consequences, the implications of which are important. First, to avoid prejudice to any criminal investigation or prosecution, there are inevitable limitations on the extent to which it is appropriate to examine the evidence relating to specific incidents of such practices, let alone in relation to the identification of those who might have been involved. Second, the rights of those who have been charged or arrested must be respected and, in particular, their right not to self incriminate must be protected. This could arise either by the Inquiry inviting answers to potentially incriminating questions or, inferentially, by putting them in a position that refusal to answer questions itself generates suspicion. In the circumstances, none of those who have been arrested has been asked questions about interception of voice mail messages or payments to public officials.[2] Taking full account of these issues, however, the rights of individuals do not mean that it is inappropriate to consider, as a matter of generality, the extent to which there was a recognised and understood willingness to obtain information in this way albeit in some cases, perhaps, without knowledge of (or, at the very least, due regard to) the relevant criminal law.

1.6 In any event, Part 1 of the Terms of Reference covers very much more than this activity. In relation to the press and the public, quite apart from the admirable journalism conducted entirely in the public interest, and journalism which sets out simply to entertain harming nobody, its culture, practices and ethics cover many other types of conduct which have been the subject of complaint. Without intending to create a definitive list, these include deception ('blagging'), bullying (by reporters of members of the public and by editors of reporters in order to obtain stories), breaches of privacy and harassment, other forms of intrusion, misleading or inaccurate stories or headlines whether deliberate or accidental, discrimination and other conduct that breaches the Editors' Code of Conduct.

Scope

1.7 This Inquiry has covered the "culture, practices and ethics of the press" which obviously includes newspapers whether printed or online: it does not include broadcasters (ultimately regulated by Ofcom). Thus, although the Director General of the BBC, then Mark Thompson, gave evidence, he did so only to provide a comparison between the approach adopted internally by the BBC Trust along with the oversight from Ofcom. In those circumstances, although there have been many calls during the Inquiry for me to expand the terms of reference to investigate other organisations (most recently the BBC in the wake of the allegations against Sir Jimmy Savile), it is simply outside the Terms of Reference within which I am working.

1.8 Part 1 also covers the culture, practices and ethics of the press across a far wider canvass than the way in which it deals with the public. It is concerned with the relationship between the press and the police. This encompasses allegations that the two have become far too close, involving the payment of money or the provision of other favours for inside information, prior notice of newsworthy incidents or participation in high profile operations (including presence at arrests). It also covers the cross fertilisation of employment with retired senior police officers being engaged as newspaper columnists and journalists being employed in PR departments or as PR advisers by police services. Part 1 also deals with the relationship between the press and politicians including, in particular, the perception that, in return for political support, politicians have been too ready to allow undue influence to be exercised in relation to policy and that, in any event, the relationship between the two has not been transparent.

[2] The problems arising from the concurrent nature of the criminal investigation are described in my ruling on the Approach to Evidence: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Approaches-to-evidence-7-November-PDF-106KB.pdf

1.9 Taken together, this remit is almost breathtaking in its width and, from the beginning, I have been extremely conscious of a number of very significant consequences of the task that I have undertaken and the need to cope with those consequences. First, it would be all too easy to allow an investigation of the issues to spiral out of control and to become far too enmeshed in detail at the expense of the overall picture. Examples could be provided of concerns which focus on individual aspects of the Inquiry and it would be entirely legitimate to subject each to detailed analysis, providing the opportunity to anyone affected or potentially affected to challenge the inferences to be drawn. In some cases, for good reason, detail at that level has, indeed, been necessary. The contrary approach, with no attention paid to specifics, would risk creating an overview that is far too general and has little value as a true narrative of events.

1.10 The need to ensure a balanced approach to the facts has to be reflected in the context of the second consideration. That is the broad time frame within which it important for me to report. I put it in that way because, without suggesting that the period of one year identified by the Prime Minister constitutes (or was intended to constitute) a straight-jacket, the imperative to deal with this issue is real; public concern at the time of the closure of the News of the World (NoTW) was intense and it is important to address the problems that were perceived and are now recognised in relation to the regulation of the press as a matter of urgency.

1.11 In any event, this consideration chimes with the question of cost. At a time of fiscal austerity for the public and increasing pressure on the commerciality of the newspaper industry, it was always important that time and the resources of both were well used and not wasted on an analysis of detail that was too extensive and unnecessary for the purposes of providing a sufficient narrative. Cost is not just about legal and other financial outlay, whether by Core Participant members of the public who do not qualify for legal assistance, public authorities such as the police or police authorities, the newspaper industry or the Ministries required to fund the running of the Inquiry. Cost also encompasses the energy and time commitment of all whether participant or witness, both in responding to calls for evidence (which, in some cases, has involved an enormous amount of work) or attending to give oral evidence.

Engagement

1.12 The third consideration has been my anxiety to ensure that the industry is fully engaged in the process and to avoid the risk that this imposed Inquiry requires or has meant that their only role is to be reactive or, perhaps more serious, entirely defensive. In that regard, one concern (evidenced in fact) has been that parts of the press would consider that I approached the Inquiry without the necessary and, in my view, entirely appropriate enthusiasm and absolute commitment to freedom of expression and the independence of the press; and that this concern would fashion their approach to the Inquiry, impact on the assistance that they provided and colour the way in which they viewed any conclusion I might reach. A subsidiary concern has been that whatever view I might have about these fundamental freedoms, I would change them in the light of what they perceive to be unbalanced evidence of problems. Of course, as many have reported, it has been inevitable that a large body of the evidence would be uncomfortable for the press, if not worse, and that the positive features of our press both at a national and regional level would be lost in the welter of criticism, although reflective consideration will demonstrate that any Inquiry of this nature will inevitably focus on the problems. As I will repeat at various stages throughout this Report, I am very conscious that most journalism, most of the time meets high standards and can compete with the best journalism in the world; the Inquiry has been concerned with that which does not.

1.13 The fourth consideration has been the interests of the public. I have made the point that the public interest in the issues identified in the Terms of Reference is intense and, in my judgment, correctly so. It has thus been vital to ensure that the Inquiry proceeded in a way that engaged the public and provided appropriate access to it. By access, I do not mean only that the hearing of the Inquiry would be in public for that goes without saying. The concern has been to find ways, first, of providing the public with information as to the framework of law and regulation within which the press operate; second, of ensuring that the public has maximum access to the evidence and the material which forms the basis of my Report; third, of allowing and encouraging the public to feed their views into the Inquiry without losing the necessary judicial rigour with which any Inquiry must be conducted or creating the perception that I am effectively engaged in what is little more than a substantial exercise in public consultation.

1.14 I approached these problems in a number of different ways which I explain in chronological order of them being put into practice. In order to provide some coherence to the evidence and so that the public could understand the approach of the Inquiry, the Terms of Reference were split into four modules: the Press and the Public, the Press and the Police, the Press and the Politicians and, finally, the Future. The first three modules were designed to provide the platform for focused evidence broadly dealing with the topic in question. I say 'broadly' because I have not wanted to trouble witnesses with necessarily having to return to give evidence for each module. Thus, during the module concerned with the Press and the Public, the relevant editors were asked about payments or other inducements to police officers (which is Module Two), along with questions about meetings with and influence upon politicians. Conversely, certain witnesses (and, in particular, Rupert Murdoch, James Murdoch, Rebekah Brooks and Andrew Coulson) were, or at least could be (subject to allowance in the cases of Mrs Brooks and Mr Coulson to the fact that, at the time they gave evidence, they had been arrested as part of the police investigation and have now both been charged) central to a number of modules and I took the view that it was more sensible to deal with all aspects of the Inquiry towards the conclusion of the oral evidence.

1.15 Furthermore, the fourth module (the Future) was not intended, as might have been thought, to be free-standing. From the outset, I have been concerned to challenge all or most of the witnesses to provide ideas for the future. I have then tested them with other witnesses and encouraged a continued dialogue between all those affected by the issues which are the subject matter of the Inquiry. In that way, I have endeavoured to ensure that, parallel to the Inquiry, others (including the industry, academic journalists and those interested in this area) engage in dialogues to ensure that all possible mechanisms for regulation are examined and considered. The purpose of Module Four, therefore, was to test possible approaches and so ensure that the final Report did as much as it possibly could to take account of all concerns and reflect a solution that not only balances the legitimate interests of all those affected by the way in which the press goes about its business, but also provides a solution, or series of solutions, that have been submitted to rigorous analysis and, hopefully, can work in the real world.

Briefing sessions

1.16 In addition to splitting the Terms of Reference into four modules, I took other steps to provide sufficient bedrock on which to build consideration of the evidence as to the need for change and the future. Having signalled my intentions and rejected submissions that it would not be

appropriate to proceed in this way,[3] the second preliminary step was to organise a series of briefing sessions to set out the technical, legal and regulatory framework both for me and the assessors.

1.17 Although running contrary to my fundamental approach to the Inquiry, I agreed that the technical briefing (to explain methods of interception of telephone and IT systems) should be conducted in private, on the basis that there was no justification for putting into the public domain methods whereby the unscrupulous could learn how to commit what are, in fact, criminal offences. An approved summary of that briefing is, however, available and has been posted on the website. The other briefings concerned the criminal and civil law framework within which the press operate and the regulatory framework, both in relation to the press (presently through the Press Complaints Commission PCC) and also in other, comparatively related, industries. Although these briefings were not recorded, transcripts were prepared and anyone interested in the subject matter of the Inquiry has been in a position to acquaint themselves with the framework of law and regulation in order better to understand the issues that the Inquiry intended to address. These briefings are not formal parts of the record of the Inquiry; I am, however, satisfied that they accurately reflected the current position and, where those who provided them gave evidence, they were happy to incorporate into the record what they said at the briefings.

Seminars

1.18 The third preliminary step, after the briefing sessions, was to seek to widen understanding of the background and the present state of the industry while at the same time distilling the issues and starting the debate. This was taken forward by three seminars held over two full days. Again, these seminars are not formal parts of the record but, again, in the case of all those who gave presentations or otherwise contributed and who later attended to give evidence, each attested to the accuracy of what he or she then said and accepted that their contribution should be taken as part of their evidence. In each case, after a formal presentation, there was an open debate before an invited audience. The seminars were recorded and a transcript of the day was also prepared: along with the briefing sessions, these remain available on the website and can all be accessed on the website both to watch and to read.[4]

1.19 The first set of seminars, on Thursday 6 October 2011, was called "The Competitive Pressures on the Press and the Impact on Journalism". It was chaired by Sir David Bell, supported by Elinor Goodman and George Jones, and received presentations from Claire Enders of Enders Analysis on the competitive pressures facing the press today; Phil Hall (former editor of the NoTW, Hello! Magazine and director of the editorial department at Trinity Mirror plc) on how the press operates in a competitive environment and the pressures facing editors; and Richard Peppiatt (formerly a reporter on the Daily Star) on the day to day effect of competitive pressures on working journalists. The second seminar, similarly chaired, was called "The Rights and Responsibilities of the Press" and received first a presentation from Alan Rusbridger (editor-in-chief of the Guardian) on why a free press matters. This was followed by Trevor Kavanagh (formerly political editor and now an associate editor and political columnist on The Sun) and Professor Brian Cathcart (formerly deputy editor of The Independent on Sunday and now Professor of Journalism at Kingston University and a founder of the Hacked Off campaign), both of whom spoke about whether there is a difference between the public

[3] The justification for proceeding in this way is explained in my Ruling on the role of the assessors: pp10-11, paras 32-36, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-the-role-of-the-assessors-PDF-102-KB.pdf
[4] www.levesoninquiry.org.uk/news-and-events/

interest and the interest of the public and what questions this raised in relation to a single set of journalistic ethics.

1.20 The second day of seminars was held on Wednesday 12 October 2011. The third seminar was called "Supporting a free press and high standards – Approaches to Regulation". The morning was chaired by Lord Currie, supported by Shami Chakrabarti. Presentations were provided on the future for self regulation from the different perspectives of a regulator, an editor and a user by Eve Salomon (a former PCC Commissioner and currently Chair of the Internet Watch Foundation), Paul Dacre (editor-in-chief of Associated Newspapers Ltd and chair of the Editors' Code Committee of the PCC) and Will Moy (Director of Full Fact, an independent fact-checking organisation) respectively. The role of corporate governance was considered by Lord Borrie (formerly Director General of Fair Trading and thereafter Chair of the Advertising Standards Authority), Stephen Hill (formerly Chief Executive Officer of the Financial Times and now a non-executive director of Channel Four television) and Sly Bailey (then Chief Executive of Trinity Mirror plc).

1.21 In the afternoon, chaired by Shami Chakrabarti supported by Lord Currie, redress for breach of standards was discussed by Professor Steven Barnett (Professor of Communications at the University of Westminster), Desmond Browne QC (a leading media silk and formerly Chairman of the Bar)[5] and Professor Robert Baldwin (Professor of Law at the London School of Economics specialising in regulation). Finally defending freedom of expression was the subject of presentations by John Kampfner (then Chief Executive of Index on Censorship), Professor James Curran (Professor of Communications at Goldsmiths, University of London and Chair of the Co-ordinating Committee for Media Reform) and Kelvin MacKenzie (a columnist for The Sun and the Daily Mail, formerly editor of The Sun and managing director of BskyB and Mirror Group Newspapers).

1.22 It is not necessary to summarise the views expressed either in the presentations or by the others who contributed to the seminars. To such extent as they have been incorporated into the record of the Inquiry (which, during the course of subsequent evidence, most have), they will be reflected in the analysis that follows. What is important to emphasise, however, is that, with very limited exception, all the speakers saw and took the opportunity of the seminars to analyse where recent events were leading and had led the business, industry or profession of journalism; in my view, this did a great deal to open up the issues to a wider audience.

1.23 Without minimising any contribution from any speaker, I particularly mention Mr Dacre who, while challenging the justification upon which the Inquiry was set up (including the credentials of those participating in it), identifying what he described as paradoxes in the current furore over the press and seeking to de-bunk what he called myths surrounding the PCC, went on to recognise the need for reform if trust was to be regained and made a number of suggestions which openly and emphatically started the debate as to the future. This was a very important recognition of the need for change which, coming from an extremely important player in the

[5] Mr Browne was later instructed to act on behalf of Trinity Mirror plc but I am entirely satisfied that his appearance at the Seminar was as an expert in the field and not as counsel to a media group that was later to become a Core Participant

industry, was of enormous value. It is a matter of record that, as he was perfectly entitled to do, he later resiled from at least one of the suggestions that he then made.[6]

1.24 These seminars had another value, which was to allow me to signal (as I have repeated many times throughout the Inquiry) that I saw the best solution as one that both the press and the public would accept as a realistic approach to the issue of regulation. The recognition that the PCC no longer held the confidence of the public (whatever might have been the position in the past) was a vital stepping stone to identifying a system that would achieve the legitimate aims of the press while, at the same time, satisfying the legitimate aspirations of the public. It is obviously important that the system works for the press and that, preferably, it is acceptable to them. However, it is even more important – indeed critical – that it works for the public in the sense that the public accept that the press are able to pursue legitimate investigative journalism that is in the public interest, but, at the same time, can be held to account for abuses of the freedoms which they have to pursue stories which have no discernible public interest and whether those abuses are criminal, tortuous, or merely contrary to any recognised code of legitimate journalistic practice. I believed that the editorial representatives of the press appreciated that, if it was accepted that the PCC could no longer continue as it had, this goal was a fundamental requirement of the Inquiry.

1.25 I ought to add that I initially intended to hold further seminars for different aspects of the work of the Inquiry.[7] In the event, as evidence became available, I decided that the impetus which had been the extremely valuable result of the first series of seminars did not require repetition. It was sufficient for public understanding of the work of the Inquiry and its direction for Counsel, Robert Jay QC, to open each module in turn, explaining precisely what it was intended to achieve and the direction that the Inquiry would take. That understanding was also aided by the identification and publication of key issues for each of the modules which, in turn, generated public response.

Broadcasting

1.26 The fourth preliminary step in relation to the broad approach concerned the extent to which it would be appropriate to allow cameras into the Inquiry room to record the evidence and thereafter to stream it live onto the Inquiry website. On the one hand, I was conscious that it would create pressure on witnesses who wished to protect their privacy and, as a result of the presence of a permanent record of their evidence, could serve to undermine that privacy. It would also serve to increase the day to day pressure on Counsel and all others participating in the work of the Inquiry. On the other hand, I recognised the significant public interest in what the Inquiry was doing and seeking to achieve, along with the very real importance in ensuring that the evidence was available for all to see in a form that was unmediated by press or other reporting. I dealt with my concern in relation to the witnesses who complained of press intrusion by ensuring that all who gave oral evidence were volunteers and understood that their evidence would be streamed on the website and available to be seen in the future; it is for that reason that I particularly recognised the value of their participation when each gave evidence.

[6] At the third seminar, Mr Dacre said: "*While I abhor statutory controls, there's one area where Parliament can help the press. Some way must be found to compel all newspaper owners to fund and participate in self-regulation.*" http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/RPC_DOCS1-12374597-v1-PAUL_DACRE_S_SEMINAR_SPEECH.pdf. That is no longer his position: on 15 June 2012, he submitted: "*In retrospect, after hearing some of the devastating evidence to the Inquiry in the third module, I regret this suggestion because I now fear that ANY parliamentary involvement would be the "thin edge of the wedge" which could result in fuller statutory control of the press*": p5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Submission-by-Paul-Dacre1.pdf

[7] http://www.levesoninquiry.org.uk/about/opening-remarks/

1.27 In the event, I am satisfied that the decision to stream the work of the Inquiry (and to enter into appropriate contractual relationships with television broadcasters as to the use to which it may be put) was entirely justified. Sky News and the BBC devoted a considerable proportion of time to televising the hearings and other media news channels used the footage both on television and as part of their online reporting.

1.28 When dealing with the topic of televising the Inquiry, it is important to sound a note of caution. I am conscious that a number of people have used the valuable impact of the reporting of the Inquiry in support of the argument that all court proceedings should be capable of being televised and that the present restrictions contained within s41 of the Criminal Justice Act 1925 should be removed. Although the experience of the Inquiry can inform any such debate, it is important to provide the context. The press and other professional witnesses were subject of notice under s21 of the Inquiries Act 2005 (and so were required to provide evidence and, when appropriate, attend the Inquiry). However, as I have said, the witnesses who complained about press intrusion were volunteers and understood that their evidence would be streamed and available on the website; cross examination was limited or non-existent. In very few cases, steps were taken to preserve anonymity of appearance if not identity. In a criminal trial or family proceedings, civilian witnesses are victims, involved in personal tragedy or accidental (and, in many cases, reluctant) participants in the process of justice; they can be cross examined at length and, frequently, as to their credit. To film their evidence (particularly in high profile cases) would be to subject them to intolerable and damaging pressure which would most certainly not be in the interests of justice.

1.29 Returning to the impact of the other preliminary steps that I have outlined, the briefings and the seminars had the intended effect. In addition to eliciting responses from those who were either invited to provide evidence or, pursuant to notice under s21 of the Inquiries Act 2005, were required to do so, many other interested parties and the members of the public did engage in the process of the Inquiry.

Core Participants

1.30 Running at the same time as the briefings and seminars, as a fifth preliminary step, it was necessary to determine who should be entitled to Core Participant status for any or all of the modules of the Inquiry and to decide how the Inquiry should proceed in the light of any representations that Core Participants might make. I decided to separate out applications for Core Participant status for each of the four modules, on the basis that although many interested parties would have equal interest in all aspects of the Inquiry (and so were granted on a blanket basis from the outset), a number might only be concerned with fewer aspects of the Terms of Reference. In the circumstances, I invited applications for each of the modules and dealt with them on that basis. Although deadlines for such applications passed, in the

main, I considered each, whenever it was made, on its merits and ruled in accordance with the letter and spirit of Rule 5(2) of the Inquiry Rules 2006.[8]

The approach to evidence

1.31 The sixth, and final, preliminary issue concerned the steps that I should take, while seeking to obtain a narrative of facts, to ensure that I did not prejudice any criminal investigation or potential prosecution and, at the same time, maintain a balanced and fair approach to others said to have been involved in illegal or unethical methods of gathering stories. In relation to the former, having invited submissions at an early stage (in particular from the Director of Public Prosecutions and the police), I ruled on the appropriate approach to evidence in relation to those charged with criminal offences or under investigation. My conclusion is summarised at para 1.16 above.[9] Fairness (as required by s17(3) of the Inquiries Act 2005) has, however, taken me further for I have not felt it appropriate to protect the names of those who have been arrested from being linked to specific allegations of criminal conduct, while affording no such protection for those alleged to have been involved in other criminal (or, in some cases, unethical) conduct which is not being investigated (and therefore gives rise to no risk of prejudice).

1.32 This approach has been criticised by those who wish to expose what is said to be the greater criminality revealed by a study of the documents seized by the Information Commissioner during Operation Motorman (the arrest of a private detective, Steve Whittamore), involving a very much greater section of the press than those seized by the police during Operation Caryatid (the arrest of Glenn Mulcaire, now being revisited in Operation Weeting). However, it is entirely consistent with the fact that the Terms of Reference are divided into two parts and that this first Part concerns the culture, practices and ethics of the press rather than individual conduct. Throughout the Inquiry, there are references to what I have described as the 'mantra' that I have not presently been concerned with 'who did what to whom' but culture practices and ethics. To the mantra, I have added what I have called the 'self-denying ordinance' that, although the Inquiry has investigated with individual journalists conduct which is not the subject (or likely to be the subject) of police inquiries, so that the question of self incrimination does not arise, in the main, I have extended similar protection to individual journalists and others who are not currently the subject of any investigations.[10] This approach has not been inflexible because it has been critically important to ensure that an appropriate

[8] Module 1 rulings: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Core-Participants-final-14.09.11.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-judgement-relating-to-Elaine-Decoulos-4-October-PDF-50.2KB.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-Ruling-on-Core-Participants-2-Novembr-2011.pdf. Module 2 rulings: p26, [line 4 et seq], http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-25-January-20121.pdf and http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-ruling-on-Core-Participants-17-February-2012.pdf. Module 3 rulings: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-Ruling-on-Core-Participants-Module-3-5-April-2012.pdf and http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-Ruling-on-Core-Participants-Government-4-May-2012.pdf. Module 4 rulings: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Amended-Ruling-in-relation-to-Core-Particpants-for-Module-42.pdf. Applications by Ms Decoulous to appeal each decision refusing her Core Participant status were refused by the Administrative Court (Module 1 on 4 November 2011 by Moses LJ and Singh J: [2011] EWHC 3214(Admin); Module 2 on 14 March 2012 by Richards LJ and Kenneth Parker J: CO/2320/2012; and Modules 3 and 4 on 17 July 2012 by Sir John Thomas PQBD and Silber J: CO/4182/2012, CO/7190/2012)

[9] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Approaches-to-evidence-7-November-PDF-106KB.pdf

[10] There are numerous references in the transcripts to this approach; see, for example, the ruling in relation to Rule 13 of the Inquiry Rules 2006 [para 5], http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf

narrative of fact is available, against which to judge the efficacy of the present system of self regulation promulgated through the Press Complaints Commission and any proposals to amend or replace that system.

1.33 I can illustrate this necessary inhibition on what I have been able to do with a simple example. In his first statement to the Inquiry, the editor of The Times, James Harding, made a passing reference to a single instance of computer hacking. This was not investigated further at that time but, in a masterly analysis, David Allan Green linked the reference to the exposure of a blogger known as Nightjack. That led to a letter and a further statement from Mr Harding which resulted in his being recalled to give evidence. Because the Nightjack incident had been the subject of litigation, the then legal manager of The Times, Mr Alastair Brett, appeared at the Inquiry when the matter was analysed in some detail. On the basis of this evidence, it would certainly be possible to draw a number of important conclusions about what happened at The Times and about internal governance and legal risk management. However, because the journalist who was said to be at the centre of this incident has now been arrested for offences of computer hacking and attempting to pervert the course of justice, it is not appropriate to risk prejudice to that investigation or to any possible trial by further discussing it.

1.34 A further consequence of this has been the need to avoid the possibility of inferential criticism of those who are currently the subject of criminal investigations. So, for example, a criticism of the governance arrangements at a particular newspaper, whether in general terms or directed at particular members of the management team, could, by implication, be interpreted as a criticism of others, elsewhere within the organisation. The requirement on me to tread this careful path might mean that some readers of this Report are surprised that a number of senior executives who gave evidence are not subject to the criticisms that might otherwise have been expected or, at least, discussed. It is, however, the consequence of the imperative not to or cause substantial prejudice to the investigation or prosecution of allegations of crime.

2. The gathering and presentation of evidence

Module One

2.1 As I have explained, many public inquiries follow some incident or event which has immediately been the subject of police or other investigation, so that the product of that investigation will be able to form the basis body of evidence upon which the inquiry can rely for its facts. In the case of this Inquiry, however, although aspects of the Terms of Reference had been or were the subject of litigation,[11] the police investigation was ongoing. Although the Inquiry obtained evidence both from the civil and public law actions, the collection of evidence even for Module One (the press and the public) required trawling from a very wide range of people including (a) individuals who complained that they have been the subject of press criminality or intrusion (one of whom gave evidence with the benefit of complete

[11] This includes the civil actions of Gordon Taylor and Sienna Miller which were of critical importance to the greater understanding of the truth behind the assertion of 'one rogue reporter', the many civil actions conducted before Vos J and the public law review of the conduct of the Metropolitan Police in relation to Operation Caryatid

anonymity),[12] (b) newspaper proprietors, editors, journalists[13] and support staff (including, in relation to News International, external lawyers), (c) freelance journalists, campaign groups and others who have been concerned about press conduct, (d) photographers (including paparazzi) and private detectives, (e) mobile phone operators, (f) the police and Director of Public Prosecutions, (g) the Information Commissioner and his staff, (h) the Press Complaints Commission, (i) academic journalists and (j) bloggers and internet sites. The remaining modules required different groups of people or different individuals within the relevant organisations.

2.2 Section 21(2) of the Inquiries Act 2005 provides that I could require any person, within such period as appears to be reasonable to provide evidence in the form of a written statement (including documents). For each module, save in relation to those who complained about press intrusion (whom I considered ought to have the opportunity to decline to give evidence in public about their complaints of invasions of privacy) and a number of the most senior politicians, I decided that all witnesses would be required pursuant to the Act to assist me: this was not intended to reflect a concern that witnesses would not be prepared to volunteer their assistance (as, I believe almost without exception, all were) but rather to ensure that there was a consistency of approach across all those whom the Inquiry approached. Such requests could only be made after the Inquiry had formally commenced (at the end of July 2011) and it was obviously essential to give everyone to whom requests for evidence had been addressed sufficient time to submit considered evidence. Given the summer, this meant that most of the evidence was not, in fact, available until the autumn. It then had to be assimilated and, eventually, made available to Core Participants for any comment prior to it being called.

2.3 In addition to witnesses whom the Inquiry approached, an invitation was posted on the website inviting members of the public and other interested individuals or groups to submit evidence directly to the Inquiry.[14] It is worth setting out the key questions posed which were as follows:

> *"The Inquiry is currently looking at the relationship between the press and the public. We're interested in hearing from professionals and the public with information and examples in response to the specific questions below.*
>
> *Your answers may be considered as potential evidence to the inquiry.*
>
> *1. The Inquiry needs to understand how newsrooms operate, particularly in the tabloid and mid-market sectors. Can you provide a personal account of culture, practices and ethics in any part of the press and media?*

[12] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/231111-S19-restriction-order-HJK.pdf
[13] This evidence included hearsay, anonymous material which Michelle Stanistreet the General Secretary of the National Union of Journalists sought to adduce from a number of journalists who feared for their careers if they spoke out in public. An application for this evidence to be heard was challenged by other Core Participants and subject to 'gateway' rulings by the Inquiry: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Anonymous-Witnesses-Ruling-PDF-64.5-KB.pdf and http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Anonymous-Evidence-28-November-2011.pdf. These were issued along with a protocol http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Protocol-regarding-Applications-for-Anonymity.pdf. The rulings were the subject of unsuccessful challenge in the Administrative Court (Toulson LJ, Sweeney and Sharp JJ): see *R (on the application of Associated Newspapers Ltd v. The Rt Hon Lord Justice Leveson as Chairman of the Leveson Inquiry* [2012] EWHC 57 (Admin), http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/assoc-news-v-chair-leveson-inquiry.pdf. There was then a substantive ruling on the merits of the application which was granted: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Anonymous-witnesses-ruling-7-Feb-2012.pdf
[14] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Key-Questions.pdf

2. Seminar debates have suggested that commercial pressures were not new, were not unique to the press, and did not impact adversely on standards of journalism or ethical behaviour. The Inquiry would be interested in submissions on this, with examples where possible.

3. Some seminar attendees suggest reader loyalty limits competition between titles. Professional competition to be first or best with a story, though, could be a powerful force. Other participants suggested some papers put journalists under significant pressure to produce a story within a tight timeframe. The Inquiry would be interested in experiences of the competitive dynamics in journalism and how that impacts on the way in which journalists operate, with examples where possible.

4. With the advent of the internet and 24 hour news as well as declines in revenue and circulation, we have heard that fewer journalists are having to do more work. The seminars also raised the issue of the casualisation of the workforce. The inquiry would be interested in experiences of how this may have changed the culture in newsrooms and what it might mean in terms of journalistic practice, with examples where possible.

5. The issue of stories that attract a high degree of press attention but subsequently turn out to be false was raised at the seminars. The Inquiry would be interested in submissions from editors, reporters and subjects of such stories - why they occur (what are the pressures that drive press interest), and how they occur (what checks and balances are or should be in place to stop this happening and why do they sometimes not operate)?

6. One seminar attendee suggested that the National Council for the Training of Journalists does not teach ethics. The Inquiry would be interested in experience of how ethics are taught and promulgated amongst journalists.

Standards

7. Attendees proposed that the general law, as it applies to everyone, should be the only constraint on the press. The inquiry would welcome submissions on whether, and if so why, the press should be subject to any additional constraints in relation to behaviour and standards, for example relating to accuracy, treatment of vulnerable individuals, intrusion, financial reporting or reporting on crime, other than those imposed by existing laws.

8. Editors at the seminars argued that the Editors' Code was a good set of standards to work to. The Inquiry would be interested in submissions from all parties on the coverage and substance of the Editors' code including accuracy and redress for those who are affected by breaches of the code.

9. It has been argued that the statutory regulation and impartiality requirements that apply to broadcasting do not chill investigative reporting on television. Broadcasters are able to rely on the printed press to break controversial stories and then follow on behind. The inquiry would be interested in submissions on the extent to which the regulatory regime for broadcasting casts a chill on broadcast reporting and the relationship between the printed press and broadcast media as a result of the different regulatory environments.

Public interest

10. The Inquiry has heard strong arguments for the importance of a free press in a democratic society. The Inquiry would be interested in submissions on the special role to be played by the press in a democracy, what 'freedom' requirements need to be

in place for that role to be played and the whether this role places any obligations or responsibilities on the press.

11. We've heard arguments that sometimes it will be in the public interest for journalists and media organisations to do things that would otherwise be ethically or legally questionable. The inquiry would be interested in submissions on the extent to which, if at all, should acting in the public interest be a complete or partial defence in relation to unlawful or unethical activity in pursuit of journalism; and, if so, subject to what conditions.

12. In practice any public interest argument would need to be considered in the context of specific cases. The Inquiry would be interested in submissions on who should be responsible for reaching decisions on whether something is in the public interest, and on what basis.

Illustrative examples would be helpful."

2.4 It has been suggested that the Inquiry never engaged with the public, and therefore never engaged with those who purchase tabloid or mid-market papers, with the result that the evidence has been in some sense skewed or biased against the millions who read that type of paper. In fact, as discussed below, members of the public (with different interests in the work of the Inquiry) did respond to this invitation and it proved an extremely valuable resource for material which the Inquiry would not otherwise have obtained. Further, a number of witnesses and groups who availed themselves of the opportunity to provide views and material were later invited to attend to give evidence orally so as to develop the issues which had been raised. As for the risk that only those with some criticism of the press might respond, as the questions make clear, the Inquiry was equally anxious to hear in support of the press as in criticism of it.

2.5 The briefings, seminars, and the collection, examination and distillation of the evidence meant that it was not possible to start the formal hearings of the Inquiry until Monday 14 November 2011, when Robert Jay QC made an opening statement, followed by opening statements from the Core Participants. Witness evidence commenced on Monday 21 November 2011 and, for Module One, continued until 9 February 2012: 175 witnesses gave evidence over a period of 40 days and the evidence of further witnesses was read into the record of the Inquiry not only while Module One was ongoing but also, as it emerged, throughout the Inquiry and, where appropriate, even after the formal hearings had concluded. This latter process has given rise to misunderstanding which I have frequently sought to correct during the course of the Inquiry but which it is appropriate to make very clear.

2.6 While the evidence on Module 1 was proceeding, a number of submissions were received from campaigning groups who argued that the approach of the PCC to third party complaints was such that there was no avenue for redress in the absence of a identified 'victim' who was prepared to pursue a complaint on his or her own behalf. In particular, therefore, generic complaints (of misleading and inaccurate reporting of issues such as immigration, domestic violence and others) were unchallengeable. This was not simply a complaint about tone or balance (although there were such concerns as well) because it was well understood that newspapers, unlike broadcasters, were perfectly entitled to be partisan in their views. Rather, it was to do with factual accuracy and consequent comment. To that end, arrangements were made for evidence to be given from, among others, Inayat Bunglawala (Engage), Heather Harvey (Eaves Housing for Women), Anna Van Heeswijk (OBJECT), Jacqui Hunt (Equality Now), Marai Larasi (End Violence against Women) and Helen Belcher (Transmedia Watch). As explained by Fiona Fox (Science Media Centre) misleading and inaccurate reporting of

conceptual issues (such as climate change or science generally) were similarly not covered by the complaints system.

2.7 Submissions from different groups continued to be received covering other areas of extremely important social awareness; these included, among others, submissions concerning the treatment afforded by the press to the young, the mentally ill, the disabled and other groups in society, some of which were vulnerable and others the particular subject of press concern.[15] All make the same or similar points to those which the Inquiry had already heard, albeit from the different perspective of the particular concern of that specific campaign. Quite apart from the question of the available time (given the very wide-ranging Terms of Reference and the other evidence that it was essential to capture), the question arose whether it was necessary to call this evidence orally in order to make the points that were developed in writing.

2.8 In the event, I decided that it was not necessary to call more evidence; however, arrangements were made for each of these submissions (as with all other evidence read into the Inquiry) to be circulated to Core Participants so that if any advanced a reason why the evidence should not received into the record of the Inquiry, that argument could be considered. In the event, no objection was received and all this evidence was 'read into' the Inquiry record. That means that it is published as part of the evidence of the Inquiry: I have read it and, where appropriate, included references to parts of it in this Report. What I am very anxious to emphasise, however, is that I do not consider that any of this evidence was 'second class' or to be accorded a lesser status to the evidence that was adduced orally: it has all been important and it has all been considered. The same can be said of the submissions to the Inquiry made by others (not necessarily relating to campaigning groups concerned with third party complaints) which, having also been read into the record, has become part of the evidence in the Inquiry.

2.9 As I deal with evidence that was read into the record but not called before me, I ought also to deal with complaints that were made to the Inquiry that were not adduced as evidence, not because they were not relevant to the Terms of Reference but, rather, because they were both complex and highly fact-sensitive. This would have resulted in a considerable amount of time being devoted to investigating the circumstances, without there being any corresponding value to be derived as to the generic culture, practices and ethics of the press (rather than the behaviour of those titles involved in the particular facts being examined). One example will suffice.

2.10 In March 1997, a private investigator, Daniel Morgan was murdered in South East London. There have been five police inquiries into the circumstances of his death and it has been alleged that his partner, Jonathan Rees, might have been involved in his murder (he was later acquitted when the prosecution were unable to guarantee his right to a fair trial following the discovery by the police of four undisclosed crates of material). Mr Rees had been employed by the NoTW and, the nature of the relationship has been the subject of media comment. I can well understand why Mr Morgan's family saw the Inquiry as an opportunity to uncover information about his death (and Mr Rees clearly visualised that possibility because he

[15] Beat; Big Brother Watch; British Psychological Society; Carbon Brief; Carnegie Trust; Democratic Society; Disaster Action; Federation of Muslim Organisation; Federation of Poles in Great Britain; Full Fact; Howard League for Penal Reform; Inclusion London; Irish Traveller Movement; Joint Council for the Welfare of Immigrants; Joint Enterprise: Not Guilty by Association (JENGbA); London Muslim Centre and the East London Mosque; Make Justice Work; Migrant and Refugee Communities Forum Mind and Rethink Mental Illness; National Aids Trust; Neuroimmune Alliance; Professionals Against Child Abuse; Refugee Council; Royal College of Psychiatrists; Runnymede Trust; Samaritans Sense About Science; Support After Murder and Manslaughter (National); Transparency International UK; UK Drug Policy Commission; United Communications Ltd; Wellcome Trust, Cancer Research UK and Association of Media Research (Joint Submission); Wish; Youth Media Agency

applied for Core Participant status on the basis that he might be the subject of criticism). Whether there should be an inquiry into this particular case is not for me to say: it is sufficient if I repeat the explanation that to have examined the issues arising would have taken weeks or months and I did not consider that the very limited time available for this Inquiry was best deployed in that way. In the event, although I made it clear that Mr Rees could make a statement for the Inquiry, he has not done so.[16]

Module Two

2.11 That conveniently brings me to Module Two which started on 27 February 2012. The evidence touching the relationship between the press and the police had been obtained and assimilated while Module One was proceeding. Once again, key questions for this module were also published on the website[17] which, again, generated considerable public interest. The questions (which provide a good overview of some of the issues which the Inquiry was to consider in this module) were as follows:

> *"The Inquiry is now looking at the relationship between the press and the police.*
>
> *We're interested in hearing from professionals and the public with information and examples in response to the specific questions below. Your answers may be considered as potential evidence to the Inquiry and may be published in a redacted form as part of the Inquiry's evidence.*
>
> ***Culture, practices and ethics**:*
>
> *1. The Inquiry needs to understand how the relationship between the press and the police currently operates. The Inquiry would be interested in the experiences of police officers, other police staff, and journalists as to how the relationship between the press and the police works in practice.*
>
> *2. The Inquiry would be interested in the experiences of police officers, other police staff, and journalists as to how the current Police Service policies and guidance in place to regulate the relationship between the press and the police work in practice.*
>
> *3. The Inquiry would like to build up an overall picture of the nature and level of the interaction that currently exists between the police and the press. The Inquiry would therefore be interested to receive submissions on the type and frequency of contact which currently exists between police officers, other police staff, and the media (differentiating between local and national media contact), with examples where possible.*
>
> *4. The internet, 24 hour news and social media has brought new challenges for both the police and the press. The Inquiry would be interested in the experiences of police officers, other police staff, and journalists on how this may have altered the relationship, and whether the Police Service policies and guidance in place have kept pace with this changing environment, with examples where possible.*
>
> *5. The Inquiry would be interested to receive views on the level of awareness and experience that exists within the Police Service of "media crime" (the unlawful interception of communications, bribery of officials by the media and harassment by paparazzi and journalists, for example), with examples where possible.*

[16] Other examples are discussed in the ruling concerning the evidence of Peter Tickner: see http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-of-26-March-2012.pdf
[17] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Key-Questions-Module-2.pdf

6. The Inquiry would be interested to receive views as to whether the Police Service governance arrangements, policies and guidance currently in place are sufficient to sustain a transparent and ethical relationship between the police and the press which at the same time upholds the confidentiality and rights of the victims of crime and the public more generally.

7. The Inquiry would be interested to receive submissions on what Police Service training, governance and oversight arrangements exist, and views on whether it is sufficient, to ensure that acceptable boundaries exist between the police and press, with examples where possible.

8. The Inquiry would be interested in the experiences of journalists about whether you have ever felt under any pressure not to report a story involving a police officer or member of police staff (detailing where and from whom the pressure came), with examples where possible.

9. The Inquiry would be interested to receive submissions from police officers, other police staff, and journalists on the extent to which formal and informal interaction between the press and the police is recorded for the purposes of transparency (are such records audited, and if so by whom, for example). Information control and disclosure:

10. The Inquiry would be interested to receive submissions on the extent to which systems are in place (and an assessment of whether they are adequate) to identify, prevent, manage and investigate police data leaks and breaches.

11. The Inquiry would be interested in the experiences of the victims of crime and the public more generally, who feel that they have been adversely affected (perhaps through a data leak or breach, or through the reporting of a case) by the current relationship between the press and the police, with examples where possible. The Inquiry would also be interested to receive submissions in relation to this issue on whether it is felt that the current investigation and complaint regime are adequate to properly address instances of this type.

12. The Inquiry would welcome submissions on how the police and the media working together is and can be of benefit to the public, with examples where possible.

***Professional Standards**:*

13. The Inquiry would like to receive views as to whether it is felt that adequate governance and oversight arrangements are in place for police officers and other police staff to ensure the effective management and recording of gifts and hospitality, secondary business interests, associations and conflicts of interest.

14. The Inquiry would be interested to receive views as to what type of payments, gifts or hospitality (if any) you consider to be legitimate transactions between police officers, other police staff, and the media, and is and should the approach to payments, gifts or hospitality between the press and the police be different to the approach between the police and other parties.

15. The Inquiry would be interested to receive views as to whether there should be rules in place to govern how and when police officers and other police staff leaving the Police Service can take up posts with the media, commercial or other bodies, with examples of when such a move has been problematic or brought advantages where possible.

16. The Inquiry would be interested to receive views as to whether there should be rules in place to govern how and when members of the press, or the media more generally, can take up posts with the Police Service, with examples of when such a move has been problematic or brought advantages where possible."

2.12 At a more specific level, Module Two covered a number of different topics. First, it involved a consideration of Operation Caryatid from its inception, following a complaint by the Royal Household in relation to the interception of mobile phone messages, through to the commencement and impact of Operations Weeting, Elveden and Tuleta. To that end a number of police officers gave evidence, along with the relevant Directors of Public Prosecutions and leading counsel instructed in the prosecution of Clive Goodman and Glenn Mulcaire. Second, it concerned the more general relationship over many years between the press and the MPS, thereby involving witnesses who complained about the impact of that relationship upon themselves; the last four Commissioners and the present Commissioner of the MPS, together with many very senior officers and ex officers and personnel from the Department of Public Affairs; and journalists who had considered the relationship and crime journalists who depended upon it. Third, evidence of comparison with other regional police forces and the regional press was called both from Chief Constables, other ranks and press departments, as was evidence of the approach of the Association of Chief Police Officers. Fourth, reports prepared by the Chief Inspector of Constabulary (Sir Denis O'Connor) and, for the Commissioner of the MPS (by Elizabeth Filkin), and the views of police authorities (including the relevant regulator for the MPS, the Mayor's Office for Policing and Crime) also fell to be considered. This evidence broadly concluded on 4 April 2012, with the Inquiry having heard from 93 witnesses over 23 days.

2.13 As I have indicated above, the evidence of a number of witnesses covered all four modules. That was particularly so in relation to Rupert Murdoch, James Murdoch, the proprietors of other newspaper groups and a number of senior staff from News Corporation or News International. This group of seven witnesses gave evidence (over two weeks in April and May 2012) between Module Two concerning the press and the police and Module 3 concerning the press and politicians.

Module Three

2.14 Module Three formally opened on 10 May 2012 and involved evidence over a period in excess of four weeks from 44 witnesses. These included some of the most senior politicians of the last 20 years (including the present and last three Prime Ministers, the Deputy Prime Minister, the Leader of the Opposition and the First Minister of Scotland), senior civil servants, special advisers and political journalists. The primary concern was the relationship between politicians of all political hues and the press, together with the impact (whether in reality or as a matter of perception) of such relationships as existed on the development and implementation of policy concerning the press. Political challenges came to the fore, however, in particular concerns about the handling by the present Government of the bid by News Corporation for those shares in BSkyB Ltd which were not already owned or controlled by Rupert Murdoch. Although only one of a number of issues regarding the relationship between politicians and the proprietors and editors of mass market newspapers over the last 30 years, the questions that arose (being of contemporary political concern) came to dominate aspects of the Inquiry. There was particular interest in an issue arising from Parliamentary Questions addressed to the Secretary of State for Culture, Olympics, Media and Sport, which were the subject

of a detailed account in his statement to the Inquiry.[18] In the event, these Parliamentary Questions were not then pursued in the House of Commons; they were examined, at some length, when Jeremy Hunt MP gave evidence.[19] This module continued until 14 June 2012, although aspects were further examined on 25-26 June.

2.15 As with the first two modules, key questions regarding the relationship between the press and politicians were identified and placed on the website[20] for consideration and comment by any interested group or member of the public. Again, it provides useful context for the work of the Inquiry to set these questions out at this stage:

> *"The Inquiry is now looking at the relationship between the press and politicians.*
>
> *We are interested in hearing from professionals and the public with information and examples in response to the specific questions below. Your answers may be considered as potential evidence to the Inquiry and may be published in a redacted form as part of the Inquiry's evidence.*
>
> *1. The Inquiry is interested in the extent of public knowledge and understanding of the relationship between the media and the politicians. Where does that knowledge come from? How is it tested? What use is made of publicly available information (for example about meetings between senior politicians and leading media figures)? Has the change to the Ministerial Code in July 2011 made a difference? (The Code now states: "the Government will be open about its links with the media. All meetings with newspaper and other media proprietors, editors and senior executives will be published quarterly, regardless of the purpose of the meeting".)*
>
> *2. The Inquiry would like to hear views on the specific benefits and risks to the public interest arising from relationships between senior politicians, at a national level, and the media. What does the public stand to gain from this relationship? What does it stand to lose? How can the gains be maximised and the risks minimised? Are there specific considerations the Inquiry should be aware of in the run up to general elections and other national polls?*
>
> *3. The Inquiry is interested in hearings views on the conditions that are necessary for a free press in a democracy to fulfil its role in holding politicians and the powerful to account. What is the nature of that role? What is the public entitled to expect of the press in fulfilling it? How can the public see for itself that the press is taking this role seriously and going about it responsibly? Are there some good examples?*
>
> *4. Is there a perception that political journalism generally has moved from reporting, to seeking to make or influence political events? How far is there evidence for that, and should it be a matter of public concern or not? Does the press have a legitimate function in fulfilling a political Opposition role?*
>
> *5. The Inquiry is interested in the nature of media influence on public policy in general (for example in areas such as criminal justice, immigration or European policy). Do you have views, or any specific examples, about how that influence is exercised and with what effect? How transparent is the process? Is the public well served by it?*

[18] pp1-14, lines 1-17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-15-May-2012.pdf

[19] One of the issues that arose in the House of Commons concerned the allegation that Mr Hunt had breached the terms of the Ministerial Code. As I have made consistently clear, my approach has been focussed on the relationship between the press and politicians and the conduct of each as a matter of generality; it is no part of my intention or my function to pass judgment on anything else and, in particular, I have not addressed the political (still less the party political) questions that have been asked

[20] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Key-Questions-Module-3.pdf

6. The Inquiry is particularly interested in the influence of the media in the content and timing of a party's media policies, and in a Government decision-making on policy or operational issues directly affecting the media. Do you have any personal examples of how this works in practice? Are the media effective lobbyists in their own causes? Do any risks arise from the Government's role in the determination of takeovers and/or mergers of media organisations? Is there a need for additional safeguards or limits on such involvement?

7. Is there a need for plurality of voice in news providers within the press, in providers of other types of news media or across the media as a whole? How does access to news information through the internet affect the need for plurality? What level of plurality is required? Is plurality of ownership a sufficient proxy for plurality of voice?

8. Is there evidence of media influence on public and political appointments (including the tenure and termination of those appointments)? The Inquiry is interested in examples, including of cases where the public interest was, and was not, well served by such influence.

9. How far do you think politicians feel inhibited from acting in the public interest to ensure that the media's conduct, practices and ethics are themselves in the public interest? Why might that be? What would make a difference?"

Module Four

2.16 Module Four commenced on 9 July 2012 and the Inquiry heard from 30 witnesses. This module was initially described as involving a discussion of 'emerging findings'. In the event, it was clear that the Press Board of Finance (PressBoF) and the current chair of the PCC had embarked upon the process of re-casting self-regulation; this Module therefore consisted of a detailed examination not only of that model but also a substantial number of other models for the regulation of the press that had been submitted as evidence to the Inquiry. To encourage that process and assist those devising potential solutions to the problems of press regulation, the Inquiry published Draft Criteria for an Effective Regulatory Regime.[21] These were not intended to be definitive but merely illustrative of the issues that had to be addressed. These criteria were as follows:

"In module 4 the Inquiry will hear proposals for potential press regulatory solutions. There are three aspects to the question of what regulatory regime should apply to the press in the future: firstly what a regulatory regime should do; secondly how it should be structured to achieve that; and thirdly the detailed rules that are put in place to achieve the objectives. The 'what' is about outcomes and the 'how' is about processes, structures and accountabilities. The detailed rules would be dealt with in the substance of any code or regulations. These three aspects of a regulatory regime need to be considered separately as they are not necessarily dependent on each other and it may be possible to achieve the desired objectives by different combinations of solutions.

The Inquiry has already heard a number of suggestions in relation to the 'how' and the purpose of module 4 is to look at those suggestions in more detail. In order to facilitate the scrutiny of the 'how' proposals it is necessary to understand 'what' any regulatory solution is seeking to achieve. The draft criteria for a regulatory solution below set out the criteria against which the Inquiry proposes to measure potential regulatory solutions. The Inquiry would welcome comments on these criteria.

[21] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Draft-Criteria-for-a-Regulatory-Solution.pdf

Draft Criteria for a Regulatory Solution

1. ***Effectiveness***

1.1 Any solution must be perceived as effective and credible both by the press as an industry and by the public:

(a) It must strike a balance, capable of being accepted as reasonable, legitimate and in the public interest by all.

(b) It must recognise the importance for the public interest of a free press in a democracy, freedom of expression and investigative journalism, the rule of law, personal privacy and other private rights, and a press which acts responsibly and in the public interest.

(c) It must promote a clear understanding of 'the public interest' which would be accepted as reasonable by press, industry and public alike.

(d) It must be durable and sufficiently flexible to work for future markets and technology, and be capable of universal application.

2. ***Fairness and objectivity of Standards***

2.1 There must be a statement of ethical standards which is recognised as reasonable by the industry and credible by the public. This statement must identify enforceable minimum standards as well as articulating good practice that should be aimed for.

2.2 All standards for good practice in journalism should be driven by the public interest and must be benchmarked in a clear objective way to the public interest.

2.3 The setting of standards must be independent of government and parliament, and sufficiently independent of media interests, in order to command public respect.

3. ***Independence and transparency of enforcement and compliance***

3.1 Enforcement of ethical standards, by whatever mechanism, must be operationally independent of government and parliament, and sufficiently independent of media interests, in order to command public respect.

3.2 In particular all relevant appointments processes must be sufficiently independent of government, Parliament and media interests to command public support.

3.3 Compliance must be the responsibility of editors and transparent and demonstrable to the public.

4. ***Powers and remedies***

4.1 The system must provide credible remedies, both in respect of aggrieved individuals and in respect of issues affecting wider groups in society.

4.2 The regulatory regime must have effective investigatory and advisory powers.

4.3 The system should also actively support and promote compliance by the industry, both directly (for example by providing confidential pre-publication advice) and indirectly (for example by kitemarking titles' own internal systems).

4.4 The system should be a good fit with other relevant regulatory and law enforcement functions.

5. ***Cost***

5.1 The solution must be sufficiently reliably financed to allow for reasonable operational independence and appropriate scope, but without placing a disproportionate burden on either the industry, complainants or the taxpayer."

2.17 Quite apart from the regulatory solution, Module Four also dealt with other key questions and, to that end, involved evidence from experts in diverse fields ranging from differing approaches to press regulation across the word (and, in particular, the Irish model) to data protection, from ethics and philosophy to plurality. The key questions, reflecting some of these issues, were published on the website[22] and, again, interested parties and the public were invited to submit evidence which could be considered during the course of the evidence (even if only to prompt questions from Counsel to the Inquiry). These questions were as follows:

*"**Relevant aspects of the public interest***

1. How would you describe the public interest in a free press?

2. How would you describe the public interest in freedom of expression? To what extent does that public interest coincide with, or diverge from, the public interest in a free press?

3. In order to maximise the overall public interest, with what other aspects of the public interest would freedom of expression, or freedom of the press, have to be balanced or limited? The Inquiry is particularly interested in the following, but there may be others:

(a) the interest of the public as a whole in good political governance, for example in areas such as

- *national security, public order and economic wellbeing,*
- *the rule of law, the proper independence and accountability of law enforcement agencies, and access to justice, and*
- *the democratic accountability of government for the formation and implementation of policy;*

(b) the public interest in individual self-determination and the protection and enforcement of private interests, for example

- *privacy, including (but not necessarily limited to) the rights to privacy specified in general in Article 8 of the European Convention on Human Rights and in European and national legislation on the protection of personal data,*
- *confidentiality, the protection of reputation, and intellectual and other property rights, and*
- *individual freedom of expression and rights to receive and impart information where those interests and rights are not identical to the interests and rights of the press.*

4. What are your views on the extent to which the overall public interest is currently well served, both in principle and in practice, by the current balance between the public interest in the freedom of the press and free expression on the one hand, and competing aspects of the public interest on the other? In your opinion, what

[22] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Key-Questions-Module-4.pdf

changes if any would be desirable in this respect, in order to maximise the overall public interest? If relevant, please state whether those changes should be voluntary or obligatory.

Press ethics

5. What would be the distinguishing features of the conduct and practices of a media industry, or any organisation which was a part of that industry, which would make it an 'ethical' one?

6. In particular, to whom might the press be considered to owe ethical duties, and why? What might be the content of such duties? To what extent might such duties come into conflict, and how should any such conflicts be resolved? The Inquiry is particularly interested in the following as potentially owed ethical duties, but there may be others:

(a) readers and consumers of the media

(b) persons who are the subject matter of stories and other media products

(c) the wider public

(d) employees, journalists and other producers of the media

(e) shareholders, investors, advertisers and others with an economic interest in the media.

7. What role might reasonably be expected to be played by a code of conduct in encouraging, inculcating or enforcing ethical behaviour by the press? What would be the distinguishing principles and features of any code of ethical conduct with universal application to the media industry?

8. To what extent does the media industry's Code of Practice (http://www.pcc.org.uk/cop/practice.html) meet the needs of an ethical code?

9. What approach would you recommend to the consideration of improvement to the nature, status, content and enforceability of the current Code? Are there changes to either content or enforceability of the current Code you would wish to see? Please explain your thinking.

10. What other changes would you consider desirable in order to encourage or constrain the press to improved standards of ethical conduct and practice? Your answer should explain the standards you consider appropriate and why, whether conformity should be encouraged or constrained, and how."

3. Challenging the evidence

3.1 Litigation in this country is generally conducted by way of adversarial process. In other words, subject to the over-riding control of the court, the parties to the litigation define the issues and the evidence to be adduced, each side disclosing the evidence on which it is intended to rely and calling such witnesses as it feels necessary to prove its case. Witnesses called by one side are cross-examined by the other side or sides, challenging evidence which is disputed and 'putting' the case which is to be advanced so that the witness can deal with the allegations made against him or her. The role of the judge or tribunal is to stand in the middle of the exercise, intervening in the evidence to elucidate or seek explanation and then listen to the opposing arguments of the parties both as to the facts and the law, before ultimately deciding the issues at stake. Inquisitorial proceedings (more common in civil law than common law jurisdictions) are led by the judge or tribunal and involve active participation the investigation

of the facts. There will still be an important role for the legal representatives of the parties to ensure that their 'case' is fully considered.

3.2 The purpose of an Inquiry is not to resolve issues between parties to litigation; there are no parties and there is no litigation in place. On more than one occasion, it has appeared that at least one Core Participant has treated itself as if in adversarial litigation with the Inquiry but that is to misunderstand both the Inquiry and the role of those who participate in it. The role of the Core Participants has been to assist the Inquiry in the elucidation of the facts which form the substratum of the Terms of Reference and then to make submissions on the way forward. The point was made in specific connection to this Inquiry by Lord Justice Moses in the first of the challenges by Elaine Decoulos to my failure to grant her Core Participant status. He said [2011] EWHC 3214 (Admin) at para 5:

> *"The purpose of the Inquiry is not to vindicate individuals' sufferings or claims they may have due to mistreatment by the press, but rather for all of us as citizens concerned at the relations between the press, institutions and the public."*

3.3 The role of Core Participants is, therefore, totally different to that of the parties to litigation and very much more constrained than the role that might be adopted even in inquisitorial proceedings which are directed to dealing with individual complaints or claims. Furthermore, the part that is or can be taken by Core Participants (or anyone else) is defined by statute and does not fall within the general discretion of the Inquiry. Thus, Rule 10 of the Inquiry Rules 2006 is in these terms:

> *(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry ... and the inquiry panel may ask the witness questions.*
>
> *(2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.*
>
> *(3) Where –*
>
> *(a) witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and*
>
> *(b) that witness's evidence directly relates to the evidence of another witness, the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.*
>
> *(4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.*
>
> *(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state –*
>
> *(a) the issues in respect of which a witness is to be questioned; and*
>
> *(b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.*

3.4 As early as 6 September 2011, I raised this provision and the potential consequences of it, observing that given the pressure on the Inquiry, subject to submissions, I "may well" require

issues which Core Participants wished to raise to be discussed with Counsel to the Inquiry in the first instance; he would then be able to conduct such cross-examination as he believed appropriate and, at the same time, restrict other cross-examination.[23] That was, in fact, the way in which the Inquiry proceeded but it did so in an even-handed way. By way of example, although Core Participants for affected newspapers suggested questions and lines of enquiry in relation to those who complained that they had been the victims of illegal or unethical press attention (and many of these were pursued by Counsel to the Inquiry when the witnesses gave evidence), I did not permit these witnesses to be cross examined in a manner that could have been appropriate in civil proceedings: I was not prepared to allow them potentially to be victimised again simply because they wished to complain about what had happened to them. Similarly, not only did I prevent cross examination by Core Participants of journalists and others in relation to the subject matter of criminal investigation; subject to specific exceptions and the requirements of fairness enshrined in s17(3) of the Inquiries Act 2005, neither did I generally permit it in relation to other allegations of illegal or unethical conduct.

3.5 That is not to say that the evidence has not been probed: that is the role that Counsel to the Inquiry has undertaken with rigour but always with an eye to the Terms of Reference in general and addressing the culture, practices and ethics of the press in particular. Notwithstanding the general approach, however, some aspects of the evidence have been subject to detailed examination.

Findings of fact

3.6 Although the constraints relating to the examination of witnesses are written into the statute and thus have bound me, I would not want it to be thought that I considered them to be inappropriate or inimical to the interests of justice in this particular Inquiry. Quite the reverse. Had the procedure been otherwise, this Inquiry need never have finished. In relation to the press and the public, the Inquiry has not only looked at the historical position but has traversed over 20 years of journalistic activity. Hundreds of complaints have been made and, although there is no issue about many, a lot more have been the subject of challenge (to greater or lesser effect) and could have given rise to detailed factual investigation. Those few stories that have been investigated in depth inevitably took a great deal of time: had it been necessary for each one, the time taken would have been inordinate.[24]

3.7 Further, the Inquiry covered far more than the press and the public. The relationship between the press and the police covered the tenure of no fewer than five Commissioners of Police for the Metropolis and crossed all national titles. Other forces, their press offices and local papers were also the subject of evidence. As for the relationship between press and politicians, in the same way that time was devoted to the bid by News Corp for the remaining shares in BSkyB Ltd, so many dominating political stories (from Iraq to the Euro) have been subject to rigorous and detailed analysis. Many have argued that this the Inquiry should have proceeded in this way on the basis that all were or may have been affected or influenced by the way in

[23] p13, lines 12-22, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/leveson-inquiry-transcript-060911.pdf

[24] This is one of the reasons why, given the concessions that were made by the press Core Participants, it was inappropriate to investigate the detail contained in the books seized from Steve Whittamore during Operation Motorman. For the purposes of Part 1 of the Terms of Reference, I concluded that it was necessary to go so far but no further: this is dealt with below but, by way of cross reference, is evident from the rulings which sought to ensure clarity of the position: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-In-Relation-to-Operation-Motorman-Evidence-11-June-20123.pdf, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Operation-Motorman-and-ANL-10-July-2012.pdf, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-Future-Direction-23-July-2012.pdf

which they were reported. The same is said for the development of press handling by the Government over the last 20 years. The effect, however, would have been an Inquiry that would have taken many years, by the end of which time the specific concerns which brought about the Inquiry in the first place (and, in particular, the issue of the regulation of the press) would have remained unaddressed, other than in whatever way the press chose themselves to address them in the meantime. That was not the brief that was contained within Part 1 of the Terms of Reference and it is not how I have sought to address them.

3.8 This means that a large number of specific individual incidents have not been the subject of very detailed factual investigation so that, subject to very limited exceptions, I do not feel in a position to make findings of fact as to what did and did not occur; neither, for the purposes of addressing the Terms of Reference is it necessary that I do so. One example, the subject of considerable press comment, will suffice.

3.9 Prior to autumn 2009, The Sun had supported the Labour Party in the three preceding General Elections. During the Labour Party conference, it decided to make public a change in allegiance and thereafter to support the Conservative Party. For present purposes, although relevant to the issue of the impact of proprietors on editorial policy, the circumstances of that decision do not matter. When giving evidence, Rupert Murdoch said that after this decision had been publicised in September 2009, he received a telephone call from the Prime Minister, the Rt Hon Gordon Brown MP, which included the observation by Mr Brown that "*your company has declared war on my government and we have no alternative but to make war on your company*."[25] Both in his statement and in his evidence, Mr Brown emphatically denied having any conversation with Mr Murdoch, still less making such a remark. When he gave evidence he said: "*This conversation never took place. I'm shocked and surprised that it should be suggested, ... There was no such conversation*."[26] He provided telephone records from the Downing Street switchboard (through which he says any such telephone call would have been routed) backing up this denial.

3.10 It has been suggested that it is important that I resolve this conflict of evidence and express my view as to where the truth lies. I decline to do so for two very different reasons. The first is very important in the context of the nature of the Inquiry and the manner in which it has had to be approached both as a matter of statute but also, as I have indicated, practicality. It is possible to postulate circumstances in which the question of whether this telephone call took place was central to the resolution of civil litigation between the parties. In that event, considerable investigation would have focussed around the precise date and time of the alleged telephone call; questions would have been addressed to Mr Murdoch as to how he said that the call had been connected; phone records and other documents sought on discovery. Mr Murdoch would have been cross-examined at length by counsel for Mr Brown and vice versa. The question who to believe would have been capable of decision within a far fuller factual matrix. To do so, in particular, without permitting cross-examination seems to me to be unfair to both men.

3.11 I recognise that judges are sometimes required to make difficult factual decisions with very little more than the information available and, if it was critical to do so, I would have had to do the best that I could. That leads me to the second reason. In short, it is neither critical nor, indeed, necessary to decide where the truth of this conversation lies: save in the limited respect of the credibility of Mr Murdoch, it is not relevant to the Terms of Reference at all.

[25] p91, line 6 et seq, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-25-April-2012.pdf
[26] p59, line 23 et seq, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf

On any showing, Mr Brown would hardly have been pleased about the loss of the support for his Government of The Sun;whether and if so how he chose to communicate his view simply takes the Inquiry no further.[27]

3.12 In part, I have gone into the detail of this particular factual conflict because of the interest and concern that has been expressed about it. Of greater importance as a reason for doing so has been to explain the limitations of the forensic exercise that it has been possible to undertake while addressing the very wide Terms of Reference within the broad timeframe within which I have been asked to report. This Report will not provide all the answers to all the questions that could possibly arise out of the uncountable number of issues that have been raised in evidence. Those who are expecting it to do so will be disappointed.

4. Other material

4.1 The material which can fall to be used by the Inquiry is not, however, limited to the statements that have been put into evidence. It has fallen to me to determine what should be part of that record; I have deliberately adopted as wide a definition of relevance as possible, in order to ensure that as full a picture of the culture, practices and ethics of the press can be put into the public domain by the Inquiry. In that way, the public can itself make a collective decision based on the same material that has been available to me. Thus, both in advance of the Inquiry and while it has been proceeding, different press titles have throughout presented the evidence and the issues (or their perception of each) and commented on the approach, asserting facts and reaching their own conclusions both as to what I have been doing and what I have been thinking. Some titles, conversely, have offered minimal, if any, coverage of the Inquiry for their readers. Free speech requires no less and although I have occasionally raised concerns about factual accuracy,[28] I stand fully behind the freedom of the press to comment critically about me, my approach, the evidence and any other aspect of the Inquiry that it sees fit to write about.

4.2 Very quickly, however, it became apparent that the way in which the Inquiry was being reported told its own story about the culture and practices of the press. In the circumstances, in addition to the other evidence that has been read into the record of the Inquiry, I also decided that the product of a press cuttings service dealing with the Inquiry should also be read into the record. At several stages during the course of the hearings, I have made this fact clear.

4.3 The Inquiry has not been alone in commenting on the way in which the press have reported the Inquiry. Private Eye has regularly published commentary on the way in which it has been reported; the campaign (on the website http://hackinginquiry.org/) has done the same. Bloggers have added their own comment and the Inquiry has engaged with Twitter (http://twitter.com/@levesoninquiry) on which there has been a regular and substantial dialogue about the Inquiry both in this country and abroad. This also is a very powerful example of the proper manifestation of free speech.

[27] For reasons which will become apparent, I take a slightly different view in relation to the disclosure of the medical condition of Mr Brown's son: see Part F, Chapter 5

[28] By way of example, p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf

5. Submissions

5.1 In addition to leading Counsel to the Inquiry, all those who were Core Participants for Module One made formal opening submissions at its commencement.[29] There were submissions at the start of Module Two from Mr Jay, and also on behalf of the Commissioner of Police for the Metropolis and the Metropolitan Police Authority (now the Mayor's Office for Policing and Crime).[30] Module Three was opened only by Mr Jay.[31]

5.2 In the same way, Counsel to the Inquiry and the Core Participants have assisted me with argument in relation to the rulings to which I have referred above and other issues that have arisen during the course of the hearings. On more than one occasion, it was necessary to deal with disclosure of information that had been shared with Core Participants in advance of its publication: these were highly relevant during the course of the hearings but are now unnecessary further to rehearse.[32] Submissions have also been received dealing with issues of evidence, on the approach to Rule 13 of the Inquiry Rules 2006 and in relation to the standard of proof, the last two of which I deal with below. Submissions have generally in writing and supplemented orally; all are also published on the website so that it is possible to see the entirety of the argument put before me as well as the ruling that followed.

5.3 Final submissions on various aspects of the Inquiry have also been received following the conclusion of the various modules. In the main, they have been extremely thorough, very detailed and, as a consequence, extremely lengthy. They have clearly been the product of an enormous amount of work and I am grateful for the effort and very great care that has been put into them. The fact that some arguments and submissions have not been specifically addressed in this Report is not intended as a discourtesy either to the writers or to the arguments. Inevitably, this Report has had to focus on the Terms of Reference, whereas the relevant Core Participants have understandably cast their nets rather wider in order to deal both with the generality and the specifics of some of the issues that have been raised to such extent as they affect them.

5.4 Although it was always anticipated that it could be necessary to re-convene the Inquiry, to obtain updated information in relation to the police investigations and to receive any other important evidence that had emerged following the conclusion of the hearings in July 2012, written and oral closing submissions were invited and presented by most (but not all) of the Core Participants. To such extent as they address the future, they shall be analysed during the

[29] p10 line 15 et seq, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-15-November-2011.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-15-November-2011.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-15-November-2011.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-16-November-2011.pdf

[30] P6, p53 and p67 respectively, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf

[31] p62, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-10-May-2012.pdf

[32] Ruling, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-Publication-of-Statements-7-December.pdf ; the Restriction Order made pursuant to s 19 of the Inquiries Act 2005 http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Amended-Section-19-Order.pdf later amended http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Section-19-Order-26-April-2012.pdf; and the analysis of the circumstances in which a newspaper published material which had been contained in a statement provided for the Inquiry: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Ruling-on-Publication-of-Statements-by-IoS-14-May-2012.pdf. For the avoidance of all doubt, the purpose of these orders and rulings were to preserve the integrity of the Inquiry: I do not consider that any of the concerns which are analysed should contribute to the conclusions that I have to reach about the culture, practices or ethics of the press

course of the consideration of the regulatory regime, although I shall be doing so from the perspective of 'the press' as opposed to the extent to which individual titles have behaved in such a way as requires a different approach to regulation. I saw no value in Counsel to the Inquiry making a closing submission and he did not do so.

6. Engagement with the public: the website

6.1 Before turning to the issues of law that have had to be considered as part of the Report writing process, I return to the website because it is appropriate to say something more about the way in which the Inquiry has sought to involve the public in its process and ensure that the evidence which has been given has received the widest audience.

6.2 I have referred to the questions that were posted on the Inquiry website as each module came to be discussed in the evidence. The purpose was to engage with as wide a reach of members of the public as possible and to obtain as wide a range of views as possible. The extent of that response can be judged from Appendix B which sets out a detailed record of the type and number of communications received by the Inquiry through the general mailbox or otherwise. Where it was possible to do so, every communication (a number of which were anonymous) was acknowledged and considered so that a decision could be taken as to whether it was right to take what was said forward in any way. Although I recognise that a number of those who wrote will have been disappointed that they were not given the opportunity to give oral evidence, I explicitly recognise and pay tribute to the very hard work that has been put into ensuring that all the observations have been received have been acted upon appropriately.

6.3 Appendix B also identifies the number of times up to the end of October 2012 that the Inquiry website has been accessed along with its reach. I believe that the Inquiry has done as much as could reasonably have been expected to engage with the public would be surprised if any public inquiry has achieved as much public access. I have no doubt that this has all contributed to the public reaction to events and the further debate as to the way forward.

CHAPTER 3
FURTHER ISSUES OF LAW

1. Rule 13 of the Inquiry Rules 2006: the approach

1.1 Prior to the publication of any Report which includes explicit or significant criticism of any person, the Inquiry Rules 2006 mandate that such a person must be warned of that criticism and given a reasonable opportunity to respond. I set out the background and the legal framework in a ruling on the Application of Rule 13[1] which I can do no better than repeat:

> *"8. One of the touchstones of the inquisitorial process prescribed by the 2005 [Inquiries] Act is the requirement of fairness to all. Whereas s. 17(1) of the Act provides that the procedure and conduct of the Inquiry shall be such as I direct, that provision is subject to s. 17(3) in these terms:*
>
> *"In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."*
>
> *9. No higher manifestation of that duty is apparent than that which deals with the requirement that those who may be criticised in any report have the opportunity afforded to them to deal with the basis of that criticism. The origin is to be found in the Royal Commission on Tribunals of Inquiry (Cmnd 3121, 1966) ("the Salmon Report") which proposed, among other recommendations, that before a person was called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them: thus were born Salmon letters although over-rigid adherence has been recognised as 'unhelpful': see the observations of Sir Richard Scott VC (in (1995) 111 LQR 596) to the effect that every inquiry must adapt its procedures to meet its own circumstances.*
>
> *10. The next manifestation of this requirement (described as 'fair play in action' by Sachs LJ in Re Pergamon Press Ltd [1971] Ch 388 at 405) dealt with comment on proposed criticism. Mr Robert Maxwell's attempt to obtain sight of proposed draft conclusions was rejected in the Court of Appeal when Lawton LJ put the matter in this way: see Maxwell v Department of Trade and Industry [1974] QB 523 at page 541B-D: "Those who conduct inquiries have to base their decisions, findings, conclusions or opinions ... on the evidence. In my judgment they are no more bound to tell a witness likely to be criticised in their report what they have in mind to say about him than has a judge sitting alone who has to decide which of two conflicting witnesses is telling the truth. The judge must ensure that the witness whose credibility is suspected has a fair opportunity of correcting or contradicting the substance of what other witnesses have said or are expected to say which is in conflict with his testimony. Inspectors should do the same but I can see no reason why they should do any more."*
>
> *11. Notwithstanding these judicial observations, the broad process was adopted by Lord Bingham in the BCCI Inquiry, by Sir Richard Scott in the Inquiry into Matrix Churchill and also by Sir John Chilcott in the Iraq Inquiry. This lack of clarity is itself unhelpful and potentially productive either of very substantial delay or satellite litigation (in each case with attendant cost) or both.*

[1] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf

12. The 2005 Act (pursuant to which this Inquiry is being conducted) adopts a different and, in my judgment, self-contained approach to ensure fairness. First, s. 21 of the Act provides that I may by notice require any person to provide evidence in the form of a written statement along with documents. Such notices have identified, in comprehensive terms, the issues with which the statement has been required to deal; where appropriate, it has identified relevant documents or other public statements which should be addressed. It cannot, of course, deal with evidence not then seen by the Inquiry but where issues of significance have arisen before the witness arrives, forewarning has been given and, if necessary, witnesses allowed time to deal with a matter for which they were not prepared. Where the issue has arisen only after the witness has given evidence, again if it is significant, second statements have been requested and obtained; more than one witness has been required to return to give further evidence.

13. The second (and most extensive) protection is provided by Rules 13-15 of the Inquiry Rules 2006 ('the 2006 Rules') which concern what are described as Warning Letters. Thus, Rule 13 provides:

(1) The Chairman may send a warning letter to any person:

(a) he considers maybe, or who has been, subject to criticism in the inquiry proceedings; or

(b) about whom criticism may be inferred from evidence that has been given during the inquiry proceedings; or

(c) who may be subject to criticism in the report, or any interim report.

(2) The recipient of a warning letter may disclose it to his recognised legal representative.

(3) The inquiry panel must not include any explicit or significant criticism of a person in the report, or in any interim report, unless

(a) the chairman has sent that person a warning letter; and

(b) the person has been given a reasonable opportunity to respond to the warning letter."

1.2 In my ruling, I explained the ways in which I have sought to ensure that the Inquiry was conducted fairly and with full regard to the position of all who might be affected. In relation to Rule 13, therefore, I concluded that a warning addressed to a section of the press consisting of the national titles (even if a number of those have not been the subject of criticism or complaint) allowed each to make submissions as to the conclusions that I should draw as to the culture, practices and ethics of the press generally (as opposed to the specific conduct of individual titles although it has been made clear titles have been free to comment on stories which are identifiably referable to them). I went on to conclude not only that generic criticisms should be evidence based, but that the justification for my concerns should be "visible and capable of being understood both by those affected and by the public".[2]

1.3 I appreciate (as was argued by Mr Desmond Browne QC for Trinity Mirror plc) that this could allow anyone following the references through to the transcript to identify the titles and, perhaps, the relevant journalists; in reality, however, that would be possible whether or not I identified the references and, on the basis that I have not made specific findings in most individual cases, this approach does not offend the general principle that I am not focussing

[2] p15, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf

on the detail of 'who did what to whom'. It is equally consistent with the principle that my intention not to prejudice criminal proceedings means that I have not identified those alleged to have been involved in mobile phone interception; therefore, in fairness, although there are exceptions when I have considered that the narrative compels specificity, generally speaking, I have exercised similar restraint in respect of those, not being investigated, who may be responsible for similar or other illegal or unethical practices.

1.4 Conscious that any approach to Rule 13 was likely to be contentious, I arranged for the matter to be argued in principle and ruled on the approach generally. This ruling fell within to s38(1)(b) of the Inquiries Act 2005 and had any Core Participant wished to challenge it by way of judicial review, that course was open within 14 days. There was no such challenge and, insofar as generic criticism is concerned, I have followed it.

1.5 I have, however, issued Rule 13 warnings to individuals (and others concerned with the relationship between the press and the public) in those circumstances where I thought fairness warranted it and, in particular, when I was concerned that any conclusion that I might reach in relation to a specific incident could be said to contain an express or implied criticism of them. The touchstone has been to provide an opportunity to make representations about identifiable concerns that I was proposing to express.

1.6 Having said that, it is important that I emphasise that this Report should not be read as addressing the individual conduct of members of the press in their dealings with the public and no implied criticism should be read into the fact that references to particular complaints are inevitably to particular stories written by identifiable journalists (albeit not named in the text of the Report). I cannot repeat too often that this part of the Inquiry is not concerned with individual conduct but with the culture, practices and ethics of the press (or a section of the press) as a whole. Who would be to blame for a particular egregious story? Would it be a proprietor or editor who ordained a particular approach or a particular agenda? Would it be the journalist who felt driven to do what had been bidden irrespective of personal qualms? Would it be the sub-editor who wrote a headline that misrepresented what should be derived from correctly identified facts or modified the words of caution that the journalist had carefully included? How could I decide between these cumulative or alternative possibilities? In the circumstances, I have only been able to take the story at face value along with the reaction of the subject of the story and my view of the law (for example in relation to privacy) and the Editors' Code of Practice.

1.7 The result of this analysis is that, in relation to most of the complaints made by those who have been subject to press intrusion I have not issued Rule 13 letters. This is because I do not intend either expressly or by implication to make explicit or significant criticism of the relevant journalists (rather than, generically, of the press). If I had done otherwise, hundreds of journalists (if not more), most of whom have neither been asked nor volunteered to give evidence to the Inquiry or even to make a statement, would have had to receive a warning. Having said that, if, in any particular case or in relation to any particular example that I wish to highlight, I have been in doubt, I have issued a warning and provided an opportunity for representations to be made. In reaching my conclusions, I have taken full account of the representations that I have received in response to all these warnings including those issued generically to the press.

1.8 In relation to Module Two and the police, different considerations apply on the basis that there being no ongoing criminal investigation into the conduct of the MPS (although there are

inquiries into other aspects of police conduct in relation to the press).[3] On the other hand, I received detailed submissions from Counsel for the MPS both generally and specifically as to the interaction of Parts 1 and 2 of the Inquiry. In the circumstances, I separately ruled in relation to the application of Rule 13 both to the MPS and to individual police officers.[4] Again, I have followed it and issued Rule 13 letters both general and specific in nature, taking full account of the representations that I have received.

1.9 Module Three raised different issues for a number of reasons. First, there is no criminal investigation that could affect my approach and, in addition, it does not appear that there will be any other consideration of the general issues which I have to address in the Terms of Reference; that might be thought to be a basis for encouraging me to range further and wider than in relation to the other modules. On the other hand, the Terms of Reference are specific to the culture, practices and ethics of the press 'including contacts and the relationships between national newspapers and politicians, and the conduct of each'. It is argued that the Inquiry should investigate the nature of friendships between individual members of the press and individual politicians but, save to the extent that these bite or may bite upon the way in which a journalist (or politician) attend to his or her professional duties, it does not appear to me that it is necessary or appropriate for me to enquire. Throughout the hearing of Module Three, I emphasised that politicians were entitled to be friendly with whosoever they wished; absent some impact on the public interest, it is no part of the work of the Inquiry to challenge that right.

1.10 Second, each of the major UK political parties has recognised, in general terms, that the relationship between politicians and the press has become too close: indeed, that was the conclusion expressed by the Prime Minister and his three predecessors when they gave evidence. For me to express that conclusion, however, undeniably constitutes an 'explicit or significant criticism' in respect of which I must issue a Rule 13 letter. Such a criticism, however, is not intended to be personal but generic. It recognises that how close is too close is itself a very difficult and nuanced issue, given that it is critically important, in a democratic society, that politicians engage with the press and seek to explain their policies to the public through the press.

1.11 The third concern has been the extent to which the work of the Inquiry has involved contemporary political issues with the risk of entering into a party political debate which is no part of its function: this particularly relates to the attempted acquisition News Corp of the publicly owned shares in BSkyB Ltd. I made it clear that I would not opine on the Ministerial Code or seek to prevent Parliament from investigating whatever aspect of the bid it wished to investigate;[5] however, I recognise that it constitutes the most recent and most well documented inter-reaction between a very powerful media organisation and politicians (although the interaction in relation to the legislative proposals now contained in s77-78 of the Criminal Justice and Immigration Act 2008 which has not yet been implemented are also important). I have, therefore, attempted to analyse these issues from a general, cultural perspective: the process has inevitably involved a consideration of individual decisions and, on the basis that, even if not explicit, implied significant criticism may be inferred, I have issued appropriate warnings accordingly.

[3] In particular, in relation to the knowledge and understanding (a) in 2002 of Surrey Police as to the interception of the mobile phone of Milly Dowler and (b) in 2008 of Cleveland Police in relation to e mail hacking of John Darwin who had faked his own death in a canoe

[4] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-in-relation-to-the-MPS-4-May-2012.pdf

[5] pp1-14, lines 4-17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-15-May-2012.pdf

1.12 I can deal with Module Four quite shortly. In this Report, each of the ideas put before the Inquiry has been subject to rigorous analysis and none more so than the proposals advanced by Lord Black of Brentwood (on behalf of the Press Board of Finance) and advocated by, among others, Lord Hunt of Wirral, the Chairman of the Press Complaints Commission. It is right that they should be, not least because, from the outset of the Inquiry and throughout, I encouraged the press to put forward their own ideas for press regulation, bearing in mind not only the values which it held to be important but also the interests of the public as demonstrated not only by the demand for this Inquiry but also by the evidence which has been given to it.

1.13 I appreciate that Lord Black has had to deal with a wide spread of press interest; I have no doubt that different constituents have put forward different priorities and different ideas and that, furthermore, Lord Black has done his best to bring everyone to a common consensus which I expect is also consistent with his own ideas. Any concern or criticism that I have of the final formulation, however, is not a criticism of him or, indeed, any other person whether individual or corporate: neither should it be seen as such. In those circumstances, I have not felt it appropriate or necessary to give advance warning of my concerns but have simply set them out in the body of the Report.

2. Rule 13 of the Inquiry Rules 2006: the practice

2.1 The reason for the existence of Rule 13 of the Inquiry Rules is clear from this analysis. Flowing from that, however, are two further consequences. The first is the fact that a notice is only necessary to address potential criticism: it is not intended to present a balanced picture of any sort. Nobody needs to be warned of the risk that their conduct might be applauded. The point was clear from the body of the letter which explained:

> *"By definition, this letter is focussed on the aspects of the culture, practices and ethics of the press which may attract criticism and it is not the function of this letter to refer to the evidence of good culture, practice and ethics which the Inquiry has received."*

2.2 The second consequence flows from the first. A possible criticism should not be interpreted as one that will inevitably be made. As a result, the letter also made it clear that both it and any response were subject to "a legal duty of confidence" owed in the public interest under Rule 14(1)(b) of the Inquiry Rules 2006.[6] This requirement (expressly mandated in the Rules) is specifically designed to discourage public discussion or debate about criticisms which have not yet been made and which could well, in the end, be less serious. It was and is, therefore, a demonstrable attempt to be fair and to provide an opportunity to those who might be affected to make submissions about possible criticism at a time when, as I made clear, I was continuing to reflect on the narrative and conclusions which I would reach and before I had done so.

2.3 Thus, although it has been portrayed as such, the letter is not intended to be a secret: it is only confidential until the Report is signed or published,[7] after which time anyone is free to discuss the letters, criticise their content and analyse the extent to which my views might have changed. My concluded view, as expressed in the Report, will then be available.

[6] This obligation of confidence is owed by the Inquiry team to any recipient of the letter and by that recipient to me, as Chairman of the Inquiry: see para. 14(1) of the Inquiry Rules 2006

[7] The obligation ceases, as far as I am concerned, when I sign the Report and, so far as everyone else is concerned, when the Report is published: see para. 14(3) and (4) of the Inquiry Rules 2006

2.4 It is therefore not in the least surprising that the letters are "one-sided," that the positive should not be subject to a similar letter, or that I would be concerned if the contents were being openly discussed in the press.[8] All are, of course, entitled to express whatever view they wish about the summary of press practice that can be culled from the evidence but it is worth repeating (not for the first, or the last, time) that the criticisms that I have suggested were not directed at the entirety of the press: most journalists, most if not all the time, do not behave in the way that, on my assessment of the evidence, a small but not insignificant number have behaved, thereby generating criticism of the culture that permitted this to happen, the practices involved and the ethics of those who have behaved in that way. As in every other walk of life, regulation is required for the small minority.

2.5 A number of recipients of Rule 13 letters have questioned the fairness of the process on various grounds, and I should record that I have considered these objections and submissions with great care, always in the context of my ultimate obligation under section 17 of the Inquiries Act to act fairly. I am completely satisfied that all recipients who have chosen to submit substantive responses have understood the issues in respect of which I have sought further assistance, and have addressed them in appropriate detail. In the few instances where it appeared that recipients might have misunderstood the point that I wished them to have the opportunity to address, I have provided further explanation and given them that opportunity. In the result, many of my provisional conclusions have been revised or reformulated to reflect the Rule 13 process and the representations that I have received.

3. The nature and standard of proof

3.1 The starting point for any consideration of the nature of what must be proved and the standard of proof is, from the outset, to recognise that the Inquiry has been set up specifically because "particular events have caused ... public concern".[9] To some extent, it is sufficient simply to refer back to the Terms of Reference of Part 1 of the Inquiry but, summarising at least the most important of these events, it would be appropriate to include as topics about which I have been required to inquire:

(a) the disclosure of the interception of Milly Dowler's mobile phone messages and the deletion of such messages;

(b) the fact that it was common ground that the News of the World had engaged in interception of mobile phone messages (revealed in civil litigation and otherwise) contrary to the continued assertion that Clive Goodman was one "rogue reporter";

(c) other complaints of illegal or unethical methods by which journalists obtained stories (not the least significant being activity in breach of Data Protection legislation leading to a concern about the policy, operation and effectiveness of the regulatory regime for data protection);

(d) the harassment and pressure placed both on members of the public caught up in stories attracting enormous press coverage and those in the public eye whether because of

[8] Writing in the Observer on 2 September 2012 (http://www.guardian.co.uk/media/2012/sep/02/simon-fox-trinity-music-man-record?INTCMP=SRCH) , Peter Preston said that I was "*spraying*" a "*confidential*" 118-page letter of early criticisms around Fleet Street which had been described as a "*diatribe*", a "*completely one-sided*" attack that resembles "*loading a gun*" and "*excoriating*". He suggested that my disappointment that my comments were being openly discussed in the press was an indication that "*he still doesn't quite get it*" so that he suffers "*just 'disappointment' if it doesn't leak instantly*". It might also simply demonstrate that not enough care has been taken to understand the process and to comply with sensible obligations specifically designed to be fair to all

[9] s1(1) of the Inquiries Act 2005

their celebrity or otherwise;

(e) the failure of the Press Complaints Commission to address the activities of the News of the World (save only to exonerate them and criticise The Guardian for its reporting); to provide adequate regulatory oversight in relation to the press; to provide adequate redress for those complaining of press misconduct save in limited circumstances; and to ensure that its remit embraced the press as a whole;

(f) the nature of the relationship between the press and the police and, in particular, the extent to which failure of the police properly to investigate the extent of interception of mobile phone messages was a consequence of that relationship;

(g) the way in which politicians engaged with the press and, in particular, the extent to which the commercial interests of the press influenced the development or implementation of policy, along with the failure to address prior concerns over many years relating to media misconduct; and

(h) the impact of the plurality of the media and cross media ownership on the public interest.

3.2 More important than the topics about which I am required to inquire are the subjects about which I am required to make recommendations. It is sufficient to repeat the Terms of Reference which are expressed in this way:

> *"To make recommendations:*
>
> *(a) for a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from Government, while encouraging the highest ethical and professional standards;*
>
> *(b) for how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities, including Parliament, Government, the prosecuting authorities and the police;*
>
> *(c) the future conduct of relations between politicians and the press; and*
>
> *(d) the future conduct of relations between the police and the press."*

3.3 These issues are to be contrasted with those set out in Part 2 of the Terms of Reference, which are specifically directed to a far more fact focussed investigation of the conduct of News International and other newspaper organisations ("the extent of unlawful or improper conduct", "the extent of corporate governance and management failures"), along with the police ("the extent to which the police received corrupt payments or other inducements, or were otherwise complicit in such misconduct or in suppressing its proper investigation") and politicians ("the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International"). In Part 2, there is a requirement "to consider the implications" of what is then found to have happened. In other words, Part 1 of this Inquiry is a qualitative exercise of sufficient breadth to determine the appropriate recommendations to make for the future. Part 2 is a quantitative exercise: how extensive have been the identified failures in News International, other press organisations, the police, the political class, public servants or others? On that basis, the implications (and any additional recommendations fall to be addressed. Part 2 requires a far greater and more detailed factual investigation than has Part 1: this is not surprising given that the Terms of Reference were split into two because of the ongoing police investigation and the lack of clarity as to where it might lead).

3.4 Against that background it is necessary to consider the overriding obligation as to the procedure or conduct of the Inquiry, which requires me "to act with fairness and with regard to the need to avoid any unnecessary cost".[10] Further, although the Inquiry may "not rule on and has no power to determine, any person's civil or criminal liability", it is not inhibited in the discharge of its function "by any likelihood of liability being inferred from the facts that it determines or recommendations that it makes".[11] Subject to this framework, the obligation is set out in s24(1) of the Inquiries Act 2005 in these terms:

> *"The Chairman of an inquiry must deliver a report to the Minister setting out –*
>
> *(a) the facts determined by the inquiry panel;*
>
> *(b) the recommendations of the panel ...*
>
> *The report may also contain anything else that the panel considers to be relevant to the terms of reference (including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference)".*

3.5 The facts as determined, however, are those which are necessary in order to provide the context for the recommendations. Focussing on the relationship between the press and the public, therefore, the submission that a single or occasional instance of misconduct will not itself justify any adverse finding about the culture, practices or ethics of the press is to proceed on the mistaken basis of thinking quantitatively rather than qualitatively. In relation to the future of regulation, the question whether a new regime is appropriate must be asked by reference to how the present regulatory regime has dealt with such issues as have arisen and whether it retains public confidence. If problems with or concerns about the culture, practices and ethics of the press are – represented by a single or occasional example – it may not be appropriate or necessary to recommend any change. Nobody, however, has submitted that this is the case. It is not challenged that there is legitimate public concern about the regulatory regime which it is no longer suggested is fit for purpose; the issue is the extent of that problem and the benefits and detriments of possible solutions.

3.6 Neither does it matter that any problem is limited to one or a small number of titles. A regulatory regime must deal with all titles and be in a position appropriately to deal with even a single recalcitrant paper; it is irrelevant if one or more title never attracts its adverse attention. To that extent, the approach of at least one newspaper group to the Inquiry, restricting itself to demonstrating how illegal or unethical activity cannot be placed at its door, has wholly missed the point. I have no intention of either applauding one paper for its culture, practices and ethics or (with the exception of the NoTW) of condemning another. The reason for the exception is so that the public do not ascribe to other titles the many criticisms that have been articulated about that one. What I sought from all Core Participants (but have not always received) was an analysis of the extent to which, as a matter of generality, there was a problem with the culture, practices and ethics of the press or a section of the press, so that it would be possible to consider a new and sufficiently robust policy and regulatory regime which supports the integrity and freedom of the press but also reflects the legitimate rights of others.

3.7 In argument, it has been submitted that it is appropriate for the Inquiry to express its findings at a high level of generality. The point is made in this way. It does not matter whether, for example, phone hacking occurred only at one title or was more widespread since it is an established problem of conduct by at least part of the press which will inform the recommendations made. Similarly, the problem of intrusion on grief identified by certain

[10] s17(3) of the Inquiries Act 2005

[11] s2(1) and (2) of the Inquiries Act 2005

witnesses is a problem of conduct by at least part of the press and it matters not for the purpose of making recommendations whether it occurred only at one title, at several titles, or at all titles. From this perspective the Inquiry can find that there are 'concerns' about alleged press misconduct without determining whether the particular type of misconduct occurred on one occasion or one hundred, at one title or many. This puts the qualitative versus the quantitative argument at its highest.

3.8 To a point, the argument is well made and correct. I have already concluded, however, that a single or occasional instance of misconduct may not be sufficient to justify an adverse finding about culture, practices and ethics on the basis that it is of no real significance. Neither am I prepared to proceed on the basis that the argument of 'one rogue reporter' can be replaced, by the remainder of the press, with an argument of 'one rogue newspaper title': if that is what I consider the position to be, I shall so conclude. That does not require me to decide how extensive was the practice or knowledge of phone hacking (although keeping quiet about a known abuse of the law by another title itself says something about culture, practices and ethics, on the basis that who otherwise will hold the press to account) but, in any event, illegality and unethical behaviour comes in many different forms and it is the overall picture that is critical.

3.9 That is not to say that I will not deal with individual cases because worked examples can exemplify the problems that exist even in titles that are not the subject of repeated complaint and these may add to the overall picture. As a consequence, it is important to underline that it is not an inevitable inference that the culture, practices and ethics of the title affected is driven by the problem that I am exemplifying. Each generality along with each example is intended to provide or add to the narrative of facts against which to judge the regulatory regime and consider what should now take its place.

3.10 Against that background, a consideration of the standard of proof becomes much more straightforward. I accept that the public interest requires that the findings of the Inquiry are expressed in such a way that can readily be understood to be a judgment on what has occurred and why any recommendations have been made and, furthermore, that the appropriate standard is that applicable in all but criminal cases, namely the balance of probability. To put it more colloquially, before reaching a conclusion, for example, that an event has happened, I must conclude that its occurrence is more likely than not. I further recognise both from an analysis of *Re H (Minors) (Sexual Abuse: Standard of Proof)*[12] and the subsequent decisions of *R(N) v Mental Health Review Tribunal (Northern Region)*[13] and *Re D*[14] that the application of the balance of probabilities is flexible in its application in that the more serious the allegation, the more careful the analysis of the facts will have to be not least because of the reduced likelihood of it being true.[15]

3.11 In my ruling in relation to the application of Rule 13 of the Inquiry Rules 2006, I raised the question whether it was sufficient that I consider whether the evidence reveals such a concern about particular conduct that regulatory arrangements should be put in place to deal with that type of behaviour should it arise.[16] I there had regard to the Baha Mousa Inquiry conducted by The Rt Hon Sir William Gage who, referring to s24(1) of the Inquiries Act

[12] *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 at 586 per Lord Nicholls
[13] [2006] QB 468
[14] [2008] 1 WLR 1499
[15] See *Re D*, per Lord Carswell at para. 28. The relevance of the concept of 'inherent improbability' to a determination of whether an event took place (as opposed to who was responsible) has recently been re-affirmed in *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2010] 1 AC 678 per Baroness Hale of Richmond at para 11-12
[16] p20, para 52, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf at para 52

2005 (to the effect that the report could contain "*anything else the panel considers relevant to the terms of reference*"), concluded that it was open to him to express suspicion that an allegation is true. He recognised that such a comment would not be a finding of fact and that the power so to conclude "*should be exercised sparingly*".[17]

3.12 I accept that unresolved suspicions, on their own, do not provide a sufficient basis for conclusions, in particular as to the success or otherwise of the present regulatory regime but the words 'on their own' are important. By way of example, I can conclude without difficulty that mobile phone interception was far more extensive at the NoTW than was initially admitted and I can also be satisfied that knowledge of the technique was far more widespread than the confines of the NoTW but, until the Guardian article in 2009, it was not addressed by the press or the PCC.

3.13 That alone is likely to be sufficient to justify a new approach to regulation but it seems to me that I can (and should) be able to go much further. A considerable body of evidence has been adduced which gives rise to reasonable grounds for believing that knowledge of the practice was linked to its use, albeit there is not the hard evidence (such as comes from the Mulcaire material) of names, telephone numbers and the like. It seems to me that it could be possible to conclude, inferentially, on the balance of probability, that others were involved in the practice; it might be fairer, however, (and sufficient to add to the weight of any conclusion about the need for a new approach to regulation) simply to conclude that there are strong reasonable grounds for believing that it did. I recognise, however, the need for real caution before proceeding along these lines.

3.14 Mr Jonathan Caplan QC for Associated Newspapers Ltd argues that any general statement that there are grounds to suspect senior executives within a section of the national press of knowledge, concealment or acquiescence in voicemail interception raised very serious reputational issues for those senior personnel reasonably considered by the public to be within that section of the press (that is to say the tabloid or popular press). It is argued that such conclusions should not be reached unless the evidence discloses objectively reasonable grounds to suspect those executives which it cannot because there has been no proper investigation of the issue.

3.15 I have not singled out 'senior executives' for special mention but it is important to make the point that this should not and does not mean that, in appropriate cases, individual titles (and individual executives or journalists) will not be identified or identifiable. The effect of the argument that to do so offends my general approach is that I would not be able to reach any conclusion because to criticise any individual title or group is to criticise the editor. This is no more than a repetition of the argument that I rejected in the ruling on Rule 13 concerning the implied criticism of those involved[18] which was not thereafter challenged. I am certainly prepared to accept, however, that I should not criticise any individual by name unless satisfied on the balance of probability that such criticism is justified.

3.16 Similar, but not identical, reasoning applies to my approach to the relations between the press and the police (Module Two) and the press and politicians (Module Three) and I will express my conclusions about the nature and impact of those relationships on the balance of probability. In both of these cases, there is no complication of pending criminal investigation which could limit my ability to focus on individual conduct.

[17] p8, para 24-25, http://www.bahamousainquiry.org/linkedfiles/baha_mousa/key_documents/rulings/standardofproofruling7may2010.pdf

[18] Paras 25 and 42 et seq, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf

3.17 In connection both with the police and with politicians, the material before the Inquiry is sufficient to reach conclusions on the important questions without having to consider issues of reasonable suspicion but the complication in these relationships arises in connection with the additional question of perception. Thus, by way of example, it has been suggested that 'deals' were struck between the press and politicians to the mutual advantage of both. That allegation has been strenuously denied both by the press and by politicians. Quite apart from that, however, there is the very different issue of whether, even assuming there was no such 'deal', the behaviour of both gave rise to legitimate perception in the public that the relationship was being conducted in a way that was not in the public interest. On that basis, it may be entirely wrong to suggest or conclude that there was impropriety of any sort but still correct to decide that the way in which the relationship is handled from the perspective both of the press and politicians requires adjustment so that each can perform their duty but in a way that does not give rise an adverse perception. A similar problem arises in connection with the relationships between the press and the police (in particular in relation to the refusal to re-open investigations into mobile phone interception).

CHAPTER 4
THE REPORT

1. Scope

1.1 The Inquiry is UK-wide in its scope. It was set up, and its Terms of Reference were finalised, with the support of the Devolved Governments of the UK in Scotland, Northern Ireland and Wales. In so far as my recommendations address matters within areas of devolved competence, it will of course be for the devolved administrations and legislatures to consider them in the usual way. I have not, however, sought to any extent at all in this Report to analyse the position separately from the perspective of the devolved jurisdictions, nor to acknowledge, where legal matters are considered, the points on which different law applies in different parts of the UK. My timetable did not allow for that; it would have been a very complex and time-consuming exercise. I recognise in the result that my Report may be less helpful to those with decision-making responsibilities in Scotland, Northern Ireland and Wales, but I have sought to set out my analysis and conclusions in a sufficiently explicit and reasoned way to enable the experts within the devolved jurisdictions to see as readily as possible how they could be made to fit. I have not been made aware of any technical reason why my recommendations should not be able to be accommodated, with appropriate adjustment, in all parts of the UK, but I have not sought detailed advice on the matter. I intend no discourtesy at all by this approach and hope that those with the relevant decision-making responsibilities will understand the reasons.

2. Purpose

2.1 This Report fulfils three quite separate functions. First, it is an account of the Inquiry. The purpose of the Inquiry was to inquire into the culture practices and ethics of the press and to make recommendations. By conducting the Inquiry in public and in such a way that it can be followed by anyone with an interest to do so, the story has emerged but it is important that it is collected together in one place and I have attempted to do that as a balanced account of what has transpired. Further, that balance can be checked. Anyone is able to go onto the Inquiry website, watch the play-back of the evidence, read every statement of witnesses whether called or simply introduced into the record, examine every relevant document in the form made part of that record whether specifically referred to not and consider every submission from a Core Participant or Counsel to the Inquiry and so form his or her own conclusion about the balance of the Report.

2.2 Collecting the material and presenting it in an ordered form has generated an additional issue. It will quickly be obvious that some stories appear in more than one place in the narrative and some not at all. That is not because different examples of types of conduct are not available from either the material called at the Inquiry or read into the record; neither is it because of my over-reliance on a particular witness and the story that he or she had to recount. It is important to appreciate, however, that in some instances, manifestations of different criticisms come together in the same story, aggravating the wrong committed. It is equally valuable, however, to understand the same story from the perspective of the victim, simply trying to deal with life events as they occur (with the press providing its own, sometimes monumental, challenges) or, in some cases, over a lengthy period of time, again

and again having to confront different attacks from the same or different quarters. To tell every story was simply impractical but to say (as is frequently asserted) that the Inquiry has been 'hijacked' by celebrities is both wrong and unfair; the claim may be thought to be an attempt to divert attention away from the real harm caused to real people.

2.3 The second purpose of the Report is to set out my conclusions on the culture, practices and ethics of the press and the other areas of my Terms of Reference. It is also to identify and explain my recommendations as to the way forward: that, after all, is precisely what the Terms of Reference require me to do. Both conclusions and recommendations appear throughout the Report but are, I hope, reasoned and comprehensible.

2.4 The third purpose of the Report is, in my view, the most important. It is to allow those who read it to reach their own conclusions about every aspect of the Terms of Reference. From the outset (and consistently the subject of commentary throughout the hearings and subsequently), it has been suggested that a judge is wholly unsuited to the task of seeking to discern, let alone determine, how a free press should operate and how it should exercise its rights of free speech. It has been said that I have had an agenda and that the failure to involve a journalist with tabloid or mid-market experience as an assessor demonstrates a failure to understand the popular culture of journalism and an attempt to impose a broadsheet agenda when the profitable newspapers are the former not the latter. It is argued that the Terms of Reference are either too broad or too narrow. It is open to all to reach their own conclusions.

2.5 I have no doubt that all sections of the press will report and comment upon this Report, each newspaper or title from its own perspective. It will be for anyone who reads the Report to decide the extent to which any comment upon it is fair in the same way that it will be for the Government (maintaining, I hope, the cross party consensus with which this Inquiry was set up) to decide how far it wishes to take the recommendations that I have made. That is where the ultimate decision making properly lies.

3. Timing and content

3.1 It is also necessary to say something about the timetable. Although the Prime Minister initially hoped that the Report would be available within 12 months, two developments affected the prospect of such a time frame being met. The first was the extension, beyond that initially envisaged, of the Terms of Reference. More significant, however, was the appreciation that there was no body of evidence immediately available to provide the basis from which to commence the calling of witnesses; the police investigation was ongoing and therefore it was not appropriate to seek to use the evidence that had been collected during that inquiry. Thus, it was only possible to start the collection of evidence in August 2011 and, given the holiday period, it was inevitable that it would take some time to be prepared; only after it had been prepared and served could it be assimilated and the hearings commenced.

3.2 In the event, the oral hearings commenced on 14 November 2011 and, had it been essential to deliver a Report by the end of July 2012, they would have had to have been concluded by April. Given the remit involving the press, the public, the police and politicians, this was simply not feasible. I therefore set different targets namely that the evidence should conclude within about 12 months of the appointment of the Inquiry and the Report should be available within about 12 months of the commencement of the evidence. I did so because I recognised the fundamental importance of early delivery of a Report so that decisions could be made and implemented as to the future within a reasonable timetable, rather than being pushed back thereby falling in the run up to a general election.

3.3 Meeting the timetable has not been without consequences. In relation to the evidence, careful selection was made of those witnesses who would be called to give evidence on oath and representations were invited from Core Participants in relation to other potential witnesses whose statements, in the absence of objection, could be read into the record without their personal attendance. Understanding the approach of the Inquiry to the evidence generally, sensible decisions were made by the Core Participants whose assistance, throughout, has been of very great value. The consequence, as I have explained, is that a vast body of evidence was not in fact the subject of oral exposition and the timetable for the hearings was met. There are, however, no different classes of evidence: although some of the material provided in writing is not referred to, it has all been considered.

3.4 As for the Report, the consequences are different. In an ideal world, I would have wished to write, re-write and hone this Report so that every nuance could be the subject of mature reflection. As previous inquiries have shown, given the amount of evidence whether oral, documentary or read-in, that would have been a task of very many months duration. This Report, therefore, is the work of many hands,[1] all working to my direction and reflecting my views; that is the inevitable consequence of the way in which the work has had to be done. I place on record my appreciation to all those who have collated the evidence in relation to different aspects of the Report. Having said that, I repeat that every finding of fact, every conclusion and every recommendation expressed in this Report is mine alone. Equally, any errors are my responsibility.

[1] That is to say, I have been assisted in the drafting by Counsel and by civil servant members of the Inquiry team; the Assessors have been invited to provide comments on drafts only where appropriate.

PART B

THE PRESS AND THE PUBLIC INTEREST

CHAPTER 1
INTRODUCTION

1.1 This Part of the Report alludes to some of the fundamental principles which must provide the context for any consideration of the role of the press in the United Kingdom. It does so principally for the purpose of brief overview and explanation, and to set the scene for the narrative, analysis and recommendations which follow.

1.2 The principles which are set out are not simply derived from philosophical or jurisprudential writings. Proprietors, editors and journalists wrote and spoke about the importance of what they do for all of us in the UK, and the value it has for our common life. Politicians described the principles informing their own relationship with the media, including as policy-makers. Commentators suggested the matters that the Inquiry should bear particularly in mind in approaching its task. This brief overview seeks to distil, without necessarily fully rehearsing, the essence of the points of principle which were put before the Inquiry.

1.3 Without seeking, or needing, to do full justice to the fine nuances of opinion which it is possible to hold and debate about such matters, this Part of the Report aims simply to set out a framework of understanding which is relatively uncontroversial. It is therefore the intention simply to underline, to put beyond doubt, the extent to which the Inquiry has itself proceeded on the basis of the perspectives set out, and to do so in terms with which I believe that most of the public would be able broadly to agree.

1.4 It is also the intention of this Part of the Report to clarify some of the strands of thought which have been woven through a great deal of the evidence the Inquiry has received. Concepts such as the freedom of the press, freedom of expression and the public interest have been much referred to in the course of the evidence. These are potent expressions, and powerful and important concepts; commensurate clarity and care is needed in their deployment in the context of a Report on the culture, practices and ethics of the press. They are concepts which are capable of being, and have been, used both rhetorically and analytically to explain and support a range of different perspectives, arguments and conclusions.

1.5 Attempting an all-embracing definition of concepts of this sort, even within the limitations of the Inquiry's Terms of Reference, is neither necessary nor appropriate. Some measure of clarification is nevertheless attempted, both to underline the importance of these concepts and also to indicate the traps they can sometimes set for the unwary. This is not intended to make any claims to an especial authority in doing so, but only to give some indication of why they are important, and the limits of the uses and justifications to which they can be put. These are precious and fundamental principles, to which great respect must be paid; at the same time, they must be handled thoughtfully and with care.

1.6 The Inquiry was considerably assisted in this respect not only by the way that the issue has been put by so many journalists but, in particular by the expert witness evidence it received, in both written and oral form.[1] I recognise that I have freely borrowed from their observations in some of what follows and I am grateful to them. In doing so and while acknowledging this debt, I should make clear, that the analysis set out here is entirely that of the Inquiry and is not to be taken to be representative of the entirety of the views of the expert witnesses, collectively or individually. As with other aspects of the evidence that I have sought to summarise, I can only commend those interested to the original evidence: any summary cannot attempt to do full justice to it.

[1] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf

B

CHAPTER 2
THE FREEDOM OF THE PRESS AND DEMOCRACY

1. Context

> *"A free press is the unsleeping guardian of every other right that free men prize; it is the most dangerous foe of tyranny … Under dictatorship the press is bound to languish … But where free institutions are indigenous to the soil and men have the habit of liberty, the press will continue to be the Fourth Estate, the vigilant guardian of the rights of the ordinary citizen."*[1]
>
> Winston Churchill

> *"The proper functioning of a modern participatory democracy requires that the media be free, active, professional and inquiring. For this reason the courts here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than necessary to promote the legitimate object of the restriction."*[2]
>
> Lord Bingham

1.1 The importance of a free press to democracy is surely incontrovertible, and, as Lord Bingham's statement makes clear, enshrined in law and constitution in the UK. Why it is so may be thought obvious, but bears some consideration. The quality of that freedom also requires consideration; again, as Lord Bingham indicates, freedom has many components and is rarely in a democracy absolute or paramount, if only because democracy may itself be thought of as a system for reconciling competing freedoms. Equally, a press that is free and nothing else will not necessarily enhance democracy. Other conditions are necessary too; Lord Bingham's formulation that the press must also be 'active, professional and inquiring, and Churchill's vision of the press as 'vigilant guardians of the rights of the ordinary citizen' raise interesting questions about how freedoms can be used.

1.2 My attention has been drawn by press Core Participants to statements of the highest judicial authority which develop these points in a variety of ways.

1.3 In *R v Secretary of State for the Home Department, ex parte Simms* (2000) 2 A.C. 115, a case which held that any restriction on the interviewing of prisoners by journalists must be strictly justified, Lord Steyn explained at paragraph 126:

> *'Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J (echoing John Stuart Mill), 'the best of truth is the power of thought to get itself accepted in the competition of the market': Abrams v US (1919) 250 U.S. 616, 630, per Holmes J (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept*

[1] Speech, 1949
[2] *R (Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55

decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country: see Stone, Seidman, Sunstein and Tushnet, Constitutional Law, 3rd ed. (1996), pp. 1078-1086. It is this last interest which is engaged in the present case. The applicants argue that in their cases the criminal justice system has failed, and that they have been wrongly convicted. They seek with the assistance of journalists, who have the resources to do the necessary investigations, to make public the wrongs which they allegedly suffered.'

1.4 The point was developed in the speech of Lord Nicholls of Birkenhead in *Reynolds v Times Newspapers Ltd* (2001) 1 A.C. 127, at paragraph 200:

'The high importance of freedom to impart and receive information and ideas has been stated so often and so eloquently that the point calls for no elaboration in this case. At a pragmatic level, freedom to disseminate and receive information on political matters is essential to the system of parliamentary democracy cherished in this country. This freedom enables those who elect representatives to Parliament to make an informed choice, regarding individuals as well as policies, and those elected to make informed decisions...Likewise, there is no need to elaborate on the importance of the role discharged by the media in the expression and communication of information and comment on political matters. Without freedom of expression by the media, freedom of expression would be a hollow concept.'

1.5 The same point has been made with equal force in the European Court of Human Rights in Strasbourg. In *Castells v Spain* (1992) 14 EHHR 445 a senator of an opposition political party in Spain published an article in a weekly magazine critical of the government, and was charged and convicted of insulting the government and disqualified from holding political office. During the trial, Senor Castells attempted to adduce evidence as to the truth of the article, but it was declared inadmissible by the Spanish Supreme Court. The Strasbourg Court held that his conviction constituted an unjustified interference with his right to freedom of expression under Article 10 of the ECHR. At paragraph 43 the Court observed:

'...the pre-eminent role of the press in a State governed by the rule of law must not be forgotten.

Although it must not overstep various bounds set, inter alia, for the prevention of disorder and the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest...

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of a democratic society.'

1.6 The fundamental importance of the freedom of the press was a very familiar theme of the evidence received by the Inquiry, and rightly so. It is one I emphasised myself on several occasions. The description of the importance of press freedom was put to the Inquiry largely in two forms: first, as a negative or 'default' argument (any interference with any sort of freedom must always be justified in a liberal democracy) and, second, as a positive argument (the press must be free to fulfil its important role). To the extent that either or both of these

arguments was deployed in the service of contentions about the right approach for the Inquiry to take to its Terms of Reference, and explicitly to the question of how far it might end by asking new things of the press in respect of its culture, practices and ethics, it is necessary to stand back and reflect on the origins and explanations for the importance of press freedom.

2. A brief history of press freedom in the United Kingdom

2.1 The history of the press is filled with struggles against the state and debates over the rights and privileges of the press. It thus provides an essential background to understanding the commitment of modern democratic society to freedom of the press. It also explains the strength of feeling demonstrated by so many journalist witnesses.

2.2 From the advent of the printing press in 1476 until the end of the seventeenth century, state licensing meant that the Government and the Church could control the press, and in particular prevent the printing of seditious or heretical works. State control over printing tightened when, in 1538, Henry VIII decreed that all new printed books had to be approved by the Privy Council and registered with the Stationers' Company. This system of state control endured under a series of decrees issued and enforced by the Star Chamber.

2.3 The licensing regime ended with the abolition of the Star Chamber in 1640. However, in 1643 licensing was reintroduced by Cromwell's Parliament in an effort to suppress the publication of material about Charles I. This act moved John Milton to write his now immortal defence of the free press in *The Areopagitica, a Speech for the Liberty of Unlicensed Printing:*

> *"The attempt to keep out evil doctrine by licensing is like the exploit of that gallant man who thought to keep out the crows by shutting his park gate … Lords and Commons of England, consider what nation it is whereof ye are: a nation not slow and dull, but of a quick, ingenious and piercing spirit. It must not be shackled or restricted. Give me the liberty to know and to utter and to argue freely according to conscience, above all liberties."*

2.4 Milton's plea went unheeded and for the next half century the press was governed under a licensing system which suppressed all but official publications. Licensing eventually ended in 1695 when the House of Commons refused to renew the licensing legislation. Ever since the licensing of the press was abolished, there has existed a general right to publish newspapers, books or magazines without state authorisation.

2.5 Although no longer required to obtain a licence for the mere act of publishing, there remained a number of restraints on the content of what the press could publish. The offences of criminal and seditious libel, for example, were still punishable at common law. In 1738, Parliament banned reporting in print of the proceedings of either house of Parliament. In 1712, the Stamp Act introduced taxes on the press. These 'taxes on knowledge', intended to curb the radical press, created a culture in which journalists and newspapers subsisted through bribes and government subsidies.

2.6 It took a century of campaigning by proponents of the radical press and free speech to secure further independence for the newspapers. Parliament ended the ban on press reporting in Parliament in 1771, after a legal battle by the radical MP and journalist John Wilkes against attempts to arrest several printers for reporting parliamentary debates. The Libel Acts of

1792 and 1843, restoring the right to trial by jury and introducing a truth defence to the charge of seditious libel, provided the press with a measure of security against unmeritorious criminal prosecutions. Newspaper stamp duty was eventually abolished in 1861.

2.7 The repeal of newspaper taxes resulted in a period of rapid press expansion. However, by the early part of the twentieth century, a new form of limitation on press independence had emerged. The proliferation of both regional and national newspapers was followed by a period of consolidation as increasingly powerful newspaper chains bought up provincial titles. For much of the inter-war period the proprietors of these large corporations – the press barons of the day – dominated the press.

2.8 During the Second World War, Government censorship returned, this time in the guise of the now infamous Defence of the Realm Regulations. Regulation 2D conferred on the Home Secretary the personal power to ban any publication which published "material calculated to foment opposition" to the war. Relying on this power, the Government closed down two communist papers. Following mass rallies in response, the ban was lifted.

2.9 In general, however, the press response to the unprecedented levels of Government censorship which characterised the war period was muted. Representative of the type of views being expressed on this issue, but not on others, George Orwell gave the following retrospective perspective:[3]

> *"Any fair-minded person with journalistic experience will admit that during this war official censorship has not been particularly irksome. We have not been subjected to the kind of totalitarian 'co-ordination' that it might have been reasonable to expect. The press has some justified grievances, but on the whole the Government has behaved well and has been surprisingly tolerant of minority opinions. The sinister fact about literary censorship in England is that it is largely voluntary."*

2.10 During the immediate post-war period, the growth in the power of a limited number of press organisations increased. Growing concern over the dominance of a small group of proprietors led to the establishment of the first Royal Commission on the Press:[4]

> *"with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of news, to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon."*

In the final report, the Commission recognised the potential problem presented by the concentration of newspaper ownership. The solution proposed by the Commission was the creation of a General Council of the Press:[5]

> *"to safeguard the freedom of the press; to encourage the growth of a sense of public responsibility and public service amongst all engaged in the profession of journalism […]; and to further the efficiency of the profession and the well being of those who practise it".*

[3] 'The Freedom of the Press'-proposed preface to 'Animal Farm', publication of which was delayed until the end of the war to avoid causing offence to the Soviet Union
[4] Great Britain, Royal Commission of the Press, 1947-1949: Report, p3
[5] para 664, *Ibid*

2.11 Concerns about the continued diminution in press diversity led to the establishment in 1962 of the second Royal Commission on the Press:[6]

> *"to examine the economic and financial factors affecting the production and sale of newspapers, magazines and other periodicals in the United Kingdom, including (a) manufacturing, printing, distribution and other costs, (b) efficiency of production, and (c) advertising and other revenue, including any revenue derived from interests in television; to consider whether these factors tend to diminish diversity of ownership and control or the number or variety of such publications, having regard to the importance, in the public interest, of the accurate presentation of news and the free expression of opinion".*

It found that the share of circulation controlled by the large proprietors had substantially increased; the leading three proprietors' share of the national daily press amounted to almost 90%. It severely condemned the General Council and urged reform. The industry eventually responded in 1974, when the Press Council was created to replace the General Council.

2.12 Notwithstanding this reform, there remained major concerns about the need to protect editors and journalists from the control of proprietors. The third Royal Commission on the Press was established in 1974:[7]

> *"To inquire into the factors affecting the maintenance of the independence, diversity and editorial standards of newspapers and periodicals and the public freedom of choice of newspapers and periodicals, nationally, regionally and locally."*

The report recommended the development of a written Code of Practice, warning "*it is unhappily certain that the Council has so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers".* The Press Council rejected this proposal.

2.13 In 1989, the Government set up a Committee under Sir David Calcutt QC to investigate growing concerns over invasions of privacy by the press. The 1990 Calcutt Report recommended the establishment of a new Press Complaints Commission to replace the Press Council. The PCC was established in 1991 and tasked with administering a new Code of Practice. Since its inception, concerns have been voiced about the PCC. These developments (and, indeed, a fuller history of all these reviews) are described later in the report.[8]

2.14 Whilst attempts to achieve a functioning of system of self-regulation stalled, great strides were achieved in securing legal protection for a free press. Beginning in 1950, when freedom of expression was enshrined in Article 10 of the European Convention of Human Rights ("the ECHR"), legal protections for the press have steadily increased. Although Article 10 is a protection for individual rather than corporate freedom of expression, and does not expressly refer to the press, press reportage has consistently been recognised in case law as protected speech. In this regard, the European Court of Human Rights has emphasised the pre-eminent role of the press in a democracy and its duty to act as a "*public watch-dog*".[9] It has also recognised the importance of pluralism in the media, noting that "*there can be no democracy without pluralism. Democracy thrives on freedom of expression*". [10]

[6] Great Britain, Royal Commission on the Press: 1961-1962: Report (Cmnd 1811)
[7] http://hansard.millbanksystems.com/commons/1974/may/02/royal-commission-on-the-press
[8] in Part D Chapter 1
[9] *Observer and Guardian v UK* (1992) 14 EHRR 153, para 59
[10] *Centro Europa 7 SRL and Di Stefano v Italy* (1Application no. 38433/09)

2.15 Consistently with other international instruments protecting freedom of expression, Article 10 expressly acknowledges that freedom of expression generally, including freedom of press expression, may be restricted where necessary to protect the legitimate aims of a democracy. The court has recognised that freedom of expression may need to be restricted in the interests of national security and public morality, as well as individual rights to privacy and peaceful enjoyment of property. The ECHR jurisprudence has nonetheless afforded a broad degree of protection of the press, drawing a distinction, however, between the protection afforded to reporting contributing to debate on economic, social and political issues and press reports involving tawdry allegations about an individual's private life.[11]

2.16 Since 2000, Article 10 has been incorporated into domestic law through the mechanisms set out in the Human Rights Act (HRA) 1998. In the years since incorporation, the domestic courts have joined Strasbourg in seeking to strike a balance between the protection afforded a free press, the restrictions necessarily placed on that freedom in a democratic society.

2.17 This brief history makes a number of points about the values and functions of press freedom in democracy. First, the struggle to achieve press freedom (in the sense of freedom from the power of the State) was driven by the democratic value served by the press. Freedom of the press, according to this historical tradition, was and is celebrated not simply because of any intrinsic value of a free press, but because of the public benefits associated with free flow of information and debate.

2.18 Second, it is clear from this history that threats to the democratic function of a free press can take many forms. Government licensing and censorship of content is the most easily identifiable restriction and was deployed with invidious effect in the seventeenth and eighteenth centuries. The democratic freedom to own and operate a printing press in the first place is precious and hard won. However, as the more recent history of the struggle for press freedom illustrates, there are other sources of power which may threaten press freedom, and indeed other freedoms which may have a legitimate claim to being taken into account.

2.19 A free press contains within itself immense power to promote democratic freedoms and the public good. It also contains within itself the reverse potential, that is to say, to create undemocratic concentrations of power and undermine freedoms and the public good. The challenge of securing the democratic benefits of a free press, whilst obviating the harm presented by the unchecked exercise of concentrated or unaccountable power, is the legacy of the historic struggle to free the press. Professor Baroness Onora O'Neill put the matter in this way:[12]

> *"I think if we just say we're in favour of press freedom, we beg all the important questions. The important question is: which conception of press freedom and how do you justify it?"*

3. The importance of a free press: free communication

3.1 When confronting the challenge of securing a free press it is important to be clear about why we value a free press and what we seek to protect. Perhaps the most enduring and least contentious rationale for a free press is the argument that a free press contributes to the

[11] Application 36919/02 *Armonienė v Lithuania* (25 November 2008), para 39

[12] p49, para 47-90, Professor Baroness Onora O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf

free flow of communications in a liberal democracy. This can be put in a very broad way, for example:[13]

> *"the public interest in … a free press is best construed as an interest in adequate (or better than adequate) standards of public communication, that allow readers, listeners and viewers to gain information and form judgements, and so as to participate in social, cultural and democratic life. A free press is a public good because it is needed for civic and common life."*

And:[14]

> *"a liberal public sphere, one in which every member, everyone in the community, can take part is just a very good thing in itself. It's useful partly for the results it creates but it's also a good in itself that we all have the status of being able to take part in the liberal public sphere and it seems the press plays a role in that. People who are insufficiently articulate or insufficiently confident to take part in the public speech, the press can give them a voice."*

3.2 A number of serving editors have given the Inquiry the benefit of a perspective from the front line. Representative of such viewpoints was the reference by Alan Rusbridger to:[15]

> *"the simple craft of reporting: recording things; asking questions; being an observer; giving context. It's sitting in a magistrates' court reporting on the daily tide of crime cases – the community's witness to the process of justice. It's being on the front line in Libya, trying to sift conflicting propaganda from the reality. It's reporting the rival arguments over climate change – and helping the public to evaluate where the truth lies."*

3.3 It is important to note that this is not just a general argument for the benefits of free self-expression. Freedom for commercial mass media businesses ('corporate speech') is a very different proposition from the freedom of individual self-expression ('personal speech'). The latter is discussed further below, and has its roots in a very personal conception of what it is to be human. Take, for example, John Stuart Mill's argument from *On Liberty*, that freedom of speech serves a central function in promoting individual autonomy and self-fulfilment. This argument has no direct relevance to press freedom because, put simply, press organisations are not human beings with a personal need to be able to self-express. In any event, "*an argument for free speech for the powerless will not make a case for free speech for a powerful organisation.*"[16]

3.4 The general argument for a free press as a means of free communication, on the contrary, has to do with a number of different things. These include the ability to give a powerful voice in the public domain to those unable to do so effectively for themselves (perhaps of diminishing importance in the era of social media and self-expression on the internet). Importantly, it is also to do with the constitution by the media in their own right of a public forum, where information, ideas and entertainment are both circulated and held up to scrutiny. The essence

[13] p3 para d), Professor Baroness Onora O'Neill, http://levesoninquiry.org.uk/wp-content/uploads/2012/07/witness-statement-of-Professor-Baroness-ONeil

[14] p69, Dr Rowan Cruft, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf

[15] Alan Rusbridger, The importance of a free press, seminar 6 October 2011, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Alan-Rushbridger.pdf

[16] p2, Professor Baroness Onora O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf

of the importance of a free press is therefore not an interest in free 'self' expression but in free communication, the free flow of knowledge, information and ideas:[17]

> *"Readers, listeners and viewers don't need media that 'express themselves': they need media that meet at least minimal standards for adequate communication with intended audiences.*[18]
>
> *The critical public interest in a free press is not so much in a press which exercises self-expression as in a press that is free from censorship, not subject to some kind of central control.*[19]
>
> *Even if the press does have a very important right to freedom of expression, you have to remember that it's justified by what it does for individuals by constituting a public sphere in which all individuals can take part."*

3.5 A free press will not necessarily provide an effective 'market-place for ideas'. The freedom of the press is a prerequisite for that, but not sufficient in itself, for all sorts of reasons. There must be some degree of effective connection between communicators in the press; and when some elements of the press are more powerful communicators than other papers and individuals, its capacity to facilitate informed debate may be impaired. In a similar vein, a measure of plurality of voices is required if a free press is to enhance democratic debate.

3.6 The 'argument from truth', which identifies free speech as an important condition for the attainment of truth, is also not straightforward when applied to the press. Mill's argument that society will benefit from "*the clearer perception and livelier impression of truth, produced by its collision with error*" may hold in relation to the battle between truth and falsity expressed by individuals (but even then, only in the sort of discourse which aims at the truth). However, it is less certain that truth will prevail in the encounter between individual and institutional speech, or between different forms of institutional speech. To put the matter bluntly, "*there is nothing to stop a free press … from freely deciding to support corruption or to be involved in it. We cannot assume that a free press, or specific agents within a free press, will be motivated to provide the kind of content that is, in fact, in the public interest.*"[20]

3.7 The fundamental point is that unlike freedom of expression for individuals, which has intrinsic merit as a form of self-expression, press freedom has value to some extent as an aspect of commercial freedom, and to some extent because of the functions it serves. In other words, freedom of the press is largely understood as an instrumental good, to be valued, promoted and protected to the extent that it is with the result that it is thereby enabled to flourish commercially as a sector and to serve its important democratic functions.

4. The importance of a free press: public debate and holding power to account

4.1 There are two, more specific, strands to explanation for the importance of a free press in a democracy. They were explained to the Inquiry by different witnesses in these terms:

[17] p66, lines 1-12, Dr Rowan Cruft, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[18] p4, Professor Baroness Onora O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf
[19] p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[20] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

"a free press serves the public interest instrumentally in two key respects:

– Constraining power: A free press is an important check on political and other forms of social power (corporate, individual). To achieve this end, the press requires not just freedom from interference with the form and content of what it says, but also the capacity to investigate and acquire information.

– Enabling democratic deliberation and decision-making; educating and enabling understanding. A free press – especially a diverse press in which many views are represented – is an important forum for public deliberation and education, a means for enabling the public to engage in informed democratic decision-making." [21]

"there are also some very well-known instrumental benefits of the press. So it's a very important check on political power and other forms of power. It's an important source of education and an important means of enabling democratic decision-making." [22]

"The public interest in a free press lies largely in the character of our society as a liberal democracy. It is in the public interest that there be a free press because and insofar as such a press serves as a necessary bulwark against government duplicity or tyranny. A free press serves also to inform people about the principles under which they live and the policies which government adopts and pursues in their name. This is of particular importance in a democratic society where governments are elected by the people and act in the name of the people. The argument from democracy is, so to speak, a 'guiding light'. Insofar as it reminds us of the most important purpose of a free press, it also, and at the same time, reminds us of the most significant duties of a free press – duties to communicate those things which people need to know if they are to be effective and informed citizens" [23]

"The serious purpose the press serves, the purpose which makes it critical to a genuinely free and democratic society has two principal components – to inform citizens and to enable citizens to hold accountable those who should be serving the wider public." [24]

"A free press can communicate important facts that the public have a legitimate interest in knowing (and which others might want to conceal). …one aspect of the public interest in a free press is that it provides an essential set of checks and balances on power (and, more importantly, the abuse of power). …there is a public interest in learning of dangers and risks, even where others may wish to conceal them…. A free press, free of the censorship and restrictions imposed by the powerful, … serves the public interest by its investigative and communicative role. Both roles are necessary." [25]

4.2 First, therefore, a free press serves democracy by enabling public deliberation. Citizens need information to make intelligent political choices. To this end, the press serves both as a conduit for the dissemination of information as well as a forum for public debate. It is therefore unsurprising that the proliferation of newspapers which followed the abolition of the stamp duty in the nineteenth century was accompanied by one of the most active periods of political reform in modern history.

[21] pp1-2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf
[22] p69, Dr Rowan Cruft, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[23] pp4-5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Susan-Mendus.pdf
[24] p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[25] p2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

4.3 The second way in which a free press serves the interests of democracy is through its public watchdog role, acting as a check on political and other holders of power. The press is able to perform this function because of its hard-won position as a powerful institution independent of the state, a position which earned it the nickname or sobriquet of the Fourth Estate amongst nineteenth century writers.

4.4 The British press has a strong tradition of holding power to account. A forerunner of investigative journalism, Charles Dickens, exposed some of the cruellest aspects of Victorian society in his excoriating accounts of the work houses. More recently, investigations conducted by his modern counterparts at *The Daily Telegraph* resulted in the exposure of widespread misuse of the parliamentary expenses scheme by Members of Parliament. Less headline grabbing, but of equal significance, is the role of investigative journalism in consumer affairs and at exposing abuses of power in publicly-run institutions such as hospitals, care homes and prisons.

4.5 Again, it is not a given that a press which is simply free will perform this function. The press must be independent from those in power and must be afforded the privileges necessary to enable investigative journalism to take place. It must also be 'active, professional and inquiring'.

5. Press freedom within the rule of law and the role of statute

5.1 The unique power wielded by the press plays a vital function in democracy. However, this power must also be used consistently with other democratic values. A free press in a democracy must therefore operate within certain parameters.

5.2 Chief amongst these is the requirement that press freedom promotes, and operates within, the rule of law which itself is often described as the cornerstone of a democratic society.[26] Although the democratic function of the rule of law is primarily associated with the idea of government in accordance with the law, the doctrine's deeper implications concern the need for accountability and constraint of all power in a modern democracy:

> *"Be you never so high, the law is above you"*[27]

5.3 Lord Bingham encapsulated this essential function of the rule of law in his now celebrated monograph on the subject, in which he defined the rule of law as follows:[28]

> *"[A]ll persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts."*

In other words, the rule of law is at the cornerstone of democracy because it protects the freedoms on which democracy depends, including press freedom, from arbitrary power.

5.4 In a modern democracy that abides by the rule of law, press freedom can never mean a press which sits outside, above and beyond, or in disregard of, the law. Respect for the law is the common framework within which the press, as an important commercial sector, is enabled

[26] As a fundamental constitutional principle, the rule of law is now recognised in statute: see s 1 of the Constitutional Reform Act 2005

[27] Dr Thomas Fuller, 1733

[28] Bingham, T, *The Rule of Law*

to flourish, to preserve and enjoy its freedoms, and to make its unique contribution to a democratic society.

5.5 That general principle relates to the law (both common law and statute) which applies to press organisations in the same way as it applies to other commercial organisations; these include the laws of taxation, for example, and, where relevant, the requirements of company or trust law. It also applies to the law which is of particular application to the activities of the press, specifically including information-gathering and publication. Appendix 4 to the Report sets out the principal sources of law applying in this more activity-specific way to press organisations. Some of this law is of particular, or modified, application to the press; whether or not that is the case, in many ways it does constrain the conduct (or 'freedom') of the press in order to hold it in balance with other important aspects of the public interest. How it does so is considered more fully below.

5.6 The point of paramount importance for present purposes, however, is that there is a fundamental public interest in respect by the press for and obedience to the law. A press considering itself to be above the law would be a profoundly anti-democratic press, arrogating to itself powers and immunities from accountability which would be incompatible with a free society more generally. All who have the privileges and responsibilities of holding power to account, including police, politicians and press, must themselves champion and uphold the accountabilities they proclaim for others. The rule of law, in other words, 'guards the guardians' and is a guarantor of the freedom of the press, not an exception to it.

5.7 Reference has already been made to the separate public interest in a press which is diverse. Even if newspapers are, as editors have forcefully suggested, merely the passive conduits of their readers' views, the argument for a multiplicity of such views is clear. To the extent that the press does more, and is capable of influencing public opinion, the argument becomes even stronger. These arguments are recognised in general terms by plurality and media specific competition laws, which apply both to the print and broadcast media. Of course, I fully appreciate that plurality and partisanship are separate concepts; that the print media is fully entitled to be partisan; and that the broadcast media is required to be impartial. The simple point I am making about the press is that an irreverent and opinionated print media should, taken as a whole, reflect a range of views if it is fully to realise its potential to contribute to the public interest.

5.8 From this brief overview, it is possible to see that the organisation, activities and products of the press are in many ways limited by, or made accountable through, the operation of the law, that is to say, both common law and statute. In this, the press is no different from any other provider of, or participant in, democratic public life. As explained above, the rule of law is at the most fundamental level the guarantor of the freedom of the press, not an exception to it. And where it limits the activities or the press, or makes the press formally accountable for its actions, the law is simply performing its inherent democratic functions of balancing competing freedoms and competing public goods. So much is to state the obvious.

5.9 That it needs to be stated at all, and more than stated, emphasised, is a result of two lines of argument put to the Inquiry, both of which are dealt with more fully below.

5.10 The first of these is the proposition that the press is, or should be, 'entitled' to break the law where to do so would be 'in the public interest'. It is certainly true that there are a number of modifications in various aspects of the law applicable to the press which gives it greater latitude within the law than is afforded to others. But that, emphatically, does not mean recognition within the law that, as a matter of general principle, the press possesses any entitlement or expectation to be indulged, in the national interest, in special exemption from

observing the requirements of the law. The Inquiry has been asked to consider the possibility of recommending that a general public interest defence be accorded to journalists in relation to what might be described as the whole of the criminal law insofar as it relates to the press. I give this proposal full and independent consideration.[29]

5.11 The other reason to clarify that a free press within a mature democracy operates within the rule of law is to address the line of argument, put to the Inquiry from time to time, that a statutory framework for, or underpinning of, press standards would by itself be repugnant to a proper view of the freedom of the press. This argument, in turn, appeared in two distinct forms.

5.12 The first version of this argument posits that any change to the law by Act of Parliament to require or restrict any behaviour by the press, or to increase its accountabilities, regardless of the content or justification of any such change, is intolerable in a democracy as an act of state control. I understand this argument, but believe that it completely lacks merit. It seems to rely, at some level, on a mistaken conflation of state censorship with the ordinary democratic processes of making and applying statute law.

5.13 As has been illustrated, there are many forms of statute law which already restrict the activities of the press, whether in terms of their organisation, competition or activities up to and including in limited cases what it may or may not be lawful to publish (race hate, for example). On the face of it, these statutory restrictions are legitimate and proportionate exercises in democratic lawmaking, balancing competing public freedoms and goods. Of course, as such, they need to be justified, and considered on their merits. Not every statutory restriction possible will be proportionate and justifiable. But to contend that no statutory reform could be so is to push the argument far beyond any reasonable statement of principle. Ultimately, there is no necessary connection between statutory underpinning of a regulatory system (to apply the argument more closely to home), on the one hand, and state censorship on the other, nor in my view is there some sort of slippery slope gliding from the first to the second.

5.14 The second variant of the argument is more limited. It is put by witnesses, such as Lord Hunt, on the basis that any proposal for statutory reform of the law as it applies to the press contains within it a risk of exposure to a Parliamentary process in which a commitment to the importance of press freedom does not at present exist.[30] There are two objections to this argument. The first is that I am aware of no empirical evidence to support it.[31] On the contrary, in recent years there are, I think, examples only of Parliamentary law making in respect of the press which is clearly focused on strengthening, rather than restricting, the freedoms of the press.[32]

5.15 The second objection is an objection of principle and constitution. More than one view is no doubt possible of how the freedoms of the press should best be held in balance with other freedoms and public goods. Parliament is the proper and legitimate forum within which such views can and must be debated in a democracy. If the press fears for its liberties in a Parliamentary context, its answer is to ensure that the case is put with maximum clarity in that forum, not to seek to avoid the forum altogether.

[29] Part J Chapter 2

[30] pp63-64, Lord Hunt, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-9-July-2012.pdf

[31] The fact that occasional attempts have been made to introduce private Member's Bills (none of which have progressed) is hardly sufficient

[32] s12 of the HRA 1998; s32 of the Data Protection Act 1998

B

6. The protection of sources and other legal privileges of the press

6.1 A free press is able to perform valuable functions which individual free speech cannot. It is because of the position of the press as an institution of power that it is able to stand up to and speak truth to power. The professional skills and resources at its disposal enable the press as an institution to carry out ground-breaking investigations in the public interest. It is these considerations and functions which have resulted in the press as an institution being afforded certain privileges going beyond those protected by freedom of speech.

6.2 Principal amongst these is the press privilege not to disclose sources of information. Now enshrined in section 10 of the Contempt of Court Act 1981, the privilege means that a publisher cannot be compelled to reveal the source of published information unless a court considers such disclosure to be in the interests of justice or national security or for the prevention of crime. The Police and Criminal Evidence Act (PACE) 1984 confers a similar procedural privilege, preventing the police from access to journalistic material without authorisation obtained by application to the court. Furthermore, the courts have also recognised the right not to disclose sources as an important facet of the free press, as is reflected in the following words of Lord Woolf CJ:[33]

> *"The fact that journalists' sources can be reasonably confident that their identity will not be disclosed makes a significant contribution to the ability of the press to perform their role in society of making information available to the public".*

6.3 Furthermore, whilst the press are not above the law, the criminal law does on occasion accord journalists a form of protected status[34] as well as certain protections in relation to otherwise defamatory publications (e.g. qualified privilege and the '*Reynolds*' defence). These matters are all covered in some detail later in the report and stand to be enhanced in the Defamation Bill presently before Parliament. Suffice to say, these privileges afforded to the press are important precisely because they enable the press to serve the public interest in carrying out investigative journalism and disseminating information: they are not afforded for any other reason.

[33] *Ashworth Hospital Authority v MGN Ltd* [2002] 4 All ER 193, 210.
[34] s55 of the Data Protection Act 1998

CHAPTER 3
COMPETING PUBLIC INTERESTS

1. Context

1.1 The public interest in a free press is fundamental. But it cannot be viewed in isolation. As has been demonstrated, it is, itself, an aspect of wider public interests such as the public interest in democracy, for example, in public life and in the rule of law. There are other public interests also of which press freedom is not a major aspect, and with which it may sometimes be in tension. This section considers some of them, in order to put the public interest in a free press in its fuller context, and to reflect on how competing aspects of the public interest are resolved and reconciled.

1.2 The 'public interest' is therefore not a monolithic concept. Nor is it the particular property of the press or any other organisation or sector. It will often be a matter of balancing a number of outcomes which would be for the common good, but which cannot all be achieved simultaneously. In a democracy, this is principally a role for Government that is, for example, used to grappling with a balance between the public interests in public spending and in low taxes, in liberty and in security, in high accountability and low bureaucracy.

1.3 That is by no means to portray any aspects of the public interest as mutually exclusive or zero-sum. On the contrary, the fact that many aspects of public, and indeed private, life may benefit the public makes the task of the decision-maker a much more subtle and skilful one than that. There are critical decisions to be taken about how to balance, weigh and reconcile many things that are in themselves good but not all of which may be simultaneously achievable. So it is a complex task for those charged with it, and one for which accountabilities are rightly demanded. A wider perspective than that of the press is therefore inevitable:[1]

> *"There are more components of the public interest than those that are served by a free press, so that the press may need to control its activity to respect those wider factors. … Sometimes it seems that the press's confidence that its activities are serving the public interest makes it insensitive to the complexity of that notion."*

1.4 Most proponents of free speech, for example, accept that its exercise must be restricted in order to protect the rights and interests of others. There is an important public interest in free speech, and there is also an important public interest in the civil liberties of individuals. These may sometimes need to be reconciled. Certain acts of speech, such as speech inciting violence or race hate, are so connected with producing specific conduct as to be relatively unprotected. Even Milton, in a passage from the *Areopagitica* overshadowed by his rhetoric in defence of a free press, acknowledged necessary limits to free speech (although not necessarily limits which we would now condone):

> *"I mean not tolerated popery, and open superstition, which as it extirpates all religious and civil supremacies, so itself should be extirpate … that also which is impious or evil absolutely against faith or manners that no law can possibly permit that intends not to unlaw itself".*

[1] pp3-4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf

1.5 Some of those who place the strongest emphasis on press freedom take their lead from the principally American brand of 'free speech absolutism'. Free speech absolutists take the injunction of the First Amendment to the United States Constitutions at face value: that Congress shall make no law abridging the freedom of speech. Within this tradition, the United States Supreme Court has developed some of the most extensive protections of free speech in the democratic world, including the protection of religious and racist hate speech as a species of 'political speech'.[2]

1.6 However, even in a culture committed to maximum protection to free speech, the absolutist position has proved impossible to sustain. In practice, the United States Supreme Court imposes extensive restrictions on freedom of speech by identifying categories of speech which are deemed not to fall within the scope of the First Amendment. These categories include for example advocacy of imminent illegal conduct, official secrets, defamation and fraudulent misrepresentation. The Supreme Court has also denied that certain categories of sexually explicit material amount to protected speech and has been prepared to sanction far more extensive restrictions of obscene material than exist in the UK.[3]

1.7 Article 10(2) of the ECHR itself permits "formalities, conditions or restrictions" on freedom of expression so long as they are prescribed by law and necessary in a democratic society. Thus, to the extent that press freedom is protected as an aspect of the protection of freedom of expression under Article 10, certain restrictions will be necessary and justifiable in the overall public interest.

1.8 The Inquiry invited thoughts on the place of press freedom within a wider concept of the public interest by asking the following question, both of some of the expert witnesses and more generally of the public at large via the Inquiry website:[4]

> *In order to maximise the overall public interest, with what other aspects of the public interest would freedom of expression, or freedom of the press, have to be balanced or limited? The Inquiry is particularly interested in the following, but there may be others:*
>
> *a. the interest of the public as a whole in good political governance, for example in areas such as:*
>
> – *national security, public order and economic wellbeing,*
>
> – *the rule of law, the proper independence and accountability of law enforcement agencies, and access to justice, and*
>
> – *the democratic accountability of government for the formation and implementation of policy;*
>
> *b. the public interest in individual self-determination and the protection and enforcement of private interests, for example*
>
> – *privacy, including (but not necessarily limited to) the rights to privacy specified in general in Article 8 of the European Convention on Human Rights and in European and national legislation on the protection of personal data,*
>
> – *confidentiality, the protection of reputation, and intellectual and other property rights, and*

[2] Barendt, E, *Freedom of Speech* (2nd ed), pp183 -186
[3] pp361-363, *ibid*
[4] para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Key-Questions-Module-4.pdf

– *individual freedom of expression and rights to receive and impart information where those interests and rights are not identical to the interests and rights of the press.*

What follows picks up some of the strands of thought in the responses the Inquiry received to these questions, and which seemed to be particularly pertinent.

2. Freedom of expression

2.1 As noted above, the rights of individuals to freedom of expression have different origins from the public interest in the free speech of the press. Thus, freedom of expression or speech has value for individuals because of its ability to contribute to individual self-expression and self-realisation.[5]

> *"Freedom of individual expression is important for the development and maintenance of social identity, and for forming relationships and associations, for developing projects (that may be counter to prevailing opinion or orthodoxy)."*

2.2 There is a distinct public interest in individual freedom of self-expression. Liberal democracies are composed of individuals free to express and develop themselves. It was put to the Inquiry in this way:[6]

> *"Freedom of thought and expression are also in the public interest because they constitute the public as a society of equals who respect one another: a society in which each member can participate and bring their own views to the public sphere. This is a good independent of the instrumental benefits it brings."*

2.3 The public interest in individual freedom of expression is a distinct and different aspect of the public interest to press freedom. Here is one way in which the difference was explained:[7]

> *"The press has, as it were, no 'self' to fulfil, so an argument from self-fulfilment or self-development will not be directly relevant to questions of press freedom. More importantly, however, demands for press freedom are not (or not centrally) demands for free expression, but rather for the communication of information, and even if we think that individuals need to be able to express their views in order to develop fully as human beings, it does not follow that extensive freedom should be extended to those (eg the press) whose primary concern is with communication of information. To put the point starkly, those who aim to communicate must aspire to standards which are inapplicable for those who aim only to express their own views."*

2.4 The democratic rationale for freedom of expression in relation to individuals is also different from the democratic interest in a free press. It encompasses the individual's right to receive information, impart his or her own views and participate in democracy on an informed basis. Democracy benefits from a free press where the press, taken as a whole (a sum of partisan parts), communicate a plurality of views and provide a platform for public debate.

[5] p6, para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[6] p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf
[7] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Susan-Mendus.pdf

2.5 In this context, mass communication by the press has the capacity both to enhance and inhibit individual freedom of expression. It is therefore necessary to bear in mind the important point made to the Inquiry that some limitations to freedom of expression under the law are necessary in order to protect free speech from being inhibited by the free speech of others. This is a significant issue when there is an imbalance of power between the competing voices. A free debate cannot happen if some participants simply drown out others and prevent them from speaking. As the New Zealand Law Commission pointed out in its submission to the Inquiry:[8]

> *"[C]ensorship is not the only enemy of free speech. Those who exercise their free speech to intimidate, bully, denigrate and harass others on the internet lessen the credibility of free speech arguments. Even though the web provides those who are harmed by free speech the opportunity to exercise their right of reply, not all have the courage or the standing to exercise it. In effect, those who exercise their free speech rights to cause harm may inhibit others from participating freely in this vital new public domain".*

2.6 Such restrictions may be necessary to protect the freedom of expression of one individual or group of individuals from the speech of another individual or group of individuals. For example, speech which inhibits personal self-expression, be it artistic, religious or sexual, or which intimidates others into silence, inhibits freedom of expression of others. This is why society does not protect racial or religious hate speech in law.[9] Nor is there protection in law for speech which is threatening, intimidating or harassing.[10]

2.7 When one individual's right to freedom of expression is inconsistent with the similar rights of another, a difficult balancing exercise must be carried out in law. It may also be necessary to balance the public interest in the free speech of the press against the public interest in the freedom of expression of individuals. Race hate would be no more protected in the pages of a newspaper than it would anywhere else. This is, of course, a straightforward example. Political philosophers and ethicists would say that more complex issues arise where individual freedom of expression is put under pressure by the free speech of others in ways which are not objectionable in law but which nonetheless might be objectionable on other grounds.

2.8 There are, for example, those cases in which the free speech of one party is experienced in a very intimate way as a threat to the core self-expression and identity of another. That is the context, for instance, in which debates about the portrayal of women and some minorities in the press is conducted.[11] There is a public interest in the free expression of views (and images) which some, perhaps many, find objectionable. There is also a public interest in the liberty of individuals to live free from publicly promulgated stereotyping which limits their own expression and development of themselves. This is not in any sense a point about censorship or law. It is a very simple and self-contained point about competing public interests in free expression.

[8] p151, para 7.5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-from-the-New-Zealand-Law-Commission-Full-Report.pdf
[9] See, for example, the Racial and Religious Hatred Act 2006; European Union Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.
[10] Part 1, Public Order Act 1986; Protection from Harassment Act 1997
[11] Part F, Chapter 6

3. Personal autonomy and civil liberties

3.1 To this extent, the public interest in individual freedom of expression is an aspect of a broader public interest in the autonomy, integrity and dignity of individuals. More generally, personal autonomy and human dignity require that individuals enjoy a protected personal sphere over which they exercise a measure of autonomous control. This is a dimension to the public interest which has a very ancient history in the UK and a special place in public imagination. It underlies the iconic status of *habeas corpus* as an early guarantee of personal liberty, and it underlies the special importance of freedom from interference in home life: 'an Englishman's home is his castle'.

3.2 Personal autonomy means that individuals must have a sphere in which they can exercise individual choices without interference from others (including the state). This important personal sphere has been described in Western liberal philosophy in terms of the public interest in personal privacy. As David Feldman has stated:[12]

> *"The combination of the idea of a right to be respected as a moral agent with the idea of social spheres of decision-making within which people or groups are entitled to regard themselves as free from outside coercion are, I suggest, of the essence off the notion of privacy as a civil liberty."*

3.3 It is evident and well evidenced that the public interest in free speech and free self-expression does, on occasion, come into tension with the public interest in individual privacy and autonomy. Both are protected in law. Article 10 of the ECHR (freedom of expression) is held in a dynamic balance with Article 8 (home and private life). This dynamic balance has been developed in the English law of the protection of privacy. Lord Hoffmann observed in *Campbell v MGN Ltd* that the protection of privacy was essential to *"the protection of human autonomy and dignity – the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people".* In the same case, Lord Nicholls agreed that *"[a] proper degree of privacy is essential for the wellbeing and development of an individual".*

3.4 Thus the existence of a private sphere is vital for human development. It is the space in which individuals are able to experiment with preferences and build personal relationships beyond public scrutiny and judgment. Violations of the private sphere prevent individuals from obtaining these benefits. The private sphere is also critical to personal autonomy as a space over which an individual exercises control. To invade someone's privacy disregards that individual's choices as to when and by whom he or she will be seen and what personal information he or she will divulge.

3.5 That element of choice and control of the personal sphere, although a fundamental public good, is also capable of being exercised contrary to the public interest. So, for example, where an individual seeks to draw a veil of privacy over his or her criminal conduct, then the public interest in privacy will come into conflict with the public interest in law enforcement. But even there, the balanced result will be a partial and not a complete invasion of privacy, and one which is carefully prescribed by law; even in prison there are basic guarantees of human dignity.

3.6 Where the public interest in free expression, in holding power to account, and in the pursuit of wrongdoing are all aligned on the one hand, and conflict with the public interest in an individual's privacy on the other, it is clear that the balance will be able to come down in

[12] Feldman,D 'Secrecy, Dignity or Autonomy? Views of Privacy as a Civil Liberty', p54, http://clp.oxfordjournals.org/

favour of the former. But again, it is important to keep in mind that the public interest in privacy, although compromised, never completely goes away. Violation of the private sphere must always be proportionate to any larger public interest being served. The element of control over one's personal life is never all-or-nothing, but a matter of an infinite number of degrees and decisions.

3.7 Where an individual has chosen to put a matter within the private sphere into the public domain, then he or she will have ceded a measure of control over it.[13] Making choices of that nature is of the essence of personal autonomy. They do not necessarily imply that other choices will be made, much less that the freedom to make other choices is also being ceded. Everyone is entitled to some private space and always provided that there is no countervailing public interest in exposure of that private space (because, for example, it exposes crime or serious impropriety)[14] there is a public interest in preserving it.

3.8 This important point was made in a number of ways to the Inquiry.[15]

> *"An actor who is successful may be well known because his films are viewed by many. He may indeed wish and hope that many continue to view the results of his (and others') craft. It does not follow from this that he has a pathological compulsion to display himself, or to have every aspect of his life observed and documented. Nor does it follow that he has made some kind of tacit contractual agreement, where he has waived his privacy rights in exchange for fame....*
>
> *"Those who do wish to enter a quasi-contractual agreement where they exchange the protection of privacy for an increase in their fame should not be prohibited from doing so, but it does not follow from this that everyone that the public might have an interest in … should have their private lives placed at risk of intrusive and invasive acts."*[16]

3.9 To treat an individual merely as something to be talked about, reported or looked at against his or her wishes is contrary to the public interest in individual autonomy, and to the ethical imperative to treat individuals as an "end" and not simply as a "means".

3.10 It is right to acknowledge however that the nature of the public interest in privacy and our understanding of the implications of choices made by individuals about their privacy are matters which lie at the heart of a number of fast-moving contemporary social changes, about which a clear and stable consensus may not yet have been reached. The explosion in use of social media, particularly by the young, has not yet been matched by a settled understanding of the implications of the choices that people make in placing private material online; many do so unwisely or naively with disproportionate exposure to exploitation of such material and the compromising of their privacy.

3.11 At the same time, the nature of commercial 'celebrity culture' continues to be pondered even as it evolves with great rapidity; again, there is as yet no settled understanding or consensus about this. A celebrity obviously gives up his or her right to privacy if he or she sells an intimate

[13] See, however, the observations of Dr Manson on the nature of privacy rights in 'public' spaces and the difference between degrees of intensity in the public gaze: pp15-20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf; p8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

[14] To use two of the examples of potentially supervening public interest considerations presently identified in the Editors' Code of Practice

[15] p9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

[16] p12, *ibid*

photograph to a newspaper. How far this goes is another question. The right is clearly ceded as regards the transaction in question, but does that give the newspaper or even the press in general, a blank cheque for all purposes or for all time? Put in those terms, the answer, in my view, is clearly not. But around the margins there may be issues of fact and degree.

3.12 In any event, while the precise limits of the public interest in this area may be being developed and contested, the underlying basics must not be lost sight of. As Professor Megone put it:[17]

> *"Journalists and editors need to recognise that both personal privacy and the importance of confidentiality can in part be understood in terms of an agent's ownership of his own information, and the importance of that to the control of his own life. These are matters a free society seeks to protect as part of the public interest – and the press need to be clear that they may well need respecting even when such respect adversely affects journalistic activity"*

3.13 The protection of the "reputation and rights of others" is expressly identified by Article 10(2) of the ECHR as a necessary public interest basis for limiting the expression of others. The right to freedom of expression must therefore be accommodated with other fundamental liberties. Thus, when confronted with conflicting claims under two protected ECHR rights, the courts must undertake a difficult balancing exercise to determine which will prevail. This is the reason why there is no protection for speech (written or oral) which unjustifiably damages a person's reputation or which interferes with a person's "reasonable expectation of privacy".[18]

4. Other public goods

4.1 The relationship between freedom of the press and the public interest in justice is similarly a matter of balance. On the one hand, freedom of expression is integral to the principle of open justice, which encompasses the entitlement of the media to impart and the public to receive information in relation to the process of justice. Therefore, any restriction on the ability of the press to report proceedings openly must be expressly limited.[19] On the other hand, reporting restrictions may be necessary if the right of an individual to a fair trial would be prejudiced by publication of information about the proceedings: this is no more than the protect the integrity of the justice system and a person's right to a fair trial.

4.2 Even more fundamental are the limits on freedom of expression necessary to protect a democratic society in which freedom of expression is able to flourish. Thus, first listed in the restrictions on freedom of expression permitted by Article 10(2) are those "necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime". These are straightforward concepts which speak for themselves.

[17] p4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[18] Appendix 4
[19] *Binyam Mohammed v Secretary of State for Foreign and Commonwealth Affairs* [2010] EWCA Civ 65 [40]-[41] *; In re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697, [63]-[64]

CHAPTER 4
THE RESPONSIBILITIES OF THE PRESS

1. Context

1.1 The idea that freedom of expression comes with responsibilities is both obvious and entirely familiar. Article 10(2) of the ECHR provides that the right to freedom of expression "*carries with it duties and responsibilities*". In part, this is because, as discussed in Chapter 3, unrestricted speech has the power to harm competing public interests, including the free speech of others. It is also because the press is an institution of considerable power and the exercise of power in a democratic context brings with it proportionate responsibility for the consequences of choices to do so. Moreover, where power is exercised purportedly in the public interest, then there is a particularly acute responsibility to account for the exercise of that power to the public in whose name it is exercised.

2. Press power and the impact on society

2.1 In order to understand the responsibilities incumbent on the press, it is necessary to consider the nature of press power and the potential it has to impact on society. One obvious aspect of the power wielded by the press is its capacity for mass communication:[1]

> *"Mass communication has powers that local, individual, communication does not. Mass communication allows others to criticize, to inform of the failings, crimes, and deceit of the powerful. Mass communication allows agents to assemble, to unite, to form dissident movements, to organize and oppose those in power."*

2.2 It is on account of this capacity of the press to communicate to large audiences, that the idea of the "megaphone effect" of the press was invoked with such frequency throughout the Inquiry. The megaphone effect of the press has a tremendous capacity to serve the public interest. It is because of the ability of the press to reach a wide audience that it is taken seriously by, and therefore able to stand up to, other institutions of power.[2]

> *"[O]ne aspect of the public interest in a free press is that it provides an essential set of checks and balances on power (and, more importantly, the abuse of power): in all too many parts of the world the state routinely tortures and murders its citizens, though reporting of such facts is strictly prohibited. This can help a vicious regime retain an air of legitimacy, or, in some cases, even to present the air of democratic legitimacy (there are putative democracies which have serious restrictions on press freedom). Similarly, the there is a public interest in learning of dangers and risks, even where others may wish to conceal them. A powerful industrialist might wish to conceal the fact that his factories are polluting the water supply, or that his company's product is carcinogenic. A free press, free of the censorship and restrictions imposed by the powerful, thus serves the public interest by its investigative and communicative roles."*

2.3 This power of the press to reach a wide audience, whilst having the capacity to do great good, carries certain risks:[3]

[1] p2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[2] *ibid*
[3] p3, *ibid*

> *"Communication is a relational process, taking place between speaker (or writer) and audiences. A powerful media, even a powerful free media, can effectively block dissenting voices".*

Mass communication by the press can block dissenting voices in a number of ways. One is by preventing access to audiences. Access to audiences is integral to the ability of individuals to experience the communicative aspects of free speech:[4]

> *"Expression can be done by a lone individual, but communication is essentially relational, and involves others. Individual speakers have an interest in being accessible to audiences. Communication can be stifled, not by blocking speech, but by blocking access to audiences. For example, suppose a cunning King permits dissenting political views to be expressed, but only at the bottom of a deep mine shaft. Though here, strictly speaking, one has an opportunity to express one's views, one is not free to have them heard. Not only do we have an interest in there being an audience for our speech, we also have an interest in our being the audience to others' speech."*

2.4 Clearly, if a particular individual or group of individuals are denied access to the press to promote their views, their ability to reach audiences is diminished:[5]

> *"Writers of such columns in the press can seek to mitigate these criticisms by endeavouring to articulate what they take to be important or widespread lines of thought. But this still points to the fact that in terms of self-expression the press only allows a select few to promulgate their views. Although absence of censorship allows others to set up press outlets, in principle the resources required to do this effectively limit this opportunity. This argument could be taken further and it could be said that the public interest in freedom of expression can even be adversely affected by a free press, if certain other conditions hold such that some voices get much more prominence than others. In those conditions the power of the press as a medium of expression may lead to certain views dominating the public sphere and other views being squeezed out."*

2.5 One consequence is that views expressed through the press megaphone are more likely to predominate: *"Whether something's liable to be noticed, what effects it's liable to have on other people's perceptions must be very relevant",*[6] *"Financial power ensures that one sort of idea is more likely to be promoted in the newspapers people read than another sort of idea".*[7]

2.6 The tendency of views expressed in the press to prevail can be also be explained by a second, and related, facet of press power. There is no doubt that the press is considered a voice of authority in society. In many quarters, it has rightly earned a reputation for accurate and vigorous reporting, independence and holding power to account. It is because of the authoritative quality of the press, combined with its access to mass audiences, that

[4] p6, *ibid*
[5] p2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[6] p32, lines 16-21, Professor John Tasioulas, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[7] p24, lines 15-18, Professor Jennifer Hornsby, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf

communication by the press, as an institution of considerable power, has a significant impact on society. It can set the news agenda, shape culture and change perceptions:[8] [9] [10]

> *"There is a great deal of difference between 'a bloke down the pub' claiming, to his fellow drinkers, that the MMR vaccine causes autism, and a broadsheet newspaper doing the same thing. Media institutions can shape public opinion, they can entrench, or change, public opinion in a way that individual speakers cannot."*

2.7 The existence of a press with such significant power is a potent antidote to the dominance of big business and government; but it also has potential to do great harm if not exercised with responsibility:[11]

> *"If someone in a position of moral or political authority makes a statement about race or about gender, it isn't simply that there will be a wider audience for that but also that the opinion comes with a greater degree of – with an imprimatur, or seems to, and that itself is problematic. That's why positions of responsibility in society are very difficult, because you have to take a lot of care about what you say because people pay attention to it."*

2.8 The press has the power to cultivate stereotypes, not just as a matter of the megaphone effect, but by cumulative effect also:[12]

> *"there is an asymmetry between the individual case and the case of the press. One of the reasons we tolerate the fairly broad-ranging right of individual expression is that individuals' remarks are typically limited in their impact… But …this megaphone effect is a kind of culture-shaping effect … It exerts much greater influence and power on people, how they're perceived by others, creating stereotypes or creating certain assumptions in society."* [13]
>
> *"It means that publications in the press are peculiarly vulnerable to promoting stereotypes, because it's – what's heard is widely heard. If it's assumed that a member of a group is portrayed as a typical member of that group, then attitudes at large towards the group will be affected."* [14]

3. Communication: truth, comment and 'assessability'

3.1 The role of a free press as an agency of free communication (rather than of self-expression), of constituting a public forum of views and ideas, is an important one to focus on. The term 'media' implies both a conduit or market-place role (the means by which material is communicated) and also the freedoms of the press to comment, in a partisan way, on the

[8] p17, lines 13-24, Professor Hornsby, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf, quoted at [x] above
[9] p19, lines 10-25, Professor Tasioulas, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[10] p7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[11] p33, lines 3-12, Professor Susan Mendus, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[12] p52, lines 3-12, Professor Jennifer Hornsby, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[13] p19, lines 10-21, Professor John Tasioulas, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[14] p17, lines 13-24, Professor Hornsby, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf

material that they publish (the message is editorially 'mediated'). The vocal power and reach of the press, and its freedoms to mediate, are what make it a mighty force.

3.2 A free press performs its communication role in a democracy in a myriad ways, day in and day out. It is by no means only through political journalism and holding authority to account that the press proves its value in this way (although those are very important aspects in their own right). All forms of journalistic content potentially perform this vital role. Debate and comment, information and speculation, news and opinion, education and entertainment, all play their part. It is exactly this multifunctional and multifaceted package of content, produced with such verve and to deadline week in, week out, which makes the press such a marvel, such a matter of pride.

3.3 The different functions of the press, though, have different implications. We care about them in different ways and for different reasons. We apply different standards to them. So, for example, we might say we wanted the TV listings and football results to be 'accurate'; the editorial to be 'opinionated' (perhaps to confirm or challenge, or help us form, our own opinions); the sports reporting to be 'lively' (and reasonably fair), the travel writing to be inspiring but not misleading, the crossword to be challenging but not impossible, and so on. And above all, we want it all to be accessible and a good read, as we all think of that in our different ways. This communication function is, in other words, an extremely complex and sophisticated exchange between editor and reader.

3.4 Nowhere is that more the case than in the role of the media in conveying news. It is here that both the demands and expectations of readers are particularly complex. We know that some news is more important than others, but we vary in our judgments about that. We want to know the facts, but we also want to know how people experienced them and what people think about them. We want the spirit as well as the letter of events – the emotion, the meaning, the drama, the implications. We have an instinct that different kinds of news should be communicated in different ways (a politician's mistake, an outbreak of disease, a missing child, a disappointing new film, another rape in the town), but we will not find it easy to articulate those differences with any great precision.

3.5 We also know about the editorial inflection, the world-view, of the newspaper we read. For some, if not most, that is very much part of why it is their newspaper of choice. That does not mean we always agree with it. But we are familiar with it, and that familiarity is at some level part of the attraction. Newspaper readership is remarkably loyal. We want the news in the press to be true and accurate; we do not want to be misled or lied to. But we want, or are content for, it to be presented in a partisan way. We want a measure of balance and context, but we also want a perspective. We want the truth, but we understand that there are many versions of the truth, and incompleteness in all versions. Notwithstanding the emphasis put by both the industry and its critics on the difference between 'fact' and 'comment' these are by no means distinct and watertight categories. The very act of describing a fact is to comment on it. All forms of recording are selective.

3.6 What authentic communication between editor and reader needs in these circumstances is no more, but no less, than a measure of shared understanding of what is going on in that act of communication. In most cases, that is easy and obvious. There will be a common expectation of complete accuracy in the TV listings; mistakes will irritate and inconvenience readers and ultimately drive them to look elsewhere. A newspaper urging readers to support a particular party in the run-up to a General Election can be expected to be more sympathetic to that party's outlook and objectives than another's, and to reflect that sympathy editorially elsewhere in its pages.

3.7 But in some cases, it will be neither easy nor obvious for readers to orientate themselves in relation to material they read in the press. Some important examples were put before the Inquiry in the course of the evidence. They included, for example:

(a) science and health reporting, where most non-specialist readers cannot easily judge for themselves what experts are telling us;

(b) consumer journalism such as property or travel reporting and restaurant reviewing, where we might not know whether a journalist has been an objective 'mystery shopper' or whether he or she has in fact been treated to holidays or meals by the organisations being reviewed, or owns a property in the same square as the house being praised in the newspaper;

(c) 'PR' journalism, in which what is effectively commercially-produced advertising material is reproduced as editorial without mediation at all;

(d) the reporting of identity issues (gender, ethnicity, sexual orientation, religion, age, disability, appearance and so on) where the fact and manner of bringing such issues into coverage has a potential to implant a relevance for them in readers which they have not chosen.

3.8 In all these cases, that is to say the inaccessible expertise, the conflicts of interest, the subliminal, or the simply misleadingly incomplete, the reader cannot straightforwardly make up his or her mind about what the newspaper is saying. Professor Baroness Onora O'Neill, who gave the Inquiry her views as a leading expert in the field of public thinking on the role of the media, describes the need for readers to be able to 'orientate' themselves in relation to what they read as "assessability". Mostly, readers know where they stand with what the papers say, and can make their own minds up about it. But not always. Where they cannot do so unaided, more is needed for the press to fulfil its proper role.

3.9 This point about the importance of authentic communication by the press, which respects the needs of readers to be able to make their own minds up about what they are reading, was made to the Inquiry in a number of ways. Examples include:

> *"Those who aim to communicate must aspire to standards which are inapplicable for those who aim only to express their own views."*[15]
>
> *"The public interest in a free press is not confined to the public interest in a press that reports matters of fact accurately and observes the disciplines of truth seeking needed for various sorts of inquiry. It also includes an interest in having a press that communicates other sorts of content – eg music and art, puzzles and stories – that do not make truth claims. Nevertheless, where truth claims are made, there is a particularly strong public interest in standards of media communication that meet the relevant requirements for truth seeking – accuracy about evidence and its limitations; distinctions between different sorts of evidence; the inclusion of necessary qualifications, and many others."*[16]
>
> *"Good public interest journalism enables the public to judge what is being said. There may be cases where one has to hold back on the source of certain information,*

[15] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Susan-Mendus.pdf

[16] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf

but good public interest journalism seeks to make the sources and the evidence as available to the public as is feasible, given certain other constraints."[17]

"I think the default in favour of openness is actually what good journalism does. They try to give the sources where they can. The difficulty about confidential sources is the problem that the reader has in knowing (a) was there any source at all and (b) was it a reliable source?"[18]

"One aspect of the public interest … is the public interest in truthfulness … Here there are two kinds of interest. There is the direct interest that individuals have in not being deceived or misled. …But there is also a second indirect interest in truthfulness, an interest in maintaining a culture of trust. If communication is believed to be untruthful (or inaccurate), then trust in communication may diminish."[19]

"Simply requiring accuracy or truthfulness does not preclude a free press from misleading, distorting, or, in some cases, from covertly serving or promoting vested interests."[20]

"News media are often intermediaries. They play the role of communicating facts that have been discovered, established or claimed by others. The evidence, warrant or other justification for such claims may be lacking, or suspect. The intermediary may not be competent to assess the claim, or have access to the evidence. They may be willing to pass on claims made by other self-interested parties in an uncritical way. …"[21]

"Knowing the source of a story is relevant to how we interpret it. Audiences' reactions to an article on a 'new wonder drug' that 'combats cancer' might be less favourable if they knew that the copy was verbatim from a press release by the company making the 'wonder drug'. Our response to 'advertorials' may (or at least ought to be) different from our response to news stories."[22]

"With regard to truthfulness and other norms of communication, the arguments offered here are not that this or that claim ought to be made but rather, that the appropriate procedures and mechanisms need to be in place to ensure that what is said (whatever it is) is justifiable, assessable and evaluable with regard to its source. … Ensuring …communicative adequacy does not determine or constrain content, except insofar as content is unjustified, misleading and untraceable."[23]

4. Press ethics and the role of a code of ethics

4.1 Press ethics, to which the Inquiry was directed by its Terms of Reference, can be understood at a simple level by reference to the choices available to a free press, where those choices may have consequences for the benefit or harm of others, whether individuals, groups or the public as a whole. These are the choices by which newspapers and journalists can exercise their freedoms so as to fulfil the unique and important role of the press in a democracy or

[17] pp66-67, line 25-6, Professor Baroness Onora O'Neil, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf

[18] pp83-84, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf *ibid*

[19] p10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

[20] *ibid*

[21] p10 *ibid*

[22] pp10-11, pp25-18, *ibid*

[23] p12-13, *ibid*

indeed to undermine it, to promote or restrict public communication and debate, to enhance or harm civil liberties and the autonomy of individuals.

4.2 These are choices which fall to be made within the framework of the law. Compliance with the law (criminal, civil and regulatory) does not necessarily exhaust the ethical choices to be made by a free press, nor does consideration of legal risk and consequence exhaust the responsibilities of a press aiming at journalism in the public interest, which takes into account ethical risks and consequences.

4.3 The choices that a responsible and ethical press will make, then, flow from precisely those aspects of a free press which give it a unique role and privileges in a democracy, and from an awareness of its power to affect the public in general, and individual members of the public, for better or worse. The following are examples.

(a) If a free press in a democracy has a special role in facilitating free communication and in constituting a public forum, then an ethical press will want to comply with good standards of communication. It will want to enable people to recognise and assess the material being provided. Where it provides information, that information will be reasonably intelligible and accurate.

(b) If a free press in a democracy has special privileges to keep its sources secret, then an ethical press will be mindful of the reasons for and effects of that privilege and will exercise it only for those reasons, and bearing in mind those effects. It will want to ensure that the protection of sources is used to enhance the free flow of significant information and especially to protect those seeking to help hold power to account. It will not use it merely to constrain or control sources, nor will it abuse the privilege to mask the weakness or absence of sources or the existence of conflicts of interest, or to hide its own wrongdoing.

(c) If a free press in a democracy has a special place because of its ability to hold power to account, an ethical press will consider itself to have responsibilities to do just that. It will not collude with the powerful at the expense of the public. It will challenge all kinds of sources of power, both public and private. It will be mindful of the power of the press itself, and seek to hold that power to account no less than other sources of power. And it will support others with responsibilities for holding power to account in doing so, including in the case of the media itself.

(d) Further, a free and autonomous press within a democracy will be mindful of the democratic freedoms and autonomies of others. All such freedoms and choices, after all, stem from the same sources of democratic authority and accountability. And all ethical systems have at their core a sense of respect for the individuality and self-determination of others.[24] People are the stock-in-trade of journalism. An ethical press will therefore be especially mindful of the need to ensure that the individuals it deals with, both as sources of information and as the content written about, are treated as subjects and not objects, and both as subjects in their own right and as subjects in context, with families, connections and group identities which may be affected by the treatment of the individual.

4.4 All of this is to re-emphasise that the freedom of the press, even the freedom of the press within the limitations and accountabilities under the law, is not enough by itself to secure the important democratic benefits for which press freedom is a prerequisite. To become an

[24] pp33-34, lines 18-1, Dr Neil Manson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf

authentically free press of the kind valued and privileged in a democracy, the press must also exercise its freedoms effectively for that purpose. It must actively choose that role and live out its implications. That point was made to the Inquiry in many ways; examples include:

> *"The duties or responsibilities of the press follow straightforwardly from the reasons we have for wanting a free press. So if one of the main reasons for wanting a free press is that we be fully informed as citizens, then there are responsibilities on the press to be accurate, honest, open and accountable."* [25]
>
> *"Clearly though, a press which is free in the sense of not being controlled centrally, not censored, will only be meeting a necessary condition for serving its purposes of informing and scrutinising. In order for the press to serve these public interests it will also need to pursue its work with accuracy and rigour, to be concerned for the truth, to seek to avoid bias or serving particular interests, to make wise judgments as to what is worthy of public attention and what not, and perhaps to be courageous in pursuing these goals. (And it may well also be … that in order to serve its purpose the press needs to communicate in ways that are intelligible and assessable)."* [26]
>
> *"Freedom is not licensed, and that's the way in which all these responsibilities bear on how you exercise your freedom. So you have those guiding aims of the media … – holding people accountable and presenting information – serving those roles and then these constraints."* [27]
>
> *"The strategy here has been to focus on the valuable ends that a free press is meant to serve and then to point out (a) that a free press need not secure those ends; (b) that a free press can even stand as an obstacle to the achievement of those ends. This is not to argue in favour of censorship but to point out ways in which a free press can fail to contribute towards the public interest, and, as such, public-interest based justifications will fail to apply."* [28]
>
> *"it is important for good judgment that the press is clear not only on the nature of the purposes it serves in a free and democratic society but on their partial contribution to public interest as a whole and the independent significance of other components of the public interest. … In my view the press itself at present assumes too quickly that freedom of the press (and free expression to the extent that is related to press freedom) is sufficient to guarantee that the press serves its distinctive role in contributing to the public interest. On the one hand this is problematic because press freedom is only a necessary condition for the press to make its distinctive contribution to the public interest. Treating it as a sufficient condition is making the press insensitive to all the other factors that are critical to this – accuracy and rigour, avoidance of partiality, bias, conflict of interest, and the other factors mentioned above. All these must receive appropriate attention. But this is also problematic because assuming that a process (a free press) will achieve a beneficial goal allows journalists and editors to fail to address carefully the question of what exactly that distinctive purpose is, or how it relates to other parts of the public interest."* [29]

[25] pp36-37, lines 22-2, Professor Sue Mendus, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[26] p2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[27] p104, lines 6-12, Professor Christopher Megone, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[28] p6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[29] p5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf

> *"While it is important to protect genuine investigative journalism into matters of public interest … it is also important to distinguish the genuine article from purported investigative journalism that ignores or flouts the relevant disciplines of truth seeking, or is not directed at any matters of public interest. Pseudo public interest journalism discredits the genuine article, is not assessable by its audiences and damages the reputation of the media."* [30]
>
> *"The moral justification for a media organisation's rights of expression and communication … turns on the role of media organisations' rights in constituting a public sphere that gives appropriate status and respect to individual people, and on the related instrumental grounds [of constraining power and enabling democratic deliberation and decision-making]."* [31]
>
> *"The public interest is not just in a free but a diverse press, and also – given the press's power and its central role within the public sphere of democratic policy-making – an accountable press too."* [32]
>
> *"The fact that the press has certain investigative powers doesn't mean automatically that it has carte blanche to do whatever it wishes to find things out."* [33]
>
> *"Freedom and responsibility are not incompatible notions. … Principally behind the notion of freedom in my account is freedom from censorship, from authorities coming in and telling the press what they may or may not say with respect to output, but they may nonetheless have a number of responsibilities they need to respect in producing those outputs. I think that's very important. No, I don't see them as inconsistent."* [34]

4.5 The point was also made more narrowly, to underline that the freedom of the press, and the value inherent in its freedom to publish, is the beginning and not the end of the questions about the public interest:

> *"The fact that freedom of expression is in the public interest – and it clearly is – it doesn't follow that every instance of expression is in the public interest."* [35]
>
> *"I think a kind of slippage can happen in which this freedom of expression is seen to be the primary public interest the public has in the press, and then that can then seem as liable to trump many of the other side constraints. … So, and if one's a journalist and one values being allowed to write what one thinks is important, … there's a kind of, as I say, a natural slippage in which this freedom of expression can be seen to be the dominating aspect of one's code."* [36]

4.6 I set these thoughts out to underline, and indeed to risk labouring, the point that ethical standards are not inconsistent with a free press but necessary for it fully to realise the value of its freedom. Ethical standards and behaviour are about valuing the freedom of the press for what it is, and seeking to promote all that is good about that freedom, and not just about

[30] p5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf
[31] p2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf
[32] p3, *ibid*
[33] p7, lines 6-9, Dr Neil Manson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf
[34] p102, lines 12-21, Professor Christopher Megone, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[35] p93, lines 3-5, Dr Rowan Cruft, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf
[36] p111, lines 12-22, Professor Christpher Megone, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf

avoiding the shoddy and the disreputable (far less just the unlawful). A free press certainly has choices which it can exercise in ways which undermine the premises of its freedom and work contrary to the public interest. An ethical press will not choose to exercise its freedoms in that way.

4.7 With freedom, rights and privilege therefore come choices, and with choices, responsibilities as to how they are exercised and with what consequences. With choices which affect the public sphere, come also public accountabilities.

4.8 The private interests of the press industry, or of organisations within it, can be expected to be strongly aligned with the public interest for just this reason: it is what the free press in a democracy is all about. But there will also be powerful motivations of a contrary nature to be overcome by an ethical press. An ethical approach requires a culture of care and awareness, but deadlines are short and time is money. A diverse and plural press will also be a highly competitive one, contesting among its titles for readership and reputation. And the pressures of public demand, real or perceived, are by no means a reliable guide to the public interest.

4.9 This latter point is a well-worn one: the fundamental difference between the public interest and what interests the public. It is nevertheless a point which it is important to stress once again, if only because of the seeming indefatigability of the argument in some quarters that whatever sells newspapers must *ipso facto* be a good thing, since newspapers are a good thing in themselves. The argument is sometimes put more subtly: that newspapers should simply meet the demands and expectations they perceive their readers to have or be capable of having in a non-judgmental way, and that the flourishing of newspapers by such means directly supports their ability to fulfil the higher purposes and freedoms of the press. But this is simply a further restatement of the error that because it is good for the press both to flourish and to be free to make choices, its exercise of those choices in its own perceived interests will itself necessarily be good. The fallacy of this line of reasoning was emphasised to the Inquiry in a number of ways:

> *"The key point here is that the fact that people have a (vicious) curiosity clearly does not entail a right to know those things, nor does it automatically excuse those who breach other norms in the service of that curiosity."* [37]
>
> *"There is no ethical duty at all to provide audiences with whatever they want, even if there are good economic reasons for doing so."* [38]
>
> *"The 'we are only providing people with what they want' may appear to have a whiff of nobility about it, but where people's wants are vicious, it is little more than an admission of lack of moral sensitivity."* [39]
>
> *"[The idea of the public's 'right to know'] is puzzling and problematic for many reasons. First, it is not clear what the scope of the right is (right to know what?). Second, the very idea of a right to know is problematic. If it is a negative claim right (no one is permitted to stop me from knowing) then this does not entail any correlative right of publication or communication. But a positive right to know (others are obliged to ensure that I know) is not feasible: I might not believe them, even if they tell me the truth. Worst still, it doesn't tell us anything at all about whom the obligation to inform might fall upon."* [40]

[37] p9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[38] p15, *ibid*
[39] p19, *ibid*
[40] p16, *ibid*

4.10 The commercial interests of the press in supplying or stimulating demands for particular kinds of content are not therefore either identical to, or even necessarily aligned with, the public interest in a free press. More than that, in an industry with people as its stock in trade, and assuming an evident and growing public appetite for information about other people which is contrary to the public interest because of the way in which it affects the personal autonomy or individual rights of those people, the commercial interests of the press have a clear potential to act contrary to the public interest.

4.11 There are other respects in which the commercial interests of the press have a clear potential to tend contrary to the public interest. They include the instances discussed above in which the private interests of individual journalists, editors or proprietors may be engaged in editorial content in ways which may not be apparent to their readership.[41] They also include incentives to anti-competitive business practices and cartel behaviour, that is to say practices which may benefit one organisation at the expense of the diversity of the sector as a whole, or which may seek to unite the industry against healthy competitive disciplines and external scrutiny capable of benefiting readers and the public as a whole.

4.12 There was some emphasis throughout the Inquiry on the place of ethical codes in supporting an ethical press. I put the matter that way with care. No code of ethics can make an unethical organisation or sector an ethical one. An unethical organisation will simply find ways round or disregard any code it purports to apply to itself when motivated to do so. An ethical organisation, on the other hand, will be helped and guided by a code of ethics, but that will be on the basis that the code is simply a clear encapsulation of the values and practices of the organisation in any event.

4.13 This is a very fundamental issue about culture, practices and ethics, and the way they relate to each other. Professor Christopher Megone, who has worked extensively with industry bodies (mainly in finance and engineering) on issues of workplace ethics, put the matter this way to the Inquiry:

> *"Of course an ethical media organisation needs to have an ethical code, one which reflects the distinctive mission of the organisation as part of the press (and thus is aware of the key role of the press regarding the public interest), and one which is sensitive to the particular ethical challenges that may arise for editors, journalists, etc in pursuit of their mission.*
>
> *"However, even more critical to the existence of an ethical media organisation is culture. … If there is an unhealthy culture then an organisation can have an ethical code but it will have little influence. Members of the organisation can undergo 'ethics training' but it will have little effect. As soon as they return from the training to their desk or office, the pervasive culture will dominate their decision-making. The culture brings to bear all sorts of 'accepted norms' which an afternoon's training will be relatively powerless to affect. (I do not, of course, think that good 'ethics training' is pointless, but simply that its effectiveness depends on whether, or to what extent, other factors are in place in the organisation.) …*
>
> *"… there are a number of critical factors that could be expected to bear on ethical culture in a media organisation. First, tone from the top – leadership – is of tremendous importance. The role of owners and editors here will be crucial. Certainly the organisation needs to have its ethical code, but that code needs to be fully understood and endorsed by its owners and editors, and these people need to live*

[41] pp71-72, lines 20-8, Professor Baroness O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf

out that code day in and day out. This is a decisive factor in that code having meaning for all who work in the organisation. But their living it out means thinking about how they can convey the code through their practice right across the organisation, how they interact with employees right across the organisation in a way that makes it resonant for them. …

"Secondly, an ethical organisation needs to have an open and honest culture in which it is possible for members of the organisation to raise their concerns about practices and to discuss them with colleagues and senior staff. … [S]taff need to feel confident that if they perceive unsatisfactory practices to be developing, or face a challenging situation, they can raise the matter with colleagues or senior staff. And they need to be confident that they can do so, and have a proper discussion, without fear of mockery or retribution. 'Accepted norms' need to be open to challenge. …

"Amongst other things, developing an open culture in a press/media organisation will require sensitivity to the particular kinds of pressure that journalists and other employees are bound to be under."

4.14 Against this background, an operative code of ethics therefore would have a number of potential functions.

(a) It would serve as a reminder of the special importance and roles, the freedoms and privileges, the power and responsibilities of the press. It would, in other words, provide a full context for the choices which fall to be made in practice so that they can be made in accordance with the principles to be derived from this context. It would, in short, explain what ethical (or, as it is sometimes described, 'public interest') journalism is.

(b) It would help journalists to understand the circumstances in which they are called upon to make ethical decisions. It would help them to make the right choices in practice. It would do this not as a matter of rigid and disconnected prescriptions and prohibitions, but by promoting "*a stable disposition to act in certain ways for the right reasons*".[42]

(c) It would recognise and explain the circumstances in which the temptations and motivations to act unethically (including commercial motivations) may be especially strong, and why they need to be resisted, in order to change the incentive structure in such cases.[43]

(d) It would seek to provide clarity, and would focus on practical applicability to everyday decision-making.

(e) It would not expect to stand alone. It would take its place in a context of ethical culture, sources of advice and guidance both generally and at the particular levels of training, reinforcement, management and feedback.

(f) It would be authoritative and respected. It would have consequences in terms of how individuals and organisations are perceived, in terms of rewards and sanctions.

4.15 The Inquiry asked a number of its witnesses specifically, and through its website the public more generally, what would be the distinguishing features of the culture and practices of a media industry, or any organisation which was a part of that industry, which would make it a recognisably 'ethical' one. I was particularly interested to hear in response about Professor

[42] p13, Dr Neil Manson,http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf

[43] p61-62, Professor Sue Mendus,http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf pg 61, line 17 - pg 62, line 9

Baroness O'Neill's suggested 'six principles of openness'[44] for identifying ethical journalism which seem to me to have much to recommend them:[45]

(a) openness about payments from others

(b) openness about payments to others

(c) openness about the interests (financial or otherwise) of owners, editors, programme-makers and journalists

(d) openness about errors

(e) openness about (most) sources, with an adequately drawn test of the public interest to allow sources to be kept secret, for specific reasons and in particular situations

(f) openness about comments from members of the public.

4.16 It is also worth setting out extracts from some of the answers to this question which appear to me to be particularly illuminative.

> *"I do not mean a media industry driven by ethical goals in the way that a charity like Oxfam is. I mean, rather, a media industry whose members and whose regulatory framework, while driven by a range of diverse goals that are not necessarily 'ethical' in a narrow sense, are nonetheless deeply sensitive to the industry's pivotal role in the liberal public sphere … A free press within an ethical media industry in this sense would have the following features, among others:*
>
> – *a sense of journalism as a profession with its own aims and values, including respect for the truth, respect for those about whom the press writes, respect for readers;*
>
> – *poor practices (unethical, illegal, or contrary to the reasons supporting press freedom) are regarded as shameful and their practitioners are ashamed of them;- whistle-blowers are supported;*
>
> – *journalists, editors and proprietors grasp the complexity of the moral role of the press (as, perhaps, politicians since the expenses scandal grasp the moral complexity of their own role);*
>
> – *the wider public is willing to pay the comparatively high costs (e.g. of ethical investigative methods) to support a press that upholds a liberal public sphere.[46]" In my view media organisations are ethical if they genuinely try to communicate in ways that enable intended audiences to understand and to assess what they publish, while respecting the legitimate claims of those on whom they comment and of those affected by their reporting.*
>
> *These are demanding aims. To meet them the media need not only to refrain from unlawful speech acts (threatening, bribing, defaming, breaches of data protection, breaches of confidentiality – and many others) but to meet adequate ethical and epistemic standards in journalistic, editorial and business practice."*[47]

[44] pp81-87, lines 14-18, Professor Baroness O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-16-July-2012.pdf; p11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf

[45] p11, Professor Baroness O'Neill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf

[46] p4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf

[47] p6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf

"1. There is a need for an aspirational code, not simply a list of prohibitions against failings which those in the media fall into.

2. *Such a code needs to be presented in the context of the specific critical contribution that a free press can make to the public interest...*

3. *The code could then be developed in terms of the duties to the key parties with whom the press/media interact in ethically relevant ways.*

4. *A code by itself is not worth the paper it is written on unless it is a lived code. To make a code a lived code, media organisations need to attend to the critical factors that can bring about an ethical organisation, or promote integrity in an organisation. These factors include tone from the top (or leadership), an open and honest culture, and so on. …*

5. *Part of developing such an ethically reflective organisation might be to introduce governance reports which press/media would produce annually, writing such reports in light of the requirements of the code. The reports might reflect both on the ethical culture of the organisation and on the organisation's contribution to the public interest. Any such governance reporting would need to avoid either being overburdensome or being a mere ritual in order to be both effective and meaningful…"* [48]

"In order for a code of conduct to be properly effective it has to be, not only coherent and justified in terms of its normative content, but such that there is something about the social, institutional, legal or practical context that motivates and secures compliance." [49]

4.17 I conclude this analysis by recognising the risks that this Inquiry must confront. The Editor-in-Chief of the Mail titles, Paul Dacre, identified these risks, and the challenges the Inquiry faces, in this way:[50]

"...I would argue that Britain's commercially viable free press, because it's in hock to nobody, is the only real free media in this country. Over-regulate that press, and you put democracy itself in peril."

I have always been keenly aware of the dangers of going too far; and I have been continually reminded as the Inquiry has progressed. In short, it has not been difficult for me to remain alive to this critical risk. I go further. The public interest in a press which is free, which is viable, and which is diverse cannot be too highly valued. Without investigative journalism, and the ability of the press to scour hidden places, the domain of the powerful, for potential wrongdoing, our democracy would be severely impoverished. Nothing I shall recommend will fail to hold to these principles.

[48] p13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf
[49] p15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Neil-Manson.pdf
[50] Paul Dacre, The future for self regulation?, 12 October 2012, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/RPC_DOCS1-12374597-v1-PAUL_DACRE_S_SEMINAR_SPEECH.pdf

PART C

THE PRESS

CHAPTER 1
CONTEXT

1. Introduction

1.1 The Inquiry is required to examine the culture, practices and ethics of the press but, in order to do that, it is helpful to set out the commercial context within which the press operates. This Part of the Report looks at the market for news provision and some of the ways in which it is changing as well as the newspaper market more generally. This Chapter looks briefly at the economics of the newspaper market and where the challenges are coming from.

1.2 Chapter 2 looks at the main players in the newspaper industry, including a brief review of the history of each where relevant, the financial and commercial performance of each and the governance and compliance processes in place at each title. This is all important background in order to understand the differences, if any, between the cultures and practices of individual titles and publishers. The focus of Chapter 2 is on the national press, and within that on those with the largest circulation and market share. The Chapter also looks briefly at the markets for regional and local newspapers and for magazines, drawing, in particular, on evidence that the Inquiry has heard from specific titles. There is no attempt at a detailed analysis of these markets; this is not needed for the subsequent consideration of the issues at the heart of this inquiry.

1.3 Chapter 3 looks at other, non-print, news providers. This includes both the economic models and market pressures, but also the regulatory environment within which they operate. Again, this is important context for subsequent analysis.

1.4 Finally, Chapter 4 looks at the way in which competition law specifically applies to the press and the media, providing a brief history of media ownership and plurality provisions and how they currently apply.

2. Commercial pressures on the press

2.1 It is undeniable that the market in which newspapers compete has changed substantially over recent decades and continues to change rapidly. The rise of digital broadcasting and the internet mean that UK citizens now have a much broader range of news and media providers offering news coverage, current affairs and entertainment than ever before; and newspapers have to compete in this market both for advertising revenue and for readership.

2.2 The result is that newspapers have a significantly smaller reach than they did 20 years ago, to say nothing of 50 years ago, and are operating in a media environment in which consumers and citizens have very different expectations of standards from different types of media. Whilst newspapers are losing their share of the market, the costs of producing the news are not reducing significantly and much of the competition on the internet comes from organisations which are not, themselves, the originators of news content.

2.3 These changes mean that the commercial environment in which the press is operating is quite different to that in which the current self-regulatory regime was first established.

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Newspaper economics

2.4 The media landscape in 2012 is very different from that which Sir David Calcutt QC looked at when he made his recommendations that led to the establishment of the PCC in 1990. Then, the internet did not exist as a consumer medium, UK citizens had access to only four terrestrial TV channels, BBC1, BBC2, ITV and Channel 4, and satellite broadcasting had only just begun and was accessed by only a tiny minority of families. On the radio, citizens could listen to the (then) four BBC national radio stations (only joined midway through 1990 by Radio 5), local BBC radio and 69 commercial local radio stations. This meant that, in reality, most people had a choice of only two different radio providers.

2.5 National newspaper circulation stood at over 15 million for the national daily newspapers and nearly 18 million for the Sunday papers.[1] Regional and local press circulation (for paid-for papers) was nearly 17 million in total. The UK citizen therefore had limited sources of news and was heavily dependent on newspapers; broadcast media was limited to a very narrow range of broadcasters, with TV broadcasters, at least, having a public service remit in respect of news.

2.6 The picture now is very different. The citizen today has a very wide range of sources of national, international and local news and comment, in a world of ever growing media complexity. Virtually every UK household has digital TV, providing a profusion of channels, including four free-to-view 24 hour news channels and others available with subscription. There are now 21 national radio channels, and 344 local radio stations,[2] all of which will carry some form of news.

2.7 Over 70% of adults in the UK have access to broadband.[3] All media organisations, whether newspapers, broadcasters, or others now have some form of established internet presence, and the internet has opened up access to UK citizens to news coverage from across the world; some of this is from professional media organisations, but it also includes 'citizen journalism' from individuals sharing their experience of, and views on, events that occur. Nearly a quarter of all the time that adults spend engaging with media is spent on the internet.[4]

2.8 Against this growing digital activity, newspaper circulation has fallen significantly, as shown by the table below. The national daily newspaper circulation stood at 9.45 million in September 2011.[5] As Claire Enders explained at one of the Inquiry seminars in October 2011, the declines since 1990 and the Calcutt report have been biggest in the *popular national press* and the *regional press*, both falling by over 40%[6] while the *quality national press* have seen falls of only 25% over that timescale. However, the decline has accelerated since 2005;[7] that period has seen the whole of the 25% post-Calcutt fall in circulation of the *quality nationals*, while the *popular nationals* have fallen only by 14% in that time scale. Whilst other media sectors are now showing recovery from the recession, that is not the case with newspapers and magazines.[8]

[1] http://www.competition-commission.org.uk/rep_pub/reports/2000/fulltext/442a4.2.pdf - cited as being cc from data in Advertising Statistics Yearbook 1999
[2] http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr11/UK_Doc_Section_1.pdf
[3] *ibid*
[4] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf
[5] Guardian website based on ABC figure http://www.guardian.co.uk/media/table/2011/oct/14/abcs-national-newspapers
[6] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf
[7] *ibid*
[8] *ibid*

2.9 This table shows circulation for both national daily and Sunday titles in September 2002 and September 2012. Although the speed of circulation decline differs from title to title there is an evident trend here.

Table C1.1: National newspaper circulation 2002 - 2012

Title	Circulation Sept 2002	Circulation Sept 2012	% change
The Sun	3,733,052	2,445,361	- 34.49
Daily Mirror	2,130,859	1,072,687	- 49.66
Daily Star	855,880	586,743	- 31.45
Daily Record	540,886	272,799	- 49.56
Daily Mail	2,387,149	1,884,815	- 21.04
The Express	942,842	543,912	- 42.31
Daily Telegraph	934,527	560,398	- 40.03
Times	640,424	406,711	- 36.49
FT	417,911	287,895	- 31.11
Guardian	389,894	204,937	- 47.44
Independent	187,042	81,245	- 56.56
News of the World	4,067,205		n/a
Sun on Sunday		2,082,755	n/a
Sunday Mirror	1,804,334	1,087,940	- 39.70
People	1,301,799	455,973	- 64.97
Daily Star Sunday	719,308	407,239	- 43.38
Sunday Mail	656,921	310,135	- 52.79
Mail on Sunday	2,306,911	1,758,720	- 23.76
Sunday Express	910,177	493,586	- 45.77
Sunday Times	1,387,182	904,548	- 34.79
Sunday Telegraph	744,023	446,526	- 39.98
Observer	432,938	238,282	- 44.96
Independent on Sunday	186,188	120,340	- 35.37

Source: Audit Bureau of Circulations[9]

Newspaper revenues

2.10 Newspaper and magazine revenues come from three sources: copy sales revenue, display advertising and classified advertising. In the national press the main revenue streams are overwhelmingly sales revenue and display advertising: 52.6% from copy sales in quality press, 58.2% in popular press and only 27% in the regional press, where classified advertising makes

[9] 2002 daily figures from http://media.guardian.co.uk/presspublishing/tables/0,,811748,00.html;
2002 Sunday figures from http://media.guardian.co.uk/presspublishing/tables/0,,811755,00.html;
2012 figures from http://www.pressgazette.co.uk/abcs-three-national-dailies-increase-circulation-september

up 41.4% of revenue. Both copy sales and display advertising revenue streams are under pressure.

2.11 Competition for display advertising spend is marked, with much advertising moving online. The Online Advertising Bureau stated that UK digital advertising expenditure grew 2.6% to £2.59 billion in the first half of 2012.[10] In addition, advertising spend has historically declined when growth in the economy is slow, adding further pressures on newspaper revenues. More dramatically, print classified advertising has been particularly hard hit by the move to online. Online models have proved highly successful with buyers and sellers.

2.12 Thus, revenues accrued through recruitment advertising have reduced from £150 million per year to £20 million per year, and there has been a similar decline in property advertising.[11] Recruiters simply do not need to place print advertisements any more. Further, public sector advertising, once a source of considerable revenue for both regional and national press, has also largely moved online with significant implications for the revenues of newspaper businesses.[12] The editors of Scottish, Welsh and Northern Irish newspapers who have given evidence said that advertising revenues were particularly important for the smaller circulation papers, and emphasised the impact of the loss of advertising from the public sector for those smaller papers.[13]

2.13 All of this means that newspapers face significant economic pressures. However, whilst newspapers revenues have fallen for most publishing groups in the last five years, the different ownership and operation structures within the industry mean that the impact of these pressures is different.

2.14 Table C1.2 below shows the revenues of major newspaper groups in 2012 and the change from 2005 to 2012.

[10] PWC adspend study, http://www.iabuk.net/research/library/2012-h1-digital-adspend-results
[11] pp83-84, lines 11-3, Sly Bailey, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[12] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Spencer-Feeney.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mike-Gilson.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-McLellan.pdf; http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Jonathan-Russell.pdf
[13] pp99-100, Spencer Feeney, Mike Gilson, John McLellan and Jonathan Russell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf

Table C1.2: Newspaper revenues

Publisher newspaper division	FY 2010 Revenues (£m)	2005-10 change in revenues (%)
National newspapers		
News International* (News Corporation)	1,047	-2%
Associated (DMGT)	850	-3%
Trinity Mirror national division	430	-14%
FT Group (Pearson)**	403	21%
Telegraph Media Group	324	0%
Guardian News and Media (GMG)	221	-5%
Express Newspapers (Northern & Shell)	214	-26%
Regional newspapers		
Johnston Press	398	-23%
Trinity Mirror regional division†	331	-48%
Northcliffe (DMGT)	294	-43%
Newsquest (Gannett) ††	344	-53%

Notes:
Unless otherwise stated, 2005-10 change in revenues is not like-for-like
*News International includes News Group Newspapers Ltd and Times Newspapers Ltd
**FT Group 2005-10 change like-for-like: 2005 revenue excl. IDC, reported in 2006 annual report
†TM regional division 2005-10 change like-for-like: 2010 revenues excl. GMG Regional Media
††Newsquest revenues converted to sterling using exchange rate stated in annual report
[Source: Enders Analysis based on company reports]

2.15 Certainly there has been no structural like-for-like shift in advertising revenues for newspapers from print to online editions. Although the proportion of advertising online spend has grown at a considerable rate, those revenues are shared by a far greater number of businesses including micro bloggers and other online businesses. Although the internet enables highly personalised targeted advertising, for which advertisers will pay a premium, such revenues derived from advertising directed at specific types of user, so-called targeted or behavioural advertising, have not in any way matched the decline in revenue from traditional sources. It is certainly telling and illustrative of the challenges faced by newspapers that the UK's most successful online newspapers, the MailOnline and the Guardian, have yet to find a way of converting this into substantial or comparable profit.

2.16 This advertising is driven by the availability of vast quantities of data, both personal and more general, that users upload when they make online purchases, or through anonymised tracking of individuals ISPs and other providers when users browse the internet. This model has served the internet industry and users well to a point. However, recent changes to the law restricting the use of cookies and other tracking technologies without the informed consent of the user may further dilute the potential revenues that a newspaper or other business may derive from this source.

2.17 The Inquiry has been told that circulation may be boosted temporarily, through price cutting or promotional campaigns, but these do not generally have a long term impact and circulation levels tend to fall back once the promotional activity is discontinued.[14]

[14] pp7-8, paras 26-27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Vijay-Vaghela.pdf

Impact of pressures on business models

2.18 The Inquiry has heard different interpretations of the impact of these economic pressures on newspaper business models. It is common ground that falling revenues and the increased need to produce copy 24 hours a day has resulted in fewer journalists having to do more work.

2.19 Editors have argued that the financial levels affect staffing levels but that this simply means that journalists work harder[15] and that there is no reduction in the quality of journalism. The Inquiry has been told that the economic difficulties have not affected training of journalists.[16]

2.20 Others[17] have suggested that the effect of journalists having to produce more stories in less time and with less resource is that material is not as thoroughly checked as it once was, press releases are reproduced uncritically and stories are recycled around the media with little development or additional checking.

2.21 The impact on regional newspapers has been more severe, with a number of titles merging or closing. For example, the Trinity Mirror portfolio of regional newspapers has fallen from 160 titles to 140.[18]

2.22 Across the press the same challenge faces all titles in respect of how to make money from content online in a world where advertising revenues and revenues from physical circulation continue to decline,[19] whilst readership online is growing. Two UK daily titles (the Financial Times and the Times) operate behind paywalls but this is not necessarily seen as a solution that can work across the industry.

2.23 That is not to say that, as is clear from Chapter 2 in this Part, there are not parts of the UK press that are profitable and, in some cases, highly profitable.

[15] Richard Wallace, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf
[16] p61, lines 1-11, Richard Wallace, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf
[17] p85, lines 10-15, Richard Peppiatt, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf
[18] p75, lines 2-5, Sly Bailey, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[19] pp99-100, Spencer Feeney, Mike Gilson, John McLellan and Jonathan Russell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf; pp59-60, Peter Charlton, Maria McGeoghan, Nigel Pickover, Noel Doran, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-18-January-2012.pdf

CHAPTER 2
THE PRESS: HISTORY, GOVERNANCE STRUCTURES AND FINANCES

1. Introduction

1.1 In this Chapter I examine the history, governance structures and finances of the major British newspapers. I will look first and in some detail at those newspapers owned by News International (NI), and ultimately by the parent company in the US, News Corporation.[1] This is fitting given the central role of the News of the World (NoTW) in the events that led to establishment of this Inquiry, as well as the extraordinary influence that Rupert Murdoch has exercised over the development of the press in Britain, since he purchased NoTW newspaper in 1969. I will then look at the history, governance structures and finances of the other major British newspaper publishing houses, before turning albeit briefly to the regional press and the magazine industry.

2. News Corporation

Group history and context

2.1 News Corporation (News Corp) was founded in 1979 as a holding company for Mr Murdoch's Australian newspaper business, News Ltd, to manage News Ltd's growing portfolio of international assets particularly in the United Kingdom and the US.[2] Mr Murdoch is both the Chairman and Chief Executive of News Corp[3] which, as of 2009, is the world's second largest media conglomerate in terms of revenue, and the third largest in terms of entertainment. Although News Corp was initially incorporated in South Australia, reflecting the Australian origins of the business, in November 2004 the company was re-incorporated under Delaware Corporation Law. News Corp is now listed on the NASDAQ and has secondary listings on the Australian Securities Exchange.

2.2 News Corp now has global reach, and in addition to its holdings in its traditional British, American and Australian newspaper markets, it has substantial operations in India, Italy, Germany, Brazil and Hong Kong that span both traditional media as well as new media, telecommunications and the internet.[4]

Group governance

2.3 News Corp is headquartered in New York. The News Corp Board of Directors is made up 17 directors and includes those in executive and non-executive capacities.[5] The Board sets the strategic direction for News Corp and its subsidiaries and is responsible for the corporate governance of the company. These processes are published on the News Corp website.[6] In

[1] The Times is published by Times Newspapers Ltd and the other titles by News Group Newspapers Ltd. The corporate structures are examined below.
[2] Page, B, *The Murdoch Archipelago*, p10
[3] http://www.newscorp.com/investor.html
[4] *ibid*
[5] http://www.newscorp.com/investor/annual_reports.html
[6] *ibid*

June 2012 News Corp announced that it intends to pursue the separation of its publishing and media and entertainment businesses into two distinct publicly traded companies. Rupert Murdoch would remain Chairman of both companies.[7]

2.4 The Murdoch family owns a 29% stake in the company. As these shares are voting shares, Mr Murdoch exercises effective control of the company. Prince Alwaleed bin Talal al-Saud of Saudi Arabia owns 7% of News Corp's shares through his Kingdom Holding Company, making him the second largest shareholder in News Corp.

The Management and Standards Committee

2.5 News Corp established the Management and Standards Committee (MSC) to take responsibility for all matters in relation to phone hacking at NoTW, payments to the police and all other related issues at NI.[8]

2.6 The MSC is autonomous from News Corp and NI.[9] It works to ensure full co-operation with all investigations into these issues, including this Inquiry, the police inquiries, civil proceedings and Parliamentary hearings.

2.7 The MSC is authorised to conduct internal investigations to fulfil its responsibilities in relation to NI's papers: The Sun, The Times and The Sunday Times. It has power to direct NI staff to co-operate fully with all external and internal investigations, and to preserve, obtain and disclose appropriate documents.

2.8 An important part of the MSC role is to recommend and oversee the implementation of new policies and systems to ensure that editorial practices at NI's titles meet the highest standards.[10] The MSC's role is to ensure that NI's titles are underpinned by a robust governance, compliance and legal structure.[11]

2.9 The MSC originally reported to Joel Klein, Executive Vice-President and a director of News Corp,[12] but at the time of writing, reports to Gerson Zweifach, Senior Executive Vice-President and Group General Counsel of News Corp, who in turn report to the independent directors on the News Corp Board through Professor Viet Dinh, an independent Director on the News Corp Board of Directors.[13] The role of the MSC is addressed in more detail later in the report.[14]

Financial results

2.10 News Corp estimates its global assets to be worth some $61.98bn.[15] Its financial results reflect the global scale of the organisation. In 2010, it reported a turnover $32.78bn, an 8% increase on its turnover for 2009.[16] In 2011, this had risen further to £33.41bn. News Corp posted profits of $2.54bn in 2010 and $2.99bn in 2011.[17]

[7] http://www.newscorp.com/news/news_535.html
[8] http://www.newscorp.com/corp_gov/MSC.html
[9] *ibid*
[10] *ibid*
[11] *ibid*
[12] *ibid*
[13] http://www.newscorp.com/corp_gov/MSC_reporting_structure.html
[14] Part E, Chapter 5
[15] http://www.newscorp.com/investor/annual_reports.html
[16] *ibid*
[17] *ibid*

2.11 Although newspapers were once central to the News Corp business model this is no longer the case. In the 2009/2010 financial year, newspapers accounted for just 13% of News Corp's overall profit.[18] By contrast, in 2001, newspapers had contributed to 30% of News Corp's total profits.[19] In 2010 New Corp's television businesses provided around 56% percent of the company's total profit.

2.12 The closure of NoTW in July 2011 affected the profitability of the company's newspaper and publishing businesses. Profit fell 38%, to $110 million. The company reported a $91 million pre-tax charge related to its British newspaper business.

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Annual conference

2.13 In addition to its media interests, News Corp also plays a role in public policy discussion, organising and hosting an annual Management Conference, the aim of which is to provide a forum for the discussion of media issues and policy in relation to world events. The conference is not only for News Corp's senior executives and journalists but also for policy makers and other interested parties. The conference has been held in Cancun, Mexico, and Hayman Island, Australia, as well as Pebble Beach, California.

2.14 The News Corp Management Conference is a private event, and in so far as can be established, no records of the meetings are made available. However, details of the 2006 event in Pebble Beach were leaked together with an agenda to the Los Angeles Times.[20] According to that newspaper, agenda items ranged from discussions on Europe, to broadcasting and new media and terrorism. Speakers have included Rupert Murdoch, the Governor of California, Arnold Schwarzenegger, Tony Blair, ex-President Bill Clinton, Al Gore, Senator John McCain and the Israeli President, Shimon Peres.[21]

News International

2.15 News Corporation's UK newspaper interests are held by its wholly-owned subsidiary, NI,[22] which is the parent company both of Times Newspapers Holdings Ltd (TNHL) and of News Group Newspapers Limited (NGN). Times Newspapers Limited (TNL), the publisher of The Times and The Sunday Times, is a subsidiary of TNHL. NGN is the publisher of The Sun and The Sun on Sunday, and formerly published NoTW.[23]

2.16 In 1987, NI bought the Today newspaper, a mid-market tabloid that had launched in 1986 and pioneered the use of colour printing and computerised editing. However, the title struggled financially and did not make a profit. It was closed on 17 November 1995.

2.17 In September 2006, NI launched The London Paper. This was the first title to have been launched rather than bought by the UK subsidiary. The London Paper, an evening freesheet published fives times each week, was distributed at bus and railway stations across London. In September 2009 the paper closed in the face of intense competition from the other free titles distributed in London, including the Metro, the London Lite and the Evening Standard.

[18] http://www.economist.com/node/18958553
[19] *ibid*
[20] http://articles.latimes.com/2006/jul/28/business/fi-fox28
[21] *ibid*
[22] http://www.newscorp.com/investor/stock_quotes.html
[23] p1, para 1.1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf

2.18 The Sun considers itself a family newspaper. Mr Murdoch made clear his view in an interview with the title ahead of the launch of The Sun on Sunday that the new Sunday edition of the paper would be "*family orientated*" and "*ethical*".[24] Indeed, in his evidence to the Inquiry, the current editor of The Sun, Dominic Mohan, expressed his firmly held belief that The Sun is a powerful "*force for good*,"[25] and cited the work undertaken by the paper to enable its poorest readers to afford holidays as well as its recent work in schools promoting science learning. The Sun also sees itself as a campaigning newspaper, championing causes it considers important to its readers[26] such as the Help for Heroes campaign.[27]

2.19 Mr Murdoch described NoTW as:[28]

> *"a campaigning newspaper…. certainly it was interested in celebrities, just as the public is, and a much greater investment went into covering the weekend soccer….. Coverage of celebrities, yes. Salacious gossip? Meaning – I take gossip as meaning unfounded stories about celebrities: no. I certainly hope not."*

James Murdoch described the brand of NoTW as:[29]

> *"an investigative newspaper with exposes and the like, wasn't only concerned with celebrities and salacious gossip, but also uncovering real wrongdoing, scandals, campaigning and so on and so forth."*

2.20 NI has described The Times as "*renowned for its ability to deliver accurate, intelligent and engaging information*".[30] Both The Times and The Sunday Times have a long and established a reputation for quality investigative journalism, particularly The Sunday Times' Insight Team, which has been responsible for stories such as the exposure of the spy scandal relating to the MI6 agent Kim Philby, the scandal of Thalidomide, as well as more recent allegations of vote rigging at FIFA.

News International history: News Group

2.21 NoTW was purchased by Rupert Murdoch in January 1969. The Sun, which had been launched by the International Publishing Corporation (IPC) in 1964, was acquired by Mr Murdoch in October 1969. The two newspapers were published as sister titles from that date until the closure of NoTW on 10 July 2011. At the time of its acquisition The Sun was almost bankrupt. Changes to content, and in particular the introduction of a far more irreverent and informal style, as well as changes to editorial policy and production methods, led to a dramatic turnaround in the newspaper's fortunes.[31] Within three years, The Sun newspaper was not only highly profitable, providing much of the necessary finance for further acquisitions elsewhere, but was successfully challenging the Daily Mirror as the UK's best selling newspaper.

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[24] http://www.thesun.co.uk/sol/homepage/news/4138209/Its-Sun-day-Were-launching-new-edition-of-Britains-No1-newspaper.html
[25] p52, lines 7-9, Dominic Mohan, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf
[26] *ibid*
[27] p52, lines 7-22, Dominic Mohan, *ibid*
[28] p44, lines 21-21, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf
[29] p10, lines 12-16, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf
[30] http://www.newscorp.com/management/newsint.html
[31] Snoddy, R, *The Good, the Bad, and the Unacceptable: The hard news about the British press*, p124

2.22 Mr Murdoch introduced a style and understanding of journalism that he had developed at the Adelaide News. In an otherwise staid newspaper market, the re-launched The Sun and NoTW were irreverent and anti-establishment. This new approach to tabloid journalism was well illustrated in the publication in NoTW of Christine Keeler's memoir of the 1963 Profumo affair. Indeed, some commentators have suggested this was a, if not the, defining moment in the development of a journalistic ethos at what was to become NI.[32] The Keeler article certainly boosted sales, although Mr Murdoch received much criticism from his competitors of reporting 'old' news, especially of such a nature.[33]

2.23 The Sun under Mr Murdoch set out to appeal to a broader cross-section of society. Innovations in content intended to appeal to a mass market included the introduction of television coverage, and the advent of the first Page 3 girl in 1970. This marked the first anniversary of the re-launched tabloid and quickly became a controversial trademark of the paper, albeit copied by its competitors. During this period, the circulation of The Sun increased from 1 million in 1969 to over 3.8 million in 1980, peaking at 4 million in 1978 under Sir Larry Lamb's editorship.[34]

2.24 Mr Murdoch was not only responsible for the introduction of a new approach to tabloid journalism at both The Sun and NoTW, he also introduced important changes to methods of production to all his titles. Although these changes were criticised by some within the industry at the time and, indeed, led to a bitter and protracted dispute with both the print unions and the National Union of Journalists (NUJ), commentators have credited these changes, which have since been adopted by all newspapers, with ensuring the economic viability of the British newspaper industry.

2.25 NI's move to Wapping and decision to face down the print unions, had strong support in Government. Indeed, throughout the strike in the mid-1980s, NI was able to maintain almost full production and distribution capabilities as well as a complement of leading journalists. The company was therefore content to allow the dispute to run its course. With many thousands of workers having gone without pay for over a year, the strike eventually collapsed on 5 February 1987.

2.26 It has been suggested that the defeat of the unions would not have been possible without the support of the Conservative Government of the time.[35] Irrespective of any political support, the changes implemented by Mr Murdoch set a precedent: within two years of the conclusion of the strike, most of the national papers had followed NI's lead, left Fleet Street, and changed their printing practices.

2.27 Although both The Sun and NI are conservative in outlook, the political loyalties of neither paper have been set in stone. Some commentators have argued that so influential has the tabloid become that it is able to decide the outcome of elections.[36] Certainly, that was the clear inference of The Sun's front page headline following the Conservative election victory in April 1992, "*It was The Sun wot won it*".[37]

2.28 Although The Sun and NoTW backed the Labour Party in the 1997, 2001 and 2005 general elections, the relationship between the New Labour Government and the NI titles had grown

[32] Page, B, *The Murdoch Archipelago*, p102
[33] *ibid*, p103
[34] Audit Bureau of Circulations, cited in Page, B, *The Murdoch Archipelago*, p120
[35] Snoddy, R, *The Good, the Bad, and the Unacceptable: The hard news about the British press*, pp124-128
[36] *ibid*, p14
[37] Discussed in detail in Part I Chapter 3

increasingly strained. It is reported that ahead of the 2005 election, Mr Murdoch had said that Tony Blair "*deserved one last chance*".[38] In late September 2009, on the day of Gordon Brown's keynote speech to the Labour Party Conference, The Sun announced that it would support the Conservative Party in the 2010 election. The detail of the relationship between Mr Murdoch and politicians, including how that influenced the editorial stance of his newspapers, is considered in detail in Part I

2.29 The Sun now has the largest circulation of any daily newspaper in the UK, selling approximately 2.7 million copies each day. The paper claims a readership of almost 9 million.[39] NoTW, at its time of closure in July 2011 had a circulation of just under 2.7 million and represented 28% of the Sunday tabloid market.[40]

2.30 The first edition of The Sun on Sunday achieved sales of 3.2 million but since has dropped to a level of sales similar to that of NoTW before its closure, at 2.6 million.[41]

News International history: Times Newspapers Holdings Limited

2.31 TNHL was established in 1967 when the Thomson Corporation purchased The Times from the Astor family and merged it with The Sunday Times. The Times is the oldest of the major UK national newspapers and was first published in 1785. It has been published continuously ever since, save for a ten month period in the late 1970s.

2.32 Faced with escalating productions costs and a commercial model that was under increasing threat, the Thomson Organisation decided to put both titles up for sale at the end of 1980. NI reached an agreement with Thomson to acquire those papers. Under Section 58 of the Fair Trading Act 1973 any newspaper merger at the time required the consent of the Secretary of State for Trade. Further, and subject to two exceptions, the Secretary of State was prohibited from giving his consent to such a merger unless he had first received a report from the Monopolies and Mergers Commission (MMC).

2.33 The Thomson Organisation imposed deadlines beyond which they said they would no longer support The Times (14 March 1981) or The Sunday Times (8 March 1981). The then Secretary of State, John Biffen, told Parliament that this factor, taken together with the financial figures for the two newspapers, convinced him that neither title was economic as a going concern and that to require an MMC reference would risk the closure of both titles, the loss of 4,000 jobs and the possibility of the permanent closure of The Times.[42] He therefore gave his consent for the merger to go ahead, but he also imposed eight conditions:[43]

> *"First, the newspapers are to be published as separate newspapers.*
>
> *Second, future disposals are to be subject to the consent of a majority of the independent national directors of Times Newspapers Holdings Ltd.*

[38] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[39] http://www.guardian.co.uk/media/table/2012/feb/10/abcs-national-newspapers
[40] ABC circulation figures July 2011, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[41] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[42] HC Hansard 27 January 1981, Volume 997, Column 789, http://hansard.millbanksystems.com/commons/1981/jan/27/times-newspapers
[43] HC Hansard 27 January 1981, Volume 997, Column 790, *ibid*

Third, the number of these independent directors is to be increased from four to six and the appointment of any independent national directors in the future is not to be made without the approval of the existing independent national directors.

Fourth, on editorial independence, the editors shall not be appointed or dismissed without the approval of the majority of the independent national directors.

Fifth, the editor of each newspaper shall retain control over any political comment published in his newspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interests of any of the newspaper proprietors.

Sixth, instructions to journalists shall be given only by the editor or those to whom he has delegated authority.

Seventh, subject only to any annual budget for editorial space and expenditure the editor shall retain control over the appointment, disposition and dismissal of journalists on his newspaper and of all other content of his newspaper.

Eighth, disputes between the editors and directors of the companies are to be settled by the independent national directors."

2.34 Those conditions are included within the Articles of Association of Times Holdings Limited and still bind the company today.

2.35 The decision of the Secretary of State was controversial. The Labour MP, John Smith, called an emergency debate on the decision on the day that the Secretary of State's consent was announced. The Opposition, and indeed some Government backbenchers,[44] argued that the threat of closure was a device concocted by Thomson and colluded in by NI designed to force the Government's hand. There were also allegations that the Prime Minister had influenced the Secretary of State's decision as a favour to Rupert Murdoch. For example, Geoffrey Robertson MP said:[45]

"In his first major decision the Right Hon. Gentleman has failed to stand up to the Prime Minister. That is the reality. I shall examine the facts and show why later. This is a straightforward pay-off for services rendered by The Sun. If it is not, let us see the facts and figures to show that I am wrong."

2.36 Despite this opposition the deal had the support of the editorial staff and the unions, and went ahead. The purchase gave NI more than a 25% share of daily newspaper circulation and something over 30% of the Sunday market.

2.37 Although The Times has a reputation for taking a generally conservative approach to matters of public policy and social issues, its support for political parties at general elections has varied. Indeed, on occasion The Times and The Sunday Times have backed different parties. Most recently, The Times supported the Labour Party in 1997, 2001 and 2005 and the Conservatives in 2010. By contrast, The Sunday Times supported the Conservative Party at each of those elections.[46]

2.38 In February 2012 The Times had a circulation of 397,549. Although this is the second highest broadsheet circulation, it is some way behind the Daily Telegraph, and accounted for only 4.3% of national daily newspaper circulation in that month. By contrast, its sister paper The Sunday

[44] HC Hansard 27 January 1981, Volume 997, Column 794, *ibid*
[45] HC Hansard 27 January 1981, Volume 997, Column 806 onwards, *ibid*
[46] http://www.guardian.co.uk/news/datablog/2010/may/04/general-election-newspaper-support

Times had a circulation of 939,395 in February 2012, reflecting its different character. This is by some margin the highest national Sunday broadsheet circulation (the Sunday Telegraph has a circulation of just over 460,000), and gives The Sunday Times the fourth highest national Sunday circulation, accounting for nearly 8.5% of the national Sunday market.[47]

2.39 Unlike The Sun, The Times and The Sunday Times have put their online content behind paywalls. This approach is not usual for UK newspapers, and The Times has the smallest online audience of any of the major UK newspapers: as of March 2012 it was reported to have only 119,000 subscribers.[48] This compares poorly to the Guardian's website which attracts upwards of three million unique users each day and the Daily Mail website which receives in excess of 70 million hits each day.

News International governance structures

2.40 The NI Board now meets monthly to address issues of significance. The Inquiry was told that in October 2010 the Board included a News Corp representative and that a second would shortly be appointed.[49] Subsequently, the Inquiry was informed that both Mr Murdoch and Janet Nova, Deputy Group General Counsel of News Corp, have stepped down from the NI board. Thomas Mockridge told the Inquiry that no NI executives sit on the News Corp Board:[50]

> *"I am satisfied that notwithstanding these changes to the board, the appropriate oversight of the News International business is being maintained both at the local division and group levels and the board of directors of NI Group Limited continues to play a key role in ensuring the appropriate corporate governance standards of the company and its subsidiaries."*

2.41 Mr Mockridge told the Inquiry the NI Board has undertaken a review of compliance since July 2011. He said:[51]

> *"... what we have sought to do is to update/refresh the whole range of compliance policies and in particular improve the communications of the compliance policies. My observation has been that even where an existing policy is completely thorough and appropriate, if it's not well communicated, then it's much more difficult to expect people to comply with it."*

2.42 The Inquiry has also been informed that the editors of The Times, The Sunday Times and The Sun will be required to attend these monthly NI Board meetings and report on performance and compliance.[52] No information has been provided on past corporate governance practice at NI or governance procedures at NoTW.

[47] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[48] http://www.guardian.co.uk/media/2012/feb/15/times-digital-subscribers-rise
[49] p2, para 2.4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[50] p1, paras 2-3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Fifth-Witness-Statement-of-Tom-Mockridge.pdf
[51] pp46-47, lines 22-9, Thomas Mockridge, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf
[52] p7, para 3.3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf

2.43 The Corporate Audit Department of News Corp provides assurance on the effectiveness of operational and financial controls through audits carried out on the basis of an assessment of significant risks to News Corp. In 2012 such audits were planned at NI in relation to, *inter alia*, advertising revenue, circulation revenue, compliance with the UK Bribery Act and NI's digital media operations.[53]

2.44 There is a separate Board for TNHL, which is covered by the undertakings given to the Secretary of State for Trade following the acquisition of the titles in 1981. The TNHL Board must comprise no more than 20 directors of whom at least six must be 'Independent National Directors'. A majority of the Independent National Directors is required for the appointment and dismissal of the editors of either of the titles or the disposal by NI of the titles. The TNHL Board meets quarterly[54] and the editors of The Times and The Sunday Times attend and are expected to account for editorial coverage to the Board.[55] The Independent Directors meet regularly with the Editor of The Times both at board meetings of TNHL and separately to discuss any on-going issues at the paper,[56] and with the Editor of The Sunday Times.[57] There are separate boards for Times Newspapers, News Group Newspapers and NI Trading, which meet as required.[58]

News International's financial results

2.45 NI is now only a small but still important part of News Corp's global business.[59] Although The Sun is highly profitable, the relative profitability of the group has been in decline for a number of years. News Group News posted pre-tax profits of £88.6m for the 2009/2010 financial year, as well as an increase in revenue from £639m to £654m.[60]

2.46 By contrast, The Times and The Sunday Times have run at a loss for a number of years and have not made a profit since 2001.[61] However, the decline in revenues at TNHL appears to have been halted though not fully reversed. TNHL reported a pre-tax loss of £45m for the financial year 2009/2010 compared with a pre-tax loss of £87.7m for the 2008-2009 financial year.[62]

2.47 Despite the strong performance by NGN, NI recorded a pre-tax loss of £78.5m for 2009/2010, compared with a profit of £34.7m for the 2009/2009 financial year. Much of this loss was attributable to the costs of writing down a £45m loan made to its free title, The London Paper, after the closure of that title in September 2009.

2.48 Over the same period NI's salary bill has been reduced from £11.7m to £8.8m. However, overall staff costs at NI have increased from £16.7m to £19.4m as a consequence of increased share-based payments and a rise in pension costs.[63]

[53] p5, para 2.10, *ibid*
[54] p3, para 2.7, *ibid*
[55] p2, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[56] pp1-3, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf
[57] p2, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[58] p3, para 2.7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[59] http://www.economist.com/node/18958553
[60] http://www.guardian.co.uk/media/greenslade/2011/jan/15/newsinternational-rupert-murdoch
[61] http://www.economist.com/node/18958553
[62] http://www.guardian.co.uk/media/greenslade/2011/jan/15/newsinternational-rupert-murdoch
[63] *ibid*

News International editorial independence

2.49 The position on editorial independence differs across the NI titles. The Times and The Sunday Times are guaranteed editorial independence pursuant to the 1981 undertakings. By contrast, Mr Murdoch takes an active interest in the editorial direction of the NGN titles, though the position in relation to The Sun and NoTW was far from identical. He told the Inquiry that:[64]

> *"I never much interfere with the News of the World, I'm sorry to say,"*

but that he would exercise editorial control on major issues, such as the support for parties at a general election or policy on Europe.[65] In contrast, he said of The Sun:[66]

> *"if any politician wanted my opinions on major matters, they only had to read the editorials in the Sun."*

News International financial management

2.50 The News Corp Corporate Audit Department provides a check on operations, financial reporting and compliance.[67] In particular this department's audits cover the Editorial Commissioning System, Casual Management System (by which casual staff are paid), expenses system and NewsPeople.[68] The accounts of NI, NGN and TNHL are audited by Ernst & Young.[69] On account of its US listing, NI is required to comply with the financial certification requirements of the Sarbanes-Oxley Act 2002.[70]

2.51 The Editorial Finance Director is responsible for the accurate reporting of the editorial numbers. A Corporate Reporting Team and a Financial Accounting Team ensure that NI complies with the relevant accounting standards. A Taxation Team ensures that tax compliance is followed.[71]

2.52 Day to day legal and policy compliance is a matter for editors, delegated to deputy editors and senior sub editors.[72] Financial matters are dealt with by the managing editors.[73] Payments to third parties for editorial content must be authorised by the relevant desk head and managing editor, apart from in the case of NoTW where a desk head could alone authorise payments up to £2,000.[74] Payments or annual entitlements of over £50,000 require authorisation from the Chief Financial Officer.[75] Cash payments, without limit, can be made to third parties subject to prior approval by the managing editor and the editor or deputy editor.[76] This has been strengthened since the introduction of the Bribery Act 2010, before which authorisation for

[64] p39, lines 8-9, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-25-April-2012.pdf
[65] pp38-39, lines 23-9, Rupert Murdoch, *ibid*
[66] p88, lines 23-25, Rupert Murdoch, *ibid*
[67] p5, para 2.10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[68] pp7-8, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Susan-Panuccio.pdf
[69] *ibid*
[70] *ibid*
[71] *ibid*
[72] p5, para 2.12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[73] p6, para 2.13, *ibid*
[74] p2, para 5.1.1(ii), http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Susan-Panuccio.pdf
[75] p3, para 5.1.1(iii), *ibid*
[76] p4, para 5.1.3(iii), *ibid*

cash payments was only required from the managing editor or deputy managing editor.[77] In addition the journalist who requested the cash has to sign a book saying that they have had training in the Bribery Act and will comply with NI's bribery policy.[78]

2.53 Expenses can be claimed through an online system, subject to authorisations from the Expense Administration Team and the Managing Editor's office. Expenses where a receipt is not provided can be paid at the authoriser's discretion.[79]

2.54 The Times rarely pays for stories, with the exception of book serialisation deals with publishers.[80] The Sunday Times pays fees to external sources of information, including local news agencies and freelance journalists.[81] The Sun makes payments to a range of external sources of information, including press agencies, tipsters and regular informants.[82]

News International policies and procedures

2.55 News Corp has a number of relevant policies that apply to its (and hence all NI) staff: Standards of Business Conduct, Global Anti-Bribery and Anti-Corruption Policy and the Record Retention, Policy.[83] In addition there are a number of NI policies that apply to all NI staff, including: the PCC Editor's Code, a Contracts Policy, an Approvals Authority Policy, an Expenses Policy, the Disciplinary and Dismissal Procedure, a Conflicts of Interest Policy and Data Protection Policies.[84] Following the events at NoTW many of these policies are being or have been revised, leading to the addition of a Whistleblowing Policy and helpline,[85] a Payment Policy[86] which sets out the procedure which must be followed in order for journalists to pay sources for stories, a Workplace Conduct Policy[87] and an NI Anti-Bribery policy which supplements the News Corp Global Anti-Bribery and Corruption policy.[88]

2.56 In addition NI has created a new role of Chief Compliance Officer, to be responsible for ensuring company-wide and title-wide compliance with the law and company policies[89] and reporting directly to the CEO. The compliance officer has been tasked with reviewing and, where necessary updating, all NI policies, working closely with the in-house legal teams and the managing editors.[90]

[77] pp8-9, para 12, *ibid*
[78] p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf
[79] p6, para 5.2.2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Susan-Panuccio.pdf
[80] pp4-5, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf
[81] p10, para 37, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[82] pp5-6, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf; p7, para 27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gordon-Smart.pdf
[83] pp3-4, para 2.8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[84] *ibid*
[85] p4, para 2.8.4, *ibid*
[86] *ibid*
[87] *ibid*
[88] p3, para 2.8, *ibid*
[89] p4, para 2.9, *ibid*
[90] *ibid*

2.57 All new employment contracts will require compliance with company policies and, in the case of reporters or journalists, with the PCC Code, and existing contracts will be revised to include these provisions where they are not already there,[91] although the Inquiry was told that for journalists with The Times, The Sunday Times and The Sun compliance with the PCC code is already a contractual requirement.[92] The Sunday Times is also drawing up formal understandings with freelancers to require them to abide by the law and the PCC Code.[93]

2.58 Until recently NI had no procedures governing the employment of private investigators. New rules are being introduced which make the engagement of a private investigator subject to approval by the Chief Executive.[94] At The Sunday Times the rules on the use of subterfuge have been revised, with prior approval now required from the legal team, the editor and the managing editor,[95] and discussions as well as any legal advice are to be documented.[96] Historically, in the NoTW, private investigators were employed by the news desk to provide various services, including surveillance, supporting undercover investigations and provisions of data.[97] Evidence has been provided that the news desk, rather than reporters, instructed these private investigators.[98]

News International management structures and processes

2.59 This section provides a brief overview of the management structures and day-to-day working practices at NI. The NI Executive Management Team (consisting of the heads of NI's various divisions, the three editors and the CEO) meets weekly to discuss day to day business issues and to draw the CEO's attention to issues of significance.[99] At title level the three editors have ultimate responsibility for ensuring that their staff behave lawfully, professionally and ethically.[100]

2.60 At The Times, the heads of each section (e.g. business editor, head of news) report to the editor, who is assisted by the deputy editor, managing editor and executive editors. The vast majority of reporters are staff, and are on site daily, discussing news stories with their editors. Journalists are expected to discuss and explain lines of enquiry and methods of obtaining a story. There is an emphasis on transparency and continuous debate and discussion.[101]

2.61 At The Sunday Times the managing editor (News) is in overall charge of news coverage, and the news editor and foreign editor report to him. Difficult ethical or legal questions are discussed with the editor and the in-house legal team. The system operates on trust but with stringent control by the news desk, managing editor (News) and other departmental heads.[102]

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[91] p8, para 6.1.7, *ibid*
[92] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf; p2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[93] p3, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[94] p8, para 6.1.6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[95] p3, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[96] p9, para 32, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Pia-Sarma.pdf
[97] p5, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Mazher-Mahmood.pdf
[98] p5, para 19, *ibid*
[99] p5, para 2.11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf
[100] p5, para 2.12, *ibid*
[101] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf
[102] p2, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf

2.62 At The Sun there is a daily news conference chaired by the editor at which proposed stories are discussed. The editor is responsible for ensuring that The Sun's corporate governance system works and is adhered to. Day to day issues of corporate governance are delegated to the managing editor.[103]

News International incentives

2.63 Staff on The Sun are paid bonuses depending on personal performance, including the stories that the individual has produced.[104] NoTW ran a monthly 'merit' scheme with awards being in the region of £500.[105]

News International oversight by readers

2.64 The Times has a 'feedback editor' who acts as an ombudsman, with a weekly column airing readers' concerns.[106] "You, the editor" invites readers to give their views on the previous day's paper.[107] At The Sunday Times the editor has appointed the associate editor as ombudsman to take an independent view of any complaint and recommend a correction and apology or defend the newspaper as appropriate.[108]

BSkyB: history and context

2.65 The detail of News Corp's ownership of satellite television broadcaster BSkyB is dealt with in detail in the context of its recent bid for full ownership of BSkyB.[109] However, at this stage I examine the early involvement of News Corp in satellite broadcasting in the UK.

2.66 NI acquired 65% of the struggling Satellite Television Ltd in 1984 for a nominal £1 and re-launched the company as the Sky Channel. The company continued to be loss making, losing £10m in 1987. Problems with the satellite technology meant that it was primarily a cable channel in the UK until 1989, when it moved to the newly launched Astra Satellite, based in Luxembourg, which made reception in the UK much easier, and its four channels were marketed primarily to the UK. Until 1990 it was the only satellite serving the UK.

2.67 The Independent Broadcasting Authority (IBA) awarded a DBS (Direct Broadcasting via Satellite) service licence to British Satellite Broadcasting (BSB) in late 1988. BSB was required by its licence to use a different technology to that then successfully in use by Sky, and was bedevilled by technical problems, not being able to launch until March 1990. The BBC had also proposed its own satellite service, going as far as signing a 'heads of agreement' on the construction of two satellites in March 1986, but this service never launched.[110] This meant that the two satellite services being marketed to the UK ran on different technical standards and needed different dishes (and different receivers) so that they were placed in direct competition with each other for customers who would only be able to receive one service or the other.

[103] p4, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf
[104] p5, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gordon-Smart.pdf
[105] p4, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Mazher-Mahmood.pdf
[106] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf
[107] *ibid*
[108] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf
[109] See Part I Chapter 6
[110] http://www.bbceng.info/Eng_Inf/EngInf_12.pdf

2.68 In 1989 the Broadcasting Bill was introduced to Parliament, which contained provisions relating to the licensing of satellite services. The Bill placed a number of licence conditions (impartiality and accuracy of news; not offending against good taste or decency; not inciting crime or disorder; and not offending against public feeling) on BSB, but not on Sky.

2.69 During debate on the Bill amendments were proposed to extend cross media ownership restrictions to the holders of a domestic or non domestic satellite service.[111] In practical terms this would have required NI to divest the Sky Channel, but might also have had an implication for other publishers who held stakes in BSB. These amendments were defeated and the Act became law without any cross media ownership provisions affecting the holders of satellite broadcast licences.

2.70 In November 1990, within days of the Broadcasting Act 1990 receiving Royal Assent but before the regulatory changes had taken effect, it was announced that BSB and Sky were going to merge. The Home Office was formally notified of the merger on 2 November 1990, with a formal public announcement being made by the two companies, and the merger taking place, on 3 November, resulting in the creation of BSkyB. At the time, the merger was covered by the Broadcasting Act 1981, under which BSB's direct broadcasting satellite service was provided under a contract with the International Broadcasting Authority (IBA), the regulator at the time. Under the 1981 Act an IBA contract for satellite broadcasting could be ended or suspended by the IBA or the Secretary of State if a newspaper proprietor had an interest in a contractor and "*the existence of those shareholdings has led, or is leading to results which are contrary to the public interest*." The IBA was not informed of the merger in advance of it taking place.[112]

2.71 Under the terms of BSB's contract with the IBA it was obliged to get the approval of the regulator for any merger. That approval was not sought in advance. In the event this proved immaterial as the merged company then broadcast solely from the Astra satellite, thus removing the need for an IBA licence.[113] The merger also took the newly formed company out of the full licensing regime that the 1990 Act would have imposed on BSB as a domestic satellite service.

2.72 For over a decade BSkyB provided the only satellite broadcasting service directed primarily at UK viewers. The service was available only with subscription, and with a combination of strong marketing and exclusive programming the proportion of households with Sky subscriptions grew from the extremely low levels in 1990 to nearly six million in 2002, and over ten million in 2011. The BBC moved to make its channels available free to air from satellite in 2003 but, as they were the only channels being broadcast from the satellite without encryption and therefore free to view, take up was limited. Over subsequent years ITV and Channel 5 joined the BBC in offering free to air satellite broadcasts, and Sky added a 'freesat from Sky' offer which allows consumers to take free to air satellite services from Sky. BSkyB now competes against both free to air digital terrestrial and satellite services and subscription based services via cable. Increasingly there is additional competition from on demand services provided over broadband.

[111] HL Hansard, 09 October 1990, Volume 522, Column 169, http://hansard.millbanksystems.com/lords/1990/oct/09/broadcasting-bill
[112] HL Hansard, 12 November 1990, Volume 523, Column 111, http://hansard.millbanksystems.com/lords/1990/nov/12/satellite-broadcasting
[113] HC Hansard, 12 November 1990, Volume 180, Column 350, http://hansard.millbanksystems.com/commons/1990/nov/12/rights-freedoms-and-responsibilities

2.73 BSkyB is now a significant part of News Corp's direct satellite broadcasting business, which consists of the whole of SKY Italia, which now has 5 million subscribers, 39.14% of BSkyB, and significant holdings in Sky Deutschland; TATA SKY in Asia and FOXTEL in Australia and New Zealand. Direct Satellite broadcasting is a relatively small part of News Corp's activities, contributing only 11.5% of revenues in 2010. Financially BSkyB went from making a loss of over £700m in 1991 to delivering revenue of over £6.5 billion and profit of £1.073 billion in 2011.[114] BSkyB is a Plc, traded on the London Stock Exchange, and News Corp owns 39.14% of the shares, which for practical purposes is a controlling shareholding. As of 30 September 2012, just over 10.5m subscribers held a subscription with BSkyB.[115]

BSkyB governance

2.74 The BSkyB Board consists of 14 Directors. The Chief Executive and Chief Financial Officer are the only executive Directors on the Board. There are nine independent non-executives, including the Chairman, three non-execs from News Corp and the Chief Executive of NI.[116]

2.75 James Murdoch was CEO of BSkyB from 2003 to 2007, then becoming non-executive Chairman. He stepped down as Chairman on 3 April 2012, saying:

> *"As attention continues to be paid to past events at News International, I am determined that the interests of BSkyB should not be undermined by matters outside the scope of this company. I am aware that my role as Chairman could become a lightening rod for BSkyB and I believe that my resignation will help ensure that there is no false conflation with events at a separate organisation."*[117]

He retains a non-executive Director seat on the BSkyB Board.

Sky News

2.76 Through its Sky News subsidiary, BskyB is both a broadcaster and provider of broadcast news content. Sky News broadcasts continuous rolling news, it is also a major provider of news services to commercial radio stations and has contracts to provide news content to Channel 4 and Channel 5.[118] Like all other broadcast news providers, Sky News is bound by the terms of the Broadcasting Code.

2.77 According to Ofcom, Sky News had in October 2010 an average weekly reach of some 24% of the wholesale news market, equivalent to 11.7m people per week, and 9.9% of the retail news market, or some 5m people per week.[119] Ofcom has estimated that Sky News' share of national and international news television viewing is around 6% of the news market.[120] This is less than the 70% market share enjoyed by the BBC and the 18% by ITV.[121] Sky News' share of the radio market is, in comparison, much larger. In October 2010 it had an average weekly reach of 33.4m people.[122]

[114] http://corporate.sky.com/documents/pdf/publications/2010/annual_report_2010?type=Finjan-Download&slot=00000010&id=0000000F&location=0A64020F
[115] http://corporate.sky.com/file.axd?pointerid=495797230af24663be7ae0cbafaa96d6
[116] http://corporate.sky.com/about_sky/our_board_and_management/board
[117] http://corporate.sky.com/media/press_releases/2012/bskyb_announces_board_changes
[118] p30, para 4.14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Exhibit-OFCOM34.pdf
[119] p31, para 4.18, *ibid*
[120] p30, para 4.15, *ibid*
[121] p30, para 4.15, *ibid*
[122] p8, para 1.23, *ibid*

2.78 The Inquiry has heard some evidence on the corporate governance procedures operated at Sky News. This was provided by John Ryley, Head of News at Sky News. Mr Ryley was invited to give evidence to the Inquiry in relation to the unauthorised access of private email accounts by the journalist Gerard Tubbs in relation to two stories broadcast by Sky News in 2008 and 2010.[123]

2.79 Mr Ryley described in some detail the informal, but thorough processes in place at Sky News, and revealed that discussions around whether to pursue each story as well as decisions to authorise the unauthorised access of the email accounts in question were had and made, together with the taking of appropriate legal advice, at senior editorial levels. [124]

2.80 Mr Ryley also said that as a consequence of the broadcast of the two stories in question, Sky News would look to introduce a formal process requiring, should the situation arise, formal written authorisation to be sought either from the head of news or the appropriate editor designate.[125]

3. Associated Newspapers Ltd

History

3.1 The Daily Mail was launched in 1896 by Harold and Alfred Harmsworth. The company was incorporated as the Daily Mail & General Trust (DMGT) in 1922 and listed on the London stock exchange in 1933. Alfred Harmsworth (later Viscount Northcliffe) also founded the Daily Mirror in 1903 and took over the Observer in 1905, and The Times and The Sunday Times in 1908. Alfred Harmsworth died in 1922 without an heir, and control of DMGT passed to Harold Harmsworth, 1st Viscount Rothermere. The Times was sold to Viscount Astor in 1922. Viscount Rothermere disposed of his interest in the Daily Mirror in 1939. The Harmsworth family have remained owners of a substantial part of DMGT, and have continuously held the post of Chairman since the company was founded.

3.2 Viscount Rothermere, the current owner of DMGT has given evidence to the Inquiry explaining the ethos and nature of the Mail Newspaper Group. Viscount Rothermere told the Inquiry that he firmly believes in taking "*pride in our products and services.*"[126] He has said that DMGT has been built on his personal and family values, and that these values resonate and are replicated across the Mail group of newspapers.[127] Viscount Rothermere also told the Inquiry that the popularity of the Daily Mail resides with the broad spectrum of news content that is offered by the title – it provides something for everyone. In their initial written submission to the Inquiry, Associated News further explained this appeal in their description of the Daily Mail:[128]

> *"…in touch with the hearts and minds of 'Middle England'. It reflects their concerns, hopes and lifestyle. Top of the agenda is reporting the news and asking the tough questions. With its campaigning stance, it is not afraid to expose the wrongs and shortcomings of people in power and with the vocal backing of its 5 million readers can be an effective force for change."*

[123] pp1-41, lines 16-8, John Ryley, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-23-April-20121.pdf
[124] pp10-24, lines 14-9, John Ryley, *ibid*
[125] p6, lines 10-21, John Ryley, *ibid*
[126] p5, line 9, Viscount Rothermere, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-10-May-2012.pdf
[127] p5, lines 3-14, Viscount Rothermere, *ibid*
[128] http://www.mailconnected.co.uk/daily-mail

3.3 The growth of the MailOnline, now the most popular newspaper website in the world, is also testament to the enduring appeal of the breadth of content, and in particular, celebrity news, offered by the Mail newspapers. Viscount Rothermere has described the MailOnline as having made a "*global footprint.*"[129]

3.4 The Mail has traditionally been politically conservative, supporting the Conservative Party at every general election since 1945.[130] When giving evidence to the Inquiry, the current editor-in-chief, Paul Dacre, has said that the Daily Mail propounds the virtues of family life, of traditional matrimony and traditional values.[131]

The Mail Group today

3.5 DMGT today operates in over forty countries with a substantial portfolio of media and information companies providing content, information, analytics and events for businesses and consumers. In 2010 DMGT's revenue was nearly £2bn, with operating profit for the year running at £320m. DMGT employs 12,000 people and only just over a quarter of its profits come from its consumer facing businesses. DMGT comprises five divisions, only one of which, A&N Media, is involved with publishing newspapers. A&N Media includes Associated Newspapers, which publishes UK national newspapers.

3.6 Associated Newspapers is highly profitable and employs over 4,300 staff. In 2010, it showed a substantial increase in profits, despite a small percentage fall in revenues.[132] In the 2010/2011 financial year, Associated Newspapers had revenues of £850m, with an operating profit of £95m. This makes Associated Newspapers by some way the most successful newspaper concern in the UK in purely cash terms, to say nothing of the global reach of its online content.

3.7 Northcliffe Media publishes ninety publications in the UK, including thirteen paid-for daily titles, two free daily titles, twenty-five paid-for weeklies, two weekly classified titles, eighteen monthly magazines and twenty-nine free weekly newspapers, in addition to a network of local websites that attracted five million unique users in September 2011. Northcliffe Media employs 2,531 people and through deduction from the Annual Report had in 2011 revenues of £248m and an operating loss of £2m.

3.8 Associated Newspapers publishes the Daily Mail, the Mail on Sunday, the Metro and MailOnline. The Daily Mail has a circulation of just over 2m, which is the second highest national title circulation (after The Sun at 2.7m), and accounted for some 21% of national daily newspaper circulation in February 2012.[133] The Metro, launched in 1999, is a free daily newspaper distributed in all major urban centres in the UK. It has a circulation of 1.38m and readership of 3.4m.[134] The Mail on Sunday had a circulation of 1.8m in February 2012.[135] Following the demise of News of the World this was the highest Sunday circulation, but was topped by the Sun on Sunday at its launch in February 2012 with a circulation of just over 3.2m. The February 2012 circulation figures for the Mail on Sunday account for just under 17% of national Sunday circulation.

[129] p3, line 23, Viscount Rothermere, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-10-May-2012.pdf
[130] http://www.guardian.co.uk/news/datablog/2010/may/04/general-election-newspaper-support
[131] p11, lines 14-21, Paul Dacre, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf
[132] http://www.dmgtreports.com/2010/Business-Review/A--and--N-Media-Associated-Newspapers.php
[133] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[134] http://www.associatednewspapers.co.uk/free-division
[135] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1

3.9 The picture would be incomplete without some reference to the phenomenal growth of the MailOnline. The MailOnline is the most popular UK newspaper website and the most visited newspaper site in the world. The website receives on average a daily viewing audience of 5.6m people, of which 2.2m are readers in the UK and 1.7m in the USA.[136] The content produced for the MailOnline is edited separately to that of the Daily Mail and the Mail on Sunday. However, the MailOnline reproduces much of the content published in the printed titles, in addition to its own, often US focused content.[137]

Governance structures

3.10 Associated News Limited publishes the Daily Mail, the Mail on Sunday, the Metro and MailOnline. Associated News Limited is part of A&N Media, which is, itself, part of DMGT, a publicly listed company quoted on the UK Stock Exchange.[138] Our focus here is on A&N Media, and within that on Associated Newspapers. A&N Media also includes Northcliffe Media.

Associated News Boards

3.11 The DMGT Board comprises nine executive directors and seven non-executives. The Chair and Chief Executive of A&N Media and the editor-in-chief of Associated Newspapers sit on the DMGT Board. The DMGT Risk Committee has responsibility for all group risk, including risk arising from editorial matters, including where appropriate recommending changes to existing practices.[139] In addition the Information Security Committee includes within its remit responsibility for data protection in the company, including third party data held by the company.[140]

Associated News editorial independence

3.12 The DMGT Board are not involved in the editorial process, nor do they have any proprietorial influence on published content. The editors of Associated Newspapers have complete editorial independence over the content published in individual DMGT titles. The editors of Associated Newspapers report to the Chair of DMGT and the editor-in-chief, not to the commercial management of the organisation.[141] The exception to this is the Editor of the MailOnline, who, in addition to reporting to the editor-in-chief on editorial issues, reports also to the Managing Director of Associated Newspapers on business matters.[142]

3.13 Mr Dacre, has given evidence as to the extent of this editorial freedom, and stressed that:[143]

> *"…just as I am given the freedom to edit by our management, I leave the individual editors of the titles – it can't be any other way. You can't edit by remote control."*

[136] pp1-2, paras 4-7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Martin-Clarke.pdf
[137] p63, lines 20-22, Peter Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf
[138] http://www.dmgt.co.uk/about-dmgt
[139] p12, para 38, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf; p2, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Kevin-Beaty.pdf
[140] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Kevin-Beaty.pdf
[141] p3, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[142] p5, lines 2-4, Martin Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-9-May-2012.pdf
[143] p5, lines 2-5, Paul Dacre, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf

3.14 Mr Dacre has also suggested that the editorial freedom that he is granted as editor-in-chief of the Mail Group of newspaper by the DMGT Board is not necessarily something extended to newspaper editors working for other concerns. He has told the Inquiry that:[144]

> *"…I have turned down editorships of The Times and The Telegraph. One reason I did so is that at the Mail I enjoy total freedom from proprietorial and managerial interference, a freedom that is not necessarily found in other newspaper groups."*

3.15 To this extent, he has suggested that the personal views of Mr Murdoch have influenced editorial decision making at the NI titles. Mr Dacre cited that newspaper group's coverage of the second Iraq conflict, which provided support for the Labour Government's decision to go to war in Iraq. He told the Inquiry his view that it would have been difficult, if not impossible, for the Labour Government to have proceeded with this decision, without the support received through Mr Murdoch's newspapers.[145]

Associated News financial management

3.16 New systems of approving and recording payments to third parties were established at Associated Newspapers following the introduction of the Bribery Act 2010. These require: prior approval from department heads; documentation of the payment; an explanation of why the payment is necessary, including any public interest issue where appropriate; and where it involves an employee acting against their employer, the information presented must be assessed as well as justified. This system applies to freelance journalists working at Associated Newspapers when they need to make payments to third parties in pursuit of a story for the company.[146]

3.17 In addition to normal relationships with news agencies, fees to third parties are sometimes paid. These could be fees to freelancers (either for information or for journalism), fees to the public for information, fees to the public for the right to tell their story, or fees to the public for pictures.[147]

3.18 Payments can be made in cash in a limited number of circumstances, and can be to anonymous sources. Each desk will have delegated authority to approve payments up to an agreed level. Above that level, the approval of the editor or deputy editor is required. Where larger sums are involved, for example in regard to 'buy-ups', there will normally be senior editorial discussion and the payments would be subject to contractual documentation.[148]

Associated News policies and procedures

3.19 Compliance with the Editors' Code of Practice is a contractual requirement for all journalists employed at Associated News.[149] Additionally, it has been a contractual requirement for all ANL journalists, and any freelance journalists working for ANL, to comply with the Data Protection Act. Any complaints to the PCC, and guidance from them, is reflected in legal notices circulated to editorial staff and relevant legal advisors.[150] The editor-in-chief's policy is that:[151]

[144] p4, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf
[145] pp116-117, lines 25-9, Paul Dacre, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf
[146] p9, para 27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf
[147] p9, paras 28-29, *ibid*
[148] p11, paras 33-34, *ibid*
[149] p2, para 5, *ibid*
[150] p6, para 18, *ibid*
[151] p5, para 15, *ibid*

"…one of the most important things… a newspaper can do is to employ first rate reporters, writers and subs who are more concerned than anybody to ensure that their journalism is of the highest professional standards."

3.20 Mr Dacre explained to the Inquiry that clear lines of communication exist between staff, department heads and the managing editors. In this respect, the company ensures that presence of the managing editors on the newsroom floor is constant. Mr Dacre said that:[152]

"If, for example, a reporter was asked to do something he or she was unhappy about, or a head of department was unhappy about signing off payment, there is no reason why they would not feel able to discuss this with the managing editors…"

ANL also has a Data Protection Policy,[153] and a staff handbook which includes a whistleblowers' procedure and a 'speak up' policy.[154]

3.21 Compliance with the Editors' Code of Practice is a particular responsibility of managing editors, together with company's in-house lawyers, who are not involved in editorial decision making and who staff should approach with any concerns related to compliance with the Code. managing editors ensure that all staff are kept aware of any changes to the Code and also have copies of the latest version. PCC training and refresher sessions are also used to ensure compliance with the Code.[155] The Inquiry has been told that training is a key part of ANL's approach to embedding ethics and compliance with the code within the organisation across the range of responsibilities. Disciplinary action has been taken by ANL against journalists on occasion in respect of breaches of the code.[156]

3.22 It is made clear to all journalists working for ANL that failure to abide by the Editors' Code of Practice will have serious consequences for them, the editor and the company.[157] Examples of letters to staff and instructions from the managing editors, legal warnings from the legal department and disciplinary action have been disclosed to the Inquiry.[158]

3.23 Since April 2007 there has been an outright ban on ANL staff using private investigators and search agencies.[159] As well as informing all ANL Journalists of the ban, the Inquiry has been told that ANL have also written to every agency previously used by ANL employees stating that any further use of their services was unauthorised and would not be paid for by the company. This has only been breached once, which resulted in the dismissal of the staff member responsible.[160] ANL retains three commercial relationships with information search services in relation to genealogy, business information and tracing, each of which the company is satisfied complies with DPA requirements.[161]

[152] p6, para 19, *ibid*
[153] p8, para 25, *ibid*
[154] p6, para 19, *ibid*
[155] p6, para 20, *ibid*
[156] p13, paras 29-40, *ibid*
[157] p5, para 17, *ibid*
[158] p6, para 18; p13, paras 29-40, *ibid*; p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[159] p14, para 45, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf
[160] p13, para 39, *ibid*
[161] p14, para 44, *ibid*

3.24 Any staff who believe they have access to, or want to access, material in breach of the DPA are required to contact the editor or deputy editor and where there are compelling public interest reasons to proceed, those reasons should be recorded in writing.[162]

3.25 Associated News has an Anti-Bribery and Corruption policy, a policy on Working with Third Parties and a policy on Gifts and Hospitality. Introduction of new procedures relating to these policies were undertaken in light of the introduction of the Bribery Act 2010. All staff must comply with these policies and promptly report any concerns or violations.[163]

Associated News management structures and processes

3.26 Editorial departments at Associated Newspapers are hierarchical organisations.[164] Reporters make the initial judgment on the quality and source of the information they are dealing with, and whether it is publishable with regard to issues of libel, privacy, data protection and taste. If they have doubts about the accuracy of the information or how it was obtained they have to discuss it with their head of department, who in turn must discuss it with senior editorial executives, who may make other investigations or consult the deputy editor or other senior executives.[165] Sub-editors are encouraged to check facts where it is appropriate to do so.[166] The editor will in turn scrutinise their decisions and may make his own enquiries if he has any reason to doubt the accuracy of the story or the methods used to obtain the story.[167]

3.27 The current editor of the MailOnline, Martin Clarke, told the Inquiry that he applies the same standards of reporting and appropriate checks involved in the publication of stories on the website as the company's print journalists would do.[168]

3.28 Editors are assisted in any such decision making by the managing editors. It is the role of the managing editors to investigate complaints and alleged breaches of the Editors' Code of Practice if, and when, they arise, while at the same time educating journalists about any new developments to or requirements of the Code, and must be proactive in ensuring that the Code is not breached.[169] The Inquiry has been told that Managing Editors are a constant presence on the editorial floor, independent of other departments and not involved in editorial decision-making, save where they are seeking to ensure that a legal or PCC warning is noted.[170] Paul Dacre has made clear that one of their core functions is to:[171]

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[162] p14, para 44, *ibid*
[163] p8, para 27, *ibid*
[164] p4, para 10, *ibid*; pp1-2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[165] p13, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf; pp3-4, paras 9-11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[166] p5, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf; p3, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[167] p13, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf; pp3-4, paras 9-11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf
[168] p7, lines 6-10, Martin Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-9-May-2012.pdf
[169] p4, para 10; p6, paras 19-20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf
[170] p6, para 19, *ibid*
[171] *ibid*

"…ensure that our journalists understand and comply with the highest professional standards."

Associated News incentives

3.29 The editor-in-chief and other ANL editors may receive share options as part of their remuneration but these are tied to DMGT's overall financial performance, and not editorial performance.[172] Mr Dacre, told the Inquiry that he also received a "*one-off lifetime bonus*" which was taken in 2010.[173]

4. Northern and Shell Media Group Ltd

4.1 Northern and Shell is a privately owned company, founded and owned by Richard Desmond. The Daily Express Group was acquired by Mr Desmond on 22 November 2000.[174] In its formal submission to the Inquiry, Northern and Shell have described the Daily Express as "*the world's greatest newspaper*",[175] and that it:[176]

"…covers world and domestic events in depth and with style, it leads opinions and tell the truth intelligently, fearlessly and with attitude. It engages the modern reader with a unique mix of news, features, sport, health, money matters, columnists and entertainment… [it] spearhead[s] the values of middle Britain."

4.2 Perhaps more prosaically, Mr Desmond has told the Inquiry that his only interest in acquiring the Express Group was the commercial opportunity that it offered.[177] Echoing the importance of the commercial interests of the Express Group's owner, the current editor of the Daily Express, Hugh Whittow, has told the Inquiry that his priority for the title is to keep it: "*buoyant, popular and profitable, and hopefully keep and encourage more readers.*"[178]

4.3 The Daily Express has traditionally supported the Conservative Party. Although the paper backed the Labour Party in the 2001 general election under the editorship of Rosie Boycott, the paper returned its support to the Conservative Party ahead of the 2005 general election.[179] The then editor, Peter Hill, explained the reason for that change in allegiance to the Inquiry:[180]

"…the entire history of the Daily Express had been that of a right-of-centre newspaper. It has an enormous constituency of readers who supported that view, and I felt that it had been a huge mistake to move the newspaper to support the Labour Party, which had been done by previous editors and administrations, and it had, in fact, cost the newspaper an enormous number of readers who had abandoned it in despair."

[172] p4, para 13, *ibid*; p3, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf; p2, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Liz-Hartley.pdf
[173] p4, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf
[174] p2 para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[175] http://northernandshell.co.uk/media/express.php
[176] http://northernandshell.co.uk/media/express.php
[177] p64, lines 19-22, Richard Desmond, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf
[178] p125, lines 22-24, Hugh Whittow, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf
[179] http://www.guardian.co.uk/news/datablog/2010/may/04/general-election-newspaper-support
[180] p17, lines 6-13, Peter Hill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf

History

4.4 The Daily Express was founded by Arthur Pearson in 1900. In 1916 the newspaper was purchased by Max Aitken, later Lord Beaverbrook. Beaverbrook was unashamed about the political use he made of his newspapers. In this respect the Beaverbrook Foundation said:[181]

> *"it will be for his role as a pioneer of newspapers and for his ability to form public opinion that Beaverbrook will be ultimately remembered."*

4.5 Under Beaverbrook's ownership the Daily Express became one of the most popular daily newspapers in the UK. Its circulation grew from 2.33m in 1938 to 4.3m in 1960.[182] However, its circulation fell after Lord Beaverbrook's death in 1964 and in 1977 the Daily Express was bought by the construction company Trafalgar House. In 1978 Trafalgar House launched the Daily Star, initially circulated only in the North and the Midlands. In 1982 Trafalgar House incorporated its newspaper publishing interests into a new company, Fleet Holdings, which was purchased by United Newspapers in 1985. In 2000, Express Newspapers, which at the point included the Daily Express, the Daily Star and the Sunday Express, was purchased by Northern and Shell, a company owned by Richard Desmond.

4.6 The Northern & Shell Media Group was founded in December 1974 by Richard Desmond, who continues to own it.[183] The group began publishing music magazines and expanded into a wider range of magazines as well as into advertising and insurance. The group acquired Express Newspapers in November 2000 and Channel 5 in July 2010.[184] The Northern & Shell Media Group currently comprises newspapers (the Daily and Sunday Express and the Daily Star and Daily Star Sunday), printing and distribution, magazines (OK!, New! and Star), Television (Channel 5 and a number of subscription and pay per view channels) and digital media (a stake in the internet television service, YouView, on demand video, websites of its print publications and other web services).[185]

4.7 In 2010 Northern and Shell Media Group had a turnover of £496.3m, with operating profit of £36m.[186] Group turnover in 2010 from publishing and printing (newspapers and magazines) was £347m, with operating profit of £43.7m. The circulation of the Daily Express in February 2012 stood at 577,543, the sixth highest circulation for a national newspaper. Although this is just below the circulation of the Daily Telegraph (on 578,774), the Express has a significantly smaller readership than The Sun, Daily Mail, and Daily Mirror and fractionally less than its sister title, the Daily Star, which has the fourth highest circulation at 617,082. This gives the Daily Express and the Daily Star 6.3% and 6.8% of national daily newspaper circulation respectively, giving N&S Group a 13.1% share of national daily newspaper circulation. In February 2012 the circulation of the Daily Star Sunday and the Sunday Express was 599,078 and 567,800 respectively, which equates to 5.4% and 5.1% of the national share, and accounts for some 10.5% of national Sunday newspaper circulation.[187]

[181] http://www.beaverbrookfoundation.org/lord-beaverbrook3.php
[182] http://www.beaverbrookfoundation.org/lord-beaverbrook3.php
[183] p54, lines 6-11, Richard Desmond, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf
[184] http://northernandshell.co.uk/about/index.php
[185] http://northernandshell.co.uk/media/express.php
[186] http://www.northernandshell.co.uk/downloads/NorthernAndShell_2010.pdf
[187] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1

Governance structures

Northern and Shell boards

4.8 The Board consists of five Executive Directors including the Group Editorial Director, who assumes the role of Board Director, in charge of the creative functions of the organisation.[188] The Board does not have any members who are the editors of the Northern and Shell titles.

4.9 The Board has the responsibility for the administration and business functions of Northern and Shell. In January 2011, it took the decision to withdraw Express Newspapers from the Press Complaints Commission (PCC).[189]

Northern and Shell editorial independence

4.10 The Inquiry has been told that the members of the Northern and Shell Board has no influence over the editorial content carried by the Express Newspaper titles. Mr Desmond has further told the Inquiry that individual editors are responsible for determining the tone of the newspapers they manage and have complete independence in terms of the content they publish. [190] He has said that Editors:[191]

> *"…decide the stories that go in the papers and leave the directors and the administration side of the company to look after the business issues."*

4.11 The decision made by the former Editor of the Daily Express, Peter Hill, to support the Conservative Party ahead of the 2005 general election, was taken with the approval of the Board, although Mr Hill emphasised in evidence that the decision was ultimately his. He has explained:[192]

> *"It had qualified support, because the chairman, Mr Desmond, was a strong supporter of Mr Blair, who was then the Prime Minister, and he was not really a -- he was not a supporter of the Conservative Party, but he accepted that this was the appropriate thing to do."*

4.12 Mr Desmond also stressed the independence of the editor in reaching that decision, and mused as to whether Mr Hill's decision might have impacted adversely on his relationship with the then Prime Minister, Tony Blair. He noted that:[193]

> *"…at the end of the day Peter Hill runs the editorial of the paper and that was the decision that he made."*

[188] pp1-2, para 1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Ashford1.pdf
[189] p5, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[190] pp31-32, lines 20-5, Paul Ashford, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf; p5, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[191] p3, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[192] p17, lines 19-23, Peter Hill, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf
[193] pp65-66, lines 23-1, Richard Desmond, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf

Northern and Shell financial governance

4.13 Corporate Governance at the Northern and Shell is primarily achieved through financial control and, particularly, the imposition of strict budgeting and financial oversight. Following the purchase of Express Newspapers, Northern and Shell implemented new systems in November 2000 intended to effect more effective control of expenses and invoices. Any expenses which exceed £5,000 must be signed off by a director at the group.[194] The Managing Director samples payments to ensure they are appropriate and approves all editorial expenses claims.[195] Cash payments are rarely used but are handled as staff expenses, which require approval by the relevant editor and managing editor.

Northern and Shell policies and procedures

4.14 Express Newspapers has a staff handbook which before 2001 was given to all staff and which is still available to staff on request.[196] That handbook included the Editors' Code of Practice and stated that editors and journalists must comply with it.[197] Gareth Morgan, editor of the Star on Sunday, told the Inquiry that he has sought to ensure that hard copies of the Editors' Code of Practice are distributed throughout his newsroom, and that this is done each time the Code is revised.[198] The Northern and Shell staff handbook also includes a requirement that employees should comply with any company policies in force in this regard. It also includes a requirement that staff should seek to minimise the risk of expensive and damaging legal action.[199]

4.15 Although Northern and Shell is not a member of the PCC, the legal team expect to work in accordance with the standards set down in the Editors' Code of Practice.[200] Rather than responding to complaints made by members of the public or by affected parties through the PCC, instead Northern and Shell has established a Committee, comprising all the editors, the Group Editorial Director and the legal department, which sits on an ad hoc basis to look at any complaints received relating to the company's publications.[201]

4.16 At present, there are no specific documents setting out the policies around anti-bribery or information gathering. Northern and Shell are in the process of issuing an anti-bribery and corruption policy following the enactment of the Bribery Act 2010.[202]

4.17 There are no rules on the employment of private investigators and search agents.[203] The absence of any internal system for monitoring the use of search agencies has allowed some journalists to maximise the use of these services, without oversight through the legal

[194] p3, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Sanderson.pdf
[195] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Ashford1.pdf
[196] p2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Martin-Ellice.pdf
[197] p24, Martin Ellice, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-MSE1.pdf
[198] p2, para 2.1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gareth-Morgan.pdf
[199] p13, Martin Ellice, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-MSE1.pdf
[200] p4, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Nicole-Patterson.pdf
[201] p2, para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf; p3, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Martin-Townsend.pdf
[202] p3, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Sanderson.pdf
[203] p5, paras 12-13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Sanderson.pdf

department of Express Newspapers, or the editors of the Express titles. In this regard, Nicole Patterson, Head of Legal at Express Newspapers informed the Inquiry that:[204]

> *"…I can't say as far as we were aware because until we started having a look at this, I didn't even know that we used these search agencies."*

4.18 Dawn Neesom, the current editor of the Daily Star, told the Inquiry that it was the investigations of Express Newspaper's legal department into unusually large payments made in expenses claims, which revealed the extent of the Daily Star's use of external search agencies. Ms Neesom said that as editor of the title she should have been made aware sooner that these practices had been taking place but was not.[205] Ms Neesom explained that a specific policy in relation to the use of external providers of information did not exist at the Daily Star. The expectation now is that her newsroom operates within the limits of the Editors' Code of Practice;[206] the Northern and Shell staff handbook, and the financial systems set in place by the Board.[207]

4.19 Mr Whittow, also told the Inquiry that he was unaware of the use of search agencies by his journalists. He said that he received the same assurances as Ms Neesom. Similarly, he assumed that any use of the search agencies would have been conducted "*within the confines of the law.*"[208] In contrast, the use of search agencies at the Daily Star Sunday, was undertaken with the knowledge of the editor. Mr Morgan, told the Inquiry that payments to search agencies are authorised through the Assistant News Editor, Jonathan Corke. Mr Morgan told the Inquiry that he:[209]

> *"…speak[s] to Mr Corke on a regular basis to make sure that if we are instructing a search agency, we are doing the right thing."*

4.20 The Inquiry has not heard any evidence to suggest that the Express Newspaper titles have implemented a formal whistle-blowing policy. Instead, Ms Neesom told the Inquiry that she operates an 'open-door policy' for her staff at the Daily Star, but was unable to differentiate between that process and an official policy for her employees. She told that Inquiry that journalists:[210]

> *"…can go to human resources. We don't – I've never had a whistle-blowing experience, to be honest with you."*

[204] p9, lines 6-7, Nicole Patterson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf
[205] p43, lines 8-19, Dawn Neesom, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf
[206] p7, para 19, Dawn Neesom, *ibid*
[207] pp44-45, lines 16-5, Dawn Neesom, *ibid*
[208] pp7-8, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Hugh-Whittow.pdf
[209] p8, para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gareth-Morgan.pdf
[210] p76, lines 18-19, Dawn Neesom, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf

Northern and Shell management structures and processes

4.21 The editor of each Northern and Shell title is responsible for the staff who work on that title.[211] Journalists report to their head of department, who in turn reports to the deputy editor, who reports to the editor.[212] The news and pictures' desk, and individual reporters, have responsibility for verifying sources of information for their stories.[213] Ms Patterson told the Inquiry that:[214]

> *"…I expect that when I'm presented with a story or some copy for legalling that the journalist will have done their job and that those facts will be correct, and if there is a legal problem with any of them, then I ask them, "where did it come from? How did it come about?"*

4.22 Editors have a responsibility to ensure that the policies for lawful, professional and ethical conduct are adhered to in practice.[215] The Inquiry has been told that editors at the group check throughout the day on all stories and pictures that are being printed.[216] Sources for stories are discussed at editorial meetings which take place throughout the day, at which unusual articles and sources of information for those articles will be discussed.[217]

5. Trinity Mirror plc

5.1 Trinity Mirror describes the Daily Mirror as:

> *"…a unique balance of real news, real entertainment and sport" and says that it's core values are "compassion, conviction and courage".*[218]

Since the 1930s the Mirror has been a left-wing newspaper, and has supported the Labour party at every general election since 1945.[219] Richard Wallace, editor of the Daily Mirror at the time he gave his evidence, said that the fact that he had met more often with Labour leaders than with the Conservative leader is a reflection of the paper's political stance.[220]

5.2 Lloyd Embley , then the editor of the Daily Mirror's sister title, the People, and now the editor of the Daily Mirror, described the People as providing:[221]

> *"…a combination of news, showbusiness and celebrities, football coverage and real-life stories."*

[211] p7, para 27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Nicole-Patterson.pdf
[212] p2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf
[213] p6, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Hugh-Whittow.pdf
[214] p23, lines 10-15, Nicole Patterson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf
[215] p5, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[216] pp3-4, para 3-4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Hugh-Whittow.pdf
[217] p8, para 29, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Nicole-Patterson.pdf
[218] http://www.trinitymirror.com/our-portfolio/nationals/daily-mirror/
[219] http://www.guardian.co.uk/news/datablog/2010/may/04/general-election-newspaper-support
[220] p41, lines 9-14, Richard Wallace, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf
[221] p6, para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lloyd-Embley.pdf

Mr Embley has said that the People, provides a unique focus on real-life stories. The title even publishes a supplementary magazine given over to such stories.[222]

5.3 Despite the historic support of the Mirror Group for the Labour party, Mr Embley has shifted the political allegiance of the People. It is now politically independent. Mr Embley has told the Inquiry that this was a personal decision, linked to the wider re-launch of the title, following his promotion to the position of editor in May 2008.[223] Mr Embley stressed the importance of the People's independent position, and explained to the Inquiry that:[224]

> *"My move to political independence, I think, says quite a lot about where I stand on – my view is that I represent and my paper represents the views of its readers, and my view on why I moved it to be politically independent is because I think politics has changed so much and the parties are so closely aligned on so many policy issues that it seems wrong to me just to follow one party. I felt it enable me to stand up for my readers best."*

5.4 The Trinity Mirror titles are also campaigning newspapers, and routinely run campaigns on issues they understand to be of importance to the demographic of their readership.[225] The People has campaigned on the issue of fuel poverty, working with the industry to provide free energy saving devices and raising awareness to rising energy costs.[226] The Sunday Mirror have led a number of military campaigns, raising money for former servicemen, highlighting the need for improved aftercare offered to troops returning from service.[227] Other campaigns have included the Daily Mirror's "*Honour the Brave*" and the successful "*Pride of Britain Awards*".[228] Mr Wallace told the Inquiry that the Daily Mirror campaigns very much reflect the title's values and political stance, representing the interests of "*ordinary people*".[229]

History

5.5 The Daily Mirror was founded by Alfred Harmsworth, Viscount Northcliffe, in 1903 as a periodical for ladies. The paper left the Harmsworth stable when it was sold in 1922 to Viscount Astor after Viscount Northcliffe's death. During the 1930s, the Mirror developed a strong focus on working class issues. By 1939 it sold 1.4m copies a day. Its popularity continued to grow and by the 1960s it was the most popular of the national dailies, selling over 6m copies a day. In June 1953 the Daily Mirror broke all records selling 7m copies on the day of the Coronation.

5.6 In 1963 the Mirror Group together with three magazine publishers formed the International Publishing Corporation (IPC).[230] In 1960 the Mirror Group acquired the failing Daily Herald, and re-launched it in 1964 as a mid-market paper called The Sun, which was then sold to NI in 1969. In 1970 the IPC was taken over by Reed International Limited. In 1984, Pergamon

[222] *ibid*
[223] p50, lines 10-18, Lloyd Embley, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[224] p53, lines 12-20, Lloyd Embley, *ibid*
[225] p4, para 16; p6, para 20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[226] p6, paras 27-29, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lloyd-Embley.pdf
[227] p6, para 22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[228] pp5-6, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf
[229] p6, para 18, *ibid*
[230] http://www.ipcmedia.com/about/

Holdings, a company owned by Robert Maxwell, acquired the Daily Mirror from Reed and it was re-listed as Mirror Group in 1991 following the death of Mr Maxwell that year. Trinity was formed in 1985 when the Liverpool Daily Echo separated from its holding company. Trinity grew rapidly through the acquisition of regional titles and in 1999 Trinity and the Mirror Group merged to form Trinity Mirror, the biggest newspaper publisher in the UK.[231]

5.7 Trinity Mirror is still one of the UK's largest newspaper publishers with a portfolio including five national newspapers, over 130 regional newspapers and more than 500 digital products. In 2010 Trinity Mirror had revenue of £761.5m and operating profit of £123.3m.[232] The Group employs over 6,500 people in more than 60 locations across the UK, including nine print sites. The Group has two trading divisions: Regionals and Nationals. The Nationals contribute something over half of Trinity Mirror's revenues and profits, with revenue in 2010 of £430.3m and operating profits of £86.1m compared to 2010 revenue from the Regionals division of £331.2m, with an operating profit of £51.7m.

5.8 Trinity Mirror's national titles include two daily titles: the Daily Mirror and the Daily Record; and three Sunday titles: the Sunday Mirror, the People and the Sunday Mail (the sister paper to the Daily Record). In February 2012 the Daily Mirror had a circulation of 1.102m,[233] or just under 12% of national daily circulation. The Daily Record had a circulation of 291,825, which puts it at just over 3% of national circulation, meaning that the Mirror Group titles together account for around 15% of national circulation. The Sunday Mirror, the People and the Sunday Mail in February 2011 had circulations of 1,594,293, 701,246 and 376,898 respectively, with 14.4%, 6.3% and 3.4% of national Sunday circulation respectively, with Mirror Group titles accounting for just over 24% of all national Sunday circulation, including the third and fifth most popular national Sunday titles.[234]

Governance structures

5.9 Trinity Mirror is a public company listed on the London Stock Exchange.

Trinity Mirror boards

5.10 The Board consists of eight members, of whom the Chair and four members are non-executives. The Executive Directors are the Chief Executive, the Finance Director and the Company Secretary.[235] Risk management is handled through the Audit and Risk Committee and risk maps, with around 70 senior personnel required each year to certify that they are properly identifying and reporting risk.[236] The Inquiry has been told that risks tracked by the Risk Committee include 'catastrophic editorial error'.[237] Day to day corporate governance is managed through the Executive Committee, which includes the three executive directors and the Managing Directors of the Nationals and Regionals Divisions.[238]

[231] http://www.trinitymirror.com/our-company/history/
[232] http://www.trinitymirror.com/documents/Trinity%20Mirror%20Prelim%203March%20FINAL.pdf
[233] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[234] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[235] http://www.trinitymirror.com/our-company/board-of-directors/
[236] p16, para 65, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Sly-Bailey.pdf
[237] p15, para 59, *ibid*
[238] p14, para 56, *ibid*

5.11 Within the Trinity Mirror's overall strategy for the management of risk, the editor is responsible for identifying risks and making the best judgments associated with that risk. In-house lawyers are also in place at titles, and are responsible for providing advice to the editor in relation to publishing articles in compliance with the Code.[239] The editor will report to the Managing Director (of either Nationals or Regionals), who in turn report to the Board, and the Chief Executive.[240]

Trinity Mirror editorial independence

5.12 The editors of the Daily Mirror, the Sunday Mirror and the People are appointed by the Board of Trinity Mirror, which has the power to remove them.[241] The final decision on what is published in a title belongs to the editor of that title, and is without influence from the Board or shareholders of Trinity Mirror.[242]

Trinity Mirror financial governance

5.13 Financial authority is delegated within strict limits, dependent on seniority, and within budget categories.[243] No one is authorised to approve payments that would breach any of Trinity Mirror's policies. Trinity Mirror has a strict policy against all manifestations of fraud and dishonesty.[244] The Fraud Policy states that Trinity Mirror will seek to recover all associated costs from the individual responsible for a fraud and makes clear that such action will lead to potential disciplinary processes, and might lead to the involvement of the police.[245] Trinity Mirror policies makes clear that the system used for paying expenses should not be used for payment for editorial content, which is instead registered as a payment for contributions.[246] Expenses must be approved by someone other than the claimant with an appropriate authority level.[247] If expenses relate to entertainment of a third party then only the editor can authorise the third party remaining anonymous on the record of the expenses.[248]

5.14 Each title has a budget for contributions, and MGN has 68,000 contribution accounts of which 19,000 have had at least one transaction processed since 2005.[249] Payments under the contributions system are made direct to the bank accounts of the recipients. All payments must be appropriately authorised and new accounts cannot be set up by the authoriser.[250] Cash payments can be made, but over a certain limit they must be approved by an editor or deputy editor and the approver must know to whom the payment is going. The request for the cash payment must be approved by a senior in-house legal advisor and the journalist must provide written receipts for the amounts claimed.[251]

[239] p9, para 37, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[240] p7, para 23, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf
[241] pp22-23, para 84, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Sly-Bailey.pdf
[242] p23, para 85, *ibid*
[243] p10, para 36, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Vijay-Vaghela.pdf
[244] pp10-11, para 40, *ibid*
[245] Trinity Mirror plc Fraud Policy. This evidence can be found on the Inquiry website.
[246] p11, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Vijay-Vaghela.pdf
[247] p12, para 42, *ibid*
[248] p14, para 52, *ibid*
[249] pp12-13, para 47, *ibid*
[250] p13, para 49, *ibid*
[251] p14, para 52, *ibid*

Trinity Mirror policies and procedures

5.15 Trinity Mirror has a policy on Standards of Business Conduct with which all staff must comply.[252] There is also a Code of Conduct policy. Breach of either is grounds for disciplinary action.[253] The PCC Editors' Code of Practice is incorporated into staff contracts.[254] Trinity Mirror has a fraud policy and a whistle-blowers' charter in place,[255] which covers fraud and any instance of malpractice.[256] Trinity Mirror also has a Dignity at Work Policy which covers bullying and victimisation, as well as an equal opportunities policy.[257]

5.16 The Mirror Group has used private investigators but since 2011 have introduced a new policy to halt such use.[258] Trinity Mirror has also re-issued to staff the organisation's policies and procedures on relevant privacy issues, including the zero tolerance policy on breaches to the Data Protection Act.[259]

Management structures and processes

5.17 The Chief Executive of the Trinity Mirror Group is responsible for the propriety and reputation of the company. The editorial functions of the national and regional titles are the responsibility of the editors of the individual titles. The management of editorial staff are for the editors alone. However, the Board has the power to appoint and terminate the contracts of the editors at all of the titles.[260] Managing editors are responsible for the business operation of the newspapers and have no role in editorial issues.

5.18 The editor is ultimately responsible for the content of their publication and is granted full editorial independence by the Trinity Mirror Board. The editor of a given title within the Group will chair editorial conferences with heads of departments on a daily basis.[261] [262] Journalists working on the Daily Mirror are expected to know and understand the Editors' Code of Practice.[263] Mr Wallace has told the Inquiry that in his view ethics was not something that should require frequent reminding in the newsroom as, he argued, it was inherently embedded in the culture of the Daily Mirror.[264] To this extent, appropriate measures with regard to the verification of sources for stories, are expected to be the responsibility of

[252] p10, para 40, *ibid*
[253] p10, para 38, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Vickers.pdf
[254] pp22-23, para 84, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Sly-Bailey.pdf
[255] p17, para 68, *ibid*
[256] pp10-11, para 39, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Vickers.pdf
[257] p12, paras 43-44, *ibid*
[258] p15, para 57, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Vijay-Vaghela.pdf; p19, paras 66-67, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf
[259] p16, lines 2-19, Richard Wallace, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf; p8, paras 28-30, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[260] pp78-79, lines 25-21, Sly Bailey, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[261] p8, para 39, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lloyd-Embley.pdf; pp5-6, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[262] p7, para 36, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Maria-McGeoghan.pdf
[263] p18, lines 22-25, Richard Wallace, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf
[264] p20, lines 4-6, Richard Wallace, *ibid*

individual journalists.[265] The editor is also responsible for 'certifying' that appropriate controls are in place.

Trinity Mirror incentives

5.19 Editors at Trinity Mirror do not receive any financial benefit for printing exclusive stories. Trinity Mirror operates an annual bonus scheme which is linked to the financial performance of the company and an editor's individual performance.[266]

Mirror Group Regionals

5.20 The Mirror Group regional titles also operate under the Mirror Group Standards of Business Conduct.[267] In addition, there is a Mirror Group Regional Editorial Policy, which incorporates the Editors' Code of Practice.[268] Approaches may differ across the regional portfolio. The Inquiry has seen evidence from the Manchester Evening News (MEN), which was purchased from the Guardian Media Group in 2010, indicating that it requires every article to be looked at by two experienced journalists to ensure that it is lawful, accurate and fair.[269] The MEN also seeks to ensure that nothing is published which is legally problematic, with a policy 'if in doubt, don't publish'.[270] Any breach of the law or any use of subterfuge would have to be approved by the editor.[271]

6. The Telegraph Media Group

6.1 The Daily Telegraph has the highest daily circulation of the national broadsheet titles. The Chairman of the Telegraph Media Group, Aidan Barclay, has described the Telegraph as an 'iconic' company,[272] which has successfully established itself as an "*investigative and campaigning newspaper*".[273] in this regard, Mr Barclay has said that the publication of the MPs' expenses story in 2009 was:[274]

> *"…probably the most important piece of investigative journalism across the British press in the last two decades."*

6.2 The current editor of the Daily Telegraph, Tony Gallagher, told the Inquiry of the quality of the professional culture that exists at the Daily Telegraph. He, like others, emphasised that his newsroom operates in full compliance with the terms to the PCC Code, and is proud to produce quality news that is fair and accurate.[275]

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[265] pp11-12, paras 44-46, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tina-Weaver.pdf
[266] p4, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lloyd-Embley.pdf
[267] p5, para 24, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Maria-McGeoghan.pdf
[268] p5, paras 24-25, *ibid*
[269] p5, para 26, *ibid*
[270] p6, para 31-32, *ibid*
[271] p11, para 55, *ibid*
[272] pp3-4, para 14-15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Aidan-Barclay.pdf
[273] pp7-8, para 25, *ibid*
[274] *ibid*
[275] p8, para 23, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf

6.3 The Daily Telegraph has historically supported the Conservative party. With this in mind, Mr Barclay also told the Inquiry that:[276]

> *"We operate under an overarching principle that customers come first. That does not mean the papers do not criticise Conservative Governments and politicians: they regularly do."*

History

6.4 The Daily Telegraph was launched by Colonel Arthur B Sleigh in 1855, allegedly to air a personal grievance, but was soon sold to Joses Moses Levy. Levy's son, Baron Burnham, eventually sold the Telegraph to Viscount Camrose in 1928 and both the Burnham and Camrose families remained involved in the management of the newspaper until it was bought by Conrad Black in 1986 (Lord Black of Cross Harbour). Under Lord Black's ownership, the Telegraph Group became part of Hollinger International, in which Lord Black's Hollinger Inc. held a 73% controlling stake in the company. In 2004 Sir Frederick and Sir David Barclay purchased Hollinger Inc, and with it the controlling stake in the Telegraph Group.

6.5 In February 2012, the Daily Telegraph had a circulation of 578,774, its nearest broadsheet competitor is The Times with a circulation of around 398,000. Even so, this amounts to only a small fraction (6.3%) of the UK's national daily newspaper circulation. In the same month, The Sunday Telegraph, had a circulation of 461,280, which is the second most popular of the Sunday broadsheets (well behind the Sunday Times on 939,395), and accounts for 4.2% of UK Sunday newspaper circulation.[277]

Governance structures

6.6 The Telegraph Media Group is a private company, ultimately controlled by Sir David and Sir Frederick Barclay's Family Settlements.[278] In 2010, it recorded a profit after taxation of £50m on a turnover of £324m.[279] It currently employs over a thousand members of staff.[280] The Group publishes the Daily Telegraph and the Sunday Telegraph and also operates the Telegraph website, www.telegraph.co.uk.

Telegraph boards

6.7 The Board of the Telegraph Media Group consists of eight members: the Chief Executive and Finance Director, Howard and Aidan Barclay, three Directors of other Barclay family undertakings, Rigel Mowatt, Philip Peters and Michael Seal and Loraine Twohill, who is an independent non-executive Director.[281]

[276] pp9-10, para 32, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Aidan-Barclay.pdf
[277] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[278] p14, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf
[279] 1 January 2012 Report and Accounts for the Financial Year of the Telegraph Media Group Limited (published 21 March 2012)
[280] p10, para 30, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Murdoch-MacLennan.pdf
[281] p3, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Murdoch-MacLennan.pdf

Telegraph editorial independence

6.8 The commercial and editorial sides of the business are run separately, with the editors reporting directly to the Chief Executive.[282] The editorial teams determine what appears in the publications at TMG, and decisions on editorial matters are left entirely to the editor, subject to operating within TMG budgetary constraints.[283] Mr Gallagher, told the Inquiry that he speaks only once or twice a month to the Chairman of TMG and would otherwise be left to focus on editorial matters.[284]

Telegraph financial governance

6.9 The Board agrees the budget for the newspaper, and authority to commit expenditure is delegated by the Board to department heads and senior editorial staff. Approved budgets for each editorial department are reviewed on a monthly basis.[285] Any expenditure above the delegated level must be approved by the managing editor, Executive Director Editorial or the Finance Director.[286] TMG has made clear to the Inquiry that it has systems in place to ensure that it acts in accordance with the requirements of the Companies Act 2006.[287]

6.10 TMG also operates clear procurement policies which state that any procurement must fully reflect all applicable laws and requires that any actual or potential unethical or illegal practices by a supplier should be reported to the Finance Director and Commercial Legal Director.[288] Only five staff members at TMG are able to authorise payments to contributors of over £500 or payments to suppliers of over £1,000.[289] Cash advances are generally only permitted for foreign travel expenses.[290]

Telegraph policies and procedures

6.11 All TMG editorial staff are required under the terms of their contracts of employment to comply with the terms of the Editors' Code of Practice.[291] The company's staff handbook and standard employment contracts also require adherence to a wider set of standards, which include not bringing the company into disrepute.[292] More recently, TMG have moved to synthesise their core principles of ethical and legal conduct into an Editorial Code of Conduct.[293]

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[282] p2, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf; p3, para 9; p10, para 39, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Ian-MacGregor2.pdf
[283] p14, para 41, *ibid*
[284] p82, lines 8-18, Tony Gallagher, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf
[285] p5, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Finbarr-Ronayne1.pdf
[286] p6, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf
[287] pp3-4, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Finbarr-Ronayne1.pdf
[288] pp7-8, para 18a, *ibid*
[289] pp6-7, paras 16-17, *ibid*
[290] p8, para 18b, *ibid*
[291] pp2-3, paras 6-7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf
[292] *ibid*
[293] *ibid*

6.12 TMG operates a whistle-blowing policy which allows staff to raise on an anonymous basis concerns they may have around potentially illegal or unlawful activity, or wrongdoing.[294] TMG also introduced an Anti-Corruption and Bribery policy in 2010 following the introduction of the Bribery Act.[295] At the time of writing, TMG did not have a policy on the employment of private investigators, but the company has made clear in evidence to the Inquiry that none have been employed within the tenure of the current editors.[296]

Telegraph management structures and processes

6.13 The Chief Executive Officer of the TMG, Murdoch MacLennan, is responsible for day to day leadership of the company. He holds weekly senior management meetings to discuss key strategic issues.[297] Working to the editor of the Daily Telegraph are, the deputy editor, assistant editor and executive editor. Together they comprise the title's senior editorial team. Beneath them sit the Department Heads (or editors). They are also supported by deputy editors.[298]

6.14 There are two legal departments at TMG. They have distinct responsibilities; the Corporate Legal Department and Editorial Legal Department.[299] When issues arise they are addressed jointly by the editorial and relevant legal teams. Where a complaint is made about a failure to adhere to terms of the Editors' Code of Practice, the Editorial Legal Department is responsible, together with the journalists involved and department head, for conducting an investigation and responding to the complaint – including drafting an apology where appropriate.[300] Editorial Directives, for example requiring staff to bring specific types of issue to the legal department, are issued from time to time.[301]

6.15 Mr Gallagher told the Inquiry that the Daily Telegraph operates a system of peer-review for the majority of articles published on the Telegraph's website. This has replaced the traditional process of editorial checks found in most newsrooms, for online news stories, as it relies on the judgment of more experienced reporters, who are effectively allowed to "*self-publish their stories*".[302] Mr Gallagher has noted, however, that this process is only applied to seemingly uncontroversial news stories, whereas any article which might attract attention would be edited through the normal process, including, where appropriate with legal involvement.[303]

[294] p9, para 20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Finbarr-Ronayne1.pdf
[295] p10, para 24, *ibid*
[296] pp13-14, para 49, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Ian-MacGregor2.pdf; p17, para 47, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf
[297] pp4-5, lines 18-6, Murdoch MacLennan, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf; p3, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Murdoch-MacLennan.pdf
[298] p3, paras 8-9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf
[299] p3, para 7-8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Adam-Cannon.pdf
[300] p6, para 19, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Arthur-Wynn-Davies.pdf
[301] p10, para 30; p13, para 38; p18, para 56, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Adam-Cannon.pdf
[302] p74, line 1, Tony Gallagher, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf
[303] p74, lines 3-12, Tony Gallagher, *ibid*

Telegraph incentives

6.16 TMG operates an annual bonus scheme for its senior commercial executives and senior editorial executives. These bonuses are not contingent on publishing particular stories or exclusives, but rather are determined by financial targets related to the operating profit of TMG and the individual titles.[304]

7. The Guardian Media Group

7.1 The Guardian is the only national broadsheet title that is owned by a Trust, rather than a traditional proprietor owner, or through shareholders in a public or private company. Dame Elizabeth Forgan is the Chair of the Scott Trust which owns the Guardian. She has said that the central objective of the Trust is:[305]

> *"To secure the financial and editorial independence of The Guardian in perpetuity: as a quality national newspaper without party affiliation; remaining faithful to liberal tradition; as a profit-seeking enterprise managed in an efficient and cost-effective manner."*

7.2 *The Guardian* is required by the Trust to support 'liberal journalism'. It has developed a reputation as a strongly liberal newspaper. Although this might be considered as a direct influence on the editorial decision-making at the Guardian, Alan Rusbridger, editor-in-chief of the title, explained to the Inquiry that:[306]

> *"…the only thing the Scott Trust tells you is to carry on the paper as heretofore, and it's left to you to interpret the traditions of the paper in the light of the current circumstances. I think it's a liberal small "L", …we discuss what the meaning of that is, but it's not liberal politically."*

With this in mind, the Guardian has supported at different times the Labour Party, the Liberal Party, the Social Democratic Party, and the Liberal Democratic Party at general elections since 1945.[307]

History

7.3 The Manchester Guardian (the Guardian) was founded in 1821 by John Edward Taylor to promote liberal interests in the aftermath of the Peterloo massacre. The journalist CP Scott was made editor of the Guardian in 1872 and remained in post until 1929. Scott bought the paper in 1907 and in 1936 the Scott Trust was established by the son of CP Scott and became the owner of the Guardian. The Trust Deed requires that the company must:

> *"... be carried on as nearly as may be upon the same principles as they have been heretofore conducted."*

[304] p7, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Benedict-Brogan1.pdf; pp14-15, para 42, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tony-Gallagher.pdf; p11, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Ian-MacGregor2.pdf
[305] p3, paras 13-14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dame-Elizabeth-Forgan.pdf
[306] p79, lines 1-7, Alan Rusbridger, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf
[307] http://www.guardian.co.uk/news/datablog/2010/may/04/general-election-newspaper-support

7.4 The Trust was established as a limited company in 2008, with the core purpose of securing the financial and editorial independence of the Guardian in perpetuity.[308] The Scott Trust is the owner of the Guardian Media Group. The Guardian Media Group has three wholly owned businesses: Guardian News & Media, GMG Radio and GMG Property services; and shares in Trader Media Group and Emap.

7.5 In 2010 GMG had a turnover of £280.2m excluding its joint ventures, but made an operating loss of £53.9million.[309] Guardian News & Media publishes the Guardian and the Observer and guardian.co.uk. It also operates Guardian Business and Professional. GNM had turnover of £221m in 2010.[310] In February 2010 The Guardian had circulation of 215,988, making it the second smallest circulation national broadsheet newspaper, with only 2.4% of UK daily national circulation. The Observer, in February 2010, had circulation of 253,022, which is again the second smallest of the Sunday broadsheets, accounting for 2.3% of national Sunday newspaper circulation.[311]

Governance structures

7.6 Guardian News and Media is wholly owned by GMG. GMG is wholly owned by the Scott Trust, who appoints, and can remove, the editor of the Guardian.[312] The Scott Trust is not only responsible for the appointment of the editor-in-chief but is also responsible for the appointment of the readers' editor. Only the Trust has powers to rescind that appointment, and that is done by way of a vote of the Board of the Trust.[313] This is to ensure the independence of the readers' editor from senior operational staff at the Guardian and the editor-in-chief.

Guardian boards

7.7 The Board of the Scott Trust comprises ten directors. It includes the editor-in-chief of the Guardian, Alan Rusbridger, and the Chief Executive of GMG.[314] Directors are appointed by a Nominations Committee (comprising the Chair and five Independent Directors). The directors meet quarterly and also meet annually with the full Board of GMG.[315]

7.8 The GMG Board consists of ten members, and includes the editor-in-chief of the Guardian, the Chief Executive of GMG and the Company Secretary of GMG, with addition the Chief Financial Officer of GMG and the Chief Executive of GMG Radio. The Board also comprises five Independent Directors.[316] The Chair of the Scott Trust leads the appointment process for the Chair of GMG.[317] The structure is deliberately designed to keep separate the editorial and

[308] http://www.gmgplc.co.uk/the-scott-trust/history/
[309] http://www.gmgplc.co.uk/wp-content/uploads/2010/11/GMG_AR_2010.pdf
[310] http://www.gmgplc.co.uk/wp-content/uploads/2010/11/GMG_AR_2010.pdf
[311] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[312] http://www.gmgplc.co.uk/the-scott-trust/the-scott-trust-board/
[313] p54, lines 4-21, Chris Elliott, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf
[314] pp3-4, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dame-Elizabeth-Forgan.pdf
[315] http://www.gmgplc.co.uk/gmg/gmg-board/
[316] *ibid*
[317] p4, para 19, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dame-Elizabeth-Forgan.pdf

commercial parts of GNM's business in order to guarantee the editorial independence of all journalistic content.[318]

7.9 The Chief Executive Officer of GMG is ultimately responsible for all non-editorial aspects of corporate governance. All board directors of GNM and GMG (with the exception of the editor-in-chief) are accountable to the Chief Executive.[319]

Guardian editorial independence

7.10 Editorial governance is the responsibility of the editor-in chief, who is accountable to the board of the Scott Trust. The GMG Board is briefed on a monthly basis by the editor-in chief on editorial strategy and implementation, budgets, capital expenditure, industrial relations issues, significant stories and press coverage of the group. The editor-in chief also briefs the Scott Trust on similar issues on a quarterly basis. Both Boards reviews past performance and strategy for the year ahead in November.[320] Directors do not discuss the editorial or political line of the paper.[321]

Guardian financial governance

7.11 The Group Audit Committee assists the GMG board in its oversight, including the integrity of financial reporting procedures and the company's compliance with legal and regulatory requirements.[322] GNM has policies on expenses, delegated authority thresholds, bribery and anti-corruption, corporate hospitality and gifts and travel and expenses.[323] These policies are available to staff through the company intranet and are kept under review to ensure that they are up to date.[324]

7.12 Payments to freelance journalists are processed by administrators using a bespoke payments system. Any one-off payments are made through the Finance Department. Payments to regular suppliers are made through a procurement system which requires a unique purchase order number for that payment to be made.[325] Staff are able claim expenses in accordance with the company's expenses policy. Expenses are approved by officials within delegated approval limits.[326] If a claim exceeds the limits set by the relevant policies, claims are referred to the managing editor for further scrutiny.[327]

[318] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Miller.pdf
[319] p3, para 6, *ibid*
[320] p2, paras 4-5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[321] p3, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dame-Elizabeth-Forgan.pdf
[322] p3, para 7f, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Darren-Singer.pdf
[323] pp13-14, paras 19-20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[324] p3, para 7f, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Darren-Singer.pdf
[325] p3, para 7, *ibid*
[326] *ibid*
[327] *ibid*

Guardian policies and procedures

7.13 The Guardian operates its own editorial code of conduct which has been in place since 2002.[328] This incorporates the Editors' Code of Practice, which Guardian staff are required to comply with in the terms of their employment contracts.[329] The GNM Code includes a number of issues not covered by the Editors' Code of Practice (e.g. conflicts of interest and declarations) and also offers more comprehensive guidance than the Editors' Code of Practice on a number of matters including privacy. In addition, the GNM Code also sets out a series of questions, including engaging the "the Omand Principles", which should be considered by journalists whenever privacy issues are potentially engaged. These are:[330]

(a) There must be sufficient cause – the intrusion needs to be justified by the scale of the harm that might result from it;

(b) There must be integrity of motive – the intrusion must be justified in terms of the public good that would follow from publication;

(c) the methods used must be in proportion to the seriousness of the story and its public interest, using the minimum possible intrusion;

(d) there must be proper authority – any intrusion must be authorised at a sufficiently senior level and with appropriate oversight;

(e) there must be a reasonable prospect of success' fishing expeditions are not justified.

7.14 The Guardian also operates a whistle blowing policy, and encourages its use by reassuring staff that they should be able to raise issues without fear of "*accusations of disloyalty, harassment or victimisation*".[331] An Anti-Bribery and Corruption Policy was introduced in June 2011, which was designed by the GMG and GNM's Anti-Bribery and Corruption Committee. This Committee reports on a regular basis to the GMG Board.[332]

Guardian management structures and processes

7.15 As previously stated, the editor-in-chief is responsible to the Scott Trust in terms of all editorial matters. In this regard, he reports directly to the Trust, rather than GMG's Chief Executive Officer. However, the editor-in-chief (who is also a director of both GMG and GNM) also has a responsibility to keep the GMG board informed about his areas of business, including the business of both the Guardian and the Observer.[333] The remainder of the board directors of GNM and GMG are accountable to the CEO. He in turn reports to the Chair of GMG and directors of the Trust.[334] [335]

[328] pp3-6, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[329] *ibid*
[330] p15, para 21, *ibid*
[331] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Supplementary-Statement-of-Alan-Rusbridger.pdf
[332] pp1-2, Darren Singer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-DS1.pdf
[333] p2, paras 4-5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[334] p3, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Miller.pdf
[335] The role of the Managing Director of GNM was removed with the arrival of GMG's CEO in July 2010

7.16 On an editorial level, the editor-in-chief of the Guardian and the editor of the Observer are responsible for their respective titles. They hold meetings to discuss issues affecting both titles, including budgets, staff issues and general strategy.[336] The editorial process is the same for both the print and digital edition of the Guardian.[337]

7.17 Parallel to such processes, the Director of Editorial Legal Services, Gillian Phillips, reports directly to the managing editor of GNM, with whom meetings are held on a fortnightly basis. The Director of Editorial Legal Services is responsible for briefing the GNM Executive Committee on a monthly basis. These briefings will cover the main legal issues which have arisen, and the status of any complaints, or other on-going matters which the Committee should be made aware of.[338]

Guardian readers' editors

7.18 Both the Guardian and the Observer have readers' editors. The Guardian's readers' editor, Chris Elliott, is, as noted, independently appointed by the Scott Trust, and is accountable only to the Chair of the Trust.[339] The readers' editor at the Observer is not appointed in this way, but through the editor and with "*an unwritten guarantee of independence*".[340] This position is currently held by Stephen Pritchard, who is also member of the Board and former President of the Organisation of News Ombudsman.[341] The contact details of the readers' editor of both titles are published in each edition of the respective newspaper.

7.19 As noted above, the Guardian is one of very few newspapers to employ a readers' editor. The role of the readers' editor is to correct or clarify inaccuracies, discuss issues raised by readers and liaise with an external Ombudsman.[342] The readers' editor at the Guardian writes a weekly column on the issues raised by readers. Reflecting the corporate and editorial independence of the role, this cannot be amended by the newspaper's editor.

7.20 On occasion, when the editor might disagree with the judgment of the readers' editor, the views of the former may be taken into account, but ultimately the editor has no power to change the outcome of the readers' editor's findings. To this extent, Mr Elliott has stressed to the Inquiry that:[343]

> *"...obviously you listen carefully to that [view of the Editor], but if, in the end, you think it's the right thing to do, you can fall back on the fact that you are employed by the Trust -- I'm employed by the Trust and I actually think they're wrong and we go ahead and I do what I see fit."*

However, there is a consultation process with the editor, the managing editor and the

[336] pp1-3, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[337] pp3-6, para 6, *ibid*
[338] p8, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gillian-Phillips.pdf
[339] p54, lines 11-15, Chris Elliott, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf
[340] p4, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Alan-Rusbridger.pdf
[341] pp1-2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Mulholland1.pdf
[342] p56, lines 3-16; pp57-58, lines 15-19, Chris Elliott, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf
[343] p57, lines 9-14, Chris Elliott, *ibid*

journalist involved in the article, once the readers' editor has made his decision.

7.21 The readers' editor may also refer any substantial grievances to the external Ombudsman. This is an externally appointed reviewer, who considers any complaints which bring into question the integrity of a Guardian journalist.[344] The Ombudsman's role is to review the process of review conducted by the Readers' Editor in carrying out the initial investigation. The Ombudsman does not look at or reinvestigate the complaint itself:[345]

> *"…he will look at the processes, the way we've actually carried out, rather than try to reinvestigate it. What he's trying to assess is whether the readers' editor has done it fairly and competently."*

7.22 In his evidence to the Inquiry, Mr Elliott explained that the external Ombudsman is unlikely to deal with a large number of referrals in the space of a year, only *"maybe one or two a year."*[346]

8. The Independent Group

8.1 The Independent is the youngest of the major national daily newspapers. Independent Print Limited is jointly owned by the Russian business tycoon, Alexander Lebedev and his son, Evgeny. The Evening Standard Limited is also owned by the Lebedevs, having been purchased in January 2009. Evgeny Lebedev told the Inquiry that his focus for both newspaper titles is the provision of accurately informed journalism, which is ethically sound and delivered in the public interest. He said that although his papers might adopt different approaches and have different political leanings, the broader purpose of both titles remains dedicated to fair and accurate journalism.[347]

8.2 Mr Lebedev has expressed his pride at the successes of the London Evening Standard, a free newspaper title, which has reach of over one million readers a day in London, reporting on issues affecting the people of the capital.[348] With regard to the philosophy of The Independent, Mr Lebedev has said that the title is:[349]

> *"…famed for its brilliant journalism, its foreign reporting, its comment, its -- it's a newspaper that people trust because traditionally it's been independent."*

8.3 The current editor of The Independent, Christopher Blackhurst, echoed Mr Lebedev's evidence with regard to the reputation of The Independent. Mr Blackhurst told the Inquiry that the Independent prides itself on taking the highest ethical stance. He said that this ethical journalism is the core of The Independent brand, which Mr Blackhurst described as a "*serious newspaper at the top end of the market*". [350] He has said further that this commitment to high quality journalism is reflected in the content published by the newspaper.

[344] p58, lines 2-15, Chris Elliott, *ibid*
[345] p58, lines 16-19, Chris Elliott, *ibid*
[346] p73, lines 13-16, Chris Elliott, *ibid*
[347] p5, lines 8-23, Evgeny Lebedev, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-23-April-2012.pdf
[348] p2, para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Evgeny-Lebedev.pdf
[349] p5, lines 16-19, Evgeny Lebedev, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-23-April-2012.pdf
[350] pp2-3, paras 9-10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Christopher-Blackhurst.pdf

8.4 The Independent did not adopt a party political position at the two general elections that followed its launch but supported Labour at the 1997 electon. In subsequent elections it has switched its support between the Labour and the Liberal Democrat parties.

History

8.5 The Independent was founded in 1986 by the journalists Andreas Whittam Smith, Stephen Glover and Brett Straub, and was published by Newspaper Publishing plc. The creation of the new paper took place against the background of the Wapping disputes. It launched with the advertising slogan, "*It is. Are you?*" making play of the independence of the newspaper from the influence of a powerful proprietor.

8.6 Although The Independent enjoyed initial success, and had achieved a circulation in excess of 400,000 by 1989, by the early 1990s its readership had declined and the paper was struggling financially. In 1994 both Independent News & Media (INM), a prominent Irish publishing company, and Mirror Group Newspapers took a stake in Newspaper Publishing and in 1996 INM purchased the whole company. By 1998 circulation had fallen to below 200,000, the smallest circulation of any of the national daily newspapers by some margin. By 2004, The Independent was reporting losses of £5m per year, and in 1998, following staff cuts, and in order to make further cost savings, the title moved to Northcliffe House, the headquarters of Associated Newspapers, where the two groups shared a number of services (though editorial, management and commercial operations remained separate).

8.7 In January 2009 a company set up by the Lebedevs, purchased the loss making Evening Standard from Associated News for £1. The DMGT retain a 24.9% share of the Evening Standard.[351] In March 2010, it was announced that the Lebedevs' company would be buying The Independent. Alexander Lebedev was quoted as saying:[352]

> *"I invest in institutions which contribute to democracy and transparency and, at the heart of that, are newspapers which report independently and campaign for the truth to be revealed. I am a supporter of in-depth investigative reporting and campaigns which promote transparency and seek to fight international corruption. These are things the Independent has always done well and will, I hope, continue to do."*

8.8 A separate newspaper, the 'i' was launched in October 2010, aimed at 'readers and lapsed readers' of all ages and commuters with limited time. Priced at 20p it has quickly overtaken The Independent in circulation.

8.9 In February 2012, the circulation of The Independent stood at 105,160. Its sister paper 'i' has more than twice the circulation, at 264,432. Altogether the two titles account for 4% of UK national daily newspaper circulation. The Independent on Sunday had a circulation in February 2012 of 124,260, or 1.1% of UK national Sunday newspaper circulation.

[351] p64, lines 18-25, Andrew Mullins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[352] http://www.independent.co.uk/news/media/press/independent-titles-sold-to-lebedev-family-company-1927436.html

Governance structures

8.10 Independent Print Limited (IPL), wholly owned by the Lebedev Family, is a private company. The company is legally distinct from the Lebedev owned Evening Standard Limited,[353]

The Independent board

8.11 The Board of IPL consists of a Chairman, Deputy Chairman, the CEO of IPL and of Non Executive Directors. The Board is also attended by the Company Secretary and Finance Director.[354]

8.12 The IPL Board also exercises a number of financial functions, which are reviewed on a weekly basis, to monitor the budgeting within the company. Editorial staff, for example, are allocated set budgets and these are monitored on a weekly basis and scrutinised in more depth by the Board on a monthly basis.[355] The Finance Director and Company Secretary of IPL has emphasized the importance of transparency of editorial payments to the Board's overall corporate and financial governance functions.[356]

8.13 The managing editor of IPL and Evening Standard Limited is responsible for the IPL's company strategy.[357] This document is endorsed by the IPL Board, and is used to monitor the progress of IPL on a monthly basis through Board meetings.[358]

The Independent editorial independence

8.14 There is complete editorial independence from the Board.[359] The governance of the Board is concerned primarily with the financial management of the business. managing editor, Andrew Mullins explains that:[360]

> *"…we separate commercial and editorial to create clear editorial independence."*

8.15 However, there are instances where editorial issues might be raised at Board level and Mr Blackhurst has also told the Inquiry that as the editor he is fully aware of the company's overall business strategy. [361] Mr Mullins explained that there are occasionally scenarios where costs related to the editorial structure are impacted; or where sales would significantly fall. Mr Mullins explained that in these instances, discussion of editorial processes would be

[353] p4, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Mullins.pdf
[354] p4, para 12, *ibid*
[355] p4, para 14, *ibid*; pp2-3, paras 11-12 http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Manish-Malhotra.pdf
[356] p77, lines 3- 10, Manish Malhotra, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[357] p4, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Mullins.pdf
[358] pp68-69, lines 17-4, Andrew Mullins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf; p4, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Mullins.pdf
[359] pp5-6, para 19, *ibid*
[360] p67, lines 13-15, Andrew Mullins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[361] p70, lines 16-19, Christopher Blackhurst, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf

discussed at board level, although there would never be any discussion in relation to the editorial content.[362]

8.16 Mr Blackhurst also told the Inquiry that The Independent has always sought to adopt a deliberately distinct approach to other national titles and continues to operate "*free from proprietorial influence*".[363] In his evidence to the Inquiry, Mr Lebedev emphasised that although he might on occasion share his expectations and personal vision with his editors on a regular basis, he has no influence on the editorial content of his newspapers.[364] He explained to the Inquiry that:[365]

> *"…we certainly discuss policies, and I certainly expect it to be taken into account, but to answer your question, there have been many instances when we've discussed particular issues, stories, policies and editors would have stuck with their original plan to write whatever they were planning to write."*

The Independent financial governance

8.17 The Independent has in place clear procedures that govern all financial transactions made by staff at the company.[366] Manish Malhotra, the IPL's current Finance Director and Company Secretary of Evening Standard Limited told the Inquiry that these procedures reflect the:[367]

> *"…separation between editorial and commercial… …for that reason it's very important that editorial payments are going through the overall corporate and financial governance of the company so that we have clear sight of what's being paid and who's being paid."*

8.18 Under this system, payments to casual staff are authorised by the relevant Department Head and have to be approved by the Financial Controller or the Senior Management Accountant.[368] Contributions payments (made to freelancers, photographs etc) are made on the payments system and checked by the Finance Department with levels of authorisation required dependent on the amount concerned. The Financial Controller and Senior Management Accountant authorise such payments. Expenses have to be authorised by department heads, and editorial expenses must be authorised by the Managing Editor. These payments are then authorised by the Finance Department in a similar way to contributions payments. No advances are made for UK based expenses.[369]

[362] pp67-68, lines 15-1, Andrew Mullins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[363] pp85-86, lines 20-4, Christopher Blackhurst, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[364] p3, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Evgeny-Lebedev.pdf
[365] p7, lines 18-23, Evgeny Lebedev, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-23-April-2012.pdf
[366] p4, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Manish-Malhotra.pdf
[367] p76, lines 3-10, Manish Malhotra, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[368] p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Manish-Malhotra.pdf
[369] *ibid*

8.19 Mr Malhotra told the Inquiry that there are no mechanisms in place which allow for journalists or other IPL members of staff to make cash payments.[370] Internal controls are overseen by the office of the managing editor, who ensures that any payments which are made are:[371]

> *"…proper, are substantiated and, if appropriate, that there is a receipt to support them."*

The Independent policies and procedures

8.20 IPL has recently introduced a Code of Conduct which brings together a number of policy matters in one document. Mr Blackhurst told the Inquiry that it would have been unlikely for The Independent to have introduced this revised Code, were it not for the exposure of phone hacking and other practices across the British National press. The purpose of the revised Code is to ensure clarity on a range of issues facing journalists.[372] The IPL's Finance Director and Company Secretary has explained that the document goes further than the PCC Code, that:[373]

> *"…it's a wider document because it covers both commercial and editorial operations. It also goes into the use of hospitality and guidance and policies around that."*

8.21 The creation of the Code was triggered by the enactment of the Bribery Act. However, as well as covering anti-bribery it also covers business relationships, social media and data protection.[374] IPL has also restated its insistence on staff compliance with the Editors' Code of Practice.[375] IPL's Code of Conduct details individual financial responsibility within IPL, and the policies on company expenses and hospitability.[376] The IPL Code of Conduct also includes a policy on whistle-blowing, which encourages employees to report concerns without fear of reprisal.[377]

8.22 IPL also has a clear disciplinary policy which sets out that employees who are found to have committed acts of gross misconduct are liable for dismissal. Acts of gross misconduct includes 'theft, dishonesty or deliberate falsification of documents', 'unauthorised use or disclosure of confidential information' and 'a serious act which breaks mutual trust and confidence or which brings or is likely to bring IPL into disrepute'.[378] This policy was explained to the Inquiry by Mr Blackhurst in the context of the disciplinary action that has been taken against Johann Hari, a former journalist at The Independent. Mr Hari was accused of plagiarism and producing derogatory comments about fellow journalists on the Wikipedia website.

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[370] pp77-78, lines 25-8, Manish Malhotra, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[371] p28, lines 4-5, Manish Malhotra, *ibid*
[372] pp70-71, lines 19-1, Christopher Blackhurst, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[373] p80, lines 19-22, Manish Malhotra, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[374] p5, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Andrew-Mullins.pdf
[375] p6, para 22, *ibid*
[376] http://www.independent.co.uk/service/code-of-conduct-and-complaints-6280644.html
[377] http://www.independent.co.uk/service/code-of-conduct-and-complaints-6280644.html
[378] p8, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Manish-Malhotra.pdf

8.23 Staff and external contributors are required by contract[379] to comply with both the law and with the PCC Code.[380] Freelance contracts require that:[381]

> *"Anyone who supplies material to any of our publications must ensure that their conduct and the material they submit are ethical, legal and proper."*

8.24 Other than these guidelines, there are no specific policies in place in relation to the payment for information. Mr Blackhurst has acknowledged that payments are sometimes made for 'tip-offs' for stories carried in The Independent's diary page but Mr Blackhurst also stated that he exercises considerable caution with information received in this way. He told the Inquiry that the Independent would:[382]

> *"…only pay, as a point of principle, if subsequently the story checked out. You wouldn't be agreeing and paying… That's not how it works."*

The Independent management structures and processes

8.25 Mr Blackhurst described The Independent as a relatively small newsroom. The group employs just under 200 journalists across the three titles (the daily, Sunday, and 'i' publication) and a small number of foreign correspondents.[383]

8.26 Letters to the editor are handled between the editor and the managing editor, in the absence of a readers' editor. Mr Blackhurst said that The Independent does not have enough resources to merit the appointment of a readers' editor at the title.[384]

8.27 The editor is responsible for overseeing processes around the verification of sources in the newsroom. Checks are made by the original reporter, the news editor, the deputy editor and finally the editor, having been through legal scrutiny. Mr Blackhurst told the Inquiry that:[385]

> *"I'm with the news editor, the foreign editor, the deputy editor pretty much all day long, and they're around me, and it's not a case of formal up and down the line requests. If I want to ask a reporter: "Where's the story come from?" I'll ask them. I won't wait for the deputy editor to speak to the news editor to speak to the reporter. We haven't got all day. I mean, just get on with it."*

8.28 Freelance writers are generally dealt with by the Heads of Department and very rarely deal directly with a newsroom editor, unless the freelancer is working on a substantive story.[386]

[379] p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Christopher-Blackhurst.pdf
[380] p8, para 35,http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Manish-Malhotra.pdf
[381] p9, para 38, *ibid*
[382] pp96-97, lines 24-12, Christopher Blackhurst, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[383] p87, lines 1-8, Christopher Blackhurst, *ibid*
[384] p91, lines 12-24, Christopher Blackhurst, *ibid*
[385] pp94-95, lines 21-4, Christopher Blackhurst, *ibid*
[386] p8, para 34; p9, para 37, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Christopher-Blackhurst.pdf

9. The Financial Times

9.1 The Financial Times focuses on the detailed and impartial reporting of business and financial issues. Lionel Barber, current editor of the Financial Times, told the Inquiry that as a consequence of this focus, that paper avoids the more populist news items which might be given space in other parts of the UK press.

History

9.2 The Financial Times (FT) was first published in 1888. In 1945 it merged with the Financial News. The FT was acquired by Pearson Plc in 1957 and is now a global newspaper, printed in 18 locations, in three international editions and with estimated global readership of 1.4m across more than 100 countries.[387] Pearson is primarily an education publishing company, with publications of educational material accounting for 74% of its revenue. 19% of Pearson revenue is derived from its consumer book publishing arm, with the remaining 7% coming from the FT Group which provides business information both through publication of the FT and digital services.

9.3 The FT Group, including both FT print and digital services had sales in 2010 of £403m, with operating profit the same year of £60m. Digital revenues accounted for 40% of FT Group revenues. The FT Group employs 2,600 people, of whom 1,600 are based in the UK.[388] In February 2012 the FT had a UK circulation of 316,493, making it the third largest selling broadsheet newspaper in the UK after the Daily Telegraph and The Times, giving the FT some 3.5% of the UK national daily newspaper market.[389]

Governance structures

9.4 FTL is wholly owned by Pearson Group and as such both the Chief Executive and the editor report to the Chief Executive of Pearson Group. Pearson is a public company and has dual listing on the US and UK stock exchanges.[390] The editor of the Financial Times is appointed by the Chief Executive of Pearson Group, who is also the only person who can remove him or her. On financial matters the editor reports to the Chief Executive of the FT. The editor of the FT, Mr Barber,[391] has made it clear in evidence to the Inquiry that there is no editorial involvement by Pearson. The Chief Executive of the FT has said that reporting to Pearson provides 'a further layer of governance',[392] but no additional information has been provided on how that relationship works in practice.

9.5 The FT 'family' consists of a number of different news services. The FT itself and FT.com, where relevant, has according to the FT's own figures,[393] a combined paid print and digital circulation of 591,390. This is made up of the FT newspaper's daily (global) circulation of 344,583 noted above[394] and the 247,000 paying FT digital subscribers. The FT has said that it has a combined print and online average daily readership of 2.1m people worldwide. FT.com has over 4m registered users.

[387] https://www.financialtimes.net/cgi-bin/eudev.cgi/fess/dummyHtmlPage?pagecode=ABOUT_FT&param=4
[388] http://www.pearson.com/media/files/annual-reports/Pearson_AR10.pdf
[389] ABC circulation figures February 2012, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=48913&c=1
[390] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Scott-Henderson.pdf
[391] p7, para 22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lionel-Barber.pdf
[392] p3, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[393] http://aboutus.ft.com/corporate-information/ft-company
[394] ABC figures – as quoted by the Guardian and the FT

Financial Times boards

9.6 The FT Board of Directors comprises the editor and Chief Executive of the FT and the managing editors of other parts of the FT family as well as senior Directors with responsibility for finance, HR and communications. There are no independent Directors on the Board.[395] The Board is not expected to have knowledge of the sources of stories that appear in FT publications.[396]

Financial Times financial governance

9.7 The FT group is profitable and has shown growth in profits over the period 2005-2010.

Financial Times policies and procedures

9.8 Pearson PLC publishes a Code of Conduct which requires all Pearson employees (and therefore all FT employees) to conduct themselves in accordance with the law and with the ethical principles set out in that Code.[397] All Pearson employees are reminded of the Code on an annual basis and required to confirm compliance or identify cases of non-compliance.[398] Pearson employees can report breaches of the Code to their manager or in-house legal team.

9.9 The FT incorporates the Editors' Code of Practice into employee contracts and has further, additional requirements in relation to financial reporting and share ownership.[399] FT employees are asked by management to sign up to the terms of the Editors' Code of Practice and are asked to declare any financial interests in a share register. Evidence has been submitted that demonstrates 75% of FT employees had done so.[400] It is the intention of the FT to require all employees to sign up to compliance with the Editors' Code on an annual basis.[401] The Inquiry was told that management are not aware of any breaches of the Editors' Code of Practice at the FT.[402]

9.10 Mr Barber said that journalists at the FT are expected to go beyond what is required in the PCC Code and uphold the highest levels of ethical journalism at his title. To this effect he told the Inquiry that:[403]

> *"…the reason we set such a high bar is that our relationship with our readers -- and they are largely in business and finance, but not exclusively, and diplomacy and academia – is one of trust. People have to be able to rely on the Financial Times for accurate information which is set in context, multiple sourced and that they can rely on it because they're making decisions, important decisions in their respective professions."*

[395] http://aboutus.ft.com/corporate-information/ft-board
[396] p5, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[397] p3, para 12, *ibid*
[398] p3, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lionel-Barber.pdf; p3, para 10-11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf; p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[399] p3, para 13, *ibid*
[400] p3, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf
[401] p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[402] p4, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf
[403] p5, lines 3-10, Lionel Barber, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf

9.11 The news editor is responsible for ensuring that the relevant editorial checks are made in the FT newsroom. Mr Barber has described the position of the news editor at the FT as one the most "*critical appointments that I can make as editor".*[404]

9.12 Pearson also operates a whistle-blowing hotline called 'Ethicspoint' which allows employees to report breaches of the Pearson code on an anonymous basis.[405] However, Mr Barber told the Inquiry that the FT does not offer a similar whistle blowing hotline for breaches of the Editors' Code of Practice. Of course, employees are entitled to use the Pearson hotline to raise any concerns they might have, but Mr Barber said that he would expect any issues in relation to such breaches to be brought to the attention of senior management directly.[406] Mr Barber spoke about a "good culture" at the FT and said that he would expect problems to be shared at all levels. He also told the Inquiry that the managing editor operates an open-door policy for staff who may wish to raise any HR issues, and works together with the Financial Times union, to whom individuals can also bring grievances.[407]

9.13 In this regard Mr Barber told the Inquiry that:[408]

> *"I think the FT should be the gold standard in journalism, and that means that we need to uphold the highest practices, the highest standards of integrity, and that is why we have the Investment Register and why we want to have full compliance from our journalists."*

9.14 The FT also has in place an anti Bribery and Corruption policy, introduced after the Bribery Act 2010.[409] Where an employee might have a concern relating to bribery or corruption at the FT, they are required to raise it with their immediate manager or with the in-house legal or internal audit teams, or to use Ethicspoint to report their concerns, should they wish to do so anonymously.

9.15 The FT has policies in place regarding approval of payments to third parties and payment of expenses to employees.[410] In both cases expenditure within agreed budgets and spending limits are approved by the individual incurring the expenditure and on the basis of appropriate evidence of the expenditure. Generally two individuals will review any expenses claim.[411] These processes are checked regularly to ensure compliance.[412] The FT states that it does not pay sources for stories, though sometimes reasonable expenses, such as travel, may be reimbursed, though no specific incidences are recalled.[413]

9.16 Whilst the editorial management team is responsible for ensuring editorial staff adhere to the PCC Code of Practice, other policies such as the company's anti-bribery policy are the responsibility of the Company Secretariat team.[414]

[404] pp18-19, lines 19-10, Lionel Barber, *ibid*
[405] p3, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[406] pp15-16, lines 14-6, Lionel Barber, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-10-January-2012.pdf
[407] pp15-16, lines 22-3, Lionel Barber, *ibid*
[408] pp10-11, lines 25-5, Lionel Barber, *ibid*
[409] p4, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[410] p3, para 10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Scott-Henderson.pdf
[411] p5, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf
[412] p5, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Scott-Henderson.pdf
[413] pp5-6, paras 20-21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf
[414] p6, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tim-Bratton.pdf

Financial Times management structures and processes

9.17 The FT Management Board are responsible for the corporate and financial governance of the FT. Its operation is entirely separate from all editorial responsibilities which lie with the editor. The FT's finance team is responsible for overseeing the processes of expenses and invoice payments.[415]

9.18 It is the role of the managing editor to ensure the management of the editorial budget, staff management and the general departmental administration of the newsroom.[416] The managing editor is also responsible for administering the Investment Register, an internal procedure which ensures that the investment interests of editorial staff are appropriately disclosed.[417]

Financial Times incentives

9.19 Financial incentives for the Chief Executive are linked to circulation and profitability of the group.[418] There are no financial incentives for the editor related to the production of exclusive stories.[419]

10. The regional press

10.1 There are 1,167 regional and local newspapers operating in the UK today, including 105 dailies, 15 Sundays, 504 paid weeklies, 533 free weeklies and ten combined weekly titles.[420] As of 1 January 2012 there were 87 regional press publishers, including 40 publishers who produce just one title each.[421] The top 20 publishers account for 86% of all regional press titles and 97% of total weekly circulation.[422] Table 5.1 (below) sets out the twenty most significant regional newspaper groups measured both by weekly circulation and by the number of titles published.

10.2 Regional newspapers in the UK are read by 32.9 million people (70.7% of all British adults), compared with the 56.8% who read a national newspaper. Significantly, 27% of those who read a regional newspaper do not read a national newspaper.[423] In addition to the regional print titles there are also over 1,600 websites and hundreds of other print, digital and broadcast channels produced by local and regional media groups.[424]

10.3 The regional and local newspaper industry also has a significant economic footprint. Over 30,000 people, including 10,000 journalists, are employed by the regional and local press.[425] The four largest regional newspaper groups had revenues in 2010 of £1,330m, with total sales and advertising revenue across the industry of £2,191m.[426] However, the regional and local newspapers market has been in significant decline for a number of years. Some regional

[415] *ibid*
[416] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-MacLeod.pdf
[417] pp2-4, paras 7-13, *ibid*
[418] p6, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Ridding.pdf
[419] p7, para 23, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lionel-Barber.pdf
[420] http://www.newspapersoc.org.uk/regional-press-structure
[421] *ibid*
[422] *ibid*
[423] http://www.newspapersoc.org.uk/readership-and-coverage
[424] http://www.newspapersoc.org.uk/circulation-and-distribution
[425] http://www.newspapersoc.org.uk/
[426] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf

newspapers have seen their circulations halve since 2000 and others have been forced to close entirely. Annual regional newspaper circulation has fallen from just under 3.5bn in 1985 to below 2bn in 2009.[427] The factors considered to contribute to this decline in circulation include: increasing access to, and adoption of, internet information sources: economic conditions; and lack of engagement with print media by young adults.[428]

10.4 The decline in circulation has been matched by a decline in revenue. Print newspapers have two main sources of income – copy sales and advertising. Advertising is predominantly in two different forms, display advertising and classified advertising. The local and regional press tend to rely much more heavily on classified advertising than do the nationals, with classified advertising accounting for 41% of revenues among the regional press but only 6.5% of revenues in the national press.[429] All three forms of revenue have been under significant pressure over recent years.

Table C2.1

Rank – weekly circulation	Group Name	Rank – No. of titles	Titles	Weekly Circulation
1	Trinity Mirror plc	3	140	10,087,945
2	Johnston Press plc	1	243	6,428,426
3	Newsquest Media Group	2	187	6,247,326
4	Northcliffe Media Ltd	4	91	4,690,109
5	Associated Newspapers Ltd	17	1	3,817,120
6	Evening Standard Ltd	17	1	3,503,640
7	Archant	6	66	1,725083
8	D.C. Thomson & Co Ltd	15	6	1,588,395
9	The Midland News Association Ltd	9	17	1,557,750
10	Tindle Newspapers Ltd	5	73	1,122,997
11	Iliffe News & Media	7	39	973,897
12	KM Group	8	19	322,269
13	Independent News & Media	15	6	458,483
14	NWN Media Ltd	14	14	437,451
15	Bullivant Media Ltd	13	9	364,153
16	CN Group Ltd	13	10	361,695
17	Irish News Ltd	17	1	261,882
18	Dunfermline Press Group	10	14	241,609
19	Topper Newspapers Ltd	17	1	212,384
20	Clyde & Forth Press Ltd	12	13	206,728
–	**Total Top 20 publishers**	–	**951**	**44,609,342**
–	**Total all publishers (87)**	–	**1,101**	**46,034,273**

Source: Newspaper Society, January 2012[430]

[427] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p7, *ibid*
[428] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p8, *ibid*
[429] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p6, *ibid*
[430] http://newspapersoc.org.uk/sites/default/pdf/Top-20-Publishers_January-2012.pdf

10.5 Overall advertising revenues in the regional press have fallen steeply, from a high of £3,133m in 2004 to £1,599m in 2010. This is a much steeper decline in advertising revenues than has been seen in the national press or in consumer magazines.[431] The decline in advertising revenue has been largely driven by competition from the internet. Classified advertising, in particular, has moved online, with the share of classified advertising online rising from 4% in 2002 to over 60% in 2010, and the printed press' share falling commensurately from 96% to under 40% in the same timeframe. That trend is predicted to continue, with the internet accounting for over 80% of classified advertising by 2015.[432] Display advertising has also moved online, but the trend is not as marked as is the case with classified advertising.[433]

10.6 The net result of these changes is that revenues in regional and local newspaper publishing have been very hard hit. Trinity Mirror's regional division saw revenues fall by 47% between 2005 and 2010, while Newquest has seen revenues fall by 56% over the same timeframe and Northcliffe has seen its revenues fall by 50%. Johnston Press appears to have suffered less over the period, with revenues falling only by 23%, but it is clear that conditions for regional and local newsgroups are very difficult.

10.7 Despite this bleak picture, regional news provision remains essentially profitable, with the three of the top four regional newspaper groups for which figures are available posting profits of £154m between them in 2010.[434] Sly Bailey, then Chief Executive of Trinity Mirror, told the Inquiry that, in between her submission of written evidence to the Inquiry on 13 October 2011, and her appearance at the Inquiry on 16 January 2012, the company had reduced the number of regional titles it publishes from 160 to 140.[435] Ms Bailey indicated that Trinity Mirror's regional business was facing structural challenges, with the competition from the internet and the proliferation of new connected devices, as well as cyclical challenges from the state of the economy. She said that the cyclical challenges had hit the hardest.[436] The effect of the economic downturn has meant, for instance that whereas at its peak Trinity Mirror had seen £150m in revenue from recruitment advertising, this figure had reduced to £20m last year.[437] Ms Bailey said that Trinity Mirror's response to the current situation was to restructure and re-engineer the industry using technology, rather than trying to do the same things with fewer people.[438]

10.8 This picture was echoed by editors of regional newspaper in their evidence to the Inquiry.[439] Maria McGeoghan, editor of the Trinity Mirror Regional title, the Manchester Evening News, told the Inquiry that:[440]

> *"…circulation on the Manchester Evening News and the paid for weekly titles is declining, but our website has got 1.5 million unique users every month and is growing, and I think the challenge for all of us is how we can make more money out of that."*

[431] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf
[432] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p15, *ibid*
[433] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p13, *ibid*
[434] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p18, *ibid*
[435] p75, lines 2-5, Sly Bailey, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[436] p81, lines 4-13, Sly Bailey, *ibid*
[437] p83, lines 2-5, Sly Bailey, *ibid*
[438] p86, lines 2-5, Sly Bailey, *ibid*
[439] pp98-103, lines 1-21, Regional Editors, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf; pp59-62, lines 4-15 Regional Editors http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-18-January-2012.pdf
[440] pp60-61, lines 22-1, Regional Editors, *ibid*

10.9 Over recent years the regional and national press has been concerned about, and lobbied on, a number of public policy issues that impact on them. These have included: changes in the rules governing statutory notices; local authorities publishing their own free newssheets, in particular where they are partially advertising funded; and the media merger rules as they apply to the transfer of ownership of newspaper at the regional and local level.[441] This last issue is considered to be the most significant and was raised by Mr Bailey in her evidence to the Inquiry.[442]

10.10 The exigencies of the economic and structural problems faced by the regional newspaper industry have led to a substantial extent to groups looking to consolidate and rationalise their holdings. Savings can be achieved where titles that are geographically close can achieve synergies through working together. This has led to regional newspaper groups looking to consolidate their holdings, in particular with an eye to geographical rationalisation. The regional newspaper industry has been concerned that the Office of Fair Trading (OFT) is inclined to consider proposals for newspaper mergers in the context of the local newspaper market only, rather than taking account of the wider competition from, in particular, internet services. This, the industry argues, leads to potential regional newspaper transfers that could allow titles that would otherwise be uneconomic and may have to close to survive under different ownership. In 2009 the OFT conducted a review of the media merger regime as it applies to local and regional newspapers, and concluded that:[443]

> *"…the current merger regime, which is broadly the same for newspapers as for other industries, is well placed to take into account developments such as competition from the internet because it is evidence-based and capable of reflecting market realities.*
>
> *The regime is also flexible in that it can take account of valid 'failing firm' arguments, as well as efficiencies and any other benefits to customers brought about through a merger.*
>
> *The OFT has therefore recommended that no legislative changes are needed to the media merger regime. The OFT proposes that it will formally seek Ofcom's view in future newspaper merger cases, given its specific sector knowledge in the UK."*

10.11 The first proposed regional newspaper transaction since this new process involving Ofcom was introduced was the proposal of the Kent Messenger Group to acquire seven local weekly titles from Northcliffe Media Limited. Ofcom conducted a Local Media Assessment which found that the 'merger may provide the opportunity to rationalise costs, maintain quality and investment, and provide a sounder commercial base from which to address long-term structural change'. The OFT noted that it was able only to consider consumer benefits and that Ofcom was not able to guarantee that in the longer term any benefits arising from the transaction would accrue to consumers rather than to shareholders. In the light of this the OFT said that it could not conclude that the evidence presented to it was sufficiently compelling to indicate that those benefits can and will only be achieved through the merger. The OFT also said that they had not been shown any compelling evidence that in the absence of the transaction the titles would all continue to exist as economic going concerns. The OFT therefore concluded on 18 October 2011 that the merger should be referred to the Competition Commission.[444] Within a month of the OFT decision Northcliffe had announced the closure of two of the titles concerned, the Medway News and the East Kent Gazette.[445]

[441] p101, lines 15- 25, Regional Editors, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf
[442] pp86-87, lines 14-17, Sly Bailey, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf
[443] http://www.oft.gov.uk/shared_oft/mergers_ea02/oft1091.pdf
[444] http://www.oft.gov.uk/shared_oft/mergers_ea02/2011/kent-messenger.pdf
[445] http://www.guardian.co.uk/media/greenslade/2011/nov/25/northcliffe-media-downturn

10.12 In relation to regional and local newspapers, I do not make a specific recommendation but I suggest that the Government should look urgently as what action it might be able take to help safeguard the ongoing viability of this much valued and important part of the British press. It is clear to me that local, high-quality and trusted newspapers are good for our communities, our identity and our democracy and play an important social role. However, this issue has not been covered in any detail by the Inquiry and, although the extent and nature of the problem has been made clear, the Inquiry has heard no evidence as to how it might be addressed. I recognise that there is no simple solution to this issue. I also recognise that many efforts have been made over the years to try to find a solution, and that many of the options for public support that have been canvassed are not appropriate. This does not make the need to find a solution any less urgent. I should also, perhaps, make it clear that the regulatory model proposed later in this Report should not provide an added burden to the regional and local press.

11. Magazines and periodicals

11.1 The UK magazine market is substantial. There are some 3,000 consumer titles in the UK (this is separate from the 4,765 business to business magazines). The magazine industry has a value of £4.1bn, with an estimated 1.4bn copies sold or distributed annually, and consumers spending some £1.9bn a year buying magazines.[446] ABC monitors some 515 consumer magazines published by 161 publishers with a total circulation of 54,751,905. 110 of those 161 publishers publish only one title, with a further 36 publishing two to four titles. The four most prolific publishers publish 181 titles between them. As is to be expected in such a broad and varied market, circulation varies enormously. Of the seven consumer magazines that have circulation of over a million, four are supermarket magazines, two are TV listings magazines and the other is the National Trust Magazine. Other magazines circulated to members of particular associations (for example, Saga or RSPB) have very high individual circulation. Beyond that there is no obvious pattern or rhythm to levels of circulation, with lifestyle, health and celebrity magazines varying considerably in popularity by title. Most of these consumer magazines are specialist interest titles of varying sorts and are not engaged in the sort of news and current affairs reporting, or reporting on individuals, with which the Inquiry is primarily concerned.

11.2 The magazines classified by ABC as 'women's interest weeklies' include some of those best known for their coverage of celebrities and celebrity lifestyles. These 24 titles are published by 11 publishers and have a combined circulation of just over 7m.[447]

11.3 According to the Periodical Publishers Association (PPA) magazines are read by 87% of the population and, unlike newspapers, are particularly popular among the young, with at least 91% of 15-24 year olds reading a magazine. Whereas newspapers are essentially ephemeral, and understandably have developed a reputation as tomorrow's fish and chip wrappers, magazines are kept and referred to because they are considered to be a "trusted friend".[448]

11.4 Magazines have not been hit as hard by either structural or cyclical factors. Consumer magazine circulation has fallen, from around 1.5bn in 1985 to just over 1bn in 2009.[449] Advertising revenues, having held steady at around £750m from 2000 to 2008, fell steeply

[446] http://www.ppa.co.uk/retail/magazine-market-data/~/media/PPANew/Retail/Magazine%20Market%20Data/Market%20Snapshot.ashx
[447] ABC magazine circulation figures 2012, http://www.pressgazette.co.uk/node/49860
[448] http://www.ppa.co.uk/marketing/effectiveness/10-things-to-love-about-magazines/
[449] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf

in 2009 as the economic downturn hit, to just over £500m, and have not yet recovered.[450] A PPA survey in 2010 found that magazine publishers in both the business to business and the consumer market were positive about the future – 78% of consumer magazine publishers were profitable, with turnover in 2011 projected to rise by over 5% and 97% of publishers expected profitability to remain steady or improve.[451] This confidence was echoed by the editors of Heat, OK! and Hello! Magazines when they gave evidence to the Inquiry.[452]

Editorial practices and ethics of the magazine titles

11.5 The Inquiry has heard evidence from the editors of three of the most popular weekly magazine titles in Britain: Heat, OK! and Hello! Magazines. It has been evident that there are some similarities with newspapers in terms of practices of the magazine newsroom, awareness and application of the Editors' Code of Practice, as well as the impact of technological change and the phenomenal growth of the internet as a source of news and information.

11.6 Heat Magazine employs 32 members of staff. These include three news desk reporters, one features editor and a number of reviews editors. The rest of the team comprise the art and production team.[453] Hello! Magazine has forty employees, 19 of whom are either journalists or subeditors.[454] OK! Magazine use only in-house journalists and employ 25 members of staff.[455]

OK! Magazine

11.7 Northern and Shell owned OK! magazine is internationally one of best known and most read celebrity weekly magazines,[456] and has a weekly UK circulation of 473,000, and an estimated readership of over 2m. The OK! Magazine website is managed and edited separately and has its own editor. Lisa Byrne, the current editor of OK! Magazine described her title as:[457]

> *"…basically an exclusive invitation into the rich and famous and celebrities in this country and the States with worldwide celebrities. So we invite our readers into people's homes, to their babies' christenings, first pictures of their children, amazing exclusive weddings, so -- even the parties are exclusive, so it's just a fantastic aspirational magazine for readers to have a look at celebrities and their lifestyles."*

11.8 Ms Byrne told the Inquiry that the availability of news on the Internet has directly impacted the circulation celebrity magazines. She said that OK! Magazine now focuses less on celebrity news, and has shifted its emphasis on more exclusive features and stories which are less readily available online.[458]

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[450] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2011, p14, *ibid*
[451] http://staging.ppa.co.uk/ppa-marketing/feature-article-archive/publishing-futures-publishers-gear-up-for-a-year-of-growth/
[452] pp7-8, lines 5-2, Lucie Cave, Rosie Nixon and Lisa Byrne, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf
[453] p6, lines 14-17, Lucie Cave, *ibid*
[454] p6, lines 18-22, Rosie Nixon, *ibid*
[455] p6, lines 23-24, Lisa Byrne, *ibid*
[456] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf
[457] p5, lines 8-16, Lisa Byrne http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf
[458] pp7-8, lines 20-2, Lisa Byrne, *ibid*

11.9 The majority of content that is published in OK! Magazine is sourced either directly from celebrities or through their agents. Consent is therefore freely offered in most cases for the publication of such content. Ms Byrne told the Inquiry that approximately 80% of content is produced with the direct consent of those celebrities involved.[459] The remainder of content is either *"…bought-in interviews, celebrity features, news round-ups and celebrity columns".*[460] Such material is subject to the same processes of verification that the Inquiry has been told is common to all newsrooms; checks are made by sub-editors, senior editors and the legal department. Ms Byrne said that she is *"…aware of almost every story that goes in the magazine*".[461]

11.10 The conduct of staff working at OK! Magazine is not subject to a specific code of practice. Nor does OK! Magazine subscribe to the PCC. However, Ms Byrne told the Inquiry that she expects her journalists to adhere to the terms of the Editors' Code of Practice. She argued that the efficacy of the reporting in OK! Magazine is dependent on a strict adherence to the Editors' Code of Practice, as this is vital to maintaining the relationships that the title has built up with the celebrities on which they report.[462] Ms Byrne also stressed the importance of ethics to the OK! Magazine newsroom, as well as her role in overseeing that ethical practices and standards are upheld on a day to day basis.

Heat Magazine

11.11 Heat Magazine is owned by Bauer Consumer Media Limited,[463] which is a UK division of the German owned Publishing House, Bauer Media Group.[464] The magazine attracts approximately 320,000 readers a week. Heat Magazine also operates a website, which has been described by current editor, Lucie Cave, as an important feature of the Heat brand. The website attracts over 1m unique users each month. Ms Cave described the role of Heat Magazine:[465]

> *"…to cover the celebrities of the day in an entertaining fashion with an emphasis on interviews and amazing photo shoots that we do ourselves against a backdrop or a highly credible entertainment, TV and reviews section."*

11.12 In addition to requiring staff to abide by the terms of the Editors' Code of Practice, Heat Magazine also require staff to adhere to the Bauer Group's Best Practice Guidelines. Ms Cave stated to the Inquiry her expectations around journalistic standards and practice. Ms Cave fully expects all staff working for Heat Magazine to follow the Code and Practice and the Bauer guidelines as well as fully obeying the criminal and civil law. The Bauer Group Best Practice Guidelines are reviewed on a regular basis and circulated to the newsroom.

11.13 Ms Cave told the Inquiry that content is subject to routine checks by editors during the publication process, and external lawyers provide advice on an *ad hoc* basis as appropriate. The magazine publishes some content that originates from PR material, although Ms Cave was not able to quantify exactly proportion of the magazine is derived from such material.

[459] p33, lines 3-4, Lisa Byrne, *ibid*
[460] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-Byrne.pdf
[461] p2, para 4, *ibid*
[462] p3, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lisa-Byrne.pdf
[463] p1, para 1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lucie-Cave.pdf
[464] http://www.bauermedia.co.uk/about
[465] p4, lines 13-17, Lucie Cave, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf

Hello! Magazine

11.14 Hello! Magazine is owned by the Spanish Company HOLA, S.L., an independently owned family business.[466] Between January and June 2011, Hello! Magazine recorded average total sales of 413,311 copies per week.[467] The title also has an online website, which is independent from the magazine and is edited by a separate editor.

11.15 Rosie Nixon, joint editor of Hello! Magazine described the title as promoting the positive portrayal of celebrity personalities. Ms Nixon said that the unwritten philosophy of Hello! Magazine lies in the phrase "*la spuma de la vida*" (the froth of life), words attributed to the founder of the company, Eduardo Perez's, grandfather.[468] Ms Nixon has told the Inquiry that:[469]

> *"…the function of the magazine… is to entertain. It's to provide an insight into the lives of the rich and the famous. …we take a look at the lighter sides of the personalities that we feature."*

11.16 *Hello!* Magazine publishes 'exclusive stories'. These are agreed in advance with the celebrities or public figures concerned. Additionally, the magazine also publishes some news-based stories obtained through a variety of PR agencies. She argued that as a weekly publication, Hello! Magazine is primarily focused on building "*long-term relationships with personalities, rather than getting one-off 'scoops.'*"[470]

11.17 Journalists at Hello! Magazine are expected to abide by the PCC Editors' Code of Practice. However, Ms Nixon told the Inquiry that "*there are no formal internal documents relating to corporate of editorial governance beyond the PCC Code*."[471] The title also does not have a formal policy in relation to payments to external sources, but Ms Nixon told the Inquiry that as a rule it does not make cash payments for any information. The majority of the magazine's content is produced in-house by pay-roll staff; a smaller amount of material is generated by freelance journalists, whose work is invoiced and processed according to the company's procurement policies.[472] Hello! Magazine makes payments for exclusive stories, and any fees are discussed and agreed with HOLA, S.L.'s CEO.

[466] p1, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Rosie-Nixon.pdf
[467] p7, lines 9-11, Rosie Nixon, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf
[468] pp10-11, para 10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Rosie-Nixon.pdf
[469] pp4-5, lines 19-2, Rosie Nixon, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf
[470] pp12-13, para 30, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Rosie-Nixon.pdf
[471] pp10-11, para 10, *ibid*
[472] p13, para 33, *ibid*

CHAPTER 3
ALTERNATIVE NEWS PROVIDERS

C

1. Introduction

1.1 For centuries the printed press was the only medium that brought news to the people. The introduction of broadcasting in the 1920s brought a new voice, but one that had a very different relationship with the public than that of the newspapers with their readers. Technological changes in the last few decades have completely revolutionised the market in which newspapers are working, leading to the fragmentation not only in readership and advertising but also the introduction of news providers that are not currently a part of the self-regulatory, or indeed any other regulatory, regime.

2. Broadcasters

2.1 The main source of news in the UK is broadcasting, with 59% of news consumption coming from the three main broadcasters (as opposed to 29% from the six main national newspaper groups).[1] At the same time broadcasters reach a higher proportion of the public than any individual newspaper title, with 81% of those in the UK who consume news receiving some of their news from the BBC.[2]

2.2 96% of UK households have digital TV,[3] offering 50 TV channels without subscription[4] (and many more with subscription), including four free to view 24 hour news channels, with at least another six[5] 24 hour news channels in some subscription packages. With the significant exception of the BBC these broadcasters are either advertising or subscription funded. This means that broadcasters are competing with newspapers for sales, for audience time, and for advertising revenue. Broadcasters are regulated by Ofcom, operating under statutory powers, and are subject to the Ofcom's Broadcasting Code.

The BBC

2.3 The BBC is a national public service broadcaster which is established by a Royal Charter[6] (this was last renewed in July 2006, and came into force on 1 January 2007)[7] and a Framework Agreement.[8] The Royal Charter sets out the objectives and purpose of the BBC.[9] There also

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf
[2] http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf
[3] http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr11/UK_Doc_Section_1.pdf
[4] http://www.freeview.co.uk/
[5] http://www.sky.com/products/tv-packs/extra-channels/
[6] http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf
[7] p1, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf
[8] http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf
[9] pp5-6, lines 23-4, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf; p2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf. http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

exists a Framework Agreement between the BBC and the Secretary of State for Culture, Media and Sport, which sets out the provisions of the BBC's funding and regulatory duties.[10]

2.4 The BBC Trust is the sovereign body, responsible for making overall strategic decisions for the BBC. It has full oversight of the BBC Executive Board.[11] Lord Patten, the current Chair of the BBC Trust, has made a clear distinction between the responsibilities of the Trust and the BBC Executive. As a sovereign body, the Executive is required to act in accordance with the governance set out by the Trust; equally, the Trust must not exercise the functions that are the responsibility of the Executive.[12]

2.5 A number of individual Boards report into the Executive Board, including the Editorial Standards Board. This is the main editorial forum for the discussion of editorial standards issues facing the BBC by senior editors, and where responses to such issues are formulated and discussed.[13] The function of the Editorial Standards Board is therefore to monitor and review the editorial compliance systems which are in place at the BBC, in tandem with the Complaints Management Board.[14]

2.6 The former Director General of the BBC, Mark Thompson, explained to the Inquiry that he also served as the Head of the BBC's Executive Board. As Editor-in-Chief he was directly responsible for the entirely of the BBC's editorial and creative output.[15] Mr Thompson described the BBC in the following terms:[16]

> *"…the character of public service broadcasting and the character of the BBC's editorial mission is different in many respects from that of some newspapers. The kinds [sic] of stories we do are different. In matters of privacy, our focus, when there is a debate about intrusions of privacy, are, I think without exception, in a journalistic context, around investigations into matters which I think everyone would accept were of public interest. …we don't do any investigations into people's private lives for their own sake."*

2.7 The BBC meets its public purpose obligations, set out in the Royal Charter, through the distribution of information, education and entertainment. These are delivered on multiple platforms and include television, radio and online services.[17]

Corporate Governance

2.8 The BBC's Editorial Guidelines set out the overarching principles underpinning editorial management at the corporation as well as defining the appropriate structure for that management. These Guidelines, most recently revised in 2010 following a public consultation

[10] p3, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[11] pp5-6, lines 23-4, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf; p3, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[12] p5, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[13] p4, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf
[14] *ibid*
[15] pp2-3, para 7, *ibid*
[16] pp19-20, lines 23-8, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[17] Article 5 of the Royal Charter, http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

process, are *"founded on the BBC's stated editorial values"*.[18] The Trust is responsible for commissioning these Guidelines from the Executive Board. In addition to the Guidelines, the BBC must also comply with sections of Ofcom's statutory Broadcasting Code,[19] including the Code on fairness and privacy. This safeguards the treatment of individuals and organisations in programmes broadcasted by the BBC. Compliance with the BBC's Editorial Guidelines is the responsibility of the individual editor and producer.[20] In addition to the Editorial Guidelines, there are separate Producers' Guidelines. Certain programmes, particularly those which rely on investigative journalism, also have to abide by relevant individual handbooks. The BBC has separate policies relating to complaints, data protection, and fraud management and ant-bribery.

2.9 Different units at the BBC have responsibility for the general oversight of specific regulatory areas. For example, Fraud Management is overseen by the Investigations Unit under the overall supervision of the Chief Operating Officer and the Chief Financial Officer. Data Protection is overseen by the Information and Compliance Unit. With effect from 1 October 2007, the Controller, Fair Trading was appointed as BBC Compliance Officer. There is also a Central Compliance Unit (also established in 2007) which is responsible for monitoring, improving and reporting on the BBC's compliance obligations. The Compliance Unit is *"not responsible for delivering compliance but is responsible for ensuring that an appropriate framework is in place to minimise compliance failures."*[21] Editorial policy compliance and financial compliance fall outside the remit of the Compliance Unit's functions.

Regulation of the BBC

2.10 The BBC is regulated by the BBC Trust. The Trust has a 'supervisory role' which is generally restricted to the regulation of broadcast content after it has been transmitted.[22] Lord Patten told the Inquiry that:[23]

> *"I would never ever seek to interfere with one of [Mr Thompson's] editorial decisions. I wouldn't, for example, ever ask to see a BBC programme, at least not in conceivable circumstances, before it was broadcast, if the Director General had decided it was worth broadcasting".*

2.11 However, Lord Patten also told us that there were occasions where the Trust would consider the principles of the Editorial Guidelines prior to transmission.[24] The Trust exists to hold the Executive to account, ensuring that the BBC's performance is in line with the public purpose set out in the Royal Charter. This includes: the BBC's compliance with general law; regulatory

[18] pp6-7, lines 25-1, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[19] http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/
[20] Section 2 of the BBC Editorial Guidelines, http://www.bbc.co.uk/editorialguidelines/page/guidelines-using-roles-responsibilities; p4, paras 3.1-3.2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Peston.pdf; p3, para 3.1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Nicholas-Robinson.pdf
[21] p5, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Summary-of-Evidence-presented-by-the-BBC.pdf
[22] p3, para 10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf; pp5-6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[23] pp103-104, lines 24-3, Lord Patten, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[24] p8, para 23, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf

requirements; as well as the policies set by the Trust, including editorial guidelines and other codes, strategies and other priorities. To this effect, the duty of the Trust is to ensure that the BBC functions in the interest of licence fee payers.[25]

2.12 Ofcom is responsible for the regulation of some aspects of the content produced by the BBC. This responsibility is defined in the Royal Charter and Framework Agreement, and the Communications Act 2003.[26] Therefore, the regulatory jurisdiction of the Trust and Ofcom overlap in respect of this content. Ofcom exercises a regulatory function in relation to the BBC's commercial activities, notably where they impact on the wider media market. All BBC commercial services must comply with the Ofcom Statutory Code, and Article 29 of the Framework Agreement requires the BBC Trust and Ofcom to create a Joint Steering Group in respect of market impact assessments.[27] However, the BBC Trust assesses the market impact of "non-services" in-house (applying a Public Value Test). There is a clear delegation of function to Ofcom in relation to the assessment of the market impact of the BBC's commercial activities. This is accompanied by an express recognition that Ofcom could play a greater role and offer assistance and expertise to the BBC, including in relation to areas which currently fall within the remit of the BBC Trust (such as non services).

2.13 Ofcom also exercises a role of oversight in relation to the editorial content of BBC output, specifically in relation to privacy and fairness. Where Ofcom finds a breach of the privacy or fairness sections of its Code, it may require the BBC to broadcast a statement of its findings.[28] Further, should Ofcom find that the Code has been breached "seriously, deliberately, repeatedly, or recklessly",[29] it can impose sanctions which range from a requirement to broadcast a correction or statement of finding to a fine of up to £250,000.[30] Guidance on right to reply expressly refers to the requirement under the Ofcom Broadcasting Code to afford the person a timely opportunity to respond.[31]

2.14 The Inquiry has heard evidence of situations where editorial incidents have taken place, which have led the BBC Trust to commission independent investigations into apparent breaches of the Editorial Guidelines, and the decision to impose relevant sanctions.[32] The scandal around the misuse of premium rate phone lines by the BBC in 2007,[33] in which it was revealed that viewers had been invited to call premium rate numbers in order to enter competitions on programmes that had, in fact, been pre-recorded, is an example. The BBC Executive proposed an action plan and the BBC Trust commissioned an independent report by Ronald Neil. Mr Neil was appointed an independent editorial adviser to the Trust in order to review the Executive's action plan. This resulted in the development of new training programmes, including the BBC

[25] p2, para 7; p5, paras 14-15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[26] p3, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf
[27] Section 19 of the BBC Editorial Guidelines, http://www.bbc.co.uk/editorialguidelines/page/guidelines-accountability-ofcom/
[28] *ibid*
[29] *ibid*
[30] *ibid*
[31] Section 6 of the BBC Editorial Guidelines, http://www.bbc.co.uk/editorialguidelines/page/guidelines-fairness-right-of-reply//
[32] pp11-12, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[33] pp53-54, lines 23-23, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf

Academy.[34] In the interim, audience phone-ins were suspended and a new Interactive Advice and Compliance Unit was created to look at audience interaction with the BBC.

2.15 In October 2008, two radio presenters, Russell Brand and Jonathan Ross, made unacceptable phone calls to Andrew Sachs in the course of a radio programme aired in that month.[35] In December 2008, BBC Management announced an action plan to address the editorial failings which had led to the programme being broadcast.[36] The progress made under this action plan was then subject to an independent review carried out by Tony Stoller (former Chief Executive of the Radio Authority) and Tim Suter (former broadcasting partner and Board member at Ofcom) for the BBC Trust.[37] Both the BBC Executive and the BBC Trust reported on the findings of that independent review.

2.16 Speaking to the importance to the BBC of addressing these failings in editorial conduct, Mr Thompson told the Inquiry about his role in informing the public of the necessary controls that have since been implemented, that: [38]

> *"…it's fundamental to my duty in this role. I think my job is to – to – not just to sit on top of a management machine and try and optimise it for editorial compliance – that's, you know, in a senses, part of what one has to do to try and get the right result – but also to take responsibility for what the BBC broadcast and also to take personal responsibility for occasions when we have fallen short of our high standards."*

2.17 The recent revelations of sexual abuse by Jimmy Savile, and decisions around the Newsnight investigation into the matter, have raised questions in some quarters as to the effectiveness of broadcasting regulation and the internal governance systems within the BBC. None of this is a matter for this Inquiry, and there are separate inquiries into the specific issues. I merely note that, without in any way prejudging any of those investigations, the original Newsnight investigations, the ITV documentary that ultimately revealed the allegations, and the subsequent Panorama programme that investigated the handling of the matter within the BBC, were produced within the constraints of broadcasting regulation, not by the print press. Any attempt, therefore, to suggest that broadcasting regulation has had any part in constraining reporting on the matter is simply not borne out by the facts.

Complaints system

2.18 The BBC is required to comply with the Royal Charter and the Framework Agreement. Complaints to the BBC therefore have an important role to play:[39]

> *"The BBC's complaints handling framework (including appeals to the Trust) is intended to provide appropriate, proportionate and cost effective methods of securing that that BBC complies with its obligations and that remedies are provided which are proportionate and related to any alleged non-compliance."*

[34] pp55-56, lines 16-7, Mark Thompson, *ibid*; p12, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[35] p12, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[36] pp57-58, lines 13-13; p59, lines 1-16, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[37] p12, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[38] p56, lines 11-19, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[39] p27, para 52.3, http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

2.19 The Trust has the role of final arbiter in appropriate appeals, and has responsibility for setting the BBC's complaint framework.[40] A Trust Protocol is established by the Trust, which oversees the procedures for specific areas of complaint, including editorial complaints.[41] This is to ensure a clear division of responsibilities between the Trust and the Executive. The Trust does not have a role in handling or adjudicating upon individual complaints in the first instance, unless the complaint is concerning the act or omission of the Trust itself.[42] In this regard, the responsibility as final arbiter is delegated to the Editorial Standards Committee.

2.20 Any BBC viewer who is dissatisfied with any of the content broadcasted by the BBC may submit their complaint directly to the Corporation. Complaints that relate to fairness or privacy can also be made to Ofcom, in line with their regulatory jurisdiction over this form of content. Although the complainant can submit complaints relating to impartiality or accuracy issues to Ofcom,[43] it is unlikely that Ofcom would entertain these types of complaints. Lord Patten told the Inquiry that, in practice, Ofcom would inform the complainant that such a complaint could be dealt with by the BBC.[44] Equally, the Editorial Standards Committee is unlikely to consider a fairness and privacy or standards matter which overlaps with the regulatory responsibilities of Ofcom, until Ofcom has completed its own processes.[45]

2.21 Lord Patten explained the nature of the complaints system, whereby viewer complaints are dealt with at the first stage by the executive's information department (possibly including the producers of the programme in question itself). Should no resolution result from this first stage of mediation, viewers can take complaints to a second stage process where they are handled by the complaints unit, governed by the Complaints Management Board (which reports directly to the BBC Direction Group).[46] The last stage is the process of appeal to the Trust, should the complaint be unresolved to the satisfaction of the viewer.[47]

2.22 There is a recognition that the complaints system requires improvement, particularly in order to speed up the process of reply. Lord Patten's review of BBC Governance expressly acknowledged licence fee payers had expressed concerns that the current system was *"too complicated and too slow"*. He told the Inquiry that he has recommended the appointment of a "*chief of editorial complaints, of corrections"*,[48] whose role would be to ensure that the system was improved and operated in a transparent manner. The Governance Report concluded that the BBC should publish a single page guide explaining where complainants should go to complain about BBC broadcast content or services. Lord Patten told the Inquiry that the BBC will work with Ofcom to ensure there is common language in the guide to explain in what circumstances complainants may complain to Ofcom. Other recommendations from the Governance Review include the streamlining of the appeals process and regular

[40] pp47-48, lines 25-2, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[41] p8, para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[42] p10, para 31, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf
[43] p9, para 30, *ibid*
[44] pp10-11, para 30, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Lord-Patten1.pdf
[45] *ibid*
[46] p11, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Mark-Thompson.pdf; pp105-106, lines 12-1, Lord Patten, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[47] pp105-106, lines 12-1, Lord Patten, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[48] p106, lines 7-8, Lord Patten, *ibid*

impartiality reviews. Concerns were also raised about the correction of mistakes made online on the BBC website.

2.23 In 2007, the BBC Editorial Standards Committee recorded that 94% of complaints had been dealt with within ten working days. In this regard, Mr Thompson informed the Inquiry that:[49]

> *"The BBC receives well over a million contacts from the public every year, of which only a relatively small proportion are complaints, but that still adds up to something like 240,000 complaints a year, of which the overwhelming majority are responded to very quickly. We have a target of responding in ten days. I think we're currently at 93,94 per cent of that target, and in, again, the overwhelming majority of cases, the complaint is satisfactorily dealt with at that stage."*

ITN

2.24 ITN is a news provider responsible for the production of the news programme for the broadcast channel, ITV. ITN also produce Channel 4 News, through a contractual agreement between ITN and Channel 4.[50] The Chair of ITN, Maggie Carver, is responsible for the organisation, but delegates editorial matters to the Chief Executive Officer, John Hardie, who is responsible for the management of editors of both ITV News and Channel 4 News.[51] Ms Carver is responsible for ensuring that the corporate governance set out by the company is adhered to by staff. In part, this is done through the ITN's Compliance Manual, the ITN Health and Safety Manual and the Ofcom Code.[52]

2.25 Compliance at ITN is the responsibility of the Head of Compliance, John Battle.[53] Mr Battle is author of the Compliance Manual, first published in July 2004. The Compliance Manual sets out *"the industry regulations that affect news reporting, the main areas of laws affecting journalism such as libel, copyright, privacy and contempt of court and internal ITN standards and procedures."*[54] This manual is the centrepiece guidance issued to staff at ITN and forms the basis of ITN staff training.

2.26 ITN recently reviewed its Compliance Manual in light of allegations of phone hacking, as well as allegations of payments to public officials by journalists and others working at the NoTW. Although Jim Gray, Editor of Channel 4 News, told the Inquiry that the review of the Compliance Manual was regular procedure, he explained that additionally *"as part of the process triggered by this Inquiry, we have held an independent external Inquiry into ITN's journalistic practices and some the [sic] findings of that will feature in the new Compliance Manual."*[55] Mr Battle also gave evidence to this effect, stating that:[56]

[49] pp49-50, lines 10-18, Mark Thompson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-23-January-2012.pdf
[50] p4, para 8b, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Battle.pdf
[51] p1, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Maggie-Carver.pdf
[52] p2, para 4, *ibid*
[53] p1, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tom-Bradby.pdf; p1, para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gary-Gibbon.pdf
[54] p5, para 8h, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Battle.pdf
[55] pp35-36, lines 24-2, Jim Gray, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-23-January-2012.pdf
[56] p60, lines 17-25, John Battle, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-23-January-2012.pdf

"It's fair to say that as a grown-up and professional organisation, we'd have to have on board the Inquiry and what's been discussed here and within the news. There have been some tightening up procedures, tilting, as you said this morning, sir, towards better regulation. I don't think there's been substantive changes as a result of this Inquiry but it also includes a lot of updates on other issues, such as Twittering in court or online posting, so it's an update."

Channel 4 News

2.27 Mr Gray is responsible for the entirety of editorial content of Channel 4 News, and for upholding relevant policies to ensure that journalists and individual editors at Channel 4 News are required to comply with the ITN Compliance Manual.[57] Mr Gray reports directly to Mr Hardie, ITN's Chief Executive Officer. Mr Gray told the Inquiry that Channel 4 News applied similar principles to the Omand principles,[58] which are *"a whole series of tests about the proportionality of what is being proposed matches the level of gravity of what the story may be"*.[59]

2.28 Mr Gray describes Channel 4 News as a public service news broadcaster with an editorial focus on news that is in the public interest. He has said that consideration is given as a matter course to issues of privacy, consent, and public interest; all of which are built into the ITN Compliance Manual.[60] He also told the Inquiry that there is a culture at Channel 4 News of behaving ethically and acceptance of journalists being held to account for their reporting. Mr Gray said in this regard that:[61]

"We don't want to cause any problems, and we certainly don't want so [sic] have any incoming attack on our reputation or integrity which would then go forward to possibly damage Channel 4's repute, which we are contractually obliged to uphold and we must uphold and we want to."

Corporate governance at ITN and Channel 4 News

2.29 Mr Battle explained that although ITN is not a content broadcaster, the organisation is still obliged to operate in accordance with the Ofcom Broadcasting Code, as well as with the expectations and requirements of the individual broadcasters, ITV or Channel 4.

2.30 There are three levels of compliance within Channel 4 News: the ITN system and core Compliance Manual; the Channel 4 independent producers' handbook; and contractual obligations between ITN and Channel 4 which require consultation and notice in certain circumstances. Mr Gray told the Inquiry that the compliance manual "*adds layers of practice, best practice and how to go around carrying out such investigations*".[62] Separately, under the Ofcom Broadcasting Code, Channel 4 News is obliged to offer timely and appropriate rights of

[57] p1, para 3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Gary-Gibbon.pdf
[58] Alan Rusbridger has talked at length about these principles which are applied at the Guardian News Media titles (see Part C, Chapter 2 above)
[59] pp39-40, lines 25-3, Jim Gray, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-23-January-2012.pdf
[60] p8, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Jim-Gray.pdf
[61] p44, lines 18-23, Jim Gray, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-23-January-2012.pdf
[62] p41, lines 5-6, Jim Gray, *ibid*

reply to the subject of a story.[63] Mr Gray also described how Channel 4 News would approach a story that might involve potential breach of privacy:[64]

> *"…if it was a serious allegation of wrongdoing or criminality, we would normally expect to contact the subject of the story in writing, putting forward the claims and the allegations and the evidence we had for what was going to be proposed to be contained in the report, and then give sufficient amount of time for the subject to respond. That can vary, That's not set down but it could be a matter of days or it could be longer. In some cases, depending on the response from the subject, it can drag on. …That's part of the way it is and if you have a real good story, you will navigate your way through that."*

2.31 Commenting on the role of Ofcom in relation to Channel 4, and Channel 4 News, Mr Gray told the Inquiry that the Ofcom Broadcasting Code helps to codify the principles and cultural standards that Channel 4 News seeks to uphold. He explained this thus:[65]

> *"…through the ITN guidelines, [we] turn [the Code] into practice, and that's helpful as well, because for the team at ITN, that makes it our guidelines. It's not an external imposition. This is our culture we're expressing in the guidelines. It makes it more of a collaborative venture rather than: we're only doing this because of – it's a series of hurdles we have to overcome to get there. It can feel like that but it makes the journalism better at the end result."*

Complaints system

2.32 In relation to complaints handling, Mr Battle told the Inquiry that ITN does not receive many complaints through Ofcom. He noted that, on average, ten complaints might be received in the course of a given year, and not all of these would be of a substantial nature.[66] Complaints in relation to Channel 4 News are handled by Mr Gray's Deputy Editor at Channel 4 News, who consults closely with the production team. The complaints are assessed in relation to the report in question with the Head of Compliance, documented as appropriate in consultation with Channel 4. Mr Gray explained that only in serious cases would a complaint be referred to him.[67] However, should a complaint be submitted through Ofcom, then the complaint would be handled in accordance with the terms set down by the regulator. Mr Gray explained that Channel 4 News had received remarkably few complaints and, specifically, over the course of five years, *"we haven't actually had a finding against us from an Ofcom complaint except once… and that was a partial ruling against us on an investigation"*.[68]

3. The World Wide Web

3.1 The media landscape, particularly the provision of news, both globally and in the UK has been transformed by the invention and phenomenal development of the Internet. At its simplest the Internet is a system of interconnected computer networks which use a standardised address system to enable the identification of each of the electronic devices that make up the network. Now literally billions of machines are linked. This means that huge quantities of

[63] p41, lines 1-3, Jim Gray, *ibid*
[64] p41, lines 7-23, Jim Gray, *ibid*
[65] p49, lines 10-18, Jim Gray, *ibid*
[66] p69, lines 2-3, Jim Gray, *ibid*
[67] pp42-43, lines 23-8, Jim Gray, *ibid*
[68] p43, lines 19-22, Jim Gray, *ibid*

increasingly complex information can be stored and accessed at ever greater speeds. It also means that the services that media providers can offer through the Internet to consumers can be ever more sophisticated, personalised and immediate.

3.2 In terms of access and reach, 74% of adults in the UK have access to broadband, with average actual speeds of 6.8Mbit/s.[69] 22% of all the time that adults spend engaging with media is spent on the internet, with this figure rising to 30% for those aged between 16 and 24.

3.3 The Internet also enables citizens to access news generated by sources across the world.[70] All UK media organisations, whether newspapers, broadcasters or others now have an internet presence. Most of that content is available for free, although some, including some UK publishers, have begun to charge for online content. This free content can be accessed directly where the user knows what they are looking for, or can be found through search engines.

3.4 In addition to the individual websites of the world's news providers there are news aggregation services. Where a site is acting as an aggregator, it directs users to material created by others. These sites tend to rely on automatic selection through algorithms and usually involve no active editorial involvement by the aggregator. In some circumstances this will involve simply directing the user to the website of the news provider. In others, it involves essentially importing the news report from the original provider to the site of the aggregator. In the latter case this will mean that any associated advertising revenues will go to the aggregator rather than to the news provider. These sites are characterised by the fact that those operating the sites have little or no editorial input to the content of the material that they provide to users, take no responsibility for the accuracy of articles to which their users are directed, and have no role in the newsgathering process.

3.5 Although some news sites are merely aggregators of news, linking to content hosted by other news websites, Google news is different. It is a function within Google that will search for material only through online news content.[71] However, the content itself is not generated by Google, nor does Google operate any editorial control over the searched content beyond the algorithms that facilitate the search.[72]

3.6 In addition to the presence that traditional providers have on the internet, recent years have also seen the growth of completely new approaches to news generation and provision. One example is the rise of blogs and other web-based news, current affairs and celebrity commentary. Blogs and other commentary come in a number of different forms, but are essentially a personal commentary. They can include examples of 'citizen journalism' produced by individuals sharing their experience of, and views on, events that occur.

Regulation of the Internet

3.7 In evidence to the Inquiry, the Internet has been described as an unregulated space, in which businesses can avoid the regulation of a given jurisdiction by hosting the content they publish in a different legal jurisdiction. Witnesses to the Inquiry have said that this creates an imbalance with market consequences between what might be written by UK newspapers

[69] http://consumers.ofcom.org.uk/2011/08/a-nation-addicted-to-smartphones/
[70] Claire Enders, Competitive Pressures on the Press, Seminar 6 October 2012, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Claire-Enders-Competitive-pressures-on-the-press.pdf
[71] pp103-104, lines 24-8, David John Collins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[72] p104, lines 17-20, David John Collins, *ibid*

and what might be published by websites hosted abroad.[73] Witnesses have pointed to the publication of photos of, in particular, Prince Harry and the Duchess of Cambridge, which though different in terms of the surrounding circumstances, highlight issues around the existence of different jurisdictions and regulatory regimes as applied to the press and the Internet. The Sun has argued that the ready availability of photographs of Prince Harry on the Internet justified in part its decision to publish those same photographs.[74]

3.8 To some extent, this is an accurate if very cursory reflection of the regulatory picture with regard to the Internet. However, it is a simplification that ignores what is a more complex picture. Certainly, the very nature of the Internet does not lend itself to regulation. It is a global network made up of a very large number of interconnected, largely autonomous networks, operating from many different legal jurisdictions without any obvious central governing body. Indeed, in many ways this loose and lightly regulated structure has been encouraged by governments and by users as a source of both innovation and growth.

3.9 This does not mean, however, that the Internet is without any governing principles. To ensure interoperability of the constituent networks, as well as consistent policy on addressing, addresses and standards are administered by the Internet Corporation for Assigned Names and Numbers (ICANN), based in California, at which the UK Government is represented.

3.10 Access to Internet services is also regulated in the UK and Europe through telecommunications legislation as regulated by Ofcom. Internet services have predominantly been provided through the national copper wire telecoms network. The transmission of content wirelessly through the national radio spectrum network is regulated through the Wireless Telegraphy Act 2006 and has regulatory impacts for access to the Internet through wireless devices other than computers such as mobiles phones (especially smart phones like the iPhone), and other Internet enabled devices such as tablets (like the iPad and Kindles).

3.11 In addition, just as the general law applies online as it does offline, some forms of online content are also regulated. Broadcast content, known as video on demand when it is made available online, through for example the BBC iPlayer service, or in the case of Channel 4, through 4oD, is regulated by the Audiovisual Media Services Regulations 2009 and the Audiovisual Media Services Regulations 2010, by the Authority for Television on Demand (ATVOD). The necessary powers for the regulation of these services are delegated to ATVOD by Ofcom through a formal designation. These ensure that protections similar to those applied to broadcast content are applied to that same or similar content when made available online.

3.12 In addition to regulation of broadcast and equivalent content through ATVOD, UK Internet Service Providers have also taken a broadly self-regulatory approach to some of the content they host and have applied a limited number of standards to that content. In many circumstances, ISPs and others have cooperated with law enforcement and other agencies to remove illegal content or block access to it. The Internet Watch Foundation (IWF) is an example of this self-regulatory approach. The IWF works closely with ISPs to ensure that webpages, including those hosted outside of the UK, which provide access to potentially criminal content and, specifically, images of child abuse, are reported and removed or blocked at source.

3.13 The current reliance on collaborative approaches and industry self-regulation does not mean that enforcement of UK law online is not possible. However, successful prosecution relies on considerable cooperation across a number of agencies, not least the ISPs and content

[73] pp7-12, paragraphs 37-61, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Martin-Clarke.pdf

[74] see Part F, Chapter 5 for a full analysis of these issues

providers, and is most effective where the alleged act is also clearly criminal in the host country.

3.14 To this end, it is worth noting that Twitter and other social media have cooperated with UK law enforcement in cases of obvious criminality. During the rioting in the summer of 2011, both RIM Blackberry and Twitter worked closely with police and other enforcement agencies to identify those using social media and communications networks to perpetrate or help commit criminal acts. In 2011, Lancashire County Council also worked with Twitter to identify and bring prosecutions against individuals suspected of tax avoidance.

3.15 This relative lack of internet specific regulation is unlikely to change. The Government made clear that it sees the Internet as a key driver of future economic growth and innovation, and has made public its commitment to an open but responsible Internet.[75] This should be understood as an internet in which all legal content is available and there is no blocking of sites or discriminatory practice (such as prioritising one very similar product over another), and where the industry works together with Government to deliver solutions to issues particularly in relation to:

- e-Accessibility;
- harmful and inappropriate content; and
- copyright.

3.16 Where legislation has been brought forward in relation to the Internet, this has been in response to legislative changes decided at a European level, intended to protect the privacy of users. Changes to the law have extended the powers available to the Information Commissioner's Office to ensure that it has appropriate tools to do its job effectively in a digital age.[76] These changes have extended the enforcement powers available to the ICO under the DPA into the Privacy and the Electronic Communications Regulations (PECR), and include powers to:

- levy civil monetary penalties for PECR offences;
- compel Communication Providers to disclose the identity of third parties; and
- amend Assessment Notice powers which will enable the ICO to compel organisations to submit to an e-privacy audit.

3.17 The changes have been made in response to concerns at a number of high-profile data breaches, some as a consequence of criminal hacking, others by the apparent unwillingness of service providers to pay full heed of data protection legislation (as in the case of the unintentional interception of data from wifi-wireless and remote internet devices by Google in 2009).[77]

3.18 This has been alluded to in evidence given to the Inquiry. Google stated that privacy online was a matter of growing importance to the company. David John Collins, Vice President of Global Communications and Public affairs for Google, explained that the company's attitude

[75] Speech by the Rt Hon Ed Vaizey, Minister of State for Culture, Communications and the Creative Industries, to PICTOR, 25th October 2012

[76] pp65-66, (DCMS), *HMG response to its consultation on proposals and overall approach including its consultation on specific issues* (2011), http://www.culture.gov.uk/consultations/7806.aspx

[77] p68, lines 16-21, David John Collins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf

towards privacy online and related matters has changed considerably with time reflecting both the growth in the use of online services and the changing legal landscape with regard to the internet.[78] Mr Collins said:[79]

> *"Google has always taken privacy seriously from a very strict compliance position; it's taken privacy seriously because ultimately the trust that we have with our users is incredibly important."*

In this respect Google has worked hard to improve public awareness of privacy issues online, and in January 2012 launched the "good to know campaign" which actively sought to raise public awareness of privacy tools in relation to email, social network accounts and other online functions that might help users to protect their privacy online.[80]

4. Blogs and other web-based commentary

4.1 The Inquiry heard evidence in regard to the operation of blogs, online news aggregators, publishers, social network sites and online hosts.

4.2 There are a number of news blogs – the Huffington Post is an early, high profile example of one, which has developed over the years into something much more like an online newspaper – which specifically aim to bring a range of news stories and views on those stories to their readers. Other examples include the *Guido Fawkes* Blog, which focuses on 'tittle-tattle, gossip and rumours' about Parliament;[81] the *Jack of Kent* Blog,[82] which describes itself as 'liberal and critical'; and *Popbitch*, which is a celebrity newsletter and message-board. Camilla Wright, co-founder of *Popbitch*, told the Inquiry that her intention in founding *Popbitch* was to create a publication like Private Eye for the celebrity world that would:[83]

> *"... look at the hypocritical gap between how those in the public eye seek to be portrayed and how they really act."*

4.3 There is no single format for these types of sites and individual sites can evolve, and have evolved, a great deal over time. Whereas *Popbitch* is clear in its ambition to entertain and understands itself to "poke fun" and comment on the "lighter" side of celebrity culture, *Guido Fawkes,* though ostensibly and in many respects similar, is different in nature. Paul Staines, the founder of the *Guido Fawkes* website, stated that *Guido Fawkes* actively seeks to break stories and prides itself on doing so ahead of the main news providers.[84]

4.4 The type and size of audience attracted by such blogs varies hugely and depends unsurprisingly on the content they carry. For example, Mr Staines told the Inquiry that the *Guido Fawkes* site generally had between 50,000 and 100,000 readers daily. However, when very big stories are being broken this can rise to as many as 100,000 visitors per hour.[85] Mr Staines estimated that

[78] pp65-68, lines 23-21, David John Collins, *ibid*
[79] p68, lines 16-21, David John Collins, *ibid*
[80] p91, lines 10-17, David John Collins, *ibid*
[81] http://order-order.com/
[82] pp15-96, David Allen Green, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-25-April-2012.pdf
[83] pp42-43, lines 12-10, Camilla Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-26-January-2012.pdf
[84] p99, lines 1-7, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[85] p99, lines 13-20, Paul Staines, *ibid*

between 25% and 30% of his readers reached the site through search engines.[86] *Popbitch*, by contrast, has 350,000 subscribers, whilst *Holy Moly*, which also covers celebrity news and gossip, serves 6.5 million page impressions a month to 1.6 million people.[87]

4.5 In addition to the stand-alone blogs and sites described above, many established news providers also use blogs – for example the Guardian has been running a live blog on the Leveson Inquiry since the first of the Inquiry seminars – either for specific events or issues, or just by way of communicating with readers in a different manner. At the other end of the spectrum, many individuals run blogs on matters which are of interest to them, some of which will, from time to time, cover issues of news or current affairs and some which may well break stories if the people writing them are well placed to do so.

4.6 These vastly different sites are all offered to the public in the same way; they all have the same theoretical reach to the entire internet-connected population at the touch of a button (particularly when facilitated by search engines). They are also, with the regulatory exceptions set out above, entirely unregulated, though subject to civil and criminal law in appropriate jurisdictions. However, it is noteworthy that although the blogs cited here are read by very large numbers of people, it should not detract from the fact that most blogs are read by very few people. Indeed, most blogs are rarely read as news or factual, but as opinion and must be considered as such.

Purpose and process

4.7 Ms Wright explained the nature and purpose of *Popbitch* as a gossip site. She said that she believed that the public had a right to know certain facts about certain celebrities, particularly given the ability of some to "*shape and influence people's lives.*"[88] Ms Wright argued that it is only right that publishers should bring material to the attention of the public if it brings to light what she described as the "*gap between people's private life and public life*."[89] This she argues is not only very much in the public interest but is a reflection of everyday concerns that individuals may have, as well as the reality of celebrities and others putting potential personal or private information into the public domain through Facebook and other social media, that might sit uneasily or indeed at odds with their public persona.[90]

4.8 Ms Wright acknowledged that this may mean that the line between what is private and what might be made public is fluid and dependent on context:[91]

> *"We draw the line, I would say, we look at who is making themselves influential, and if so are they living up to it."*

4.9 Understandably perhaps, for a relatively small operation, the standards of proof deployed by Ms Wright are lower, and the processes different from those that might be found on a print newspaper. Ms Wright said in relation to the corroboration of stories:[92]

[86] p100, lines 2-4, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[87] evidence of Jamie East to Joint Committee on Privacy and Injunctions Q336, http://www.parliament.uk/documents/joint-committees/Privacy_and_Injunctions/JCPIWrittenEvWeb.pdf
[88] p55, lines 7-8, Camilla Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-26-January-2012.pdf
[89] p56, lines 1-3, Camilla Wright, *ibid*
[90] p56, lines 15-23, Camilla Wright, *ibid*
[91] p57, lines 3-8, Camilla Wright, *ibid*
[92] pp48-43, lines 7-10, Camilla Wright, *ibid*

"If it is a contentious or controversial story , I would want to get someone else to back up what they're saying and try and find if possible, some evidence to support what they're both saying."

4.10 Ms Wright also explained that whilst *Popbitch* may not have formal processes for establishing whether content might be in the public interest or a breach of privacy, the company does consult with and take advice from media lawyers, who have at times provided extracts from the Editors' Code of Conduct which they perceive might be useful for *Popbitch* to consider.[93]

4.11 Much as *Popbitch* understand itself to provide information to the public that it determines to be in the public interest, *Guido Fawkes* also prides itself on its ability to deliver stories it understands to be in the public interest, that might otherwise remain unknown. Mr Staines said: [94]

"I particularly don't think people in public life, people who are, you know, paid for by the taxpayers, or subject to the voters, should expect the same degree of privacy as a private citizen who has no public life can expect. These people – their character speaks to what the voters need to know about them as politicians, so if they misbehave in their private life – it's quite common that somebody who will lie to their wife will lie to the voters. That's an old adage that has some truth to it."

4.12 Indeed**,** Mr Staines stated in evidence that he would publish information that he assessed to be in public interest even if that information was the subject of a legally enforceable injunction. He referred in evidence to material made available by his blog which a court had ordered should be removed from the internet.[95] This is explored in more detail below.[96]

4.13 Mr Staines also gave evidence on the standards and editorial processes he deploys with regard to the content he publishes. He said that in many cases he is unable to corroborate stories through a second source:[97]

"Yeah, quite often there's only one source in the room who can provide us with information, so we have no choice. We don't rely on single sourcing from people we don't know. There has to be some authority to that person or we have to have a level of trust built up over time. If someone came in fresh and was a single source we couldn't verify in any way whatsoever, I'd be very reluctant to run with it."

4.14 Mr Staines also made clear that accuracy was as important to the credibility of a blog site like *Guido Fawkes* as it was for a print newspaper. It is for this reason that the majority of material sourced by Mr Staines was either verifiable or from a trusted source. Only some 10% of material might be from an unknown source.[98]

4.15 Additionally, Mr Staines told the Inquiry that journalists occasionally provided him with material that an editor may have decided not to publish (that had been spiked), or that might not fit with the overall agenda of the publication in question.[99] As such *Guido Fawkes* provides

[93] p61, lines 3-17, Camilla Wright, *ibid*
[94] pp114-115, lines 23-8, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[95] p106, lines 15-18, Paul Staines, *ibid*
[96] see paras 5.13, 5.14 and 7.6
[97] p102, lines 2-9, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[98] p110, lines 4-12, Paul Staines, *ibid*
[99] p112, lines 1-9, Paul Staines, *ibid*

a valuable vehicle for publication of such content. *Guido Fawkes* also receives material that journalists want to push further and establish whether the story in question has legs.[100]

4.16 Mr Staines also stated, in a parallel that he himself has drawn with the former editor of The Sun, Kelvin Mackenzie, that he would run stories that are single sourced if the story was of little consequence, or in keeping with the overall tone of the *Guido Fawke*s site, namely, that it was gossipy or humorous in nature.[101]

4.17 Much as the *Guido Fawkes* site is used as a proxy by some newspapers and a means of running stories that might lead to a newspaper being challenged, Ms Wright said that *Popbitch* is also occasionally used by journalists from print newspapers in this manner. However, Ms Wright made clear that is a practice that she generally seeks to avoid. She noted that such an approach has not happened for some time.[102] Ms Wright was also keen to emphasise that she would only publish such information if it were in the public interest. This, she said, has not yet happened.[103]

4.18 The Inquiry also heard evidence from the Carla Buzasi, Editor in Chief of the *Huffington Post UK*. In contrast to either *Popbitch* or Guido *Fawkes*, the *Huffington Post UK* is not a blog built around the knowledge and gossip of a given area, it is an online newspaper employing trained journalists and abiding by journalistic standards as set out in the Editors' Code of Practice, as well as participating in the system of self-regulation for the press through the PCC.[104] The *Huffington Post UK* also functions as a news aggregator and links to news content hosted on other websites, as well as hosting blogs for the discussion and dissemination of opinion.

4.19 Ms Buzasi gave evidence on the importance of trust to the *Huffington Post UK*, and particularly to its reputation as a news source. This has informed editorial and management decisions made around training and editorial guidelines.[105] It is therefore expected that all stories are verifiable and are not single sourced. However, Ms Buzasi acknowledged that there may be a limited number of circumstances in which single sourcing was acceptable, but it was not the rule.[106] A similar emphasis on trust is placed on those news sites that the *Huffington Post UK* will link to.

Regulation of blogs

4.20 Blogs and other such websites are entirely unregulated. The *Huffington Post UK* is unique in having opted to subscribe to the PCC. It is the only solely online news provider to have elected to this and did so in September 2011. Ms Buzasi suggested that membership of the PCC was a natural next step for the *Huffington Post UK* as it had long abided by the terms of the Editors' Code of Practice. However, she expressed some frustration at that organisation's lack of consideration for online publications and intimated that the process of joining revealed flaws inherent in the existing system.[107] She noted that the *Huffington Post UK* was eventually

[100] p112, lines 10-23, Paul Staines, *ibid*
[101] p102, lines 16-20, Paul Staines, *ibid*
[102] p66, lines 11-13, Camilla Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-26-January-2012.pdf
[103] p66, lines 18-20, Camilla Wright, *ibid*
[104] pp75-76, lines 10-19, Carla Buzasi, *ibid*
[105] p78, lines 8-18, Carla Buzasi, *ibid*
[106] pp79-80, lines 8-15, Carla Buzasi, *ibid*
[107] p92, lines 5-18, Carla Buzasi, *ibid*

categorised by the PCC as a regional newspaper although it is in reality a national online publication with a substantive readership.[108]

4.21 By contrast, Ms Wright told the Inquiry that although she was aware of the PCC Code she saw no reason for *Popbitch* to be part of the system of self-regulation through the PCC. Instead, she said in response to questions from the Inquiry that she believed *Popbitch*'s own system of internal or personal regulation was more effective and better suited to the needs of the organisation.[109] With regard to a future system of regulation for the press, Ms Wright was equivocal as to whether such a system would be something that *Popbitch* would consider voluntarily signing up to, the detail of that system depending. Ms Wright said that she would need to determine whether that system of regulation would be useful to *Popbitch*.[110]

4.22 With regard to the oversight and regulation of content published by third parties, views of the *Huffington Post UK* to hosted and other user generated content on its site are broadly typical of other hosting sites. *The Huffington Post UK* does not pre-moderate or edit that content. Indeed, Ms Buzasi has said that:[111]

> *"We want to have their personalities shine through on their blogs but there is a framework to ensure that we're – or our bloggers are complying with the law."*

4.23 Mu Buzasi said that a small number of comments were routed through a filter which may pick up certain word combinations or profanities. These were then directed to a moderator for review.[112] Comment that was flagged by users was also directed to a moderator for review.[113]

4.24 Ms Buzasi made clear that it was her firm belief that micro bloggers and small non-commercial bloggers should exist outside any formal system of regulation. She regards this freedom from regulation as a necessary condition for the nurture of creative talent and encouragement of new media enterprises, particularly if there are substantive costs associated with that system.[114]

4.25 Google is by some margin the largest publisher of third party content to have given evidence to the Inquiry. Specifically, Google hosts user generated content through its Blogger.com service. The service hosts blogging sites, and now hosts more than 1 trillion words. That total increases at rate of over 250,000 words every minute.[115] Its attitude towards the content it hosts is markedly similar to that of the *Huffington Post UK*. All content hosted through the service must comply with the terms of use. Beyond this, Google does not exercise any editorial control over the content it hosts on its blogger service.[116] It does, however, provide a notice and take down service. Google's legal Director, Daphne Keller, has said that while a blogger service is available only through the .com domain, Google will take steps to ensure

[108] p92, lines 9-12, Carla Buzasi, *ibid*
[109] p54, lines 7-15, Camilla Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-26-January-2012.pdf
[110] p67, lines 15-18, Camilla Wright, *ibid*
[111] p83, lines 17-21, Carla Buzasi, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[112] p84, lines 16-24, Carla Buzasi, *ibid*
[113] p84, lines 21-22, Carla Buzasi, *ibid*
[114] p89, lines 3-22, Carla Buzasi, *ibid*
[115] p109, lines 10-14, Daphne Keller, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[116] pp111-112, lines 7-11, David John Collins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf

that content originating from a given jurisdiction is compliant with local law, if it receives a complaint about the content in question.[117]

Funding models

4.26 Many blogs sites now run on a commercial basis. The largest blog sites are increasingly funded either in their entirety or in part by advertising, as is the case with both *Popbitch* and *Guido Fawkes*. Although the approach to what appears on the website or blog will vary from site to site, the technical costs associated with running a site of this sort are relatively low, and barriers to entry to the market for both new players, be they individuals or much larger firms, are similarly low. Effectively, anyone with access to the Internet can set up a blog and seek to reach readers.

5. Social networking sites

5.1 A social networking service is an online service, platform, or site that focuses on the building and reflecting of social networks or social relations among people who, for example, share interests and/or activities. A social network service essentially consists of a representation of each user (often a profile), his/her social links, and a variety of additional services. Most social network services are web-based, providing means for users to interact over the Internet, potentially through e-mail and instant messaging. Myspace, Facebook, Twitter, LinkedIn and Google+ are all social network sites.

5.2 Although there is limited news provision in the terms that are relevant to this Inquiry on pure social networking sites, all social networks provide opportunities for individuals to disseminate and discuss news, information and comment. Indeed, everyday use of the Internet is increasingly characterised by the use of social networking sites and other social media. Their growth has been little short of phenomenal. Ten years ago there were no social networks; now the largest social networking site, Facebook, has over 800m users worldwide (although Facebook has recently suggested that as many of 100m of these accounts may be either dormant, fake or used for questionable purposes). The rise of Twitter has been similarly rapid. Founded in 2006, it now counts over 100 million active users each month, sending a billion tweets every four days.[118] Perhaps most astonishingly (and for this Inquiry of concern to those who may be the subject either of Tweets that breach privacy or indeed the criminal or civil law), is the speed with which a message might be propagated. Colin Crowell, Head of Global public Policy for Twitter Inc, noted that during the 2012 Superbowl, Twitter processed 12,000 tweets per second.[119]

5.3 Increasingly newspapers themselves not only use the pages of social networking sites to disseminate news, but also provide platform friendly applications, to enable the application to be accessed through the specific social media. However, it is worthy of note that despite their extraordinary growth, as with most blogs, in the main few tweets or social network pages are read by very large numbers of people. Although a very small number of tweeters are followed (though not necessarily read) by very large numbers of people, and such may at times have significant impact (the Inquiry has heard evidence from Stephen Abell of the PCC

[117] pp109-110, lines 20-15, Daphne Keller, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[118] pp92-93, lines 25-9, Colin Crowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[119] p105, lines 3-4, Colin Crowell, *ibid*

of the phenomenon of Fry-bombing),[120] it should not detract from the fact that most tweets are read by very few people. The television personality and actor, Stephen Fry, one of the most prolific celebrity tweeters has over 5 million Twitter followers.

5.4 Although social networking sites are not obviously in competition with newspapers for audience, revenue or advertising, they may be used to publish information that would not be able to be published by a newspaper in conformity with the standards set by self-regulation. In a practical, though not a legal, sense they might also be used to publish information that a court has ruled should not be published with little likelihood of the publisher being identified and held to account. Indeed, there are clear and very recent examples of this practice that do not need to be repeated here.

5.5 It is in this regard that Twitter has been the focus of some interest to the Inquiry because of the role played by users in identifying individuals who had been the subject of privacy injunctions. Twitter allows members to operate anonymously, or under a pseudonym,[121] and it is also possible that the company itself may not know the real identity of any member.[122] However, Twitter has told the Inquiry that its rules forbid members from using the service for any unlawful purpose,[123] and any material that is found by the company to contravene that policy can be taken down or removed.[124]

5.6 In this respect Twitter is similar to other social media. Most social networking sites and publishers of user generated content operate acceptable use policies (AUPs) which set down guidelines for user behaviour on those sites and cover issues such as posting of offensive content and bullying. Where a policy is breached, material is removed and in some cases the user's profile is deleted.

5.7 Most recent trends in social network technology have been towards the concept of "real-time web" and "location based" services. The real time web service allows users to generate content, that is broadcast as it is being uploaded – the concept is potentially analogous to and may indeed come to challenge live radio and television broadcasts as well as traditional print media.

5.8 Indeed, the instant nature of social networking also differentiates it from more traditional media. Rebuttals and denials of allegations can take place instantly, helping if not to kill a story at least to provide the subject of the story with a voice and make users aware that the veracity of the allegation or story may be in doubt.

Consideration of the law

5.9 The major websites and providers of internet services, be they social networking sites or providers of other services or functionality, tend to operate under US law if that is where the company is based. However, as witnesses to the Inquiry representing Internet firms have sought to make clear, where services are targeted at a given jurisdiction, they will also seek to comply with local law. This can and does lead to conflicts of law, for example, where issues such as consideration of privacy and other related matters conflict with rights under the First Amendment of the American Constitution.

[120] pp60-61, lines 19-4, Stephen Abell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-30-January-2012.pdf
[121] p94, lines 6-7, Colin Crowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[122] p98, lines 22-23, Colin Crowell, *ibid*
[123] p96, lines 22-25, Colin Crowell, *ibid*
[124] p98, lines 6-9, Colin Crowell, *ibid*

Blogs and the consideration of the law

5.10 The Inquiry has heard much evidence in this regard. Ms Wright said that as *Popbitch* is published in the UK it abides by general law. This includes making efforts to ensure that content is not defamatory.[125] Ms Wright was keen to emphasise, echoing points made by other witnesses representing online publishers and Internet businesses, that *Popbitch* sought to obey the local law in each of the jurisdictions in which it operated.[126] Asked by Counsel to the Inquiry whether she considered the privacy of individuals about whom she writes, Ms Wright said:[127]

> *"In era where injunctions have been such a much-talked about thing, that obviously has to be a consideration. I think if I could put it this way, Popbitch is an entertainment product, therefore we are trying to do no more than poke fun in the world of celebrity….. We get a lot of stories in [sic] which we don't print, which are things like somebody's gone to rehab, somebody has cancer, or it's about their children."*

5.11 Ms Wright also said that consideration of privacy issues was more important to *Popbitch* than it once was. In evidence she referred to the example of Victoria Beckham's pregnancy, noting that at the time the pregnancy was widely discussed, and that although *Popbitch* were the first publishers to write about the story, the fact of that pregnancy was no secret. However, Ms Wright has said further:[128]

> *"I would be I think since then much more careful about making sure that a pregnancy was beyond twelve weeks before – in this case, this was that as well, but I would be very careful about doing that."*

5.12 Mr Staines provided different and interesting evidence in relation to legal accountability and enforcement, particularly in relation to legal jurisdictions, that illustrates well the problems in respect of the application of national law by online publishers. Mr Staines was candid about this. He said that the servers used by the *Guido Fawkes* site are located in the USA. The site was previously hosted by Google on the Google free blogger system but, as Mr Staines explained, was moved when Google *"became more willing to give in to legal threats."*[129] Mr Staines said by way of further explanation:[130]

> *"I thought it be a good moment to switch from them to a hosting provider who was robust and would stand up for my First Amendment protections."*

5.13 This switch from Google to another blog host was made in order to make it more difficult for content Mr Staines had published to be challenged through the UK courts; he cited the experience of Wikileaks as a sufficient justification for this course of action.[131] Further, Mr Staines stated that although he had been threatened with legal action on a number of occasions, no such action had been successfully prosecuted. Mr Staines also made clear that he has ignored UK Court decisions without adverse consequences.[132]

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[125] p51, lines 8-12, Camilla Wright, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-26-January-2012.pdf
[126] p67, lines 9-12, Camilla Wright, *ibid*
[127] p52, lines 10-16, Camilla Wright, *ibid*
[128] p52, lines 10-16, Camilla Wright, *ibid*
[129] p103, lines 1-2, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[130] p103, lines 3-5, Paul Staines, *ibid*
[131] *ibid*
[132] p103, lines 3-5, Paul Staines, *ibid*

5.14 He gave the specific example of a memorandum prepared by Merrill Lynch setting out concerns at the future prospects of Northern Rock which suggested that the eventual cost to the taxpayer might be as much as £50bn.[133] Mr Staines said that he uploaded the memo in question onto a number of overseas servers to circumvent injunctions issued by the law firm Carter Ruck.[134]

5.15 The attitude of Mr Staines revealed in evidence with regard to compliance with national law was unique among witnesses from online businesses who have given evidence to the Inquiry. More typical were those of the *Huffington Post UK*, which have already been partly addressed. Ms Buzasi was clear that the *Huffington Post UK* abides by UK law. Under the terms of use, users of the *Huffington Post UK* comment boards and blogs must undertake not to post anything that might be illegal. Users must also provide personal details, which means that legal orders or proceedings can be enforced should either legal action be brought or an injunction be imposed.[135] However, she also explained that the *Huffington Post UK* was not able to review and "pre-moderate" potentially libellous or defamatory comment, a theme that was taken up by other witnesses to the Inquiry.[136] Ms Buzasi suggested that the inability of the *Huffington Post UK* to make adjudications in such matters is, to some extents, mitigated by provisions made for the correction of inaccurate or potentially actionable material through the prominent provision of "send a correction button"; the site also operates what Ms Buzasi has referred to as a "robust" notice and take down process.[137]

6. Other providers

6.1 Mr Crowell made clear that it would be both technologically and physically impossible for Twitter to pre-moderate the user-generated content hosted by Twitter, in this case tweets, and adjudicate on their potential illegality.[138] In this respect, the position of Twitter is markedly similar to that of both Google and Microsoft in relation to user-generated content. Articulating the position of Google with regard to compliance in this area, Ms Keller explained that given the volume of material generated by third parties that Google either indexes, searches or hosts depending on the relevant Google service or function, it is impossible for Google to pre-moderate that content in any way or, to make adjudications as to whether content is legal or not.[139] Ms Keller has made clear that both the volume and nature of the content make such decision making practically impossible. She told the Inquiry that such filtering is also technically impossible and would also run the risk of legal challenge if content that had been posted entirely legally were removed inadvertently as a consequence of such filtering.[140]

6.2 However, Mr Crowell was keen to stress that recent technological changes since the start of 2012 have enabled Twitter to withhold tweets within a given jurisdiction. This will enable Twitter to comply more effectively with differences in local law in different jurisdictions.[141] Mr

[133] p106, lines 19-23, Paul Staines, *ibid*
[134] p107, lines 2-8, Paul Staines, *ibid*
[135] p85, lines 17-19, Carla Buzasi, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[136] p85, lines 14-26, Carla Buzasi, *ibid*
[137] p86, lines 6-11, Carla Buzasi, *ibid*
[138] p102, lines 5-11, Colin Crowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[139] p76, lines 8-22, Daphne Keller, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[140] pp101-102, lines 7-19, Daphne Keller, *ibid*
[141] p106, lines 5-14, Colin Crowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf

Collins also provided further evidence of Google's evolving policies with regard to compliance with national law. He said that Google services targeted at a particular country comply with local law and that this applies as much to privacy and other related matters as it does to other areas of law.[142] By way of example, Mr Collins explained that Google policy on privacy in the UK was shaped through an ongoing dialogue with the ICO, which had provided relevant advice.[143] Ms Keller explained that the use of the .co.uk domain name underpinned the provision of services to the UK as well as compliance with the local law.[144]

6.3 Ms Keller also explained the number of routes through which an individual might seek to remove material made available through Google services. It is notable, and indeed unfortunate – although given the technological constraints understandable – that in each example the burden of effort lies with the injured party. Ms Keller explained that webmasters (those who author and maintain websites) are able to request that their site is not indexed and will therefore not appear in searches.[145] Ms Keller also said that this particular approach is in the view of Google the most effective means of getting content removed. Google also provides a "remove content from Google" service, which users may use to alert staff to potentially illegal content which will be taken down if it is understood not to comply with UK law.[146] Google has adopted a similar, expedited approach in relation to content that is in breach of copyright.[147]

7. Enforcement

7.1 Despite the efforts made to comply with national law, it is clear that the enforcement of law and regulation online is problematic. Although the law with regard to online content is clear, and UK hosted content is by and large compliant, the ability of the UK to exercise legal jurisdiction over content on Internet services is extremely limited and dependent on many things (explored below) which are rarely aligned. These include: the location of the service provider; the location of the servers on which material is held; and international agreements and treaties.

7.2 Internet Service Providers offering services to UK customers will block content that has been declared illegal. They are, however, understandably unwilling to make decisions on whether content may or may not be illegal or to take decisions where there are grey areas in law. This has been particularly apparent in cases of alleged defamation, where ISPs and content providers have historically been unwilling to remove content without a court decision. Whilst the position of the ISPs and content providers may be understandable – issues clearly arise as to their ability to decide on the veracity of an allegation – in some cases considerable damage may have been done to the subject of those allegations before a judgment has been reached and the defamatory content consequently removed.

7.3 Most successful attempts to induce service providers of any sort to take enforcement action in relation to content are either through agreement, or dependant on case-specific court orders. In his evidence to the Inquiry, Mr Crowell (as well as representatives from Microsoft and Google) said that Twitter would enforce orders made by UK courts, in so far as they might

[142] p69, lines 8-20, David John Collins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[143] p69, lines 8-20, David John Collins, *ibid*
[144] pp73-74, lines 13-17, Daphne Keller, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[145] p78, lines 7-11, Daphne Keller, *ibid*
[146] p79, lines 6-12, Daphne Keller, *ibid*
[147] p88, lines 1-24, Daphne Keller, *ibid*

apply to UK users, on a case by case basis.[148] In practice, this means that for Twitter to remove a defamatory tweet that was re-tweeted, a court order would be needed in relation to every relevant tweet by every individual unique user who repeated that defamatory content.[149]

7.4 Ms Keller has also made clear that, in cases of alleged defamation, it is Google policy in most cases only to remove material from a given service if the complainant was able to provide a legal judgment in support of their claim. However, Ms Keller acknowledged that while such material would be removed from a UK search, it might still be found through Google.com if the material in question was not in breach of American law.[150] This means in practice that, in order to have material removed from searches in multiple jurisdictions, a legal application would have to be made in each relevant jurisdiction. Ms Keller said in this respect that she hopes: *"this would not be a difficult thing to do."*[151] It is notable that much as Twitter requires a court order in respect of each individual user, Google require such an order in relation to individual URLs.

7.5 Both examples are also in counterpoint to the number of instances where UK legislation and decisions by UK courts are simply ignored, as they are unenforceable. Content providers headquartered in the United States will also strenuously defend rights to free speech under American law and indeed may themselves be at risk of prosecution if they remove allegedly defamatory or potentially illegal content ahead of a court decision. This position is not without legal underpinning under European Law. Under Article 15 of the European eCommerce Directive which sets out the regulatory framework for trade through the Internet, ISPs are not legally responsible for the content they carry over their pipes.[152] This defence is known as mere conduit. Mr Collins of Google described the apportionment of responsibilities between publishers and host thus:[153]

> *"Firstly, there is a very clear set of regulations which apply to technical intermediaries hosting platforms. It's called the E-commerce Directive and it does place a number of responsibilities on us around removal of content. I know that you're very aware of it. It's important to make the distinction between – in the system that you've outlined, it's important to make the decision between someone who provides a hosting platform for other people to create and post content, and a publisher. Blogger.com or other products that are – attempt to form a community around the product, YouTube, et cetera, they don't make us a publisher; we remain a hosting platform. So I think whatever system that you devise, it's important to retain that distinction, because not only is there already a very clear set of regulations around those principles placing responsibilities on us, but it retains a very essential balance online, which is: where does that responsibility lie? We have our responsibilities, which we fulfil; the person that produces and uploads that content has his or her responsibilities as well."*

7.6 Mr Staines also described with some colour the difficulties that an individual or company might encounter in trying to have content removed from the internet:[154]

[148] p23, lines 21-24, Colin Crowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[149] pp103-104, lines 5-5, Colin Crowell, *ibid*
[150] p85, lines 9-20, Daphne Keller, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[151] p86, lines 22-23, Daphne Keller, *ibid*
[152] pp111- 112, lines 8-4, David John Collins, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf
[153] pp111- 112, lines 8-4, David John Collins, *ibid*
[154] p107, lines 2-8, Paul Staines, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf

"I think it is impossible for them to do anything, I would basically upload it to a free hosting service after the close of business hours, so if the law firm was contacting Yahoo India, they would find that there would be no one at home and it would be up on that website until the next day at the very least."

8. Press photographers

8.1 Press photographers are another source of news material. Their actions and conduct are covered elsewhere in this Report as appropriate, so I will restrict myself to a very few comments in this regard. Based on figures provided by the British Press Photographers Association (BPPA), it is estimated that there are around 800 press photographers in the UK. Of these around a quarter are directly employed by newspapers or agencies, around 12% are employed on fixed term or rolling contracts, around 18% work through agencies as freelancers and the remaining 45% are entirely freelance.[155]

8.2 Those photographers who are directly employed, whether by newspapers or by agencies, might expect to be subject to the Editors' Code of Practice. Indeed, the Inquiry has been told by witnesses both from picture agencies and newspapers that the expectation is that press photographers would abide by the terms of the Editors' Code of Practice.[156] Those who operate on a freelance basis are not subject to any regulation beyond the law, as it applies to everyone.

8.3 Much of the work undertaken by press photographers involves arranged photo shoots of one sort or another. However, press photographers obviously do also work by waiting for potential subjects and hoping to get pictures of them. This inevitably gives rise to the risk that photographs will be taken in situations where the subject might prefer not to be photographed and, as is made clear[157] elsewhere in this report, may even be subject to harassment or distress.

8.4 The death of Diana, Princess of Wales,[158] in an accident that occurred while the car in which she was travelling was being pursued at high speed by a number of press photographers in 1997 brought the role and behaviour of press photographers very much to public notice. Since then, UK newspaper editors have been committed by the Editors' Code of Practice not to publish images that are taken in contravention of the Code. The responsibility for checking whether the Code of Practice has been breached in relation to any specific image sits with the newspaper concerned.

8.5 The market for celebrity and news photographs is now a global one. A picture that might be turned down by a UK editor as not being consistent with the Code might well be accepted by non-UK newspapers, broadcasters or websites. Recent cases involving Prince Harry and the Duchess of Cambridge are instructive and are described elsewhere in this Report.[159] The largely freelance nature of the press photography business means that there is a high level of competition among photographers to get the best picture.

[155] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-The-BPPA1.pdf
[156] Part F, Chapter 6 for a fuller discussion
[157] Part F, Chapter 6
[158] Part D, Chapter 7
[159] Part F, Chapter 5

C

CHAPTER 4
PLURALITY

"I think sometimes – a lot of the time it isn't necessarily the size of the newspaper group, it's the strength of voice of the paper. I mean, actually, the Daily Mail is an incredibly sort of powerful voice in the nation's politics because it's a very strong product, it puts its voice very powerfully, and that's not related really to its market power, it's [related] to the way it pushes its agenda."[1]

1. What is plurality and why does it matter?

1.1 There is a generally held view that the media is of central importance for a healthy, well-informed democracy and therefore control of the media should not be concentrated in too few hands. This is based on a concern that a small number of media owners could have too much influence in terms of content and, in particular, agenda setting. Policy and legislation have been designed overall to achieve a range of different media "voices", which enable consumers to have access to a range of views, which helps them to actively participate in the democratic process in the widest sense.

1.2 The Communications Act 2003 takes two different approaches to the nature of the plurality that is considered important. The first is the need for a "*sufficient plurality of views in newspapers in each market for newspapers*"[2] and the second is the need for "*there to be a sufficient plurality of persons with control of the media enterprises serving [every] audience [in the UK]*."[3] The difference between a plurality of views and the plurality of persons with control of media enterprises is clear. The rationale as to why the first should apply in relation to newspapers and the second in relation to media enterprises is less clear. In any event, the media market has moved on considerably since the Communications Act 2003 was passed and the nature and number of media enterprises serving markets in the UK has changed. Witnesses to the Inquiry took various approaches to what they understood by the need for plurality in the media.

1.3 Ofcom defines plurality with reference to the desired outcome of a plural market:[4]

> *(a) "ensuring there is a **diversity of viewpoints** available and consumed across and within media enterprises;*
>
> *(b) preventing any one media owner or voice having **too much influence** over public opinion and the political agenda."* (emphasis added)

1.4 Professor Chris Megone, Professor of Inter Disciplinary Applied Ethics at the University of Leeds, described both the benefits that a free press brings and the risks of a few voices dominating the public debate:[5]

[1] p24,lines 1-8, David Cameron, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-14-June-2012.pdf
[2] Communications Act 2003 s375 (1)(2B) http://www.legislation.gov.uk/ukpga/2003/21/section/375
[3] Communications Act 2003 s375 (1)(2C)(a) http://www.legislation.gov.uk/ukpga/2003/21/section/375
[4] p11, para 3.8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Ofcom-Measuring-Media-Plurality1.pdf
[5] p2-3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Christopher-Megone.pdf

"freedom of individual expression may be served to some extent by a free press in that such a press provides a vehicle for the expression of opinion in leader and comment columns. Such free expression can contribute to informed citizens through its role in the cut and thrust of ideas. However clearly there are only a limited number whose ideas are expressed in this way, and even with letters pages, and invited contributions from politicians and the like, the number able to express themselves is very small."

and later:

"This argument could be taken further and it could be said that the public interest in freedom of expression can even be adversely affected by a free press, if certain other conditions hold such that some voices get much more prominence than others. In those conditions the power of the press as a medium of expression may lead to certain views dominating the public sphere and other views being squeezed out.

So the public interest in freedom of self-expression, or freedom of opinion, is served by a free press, but only to some extent, and only if the structure of the press allows for sufficient diversity."

1.5 This approach to both the diversity of views available and the influence wielded seems to be generally accepted. Robin Foster, an independent adviser on regulatory policy and strategic issues in the communications sector, described two aspects of plurality that he considered important: to make sure that there was a reasonable wide range and diversity of news and opinion available to the public, and to make sure that no single one of those news providers became so powerful that they had too much of an influence on opinion-forming and the political agenda.[6] Professor Steven Barnett, University of Westminster, said that plurality must encompass both a sufficient number of competing media enterprises and (separately) the prevention of an unhealthy accretion of power by any single enterprise.[7]

1.6 The rationale for requiring plurality within the media and the different dimensions of it that are important seem uncontroversial. However, it is also necessary to say what the scope of media plurality should be. Ofcom notes that both they and other regulatory authorities have concentrated to date on news and current affairs, but that this is not required by the legislative framework.[8] There are arguments for broadening the scope, which are considered later in this Report.[9] Historically, regulators have not really looked beyond news and current affairs when considering plurality.

2. Approaches to securing plurality

2.1 Attempts to secure plurality have tended to rely on four complementary approaches. First, where broadcast media are concerned, it can be argued that the existing rules around accuracy and impartiality should counter concerns about concentration of ownership. The Department of Culture, Media and Sport (DCMS) argues that this is true up to a point, but it is difficult to regulate the coverage and prominence of stories. Therefore, there is still considerable scope for

[6] p3, lines 4-10, Robin Foster http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-17-July-2012.pdf
[7] p1, para 1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-Professor-Steven-Barnett-on-plurality.pdf
[8] p12, para 3.11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Ofcom-Measuring-Media-Plurality1.pdf
[9] Part I, Chapter 8

influencing the agenda by the extent to which particular stories are covered or not.[10] A wider range of media owners makes it harder for one or two large owners to distort the agenda in a way which suits their own purposes.

2.2 Second, there have been specific rules constraining the ability of any one person or company to own too large a proportion of the broadcast market, and restrictions on the extent to which any one person or company can own both a national newspaper and a national terrestrial television channel or a local newspaper and a local television channel. These rules and how they have changed over time are outlined below.

2.3 Third, there is general competition law. One of the key aims of competition law is to ensure that no company has such a position of power within a market that it can abuse that power, for example to force competitors out of the market to the detriment of consumers. Competition law is designed to reduce concentration of market power and, therefore, will generally produce outcomes which support plurality. However, competition rules are also designed to prevent abuse of market power; it is possible that an owner could have a dominant position which he did not abuse in competition terms (and which will therefore be allowed under the competition regime) but which was deemed undesirable in relation to plurality. It is also likely that competition rules are less able to prevent unacceptable levels of cross-media ownership where each market may be seen as distinct for competition purposes. Yet this form of ownership is sometimes seen as being of most concern because it could allow an owner to promote an agenda across a number of platforms which could be more influential than involvement in just one. This was the position originally taken by the Government in relation to media mergers when the 2003 Communications Bill was published.

2.4 The process by which that position changed and how the current provision in the 2003 Act relating to media mergers was introduced is fully documented later in the Report.[11] The result was that the Communications Act 2003 includes provisions to allow the Secretary of State to take public interests considerations relating to plurality into account in proposed media mergers.

2.5 The media ownership regime takes as its starting point the position that a variety of owners will represent a variety of different viewpoints. This cannot be taken as axiomatic as owners could have a very similar set of views and values. It is nevertheless likely that the greater the number of owners, the greater number of views. Moreover, it is difficult to regulate for different points of view, so ownership restrictions act as an effective "proxy" for plurality.[12]

2.6 Media ownership rules act as a constraint on the normal workings of the market, so successive Governments have thought it important to strike an appropriate balance between the needs of plurality and the needs of the wider economy, and to ensure that media ownership rules are no more burdensome than necessary. As more and more services become available on different platforms, concerns over ownership have diminished to some extent and greater liberalisation has been permitted. The DCMS "Consultation on Media Ownership Rules" in November 2001 said:[13]

> *"The current ownership rules are being overtaken by a changing media landscape. In devising new, forward-looking legislation, we have two main aims. We want to*

[10] p2, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[11] Part I, Chapter 5
[12] p3, para 5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[13] p3, para 5, *ibid*

encourage competition and economic growth, by being as deregulatory as possible. However, we must also allow the media to continue to perform its vital role in democratic society, as a forum for public debate and opinion."

3. The history of media ownership rules in the UK from the 1990s

Legislative background

3.1 DCMS has very helpfully provided a detailed history of the Media Ownership Rules in the UK from the 1990s to the most recent developments; this can be viewed as part of the evidence submitted to this Inquiry.[14] For the purposes of the Report I merely summarise the key points.

3.2 The constitutional framework for UK commercial terrestrial television and local radio sectors during the 1980s was provided by the Broadcasting Act 1980 and consolidated in the Broadcasting Act 1981.[15] The Independent Broadcasting Authority (IBA) had the function of providing television and radio services additional to those of the BBC. It therefore acted as both broadcaster and regulator. It did this by entering into contractual arrangements with ITV and Independent Local Radio franchisees, whereby the contractors agreed to supply programmes for their regions and the IBA agreed to transmit them. The IBA had wide powers to preview programmes and approve schedules in advance of transmission. The issue of ownership restrictions did not therefore arise as providers of commercial TV and radio services were not owners of licences but contractors to the IBA.[16]

3.3 The Broadcasting Act 1990 made significant changes to this regime by abolishing the IBA and establishing the Independent Television Commission and the Radio Authority instead. The main effects of the Act were as follows:[17]

(a) The previous contract-based regulatory system was replaced by a licensing system, with each licence subject to certain conditions and penalties for non-compliance;

(b) Licences for certain services were to be awarded by the ITC and RA through competitive tender to the highest bidder after a quality threshold and sustainability test had been passed, except in exceptional circumstances;

(c) Cable and satellite programme licences were to be issued on compliance with the ITC codes' consumer protection requirements;

(d) Channel 4 was to be provided by a new non-profit making body, the Channel Four Corporation, under licence from the ITC; and

(e) Provision was made for the licensing of a new terrestrial television service, Channel 5 (which came to air in 1997).

3.4 The Broadcasting Act 1990 introduced ownership restrictions that licences could be held and traded. It also introduced an upper limit on any person owning more than two Regional Channel 3 licences.[18] The Broadcasting Act 1996 imposed a limit of one licence where the

[14] *ibid*
[15] ITC Notes, The Broadcasting Acts of 1990 and 1996, June 2003
[16] pp3-4, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[17] p4, para 7, *ibid*
[18] Channel 3 network includes 15 Regional licences

licence-holder's total audience share was over 15%, and provided that a national licence could only be held for either Channel 3 or Channel 5.[19]

3.5 The Communications Act 2003 repealed the two rules which prevented the joint ownership of National Channel 3 and Channel 5, and removed stand-alone accumulation limits for all television licences. ITV plc (which resulted from the merger of Carlton and Granada in 2004) now holds all but three of the 15 Regional Channel 3 licences (those being UTV and Northern and Central Scotland).[20]

Provision of broadcast news

3.6 Specific controls were introduced to ensure plurality of the provision of broadcast news. The Broadcasting Act 1990 allowed for the ITC to nominate news providers who would be eligible to provide news programmes for holders of Regional Channel 3 licences ('nominated news providers'). It was only possible to hold 20% of one nominated news provider, and each nominated news provider was only permitted to own up to 50% of a Regional Channel 3 licence (ie 50% of any company holding a Regional Channel 3 licence). The Broadcasting Act 1996 then made further provision for all holders of Regional Channel 3 licences to, as far as possible, appoint the same (single) news provider ('the appointed news provider').

3.7 The purpose of this provision was to ensure that high quality national and international news was carried across all Channel 3 regions at peak times by a single news provider. This was needed because Channel 3, unlike the BBC, was not a single network, but made up of a number of Channel 3 regions under different ownership. By requiring all Regional Channel 3 licence holders to select the same nominated news provider, from providers nominated for that purpose by the ITC, the rules guaranteed a nationwide competitor to the BBC's news services. In the Government's view, this competition served to underpin the impartiality of both services, guaranteeing plurality for viewers. Eventually the Communications Act 2003 lifted all restrictions on the ownership of nominated news providers, while retaining the requirement for all Regional Channel 3 licence-holders to appoint the same nominated news provider.[21]

Digital TV services

3.8 The Broadcasting Act 1996 introduced the licensing regime for digital TV and, at the same time, introduced certain ownership limits in relation to the number of digital licences that could be held. These rules were removed by the Communications Act 2003, consistent with its overall deregulatory approach, so there are now no explicit ownership rules in respect of digital TV services.[22]

[19] p5, paras 8-9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
More detail can be found in annex A to the submission http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Annex-on-media-ownership-rules-from-the-Broadcasting-and-Communications-Act.pdf
[20] p6, para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[21] pp6-7, paras 13-17, *ibid*
[22] pp7-8, paras 18-19, *ibid*

Satellite and cable TV services

3.9 The Broadcasting Act 1990 placed no restrictions on cable and satellite licences. This may well have been because these services were not subject to the same spectrum constraints as analogue services. The Act did place requirements on original programming in respect of direct satellite services (DBS) holding UK licenses for broadcasting on UK frequencies. No such requirement was placed on the holders of other satellite licenses (non-DBS).[23] In practice, this meant that British Satellite Broadcasting was subject to this requirement, whilst Sky was not, giving a commercial advantage at the time to Sky in a market that proved not to be sufficient to support two satellite broadcasters.

3.10 The Broadcasting Act 1990 also placed different ownership restrictions on DBS and non-DBS satellite services. National newspapers could not hold more than a 20% stake in a DBS broadcasting satellite channel. However, no such restriction was placed on newspapers owning non-DBS licences. The Government of the day explained that this was because the number of DBS licences was restricted by international agreement to five, whereas the number of non-DBS licences was not restricted and was likely to grow significantly. This made ownership of one or more such channels less of a significant issue in plurality terms.[24]

Radio

Analogue local radio

3.11 The Broadcasting Act 1990 placed an upper limit on ownership of 20 analogue local radio licences. In addition there was a calculation based on coverage area designed to ensure a minimum of seven owners across the UK. The Communications Act 2003 introduced a new system that would ensure at least three local owners in any area in addition to the BBC. This was subsequently changed to secure at least two, rather than three, local owners in addition to the BBC. Where there were only one or two local radio stations in an area all ownership restrictions were removed (subject to the local cross media ownership rule designed to ensure that there were not total local monopolies). Following a report from Ofcom in 2009, all local radio ownership rules were repealed by the Media Ownership (Radio and Cross Media) Order 2011.[25]

Analogue national radio

3.12 The Broadcasting Act 1990 placed restrictions on one person holding more than one of the three national analogue commercial radio licences. This rule was removed in the Communications Act 2003.[26]

Digital radio

3.13 Under the Broadcasting Act 1996, a person was limited to one digital service licence or 15% of the total audience points (whichever was the higher) and was also disqualified from providing more than one non-simulcast local digital sound programme service on a single multiplex, unless there was another multiplex operating in the same geographical area. Following the Communications Act 2003, these rules were replaced by a new local points based regime; this mirrored the provisions of the analogue regime by placing a limit on digital radio licences of 55% of the points available in an area.[27]

[23] pp8-9, paras 20-23, *ibid*
[24] pp9-11, para 24, *ibid*
[25] pp11-13, paras 25-30, *ibid*
[26] p13, paras 31-33, *ibid*
[27] pp13-14, para 34, *ibid*

C

Specific prohibitions on licence holding

3.14 There are restrictions on the holding of broadcasting licences by certain types or classes of owners. Historically there have been prohibitions on religious bodies holding broadcasting licenses. Over recent decades those restrictions have been significantly reduced, although religious bodies still cannot hold licences for Channel 3, Channel 5 or any national analogue radio licence.[28] The Broadcasting Act 1990 prevented local authorities from holding broadcasting licences. The Communications Act 2003 now allows local authorities to hold broadcast licences for information purposes, and puts in place safeguards to prevent this from being exploited for political purposes.[29] The Broadcasting Act 1990 also prevented political parties from holding broadcasting licences (as there were concerns that they could not run a broadcasting company with sufficient impartiality). This restriction remains in place.[30]

3.15 The Broadcasting Act 1990 additionally prevented advertising agencies from holding broadcasting licences and this restriction has continued.[31] The Broadcasting Act 1990 also introduced some foreign ownership restrictions to non-European Economic Area (EEA) countries (it was not permitted to place restrictions on EEA companies and individuals), which were expanded upon by the Broadcasting Act 1996. Non-EEA companies could hold certain licences including for cable and satellite services. In 2002 the Government consulted on removing these restrictions and the matter was the subject of extensive debate. In the event, in circumstances fully described later in the Report,[32] the Communications Act 2003 did remove the restrictions and there is now no restriction on foreign ownership of any broadcasting licence, subject, of course, to other ownership restrictions.[33]

Cross media ownership

3.16 The position under the Broadcasting Act 1990 was:[34]

(a) National newspaper owners were tightly limited in their holdings in terrestrial TV and radio, and in domestic satellite broadcasters.[35] Within each category they could hold up to 20% of one licence, and then up to 5% of any others. They were allowed full control of non-domestic satellite broadcasters "*in order to encourage investment in an uncertain and high-risk enterprise*". (By 1996 there were no domestic satellite broadcasters and the largest non-domestic satellite broadcaster was BSkyB);

(b) Local newspaper owners were less tightly controlled, in being allowed to own regional TV or local radio broadcasters, provided there was no significant overlap between the licence area and the paper's circulation area;

(c) National TV and radio (and regional Channel 3) broadcasters were limited to a 20% stake in national newspapers and non-domestic satellite licences; and

(d) There were no cross-media restrictions on ownership cable services (other than that satellite providers could not own more than 20% of a terrestrial TV or National Radio licence).

[28] pp14-15, paras 36-39, *ibid*
[29] p15, para 40, *ibid*
[30] p15, para 41, *ibid*
[31] p16, para 42, *ibid*
[32] in Part H Chapter 4
[33] pp16-18, paras 43-47, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[34] pp18-19, para 48, *ibid*
[35] para 2.8, Media Ownership The Government's Proposals, May 1995

3.17 The Communications Act 2003 revised these rules:

(a) Retention of the national rule concerning cross-media ownership between newspapers and ITV. This was expressed as follows:

(i) no one controlling more than 20% of the national newspaper market may hold any licence for Channel 3;

(ii) no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Channel 3 service; and

(iii) a company may not own more than a 20% share in such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.

(b) Retention of a parallel local rule: no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region;

(c) Stricter application of the local radio ownership rules where potential owners had other media interests. The effect was to ensure that, in these cases, there would be a minimum of three media owners in each area across TV, newspapers and radio;

(d) A local cross-media rule (the "local monopolies" rule) designed to ensure that there were no complete monopolies in areas with only one or two local radio stations;

All other cross-media ownership rules were repealed.

Review of ownership rules

3.18 The Communications Act 2003 requires Ofcom to review all media ownership rules at least every three years. Ofcom makes any recommendations for further reform to the Secretary of State, who can amend or remove rules by secondary legislation. The first review in 2006 recommended no change.[36] In its second report in November 2009,[37] Ofcom concluded that that national "20/20" rule should be retained and that the local cross media ownership rules should be liberalised so that the only restriction remaining would be on ownership of all three of: local newspapers (with 50% plus local market share); a local radio station; and a regional Channel 3 licence.[38] According to Ofcom:[39]

> *"this liberalisation will increase the flexibility of local media to respond to market pressures. Consumers still rely on television, radio and press for news, so going further to complete removal of the rules could reduce protections for plurality."*

3.19 On 8 July 2010, the Secretary of State asked Ofcom to revisit its advice on retaining the "local monopolies" rule. Ofcom replied on 29 July and published a fuller version of the reply in August.[40] It recognised that there had been some changes in circumstances since the original report but that a decision on whether to remove this one remaining local rule "*is a matter of judgement and one which is rightly made by Government and Parliament*". Having considered

[36] http://stakeholders.ofcom.org.uk/market-data-research/other/media-ownership-research/rulesreview
[37] http://stakeholders.ofcom.org.uk/consultations/morr/statement/
[38] pp21-22, para 54, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[39] p22, para 56, *ibid*
[40] http://stakeholders.ofcom.org.uk/binaries/consultations/morr/response-localmedia/ Local Media Final Document.pdf

the matter further, the Secretary of State concluded that the remaining rule should also be removed; this was given effect by the Media Ownership (Radio and Cross Media) Order 2011.[41]

3.20 The Government's view was that local media ownership rules (for television, radio and newspapers) placed unnecessary limitations on ownership within commercial media; that the rules were no longer appropriate in a converging digital world; and that removing regulatory barriers would help established industries adapt to new environments. The deregulation of the local media ownership regulations now enables partnerships between local newspapers, radio and Channel 3 television stations to promote a strong and diverse local media industry.[42]

Media plurality public interest test

3.21 The process by which the media plurality public interest test was inserted into the Communications Bill, and the rationale behind it, is also fully outlined later in the Report.[43] These provisions mean that the Secretary of State can ask Ofcom and, if necessary, the Competition Commission to investigate any merger which could have a damaging effect on plurality, diversity or standards.[44]

3.22 In applying the test the Secretary of State takes into account the need for:

(a) a sufficient plurality of persons with control of media enterprises serving any audience;

(b) a wide range of high quality broadcasting that appeals to different tastes and interests; and

(c) a genuine commitment to Ofcom's standards code.

3.23 The Government produced further guidance on how the public interest test would be operated in practice. Partly due to lobbying from industry, Ministers indicated that they were not minded to exercise these powers where media ownership rules continued to apply or where, before the passage of the Communications Act 2003, no media ownership restrictions applied.[45]

3.24 The request to Ofcom is triggered by an intervention notice issued by the Secretary of State which specifies a "*media public interest consideration*".[46] A media public interest consideration is any consideration which, at the time of the giving of the European intervention notice concerned, is specified in s58(2A) to (2C) of the Enterprise Act 2002 or, in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in s58 of the Act (ie would need to be "finalised" by statutory instrument).

3.25 The currently recognised media public interest considerations are:[47]

(a) s58(2A): the need for accurate presentation of news and free expression of opinion in newspapers;

[41] pp22-23, para 57, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[42] p23, para 58, *ibid*
[43] Part I, Chapter 5
[44] p23, para 59, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf
[45] p24, para 61, *ibid*
[46] depending on the type of merger, the power to issue such a notice may arise under sections 42(2), 59(2) or 67(2) of the Enterprise Act 2002
[47] Communications Act 2003 http://www.legislation.gov.uk/ukpga/2003/21/Section/375

(b) s58(2B): the need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK;

(c) s58(2C)(a): the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;

(d) s58(2C)(b): the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(e) s58(2C)(c): the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in s319 of the Communications Act 2003. These require, among other things, "*that news included in television and radio services is reported with due impartiality and the impartiality requirements of s.320 are complied with*" and that news is reported with "*due accuracy*".

Paragraph 7.24 of the guidance issued by the DTI identifies the following as relevant to this question: previous compliance with Ofcom standards, the behaviour of the media owner's other broadcasting enterprises, behaviour in other jurisdictions and compliance with other standards (including under self-regulatory regimes).[48]

3.26 An enterprise is a media enterprise if it consists of or involves broadcasting;[49] but where the public interest concern is that as set out in s58(2C)(a) and a merger involves only one broadcasting company, a merger is still a media merger of media enterprises if the other company is a newspaper enterprise.[50]

3.27 Where there has been an intervention notice, Ofcom is required to report to the Secretary of State on whether, having regard only to the public interest consideration specified in the intervention notice, it is or may be the case that the merger may be expected to operate against the public interest. It is then for the Secretary of State to determine whether or not the merger should be referred to the Competition Commission for further review and, if necessary, consideration of remedies.[51]

3.28 There have only been two occasions on which the Secretary of State has issued an intervention notice in relation to a media merger. On both occasions, the public interest consideration was: "*the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience*".[52]

3.29 The first of these occasions, the completed acquisition by British Sky Broadcasting Group plc (BSkyB) of a 17.9% stake in ITV, was a UK merger. Ofcom considered the plurality public interest considerations and recommended a reference to the Competition Commission.[53]

[48] pp23-24, para 25.5, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Ed-Richards.pdf
[49] s58A(1)
[50] s58A (2). A newspaper company is an enterprise consisting in or involving the supply of newspapers (Section 58A(3)). A "newspaper" is a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the UK or in a part of the UK (Section 44(10))
[51] p24, para 25.7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Ed-Richards.pdf
[52] p28, para 32.1, *ibid*
[53] http://webarchive.nationalarchives.qov.uk/20101227023510/http:llwww.bis.qov.uk/files/file39607.pdf

At the same time, the OFT advised that the transaction was a merger and that it was or may be the case that the merger may be expected to result in a substantial lessening of competition.[54] The Secretary of State referred the case to the Competition Commission. The Competition Commission considered that the transaction raised competition issues, but not plurality issues, and on its recommendation the Secretary of State required BSkyB to sell shares so as to reduce its holding to below 7.5%. The decision was appealed to the Competition Appeal Tribunal and to the Court of Appeal; the Court of Appeal upheld the Competition Commission's decision.[55]

3.30 The second occasion, the proposed acquisition by News Corporation of the shares in BSkyB it did not already own, was an EC merger.[56]

4. History of the newspaper ownership regime

Before the Communications Act 2003

4.1 DCMS has also very helpfully provided a history of the newspaper ownership regime.[57] I draw heavily on it and gratefully acknowledge the work that was put into it.

4.2 Since 1965 there has been a separate regime in place in respect of newspaper mergers. This was first introduced by then Monopolies and Mergers Act 1965, following the Report of the Royal Commission on the Press in 1962 ("the Shawcross report"). Shawcross concluded that control of the press was a matter of particular public sensitivity and that the increasing concentration of newspaper ownership in too few hands could stifle the expression of opinion and argument and distort the presentation of news. The Fair Trading Act 1973 (FTA) subjected most newspaper mergers to a stricter system of control than other mergers. The FTA required the Competition Commission (CC) to look at whether the transfer in question might be expected to operate against the public interest, taking into account all matters which appeared in the circumstances to be relevant. Any such transfer would be automatically void without the written consent of the Secretary of State.

4.3 Proprietors had to obtain prior consent from the Secretary of State for Trade and Industry (as was) before acquiring a newspaper (or newspaper assets) where the total paid-for daily circulation of the newspapers involved was 500,000 or more. The Secretary of State was required to refer newspaper applications to the CC for a detailed report before deciding whether or not to consent to the transfer. Exceptions to this rule meant that the Secretary of State:

(a) could consent to a transfer without a CC reference if he was satisfied that the newspaper was not economic as a going concern and that, if it was to continue as a separate newspaper, the case was urgent (s58(3)(a) of the FTA);

(b) had to consent to a transfer without a CC reference if he was satisfied that the newspaper concerned was not economic as a going concern and that it was not intended to continue as a separate newspaper (s58(3)(b) of the FTA); and

[54] http://webarchive.nationalarchives.qov.uk/20101227023510/http://www.bis.,qov.uk/files/file39606.pdf
[55] p28, para 32.2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Ed-Richards.pdf
[56] This is considered in detail in Part I, Chapter 6
[57] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-newspaper-ownership.pdf

(c) could consent to a transfer without a reference to the CC if he was satisfied that the newspaper being taken over had average daily sales of 50,000 or less (s58(4) of the FTA).

Communications Act 2003

4.4 The Communications Act 2003 was designed to replace the FTA regime with a streamlined and less burdensome process that focused regulatory action on those few newspaper transfers that appeared to raise competition or plurality concerns. Under the Communications Act 2003 there is no longer a requirement for the Secretary of State's prior consent to newspaper transfers. The new regime applies to all transfers that satisfy the jurisdictional criteria for mergers in the Enterprise Act (broadly speaking, the turnover of the body being acquired exceeds £70m or the merger would result in market-share of 25% or more), meaning that the smallest local newspapers were removed from regulation altogether.

4.5 Where a takeover or merger does not meet the jurisdictional criteria it is still possible for the Secretary of State to intervene under the special public interest regime; this applies in any case where the newspaper to be acquired has a 25% share of a market in a substantial part of the United Kingdom.

4.6 The Secretary of State retains the power to refer those cases that involve the public interest in plurality for wider investigation by the CC. The plurality public interest considerations are set out in s58 (2A) and (2B) of the Enterprise Act 2002 and cover:

(a) accurate presentation of the news in newspapers;

(b) free expression of opinion in newspapers; and

(c) to the extent reasonable and practicable, a sufficient plurality of views in newspapers, in each market for newspapers in the UK or a part of the UK.

4.7 Where there has been a reference to the CC, it will make recommendations as to any remedies it deems appropriate to meet competition or plurality concerns. The final decision on any action to take with respect to plurality issues rests with the Secretary of State. However, the Secretary of State may seek the advice of Ofcom on the CC's recommendations on the plurality aspects of the transfer. He can disregard the competition authorities' proposed solutions to competition problems, but only where the plurality issues justify this course of action: the Secretary of State will decide overall on the basis of a public interest test that will take account of both plurality and competition.

Developments since 2003: local media assessment

4.8 The interim *Digital Britain* report included an invitation to the Office of Fair Trading to conduct a review of the local and regional media merger regime. The conclusions of this review were published in the final *Digital Britain* report. The OFT broadly considered that the existing merger framework was sufficiently robust and flexible, but recommended that a number of small changes would be advantageous. This included amending OFT guidance to ensure that, where a local media merger raised prima facie competition issues, the OFT would ask Ofcom to provide a Local Media Assessment (LMA) covering relevant factors arising from their understanding of media markets. The OFT subsequently revised their Jurisdictional and Procedural Merger Guidance accordingly.

4.9 Ofcom has to date conducted one Local Media Assessment, concerning the proposed acquisition by Kent Messenger Group (KMG) of seven newspaper titles owned by Northcliffe Media. Ofcom provided its Local Media Assessment to the OFT on 2 September 2011. Ofcom considered that a merger could provide the opportunity to rationalise costs, maintain quality and investment, and provide a sounder commercial base from which to address long-term structural change, for example by expanding the availability of online and other digital local services. It also said that these potential benefits needed to be weighed against any potential customer harm resulting from reduced competition identified in the OFT's overall assessment. Despite this, on 18 October 2011, the OFT referred the proposed merger to the Competition Commission, and the CC cancelled its inquiry after KMG announced it was abandoning the proposed acquisition as a result of the referral and some of the titles concerned were closed. According to KMG *"The costs and time required for a full Competition Commission review would be completely unreasonable for a business of our size and for a deal of this scale."*[58]

[58] http://www.guardian.co.uk/media/greenslade/2011/oct/18/local-newspapers-mediabusiness

PART D

STANDARDS

CHAPTER 1
THE HISTORICAL BACKGROUND

1. Introduction

1.1 In order to understand the present position in relation to press regulation, it is necessary to examine what has happened in the past. This chapter of the Report examines the content and context of the three Royal Commissions into the British Press undertaken since the Second World War, the Younger Report into Privacy of 1972, and the two reports of Sir David Calcutt QC into privacy and the press published in 1990 and 1993. Taken together, these form the formal public policy response to concerns with the press, press standards and the behaviour of journalists and others acting on behalf of newspapers and their employees, in the post-war period.

1.2 It can be argued that the findings of the three Royal Commissions as well as the reports of Sir David Calcutt not only help to elucidate a pattern of press behaviour that remains pertinent to the work of this Inquiry, but also set out a series of attempts to find a solution to problems that remain broadly unchanged and unaddressed. Indeed, it has been contended by some witnesses to the Inquiry that the six documents that form the backdrop to this chapter bear telling testament to a misplaced faith in the ability of the industry to develop and lead self-regulatory systems capable of offering appropriate real redress to those who have been wronged, and of constituting a sufficient solution to problems of unethical and unlawful behaviour in the newspaper industry. In this regard, the Media Standards Trust has said in its submission to the Inquiry:[1]

> *"The conclusion… that self-regulation on its own, without any greater independence or enhanced powers, does not provide adequate protection for the public or for journalists - is based in large part on an historical analysis of the continued failure of the various voluntary self-regulatory bodies that have existed since the first Royal Commission on the Press published its report in 1949."*

Some context

1.3 As has been emphasised in this Report on more than one occasion, the British press has a long held reputation for the vitality and quality of its journalism as well as the diversity of voices with which it speaks. Certainly, it has been with something approaching envy that overseas commentators examining the British press both historically and today have been impressed by both its freedoms and the breadth and scope of its journalism. In this regard, it is worth highlighting the very large number of occasions that the Inquiry has been told with real pride by commentators, journalists, proprietors and politicians about the achievements of the British press and the valuable role it plays in the public life of the nation.

1.4 For my part, I do not doubt that, at its best, British journalism is and has historically been world-beating: it has uncovered scandal, reported on significant events, and campaigned on issues of importance with both decency and integrity. Furthermore, it has been made very clear during the course of this Inquiry that journalism of the highest quality is not restricted only to a certain section of the press but is to be found across its many distinct and different

[1] p13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Media-Standards-Trust.pdf

parts: not only in the broadsheets but also in the mid-market titles and the tabloids along with the regional and local press, both in print and now also in their online editions.

1.5 Before dealing with the analysis of historical responses to the culture and practices of the press, it is worth restating that the press does not exist in a vacuum. It is subject to other forces. Technological and societal changes have increased the pressures on what is and has historically been an intensely competitive market. The share which the newspaper industry holds of the wider communications market has been steadily eroded, first by radio and then the advent and growth of television. Television has moved from one initial offering by the BBC to the explosion of channels available through the introduction of satellite television services and, further, with the continuation of this trend through the rollout of digital television. The loss of market share has been further exacerbated by the internet and the increasing availability of mixed media services through that medium. Overall, these forces have had an important role in shaping the culture, practices and ethics of the press over decades.

1.6 It should not be thought that the culture and practices that have given rise to the establishment of this Inquiry are in any way new, even if much of the technology which underpins new developments is. Concerns as to the behaviour and practices of the press have been articulated by both private individuals and Governments throughout the twentieth century, and (in one form or another) very much earlier. Indeed, some of the practices and concerns that gave rise to the 1947 Royal Commission into the Press, and in particular those in relation to the breach of privacy of individuals, have been effectively repeated before this Inquiry. Thus, the historical review carried out in this chapter demonstrates a number of common themes; in particular, it reveals not merely consistent and similar complaints over the preceding decades, but also consistent and similar proposed solutions.

2. The Royal Commission into the Press 1947

2.1 Shortly after the election of the Labour Government in May 1945, the National Union of Journalists (NUJ) passed a resolution which called for the new administration to establish an independent Commission to examine, among other things, structures of ownership and control of British newspapers. The NUJ resolution reflected growing concern about the influence of a small group of newspaper publishers who had substantively increased their share of the national newspaper market in the inter-war period. The NUJ resolution also gave voice to other concerns and called for a Commission to investigate:[2]

> *"...with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of news, to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon."*

2.2 The resolution led to the tabling of a motion in the House of Commons that repeated its central concerns. Advanced by members of Parliament who had either worked as journalists or were still employed as such, the motion also made an explicit connection between the growing concentration in newspaper ownership by a small number of proprietors as well as the substantial increases in the profitability of some newspapers since the conclusion

[2] Moore, M, *The Origins of Modern Spin: Democratic government and the media in Britain, 1945-51*, p106

of hostilities, and a supposed decline in the quality of British journalism.[3] The motion was passed by MPs on the 29 October 1946. It read:[4]

> *"That, having regard to the increasing public concern at the growth of monopolistic tendencies in the control of the Press and with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of news this House considers that a Royal Commission should be appointed to inquire into the finance, control, management and ownership of the Press."*

2.3 In part, the concerns articulated in the resolution of the NUJ and the Parliamentary motion reflected understandable public disquiet at a return to business as usual by the newspaper industry after the war years (which had entailed strict Government control of all content, print as well as the means of distribution). The reversion to a peacetime modus operandi also heralded the return, after the quiescence of the war years, of a number of sharper journalistic practices increasingly unpalatable to the public at large. These were manifest to differing degrees in accusations of inaccuracy and political bias on the one hand and alarm at the intrusion of journalists into the private lives of individuals on the other.[5]

2.4 However, public indignation at such behaviour was not new; the culture and practices of some parts of the press had been noted as a matter of concern by the immediate pre-war Government-appointed Political and Economic Planning (PEP) group which, in 1938, had formulated the first significant proposal for formal self-regulation of the press.[6] Among other things, the PEP group's final report argued for the establishment of a voluntary Press Tribunal led by an independent Chairman and supported by a panel of experts drawn from the newspaper industry. This, the report suggested, should consider and mediate complaints made by members of the public about the press. The outbreak of war drew an end to any further work to achieve this end.

2.5 The Commission was granted a broad remit by the Government of Clement Atlee and was charged with seeking answers to a number of questions that went further than the concerns that have been outlined above. The Government asked that the Commission investigate:[7, 8]

- *"Whether the degree of concentration of ownership of newspapers, periodicals, and news agencies at present exists;*
- *Whether there is a tendency towards further concentration;*
- *Whether such concentration as exists is on balance disadvantageous to the free expression of opinion or the accurate presentation of news;*
- *Whether any other factors in the control, management or ownership of the Press or of the news agencies, or any external influences operating on those concerned in control, management or ownership, militate against this freedom and accuracy; and*

[3] *ibid*, p4
[4] Great Britain, *Royal Commission on the Press 1947-1949: Report*, p3
[5] O'Malley, T and C Soley, *Regulating the Press,* pp51-56
[6] Political and Economic Planning, *Report on the British Press*
[7] "*whereas [w]e have deemed it expedient that a Commission should forthwith issue with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of news, to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon*", *ibid*, piii
[8] *ibid*, pp4-5

- *How this freedom and accuracy may best be promoted."*

2.6 When the Royal Commission reported in 1949, it made a number of damning findings. It found that there had been *"a progressive decline in the calibre of editors and in the quality of British journalism"* which, it argued, if not addressed would undermine not only the freedom of the press itself, but also the welfare of the country at large. The Commission recommended that a system of self-regulation should be established, built around a "General Council of the Press". The Commission was unambiguous in its consideration of statutory controls which, it argued, would unacceptably restrict the freedoms of the press. It said that it was necessary:[9]

> *"to safeguard the freedom of the press; to encourage the growth of a sense of public responsibility and public service amongst all engaged in the profession of journalism [...]; and to further the efficiency of the profession and the well being of those who practiced it."*

2.7 The Royal Commission hoped that the proposed General Press Council would function both as a guarantor of the "freedom and prestige of the Press", by representing the interests of the newspaper industry through a single, unified voice as well as a brake on poor and unethical journalistic practices. In so doing the Royal Commission made a fundamental statement on the nature of the relationship between the state of the press and the health of the nation as a whole, suggesting a correlation between the ownership structures of the newspaper industry and the incidence of inaccurate reporting and poor journalism. Significantly too, the Royal Commission's report recognised that, as a consequence of technological and commercial changes, the ability of newspapers to disseminate *"to the public a mass of information on subjects as complicated as they are important"* had increased, but there had been no commensurate increase in journalism fitting or appropriate to such purpose.[10]

2.8 The Report of the Royal Commission made a number of recommendations, some of which added important detail to the central proposal of the formation of this 'General Council'. For instance, the Commission recommended that the Press Council be made up of 25 members, a proportion of whom (some 20%) would be appointed from outside the industry and would ensure that lay interests were adequately represented. The Commission's Report also set out what Sir William David Ross and his fellow commissioners regarded as the necessary and non-negotiable elements of an effective regulatory regime for the British press. These were: a code of conduct; powers to adjudicate and rule on complaints, including those received from third parties as much as from individuals directly affected, and powers to impose sanctions where appropriate. It was intended by the Commission that the Press Council should have sufficient powers to maintain press standards and where appropriate to impose sanctions for poor conduct:[11]

> *"It should have the right to consider any complaints which it may receive about the conduct of the Press or of any persons towards the Press, to deal with these complaints in whatever manner may seem to it practicable and appropriate, and to include in an annual report a statement of any action taken."*

2.9 It is clear from the recommendations made by the Royal Commission that it intended that the Press Council should have a broad remit, encompassing a number of potentially problematic and conflicting functions; this would include being a champion of press freedom as well as a defender of the rights of members of the public who might have been mistreated by the

[9] O'Malley, T and C Soley, *Op cit*, p55
[10] *ibid*, p164
[11] Great Britain (1949) *Op cit, p172*

press. In addition the Royal Commission proposed that the General Council of the Press should have appropriate powers to monitor and rule on the terms and conditions of the employment of journalists and other newspaper workers, whilst also promoting the interests of consumers and conducting research into the long-term social and economic impacts of the print industry. The Commission was clear; its proposals were not intended *"to safeguard its own liberty"* but to *"save the press from itself."* [12]

2.10 Although Parliament unconditionally accepted the recommendations of the Commission, the industry response to them was slow and much wrangling and negotiation followed. Indeed, it has been convincingly argued by some commentators that such progress was only made as a consequence of the real threat of statutory regulation.[13]

2.11 That came about in this way. The initial industry response of the press to the Report of the Royal Commission found little favour with the then Government. That response was seen as concentrating too much power in the hands of already powerful newspaper proprietors, and paying too little heed to many of the recommendations contained in the report. The NUJ also declared the newspaper industry's proposals to be unacceptable to the Union and its members.[14]

2.12 To deal with what appeared to be a palpable lack of progress and refusal on the part of the newspaper industry to grapple with the fundamental criticisms and concerns at the heart of the Royal Commission's report, in November 1952 the Labour backbench MP, CJ Simmons, with the backing of a number of members of the Shadow Cabinet, introduced a Private Member's Bill. This Bill was intended to establish a Press Council in statute. The threat of statutory regulation quickly persuaded newspaper publishers to come to an agreement that was deemed satisfactory to the Conservative Government, which then took action to prevent a second reading of the Bill.[15]

2.13 When it was eventually established in 1953, the General Council of the Press, as had been fashioned by the industry and endorsed by the Conservative Government, was substantially different from the proposals that had been recommended by the Royal Commission. In many respects, the changes which had been made to the structures and functions of the nascent Press Council were to the benefit of the industry and not to those who complained of having been the victims of press mistreatment. Significantly, proposals for lay representation on the Press Council, including the appointment of Chairman from outside the industry, had been dropped. Further, the recommendation that the Press Council be able to investigate and make findings on complaints brought by members of the public was changed so that, in most circumstances, only complaints by persons affected by stories would be accepted; third party complaints would be entertained on a discretionary basis and exceptionally. Other recommendations relating to the promotion of standards and the employment conditions of journalists and other newspaper employees were also omitted from the final proposals brought forward by the industry.[16]

2.14 The Media Standards Trust has noted in its submission to the Inquiry the 'prescience' of the final contribution made by CJ Simmons to the Parliamentary debates on the establishment the Press Council, in which he said:[17]

[12] Great Britain (1949) *Op cit, p178*
[13] Snoddy, R, *The Good, the Bad, and the Unacceptable: The hard news about the British press,* p84
[14] O'Malley, T and C Soley, *Op Cit,* p56
[15] *ibid*, pp57-58
[16] *ibid*, p59
[17] O'Malley, T and C Soley, *Op cit*, p58

"[To] give the voluntary Press Council a chance to prove its worth, efficiency and competence to do the job to which it has set its hand, I give warning here and now that if it fails some of us will again have to come forward with a measure similar to this Bill."

3. The Royal Commission of 1962 and the Younger Committee into privacy

3.1 The General Council of the Press was neither the body nor the panacea that the Royal Commission had intended. From the outset it was the subject of criticism, particularly from those who thought themselves the victims of press mistreatment. It was seen as self-serving and concerned more with defending the interests of journalists and newspaper editors than in addressing the many issues identified by the first Royal Commission on the press. In 1961 a second Royal Commission was established:

"...to examine the economic and financial factors affecting the production and sale of newspapers, magazines and other periodicals in the United Kingdom."

3.2 Lord Shawcross, a former Labour Attorney General and then President of the Board of Trade, later becoming a cross-bench peer, was appointed Chairman of the second Royal Commission. Lord Shawcross was a passionate defender of press freedoms and had spoken publicly on the subject on a number of occasions. He brought a formidable intellect to the task as well as a reputation for gravitas and forensic analysis achieved as Chief UK Counsel for the Prosecution in the post-war Nuremberg trials.

3.3 The establishment of a second Royal Commission on the press was prompted in part by the closure of a number of national and provincial newspapers which had led to a further, and to some, worrying concentration in the ownership of newspaper titles. Its primary purpose was to look at the costs of production, printing and distribution as well as at the nascent impact of television on readership and advertising revenues, and to consider whether these factors had affected the diversity of ownership and control. The terms of reference to the Commission explained it thus:[18]

"...to examine the economic and financial factors affecting the production and sale of newspapers, magazines and other periodicals in the United Kingdom."

3.4 The Commission was not primarily concerned with the performance of the press or with questions of ethical behaviour, and indeed its terms of reference made no express reference to either of these matters. But its very establishment reflected political and public concern at the steady build up of complaint, as well as public disapproval, at press behaviour. Some contemporary commentators sought to explain this further decline in standards through the prism of increased competition for circulation. Others called into question the effectiveness of the overall system of self-regulation through the General Council of the Press, decrying its inability to put an end to press intrusion into the private lives of individuals.[19] It is a matter of some significance that Lord Shawcross commented on the failure to heed the lessons of the first Royal Commission:[20]

"[h]ad they been carried out much of our own inquiry might have been unnecessary".

[18] Great Britain, Royal Commission on the Press 1961-1962: Report, p8
[19] O'Malley, T and C Soley, *Op cit*, p60
[20] Great Britain, Royal Commission on the Press 1961-1962: Report, p101

3.5 The Shawcross Commission published its findings in September 1962. The Commission levelled substantial criticism at the General Council of the Press for, in particular, its failure to implement many of the recommendations made by the first Royal Commission on the press. These specifically included those recommendations relating to the monitoring and enforcement of standards, the involvement of lay representatives on the Council and its failure to heed recommendations relating to the monitoring of levels of newspaper ownership.

3.6 The Shawcross Commission clearly identified those issues that it deemed had led to a decline in press standards, and it called for an improvement in the performance of the General Council of the Press. However, the solutions it proposed were little different from those articulated by the first Royal Commission in 1949. It recognised the desirability of a voluntary system of self-regulation for the press, but made clear that any such system of regulation would need to be built around an effective and credible body rather than the General Council of the Press as it was then constituted. It recommended that the industry should be given two years to bring forward, develop and implement appropriate plans but, should these not be forthcoming, recommended that the Government should introduce the legislation necessary to establish a Press Council in statute, with powers equivalent to those recommended originally by the first Royal Commission in 1949. Lord Shawcross said at the time:[21]

> *"If... the Press is not willing to invest the Council with the necessary authority and to contribute the necessary finance the case for a statutory body with definite powers and the right to levy the industry is a clear one".*

3.7 Anxious at the potential threat of statutory legislation, the industry response to the recommendations of the second Royal Commission was rather swifter than had been the case following the first Royal Commission. The General Council of the Press was reformed as the Press Council. For the first time it included lay representation on its board. The newly formed Press Council also made amendments to its constitution to reflect the wider recommendations made by the Commission. Clauses that were no longer regarded as relevant to its role and remit were removed and, in particular, a new clause was introduced in relation to the consideration of complaints about the press.[22] This empowered the Press Council to deal with them *"in whatever manner might seem practical and appropriate"*.[23] The reformed Press Council also took a more proactive approach to the consideration of some of the most significant challenges facing the press and published guidance on contempt of court, privacy and defamation.

3.8 These reforms, however, were not universally well-received. Questions were asked almost immediately about the ability of the Press Council to regulate the actions and conduct of newspapers. These had altered little over time, and the press continued to push at the boundaries of what was considered acceptable journalism. Coverage of the Profumo scandal and, in particular, the Sun's exclusive interview with Christine Keeler, as well as the vilification of the child-killer Mary Bell, by turns titivated, entranced and horrified the public. Further, allegations of payments for stories relating to the Profumo affair, as well as to witnesses in the case of the Moors Murders, undermined confidence in the efficacy of the Press Council as the regulatory body for the press.[24] Perhaps unsurprisingly, by the end of the decade there were calls for a further Royal Commission on the press as well as an inquiry into the workings

[21] *ibid*, p102
[22] O'Malley, T and C Soley, *Op cit*, p64
[23] *ibid*, pp63-65
[24] *ibid*, pp64-67

of the Press Council which had struggled to be seen as anything more than *"a champion of the press* [rather] *than as a watchdog for the public"*.[25]

3.9 The introduction of a Private Members Bill on privacy forced the hand of the Wilson Government, and in 1970 a new Committee looking, once again, at the behaviour of the press was constituted.

The Younger Committee

3.10 The Committee on Privacy, chaired by Sir Kenneth Younger, was established to examine a number of issues relating to the personal privacy, including the responses of the Press Council to alleged breaches of privacy in the press. Sir Kenneth Younger was a barrister by training and former Labour Party politician who had served as a junior Home Office Minister in the Government of Clement Atlee. After leaving Parliament in 1957, Sir Kenneth had campaigned for progressive political reform with regard to a number of social issues including the legalisation of homosexuality and reform of prison conditions.

3.11 Published in July 1972, the report of the Younger Committee on privacy was highly critical of the Press Council and its seeming inability to command the confidence of the British public. The Committee suggested a causal link between the level of lay representation on the Press Council and the overall credibility of that organisation in the public mind. The Commission duly recommended that the Press Council increase the representation of lay members; it also recommended that steps be taken to ensure the independence of lay appointments because, in its view, the process of appointment was both opaque and too readily open to influence from the industry.[26] Of the recommendations made by the Younger Committee, perhaps the most significant related to the publication of Press Council adjudications by newspapers. The Younger Committee suggested that where an adverse adjudication had been issued by the Council, it should be given similar prominence to that given to the original article.[27] The Younger Committee also recommended that the Council make efforts to codify its adjudications on privacy and build up a body of case law understood by the industry.[28]

3.12 It is perhaps indicative of the prevailing mood that the Committee did not unanimously agree the recommendations made in the final report. However, a minority of the commissioners who worked together with Sir Kenneth, did not believe the recommendations to be sufficiently far-reaching, and a minority report was published which recommended among other things a general law of privacy to provide individuals with proper protection from unjustified press intrusion.[29]

3.13 The reforms of the Press Council, which were finally implemented in July 1973, did not encompass the most significant of the recommendations made in the Younger Report. In particular, recommendations on the prominence of adjudications and the codification of rulings had been dropped. Lay membership on the Press Council was increased by four to ten, which was exactly half the number of industry representatives. Begrudgingly accepting the Committee's recommendation, the Chairman of the Press Council, Lord Pearce, noted that the Younger Report had provided 'no evidence' to support the conclusions it made linking public confidence in the Press Council to the proportion of lay representatives but, nonetheless,

[25] Robertson, G *People Against the Press: An Inquiry into the Press Council,* p13
[26] Frost, C, *Journalism Ethics and Regulation*, p217
[27] Great Britain, *The Report of the Committee on Privacy,* p13
[28] O'Malley, T and C Soley, *Op cit*, p69
[29] Snoddy, R, *Op cit*, p88

further minor changes were made to increase the number of lay representatives serving on the Complaints Committee.[30]

3.14 Following the publication of the Younger Report, public criticism of the Press Council, characterised by Lord Pearce as 'assaults on the principle of self-regulation,' became more commonplace.[31] Certainly, the tensions between the regulator, the regulated and the public were made more acute by the political and social tensions between the Government, the trade unions and the industry more broadly, and did little to address the failings, both perceived and actual, of the Press Council. Indeed, the performance of the Press Council was regarded by the Government of the day as so inadequate that, within a year of publication of Sir Kenneth Younger's report, not only was a third Royal Commission on the Press established, but it was given an express remit to examine in detail *"the responsibilities, constitution and functioning of the Press Council."*[32]

4. The Royal Commission of 1974

4.1 The Third Royal Commission on the Press was established on 7 March 1974 under the Chairmanship of Professor Oliver (later Lord) MacGregor, then a leading academic in the field of socio-legal studies and medical sociology and, immediately before his appointment, a fellow of Wolfson College, Oxford. Much later, he was appointed first Chairman of the Press Complaints Commission.

4.2 The MacGregor Commission was constituted not only in the context of ongoing discussions on the recommendations of the Younger Report on privacy but also against a continuing backdrop of concern at the behaviour of journalists and the press more widely. Public and political frustration was also growing at the apparent inability of the Press Council to curb the worst excess of such behaviour or to provide sufficient redress to those who had been wronged by the press. The MacGregor Commission was granted a broad remit and was invited to:[33]

> *"...inquire into the factors affecting the maintenance of the independence, diversity and editorial standards of newspapers and periodicals and the public freedom of choice of newspapers and periodicals, nationally, regionally and locally."*

4.3 When it reported in 1977, the McGregor Commission sought to explain the real difficulties it had faced in reaching its recommendations. The Commission expressed concern that there was no real public or political consensus on the role of press in British society. It recognised that the press should not be subject to state control but it refused to advocate a press that was subject only to the unregulated forces of the market and the pursuit of profit.[34] Although undecided on the most suitable form of regulation for the press, the Commission was unequivocal in its criticism of the Press Council both as a regulator of press standards and as able to provide appropriate means of redress. It recommended wholesale changes to both the structure and functions of the Press Council.

4.4 The Commission's proposals for reform of the Press Council included a reiteration of the dormant recommendations of the first and second Royal Commissions as to the prominence

[30] O'Malley, T and C Soley, *Op cit*, p69
[31] *ibid*, p71
[32] Great Britain, *Royal Commission on the Press: Final Report,* p(i)
[33] *ibid*, pp(i-ii)
[34] *ibid*, p11

and location of adjudications. Lord MacGregor's Commission, in line with the previous Royal Commissions and the Younger Commission, also proposed that the question of confidence in the Press Council should be addressed through an increase in the number of lay representatives and the appointment of a lay Chairman. It also recommended that the Press Council should seek to curb the worst excesses of the press through the development and implementation of a written code of conduct. The Commission's report noted:[35]

> *"...it is unhappily certain that the Council has so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers".*

4.5 The MacGregor Commission also made recommendations intended to effect a fundamental shift in the treatment and handling by the Press Council of complaints made by members of the public. It proposed that the Press Council should not only act as mediator and arbitrator of complaints but should also actively seek, where appropriate, to secure the swift publication of adjudications, where necessary on the front page. The MacGregor Commission also entered new terrain, as its recommendations included:[36]

> *"The creation of a Conciliator, drawn from the staff of the Council, to propose remedies between complainants and newspapers:*
>
> - *The extension of the Council's doctrine of right of reply, and to uphold a newspaper's making space available to those it has criticised inaccurately (although the Commission rejected the introduction of a legal right of reply on the principle that the press should not be subject to different laws than ordinary citizens);*
> - *The power to investigate the conduct of the press without waiting for a formal complaint; to introduce the practice of undertaking wider reviews of publications and journalists involved in disputes;*
> - *The amendment of the Council's existing position on accuracy and bias, so that inaccuracy should be prima facie evidence for upholding a complaint;*
> - *The Chairman's role to be extended to chairmanship of the Appointments Commission; and*
> - *That the Council should accept recommendations for lay appointments from any source."*

4.6 In line with the approach of the Second Royal Commission, the final report of the MacGregor Commission suggested that if the response of the industry and Press Council was insufficient to address ongoing concerns as to press conduct and restore confidence in the Press Council, then a statutory solution might need to be sought.[37] That said, Professor MacGregor remained hopeful that such measures would not be necessary. The conclusion to its report set out its aspiration and belief that:[38]

> *"...these recommendations will be accepted and acted on by the Press Council, and that it will fulfil the hopes that were held for it in 1949."*

[35] *ibid*, p13
[36] *ibid*, pp235-236
[37] Snoddy, R, *Op cit*, p91
[38] *ibid*, p215

4.7 In a yet further parallel to the Younger Review, the MacGregor Commission published a minority report, its adherents taking the line that more was needed to modify the culture, practices and ethics of the press.[39]

4.8 Much as the publication of the MacGregor Report in 1977 had mirrored the publication of the Shawcross report in 1962, there were many similarities between the reactions of the Press Council and the industry to the two sets of recommendations. The Press Council rejected the most significant recommendations of the MacGregor Commission, arguing that they amounted to an unnecessary restraint on the press and muzzled freedom of expression, despite widespread and very public calls for meaningful reform. In all, five out of twelve of the MacGregor Commission's recommendations for reform of the Press Council were explicitly rejected, including the recommendation for a written Code of Conduct, and a number of others were *de facto* ignored.[40] Furthermore, where the call for reform was heeded and changes implemented, that implementation was partial and incomplete. As the Media Standards Trust has fairly pointed out, this repeated the:[41]

> *"...previous outcomes of 1953, 1963 and 1973 (when the recommendations of the first two Royal Commissions and the Younger Report were implemented)."*

4.9 Of the recommendations made by the MacGregor Commission in relation to the Press Council, only those relating to lay representation, the appointment of a Conciliator and to the seeking of nominations 'from any source' were adopted in full.

4.10 Yet although the reaction of the industry was predictably obstructive, the reaction of the public was different. Whereas the newspaper industry had criticised the recommendations made by Professor MacGregor because of the restrictions they believed the proposals would, if implemented, have placed not only on freedom of speech but also on the ability of journalists to hold the rich and powerful to account, public criticism of the report focused on the perceived weakness of its proposals, particularly in relation to the Press Council. In a curious twist of fate, contemporary commentators also suggested that there were unintended consequences to the publication of the MacGregor report, namely that the extent of the criticism of the Council in the report weakened it still further and *"did little to improve the long-term credibility of that body."*[42]

5. The first report of Sir David Calcutt QC

5.1 It is clear that neither the MacGregor Commission nor the limited and begrudging response of the industry to its recommendations did much to stem the increasingly growing sense that self-regulation of the press through the offices of the Press Council was not an effective means of limiting harmful press behaviour. Rather, they fostered a polarisation of the debate on the role of the press in British society and the most effective means of regulating what many believed to be the most harmful aspects of press behaviour. Indeed, the period between the publication of the report of the third Royal Commission and the formation of the Press Complaints Committee in 1990 (following the publication of the first of the reviews of the press by Sir David Calcutt) witnessed some of the most egregious examples of press

[39] Great Britain (1977), *Op cit*, p241
[40] *ibid*, pp77-78
[41] *ibid*, p78: "[The Council] rejected '*the Commission's suggestion that it should seek undertakings that newspapers would publish adjudications upholding complaints against them on their front page'. This was, of course, a recommendation, not a 'suggestion*.'"
[42] O'Malley, T and C Soley, *Op cit*, p77

misconduct. These included allegations of cheque book journalism in relation to the Yorkshire Ripper, Peter Sutcliffe, defamatory allegations made in The Sun about the singer, Elton John (which led to the award of record damages for libel in 1987), the coverage of the television presenter Russell Harty's illness and subsequent death in 1988, and the coverage of the alleged behaviour of Liverpool football fans during the Hillsborough disaster in 1989. Some of these examples of breaches of privacy and defamatory reporting became stories in their own right. The growing list of high-profile incidents involving harmful press behaviour tested public and Parliamentary support for the Press Council and led to a 'crescendo' of criticism.[43]

5.2 The corollary to this was the continued erosion of public support for voluntary self-regulation. It should not be doubted that contemporaneous arguments about journalistic freedoms and the most effective means of regulating the British press were amplified through the wider travails and industrial disputes that afflicted the industry during this period. These paralleled a growing ideological divide in British politics. Back in 1974, the Labour Party had published a report entitled *The People and the Media* which set out its thinking on the British media and communications markets. It proposed that a joint regulatory code should be developed for both broadcasting and the press, and that public confidence in the regulator should be fostered through greater transparency, regular public review of that body and a legally enforceable right of reply.[44] The report also considered the state of the press market and, perhaps unsurprisingly for a document produced by a political party which was not always favourably characterised in press reporting, bemoaned a lack of accountability and bias in the press. More significantly, *The People and the Media* was also strongly critical of the existing system of self-regulation through the Press Council; whilst the Governments of Harold Wilson and James Callaghan did little to change the system of self-regulation for the press, the report marked an fundamental shift in political support for the Press Council, which had previously benefited from the tacit support of both the Labour and the Conservative Parties.

5.3 The Labour Party was certainly not alone in its criticism of the Press Council. The Campaign for Press Freedom (which would later be re-constituted as the Campaign for Press and Broadcasting Freedom (CPF)) also advocated a complete overhaul of regulation of the press. Perhaps unsurprisingly for an organisation that had its roots in the wider Labour movement, the CPF pointed to what it regarded as unnecessary and destructive hostility directed at the trade unions by newspaper proprietors. The CPF also sought to lay the blame for the lack of real and meaningful reform at the door of the Press Council and the system of self-regulation itself.

5.4 So concerned was the CPF at the perceived injustices of the existing system that it established its own Inquiry into the Press Council and matters relating to it. When it was finally published in 1983, the CPF report (known as the Robertson Report on the Press Council after its Chairman Geoffrey Robertson). The Robertson Report was unsurprisingly critical of the performance of the Press Council, but recommended nevertheless that the organisation be granted one final opportunity to reform itself and demonstrate its efficacy as a regulator.

5.5 The conclusions of the report were unambiguous about what such reforms should entail. It recommended substantive changes to the Press Council and indeed to the existing law. Recommendations for reform of the Press Council included the further and oft repeated call for the development of a published code of conduct, auditing powers to ensure the maintenance of high standards, as well as powers, backed by contract, to direct prominent publication of corrections.[45] The Robertson Report also recommended that the Press Council be given responsibility for the training and professional development of journalists. However,

[43] Bingham, A, 'Drinking in the Last Chance Saloon': The British press and the crisis of self-regulation, 1989-95', p80
[44] Labour Party, *The People and the Media*
[45] O'Malley, T and C Soley, *Op Cit*, p82

this report also went much further in its recommendations than just proposals for the reform of the Press Council. It also recommended substantive legislative change. Proposals put forward by the CPF included legislation to establish a statutory press ombudsman, to provide a defence in law for investigative journalism, a Freedom of Information Act and changes to the laws on libel and contempt.[46]

5.6 Reference has already been made to examples of press misconduct in the 1980s, but it would be incorrect to suggest that the Press Council was always silent in these circumstances. Indeed, under the leadership of its final Chairman Sir Louis Blom-Cooper QC, the Press Council made significant efforts better to represent ordinary people and the victims of press mistreatment.[47] However, there is little evidence to suggest that such rulings were respected or observed by the industry. Indeed, in material submitted by Sir Louis to the Inquiry, he has made clear his belief that the Press Council ultimately failed because its rulings were routinely, though not always, traduced and undermined in the pages of newspapers, thereby only serving to undermine public confidence in that body.[48]

5.7 The perceived inability of the Press Council to take credible and effective action in these cases of press mistreatment further damaged its reputation. Increasingly, it was regarded as ineffective both as a regulator of press conduct and as a means of redress for those who had suffered harm. Consequent opprobrium at the Press Council was not restricted to those who were the victims of press misconduct, but also extended to policy makers and to some of those involved in the industry. Already in 1980, the NUJ had withdrawn its membership from the Press Council on the grounds that it was not only incapable of internal reform but also was not able effectively to improve the behaviour of the press.

5.8 Parliamentary concern at the behaviour of some parts of the press was such that in 1989 two Private Members' Bills were put before Parliament. These were intended to address the intrusive practices conducted by some journalists and the lack of redress available to those who had been the victims of them. The first of the two Bills was laid before the House of Commons by a Conservative MP, John Browne. His Bill proposed the introduction of a privacy tort, envisaged as a means of helping to protect individuals from unwarranted intrusion by the press. The second such Bill was introduced by Tony Worthington, a Labour MP. This proposed the creation of a statutory Press Commission Appeal Tribunal with legally enforceable sanctions. Introducing his Bill to Parliament, Mr Worthington expressed the hope that it would improve access to redress for those who had been the victims of press mistreatment and speed up the process of dealing with complaints.

5.9 These Private Members' Bills were not the only attempts by Parliamentarians to tackle perceived press wrong-doing and the seeming inability of the Press Council to police press excesses effectively, although they were the last before the eventual appointment of Sir David Calcutt in 1989. For example:[49]

- In June 1981 the Labour MP, Frank Allaun, presented a Bill 'to give members of the public the right to reply to allegations made against them in the press, or on radio or television'. In December 1982, Allaun introduced a second right of reply Bill to the House of Commons.

[46] the 1947-1949 Royal Commission explored but dismissed this option
[47] p6, para 11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Third-Submission-by-Sir-Louis-Blom-Cooper-QC.pdf
[48] pp6-8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/First-Submission-by-Sir-Louis-Blom-Cooper-QC.pdf
[49] O'Malley, T and C Soley, *Op Cit*, pp79-82

- In January 1982, the Conservative MP, Teddy Taylor, asked the Attorney General to review the remedies available *'to individuals, groups and organisations in the event of newspapers or the broadcasting media publicising inaccurate or misleading reports, and legal remedies available to newspapers and broadcasters in the event of industrial action looking to influence their content.'*

- In June 1984, Alfred Dubs MP (Labour) pressed unsuccessfully for a Bill to make newspapers declare payments to non-regular contributors. The Labour MP Austin Mitchell also introduced a Bill requiring a right of reply.

- In 1987 a number of yet further attempts were made to introduce legislation to curb the worst excesses of press misbehaviour. These included the movement of a debate in the House of Lords by the Labour Peer, Lord Longford, on 'Tabloid press: moral standards', the introduction of an Unfair Reporting and Right of Reply Bill by the Labour MP, Ann Clywd, and the introduction of a Right of Privacy Bill by the Conservative MP, Bill Cash.

5.10 The Government responded to this continual build-up of pressure for both the reform of the Press Council and the introduction of effective curbs on the worst excesses of press practice by appointing a Departmental Committee, chaired by Sir David Calcutt QC, to investigate the matter. Sir David was asked:[50]

> *"...to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and improve recourse against the press for the individual citizen."*

5.11 Sir David published his report on Privacy and Related Matters in June 1990. It is clear from the content of the report that the members of the Committee considered its remit to go beyond a limited discussion of privacy and encompass the existing system of press regulation.[51] The final report was highly critical of the Press Council and set out in clear terms the failings of that organisation. These included: its ineffectiveness as an adjudicator; the lack of confidence in its independence from the newspaper industry; its tendency to reject large numbers of complaints; the lack of clarity in its selection and categorisation of complaints; the time taken to resolve contested cases; and the lack of effective sanctions in instances of proven breach.[52]

5.12 However, contrary to the expectations of a number of contemporary commentators, Sir David Calcutt's first report did not advocate the introduction of statutory controls for the press. Rather, it recommended that the Press Council should be abolished and replaced with a new self-regulatory organisation; the Press Complaints Commission (PCC). The report argued that the press be given:[53]

> *"...one final chance to prove that voluntary self-regulation can be made to work. However, we do not consider that the Press Council, even if reformed as proposed in its internal review, should be kept as part of the system. We therefore recommend that the Press Council should be disbanded and replaced by a new body, specifically charged with adjudicating on complaints of press malpractice. This body must be seen to be authoritative, independent and impartial. It must also have jurisdiction over the press as a whole, must be adequately funded and must provide a means of seeking to prevent publication of intrusive material. We consider it particularly*

[50] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-–-D2.pdf
[51] Home Office (1990), *Report into Privacy and Other Matters, passim*, especially. p5.
[52] *ibid*, pp63-64, paras 14.28-14.34
[53] *ibid*, p65, para 14.38

important to emphasise the break from the past. The new body should, therefore, be called the Press Complaints Commission."

5.13 The report recommended that this new body should deal with the numerous and substantial concerns that had been raised around the behaviour of some parts of the press. In contrast to the three Royal Commissions, the Calcutt Committee did not make a large number of recommendations for specific reforms. Rather, it set out a framework of measures that the Committee regarded as the necessary elements of an effective self-regulatory regime. The new PCC would have 18 months to demonstrate *"that non-statutory self-regulation can be made to work effectively"* by implementing appropriate reforms.[54] In this report, Sir David recognised that such change would pose a significant challenge for the press but was adamant that if the challenge should not be met, namely *'a less than overwhelming rate of compliance with the Commission's adjudications*...[or]...*large-scale and deliberate flouting of the code of practice by the press or a total collapse in standards,*[55] then *"a statutory system for handling complaints should be introduced."*[56]

5.14 Sir David's report made clear that the primary function of the PCC should be to provide effective redress for complaints made by members of the public against the press, including the ability to consider allegations of unfair treatment and unwarranted infringements of privacy. In addition, the Commission was to *"publish, monitor and implement"* a comprehensive code of practice for the guidance of both the press and the public, as well as to operate a 24 hour hotline for complainants.

5.15 Sir David also made clear that the adjudication of complaints should be a clear and fast process and that, where a newspaper was demonstrated to be in breach of the code, an apology should be given to the complainant. Sir David also recommended that the PCC should be able to advise on the form and placing of replies or corrections. It is noteworthy that Sir David's report made no mention of sanctions and instead placed emphasis on the preparedness of the press to adhere to the adjudications of the PCC.

5.16 In addition, Sir David's report made a small number of specific recommendations about the structure and function of the PCC, intended to address concerns expressed by the three Royal Commissions as to the independence of the organisation. The report recommended that the PCC should have an independent Chairman supported by a Commission made up of no more the twelve Commissioners. These would be appointed by a separate independent appointments commission which would select and appoint on the basis of merit alone.

5.17 As had been the case after the second Royal Commission (but not other reviews less favourable to the press), the response of the industry was swift. The Press Council was duly disbanded, and in the spring of 1990 the five publishing associations in the UK (the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers Association, Scottish Newspapers Publishers Association and the Scottish Daily Newspaper Society) worked together to establish the Press Standards Board of Finance (PressBoF) for the specific purpose of funding the PCC. The PCC was itself incorporated on 1 January 1991 and, in a nod to the history of the self-regulation of the press as well as in recognition of his very real qualifications for the post, Lord McGregor was appointed as its first Chairman.[57] However, the full Commission was

[54] Bingham, A, *Op cit*, p84
[55] Home Office (1990), *Op cit*, p74
[56] Home Office, *Op cit*, p74
[57] Bingham, A, *Op cit*, p84

appointed directly by Lord McGregor, in direct contravention of the Calcutt Report's specific recommendation that there should be a fully independent appointments process.[58]

6. The second report of Sir David Calcutt QC

6.1 Although the PCC had been established speedily, standards of press behaviour remained a concern to politicians and members of the public alike because no immediate improvement in press behaviour was discerned. Indeed it has been suggested that despite the speed and promise of its establishment, the PCC quickly followed the *modus operandi* demonstrated by the Press Council in its responses to the Royal Commissions and Sir Kenneth Younger's report on privacy in 1972.[59] Many of the recommendations made by Sir David Calcutt were either quietly shelved or ignored by the PCC. Others were modified or implemented in a manner that benefitted the industry. For instance, the Code of Conduct was promulgated by the industry rather than the PCC itself and, as indicated above, the appointments process was not independent.

6.2 The Commission also struggled to impose its authority on the industry; it has been argued that, in failing to commit to dealing with complaints from third parties, or indeed establish any investigatory arm, the regulatory function and capacity of the newly formed Commission was 'gravely weakened' from the outset.[60] In 1992 the Labour MP, Clive Soley, introduced a Private Member's Bill on Freedom and Responsibility of the Press. The Bill proposed the creation of a statutory Independent Press Authority, with powers to enforce its rulings through the courts. Clive (now Lord) Soley has suggested that his Private Member's Bill was intended to complement thinking around Sir David's forthcoming follow-up review.[61]

6.3 Following the publication in The Sun of the detail of intimate conversations between the Princess of Wales and James Gilbey, and the Prince of Wales and the Duchess of Cornwall (as she now is), the Secretary of State for National Heritage, David Mellor QC MP, gave a speech in July 1992 in which he reflected widespread public anger at the actions of The Sun. He described the press as drinking in the *"last chance saloon"*. Mr Mellor later complained that his stance on the need for reform of the press led to him being driven from office by a series of salacious stories about his private life although he acknowledges that the timing was coincidental.[62] Perhaps with greater ambiguity, he has also suggested that some of that coverage was legitimate and a matter of public interest.

6.4 In July 1992, Sir David Calcutt was asked by the Secretary of State for National Heritage to conduct a second review, the report from which was published in January 1993. This was just before Mr Mellor had left office in the circumstances explained above. David Mellor's explanation to the Inquiry was that 18 months had elapsed since the press had been described by him as drinking in the *"last chance saloon"* in December 1989, and the matter needed to be re-assessed.[63] There, Sir David analysed the record of self-regulation by the press since the formation of the PCC in January 1991. Sir David's assessment was forthright. He contended

[58] Shannon, R, *A Press Free and Responsible*, p74.
[59] pp24-24, and p28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Media-Standards-Trust.pdf
[60] Bingham, A, *Op cit*, pp84-85
[61] pp2-6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Submission-by-Lord-Soley-of-Hammersmith.pdf
[62] pp30-36, lines 1-21, David Mellor QC MP, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-26-June-2012.pdf
[63] P29, lines 5-17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-26-June-2012.pdf

that self-regulation by the PCC had failed and called for the introduction of a statutory Press Complaints Tribunal. He summarised his conclusions as follows:[64]

> *"The Press Complaints Commission is not, in my view, an effective regulator of the press. It has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. It is not the truly independent body which it should be. As constituted it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry."*

6.5 Sir David's second report made clear his view that the press was neither capable nor willing to initiate reforms that might constitute a credible alternative to statutory regulation. He therefore recommended that the proposals set out in his first report for a statutory "Press Complaints Tribunal" be enacted forthwith:[65]

> *"It has been argued that two years is too short a time in which to judge the Press Complaints Commission. But the way forward was clearly spelt out in the Privacy Committee's Report. In particular, the Committee stressed the need for the Commission to be seen as an independent body which would command the confidence of the public. Both the Committee, and subsequently the Government, gave a clear indication that this was the last chance for the industry to put its own house in order. It has to be assumed that the industry, in setting up the present Press Complaints Commission, has gone as far as it was prepared to go. But it has not gone far enough."*

6.6 If the conclusions reached in Sir David Calcutt's second report were damning of the PCC, the recommendations for change were equally alarming for the supporters of self-regulation. The final report contained a detailed set of proposals for the wide-ranging powers that should be granted to that body. These included powers to establish and maintain a code of practice, prevent the publication of material in breach of the code, handle complaints in relation to alleged breaches of the code (including from third parties), investigate and adjudicate on breaches without a complaint, require the publication of adjudications, apologies and corrections, and, where appropriate, to hold full hearings.[66]

6.7 The PCC and the industry rejected the analysis of Sir David. They argued that he had failed to pay sufficient attention to the relevant facts. The PCC said that the criticism of it was excessive.[67] Indeed, Sir David's proposals were seen as a step too far by even the most adamantine critics of the press.[68] However, the PCC did accept that some reform was required and under the leadership of its second Chairman, Lord Wakeham, changes were made to aspects of policy and procedure, largely to improve and expedite the complaints handling procedures.[69]

6.8 Specifically, amendments were made to the Editors' Code of Practice. These included requirements to restrict the use of eavesdropping and phone bugging techniques.[70] Other changes included new guidance on how journalists should identify themselves when seeking

[64] David Calcutt QC, *Review of Press Self-regulation*, pxi, §5
[65] *ibid,* pxi §7
[66] *ibid*, pp45-50
[67] p36, para 56, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[68] Shannon, R, *Op cit*, p119
[69] pp4-8, lines 18-21, Lord Smith, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-22-May-20121.pdf, pp23-24, lines 25-12, Lord Wakeham, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-15-May-2012.pdf
[70] http://www.pcc.org.uk/

stories. In addition, the board of the PCC was reconstituted to include a majority of lay members (nine, including the Chair, alongside seven serving editors). Similar changes were also made to the independent Appointments Committee.

6.9 In further changes, the industry agreed that the PCC should be granted powers to ratify, if so advised, the changes to the Editors' Code of Practice recommended by the Editors' Code of Practice Committee. Funding to the Commission was also increased substantially. This enabled the development and introduction of a hotline for members of the public specifically to deal with incidents of harassment by members of the press, as had been recommended in Sir David's first report.

6.10 The weakness of the press response to the second Calcutt report, as part of an overall narrative, was demonstrated by an example provided by Lord Brooke, the Secretary of State for National Heritage between July 1992 and September 1994. He recalled that in 1993 the Sunday Mirror published photographs of the Princess of Wales exercising in a private gym.[71] Lord McGregor, then Chairman of the PCC, issued a public rebuke of the Sunday Mirror; but instead of showing contrition the paper's response was to leave the system of self-regulation through the PCC.[72] Lord Brooke suggested that this incident was instructive at many levels, demonstrating not only the weaknesses existing within the system of regulation, but also the refusal of the press to begin to countenance change until compelled to do so as a consequence of public indignation at its behaviour.[73] Lord Brooke described the matter thus:[74]

> *"In the same way, another instance which I would quote from my own time, the episode of the Mirror in the first week of November 1993, when the photographs were taken of Princess Diana working out in a gymnasium, had a very powerful effect on the behaviour of the press immediately, because they had been resisting anything that in any way related to – either to Calcutt or to ourselves and indeed others, and then suddenly changed their minds when they realised that an episode as absurd as the Mirror episode, where the chairman of the Press Complaints Commission rebuked the Mirror – the Sunday Mirror, in fact – rebuked the Sunday Mirror for their behaviour, first led the Sunday Mirror to walk out of the Press Complaints Commission, and then to come back, and it was clear that some of the things that were being said to them about the degree of control that they had were actually being proved by reality."*

6.11 The Government did not immediately respond to Sir David's second report. Rather, it waited until 1995, when the Secretary of State for National Heritage, Virginia Bottomley MP, rejected his recommendation for statutory regulation and instead supported the package of reforms that had been proposed by Lord Wakeham. The Inquiry has heard from witnesses who have sought to explain the nature of the Government's response. Sir John Major has told the Inquiry that, although a matter of concern to his Government, the conduct of the press could not be regarded as a priority, nor, he noted, was there any agreement within the Government on the most desirable way forward.[75] He recounted that his Government had to contend with other more pressing and immediate demands, including the UK's exit from the European Exchange Rate Mechanism on Wednesday 16 September 1992.[76] Sir John also suggested that the strength of Parliamentary opinion in relation to freedom of the press, particularly in the

[71] p26, lines 5-8, Lord Brooke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-24-May-2012.pdf
[72] p26, lines 6-13, *ibid*
[73] p26, lines 17-18, *ibid*
[74] p26, lines 5-21, *ibid*
[75] pp68-69, lines 13-5, Sir John Major, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-12-June-2012.pdf
[76] pp86-88, lines 12-25, *ibid*

context of the Government's diminishing Parliamentary majority, ruled out any more decisive action in this area.[77]

6.12 Sir John's recollection of events has found a complementary echo in the evidence of Lord Brooke. He told the Inquiry that there was little appetite in Cabinet for the statutory solution proposed by Sir David in his second report.[78] Lord Brooke also explained that a number of legislative proposals, through which press intrusion might be addressed,[79] had been put forward by different Government departments. These included both a privacy tort and proposals to make some forms of intrusion a criminal offence. Lord Brooke noted that although there was some agreement in Cabinet on bringing forward legislation to introduce criminal offences, there was less accord in relation to the introduction of a tort of privacy.[80]

6.13 Stephen Dorrell, the Secretary of State for National Heritage from July 1994 to July 1995, was responsible for the formulation but not the publication of the response to the second Calcutt report. He has helped complete this picture. He said that such were the disagreements in Cabinet around both the likelihood of the Government enacting legislation and the desirability of regulating the press, that the Government had *"argued itself to a standstill"*.[81] He also noted that the reforms to the PCC proposed and then implemented by Lord Wakeham increasingly appeared to meet the needs set out by Sir David Calcutt without the requirement for time-consuming and controversial legislation.[82]

6.14 Nonetheless, many have suggested that Lord Wakeham's appointment and tenure was very much in the interest of the press. Lord Smith summarised industry thinking behind his appointment in this way:[83]

> *"I think the newspaper industry did not want statutory control and that they accepted they needed someone to be the chairman with a bit of clout, who could stop statutory control by getting the standards up to an acceptable level, and this was my view of what I thought they probably wanted."*

Sir John Major explained why Lord Wakeham's appointment might well have been valued by the industry itself:[84]

> *"I mean, those who were at all queasy about it would then say, "Look, here is one of our own, a very respected former Cabinet Minister who is actually chairing the PCC. Therefore, why don't we wait and see how well he gets on? Why rush ahead with legislation?" So his appointment did have a material effect upon views in the Parliamentary party."*

[77] p73, lines 1-12, *ibid*
[78] pp4-8, paras xiv-xxvi, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Brooke.pdf
[79] p15, lines 4-9, Lord Brooke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-24-May-2012.pdf
[80] pp4-8, paras xiv-xxvi, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Brooke.pdf
[81] p22, lines 12-16, Stephen Dorrell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-23-May-2012.pdf
[82] pp19-20, line 19-5, *ibid*
[83] p19, lines 19-25, Lord Wakeham, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-15-May-2012.pdf
[84] p76, lines 15-21, Sir John Major http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-12-June-2012.pdf

6.15 However, Lord Wakeham was not appointed simply for his political skills. In perhaps the most important respect, he shared the values which were most cherished to the industry which the PCC was regulating. Lord Wakeham explained that he was a strong supporter of both press freedom and self-regulation:[85]

> *"I don't think you could be a chairman of a body that was running a system of self-regulation unless you believed in self-regulation. I think that would be a bit difficult. And I can't imagine you being a very good chairman of a Press Council if you didn't believe in press freedom. I would have thought they were pretty self-evidently things that were required for the job."*

6.16 Whilst it is clear that the PCC did introduce reform during the chairmanship of Lord Wakeham, including the appointment of a Privacy Commissioner tasked with the oversight of each and every complaint to do with privacy, these changes did not amount to the creation of the organisation envisaged by Sir David Calcutt in his first report, but rather a PCC that met the minimum requirements of a Government increasingly disinclined to effect major reforms of the system of press regulation and fearful of the political ramifications of any such change.

6.17 The PCC won support in some quarters, including in Government, for the breadth of its proposed reforms and their speed of implementation. But the frank evidence of Sir John Major is pertinent on this issue:[86]

> *"In retrospect, yes. I mean, there were some things done. It has to be said on behalf of the PCC that it did make some changes. They were relatively trivial changes, but they were changes. And they also, if I remember correctly, appointed a privacy commissioner from among their numbers, a Professor Pinker, at the time. So there were things that they had done, and the hope that Stephen Dorrell is expressing there is that John Wakeham would be able to persuade the media, the press, to go a good deal further than they already had done. It was, as you say, aspirational."*

7. The death of Diana, Princess of Wales

7.1 The death of Diana, Princess of Wales in 1997 was a wake-up call for the press. Although it did not generate a specific inquiry into press ethics, it did reignite a public demand for improvements in press behaviour.

7.2 Considered as a whole, the reforms introduced in response to the public outcry were the most comprehensive ever introduced by the PCC. It should not be doubted that the reforms, which concerned amendments to clauses 4 and 6 of the Editors' Code of Practice, did have an impact on the behaviour and actions of journalists, press photographers and paparazzi.

7.3 Nonetheless, it is apparent from the evidence that these changes were, as so many before, hard won from the industry and not freely given. Lord Smith provided a detailed description of the protracted negotiations between his Department and the industry through the offices of the PCC, in which despite the tragic background, the quite extraordinary levels of public

[85] p15, lines 17-22, Lord Wakeham, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-15-May-2012.pdf
[86] p79, lines 2-13, Sir John Major, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-12-June-2012.pdf

concern, and the willingness of the PCC to act in the first instance as regulator and then mediator, the final outcome was *"relatively modest"*.[87]

7.4 Lord Smith told the Inquiry that it was Government policy to seek to strengthen the system of self regulation and, in particular, to bring about changes in relation to sanctions, the definition of the public interest, and the issue of PCC pro-activity.[88] Lord Smith made clear that he thought that tackling these three issues would effect far-reaching and lasting change in the attitudes of the industry such that the press *"should not slip back into old ways when the events of the past week have receded from recent memory"*.[89]

7.5 However, it is quite clear from the evidence both of Lord Smith and Lord Wakeham that the industry was unwilling to make concession in these respects. Rather the changes that were finally adopted were confined to those very few areas outlined above most closely associated with the direct circumstances surrounding the death of Princess Diana. Lord Smith testified that the industry demonstrated a disinclination to agree to any changes and did so only under duress after considerable public and political pressure was brought to bear. In his evidence Lord Smith recalled a meeting with Lord Wakeham in which the latter said:[90]

> *"If the government can keep up some external pressure on me, pushing me all the time to go a bit further, then that will be very helpful, he said, in enabling me to make better progress with the editors and proprietors."*

7.6 Even in the evidence of Lord Wakeham it is clear that his ability to broker a solution was severely circumscribed by the unwillingness of editors and proprietors to concede ground:[91]

> *"bear in mind the changes in the code were not a matter for me; they were a matter for the editors under the arrangements, and I therefore had to move carefully to make sure the editors went along with what I wanted."*

7.7 Lord Smith recognised that one of the lessons from history was that the window of opportunity for reform was short. He said that over a period of months the attitude of the PCC shifted from operating as a regulator to championing the interests of the press. This was a metamorphosis which it may be argued was as inevitable and it was entirely understandable, as other 'real world' concerns impacted, in particular in relation to the possible ramifications for the press of the incorporation of the European Convention on Human Rights into UK domestic law.[92]

7.8 Further, the reforms to the Editors' Code of Practice that were introduced with effect from 1 January 1998 were neither welcomed by the press nor much observed in the longer term. Lord Smith described these as:[93]

> *"... carried through, sometimes, I suspect, with gritted teeth amongst the editors and proprietors, because there was a public wind at the back of change. But that moment did not last for terribly long, and the equilibrium returned more or less to normal, which makes it very difficult for government to take strident steps to restrain press activity."*

[87] p35, lines 8-11, Lord Smith, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-22-May-20121.pdf
[88] p28, lines 16-24, *ibid.*
[89] p24, lines 6-14, *ibid*
[90] p19, lines 11-13, *ibid*
[91] p32, lines 3–8, *ibid*
[92] p21, lines 9-16, Lord Smith, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-22-May-20121.pdf
[93] p31, lines 11-18, *ibid*

7.9 Lord Smith said that, following the death of Princess Diana, Lord Wakeham, and by extension the PCC, *"were stepping up to the plate and being a regulator"*.[94] But he, along with other witnesses to the Inquiry, stressed that the changes in press behaviour were of short duration:[95]

> *"I think it's probably fair to say that for the two or three years following the Wakeham changes immediately after the death of Diana, the conduct of the press did improve. Certainly in terms of the specifics of the changes, their approach to the coverage of the princes, handling of children and minors, some of the intrusive taking of photographs, there was a palpable change of behaviour. But after that two to three-year period, I think it began to slip, and as we know from all the evidence that you've been receiving, it slipped grievously in quite a number of ways."*

7.10 Evidently, the same dynamics that played in the aftermath of the reporting of the Royal Commissions and the reports of Sir David Calcutt were also apparent in the industry's response at this point. The industry moved quickly to make a number of high profile but nevertheless limited changes which were in any event only begrudgingly accepted. In this case, they were ably guided by the dextrous political hand of Lord Wakeham who moved swiftly and adroitly to secure political backing for an industry-led response to these events.[96]

7.11 In 2003 Sir Christopher Meyer was appointed Chairman of the PCC, and the evolution of that organisation under his leadership is addressed elsewhere in this Report, in particular in Part J. The organisation which he inherited was hidebound by the structural and cultural constraints which this chapter has served to highlight. It would require a herculean task to break free from them.

8. Conclusions

8.1 At this juncture, it is opportune that I seek to draw out some brief lessons from the history of press self-regulation in the UK since the foundation of the General Council for the Press in 1953, as well as the public policy response to concerns at the conduct of some sections of the press.

8.2 It must be made clear that the story is not all bad, in the sense that there have been a number of reforms in press regulation since the Second World War. That said, whilst recognising some of the good work that has been done in response to criticism, to changing attitudes and the clear recommendations of the reports, it is evident that many of the lessons of the post-war period have been ignored. This chapter of the Report attempts to provide only a cursory glance at the recent history of the British press, but it is patent that many of the concerns and practices that led to the establishment of three Royal Commissions, a Committee on privacy and the two reviews led by Sir David Calcutt, are the same as those which have led to the establishment of this Inquiry. This has been a history of strongly recurring themes.

8.3 An equally strong recurrence has been concern about the inability of 'self-regulation' to address the underlying problem sufficiently, an inability which has been consistently pointed out by all of those who have examined the problem in depth. The history demonstrates a distinct and enduring resistance to change from within the press. This replication of pattern,

[94] p20, lines 6-9, Lord Smith, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-22-May-20121.pdf
[95] pp. 37-38, lines 16-1, Lord Smith, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-22-May-20121.pdf
[96] pp29-41, lines 23–5, Lord Wakeham, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-15-May-2012.pdf

of the wheels of history moving in concentric circles, has been demonstrated through the press response to the recommendations made and repeated over the years, the regulators'[97] response to those recommendations and, it must be said, the response of successive Governments to the clear advice they have been receiving.

8.4 My conclusion on the cyclical nature of press self-regulation is not a novel one. Indeed, it was shared by many of the witnesses to the Inquiry. Lord Brooke suggested that the history of press self-regulation has been one of a distinct reluctance on the part of the industry to implement meaningful change. He noted that such change that has been effected has only been implemented in the face of the very real threat of statutory intervention:[98]

> *"But in the period since 1945, I observe that quite extraneous events, like a Private Members' Bill, actually have had the effect of moving the story on quite a lot. In the case of the 1949 Royal Commission under Sir William Ross, there was a proposal that the press should have a general body of their own, and they showed no sign at all of doing anything about that until a backbench MP called Mr Simmons in 1952/53 brought in a Private Members' Bill, whereupon effectively almost instantly the press came around to the original recommendation in the Royal Commission."*

He continued:[99]

> *"In the same way, in 1989 – I noticed the text of Mr Dorrell's account of how the Calcutt 1 was set up, but its actual genesis was the report stage of Mr Worthington's bill entitled "Right of Reply" in 1989, and the government minister responding at the dispatch box on that bill basically foreshadowed Calcutt 1 in his response. So these things happen as a result of different, frequently unrelated episodes."*

8.5 Lord Brooke perceived a causal link between the credible threat by policy makers of the introduction of statutory regulation for the press, and the introduction by the industry of limited measures to improve the existing system of self-regulation for the press, a system that has worked overall to the distinct advantage of the industry:[100]

> *"The other Royal Commissions and Lord Younger's Commission weren't quite so fruitful, but then there wasn't a Private Member around to help."*

8.6 The same reasoning has been pursued more forthrightly in submissions to the Inquiry by Professor Brian Cathcart of Kingston University. He told the Inquiry that in his view the history of press reform is one of failure to introduce measures recommended in terms to improve public trust in both the press and the system of self–regulation.[101] He said that the attitude of the press to change in this area has been one of foot-dragging and obfuscation, with progress only occurring under duress:[102]

> *"I think you go back to the first Royal Commission, 1946 to 1949, I think, which reports, recommends the setting-up of a Press Council and it takes three and a half years*

[97] the PCC advances the argument that it is not and never has been a regulator in the proper sense of the term, nor *a fortiori* were its predecessors; what it has done and how it has portrayed itself is analysed in Part J Chapter 2, but the term is used for present purposes
[98] p25, lines 7-17, *ibid*
[99] p25, lines 18-24, *ibid*
[100] pp25-26, lines 25-4, *ibid*
[101] pp100-101, lines 13-15, Professor Brian Cathcart, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-8-December-20111.pdf
[102] p100, lines 14-23, *ibid*

before the press – and an awful lot of leaning on and threats of legislation before the press will set something up. That, if you look through the history, and this is another thing that Hacked Off is doing, that sort of conduct is repeated and repeated."

8.7 Similar observations were made by the Media Standards Trust, which submitted to the Inquiry a detailed analysis of the cycle of industry-led reform.[103] Dr Martin Moore argued that in the face of considerable public concerns prompting the Royal Commission and other investigations into the behaviour of the press, the industry has been unmoved until *"threatened with the Damoclean sword of some form of statutory regulation."*[104] Further, Dr Moore has said the paucity of reforms implemented by the industry has led to a cycle of *"subsequent commissions, often within a decade"* examining to all intents and purposes the same conduct that had originally generated those public concerns.[105]

8.8 The MediaWise Trust agreed, recalling with some concern that recommendations made by the Ross Commission in 1949, repeated in the report of the Shawcross Commission of 1962 and again by Lord McGregor in 1974, have yet to be implemented, particularly with regard to the prominence of apologies and corrections. However, in a somewhat different vein from other commentators, the Mediawise Trust suggested that it is incorrect to describe the history as cyclical, as this tends to obscure the fact that the calls for reform became increasingly strident and more forthright with time, and the refusal of the press to implement the changes at the heart of those reports more obdurate.

8.9 The historical lessons are clear enough, but the challenge for today is whether any of them will be taken on board. Those who complain about the conduct of the press[106] are entitled to ask "How many chances must the press be given before something is done about it?" The problem is to decide whether that complaint is justified and, if it is, what that "something" is.

[103] pp12-13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Media-Standards-Trust.pdf

[104] p5, para 32, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Dr-Martin-Moore.pdf

[105] *ibid*

[106] although this question relates to "the press" generally, throughout this Report reference is usually made to "a section of the press". As has been and will be emphasised, this is to underline the good work of most journalists and the enormous value that the press can bring to our democratic society. The fact that most of the press do not behave in a way that requires regulation does not, however, negate the need for such regulation to deal with those whose behaviour does not meet the high standards of the majority

CHAPTER 2
SELF-REGULATION OF THE PRESS

1. Introduction

1.1 This Chapter of the Report will look at the Press Complaints Commission (PCC) as the system of self-regulation that has existed for the press since 1990. Having examined the establishment of the PCC in the context of the publication of the first report into the press by Sir David Calcutt QC in June of that year, it will then look, in turn, at the powers, operation and standards of the PCC before considering both the role of Press Standards Board of Finance, which was established with the express purpose of providing sufficient funding for the PCC, and the Code Committee which is responsible for the promulgation, implementation and amendment of the Editors' Code of Practice, the cornerstone of self-regulation through the PCC.

1.2 This Chapter will also look at the operation of the Editors' Code of Practice, together with the services that it offers to the public; this includes the anti-harassment hotline and its role as a complaints handling body.

1.3 The purpose of this Part of the Report is to review the position of the PCC very much from the perspective of its own witnesses, rather than from that of those who are more critical of what it has done since January 1991. Some criticisms are reflected but are mentioned only. A more critical perspective requires a detailed analysis of the response of the PCC to allegations of systemic press misconduct (such as that which arose in relation to data protection following Operation Motorman and then to phone hacking following Operation Caryatid). That exercise has therefore been deferred until these incidents (covering a number of years) have been fully ventilated: the Report therefore returns to the PCC below.[1]

2. The establishment of the PCC

2.1 As has already been explained above,[2] the PCC was set up following the first report into privacy and the press by Sir David Calcutt QC, published in 1990.

2.2 The broad scope of Sir David's Departmental Committee had reflected a growing concern in Parliament, as well as among the public more widely, about the behaviour of some parts of the press and the perceived failure of the Press Council, then the self-regulatory body for the press, to take effective action to deal with such behaviour.

2.3 Sir David's first report was published in June 1990. At that stage, he did not advocate the introduction of statutory controls. Rather, he recommended that the existing, and by this point largely discredited, Press Council should be abolished and replaced with a new self-regulatory organisation, the Press Complaints Commission, which should deal with the many and substantive concerns that had been raised around the behaviour of some parts of the press. The new PCC would have 18 months to demonstrate "*that non-statutory self-regulation can be made to work effectively.*"

[1] Part J, Chapter 3
[2] Part D, Chapter 1

2.4 As a result, in the spring of 1990, the five publishing associations in the UK (the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers' Association, Scottish Newspaper Publishers Association and the Scottish Daily Newspaper Society) worked together to establish the Press Standards Board of Finance (PressBoF) for the specific purpose of funding the PCC. The PCC was itself incorporated on 1 January 1991.

2.5 The primary function of the newly incorporated PCC was to provide an effective means of redress for complaints made by members of the public against the press, including the ability to consider accusations of unfair treatment and unwarranted infringements of privacy. In addition, the Commission was to "*publish, monitor and implement a comprehensive code of practice for the guidance of both the press and the public*", as well as to operate a 24-hour hotline for complainants. Sir David made clear that the adjudication of complaints should be a clear and fast process and that, where a newspaper was demonstrated to be in breach of the code, an apology should be given to the complainant. Sir David also recommended that the PCC should be able to advise on the form and placing of replies or corrections.

2.6 I now turn to the Editors' Code of Practice. This set out standards of behaviour that journalists and editors should seek to uphold and also set down the rules by which the newspaper industry should adhere. The Editors' Code of Practice was formulated by a Code Committee, formally a sub-committee of PressBoF which was made up of serving editors of both newspapers and magazines. The Code is explored in more detail below. Further, in a determined break with the past, the newly formed PCC also took a more proactive approach to dealing with some of the more challenging issues facing the press, producing a range of guidance which is valued by editors, particularly in the regional press.

2.7 However, although the industry had moved quickly to set up the PCC, standards of press behaviour remained a concern to both politicians and members of the public who did not discern any immediate improvement in that behaviour. Reflecting that widespread concern, the then Home Office Minister, David Mellor QC MP, made clear his view in a television interview in 1989, describing the press as drinking in the "last chance saloon". In July 1992, Sir David Calcutt was asked by Mr Mellor to prepare a second report analysing the record of self-regulation by the press since the formation of the PCC in January 1991. In that report, which was published in January 1993, Sir David argued that self-regulation by the PCC had failed and called for the introduction of a statutory Press Complaints Tribunal.

2.8 Reiterating the history set out above, the PCC and the industry more widely both rejected the analysis of Sir David. However, the PCC did accept that some reform was required and changes were made to some of its policies and procedures in the light of the first 18 months of operational experience. Further changes were made in 1995, after the Government had published its eventual response to Sir David's second report and the PCC has continued to keep its practices under review since then.

Purpose of the PCC

2.9 The primary purpose of the PCC is set out in its Articles of Association.[3] Article 53.1 of the Articles states that:[4]

> *"The primary function of the Commission shall be to consider, and adjudicate, conciliate and resolve or settle by reference to the Press Code of Practice promulgated*

[3] http://www.pcc.org.uk/assets/111/PCC_Articles_of_Association.pdf
[4] p12, *ibid*

by PressBoF for the time being in force complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and unwarranted infringements of privacy through material published in newspapers, periodicals or magazines (in each case excluding advertising by third parties) or in connection with the obtaining of such material but shall not consider complaints of any other nature."

2.10 This is again set out in plain English on the PCC website in the form of a mission statement.[5] In that statement, it is said that the PCC is:[6]

"an independent body which administers the system of self-regulation for the press. It does so primarily by dealing with complaints, framed within the terms of the Editors' Code of Practice, about the editorial content of newspapers and magazines … and the conduct of journalists."

2.11 It is clear from this that the PCC understood itself to be a de-facto regulator and presented itself publicly as such. This difference between this perception and the reality is explored below.[7]

3. Current powers, operations and standards

3.1 Since its foundation in January 1990, there has been five Chairs of the PCC. These were Lord MacGregor (1991–1994); Lord Wakeham (1995–2002); Sir Christopher Meyer (2003-2009); Baroness Buscombe (2009-2011); and Lord Hunt (since 17 October 2011). Professor Robert Pinker served as Acting Chair from July to October 2011.

Membership of the PCC

3.2 Membership of the PCC is voluntary and as such there is no system of sanctions or incentives in place to induce those newspapers and magazines who do not subscribe to the PCC to do so. Currently, the majority of national newspapers do subscribe to the PCC but there are important and significant omissions to that membership. In particular, the Northern and Shell group withdrew its membership in January 2011 and, as a consequence, the Star and Express titles have not been subject to any system of self-regulation since then (although Dawn Neesom, the editor of The Star, explained in her evidence that staff at both titles continued to abide by the terms of the Editors' Code of Practice during this period).

3.3 In addition to the majority of national newspapers, all regional titles and most magazine titles are currently members of the PCC.[8] Subscription to the PCC is organised through the five print trade associations: the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers' Association and the Scottish Daily Newspaper Society.

The structure of the PCC

3.4 The framework for the membership of the PCC and appointments to the PCC are set out in Articles 5-9 of the Articles of Association. There are a number of classes of member of the

[5] p28, para 27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[6] http://www.pcc.org.uk/index.html
[7] Part J Chapter 3
[8] A full list of those publications subscribing to the press self-regulatory system may be found at http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-S1.pdf

PCC, as set out at Article 6 which also established the appointments process for each class. The three classes of members of the Commission are as follows (see Article 6.1):

(a) the Chairman;[9]

(b) public members; and

(c) press (or editorial) members.

Article 5 provides that there shall at any time be between nine and 17 members of the PCC. It also makes clear that at all times a majority of the members shall be Public Members rather than Press Members. Commissioners also serve as Directors of the PCC. There are at present 17 members of the PCC.[10]

D

Appointment of members

3.5 The Chair of the PCC is appointed by PressBoF. It is of critical importance to note that, under the Articles of Association, PressBoF has absolute discretion to appoint the Chair on whatever terms it sees fit, and to vary or revoke that appointment. The most significant of the Articles of Association in this regard is Article 6.2, which provides that "*the Chairman shall not be engaged in or connected with or interested in the business of publishing newspapers, periodicals or magazines (other than through his appointment as Chairman)".*

3.6 It is clear that candidates for the post of PCC Chair are expected to have knowledge and expertise of the working of the press and also of regulation. For example, Sir Christopher Meyer was Press Secretary to Sir John Major from 1994 to 1997; during his tenure as Prime Minister and, before his appointment, Lord Hunt had prepared a report on the future regulation of solicitors for the Law Society of England; prior to that, he had led the first review of the Financial Ombusdman Service.

3.7 In addition, the Inquiry has been told that a belief in the superiority of self-regulation above other forms of regulation is a requirement for all candidates applying for the post. The evidence submitted by Lord Hunt included a copy of the advertisement for the post of PCC Chair as it was advertised in 2011. The advertisement stated that candidates for the post of PCC Chair:[11]

> *"must be committed to the principles of self-regulation and freedom for the press."*

3.8 The Inquiry was told candidates are also tested on this particular issue during the application process. For example, Lord Grade was asked at interview whether or not he supported statutory regulation, and Sir Christopher Meyer suggested that he regarded his tenure as PCC Chair as a success as he warded off the threat of statutory regulation.

3.9 The Public Members and Press Members of the PCC are appointed differently. According to the Articles of Association, Public Members and Press Members are appointed by the Appointments Commission (Article 6.3). This Commission also has absolute discretion to appoint Public and Press Members upon whatever terms and for whatever period it sees fit. Similarly, it has the power to revoke or to vary any appointment of a Public or Press member. Article 6.3 makes clear that no Public Member shall be engaged in, or otherwise connected

[9] Described as 'the Chair' throughout the Report

[10] p50, paras 107-108, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf. See pp21-23, para 25, *ibid* for a complete list of Commissioners/Directors of the PCC

[11] p59, lines 1-2, Lord Hunt, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf

with or interested, in the business of publishing newspapers, periodicals or magazines (other than through his appointment as a Commissioner).

3.10 In practice, however, the Appointments Commission has been abolished and responsibility for the appointment of Public Members has been taken on by the Nominations Committee. This reform was introduced following the Governance Review in 2009 but, at this point, has not yet been formalised as an amendment to the Articles of Association.

3.11 The Nominations Committee is chaired by the PCC Chair and has two other members drawn from Public Members of the Commission. At present, Ian Nichol and Professor Ian Walden sit on the Nominations Committee along with the Chair. Vacancies for Public Members are advertised publicly. The Nominations Committee considers applications and then makes nominations for the whole of the Commission to vote upon. As part of the process of considering applications, the Nominations Committee consults with the Chair of PressBoF. The Nominations Committee is also responsible for appointing the Independent Reviewer and the Review Committee.

3.12 Press (or Editorial) Member appointments are made by the trade bodies through PressBoF.[12]

Functions of the PCC

3.13 The then Director of the PCC, Stephen Abell, provided detailed evidence to the Inquiry about the function and operation of the PCC. He briefly summarised the purpose of the Commission as:

(a) to investigate complaints, primarily from concerned individuals, that relate to the terms of the Editors' Code of Practice;

(b) to deal with pre-publication concerns of individuals and advocate on their behalf with news organisations, with a view to preventing the publication of non-compliant material; and

(c) to prevent harassment by journalists.

3.14 In addition to this, the PCC also seeks pro-actively to contact individuals who might need the assistance of the Commission in their dealings with the press; provides guidance to the industry on a range of ethical issues (such as reporting on mental health issues); and works with titles to help raise standards across the industry.

Investigating complaints that relate to the terms of the Editors' Code of Practice

The complaints process – assessment

3.15 One of the core functions of the PCC is the investigation of complaints relating to the terms of the Editors' Code of Practice. Investigations are handled by the complaints officers in the PCC secretariat.[13] Each new complaint is assessed by a complaints officer or the Head of Complaints; at this stage, any complaint which falls outside the remit of the PCC or the Code of Practice is sifted out.[14] It may be the case that the PCC has to ask for further details before a decision can be taken about whether or not the complaint falls within its competence.[15]

[12] p54, paras 121-124, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[13] p55, para 125, *ibid*
[14] p85, para 188, *ibid*
[15] p85, para 191, *ibid.* Commonly when asked for further information complainants choose not to pursue their complaints

When the PCC does not investigate

3.16 The PCC does not investigate cases where no breach of the Code is raised in the complaint. Examples of this might include where the complaint was about a broadcaster, or where the complaint raised questions of taste and decency.[16] The PCC might also decide that, if sufficient remedial action had been taken by a newspaper, no further action was necessary.

3.17 When a complaint does not fall within the remit of the PCC, it will try to redirect the complainant to the relevant alternative regulator.[17] Where the complaint does fall within the competence of the PCC, but there is no *prima facie* case to answer, the matter may be put before the Commission directly without investigation.[18]

Investigation

3.18 If a complaint does raise a *prima facie* breach of the PCC Code, it is assigned for investigation to a Complaints Officer. Complaints Officers at the PCC play a dual role of both investigator and conciliator.[19] Where a complaint is accepted for investigation, the PCC first writes to the editor of the relevant publication. That editor is sent a copy of the complaint and is asked to respond within seven days. There then follows three way correspondence, with the PCC Complaints Officer acting as the conduit between the complainant (or his/her representative) and the publication complained about.

3.19 The PCC has a protocol for disclosure.[20] This document does not place either party under any obligation to provide key documents to the other party or to the PCC itself. The protocol provides that any material submitted by a publication to the PCC in the course of a complaint will be seen by the complainant. It also provides that the PCC will '*consider on request providing to the complainant copies of our correspondence – conducted during an investigation – with editors*'. The PCC has no power to subpoena documents, having argued in the past that a power of subpoena would contribute to delay in the system.[21] There is no obligation on a complainant or a publication to disclose to the other party or to the PCC documents which might undermine a party's own case or strengthen that of the other party.

3.20 While the PCC does have the power to hold oral hearings, that power has never been exercised. According to the PCC's response to the 2010 Independent Governance Review, oral hearings would be undesirable because they might undermine two key virtues of the PCC system, namely that the system is free and fair.[22]

3.21 On some occasions, the PCC has found that, after the conclusion of investigations, it has insufficient information to reconcile the positions of the parties and, as a consequence, has declined to come to any conclusion as to the merits of the complaint. There are other instances of PCC decisions in which the PCC has not upheld a complaint on the basis that there was not enough evidence for it to be sustained; on its face, however, it seems that if key documents were disclosed, the matter might have been resolved.

[16] p85, para 189, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[17] p85, para 190, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[18] p86, para 193, *ibid*
[19] pp86-87, paras 193,195-196, *ibid*
[20] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-H213.pdf
[21] http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcumeds/532/53204.htm
[22] p8, para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-F2.pdf

Action to prevent publication of material that does not comply with the PCC Code

3.22 On occasion, the PCC coordinates with publications and complainants who are at the centre of a specific news story.[23] Where the police are involved, the PCC might seek to approach the subject or probable subject of stories through the police (such as contact with Cumbria police following the shootings by Derrick Bird);[24] or through other representatives such as solicitors (as in the case of Christopher Jefferies).[25] The PCC can send a private advisory note to editors, making it clear that an individual does not want to speak to the media.

Preventing harassment by journalists

3.23 Harassment by journalists is covered by Clause 4 of the PCC Code. Where an individual asks a publication to desist from questioning, telephoning, pursuing or photographing him, the Code makes clear that publications should not persist in their pursuit of the individual.[26] The PCC has developed a system whereby it can communicate the request of a complainant to an individual newspaper or to the whole print and broadcast industry. Since 2003, the PCC has operated a 24-hour helpline,[27] the number for which is advertised on the PCC website. The system, referred to by some as a desist order, has been widely praised by both members of the public and those who have benefited from the system. However, it is notable that this has been used only rarely, and only in circumstances in which individuals have been placed under sustained, intense and intrusive media speculation.

Limitations on the PCC's role

3.24 The Articles of Association also make express a number of explicit limitations on the PCC's competence to consider complaints. These are:

(a) the PCC can only consider complaints made by the person affected or by a person authorised by him to make a complaint (Article 53.3(a));

(b) the PCC cannot consider a complaint where the matter complained of is the subject of proceedings in a court of law or tribunal in the United Kingdom (Article 53.3(b)); and

(c) where the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, the PCC may consider the complaint if in the particular circumstances of the case it appears to the Commission that it is appropriate for the Commission to consider a complaint about it.

The PCC only deals with complaints relating to an article in a newspaper, magazine or periodical, or on the website of a newspaper, magazine or periodical.

[23] p206, para 272, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf No records of these approaches were kept before May 2010
[24] p206, paras 272 & 291, *ibid*
[25] p206, paras 270-271, *ibid*
[26] pp185-186, paras 254-261, 280.2, *ibid*
[27] p44, para 87, *ibid*

Powers and sanctions

3.25 The PCC has only limited powers available to it. For instance, as already observed, the PCC has no power to subpoena documents. The PCC also has a range of sanctions available[28] which, in brief, are:

(a) negotiation of an agreed remedy;

(b) publication of a critical adjudication;

(c) a letter of admonishment from the PCC Chairman to an editor;

(d) follow-up by the PCC to establish what steps have been taken to avoid a repeat of a breach and what steps have been taken against those responsible for breaches; and

(e) referral of an editor to his publisher.

3.26 Although criticised by a number of witnesses (including Dr Martin Moore and Professor Greenslade) as inadequate, Baroness Buscombe told the Inquiry that the current sanctions regime available to the PCC had been broadly effective.[29] Indeed, in its response to the Culture, Media and Sport Select Committee report, the PCC said "*at present, the Commission believes that its powers are effective and can point to a culture in which its sanctions have real impact*".[30] The PCC has also pointed to the growing number of settled complaints as testament to the efficacy of the current sanctions regime.

3.27 Both Baroness Buscombe and Sir Christopher Meyer told the Inquiry that the possibility of an adverse adjudication on an editor of a newspaper was a real and effective sanction. Sir Christopher said that editors would go to considerable lengths to avoid an adverse adjudication and that this was to the benefit of the complainant.[31] Baroness Buscombe went further, observing that editors reacted with fury to the announcement of an adverse PCC adjudication and that the effect of such an adjudication on an editor was considerable.[32] In so doing, Baroness Buscombe has implied that the deterrent and punitive effect of a PCC adjudication was real. However, elsewhere in her evidence, she appeared to concede that the deterrent impact of an adverse adjudication from the PCC was not as effective as might have been suggested. She accepted that the anger she had experienced from editors when providing notice of a forthcoming adjudication was at the fact of personal criticism rather than its content and impact.[33]

3.28 Baroness Buscombe also explained that both the Daily Mirror and the Financial Times had threatened to leave the PCC as a consequence of an adverse adjudication. She accepted the suggestion of the Inquiry that this reflected that the balance of power within the self-regulatory system for the press may be wrong.[34] However, she was emphatic that, although

[28] para 185 *et seq*. http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[29] p61, lines 2-8, Baroness Buscombe, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[30] p61, lines 19-22, Baroness Buscombe, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[31] p17, paras 2-11, Sir Christopher Meyer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[32] p62, lines 9-12, Baroness Buscombe, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[33] pp62-63, lines 23-25, Baroness Buscombe, *ibid*
[34] pp62-63, lines 10-25, Baroness Buscombe, *ibid*

an issue for the system of self-regulation through the PCC, adverse and indeed disdainful reactions from editors to PCC adjudications were rare and limited to a small minority.[35]

3.29 In a further reflection on this point, Baroness Buscombe acknowledged that the current state of affairs impacted directly on levels of trust in the PCC and that, as a consequence, there was very real difficulty in persuading both policy makers and members of the public that an adverse adjudication was, in fact, an effective sanction.[36] It is important to note in this context that the PCC has no power to enforce its adjudications or rulings if they are ignored by an editor or publisher. The lack of power in this respect has been the subject of some criticism and had already been identified as an issue to be reviewed by the PCC Reform Committee by February 2012.[37]

3.30 A further analysis of the punitive and deterrent impact of adjudications as a sanction is undertaken later in the Report.[38]

Options for appeal or review

3.31 There is no avenue within the self-regulation system through which complainants can appeal against the substance of a PCC decision. The Inquiry has been told that this was the source of some frustration to complainants, and indeed, had dissuaded some from taking complaints to the PCC in the first instance. On occasion, parties who have been informed of the substance of the outcome of adjudications in their cases have asked the PCC to reconsider its decision.[39] However, when this happens, the PCC has only reviewed the process of the handling of the complaint and not the substance of the material decisions made.

Charter commissioner and independent reviewer

3.32 The position of Charter Commissioner was introduced in 2003, together with a Charter Compliance Panel, as part of the policy of 'permanent evolution' initiated by Sir Christopher Meyer. The function of the Charter Commissioner is defined under Articles 55 and 56 of Articles of Association as to:[40]

> *"consider complaints (other than complaints relating to the substance of an adjudication) from persons who have received a decision from the Commission and who are dissatisfied with the way in which the Commission has handled their matter."*

3.33 The first Charter Commissioner was Sir Brian Cubbon, who served until 2009. He was replaced by Sir Michael Wilcocks (who became the first Independent Reviewer). The Independent Reviewer is now Professor Robert Pinker CBE: he served as a Public Member of the PCC between 1991 and 2004 and was Acting Chair in 2002-2003 and in 2011. The role of the Charter Commissioner was characterised in the 2003 PCC Annual Report as being to 'operate a sort of internal system of judicial review'. The Charter Commissioner is assisted in his work by the Charter Compliance Panel. Article 55.1 sets out the role of the Charter Compliance Panel as:[41]

[35] p88, lines 16-17, Baroness Buscombe, *ibid*
[36] p61, lines 9-14, Baroness Buscombe, *ibid*
[37] p85, para 187 http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[38] Part J Chapter 2
[39] For example *A Woman v Clevedon People,* p8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-J211.pdf
[40] p15, http://www.pcc.org.uk/assets/111/PCC_Articles_of_Association.pdf
[41] p15, *ibid*

"to examine the handling of complaints by the Commission pursuant to Article 53."

3.34 In practice, the Charter Commissioner and the Charter Compliance Panel provide an avenue through which a complainant might refer his or her complaint if he or she believes that there had been some procedural defect in the way that the complaint had initially been handled. However, the Charter Commissioner had no remit to look at the substance of a complaint. This role has, since the independent governance review, been included unaltered in the position of Independent Reviewer.

Pro-active work by the PCC

3.35 The PCC produces Guidance Notes to assist the industry with particular issues where there is an apparent need.[42] Such guidance has been produced on a range of subjects including: the reporting of suicide (developed together with the Samaritans); the reporting of people accused of crimes; payments to parents for material about their children and the reporting of court cases involving sex offences.

3.36 The PCC also publishes Annual Reviews. Among other information, these contain statistics about the number and types of complaints received. In addition, the PCC has in the past organised public events such as talks and Question & Answer sessions.

4. PressBoF

4.1 PressBoF, is responsible for the organisation and collection of the levy which funds the PCC from the newspapers and periodicals participating in it. PressBoF is a company limited by guarantee and was incorporated shortly before the inauguration of the PCC. The membership of the Board of PressBoF is set out under Article 5 of the Articles of Association.[43] Currently, three members of the PressBoF Board are drawn from the Newspaper Association; three members from the Newspaper Society; two from the Periodical Publishers' Association and two from the Scottish Daily Newspaper Society.[44] The Board members are appointed by their trade association and in turn appoint the Chair, currently Lord Black of Brentwood (who, between 1996 and 2003 was the Director of the PCC).

4.2 The structure of PressBoF is based loosely on the funding body for the Advertising Standards Authority.[45] However, whilst the funding structure underpinning that organisation has been made public, that is not the case with the PCC or PressBoF. As a consequence, there is little public understanding of how the PCC budget is financed. This has been the subject of both criticism and speculation. In addition to the oganisation of funding for the PCC, PressBoF also exercised full control over the appointment of the PCC Chair, as well as playing a prominent role in the appointment of new members to the Commission until changes were introduced as part of the 2010 Internal Governance Review.[46]

4.3 The Inquiry has heard detailed evidence from Lord Black, who has been Chair since September 2009, which has helped to explain the role of PressBoF as to the function of the PCC. He told the Inquiry that PressBoF not only funded the PCC through the collection and disbursement

[42] p197, para 262, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf One of these is a note on 'Data protection Act, Journalism and the PCC Code' (2005), http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-K6.pdf
[43] p4, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Lord-Black1.pdf
[44] p4, para 16, *ibid*
[45] Shannon, R. (2001) *Op. Cit*., p38
[46] Part J, Chapter 3

of the levy, it also had a fundamental role in relation to the exercise of its functions, as all decisions relating to the role and remit of the PCC must first be ratified by PressBoF. Lord Black explained that this was to ensure that no substantive changes were made to the role of the PCC without consultation with the industry.[47] In part, this was enforced through an undertaking made by Commissioners, on their appointment to the PCC, not to agree any changes to the articles of association without the express permission of PressBoF. This was one of two such undertakings made by Commissioners to the PCC, the second being to contribute £1 to the winding up costs of the PCC should this ever prove necessary.[48]

4.4 Lord Black also explained the generality of the PCC funding arrangements. Payments by national newspapers accounted for 54% of the levy, regional newspapers paid 39% of the levy and magazines paid the remaining 7%.[49] Lord Black explained that, each year, PressBoF asked the national press through the National Newspaper Association to pay a specified amount towards the levy.[50] The contribution from each member of the NPA was decided by a formula derived from the amount of news print consumed by each member and the number of publications owned by each member.[51]

4.5 This calculation was made through the NPA as some of the information needed to deduce the level of contributions to the levy was commercially sensitive.[52] Although the membership of the NPA was in the public domain, the details of who paid for what were not public[53] or, indeed, shared with PressBoF, as members of the Board or PressBoF staff may have links with the individual publishing houses.[54] The monies collected through the levy were collected and passed on to PressBoF twice each year.[55]

Role of PressBoF in PCC appointments

4.6 PressBoF also plays an important role in the appointment of personnel to the PCC, [56] including to the position of Chair. Lord Black made the point that the appointment process had not been static but had changed, becoming increasingly transparent,[57] over time: he noted that the appointment of the first Chairman of the PCC, Lord Wakeham in 1991, was done effectively by a tap on the shoulder, with no outside scrutiny or independent influence.[58]

4.7 By comparison, Lord Black explained that the appointment of Sir Christopher Meyer in 2003 involved the use of specialist recruitment consultants. The process for the more recent appointment of Baroness Buscombe was more transparent, and was built around the public advertisement of the post in the national press.[59] Further changes had since been made as a consequence of the independent review of the PCC governance processes; these were

[47] p3, lines 7-9, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf
[48] p3, lines 2-6, Lord Black, *ibid*
[49] p4, lines 20-23, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf; p6, para 20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Lord-Black1.pdf
[50] p5, lines 3-5, Lord Black, *ibid*
[51] p5, lines 6-9, Lord Black, *ibid*
[52] p5, lines 16-20, Lord Black, *ibid*
[53] p5-6, lines 24-2, Lord Black, *ibid*
[54] p5, lines 16-18, Lord Black, *ibid*
[55] p5, lines 13-15, Lord Black, *ibid*
[56] pp22-23, lines 24-6, Lord Black, *ibid*
[57] p23, lines 1-13, pp23-24, lines 17-23, Lord Black, *ibid*
[58] p31, lines 11-24, Lord Black, *ibid*
[59] p31, lines 17-24, Lord Black, *ibid*

intended to make the appointment process more open and independent of the industry.[60] However, it is important to note that, although lay members of the PCC were involved in the appointment of Lord Hunt in 2011, they owned no formal role in the process.

4.8 The appointment of Lord Hunt incorporated these changes for the first time. Following the resignation of Baroness Buscombe, the position of PCC Chair was advertised in the national press in August 2011. A firm of recruitment consultants, *Korn, Ferry, Whitehead, Mann*, were appointed to manage the process for the first time and an independent assessor was also appointed to oversee the process. The independent assessor provided an audit note of the complete application process.

4.9 Applications were made not to PressBoF but direct to the recruitment consultants. They drew up an initial long-list which was discussed with both the independent assessor and the PressBoF Board. Those discussions resulted in the production of a shorter list and prospective candidates were interviewed by the consultants in the first instance. At that point, a final shortlist of some 12 candidates was drawn up by PressBoF and formal interviews took place during September 2011. A subcommittee of five members was involved in the interview process. That committee made a final recommendation to the PressBoF Board.

4.10 The involvement of lay members was indirect. In the first instance, they were provided with an opportunity to put names forward for the post.[61] Later, members were offered a meeting with Lord Hunt at which they were provided with an opportunity to give their views on the type of Chair they thought appropriate to the position.[62] In his evidence to the Inquiry, Lord Black said that he spoke with all lay members of the Commission, with one exception.[63] Further, the Deputy Chair of the Commission, Ian Nichol, was appointed to liaise between the independent assessor and the recruitment consultants to monitor the process.[64]

4.11 Lord Black rejected the notion, put to him by Robert Jay QC, that, in practice, the position of PCC Chair was a *de facto* political one, on the basis that the post did not deal with political matters. Lord Black also noted that Lord MacGregor of Durris, the first Chairman of the PCC, was a Liberal Democrat Peer.[65] He also emphasised that the most recent recruitment process had been open to applicants from all political parties.[66] Lord Black told the Inquiry that the politics of Lord Hunt, the fourth Conservative Party peer to have held the post of PCC Chair, had played no role in his appointment.[67]

The Editors' Code Committee

4.12 The Code Committee is responsible for the wording of the Editors' Code of Practice. The Code Committee has also been responsible for producing the Editors' Codebook, which brings together the Code and the PCC case law. The Code Committee is made up of editors appointed by the relevant trade bodies of the newspaper and magazine industry.

4.13 The current Chair of the Code Committee is Paul Dacre, the editor-in-chief of Associated Newspapers. The PCC is represented through its Chair or Director at every meeting of the

[60] p23, lines 7-13, Lord Black, *ibid*
[61] p24, lines 8, Lord Black, *ibid*
[62] p24, lines 5-7, Lord Black, *ibid*
[63] p24, lines 10-13, Lord Black, *ibid*
[64] p24, lines 14-18, Lord Black, *ibid*
[65] p32, lines 9-12, Lord Black, *ibid*
[66] p32, lines 11-24, Lord Black, *ibid*
[67] p32, lines 14-16, Lord Black, *ibid*

Code Committee and the PCC Commissioners must ratify any changes to the Code before they become valid.[68]

4.14 Lord Black has said that representation of serving editors on the Committee of the Editors' Code of Practice is a basic requirement for the success of the system of self-regulation. In his view, serving editors brought necessary expertise and industry knowledge to the system and, in particular, an awareness of the dilemmas faced by staff in newsrooms.[69] He suggested that majority industry representation was normal for systems of self-regulation, and was certainly the case with regard to systems of press self-regulation globally.[70] However, Lord Black did concede that public or independent representation on the Code Committee or a successor body would need to be considered going forward, particularly as this would be central to any effort in rebuilding public trust and confidence.[71]

4.15 Having said that, Lord Black categorically rejected the notion that that the Code Committee was not suitably independent of either PressBoF or the industry more widely. He told the Inquiry that, whilst PressBoF provided funding to the PCC, and although PressBoF, through the Code Committee, determined the Code, the independence of the complaints process by the PCC was sacrosanct.[72] He noted that his formal engagement with the Commission was rare, limited to one meeting each a year, the purpose of which was to update the Commission on the state of the industry. In his view, there was no capacity to exercise control over the function of the PCC.[73]

4.16 Importantly, Lord Black clarified that the Editors' Code of Practice Committee was a part of PressBoF and not the PCC. It was not, therefore, subject to the same level of lay scrutiny and influence as the PCC. Indeed, the only lay representation on the Editors' Code of Practice Committee was through the Chair and Director of the PCC, who were entitled to attend in an *ex-officio* capacity.[74] As neither were entitled to participate in discussions or in any decision-making capacity, it is clear that the influence of lay members on the Committee was limited.[75]

4.17 Witnesses from the PCC pointed to the merit in allowing serving editors to sit on decision-making boards like the Code Committee, particularly in the light of the current knowledge and experience they brought of a fast moving industry. Similarly, a number of editors told the Inquiry that such input to the Code was crucial if the Code was to have sufficient credibility with the industry. The same point was also made by Lord Hunt, who stated that it was important that any rules for the press, particularly around standards, were written by professionals with an appropriate level of knowledge and experience.[76]

4.18 However, there was some recognition that this knowledge could be brought to bear by former editors or, indeed, other industry experts. Lord Grade accepted that the codes developed by the Communications regulator Ofcom did not suffer because input came from former rather

[68] p235, para 350, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[69] p34, lines 5-8, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf
[70] pp33-34, lines 19-5, Lord Black, *ibid*
[71] p34, lines 9-12, Lord Black, *ibid*
[72] pp29, lines 10-15, Lord Black, *ibid*
[73] pp29, lines 15-17, Lord Black,
[74] p6, lines 21-25, Lord Black, *ibid*
[75] p7, lines 11-13, Lord Black, *ibid*
[76] p69, lines 1-9, Lord Hunt, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf

than serving journalists.[77] He also acknowledged that credibility with the industry could also be achieved through other means, such as consultation on the content of a code with serving industry editors, rather than their direct input through representation on the Code Committee.[78]

4.19 On one occasion at least, the Code Committee had been required to play a role as arbiter of the meaning of a given provision of the PCC Code where the PCC found that there was ambiguity.[79] On 22 September 2010, Baroness Buscombe wrote to Ian Beales (Secretary to the Code Committee) asking for clarification of Clause 15 of the PCC Code (payments to witnesses).[80] This was in the context of the Mail on Sunday having made payments to Baroness Scotland's housekeeper. On that occasion, the Editors' Code Committee took legal advice from Mr Jonathan Caplan QC, and that advice was relayed to the PCC by Ian Beales.[81]

The Editors' Code of Practice

4.20 The Editors' Code of Practice is the cornerstone of the system of self-regulation for the press,[82] and it is the responsibility of the PCC to ensure that the Code is properly enforced. The PCC's website states that all members of the press have a duty to maintain the highest professional standards.[83] It makes clear that these standards are set out in the Code of Practice, and that the Code acts as a benchmark for those ethical standards. According to the PCC, the Code protects both the rights of the individual and the public's right to know.

4.21 Although there was later comment about ways in which the Code could be improved, witnesses to the Inquiry have, in the main, spoken favourably about its content. It has been praised by witnesses for being both readily understandable and usable. Even those witnesses who have been otherwise critical of the PCC, have spoken in favourable terms about the Code: for example, Alan Rusbridger, the editor of the Guardian, has described the Code as "good".

4.22 The PCC makes clear just how the Code should be interpreted by editors: the PCC website states that the Code should be *"honoured not only to the letter but in the full spirit"*.[84] Issues around interpretation are elaborated further on the website, including the unambiguous statement that the Code should not be interpreted "*so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest*."[85]

4.23 Lastly, the PCC makes clear that "*it is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of publications*". They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.

[77] p54, lines 9-22, Lord Grade, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[78] pp54-55, lines 17-8, Lord Grade, *ibid*
[79] p236, para 355, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[80] p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-M13.pdf
[81] p1, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-M14.pdf
[82] http://www.pcc.org.uk/cop/practice.html
[83] http://www.pcc.org.uk/cop/practice.html
[84] p7, lines 21-25, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf
[85] http://www.pcc.org.uk/cop/practice.html

Amendments to the Code

4.24 The Editors' Code of Practice has developed through a process of iteration over the last two decades, responding to challenges and concern at the behaviour and actions of the press.[86] The Code has now been amended on at least 30 occasions, most notably following the death of Diana, Princess of Wales, in 1997.

4.25 The most substantial of the amendments made to the Code of Practice have related to privacy and, in particular, the privacy of minors. Specifically, new wording was introduced to clause 3 in relation to privacy. This was largely drawn from the European Convention on Human Rights which, at the time the amendments to the Code of Practice were made, was about to be incorporated into UK law.[87] Significantly, these amendments also altered the definition of a 'private place', to include both public and private places '*where there is a reasonable expectation of privacy*'. Changes were also made to Clause 1 on accuracy to cover photographic manipulation.[88]

4.26 Further amendments to the Code sought to address concerns around the alleged role and actions of the paparazzi in the death of Princess Diana and the manner in which some photographs were sought. To address these concerns, provisions on harassment were expanded and revised to include a ban in the use of information or pictures obtained through 'persistent pursuit'. This new Clause 4[89] also made explicit the responsibility of the editor not to publish material that had been obtained in breach of this clause, regardless of whether the material had been obtained by the newspaper's staff or by journalists or other staff employed on a freelance basis.[90]

4.27 A new clause 6 was also introduced, making explicit provision for the protection of the rights of children to privacy while they were at school (previously, this clause had referred only to children under the age of 16). The revised clause 6 also forbade payments to minors or the parents or guardians of children for information involving the welfare of a child (unless demonstrably in the child's interest), and introduced a requirement for a justification for the publication of information about the private life of a child other than the fame, notoriety or position of his or her parents or guardian.[91]

4.28 The final changes saw the phrase 'should not' replaced by 'must not' throughout the Code, and the amendment of the section on the public interest to ensure that, in cases involving children, an editor must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.[92]

4.29 Despite these attempts to keep the Code updated, the Inquiry has heard some criticism about the opaqueness of the drafting process, as well as the limited opportunity afforded to members of the public to influence the process of amendment. The Media Standards Trust, for example, said:[93]

[86] p236, para 356, http://www.levesoninquiry.org.uk/wpcontent/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf; http://www.pcc.org.uk/cop/evolving.html
[87] http://www.pcc.org.uk/cop/evolving.html
[88] http://www.pcc.org.uk/cop/evolving.html
[89] http://www.pcc.org.uk/cop/evolving.html
[90] http://www.pcc.org.uk/cop/evolving.html,
[91] http://www.pcc.org.uk/cop/evolving.html
[92] http://www.pcc.org.uk/cop/evolving.html
[93] p38, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-by-Media-Standards-Trust.pdf

"It [the Code of Practice] has grown up outside of public scrutiny, framed by those responsible for putting it into practice."

4.30 This criticism has, however, been rejected by representatives of the PCC. Lord Black indicated that there were a number of means through which the public could contribute to the amendment of the code.[94] He specifically pointed to the annual review of the Code, which is undertaken by the Code Committee, during which suggestions for amendments were invited from Committee members, interested parties and the public.[95]

4.31 In practice, the Inquiry heard that the opinions and views offered by members of the public or from individuals outside of the newspaper industry were rarely heard. Lord Black acknowledged, in response to questions about the influence of lay voices and views on the Committee, that, as the Committee was "an Editors' Code Committee", the voice of the press was "bound to be predominant".[96] However, he also suggested that this potential bias was mitigated by the breadth of freely voiced opinion across the Code Committee.[97]

4.32 Lord Black was asked about criticisms that the Committee was slow to respond or adapt to criticism, that it had put the system of self-regulation ahead of the needs of individuals, particularly those who had been subject to abuse and mistreatment by the press, and had not looked critically or objectively at the efficacy of the system.[98] He denied that any of these were sustainable criticisms, and suggested instead that the sustained level of funding by the industry for an independent system of self-regulation had brought about a number or real successes, including significant improvements to the behaviour of journalists and the press.[99]

4.33 In particular, Lord Black noted improvements in behaviour related to harassment and the treatment of children and hospital patients.[100] He also suggested that a key, but hidden, success of the changes that stemmed from the Code of Practice was the increased tendency of editors to receive and deal with complaints themselves, particularly around accuracy, without referral to the PCC.[101]

4.34 Lord Black was particularly keen to make clear to the Inquiry that one of the primary functions of PressBoF, as a body that represented the industry, was forcefully to promote press freedom.[102] However, he rejected the notion that this had the potential to affect the overall balance of the Editors' Code of Practice by the Code Committee, by giving greater weight to the issue of press freedom, noting that there was only one member of PressBoF who sat on the Code Committee. He did, however, concede that the 13 members of the Code Committee (editors in their own right) would have clear and deeply held views of their own on press freedom.[103]

[94] p7, lines 21-25, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf
[95] pp7-8, lines 22-6, Lord Black, *ibid*
[96] p9, lines 14-15, Lord Black, *ibid*
[97] p9, lines 19-24, Lord Black, *ibid*
[98] pp13-14, *passim,* Lord Black, *ibid*
[99] p14, lines 5-10, Lord Black, *ibid*
[100] p13, lines 7-10, Lord Black, *ibid*
[101] p13, lines 16-23, Lord Black, *ibid*
[102] p17, lines 20-23, Lord Black, *ibid*
[103] p18, lines 2-10, Lord Black, *ibid*

5. Benefits of self-regulation

5.1 Witnesses from the PCC were clear about the benefits of a system of self-regulation for the press. They suggested that any form of statutory regulation for the press in the UK would also undermine the efficacy of the ex-ante interventions currently undertaken by the PCC, particularly work intended to stop the publication of particularly damaging or defamatory articles.[104] If this function were passed to a statutory body open to political capture then the potential for abuse of that function would have worrying and significant implications for freedom of expression.[105]

5.2 To illustrate his point, Lord Grade provided the example of complaints to the BBC about Jonathan Ross and Russell Brand in October 2008. The BBC Trust was able to issue an apology and a correction within ten days, whereas Ofcom took almost three months to investigate the same complaint and reach broadly similar conclusions. Lord Grade also suggested that, given the nature of complaints directed to the PCC, speed of resolution is of primary importance to the complainant.

5.3 Lord Hunt said that he firmly believed in the value of self-regulation above formal statutory regulation, which he suggested was open to political interference.[106] By contrast, he suggested that independent, voluntary, self regulation of the press, for the press and in the public interest was preferable and the optimal of the available approaches. Ideally, such a system of self regulation should be universal but he did not expand on his thinking as to how bodies outside that system might be induced to join.

5.4 Like other witnesses to the Inquiry, Lord Hunt has argued that it is the press who are in best position to correct the perceived failings with the current system of self-regulation and develop a solution that is more appropriate for dealing with the issues described to the Inquiry. Lord Hunt also suggested it is only by the press working together that a system of regulation such as that outlined by Sir David Calcutt in his second report can be achieved.[107]

5.5 A similar line of argument was advanced by Baroness Buscombe, who told the Inquiry that the speed and flexibility of the current system are advantageous when compared with attempts to find resolution through the courts.[108] She noted the harm that could be done to individuals as a consequence of drawn out court processes.[109]

5.6 In her evidence to the Inquiry, Baroness Buscombe suggested that the collaborative structure of the PCC was a strength.[110] She suggested that had the system of self-regulation been closer to a formal regulatory process, with potentially a system of fines for breaches, the efficacy of the PCC in dealing with complaints and pre-publication issues would have been compromised. She has argued that such a change would have made the system more adversarial and would have necessitated the involvement of lawyers in decision making, leading to drawn out processes which would have resulted in a lesser service to the public.[111]

[104] p35, lines 13-21, Lord Grade, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[105] p36, lines 1-9, Lord Grade, *ibid*
[106] p59 lines 10-16, Lord Hunt, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[107] p67, lines 9-17, Lord Hunt, *ibid*
[108] pp38-39, Baroness Buscombe, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-7-February-2012.pdf
[109] pp38, lines 1-12, Baroness Buscombe, *ibid*
[110] p58, lines 5-12, Baroness Buscombe, *ibid*
[111] p587, lines 14-23, Baroness Buscombe, *ibid*

5.7 Lord Hunt also suggested to the Inquiry that a regulatory regime backed in statute would not be sufficiently flexible as an independent self-regulatory system. In particular he worried that a regime backed in statute would not be able to respond to new challenges as they emerged, as such a system would require changes to the law and would be beholden to the Parliamentary timetable.[112] By contrast, Lord Hunt argued, an independent regulator could make changes in a more timely fashion. Although Lord Hunt conceded that it was perfectly possible to base the new system on legislation that was not proscriptive, he suggested that his experiences as a Parliamentarian led him to believe that legislation could rarely account adequately for future circumstances.[113]

6. Anti-harassment policy

6.1 The PCC operates an anti-harassment hotline for the general public through which an individual might communicate a desire for press attention to cease to newspapers. Such a request may result in the Commission issuing a desist order to newspapers after which press attention in the person in question should cease.

6.2 In his evidence to the Inquiry, Stephen Abell said that the PCC anti-harassment service was one of the cornerstones of the "fast moving" part of the system of self-regulation for the press; something, that by implication may not be possible or practicable under a different system.[114] The service was regarded by the PCC as an important complement to Clause 4 (harassment) of the Editors' Code of Practice. This states that journalists:

> *"must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent."*

6.3 The anti-harassment service is intended, therefore, to provide members of the public and other individuals affected by the actions and behaviour of journalists with the means of making express the terms of the Clause 4 of the Editors' Code of Practice.

6.4 Although the PCC has no formal responsibility for broadcast journalists, as these are not covered by the terms of the Editors' Code, the PCC has, as a rule, forwarded desist notices to broadcasters, who have then taken appropriate action to ensure that their journalists abide by the will of the desist notice. Mr Abell's written evidence to the Inquiry noted that:[115]

> *"This helps to reduce the problem of "media scrums" that involve journalists from all forms of media."*

6.5 The anti-harassment service is accessed through the 24-hour helpline operated by the PCC. The PCC website provides comprehensive details of the service and the circumstances under which it might be used. The PCC has made clear that the initial telephone conversation with the affected party or, in some cases, their representatives is usually handled by a senior member of Commission staff. The PCC will also request an email setting out the concern or allegation from the individual in question. This email then becomes in effect the desist notice,

[112] p94, Lord Hunt, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[113] p96, Lord Hunt, *ibid*
[114] p69, lines 11-19, Stephen Abell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-30-January-2012.pdf
[115] p185, paras 255-256, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf?

which the PCC will then forward to a list of senior editorial and legal representatives. I note that Mr Abell has written that:

> *"Almost invariably, it is followed and the attention ceases."*[116]

6.6 In his written evidence, Mr Abell suggested that the service could be used "prophylactically". He provided the example of a grieving family who might contact the PCC ahead of an inquest or funeral, to make their wishes known. He noted that in such circumstance "*the PCC will act to disseminate their position immediately.*" I note that in this regard, the PCC has produced specific guidance both for bereaved individuals and also for journalists in relation to grief and intrusion into grief. This guidance encourages the bereaved to use the anti-harassment service. This guidance has been disseminated to all UK police forces and coroners' courts.[117]

6.7 The PCC has said in evidence that the anti-harassment service also had an application for individuals in the public eye. It was explained that a desist order acted as a check on the publication of paparazzi photographs obtained through harassment. Mr Abell stated:[118]

> *"The starting premise is that as soon as an editor publishes a photograph, he or she is taking responsibility for the conduct of the person providing it."*

6.8 He noted further that:[119]

> *"This places the onus on the editor to take care over the publication of photographs of the affected individual. This in turn means that non-compliant photographs are not bought by newspapers or magazines, and the market for them dwindles. This in turn affects the behaviour of the paparazzi in regard to the individual."*

6.9 The PCC suggested that the use of the anti-harassment service was the most effective means currently available of influencing paparazzi. Mr Abell's written evidence explained that, as a class, the paparazzi were not regulated through any formal mechanism. Therefore, restricting the market for paparazzi photographs that may have been taken in breach of the code, or in contravention of a desist notice, helped to enforce standards of behaviour.[120]

[116] p185, para 256, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[117] pp185-186, para 258, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[118] pp185-186, para 259, *ibid*
[119] pp185-186, para 260, *ibid*
[120] pp185-186, para 260.0, *ibid*

Table D2.1 Total Number of Desist Notices

Month	Number of Desist and Private Advisory Notices*
Jan 2010	8
Fen 2010	4
Mar 2010	11
Apr 2010	5
May 2010	4
Jun 2010	1
Jul 2010	2
Aug 2010	3
Sep 2010	8
Oct 2010	7
Nov 2010	4
Dec 2010	2
Jan 2011	10
Feb 2011	9
Mar 2011	13
Apr 2011	12
May 2011	12
Jun 2011	11
Jul 2011	16
Aug 2011	10
Sep 2011	7
Oct 2011	5
Nov 2011	11
Dec 2011	14
Jan 2012	13
Feb 2012	12
Mar 2012	11
Apr 2012	17
May 2012	7
Jun 2012	6 (up to 27th June 2012)
TOTAL	**255**

* The PCC makes no distinction between a "desist notice" and a "private advisory notice". A desist notice is an internal PCC term for a notice in relation to Clause 4 of the Editors' Code of Practice (harassment).

6.10 At the time of writing, the PCC had issued 255 desist notices since January 2010 (as set out in Table D2.1). I note that, whilst there is no significant variance in the recorded monthly figures, the trend is towards the more frequent issue of these notices.

6.11 I have heard little evidence that has been critical of the anti-harassment service operated by the PCC and it would be appropriate, therefore, to restrict myself to some general comments only. I note, first, that the service appears to be well regarded. The PCC has provided me with evidence of the efficacy of this service in helping those in often extraordinary circumstances

to benefit either from a desist notice or in helping affected parties manage press and other media interest.

6.12 This additional evidence was submitted in response to comments made in evidence by Gillian Shearer, the Communications Director for the Cumbrian Police Force, in relation to shootings in Whitehaven in Cumbria in July 2010. Ms Shearer described what she regarded as the aggressiveness of the press, the impact on the families concerned and the failure by the press to adhere to the police notice requesting that the media respect the families' wishes for privacy. She also criticised what she suggested was the failure of the PCC to respond meaningfully both to events but also the wishes of those individuals affected.[121]

6.13 In the evidence he has provided to the Inquiry, Michael McManus, the Transitional Director of the PCC, has sought to correct this perception of the actions of the PCC; he provided the Inquiry with a detailed description of the PCC's activities in response to events in Whitehaven. It is to be borne in mind that although the events Mr McManus has described were extraordinary, they illustrate well the services the PCC is able to offer those individuals who become the subject of intense press attention. Mr McManus has written that:[122]

> *"On the day of the shootings, a member of PCC staff spoke briefly to Cumbria Police and followed up immediately with an email providing our contact details and explaining how we could help deal with concerns about media scrums and prepublication issues. A similar email was also sent to local hospitals."*

6.14 Mr McManus noted that during this difficult period members of PCC staff were in regular contact with police communicators. In addition, the PCC issued a private advisory notice on behalf of one individual who had become the subject of unwanted media attention and handled a number of formal complaints about published material. I note that the then Director of the PCC, Mr Abell, travelled on 9 July 2010 to Cumbria to meet with police communicators, local clergy and the editor of the Whitehaven News. The Whitehaven News subsequently published a letter from Mr Abell setting out the PCC's services, and encouraging people to make contact with the PCC if they wished to do so.

6.15 It is also clear that the PCC undertook a great deal of work in relation to events in Whitehaven. Mr McManus notes that:[123]

> *"The PCC stayed in touch with the police after the shootings, and also initiated contact with the local Coroner".*

It is right to record that the PCC provided some assistance to Professor John Ashton, chair of the West Cumbria Shootings Recovery Group, in drafting a letter to the media requesting restraint ahead of the formal start of Inquest hearings in 2011. The PCC also worked with the police and Coroner to identify those individuals who had decided not to speak to the media; the Commission circulated a desist request on their behalf, requesting that they not be contacted.

6.16 It is clear that the work of the PCC was wide-ranging. In May 2011, the PCC organised a public meeting in Carlisle to enable local communities to speak to its representatives. The panel also included the then editor of the News and Star (Carlisle), Neil Hodgkinson. Mr McManus has

[121] pp65-67, lines 2-2, Gillian Shearer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf
[122] Michael McManus' evidence is available on the Inquiry's website
[123] Michael McManus' evidence is available on the Inquiry's website

also told the Inquiry that following these events, the PCC has amended the guidance it offers to families in dealing with the media following a death.

6.17 This is not to say that there are still not concerns with the anti-harassment service that should not be elaborated. Although the PCC website provides clear advice on the services available to members of the public with regard to harassment by journalist and photographers, it also sets a number of steps that the affected parties should follow before contacting the PCC. In certain circumstances, these steps might prove to be unduly difficult or, indeed, impossible to fulfil. They depend both on the goodwill and cooperation of the journalists and press photographers involved, as well as on the substantive efforts of the affected party who, feasibly, might not be in a position to comply with the suggested steps.[124] The PCC website states:[125]

> *"There are a number of practical steps that you can take to avoid unwanted or repeated approaches:*
>
> *1. Get the name of the journalist and the newspaper or news agency for which they work. Tell them politely that you do not wish to speak to them and that they should not contact you again. Say that you understand that under the Code of Practice journalists must not persist in contacting you having been asked to desist. It will help if you tell them that you are saying the same to every journalist. This applies however a journalist is approaching you – whether it is at home, in a public place or over the telephone. You should then be left alone. If you are not, see point 5, below.*
>
> *2. If you are at home and too distressed to answer your door, pin a short note to it to say that you do not wish to speak to journalists and do not want to be disturbed.*
>
> *3. Similarly, if you are being telephoned repeatedly and do not wish to speak to journalists, alter your answerphone message to say that only personal callers should leave a message as you are not speaking to the media.*
>
> *4. Some people – particularly at times of grief or shock – find it helpful to ask a friend or neighbour who is not as closely associated with the story to deal with press enquiries. They can then answer your phone and door and either pass on a prepared statement (reflecting what is said in point 1) or turn down requests for interviews.*
>
> *5. If these measures fail and you feel that you are still being harassed, contact the PCC immediately."*

6.18 However, whilst the PCC guidance with regard to harassment is in most respects clear, there are significant caveats and exemptions to desist notices. In those cases where it has been impossible for the individuals concerned to establish the names of the journalists or newspapers in question, the PCC makes no claim to be able to take action. Even then, however, the website still encourages members of the public in such circumstances; it states thereafter that the PCC:[126]

> *"may then be able to communicate your concerns across the industry as a whole via a general "desist" message, which should alleviate the problem."*

In so doing, the website makes no claim to the certainty of success of any action on the part of the PCC in this regard.

[124] http://www.pcc.org.uk/news/index.html?article=Mzg2Mw
[125] http://www.pcc.org.uk/news/index.html?article=Mzg2Mw
[126] http://www.pcc.org.uk/news/index.html?article=Mzg2Mw

6.19 Lastly, it is also important to underline that the website states that, in those cases in which there is a perceived public interest, there is no obligation on the part of the press to heed a desist notice. The website does not, however, elucidate what any public interest might be, and does not provide the public and more specifically the users of the service with any degree of certainty or clarity on this important issue. Perhaps of more importance, it leaves those individuals and their families who may already be in some distress open to continued and unwarranted press attention.[127]

7. Complaints

7.1 I will now look how complaints are dealt with by the PCC, considering in turn the different aspects of that system: who might make a complaint; the circumstances in which an individual might complain; the limitations on the ability of a complainant to make a complaint; the informal resolution of complaints; and complaints deemed inadmissible.

7.2 Before doing so, there is value is in setting into context the complaints handling process operated by the Commission. First, it is worth noting that the level of complaints received by the PCC is neither disproportionate nor excessive; the number received by the Irish Press Ombudsman is broadly similar, when adjusted for population, as is the number received by Ofcom, in relation to content. The number of complaints rejected by the PCC is also comparable to the numbers rejected by Ofcom. The majority of complaints to other regulators, however, are rejected because the complainant has not followed due process and has used the regulator in question, rather than the regulated company, as the starting point for the complaint. In such cases, the complaint is referred back to the company in question. However, this option is not available to the PCC as very few UK newspapers have formal complaints processes beyond the discretion of the editor.

7.3 It is also important that the Inquiry provides a context to any discussion of the complaint-handling process with the detail of the volume of complaints considered by the PCC. The figures for 2010, reported by the PCC in 2011, are the most recent full figures available, and are broadly similar to those received up to 2010. In that year, the PCC received a little over 7,000 complaints. Of these 1,687 resulted in a ruling[128] and 44 in adjudications. Only two publications had more than one upheld adjudication against them.[129]

7.4 It is without doubt that the handling of complaints was the main and dominant part of the PCC's business, taking up most of the day to day function of the Secretariat. After salaries, administration and property costs, complaints handling accounted for the greatest part of the remaining budget. Exact figures have not been provided to the Inquiry, but it has been suggested by witnesses that the PCC budget was only just sufficient for its purposes and only just stretched to cover these costs, with no remainder for any other actual or proposed function. This raises serious questions about the ability of the model proposed by Lord Black to provide for an investigatory arm within the funding envelope suggested.

7.5 Evidence presented to the Inquiry by the PCC, and taken from the routine surveying of complainants, suggests that the level of satisfaction among complainants with the conduct

[127] http://www.pcc.org.uk/news/index.html?article=Mzg2Mw

[128] This number of complaints (7,000) 'includes multiple complaints (where more than one person complained about the same article), as well as those that did not fall within the Commission's remit or were not pursued after an initial contact' PCC Annual Review 2010
http://www.pcc.org.uk/review10/statistics-and-key-rulings/complaints-statistics/key-numbers.php

[129] 'PCC Statistics: a critical analysis by the Media Standards Trust', p16 http://mediastandardstrust.org/wp-content/uploads/downloads/2012/02/PCC-Statistics.pdf

of complaints handling by the PCC is genuinely high.[130] Lord Hunt said in evidence that that the satisfaction rate among complainants to the PCC was very high. He suggested that 80% of complainants were satisfied at the outcome of their complaint. However, this figure has been called into question by other evidence submitted to the Inquiry. It has been suggested that such a figure can only be reached if all complaints are understood to have been resolved in a manner satisfactory to the complainant.

7.6 Certainly, witnesses to the Inquiry have recognised that the secretariat and, in particular, the complaints handling staff at the PCC make considerable effort to be courteous and helpful. The MediaWise Trust, an independent press watchdog that monitors the behaviour of the press, has noted that in the surveys of complainants that they have undertaken, respondents score the staff highly against these criteria.[131] Complainants also appreciate the speed with which PCC staff deal with issues raised by complainants in the course of the complaints.[132]

7.7 PCC witnesses to the Inquiry have certainly drawn attention to the apparent satisfaction at the speed of the complaint-handling process and the value placed on this by complainants. Sir Christopher Meyer gave evidence that, in most cases, resolutions were reached within a month of the complaint first being lodged.[133] Given that most editors dislike the personal criticism inherent in any upheld adjudication, it is unsurprising that they will work hard to reach a resolution to the satisfaction of the complainant.

7.8 The PCC website makes clear that the Commission will deal with complaints as expeditiously as it is able. The website points to an average turnaround for the resolution of complaints of 34.8 days.[134] However, in evidence presented to the Inquiry, the Media Standards Trust has suggested that this figure is misleading as it takes account of complaints which do not fall into the jurisdiction of the PCC and are therefore rejected. The Media Standards Trust notes that, although such complaints are passed on to the relevant body or organisation, they are regarded by the PCC as 'resolved'. The Media Standards Trust suggests that the inclusion of such cases therefore serves to distort both rates of satisfaction, as well as the record of the time taken to resolve a complaint. The Media Standards Trust deduced from available PCC data that the actual figure of turnaround was an average of 106 working days, three times greater than the PCC figure.[135] That said, there are limits to the analysis of any of the PCC data, as the Commission publishes information which omits the date on which a complaint is received.

Who can complain

7.9 The website states that the PCC is an independent body, which has been set up to examine complaints about the editorial content of UK newspapers and magazines (and their websites).[136] It makes clear that the PCC exists to help complainants and that its services are

[130] p230, para 345, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[131] Jempson, M, *Satisfaction Guaranteed: Press Complaints System Under Scrutiny*, (MediaWise Trust. Bristol, 2004), p18
[132] *ibid*
[133] p17, Sir Christopher Meyer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf
[134] http://www.pcc.org.uk/about/index.html
[135] pp26-27, lines 23-14, Martin Moore, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[136] http://www.pcc.org.uk/complaints/makingacomplaint.html

free. The PCC website explains that the Commission will deal with all editorially-controlled material in UK newspapers and magazines (and their websites). Examples are provided:[137]

- Articles and pictures;
- Words and pictures (including video) on newspaper and magazine websites;
- Audio material on newspaper and magazine websites;
- Readers' letters; and,
- Edited or moderated reader comments on newspaper and magazine websites.

7.10 The website also explains that the PCC will also consider complaints brought in relation to the behaviour of journalists. Again, examples are provided. These are:[138]

- Persistent pursuit of individuals
- Refusing requests to stop taking photos or asking questions
- Using hidden cameras to obtain material
- Failing to be sensitive when dealing with cases involving grief and shock
- Failing to obtain the proper consent before speaking to children or people in hospital.

The website further explains that Complaints have to be judged against the terms of Editors' Code of Practice.

7.11 Most importantly, the website makes clear that the PCC will only *"normally accept complaints only from those who are directly affected by the matters about which they are complaining."*[139] It explains that individuals who meet that criterion are able to make complaints to the PCC and may raise complaints through the Commission against any newspaper, magazine or publication which subscribed to PressBoF.[140] The website also explains the limited circumstances in which third parties are able to make complaints. Such complaints will be considered by the Commission only in those circumstances where the third party has signed authorisation to act on behalf of the individual concerned.[141]

7.12 Lord Hunt has said that there is "misunderstanding" around the PCC's policy on complaints from third parties: they have always been able to bring complaints in relation to accuracy. However, it is clear from Chapter 1 above that, as a matter of history, it has proved difficult to bring third party complaints. Further, the evidence received from the PCC in this regard might be said to contradict this account. Thus, Mr Abell explained that it was not the policy of the PCC to take account of complaints from third parties.[142] This evidence chimes with that received from a number of groups who drew attention to the difficulties they have encountered in the face of this policy.

[137] http://www.pcc.org.uk/complaints/makingacomplaint.html
[138] http://www.pcc.org.uk/complaints/makingacomplaint.html
[139] http://www.pcc.org.uk/complaints/makingacomplaint.html
[140] http://www.pcc.org.uk/AboutthePCC/WhatisthePCC.html
[141] http://www.pcc.org.uk/complaints/makingacomplaint.html
[142] p90, para 208, Stephen Abell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf

7.13 However, the policy of the PCC has not been entirely inflexible, in particular in the fairly limited number of cases where a single article has given rise to a very large number of complaints. In some instances, complaints received from third parties may cause the PCC to contact the subject named in the article in question, or someone directly affected by that article, to consider whether they would take forward a complaint.[143]

7.14 In this regard the case of Stephen Gately is instructive. An article published by the Mail on Sunday about the singer's death, written by columnist Jan Moir in 2009, prompted a record number of complaints from members of the public to the PCC.[144] In response, the PCC contacted Mr Gately's partner and asked if he would consider submitting a complaint.[145] In the event, the PCC did not uphold the complaint, although it considered that the article had come close to breaching the Editors' Code of Practice.

Time limits and delay

7.15 The PCC website clearly sets out a timetable for members of the public seeking to bring a complaint against a newspaper.[146] Thus, in most circumstances, the PCC will not accept complaints made more than two months after the date of publication (or over two months after the end of direct correspondence between a given complainant and an editor, provided that correspondence was entered into straight away).[147] The same section of the website also explains that complainants can formally submit a complaint to the PCC if the newspaper in question has failed to respond to the complaint within one week of the receipt of that complaint, but goes on to say that if the article in question remains available on the publication's website, this time limitation does not usually apply. Beyond the strict timeframe set down by the PCC for the initial submission of the complaint, however, the times for each subsequent element of the complaints-handling process are not specified and no guidance is provided as to the likely duration of that process. Rather it suggests only that the steps involved in reaching the stage of an adjudication are less formal and are likely to be determined on a case by case basis.[148]

7.16 There are a range of resolutions that may be offered by titles. However, the PCC has no powers to stipulate the form of resolution that might be offered by the newspaper in question. Resolution can take the form of published apologies, the correction of the content in question in a future edition, the removal of the offending article from the title's archives or online editions, or private letters of apology. In a limited number of circumstances, resolution might also include *ex-gratia* payments or donations to charities or other organisations.

7.17 Some witnesses to the Inquiry have complained about what they regarded as an unnecessary slow process that was prone to delay. Some have said that lengthy periods between correspondence and delay were not uncommon. According to an analysis undertaken by the Inquiry of complaints to the PCC between January 2009 and May 2012, declared to have been resolved during that period, the time taken to resolve a case can vary significantly. In the fastest example, the resolution of a complaint took one month; in the slowest case

[143] p90, para 211, *ibid*
[144] http://www.pcc.org.uk/cases/adjudicated.html?article=NjIyOA
[145] p90, para 212, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf
[146] http://www.pcc.org.uk/complaints/makingacomplaint.html
[147] http://www.pcc.org.uk/complaints/makingacomplaint.html
[148] http://www.pcc.org.uk/complaints/makingacomplaint.html

the process appeared to have lasted for three years.[149] The value of an apology or other resolution after such a period of delay is questionable.

7.18 Will Moy of Full Fact stated that whilst some complaints resulted in a prompt response from the newspaper in question, sometimes within a day of two, in other cases the process of reply was much slower, taking as many as 21 days.[150] In a limited number of circumstances no reply had been received from the newspaper.[151] In its evidence, Full Fact provided details of a number of complaints, including one about an article published in the Evening Standard, where that newspaper did not respond until two months after the initial submission to the PCC.[152] Similar experiences have been documented in the evidence provided by ENGAGE.[153]

7.19 The majority of complaints submitted to the PCC and ruled admissible are settled through a process of informal mediation between the complainant and the title in question. Only a very small number of complaints are not resolved in this manner, and those which fall into this category go forward for adjudication by the PCC. Complainants have a period of one month to appeal in writing to the Independent Reviewer should they wish to contest the PCC's decision (although, as already identified, the Independent Reviewer will only look at the way that the PCC handled the complaint and not its merits).[154] The PCC website provides details of a total of 5,241 complaints that have been the subject of PCC rulings since 1996.[155] It lists 257 such complaints in 2012, (as set out in Table D2.2) of which 96.1% were informally resolved, 1.6% were upheld at adjudication and similar a proportion were not upheld.[156] In 0.8% of cases the PCC found that the newspaper question had taken sufficient remedial action to declare the complaint resolved.

Table D2.2: Complaints to the PCC: 2009-2012

Year	Total Number of complaints	Resolved	Adjudicated Complaints		
			Upheld	Against	Sufficient remedy offered
	No.	%	%	%	%
2012	257	96.1	1.6	1.6	0.8
2011	588	93.5	3.2	1.4	1.9
2010	499	91.4	4.0	4.0	0.6
2009	400	86.5	7.0	5.0	1.5
Total	**1744**	**91.7**	**4.1**	**3.0**	**1.3**

7.20 Data for 2011, 2010 and 2009 suggests a similarly high proportion of complaints were resolved through informal mediation processes (93.4%, 91.5% and 86.5% respectively), with only a correspondingly small percentage of case taken forward to formal adjudication. These figures

[149] This data is however limited in its accuracy and use, as the date of the complainant's complaint is not included in the data published by the Commission
[150] p39, lines 7-15, Will Moy, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf
[151] p8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf.
[152] pp79-81, *ibid*
[153] p6, lines 1-20, Inayat Bunglawala, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf
[154] http://www.pcc.org.uk/complaints/makingacomplaint.html
[155] as of the end of May 2012
[156] p49, lines 1-20, Stephen Abell http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-30-January-2012.pdf (This suggests a complainant success rate of 60%)

show a trend towards the informal resolution of an ever larger number of cases, although this is from an already high base. Unfortunately, these figures do not relate to figures published in relation to complaints in the PCC Annual Reviews for 2009, 2010, and 2011.[157] Those Reviews refer to complaints received in a given year, and break down the details into somewhat different categories.

7.21 It has been suggested by the PCC that the very large number of cases resolved informally, and through no process of adjudication by the PCC or the sustained intervention of the PCC through mediation, represented a *'substantial and hidden success of self-regulation'*.[158] Others have claimed that the odds are heavily stacked against the complainant, and that the PCC does not always appear to be neutral. But Mr Abell suggested that the position of the complaints handler was one of neutrality:[159]

> *"So I don't think it's a neutral act by complaints people. I think their job is to grip the issues and to try and bring them to a conclusion, and that will invariably be by assisting the complainant."*

7.22 In particular, Mr Abell suggested that there was no validity in the assertion that the PCC's preferred outcome of a mediated resolution was in the better interest of editors and newspapers rather than the complainant.[160] Sir Christopher Meyer also rejected the characterisation of the complaints-handling process as attritional, in which intense pressures were placed on the complainant to resolve issues through mediation rather than pursuing a decision through the PCC and that the effort in reaching that resolution wass made disproportionately by the complainant.[161]

[157] http://www.pcc.org.uk/complaints/makingacomplaint.html
[158] p12, lines 13-23, Lord Black, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf
[159] p49, lines 18-20, Stephen Abell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-30-January-2012.pdf
[160] pp54-55, lines 19 -20, Stephen Abell, *ibid*
[161] pp16-17, Sir Christopher Meyer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-31-January-2012.pdf

PART E

CROSSING LEGAL BOUNDARIES: THE CRIMINAL AND CIVIL LAW

CHAPTER 1
THE LEGAL FRAMEWORK

1.1 An Inquiry into the culture, practices and ethics of the press might not be thought to engage or require detailed consideration of the law but, as many witnesses have correctly identified, the starting point from which any assessment of the way in which the press goes about its business must be the general framework of the law. In that regard, there have been criticisms that the press is already far too over-regulated with particular reference to the complications of the ever-changing criminal and regulatory law, itself requiring training for journalists, as well as the equally ever-developing civil law. In this second category falls not only the jurisprudence in this country (in respect of which particular criticism has been made of the law of defamation) but also the effect of the Human Rights Act 1998, which gave further effect in domestic law to the rights and freedoms guaranteed under the European Convention on Human Rights and Fundamental Freedoms 1950 (Cmd. 8969) (ECHR). That has led to litigation involving the press that has not infrequently been taken through the UK courts and has then been the subject of further argument before the European Court of Human Rights.

1.2 The purpose of this Inquiry is not to analyse the law in any depth but, in order to provide a wider picture to anyone interested in the issues affecting the press, it is necessary to provide some background in relation to the criminal law, the civil law and the regulatory framework provided by the Data Protection Act 1998. Where the law touches upon specific issues which fall within the Terms of Reference, a degree of analysis will follow in the text. Otherwise, a general outline has been provided in Appendices to the Report. Nobody should rely on the Appendices as a complete review of the nuances of the law: there are text books for that purpose. It is intended only to identify the broad landscape.

1.3 The criminal law can touch upon the work of journalists in many ways and inevitably prescribes the ways in which it is acceptable for stories to be obtained. A brief summary of aspects of the criminal law most likely to be engaged in the pursuit of journalism is at Appendix 4 but it is neither complete in detail nor is it comprehensive. By way of example, aspects of the behaviour of Neville Thurlbeck as he pursued a follow up to his scoop relating to Max Mosley were described by Mr Justice Eady in the ensuing civil litigation as containing "*a clear threat to the women involved that unless they cooperated … (albeit in exchange for some money)*" making the point that it was *"elementary that blackmail can be committed by the threat to do something which would not, in itself, be unlawful."*[1] Blackmail is not, however, a crime that is covered in this Appendix. There is no doubt room for other potential offences to be engaged in the unprincipled pursuit of a story.

1.4 In addition to the substantive criminal law, it is also necessary to consider aspects of criminal procedure which recognise the important place that journalism plays in our society and accords to journalists special protection in relation to journalistic material. The restrictions and limitations on the powers of the police to search for or seize such material add to the privileges that society gives to those involved in this work: they are summarised in Appendix 4.

1.5 The same is so for the civil law. Developments have undeniably broadened the focus in defamation beyond meaning, justification and fair comment. In addition, new concerns surround the concept of privacy. This has developed with the increasing recognition of the significance of Article 8 of the ECHR which, subject to exceptions, provides for everyone the right to respect for his private and family life, his home and his correspondence. Running

[1] *Mosley v. News Group Newspapers Ltd* [2008] EWHC QB 1777 paras 82 and 87

parallel to Article 8, however, is Article 10 which, similarly subject to exceptions, provides that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. A brief summary of the most important aspects of the civil law insofar as it affects journalism or journalists is set out at Appendix 4. Again, it is not intended to be exhaustive.

1.6 A separate analysis has been completed in relation to the law of data protection (see Appendix 4). That is because it has criminal, civil and regulatory aspects and stands outside the areas of law so far outlined with the Information Commissioner being accorded, by statute, powers and responsibilities which go beyond the power to prosecute, or to commence civil proceedings. Given that the Terms of Reference specifically cover *"the extent to which the current policy and regulatory framework has failed including in relation to data protection"* the remit of the Information Commissioner will require detailed analysis beyond the brief synopsis of the legislative framework.[2]

1.7 Against the background of this framework, this Part of the Report will focus chronologically on the criminal investigations that have been undertaken both in relation to data protection and interception of mobile telephones, the outcome of those investigations and the reaction not only at the time but as further material entered the public domain. In particular, the milestones that led to this Inquiry include:

(a) the publicity accorded to the investigations by the Information Commissioner through reports to Parliament and discussions with the PCC;

(b) the outcome of each of the criminal prosecutions and, in particular in relation to Operation Caryatid, the police strategy adopted thereafter;

(c) the reaction of the press (and, in particular, the News of the World) to the prosecutions along with the response of the PCC;

(d) the impact of civil litigation;

(e) the investigations undertaken by the Guardian and, subsequently, the New York Times along with the reactions of the police and Parliament to each of the articles;

(f) the further civil litigation and the proceedings for judicial review of the strategy adopted by the police following the successful prosecutions of Clive Goodman and Glenn Mulcaire;

(g) the re-opening of the criminal investigation and the reactions thereafter of News International, the PCC and Parliament.

1.8 The purpose of this Part of the Report is to provide what is a vital narrative to the background against which the criticisms of the culture, practices and ethics of the press (or part of the press) can be considered. It starts with the police operations that led to Operation Motorman, which was an investigation that fell to the Information Commissioner. The narrative then passes to Operation Caryatid, the police investigation of interception of voicemail messages (phone hacking) and its consequences, which continue to be felt today.

[2] Part H

CHAPTER 2
POLICE INVESTIGATIONS START

1. Operation Reproof

1.1 In 2001, the Devon and Cornwall Police were investigating an allegation of blackmail in Plymouth which sprang from the fact that a member of the public had obtained details of the criminal convictions of someone else. Not surprisingly, the police were concerned to discover how those details had been obtained and, in the course of the investigation, evidence was uncovered that an officer serving with the same force had accessed the Police National Computer (PNC) record of the victim. It was suspected that he had passed the information to individuals working as private investigators, and that the information had ultimately reached the hands of the suspect.

1.2 In December 2001, therefore, a series of searches of various premises, which supported that concern, were carried out. Material was seized which indicated that police officers and support staff from the force had been obtaining details of criminal convictions and information about the keepers of identified vehicles which were stored on police computer systems and then passing that information to private investigators, who would in turn pass it onto their customers. The private investigators were, in the main, retired police officers.

1.3 Thus, in January 2002, Operation Reproof was initiated. The Senior Investigating Officer for that investigation has now retired: his deputy, now Detective Chief Superintendent Middleton (then holding the rank of Detective Inspector) gave evidence to the Inquiry.[1] The purpose of the operation, initially, was to scope the material that had been seized during the blackmail investigation, with the following terms of reference:

(a) to investigate the alleged offences and conduct interviews of the individuals identified as being in "jeopardy";

(b) to establish links with other agencies to identify individuals who had unlawfully revealed confidential information, and to preserve evidence in support of suspected offences and to interview those individuals; and

(c) to report to the Crown Prosecution Service and the Police Complaints Authority.

1.4 Through an analysis of a "*huge amount of evidence*" the police discovered a network of companies and individuals throughout the UK, acting as investigators, who were sourcing information on demand, either directly from a person serving with the police or through a third party.[2] In particular, the police found that a small number of police officers who had retired from the Devon and Cornwall Police had set themselves up as private investigators for the commercial market and were obtaining information from former colleagues who were still working within the police service or other agencies, such as the Department for Work and Pensions. The information was then passed through a network of individuals before it reached the ultimate customer. In most cases that ultimate customer was three or four links up the chain.

[1] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-T-ACC-Russell-Middleton.pdf
[2] p76, line 1, DCI Middleton, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf

1.5 The police sought to identify all the links in the chain and ascertain who in the chain knew that the information had been obtained unlawfully. The customers were found to be requesting either specific pieces of information or packages, which could include a person's criminal background, their financial situation, medical history, telephone records and current whereabouts. The customers ranged from individuals involved in matrimonial disputes to large financial institutions including insurance companies and debt recovery agents. The police found no evidence that the companies were aware that the information was being obtained illegally.

1.6 The investigation also showed that serving and retired officers from other police forces were involved in similar illegal activities, and had links with the suspects in Devon and Cornwall. The relevant forces were contacted, including the Metropolitan Police Service (MPS) and the police forces of Dorset, Northumbria, Surrey and Essex.

1.7 The investigation led the police to a 'data gathering' company based in Surrey called Data Research Ltd. Data Research featured heavily as the third link in the chain. As it happened, at the same time, the Information Commissioner was conducting an investigation into the same company. On 8 March 2003, the police executed a search warrant at the company's offices during the course of which a significant amount of information was found which indicated that data had been obtained unlawfully from the DVLA. This information formed the basis of Operation Motorman, an investigation then also conducted by the Information Commissioner (ICO) which has formed an important part of the narrative to the Inquiry. From this investigation, the ICO passed material to the MPS, which gave rise to Operation Glade. For convenience, having dealt with Operation Reproof, the narrative will pass on to Operation Glade and then to Operation Motorman.

1.8 DCS Middleton explained that the CPS and the Police Complaints Authority advised the police to focus the investigation on (i) individuals who were either systematically providing or receiving information unlawfully from databases, and (ii) the customers who knew or ought to have known that the information had been obtained unlawfully. The upshot was that two serving police officers, two retired police officers and two individuals associated with Data Research Ltd were charged with misconduct in public office offences and Data Protection Act offences.

1.9 On 17 October 2005 a pre-trial hearing took place at Exeter Crown Court before the trial judge, His Honour Judge Darlow. The defence argued that the proceedings should be stayed for an abuse of process. Although not directly relevant to this abuse of process submission, the defence also contended that accessing the databases and the subsequent passing of information obtained to insurance companies was "*not that serious*" and that unlawfully accessing the PNC could not amount to the criminal offence of misconduct in public office.[3] The prosecution argued that the unlawful disclosure of the information was serious, irrespective of the use to which the data was intended to be put.

1.10 On 19 October 2005 the judge gave judgment on the issues raised. He roundly rejected the defence submission that the proceedings should be stayed for an abuse of process. However, he also expressed the provisional view, not central to his principal conclusion in relation to the application of which he was formally seized, that the act of a police officer accessing the PNC and providing the information to a former colleague might not in the circumstances of this particular case amount to misconduct in public office, and in any event the matter was not terribly serious.

[3] p13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-T-ACC-Russell-Middleton.pdf

1.11 In any event, following the judge's comments, a number of case conferences took place with the CPS and prosecution counsel. With the judge's comments in mind it was decided not to proceed on the basis that it would not be in the public interest given the potential costs that would be incurred. In short, DCS Middleton confirmed in evidence that a fair summary of the position was that the judge caused the CPS to ask itself, *"do we want to spend all this time on a trial if the judge is of the view either (a) that the facts may not make out an offence, or (b) that if they did, it is not a terribly serious matter."*[4] I do not comment on the judge's expression of opinion (also reflected in the sentences which had been passed in relation to Operation Glade discussed below). I do, however, add that whatever might have been the position considered by the judge and, in consequence, by the CPS in 2005 should not be assumed to represent a current assessment of whether conduct of that type constitutes misconduct in public office or the gravity of such conduct.

1.12 In evidence, DCS Middleton was asked why journalists were not within the scope of Operation Reproof. He answered:[5]

> *"I think I need to make clear that they weren't out of scope. The whole inquiry right from the outset was extremely open, an open-minded approach as to what we would discover. The initial information, as we said, linked pretty much specifically to a local investigation, detective private investigation agency in Devon and the flow of information was from the police officer and the other staff I've mentioned through to that private investigator, up one or two more chains, and we were tracking customers each and every occasion, open-minded as to who those customers would be, and we never found any direct evidence or indirect evidence linking that information being requested by or for any part of the media or journalists."*

1.13 In his witness statement, DCS Middleton said that:[6]

> *"There was no direct evidence found during the course of the investigation that any media organisation was in any way involved in the obtaining of illicit information being investigated…"*

1.14 In evidence he was asked whether there was any indirect or inferential evidence that a media organisation was involved. DCS Middleton responded:[7]

> *"As I've said right from the outset, the mindset of myself as the senior investigating officer and my team, who were thoroughly professional throughout, was we were open-minded as to what we would find and we would have dealt with that and pursued that based on information or evidence that we had. We deal with information, intelligence and evidence. The CPS were working alongside us, as were the Police Complaints Authority. We did not have anything that directly or indirectly linked to journalists. Had we done so, we'd have thoroughly investigated that."*

2. Operation Glade

2.1 Operation Glade is an example of a police investigation which, on the face of it, may be thought to demonstrate partiality or favour to journalists which, it is argued, has been rendered

[4] p86, lines 1-9, Lord Justice Leveson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf
[5] pp77-78, lines 15-3, DCI Middleton, *ibid*
[6] p9, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-T-ACC-Russell-Middleton.pdf
[7] pp79-80, lines 24-9, DCI Middleton, *ibid*,

more credible in the light of the evidence that has emerged about the relationship between the press and the MPS generally or with certain senior officers in particular. Although self contained, therefore, it is important to deal with the possible perception.

2.2 Operation Motorman[8] was commenced because an audit by Devon and Cornwall Police had identified that Paul Marshall, a civilian member of the police staff at Tooting police station, had been accessing the PNC and obtaining information for Steve Whittamore, a private investigator. A search warrant (executed with the Information Commissioner's investigators present) at the latter's premises demonstrated that he was involved in obtaining details of an individual's criminal history by way of a check through the Criminal Records Office (CRO) or details of his or her address by way of a check on the registered keeper of a vehicle. A large number of such checks were on behalf of the national press, where the information subsequently appeared. As we have seen above, Devon and Cornwall Police had also searched the premises of the data gathering company, Data Research Ltd; this was the corporate *alter ego* of Mr John Boyall. Evidence was obtained that indicated he was involved in the same types of activity as Mr Whittamore.

2.3 The evidence relating to Data Research Ltd was referred to the MPS, which first carried out a scoping exercise in order to decide whether the matter should formally be investigated. The investigation (Operation Glade), began in August 2003 with Detective Chief Inspector Mick Allen appointed as the Senior Investigating Officer and DCI Brendan Gilmour (then Detective Inspector Gilmour) as the Investigating Officer.

2.4 During the course of his evidence DCI Gilmour recognised that, when scoping the investigation, he and his colleagues were alive to the sensitivity of investigating journalists but said that he could not recall specific discussions about the issue. He expressly disavowed that the investigators were in fear of the press: [9]

> *"Well, considering the work that we were doing, investigating corrupt police employees, police officers and members of civilian staff, investigating journalists didn't present any fear. There wasn't any fear involved at all. But we did recognise the significance of what we were doing and the attention that that would attract and that would obviously shape how we approached that, but it certainly wouldn't have stopped us doing it and there was no trepidation around it."*

2.5 He also denied fearing a backlash from the press.[10]

2.6 DCI Gilmour was asked whether the resource implications of taking on journalists and powerful newspapers, who would have access to sophisticated legal advice, were a factor in their decision-making. His response was that such considerations would not have stopped the investigating team from doing what it needed to do.[11]

2.7 The terms of reference of Operation Glade were ultimately set down as follows: [12]

> *"To investigate (covertly) at this time the allegations against Marshall in order to prove or disprove his involvement in the offences alleged. The parameter of the investigation at this time will include Marshall himself, John Boyall and possibly*

[8] Discussed at length in Part E, Chapter 3
[9] p48, lines 6-15, DCI Gilmour, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf
[10] p58, lines 17-24, DCI Gilmour, *ibid*
[11] p48, lines 16-21, DCI Gilmour, *ibid*
[12] p52, lines 4-18, DCI Gilmour, *ibid*

Stephen Whittamore. There appears to be clear evidence that Marshall is conducting illegal PNC or CRO checks on behalf of John Boyall at the request of a number of reporters. The aim of the investigation will be to gather evidence of Marshall, Boyall and Whittamore's involvement in the misuse of the PNC or CRO systems with a view to prosecuting them for any offences disclosed or to prevent further misuse. Early consultation will take place with the CPS regarding appropriate charges should sufficient evidence be obtained."

2.8 It is noteworthy that the terms of reference did not expressly encompass investigating the journalists who had received the information. In the event, however, it became clear that DCI Gilmour did not consider that this limited the extent of the investigation or prevented the investigators from turning their attention to those journalists at the appropriate time.

2.9 Through analysis of telephone data relating to Mr Marshall, the Operation Glade investigators established that a retired police sergeant, Alan King, had been acting as the conduit between Mr Marshall on the one hand and Mr Boyall and Mr Whittamore on the other. There was no evidence that any other police personnel were involved. On 10 November 2003, Mr King was arrested.

2.10 Meanwhile, from the very detailed ledgers of Mr Whittamore's business, the investigators found invoices to journalists setting out what information was sought and his fee for obtaining that information. Contrary to the approach adopted in relation to Mr King, on or around 16 January 2004 DCI Gilmour decided to interview the journalists identified in the ledgers under caution (and therefore as suspects) but also decided, as an operational matter, not to arrest them, but to invite them to attend voluntarily for interview.

2.11 The difference in approach was explained on the basis that DCI Gilmour was confident that the attendance of the journalists could be secured voluntarily, whereas the same was not so in relation to Mr King. He said:[13]

"The default isn't always to arrest in the first instance. My consideration then were what is it that I was hoping to achieve and what I wanted to achieve was to interview the journalists under caution. I, through the legal departments of the various newspapers, was able to access and secure the attendance of the journalists, and that was relatively straightforward, I think, without any complication. Whereas King, I didn't have that access to King and it was necessary…to secure his attendance at the police station for investigation interview by arresting him…for every suspect, it's a consideration as to whether or not they need to be arrested in order to achieve what it is you want to achieve."

2.12 He also explained it was not necessary to arrest the journalists because, given the evidence in the ledgers that the journalists had requested the information, there was no need to carry out searches of the journalists' premises (arrest carries with it certain powers of search under the Police and Criminal Evidence Act 1984).[14] It is not without interest that this approach was not adopted in relation to Clive Goodman during the course of Operation Caryatid and neither is it necessarily accurate: in any case which is dependent on circumstantial evidence, whatever documentary evidence can be found is always likely to add weight (or detract) from the strength of the case. Having said that, however, the legitimacy of different approaches by different officers must be accepted and there is no evidence or basis for suggesting an ulterior motive.

[13] p52, lines 4-18, DCI Gilmour, *ibid*
[14] p63, lines 3-13, DCI Gilmour, *ibid*

2.13 Between 19 January 2004 and 31 January 2004, the police interviewed seven journalists under caution. As anticipated each attended voluntarily and was legally represented. All the journalists admitted that they had used Mr Whittamore to obtain information but each denied knowing that the information was being obtained unlawfully. DCI Gilmour said that a number of the journalists gave the account that they believed that the information was coming from the courts and that "CRO" stood for "Court Record Office". DCI Gilmour made it clear that it was put to them in interview that they must have known that Mr Whittamore was not obtaining the information from a court office because of the speed of turnaround of the requests, sometimes a matter of hours. However, each adhered to the line and claimed that he would not have used Mr Whittamore or any agency had it been known that the information was being obtained unlawfully. DCI Gilmour said that it was specifically put to them that, by their very nature, details of convictions must have been obtained unlawfully. The journalists simply pleaded ignorance.

2.14 The police sought the advice of the CPS as to the likelihood of successfully prosecuting all the suspects, including the journalists, and as to the appropriate charges.

2.15 The CPS advised that Messrs Marshall, King, Boyall and Whittamore should be charged with conspiracy to commit misconduct in public office. As regards the journalists, the CPS advised that there was insufficient evidence to charge anyone because it was unlikely to be proved that there was the requisite degree of knowledge that the information was being unlawfully obtained. DCI Gilmour explained his disappointment at the view of the CPS that they could not prove the necessary guilty knowledge.[15] The Inquiry has not investigated the reasons for this conclusion (which some may argue appears overcautious): the relationship between the CPS and the press has not been the subject of investigation. What can be said with certainty, however, is that this material does not provide any evidence that the failure to prosecute any of the journalists was influenced or motivated by any fear of the press on the part of the police, or by any improperly close relationship.[16]

2.16 Messrs Marshall and King pleaded guilty to the conspiracy charges. A count of obtaining personal information contrary to s55(1)(a) of the Data Protection Act 1998 was later added to the indictment against Messrs Boyall and Whittamore. They pleaded guilty to that offence and the conspiracy charge was left to lie on the file.

2.17 In April 2005 all four defendants were given conditional discharges and further details, including the judge's sentencing remarks, are in Chapter 3 below. DCI Gilmour made it clear that these sentences were a disappointment for the police. In May 2005, the CPS sought counsel's advice as to the merits of a reference under s36 of the Criminal Justice Act 1998 to the Court of Appeal to challenge the sentences on the ground that they were unduly lenient. DCI Gilmour explained that for a number of legal reasons, on which he was not able to elaborate, counsel advised against this course of action. The comment made in paragraph 1.11 above about current perceptions of the gravity of this type of conduct is repeated.

[15] p69, lines 1-2, DCI Gilmour, *ibid*

[16] For my part, it seems remarkable that notwithstanding all that has been written about criminal records over the years, the journalists all misunderstood the meaning of the acronym "CRO" or believed that a search of court records could have been accomplished within the time of the response. That said, I am not suggesting that the advice of the CPS, on which the police were bound to act, was based on anything other than an objective and independent minded assessment of the strength of the evidence. The Inquiry has gone no further than this summary identifies; its value is simply as part of the history of attempts to use the criminal law in this area.

CHAPTER 3
OPERATION MOTORMAN

1. Introduction

1.1 The information arising from Operation Reproof caused the Office of the Information Commissioner (ICO) to focus attention on Steve Whittamore. As a result, on 8 March 2003, a team of investigators led by Alexander Owens from the ICO, and alongside police officers from Operation Reproof, searched the premises of the private detective agency run by Mr Whittamore. They seized a significant volume of documentation detailing an extensive trade in personal information. Mr Owens and his team then undertook a comprehensive analysis of the seized material and observed a clear audit trail between the requests, supply and payment for personal information relating to a range of subjects. The customers requesting and being supplied with personal information included a significant number of journalists, employed by a range of newspaper and magazine titles.

1.2 Ultimately, the implications of this material were of sufficient significance that the ICO was prompted to lay before Parliament two reports setting out a summary of the evidence obtained as part of the investigation: *What Price Privacy?* and *What Price Privacy Now?* The reports also called for stricter penalties for those engaged in unlawful activities, in particular for breach of s55 of the Data Protection Act 1998 (DPA). This provision makes it an offence to obtain, disclose or procure the disclosure of confidential personal information, knowingly or recklessly, without the consent of the organisation holding the data.[1] This chapter explores the essential narrative surrounding this investigation and the evidence obtained during Operation Motorman.

2. The genesis of Operation Motorman

2.1 On 11 November 2002, during the course of the search of the premises of Data Research Ltd, as part of Operation Reproof, Mr Owens observed documents containing lists of Vehicle Registration Marks (VRMs) that appeared to have been checked for vehicle owners' personal details.[2] The documents recorded the owners' details alongside the VRMs and also contained times and dates when the searches had been carried out. Mr Owens contacted the Driver and Vehicle Licensing Agency (DVLA) with a number of the listed VRMs and the DVLA confirmed that all the numbers has been searched through the DVLA records by the same employee. Mr Owens also confirmed that the times and dates recorded on the seized documents corresponded with the times and dates when the DVLA records had been checked.[3] In the light of these facts, Mr Owens formed the view that a source within DVLA had been supplying information on request to the detective agency.[4] Further examination of the documents seized revealed that several hundreds of VRMs had been checked by the detective agency, and the results sold on to a number of companies and individuals.[5]

[1] Appendix 4 sets out a detailed analysis of section 55
[2] Operation Reproof is considered in detail at Part E, Chapter 2
[3] p16, lines 12-18, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf
[4] p3, para 3.3, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alexander-Owens1.pdf
[5] p4, para 3.5, *ibid*

2.2 These discoveries led to two investigations. The ICO commenced Operation Motorman to investigate data protection offences and, in particular, to identify the customers of the agency who had commissioned the supply of information and the reasons why personal information of this nature had been sought.[6] Thereafter, the Metropolitan Police Service (MPS) commenced Operation Glade to identify potential corruption by police officers or civilian police employees.[7]

2.3 On closer examination of the documents seized from the premises of Data Research, Mr Owens observed that one of the VRM checks had been made against a "*protected number*". Having previously served as a Special Branch police officer, Mr Owens appreciated that a protected number was likely to signify a vehicle owned by a sensitive individual or an undercover police vehicle. This was confirmed by the MPS and Mr Owens identified Mr Whittamore and his company, JJ Services, as having sought the information in relation to this vehicle. As a result of this, Mr Owens explained, "*Stephen Whittamore immediately went to number 1 on [his] investigation list to be visited and interviewed.*"[8] The ICO identified Mr Whittamore as a private detective running a business from his home address and, as has been explained above, on Saturday 8 March 2003, five ICO investigators searched Mr Whittamore's premises pursuant to a search warrant issued under Schedule 9 of the DPA.[9]

3. The search

3.1 A significant volume of documentation was seized during the search of Mr Whittamore's premises. This included reports, workbooks, ledgers, invoices and in particular four hardback coloured notebooks which have become known as the "Blue book", "Red book, "Green book" and "Yellow book". These notebooks represented all the work that Mr Whittamore had done, and set out precise dealings between Mr Whittamore and his customers, including a number of journalists. The workbooks documented who had requested the personal information (both in terms of the newspaper concerned and the commissioning journalist), what information had been requested and supplied, how much had been charged for obtaining the information and how much was paid to associates who assisted in the supply of the information.[10] Invoices and remittance advices demonstrated the payments made by newspaper groups and how much money had been paid for each transaction.[11] As Mr Owens explained in his evidence, he was able to demonstrate a paper trail from identified journalists working for named newspaper groups, requesting information be obtained, through to the subsequent activities of the private investigators using sources or blaggers to obtain the information.[12]

3.2 Mr Owens, assisted by ICO Investigator Roy Pollitt, created a photo image of each of the documents and pages of the notebooks, and sent the documents to a forensic computer specialist to input the information into an electronic database, thus converting the contents of Mr Whittamore's notebooks, invoices, remittance advices into an electronic format. On 30

[6] Information Commissioner's Office, *What Price Privacy*?, p15, para 5.1
[7] Operation Glade is considered in detail at Part E, Chapter 2
[8] p5, para 3.9, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alexander-Owens1.pdf
[9] p18-19, lines 16-25, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf
[10] Information Commissioner's Office, *What Price Privacy*?, p15, para 5.2
[11] p23, lines 12-22, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf; pp6-7, para 4.4, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alexander-Owens1.pdf
[12] pp6-7, para 4.4, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alexander-Owens1.pdf

November 2011 Mr Owens made a copy of the electronic database available to the Inquiry. Its broad accuracy was confirmed when the ICO produced Mr Whittamore's hardback coloured notebooks.

3.3 The highly confidential nature of the information contained within the database, and the need to protect the privacy of the subjects of the information requested, requires the confidentiality of the details of the database to be preserved and the subjects of the requests to remain anonymous. Similarly, the journalists who are identified by name in the database, but have not been interviewed or prosecuted by the ICO, have not been named during the course of the Inquiry. I heard submissions in private as to how to use this material and decided to make the database available to the Core Participants of the Inquiry, subject to confidentiality undertakings and on strict conditions. The purpose of making the material available was to permit Core Participants to evaluate their position in relation to this evidence. In due course it was conceded by all Core Participants that I could proceed on the basis that no positive case was to be mounted by them that the Motorman material did not reveal *prima facie* evidence of breaches by journalists of the DPA, and I have done so.[13] It has not been suggested by any Core Participant that, if necessary, I cannot go further and reach my own conclusions based on the Motorman evidence as to the culture, practices and ethics of the press.

3.4 During Mr Owens' evidence, I observed that the records kept by Mr Whittamore, as illustrated in the database, contained, by reference to each request, the name of the newspaper group, the newspaper within that group, the journalist's first and last names, the service requested, the name of the person retrieving the information (for example the blagger), the subject about whom the information was requested, the result of the search and various accompanying comments.[14] These aspects of the evidence are now considered in some detail.

Volume of requests made to Mr Whittamore

3.5 Mr Owens expressed the view that the notebooks contained in the region of 17,000 entries, or requests for information from the press.[15] These requests principally related to activities in the period between the end of 2000 and 8 March 2003 when the material was seized by the ICO; however the earliest entry was around 1997.[16] Richard Thomas, the Information Commissioner at the time, gave evidence that the total number of requests was 13,343.[17] This discrepancy is explained by their different approaches to multiple requests, and need not be resolved for present purposes. On any view, the figure involved is substantial, and demonstrates that Mr Whittamore was not simply engaged in obtaining the occasional ex-directory number, or in locating addresses on an infrequent basis, or in supplying personal information relating to simply a handful of individuals. Rather, he was engaged in a trade of

[13] Care was taken over this issue which became the subject of some controversy during the hearing and was the subject of a ruling: see http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Operation-Motorman-and-ANL-10-July-2012.pdf. Associated Newspapers Ltd later confirmed that it did not advance a positive case contradicting the position that there exists prima facie evidence that journalists did act in breach of s55 by obtaining information which, *prima facie*, could not be justified in the public interest. That group thus fell into line with all other press core participants.

[14] pp4-7, lines 20-15, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-5-December-2011.pdf

[15] pp21, 27, lines 7-11, 18-19, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf

[16] p26, lines 16-19, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-5-December-2011.pdf

[17] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Second-Witness-Statement-of-Richard-Thomas-CBE1.pdf; p2, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/RJT-Exhibit-47.pdf

personal information relating to hundreds of individual subjects, on an almost daily basis. The demand for this information from the press was constant.

Buyers/customers of information

3.6 It is important to acknowledge that the buyers or customers of the information were not, by any means, exclusively journalists. They included the media, insurance companies, lenders and creditors, parties involved in family disputes, criminals with what are likely to have been criminal or malicious intentions, including witness and juror intimidation, and estranged couples seeking details of their partner's whereabouts.[18] However, the number of journalists requesting personal information from Mr Whittamore (for whatever reason, whether justifiable or not) indicates that it was not an isolated incident, or a handful of individuals engaging in the practice. The Parliamentary Report, *What Price Privacy Now?*, identified 333 journalists as having been named in the Motorman documents, as set out in the table below. Mr Thomas' witness statement identifies some 305 journalists as having been named in the Motorman material, and whilst, again, I note the discrepancy between the figures, nothing turns on this difference.[19]

Suppliers of information

3.7 The documents seized disclosed that the information was either obtained directly by Mr Whittamore, or through associates who would be paid to obtain the information through either blagging or paying a source. Mr Whittamore would commonly outsource work to associates in return for a payment, and add a premium to the value of the information sold to the end buyer.[20] One example of a method used to obtain information is illustrated by BT ex-directory numbers. One of Mr Whittamore's associates, Mr Jones, would ring BT or other phone companies, purporting to be an engineer; he would use a form of password which is given to BT employees (known as an EIN number) in order to identify himself as an engineer. Once he had obtained the information sought, he would telephone Mr Whittamore and pass on the relevant information. This *modus operandi* was elicited by Mr Owens from the relevant paperwork and by interviewing Mr Jones.[21]

Subjects of requests for information

3.8 Turning to the journalists, the information sought related, in part, to a number of well-known celebrities and other figures in the public-eye, but equally included individuals who were only remotely connected with public figures, and some who had no obvious newsworthiness at all; one, for example was a self-employed painter and decorator who had once worked for a lottery winner.[22] In his evidence to the Inquiry Mr Owens confirmed that he had seen a reference to the Dowler family in the Operation Motorman material alongside a request for

[18] Information Commissioner's Office, *What Price Privacy*?, p5, para 1.8
[19] p6, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Second-Witness-Statement-of-Richard-Thomas-CBE1.pdf
[20] Information Commissioner's Office, *What Price Privacy*?, p21, para 5.27
[21] pp27-28, lines 14-19, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-5-December-2011.pdf
[22] Information Commissioner's Office, *What Price Privacy*?, p17, para 5.10

an ex-directory telephone number.[23] It also emerged in evidence that Mr Hugh Grant was amongst the celebrities whose personal information was sought by journalists.

Nature of information

3.9 The material seized evidenced the supply of a wide range of information including criminal record checks against the PNC, occupancy checks, voter searches, directors searches, VRM checks and vehicle owner details, ex-directory phone numbers, itemised telephone billing and mobile phone records, details of frequently dialled ("friends and family") numbers, conversion of mobile telephone numbers into addresses and vice versa.[24] I emphasise immediately that at least some of this information could have been obtained lawfully, but that is not the case for all the types of information sought.

3.10 By way of example of the type of information requested, in the course of Mr Owens' evidence the Inquiry heard that one entry related to a request for specific calls from a telephone number between 16:00hrs and 17:00hrs on a given date. The price for obtaining this type of information was £300-£400. Mr Owens expressed the view that this information would be available on the subscriber's telephone bill and this would only be available from the phone company.[25] Another entry related to a request for a *"Phone bill for June 2011"* for the price of £800.[26]

3.11 These examples demonstrate that whilst some requests were more general, such as seeking to identify where an individual lived, other requests were highly specific in their terms.

Methods of obtaining information

3.12 Within the types of information requested, varying methods were used to obtain the data. Thus, by its very nature, it appears clear that some types of information could only have been acquired from one possible source, for example the DVLA (VRM checks against owner details), the PNC (criminal record checks), or telephone companies (friends and family numbers). As Mr Owens explained in relation to friends and family numbers, *"there's no way you can get somebody's list of family and friends lawfully, unless you actually know them and what's on the list. The only way you'll get them is from BT or whichever phone company"*.[27] He further explained that criminal records checks could also not be obtained lawfully.[28] Mr Thomas in his evidence also confirmed that the PNC, and the list of friends and family numbers, cannot be obtained from information in the public domain.[29]

3.13 Similarly, in relation to obtaining the vehicle owner's details from the DVLA, this information could only be obtained lawfully in a number of specifically defined circumstances set out by law. The DVLA has two separate databases holding information: the vehicle register and the driver register. The DVLA's vehicle register holds information about each motor vehicle

[23] p41, lines 4-7, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf
[24] Information Commissioner's Office, *What Price Privacy*?, p15, para 5.3
[25] p8, lines 2-20, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-5-December-2011.pdf
[26] p13, lines 5-8, *ibid*
[27] p28, lines 4-15, Alexander Owens, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf
[28] p28, lines 2-5, *ibid*
[29] p99, lines 1-10, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf

(e.g. registration mark, vehicle identification number, make/model, emissions, etc) and includes the name and address of the registered keeper, dates of acquisition and disposal, and the vehicle's tax status. The driver register holds each driver's name, address, date of birth, photograph, endorsements, convictions and relevant medical information that may affect a person's ability to drive. The particulars from the register may be made available in a number of particular circumstances, for example to a police officer, or to a local authority to investigate an offence.[30] It may also be made available to a person who has "reasonable cause" for seeking particulars, for example following involvement in an accident, enforcement of road traffic legislation or tax collection. It appears very unlikely that requests made to the DVLA for owners' addresses to be supplied to journalists would fall within this category.

3.14 Putting it at its lowest, in respect of these types of information, namely VRMs checks against owner details, criminal record checks, or friends and family telephone numbers, I consider that the methods used to obtain this information by Mr Whittamore are highly likely to have been unlawful.

3.15 It is right to observe that, in principle, other forms of information, for example addresses, or ex-directory numbers, may be obtained through lawful means. For example, one can conceive of a laborious check of the full electoral register to identify an address. Similarly, searching through former telephone directories to locate a number that may have been notified before it became ex-directory may be possible. However, as was explained in *What Price Privacy?*, in many instances the sums charged for such information, for example the obtaining of a personal address, appeared to be too low to suggest that extensive hours of research had been undertaken to obtain this information. Mr Thomas expressed the view that it was highly likely that ex-directory numbers were obtained illegally.[31]

3.16 News International drew Mr Thomas' attention to the fact that there exist substantial databases of telephone numbers which may well have been obtained lawfully: one of the largest holds in the region of 50 million numbers, of which approximately 10 million may be inferred to be ex-directory.[32] However, it does not seem likely that Mr Whittamore had access to such a database between 1997 and 2003, and the way in which he recorded the information that he obtained does not suggest great computer literacy on his part. Further, it is difficult to see why newspapers (which, presumably, could access certain databases themselves) would have paid so highly for his services had such databases been his source.

3.17 Taking all this evidence into account, and applying basic common sense to it, the fairly obvious conclusion is that Mr Whittamore was obtaining the ex-directory numbers by unlawful means. The position is less clear cut in relation to the obtaining of addresses.

Public interest

3.18 In his evidence Mr Thomas acknowledged that there could, at least in theory, be cases where the public interest fully justified obtaining personal data (with the result that no offence would be committed); and he also recognised that there could be questions concerning proof of intention or recklessness. In relation to the public interest, he gave the example of seeking the weekend telephone number of a minister who had recently resigned in order to

[30] Regulation 27 of the Road Vehicles (Registration and Licensing Regulations) 2002

[31] p109, lines 1-9, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf

[32] pp101-105, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-9-December-2011.pdf

contact him with a proposed story; however, when he was pressed by Mr Rhodri Davies QC for News International, he said: *"But I have to say yet again, that was not typical, nothing like typical of the cases that we were seeing. And although you made the point that the majority of the cases were, in your language, only addresses or phone numbers, I would also say the vast majority were nothing to do with public interest considerations along the lines I've just mentioned."*[33] Mr Thomas expressed the opinion that the evidence obtained as part of Operation Motorman did not come near to being characterised as being in the public interest. He explained, "*I haven't seen a whiff of public interest. It was tittle-tattle. It was fishing. There may be one or two examples, but they would be exceptional*".[34] I can add that no example of a search for the weekend telephone number of a recently resigned minister has been shown to me.

3.19 Given that no journalists were ever interviewed by the ICO in relation to Operation Motorman, the strength of any public interest defence is difficult to assess definitively and I do not propose to do so. However, it was suggested to the Inquiry by at least one press Core Participant that the newspaper required access to this data in order to be able to contact the subject of a story for his or her version of events; in other words, to facilitate the exercise of a right to reply. Expressed in these terms, a public interest defence has superficial attraction, but upon closer analysis its strength dissipates. In each case consideration needs to be given to the subject matter of the story which is proposed to be published. If the story has a potential freestanding public interest, then it is indeed arguable that, subject to a range of other factors, the journalist might need to contact the subject of the story for his or her account. But if, as Mr Thomas has suggested, there is not a whiff of public interest in the underlying story, it is not arguable that a public interest can be manufactured for the purposes of the defence under s55 of the DPA on the grounds that the subject needs to be contacted.

3.20 In any event, regard must be paid to the nature of the information commonly being sought by journalists. Even assuming a journalist needed to contact the subject of a story, it is difficult to imagine why he or she should need to know the telephone details of the family and friends of the target. Even more difficult is to see the public interest in deceptively obtaining a criminal record check. In those circumstances, it is unlikely that a public interest defence under s55 of the DPA would have succeeded. Indeed, in only a small minority of the cases is it likely to have been even arguable.

Mental element

3.21 The case against a journalist instructing Mr Whittamore to obtain the relevant information is slightly different because, in order to establish guilt under s55, the prosecution would have to prove to the criminal standard that the journalist in question either knowingly or recklessly obtained or disclosed personal data or the information contained in personal data, s55(1)(a), or procured the disclosure to another person of the information contained in personal data, s55(1)(b). Again, the fact that no journalist was ever interviewed by the ICO renders difficult an assessment of whether this mental element could have been proved.

3.22 It is, of course, possible to draw certain inferences from the available material. That material includes, in particular, the type of data sought and obtained, the speed with which it was obtained, the amount of money paid for the information in question, and the sheer quantity of requests. There is certainly enough here to indicate *prima facie* (if not at a higher level) that many journalists either knew precisely how the information was being obtained or turned a

[33] p107, lines 3-9, Richard Thomas, *ibid*
[34] p65, lines 4-10, Richard Thomas, *ibid*

Nelsonian eye to the obvious, or the close to obvious (with the result that there were, at least, reasonable prospects of proving recklessness). In that regard, I do no more than accept the concession that the press Core Participants made to that effect. It is not possible to go further than that, and (notwithstanding that the names of the journalists have not entered the public domain) it would be unfair to do so.

4. Prosecutions arising from Operation Motorman

4.1 The Information Commissioner formed the view that the material obtained during the course of Operation Motorman was of sufficient quality and quantity to bring criminal proceedings against the private detective Mr Whittamore and his associates involved in the blagging and obtaining of personal information. However, the evidence obtained by the ICO overlapped to some extent with the material obtained by the MPS and therefore the prosecutions led by the CPS in relation to the offences of corruption and conspiracy were given priority, being offences of a more serious nature.[35]

4.2 The evidence discovered by the MPS had highlighted the unauthorised supply of information from the PNC by a civilian police employee, and the CPS charged four individuals; namely Steve Whittamore, John Boyall, Alan King and Paul Marshall with corruption offences. 19 incidents were covered by the indictment, 12 in respect of Criminal Record Office offences and seven in relation to vehicle checks from the PNC. Two of the accused pleaded guilty to the corruption charges. On 6 April 2005, the Crown amended the indictment to include two offences under the DPA. Mr Whittamore and Mr Boyall pleaded guilty to offences under s55 of the DPA.[36]

4.3 On 15 April 2005, His Honour Judge Samuels QC, sitting at Blackfriars Crown Court, sentenced the four defendants. HHJ Samuels QC stated that: "*the vice of the primary conspiracy was to make known to the press information which on any view ought to have been confidential, and was bound at its lowest to cause immense embarrassment to members of the public who required the state to maintain confidentiality in their affairs*".[37] However, the judge considered himself circumscribed by two factors. First, Paul Marshall had already been given a conditional discharge at an earlier trial in respect of unrelated offences, his mitigation being that he was seriously ill; in the court's view, Mr Marshall could not now be given a higher sentence for a less serious offence, and his co-defendants could not be treated less leniently either. Second, the personal circumstances of each of the defendants (as argued before the judge) meant that the court considered that it could not impose a fine. Consequently, each defendant received a conditional discharge.

4.4 Separate proceedings under s55 of the DPA had been commenced by the ICO against Mr Whittamore and five other private investigators. However, the proceedings were withdrawn when the CPS prosecutions resulted in a sentence of a conditional discharge.[38] The reasons for the discontinuance of the prosecutions are identified in the report *What Price Privacy?*; namely that the ICO was disappointed at the sentences imposed by the court and considered that it was not in the public interest to proceed with the ICO's own prosecutions in these

[35] pp4-5, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/First-Witness-Statement-of-Richard-Thomas-CBE.pdf
[36] pp19-20, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-RJT-49.pdf
[37] p18, *ibid*
[38] pp4-5, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Second-Witness-Statement-of-Richard-Thomas-CBE1.pdf

circumstances.[39] Given that the maximum sentence for a breach of s55 was a financial penalty, it cannot be said that this decision was unrealistic.

5. Publication of Parliamentary Reports in 2006

5.1 In 2006 the then Information Commissioner, Mr Thomas, published two Parliamentary reports documenting the widespread trade in confidential personal information.[40] The report *What Price Privacy? The unlawful trade in confidential personal information* was published on 13 May 2006 and the follow-up report *What Price Privacy Now?* was published on 13 December 2006.

What Price Privacy?

5.2 The Parliamentary Report published in May 2006 was not the first occasion on which the issue of the unlawful trade in personal information had been debated or discussed in public. *What Price Privacy*? identified three newspaper articles in The Guardian, The Sunday Telegraph and The Times, written in the period between September 2002 and January 2003, which related to the obtaining of confidential information by private detectives and the sale of confidential information from government departments, namely the Inland Revenue, to outside agencies.[41] The report also noted that the House of Commons Select Committee on Culture, Media and Sport had conducted an investigation in early 2003 into privacy and media intrusion and concluded in its reports that "*improper and intrusive gathering of data*" had appeared in the press and that these methods amounted to a "*depressing catalogue of deplorable practices*".[42]

5.3 The first report laid before Parliament claimed to reveal evidence of systematic breaches of privacy that amounted to an unlawful trade of confidential personal information. The purpose of the report was to put a stop to the trade by proposing the introduction of a custodial sentence for up to two years for persons convicted on indictment, or six months for summary convictions.[43]

5.4 Section 5 of *What Price Privacy?* set out the evidence collated by the ICO which illustrated the market in the unlawful supply of personal data. The report explained that: "*documents seized during Operation Motorman and in other investigations have allowed the ICO to build up a clear picture of how the market in unlawful personal data operates. Case details provided evidence of who is buying the information and why, and who is obtaining and supplying the information. We also have some idea of how the suppliers operate and the prices they charge.*"[44]

5.5 The report analysed the information seized at Mr Whittamore's premises as falling into two categories of documentation. The primary documentation consisted of correspondence (reports, invoices, settlements of bills) between Mr Whittamore and many national newspapers and magazines, identifying the individual journalist seeking the information. The

[39] Information Commissioner's Office, *What Price Privacy*?, p27, paras 6.7-6.8
[40] These reports were laid pursuant to s52(2) of the DPA. pp20-21, lines 12-3, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf
[41] Information Commissioner's Office, *What Price Privacy*?, p14, para 4.10
[42] pp13-14, paras 4.7-4.11, *ibid;* see also Culture, Media and Sport Select Committee, Fifth Report, Privacy and Media Intrusion, HC, 458 – 1, 16 June 2003.
[43] Information Commissioner's Office, *What Price Privacy*?, p4, para 1.2
[44] p16, para 5.4, *ibid*

secondary documentation consisted of the detective's own handwritten personal notes and a record of work carried out, about whom and for whom.

5.6 In relation to methods, the report set out that there were two principal methods of obtaining information: corruption and deception.[45] Corrupt practices included paying employees of organisations, for example the DVLA, to access information available to them by virtue of their position, whilst deceptive practices included impersonating either the data subject or a third party (for example an employee of the same organisation) to obtain the information.[46]

5.7 The report also identified in broad terms a number of individuals who had been interviewed as part of the investigation, including celebrities, professional footballers and managers, broadcasters, a member of the Royal Household and also figures of less obvious public interest, including the sister of a partner of a local politician. The report set out the example of a mother whose show-business daughter had featured in a number of press stories. Details of the mother's telephone calls and cars owned appeared in Mr Whittamore's ledgers and records of financial transactions. Further, a number of those interviewed reported media intrusion after personal information had been passed to the press and all were confident that they had not willingly supplied the information nor consented to its release.[47]

5.8 Another aspect of the transactions that was analysed in the report was the issue of cost; that is to say how much the ultimate customers were charged for personal information and how much of this was profit once the agent sourcing the information had been paid. The prices charged to journalists ranged from £17.50 for finding an address for a person on the electoral roll, to about £70 to search for an ex-directory number, and up to £500 for a criminal record check and £750 to obtain mobile account details.[48] It seems likely that the figures reflected the mode of obtaining the information sought, in particular where other parties, for example blaggers, or employees, required payment for their role in the provision of the information.

5.9 The total sum paid by newspapers for the items of information supplied in Operation Motorman is estimated to be between £300,435 and £547,160.[49] This gives an indication that the supply of personal information was, for those involved, a lucrative business.

5.10 In the conclusion of the report, the ICO made a number of extremely pertinent observations:

> *"At a time when senior members of the press were publicly congratulating themselves for having raised journalistic standards across the industry, many newspapers were continuing to subscribe to an undercover economy devoted to obtaining a wealth of personal information forbidden to them by law. One remarkable fact is how well documented this underworld turned out to be".*[50]
>
> *...."The law relating to this offence is perfectly clear... it is framed in a way that applies to those who request the disclosure of personal data and those who supply it, including any intermediaries in the chain. The problem lies in the inadequacy of the penalties which the courts are able to impose".*[51]

[45] p5, paras 1.10-1.11, *ibid*
[46] p22, para 5.30, *ibid*
[47] p17, paras 5.9-5.11, *ibid*
[48] p24, para 5.35, *ibid*
[49] p2, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Second-Witness-Statement-of-Richard-Thomas-CBE1.pdf
[50] Information Commissioner's Office, *What Price Privacy*?, p28, para 7.2
[51] p28, para 7.5, *ibid*

5.11 The ICO sought custodial sentences in relation to the commission of offences under s55 DPA in order to deter this unlawful trade in information. The ways in which the ICO sought to achieve that end are dealt with in Part H of the Report.

What Price Privacy Now?

5.12 The Parliamentary Report *What Price Privacy Now?* was published to chart the progress in the six months following the first report and to set out the responses to the recommendations set out in the first report.

5.13 The report noted that a Freedom of Information Act request for further information about the 305 journalists identified in the Motorman material and referred to in *What Price Privacy?* had been considered and, on the basis that disclosure of the information was in the public interest, the employers of the journalists were set out in tabular form.

5.14 This table is replicated below.[52]

Table E3.1

Publication	No. of Transactions positively identified	No. of Journalists or Clients using services
Daily Mail	952	58
Sunday People	802	50
Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	228	23
Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
The People	37	19
Daily Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
Sunday Mirror Magazine	6	1
Real Magazine	4	1

[52] Information Commissioner's Office, *What Price Privacy Now?*, p9

Publication	No. of Transactions positively identified	No. of Journalists or Clients using services
Woman's Own	4	2
The Sunday Times	4	1
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	4
The Times	2	1
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1

5.15 The table sets out a breakdown of the extent to which individual newspapers and magazines were implicated in the evidence produced by Operation Motorman and, in particular, the number of journalists employed by each newspaper or magazine which was identified as having requested the supply of personal information.

5.16 It is worth underlining the view of the Information Commissioner, as set out in the text of *What Price Privacy Now?*, that the figures in the table do not purport to set out the total number of offences committed by journalists, but rather the number of requests made by journalists for information. In his evidence to the Inquiry, Mr Thomas emphasised that it was not being said that every single transaction identified was an offence committed by a journalist, but rather that journalists were significant customers of information which appeared to have been obtained illegally.[53] However, Mr Thomas also expressed the view that it was likely that journalists were committing an offence.[54]

5.17 Two overriding observations can be made in relation to these figures. First, whilst the journalists engaged in buying personal information supplied through a private investigator were employed by a range of titles, including tabloid newspapers, broadsheet newspapers and magazines, there is significant variation in the extent to which journalists and titles engaged in the purchase of personal information from Mr Whittamore. For example, 58 journalists from the Daily Mail sought the supply of personal information on 952 occasions, whereas by contrast one journalist from The Sunday Times sought the supply of personal information on four occasions. Second, the numbers of individual journalists engaged in purchasing personal information from particular titles is higher than could be put down to certain individuals undertaking investigations which might or might not have been known about or authorised. Where dozens, or in some cases, over 50 journalists at a particular title have sought to purchase personal information, the inference that these practices were endemic within particular titles may be readily understood.

6. Conclusions

6.1 For the purposes of responding to a request by Lord Ashcroft under the Freedom of Information Act 2000, ICO investigation officers and an in-house lawyer analysed the source material collated as part of Operation Motorman. They documented some 13,343 transactions, or individual requests for information made of Mr Whittamore. These transactions were

[53] p91, lines 11-18, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf
[54] pp91, 93, lines 11-18, 9-18, Richard Thomas, *ibid*

segregated by staff of the ICO into three separate categories in terms of their evidential value.[55] Of these, the ICO took the view that some 5,025 were actively investigated as part of Operation Motorman and positively known to constitute a breach of the DPA. More specifically, and put somewhat more carefully, it was the view of a lawyer employed by the ICO with extensive involvement in the prosecutions that the evidence in these cases would have been sufficient to lead to conviction.[56] A number of the requests in this category included PNC requests, friends and family requests and some ex-directory requests.[57]

6.2 A further 6,330 requests represented occupancy searches and are thought to have been information obtained from telephone service providers. The ICO considered that the obtaining of this information was likely to amount to breaches of the DPA; however, the nature of the transactions was not sufficiently known or understood for these to be characterised as a positive breach of the DPA, rather than probably illicit transactions.[58] Some 1,988 of the transactions were considered to lack sufficient identification or understanding of how the information had been obtained to determine whether they represented illicit transactions. The first category of transactions only was included with the Parliamentary Reports.[59]

6.3 Overall, it is not surprising that the Core Participants made the concessions recorded under paragraph 3.3 above: a detailed examination of many individual examples would, in my judgment, undeniably have established that this was the very lowest at which it could be put. For reasons which I well understand, the ICO would argue that the concession does not go far enough. Without condemning any journalist (none of whom were ever even interviewed by the ICO), it is sufficient for me to conclude that, at least in part, what has been revealed by some of the Operation Motorman evidence demonstrates an attitude to compliance with the law relating to data protection which can only be described as cavalier, if not worse: it is certainly revealing of what, at that time at least, were the practices of parts of the press. As will become apparent, the extent to which Mr Whittamore's services continued to be used by some titles after his conviction is even more revealing.

[55] pp1-2, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Fifth-Witness-Statement-of-Richard-Thomas-CBE.pdf

[56] pp86-89, lines 22-11, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf. Mr Thomas used the words *"mount a conviction"*: this is the only interpretation that can be put on that phrase

[57] p89, lines 12-20, Richard Thomas, *ibid*

[58] pp89-90, lines 22-5, Richard Thomas, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-9-December-2011.pdf

[59] p2, para 9, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Fifth-Witness-Statement-of-Richard-Thomas-CBE.pdf

CHAPTER 4
PHONE HACKING: THE EXPANDING IMPACT OF OPERATION CARYATID

1. Introduction

1.1 This Inquiry was ultimately directed because of the wide scale public revulsion at the reported conduct of one or more journalists from the News of the World (NoTW) in intercepting messages left on the mobile telephone of Milly Dowler: this type of interception has been referred to colloquially as phone hacking. Having said that, however, there was also increasing public concern about the apparent lack of appropriate investigation by the Metropolitan Police Service (MPS) into the conduct of a private investigator, Glenn Mulcaire, and the extent of the involvement of the NoTW (precipitated by increasing disclosure arising out of civil litigation). The consequence (prior to the disclosures about Milly Dowler) was that the then Acting Commissioner, Tim Godwin, had re-opened the investigation into the NoTW which had started in 2006; substantial resources were devoted to it. Not the least important reason for this concern was the increasingly vocal allegation that the relationship between senior executives at the NoTW and senior officers at the MPS had influenced or affected the direction of the investigation; the allegation itself had the potential to cause serious damage to the reputation of the police generally.

1.2 It is therefore not surprising that the Terms of Reference for Part 1 of the Inquiry specifically require it to consider the culture, practices and ethics of the press including contacts with, and the relationship between, the press and the police along with the conduct of each. They also require recommendations as to how future concerns about press behaviour should be dealt with by all the relevant authorities, including the police, the prosecuting and regulatory authorities and Parliament.

1.3 This part of the Report, therefore deals with a wide range of issues including, in relation to Operation Caryatid:

(a) whether the nature of the relationship between the police and the media explains why the police did not pursue journalists other than Clive Goodman in 2006 and why the investigation was not re-opened following expressed concerns in 2009 and 2010;

(b) the nature and extent of any relationship between News International (NI) and senior officers who were or became involved in this operation and the extent (if at all) to which any relationship influenced directly or indirectly the way in which operational decisions were approached;

(c) in the event that investigating officers or those with an operational role in connection with the investigation did not themselves have any relevant relationship, whether knowledge or understanding of the existence of such a relationship between NI and their superiors was taken into account when they approached decisions; and;

(d) in order to make recommendations as to the future, the approach and response to the investigation of the Crown Prosecution Service (CPS) and the prosecuting authorities more generally.

1.4 On the other side of the same investigation, it is also necessary to consider (as part of the culture, practices and ethics of the press) the response to the police investigation of NI, the Press Complaints Commission (PCC), and the Culture, Media and Sports Committee and the Home Affairs Committee of the House of Commons. The part played by the PCC also deserves detailed consideration in the context of a consideration of the effectiveness of any new regulatory regime.

1.5 Given the pivotal role that Operation Caryatid has played in the background that has given rise to this Inquiry and the focus, in part, on criticisms of the MPS for what is perceived to be its failure properly to investigate what emerged from this investigation, it is necessary to set out precisely what happened in some detail, evaluating decisions that were made as they were made and in the light of the prevailing circumstances. That is because I must address the allegation that the MPS deliberately held back on a full investigation (and further investigation in 2009 and 2010) because of a link with NI. In my ruling of 4 May 2012 in relation to the operation of rule 13 of the Inquiry Rules 2006 to the MPS, I said[1]:

> *"If not because of the influence of the press, why did the police not go further with Operation Caryatid or investigate the Mulcaire notebook in more detail (particularly as a number of officers were concerned that it more than justified further examination)? Why was it that the articles in The Guardian and the New York Times were so quickly dismissed without further investigation being undertaken? In my judgment, answering those questions would be a critical part of the exercise both to assuage the legitimate public concern that caused the conduct of the police to be included in the Inquiry in the first place but also to justify any conclusions that I reach as to future conduct of the relationship between press and police".*

1.6 I concluded that answering these questions could give rise to criticism and I decided to approach the MPS, individual police officers, the CPS and counsel on that basis. Given that the statements of a number of police officers used for the Inquiry were those prepared for other proceedings, therefore, it is not surprising that, in response to notices under rule 13, additional material has been forthcoming. I have dealt with it in the Report and directed that additional statements, establishing the facts put before me, should be provided and treated as part of the evidence of the Inquiry. Where new issues have arisen, I have identified them but, in fairness, declined to determine any such issue adverse to any individual: to do otherwise would have been to require further rule 13 notices if not further oral hearings.

The complaint

1.7 In December 2005, the Royal Household reported to the Royalty Protection Department of the MPS that it was concerned that the voicemail messages of Jamie Lowther-Pinkerton and Helen Asprey, respectively the private and personal secretaries to Princes William and Harry, were the subject of unlawful interception. Information had been appearing in the press, in particular in the column of Clive Goodman, the Royal editor at the NoTW, which suggested knowledge of the content of voicemail messages left on their mobile phones.

1.8 The Head of the Royalty Protection Department, Commander Loughborough, approached Deputy Assistant Commissioner (Specialist Operations) Peter Clarke (now retired) who was the head of the anti-terrorism branch of the MPS (then known as SO13). Given the potential threat to the safety of members of the Royal Family and the sensitivities surrounding them, Mr Clarke decided that SO13 would investigate the matter and would do so covertly (in

[1] para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-in-relation-to-the-MPS-4-May-2012.pdf

order to avoid alerting potential suspects).[2] Mr Clarke sought to safeguard the secrecy of the investigation by ensuring only very few officers were aware of it. He explained that the need for operational security was one of the factors that weighed in his mind when deciding to keep the investigation within SO13,[3] where the investigators were developed vetted.

1.9 Given the code name Operation Caryatid, Mr Clarke had ultimate operational oversight of the investigation. He set its parameters and strategy[4] and was answerable to the Assistant Commissioner (Specialist Operations), Andy Hayman. Mr Hayman has described himself as accountable for the investigation but not responsible for day-to-day decision-making,[5] nor personally involved in formulating strategy.[6] He received briefings from Mr Clarke.[7] The Deputy Commissioner, at the time, Sir Paul Stephenson, played no apparent role in any relevant events in 2005/2006. The then Commissioner, Lord Blair, said that his knowledge of the entire investigation was *"… limited to short briefings imparted in a few minutes on very few occasions …"*[8] Lord Blair explained that if those involved had not been members of the Royal Family, for whose security he had ultimate responsibility, he would not have expected to have been informed of the case at all.[9]

1.10 The Senior Investigating Officer (SIO), Detective Superintendent Philip Williams (now Detective Chief Superintendent (DCS) Williams),[10] was responsible for implementing the strategy set by Mr Clarke, for the daily conduct of the investigation and for providing him with regular personal briefings.[11] Otherwise, DCS Williams reported to Mr Clarke through his senior officers, DCS Tim White and Commander John McDowell.[12] By May 2006, Commander McDowell was succeeded by Commander Loughborough.

1.11 From 18 April 2006, the Investigating Officer (IO) was Detective Chief Inspector Keith Surtees (now DCS Surtees). His role was to deliver the strategy by deciding and putting into effect the tactics.[13] DCS Surtees also personally briefed Mr Clarke[14] and undertook the role of SIO when DCS Williams was absent. Towards the end of April 2006, Detective Sergeant Maberly (now a Detective Inspector or DI) was appointed the case officer for Operation Caryatid and worked with Detective Constable Robert Green (now a Detective Sergeant).[15] DI Maberly explained

[2] p42, para 83, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[3] p42, para 83, *ibid*
[4] p43, para 84, *ibid*
[5] p32, para 83, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Andy-Hayman1.pdf
[6] p33, para 89, *ibid*
[7] p52, line 11, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[8] p24, para 58, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf
[9] p24, para 58, *ibid*
[10] During the six years that have elapsed, many of the officers involved in Operation Caryatid have been promoted through the ranks. For the sake of clarity, the Report refers to them throughout by the rank which they held at the time they gave evidence rather than the (sometimes different) ranks that they held at the various times of their involvement in the investigation or may hold at the time of publication of the Report
[11] p34, para 65, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[12] p43, para 84, *ibid*
[13] p22, lines 18-24, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[14] p34, para 65, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[15] Other police officers were involved in the investigation. They will be referred to as and when their involvement is relevant

that his responsibility was to carry out the instructions of the SIO and IO and agreed that his role was *"hands on"*, dealing with the evidence as it came in and progressing the case.[16]

1.12 As standard practice, DCS Williams and DCS Surtees kept a decision log and prepared written case reviews. In these contemporaneous documents, the officers recorded key decisions about the case including their thoughts about the investigation, the details of periodic reviews and their requests for advice from the CPS. Neither Mr Hayman nor Mr Clarke read the decision log or case reviews. Mr Clarke explained that he would not have expected to read them but was briefed orally throughout the investigation. Mr Clarke was involved in the overall review of the decisions made and how the investigation was progressing.[17]

1.13 In contrast with the standard practice adopted elsewhere in this Report, this Chapter refers to certain documents which are not on the Inquiry website or otherwise in the public domain. They are referred to in general terms only with some parts quoted in order to tell the full story. The reason is that to publish them in full at this time might prejudice criminal investigations and future trials. Although each has been closely examined during the course of the Inquiry, therefore, hyperlinked references to these documents cannot be provided.

2. The collection of evidence

The covert phase

2.1 Mr Clarke defined the parameters of Operation Caryatid as follows: to investigate the unauthorised interception of voicemail messages in the Royal Household; to prosecute those responsible if possible; and to take all necessary steps to prevent this type of abuse of the telephone system in the future.[18]

2.2 The first step taken by DCS Williams was to establish whether or not a third party had been accessing the voicemail messages of Mr Lowther-Pinkerton and Ms Asprey without their permission.[19] At that stage Vodafone and O2, the respective service providers, maintained that they had not appreciated that it was possible to listen to another person's voicemail messages without their knowledge or permission.[20] Indeed at that time none of the service providers admitted to being aware of this capability.[21]

2.3 The evidence of DCS Williams was that it was only due to the tenacity of DI Kevin Southworth (now Detective Superintendent Southworth) who worked with Vodafone and their engineers that the police discovered how mobile phone voicemail systems worked. It was the case, apparently, that the service providers had limited ability to establish precisely what was

[16] p75, lines 2-7, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[17] pp34-35, para 66, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[18] pp42-43, para 85, *ibid*
[19] p11, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[20] p12, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; p8 para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[21] Although this aspect of the evidence has not been investigated in detail, it contrasts with the evidence of Steven Nott who spoke about the security ramifications of the messaging system to Vodafone as long ago as 1999 before seeking to interest the press, the television and other mobile providers in the issue: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Steven-Nott.pdf

happening within any given voicemail system.[22] They could not, for instance, determine whether a voicemail message (whether new or old) existed within a voicemail box at any particular time.[23] Although it was possible to identify outside or potential "rogue" numbers dialling into a person's voicemail box, the available software could not identify whether or not the "rogue" number had listened to any messages.[24] They also could not assist with how often the illegal access was taking place or how widespread it was.[25]

2.4 By 30 January 2006, with the assistance of Vodafone's engineers, the police had established that a number of outside or potential "rogue" numbers had been calling in to Mr Lowther-Pinkerton's voicemail box, using his unique voicemail access number.[26] One of those "rogue" numbers was traced to Mr Goodman's home address.[27]

2.5 DCS Williams immediately recognised the possible implications of this apparent vulnerability in voicemail systems and recorded in the decision log that they could be quite far reaching among the mobile phone service providers.[28] It is appropriate to note that he was: *"at pains to ensure that no one company was singled out as being particularly at risk/fault because to an extent, we only knew what we knew from those companies who had software that could give an indication of potential interception."*[29]

2.6 Despite acknowledging how widespread the practice was likely to be, DCS Williams maintained the focus of the investigation on the Royal Household (not least because the enquiry was still in its early stages) with a view to establishing whether what the police had discovered was a one-off set of occurrences or something more systematic.[30]

2.7 The police therefore obtained Mr Goodman's telephone records (or "outgoing call data") in order to ascertain whom he was calling.[31]

2.8 On 9 March 2006 there was a case review meeting involving Mr Clarke, DCS Williams, DCS White and DCI Paul Greenwood. It was decided at that meeting that the lines of enquiry would remain focussed predominantly on Mr Lowther-Pinkerton's voicemail box and the link to Mr Goodman. As regards Mr Goodman, the investigation was to focus on establishing whether or not he was attempting to access other voicemail accounts and whether or not his actions were limited to the Royal Household.[32]

[22] p13, para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[23] p17, para 22, *ibid*
[24] p13, para 29, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[25] p8, para 16, *ibid*
[26] p12, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; Vodafone referred to voicemail telephone numbers as unique voicemail numbers (UVNs) whilst O2 referred to them as direct dial numbers (DDNs). Rather than use one or more acronyms, they will be referred to generically as unique voicemail access numbers
[27] p13, para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; para 29, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf;
[28] p13, para 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf,
[29] p18, para 24, *ibid*
[30] p13, para 18, *ibid*
[31] pp23-24, lines 21-1, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[32] Review of Case dated 9 March 2006 (not published)

2.9 On 4 April 2006 DCS Williams prepared a written review of the case.[33] He recorded that following an analysis of the outgoing call data from Mr Goodman's home phone number, five to six potential victims, all within the Royal Household, had been identified. The police had ascertained that Mr Goodman had been making a significant number of phone calls to Mr Lowther-Pinkerton and these other members of the Royal Household over a sustained period of time. In the review, DCS Williams indicated that guidance would be sought from the CPS in relation to the two main offences that he had identified as arising from Mr Goodman's actions.[34]

2.10 The first of the two offences about which the police sought advice was unauthorised access to computer material contrary to s1 of the Computer Misuse Act 1990 (CMA); this is a summary only offence attracting a maximum six months' imprisonment. The second offence was interception of a telecommunication system contrary to s1 of the Regulation of Investigatory Powers Act 2000 (RIPA), an indictable offence attracting a maximum two years' imprisonment. S1(1)(b) of RIPA makes it a criminal offence for a person "*intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of a public telecommunication system*".

2.11 DCS Williams also set out in the review his understanding that the s1 of RIPA offence would not be committed unless the interception took place before the intended recipient had listened to the message. This has been referred to during the Inquiry by reference to the analogy of an "unopened envelope" and as the "narrow interpretation" (the "wide interpretation", in contrast, being that the timing of the interception would be immaterial to the commission of the offence so that it would not matter whether or not the intended recipient or anyone else entitled to access the voicemail system had done so). He noted that the practice of voicemail interception:

> *"... was highly unlikely to be limited to Goodman alone and is probably quite widespread amongst those who would be interested in such access – a much wider security issue within the UK and potentially worldwide".*

2.12 This case review also demonstrated that, at this early stage, DCS Williams was concerned about the pressure on resources. He recorded that: "*taking this inquiry forward will impact on core SO13 operations and the resource implications for a prosecution could be significant*." The "resource implications" referred to by DCS Williams in the context of core operations conducted by SO13 need hardly be made explicit. The terrorist threat in 2006 remained at the highest level and must legitimately have been assessed as being at a totally different order of priority to voicemail interception.[35] At the same time, however, the need to keep the investigation secret and the need to maintain the confidence of the Royal Family was militating against transferring the investigation out of SO13.

2.13 By 13 April 2006 nine potential victims within the Royal Household had been identified. DCS Williams decided that only six of them would be notified that they were potential victims. Those six included three members of the Royal Family itself. DCS Williams noted in the decision log of that day that:

[33] p15, lines 8-15, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf; Review of Case dated 4 April 2006 (not published)
[34] para 19, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[35] paras 5.3-5.5, provide an exposition of the weight of the terrorism investigations which were over-stretching the resources of S013 and had required Mr Clarke to "borrow" resources not only from other departments within the MPS but other police forces

> *"… extending the circle of knowledge concerning what is still a highly sensitive covert enquiry runs the risk of the nature of the enquiry becoming more publicly known and possibly alerting suspect(s), thereby preventing the opportunity for offenders to be brought to justice and/or other appropriate security and commercial interests to be fully considered once the full facts are known."*

2.14 By 18 April 2006 the investigation had reached a turning point: it was capable of moving into a phase of evidence-gathering for the purposes of a prosecution. DCS Williams recorded in the decision log that he had raised with Mr Clarke, Commander McDowell and DCS White his concern about continuing with the investigation given the pressure on resources:[36]

> *"I'm raising to my senior management that if we take this forward to a final prosecution and it gets played out in court, given the fact that we are under huge, huge pressure in terms of our counter-terrorism operations, how is it right that the anti-terrorist branch is dedicated [sic] investigating resources to something that actually is not terrorism? … Equally, there were valid arguments for why we should retain it."*

2.15 Mr Clarke decided that the investigation would continue with a view to prosecution and would continue within SO13.[37] DCS Williams therefore asked for and obtained additional investigative resources.[38] DCS Williams explained the stage the investigation had reached as follows:[39]

> *"My parameters remained in terms of keeping the investigation focused on the primary victims supported by an uplift in resourcing to enable the evidential gathering phase to begin in earnest."*

2.16 DCS Williams gave evidence that when looking ahead to a potential trial, his principal concerns were maintaining the confidence of the victims and presenting the case in the clearest and most straightforward way possible. He put it in his the statement (prepared for judicial review proceedings against the MPS[40]) that:[41]

> *"In terms of securing the confidence and willingness for any 'victims' to be willing to give evidence in court my strategy was to try to prove the offences based on technical evidence rather than bringing into a public arena who might have been leaving messages for whom and almost inevitably, what the content of any message might be by way of proof it existed. Equally I wanted to be able to present the case in a clear and concise manner to ensure the best chance of a successful prosecution and thereafter provide the greatest sentencing powers."*

2.17 In short, DCS Williams was anxious to ensure that the prosecution could be "ring-fenced" so as to avoid any member of the Royal Family being placed in the potentially embarrassing position of giving evidence and to avoid the examination of the actual content of any of the intercepted voicemail messages. In other words, he wished to confine the evidence for the prosecution to witness evidence from members of staff within the Royal Household (as opposed to members of the Royal Family) and to technical data relating to the interceptions. It is not correct to interpret the use by DCS Williams of the term "ring-fence" as an intention or attempt to rule out the investigation of other potential victims.

[36] p21, lines 8-23, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf;
[37] Decision log dated 18 April 2006 (not published)
[38] para 1.11 http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[39] para 21, *ibid*
[40] Save where otherwise indicated references to the witness statements of DCS Surtees and DCI Maberly are also to witness statements they prepared for the judicial review proceedings
[41] para 22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

2.18 On 20 April 2006 DCS Williams and DCS Surtees had a meeting with Carmen Dowd, Head of Special Crime Division at the CPS.[42] Ms Dowd was responsible for the provision of legal advice in relation to the investigation and eventually for prosecution decisions. At the meeting, DCS Williams and DCS Surtees raised the question of how s1 of RIPA should be interpreted. DCS Surtees recalled specifically the use of the analogy of the unopened envelope.[43] They also raised the strategic and presentational question of whether the prosecution could be "ring-fenced" in the manner described in the paragraph above.[44]

2.19 On 25 April 2006, via email, Ms Dowd provided the police with preliminary advice. She indicated that both the offence under s1 of RIPA and the offence under s1 of CMA were engaged. As for s1 of RIPA, Ms Dowd reserved her position, but gave the provisional indication that the "narrow interpretation" was correct. She put it in this way: [45]

> *"… the offences under Section 1 of RIPA, would as far as I can see only relate to such messages that had not been previously accessed by the recipient. However, this area is very much untested and further consideration will need to be given to this. Again, the actual technical evidence would need to be carefully considered before any firm view could be taken about whether the offence is capable of being proved. Unless the evidence is capable of showing all of the details we discussed (length of original message, length of call to recipient's voicemail etc) it is unlikely that we could proceed with the technical evidence alone."*

2.20 Ms Dowd also advised that the prosecution could be "ring-fenced" in order to avoid the need for a member of the Royal Family to give evidence. Finally, it is correct to point out that in the context of this preliminary advice Ms Dowd did not mention the possibility of charging the inchoate offence of conspiracy under the Criminal Law Act 1977, or the consequences of relying on an agreement to intercept messages which would not require proof of an "unopened envelope".

2.21 There is no sensible basis for suggesting that this provisional legal advice, given by Ms Dowd, on the interpretation of s1 of RIPA was influenced by any concern about offending NI and I have no doubt that it was not. The fact that her initial view as to the proper interpretation of s1 RIPA may not have been right therefore throws no light on the conduct of the police and the press. However, it is important to consider whether the fact that this initial view was provided goes some way to explaining the apparent restraint shown by the MPS in limiting the scope of the investigation. This preliminary advice certainly led DCS Williams to direct the investigation towards obtaining technical evidence that the suspect was accessing voicemail messages before the intended recipient. In the words of DCS Williams:[46]

> *"This was my understanding of the law from the beginning of the enquiry, it was a key question put to the CPS which they confirmed as being correct and thereafter it was central to all our activity in terms of securing best evidence including the use of an expert witness. If at any time the advice had been otherwise I would not have had*

[42] paras 19-20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[43] para 21, *ibid*
[44] para 22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; paras 22, 23, 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[45] pp74-75 lines 15-2, Lord Macdonald, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[46] para 23, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

to go the lengths I went to, to both shape the investigation and identify any 'potential victims' of this form of criminality."

2.22 To this extent, therefore, this initial advice did have a causative bearing on the subsequent course of the police investigation and it will be necessary to consider any continued impact it might have had as time passed. In the light of Ms Dowd's advice, however, the police cannot be criticised for adopting the investigative approach described by DCS Williams. It goes further because it would have been irresponsible to ignore it, the risk being that, unless the allegation of conspiracy was brought into play, they would fall at the first hurdle of any prosecution under s1 of RIPA should the court subsequently conclude that this narrow interpretation was correct without there being evidence that the "envelope" had been unopened when accessed by the accused. Although the CPS had been careful to advise that the CMA was an alternative statutory recourse, if the police wished to keep both legal avenues open in line with CPS advice it was necessary to obtain this specific evidence.

2.23 Simply as a matter of chronology, it is worth noting that, on 25 April 2006, Andy Hayman met Andy Coulson and Neil Wallis (then Editor and Deputy Editor of NoTW) with Dick Fedorcio. At this stage, there was no evidence in the hands of the police that any NoTW journalist (other than Mr Goodman) was implicated in voicemail interception. All have said that the issue of voicemail interception (still in its covert phase) was not discussed on that occasion, and as Mr Garnham QC was able to develop in argument, an examination of the chronology of decision making within the MPS at this point demonstrates that nothing discussed at that dinner could have resulted in any favour shown to NI.[47] In the circumstances, although I understand why it is contended that the contrary cannot be excluded, I am satisfied that the police did nothing to alert the editors as to what was going on: it does, however, serve to underline the importance of care in relation to contacts with any organisation an employee of which is being investigated simply because of the perception that favours could be exchanged.

2.24 The story moves on to 9 May 2006 when DCS Williams recorded in an "Enquiry Update"[48] that the police had discovered another potential suspect, a "Paul Williams" (which transpired to be an alias used by Mr Mulcaire).[49] In the course of its own internal enquiry O2 had traced audio recordings of a man calling himself "Paul Williams" phoning O2 customer services and asking for pin numbers for voicemail accounts to be re-set to default settings. He held himself out as an O2 employee who was authorised to have access to customer information and to make such requests. O2 discovered that on two occasions "Paul Williams" asked for Ms Asprey's pin number to be reset to default, and that this had been carried out.

2.25 In the update DCS Williams set out three options to be considered by the senior management. Option one was that there be no further investigation with the intention of prosecution. Option two was to hand over the investigation to another police unit; option three was to commence a formal investigation to prosecute those intercepting the Royal Household voicemail messages and *"in tandem with the above establish whether or not there are evidential links to the potentially wider unauthorised intrusion/access suspected by O2"*. He recommended the third option over the short-term, and provided a very perceptive rationale in this way:

"… we have discovered a vulnerability that exists within the mobile telephone industry whereby unscrupulous people could intrude upon the privacy of the vast majority of

[47] pp34-35, Neil Garnham QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[48] Not published
[49] para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf;

the public through unauthorised access to voicemail. I suspect that the media world may well be aware of this vulnerability and there may well be a host of people using this vulnerability for journalistic purposes. The Goodman connection is potentially an example of this, but the more sinister side would be that the knowledge could equally be utilised by criminals whether that be in the general sense, for terrorism or to threaten national security. Therefore I believe that this matter has a significant public interest aspect to it particularly in terms of safety and security and risk to life."

2.26 DCS Williams recorded at the end of the update that its contents had been briefed to DCS White and Commander Loughborough and that he had been advised that the enquiry would remain within SO13 for the time being. In line with the preliminary advice from the CPS, he then set about deciding how best to prove the interception of voicemail messages before they had been heard by the intended recipient. DCS Williams decided to mount what he termed a "sting operation" (although this is a misnomer because the operation did not involve deception) which amounted to allocating a test period over around three weeks in May and June 2006 during which the relevant activity on the mobile phones of Mr Lowther-Pinkerton and Ms Asprey would be monitored.[50]

2.27 With DCS Williams working abroad between 12 May and 5 June 2006, DCS Surtees oversaw this aspect of the operation the aim of which was to prove who was accessing messages and to obtain evidence to establish that after a voicemail message had been left, the same message was illicitly accessed before it was heard by the intended recipient.[51] During this test, Mr Lowther-Pinkerton and Ms Asprey were asked to retrieve their voicemail messages only at set times twice in every 24 hour period. Where either came across a message that was marked as an old message, but which he or she had not previously listened to, this prompted further investigation.[52]

2.28 Part of the strategy for the operation was to ascertain whether the service providers had the software capability to detect both the fact that a message had been left and the retrieval of unheard messages by one of the rogue numbers.[53] It transpired that it was only through Vodafone's "Vampire" data that the police could definitively prove the sequence of person A leaving a message on person B's voicemail and person C dialling in and retrieving the message.[54] DI Maberly explained that "Vampire" data was an engineering or diagnostic tool used by Vodafone to monitor how its systems were running, including its voicemail systems. In the process of monitoring the systems, it captured data relating to customers' accounts, including when a voicemail message was left and when it was opened. However, this data was not retained for very long and so Vodafone needed to *"harvest it"* on a regular basis.[55] DI Maberly had the impression that it would only exist for a matter of days or maybe a couple of weeks.[56]

2.29 Where "Vampire" data was not available, the fact that a voicemail message had been accessed had to be deduced from the length of the incoming call to the voicemail box. The telephone expert for the prosecution, David Bristowe, explained that the call would need to be at least

[50] para 26, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[51] p31, lines 4-21, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[52] para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[53] p24, lines 1-18, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[54] p80, lines 3-8, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[55] p76, lines 12-23, *ibid*
[56] p77, lines 6-12, *ibid*

10 to 14 seconds long owing to the length of the recorded message which the caller would have heard before accessing the voicemail message.[57] Therefore, where a call was at least 10 to 14 seconds in length, it could be inferred that the caller had listened to a voicemail message.[58]

2.30 During the same period, the police carried out a surveillance operation on the home address of Mr Goodman. The purpose was to prove that the telephone was in Mr Goodman's hand at the time of any relevant calls from that number into the voicemail systems being monitored.[59]

2.31 On 15 May 2006 O2 informed the police that they had identified and contacted a number of customers whose voicemail accounts had potentially been accessed unlawfully. Two such customers, Max Clifford and "HJK"[60] had asked that the police be informed.[61] This was highly significant because these potential victims were not members of the Royal Household and therefore would not ostensibly have been of any interest to Mr Goodman (although the NoTW was later to argue that Mr Goodman had a wider remit than the Royal Household). At around the same time, other service providers also gave the police details of possible victims although all but a very small number were linked to the Royal Household.[62]

2.32 On 30 May 2006 Ms Dowd prepared a briefing on the current status of the investigation for the Director of Public Prosecutions (DPP), who at that time was Ken Macdonald QC (now Lord Macdonald QC of River Glaven), and for the Attorney General.[63] This was conventional in any case involving members of the Royal Family. In the briefing Ms Dowd explained the legal and technical issues, and stated:

> *"… in addition to Goodman, another potential suspect has been identified as accessing the UVM's [sic] on a number of occasions and inquiries continue in relation to him. I am told that in the media world he is widely suspected of being able to access mobiles … A vast number of UVM's belonging to high profile individuals (politicians and celebrities) have been identified as being accessed without authority – these may be the subject of a wider investigation in due course. A number of the targets of these unauthorised accesses have been informed – some of whom have declined to assist in a police investigation."*

Lord Macdonald QC asked to be kept closely informed.[64] He was not asked to give an opinion on the case and he said it would have been surprising if he had been asked to do so.[65]

2.33 On 31 May 2006 DCS Surtees prepared a written update on the investigation.[66] As the briefing given by Ms Dowd to the DPP indicated, the police had by then ascertained that one of the "rogue" numbers accessing the voicemail boxes of Mr Lowther-Pinkerton and Ms Asprey belonged to Mr Mulcaire. DCS Surtees identified the possibility that Mr Mulcaire and Paul Williams were one and the same person. The update referred to Max Clifford and "HJK" and

[57] pp32-33, lines 19-9, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[58] p33, lines 10-16, *ibid*
[59] pp31-32, lines 22-4, *ibid*
[60] An individual whose identity has been anonymised throughout the Inquiry: http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/231111-S19-restriction-order-HJK.pdf
[61] para 35, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[62] para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[63] Not published
[64] p5, para 12b, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lord-Macdonald-QC1.pdf
[65] p7, para 12h, *ibid*
[66] Operation Caryatid Update (not published)

suggested that the investigation into potential victims outside the Royal Household should be taken over by a team outside the anti-terrorist branch. Pursuing his recommendation that the wider investigation should be undertaken by a different team, he also recorded that he had briefed the relevant officers.

2.34 Mr Clarke decided to keep the investigation within the anti-terrorist branch and not to widen the original parameters of the investigation.[67] Mr Clarke described his thinking as follows:[68]

> *"As the investigation progressed it became clear that there may have been many other people being targeted by whoever was responsible for the interception, and there was potential for the investigation to become much wider. I took the decision that this was not appropriate for a number of reasons. In coming to the decision that the parameters of the investigation had to remain tightly drawn it was obvious to me that a wider investigation would inevitably take much longer to complete. This would carry two unacceptable risks. First, that the investigation would be compromised and evidence lost and second, that the much wider range of people who we were learning were becoming the victims of this activity would continue to be victimised while the investigation took its course. This would probably go on for many months and to my mind this would be unacceptable."*

2.35 Mr Clarke rejected the option of informing the victims, in confidence. This was to enable the investigation to continue:[69]

> *"It was not feasible to notify victims and continue with a wide ranging covert investigation, and if we had done so, it is inconceivable that the fact that there was an enquiry into this matter would not have leaked, thereby compromising the investigation and leading to the potential loss of evidence."*

2.36 Mr Clarke agreed that this decision not to widen the parameters of the investigation was probably made on or shortly after 31 May 2006 when DCS Surtees briefed him on the potential breadth of the investigation.[70] His evidence was that, when it was becoming clear that the police were looking at something endemic within a particular part of the media and that there were more victims than they originally thought, he did seriously consider transferring the investigation from SO13 to a different department. He explained:[71]

> *"...Initially it was because by that stage my officers were very familiar with the quite complicated technical aspects of this offence…They had also engendered the confidence of the royal household in the way in which they were conducting themselves and the investigation, and because of the wider nature of what was happening, it would have meant picking apart the investigation and perhaps hiving off one part to one department, keeping another part with us, and that would have not made any sort of operational sense. So at that stage I decided it should stay where it was."*

2.37 In evidence DCS Surtees said that it was a *"fair observation"* that it might be difficult to disentangle an investigation involving offences against the Royal Household from an investigation involving other victims.[72] As a result, the police strategy was to continue concentrating on arresting and prosecuting Mr Goodman and Mr Mulcaire and not (in the

[67] para 38, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[68] para 88, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[69] para 89, *ibid*
[70] pp31-32, lines 22-10, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[71] p29, lines 3-14, *ibid*
[72] pp38-39, lines 20-1, *ibid*

words of DCS Surtees): *"to delay this exercise in favour of identifying a multitude of victims to load a future indictment…"*[73] He explained his biggest fear was that:[74]

> *"… sensitive state visits by principle [sic] members of the Royal Family to areas such as Iraq or Afghanistan could be leaked with the obvious security risks associated with such knowledge, whilst a trawl for victims continued."*

2.38 On 21 June 2006, DCS Williams prepared a further written update.[75] He recorded that through an analysis of the Vodafone "Vampire" data gathered during what he termed the "sting operation", the police had identified two voicemail "interceptions" in the "narrow" sense[76] by Mr Goodman and two by a phone number which was subsequently attributed to Mr Mulcaire.[77] He described this as *"a moment of reflection"* during which he put the operation in its context.[78] DCS Williams concluded by setting out his concerns about the strain on resources caused by the burgeoning number of SO13 anti-terrorist operations and the need, given the limited resources available, for a proportionate approach to Operation Caryatid:[79]

> *"At the moment I consider that I have enough resources to continue with this enquiry in terms of what is currently required, however I believe that it is important to formally record that this investigation has been conducted against a backdrop of sustained and increasing workload for SO13 since at least December 2005. Over that period the number of operations has increased from numbers in the 50's to today at tasking where we have reached 72 active operations with a number of them posing significant life threatening risks. Today again at tasking, as in previous weeks, there were requests for additional resource with there no longer being any spare capacity. This has resulted in some lower priority anti terrorist operations being placed on hold to release officers to higher priority operations. The level of the current workload is unprecedented and the assessment for the future is that this is unlikely to ease.*
>
> *"Operation Caryatid has been brought to its current status against this backdrop and the need to balance resources against all anti terrorist operations. Subject to the stages outlined above the scope of any future overt operational activity e.g. arrest/ searches will need to be balanced against the whole of SO13/CT priorities. These comments are documented purely to reinforce how my decision-making has been reached in terms of how to approach this enquiry in a proportionate manner."*

2.39 Meanwhile, the service providers continued to identify previously undiscovered potential victims.[80] The decision not to widen the investigation was, however, maintained. On 6 July 2006 DCS Surtees noted in the decision log that he was aware that there were potentially numerous victims, at the hands of Mr Goodman and Mr Mulcaire or others, but that identifying all those victims would be *"hugely time consuming"*.[81] In the context of what was later to happen (both at the conclusion of the prosecution and during the years that followed

[73] para 40, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[74] para 41, *ibid*
[75] Operation Caryatid Update as of Wednesday 21 June 2006 (not published)
[76] i.e. interceptions before the voicemail message had been listened to by its intended recipient
[77] para 26, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; ultimately, these were the only interceptions in the narrow sense that the police were able to prove
[78] pp35-36, lines 3-2, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[79] pp34-35, lines 5-2, *ibid;* Operation Caryatid Update as of Wednesday 21 June 2006 (not published)
[80] para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[81] Decision log dated 6 July 2006 (not published)

when concerns were being expressed about the way in which the investigation had been conducted), this is an important observation.

2.40 On 30 June 2006 the police prepared a written request for advice from the CPS.[82] The police informed the CPS that the telephone evidence indicated that:

(a) between 26 January 2005 and 24 April 2006 Mr Goodman's landline had called the unique voicemail access numbers of Mr Lowther-Pinkerton and Ms Asprey 145 times and 107 times respectively;

(b) between 22 February 2006 and 8 May 2006 a landline located in the offices of NI had called Ms Asprey's unique voicemail access number;

(c) in May 2006 a landline number registered to an office leased by Mr Mulcaire had called the unique voicemail access numbers of Mr Lowther-Pinkerton and Ms Asprey five times and 38 times respectively; and

(d) the number relating to Mr Mulcaire's office premises had called Mr Goodman's mobile phone a number of times.

2.41 On 14 July 2006, before the CPS responded to this request for advice from the police, Ms Dowd sent another confidential briefing note to the DPP and the Attorney General.[83] Lord Macdonald agreed that the briefing was premised on the narrow interpretation of s1 of RIPA.[84] However, Ms Dowd expressed the view that offences of conspiracy between Mr Goodman and Mr Mulcaire to commit s1 of RIPA and s1 of CMA offences *"may better reflect the alleged criminality involved and enable a more comprehensive case to be presented".*[85]

2.42 On 18 July 2006 Ms Dowd advised the police in writing. She advised that the case against Mr Goodman and Mr Mulcaire, at that stage limited to the Royal Household interceptions, was *"cogent and presentable and could proceed without the need to delve into the content of any messages left and/or retrieved"*.[86] She also stated that:[87]

> *"Whilst there are many aspects of the evidence which I would require to be clarified, it is my initial assessment that offences under the CMA and RIPA 2000 may be provable. However, in addition, I would also be looking to consider an offence of conspiracy to commit those offences on the basis of other evidence being available …"*

2.43 It is correct to observe that this was the first occasion on which the possibility of the criminality being accommodated within the offence of conspiracy was mentioned by the CPS. As Lord Macdonald pointed out in evidence, and reflected above, a charge of conspiracy would not require proof that every interception had taken place before it had been accessed by the intended recipient:[88] indeed, given that the offence was constituted by the agreement rather than by the subsequent act or acts, it would probably be sufficient to prove a common

[82] Not published
[83] Not published
[84] p59, lines 3-15, Lord Macdonald QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[85] p4, lines 18-20, David Perry QC, *ibid;* Letter of advice not published
[86] p36, lines 6-8, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf; Letter of advice not published
[87] para 44, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lord-Macdonald-QC1.pdf; Letter of advice not published
[88] pp78-79, Lord Macdonald QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf

intention to intercept voicemail messages without examining exactly when such multiple accessing would be taking place.

2.44 Also on 20 July 2006 DCS Williams prepared a further written update on the investigation.[89] He noted that: *"there may well be a much wider range of 'victims' and indeed I suspect that Mulcaire could well be someone whose business it is to secure access to information concerning a whole range of 'VIPs'"*. Identifying the options, again he included:

> "extend[ing] the investigation to include the full extent of this potential criminality which would help to establish the seriousness of what we are facing."

but he went on:

> *"However, to do this effectively the enquiry would probably have to remain covert, which would leave my known and unknown victims vulnerable over a much greater period of time. It would also require significant SO13 resources and the current terrorist threat requires their deployment elsewhere against much higher threats to public safety/life."*

2.45 Because of this, DCS Williams was of the view that Operation Caryatid should remain limited to victims within the Royal Household but that Mr Goodman and Mr Mulcaire should be arrested as soon as possible in order to curtail the exposure of the victims to voicemail interception. DCS Williams also had in mind that including more victims would be unlikely to increase significantly the sentence that the offenders would receive; and that securing a conviction as a deterrent to others would be best achieved through a clear and simple case. He set out that the alternative to limiting Operation Caryatid would be:

> *"… a much extended trial, numerous victim's [sic], potentially more suspects with a host of council [sic] all seeking to derail what could appear to be a far more complicated case ...*
>
> *[whereas] "Once executive action is taken then all parties can be briefed re the security issues and the phone companies can start to put in appropriate security measures and brief/reassure their customers – all of which will reduce public/personal harm ..."*

2.46 In the same update of 20 July 2006, DCS Williams also listed the factors which influenced his view that the investigation should not be transferred out of SO13. His list included the following:

(a) that the support of the Royal Household was strongly based on the confidence it had in SO13;

(b) that the relationships formed between SO13 and the service providers were crucial to a successful prosecution;

(c) the importance of continuity of the investigation;

(d) that delays would be caused by transferring the investigation to another department because a new SIO would need to review the case and may have resource constraints that might further delay the operation.

(e) the current team's intimate knowledge of the case, which could not realistically be picked up in the same detail by a new team.

[89] Operation Caryatid Update as of Thursday 20 July 2006 (not published)

2.47 DCS Williams sought strategic guidance on this approach from Mr Clarke, who endorsed his view.[90] He then went on leave until 12 August 2006 so it fell to DCS Surtees to deal with information received on 26 July 2006 to the effect that Mr Mulcaire had accessed the voicemail of Tessa Jowell, then a cabinet minister. DCS Surtees then noted in the decision log:[91]

> *"As a result the position is that this changes the perception that as well as the Royal Correspondent of the N.O.W filling up his editorial with Royal gossip the potential for operational Security breaches now not only surrounds the Royal household but also Cabinet Ministers."*

When giving evidence, DCS Surtees agreed that his primary concern was then to stop the voicemail interception in the interests of national security.[92]

2.48 On 2 August 2006 Ms Dowd discussed the case with leading counsel, David Perry QC. Mr Perry agreed during his evidence that the advice he gave was essentially that, first, there was evidence in respect of four main substantive offences[93] which established in any event that the interception had taken place before the intended recipient had accessed the voicemail message concerned; and second, that in relation to the conspiracy charge, the issues about whether or not there needed to be an "unopened envelope" would not arise.[94]

2.49 Mr Perry explained in his evidence that he also advised against charging Mr Mulcaire and Mr Goodman with CMA offences because asking a jury to deal with those allegations together with s1 of RIPA would be confusing;[95] furthermore, s1 of RIPA more accurately reflected the conduct concerned.[96] Mr Perry also advised as to the possibility of obtaining a warrant under the Police and Criminal Evidence Act 1984 (PACE) and the attendant difficulties which would arise in relation to journalistic material.[97]

2.50 The only record that exists of the meeting on 2 August 2006 is an email sent by Ms Dowd to the police on that day.[98] On the question of the interpretation of s1 of RIPA, Ms Dowd said the following in the email:

> *"We have briefly discussed before the possibility of arguing that what we have termed our Computer Misuse Act offences might fall to be considered as RIPA offences – that the issue has not definitively been argued. I was reticent about arguing the point in this case. However, having considered the matter with Counsel we have concluded that we could properly argue the point – and in any event nothing would be lost as we already have the 4 main clear RIPA offences (if not more I hear!)."*

2.51 As regards Ms Dowd's use of the words *"if not more I hear"*, DCS Surtees was asked whether this was a reference to the possibility, at least, of additional co-conspirators. DCS Surtees disagreed and said that:[99]

[90] para 28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[91] Decision log dated 26 July 2006 (not published)
[92] pp39-40, lines 25-8, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[93] The four interceptions proved during the test period, referred to in paragraph 2.38 above
[94] p7, lines 10-22, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[95] pp6-7, lines 25-2, *ibid*
[96] p7, lines 5-7, *ibid*
[97] p9, lines 9-15, *ibid*
[98] pp5-6, lines 24-8, *ibid;* email not published
[99] p43, lines 3-7, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf

> *"I think it's more … that we've got more information/evidence coming from the telephone companies to talk about access to DDNs and the sequencing which we're concentrating on as opposed to more suspects."*

2.52 Pausing in the narrative, it is appropriate to comment on the approach of the police to the gathering of evidence and to the strategic decisions that were taken, particularly against the context of the concern that this approach was or could have been affected by the relationship between the MPS or its most senior officers and NI. The first point to make is that there is no evidence (or even the slightest suggestion) of any relationship between NI, the NoTW or any of its employees and any officers involved in this enquiry from the Deputy Assistant Commissioner (Mr Clarke) down through the detective ranks. Whilst each, as their roles required, will have interacted with individuals from NI at certain times during their careers, they did not form social relationships. Mr Clarke gave evidence as to his level of interaction with individuals from NI, which, in spite of his senior position and high-profile role, was extremely limited. To the best of his knowledge he had never met or even spoken to Neil Wallis or Colin Myler (editor of the NoTW between the end of January 2007 and July 2011). He met Rebekah Brooks and Andy Coulson on one occasion in 2004. The purpose of that meeting was to make the media aware of the reality of the terrorist threat because there had been a great deal of criticism in the media of the counter-terrorism effort and some commentators had been saying that the terrorist threat was being exaggerated by the authorities for political or self-serving purposes.[100] At the meeting, they were unexpectedly (at least to Mr Clarke) joined by Rupert Murdoch.[101]

2.53 The only known relationship was with Mr Clarke's senior officer, Mr Hayman, and the occasions in respect of which there is evidence of contact with NI in the relevant period will be clear; there is no basis for suggesting that Mr Hayman was any more than peripherally involved in the investigation; to such extent as he was involved in any way, it was solely because of his responsibilities for overall command of Mr Clarke's team. Neither do I believe that Mr Clarke or any of the other officers were or would have been affected by any such relationship.

2.54 The peripheral nature of the involvement of Mr Hayman is illustrated by his evidence and that of Mr Clarke. The evidence of Mr Hayman is that he allocated the investigation to Mr Clarke, asked him to devise an investigation strategy and an operation,[102] and let him "get on with it". Mr Hayman only expected Mr Clarke to refer to him if Mr Clarke considered there was something that Mr Hayman needed to brief up to the Commissioner or if Mr Clarke had insufficient resources.[103] Mr Hayman stressed that he was not involved in the detail of Operation Caryatid and stated that his degree of detachment was demonstrated by the fact that he did not know when the arrests or searches were going to take place.[104] Mr Hayman told the Inquiry that he could count on one hand the number of times he and Mr Clarke spoke about the investigation.[105]

2.55 Mr Clarke, in general agreement with the extent to which Mr Hayman had contact with him on this issue said that he personally would have briefed Mr Hayman *"probably not very often".*[106] Mr Clarke could not remember specifically which issues he discussed with Mr Hayman except

[100] para 16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[101] para 18, *ibid*
[102] p135, lines 9-11, Andy Hayman, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[103] p135, lines 13-16, *ibid*
[104] p135, lines 17-22, *ibid*
[105] p132, lines 2-6, *ibid*
[106] p22, line 14, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf

that he certainly briefed Mr Hayman at the outset when it was discovered that Mr Goodman and Mr Mulcaire appeared to be responsible and *"probably … in the run-up to the arrest phase"*.[107] It is clear, therefore, that Mr Hayman did not make any operational decisions and did not influence relevant decision-making, save to the extent that he did not disagree with any of the decisions made by Mr Clarke.[108]

2.56 Moving on, I am entirely satisfied that each of the decisions taken was justified and based on reasoning that was clear, rational and entirely in keeping with the operational imperatives of the police at that time. I recognise that the decision (which was revisited on a number of occasions) not to expand the investigation beyond the Royal Household gives rise to concern but there is no basis for arguing that it was based on oblique motives consequent on any relationship with NI. Again, in the light of the circumstances prevailing (especially related to the extensive demands on police time in relation to terrorism), it was understandable, justified and appropriate.

2.57 Elaborating on the reasons for these conclusions, it is clear that during the pre-arrest phase of the investigation DCS Williams, DCS Surtees and, indeed, Mr Clarke were aware that there could be a wide range of other victims but that the priority which needed to be given to counter terrorism, the need for secrecy and the belief that arresting Mr Goodman and Mr Mulcaire would send out the strongest signal and bring this criminality to an end all militated against expansion. The contemporaneous decision logs and case reviews identify this reasoning; DCS Williams spoke of the process as involving *"a balance of risk and harm"* which would be judged in particular against the imminence of a threat to life and it is equally clear that judgements continued to be made throughout this time on that basis.[109] Such a decision, however, does leave open the need to devise, institute and execute an appropriate exit strategy. All these decisions were re-visited after the operation moved through the arrest and prosecution phases and require re-examination as the extent of the evidence came to be known whereupon the need for an exit strategy to deal with the unresolved issues surrounding the investigation became all the more pressing. It is to these phases that I now turn.

E

The arrest and searches

2.58 On 8 August 2006, the police arrested Clive Goodman and Glenn Mulcaire and searched over 13 premises and vehicles, including their home addresses.[110] Attempts were also made to search the offices of NI in Wapping[111] although to minimise the risk of encountering journalistic material, the CPS had advised that the search of those premises should be confined to Mr Goodman's desk and the finance offices.[112] The objectives of the search included looking for evidence implicating other NoTW journalists. DCS Surtees explained:[113]

> *"The intention behind searching the offices of News Corporation was to seize all material relating to Clive Goodman and Glenn Mulcaire to establish the extent of their unlawful practises [sic] and also to establish the level of knowledge of NOTW concerning this illegal activity. At no point was a decision made by D/Supt Williams*

[107] p52, lines 11-17, *ibid*
[108] p52, lines 22-23, *ibid*
[109] p35, lines 13-24, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[110] p44, lines 8-9, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[111] pp45-46, lines 24-23, *ibid*
[112] Decision log dated 3 August 2006 (not published)
[113] para 45, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf

> *or I to not investigate the wider possible involvement of NOTW. Despite the legislative challenges to searching journalistic premises, the warrant would be executed as I was eager to gain entry to the offices of NOTW for two reasons: The first was to seek and recover any additional evidence relevant to Clive Goodman's activities and the second was to ascertain whether any other evidence existed implicating others within the NOTW in a wider conspiracy, hence my reference on application for the section 8 PACE warrant to the financial office."*

2.59 DI Maberly explained that the police intended to seize records relating to financial payments to Mr Mulcaire (including documents recording the dates of such payments, the reasons for the payments and those authorising the payments) and plans or directories relating to the locations of telephone extensions within the offices.[114]

2.60 It is significant and a matter of regret that the plans for the search were substantially thwarted. DCS Surtees described how the searching officers were obstructed by NI personnel:[115]

> *"There was some real difficulty in conducting the search at News International. There were I think four of my officers who actually got into the premises before News International barred the rest of my officers from going into News International. We got to the desk of Goodman, we seized some material from the desk of Goodman. There was a safe on his desk, which was unopened. My officers were confronted with photographers, who were summonsed from other parts of News International, and they were taking photographs of the officers. A number of night or news editors challenged the officers around the illegality of their entry into News International. They were asked to go to a conference room until lawyers could arrive to challenge the illegality of the section 18(1) and 18(5) and section 8 PACE authorities, and it was described to me as a tense stand-off by the officer leading the search.*
>
> *"The officer tried to get our forensic management team, our search officers into the building. They were refused entry, they were left outside. Our officers were effectively surrounded and photographed and not assisted in any way, shape or form. That search was curtailed. Some items were taken. The search did not go to the extent I wanted it to."*

2.61 On being informed of the level of obstruction, DCS Surtees, who was not present at the search, instructed the small team to search Mr Goodman's desk only and leave the premises with whatever they had recovered.[116] A locked safe and computer had to be left behind. The financial records were not searched.

2.62 No subsequent search (with a larger team of police officers) was arranged. DCS Surtees explained: *"I think the moment had been lost with regard to the information we sought. It, I think, had gone, quite frankly".* He agreed that what he meant was that NI might have hidden or destroyed incriminating information.[117] This is a disturbing conclusion and justifies a re-evaluation of the way in which PACE operates when seeking to deal with allegations of criminal conduct by journalists while at the same time protecting the essential requirements of a free press.[118]

[114] para 28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[115] pp45-46, lines 24-23, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[116] para 47, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[117] pp47-48, lines 22-7, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[118] This issue is discussed further in Part J Chapter 2

2.63 The search of Mr Mulcaire's home and business premises was very much more successful: the police seized some 11,000 pages of papers. These papers have been referred to in various ways including as "Mulcaire's notebook" and "the Mulcaire archive" and, in part, consisted of lists of names, with addresses, landline and mobile phone numbers; in some cases, there were unique voicemail access numbers and pin numbers along with contact details for the network service provider. Additionally, of potential importance was a first name in the top left hand corner of the page. In a number of cases in respect of which Mr Goodman was later prosecuted, that name or "corner name" (as it has since been termed) was "Clive". Given the present status of the investigation and prosecution of journalists in relation to this material, it is not appropriate to go further.

2.64 What can be added is that the 11,000 pages of documents included what has since been described as the "for Neville" email.[119] This email (dated 29 June 2005) was apparently sent by Ross Hindley at the NoTW, to Mr Mulcaire, and is entitled '*Transcript for Neville: Wednesday, June 29 2005'*. The message read:

> *"Hello,*
>
> *This is the transcript for Neville. I have copied the text in the below email, and also attached the file as a word document.*
>
> *Ross.*
>
> *TRANSCRIPT FOR NEVILLE: WEDNESDAY, JUNE 29 2005."*

Then, set out in the body of the email is the text of 35 voicemail messages left for, or received by, Gordon Taylor. The attachment is entitled *"TRANSCRIPT_FOR_NEVILLE.doc"*.[120]

2.65 In addition to this mountain of paper, the police also seized from Mr Mulcaire audio cassettes, CD roms, white boards showing pin numbers, security codes and bank details of potential victims.[121] There was also a contract between Mr Mulcaire and the NoTW according to which Mr Mulcaire was to provide *"a research and information service"* to the newspaper and undertook to carry out *"all research and information assignments"* requested.[122]

2.66 Further material related to payments from the NoTW, including a number of invoices showing apparent payments to Mr Mulcaire.[123] Suffice to say that he was paid a weekly retainer amounting to no less than £2,019 per week. In addition to the weekly retainer he also received other payments, typically of £250, which appear to have been linked to work on specific stories.

2.67 On the day of the arrests, the MPS notified the public that there were victims other than those associated with the Royal Household. Its press release stated that: *"As a result of their enquiries police now believe that figures beyond the Royal Household have had their telephones intercepted …"*[124]

[119] Not published
[120] This email was not ultimately used in support of the prosecution, instead forming part of the unused material. Unused material comprises documents gathered or created during an investigation but which the prosecution do not rely on in support of the charges; it must be disclosed to the defence if it undermines the case for the prosecution or might assist the case for the defence
[121] para 50, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[122] Not published
[123] Not published
[124] para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Reid.pdf

2.68 Following the arrests, NI instructed BCL Burton Copeland Solicitors (Burton Copeland) to respond on their behalf to any enquiries or requests from the police.[125] How the firm went about discharging that responsibility is examined below but the evidence given by Colin Myler was that the role of Burton Copeland was to:[126]

> *"act as the go-betweens and the word I've used before is a bridge head, as I understand, between the police and the company, so that anything that the police wanted Burton Copeland would facilitate, so that there was full transparency and there was no opportunity to accuse the company of being an obstruction to what the police were looking for."*

The interviews

2.69 On 8 and 9 August 2006 Mr Mulcaire and Mr Goodman were separately interviewed by junior rank detectives. Both were warned of their right to remain silent and, exercising that right, both declined to answer any questions giving 'no comment' responses.[127] At this stage, however, what is of interest is not what they might have said but the questions themselves for although, at that stage, the police would only have been able to undertake a cursory examination of the documents seized, they indicate just how much the police knew or appreciated about the likely extent of Mr Mulcaire's activities and, at least to some extent, who his victims were.

2.70 During the interviews of Mr Mulcaire on 9 August 2006, the interviewing officers referred to Abi Titmuss, and various sports people, offenders and members of the Royal Family (whose names have been redacted). Among the allegations put to Mr Mulcaire, Detective Constable Gallagher asked the following questions:

> *"I'm gonna cross reference something in this document. There's a reference to Tessa Jowell and then in brackets, sorry circled above it says MP, gives a telephone number DDMI, PIN number. [Redacted] is crossed out David Mills and then it says [redacted], gives an account number and network Voda. David Mills is written underneath and it says husband and gives a telephone number for him and then (INAUDIBLE) refer to another document found in the kitchen cupboard of your home, exhibit WAB/61 is another sheet of A4 paper which also refers to Tessa Jowell and that has a telephone number there. If I can just show this to you, on the left hand side at the top of the page it says Tessa [redacted]. Now that sounds to me, that reads to me like you've written down somebody's conversation. Is that what's taken place here?*
>
> *"Have you intercepted her voicemail?*
>
> *"Either of Tessa Jowell or her husband?"*

2.71 DC Gallagher also asked the following question, which made clear that the police had evidence to suggest that Lord Prescott had been the victim of voicemail interception:[128]

[125] p3, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Tom-Crone.pdf
[126] p8, lines 14-21, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf
[127] The transcripts of the interviews have not been published
[128] This is a significant question particularly in the context of the response that Lord Prescott received from Assistant Commissioner Yates when he enquired in July 2009 as to whether he had been the victim of phone hacking; p42, lines 8-13, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

"Another page here, this has got the name John Prescott. There's another name underneath, first of all it says advisor and then the name Joan Hammel. You've got her telephone numbers and DM1 numbers, password numbers and Vodafone passwords that I've already mentioned and an address in NW1. Have you got that information to access John Prescott's network or that of his advisors?"

2.72 On the extent of the work that Mr Mulcaire was performing for the paper, DC Gallagher asked the following:

"Okay. We've got pages and pages of information here, at least another 30 odd pages, various names. Again you've got instances of telephone numbers, PIN numbers, etc. I just picked out ones which are relevant to this enquiry that we put to you so far. Okay, the last page in this document is an email message. This is very relevant ...

"This suggests that you do have a contract, a long term contract with the News of the World and that would account for you being paid up to £2,000 a week by them.

"Can you recall in the last interview, yeah, I put it to you that you were on a retainer by News of the World to do research for them. I hadn't seen that email at the time and that supports what I said earlier on, remind you that you were being paid by them a fixed fee just to do regular for them at their behest. They're asking you to do research for them and you're providing them with information and on top of that, when you get a good one, then you have a separate contract for that particular job and you're in the business of delving into people's personal lives inappropriately, breaking the law to intercept telecommunications and that's part and parcel of what you do. Have you got anything to say to that?"

2.73 DC Green returned to the issue on a later occasion and asked the following question:

"… I'm asking you to account for the fact that this invoice shows that you have been paid for what would appear to be work in and around a person called Jowell who I believe to be Tessa Jowell who we've outlined in other documents. I believe that this fact is because you may be taking part in the commission of the offence of unlawfully intercepting her telecommunications …"

2.74 Revealing a suspicion that Mr Mulcaire had been working for one or more NI journalists other than Mr Goodman, DC Green also put the following to him:

"… I have no doubt, this simply goes back and there is evidence there that you have been in the employee [sic] of News International for several years and you've been working with Mr Goodman most recently".

2.75 On 9 August 2006, following the interviews, Mr Goodman and Mr Mulcaire were charged with conspiracy to intercept communications and eight substantive offences of unlawful interception of communications. Critical context for this development in the investigation comes from other arrests which took place on the same day as part of an investigation, Operation Overt. In short, 25 people were arrested for conspiracy to cause nine passenger aeroplanes to explode over the Atlantic; this was one of the largest counter terrorism operations ever undertaken.[129] When DCS Williams returned from leave on 12 August 2006, he received a briefing during, which he stated, he would have been told about the range of

[129] para 29, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

material that had been found[130] but it is highly material to bear in mind that, from that time, Operation Overt was also occupying his attention.[131]

The initial review of the documents seized: compiling "The Blue Book"

2.76 The police have access to a computerised system to record the largest investigations and for the analysis of the material received. It is known as HOLMES (Home Office Large Major Enquiry System) but it was not used for this operation. In evidence, DCS Williams and DCS Surtees gave different reasons for this decision. DCS Williams said that HOLMES was not used because of the desire to keep the investigation secret. DCS Surtees said that it was not possible to record all the documents on the database because it was already at operational capacity.[132]

2.77 In order to have the material analysed in more detail DCS Surtees had to negotiate for the necessary resources. Because his anti-terrorism colleagues were all working on Operation Overt, DCS Surtees asked for some 20-30 officers from Special Branch:[133] *"to populate a spread sheet with the details of all those individuals who appear on the documents seized that there is an indication of Interception offences against them"*.[134] They began work on 9 August 2006.[135]

2.78 In an entry in the decision log dated 10 August 2006, DCS Surtees gave a further indication of what the police were able to ascertain within days of seizing the documentation from Mr Mulcaire and which revealed his suspicions that Mr Mulcaire's work was centred on obtaining access to voicemail messages:[136]

> *"Having reviewed the material seized at the address searches it is clear that there is a wealth of sensitive documents relating to hundreds of individuals including Royal Household, Members of Parliament, Sports stars, Military Police, Celebrities and journalists. There is also a number of electronic media seized including cassette tapes, microtapes and computers ...*
>
> *"It is clear from the documents Recovered from the searches conducted that Mulcaire has been engaged in sustained (years) period of research on behalf of News International, this assumption is based on the fact that News International have for a number of years paid substantial cash payments to his bank accounts. The documents are a collection of handwritten sheets that show 'research' work in various levels of completion. In many there is simply a name of a celebrity or well known public figure these develop into sheets detailing home addresses, business addresses, telephone numbers, DDNs, account numbers, passwords, pin numbers and scribblings of private information. Clearly from these documents I take the view that this research work*

[130] pp41-42, lines 14-3, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[131] para 30, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[132] para 50, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[133] p50, lines 3-7, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[134] Decision log dated 10 August 2006 (not published)
[135] para 51, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[136] Decision log dated 10 August 2006 (not published); para 61, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf

is and has been undertaken over a substantial period and is with the intention of obtaining access to voicemail messages …"

2.79 With the identification and notification of potential victims in mind, DCS Surtees continued as follows in the decision log:[137]

> *"To establish a full picture as to whether individuals have been intercepted or the amount of times they have been intercepted all of the airtime providers will need to search their database to give us those details. Once all of this work is complete then I will discuss the issue of how we will notify those victims. Again whilst it would be advantageous to victims to be informed I would not be in a position to provide details and therefore would need to follow up each contact with further contact and conversations which by sheer volume would be impracticable. I am satisfied that the risk to these victims has diminished due to the arrest of the two subjects …*
>
> *"From the documentary evidence referred to above a spread sheet has been produced showing the names of everyone who is featured regardless of how developed the research appears. So in some cases the spread sheet will simply feature the name with no other information apparent in others then many other boxes will be populated. Where we have a telephone number and a DDN I have asked for the telephone data to be cross referenced to ascertain whether possible interceptions have taken place. This will produce a possible 'victim' list …"*

2.80 Before passing from this logged decision, it is important to note that DCS Surtees also recorded that the present advice from the CPS was that there needed to be evidence that the voicemail message was intercepted prior to being listened to by the intended recipient. Thus, the advice of David Perry QC (that the wider interpretation of s1 of RIPA which avoided having to prove that 'the envelope had not been opened' was arguably correct and that, in any event, the problems of interpretation could be wholly avoided by charging with conspiracy to commit the RIPA offence) had simply not filtered down to DCS Surtees. He continued to proceed on the basis of a far more restrictive interpretation of the law.

2.81 The spreadsheet required by DCS Surtees took officers from Special Branch five to seven days (including overtime over a weekend) to create.[138] It became known as "the blue book"[139] and DI Maberly explained that it was divided into two parts. The first part contained a list of "those potentially compromised" and the second summarised the content of the audio and video exhibits.[140] The blue book also identified those who had potentially received the product of Mr Mulcaire's work[141] and was supplemented over the following weeks with various pieces of information, including information supplied by the telephone companies.[142]

2.82 DCS Surtees explained that where Mr Mulcaire had recorded the unique voicemail access number for a particular voicemail box, the relevant mobile phone company was asked whether the number had been dialled by numbers which could be attributed to Clive Goodman or Glenn Mulcaire, that is, "the suspect numbers". The precise timing is not clear, but around the same time (and in line with the decision recorded on 10 August 2006), the police asked all five of the UK mobile phone service providers to identify calls by these suspect numbers, to

[137] *ibid*
[138] p50, lines 7-12, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[139] para 54, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[140] para 36, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[141] para 54, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[142] pp50-51, lines 25-2, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf

the voicemail boxes of any of their customers, dating back as far as possible.[143] To the suspect numbers was added a hub (or general) phone number at the NoTW which the police had also identified was being used to access voicemail boxes.[144]

2.83 On 17 August 2006 Burton Copeland wrote to Louis Mably (junior counsel for the prosecution).[145] In that letter they claimed that the NoTW had retained the services of Mr Mulcaire's company, Nine Consultancy, for a number of years, but that the activities currently the subject of charges were the result of a separate arrangement between Mr Goodman and Mr Mulcaire and were *"undertaken and paid for outwith this official arrangement with the newspaper"*. Burton Copeland claimed that at the end of October 2005 Mr Goodman introduced a supposed confidential source named "Alexander" who was given cash payments. They enclosed the records of payments made to "Alexander" and a corresponding schedule entitled *"Cash paid by News International (through Goodman) to Glenn Mulcaire"*. The cash payments totalled £12,300.

3. The prosecution strategy

Conference with counsel on 21 August 2006

3.1 On 21 August 2006 a case conference took place at Counsels' Chambers involving leading and junior counsel, Ms Carmen Dowd on behalf of the CPS, and various police officers, including DCS Williams. Mr Perry's recollection is that, at that stage, he and Mr Mably did not have all the papers subsequently used at the Crown Court.[146] The Inquiry has seen notes of this conference prepared by DCS Williams and also those of Mr Perry and Mr Mably.[147] In essence, the police officers explained to counsel that the review of the seized material had demonstrated the existence of approximately 180 targets of interception[148] although the nature and quality of the evidence in relation to each had not been established. In order to ensure that the case remained manageable but also reflected the broad totality of the criminality, counsel advised that the matter should proceed to trial on the basis of four to six victims (in addition to those from the Royal Household) who should be selected as being representative of the group as a whole. The advice given by counsel was that this number of victims would afford the court adequate sentencing powers; it was important to provide a picture of the criminality so that its scope could be reflected.[149] The inclusion of any more victims would not increase the sentencing powers of the court.[150] This is a perfectly sensible and extremely common strategy. As DCS Surtees said descriptively, there is a point at which an indictment saturates.[151]

[143] p63, lines 15-20, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[144] p64, lines 8-14, *ibid*
[145] letter not published
[146] para 10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-David-Perry-QC.pdf
[147] not published
[148] para 55, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[149] para 12, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-David-Perry-QC.pdf; para 55, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[150] p13, lines 12-24, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf; para 31, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[151] p40-41, lines 22-1, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf

3.2 Further, on the hypothesis that there were other potential defendants who were encouraging the commission of the primary offences, counsel pursued the question of whether anyone else was involved. In a short note produced on 14 July 2009, nearly three years later, Mr Perry and Mr Mably recorded the following:[152]

> *"We did enquire of the police at the conference whether there was any evidence that the editor of the News of the World was involved in the Goodman-Mulcaire offences. We were told that there was not (and we never saw such evidence). We also enquired whether there was any evidence connecting Mulcaire to other News of the World journalists. Again we were told that there was not (and we never saw any such evidence)."*

3.3 Notwithstanding the apparent certainty of counsels' recollection as expressed in their note, the evidence given by Mr Perry was slightly less emphatic as regards the specificity of his questions:[153]

> *"I don't think I would like to say that I necessarily expressed it in precisely those terms, but I was concerned to discover whether this went further than just the particular individuals with which we were concerned and I think I was conscious in my own mind that the question had to be whether it was journalists to the extent of the editor."*

3.4 Mr Perry clarified during his evidence that his question was directed at ascertaining whether there was evidence that would support charges against other individuals rather than understanding simply what suspicions the police might have had. Having been asked whether it was possible that there were speculative discussions along the lines that there might be circumstantial or inferential evidence, as opposed to anything concrete, he said:[154]

> *"It's certainly possible, although I have no recollection of it, and I think from my point of view I would have been looking to see whether there was a possibility of a case, rather than whether there was something that was speculative …"*

3.5 Recognising that many cases are built on circumstantial or inferential evidence, Mr Perry said:[155]

> *"But it depends on the combination of circumstances and the strength of any evidence, but certainly in the context of looking at the material that we had in this case and the evidence available to us, I certainly don't think I saw anything that would have enabled me to present a case in any – on the basis of any inference or circumstantial evidence."*

3.6 Mr Perry also made it clear that he had not seen any evidence that other individuals had been involved, but that he was basing his question on his own knowledge and experience of journalists and newspapers.[156] In answer to his direct question, Mr Perry said:[157]

> *"We were informed that there was no such evidence. I can't recall which officer gave that reply. I think, in fairness to everyone involved in the case, I think it's right to say that this was still at a time when the information that we were obtaining was continuing to develop."*

[152] p2, John Yates, https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-18.pdf
[153] p15, lines 5-21, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[154] pp16-17, lines 18-2, *ibid*
[155] p17, lines 3-13, *ibid*
[156] pp15-16, lines 22-8, *ibid*
[157] p16, lines 12-17, *ibid*

3.7 DCS Williams does not dispute that counsel would have been told at the conference that there was no evidence that others at NoTW were involved in the conspiracy. When he gave evidence, DCS Williams said that:[158]

> *"… we were all aware of what the speculations, potentially how this might be further than these two men, because that was part of our discussion in terms of considering whether or not there may be other defendants. In terms of there actually being evidence, and they had access to all the material, then I would agree: at that time, we didn't have evidence."*

3.8 It seems overwhelmingly likely both that DCS Williams was the officer who answered Mr Perry's question (neither DCS Surtees nor DI Maberly were at the conference) and that Mr Perry's recollection of the answer given was accurate. As to his note concerning "*anyone else's involvement*", DCS Williams said that there was discussion and speculation about whether others were involved; it was this discussion that led onto the question of obtaining a production order pursuant to PACE directed to NI, requiring the production of documents.[159]

3.9 When DCS Williams was asked about the reference to a production order and his note: *"if identifies other defendant – consider"*, he said that the intention was that if the fruits of a production order revealed further suspects, they would consider the position at that time.[160] DCS Williams described his thinking as follows:[161]

> *"[Mr Mulcaire] has a contract for something like 104,000 a year. What's he getting – why's he got that? Who's tasking him? What are they tasking him with? And equally, what's he giving back? Dependent on the outcome of that, we would be able to do analysis in terms of, well, assessing, then, consider, actually, what is it that we might be able to do in terms of building a further case?"*

3.10 Also after three years, on 15 July 2009, DCS Williams provided a note to the CPS which contained his recollection of the conference.[162] In it, he set out his belief that everyone recognised that proving that someone was the victim of interception was *"extremely challenging"* (a statement which, as Keir Starmer QC[163] himself recognised, was consistent with the narrow view of the law).[164] DCS Williams further explained:[165]

> *"In relation to whether or not anyone else was involved. As a part of this same conference and considering what we had discovered we actually commented that we were open to the potential for there to be other defendants and in fact part of our discussion was around the merits of getting a Production Order to see if it would reveal more to help our understanding. Our NTFIU, MPS Legal services and Louis Mably were actioned to explore that further, particularly around what we could legitimately ask for in such an order, but the view of the meeting was that, that process may well be 'drawn out' by NOTW and that if possible we would seek disclosure through*

[158] p54, lines 18-25, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[159] p55, lines 16-23, *ibid*
[160] p56, lines 1-24, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[161] p56, lines 13-21, *ibid*
[162] pp109-110, lines 20-7, Keir Starmer QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf; Note not published
[163] Keir Starmer QC, succeeded Lord Macdonald as the Director of Public Prosecutions on 1 November 2008
[164] p110, lines 19-23, *ibid*
[165] note not published; p111, lines 4-9, *ibid*

written request to their legal department seeking cooperation with our investigation. The latter is what happened …"

3.11 Mr Starmer declined to comment on this segment of DCS Williams' note.[166] Subsequently, Mr Mably stated that he *"broadly agreed"* with it.[167] Mr Perry explained that there were two issues relating to the question of a production order: the first was whether there was any basis for obtaining evidence generally by way of a production order, and the second was whether a production order should be sought to obtain evidence of payments made by Mr Goodman to Mr Mulcaire.[168] Mr Perry emphasised that he did not think that the minds of anyone were closed at that stage[169] and it is certainly accurate that, following the conference, Mr Mably did, in fact, draft an application for a production order.[170]

3.12 I do not believe that DCS Williams sought to downplay the number of victims, as has been suggested, still less that he misled counsel in any respect. It is right that DCS Williams told counsel that there was "no evidence" that journalists other than Mr Goodman were involved, when in reality there was inferential and circumstantial evidence,[171] but this was in the context of the common understanding that counsel was enquiring into whether there was sufficient evidence to charge any further suspects. DCS Williams did not hide from counsel his suspicions that others were involved, on the contrary, they were openly discussed: he sought advice from counsel on whether a production order could be obtained in order to secure evidence to substantiate those suspicions. DCS Williams was plainly open to pursuing investigative avenues with a view to supporting the hypothesis that others were involved. It would be unfair to suggest that, in some way, he was setting out to restrict the investigation and avoid casting the net beyond Mr Goodman and Mr Mulcaire.

3.13 Furthermore, no evidence was concealed. At the very least, counsel and the CPS knew of the evidence supporting the charges that became counts 16-20 and were aware of the corner names which could implicate other journalists (because of counts 16 to 20). Counsel were given a copy of the blue book; further, albeit for the specific and limited purpose of reviewing the unused material,[172] Mr Mably was given access to all the documents seized, including all the Mulcaire papers.

3.14 It is also clear from the notes of the conference that counsel gave some consideration to the technical legal question which arose under RIPA namely whether it was necessary to prove that the unlawful interceptions had taken place before the voicemail messages had been listened to by their intended recipients. It is less clear, however, precisely what advice was

[166] p111, line 20, *ibid*
[167] note not published
[168] para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-David-Perry-QC.pdf
[169] p18, lines 5-20, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[170] Draft application not published
[171] This is addressed below
[172] This issue of the review of unused material is raised at different times and it is important to understand precisely what is involved in the exercise and what can be derived from it. The purpose of any review of unused material (conducted in this case by junior counsel, Mr Mably) is not to look for evidence that might implicate others (in this case, others at NI or elsewhere), but to fulfil the disclosure obligations imposed on the prosecution by the Criminal Procedure and Investigations Act 1996 (CPIA). S3 (Initial duty of prosecutor to disclose) provides that: "*The prosecutor must – (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a)*

given, and with what emphasis. That said, Mr Perry gave clear evidence to the effect that he did not advise that the narrow view of the law was correct. In short: [173]

> *"well, I'm confident that that was not the approach that we took because it wouldn't be consistent with the terms of the indictment that was originally settled, and I think that the view that Mr Mably and I took was that what Lord Woolf had said in the Ipswich Crown Court case*[174] *certainly provided an arguable basis for someone to contend that the narrow view was correct, but we thought that we should proceed on the broader view, and if the point were taken against us, we could meet it in a number of ways, because it was about making sure that we didn't lose the case overall, and we could meet it in a number of ways … [a]nd in any event, the conspiracy charge could outflank any such argument".*

3.15 So it came about that, in due course, counts 16 to 20 of the indictment, which alleged substantive offences under RIPA solely against Mr Mulcaire, were drafted by counsel. As Mr Perry explained in evidence, he could not possibly have taken the narrow interpretation of the law to be correct since, in relation to counts 16 to 20 there was neither evidence nor basis for saying that the message had been listened to by an interceptor before it had been heard by the intended recipient.[175] Further, Mr Perry did not advise the police to obtain "Vampire" data in relation to counts 16 to 20. Put simply, Mr Perry is correct. It is simply inconceivable that he (or any counsel instructed by the Crown to prosecute allegations of crime) would have prepared an indictment on the premise of a legal interpretation which they knew to be incorrect. I have no doubt that Mr Perry gave the advice in the terms summarised by him in his evidence.

3.16 Whether DCS Williams took away this message from this conference is less clear. In his witness statement for the purposes of the judicial review, DCS Williams said that counsel advised that counts 16 to 20 should be included in order to test the law.[176] It is apparent, however, as will be seen from the various notes, briefings and memoranda that he produced in 2009 that, at that stage at least, he was under the impression that counsel had been advising that the narrow interpretation of the law was correct. It is a safe assumption that DCS Williams misunderstood, or misremembered, what counsel had advised in August 2006; it would not be safe or correct to conclude that DCS Williams deliberately mis-stated counsels' advice on these subsequent occasions.

3.17 Regardless of the extent to which both Mr Perry advised clearly and the advice was properly understood, following this conference, the police made no attempt to obtain technical evidence in relation to what became counts 16 to 20 which would have enabled the case to be proved on the narrow view of the law. Nor is there any contemporaneous evidence to show that counsels' advice caused surprise or consternation in the police camp. From that point therefore, the advice previously given by the CPS had no bearing upon the way

[173] p21, lines 3-22, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf. This evidence contradicts what Mr Perry recorded in his advice dated 20 July 2009 which said in terms that it was necessary to prove that the message was intercepted before it was accessed by the intended recipient. To the suggestion that this might have been the advice he gave in 2006 Mr Perry said that: *"if I did in this document give the impression that the narrow view had been adopted then that is incorrect"* – p38, lines 17-19, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf. The reason why Mr Perry gave different advice is considered at paras 8.147-8.150 below

[174] *R (NTL Group Limited) v Ipswich Crown Court* and another [2002] EWHC 1585 (Admin)

[175] pp22-23, lines 20-1, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf.

[176] para 31, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

the prosecution was prepared and advanced.[177] It is also worth adding that, at the same conference, counsel advised that the appropriate charges should be under RIPA; offences under the CMA (which had no technical problems) were not pursued so as to ensure a simpler presentation to a jury.[178]

3.18 The last topic discussed was the question of confiscation pursuant to s6 of the Proceeds of Crime Act 2002. Without setting out the detail of the relevant statutory provisions, a confiscation order, in essence, requires a convicted defendant to pay a sum of money representing the level of his or her financial benefit from his or her criminal conduct. The police wished to contend for a substantial benefit figure based on the monthly retainer on the basis that it was part and parcel of Mr Mulcaire's criminal enterprise.[179] However, given NI's claim, through Burton Copeland, that the monthly retainer paid to Mr Mulcaire did not relate to the matters that were the subject of charges,[180] Mr Perry advised that the confiscation proceedings should focus on the cash payments, which amounted to £12,300.[181] Mr Perry explained that the short point was that if Mr Mulcaire was doing legitimate work it was difficult to argue that it was as a result of or in connection with the offending. Mr Perry agreed that it was his decision that this was the appropriate approach to take.[182] It is convenient to state here that ultimately the Crown Court made a confiscation order for £12,300.

3.19 Before passing from the information placed before Mr Perry and the advice that he gave, it is appropriate to refer to the "for Neville" email. When giving evidence, Mr Perry was asked whether or not he saw this email at this conference or at any stage before 26 January 2007 (when Mr Goodman and Mr Mulcaire were sentenced). Mr Perry said in evidence that he did not have any recollection of seeing it,[183] and he did not shift his ground when shown a note of a much later conference on 1 October 2010 which suggested that he saw this email after the case papers relating to Mr Gordon Taylor had been prepared for trial.[184] It is right that the email formed part of the unused material but Mr Perry was not asked to examine that material and would not have been expected to do so absent specific instruction. Although it may not advance the issue very far, I conclude that Mr Perry probably did not see the "for Neville" email earlier than his recollection.

Victims not associated with the Royal Household

3.20 Following the conference, the investigating officers set about contacting victims to ascertain whether they would be willing to provide evidence in support of the prosecution.[185] DCS Surtees gave evidence that one of these victims was Tessa Jowell and, furthermore, that she

[177] It equally had no bearing on the later decision not to broaden the investigation, which was taken for other reasons. See paras 5.22-5.26 below
[178] para 32, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[179] pp31-32, lines 25-10, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[180] In due course Mr Mulcaire adopted the position that the payments under the retainer were for legitimate work and that the payments in respect of the unlawful interceptions were those he received under the pseudonym of Alexander; p31, lines 15-19, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf. In the light of the ongoing investigation and prosecutions, the accuracy of this proposition cannot further be examined
[181] p31, lines 1-5, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[182] pp31-32, lines 19-24, *ibid*
[183] p27, lines 1-6, *ibid*
[184] pp27-28, lines 11-12, *ibid*; Note not published
[185] para 56, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf

declined to assist.[186] Ms Jowell strongly disputed that she was unwilling to assist with the prosecution. She provided her account in these terms:[187]

> *"I remember very clearly the conversation, which, as I say, took place on holiday. I happened to be by the swimming pool with very close friends that I was on holiday with. The conversation didn't take very long, but I am absolutely clear that I sought clarification about what further I should do, expressed my willingness to help in any way that I could but was assured that at that stage there was nothing further that I needed to do.*
>
> *"… I would also say that I was a secretary of state and a privy councillor. It would have been absolutely incumbent on me, were I asked to co-operate with an inquiry, to agree to. My principal private secretary, who is a civil servant, confirmed my willingness to help, as too the two friends that I was on – who I recounted this too, are also abundantly clear about the account of the conversation that I gave them.*
>
> *"… I was telephoned again by the police to be told that a prosecution was going to be brought against Clive Goodman and Glenn Mulcaire. I asked if I needed to provide a statement or further assistance. I can't remember the precise word that I used, but it was essentially an offer of any assistance with the inquiry, and was told very clearly that I wouldn't be needed as a witness because they had witnesses from the royal household who would support the prosecution."*

3.21 This is not an issue that is directly relevant to my Terms of Reference but I find the evidence given by Ms Jowell on this point to be compelling. It is not necessary to decide how DCS Surtees came to recall otherwise save that I do not conclude that he was deliberately seeking to minimise the impact on NI: had he wished to do that, he would not have spoken to her in the first place.

3.22 In the meantime, in response to the request to identify any customers whose voicemail boxes had been called by the suspect numbers, Vodafone emailed DI Maberly, on 29 August 2006, with a spreadsheet of calls made to 61 unique voicemail access numbers by Mr Goodman's home landline and Mr Mulcaire's office landline. A large number of those on the list were celebrities and well-known public figures, whilst others appeared to be company names.[188] On 30 August 2006 DI Maberly emailed Orange to ask if there was "an indication of interception" of the voicemail messages of six named individuals, including Simon Hughes. He also sent an email to Vodafone asking if anyone had listened to the voicemail of nine named people.[189] On 10 October 2006, O2 responded to the request to identify customers whose voicemail boxes had been called by the suspect numbers by sending DI Maberly a spreadsheet setting out the number of times that the 93 customers concerned had been called by the suspect numbers.[190]

3.23 In the light of the information that became available, an appropriate number of victims (additional to those emanating from the Royal Household) were identified as the named victims for the charges that were represented by counts 16 to 20 of the indictment directed at Glenn Mulcaire (and not part of the conspiracy count which involved Clive Goodman). They were chosen, essentially, because of the high volume of frequency of calls (along with

[186] *Loc. cit*
[187] pp60-63, lines 23-1, Tessa Jowell, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-21-May-2012.pdf
[188] para 39, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[189] Emails not published
[190] Not published

their duration) to the unique voicemail access numbers by Mr Mulcaire.[191] The subjects of these five charges were Max Clifford, Skylet Andrew, Graham Taylor, Simon Hughes and Elle Macpherson.

3.24 In the light of all the circumstances, it is necessary to deal with one further discussion with a potential victim of multiple interceptions. DCS Williams gave evidence that, in early September 2006, the police contacted Rebekah Brooks (then editor of The Sun) to notify her that she was a potential victim of voicemail interception and to ascertain whether she wanted to make a formal complaint in that capacity.[192] An email, dated 15 September 2006, sent by Andy Coulson to Tom Crone after this meeting, which set out what Mrs Brooks had been told *"by the cops"*, has generated a number of concerns.[193] On the face of the email, it appeared that the police had given Mrs Brooks details of the prosecution strategy over and above that which any other victim of crime could expect to be given and it is suggested that, in so doing, the police were improperly alerting her to the state of the investigation by the MPS, inviting her to take action internally. Further, the last sentence of the email (*"They are going to contact RW today to see if she wishes to take it further")* could be interpreted as meaning that the police were asking her whether she wanted the police to take further the investigation into others within NI.[194]

3.25 Again, I can well understand how this second hand summary of the conversation, reduced into an email, can give the impression of collusion but, having heard DCS Williams' evidence on this issue, I am satisfied that Mrs Brooks was contacted by the police because she, too, had been a victim of extensive voicemail interception (with her voicemails having been accessed up to twice a week). I also accept that information was passed to Mrs Brooks not as a result of an improper relationship with the police but with a view to her making a formal complaint and consenting to being part of the prosecution.[195] This is the context in which one must view the final line of the email. As DCS Williams said: "This is purely: you are a potential victim. Would you like to join our prosecution?"[196]

3.26 The same email also referred to Mr Mulcaire receiving payments totalling over £1 million. In evidence, DCS Williams said that the figure of £1 million was not known to him or his investigation team.[197] Since the £1 million figure is not supported by evidence available contemporaneously or subsequently it is simply not clear where this figure came from. Again, the present investigation and prosecution precludes any further investigation of this issue.

3.27 Fitting within the general chronology, it is relevant to note two engagements between NI and senior officers of the MPS. The first was on 19 September 2006 when Lord Blair, with Mr Fedorcio, met Andy Coulson. Whilst there could well be a concern that this meeting provided the opportunity for the exercise of inappropriate influence over the police investigation (and perhaps rather more thought should have been given to the perception that could result from the meeting), there is not the slightest evidence that this was a reality. As I have set out above, Lord Blair played no part in the decision-making process; his involvement did not go beyond receiving limited briefings from Mr Hayman and Mr Clarke. The second was on

[191] p6, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf
[192] pp102-103, lines 17-4, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[193] Email not published
[194] pp34-35, lines 15-10, Simon Hughes, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-28-February-2012.pdf
[195] pp92-93, lines 24-25, DCS Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[196] p103, lines 3-4, *ibid*
[197] p92, lines 5-8, *ibid*

26 October 2006 and consisted of a two hour, early evening, meeting between Mr Hayman and Neil Wallis. The problem of perception (and the question of the extent to which that perception was considered) recurs. Again, there is no evidential basis for concluding that this meeting impacted in any way on the police investigation.

The approach of Burton Copeland

3.28 In order to obtain relevant evidence from NI, the CPS advised the police to enter into correspondence with them (though Burton Copeland). This was because the legislative provisions for obtaining a production order, which would require NI to produce journalistic material to the police or provide the police with access to it required other methods to have been tried without success or that it be established that such methods were bound to fail.[198] Thus, a court would be unlikely to make a production order, requiring a person or organisation to hand over such journalistic material, if it were satisfied that the person or organisation in possession of the material appeared to be cooperating with the police.

3.29 In the light of the fact that NI had instructed Burton Copeland to respond to police requests, the officers sought their cooperation and assistance, through Burton Copeland, in relation to a number of evidential matters.

3.30 The investigators were keen to identify who would have used the hub phone at the NoTW that had been used hundreds of times to call the voicemail boxes of individuals not associated with the Royal Household.[199] DI Maberly approached Vodafone who told him that he would have to get that information from the NoTW.[200] Mr Bristowe (the prosecution's telephone expert) advised DI Maberly that no large firm would have unaccounted for billing, because it would want to monitor the use of the phone systems by staff, to detect any abuses. The police therefore had an expectation that NI would be able to identify the user of the hub phone in question.[201]

3.31 DCS Surtees tasked DI Maberly with writing to the NoTW for the purposes of ascertaining who would have used the hub phone and obtaining further evidence against Mr Mulcaire and Mr Goodman, but also to gather evidence of the involvement of other journalists or editorial staff in the conspiracy with Mr Mulcaire.[202]

3.32 On 31 August 2006 DI Maberly attended Burton Copeland's offices and made a number of requests for information.[203] That same day Burton Copeland wrote a letter to the police, apparently stating an intention to cooperate fully with all their reasonable requests for information:[204]

> *"On behalf of my clients, Newsgroup Newspapers Ltd, I would wish to make it plain that in connection with the enquiries that you are presently conducting and which are referred to in the Application under the Schedule 1 of the Police and Criminal*

[198] See s. 9(1) and Schedule 1 to PACE and, in particular, para 2(b); para 90, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[199] p54, lines 2-12, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf. This use of the hub phone also fuelled DCS Surtees' suspicion that journalists other than Mr Goodman were involved in the conspiracy
[200] pp83-84, lines 24-4, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[201] pp84-85, lines 7-4, *ibid*
[202] para 68, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[203] para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[204] p1, John Yates, https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-132.pdf

> *Evidence Act (PACE Application) … that my clients intend to provide such material as you or your colleagues might reasonably require from them in connection with your enquiries."*

3.33 In that letter Burton Copeland referred to the "PACE application" (the application for a production order drafted by Mr Mably) and the fact that the police sought:

> *"all paid cheques, credit/debit slips, mandates, statements of accounts, inter-account and telegraphic transfers, any other vouchers in relation to the following financial accounts. Account numbers … sort code … or payment to any other bank accounts held in the name of Glenn Mulcaire, Nine Consultancy Ltd or Nine Consultancy UK Ltd and any cash payments made by or on behalf of News International or Newsgroup Newspaper to Glenn Mulcaire from 1 January 2005 present [sic]".*[205]

Burton Copeland enclosed a file labelled *"Newsgroup International – Payments to Nine Consultancy Ltd"* which they asserted contained the requested information and included in particular:[206]

> *"1. A schedule that has been created from the records maintained of all payments to the accounts referred to in the PACE Application;*
>
> *2. The appropriate BACS Telecom Acceptance Advice relating to payments to be included in the payment schedule;*
>
> *3. The redacted payment schedule which highlights each payment to Nine Consultancy Ltd;*
>
> *The appropriate copy invoice in respect of each payment included in the schedule referred to in 1 above."*

3.34 DI Maberly also followed up the meeting with a letter, which he delivered to Burton Copeland's offices on 7 September 2006.[207] In that letter he confirmed what he had requested.[208] Those requests included:[209]

(a) A floor plan to include the locations of the telephone extensions in Mr Goodman's office;

(b) Details of the phones used regularly by Mr Goodman (i.e. the number of the phone on his desk or any mobile issued to him by the company);

(c) Itemised billing for phones used regularly by Goodman (i.e. the phone on his desk and any other mobile phone issued to him) for the period of 1st December 2005 to 8th August 2006;

(d) Records of any work completed by Mr Mulcaire/Nine Consultancy for Mr Goodman or other editors/journalists.

(e) Records of any work completed

3.35 DI Maberly stated in the letter that:

[205] *Loc. cit*
[206] pp1-2, *ibid*
[207] para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[208] p3, John Yates, https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-132.pdf
[209] *Loc. cit*

"The investigation is attempting to identify all persons that may be involved including any fellow conspirators. Therefore we require the telephone numbers of persons called before and after relevant unlawful calls to the voice mailboxes."

3.36 On 15 September 2006 DI Maberly hand delivered a further letter to Burton Copeland which included the following:[210]

"During the search of Mr Goodman's offices at News International he identified the computer used by him (situated on his desk) and a safe also used by him (situated under his desk). These items were not seized or searched but were subject to a retention request. In relation to these two items I would like to be provided with a copy of information held on computer (including any mainframe database accessed from the desktop computer) and any information held in the safe that relates to the following;

Material relating to any mobile telephone numbers that may [sic] connected to the interception of voicemail accounts (e.g. written notes, data files, cassette/ digital recordings etc) …

Material relating to any voicemail(s) that may have been listened to (e.g. written notes, data files, cassette/digital recordings etc) …

Evidence of contact between Mr Clive Goodman, Mr Glenn Mulcaire, Mr Paul Williams, Nine Consultancy … and any others (whether directly or indirectly employed by News International) relating to the interception of voicemail(s)".

3.37 Burton Copeland had drafted a letter dated 14 September 2006, which they gave to DI Maberly when he visited their premises on 15 September 2006. It stated the following:[211]

"Newsgroup Newspapers are anxious to provide all material reasonably required in respect of your investigation into voicemail interception offences. We stress, however, that the procedure under Part 2 of the 1984 Act is a procedure designed to produce documentation or other material in the possession of an individual. It is not a procedure designed to elicit answers other than those contained within such material.

"In fact, very little documentary or other material in relation to Mr Mulcaire, Nine Consultancy Ltd or Mr Goodman exists. This is entirely consistent with normal business practices in relation to the use of such consultants.

"Attached to this letter are copies of all documents held by Newsgroup Newspapers falling within the terms of your request. This comprises copy documentation relating to the contract of employment between Nine Consultancy Ltd and NOTW. Extensive searches have revealed the existence of only one piece of paper, enclosed herewith.

"No documents exist recording any work completed by Mr Mulcaire, monitoring of Mr Mulcaire's return of work, reporting structures or any persons for whom Mr Mulcaire may have provided information. There is no floor plan. The telephone system installed at Newsgroup Newspapers does not provide an itemised breakdown in respect of any particular extension number…

"Newsgroup Newspapers wishes fully to assist your investigation and does not require any formal Court Order for the provision of any material. They are, however, entirely satisfied that the material to which you are entitled is limited and that you

[210] p7, *ibid*
[211] pp5-6, *ibid*

are now, along with material previously submitted, in possession of all relevant documentation…"

3.38 It is interesting to note that Burton Copeland were precise in seeking to confine the entitlement of the police to documents *"in the possession of an individual"* as opposed to documents held by NI generally. In my judgment this is an artificial and inapt distinction: by way of example, there must have been an internal telephone directory for the NoTW and documentation that could have led the police (perhaps through the telephone network if the records were not kept) to trace which extensions were dialling which numbers. DCS Williams, DCS Surtees and DI Maberly all formed the impression that whilst Burton Copeland were protesting that they were cooperating, the reality was the opposite.[212] In evidence DI Maberly agreed that he was very suspicious that he was being "*fobbed off*".[213]

3.39 After 15 September 2006, no further documents were produced by Burton Copeland. Ultimately therefore, NI provided the MPS with extremely scant information. The MPS describes this, correctly in my judgment, as a "veneer of cooperation". Despite their protestations to the contrary, NI were not helping the police with their enquiries.

3.40 It is relevant that once NI decided, in January 2011, fully to co-operate with the MPS, that is exactly what happened and the investigations that have become Operations Weeting, Elveden and Tuleta (with subsidiary operations associated with them) has been the result. While signalling the intention of NI now to place itself in the position of demonstrating that it takes compliance with the criminal law extremely seriously, it undeniably casts light on what had happened previously. I am not in a position to judge what part, if any, Burton Copeland played in the approach to the police investigation in 2006, what their instructions were or the advice they gave because NI has not waived the legal professional privilege which attaches to this material. As a result, the public can only know what Burton Copeland did and not why they did it.

3.41 Rupert Murdoch's evidence was that when Mr Goodman was arrested he was told, probably by Les Hinton, then the Executive Chairman of NI, that NI was co-operating with the police.[214] In support of the contention that NI was cooperating, Rupert Murdoch referred to appointing *"a special law firm to look into this and to aid our co-operation with the police…"*[215] When he was told, during his evidence, that the Inquiry had heard evidence that the solicitors' firm concerned provided limited documentation[216] that did not represent the position at all and that, one way or another, NI was being obstructive Rupert Murdoch said: *"That shocks me deeply, and I was unaware of it and I've not heard of it until you've just said that.*[217]

[212] para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf; p66, lines 9-13, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf and p82 lines 19-21, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

[213] p85, lines 4-15, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf

[214] para 170, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Keith-Rupert-Murdoch2.pdf

[215] p21, lines 17-18, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf

[216] It was put to Rupert Murdoch in error, contrary to para 2.83 and para 3.33 above, that Burton Copeland only provided one document. The documentation provided was nonetheless extremely limited and unrepresentative of the true position

[217] p22, lines 6-7, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf

3.42 This raises two issues about local management at NI, its internal governance and its relationship with News Corporation. First, if Rupert Murdoch's evidence is correct, it appears that there was a lack of full transparency between the local management at NI and senior management at News Corporation or, alternatively, a very different understanding of the meaning of the word co-operation. Second the approach taken by NI is far from what might be expected of a well-run corporation. Mr Clarke described a closing of ranks by NI and said that this was *"unusual for a major company – where full co-operation would be the norm".*[218] An organisational culture that is founded on integrity and honesty would require not only full co-operation with law enforcement, but also a determination to expose behaviour that failed to comply with the law. That would normally be achieved through a thorough internal investigation of any allegation, unaffected by the legal constraints that the police might face, in order to ensure that any wrongdoing in the company was uncovered, stopped and dealt with appropriately. What happened at the NoTW in relation to voicemail interception in this context is particularly informative about the culture that pertained both within the corporate and editorial operations.

The report of the High Tech Crime Unit

3.43 On 23 November 2006, pursuant to a task set by DCS Surtees, the High Tech Crime Unit of the Directorate of Professional Standards at the MPS produced a report[219] setting out the results of the examination of the computers and other storage media seized during the August searches.[220] The examination revealed a computerised record of approximately 300 names, addresses, dates of birth, mobile phone numbers and additional information. Many of the names have been redacted to protect the privacy of the individuals concerned, but the unredacted names include: Maria, Charlotte and James Church; Max Clifford; Ashley Cole; Stephen J. Coogan; Cornelia Crisan; George Galloway; Ryan Giggs; James Hewitt; Ulrika Jonsson; Jude Law; Sadie Frost; Elle McPherson; Mark Oaten and Brian Paddick.

3.44 The investigating officers were concerned to discover that within the report were the details of people who had been given new identities as part of the witness protection programme.[221] The extreme sensitivity of this information does not require elaboration. Equally seriously, at the least, it gave rise to the possibility that police officers had been providing information to Mr Mulcaire. Mr Mulcaire was not asked about this in interview and Mr Clarke was not made aware of it.

3.45 DCS Surtees instructed DI Maberly to contact the witness protection unit, provide them with the list of names and ask them to take whatever action they considered necessary.[222] When DI Maberly did so: *"it quickly became apparent that contained within were names of interest to [the unit]."*[223] The SO13 officers did not know what action was taken by the witness protection unit; they left the matter with that unit because it was best placed to decide upon and take

[218] p33, lines 5-13, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[219] Not published
[220] para 50, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[221] para 51, *ibid*
[222] p72, lines 12-17, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[223] para 51, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf

the appropriate remedial action.[224] Mr Clarke agreed that this was the correct way of dealing with the matter.[225]

3.46 The report of the High Tech Crime Unit included the following statement: *"It is also believed attempts may have been made to corrupt serving police officers and misuse the Police National Computer"*. It is argued by the Core Participant Victims that the apparent failure to act on this adds to the impression that there were areas of investigation which were highly sensitive and which made the MPS unwilling to probe further. Although I understand the concern, it would not be appropriate for me to go further. Suffice to say, the current criminal investigation continues and my determination not to prejudice that investigation has meant that further detail has not been explored in the evidence. The points that I have made about the individual officers responsible for the conduct of Operation Caryatid are not affected and remain, even if there was some additional thread which could have been followed.

4. The outcome to the prosecution

The criminal proceedings

4.1 The indictment brought against Mr Mulcaire and Mr Goodman contained the following 16 counts:

Count 1: Against both, conspiracy to intercept communications contrary to s1(1) of the Criminal Law Act 1977;

Counts 2, 3, 7, 10 and 13: Against both, interception of the voicemail messages of Helen Asprey contrary to s1(1) of RIPA;

Counts 4, 6, 8, 11 and 14: Against both, interception of the voicemail messages of Jamie Lowther-Pinkerton contrary to s1(1) of RIPA;

Counts 5, 9, 12 and 15: Against both, interception of the voicemail messages of Paddy Haverson contrary to s1(1) of RIPA;

Counts 16-20: Against Mr Mulcaire only, interception of the voicemail messages of Max Clifford, Skylet Andrew, Graham Taylor, Simon Hughes and Elle Macpherson respectively contrary to s1(1) of RIPA.

4.2 Mr Perry explained that counts 2 to 15 were substantive allegations intended as an alternative to count 1 which charged the underlying criminal conspiracy; in relation to all the substantive counts, there was not necessarily the evidence available to prove that the voicemails had been listened to before their intended recipients.[226] Counts 16 to 20 were individual substantive charges intended to reflect the further criminality.

4.3 On 29 November 2006, at the Plea and Case Management hearing conducted at the Central Criminal Court, Mr Goodman and Mr Mulcaire pleaded guilty to the main counts on the indictment. Although it might be legitimate to conclude that the lawyers acting for the men had

[224] p73, lines 3-5, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[225] p51, lines 13-16, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[226] p45, lines 19-25, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf

no confidence in the possible success of any argument relating to the correct interpretation of s1 of RIPA, the fact is that it was simply never tested. On 26 January 2007, Mr Justice Gross sentenced Mr Goodman and Mr Mulcaire to four and six months' imprisonment respectively.

4.4 At the sentencing hearing, during the course of his plea in mitigation, counsel for Mr Mulcaire asserted that his client was working for others at NI in relation to the interceptions which formed the basis of counts 16 to 20. He said, in terms: *"This information would have been passed on not to Mr Goodman – I stress the point – but to the same organisation".*[227]

4.5 Although this has been a matter of some debate, the point has already been made that Mr Goodman had no specific interest (perhaps with some limited exceptions) in the non-Royal material, and it is clear that the evidential links between the two men which had been present for the Royal interceptions were not available for the others. Yet, Mr Mulcaire must have been working for someone. Mr Justice Gross picked up on this submission in his own sentencing remarks. He said: *"As to Counts 16-20, you had not dealt with Goodman but with others at News International"*.[228]

4.6 Although Mr Perry rightly pointed out that the judge did not reach this conclusion as a result of any submission he had made during the course of opening the case that morning, he readily accepted that the judge was not simply relying on the submissions of Mr Mulcaire's counsel but also on *"a bit of common sense added in"*.[229] It is right to observe that Mr Perry added in his witness statement that: *"… reading the transcript now does not convey the implication that other individuals were necessarily involved in unlawful interception (as opposed to receiving information)."* [230] This may be right, but again common sense would strongly indicate that the other individuals were aware of the source of the information they had received from Mr Mulcaire and it is difficult to postulate that Mr Mulcaire was simply offering information without being encouraged or prompted.

4.7 Mr Justice Gross also referred in his sentencing remarks to the fact that Mr Goodman had offered by way of mitigation that he *"operated in an environment in which ethical lines are not clearly defined or observed"*.[231] From the perspective of the management at NI, the sentencing remarks ought to have raised serious alarm bells that there may have been other journalists in the newsroom engaging in illegal or unethical activity; what otherwise should have been needed to launch a full scale review into every aspect of the work that Glenn Mulcaire had done for the NoTW?

5. Subsequent operational decisions

5.1 One of the most serious allegations against the police relates to the deliberate decision effectively to shut down Operation Caryatid when it is argued that there was clearly much more that could have been uncovered. It is suggested that the decision not to pursue further investigations could have been affected by the relationship between the officers of the MPS and NI or, in other words, had not been taken in good faith or for good operational reasons. Similar concerns (examined in the next section) deal with the strategy adopted to deal with the aftermath of the investigation, particularly in relation to victims or potential victims.

[227] See sentencing remarks of Mr Justice Gross in R v Glenn Mulcaire and Clive Goodman, 2007, Central Criminal Court
[228] p179H, See sentencing remarks of Mr Justice Gross in R v Glenn Mulcaire and Clive Goodman, 2007, Central Criminal Court
[229] p36, lines 3-7, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[230] para 18, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-David-Perry-QC.pdf
[231] See sentencing remarks of Mr Justice Gross in R v Glenn Mulcaire and Clive Goodman, 2007, Central Criminal Court

5.2 In the circumstances, it has been necessary to investigate in detail the circumstances in which the police reached the decision not to take Operation Caryatid further. This involves an understanding of the police operational background at the time of the investigation, and an analysis of the evidential issues concerning the police along the possible next steps that could have been taken.

The background

5.3 Police resources are finite and the decision not to widen the Operation Caryatid investigation cannot properly be understood without a full understanding of the operational context at the time. More specifically, for what had been SO13, whose primary commitment was to counter terrorism, the issue was the scale and immediacy of the threat from terrorism at the time and the massive pressure on resources that it entailed. It is of such importance that it is worth quoting extensively from the statement made by Mr Clarke:[232]

> *"72… Throughout much of 2002 and running into 2003 an operation called Springbourne taught us that there was a real and immediate threat within the UK from Islamist terrorists …*
>
> *"73. During 2003-2004 there was an accelerating tempo of terrorist investigations … There were many other strands of intelligence that showed the threat to the UK from Islamist terrorism was not only a reality, but growing in intensity.*
>
> *"74. In 2004, there was a major escalation in our understanding of the scale and nature of terrorist plotting in the UK with the discovery, early in the year that a group of British citizens were planning to make and detonate a large bomb. This required what was then the largest ever UK surveillance operation to control the threat posed by the plotters and to gather evidence to convict them. This operation was called Operation Crevice …*
>
> *"75. Later in 2004, there was another major investigation called Operation Rhyme which dismantled a terrorist network led by a veteran jihadist called Dhiren Barot, whose ambition was to mount attacks, including the use of radiological devices, both in the US and the UK. Both of these cases led to multi-defendant prosecutions which in all took over three years to come to a conclusion, and devoured huge amounts of investigative resource throughout that time.*
>
> *"76. These cases and others showed a clear intention on the part of terrorists to attack the UK mainland to try to kill as many people as possible whenever possible …*
>
> *"78. In July 2005, despite the best efforts of the UK counter terrorist community, London was twice attacked to devastating effect. The subsequent criminal investigation was the largest ever carried out in the UK, drawing in detective resources from across the country, and in effect lasted right through until the Inquest into the deaths of the victims of the 7/7 attacks was concluded in 2011.*
>
> *"79. By early 2006, at exactly the time Operation Caryatid was developing, Operation Overt began. This was the next in line of what seemed like an interminable series of potentially devastating plots. This one turned out to be a plan to blow up, simultaneously, a number of transatlantic airliners en route from the UK to the USA … As with other major terrorist cases, the prosecutions in Operation Overt took a long time to come to fruition. In fact they took some 4 years and were spread over 7*

[232] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.1pdf

separate trials. This all needed a massive commitment of officers from the Counter Terrorism Command (SO15).

"80. The impact of this was that those of us who were charged with protecting the public from the effects of terrorism were more than fully committed on matters that directly affected the safety of the British public. Not only were we continually 'borrowing' colleagues from other parts of the MPS, we also drafted in large numbers of officers from across the country. The impact of this on other policing operations was at times severe. For instance, during the surveillance operation in support of Operation Crevice in early 2004, every available surveillance team from within the MPS and indeed beyond was used on the enquiry. Investigations into drug trafficking, murder and other serious crime, including internal corruption enquiries, came second to the need to protect the public from terrorism.

"81. Despite all the support that was received throughout these years, and particularly after the attacks on London in 2005, by the time Goodman and Mulcaire were arrested in August 2006 the Anti-Terrorist Branch (SO13) had some 70 live terrorist cases on its books, but insufficient resources to investigate them all. There was prioritisation even with life threatening terrorist cases, and that is the context within which the decisions that were taken to investigate possible invasions of privacy under Operation Caryatid must be considered."

5.4 Elaborating on this statement, it is clear that, since 2004, there had been repeated attempts by Al-Qaeda networks to commit mass casualty suicide attacks. These included the fertiliser bomb plot (Operation Crevice) and Dhiren Barot and the dirty bomb plots (Operation Rhyme).[233] On 7 July and 21 July 2005, there was a series of coordinated suicide terrorist attacks and follow up attacks. Operation Crevice alone used every single surveillance team in London and most of those from the areas around London and Mr Clarke had "borrowed" over 1,000 officers from other forces to support the investigation into the attacks on 7 July 2005. By January 2007, 200 highly experienced and specialised officers continued to be on loan for this work.[234] Mr Hayman described in evidence the terrorist threat as *"unprecedented"*.[235]

5.5 Lord Reid, endorsed the evidence of the police, saying that the scale of the terrorist threat and ensuing counter-terrorist operations had been *"well set out by others who had testified"*.[236] He explained that the threat level of a terrorist attack during 2006 varied only from the second highest level, "Severe", to the highest, "Critical", where an attack was deemed likely and imminent. He said the great fear of a terrorist attack at that time was *"superseding everything else"*.[237]

5.6 This background is critical to an understanding of the operational context in which Mr Clarke had to consider whether and, if so, to what extent the investigation should continue beyond the very targeted prosecution of Mr Goodman and Mr Mulcaire. Resources, however, were not the only problem.

[233] p24, lines 14-21, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[234] p26, lines 17-25, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[235] p137, line 21, Andy Hayman, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[236] para 31, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Reid.pdf
[237] p153, lines 6-9, Lord Reid, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf

The evidential issues

5.7 By mid-September 2006, the police had tried, without success, to obtain evidence from NI to support their strong suspicion that NoTW staff (other than Mr Goodman) were involved in a conspiracy to intercept voicemail messages. The investigators, including DCS Williams,[238] did not dispute, however, that they had material that implicated other journalists and investigative leads that could have been followed. The following is a stock-take of the matters the investigators had specifically identified by that time.

5.8 The 11,000 pages of documents seized from Mr Mulcaire, taken together with the pattern of behaviour demonstrated by the call data obtained, created a picture of a trade craft, of someone who was building up the means unlawfully to access voicemail messages (and that in some cases he had utilised those means).

5.9 There was an inference that the "corner names" (so described because they were written in the corner of Mr Mulcaire's notes) were those who had either instructed Mr Mulcaire or those who were the intended recipients of the information, or both. Not only did "Clive" appear as a corner name in relation to the Royal Household voicemail message interceptions but there were corner names associated with counts 16 to 20 on the indictment.

5.10 The hub phone at the NoTW had been used hundreds of times to call the voicemail boxes of individuals not related to the Royal Household.[239]

5.11 The phone records of Mr Mulcaire taken together with his papers (in which he had recorded the mobile phone numbers of other journalists) demonstrated that Mr Mulcaire had made calls to journalists other than Mr Goodman.[240]

5.12 The lack of cooperation on the part of NI with the investigation (both by interfering with the search of the Wapping offices and in their response, through Burton Copeland, to requests for documents and information which might implicate others at NI) bolstered the belief that the criminality permeated wider within NI than just Mr Goodman.

5.13 There were financial and editorial evidential leads available to the police relating to published articles and payments for them.

5.14 DCS Williams was correct to assert that in order to prosecute any of the individuals referred to by the corner names he would have needed to be in a position to prove cogently who they were[241] and that they had requested or received the information in the knowledge that Mr Mulcaire obtained information through voicemail interception.[242] He explained that what was absent from the seized material was any specific instructions to Mr Mulcaire to undertake any criminal activity that could be connected to a particular person, or "*what it was he did and who he sent it to and how he billed it ...*"[243]

[238] p81, lines 15-16, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[239] p54, lines 2-7, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/. DI Maberly believed that three of the corner names in particular were the names of journalists at the NoTW. When pressed, he agreed that there was circumstantial evidence, but went on to say (as is undoubtedly the case) that he would have needed something more substantial in order to obtain a conviction. uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[240] p91, lines 1-4, Mark Maberly, *ibid*
[241] p51, lines 1-11, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[242] p50, lines 12-19, *ibid*
[243] p50, lines 9-10, *ibid*

5.15 During his evidence, however, DCS Williams appeared to assert, that there was "no evidence" that other journalists were involved. For instance, it was put to him that it was likely, or at least a plausible picture, that Mr Mulcaire said to the journalist on the phone: "I've listened to celebrity X's voicemail and this is what I can tell you is on the voicemail." DCS Williams agreed that it was a plausible picture but stated that he had no evidence of that to put before a court.[244] This has caused concern that DCS Williams failed to recognise the evidential value of the matters the police had established.

5.16 DCS Williams is emphatic that his use of the expression *"no evidence"* has been taken out of context and that he did not mean that there was no evidence whatsoever, but rather that such material as had been collected, was insufficient to prosecute. Given that DCS Williams was plainly aware of the material that pointed towards other journalists and was correct in his assessment that a considerable amount of further work would have had to be done before a further prosecution could have been contemplated; I am prepared to accept his submissions on this issue. Had he not been aware of the potential value of the evidential leads, he would not have considered it necessary to ask Mr Clarke to decide whether further resources should be committed to the investigation. DCS Williams may not have labelled or analysed the material in his own mind as circumstantial or inferential evidence but it would be wrong to find, in 2006 at least, that he did not appreciate that there was "some evidence"; as the section below demonstrates, however, that made no difference to the decision made by Mr Clarke.

5.17 Similarly, in his evidence DI Maberly explained that he believed that three of the corner names in particular were the names of journalists at the NoTW[245] but went on to say: *"We had some inference; we had no evidence"*.[246] When pressed, he agreed that there was circumstantial evidence, but went on to say (as is undoubtedly the case) that he would have needed something more substantial in order to obtain a conviction.

5.18 I conclude this section by emphasising that it would not be fair to seek to infer from the fact that a number of prosecutions are now being undertaken that the conclusions then reached by the officers were wrong, let alone that they were not objectively and fairly reached. It is obviously important not to prejudice or appear to pre-judge the criminal process by expressing too robust a view of the material then (or now) available. There was, in my judgment, more than enough in the Mulcaire documents to justify further work which could, itself, have led to further evidence being uncovered, but that is a long way from saying that it would then have been appropriate to go further; it is even further removed from being able to suggest that the decision not to do so was wrong.

The decision

5.19 If the investigation was to continue, DCS Williams was of the view that the next step would be a detailed analysis of the documents seized from Mr Mulcaire. He said:[247]

> *"I knew that we would need to go through that material again, and that we would have to do all the research in exactly the same way we'd done around the phone*

[244] p8, lines 2-8, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[245] p88, lines 8-17, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[246] p89, lines 15-20, *ibid*
[247] p88, lines 10-18, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

> *works to see what that showed. Then I would have a better picture of is there actually something here that I can either take to a judge in a production order or, probably more realistically, I would have taken that investigation forward, assuming that there is something more in that material, in terms of arresting people."*

5.20 DCS Surtees was also of the view that pursuing the evidential leads would have required a *"step-change"* in the investigation, which would include a thorough analysis of the material seized from Mr Mulcaire. For instance, he considered that the "guilty knowledge" of those identified by the corner names would be difficult to prove and would require a full scale criminal investigation sanctioned by senior officers in SO13.[248] He said:[249]

"… in terms of widening the suspect pool, that is a protracted piece of work, because we'd have to go through the whole process again of trying to identify, et cetera."

5.21 This analysis of the material seized would have to have preceded an application for a production order because the court would expect the police to have a clear idea of what they already had in their possession before seeking to compel the production of journalistic material. The law requires the police to make proportionate applications, which focus on what is strictly required. The law does not permit wide-ranging, speculative "fishing expeditions".[250] The Operation Caryatid investigators would not have been in a position to identify what was strictly required until they had ascertained what evidence they already had.[251]

5.22 Against that background, DCS Williams and DCS Surtees briefed Mr Clarke, Commander McDowell and DCS White as to the current state of the evidence. DCS Williams said that senior management were aware that the investigators believed that NI had not been cooperating with the investigation. DCS Surtees said that during the briefing:[252]

> *"… it was made very clear that, given the unprecedented amount of operations currently live within SO13 and the huge demand this was having on the CT command, this matter was not to be investigated beyond the original parameters. Moreover, all efforts were put into preparing the prosecution case to ensure the conviction of Mulcaire and Goodman."*

5.23 Mr Clarke explained that in order properly to analyse the material and to be in a position to present it as evidence in a prosecution, it would have been necessary to index the material (manually, because at that time there was no way of scanning documents onto the HOLMES system); cross-reference it; research every phone number and subject it to an individual RIPA application to obtain data; and then analyse that data.[253] Mr Clarke said that it would have been an *"an enormous undertaking"*.[254]

[248] pp25-26, para 52, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[249] p41, lines 5-8, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[250] See, for instance, *R(B Sky B and others) v Chelmsford Crown Court and Essex Police* [2012] EWHC 1295 (Admin)
[251] When asked whether he was surprised that a production order had not been sought given that, in his own words, there had been a *"closing of ranks from very early on"* from NI, Mr Clarke said that, even if a production order had been granted, it would not have made any difference to his decision p33, lines 12-13, and pp34-35, lines 19-1, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[252] p31, para 65, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[253] p37, lines 12-23, *ibid*
[254] p38, lines 24-25, *ibid*

5.24 On the question of the possibility of requesting support from elsewhere in the police service, Mr Clarke quoted in his witness statement from his evidence before the Home Affairs Select Committee in July 2011:

> *"I took the view that it would be completely unrealistic, given that we were heading towards a prosecution of Goodman and Mulcaire, to then go to another department and say, 'We've got a prosecution running. We have a huge amount of material here that needs analysing. We don't know, given the uncertainties of the legal advice, whether there will be further offences coming from this or not. Would you like to devote 50, 60, 70 officers for a protracted period to do this?' I took the judgment that that would be an unreasonable request and so I didn't make it."*

5.25 Mr Clarke gave more detail about his rationale in his witness statement:[255]

> *"… First, given the wider context of counter terrorist operations that posed an immediate threat to the British public, when set against a criminal course of conduct that involved gross breaches of privacy but no apparent threat of physical harm to the public, I could not justify the huge expenditure of resources this would entail over an inevitably protracted period. Instead a team of officers were detailed to examine the documents for any further evidence, and to identify potential victims where there might be security concerns.*
>
> *"Secondly, the original objectives of the investigation could be achieved through the following measures:*
>
> The very public prosecution and imprisonment of a senior journalist from a national newspaper for these offences;
>
> "Collaboration with the mobile phone industry to prevent such invasions of privacy in the future; and
>
> Briefings to Government, including the Home Office and Cabinet Office designed to alert them to this activity and to ensure that national security concerns could be addressed."

5.26 He added in evidence that the investigation *"… was, to be honest, not anywhere near the top of our level – our concerns because, remember, we are dealing with the airline plot and a whole range of other terrorist operations at that time"*.[256]

5.27 A legitimate concern has been expressed that Mr Clarke's decision was underpinned by a briefing from DCS Williams,[257] and therefore that he might have been told by DCS Williams that the investigation had uncovered "no evidence" implicating other journalists, or, if DCS Williams at least mentioned the evidential leads (which, as it happens, I do not doubt that he did), he would have expressed a cautious view of their potential value or viability. The first point to note is that throughout the investigation Mr Clarke (and indeed DCS White and Commander McDowell) received regular briefings, from both DCS Williams and DCS Surtees, at which the evidence and potential direction of the investigation were discussed (and at which decisions were made to limit the investigation). It is therefore not the case that before

[255] pp45-46, paras 92-93, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[256] p36, lines 21-25, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[257] whether directly or through Commander McDowell and DCS White

being briefed in September/October 2006 Mr Clarke had no idea of the potential evidential leads.[258]

5.28 The precise content of the briefing received by Mr Clarke cannot now be ascertained, but the evidence given by Mr Clarke demonstrates that even with the fullest understanding of the quality of the evidence, his decision would have been the same. His reaction to questions on this issue was that he had enough information to make a properly informed decision:[259]

> *"Even though I didn't know some of the intimate details of the case, and indeed details which, with hindsight, you could say were very important, I still think I had enough information available to me to make the overall decision about the future direction of the inquiry, because I still can't see any way in which we could have done that without exhaustive analysis of all of that material."*

5.29 Mr Clarke agreed that it probably followed that even if one could fairly characterise the evidence, particularly in relation to the three journalists, as strong circumstantial or inferential, that his decision not to pursue them would have been exactly the same:[260]

> *"… Strong circumstantial evidence in terms of trying to prove a conspiracy within a major newspaper group, it might – it won't get you, I would suggest, it would be very unlikely to get you to the position of a successful prosecution."*

5.30 He was asked whether from reviewing the decision logs in preparation for the Select Committee hearing and having heard some of the evidence from the investigating officers during the Inquiry, he had a different impression or understanding of the quality of the evidence insofar as other journalists were concerned. Mr Clarke answered as follows:[261]

> *"It's told me that there's more information there … What I can say is that I haven't seen anything which would cause me to make a different decision than the one I did then in terms of the allocation and resources, and I say that because we referred earlier to the overall strategy, which was to try to bring this criminality to an end by the prosecution of a senior, high-profile journalist, through working with the industry and through passing information to government."*

5.31 I asked Mr Clarke whether, in fact, the decision was not even close, not because of the quality of the evidence but because he was coping with 70 terrorist operations on a monumental scale. Mr Clarke said that this was very close to being *"spot on"*:[262]

> *"… because the minutiae of whether there was circumstantial evidence against journalist A, B or C is a minor consideration in comparison with the consideration of what poses a threat to the lives of the British public. Invasions of privacy are odious, obviously. They can be extraordinarily distressing and at time they can be illegal, but, to put it bluntly, they don't kill you. Terrorists do."*

5.32 Mr Clarke continued by explaining that it would have taken *"a huge amount of very strong, compelling evidence to persuade me that we should take a different course"*. Even that, however, would not have guaranteed that the matter would have been investigated further, only that he would have had better grounds to approach another part of the police service

[258] Further, DCS Surtees has specifically emphasised that he discussed his view of the outstanding leads in detail with DCS White "and other supervisors" in August/September 2006
[259] pp45-46, lines 21-3, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[260] pp47-48, lines 24-3, *ibid*
[261] p47, lines 7-18, *ibid*
[262] pp48-49, lines 17-1, *ibid*

and suggest that the enormous resources required should be dedicated to the problem.[263] Mr Clarke said:[264]

> *"If officers had come to me and said: 'Look, we have very clear technical evidence here that these journalists are involved in phone hacking', that would have given me something more then to try to move the operation somewhere else, something to explain to colleagues why they should devote their own precious resources to what would inevitably be an enormous operation, but that simply wasn't there."*

5.33 It is also worth noting that both the SIO and his deputy clearly agreed with Mr Clarke's decision. DCS Williams put it this way:[265]

> *"… ultimately the decision was Mr Clarke's and I have worked with him since 2004. He is the most professional man that I've ever worked for, and I have absolute confidence in his integrity. I totally agreed with his decision-making. We were all acutely aware of the very difficult decisions that ultimately he would have to make and the rationale for it, and I do agree with it."*

5.34 DCS Surtees also agreed, stating that given the 70 priority terrorism investigations on-going at that time: *"… it would have been absolute folly to prioritise the outstanding parts of this investigation to the detriment of the life threatening investigations."*[266] He went on to make it clear that, despite Mr Clarke's evident reputation for integrity, he would not have accepted without challenge what he perceived to be a perverse decision. He said:[267]

> *"Had I been concerned about the legitimacy or otherwise of that decision, I would have taken that elsewhere. What I mean by that is I clearly am alive to the fact that we have got lines of investigation that had not been pursued in this case. The lines of investigation could have been pursued, and, as a detective, I would like to have pursued them. If Peter Clarke had made a decision based on resource, and my experience was that there was lots of resource, and I thought the decision was perverse, then I would have taken that elsewhere. That was absolutely not my position when the decision was communicated down to me. I was fully aware of where we were within the anti-terrorism branch or counter terrorism command at that time."*

5.35 Neither Mr Hayman nor Lord Blair had any apparent input into this decision. Mr Hayman could not recall a conversation with Mr Clarke about the possible widening of the investigation to embrace other journalists[268] and had not appreciated the significance of what the investigation had turned up at the time (in relation to the number of potential victims and the corner names of journalists). Even if he had, he would have accepted the decision made by Mr Clarke not to widen the investigation because he was one of the people weighing up the competing demands on resources.[269]

5.36 Lord Blair said that because of the huge pressures from Operation Overt, any conversation about the evidence in Operation Caryatid would have been *"way back on the agenda and*

[263] p49, lines 15-23, *ibid*
[264] p50, lines 6-13, *ibid*
[265] pp105-106, lines 20-21, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[266] p31, para 64, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[267] pp65-66, lines 20-8, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[268] p141, lines 6-10, Andy Hayman, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[269] pp152-153, lines 22-3, *ibid*

relatively short, particularly because the matter was being successfully dealt with and closed down, and that was how it was – I understood it to be".[270] Lord Blair said that it never occurred to him to ask whether there was further evidence of similar offences or offenders and nor was he told that that was the case. He said that these were *"fragmentary conversations about something which was considered of relatively minor importance in comparison to the unfolding threats of mass casualty terrorism".*[271]

5.37 Lord Blair expressed the view in his evidence that although the decision Mr Clarke made was a reasonable one,[272] it would have been open to Mr Clarke to escalate the matter to Mr Hayman, the Deputy Commissioner or up to him, any of whom might have decided to hand the investigation to another part of the organisation, possibly the specialist crime directorate, for a scoping study in due course.[273] Lord Blair said that:

> *"It could have been taken out and parked. I just do want to get across that I am not … blaming Peter for this. I am merely saying another course of action could have been taken, and perhaps at that stage the information would have come out about there being lots more names and indications of a lot more people involved and then things would have been very different."*[274]

5.38 Whilst an alternative course may have been available to Mr Clarke, it would not be right to criticise Mr Clarke in any way for taking that course in the circumstances he has described. He was an impressive witness. His evidence regarding the terrorist threat to life and his prioritisation decision was given with force and in a convincing manner. I conclude unhesitatingly not only that Mr Clarke was entitled to reach the decision that he did but that, to such extent as it is appropriate for me to express an opinion, he was right to decide that no further anti-terrorist resources would be committed to investigating the breaches of privacy occasioned by voicemail interception. Even if the potency of the potential evidential leads were not explained during the briefing, that fact made no difference to the outcome.

5.39 There was no question that Mr Clarke had to satisfy the demand for resources that the terrorist threat presented and that he was forced to make resourcing decisions that might not have been justifiable if the quantum of the threat were not so large. It was so clearly the correct decision that there is simply no scope for concluding that the decision was in any way influenced by the relationships between some senior officers and NI staff. I have no doubt, in any event, that Mr Clarke would not have countenanced such a factor having any bearing on his decision-making.[275]

Recording the decision

5.40 Mr Clarke said that his belief was that, in the final analysis, Commander McDowall and DCS White would have briefed him and he would have said to them: *"Okay, go and see the SIOs,*

[270] p65, lines 5-9, Lord Blair, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf
[271] pp24-25, para 59, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf
[272] p58, lines 18-21, Lord Blair, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf
[273] p59, lines 6-18, *ibid*
[274] p63, lines 10-18, *ibid*
[275] To which it is appropriate to add that Mr Clarke himself strongly denied any suggestion that his decision not to broaden the investigation was influenced in any way by pressure from NI or the perception that senior officers would wish it so: p52, lines 4-8, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf

tell them that we're not going to go into the enormous exercise that going through all that material would involve".[276] Mr Clarke believes that he made this *"ultimate decision"* around the end of September 2006;[277] DCS Williams believed that it was *"around September, possibly October"*.[278]

5.41 Mr Clarke went on to say that although briefing meetings were not themselves documented or the subject of minutes, he would expect the product of those meetings to be recorded in the SIO's decision log.[279] DCS Williams has contended that it would have been for Mr Clarke, as the decision-maker, to record the decision. In this case, for whatever reason, it did not happen: there is thus no contemporaneous written record of Mr Clarke's decision or its rationale. Neither is this failure simply bureaucratic: in my judgment, it was significant because the absence of any written explanation of the rationale behind the decision but also the evidential stage that the investigation had reached along with details of the outstanding leads may well have had important consequences in 2009, when the then Assistant Commissioner, John Yates, was tasked with establishing the facts around Operation Caryatid.[280] It was also important for another reason: it deprived the police of an important protection from allegations of impropriety, which, in this case, have caused serious damage to the reputation of the MPS.

5.42 It follows that I entirely endorse Mr Clarke's comment that where the police decide not to deal with a particular piece of criminality by what might be described as the conventional course of arrest and prosecution, there may be circumstances where the rationale needs to be made clear to others, so that *"the sorts of insinuations that have been made about my officers who conducted that inquiry in 2006 can more easily be shown to be baseless."*[281]

5.43 Sir Paul Stephenson made similar comments with which I also completely agree. He said:[282]

> *"… what do you then do with those matters that could be part of a criminal investigation, but for very proper resourcing decisions you decide not to take that option, which is not unusual in many investigations, and I think that there are two relevant factors there: one, you have to ensure that if you are taking those matters elsewhere, from a crime prevention perspective or to change behaviour or to deal with victims in a better way, then you have to make sure you land those issues with those other agencies or government.*
>
> *"Secondly … you have to try and ensure, I think, in the future that we make those decisions transparent so they can withstand this level of scrutiny."*

Other possible approaches

5.44 The two conclusions that led to the investigation being curtailed were, first, that it would have been essential to undertake a full and detailed analysis of Mr Mulcaire's documentation

[276] p37, lines 2-5, *ibid*
[277] p35, lines 8-12, *ibid*
[278] p85, lines 8-9, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[279] pp21-22, lines 11-8, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[280] These consequences are discussed in Section 8 below
[281] p59, lines 15-23, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[282] p66, lines 6-21, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf

and, second, that considerable resources would have been required to do the work. Having regard to the allegations that have been made, however, it was necessary to test the extent to which those beliefs were both genuine and reasonable: having done so, it is only fair to record the answer. Thus, the officers were asked about the feasibility of investigative steps short of such an analysis.

5.45 They were also asked whether they could have arrested the three journalists from the NoTW identified by DI Maberly. The four detectives roundly rejected this is as a realistic option on the basis that, in all likelihood, the journalists would have made no comment in interview, as did Mr Goodman and Mr Mulcaire; the police would have been no further forward. In relation to this suggestion, Mr Clarke remarked:[283]

> *"Would it be reasonable, bearing in mind that we were being completely thwarted and receiving no co-operation from News International whatsoever, to go out and arrest two or three journalists, invite them to make a full and frank confession of what they'd been doing, because we wouldn't, without analysis of all that material, have substantial issues to put to them? It would be a complete reverse of good investigative practice to do that."*

5.46 DCS Williams said:[284]

> *"My opinion is that to do a proper and professional investigation to interview anyone, it has to be done from a position of knowledge, and that in many investigations simply going and asking someone to give an explanation quite often results in 'no comment', in exactly the same way in my early decision logs I could have gone and seen Mr Goodman and it is highly unlikely that we would have got very far in the investigation."*

5.47 DCS Williams continued:[285]

> *"This is my personal belief as an investigator, and maybe others will judge my threshold is too high, but given my experience of investigations and presenting a case before a court, I obviously have a personal higher threshold than others as to what I believe in terms of the right thing to do in terms of reasonable ground before I start depriving other people of their liberty. I do understand that you are arguing to me that there is a lower threshold and I could have arrested and interviewed."*

5.48 DCS Surtees said:[286]

> *"Whilst the most probable explanation for the corner names was that journalists at NOTW were in receipt of this information and that they could be aware of the illegal practises [sic], the difficulty was proving this. This would have meant potentially arresting those journalists listed on Mulcaire's documents. To affect [sic] this there would need to be a full scale criminal investigation."*

[283] pp40-41, lines 22-5, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[284] p104, lines 12-19, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[285] p10, lines 14-24, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[286] pp25-26, para 52, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf

5.49 DI Maberly made the following observations on this subject:[287]

> *"There would have been aspects of the case that I would have liked to have asked them about, but I had no firm evidence of either their knowledge of voicemail interception or of them tasking Mr Mulcaire. This is something that I would have looked to find before speaking to them, because it would have been the case that, you know, if we did bring them in for questioning, the likelihood is that they would have made no comment, as did the other two employees of News of the World. We would have got nowhere."*

5.50 I have no difficulty in accepting that this collective view that there would have been nothing to gain from arresting the three journalists, without further investigation, was (as Mr Clarke pointed out) in keeping with good investigative practice; it was both reasonable and entirely honestly held.

5.51 As a further possibility, it was put to DCS Williams that he could have asked the NoTW to provide him with a list of journalists, perhaps limited to particular desks. DCS Williams explained that he would need more than a corner name that happened to be the first name of someone employed by the paper:[288]

> *"To put together a criminal investigation, I wouldn't just use that one facet. There would be a whole range of questions and things that I would want to get put together to have a cogent case as to now why am I speaking to this individual. Not simply the fact that their name is – I'm making this up – Bill, because that's on a corner name, and they happen to be Bill someone employed in this papers. I would need more than that."*

5.52 He repeated that he would have wanted to go through all the material because:[289]

> *"That is a proper and professional way of carrying out a criminal investigation. It's not done piecemeal or bit by bit. It's done exhaustively, in exactly the way that actually it's being done subsequently."*

5.53 Whilst I do not accept that, of necessity, furthering the investigation was "all or nothing", and that certain preliminary steps could not have been taken to see what they yielded, I have no doubt that DCS Williams honestly held the view that the only satisfactory approach was to examine the Mulcaire archive both systematically and comprehensively.

5.54 The next possibility, suggested to DCS Surtees was that he could have obtained the call data in relation to a limited number of victims listed in the blue book and see who else might have been calling into their voicemail boxes.[290] DCS Surtees explained that the phone records for a given individual reveal thousands of lines of incoming telephone calls. Identifying any given incoming caller requires a separate RIPA authorisation (which itself was a *"laborious process"* because the police needed to account for their wish to intrude into the privacy of the individual).[291] He stated that the only feasible approach, therefore, was to start with the

[287] p89, lines 5-14, Mark Maberly, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[288] p100, lines 8-16, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[289] pp100-101, lines 23-3, *ibid*
[290] p24, lines 18-23, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[291] p24, lines 9-17, *ibid*

suspect's number and look to see whether that number had accessed the voicemail account of the potential victim.[292]

5.55 DCS Surtees agreed that the potential victim concerned could be asked to exclude the numbers they recognised.[293] However, he also pointed out that the phone records would not show which of the incoming calls were seeking remote access to voicemail and which were ordinary phone calls to the victim. Only Vodafone's "Vampire" data were able to show the details of calls into voicemail boxes.[294] It follows that it was quite likely that even after the individual had eliminated all the numbers he or she could recognise, the police would be left with many numbers which may or may not have called the voicemail box. A RIPA application would then have had to be made on a speculative basis, which may well have been insufficient to satisfy the officer charged with deciding whether to grant a RIPA authorisation, because the number could quite easily belong to an entirely innocent party.

5.56 DCS Surtees was also asked whether he considered and discussed with his senior officers a more limited investigation in the first instance, for example by targeting the most senior journalists, because he would be able to find out their relevant phone numbers. He could not remember what conversations there were around scoping a possible future investigation or the extent of such an investigation. He said: *"I certainly can't remember going into – we could have a major investigation or we could have a smaller investigation."*[295] Again, taking account of the response of DCS Surtees to the questions on this topic, that to the extent that he, and indeed DCS Williams, did not consider whether steps short of a major investigation might be feasible, the absence of such consideration was based on a judgment made in good faith and was not influenced by any desire to protect or propitiate NI.

5.57 The tenor of the evidence of Mr Clarke was that he agreed with DCS Williams and DCS Surtees. Mr Clarke was asked whether it would have been possible to carry out a more abbreviated analysis, looking at a sample of victims and the three journalists in the sight lines of DI Maberly. His response was:[296]

> *"… Well, potentially, but I don't see how you could take part of that material and subject it to analysis with all the cross-referencing and so on that would have to happen, and so inevitably I think it would lead to an analysis of all the material."*

5.58 Mr Clarke agreed, when challenged, that there could have been a more limited and streamlined analysis of the material which focussed on the three journalists. He said:[297]

> *"I see what you're saying and with hindsight there are probably all sorts of approaches that could have been taken, but in the light of what I was aware of at the time, what I knew and the competing demands, I made the decision that we would not do so."*

5.59 However, he subsequently re-stated his initial position, namely that the investigation could not have moved forwards without an exhaustive analysis of the material.[298]

5.60 I am not in a position to judge whether further tentative enquiries would have borne sufficient fruit to prosecute other journalists without there being a disproportionate drain on resources.

[292] p25, lines 4-22, *ibid*
[293] p26, lines 8-18, *ibid*
[294] p28, lines 5-10, *ibid*
[295] pp59-60, lines 10-4, *ibid*
[296] pp38-39, lines 21-1, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[297] p39, lines 2-16, *ibid*
[298] pp45-46, lines 21-3, *ibid*

What matters insofar as the Terms of Reference are concerned is whether the detectives honestly held the views that they did (rather than whether their views were necessarily well-founded) and were not influenced by any relationships between senior officers within the MPS and NI. The evidence I heard from each of them, and how they have justified their decisions, gives me no cause to doubt that their decisions were unaffected by the fact that the target of the further investigation would have been NI journalists or editors.

5.61 It is fair to add that DCS Williams also had concerns about whether the huge resource injection that he believed would be required to take the investigation further would be justified by what such an investigation might realistically yield (which itself might have added to his cautious approach). He said:[299]

> *"All along, I – we had some grounds to suspect that this could be wider and that indeed if we undertook further research we may find something. What I didn't know and what I was clear about is what we would find, and actually what it would amount to. What I was very cognisant of, as indeed we all were, was the amount of work it had taken to get us to where we were, particularly in terms of the technical difficulties.*
>
> *"The other dimension that we were very conscious of is we had achieved that in a covert operation, where nobody knew what we were doing, nobody understood what we were looking for, and they couldn't hide evidence. At the moment this was now very clear about what we were doing and what evidence we were looking for, and it is not unreasonable to think that it would be a far more challenging operation in terms of the implication of the resources that you would need."*

5.62 DCS Williams went further because, when asked whether there was any sense that he was taking on a large and powerful organisation and that there were dangers in doing so, he said:[300]

> *"I think with any large organisation, yes, we were aware of it in terms of a big organisation, which is why we carried out such a thorough investigation, why we sought so much advice from the CPS, in particular in terms of when it came to our arrest phase, because we wanted to be able to seize as much evidence as possible and do it in a proper and professional manner so that we could not be criticised for the way we carried out our investigation."*

5.63 I accept the evidence that, if anything, the fact that he was investigating a large organisation made it all the more important that DCS Williams did a good job, both in terms of the way the investigation was conducted and in ensuring that the evidence was sound. Reading between the lines, it was likely to have been within his contemplation that if there were any flaws in the investigation process or the evidence, they would be exploited to the fullest extent possible by the organisation's legal team. It is likely that this mind set also contributed to the cautious approach that DCS Williams took to the evidence.

5.64 Finally, it has been argued that all that would have been needed to include additional journalists on the indictment would have been to ask NI for a list of journalists and cross-refer the list with the corner names. It is suggested that this would be virtually the same evidence as was used to convict Mr Goodman and Mr Mulcaire. It is right, as DCS Williams explained in evidence, that the evidence in support of counts 16 to 20 comprised a high volume of frequency of calls made by Mr Mulcaire to the relevant voicemail box and the

[299] p86, lines 4-20, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[300] pp105-106, lines 20-3, *ibid*

duration of those calls.[301] However, the approach suggested is too simplistic not least because the evidence implicating Mr Goodman in the conspiracy went significantly beyond his name appearing in the top corner of Mr Mulcaire's notes.

Influence of News International

5.65 It has also been argued that there is a strong implication that the conduct of DCS Williams (in telling counsel, the CPS and subsequently Mr Yates that there was no evidence that any other journalists were involved and in later not pursuing the agreed strategy of informing victims) derived from his fear of the powerful media friends of his superiors and reflects a wider institutional fear of NI and his awareness of the close social relationships fostered by the company with his superiors. It has been contended that although there is no evidence that DCS Williams made any conscious decision to suppress evidence, it is inevitable that the relationships exerted some influence on his decision-making.

5.66 In relation to this aspect of the case, I reject these arguments. First, quite apart from whether DCS Williams was aware of any close social relationships, if such there were, there is no evidence that any decision that he made as to the investigation was not entirely justifiable on logical and reasonable grounds; from the outset, he pursued it vigorously and effectively. The ultimate decision (as it has been called) was made by Mr Clarke. As to the attitude to the investigation, DCS Williams said that:[302]

> *"… no one in my team had any contact with any of the newspapers, and I can assure you at no time in that investigation was it ever an issue, did we ever discuss it, did it ever influence the direction that we went in with that investigation."*

5.67 Second, DCS Williams did not suppress evidence; and I have accepted that DCS Williams was not intending to convey to counsel or the CPS that there was no evidence whatsoever to implicate other journalists, only that there was insufficient evidence to lay before a criminal Court.[303]

5.68 Suffice to say, having seen the senior members of the investigating team, I have no doubt that they approached their task with complete integrity. Neither do I doubt their enthusiasm or their desire to investigate the criminality before them to the fullest extent possible within the limits of the resources available to them. I am satisfied that had Mr Clarke, at the end of September 2006, sanctioned the exhaustive analysis of the documentation seized from Mr Mulcaire, the investigators would have embarked on that task with the zeal and rigour they had demonstrated since Operation Caryatid had begun.

5.69 Given how little was known about voicemail interception when the investigation began in December 2005 and the challenges involved in understanding how the interceptions were taking place and then proving the interceptions, it could only have been (and was) a robust, tenacious, well-motivated and skilful team that could have secured such extensive evidence that Clive Goodman and Glenn Mulcaire were driven to admit their guilt. I do not find they were deterred in their investigation by fear of getting on the wrong side of such a powerful organisation or displeasing senior management by risking damage to the MPS's working relationship with NI.

[301] pp98-99, lines 11-6, *ibid*
[302] p106, lines 17-21, *ibid*
[303] The context in which DCS Williams used the phrase "no evidence" was rather different in 2009, however, when DCS Williams was briefing John Yates. This is explored in section 8 below

5.70 As an indication of DCS Surtees' enthusiasm in particular, I note that he said in evidence that, when producing his search strategy:[304]

> *"I wanted very much to get into News International, because I wanted to search the desk, I wanted to search the financial areas, I wanted to find evidence around who was involved in this illegal activity."*

5.71 Also, when asked whether he would have liked there to have been a full scale criminal investigation into other journalists, his answer was: *"absolutely".* He explained, however, that he understood the priorities:[305]

> *"So in terms of what I would have liked to have done coupled with my obligations and the seriousness of the investigations I was involved in, I knew where my priorities lay, and those were with the issues of serious threat to life investigations. That's where I needed to be and that's where my staff needed to be."*

5.72 On this topic, Mr Clarke observed that*: "[the investigating officers] conducted an honest inquiry, they were uninfluenced, as was I, by anything to do with News International or any media group."*[306] In the context of his evidence about the perception caused by his relationships with individuals from NI, Mr Hayman stressed:[307]

> *"I can absolutely accord with your point around perception, but I can tell you that the team on it are ferocious, they have a reputation of being ferocious, and if, let's say, there is a scenario, which some people have argued around the conspiracy that there was a not such ferociousness around because of a perceived relationship, it was impossible, in my view. If you wanted to be disproportionate towards those alleged perpetrators, or you wanted to dilute down the investigation, the security and parameters that were set by the SIO would make that impossible. And if I personalise that, if there was an agenda from me or any other person, Assistant Commissioner, who wanted to dilute or disproportionately ramp up that operation, it would be impossible for that to happen without the SIO calling foul or asking for that individual to record why they want something done in that decision log."*

5.73 Because of the serious concern expressed, this aspect of the police operation has been examined in detail. In the circumstances, I ought finally to record the views of the independent Queen's Counsel instructed to advise and conduct the prosecution, who dealt with the officers on a regular basis. David Perry QC said of the police and CPS staff involved: [308]

> *"… my impression throughout this case, which was not an easy case, given all the sensitivities as well as the technical aspects and the difficult issues of law, was that everyone involved, both at the Crown Prosecution Service and in the police, were conscientiously attempting to do their jobs professionally and with some skill, and my distinct impression at the end of it all was that it was an example of collaborative efforts on the part of the Crown Prosecution Service and the police that had led on*

[304] p45, lines 1-6, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[305] p59, lines 4-9, *ibid*
[306] p59, lines 23-25, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[307] p140, lines 2-18, Andy Hayman, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[308] pp46-47, lines 25-13, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf

the face of it at any rate to a successful outcome on the facts of this case. I must say, I found everyone involved highly skilled, competent and professional."

6. Police strategy for the aftermath

The victim notification strategy

6.1 In order to examine how the police intended to address issues concerning the victims of voicemail interception, it is necessary to return to 24 August 2006 (three days after the conference with counsel) on which date DCS Williams met with Mr Clarke and DCS White. Mr Clarke's recollection is that the purpose of the meeting was to devise and produce a victim notification strategy.[309] Mr Clarke said that he agreed the strategy at the meeting[310] and expected it to be implemented and seen through.[311] He said that:[312]

> *"Bearing in mind that there had been very close co-operation between my officers and the mobile phone industry throughout the investigation, it was agreed that after the arrests there would be a strategy for informing victims whereby police officers would inform certain categories of potential victim, and the mobile phone companies would identify and inform others."*

6.2 Mr Clarke was asked whether it was his intention that the 418 names on the original list of potential victims, which was prepared shortly after 8 August 2006, would be notified one way or the other, either directly by the police or by the mobile phone companies. Mr Clarke said: *"Yes, absolutely"*.[313] Mr Clarke said that he did not have any oversight over the execution of the strategy because he would not be expected to do so and by then he was fully immersed in Operation Overt.[314]

6.3 DCS Williams said that he wrote the outcome of the discussion in a document entitled *"Informing Potential Victims"*.[315] Given that Mr Clarke had no further involvement in the victim notification strategy after that meeting, it does not appear that he saw the document or was asked to agree the detail of the strategy. The following are material extracts from the document:

> ***"Situation***
>
> *...*
>
> *Material seized during the executive action phase of Op Caryatid has been assessed and at this stage there are approximately 180 potential victims whose details are recorded by Mulcaire.*
>
> *...*
>
> ***"Way Forward***

[309] p46, para 96, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[310] p55, lines 20-22, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[311] p47, para 96, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[312] p46, para 94, *ibid*
[313] p56, lines 2-9, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[314] p47, para 96, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf
[315] p22, para 33, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf; (document not published)

There is a need to establish definitely how many victims there are, i.e. how many people have had their voicemails (UVNs) rung by Mulcaire/Goodman. With that in mind all 5 of the UK mobile phone companies have been asked to search their UVN equivalents for any of our 'suspect' phone numbers calling them going as far back as possible – up to one year, dependant [sic] upon data retention. Time frame – up to 3 weeks, but variable due to Op Overt.

…

Using the information that will come from the mobile phone service providers together with an assessment of material seized, police/Council [sic] can choose an appropriate range of 'victims' – subject to their agreement – to add to the charges. The list of victims will then represent the most definitive list of people who have had their voicemails 'intercepted'.

There is arguably a duty to inform people when they have been a victim of crime and in this case I believe that duty should be undertaken for those people who we know are victims by virtue of the fact that our suspects called their voicemails (UVNs). That list will be identified as above and the next step is to decide when and how they should be informed.

"Issues to bear in mind if informing victims

Informing all of the victims could be resource intensive which SO13 can ill afford at this juncture given the current terrorist threat.

From all that is known, the risk to the victims does not extend to a risk to life or serious injury/damage to property, but rather the goal of the criminality is to seek material of media interest – typically salacious gossip!

Arguably any immediate and future risk has been negated by virtue of the fact that police now hold the suspects data on their victims and the fact that they have been detected acts as a deterrent for them or anyone else to target these victims.

Although the techniques for voicemail interception may not be limited to these suspects it is unlikely these two will have shared them with a wider audience given the potential earning value of the technique. Equally our investigation to date has not identified any other suspects calling the UVNs of our main victims.

There is a rationale for saying that the risk to victims has been significantly reduced due to police action and therefore a more measured and proportionate approach can be taken in terms of who and when the victims are informed.

Options

In terms of the, who and when, the following are options:–

1. *Given the rationale outlined above, do not inform any victims beyond those who will be used in the prosecution.*
2. *As per 1 above, but extend the victims to be informed to include anyone who falls into the category of MP, Royal Household, Police and Military on the basis that although there is nothing to suspect personal safety or national security is being targeted, these are people for whom being those aspects could be a collateral risk. The latter four categories would include those that are on Mulcaire's list whether or not any investigation shows that their UVN has been dialled.*
3. *Inform all victims i.e. whose voicemails have been called.*

4. *As per 3 above, but vary the when and how. The four categories identified in option 2 should be informed now and the remainder can be informed once the definitive list is complete following responses from the phone companies. Police would lead on informing the former group whereas the latter group could be informed by the respective 'victim' phone company via an agreed police/mobile phone companies' letter.*

Recommended Option

Option 4 is my preferred option because:–

It deals with the risks to individuals in a proportionate manner.

Is a proportionate use of police resources that are hard pressed across the MPS?

The responsibility and resource implications are shared with the phone companies.

The phone companies are the most effective and efficient means of contacting the victims in the majority of cases.

Police have the appropriate channels to contact the police/military/MP/Royal victims.

6.4 DCS Williams explained in his witness statement that:[316]

> *"… I felt that there was arguably a duty to inform people who may have been a victim of crime in this case and I felt that this was best defined by 'for those people who we know are victims by virtue of the fact that our suspects called their voicemails.' If those people could be identified it was a case of by whom, how and when those people would be informed. The rationale for such a distinction was based upon a proportionate sharing of the resources that would be required, the level of risk/harm and who, police or service providers, had the best discrete [sic] channels to carry out the task."*

6.5 He provided additional insight into his thinking at the time during the course of his briefing to the Assistant Commissioner, John Yates, in 2009:[317]

> *"At the time the strategy recognised that there was still extensive research to be done with the phone companies to identify what the full extent of victims might be and therefore as outlined under the section above* ***'How were victims identified'*** *this could be a vastly bigger group of people and in reality we would probably never know the true scale. This strategy was therefore seeking to alert potential past victims in a proportionate manner without causing undue alarm (i.e. contact via Phone Company as opposed to police) and set in motion measures within the overall mobile phone industry to prevent it happening in the future."*

6.6 In summary therefore, the plan was for the police to notify immediately those identified in the blue book (the 418 individuals) who fell into the category of MP, Royal Household, Police and Military, regardless of whether there was evidence that their voicemail boxes had been dialled by the suspect numbers. Individuals outside those four categories would be notified provided their voicemail box had been rung by Mr Goodman or Mr Mulcaire or both[318] but

[316] para 37, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[317] para 28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[318] p66, lines 6-9, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

irrespective of whether there was a "new" or "old" message in the voicemail box.[319] DCS Williams explained that this latter group of victims would comprise those in the blue book whose voicemails had been rung by the suspect numbers (but who were not MPs, members of the Royal Household, police of military) and any additional individuals that the phone companies brought to their attention.[320] It was not sufficient that they merely appeared in the Mulcaire papers or were listed in the blue book.[321] This latter group of individuals would be informed by their phone company, by way of a letter agreed between the police and the phone company, but not until the phone companies had responded to the request that they identify as many of their customers as they could whose voicemail boxes had been rung by the suspect numbers (so that a *"definitive"* list could be compiled).

6.7 I find that it was reasonable for the police to put in place a three-track strategy for the prosecution: namely (i) conducting a high-profile but limited prosecution (limited in terms of victims named on the indictment); (ii) alerting the phone companies so that they could improve security and change their procedures as appropriate and (iii) warning people who were the subject of criminal attention. However, the victim notification strategy was both poorly thought out and scarcely executed.

6.8 The plan lacked coherence. A considerable amount of work had been invested in the blue book, which provided a list of potential victims (as DCS Surtees intended).[322] Plainly, the police should have ensured that all those named in the blue book were notified and the plan should have been devised on that basis. I see no reason for believing that this would have been a disproportionate drain on resources. Instead, the detail of the strategy was such that it excluded people listed in the blue book but in respect of whom there was no evidence that their voicemails had been called by the suspect numbers.[323] The strategy therefore overlooked people who were identified in the blue book, and in respect of whom Mr Mulcaire had the wherewithal to access the voicemail accounts, but whose voicemails may have been accessed by an as yet unidentified suspect number, such as a number belonging to someone other than Mr Goodman or Mr Mulcaire. This ought to have been within DCS Williams' contemplation given his strong suspicion that journalists other than Mr Goodman had been involved in voicemail interception. The strategy also overlooked the fact that the phone companies only held their records for a short period of time and it thereby excluded those whose voicemails had been accessed by the identified suspect numbers but at such an early date that the relevant records had not been retained.

6.9 DCS Williams was asked why everyone named in the blue book was not notified. His response was:[324]

[319] p74, lines 16-18, *ibid*. By implication, this was irrespective of whether there was a voicemail message at all. DCS Williams did not apply the narrow interpretation of s1 of RIPA when identifying 'victims'. This was plainly the correct approach given that regardless of the applicability of s1 of RIPA, the accessing of any voicemail message amounts to a criminal offence under s1 of the CMA. Therefore, all individuals whose voicemail messages have been intercepted are victims of crime, irrespective of whether the messages concerned were intercepted before or after they were heard by the intended recipient

[320] pp72-73, lines 24-3, *ibid*

[321] p64, lines 3-18, Keith Surtees, http://www.levesoninquiry.org.uk/evidence/?witness=dcs-keith-surtees

[322] The list of names comprised people of interest to Mr Mulcaire, in respect of whom Mr Mulcaire either had the wherewithal to access their voicemails or was in the process of obtaining that wherewithal; p67, lines 4-16, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

[323] The strategy did not therefore fulfil Mr Clarke's intention that all 418 individuals listed in the blue book would be informed, which is a further indication that Mr Clarke did not agree the detail of the strategy

[324] pp67-68, lines 22-7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf

> *"But I believe the implementation of this strategy was all I'd got there is a snapshot in time from the material that we happened to have received. There could well be a wider pool of people that have been compromised as a result of his activity or indeed anywhere else. So this strategy was aimed at the full potential of what those potential victims might be. So that's where it's actually in the when and the how that I'm seeking or I was hoping through this strategy to address that much wider pool of people, which would have included everybody on that list."*

This answer suggests that DCS Williams failed to recognise that the ambit of the strategy simply did not encompass, even theoretically, everyone identified in the blue book.

6.10 Without suggesting to DCS Surtees that it was his responsibility to do so, it was put to him that it would not have been an enormous task to contact everyone in the blue book and make sure that everyone was told that there was some information that their voicemail messages may have been intercepted, that it may not be possible to prosecute for reasons that could be explained, but that they ought to be aware of that fact and take appropriate security arrangements or, at least, be alert.[325] DCS Surtees responded as follows:[326]

> *"I accept that. In terms of the Blue Book and in terms of the document that was produced later, which was a document produced as a result of the analysis of the electronic media, which I think came to us on 23 November 2006, in relation to both those documents, I accept that, the Metropolitan Police, could have approached all of those people and said, 'Look what is on a piece of paper', or, 'Look what is on a document and look how it relates to you'. I accept that."*

6.11 In my view, the police ought either to have informed those named in the blue book themselves, or have agreed with the phone companies that the latter would do so, and given them the means to do so by providing the list of names. The police ought then to have checked with the phone companies to ensure that all relevant individuals had been informed. Insofar as the police had concerns about their obligations under the Data Protection Act 1998 when giving any names to the phone companies, this was a matter that could doubtless have been discussed and resolved: ultimately, the police could have avoided those concerns by informing those individuals themselves.

6.12 Unfortunately, not only was the strategy ill-conceived but, in addition, its execution was woefully inadequate. The evidence indicates that the police did not notify all the victims for whom they were responsible and neither does it appear that the plan was ever, in terms, communicated to the phone companies, despite a large part of the responsibility for informing victims being intended to fall on them. The police appear to have assumed that having been asked to identify any customers whose voicemail boxes had been called by the suspect numbers, the phone companies would naturally inform all those that they identified.

6.13 DCS Williams explained his thinking as follows:[327]

> *"When I wrote the strategy, it was based on what I believed was already happening in terms of our relationship with the service providers and as the case progressed to prosecution that ongoing support, discovery, cooperation and joint media releases*

[325] In his witness statement, at para 69, DCS Surtees had said that informing victims beyond those categorised as military, police, MPs and Royal Household, would have involved a huge and labour intensive commitment from SO13
[326] p61, lines 16-24, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[327] p25, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

served to reinforce my belief. I believed the strategy was being carried out as an ongoing process and I had merely formalised the process at a moment in time with the official endorsement of my senior management."

6.14 DCS Williams even appears to have contemplated that the phone companies would identify potential victims and notify them without giving the police their names. DCS Williams:[328]

"… Albeit all of the companies and police were pragmatic in sharing data in what potentially would bring us to an administrative halt if we went down the full process, neither party was willing to share long lists of names for obvious privacy/data protection reasons. Therefore the informing potential victim strategy embraced these issues by providing the optimum, discrete [sic] means of informing anyone who was identified as a potential victim supported by a single, well worn route for those who may wish to report the matter to police."

6.15 DCS Surtees described it as his "understanding" that the telephone companies would tell those other than MPs, members of the military, members of the Royal Household and police that their phones had potentially been accessed.[329] He said:[330]

"The Mobile phone companies had continued from the outset of the investigation to provide us with details of other customers who had their voicemails intercepted. At no time did I or indeed anybody else from the police team ask for this to stop, even post arrest and charge. The issue of the obligation to inform customers/victims to my knowledge was never explicitly documented anywhere either by the police or indeed the telephone companies. O2 were adamant that they would only inform us of possible victims after they had informed their customers and sought consent[331]. My view was that the telephone companies were responsible for their customers, as is the case in other areas of business such as in the banking industry."

"Whilst I was not explicit as to what these companies should do around informing and keeping their customers up to date, I held the belief that this was, in fact, being done. To further reinforce this I ensured that the phone companies, especially those not as close to the investigation as the two mentioned herein, were briefed, and, through Jack Wraith, that any victims were directed back to this investigation. Like with O2, the emphasis was still very much on the phone companies to deal with their customers in a professional manner. The telephone companies knew which of their customers were subject to illegal access because it was they who told us in the first place. At no time were they ever restricted from informing those customers, although the extent of the information passed would be limited. Further, it was not for the police to dictate to private companies how to execute their internal procedures and how to deal with their own customers."

6.16 It does appear, therefore, that no attempt was even made to agree the strategy with the phone companies. In addition, there is no evidence of joint letters being agreed with the phone companies, despite this being the intention identified by the strategy. Furthermore, none of the phone companies have stated that they were asked, either before or after this

[328] p25, para 40, *ibid*
[329] p63, lines 7-11, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[330] pp32-33, paras 70-71, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DCS-Keith-Surtees.pdf
[331] Therefore, to such extent as O2 provided names, he could at least conclude that those named individuals had been informed

strategy was drafted, formally to notify any particular category of customer that they were the potential victim of voicemail interception.[332] It is right that O2 did notify a number of their customers, but it appears that they did so of their own initiative and not because they were asked to by the police as part of the victim notification strategy. I therefore do not accept the argument of the MPS that the failure of the strategy was due to a misunderstanding between the MPS and the phone companies as to which categories of victims should be informed and by whom. The strategy failed because the MPS did not take the necessary steps to put it into effect.

6.17 As late as 2009, when briefing Mr Yates, DCS Williams and DCS Surtees did not even appear to have been aware that the strategy had failed. In a briefing note dated 12 July 2009, they stated:[333]

> *"It is not known in detail what each mobile phone company actually did, but anecdotally we know that upon learning of the flaws in their processes the phone companies took steps prevent future breaches and albeit these measures varied from company to company they included contacting customers who they thought might have been a victim …"*

6.18 When making its opening statement to the Inquiry, the MPS fully accepted that the victim notification strategy was not properly executed.[334] The failure is now being remedied as part of Operation Weeting. The MPS states that it accepts that it should have done more to ensure the strategy was fully implemented, but argues that this needs to be seen in the context of the huge demand on what became SO15 resources in 2006-7, as a result of several major counter terrorism operations.

6.19 DCS Surtees has also added that the decision made by Mr Clarke not to expend any further resources on the operation affected the victim notification strategy. He said that after the decision had been made not to expand the investigation, he received the direction that staff should only service the prosecution, and consequently, there were no staff to follow up with the phone companies what they were doing regarding victim notification.[335] It does not, however, seem that anyone went back to Mr Clarke and reminded him of the resources needed to implement the strategy which, in outline, he had approved.

6.20 In my judgment, these resource considerations simply do not explain why the basic steps required were not taken to ensure that the phone companies were aware of what the police expected them to do and agreed both to do it and to the terms of a joint letter. The decision made by Mr Clarke and the demand on resources may provide some explanation (but no excuse) for why these important steps in the process were apparently overlooked but the significance of the failure should not be minimised: it was a failure to take even basic steps to follow up the strategy and to ensure that it had worked as intended. Mr Clarke expressed his regret for the failure of the strategy in his witness statement:[336]

> *"I have since learned that this strategy did not work as intended and as former Assistant Commissioner John Yates has publicly acknowledged, that is a matter of profound regret. It is also of course utterly regrettable that as a result of the decision*

[332] See paras 8.168-8.169 and 8.187-8.189 below. Vodafone and Orange expressly denied having been asked to do so
[333] p7, para 30, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf
[334] The MPS conceded the judicial review proceedings referred to at paras 11.7-11.17 below in which that issue occupied central stage. It acknowledged that it failed to take prompt, reasonable and proportionate steps to ensure that those identified as victims were made aware
[335] Second witness statement of Keith Surtees, to be published after this Report
[336] p46, para 95, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf

not to conduct a detailed analysis of all the material seized, victims of crime and their relatives, who I had no idea were the targets of the hackers, were not notified and did not receive the support that they deserved sooner."

6.21 The failure of the victim notification strategy reduced the opportunity for other victims to make themselves known and created a perception that has caused significant damage to the reputation of the MPS. Once again, the important question is whether there is an evidential basis for finding that the police deliberately failed to notify people because they did not want the scale of the interceptions to be known publicly, which might itself have called into question both their strategy and their relationship with NI. The MPS contends forcefully that the failure of the strategy had nothing to do with inappropriately close relationships with (or fear of) members of the press, or any of the risks arising from such relationships as there were.

6.22 During his evidence Mr Clarke emphasised that his hope had been that the victim notification strategy would be comprehensive and would work. He said: "*Sadly, it turned out not to be the case and to this day I don't really understand why it didn't work*".[337]

6.23 DCS Williams said:[338]

"This strategy … did not seek to hide the potential to be a 'victim' of this behaviour. Far from it, the whole aim was to secure maximum public awareness of the vulnerability through an effective and decisive criminal prosecution..."

6.24 DCS Williams was asked whether it was a fair observation that part of the reason for the failure of the strategy was the fear that notifying all potential victims would mean the matter would enter the public domain more explosively and force the police to carry out an investigation which they did not really want. DCS Williams said:[339]

"It's not. I understand that's what's being said now, but I can assure you that was absolutely not the intention. I wanted to make this as public as possible, and the most obvious way of doing that is through a prosecution. If I hadn't have wanted to have done it, I could have stopped this investigation much earlier, but that was absolutely not my intention. It was to secure a prosecution, to make this very public, and actually in the wider and long term, to make it absolutely clear what the risks were and how to prevent it."

6.25 It has been asserted that the failure to alert Lord Prescott, in particular, to the fact that he was a potential victim[340] strongly supports the allegation that the police deliberately avoided notifying certain victims since, if Lord Prescott had been alerted, he is likely to have reacted to this revelation in such a way which would have made it very difficult for the police not to expand the investigation. It is important to note that, on 30 August 2006 DI Maberly emailed Vodafone asking if they could tell him whether anyone has listened to the voicemail of a number of people, which included "Tracey Temple (Prescott)".[341] Clearly he was a suspected

[337] pp55-56, lines 18-1, Peter Clarke, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf
[338] p23, para 35, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[339] p107, lines 4-14, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[340] This is despite the fact that Lord Prescott had been identified as such by the interviewing officers shortly after the arrests
[341] Email not published

victim. Further, on 2 October 2006, DI Maberly emailed O2 identifying two persons of concern and asking O2 if they featured in the analysis O2 was preparing: the first name was *"Joan Hammell (linked to prezza)".*[342] DCS Williams was asked about the material relating to Lord Prescott. He said:[343]

> *"I don't know whether I knew that specific bit in the sense of it sat here in this interview. What I was briefed about was, yes, there are now from the material a number of other people in all walks of life, that include politicians, where it may be that they are potentially people who Mulcaire or others might want to target in terms of their voicemail."*

6.26 It is extremely unfortunate that, apparently, DCS Williams was not made fully aware of the fact that the investigators suspected that Lord Prescott had been or, at the very least, was at risk of being, a victim, not least because of the significance of his position as Deputy Prime Minister. On the other hand, I consider it highly unlikely that this omission or the consequential failure to inform Lord Prescott was deliberate. The police had devised a strategy for bringing the matter to public attention, which included notification of specifically identified victims. It was not their overall intention that was at fault but, rather, the detail of the strategy and its implementation. It would be remarkable to embark on the exercise if their intention was to keep hidden what they had found. In the circumstances, it would not be safe or fair to conclude that the failure of the strategy was either a device to minimise publicity or avoid scrutiny or an attempt to 'bury' the scale of the problem. As DCS Surtees explained in evidence:[344]

> *"There was a communication strategy which was devised in 2006 and it was multifaceted. It dealt with the information that was put out for offer. Two people had been arrested, two people had been charged with these offences. There was various media lines put out throughout the process: two men have pleaded guilty and then latterly two men have been sent to prison. So there were through the process of August into January 2007 a number of media lines put out and a lot of media coverage as a result of that."*

6.27 Further, the police informed the PCC[345] and Mr Clarke is absolutely clear in his mind that he made the government aware of the investigation when Mr Goodman and Mr Mulcaire had been arrested. He said in his witness statement:[346]

> *"I recall discussing the case with Dr John Reid, the then Home Secretary, shortly after Goodman and Mulcaire had been arrested. This was in the margins of a meeting about broader counter terrorism issues in the immediate aftermath of the Operation Overt arrests, and was of little significance other than to demonstrate that the Home Office had been informed of the arrests and the broad nature of the case that was alleged against Goodman and Mulcaire."*

[342] Email not published
[343] pp42-43, lines 22-3, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[344] pp62-63, lines 9-18, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[345] p28, para 45, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf
[346] p48, para 100, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf

6.28 Lord Reid confirmed this to the extent that he agreed it was quite possible that the subject of their arrests was mentioned informally by Mr Clarke though he personally does not recall a specific conversation.[347] He added:[348]

> *"I do recall the issue being touched upon much later in one conversation with the Met Commissioner towards the end of my period in office … My recollection is of being told that work continued following the recent trial that had concluded in late January 2007; that there was a considerable amount of material arising out of the trial and the investigations related to it; but that material did not equal evidence, and it would take some time to work through it with a view to gathering evidence."*

6.29 This evidence is difficult to reconcile with the fact that, towards the end of September 2006, Mr Clarke decided that no further analysis of the material would take place. Lord Reid continued as follows:[349]

> *"So that was certainly my impression when I left office, that having carried out the convictions on Goodman and Mulcaire, that now what was being done on the generality of it because there were other suspected victims of this.*
>
> *"I think it was my final meeting. I can't be sure of that, but I think the final meeting was around May with Ian."*

6.30 Lord Reid said that he was never made aware that were perhaps hundreds of victims and thousands of names or that Lord Prescott was one of names in which Mr Mulcaire could be seen to be interested, whether or not his phone messages or the phone messages of one his staff were actually the subject of interception.[350]

6.31 Not only do I conclude that a deliberate failure to inform victims was inconsistent with the evident desire of the police to bring the matter to public attention generally, but neither do I find it plausible that the officers concerned would devise a victim notification strategy which they never intended to execute. Further, for all the reasons that I have previously set out, I do not believe that the failure of the strategy was influenced in any way by or connected to any inappropriate relationship between the MPS and NI. By far the more plausible explanation for the failure of the notification strategy is that SO13, having been successful in its primary objective, simply took its eye off the ball in circumstances where it was extremely keen to return to what might be described as its core business, namely counter-terrorism.

6.32 It has also been argued that when the police did notify victims, they favoured media contacts. For instance, Mrs Brooks was informed that she was a victim and, on 13 October 2006, DCS Surtees emailed the Mail on Sunday a list of five members of staff who had been found to be the victim of voicemail interception.[351] It is said that this position is to be contrasted with that of Brian Paddick, Lord Prescott and Simon Hughes. Brian Paddick was a Commander serving with the MPS at the material time; his name appeared in the project list created by the High Tech Crime Unit from information held on Mr Mulcaire's computer. Indeed, the High Tech Crime Unit had specifically highlighted his name in the introduction to the document as someone about whom attempts had been made to obtain information. There were also references in Mr Mulcaire's papers which included the name of Mr Paddick, his address,

[347] para 47, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Reid.pdf
[348] para 48, *ibid*
[349] p173, lines 1-10, Lord Reid, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf
[350] p195, lines 18-25, *ibid*
[351] Email not published

his mobile phone number and other phone numbers. It was only in 2010 that Mr Paddick was informed. Further, although Rt Hon Simon Hughes MP was an identified victim and the subject of one of the charges in the criminal trial, he was not told that Mr Mulcaire had recorded in his notebook not only details about him but also his friends and family along with the names of three NoTW journalists other than Mr Goodman.[352]

6.33 I can well understand the reason for the concern that these witnesses had about the approach of the police which underlines the failure adequately to enunciate and implement a sensible and appropriate policy of notifying those who needed to know that their communications may not have been secure and their privacy had been violated or, at the very least, at risk. This might have been as a result of direct notification or by involving mobile phone companies but it had to be done and steps taken to ensure that it had been done. Having said that, the police did notify a number of those who were not related to the media (including, for instance, George Galloway who was told on 24 August 2006). In the circumstances, I consider that the undoubted failures of notification are not the result of cover-up or preferential treatment and favouritism towards the press but rather of poor strategy, and poor implementation of such strategy as existed with insufficient consideration to the importance that many if not most of the victims would attach to learning what had or might have happened to them.

The failure to warn NI or challenge the "one rogue reporter" assertion

6.34 The police were aware that there were very strong grounds for believing that journalists at NI, other than Mr Goodman, had been involved in unlawful voicemail interception. They had identified that the practice might be widespread. However justifiable their decision not to follow the evidential leads implicating other journalists might have been, that approach, brought with it an expectation that the police would take all other steps reasonably available to them to prevent the recurrence of the crime. In part that was achieved by mounting the high profile prosecution of Glenn Mulcaire and Clive Goodman.

6.35 Given the extent of the material in the Mulcaire archive and the collation of that material in the blue book, one possible additional step would have been to alert senior management at NoTW and NI of their concern about the extent of the criminality so that the management could review their systems of corporate governance, possibly to institute their own internal investigation into the relationship between the NoTW and Mr Mulcaire which had permitted him to earn so much money and, in the event that payments could not be justified to take such steps as they thought appropriate to deal with the position. It could have been explained to NI that there were other leads in the material which they had seized which could have revealed more widespread criminality but that were not being pursued because of significant competing priorities to deal with counter terrorism. This is not to suggest that the police should have undertaken any duty to monitor NI for which they had neither power nor resources.

6.36 Taking this step might have led NI and NoTW to be rather less forceful in their assertion of the line that Mr Goodman represented *"one rogue reporter"*. Furthermore, when the police became aware that NI's public approach was that Mr Goodman had been working alone, at the very least, the police should have been prepared to point to the observations of Mr Perry, the conclusion of Mr Justice Gross and the fact that their investigation (necessarily not taken as far as it could have been taken because of counter terrorism) should not be taken as

[352] pp5-7, paras 16-22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Simon-Hughes-MP.pdf

supporting that conclusion. I am not suggesting that they could make allegations about those whom they had not investigated; distancing the police from these conclusions, however, would, at least, have provided some context.

6.37 DCS Surtees accepted that it would have been possible to go to NI and have a conversation although: *"it may well have been viewed cynically"*. He agreed that if the police had done so, then they could have pointed out, when reference was made to a single rogue reporter, that the police *"put them right"* because this did not do justice to the extent of the investigation.[353] This would not have taken a great deal of police resource.[354]

6.38 This step did not, however, cross the mind of DCS Williams. He said:[355]

> *"I didn't think to specifically do that. I – if I think of your question and look back, I feel we made it abundantly clear what our understanding was and what our suspicions were in terms of the requests that we made to them. I'm sure they were well aware of what it was that we suspected, and given that ultimately a member of their senior management team resigned on the basis of what we'd found, I would have expected any senior management in an organisation to question why had that happened and to understand exactly what had gone on."*

6.39 He went on to say that:[356]

> *"Actually, I thought I'd already done that, had made it very clear, not just to them, but to any organisation that might be engaged in this, that might want to consider are we also doing this.*
>
> *"That was the whole purpose. It was to show people: if you are doing this, whoever you are and wherever you are, actually it is clearly criminally wrong, and you'll go to prison, and if you're an organisation that knows that you seek information and you should be thinking to yourselves, 'I wonder if we've got any vulnerabilities?' – that's what we do as a learning organisation in the police. I don't necessarily expect someone to come and tell me that I should do that, and actually, I may be wrong, but I'm not aware in – either I've not done it and I'm not aware of my fellow investigators having actually gone and this in senior companies. I know in frauds, then, but that's more in terms of vulnerabilities of a system as opposed to actually something being wrong in the organisation. That's usually demonstrated through the prosecution of people."*

6.40 DCS Williams was right to expect the senior management at NI to conduct an internal investigation and take such preventative measures as were necessary, but it was not safe to assume that they would do so. Bearing in mind the 'one rogue reporter' defence, the reverse was more likely to be the case. On any showing, by strongly advising that course of action, it was open to the police to maximise the chances that the issues would be addressed.

6.41 The MPS argues that the omission to warn NI as to its future conduct was not a failing and that it did all that was reasonable (given the relevant context and state of knowledge at the time) to raise concerns with NI. The MPS submits that it was made *"abundantly clear"* to NI that

[353] pp69-70, lines 24-9, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[354] pp68-69, lines 17-2, Keith Surtees, *ibid*
[355] pp107-108, lines 22-6, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-29-February-2012.pdf
[356] pp110-111, lines 25-21, *ibid*

the police suspected that voicemail interception was more widespread and that the message was delivered *"very firmly"* that they had a problem with employees engaged in *"sustained periods of criminal activity"*.[357] The MPS submits that the attempted search of NI would have sent a very clear message to NI that the MPS was seeking any evidence of criminality and by implication a halt to any further criminal practice. Also, that the correspondence sent to Burton Copeland demonstrated the attempts made by the MPS to bring to the attention of NI both the nature and extent of the documentation required and by implication the practice of voicemail interception within NoTW. In my judgment, however, these submissions overstate the case: an aborted search that was not renewed and letters requesting documentation, both of which entailed no repercussions for NI sent no warning signal at all.

6.42 The MPS makes the further submission that it is evident from the recent arrests and various charges in Operation Weeting that there is at least material for suggesting that others at NI either knew or feared very much more extensive criminality. Without prejudicing the ongoing criminal investigation and prosecution, it is not right to go further although it is sufficient to point to Mr Myler's comment about *"bombs under the newsroom floor"* as identifying his concern which was hardly consistent with the stated line. In any event, this argument misses the point: what was important was not what the NoTW knew or appreciated but that the *police* had strong grounds for believing that the offending was more extensive than the public line being deployed and that the fact that the investigation had not gone further should not be taken as police endorsement of an attempt to minimise what had been uncovered.

6.43 The MPS also relies on the prosecution itself, stating that this alone should have sent a very clear message to all media organisations, not just NI, that voicemail interception was illegal and would not be tolerated. I have no doubt that everyone understood the gravity of the position if it was detected. On the other hand, the deterrent effect of the prosecution would have been substantially reduced by the fact that NI had arguably thwarted a wider investigation by interfering with the searches in Wapping and by adopting the attitude reflected in the approach of Burton Copeland to requests for information and documents. The deterrent effect would also be reduced by the fact that, despite the indications of wider criminality at NI, the investigation had been closed. In those circumstances, NI could well have considered itself "off the hook". The matters relied upon by the MPS are simply not in the order of what, in my judgment, was required of them before they put Operation Caryatid behind them.

6.44 Finally, the MPS argues that any approach by the MPS to NI in an unofficial capacity to seek compliance could have been perceived by others as inappropriately 'cosy' and DCS Williams has said that he was operating under the general instruction from Mr Clarke not to engage with the media. The MPS would not, however, be acting in an unofficial capacity and it is not correct to suggest that a formal approach by senior officers, at a fully documented and minuted meeting, delivering the warning and advice outlined above, could be perceived as overly 'cosy' or otherwise inappropriate, or of a nature that Mr Clarke would prohibit.

7. The reaction of the News of the World

Change of editors

7.1 The one significant change that occurred at the NoTW following the prosecution was the resignation of Andy Coulson and appointment of Colin Myler as editor. Mr Coulson said in

[357] p69, lines 8-14, Keith Surtees, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf

evidence that his resignation was his decision, reached without any prior discussion with Mr Murdoch or Mr Hinton:[358]

> *"I went to see Les Hinton and I was very clear that I was going to resign, and then I did so."*

7.2 Accepting this evidence, which has not been contested in any way, the replacement of Mr Coulson as editor was not a step taken by NI to effect a culture change, so much as a convenient opportunity. On his departure, Mr Coulson received compensation in lieu of notice and compensation for termination of employment.[359] This appears to suggest a gesture of good will on the part of NI to Mr Coulson at the point of his personal decision to accept editorial responsibility for what had happened.

7.3 According to the oral evidence of Rupert Murdoch, Mr Myler was appointed to "*find out what the hell was going on*".[360] Mr Murdoch testified after Mr Myler and his version of events could not be put to the latter when he gave evidence in Module 1. Having been given the opportunity to comment on Mr Murdoch's account, Mr Myler contends that he was given no such brief either in these somewhat colourful terms or otherwise, and that he simply understood his role as being to edit the paper.[361] In response, Rupert Murdoch has clarified that it certainly was his understanding from Les Hinton that Mr Myler was appointed to "*find out what the hell was going on*", and that it would not been possible for the latter to have moved the paper forward by improving its practices and governance, to avoid a repetition of the conduct which had led to the criminal convictions, without ascertaining what had gone wrong in the past.[362] The upshot was that Mr Myler appears to have decided that his function should be forward-looking:[363]

> *"… the trauma of what had happened with the Goodman/Mulcaire trial left a very deep, as I say, trauma within the newspaper and the morale of the staff. So I think it was more important to improve the standards and the protocols and the systems that existed, rather than dwell on what was. I think it was more important to say, 'From now on, this is how we're going to work and this is what it is'."*

7.4 Mr Myler claimed, however, to be uneasy with the situation:

> *"It's fair to say that I always had some discomfort and I always – the term I phrased was I felt that there could have been bombs under the newsroom floor and I didn't know where they were and I didn't know when they were going to go off. That was my own view. But trying to get the evidence or establishing the evidence that sadly the police already had was another matter."*[364]

7.5 There were steps that Mr Myler could have taken in an attempt to locate and defuse 'the bombs'. He had the ability to analyse every single payment to Mr Mulcaire and to require

[358] p26, lines 16-17, Andy Coulson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-10-May-2012.pdf
[359] p26, lines 18-22, Andy Coulson, *ibid*
[360] p28, lines 13-14, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf
[361] fourth witness statement of Rupert Murdoch dated 31 October 2012: gives details of an informal drink with Mr Rupert Murdoch immediately after his appointment as editor of the NoTW
[362] para 3 of the third witness statement of Rupert Murdoch dated 6 November 2012
[363] p23, lines 7-14, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf
[364] p9, lines 21-25, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf

every single journalist who had employed him to justify every single request or task that Mr Mulcaire had been set and every story that Mulcaire had provided. Although in the light of the way in which the paper had dealt with the police investigation, it may have been difficult or embarrassing, he could have sought the assistance of the police not to encourage further investigation but to see whether there were any strands which they had considered which an internal investigation might pursue thereby demonstrating his determination to root out what had happened. Some of these steps might not have been practicable and the impact on morale had to be considered: but some must have been. In the event, he did little to assuage his own 'discomfort' except lay down rules for the future. As to the what had happened, he vigorously and forcefully followed a line which, to pursue the analogy of a bomb under the newsroom floor, simply ignored his privately held fear of an impending explosion.

The "one rogue reporter" claim

The PCC

7.6 Mr Tim Toulmin, then Director of the Press Complaints Commission (PCC) said that the PCC had neither the legal powers nor the authority vested in it by the newspaper industry to institute an inquiry into other possible instances of unlawful voicemail interception at the NoTW or more generally in the press,[365] but that it wanted to do something useful to complement the police inquiry so that light could be shone on what had gone wrong, and so that lessons could be learned to ensure that there was no repetition.[366] Accordingly, on 7 February 2007, Mr Toulmin wrote to Mr Myler asking a number of questions about the conduct of Mr Goodman and Mr Mulcaire and asking him what the newspaper proposed to do to ensure that the conduct was not repeated. In his reply, Mr Myler urged the PCC to see the episode in perspective on the basis that it represented:[367]

> *"an exceptional and unhappy event in the 163 year history of the News of the World, involving one journalist".*

7.7 Mr Myler also emphasised the newspaper's commitment to the Code of Practice, drawing attention, by way of example, to an episode where it had dismissed a reporter for breaching the provisions of the Code. He said that: [368]

> *"Every single News of the World journalist is conversant with the Code and appreciates fully the necessity of total compliance".*

7.8 Mr Myler described Mr Goodman as a "rogue exception". This is possibly the first use of what later became established as the "one rogue reporter" defence.[369]

7.9 Mr Myler also set out the changes that he was making to prevent repetition of the conduct concerned. Those changes were: ensuring that contributors to the newspaper clearly understood their responsibility to comply with the Code and NI policies and procedures; ensuring that all journalists focussed on the importance of the Code and legal compliance and the risk of dismissal for failure to comply; and instituting processes to ensure that large cash sums could not be paid without appropriate authority.[370]

[365] The extent to which the PCC could have instituted enquiries is subject to analysis in the context of the PCC generally
[366] p5, para 5.3, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Tim-Toulmin.pdf
[367] PCC phone message hacking report March 2007, para 3.1
[368] PCC phone message hacking report March 2007, para 3.2
[369] PCC phone message hacking report March 2007, para 5.5
[370] PCC phone message hacking report March 2007, paras 5.1-5.9

7.10 The PCC concluded that: [371]

> *"No evidence has emerged either from the legal proceedings or the Commission's questions to Mr Myler and Mr Hinton of a conspiracy at the newspaper going beyond Messrs Goodman and Mulcaire to subvert the law and the PCC's Code of Practice. There is no evidence to challenge Mr Myler's assertion that: Goodman had deceived his employer in order to obtain cash to pay Mulcaire; that he had concealed the identity of the source of information on royal stories; and that no-one else at the News of the World knew that Messrs Goodman and Mulcaire were tapping phone messages for stories. However, internal controls at the newspaper were clearly inadequate for the purpose of identifying the deception."*

Parliament

7.11 On 6 March 2007, Les Hinton, Chairman of NI, appeared in front of the Culture Media and Sports Committee of the House of Commons (CMS Committee), which at that time was conducting an inquiry into self-regulation of the press. Voicemail interception was only briefly touched on at the hearing. Mr Hinton told the Committee that a, "*full, rigorous internal inquiry*" was being carried out and that he (Hinton) was absolutely convinced that Mr Goodman was the only person who knew what was going on.[372] The Committee noted this assurance without comment but were highly critical of the financial processes in place in NoTW that they had been told allowed Mr Goodman to employ Mr Mulcaire to intercept voicemail messages without appropriate oversight or authority from senior executives.

Dismissal of Clive Goodman and his appeal

7.12 It appears that Mr Goodman expected to continue his employment at the NoTW once he had served his sentence of imprisonment. In my judgment, that perception is, in itself, quite extraordinary. There can be few employees who would expect to return to their jobs after serving a sentence of imprisonment for a serious criminal offence, particularly an offence committed in the course of their employment and, even more so, where (as was contended) what he was doing was wholly unknown and had been managed and financed by deceit. The NI Disciplinary Policy and Procedure provided for immediate dismissal without notice, or payment in lieu of notice, for various forms of "gross misconduct" including: [373]

> *"conviction for a criminal offence (including outside of work) which may bring News International into disrepute or otherwise impact on your suitability for employment with the Company".*

7.13 In the circumstances Mr Goodman should properly have expected to be dismissed without any form of financial compensation. However, Mr Goodman felt he had been given assurances by both Tom Crone (the lawyer employed by NI who had ultimate legal responsibility for editorial legal matters at the NoTW) and Andy Coulson that he could return to work at the NoTW once he had served his sentence providing he did not implicate in criminal conduct any of the newspaper's other staff.[374] Whilst Mr Crone denied the allegation that there was any

[371] PCC phone message hacking report March 2007 pp103-104, paras 6.3-6.4 [PLEASE INSERT HYPERLINK]
[372] pEv40, Q95-96, Culture, Media and Sport – Seventh Report, http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcumeds/375/37502.htm See also Q1402, Damian Collins, http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcumeds/uc903-v/uc90301.htm
[373] News International Disciplinary Policy and Process: not publicly available.
[374] Letter from Clive Goodman to NI 2 March 2007 (not available on Inquiry website)

suggestion that Mr Goodman might be kept on as the price for his silence, Mr Crone did say that Mr Coulson had indicated that: [375]

> *"…he hoped that whatever happened to Clive Goodman at the end of the criminal process, and if he was found guilty and served his sentence, he would be able to come back to the News of the World in some sort of role, having served his sentence. Not a reporting role that involved interaction with the public in any other way, but perhaps book filleting or book serialisation, possibly."*

7.14 In the event, this view was not shared by Mr Hinton because on 5 February 2007 Mr Hinton wrote to Mr Goodman terminating his employment. The letter said: [376]

> *"I recognise this episode followed many unblemished, and frequently distinguished, years of service to the News of the World. In view of this, and in recognition of the pressures on your family, it has been decided that upon your termination you will receive one year's salary. In all the circumstances, we would of course be entitled to make no payment whatever…You will be paid, through payroll, on 6 February 2007, 12 months' base salary, subject to normal deductions of tax and nation insurance."*

7.15 The terms of the dismissal were considerably more generous than the terms of his employment required, but Mr Goodman was not content. On 2 March 2007, Mr Goodman wrote to Daniel Cloke, then head of Human Resources at NI, appealing against his dismissal. His first two grounds of appeal were first, that the decision was perverse because his actions were carried out with the full knowledge and support of executives at the NoTW and second, that the decision was inconsistent because others, who were still working for the NoTW, were engaged in the same illegal procedures.[377]

7.16 On 14 March 2007, Mr Goodman submitted a lengthy list of documents which he wanted NI to provide for the purposes of his appeal. The list included emails passing between him and various named members of staff. On 9 May 2007 Jonathan Chapman, then Director of Legal Affairs for NI, instructed solicitors, Harbottle & Lewis, to carry out a review of the emails identified by Mr Goodman. Mr Chapman sent formal instructions by email the following day to Lawrence Abramson, then managing partner at Harbottle & Lewis, which stated that:[378]

> *"Because of the bad publicity that could result in an allegation in an employment tribunal that we had covered up potentially damaging evidence found on our email trawl, I would ask that you … carry out an independent review of the emails in question and report back to me with any findings of material that could possibly tend to support either of Mr Goodman's contentions".*

7.17 It is revealing that the concern was to identify material that would cause the company further embarrassment or damage their prospects in an Employment Tribunal rather than ascertain whether the allegations made by Mr Goodman were true.

[375] p92, lines 11-17, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf
[376] Letter from Les Hinton to Clive Goodman 5 February 2007 (not available on Inquiry website)
[377] Appeal letter from Clive Goodman (not available on Inquiry website); p11, lines 10-20, Lawrence Abramson, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-13-December-2011.pdf
[378] pp9-10, lines 20-2, *ibid*

7.18 On 25 May 2007 Mr Abramson emailed Mr Chapman draft wording of his advice for consideration by him before it was formalised.[379] The email read:

> *"We have on your instructions searched the emails that you were able to let us have access to from the accounts of [redacted names] I can confirm that we did not find any evidence that proved that [redacted names] knew that Clive Goodman, Glenn Mulcaire or any other journalists as the News of the World were engaged in illegal activities prior to their arrest."*

7.19 Later that day Mr Chapman suggested an addition to the advice, namely:[380]

> *"Equally, having seen a copy of Clive Goodman's notice of appeal of 2 March 2007, we did not find anything that we consider to be directly relevant to the grounds of appeal put forward by him."*

7.20 Mr Abramson declined to include this sentence because:

> *"I think the short answer is it wasn't the exercise we'd been asked to conduct. We'd been asked to look for whether there was evidence in emails that supported specific allegations, and to have then signed off on an opinion that was much wider than the exercise we'd been conducting would have been wholly wrong and I couldn't have done that."*

7.21 The final wording was the following:

> *"I can confirm that we did not find anything in those emails which appear to us to be reasonable evidence that Clive Goodman's illegal activities were known about and supported …"*

7.22 It is important to note the limited exercise that Harbottle and Lewis had been asked to carry out and the correspondingly limited comfort that NI could legitimately derive from it when considering the broad question of whether there was evidence that the conspiracy to intercept voicemail messages extended beyond Mr Goodman and Mr Mulcaire.

The limits of the internal investigation

7.23 Despite the assurance given by Mr Hinton to the CMS Committee that a *"full, rigorous internal inquiry"* was being carried out, there is no evidence that anyone at the NoTW made any proper effort to investigate the veracity of the allegations made by Mr Goodman.[381] Apart from the review of the emails by Harbottle and Lewis, the internal investigation of the allegations made by Mr Goodman was limited to Mr Cloke and Mr Myler, speaking to the individuals named by Mr Goodman to ask whether there was any substance to them. Mr Myler said in his evidence that: [382]

> *"in the absence of any evidence to support Mr Goodman's allegations they were denied. Very strongly."*

[379] p18, lines 2-10, *ibid*
[380] p23, lines 3-6, *ibid*
[381] It is of course possible that Burton Copeland had been instructed to conduct such an investigation, but it has not been able to pursue whether this was the case because of NI's refusal to waive legal professional privilege in respect of the instructions given to, or advice received from, Burton Copeland
[382] p11, lines 18-22, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf

7.24 Mr Chapman said that the right thing to do was to investigate whether there was any foundation to the allegations.[383] However, Mr Myler and Mr Cloke appear to have accepted at face value the denials of those individuals named by Mr Goodman. It does not appear that anyone at the title took seriously the possibility that the allegations were well-founded or, given the very substantial sums that he had been paid, even investigated precisely what Mr Mulcaire had been doing and for whom he had been working.

7.25 Mr Crone said during his evidence that he had believed from the outset that the claim that the unlawful voicemail interception had been the action of "one rogue reporter" was wrong.[384] Mr Crone had attended all the hearings at the Central Criminal Court, including the hearing at which Goodman and Mr Mulcaire were sentenced. He had "*…formed a strong impression that what was said about others at News International commissioning Mulcaire's accessing in relation to the non-royal victims was based upon more than circumstantial evidence*."[385] Mr Crone agreed during his evidence that one reason for forming that view was that counts 16 to 20 did not relate to Royal issues and would therefore be outside Mr Goodman's area of interest.[386] When asked whether he had shared his view with others at NI that the "one rogue reporter" claim was wrong he replied:[387]

> *"I had discussions which were privileged, yes. But I don't think any of them involved me saying there's clear and hard evidence, to be perfectly honest."*

7.26 Mr Crone explained that he took no other action because the police showed no signs of continuing the investigation or making more arrests and *"the company's primary thought was to draw a line under it"*.[388] Certainly it appears that whatever privileged discussions Mr Crone might have had he did nothing to change the view that Mr Myler had formed, namely that there was no evidence to justify an investigation into possible unlawful or unethical behaviour in the newsroom at the News of the World. Mr Myler explained that apart from the investigations into the allegations made by Mr Goodman during his appeal against his dismissal, he relied heavily on the fact that the police investigation had gone no further than the charges against Mr Goodman and had not resulted in any suggestion by the police to the News of the World that there was a wider problem.[389]

The Goodman and Mulcaire settlements

7.27 In July 2007 NI settled a claim for unfair dismissal brought by Mr Goodman, making a payment of a further £140,000 in addition to a £90,000 notice payment that had been made in February 2007 when Mr Goodman was dismissed.[390] The focus in dealing with Mr Goodman's claims was, according to Mr Chapman, to manage the risk of further reputational damage to the company. The settlement agreement contained a confidentiality clause.[391]

[383] pp93-94, lines 25-2, Jonathan Chapman, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf
[384] p98, lines 7-11, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf
[385] p94, lines 8-13, Tom Crone, *ibid*
[386] p96, lines 1-9, Tom Crone, *ibid*
[387] p98, lines 16-19, Tom Crone, *ibid*
[388] p100, lines 24-25, Tom Crone, *ibid*
[389] pp7-8, lines 24-12, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf
[390] p103, lines 11-15, Jonathan Chapman, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf
[391] p108, lines 14-15, Jonathan Chapman, *ibid*

7.28 The circumstances of Mr Goodman's dismissal create an impression that his criminal conduct was viewed not as an outrageous breach of the law, the Code and the company's policies, but as something akin to a regrettable oversight in an old and trusted employee. The response to the conviction and Mr Goodman's allegations suggest that the possible widespread use of illegal methods of obtaining information was regarded, at the highest, as a reputational risk if exposed. There is no sign that the News of the World regarded the fact that criminal conduct may have flourished as a significant risk either from a corporate governance or operational perspective. The potential underlying truth of the allegations was apparently regarded as a second order issue.

7.29 Running parallel with the dispute between NI and Mr Goodman was the similar dispute between NI and Mr Mulcaire, who was not an employee but who sought similar financial recompense. In April 2007 Mr Mulcaire claimed that his contract with NI gave him employment rights and that NI had not followed the correct statutory procedures when it terminated the contract in January 2007. The view was taken that there was a significant risk that an employment tribunal would find that Mr Mulcaire did have employment rights. Mr Chapman explained his analysis:

> *"When I analysed the position, based on the usual parameters, mutuality of obligation, control, right of substitution, it looked very much to me like Mr Mulcaire was an employee, and I understand that subsequently Farrers took that view as well."*[392]

Mr Mulcaire was paid approximately £80,000.[393] Mr Chapman agreed that the reasoning process that led to alighting upon a settlement figure for Mr Mulcaire was more or less the same as that which applied to Mr Goodman, namely the need to limit reputational harm.[394]

7.30 The approach of the company to severance payments or payments in lieu to Mr Goodman and Mr Mulcaire does not appear to convey corporate concern at their criminality; the payment to Mr Coulson[395] may be considered slightly differently but is starkly in contrast to its approach to other employees such as Mr Driscoll.[396]

The Gordon Taylor litigation

7.31 The next significant event was the civil claim for damages brought by Gordon Taylor in the spring of 2008. As Mr Crone, Mr Chapman and Mr Myler stated repeatedly in evidence, the desire of the News of the World was to draw a line under the matter. As a result, the claim cannot have been well-received, not just because of the obvious financial implications, but also because of the potential reputational harm that would result even from only a repeat exposure of the facts of the prosecution of Mr Goodman and Mr Mulcaire.

7.32 The claim was brought against NGN and Mr Mulcaire for breach of confidence, misuse of private information and breach of privacy. When Mr Taylor served his claim he provided no documentary evidence to support it and NGN filed a defence denying any involvement. However, Mr Taylor then applied for, and obtained, an order requiring the police to release the prosecution papers and evidence to his solicitors. Among those papers was the contract between Mr Mulcaire and the News of the World to pay Mr Mulcaire £7,000 for information

[392] pp2-3, lines 22-1, Jonathan Chapman, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf
[393] pp1-2, lines 25-3, Jonathan Chapman, *ibid*
[394] p3, lines 2-9, Jonathan Chapman, *ibid*
[395] para 7.2 above
[396] Part F, Chapter 4

about an affair being conducted by Mr Taylor and the "for Neville" email, which enclosed transcripts of voicemail messages from Mr Taylor's mobile phone.[397] Mr Crone recorded in a briefing note on 24 May 2008 that this material was *"fatal to our case"*.[398] "Recognising the inevitable", Mr Crone instructed NGN's solicitors, Farrer & Co, to make an offer to Mr Taylor of £150,000 plus costs.

7.33 In the light of the awards that had been made for breach of confidence and invasion of privacy, this was a very substantial offer but Mark Lewis, of the solicitors instructed to pursue the claim, replied that Mr Taylor was not interested in settling and wanted to take the matter to trial. Mr Crone sought advice from Michael Silverleaf QC about how NGN should proceed.[399] The advice from Mr Silverleaf, dated 3 June 2008, was very clear and echoed what Mr Crone had already concluded. Mr Silverleaf concluded that: [400]

> *"NGN's prospects of avoiding liability for the claims of breach of confidence and invasion of privacy…… are slim to the extent of being non-existent."*

7.34 He found it difficult to give clear advice on the level of damages that might be expected but put it within a range of £25,000-£250,000 or even slightly more.[401] In addition, Mr Silverleaf reflected on what the papers told him about the quality of the defence filed by the News of the World, stating: [402]

> *"In the light of these facts, there is a powerful case that there is or was a culture of illegal information access used at NGN in order to produce stories for publication."*

7.35 Also on 3 June 2008 Julian Pike, a partner at Farrer & Co, told Mr Taylor's solicitors that NGN was about to make an offer of £350,000. He said that NGN were happy that this would not be beaten by the amount that might be awarded at trial, but that they were prepared to pay the higher amount in order to resolve the matter that week and on the basis that the deal would be confidential.[403] Mr Pike then spoke to Mr Taylor's solicitor, Mr Lewis, on 6 June 2008. Mr Lewis indicated that Mr Taylor would want at least £1 million plus costs *"not to open his mouth"*. The report of the conversation made by Mr Pike shows a desire on the part of Mr Taylor to pursue the claim in order to demonstrate that voicemail interception was *"rife in the organisation"*.[404] Ultimately NGN settled with Mr Taylor for £700,000, of which £425,000 was attributed to damages and the balance to costs.[405]

Who knew what?

7.36 It is not clear whether Mr Crone, who attended the Central Criminal Court, made any senior executives aware of the key matters that indicated that the practice of unlawful voicemail

[397] p1, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP2-Select-Commitee.pdf
[398] p1, Julian Pike, *ibid*
[399] p1, Julian Pike, *ibid*
[400] p1, para 6, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP21-Select-Commitee.pdf
[401] p1, para 17, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP24-Select-Commitee.pdf
[402] p39, lines 12-16, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-13-December-2011.pdf
[403] p1, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP8-Select-Commitee.pdf
[404] p1, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP11-Select-Commitee.pdf
[405] Module 1 Opening Submission by Robert Jay QC, p82, lines 11-19, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf

interception was not confined to Mr Goodman. Those matters were: the content of counts 16 to 20 on the indictment; the fact that they were brought against Mr Mulcaire but not Mr Goodman; the fact that they related to victims who were of no apparent interest to a royal correspondent and the sentencing remarks of Gross J. Mr Chapman said that he had obtained a copy of the sentencing remarks at the request of Daniel Cloke, and on behalf of Mr Crone, but that he did not read them himself.[406] Mr Myler claimed to be unaware of the sentencing remarks.[407] There is no reason to doubt what Mr Myler says but, given the background and his own perception of the newsroom, this lack of interest is also remarkable.

7.37 In short, Mr Crone and Mr Chapman were both clearly aware of the allegations made by Mr Goodman in his appeal against dismissal, but there is no evidence that they were known more widely. Mr Myler was also aware of them to the extent that they were demonstrated by the documents disclosed by the police for the purposes of the claim brought by Mr Taylor (these documents were also seen by Mr Crone).

7.38 The extent of James Murdoch's knowledge of the allegations is not clear. There was a discussion between Mr Myler and James Murdoch of which neither participant claims to have a substantial recollection. However, Mr Pike made a note of a subsequent telephone conversation that he had with Mr Myler on 27 May 2008,[408] during which Mr Myler relayed to Mr Pike what he explained were the relevant points of his conversation with James Murdoch. The note is not straightforward to interpret. It makes reference to the fact that Mr Goodman "*sprayed around allegations*"[409] but it is not clear whether that was a reference to what had been discussed with James Murdoch or to the beginning of a subsequent discussion between Mr Myler and Mr Pike. James Murdoch contended that the note of his conversation with Mr Myler did not go beyond recording his view that they should wait for the opinion of leading Counsel, which had already been sought.[410] James Murdoch said in evidence that Mr Myler had not taken the opportunity to alert him to the fact that there were allegations that voicemail interception at the News of the World went wider than Mr Goodman.[411]

7.39 There is also a dispute about how high within the organisation the advice from Mr Silverleaf was seen. There is no doubt that Mr Crone[412] read it. Mr Myler said in evidence that he was told the gist of it but did not see the actual advice and was not told that Mr Silverleaf's opinion was that there was a *"powerful case that there is or was a culture of illegal information access used at NGN in order to produce stories for publication."*[413] James Murdoch said that the opinion of Mr Silverleaf was mentioned to him but not shown to him (which he explains is not unusual as the Chief Executive), and that he was not told that there was new evidence that NGN's involvement in voicemail interception went beyond Mr Goodman.[414] What is

[406] pp95-96, lines 22-14, Jonathan Chapman, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf
[407] pp8-9, lines 23-6, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf
[408] p1, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-JCP7-Select-Commitee.pdf
[409] *ibid*
[410] pp24-26, lines 7-12, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf
[411] pp28-29, lines 22-4, James Murdoch, *ibid*
[412] p19, lines 14-19, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf; p1, lines 3-9, Julian Pike, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf
[413] p12, lines 3-24, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf
[414] p37, lines 2-13, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf

clear is that, even following the unequivocal opinion of Mr Silverleaf, no action was taken to investigate whether there was a culture of obtaining information by unlawful means. Instead, the full focus of the management team was on handling the litigation and the potential reputational repercussions.

7.40 On 7 June 2008 Mr Myler forwarded an email chain to James Murdoch which made clear that Mr Taylor was asserting that unlawful information gathering techniques were *"rife within the organisation"*.[415] The message from Mr Myler read:

> *"James, update on the Gordon Taylor Professional Football Association case. Unfortunately it's as bad as we feared. The note from Julian Pike of Farrers is extremely telling regarding Taylor's vindictiveness but again that speaks for itself. It would be helpful if Tom Crone and I could have five minutes with you on Tuesday."*

7.41 James Murdoch explained in evidence that he did not read all the email chain, and did not read the specific allegation made by Mr Taylor because he received the email on a Saturday when he was with his family. He said that since he was due to meet Mr Myler to discuss the issue on the following Tuesday he did not feel he needed to read beyond the request for a meeting.[416] James Murdoch replied to the email within two minutes of receiving it. The speed and content of his reply appear to support his claim not to have focused on the key allegation.

7.42 On 10 June 2008, Mr Myler, Mr Crone and James Murdoch met to discuss the civil claim brought by Mr Taylor. Mr Crone said in evidence that he probably took with him copies of Mr Silverleaf's opinion, the pleadings from the case, spare copies of the front page of the "for Neville" email and his earlier briefing note.[417] Crone said that he could not recall whether any of these documents were handed to James Murdoch but that he was *"pretty sure"* that he held up the front page of the "for Neville" email.[418] Mr Crone was very clear that the "for Neville" email was discussed, and that James Murdoch was told that it was direct and hard evidence of involvement in voicemail interception beyond Mr Goodman and Mr Mulcaire.[419] Mr Myler said that he did not have any useful recollection of what specifically was discussed at the meeting or what documents were discussed or shared.

7.43 James Murdoch said in evidence that he was told at the meeting that there was evidence that linked the interception of Mr Taylor's voicemail messages to the NoTW and that the case would certainly be lost and should be settled. His recollection was that Mr Crone and Mr Myler told him that counsel's advice on the level of settlement was that: "*the number could be upwards of … £425,000, so they said half a million to a million pounds with costs in it*."

7.44 James Murdoch said that it was established at the meeting that it was better to settle at an amount that would avoid litigating a case that would be lost than *"drag up all these things, a painful episode in the past and what not"*.[420] He also stated that the discussion about the "for Neville" email was limited to the fact that it linked the NoTW to the interception of Mr Taylor's voicemail messages and that there was no discussion about the fact that it suggested the involvement of other NoTW journalists. He said that he was not shown a copy of the

[415] p31, lines 12-13, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf
[416] pp30-31, lines 14-3, James Murdoch, *ibid*
[417] pp38-39, lines 22-4, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf
[418] p39, lines 6-8, Tom Crone, *ibid*
[419] p39, lines 23-4, Tom Crone, *ibid*
[420] p35, lines 10-11, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf

email[421] or the opinion of Mr Silverleaf, nor told that the opinion of Mr Silverleaf was that there was evidence that the practice of voicemail interception was used by journalists other than Mr Goodman.[422]

7.45 Given the significance of the issue, it is necessary also to deal with the extent to which Rupert Murdoch had knowledge of the relevant facts. Rupert Murdoch said in evidence that he knew nothing of the settlement of the claim brought by Mr Taylor when it happened in 2008. He said that he first learned of it in 2009 and was very surprised by the size of the settlement.[423] He recalled discussing with James Murdoch why the settlement was so high, but denied that there was any discussion about the fact that Mr Taylor had evidence of further illegality at NoTW or that NGN had had to settle at that level to buy the silence of Mr Taylor. He said that James Murdoch's explanation for the value of the settlement was that, though high, it was less than the anticipated cost of a full trial.[424]

7.46 Rupert Murdoch claimed that senior management at NI:[425]

> *"…were, all misinformed and shielded from anything that was going on there... there's no question in my mind that maybe even the editor, but certainly beyond that someone took charge of a cover-up which we were victim to".*

7.47 He went on to say that the culture of cover-up emanated from:

> *"one or two very strong characters ……or the person I'm thinking of…..was a clever lawyer and forbade people to go and report to Mrs Brooks or to James."*

7.48 Both Mr Myler and Mr Crone strongly denied that there was a culture of cover up at the NoTW. Mr Crone accepted that everyone hoped that *"it would all go away"* if it could be kept quiet,[426] but contended that the thinking was not to cover up criminality but to avoid reputational damage through bad publicity.[427] There is undoubtedly a fine line between the two. Mr Myler, similarly, said: [428]

> *"I don't believe it was a cover-up….and I don't believe it's wrong or unreasonable of any business to try to protect the reputation of itself, particularly after what had happened in the course of 2006 and 2007."*

7.49 Whatever the truth of what was discussed on 10 June 2008, the evidence outlined above points to a serious failure of governance within the NoTW, NI and News Corporation. There was a failure on the part of the management at the NoTW to take appropriate steps to investigate whether there was evidence of wrongdoing within the organisation. Although I endorse the right of any business to seek to protect its reputation, it surely must first take every step to get to the bottom of what had happened. To argue that the decision by the police to conclude their *criminal* investigations precluded the requirement for a proportionate

[421] p36, lines 8-24, James Murdoch, *ibid*
[422] p37, lines 5-13, James Murdoch, *ibid*
[423] p34, lines 6-22, Rupert Murdoch, http://www.levesoninquiry.org.uk/wp- content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf
[424] pp34-37, lines 23-6, Rupert Murdoch, *ibid*
[425] p24, lines 3-9, Rupert Murdoch, *ibid*
[426] p103, lines 5-10, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf
[427] pp41-42, lines 24-2, Tom Crone, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf
[428] p35, lines 15-23, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf

but robust *internal* investigation is, in the circumstances, of real concern; and the attitude at NoTW to the police investigation equally meant that reliance could not be put on their having done so. In any event, if the explanation of James and Rupert Murdoch is correct, far from simply limiting external damage to reputation, one or more parts of the management at the NoTW was engaged in a determined cover-up to keep relevant information about potential criminal activity within the organisation from senior management within NI.

7.50 Having made that point, however, I must make it clear that if James Murdoch was unaware of the allegations, his lack of knowledge is, at least in part, only as a result of chance, rather than as the consequence of a sustained campaign by Mr Myler or Mr Crone (if there was one) deliberately to keep him in the dark. The fact is that had he read, in detail, the entirety of the email that he received on 7 June 2008, there was sufficient to put him onto a line of enquiry which could have led to an investigation of the entire issue. It also depends on precisely what he was told on 10 June 2008.

7.51 It is sufficient to say that if James Murdoch had been the victim of a cover-up, or an attempt to minimise the gravity of the position, then the accountability and governance systems at NI would have to be considered to have broken down in an extremely serious respect. If James Murdoch was not the victim of an internal cover up then the same criticism can be made of him as of Mr Myler or Mr Crone in respect of the failure to take appropriate action to deal with allegations of widespread criminality within the organisation.

7.52 A similar analysis stands in respect of News Corporation. Although there is no evidence from which I could safely infer that Rupert Murdoch was aware of a wider problem, it does not appear that he followed up (or arranged for his son to follow up) on the brief that he believed had been given to Mr Myler to "*find out what the hell was going on*", leaving the matter solely in the hands of Mr Hinton. If News Corporation management, and in particular Rupert Murdoch, were aware of the allegations, it is obvious that action should have been taken to investigate them. If News Corporation were not aware of the allegations which, as Rupert Murdoch has said, have cost the corporation many hundreds of millions of pounds, then there would appear to have been a significant failure in corporate governance and in particular in the effective identification and management of risks affecting NI and, thus, the corporation.

7.53 I have given careful consideration as to whether I should go further, and conclude that Mr Crone's version of events as to what occurred on 10 June 2008 should be preferred to that of James Murdoch. There are aspects of the account of Mr Murdoch that cause me some concern: in particular, it is surprising if the gist of Mr Silverleaf's opinion was not communicated to him in circumstances where the potential reputational damage to the company, of which he was CEO, was likely to be great if an early settlement of the claim brought by Mr Taylor were not achieved.

7.54 Furthermore, Mr Myler and Mr Crone had no reason or motive to conceal relevant facts from the senior man, as borne out by the former sending James Murdoch the chain of emails containing the 'bad news' on the afternoon of Saturday 7 June 2008. Not merely does this throw light on Mr Myler's state of mind on that date, it provides some indication as to what the agenda might have been for the meeting three days later. On the other hand, I also have serious concerns about the evidence of Mr Crone and Mr Myler about this meeting: given the significance of the issue, it is surprising that there was not a full blown risk analysis with options for James Murdoch to consider. After all, this litigation represented the first of a number of potential actions and there was, at the very least, a real risk that the problems were

likely to get worse as the other known victims (as represented by the criminal investigation if none other) could and doubtless would also pursue claims.

7.55 It is here that I must return to the Terms of Reference and to recognise that the detail of who knew what is properly part of Part 2 of this Inquiry not least because of the ongoing criminal investigation. Furthermore, the nature of the process of this part of the Inquiry has meant that, in relation to these extremely fact sensitive meetings, there has been insufficient opportunity for detailed cross examination of precisely what was said by whom to whom. In the circumstances, I do not seek to reach any conclusion about precisely what transpired at this meeting. For present purposes, it is sufficient to repeat that whoever's account is correct as to what happened on 10 June 2008, there was no subsequent analysis of the consequences in relation to oversight and internal governance.

7.56 In truth, at no stage, did anybody drill down into the facts to answer the myriad of questions that could have been asked and which could be encompassed by the all embracing question *"what the hell was going on"*? These questions included what Mr Mulcaire had been doing for such rewards and for whom?; what oversight had been exercised in relation to the use of his services?; why had Mr Goodman felt it justifiable to involve himself in phone hacking?; why had he argued that he should be able to return to employment and why was he being (or why had been) paid off. On any showing, these questions were there to be asked and simple denials should not have been considered sufficient. This suggests a cover up by somebody and at more than one level. Although this conclusion might be parsimonious, it is more than sufficient to throw clear light on the culture, practices and ethics existing and operating at the News of the World at the material time. The way in which further litigation was managed (including the action brought by Max Clifford) only serves to underline the same issue both justifying and reinforcing the same conclusion.

8. July 2009: The Guardian

Introduction

8.1 Although the NoTW was having to cope with the consequences of Operation Caryatid both in relation to Clive Goodman, Glenn Mulcaire, Andy Coulson and all those who then wished to pursue claims for damages, in the immediate aftermath of the prosecution and notwithstanding what journalists knew, believed or had gossiped about in relation to voicemail interception, until the Guardian article, there is no evidence that the wider issue (or the police investigation) was considered in any detail by the press. When the Guardian (and, subsequently, the New York Times) did publish articles, both the Police and the PCC reacted. They did so, however, in ways that have raised more questions than they answered and, in the context of this Part of the Inquiry, require detailed consideration.

8.2 More specifically, this Inquiry must address the public concern about the decisions taken by the MPS in 2009 and 2010 to the effect that there was nothing in what was reported in the press to justify further examination despite the claim that the MPS itself held evidence that implicated other journalists and which would merit further investigation. In particular, it boils down to the question whether any relationship between the MPS and NI, or between officers within the MPS and senior management in NI influenced the decisions which were then made.

8.3 To address that issue, the focus of this section is upon the reasons why, until January 2011, the MPS, and the then Assistant Commissioner, John Yates, in particular, asserted and maintained the position that there was no evidence of further criminality and that absent "new evidence", there was no reason to re-open the 2006 investigation, despite the facts, first, that the detectives involved in Operation Caryatid knew that there was evidence implicating other journalists, but which had not been taken further in 2006 because of resource constraints and, second, that the police held vast quantities of material that had not been fully analysed in 2006.

The allegations made by the Guardian

8.4 On 8 and 9 July 2009 the Guardian published an article[429] which exposed that NGN had paid out more than £1 million to settle claims for the reason that the claims threatened to reveal evidence of its journalists' repeated involvement in the use of criminal methods to obtain stories. Those criminal methods were alleged to include using private investigators to intercept the mobile phone voicemail messages of numerous public figures, including cabinet ministers, MPs, actors and sportspeople. The article referred specifically to the claim brought by Gordon Taylor and stated:

> *"Today, the Guardian reveals details of the suppressed evidence which may open the door to hundreds more legal actions by victims of News Group, the Murdoch company that publishes the News of the World and the Sun, as well as provoking police inquiries into reporters who were involved and the senior executives responsible for them."*

8.5 The article claimed that the evidence posed difficult questions for Andy Coulson, Rupert Murdoch executives and, in addition:

(a) the MPS *"who did not alert all those whose phones were targeted"*;

(b) the CPS, *"which did not pursue all possible charges against News Group personnel"*; and

(c) the PCC, *"which claimed to have conducted an investigation but failed to uncover any evidence of illegal activity"*.

8.6 The article referred to the assertion of NI, following the prosecution of Mr Goodman and Mr Mulcaire, that it knew of no other journalist who was involved in voicemail interception and that Mr Goodman had been acting without its knowledge. The article then went on:

> *"However, one senior source at the Met. police told the Guardian that during the Goodman inquiry, officers had found evidence of News Group staff using private investigators who hacked into "thousands" of mobile phones. Another source with direct knowledge of the police findings put the figure at "two or three thousand" mobiles. They suggest that MPs from all three parties and cabinet ministers, including former deputy prime minister John Prescott and former culture secretary Tessa Jowell, were among the targets …"*

8.7 The article referred to the fact that in the claim brought by Mr Taylor, the court had ordered the MPS to disclose evidence obtained during its investigation into Mr Goodman and then reported as follows:

[429] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-1pdf.pdf

> *"The Scotland Yard files included paperwork which revealed that, contrary to News Group's initial denial, Mulcaire had provided a recording of the messages on Taylor's phone to a News of the World journalist who had transcribed them and emailed them to a senior reporter; and that a News of the World executive had offered Mulcaire a substantial bonus payment for a story specifically related to the intercepted messages."*

8.8 The article also reported that, faced with this evidence, NI began offering huge sums of money to Mr Taylor to settle the case and secure a confidentiality clause. It continued:

> *"The Scotland Yard paperwork also provided evidence that the News of the World had been involved with Glenn Mulcaire in his hacking the mobile phones of at least two other figures from the world of football. They, too, filed complaints, which were settled earlier this year when News International paid a total of more than £300,000 in damages and costs on condition that they, too, signed gagging clauses.*
>
> *"The Guardian's understanding is that the paperwork disclosed by Scotland Yard to Taylor is only a fraction of the total material they gathered on News Group's involvement with Glenn Mulcaire."*

8.9 The Guardian had made a clear allegation that evidence implicating journalists other than Mr Goodman had already been obtained by the police during the original investigation. It was not the case that the Guardian was alleging that it had uncovered evidence that the police had not been able to obtain themselves.

8.10 The article prompted a number of responses which bear detailed examination although the response from NI itself can be dealt with shortly. The evidence of James Murdoch was that the article was drawn to his attention and that he asked the management at the NoTW whether the allegation, that Mr Taylor had been paid, in effect, "hush money", was true. He said that he was assured:[430]

> *"That it wasn't true, that there was no other evidence, that there – you know, this is a – you know, this has been investigated to death and this is, you know, a smear."*

8.11 He made no effort to probe further and accordingly there was no investigation of the allegations.

The police response

8.12 On the morning of 9 July 2009, which was the day after the Guardian article appeared online but when it featured in the print edition of the newspaper, the Metropolitan Police Commissioner, Sir Paul Stephenson, was being driven to an ACPO conference. It was quite frequently the case that he would hear something on the radio or read something in the newspaper and ask the matter to be looked into and he heard a discussion on the radio about the allegations made in the article. Sir Paul understood the allegation to be that the MPS had not *"gone the whole distance"* in the investigation. He took it to be *"just yet another headline"* which he expected the Assistant Commissioner to pick up and deal with.[431] In this

[430] p50, lines 5-11, James Murdoch, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf

[431] pp69-70, lines 23-8, p71, lines 6-9, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf; p37, para 94, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf

case, by reason of his responsibility, John Yates was the natural choice: by then, Mr Yates had succeeded Andy Hayman as the Assistant Commissioner in charge of Specialist Operations.[432]

8.13 Sir Paul telephoned Mr Yates. Sir Paul and Mr Yates had the common understanding that Mr Yates was not expected to conduct a "review" of Operation Caryatid but to "establish the facts" surrounding the investigation.[433] As Mr Yates stressed:[434]

> *"The request was to 'establish the facts'. There has been some misunderstanding and debate about the term 'review' – a review in police terms is a comprehensive piece of work which involves a substantial number of people reviewing an entire investigation or particular aspects of one … Reviews are resource intensive and there has to be a compelling reason for a decision to devote staff and officers to undertake one. New evidence or new information could obviously be a compelling reason, although it is likely that a scoping exercise would be carried out first to decide whether such a decision was merited. The article of 9 July 2009 provided no such new evidence or new information that merited a full review."*

8.14 An issue that arises immediately is whether it was appropriate for Mr Yates to conduct the exercise at all given the nature of his relationship with Neil Wallis.[435] This was significant because, according to the Guardian, there appeared to be a conspiracy involving reporters at the NoTW which possibly encompassed senior executives responsible for reporters. Needless to say Mr Wallis, as deputy editor of the NoTW, was someone who on the face of things fell within this latter category and there was therefore a risk that far from assuaging concern, should the nature of his friendship become public knowledge, Mr Yates would exacerbate it.

8.15 Police action should always be capable of withstanding the test of public scrutiny and both the independence of decision-making and the appearance of the same are vital to this. Whilst there is no evidence to cause me to suspect that Mr Yates was, in fact, influenced in his decision-making by his friendship with Mr Wallis, I have no doubt that he should not have accepted the task nor maintained responsibility for considering subsequent allegations made in the press; particularly (as was the event), if he was to dismiss the concern, he risked creating a perception that the decision-making of the MPS was not independent or impartial, but influenced by his friendship.

8.16 In response to the suggestion that he should not have undertaken the fact-finding exercise in the light of his relationship with Mr Wallis, Mr Yates said:[436]

> *"… from 2005, 2006 onwards, whenever Caryatid started, there was never any question of Mr Wallis being involved. He hadn't resigned, he continued to work at the newspaper. There was no evidence in July 2009 …*
>
> *"... So as far as we were aware, you had Mr Goodman, as a cog in a large organisation, arrested for wrongdoing and sent to prison. That, as far as I was aware at the time and others were aware, no other evidence to suggest others' involvement, does that*

[432] p70, lines 9-15, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf
[433] p82, lines 18-24, *ibid*
[434] para 110, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf
[435] Part G, Chapter 3 paras 4.61-4.69 deals with this issue from the perspective of the general impact of the relationship between Mr Yates and employees of the NoTW. Although the facts are repeated, it is important to examine this issue from both perspectives and in context
[436] pp31-32, lines 11-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf

mean you cut off relationships with a very influential section of the media? I don't think it does."

8.17 Leaving aside for the time being the misconception that there was *"no other evidence to suggest others' involvement"*, in this response, Mr Yates missed the point. It was no answer to state that there was no evidence to suggest that Mr Wallis was involved in unlawful voicemail interception because the Guardian was claiming precisely that senior executives could be involved and that there was evidence that they were. On analysis, this response betrays a closed mind-set because it suggests that Mr Yates had already dismissed the very question he was being asked to consider, even if on a limited basis: namely whether the police held evidence of a conspiracy to intercept communications that went beyond Mr Goodman and Mr Mulcaire and which they should now be considering. Further, in this answer Mr Yates did not grapple with the fact that his friendship with Mr Wallis might create a perception that he would be influenced in his decision-making. When challenged about the perception created he said: [437]

"No, I take – of course I take your point, but I think the benefit of hindsight once again comes into play because in July 2009 there was nothing to suggest that Wallis was involved in any way whatsoever, and what's happened in the last few years, and of course nothing has been proven yet, but in July 2009 there was just – there was no indication at all, and I did this very dispassionately, and I take your point about the perception, but it didn't appear to me to be a problem then and it didn't appear to others to be a problem then. It is clearly a problem now."

8.18 Mr Yates continued:[438]

"I completely take that as a perception, but what this was on July 9, 2009, was a newspaper article. It didn't present evidence. Newspaper articles, as we all know, can have basis in facts and they can have lots of flour put around them to make them more interesting. I can only go on what the evidence was that day and that's where I got to."

8.19 In those answers Mr Yates failed to deal with the fundamental point that it could be perceived that he did not approach the exercise with a wholly objective mindset. He also appeared not to grasp that it mattered not at all whether he was aware of any evidence implicating Mr Wallis personally, not least because before he embarked on the fact-finding exercise he had no way of knowing what evidence Operation Caryatid had uncovered or what the alleged *"suppressed evidence"* comprised. Finally, after a number of questions on the point, he appeared to accept that there was at least the appearance of a lack of disinterestedness because of his close friendship with Mr Wallis,[439] although he has since made clear that he denies that it was a misjudgement to undertake the exercise and that he does not accept even that there was a perception that the decision-making for which he was ultimately responsible was not independent and impartial.

8.20 Mr Yates has also since argued that had the fact-finding exercise uncovered any hint of potential wrongdoing by Neil Wallis personally, then he would at that point have declared a conflict of interest and handed the exercise over to a colleague. I have no doubt that this is correct, but it does not address the fundamental concern that the general allegation in the

[437] pp61-62, lines 19-4, *ibid*
[438] p62, lines 13-19, *ibid*
[439] p63, lines 4-6, *ibid*

Guardian and the circumstances could almost inevitably create concern that he might not approach the evidence with sufficient objectivity and independence of mind.

8.21 During his evidence Mr Yates was understandably eager to stress that in reality his friendship with Mr Wallis had no bearing on his decision-making. He sought to reinforce this by emphasising that there were *"informal checks and balances".* Mr Yates gave the example that it would be nonsense to suggest that an officer like DCS Surtees would accept a perverse decision just because Mr Yates was a senior officer.[440] Whilst factors such as these support my conclusion that the decision-making of Mr Yates was not in fact distorted by his friendship with Mr Wallis, they would not have prevented the perception forming that it was, and that perception is capable of undermining public confidence in his decision.

8.22 Mr Yates suggested that it could only be said that his decision to undertake the fact-finding exercise was wrong when viewed with hindsight, informed by knowledge of *"the cover-up undertaken by News International"*. I simply do not accept that argument: in my judgment, the facts that made it inappropriate for him to look into the allegations made by the Guardian were known at the time. I also observe that the position of Mr Yates was internally inconsistent. On the one hand his thinking was to the effect that "this is nothing, we do this all the time, it is no big deal"; but on the other hand, he clearly thought it was sufficiently important that he should deal with it himself and that it was necessary for an Assistant Commissioner to 'front' the consideration of the article and, very quickly, to speak to the press about it. There was no question of delegating the task.

8.23 If it was sufficiently important for him to deal with, he ought to have raised with the Deputy Commissioner, Tim Godwin, or Sir Paul Stephenson whether it would be better if someone else undertake the exercise because the deputy editor of the NoTW was his friend. I conclude this discussion by making clear that I do not suggest that, in reality, he approached the task with anything other than complete integrity and in good faith. Having said that, accepting and retaining the task was, at the time, a misjudgement on his part.

8.24 Sir Paul believes that Mr Yates did not give thought to whether there was a conflict of interest because of a defensive mindset:[441]

> *"I suspect that defensive mindset set in very early, for all the reasons I outline, that stopped us challenging ourselves, that stopped us going back and challenging what was the reason for the original investigation stopping short, albeit we didn't know it stopped short. I think that is the more likely reason why Mr Yates didn't decide that he had a conflict or not."*

8.25 It is certainly a plausible explanation. Fully articulated (as put by Mr Rhodri Davies QC in his closing address for NI) it is that Mr Yates (and indeed DCS Williams) did not interpret the Guardian's article as a non-judgmental suggestion that the practice of voicemail interception merited another look. Rather, he saw it as an unjustified attack on the integrity of the 2006 investigation that it did not occur to him to consider whether it was appropriate for him to carry out the exercise. In addition, this latter question did not subsequently strike him because he made up his mind within the space of what can only have been a few hours that there was no need to look further and that there was no evidence of a conspiracy, least of all one involving Mr Wallis.

[440] p32, lines 17-23, *ibid*

[441] p75, lines 14-21, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf; Sir Paul's hypothesis that the MPS had a defensive mindset is set out in full at para 8.66 below

8.26 It is right that Sir Paul knew that Mr Yates was a friend of Mr Wallis (although he said that he did not know the extent of the friendship).[442] Sir Paul very frankly admitted that he did not make the connection. When it was suggested to him that it might have been inappropriate for Mr Yates carry out the exercise, he said:[443]

> *"I think you're crediting me with a level of analysis that I wouldn't and didn't give to this matter. It was just another headline, a sort of – I don't mean to say this dismissively – some noise about an event that I expected someone to pick up and deal with … I didn't connect it with Mr Wallis. I didn't give it any particular thought."*

8.27 It does not seem, however, that Sir Paul would have acted differently even if he had made the connection between Mr Wallis and the allegations made by the Guardian. Sir Paul said in evidence that:[444]

> *"Had [Mr Yates] come back to me with this … I might have expected him to get somebody within his business group to deal with it and ensure there could be no allegations of impropriety against him. I do have to say – this is hypothesis and we're speculating just a little, sir – that probably Mr Yates would have felt that he was more than equipped to deal with it. It is not as if, in our professional lives, that we don't actually, as chief constables and senior officers, investigate people who are known to us socially and who have been friends, and to actually say somebody else has to deal with it would almost be saying that I do not have sufficient integrity to deal with it.*
>
> *"Whether, with hindsight, it might have been wise to do that, I think that's an entirely different question. I can understand why he didn't do it, but with hindsight it might have been wise."*

8.28 Sir Paul was challenged on his evidence that chief constables and senior officers investigate people known to them socially and who have been friends. He clarified his evidence as follows:[445]

> *"Well, as a police officer, when I've been asked to do discipline and complaints in the past going back years, yes, I've investigated people who have been known to me."*

8.29 This clarification, in fact, answers a different question to that being addressed. When dealing with complaints against the police and internal discipline issues it is inevitable (and particularly so in a small force) that officers will have to deal with colleagues who are known to them. That is very different from leading or taking part in the investigation of civilians who are personal friends (or, I might add, investigating organisations in which personal friends hold leadership responsibilities). There are strict rules about conflicts of interest of this type (including the maintenance of relationships with those who are under investigation) and I do not anticipate for one moment that Sir Paul was distancing himself from those rules.[446]

[442] p70, lines 20-22, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf
[443] p71, lines 5-12, *ibid*
[444] pp73-74, lines 9-1, *ibid*
[445] p74, lines 3-5, *ibid*
[446] Declarable Interests Standard Operating Procedure 2011

The "fact-finding" exercise

8.30 I turn now to the exercise that was conducted to find the facts, which Mr Yates started and on which he announced his conclusion all within the same day as the article had appeared in print, namely 9 July 2009.

8.31 Mr Yates explained that he received informal briefings about the investigation before he chaired a Gold Group meeting at 11:00hrs: this was a formal meeting to discuss facts and record decisions. Mr Yates said that numerous people who had worked on the enquiry at various levels were involved, including DCS Williams, DCS Surtees and D/Supt Southworth.[447] According to DCS Williams, he was with Mr Yates for most of the day, explaining to him what the police had done during the original investigation. The documents shown to Mr Yates were the strategy for informing potential victims, a copy of the indictment and a short briefing document.[448]

8.32 There were three problems with the process that was adopted on that day. The first and fundamental problem was that none of the officers, including DCS Williams, who had overall responsibility for briefing Mr Yates, were given any real opportunity to refresh their memory of the nuances of what had been a comparatively complex investigation, involving seizure of a vast quantity of material, difficult issues of law and the overwhelmingly important competing demands consequent upon the threat of terrorism. Mr Yates did not wait for the documents (including the decision log) to be retrieved from storage, leaving DCS Williams with access only to the memories of the officers available to discuss the investigation and to very limited documentation.[449]

8.33 Mr Yates has submitted that before he reached any conclusions he ensured that DCS Williams and senior members of his team had satisfied him that they had a full recollection of all salient points of the investigation. It was, however, quite unrealistic of Mr Yates to expect that the officers could do so in such a short time, even if they believed they could. This briefing was about the material discovered, the actions taken and the decisions made just short of three years beforehand, when there can be no doubt that the officers had since been involved in extremely complex counter terrorism investigations. They could not conceivably have remembered all the detail, let alone appreciate that what they had intended to happen by way of exit strategy had not been followed through.

8.34 The minutes of the Gold Group meeting[450] indicate that Mr Yates approached the task by asking some perceptive questions. These included the question: *"Why was there not a more wide ranging investigation?"* According to the minutes, he was told that the reason was that: *"There was no evidence to expand the investigation wider, which, if it had done, then this would have been an ineffective use of public resources."* Further, in answer to the question: *"What other journalists were involved?"* Mr Yates was told: *"There was no evidence at that time to implicate involvement in* [sic] *any other journalists"*. Under the heading *"Reopening of investigation"* it was written: *"No evidence to justify".* In all likelihood it was DCS Williams who gave these answers and communicated this message to Mr Yates because it appears

[447] pp56-57, lines 21-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf. It does not appear that DCS Surtees was involved until the following day
[448] p3, lines 11-19, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[449] p5, lines 4-9, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[450] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-3.pdf

that he was the only officer present at the Gold Group meeting who would have had any knowledge of the detail of the investigation.

8.35 Leaving aside the question of whether the evidence uncovered by Operation Caryatid ought properly to be labelled as direct, circumstantial or inferential evidence, it is important to note from the outset that the message communicated to Mr Yates was not that there was "some evidence" that the criminality extended beyond Mr Goodman, but that there had been insufficient evidence to prosecute other journalists (which, as I have found, was the understanding, in 2006, of the officers involved in Operation Caryatid, including DCS Williams). Instead, it appears that in the mind of DCS Williams on 9 July 2009, that understanding had become a belief that, although there had been plenty of speculation that other journalists had been involved, the sum total of the evidence uncovered by Operation Caryatid was not capable of being taken forward or developed as part of a wider investigation. It is quite likely that this initial briefing provided the prism through which Mr Yates viewed the information he was given in subsequent oral and written briefings.

8.36 I consider that the answers given by DCS Williams did not accurately reflect not only the value of the material that the police had seized but also the way in which the investigation had been brought to an end. Given the haste with which this "fact-finding exercise" was being undertaken, however, it is difficult to be over-critical of DCS Williams at this stage.

8.37 When he came to make a statement in September 2011, DCS Williams had obviously had the chance of reviewing the contemporaneous material in detail and so was able to deal with the matter rather more reflectively and in greater detail than would ever have been possible in July 2009. The contrast is obvious. The more recent explanation provides the context in these terms:[451]

> *"In the months following the arrest and right up to the prosecution … DAC Clarke's decision to continue within the parameters as originally set and thereby not go any further in terms of the material seized from Mulcaire and Goodman, remained. My understanding of this enduring rationale was that this would have involved a commitment of huge resources that could not be justified given the climate concerning, in particular, terrorism. On balance it was felt that the safety of the public was more important that protecting invasions of privacy; and that it was not the job of police to regulate the media, rather that it should regulate itself through the PCC."*

8.38 The differences are important. To say, for example, that there was no evidence to implicate other journalists (which, in any event, although the expressed view of DCS Williams did not, in my judgment, start to be an accurate analysis of the material available to the police), is not the same as saying that the decision not to go further was based on the resource commitment involved. It is worth adding, in parenthesis, that even if Mr Yates had waited for the records to be unearthed, he would not have found a record of the briefing given to Mr Clarke at the end of September 2006 or of the rationale behind the ultimate decision not to expand the investigation beyond Mr Goodman and Mr Mulcaire because there was no such record. A careful study of the decision log, the statements and interviews (which contained, for example, the references to other possible victims) would, however, have revealed a rather different picture to that which he had been given during the briefing.

8.39 In relation to the absence of the record, the MPS submits that although the specific reasons were not set out in any detail, given the successful and widely reported charging and subsequent public prosecutions of Mr Goodman and Mr Mulcaire together with the

[451] para 44, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DS-Philip-Williams.pdf

formulation of a victim strategy: *"it should have been evident to anyone subsequently reviewing the decision that it was not made on the basis that there were no further leads to investigate."* It is sufficient for me to say that I do not understand how that follows: the prosecution and the strategy say nothing about whether there existed viable investigative leads when the decision was made to close down the investigation.

8.40 The MPS also submits that the lack of recorded reasons did not have any material impact on the 2009 decision, as the same officers who conducted the original investigation also provided detailed briefings and advised Mr Yates. Although true, the fact is that neither DCS Williams nor any other officer who spoke to Mr Yates on 9 July did, apparently, recall accurately why the decision was made by Mr Clarke and so did not provide a full picture for Mr Yates.[452] If what records there were had been available, rather more detail might have come back to mind. I understand the reasons but it reveals an important flaw in what was happening on that day.

8.41 DCS Williams has submitted that although the final decision not to expand the investigation was not recorded, the decision log had considered the question of expanding the investigation and the issue of resources and that the final decision was part of that ongoing decision making process. He goes on to argue that Mr Yates knew why the operation had been closed down, but I have seen no evidence that Mr Yates was ever told, in terms which would have been sufficiently clear to correct the initial understanding he was given (that there was no evidence to expand the investigation wider), that Mr Clarke made the decision essentially on the basis of the necessary prioritisation of counter terrorism investigations so that his decision said little if anything about the quality of the evidence or viability of the leads. The fact remains that the rationale was not explained adequately to Mr Yates and a clearly recorded decision setting out the rationale would, in all likelihood, have avoided the misunderstanding that clearly arose. Suffice to say, I have little doubt that the answers given on 9 July to the questions posed by Mr Yates caused him to misunderstand the scope of what had been revealed during Operation Caryatid and to go on to approach the exercise from entirely the wrong angle, that is to say focusing exclusively on the question of whether the Guardian article had revealed any evidence that the police had not previously seen.

8.42 The second problem was that Mr Yates did not approach the exercise with any intellectual rigour or scrutinise the information he was given. As explained above, crucially, Mr Yates pursued only the question whether anything was new: he did not pursue the questions which the article raised. It is clear from the minutes of the Gold Group that Mr Yates was informed that a large amount of material had been seized. Without undertaking a full scale review, in the light of the challenge to the MPS itself, it would have been sensible and responsive to the allegations in the article to ask a number of questions. Had the material seized from Mr Mulcaire all been analysed and, if not, why not? What was the basis of the decision to limit the indictment as drafted and (in relation to the counts on the indictment which it was not suggested involved Mr Goodman) to whom was Mr Mulcaire supplying that information and why? Who had caused Mr Mulcaire to obtain so many mobile phone numbers, PIN details and other material which, on the face of it, could give rise to the inference that he was seeking to get information by intercepting voicemail messages? Was it right that not all possible charges were pursued against News Group personnel? Was there any material to suggest that other

[452] In a different sense, it may have made less significance because DCS Williams has maintained at all stages what I have concluded is his mischaracterisation of the material gathered during Operation Caryatid as amounting to "no evidence" that journalists other than Mr Goodman were involved in a conspiracy to intercept communications. It would still have been wrong not only because of the identified contraventions of the Computer Misuse Act 1990 but also the inchoate offences of conspiracy and the fact that the indictment had not proceeded on the narrow view of the law

reporters were involved? It does not appear that any detailed consideration was (or, indeed, could have been) given to the substance of what was being alleged.

8.43 Mr Yates wrote himself a file note on 9 July (or within 24 hours)[453], in which he recorded the *"Principles to be adopted regarding Operation Caryatid and request by Commissioner to establish the facts around the case"*. He included in his list of principles the *"Scale, scope and outcome, in terms of the original case", "Any complexities and challenges around the evidence then and any advice they have provided"* and "The level of disclosure and who had reviewed what material".[454] Had Mr Yates explored properly these headlines, which he set for himself, he would (or should) have ascertained the true factual position, namely, that the police held vast quantities of documents that had not been analysed and very few of which had been reviewed or considered by the CPS or Counsel (save only for the very limited purpose of disclosing unused material). He might also have learnt that, although the terrorism threat fully justified limiting what was to be done in Caryatid, there was an entirely reasonable view that there had been a number of viable leads that could have been pursued had the investigation continued.

8.44 Instead, Mr Yates appears to have accepted at face value the information provided by DCS Williams, relying only on his memory. Mr Yates was asked to what extent he tested the proposition that there was no evidence to implicate other journalists. Mr Yates replied that he would have asked whether counsel and the CPS saw the evidence and whether the unused material was reviewed properly.[455] Given that the CPS was only asked to consider the investigation actually undertaken and that the purpose of reviewing unused material is limited, the nature of the allegations made by the Guardian meant that this approach was plainly insufficient.

8.45 In explaining his limited approach, Mr Yates relied on the fact that he was not briefed that there was circumstantial or indeed other evidence which implicated journalists other than Mr Goodman.[456] DCS Williams has accepted that the initial briefings he gave Mr Yates were not as thorough as he would have liked and were conducted from memory, without the benefit of documents, all as part of a hurried response to the Guardian article. It is undeniable that if DCS Williams along with his team of officers had been able to recreate for Mr Yates the much more nuanced state of the investigation and the context within which operational decisions had been taken, Mr Yates would have been in a better position to consider the matter and is unlikely to have publicly expressed himself on 9 July as he did. I am simply not in a position to say whether he would have reached a different conclusion.

8.46 I also accept the general principle that it is essential to the efficient functioning of the MPS that a senior officer is able to rely on the total accuracy of the information given to him by officers under his command, and I do not doubt that DCS Williams intended to brief Mr Yates entirely accurately. However, these matters are by no means a complete answer for Mr Yates because he had to ensure that he had elicited all material facts from DCS Williams before relying on the latter's assessment of those facts. Given the very specific allegations made by the Guardian, Mr Yates should have required DCS Williams to explain precisely what had been discovered that could potentially implicate journalists other than Mr Goodman, whatever the quality of the information (giving sufficient time to review the material gathered, perhaps

[453] p53, lines 19-23, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[454] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-2.pdf
[455] p72, lines 9-14, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[456] pp80-81, lines 21-6, *ibid*

even to speak to the case officers, such as DI Maberly, who had been "hands-on" during the investigation). Mr Yates, as the senior officer in charge of deciding what the response of the organisation to the Guardian article should be, ought then to have considered for himself whether there were evidential leads and whether there ought to be a scoping exercise with a view to deciding whether the full investigation should be re-opened.

8.47 Further, Mr Yates not only failed to require a more measured review of the position but he positively refused to allow it to happen before announcing his conclusions. The action points of the Gold Group meeting on 9 July simply did not include a review of the papers in storage or the decision logs. This need not have taken a great deal of time but Mr Yates decided upon a very speedy response rather than mature reflection. By not establishing accurately all the relevant facts, Mr Yates proceeded on the false assumption that there was no material in police possession that could justify reconsideration of Operation Caryatid; thereafter, the only question of any interest to Mr Yates was whether the Guardian article revealed any "new evidence".

8.48 This, then, is the third problem with the exercise that was undertaken on 9 July. The minutes of the Gold Group meeting indicate that it was clearly decided at an early stage that there was no evidence to justify reopening the investigation: almost immediately, Mr Yates (and DCS Williams) had decided to dismiss the Guardian article in its entirety. The final action point was for the Directorate of Public Affairs to prepare press lines for Mr Yates to deliver to camera outside New Scotland Yard that afternoon. Although DCS Williams went on to retrieve the papers and write a paper with DCS Surtees, the course had been set and a public denunciation of the Guardian delivered. Whatever emerged when the papers were retrieved and the decision logs reviewed, it is difficult to see how the MPS would have been able to move away from the decision so quickly and so publicly announced.

8.49 This is borne out by the minutes of the Gold Group meeting which suggest that the police were more astute to manage aspects of public relations than to review the investigation. As the MPS has accepted, the exercise was framed too narrowly and the decision had all the hallmarks of haste and none of reflective calm. Lord Blair expressed the same view in evidence:[457]

> *"From what I can see, that decision was just too quick. It was just why could you not have gone back with all those allegations and looked further into what was – what did the material actually say?"*

8.50 The result was that, on the afternoon of the day of the Guardian article, Mr Yates issued a press release[458] publishing his conclusion that no additional evidence had come to light since the prosecution of Mr Goodman and Mr Mulcaire, and therefore that no further investigation was required. In the press release Mr Yates stated that:

> *"This case has been subject of the most careful investigation by very experienced detectives. It has also been scrutinised in detail by both the CPS and leading Counsel. They have carefully examined all the evidence and prepared the indictments that they considered appropriate."*

8.51 This statement was inaccurate. It is known now that neither the CPS, nor Counsel, nor indeed the investigating officers, had examined all the material for evidence of the involvement of other journalists. It suggested that the material seized from Mr Mulcaire had been thoroughly

[457] p69, lines 14-20, Lord Blair, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf
[458] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-11.pdf

examined and every evidential lead pursued as far as it could be with the results put before the CPS and counsel for overarching advice on the widest range of outcomes. Put simply, that is not what happened: the material had not been analysed for evidence incriminating others.

8.52 Mr Yates has claimed that DCS Williams assured him that counsel had spent two days reviewing the material and that no additional suspects had been identified. Given the submissions made by DCS Williams on this point, it is quite possible that he provided that assurance but any inquiry would also have revealed that counsel had not been tasked with reviewing the material in order to advise on the extent to which there was evidence of the involvement of others. Not only had counsel not analysed the material for that purpose: neither had the police. Indeed, as explained below, if such an exercise had taken place, it could not have been concluded within two days.

8.53 Both DCS Williams and DCS Surtees have argued that it was their understanding that counsel did "examine" all the material seized during the investigation and DCS Williams has submitted that it was the responsibility of the CPS both to advise on charges and to assess whether further evidence was required for the prosecution. With respect, the role of counsel is not to act as investigators and, unless specifically so instructed (which is not suggested) it is wholly unrealistic to suggest that it included examining all the material for evidence that might justify further police investigation against anyone not, at that stage, even the subject of any focused investigation.

8.54 When explaining why no further investigative steps were taken in 2006, the officers gave clear evidence that pursuing the investigation would have required a comprehensive analysis of the documents seized and that such an analysis would have been an enormous undertaking and not a straightforward exercise. Mr Clarke and DCS Williams have explained that given the nature of the material (which included hundreds of unstructured handwritten pages),[459] it was not a question of reading what had been seized from start to finish. Analysing the material would have required a time-consuming and systematic analysis of the papers, with the need to create schedules and spreadsheets of the material in order to cross-reference all the information. Mr Yates would have known that any review of unused material for the purposes of identifying exculpatory material would not even have approached such an involved exercise.

8.55 Mr Yates also addressed in the press statement the question of the number of victims of unlawful voicemail interception:

> *"Their potential targets may have run into hundreds of people, but our inquiries showed that they only used the tactic against a far smaller number of individuals.*
>
> *…*
>
> *"It is important to recognise that our enquiries showed that in the vast majority of cases there was insufficient evidence to show that tapping had actually been achieved."*

8.56 Given the discoveries that Operation Caryatid had made, these statements were also wholly inaccurate. The fact that a substantive offence could not be made out for purely technical reasons would not give the 'potential targets' comfort in terms of measuring the level of intrusion to their privacy but it should also be reiterated that the commission of a criminal offence under the CMA did not depend for its proof on the precise timing of the interception.

[459] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-4.pdf

Mr Yates explained that these statements reflected his genuine understanding and that they were based on the information he had been given:[460]

> *"That is definitely what I thought at the time, and it was in good faith, based on the briefings I'd received, but I absolutely accept now that I got that wrong and I made a fundamental misjudgment there."*

8.57 The minutes of the Gold Group meeting[461] demonstrate that Mr Yates was briefed as follows:

> *"3000 names*
>
> *During searches of defendants premises, large amount of material seized, names, numbers etc. One defendant was a private investigator and as they had accessed mobile phone company systems, they had interest and potentially access to numerous people/phones. There was no evidence to prove criminally any other persons phone had been intercepted. There was strong evidence that they had intercepted 3 Royal family aides phones and a further 5 other high profile people, all of which were subject to the charges and proceedings in court. Wider people were not informed as there was no evidence to suggest there was any criminal activity on their phones".*

8.58 DCS Williams was asked during his evidence whether it was correct that the tactic had only been used against a far smaller number of individuals. He replied: "It was from my perspective of what would constitute an interception. I totally understand that there is a different view on that now."[462] Even if the narrow interpretation of RIPA were correct, however, and therefore that the police had only positively proved voicemail interception in a small number of cases, the statement was nonetheless misleading because it suggested that the police had been able to rule out voicemail interception beyond that small number of victims.

8.59 It also appears therefore that DCS Williams erroneously put forward the need to apply the narrow interpretation of s1 of RIPA as one of the reasons why the investigation was not widened in 2006. Both DCS Williams and DCS Surtees have submitted that counts 16 to 20 were contained on the indictment in order to "test" the law.[463] DCS Williams said this was agreed by the CPS and Counsel to see if the convictions could be secured despite having no proof that an interception had taken place. There is no doubt that DCS Williams misunderstood or failed accurately to remember the more nuanced advice given by Counsel in August 2006 at the conference he attended and that DCS Surtees acquired the same misunderstanding.

8.60 It is surprising that DCS Williams appears to have briefed Mr Yates that others were not informed on the basis there was no evidence to suggest that there was any criminality in relation to their mobile phones, because the victim notification strategy, which DCS Williams had to hand that day, had been designed to ensure that large numbers of potential victims were informed because the only criterion was that the "suspect" numbers had dialled their unique voicemail access number.

8.61 It is noteworthy that, on 22 February 2012, when he signed his witness statement, Mr Yates apparently still believed that there was no unlawful interception unless it could be proved

[460] p53, lines 6-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[461] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-3.pdf
[462] p13, lines 4-11, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[463] That would suggest that Counsel were not relying on the narrower view of the law: as discussed above, a criminal charge would not be pursued if counsel for the Crown did not consider it sustainable as a matter of law

that the interception took place before the relevant voicemail message had been heard by the intended recipient.[464]

8.62 The important questions that arise from this analysis of events are:

(a) why Mr Yates carried out this exercise in such a hurried way, without any proper consideration of the serious allegations made by the Guardian;

(b) why DCS Williams was prepared to brief Mr Yates in unqualified terms without refreshing his memory fully from the decision logs and case papers and did so inaccurately;

(c) why, within a matter of hours of the Guardian article, both men decided to dismiss the article in its entirety; and

(d) to what extent, if at all, can the matters of concern in (a) to (c) above be explained by the relationships Mr Yates enjoyed with individuals at NI or the relationship more generally between the MPS and NI.

8.63 In my judgment, the approach taken by Mr Yates can be explained entirely by the inappropriately dismissive and closed-minded attitude he adopted from the outset. This attitude stemmed from two main factors. The first was that he appeared to give less credence to the allegations than they deserved simply because they were made in a newspaper article. The second is the defensive mind-set alluded to above. Mr Yates provided an important insight into the level of respect he had for the allegations during his evidence when he said:[465]

> *"This was a simple exercise and one of a number of exercises that the Commissioner or Deputy would ask ACs like me to do almost on a weekly basis. It was an article in a newspaper, and it was no more, no less than that. So the fact that I sort of cleared my diary and did something relatively formal around this, recognising some of the challenges, is actually qualitatively different than many times you'd do it. So it's what it was. It was an article in a newspaper. Events make that look very different, I know, but give me the credit, this was an article in a newspaper, that's what it was about. It wasn't a formal review."*

8.64 Further, when asked whether the issues raised by the Guardian were wide-ranging, serious and important Mr Yates said:[466]

> *"… One looks at the invasion of privacy uncovered by Motorman and Glade and the sentences they got there, which was conditional discharges, so I would not put it at the serious end. What we know now puts it at the very serious end, but in July 2009 it was phone hacking. I was three months into a new job as head of anti-terrorism, we were dealing with the fall-out of a very difficult operation up in Manchester, which was still going, numerous other high-profile operations involving the security of the state. This did not present itself as a hugely serious thing in 2009."*

8.65 Whilst Mr Yates cannot be criticised for judging the relative seriousness of voicemail interception as markedly less grave than terrorism, this expression of his thinking reinforces the view that he did not apply himself fully to the task. Mr Yates has since added that it is relevant context that he was pressed with challenging work in relation to the ongoing fight against terrorism and the numerous high priority operations in progress. I do not challenge

[464] pp31-32, paras 105 and 106, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf
[465] pp57-58, lines 16-2, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[466] pp63-64, lines 16-1, *ibid*

for one moment that he would have faced such pressures, but it would have been perfectly reasonable for him to discuss with Sir Paul or his Deputy, Tim Godwin, the delegation of the task of addressing the Guardian's allegations to a Deputy Assistant Commissioner or a Commander, or to raise with them any general resourcing concerns that might have precluded a proper assessment of the allegations: his "new job as head of anti-terrorism" and the role of his department were, indeed, of critical importance but there was no point in accepting responsibility for doing the exercise if he was not prepared to make sure that it was done properly.

8.66 Regarding the defensive facet of the attitude assumed by Mr Yates, Sir Paul Stephenson offered the following view why the decision not to reopen the investigation was made and maintained:[467]

> *"I think that what happened in 2009 is that within the Met, we developed a fixed mindset and a defensive mindset around this whole issue … I think that mindset was based on a number of issues, none of which are an excuse as to why we didn't get this thing right … I think the start of that mindset was very much about: it's inconceivable for people in 2009 to believe that an inquiry led by Mr Clarke would limit itself for any improper purposes … I think after that, in the absence of [establishing] what the Met had in its possession – I think that's been rehearsed in this Inquiry and in various places. That's regrettable. That absence caused the Met to be more and more convinced that the original investigation, therefore was a success in totality, and of course that wasn't the case … what we didn't do is go back and actually challenge the reasons for those decisions in 2006 … We didn't go back and challenge the reasons why it was limited because we didn't know that it was limited, and had that taken place, we might have been in a better place … I then go on to think that we got ourselves almost hooked on a strategy – on a defensive strategy that we would not expend significant resources without new or additional evidence … the defensive mindset we established was very much based on the flawed assumption that the original one was successful investigation in totality and the absence of challenge, I think, led us into some difficulty, if that makes sense."*

8.67 The MPS accepts the criticism that it adopted a defensive state of mind. It is worthwhile to add that Lord Blair commented:

> *"But I am clear, and I'm quite prepared to say it, that was a decision that appears too hasty, and I thought some of the way in which Sir Paul Stephenson suggested the closed mindset of because it had been Peter Clarke who had made the decision and he was so respected, it was a very interesting piece of what you can describe sometimes as group think."*

8.68 I find that this defensive attitude was an important factor in explaining the approach taken by Mr Yates.

8.69 The limited respect Mr Yates had for the allegations by virtue of the fact that they appeared in a newspaper combined with his belief (albeit justified) in the absolute integrity of the 2006 investigation, no doubt largely because Mr Clarke had been at its helm, translated into a real reluctance to challenge or revisit past decisions. This attitude prevented him from standing back from the article and assessing its allegations dispassionately, despite the fact that this is what he had been given the responsibility for doing. In my judgment, it

[467] pp60-63, lines 20-22, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf

explains his willingness to accept at face value the assurances given by DCS Williams that the investigation was exhaustive. It led him, almost inevitably, to the peremptory conclusion that the investigation would not be reopened. It resulted in "a swift and offensive response", as described, accurately in my judgment, by Mr Rhodri Davies QC in his closing address. I must make it clear, however, that I do not find that there is any evidence from which to infer that any relationships with NI in general, or Neil Wallis in particular, contributed to this attitude or approach.

8.70 It is undeniable that Mr Yates demonstrated poor judgment in failing to have sufficient respect for the allegations made in the Guardian article. The article was not tittle-tattle. On its face it was a well-researched piece of journalism. It was significant that three years had passed but the matter remained of real interest to a credible journalist. I also find it significant that Sir Paul Stephenson (who had only heard about the article on the radio) thought it raised sufficiently important issues that he wanted an officer as senior as Mr Yates to "look at it". Furthermore, the then Home Secretary, Rt Hon Alan Johnson MP, said in evidence that at the ACPO conference on 9 July the first conversation he had with Sir Paul Stephenson, in a quiet corner, was about the article. It was unacceptable to treat it in the way that Mr Yates did; it was not the same as any 'article in a newspaper'. It both demanded and merited a more considered and careful response as the reputational damage to the MPS has since amply demonstrated.

8.71 The defensive mind-set outlined by Sir Paul Stephenson also largely explains the approach taken by DCS Williams. DCS Williams accepted in evidence that his response to the article was influenced or indeed governed by his perception that the Guardian was alleging that the police had tried to hide something:[468]

> *"... maybe it's the wrong perception, my feeling was that they were very much saying we were trying to hide something, so my – that's my impression from the coverage, and I'm trying to say there was absolutely no intention to hide anything. And this is what I'm trying to articulate to Mr Yates."*

8.72 DCS Williams has since accepted specifically that he was defensive but denies that this prevented him from carrying out an open minded and dispassionate re-evaluation of the decisions taken. I regret that I do not agree. Being open-minded would have led to his appreciation that there were, indeed, other potential victims and other evidence to examine (as he has accepted that he knew) with the result that there was sufficient in the article to justify rather more detailed consideration than the few hours it was given. If he had remembered the pressure on resources at the time, being open-minded would have led him back to the papers – not to re-open the investigation but to put himself in the best position to analyse the criticisms made of the police. In short, being open-minded meant that the allegations in the Guardian could not be dismissed within hours and DCS Williams should have appreciated that Mr Yates (who was entitled to rely on him) was doing just that (albeit without probing sufficiently or making sure that he understood all the ramifications of what had happened three years earlier).

8.73 It is right that I deal with the further allegation that DCS Williams sought to persuade Mr Yates not to reopen the investigation. This was refuted by DCS Williams, who said: *"I just gave an explanation of exactly what we'd done and the position we had reached"*.[469] I asked DCS Williams to explain why he presented to Mr Yates that there was nothing else to do when in

[468] p12, lines 8-16, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[469] p4, lines 1-2, *ibid*

fact there was a great deal that could have been done, albeit that there were understandable reasons why those things were not done. DCS Williams said:[470]

> *"No, I see what you're saying ... I'm thinking of it in my head as the evidence I didn't have in my mind of what I would have needed to take that investigation forward, and if I've created the wrong impression, I've created the wrong impression. It wasn't done intentionally. I'm trying to provide a briefing to my senior officer as genuinely as possible as to what we did and what we didn't do then. I'm saying I haven't made these decisions – I accept I'm responsible, I was the SIO, no question about that, but I haven't done it in isolation, I have briefed and talked to a whole range of people and I always do that for the purpose of taking advice and talking things through. Ultimately my decision as SIO where we go with that – in the parameters I've been given with the investigation. I understand what you're saying, but I was not doing anything here to mislead or create a false impression."*

8.74 The briefing DCS Williams gave was clearly inaccurate and, as set out above, by 2009, he appeared to have formed the belief that there was "no evidence" in police possession that then could or should be taken forward as part of a further investigation. It is unnecessary for me to attempt to make a finding on how he may have come to hold this belief, despite his contrary understanding in 2006. The effect of the passage of time, with numerous intervening investigations, combined with the defensiveness alluded to are a potential explanation, but for the purposes of the Terms of Reference, it is sufficient if I make it clear that I accept that DCS Williams was acting in good faith and I do not believe that he intended to mislead Mr Yates or that his approach was calculated to prevent the investigation being re-opened, whether to protect NI or any other improper purpose.

8.75 Related to the question about the extent to which the Guardian article merited detailed consideration, Mr Yates was asked to explain why he did not wait for DCS Williams to provide him with briefing notes before issuing his press statement. He said:[471]

> *"... we'd established the facts and the facts were, then, that that Guardian article had some new information for the general public, but it wasn't new to the investigators or to the police, and there was nothing – there was no new evidence presented by that article to warrant reopening the investigation at that stage. So I came out and said it. I could have waited a week, two weeks and choreographed it and spun it, but I didn't. I said it as it was."*

8.76 Mr Yates was right to conclude that the Guardian had not revealed anything that would be new to the police, but that was precisely the point. The Guardian was alleging that the evidence should have been acted upon. What Mr Yates failed to recognise was that whether the Guardian had referred to new material was not the same question as whether re-opening the investigation might be warranted. It does not appear to have crossed his mind to ask DCS Williams for full details of what information there was that might possibly implicate other journalists. Mr Yates had also said:[472]

> *"If you look at the list of people who were present at that meeting, all very senior, all very experienced. If there had been a scintilla of evidence that said we should be doing something differently, I can absolutely assure you they would have challenged*

[470] pp11-12, lines 11-4, *ibid*
[471] pp75-76, lines 19-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[472] pp64-65, lines 21-6, *ibid*

me and I'd have challenged myself and we would have done something different. The fact of the matter was, as I was briefed, there was nothing else in that article that led us to suggest that anything else needed to be done immediately regarding the investigation, or anything about the investigation."

8.77 Mr Yates ought to have known that it was not safe categorically to state that there was nothing to warrant any reconsideration of the investigation, or to rely on the lack of contradiction by anyone present at the meeting, in circumstances where no one involved in the investigation had had proper opportunity to refresh their memories from the decision logs and case papers. Further, the very fact of the pressure caused by counter terrorism operations could have alerted those looking back from 2009 to perceive the risk that a decision had been taken at least in part on the basis that, whatever else the material might reveal if further time was spent on it, there were far more pressing operational demands that took priority.

8.78 It is remarkable that, even with hindsight, Mr Yates was not prepared to accept that, on 9 July 2009, it would have been more accurate to have said that there may well have been evidence which implicated others, but that the decision was taken in September 2006 to limit the investigation because such evidence was insufficiently clear and operational demands required use of resources to deal with other, far more pressing, counter terrorism work. He said:[473]

"I don't accept that's the case either. There may – Keith Surtees may have had suspicions and those suspicions are clearly well-founded now, but they weren't – there was no evidence then. If there had been any evidence for us to pursue … You're judging me on 2012 by what was taking place in July 2009 …"

8.79 Mr Yates was asked, directly, whether it was his opinion that there was no evidence at all to suggest that others might be involved, he said:[474]

"Well, there was the – you know, the long spoken about 'for Neville' email, which again was covered in terms of what its value to an investigation was on several occasions, not least by the DPP and counsel in terms of what it would value – its evidential value. There was nothing else that we knew differently then."

8.80 He also said:[475]

"There was certainly a desire to go to the phone hubs and all that. The evidential challenges were paramount, and as far as I was aware from them were completely that they could not be overcome."

8.81 Mr Yates said that he did recall the phrase *"a sort of Mexican stand-off at Wapping HQ"* but that: *"I think the newspaper lawyers would want to test that warrant and do everything they could do to safeguard journalistic material. I wouldn't necessarily think that would be an unusual turn of events at a newspaper"*.[476] It was put to him that this was part of the inferential picture of whether there was evidence generally speaking against others at the NoTW. He was asked if he saw the relevance of the obstruction from that point of view. His answer was: *"I do and I don't"*.[477]

[473] pp79-80, lines 25-7, *ibid*
[474] p26, lines 13-18, *ibid*
[475] p81, lines 19-22, *ibid*
[476] p45, lines 8-15, *ibid*
[477] p46, line 15, *ibid*

8.82 Mr Yates appears to have adopted without challenge, and maintained, the same mistaken appraisal of the state of the evidence as DCS Williams, namely that Operation Caryatid had disclosed "no evidence" that journalists other than Mr Goodman had been involved in unlawful voicemail interception and had produced no viable leads. Mr Yates contended that lawyers and police officers have different opinions as to what might constitute "evidence" for these purposes. I did not find this distinction to be convincing: in my experience, police officers have a well developed understanding of what constitutes evidence and the more likely challenge arises when police officers seek to push the boundary of what is provable as evidence beyond that which a criminal lawyer will accept.

8.83 Apparently Mr Yates continued to fail to recognise that there was material in police possession that was capable of being taken forward. He maintained that it was only with the benefit of hindsight that his decision not to re-open the investigation was wrong:[478]

> *"I have also stated publicly that the decision not to reopen the investigation was a poor one in the light of what we now know … I had no way of knowing at that time the extent of the NoTW's deliberate cover-up of the wider involvement of others in this activity."*

8.84 Although it is right that Mr Yates cannot have known the extent of the wrongdoing at the NoTW, or the extent to which it had been concealed, he undoubtedly did not require the benefit of hindsight to respond adequately to the Guardian article by identifying the reason why Operation Caryatid had not exhaustively pursued all possible leads, by discerning that there were parts of the Guardian article that generated concern and by taking rather longer to consider the position than he was prepared to devote to it. The error of judgment in deciding on immediate and prompt dismissal of the allegations by press announcement that afternoon should have been apparent at the time.

8.85 It has been argued that I should not reach adverse conclusions without having heard from Carmen Dowd. For instance, Mr Yates has submitted that it was the advice she gave in 2006 that influenced his approach to what was achievable given the limited resources available. The problem facing the police team in 2009, however, was not the advice in 2006. It was that it was known that there was an enormous body of evidence which had not been examined, yet it was decided that there would be no further consideration of the allegations unless there was "new evidence"; it would only have been at that stage, when deciding what steps to take in the light of the "new evidence" that Mr Yates would have considered resourcing priorities.

8.86 Finally, I must deal with two other aspects of the press release issued by Mr Yates on 9 July 2009. The first concerns the Deputy Prime Minister and asserts:

> *"There has been a lot of media comment today about the then Deputy Prime Minister John Prescott. This investigation has not uncovered any evidence to suggest that John Prescott's phone had been tapped."*

8.87 This statement was made not only in response to media comment, but also in response to a letter received that day from Lord Prescott (then the Rt Hon John Prescott MP). Lord Prescott had written to Sir Paul Stephenson asking whether the Guardian had been correct to allege that the MPS held the names of all those whose phones were targeted, including his, and if so, why the police did not inform those people or take any action.[479] Mr Yates had also telephoned

[478] p38, para 123, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf
[479] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-9.pdf

Lord Prescott, before he spoke to the press, to reassure him that there was no evidence that his mobile phone had been the subject of voicemail interception.[480] It is extraordinary that Mr Yates was prepared to give this assurance both to Lord Prescott personally and in his press release because it is clear from the minutes of the Gold Group meeting that DCS Williams was not able to state definitively that Lord Prescott was not a potential victim. An action point recorded in the minutes was that DCS Williams was to confirm the position; it noted: *"If he had been subject to interception and evidence supported this then he would have been informed … **ACTION** – PW to confirm."*

8.88 The minutes suggest therefore that the assurance given by Mr Yates to Lord Prescott was based on nothing but an assumption on the part of DCS Williams, which he had not had time to confirm, that Lord Prescott could not have been a potential victim because if he had been, he would have been informed pursuant to the victim notification strategy. This is despite the fact that DCS Williams did not oversee the strategy to make sure that it had been executed as intended and, given that it was not in fact overseen by anyone else, DCS Williams could have received no confirmation that it had been put fully into effect.

8.89 DCS Williams has raised in submissions that in a written briefing to Mr Yates, dated 9 July 2009, a DCS Timmons stated the following:

> *"Deputy PM John Prescott – PW and KS without reference to the exact documentation believe that Mr Prescott was not directly targeted although it is believed that members of his staff may have been. There has been no direct contact with Mr Prescott and he is not believed on the information available at this time that he was a 'victim of interception'."*

8.90 If this briefing note accurately reflects the position, then it gives a different or additional explanation for why he reassured Mr Yates that Lord Prescott was not a potential victim of voicemail interception. DCS Williams has submitted that at that time, the view of what constituted 'interception' was narrower. DCS Surtees has also submitted that Mr Yates accepted the narrow interpretation of "victim" and that up until 2010 everyone was working on that interpretation. This all indicates that DCS Williams and DCS Surtees, were briefing Mr Yates on the basis that an individual was only a victim if the police could prove that there had been an interception according to the narrow interpretation of s1 RIPA. It also indicates that they did not have in mind that whether someone was a "potential victim" was as important as whether someone could be proved to be a victim, given that the investigation had not been exhaustive, and ignored the prospect that the individual was a victim of an offence under the CMA or the target of a conspiracy.

8.91 The following day, after DCS Williams had apparently checked the position, he told Mr Yates that Lord Prescott had not been the subject of voicemail interception.[481] Either DCS Williams gave Mr Yates this reassurance on the artificially narrow basis that a person could only be a victim (or potential victim) if voicemail messages left on his or her own phone had been intercepted, rather than voicemail messages received by people close to him/her, or, if this was not his approach, he gave the reassurance without checking the case papers because if he had carried out a reasonably careful review of the case papers he would have ascertained:

(a) either from the papers seized from Mr Mulcaire or from the record of interview of Mr Mulcaire on 9 August 2006 at 16:35 hrs, that Mr Mulcaire had recorded in his papers the name, John Prescott, with 'advisor' and then 'Joan Hammel' underneath and her

[480] p1, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-12.pdf
[481] p1, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-12.pdf

telephone numbers and pass codes and an address in NW1; or

(b) that on 30 August 2006 DI Maberly had emailed Vodafone asking if they could tell him whether anyone had listened to the voicemail of a number of people, which included *"Tracey Temple (Prescott)"*; or

(c) that on 2 October 2006 DI Maberly had emailed O2 identifying two persons of concern and asking O2 if they featured in the analysis O2 was preparing: the first name was *"Joan Hammell (linked to prezza)"*.

8.92 Any of these would have alerted DCS Williams to the fact that Lord Prescott had, indeed, been suspected of having been either a potential victim or a possible target. Once it is appreciated that his staff have been targeted, it is not difficult to conclude that they were being used as a means of learning about his private communications.

8.93 Precisely what happened and the exact thinking of Mr Yates and DCS Williams on this issue could not be explored without recalling the witnesses and delaying this Report. That would not have been a proportionate step to take when the failure to notify Lord Prescott was so abundantly clear and the cause of that failure could be narrowed to some form of mistake or misjudgement rather than any improper influence connected to NI.

8.94 The second aspect of the press statement which requires further consideration is that Mr Yates stated that the MPS was taking all proper steps to ensure that, where there was evidence that people had been the subject of voicemail interception or there was any suspicion that there may have been, that they had been informed. The actions taken to comply with this undertaking and the extent to which they were successful are below.

The initial reaction of the CPS

8.95 Keir Starmer QC, who had succeeded Lord Macdonald as the DPP, was concerned by the assertions made in the Guardian, in particular the claim that deliberate decisions had been taken not to prosecute NoTW executives (which could have involved his staff). He therefore convened a meeting at which he asked senior lawyers to conduct an examination of the material supplied to the CPS by the police so that he could be satisfied that appropriate action had been taken at the time. He also asked for a chronology, setting out the actions taken and the sources of information.[482] Simultaneously, the office of the DPP came under pressure from the Home Secretary and the press to explain the nature of its involvement in 2006:[483] all this demonstrates the extent to which the allegation in the Guardian was not 'just another article'.

8.96 In contrast to Mr Yates, Mr Starmer explained that he took the Guardian article seriously both because of the important issue it raised and because of the number and seriousness of the requests coming in to him that day. They persuaded him that this was something he really needed to understand and that he needed to reconstruct the picture as quickly as possible.[484]

8.97 Mr Starmer became aware of the press statement that Mr Yates gave later that afternoon. This was some of the first information he received and: *"given his position at the time, I have*

[482] p8, para 26, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[483] p8, para 27, *ibid*
[484] p100, lines 12-21, Keir Starmer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf

to say I took it pretty much at face value in building up the picture".[485] At that stage, however, he did not know how little time Mr Yates had devoted to his "establishment of the facts exercise". Later that same evening (9 July 2009) Mr Starmer issued his own press statement in the following terms:[486]

> *"I have no reason to consider that there was anything inappropriate in the prosecutions that were undertaken in this case.*
>
> *"In light of the fresh allegations that have been made, some preliminary enquiries have been undertaken and I have now ordered an urgent examination of the material that was supplied to the CPS by the police three years ago. I am taking this action to satisfy myself and assure the public that the appropriate actions were taken in relation to that material.*
>
> *"Given the nature of the offences, the amount of material is of course extensive and complex, but it has all been located and a small team is now rapidly working through it. This process will need to be thorough, so it will necessarily take some time. I am only too aware of the need for urgency and I will issue a further statement as soon as this work has been completed. I anticipate being in a position to do so in coming days."*

8.98 Again, in direct contrast to the approach taken by Mr Yates, in his press release Mr Starmer gave a provisional indication but reserved his position until a thorough examination had been conducted.

8.99 It is important to appreciate that Mr Starmer intended that this exercise should be limited: the examination was confined to the material that the police had physically supplied to the CPS and not the unused material, because reviewing the unused material would have been an extensive and time consuming task.[487] Thus, for example, the "for Neville" email was part of the unused material and so was not examined.[488]

8.100 This underlines the point made above: by its very nature, unused material is only examined for the purpose of disclosing material that might undermine a prosecution case or assist the defence in a prosecution being mounted. For the DPP, the critical issue was to identify what the CPS had done in the light of the material that had been provided as part of a file to prosecute or advise on prosecution. This was a reasonable approach and the fact that Mr Starmer wanted some time taken over it also demonstrates a difference from the line taken by the MPS. As it happened, however, due to a misunderstanding, the team at the CPS did not examine the entirety of the evidence in their possession. The overlooked documents included the witness statements and exhibits used in the prosecution of Mr Goodman and Mr Mulcaire.

8.101 Unlike the police (where all the relevant officers, save for Mr Clarke, continued in service), the CPS in general and Mr Starmer in particular were hampered by the fact that Lord Macdonald was no longer in post and Ms Carmen Dowd had left the service.[489] Throughout 2009 and 2010, Simon Clements, the new Head of Special Crime Division, was responsible for briefing Mr Starmer on issues relating to voicemail interception[490] although he had not been involved

[485] p97, lines 9-13, *ibid*
[486] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-5.pdf
[487] p12, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[488] p12, para 42, *ibid*
[489] p4, para 13, *ibid*
[490] p5, para 17, *ibid*

in the matter in 2006 or 2007. Accordingly, the CPS was reliant, perhaps over-reliant, on what the MPS told it about the events of those years. The paucity of material available to the CPS at this early stage is demonstrated by the notes of a conference which took place with junior counsel, Mr Mably, on 10 July 2009.[491] The principal point which he remembered was the need to "ring fence" the investigation in order to avoid personal embarrassment to Princes William and Harry. Unsurprisingly, he could not recall any of the fine detail of the case.

8.102 As if again to underline that this was not simply 'just another article', the 9 July 2009 also saw the Chairman of the Culture Media and Sports Committee (CMS) write to Sir Paul Stephenson, asking him to submit written evidence to the Committee concerning the investigation into voicemail interception.[492]

After 9 July 2009: the on-going response

8.103 The following day, 10 July 2009, Mr Yates convened and chaired a second Gold Group meeting *"to seek update from yesterday's meeting"*.[493] This time DCS Surtees was also present. The following is recorded in the minutes:[494]

> *"The original enquiry team (Op Caryatid) were aware that the defendant – Glenn Mulcaire was speaking to numerous people and other journalists to the very nature of his job. The MPS sent a letter to News of the World asking them to reveal the phone numbers for their journalists so a comparison could be made on the seized data. It appeared [Mr Mulcaire] often used the News of the World switchboard so it was difficult to confirm who he was speaking with. They refused to co-operate. Telephone data went into 50,000 + and although further analysis could have been conducted to identify other journalists etc, it was decided in conjunction with CPS / Counsel, to set parameters and from a proportionality point of view, to focus on evidence that would support charges and attract suitable penalty at court for the level of criminality involved. Effective use of Police resources was also considered at the time and discretion to investigate (R v Blackburn). The data examined did not unravel a conspiracy with other journalists so was not extended.*
>
> *"If the MPS were to consider extending remit now then the phone companies no longer hold the data so it would not be feasible to investigate. It is also worthy to note that the victims subject to interception, apart from the two convicted defendants, they did not have any other suspect / target numbers attempting to intercept their phones.*
>
> *"[DCS Surtees] stated that during the S18 searches of News International the Police team met resistance and threats to use force to remove them from the premises. There was a general lack of co-operation on their part."*

8.104 These discussions brought to the attention of Mr Yates that evidence gathered did indicate that other journalists might be involved and that further analysis of the telephone data could have been conducted to identify other journalists, but that no analysis was conducted for reasons of proportionality. They also flagged to Mr Yates the strong resistance from NI to the search. They did not, however, cause Mr Yates to review his decision of the previous day. Even if Mr Yates did absorb that there was in fact evidence that might implicate other journalists,

[491] Not published
[492] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-63.pdf
[493] p1, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-12.pdf
[494] p2, John Yates, *ibid*

he appears just to have accepted, again at face value, that further investigation would not now be feasible. I am driven to the conclusion that having reached his dogmatic conclusion the previous day, he had closed his mind to the question of whether there might be material in police possession that could justify reopening the investigation.

8.105 This entrenched position is relevant when considering the protestations made by Mr Yates that it was not just an eight-hour exercise, but *"a continuing exercise of reviewing, considering, reflecting about, you know, whether we were on the right track and whether we needed to do something different."*[495] In my judgment, given the emphatic and publicly announced response on the previous day, to the extent that there was a continuing review at all, it was extremely focused, wrongly demanding nothing short of "new evidence" before consideration would be given to reopening the investigation. He accepted that after 9 July he did not continue with the establishment of the facts exercise. His evidence was that the continuing exercise *"was to do with all about the victims, actually, all about the victims."*[496]

8.106 DCS Surtees has submitted further evidence[497] in which he states that the minutes of 10 July 2009 were not a wholly accurate reflection of what was discussed and that in this meeting and subsequent meetings he attended, he was vocal in advancing his view that the matter should be re-opened and re-investigated for the very reason that he knew there were evidential leads to pursue and that the rationale for closing the investigation in 2006 did not exist in 2009. He states that he challenged Mr Yates and even suggested that Her Majesty's Inspectorate of Constabulary (HMIC) should be appointed to investigate. DCS Williams, in his further evidence, agrees that DCS Surtees was *"quite vociferous"*, at his first meeting with Mr Yates in suggesting that he review or reopen the investigation or that HMIC have an independent look at it.[498]

8.107 DCS Surtees was not asked about 2009 when the evidence was called and Mr Yates has not been asked to respond to what is now said. In the circumstances, as a matter of fairness, I am not prepared to reach any conclusion on this issue. By 10 July, however, the scene had been set both by the briefing given by DCS Williams and the press announcement of the previous day: it would have required considerably more than DCS Surtees calling for a review to persuade Mr Yates to alter the course he had fixed in place. Furthermore, to be fair to Mr Yates, it is right to note that in the briefing note to which DCS Surtees contributed, dated 12 July 2009, and considered below, the evidence was not represented in a way that steered the reader to the conclusion that there were viable leads.

8.108 It is appropriate next to refer to the fact that, on 11 July 2009, an article written by Andy Hayman was published in The Times. In that article, Mr Hayman claimed that the original investigation had *"left no stone unturned"* and that if there had been the slightest hint that others were involved, they would have been investigated. These were extraordinary assertions to make given the true scope of the investigation and given that Mr Hayman was not in a position to comment on the thoroughness or otherwise of the investigation because he was not aware of any of the details. Further, having retired, he had no access to any of the

[495] p51, lines 1-5, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[496] p89, lines 13-16, *ibid*
[497] Second witness statement of Keith Surtees is available on the Inquiry website
[498] Second witness statement of Philip Williams is available on the Inquiry website

relevant papers or decision logs.[499] Mr Hayman said that he based his article on his *"general broad recollection, of how events were"*.[500]

8.109 I am satisfied that Mr Hayman was not deliberately intending to mislead and neither do I consider it to be proved that he was motivated by a desire to protect NI from further investigation; unwisely, however, he made defensive assertions which were based not on fact but on his assumption that the investigation would have been comprehensive. He undoubtedly believed the detectives working on Operation Caryatid to be tenacious investigators and that they would have sought to prosecute all offenders against whom there was a sufficiently strong case. In reality, without the relevant information, he set about defending the investigation (and, by extension, both himself and his former colleagues). Furthermore, it was equally imprudent of Mr Hayman to write this article in The Times because, by doing so, he gave the impression, no doubt inadvertently but undeniably, that he was being deployed by NI to give support to the police line which, itself, was in support of NI.

8.110 As referred to above, on 12 July 2009, DCS Williams and DCS Surtees prepared a written briefing note for Mr Yates.[501] DCS Williams believed that the briefing note may well have included more detail than he gave orally on 9 July: *"particularly when it goes into quoting figures, because then we had retrieved the investigative documents from storage and so I would have been able to do that. On the day, I would – of 9 July, I would have been doing it to the best of my ability of my memory."*[502] DCS Williams and DCS Surtees stated the following in that note:

> *"14 … It is clear from these documents that Mulcaire had been engaged in a sustained (years) period of research work in various levels of completion. In many there is simply the name of a celebrity or well known figure in others there is more detail with names, addresses, dates of birth, telephone numbers, DDN's passwords, PIN numbers and scribblings of private information. On some there are names which probably relate to journalists and cash sums. (As yet unconfirmed).*
>
> *"15. It should be noted that no evidence existed to suggest that those possible journalists detailed on these sheets had knowledge of the illegal methods undertaken to supply these stories, however, it should be pointed out that in one of the recordings recovered from Mulcaire it is clear Mulcaire is giving instruction to an unknown person (possibly a journalist) on the telephone, on how to access messages of Gordon Taylor. (As yet unconfirmed who this person is).*
>
> *"16. Also recovered were a number of contracts between Mulcaire and the News of the World, some show agreements to pay Mulcaire a wage of £104,988 per year … In addition to these contracts other financial documents recovered highlighted individual payments to Mulcaire from the NOTW for instance in the case of Gordon Taylor an agreement to pay £7000 once a story had been printed. (All used by counsel in the criminal prosecution)."*

8.111 It was also claimed in the briefing note that:[503]

> *"All the available evidence in terms of scale and potential role of News of the World*

[499] p142, line 6, Andy Hayman, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-2012.pdf
[500] p142, lines 10-11, *ibid*
[501] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf
[502] p5, lines 4-9, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[503] para 33, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf

> *was part of the prosecution case … Nothing has been hidden from the public as to what was found it has just not had the opportunity to be fully heard."*

8.112 The content of this briefing note leads me to the conclusion that even when DCS Williams had reviewed the investigation papers, his aim when briefing Mr Yates was only to reinforce the position that there was "no evidence"; that is not surprising given the view that he continues to maintain and, additionally, the fact that three days earlier Mr Yates had announced that there was nothing new to consider. The conclusion reached on the value of the "corner names", at paragraph 14 of the note, appears to have been infected with the inaccurate analysis that there was "no evidence" that those identifiable by the corner names knew that Mr Mulcaire was obtaining the information unlawfully (when in fact there was circumstantial or inferential evidence of the same).[504] It is clear that the note conveyed that the officers suspected that the criminality went far beyond just Mr Goodman, but it did not convey any belief that there was material that could be developed in a wider investigation. In the light of what he has recently argued, it is surprising that DCS Surtees did not ensure that this was communicated in the written document.

8.113 It is evident that this briefing note introduced Mr Yates to evidence implicating other journalists, albeit the evidence was not given the epithet: "corner names". It is right that the evidence was immediately followed by the assertion that *"no evidence existed"* that those journalists knew of the illegal methods used by Mr Mulcaire, but it gave Mr Yates the *"scintilla of evidence"* that he had protested he did not have.[505] During his evidence Mr Yates said that he did not know about the "corner names".[506] When taken to these paragraphs of the briefing note, he said that they *"didn't hit home in that way"*.[507] I find that this reference to evidence implicating other journalists did not "hit home" precisely because of his closed and defensive mind-set, which caused him to overlook the significance of these paragraphs. That said, during his evidence, he did not accept that there was in fact any evidence that those named knew of the particular method of obtaining the information used by Mr Mulcaire:

> *"… who knows what techniques, lawful or unlawful, private detectives use and how they get the information, you know, I can't be the judge. What we were worried about was is there any evidence around this, and the view I was given was: no, there wasn't."*

8.114 Mr Yates, like DCS Williams (and in the briefing note of 12 July 2009 at least, DCS Surtees), has failed to acknowledge the circumstantial or inferential evidential value of the corner names or to consider how the communications between journalists and Mr Mulcaire might have come about or how the information which Mr Mulcaire obtained might have been passed back to the journalist. I do not pass further comment or reach any further conclusions, however, not least because of the current criminal investigations and impending prosecutions of other journalists at NoTW and my anxiety not to prejudice let alone appear to prejudge what might emerge at any trial.

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[504] It is suggested that "no evidence" in this context does not mean there were no lines of investigation or no suspicion of criminality but that they did not have available at that time sufficient evidence to charge other people. It might be that the officers intended to convey this to Mr Yates, but it would have been entirely reasonable for Mr Yates to interpret the reference to "no evidence" not as meaning "insufficient to prosecute" but that there was no evidence capable of being developed

[505] This is whether or not the reference to "no evidence" was no sufficient evidence to prosecute as opposed to no evidence capable of being developed

[506] p84, lines 7-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf

[507] p84, lines 21-25, *ibid*

8.115 The following extract from the briefing note illustrates that DCS Williams and DCS Surtees had reminded themselves accurately that there were many potential victims despite the continued adherence to the narrow interpretation of s1 of RIPA:

> *"It was clear from the spreadsheet and the lines of data supplied by the telephone companies that many potential 'victims' existed and had been subject to their voicemails being called, but that is not sufficient to prove the criminal offence of interception. The burden is on the prosecution to show they actively led to the defendant gaining access to voice messages prior to the intended recipient gaining access. The data alone does not even show whether or not messages existed only that the voicemail had been accessed."*

8.116 The following is also recorded in the briefing note:[508]

> *"… Advice indicated that S1 RIPA interception or Computer Misuse Act might be the potential offences for what was happening. The latter apparently had a poor track record in terms of conviction, because of the complexity of what had to be proved and the latter had not been used in respect of telephone voicemail …"*

8.117 This indicates that DCS Williams had refreshed his memory from the papers sufficiently to recall that voicemail interception was not just an offence under RIPA but also under the CMA. Further, at paragraph 28 of the briefing note DCS Williams and DCS Surtees recorded that the victim strategy, in broad terms, had been to inform everyone in the bluebook who had had their unique voicemail access number dialled by the suspects. It continued:

> *"At the time the strategy recognized that there was still extensive research to be done with the phone companies to identify what the full extent of victims might be and therefore as outlined under the section above 'How were victim identified' this could be a vastly bigger group of people and in reality we would probably never know the true scale."*

8.118 Unfortunately, however, neither of these factors caused DCS Williams to correct his original briefing to Mr Yates concerning the number of victims of voicemail interception which was to the effect that *"police enquiries showed that the tactic of voicemail interception had only been used against a far smaller number of individuals"*. In the light of the way that DCS Surtees now puts the matter, it is surprising that DCS Surtees did not himself later correct this misunderstanding: by then, of course, the decision had been made and the defensive line published. Whatever the reason, however, I am confident, however, that it had nothing to do with any relationships with NI.

8.119 Sir Paul Stephenson explained that during intermittent discussions with Mr Yates, as the Guardian maintained its coverage, Mr Yates continued to reassure him that there was nothing new in the allegations that would warrant the reopening of the investigation and the investment of significant additional resources.[509] To put his involvement in its proper context, Sir Paul said that the matter was not a priority for him as Commissioner. He occasionally had discussions with Mr Yates about it, but he would not have delved further into it because it was getting the right level of senior attention.[510]

[508] para 24, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf
[509] para 95, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf
[510] p79, lines 6-10, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf

8.120 Mr Yates chaired two Gold Group meetings on 13 July. The first was attended by DCS Williams, Mr Clements and Mr Hussain from the CPS, and D/Supt Dean Haydon.[511] That meeting dealt predominantly with the question of ensuring that the MPS had been sufficiently diligent in informing potential victims but there was also discussion about whether a letter should be written to the Guardian encouraging the newspaper to share any new information. The minutes stated:[512]

> *"Following DPA advice, JY decided not to write a letter as the Guardian to date had not produced any fresh information or evidence in their articles. Their articles were based on historical cases. If he did, the Guardian could use spin and claim that he has made a U-turn, had done this under mounting pressure, why was this not done before etc. Press reporting to be monitored in event fresh information comes to light to justify writing a letter. Decision – no letter to be sent to the Guardian at this stage."*

8.121 According to Mr Clements, Mr Yates told them at that meeting that he was happy to help with *"piecing together the evolution of the prosecution strategy regarding potential victims"*.[513] Mr Clements and Mr Hussain told Mr Yates that a review was underway and that they would reveal their findings on Wednesday in a press release.[514]

8.122 The second Gold Group meeting was attended only by MPS personnel, including DCS Williams and DCS Surtees. A separate investigation name, Operation Quatraine, was allocated in order to provide a reference point for work done on the recent issues and the costs incurred. Mr Yates decided that the Gold Group would provide strategic oversight and that all decisions and records would be recorded in the minutes and that no separate decision log would be maintained.[515]

8.123 On 14 July 2009 the journalist Nick Davies, who had been responsible for the Guardian article, gave evidence to the CMS Committee. He presented the Committee with copies of a number of documents including the "for Neville" email and the contract with Mr Mulcaire which related to the payment of a bonus for the Gordon Taylor story.

8.124 Also on 14 July 2009 David Perry QC and Louis Mably produced the note to which reference has already been made (see paragraph 3.2 above).[516] The key part of the note was the following:[517]

> *"We did enquire of the police at the conference whether there was any evidence that the editor of the News of the World was involved in the Goodman-Mulcaire offences. We were told that there was not (and we never saw such evidence). We also enquired whether there was any evidence connecting Mulcaire to other News of the World journalists. Again we were told that there was not (and we never saw any such evidence)."*

[511] Detective Superintendent Haydon was the staff officer to Mr Yates and attended the Gold Group meetings which responded to the Guardian article. He was subsequently appointed as the SIO of Operation Varec: para 9.8 below
[512] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-15.pdf
[513] Not published
[514] p3, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-161.pdf
[515] p4, *ibid*
[516] I have found (see para 3.19 above) that the "for Neville" email did not form part of the documentation sent by the MPS to the CPS in 2006, but it is clear from the transcript of the hearing before Gross J on 26 January 2007 that the CPS and Counsel were aware of the existence of the contract
[517] p2, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-18.pdf

8.125 This record of the answers given by the police understandably influenced the conclusion reached by Mr Starmer of how the original prosecution had been handled and the extent to which there was any need for a re-evaluation in 2009.[518]

8.126 Mr Yates also claimed to place heavy reliance on this note from counsel but in contrast to Mr Starmer, it was not reasonable for Mr Yates to infer from it that counsel had checked all the material gathered during the investigation for further evidence of criminality. First, the conference was prior to the review of unused material and was based purely on what counsel were told by the police; secondly, Mr Yates knew (or certainly ought to have known) that the review carried out by counsel (Mr Mably specifically) had been confined to a review of the unused material which had the particular limited purpose of fulfilling the disclosure obligations explained above.

8.127 When challenged about the legitimacy of relying on this review of unused material, given its purpose and that Mr Mably had not been asked to decide how the investigation should proceed, Mr Yates accepted the limited nature of the exercise but said that:[519]

> *"This was quite an important limb, I would say, in terms of saying, well, okay, he was looking at it from the CPI perspective from the indictment, but if counsel is telling me that they never saw any such evidence, then of course I'm going to place some reliance on that. But it was only one limb of a series of aspects which enabled me to come to that view, if you like."*

And:[520]

> *"Well, if you read out the sentence in the note, I think it's abundantly clear what's there, and on any reading, exculpatory, CPIA or whatever, they are saying they've done the exercise on CPIA and they never saw any such evidence about others' involvement … I can't see any other reading of it that would – you know, it's there."*

8.128 Whilst it would be fair to find that Mr Yates might have expected counsel reviewing the unused material to notice a document that stood out as a "smoking gun", he could not rely on it to conclude that there was no evidence of further criminality.

8.129 On 15 July 2009, the Chairman of the Home Affairs Committee (adding weight to the enquiries being conducted by the CMS Committee) wrote to Sir Paul Stephenson in order to put a serious of questions to the MPS. [521] He asked to be informed of the extent of previous police enquiries into illegal surveillance by journalists, in particular, whether journalists other than Clive Goodman were investigated and why Mr Yates was convinced that no further investigation was needed. He also asked whether there was any evidence to indicate the existence of arrangements between Mr Mulcaire and other journalists, either at the NoTW or elsewhere, which could have included intercepts and other potentially illegal surveillance.

8.130 Also on 15 July 2009 DCS Williams sent an email to the CPS which contained his recollection of the August 2006 conference with counsel.[522] Mr Hussain also prepared a submission for

[518] pp15-16, para 52, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[519] p50, lines 5-11, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[520] pp51-52, lines 19-1, *ibid*
[521] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-172.pdf
[522] Not published

the DPP which set out in summary form the CPS involvement in the case in 2006.[523] Perhaps the most important part of it for present purposes was paragraph 3, which read:

> *"In addition to Goodman and Mulcaire a third man ... was arrested but was not charged due to there being insufficient evidence to proceed against him. NO other suspects were considered or charged. This has been confirmed to Asker Hussain by DCI Surtees: 'no other named suspects ... were confirmed as suspects of criminal activity through this investigation'. Prosecution counsel has also confirmed that there were no other suspects apart from these three individuals."*

8.131 The precise content of any conversation between Mr Hussain and DCS Surtees cannot be ascertained from this note, but I would expect DCS Surtees not to have given the impression that there were no evidential leads relating to named individuals even though there were no "confirmed suspects" as such.

8.132 On 16 July 2009, following receipt of this submission from Mr Hussain, the DPP issued a press statement. It stated that the police had provided the CPS with all relevant information and that the approach to charging Mr Goodman and Mr Mulcaire had been appropriate. It is noteworthy that the press release relates only to those 'identified to the CPS' and reads as follows:[524]

> *"Having examined the material that was supplied to the CPS by the police in this case, I can confirm that no victims or suspects other than those referred to above were identified to the CPS at the time. I am not in a position to say whether the police had any information on any other victims or suspects that was not passed to the CPS."*
>
> *"In light of my findings, it would not be appropriate to re-open the cases against Goodman or Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them".*

8.133 Also on 16 July 2009 DCS Williams wrote a report entitled: *"Why didn't we expand the investigation?"* in which he stated that:[525]

> *"… My practical assessment was that no matter what we found out [once the investigation was overt] any other potential suspects were now firmly aware of what we were doing and would certainly be taking all steps to avoid incriminating themselves.*
>
> *"Against this backdrop I knew how challenging it had been to get the case this far based upon technical proof (this is a huge challenge which perhaps understandably everyone is underestimating) and now that potential other persons who may or may not have been involved were alerted my belief was that we would not be able to secure the level of proof necessary to get across the criminal threshold.*
>
> *"Added to the above I knew that any attempt by us would [be] highly likely to be protracted for the reasons already highlighted and it would risk clouding the issues around a solid, clear and proportionate case.*
>
> *"All of the above was not a decision that I made in isolation. Throughout, this investigation had the highest oversight at all times. The potential breadth/scale of what may or may not be out there was fully discussed together with what resources*

[523] Not published
[524] p3, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-21.pdf
[525] Not published

might have been required to even begin exploring that. There was no appetite to expand the investigation and the strategic guidance given to me was to continue with what I had before me as outlined above."

8.134 DCS Williams argues that this report demonstrates he communicated to Mr Yates that there were evidential leads and that the strategic decision had been made not to follow them for resourcing reasons. In the context of the briefings, I do not consider that it would have conveyed any such message to Mr Yates. The report suggests that the decision was made at least predominantly (if not entirely) on the basis of the quality of the evidence and viability of the leads, rather than making clear that resource concerns overrode considerations of the quality of the evidence.

8.135 DCS Williams also set out his views[526] on *"what would be the issues should it be decided to now open an investigation into any aspects of NOTW activities from that period"*:

> *"**1. Maximum success already achieved** – My rationale for what we did then I believe serves as a strong basis for why it would be highly challenging to find anything more that would lead to a criminal prosecution which would have any greater benefit in terms of what we have already achieved.*
>
> *"**2. Data** – In terms of practical challenges I doubt whether the necessary data exists now. Even at the time Orange for example only hold what data they had for a few hundred days. So for example to explore in terms of data whether or not Gordon Taylor had been the victim of intercept in June 2005 or before as indicated by one seized document was not possible then let alone now.*
>
> *"**3. Victim Cooperation** – I believe the current climate is making an assumption around who would want to come forward as a victim/witness. Given that the people who are targeted are in the public eye for one reason or another I suspect many of them would not want to [be] identified publicly as a 'victim' due to what it might suggest about their private life.*
>
> *"**4. Public Duty** – Taking into consideration all that I have written above I do not feel we would be serving the criminal justice system for the public good, but all we would achieve is feeding the civil litigation industry for individual gain at much cost to the general public."*

8.136 In my judgment, this is another example of the way in which DCS Williams represented matters defensively and in such a way as to reinforce the decision that reopening the investigation was unwarranted.

8.137 Later that evening, on 16 July 2009, the press office of the DPP received an enquiry from Nick Davies as to whether the DPP had called for the NoTW contract and the "for Neville" email.[527] This enquiry promoted a flurry of late night activity within the CPS.

8.138 On 17 July 2009 Mr Yates chaired a further Gold Group meeting during which a question was raised about the possible involvement of Neville Thurlbeck (following a question to Mr Yates from Chris Huhne MP),[528] in light of the "for Neville" email. According to the minutes of the meeting, DCS Williams stated that this formed part of his wider prosecution strategy relating to both suspects and victims, which was still robust to that day. The minutes also

[526] Not published
[527] p18, para 62, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[528] p2, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-22.pdf

demonstrated that DCS Williams emphasised the lack of co-operation from NoTW during the investigation, including no comment interviews, resistance during the searches and refusal to cooperate with telephone data requests.

8.139 After the meeting, but also on 17 July 2009, a briefing note was prepared for Mr Yates, presumably by DCS Williams, which explained the reasons for not having followed up the possible implications of the "for Neville" email.[529] He stressed that the mere sight of transcripts of conversations is not itself sufficient evidence to charge with an offence of conspiracy to intercept communications. He explained that:

> *"It is important to differentiate the investigative strategy and risk reduction strategy taken at the time, to the very different focus today of whether in fact lots of journalists at the NOTW or elsewhere were involved in a criminal conspiracy.*
>
> *…*
>
> *"Police could have arrested Thurlbeck and/or others. The experience police had of the stance taken by News International staff led them to suspect that any other journalists arrested would not readily assist police by answering any questions this would inevitably leave investigators with insufficient evidence to charge others. Further enquiries were undertaken by investigators to prove the involvement of other journalists by requesting telephone information and floor plans from News International at the time. These were frustrated from the outset."*

8.140 For their part, during the course of 17 July 2009, the CPS ascertained that the "for Neville" material was part of the unused material and nothing more. A copy of the email was faxed by the MPS to the CPS later that day, and drawn for the first time to the attention of Mr Starmer. Mr Clements told Mr Starmer that he had spoken to D/Supt Haydon and that: *"the Met do not consider that the email in question has the significance that the Guardian attribute to it."*[530] Mr Starmer was immediately concerned about the email, because *"[w]hatever view others took about this email, I was concerned about it. Taken at face value, it seemed to me to suggest that both the author and recipient were possible suspects"*.[531] In answer to my question, Mr Starmer indicated that his assessment of the email was that it was more in the nature of an evidential flag or pointer than a 'smoking gun', although, even on that basis, he recognised that it did not correspond with the reasonably firm assurance he had been given that there had not been thought to be other suspects.[532]

8.141 At 4pm on 17 July 2009 a meeting took place between Mr Starmer and David Perry QC. The latter confirmed his recollection of the answers the police gave to his questions regarding other possible defendants. However, Mr Starmer was still concerned about the email and decided to write to Mr Yates inviting him to consider whether further investigation was now required. A draft press statement had been prepared to that effect, but, following discussions with Mr Yates later that evening Mr Starmer was persuaded not to issue the statement but to meet Mr Yates the following Monday morning (20 July 2009) to discuss the email in greater detail. During the course of the Friday evening discussions which followed the meeting with Mr Perry, Mr Starmer sensed a degree of "push-back' from Mr Yates against his suggestion that there should be a reinvestigation or further investigation of the "for Neville" email. Mr

[529] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-23.pdf
[530] p21, para 73, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[531] p21, para 74, *ibid*
[532] p5, lines 12-22, Keir Starmer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf

Starmer did not suggest that there was anything sinister or untoward about this, given the time of day.[533] Following those discussions, Mr Starmer issued a press statement which merely said: *"the DPP is now considering whether any further action is necessary."*

8.142 On Monday 20 July, the meeting with Mr Yates and others (including DCS Williams) took place as arranged; the notes made on behalf of the MPS have been made available to the Inquiry.[534] Mr Starmer explained to the police that Mr Perry had told him that he could not remember discussing the "for Neville" email at the time of the prosecution. DCS Williams reiterated the point that there had been discussion about other possible defendants. The following appeared in the notes:

> *"KS. David and Louis asked if evidence* editor and other journalists. Told not. Saw no evidence to support"

8.143 Mr Starmer confirmed that this assertion was never contradicted by anyone present at the meeting.[535]

8.144 According to Mr Starmer, the key contribution made by Mr Yates to the meeting was that this was not new material; it had been seen by counsel and that the police investigation focused on set parameters, which were an operational matter for the police; furthermore, in any event, *"the email will go nowhere".* Unsurprisingly, Mr Starmer was not entirely comfortable with this response, given that Mr Perry did not have a recollection of seeing the email, and to the extent that it might have been seen by junior counsel this was in a specific and limited context; that the 'set parameters' rather begged the question; and that his assessment of the evidential strength of the email was not the same as the assessment made by Mr Yates. The matter was left on the footing that Mr Starmer would seek written advice from Mr Perry on the status of the email, and that DCS Williams would do a background note to avail him.

8.145 Shortly after 6pm that evening, DCS Williams sent the CPS a briefing note, as they had requested, which he entitled *"Challenges faced in the investigation and subsequent prosecution"* for the CPS.[536] Under the rubric "Challenges", DCS Williams set out his understanding of the law which continued to be based on the narrow view of RIPA 2000. He also made a number of observations in the note about the "for Neville" email, all of which tended to suggest that neither in 2006 nor in 2009 could it amount to evidence that the criminality at the NoTW went beyond Mr Goodman. For instance, he set out his analysis that there was nothing to indicate that "Neville" had actually seen the document and that even if he had, reading the email would not have been an offence and so there was no evidence to link him to a conspiracy to intercept communications. It is worthy of additional note that this specific analysis of the email was also to form the basis of the evidence Mr Yates gave to the CMS Committee.

8.146 Mr Starmer was anxious to resolve the issue as quickly as possible and so he asked Mr Perry to provide an 'overnight' advice, that is to say before the following morning. In effect, the DPP wanted Mr Perry to answer the following four very specific questions:[537]

(a) based on his knowledge of the case in 2006 and in particular the technical and practical

[533] pp8-9, lines 21-9, Keir Starmer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf
[534] Not published
[535] p13, lines 4-16, Keir Starmer QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf
[536] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-25.pdf
[537] p24, para 86, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf

issues associated with proving offences of interception, what advice would he have given to the CPS/police at the time in respect of the "for Neville" email, had it been brought specifically to his attention?

(b) based on his knowledge at that time (July 2009), would his advice be any different?

(c) based on his knowledge in 2006 whether he was of the view that the police had sufficient to arrest and/or interview "Ross" and/or "Neville".

(d) based on his knowledge at that time (July 2009) whether he was of the view that the police had sufficient to arrest and/or interview "Ross" and/or "Neville".

8.147 At the time of the urgent request for advice, Mr Perry did not have access to his original papers and was also working under the pressure of a court appearance. Rather than seek further time from Mr Starmer, Mr Perry decided to rely on what he could recall of the prosecution and on the briefing note provided by DCS Williams. He set out his advice under the heading "Draft Advice" although it was not expressed to be contingent on any further information or input from either the MPS or the CPS and was never replaced by a further document. The advice arrived at the CPS at 09:40 hrs the following morning, namely 21 July 2009.[538] Mr Perry indicated that he only had a dim recollection of the decisions taken in relation to the investigation and prosecution strategy, but that he had found the note prepared by DCS Williams to be extremely helpful and to accord with such recollection as he did have. Mr Perry expounded the narrow view of the law in lapidary and unqualified terms:

> *"… to prove the criminal offence of unlawful interception contrary to section 1(1) of the Regulation of Investigatory Powers Act 2000, it is necessary to prove that the message was intercepted before it was accessed by the intended recipient."*

8.148 Mr Perry also appeared to suggest that he gave the same advice to the police and the CPS in 2006.[539] He stated in his advice dated 20 July 2009 that the "for Neville" email did not cause him to acquire a different view of the merits of pursuing other possible defendants. He adopted eight of the nine points made by DCS Williams in relation to the evidential value of the email.

8.149 Mr Perry has accepted that his statement about the law was too emphatic and that he had been over-reliant on the briefing note.[540] Given that he did not have his papers and was advising overnight, I am fully prepared to accept the explanation why he expressed this view, despite having given different advice in the conference with the CPS and the police in August 2006.[541]

8.150 With the benefit of hindsight, Mr Starmer has since said that it would have been better if, before Mr Perry committed himself, he had been given more time along with the opportunity to check his papers. That is undoubtedly right but, despite his understandable anxiety to meet the very tight deadline set by the DPP, Mr Perry should not have given unequivocal and unqualified advice, which in any event did not reflect the considered advice he gave in 2006, without, first, re-acquainting himself sufficiently with the law and relevant factual

[538] Not published

[539] In an email dated 22 October 2009 Mr Mably also adopted the narrow interpretation (not published). Mr Perry believed that this may have been based on the "wrong turn" which he took in the Advice he drafted in July, which may itself have affected the recollection of Mr Mably: pp44-45, [lines 21-6], David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf

[540] p38, lines 14-17, and p39, lines 18-23, *ibid*

[541] As I found at para 3.15 above, the advice Mr Perry gave in 2006 was that although the "narrow view" was arguably correct, the argument could be met in a number of ways and in any event the inchoate offence of conspiracy did not depend for its proof on the correctness of the narrow interpretation

background; secondly, reviewing his papers relating to the prosecution; and, thirdly, if it was necessary, reconsidering the likely interpretation of s1 of RIPA. He should not have permitted himself to rely almost entirely on a briefing note provided by DCS Williams (whom he did not blame) or to assume that it was accurate or reflected the advice he gave in 2006.

8.151 Although it might have caused his client some frustration, I have no doubt that Mr Perry should have told Mr Starmer that he needed more time before he could give accurate advice; alternatively, he could have expressed a view only on a provisional basis following it up shortly thereafter, when the papers were to hand and the necessary time available. Entirely accurately, Mr Perry summarised the position by saying that: *"the moral of the story is: don't do advices overnight if you don't have the papers"*.[542]

8.152 The DPP wrote to the chairman of the CMS Committee on 30 July 2009.[543] Basing himself heavily on the advice given by Mr Perry, Mr Starmer confirmed that it would not be appropriate for him to reopen the cases against Mr Goodman and Mr Mulcaire, nor to revisit the decisions taken in the course of investigating and prosecuting them.

8.153 On 25 August 2009 DCS Williams provided what he called a *"very rough draft"* opening statement for the CMS Committee hearing. It included the following paragraph which, in the circumstances, did not fully reflect the complete picture of what had happened in 2006:[544]

> *"**Suspects** – In 2006 Police, CPS and Senior Counsel considered whether or not there was evidence against anyone else and in the light of recent concern have revisited that decision. Supported by Senior Counsel the collective belief is that when set against both the investigation and prosecution strategy there was and remains insufficient grounds to arrest and /or interview anyone else."*

8.154 Presumably for the purposes of the CMS Committee hearing,[545] DCS Williams prepared a further briefing note, dated 2 September 2009, entitled *"Efforts to pursue investigation with NOTW"* which including the following information:

> *"Post arrest at a case conference between police, CPS and Council [sic] the extent of what we could legally ask for access to through a Production order was discussed and again based on the evidence we had that was deemed highly likely to be limited to the activities of Goodman and potentially Mulcaire – in affect [sic] we would not be allowed to do anything that might be looked upon as a 'fishing exercise'.*
>
> *"NOTW solicitors had already made it known of their desire to cooperate with the investigation and the best way forward was decided to be through cooperation, but to explore/prepare a production order in tandem to be used as legally possible."*

8.155 DCS Williams then explained how Burton Copeland had responded to the various request for information in the following terms:

> *"Throughout it would be fair to say that NOTW took a robust, but legal approach to our requests and provided the material in relation to Goodman and Mulcaire only, e.g. the payments to 'Alexander' – total £12,300. What was received did indeed become*

[542] p39, lines 3-4, David Perry QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-4-April-2012.pdf
[543] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-G.pdf
[544] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-30.pdf
[545] DCS Williams and Mr Yates gave evidence to the CMS Committee on 2 September 2009: paras 8.217-219 below

part of the prosecution, but we did not have the legal basis with which to push our investigation further."

8.156 On 3 November 2009 the DPP wrote again to the Chairman of the CMS Committee. He set out in that letter that the advice given by Mr Perry had been that the narrow interpretation of s1 RIPA was correct and that there was nothing to be gained from seeking to contend for a wider interpretation.[546] On the same day Mr Yates also wrote to the Chairman of the CMS Committee. He confirmed that the police had in their possession hundreds of *"unstructured handwritten sheets"* showing research into many people in the public eye. He said: *"It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions was* [sic] *or how they intended to use it."*[547]

8.157 Before leaving this section, it is important to deal with the allegations that have been made about the integrity of Mr Yates. I recognise that I have strongly criticised his decisions not just with the benefit of hindsight (which is no criticism at all) but having regard to what he knew or could have discovered. As to the question of ulterior motive, however, it is important to analyse the evidence. On this question, Mr Yates said:

"… I absolutely know what I did on July 9th, I know what I was provided with, I know the judgment I made. You know, time has shown that to be – and what's happened – not the greatest call, but at that time it was the right call, and it wasn't influenced in any way, shape or form by other matters."

8.158 Those who worked closely with Mr Yates were and are convinced of his integrity. DCS Williams (whom I have also criticised) said:[548]

"… In my workings with [Mr Yates], I've not worked with him directly before, but I saw nothing or heard nothing that me think that we – that there was anything wrong going on here, that we were looking to hide anything. He was looking at an investigation that was four years old. I briefed him and over the period I believe he was genuinely seeking to understand what had happened and make proportionate decisions. I just want to assure you that I've seen nothing that makes me think that there is anything other than a genuine desire to do a proper investigation and to keep the public informed about what's going on."

8.159 As for more senior officers, Lord Blair offered the following assessment:

"Do I believe that John Yates took that decision in order to placate News International? No, I don't. I just don't believe that he did that. But his difficulty, without making it more difficult for him, is the number of contacts, and that, I think, is a problem."[549]

8.160 Sir Paul Stephenson was convinced that Mr Yates acted in good faith.[550] He added that: *"I think we ended up defending instead of challenging. Do I believe that there was a deliberate*

[546] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-3.pdf
[547] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-4.pdf
[548] pp19-20, lines 20-6, Philip Williams, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf
[549] p73, lines 15-19, Lord Blair, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf
[550] p61, lines 23-24, Sir Paul Stephenson, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf

attempt to back off because it was News International? No, I do not, sir."[551] He made clear that he did not believe that fear of taking on a powerful enterprise *"comes into it"*.[552]

8.161 In reality, there is no evidence from which it would be right to infer that Mr Yates was swayed in his decision making by his friendship with Mr Wallis or his relationships with NI more generally. That he did not take the Guardian article (or the follow up) seriously enough is beyond doubt but I do not believe that he was acting out of fear of NI, or in a desire to protect Neil Wallis or NI or, indeed, to garner favours from the organisation.

8.162 I have considered also the subtler point whether because he knew the personalities of the leaders at the NoTW and had amicable relations with them, he was less prepared to think ill of what they had been doing. I agree with Mr Garnham QC that I do not have the evidence to make such a finding. I do not consider there is any basis for concluding that Mr Yates would permit or did permit his own personal knowledge of individuals to influence his assessment of whether they may be involved in obtaining information for stories by criminal means. Whatever conclusions I reach about the way in which Mr Yates went about discharging his responsibilities in 2009-2010, I do not challenge his integrity.

The second attempt to ensure that all potential victims had been informed

8.163 Having undertaken on 9 July 2009 to ensure that all suspected victims had been informed, on 10 July 2009, Mr Yates issued a press statement asserting that: *"the process of contacting people is currently underway and we expect this to take some time to complete"*.

8.164 In the briefing note dated 12 July 2009, DCS Williams and DCS Surtees told Mr Yates that although it was not known in detail what actions each mobile phone company took, the steps they did take included *"contacting customers who they thought might have been a victim"*.[553] They gave Mr Yates this assurance despite the fact that neither had ensured either that the phone companies understood that this was their responsibility or that the phone companies had, in fact, informed their customers. It is plain that Mr Yates was significantly misinformed. No doubt reassured by this briefing, at the first Gold Group meeting on 13 July 2009, Mr Yates gave DCS Williams and DCS Surtees the task of reviewing the remainder of the list to establish if there were any other potential victims that should be informed.[554] He also gave DCS Surtees the responsibility of confirming, from the files, who the police had informed and when. It is fair to note that Mr Yates was, indeed, seeking to honour his public undertaking to ensure that all potential victims had been informed.

8.165 DCS Surtees has submitted that this tasking was predicated on the narrow interpretation of 'victim', namely that a person was only a victim if there was proof that a voicemail message sent or received by him/her was intercepted before it was heard by the intended recipient. It is very surprising that DCS Surtees has made this submission given that it is wholly at odds with the wording of the original victim notification strategy and the summary of the victim notification strategy that he and DCS Williams gave in the briefing note of 12 July 2009. It is also at odds with the undertaking Mr Yates made on 9 July 2009 to inform all victims, including those where there was *"any suspicion"* that they might have been victims and with the minutes of the second meeting on 13 July 2009, the relevant extract of which is set out in

[551] p82, lines 12-15, *ibid*
[552] p88, lines 8-10, *ibid*
[553] p7, para 3, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-14.pdf
[554] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-15.pdf

the paragraph below. If this was the approach, it is difficult to explain how it developed. DCS Surtees does also make the point that the meetings record only a small part of the discussions that took place.

8.166 In the minutes of the second meeting on 13 July 2009, it was recorded that, over the weekend, the police had informed Andy Coulson that he was a potential victim and that attempts had been made to contact seven others, albeit only one of those seven attempts was successful.[555] The following was also noted:

> *"Over weekend. PW reviewed all files again and decided original victim strategy still stood re informing people (i.e. nothing had changed, apart from Coulson position) and after speaking with JY, it was decided no further contact was attempted with any other people. Weekend focus was then diverted to preparing briefing note and chronology of events.*
>
> *"PW stated after reviewing list there were approx. 60 people with activity on their phones. JY asked rationale for not informing them now. PW stated they had been in contact with phone companies and they were compiling in writing what they did at the time. Response should [be] received in next 24 hours and therefore decision pended until we see phone companies' response in event there could be duplication of work. Press line should read presently – not prepared to discuss (this is personal data)."*

8.167 It is not clear how DCS Williams reached the conclusion that *"the original victim notification strategy still stood"* given the reality that it had substantially failed. The evidence indicates that this correspondence with the phone companies was the first attempt by the police to check that the phone companies had been notifying potential victims in line with the victim notification strategy.

8.168 On 14 July 2009 DI Maberly received a response from O2 to this correspondence from the police asking them about what steps they took following the investigation.[556] O2 said:

> *"The matter was fully investigated, and information came to light indicating a small number of additional O2 customers who may have been targeted in the same way.*
>
> *"All the O2 customers affected were contacted by the O2 Fraud & Security Team in May 2006. The customers were advised that there may have been an attempt by a third party to access their voicemail messages. They were told we were making changes to the voicemail systems to stop this happening, and advised that O2 were working with the police to assist in providing evidence to identify and prosecute those responsible. Some customers requested their details be passed on to the police, and this was done."*

8.169 Vodafone and Orange also replied within the month. They set out what steps they had taken but neither mentioned having taken any steps to identify or inform potential victims of voicemail interception.[557] Surprisingly, despite the imperative to identify individuals who might not have been informed and the clear instructions from Mr Yates, it does not appear that the police made any attempt to follow this up with Vodafone or Orange and query whether they had notified any potential victims. Neither have I seen evidence that Mr Yates

[555] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-161.pdf
[556] Not published
[557] Not published

subsequently asked DCS Williams or DCS Surtees what had been ascertained from the phone companies.

8.170 On 22 July 2009, as part of Operation Quatraine, Mr Yates directed that all the material seized from Mr Goodman and Mr Mulcaire be scanned onto "ALTIA". ALTIA was a relatively new IT system, which had not been available when the investigation began, which enabled the mass scanning of hard copy exhibits to make them searchable on the HOLMES database. This was intended to assist the MPS in responding to the growing number of requests for information[558] from individuals who were concerned that their voicemail messages may have been intercepted. An email drafted on behalf of Mr Yates indicated that the exercise was to be a priority. The email read:[559]

> *"It is of critical importance to the MPS and the command that this is progressed as a priority and this requires attention today please to coordinate."*

8.171 Mr Yates explained that around ten detectives spent over four months undertaking this task at a cost of over £200,000. It is noteworthy that those working on the exercise appear to have been directed that if, when examining the exhibits, they identified potential further leads for investigation, they should be referred to the SIO for consideration.[560] However, no such leads, if identified at all, were brought to the attention of senior officers, and the task of scanning documents was not properly completed. Mr Yates said:[561]

> *"I mean … in fairness to me – on 23 July or whatever it was … I was so concerned about our inability to analyse the material in any shape or form that I asked for it to be put on the HOLMES system. You have that email in your pack, where I've said as a matter of priority I took people off counter terrorism operations to put all the material on the HOLMES system.*
>
> *"Now, if during that exercise run by detectives who, you know, would have a detective outlook, I would have expected, if concerns began to be raised about what's actually in that material, stuff that's come out, that I would have been told, but that didn't happen. So I was sufficiently exercised, as critical incident in the Met parlance, to put the stuff on a computer, to invest I think it was ten detectives for three or four months working long days to put all this material on a system so I could search it, so I could actually with confidence say – when people wrote in, I could say you're either on the system or not on the system. Now unfortunately that exercise wasn't done as thoroughly as it should have been."*

8.172 On 24 November 2009, having been contacted by Nick Davies for information about whether all potential victims had been informed, Orange wrote to DI Maberly in the following terms:

> *"We've drafted a press statement – the part relevant to the issue in question (i.e. if we were 'asked' to investigate and contact customers) is:*
>
> *We were not asked nor felt it right to further investigate these customers as this was part of the Police investigation. We were also advised not to contact these customers as it could jeopardise the investigation and prejudice any subsequent trial.*

[558] p3, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DI-Mark-Maberly.pdf
[559] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3A-27.pdf
[560] Not published
[561] pp102-103, lines 21-18, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf

Do you think this is fair comment? ..."

DI Maberly replied the following day and said:

"I don't think the comments are totally fair. Let me speak to our legal team / SIO (Senior Investigating Officer), who may have a documented record of the strategy agreed at the time."

8.173 Orange replied within a few minutes and said:[562]

"Unfortunately we have responded but would be happy to issue a clarification if necessary. We're not disputing that the ball was in our court, just that no specific [italics in original] request was made to investigate and contact…"

8.174 There does not appear to have been any real reaction to the implications of this email correspondence or beginnings of a recognition that the victim notification strategy had failed.

8.175 On 25 January 2010, DI Maberly emailed O2 and Orange, explaining that following a review of material requested by DCS Williams, the police had identified a *"very small"* number of people who were a target for interception but who had not been informed of this. Presumably these were individuals who, pursuant to the victim notification strategy, should have been notified by the police. DI Maberly also explained that the police were intending to give the relevant numbers to the phone companies in order to ascertain to which network they belonged at the time and might then ask the phone companies to make contact with those customers. O2 replied that day in the following terms:[563]

"We identified a number of customers we believed may have had their voicemails intercepted and I advised Philip Williams at the time that we intended to proactively contact them and let them know. We could not say for certain that their voicemail had been intercepted only that there was evidence it had been attempted. From my memory this was approximately 40 customers, certainly not more than that number. The only customers from this list we did not contact as part of that process were the members of the royal household that the police were dealing with directly. We had no information that voicemail messages belonging to any additional customers on the O2 network had been intercepted or had interception attempted."

8.176 This demonstrates that O2 informed their customers because they made the independent decision to do so and not pursuant to a request from the police.

8.177 Orange also replied the same day stating that they told Nick Davies that they had given the police the phone numbers of 45 Orange customers whose voicemails boxes had been accessed by the suspect numbers provided by the police.[564]

8.178 On 26 January 2010, DI Maberly spoke to a representative from Vodafone. She told DI Maberly that she did not confirm any numbers to Nick Davies.[565]

8.179 On 1 February 2010, the MPS received a request from Nick Davies under Freedom of Information Act 2000; this included requests for the total number of full names, partial names and initials including possible misspellings and duplications, which were listed on the database and the total number of mobile phone numbers (full and partial).

[562] Emails not published
[563] Not published
[564] Not published
[565] Not published

8.180 On 9 February 2010, Mr Yates wrote again to the Chairman of the CMS Committee and contended that during his evidence in September 2009 he had answered the questions as fully as possible. He stated in that letter that:[566]

> *"… Since that appearance, and in accordance with my initial press statement, I have been attempting to ensure that the police have taken all proper, reasonable and diligent steps to inform all those individuals where there is any evidence that they may have been subject of any form of interception. This has involved considerable and time consuming work, in particular the use of an IT process previously unavailable. Even now we cannot with any certainty answer questions relating to identifying individuals and whether or not they were a victim of interception …*
>
> *"… whenever a name in whatever context was identified it was captured and put onto an MPS system. The name could range from initials, single names right through to multiple variations and spellings of a host of fore and/or surnames. To even attempt to discern from the material to what extent this data refers to distinct individuals or for what purpose would have required extensive work beyond the scope of the criminal investigation and would not have been a proportionate use of police resources.*
>
> *"A similar process would then have had to be undertaken to link phone numbers and or voicemail messages to these individuals.*
>
> *"What we can say is that where information exists to suggest some form of interception of an individual's phone was or may have been attempted by Goodman and Mulcaire, the MPS has been diligent and taken all proper steps to ensure those individuals have been informed."*

8.181 The latter paragraph indicates that the police had still failed to ascertain or recognise the extent of the failure of the victim notification strategy despite having identified, initially at least, the importance of notifying all those whose privacy had potentially been invaded.

8.182 DCS Williams prepared a report entitled "Options for Dealing with the potential 'victims' issue".[567] It is undated, but it is apparent from the content that it was drafted after the MPS received the request issued under the Freedom of Information Act but before the response which was dated 29 March 2010.[568] DCS Williams made reference to the fact that DI Maberly had examined the 91 individuals whose names, mobile phone numbers and pin codes appeared in the papers seized from Mr Mulcaire and identified 13 people who:

> *"will not have been contacted by us and potentially the service providers and from the billing data provided as part of the original investigation, there are calls that are greater than 10 seconds (i.e. enough to enter the voicemail and listen to any message left as per the criteria used for the trial)*
>
> *"Albeit not proved at an evidential level that interception has taken place, if the data is correct then there is a case for saying that for these individuals the possession of their name/mobile/pin has probably gone beyond more than merely preparatory and therefore there is suspicion that some form of 'phone tapping' may have taken place. The following are options for informing them.*
>
> ***"Option 1***
>
> *"Police try to contact these people using the mobile numbers listed by Mulcaire and tell them that they fall into this category.*

[566] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-102.pdf
[567] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-9.pdf
[568] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-19.pdf

"If we did this I would suggest we are quite firm on saying that we are not investigating the case, we are simply carrying out John Yates' promise to inform people and if they have any concerns to contact their service provider.

"If we cannot contact them, because the phone is now out of use or has moved on to someone else then that would be the end of the process on the basis that we have ***'been diligent, reasonable and sensible, and taken all proper steps.'***

"Issues to consider: –

This case is now nearly 4 years old, we are not carrying out an investigation and all the time we are spending public money on something that is not making anyone safer. At best we would be handing someone an opportunity to make personal gain through the civil courts which does not assist the wider public good.

It probably would [be] possible to undertake further enquiries beyond ringing the phone numbers to try to contact those individuals. A view might be that some of the people are well known and it would have been 'easy' to make contact. However, it might not be as easy as it seems, because we could be limited in terms of our full range of research methods as this is not an investigation and that could delay notification in some instances. Equally the more lengths we go to [to] contact individuals, potentially through other people, we risk breaching their anonymity around this case, again for no great gain. Where is the balance of reasonableness?

For some of the 13 we are not sure who they are/their relevance in terms of known individuals.

This is something that could be done immediately, before the Nick Davies FOIA letter goes out.

"Option 2

We approach the service providers directly and/or through Jack Wraith (who originally coordinated much of the contact/press lines with the service providers) and supply them with details of these last few people and ask them to clarify whether or not they have any concerns and make contact with the customer.

"Issues to consider: –

This would share the responsibility for determining who is a 'victim' with the service providers as it was the weaknesses in their system that has caused all this work for us and in theory if they had any concerns back in 2006 they should have contacted their customers.

This would take an unknown time and it is important to send out the Nick Davies FOIA this week.

"Option 3

We could complete Option 1 immediately and then consider pursuing the remainder through option 2. If the combination of both did not make contact then that would be deemed reasonable and diligent."

The paper did not reach a conclusion as to which option should be selected.

8.183 It is not clear whether any further victims were informed following this paper being written, but it does indicate a clear lack of enthusiasm for informing any further potential victims, despite the undertaking given by Mr Yates in July the previous year. It appears to have been considered to be a time consuming and expensive exercise for no real gain. There were to be no further charges and one of the purposes of informing potential victims was to enable

them to take steps, if so advised, to seek whatever redress they saw fit: the enforcement of privacy rights in the civil courts, therefore, did not appear to register with the police as a worthwhile outcome. In the circumstances, the lack of appetite for ensuring that all potential victims were informed was a misjudgement.

8.184 It was noted in the minutes of a Gold Group meeting on 10 September 2010 that DCS Williams was to provide a brief on the victim strategy to date. At a further meeting on 17 September 2010 the approach for dealing with "potential new victims" was discussed. It was recorded that a strategy for new victims was being devised and that the proposed course was to write to each prospective victim and ask them to approach their service provider to see if they held any information to support their suspicion.[569] There was also an action point requiring DCS Williams *"to provide details to JY of notifications to potential victims"*.

8.185 In October 2010, Nick Davies reported that he had contacted the mobile phone service providers and ascertained that not all the victims had been contacted. The MPS began asking the service providers, in terms, which victims they had contacted and asking them to notify those not yet contacted. It is remarkable that this had still not been done, particularly given the earlier correspondence from the phone companies which indicated that O2 had notified customers but only at their own instigation and that Orange and Vodafone had not notified any customers. The minutes of a Gold Group meeting held on 21 October 2010[570] recorded that DCS Williams had completed the previous action that he provide details to Mr Yates of notifications to potential victims and that there was an on-going action involving liaison by DCS Williams with the telephone companies to establish which victims they had informed and cross-compare them with the list compiled by the MPS. The action continued: *"If victims remain outstanding consideration of joint letter (MPS and telephone companies) to inform them accordingly"*.

8.186 It was following this meeting that DCS Williams wrote to O2, Everything Everywhere (formerly Orange) and Vodafone asking them whether those who they (the phone companies) had identified as potential victims during the 2005 to 2006 investigation had been contacted.[571] He asked them, if they had not informed those potential victims, to make arrangements to bring to their attention the information that suggested they might have been victims. He also asked them to provide those customers with the MPS single point of contact. It is noteworthy that, even in this letter, DCS Williams was not verifying whether the original victim notification strategy had been implemented because that would have required him to ask whether the phone companies had completed the two stages: that is to say, they had both identified all customers whose voicemail boxes had been dialled by the suspect numbers and then notified those customers.

8.187 On 2 November 2010, Orange responded stating that no Orange customers had been contacted and that at no point during the investigation, or subsequently, had the MPS asked Orange or T-Mobile to contact any potential victims.[572] The letter also stated:

> *"Orange assisted the investigation by providing a list of mobile numbers that had been called by a set of telephone numbers supplied to us by the MPS. Orange has no knowledge if those Orange mobiles were being called legitimately or with the intention of attempting to access their voicemail without authorisation. This was part of the police investigation and for the MPS to identify."*

[569] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-29.pdf
[570] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-B.pdf
[571] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-C.pdf
[572] pp1-2, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-D2.pdf

8.188 On 12 November 2010, O2 responded by saying:[573]

> *"I can confirm that the O2 customers identified in 2006 by us as potential victims of voicemail interception were contacted at the time and given advice …"*

8.189 Finally, on 22 November 2010, Vodafone dealt with the enquiry in the following terms:[574]

> *"I am surprised that you say that you thought at the time of the investigation that "all of the people potentially identified as being 'victims' had been 'contacted' by Service Providers, including Vodafone. Whilst we were able to furnish the police with information and data requested, it is not for Vodafone to determine who is a "potential victim" in a police led investigation … This is something for the police to establish and it is for the police to take such steps to inform potential victims of crime as they deem appropriate, which I accept could have included asking Vodafone to contact a given list of customers …*
>
> *"A search of our files in relation to the matter has not revealed any request from your officers that we do otherwise".*

8.190 The police thereafter identified that in fact 58 people out of the list of 91 names with PIN numbers associated had not yet been contacted.

8.191 As regards this failure of this second attempt to ensure that all potential victims had been informed, Mr Yates said that the exercise had been conducted with the very best intentions but that it was *"fairly torturous"*.[575] Mr Yates accepted responsibility for its failure and explained it as follows:[576]

> *"… the day-to-day management of the exercise to place all documentation on the Holmes computer was not at the level I expected or that was required. This resulted in some material not being placed on the system which resulted in incomplete or incorrect responses to a number of people who were affected. This is a matter of great personal regret."*

8.192 It should be noted, however, that the process of scanning the documents in order to create a searchable database was not implemented to assist in positively identifying individuals who had not been informed but who should have been; rather it was to respond to individual requests for information from people who wanted confirmation whether or not they were potential victims. I find that the MPS (and, in particular, Mr Yates, DCS Williams and DCS Surtees) failed to take effective steps, at any time before November 2010, to ensure that those potential victims who had not been informed were informed as soon as practicable. They failed even to realise that the victim notification strategy had failed or the extent of its failure until Orange and Vodafone spelled out in terms that they had not notified their customers, nor been asked to do so. These failings on the part of the police are difficult to explain. The most likely explanation in my judgment is that the officers concerned did not look beyond the assumption that it had worked, at least substantially. Once more, however, there is no evidential basis for inferring that the police approach was influenced in any way by relationships with NI.

[573] p3, *ibid*
[574] p4, *ibid*
[575] p88, lines 18-24, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[576] p38, para 122, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf

8.193 It is worthwhile briefly to revisit the failure to identify that Lord Prescott was a potential victim. By letter dated 15 December 2009, he was eventually informed by the Directorate of Legal Services at the MPS that he was a "person of interest" to Mr Mulcaire in that there was a piece of paper containing the words "John Prescott" and "Hull", and two self-billing tax invoices dated 7 and 21 May 2006, addressed to News International Supply Company Limited and containing the words *"Story – Other Prescott Assist – TXT"* and *"Story – Other Prescott Assist – TXT: Urgent"*.[577] He was not, however, alerted to the more concerning references to his adviser, her phone numbers and her pass codes, which had been discovered in the short space of time after Mr Mulcaire's arrest but before his interview. Mr Yates attributed the failure to indexing problems on the HOLMES database:[578]

> *"I think what happened, and I say – and I've absolutely stated this in my statement and accepted it, that there was an indexing issue around the name John Prescott being linked to his – I think it was his adviser, whose name I would never have known or could never – I don't think anyone could have made the link, to be honest …"*

8.194 This is not, however, the complete answer. In his evidence, Mr Yates stressed with some force that he checked on a number of occasions whether there was evidence that Lord Prescott had been a victim and that he always received the same answer, upon which he understandably relied[579]. He emphasised:[580]

> *"… I cannot tell you the amount of times I checked and sought further and better particulars about the possibility that Mr Prescott's phone had been interfered with. It would be literally scores – over the following months ..."*

He continued:[581]

> *"… Because I was so concerned, the idea of misleading the Deputy Prime Minister is not something I'd relish and I was absolutely desperate to get to the bottom if there was something there."*

8.195 DCS Williams has said that he briefed Mr Yates to the best of his ability; that he does not believe that all the material came to light until it had been scanned onto the HOLMES system some months later; and that he ensured that he showed Mr Yates all the material as it became available, including references to Tracey Temple. For the reasons explained above, I make no finding as to precisely what was brought to the attention of Mr Yates but, to say the very least, it is disappointing that what was inferred by the interviewing detectives within hours of the material being seized was not more clearly communicated to Mr Yates as he was being pressed by the Deputy Prime Minister.

The PCC response

8.196 Although this will be discussed later in this Report, as part of this narrative, it is worth including the response of the PCC. On 9 July 2009 the following statement was issued:

[577] *R (Bryant, Montague, Paddick and Prescott) v Commissioner of Police of the Metropolis* [2011] EWHC 1314 (Admin)
[578] p68, lines 5-10, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf
[579] This is probably because DCS Williams did not consider that the possible targeting of Lord Prescott's staff constituted sufficient indication that he was a potential victim although it is difficult to understand why he would reach that conclusion because the link to Lord Prescott's staff had been made: para 8.89 above.
[580] p66, lines 7-11, *ibid*
[581] p69, lines 9-12, *ibid*

> *"The PCC has previously made clear that it finds the practice of phone message tapping deplorable. Any suggestion that further transgressions have occurred since its report was published in 2007 will be investigated without delay. In the meantime, the PCC is contacting the Guardian newspaper and Information Commissioner for any further specific information in relation to the claims, published today about the older cases, which suggest the Commission has been misled at any stage of its inquiries into these matters."*

8.197 The PCC was concerned about two issues: whether it had been misled during its 2007 inquiry and whether its recommendations to the industry to help prevent any repetition of the criminal activity had failed. It launched a further investigation, taking evidence from the NoTW, the Guardian and the Information Commissioner's Office.[582]

8.198 On 27 July 2009 the PCC wrote to Mr Myler asking a number of questions, including the following:[583]

> *"Does it remain your position that the illegal behaviour of Clive Goodman was a rogue exception and that no other journalists or executives of the newspaper were aware of the practice of phone message tapping by anyone employed by the paper?"*

8.199 In his letter of response dated 5 August 2009 Mr Myler stated that the allegations in the Guardian were *"not just unsubstantiated and irresponsible, they were wholly false."*[584] In response to the particular question quoted in the paragraph above he said:[585]

> *"Our internal enquiries have found no evidence of involvement by News of the World staff other than Clive Goodman in phone message interception beyond the e-mail transcript which emerged in April 2008 during the Gordon Taylor litigation and which has since been revealed in the original Guardian report. That email was dated June 29 2005 and consisted of a transcript of voicemails from the phone of Gordon Taylor and another person which had apparently been recorded by Glenn Mulcaire. The email and transcript were created by a junior reporter (who has since left the newspaper). When questioned after the email was supplied to us by Gordon Taylor's lawyers in April 2008, the junior reporter accepted that he had created the relevant email document but had no recollection of it beyond that. Since by the end of June 2005 he had been a reporter for only a week or so (having been promoted 'off the floor' where he had been a messenger) and since the first months of his reporting career consisted largely of transcribing tapes for other people, his lack of recollection when questioned three years later is perhaps understandable.*
>
> *"Email searches of relevant people … failed to show any trace of the email being sent to or received by any other News of the World staff member.*
>
> *"Those who might have been connected to the relevant story … denied ever having seen or knowing about the relevant email and no evidence has been found which contradicts these assertions".*

8.200 Mr Myler was asked during his evidence whether his internal enquiries had in fact demonstrated that the allegation made by the Guardian that there had been hacking into

[582] para 5.1, PCC 2009 hacking report , http://www.pcc.org.uk/news/index.html?article=NjAyOA
[583] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Exhibit-SA-V15.pdf
[584] para 9.2, PCC 2009 hacking report, http://www.pcc.org.uk/news/index.html?article=NjAyOA
[585] *ibid*

thousands of mobile phones was unsubstantiated and irresponsible. He was asked to put to one side what the police might or might not have found. Mr Myler responded as follows:[586]

> *"I didn't have any direct information that our internal enquiries had gone to that point, and as I said earlier, one of the things that weighed heavily with me when I came in was the fact that the police hadn't interviewed anybody else other than Goodman in their enquiries."*

8.201 To the suggestion that, when making this assertion to the PCC, he had not relied on any information that he had obtained through internal enquiries Mr Myler said:

> *"Other than the appeal that Mr Goodman – I had to conduct with the head of human resources and the allegations that he made, and then talking to those individuals who he made allegations against. There was no evidence provided to me to support what the Guardian had said at all."*

8.202 It was put to Mr Myler that his evidence had been that after June 2008 he no longer believed the single rogue reporter defence (on the basis that it was untenable after the "for Neville" email was discovered) but that in this letter to the PCC he was effectively stating that there was no evidence which went beyond Mr Goodman and therefore that the single rogue reporter defence was true. He said:

> *"Well, the rogue reporter defence failed to hold once the 'for Neville' email was discovered. And I made that clear to the Select Committee I think in July of 2009, I think it was, about its significance…*
>
> *"But – yes, and that clearly, perhaps, was an error, because this letter was dated 5 August and I'd appeared before the Select Committee in the month previously. So I'm sure that the PCC were aware of that, if that – clearly that was following my evidence to the Select Committee, which was very heavily covered."*

8.203 I am afraid that I find this response was unconvincing. It is not and cannot be acceptable for Mr Myler to rely on the evidence he gave to the Select Committee to support the proposition that the PCC would not have been misled by an entirely contradictory assertion that was contained in his response to them. On any showing, what he said to the PCC was neither full nor frank.

8.204 In addition, Mr Myler told the PCC that the process of internal investigation had been rigorous and that News Group had instructed Burton Copeland, an independent firm of solicitors, to deal with further police inquiries after the arrests of Mr Mulcaire and Mr Goodman. He claimed that Burton Copeland were given: [587]

> *"every financial document which could possibly be relevant to the paper's dealings with Mulcaire, and they confirmed that 'they could find no evidence from these documents or their other enquiries which suggested complicity by the News of the World or other members of its staff beyond Clive Goodman in criminal activities'."*

8.205 This is the most that the Inquiry has been told about the work carried out by Burton Copeland given that NI has not waived legal professional privilege. As referred to[588] there is no available information about what documents were given to Burton Copeland (beyond certain limited

[586] p48, lines 5-10, Colin Myler, http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf
[587] para 9.2, PCC 2009 hacking report, http://www.pcc.org.uk/news/index.html?article=NjAyOA
[588] para 3.40 above

financial documentation); what sources of information they were able to access; the precise terms of their instruction; what investigations they made; or what, if any, caveats surrounded their conclusions. As a result, the reliance by Mr Myler on their work is hardly persuasive.

8.206 Among its conclusions, the PCC found as follows:[589]

> *"…While people may speculate about the email referencing 'Neville', the Taylor settlement, and the termination payments to Mulcaire and Goodman, the PCC can only deal with the facts that are available rather than make assumptions. The PCC has seen no new evidence to suggest that the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire, or evidence that News of the World executives knew about Goodman and Mulcaire's activities. It follows that there is nothing to suggest that the PCC was materially misled during its 2007 inquiry."*

The CMS Committee reaction

8.207 The CMS Committee considered that the Guardian article cast doubt on the evidence they had been given by NI executives in 2007 and so reopened the hearings in the inquiry (launched in November 2008) into press standards, privacy and libel; the purpose was to examine whether there was any evidence of a widespread conspiracy at the NoTW. The Committee heard evidence from representatives of the Guardian, the PCC, the Information Commissioner and the MPS as well as from then current and former NI executives. It also received written evidence from the DPP and Mark Lewis, the solicitor who acted for Gordon Taylor. The NI witnesses comprised Tom Crone, Colin Myler, Andy Coulson, Stuart Kuttner and Les Hinton. The Committee also invited Glenn Mulcaire, Clive Goodman, Neville Thurlbeck and Rebecca Brooks to give evidence but all declined (save for Mr Thurlbeck who was prepared to give evidence but only in private). The Committee decided not to use its powers of compulsion for reasons of *"time and practicality"*.[590]

8.208 In giving evidence to the Committee, NI witnesses continued to assert that Mr Goodman had acted alone. Mr Hinton told the Committee:[591]

> *"There was never any evidence delivered to me that suggested that the conduct of Clive Goodman spread beyond him."*

8.209 In response to questions suggesting that termination payments to Mr Mulcaire and Mr Goodman could be interpreted as an attempt to prevent them speaking out about practices at the newspaper, Mr Hinton said he had authorised the payments on the advice of specialist employment lawyers.

8.210 Mr Coulson told the Committee that during his time as editor he *"never condoned the use of phone hacking"* and that he did not have *"any recollection of incidences where phone hacking took place"*.[592] He said: [593]

> *"What we had with the Clive Goodman case was a reporter who deceived the managing editor's office and, in turn, deceived me. I have thought long and hard about this (I did when I left): what could I have done to have stopped this from happening? But if*

[589] para 13.2, PCC 2009 hacking report, *ibid*
[590] p97, para 407, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-37-Culture-Media-and-Sport-Select-Committee-Press-standards-Privacy-and-Libel-Rport-part-1.pdf
[591] Q2106, CMS Report on Press Standards Privacy and Libel
[592] Q1550, *ibid*
[593] Q1554, *ibid*

a rogue reporter decides to behave in that fashion I am not sure that there is an awful lot more I could have done."

When asked whether he commissioned an enquiry when he found out about the arrests, Mr Coulson said:[594]

"Yes. Obviously we wanted to know internally very quickly what the hell had gone on. Then I brought in Burton Copeland, an independent firm of solicitors to carry out an investigation. We opened up the files as much as we could. There was nothing that they asked for that they were not given."

8.211 Mr Coulson did concede that Burton Copeland were tasked *"with the primary purpose, I have to say, of trying to find out what happened in relation to Clive"*.[595]

8.212 On the remit of the internal investigations Mr Myler said:[596]

"My recollection was that a very thorough investigation took place where there was a review of everything from how cash payments were processed …"

When asked about the width of the internal enquiry Mr Crone gave the following account:[597]

"… By the time I got back, which must have been August 15, Burton Copeland were in the office virtually every day or in contact with the office every day. My understanding of their remit was that they were brought in to go over everything and find out what had gone on, to liaise with the police … What I think was being enquired into was what had gone on leading to the arrests; what, in the relationship with Mulcaire, did we have to worry about. Burton Copeland came in; they were given absolutely free-range to ask whatever they wanted to ask. They did risk accounts and they have got four lever-arch files of payment records, everything to do with Mulcaire, and there is no evidence of anything going beyond in terms of knowledge into other activities."

8.213 Again, these assertions cannot be tested because legal professional privilege has not been waived in relation to the instructions given to Burton Copeland, the material provided, or, indeed, any aspect of the work done. I do no more than record what Mr Crone said.

8.214 The Committee concluded, in their report published on 24 February 2010, that:[598]

"Evidence we have seen makes it inconceivable that no-one else at the News of the World, bar Clive Goodman, knew about the phone-hacking … We cannot believe that the newspaper's newsroom was so out of control for this to be the case."

8.215 The Committee also noted that the newspaper's enquiries had been far from "full" or "vigorous", as it – and the PCC – had been assured. It was struck by the *"collective amnesia afflicting witnesses from the News of the World"*.[599] It concluded that:[600]

[594] Q1719, *ibid*
[595] Q1558, *ibid*
[596] Q1394, *ibid*
[597] Qs 1395-1396, *ibid*
[598] p103, para 440, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-37-Culture-Media-and-Sport-Select-Commitee-Press-standards-Privacy-and-Libel-Rport-part-1.pdf
[599] p103, para 442, *ibid*
[600] p1114, para 493, *ibid*

> *"a culture undoubtedly did exist it the newsroom of the News of the World and other newspapers at the time which at best turned a blind eye to illegal activities such as phone-hacking and blagging and at worst actively condoned it …"*

8.216 The determination of NI to maintain a line that the editor and the legal director believed was not true in the face of two investigations by the CMS Committee and two investigations by the PCC is extraordinary and, at the very least, a demonstration of loyalty to the NoTW and its reputation which says a great deal about the culture of the paper (to say nothing of its practices and its approach to ethical propriety). In fact, the NoTW maintained the "one rogue reporter" defence until the Spring of 2011 when three NoTW journalists were arrested as part of Operation Weeting.

8.217 The Committee also considered the actions of the MPS. On 2 September 2009, Mr Yates and DCS Williams gave evidence to the CMS Committee. Mr Yates told the Committee that the approach during the investigation had been that an offence under s1 RIPA 2000 was committed only where the messages intercepted had not previously been listened to by the intended recipient. He said:[601]

> *"Our job, as ever, is to follow the evidence and to make considered decisions based upon our experience which ensures limited resources are used both wisely and effectively and, supported by senior counsel, including the DPP, the collective belief is that there were then and there remain now insufficient grounds or evidence to arrest or interview anyone else and, as I have said already, no additional evidence has come to light since."*

8.218 Mr Yates described his July 2009 review in the following terms:[602]

> *"… I considered the approach adopted by the prosecution team in their papers, what were they actually focused on, and it was those eight cases. I considered the amount of complexities and challenges around the evidence then and what evidence would be available now, particular in relation to the availability of the data. I considered the level of disclosure and who would review the material. In this case senior counsel had reviewed the material. I considered how the case was opened after the guilty pleas. I considered whether there was anything new in the Guardian articles in terms of additional evidence, and I considered finally our approach to the victims, how they were managed and dealt with and the impact of further inquiries, if they had been necessary, on them, and I came to the view, and I appreciate you all thought it was rather quick, that there was no new evidence in this case. It was a conflation of three old stories."*

8.219 He said of the Guardian article that:

> *"there is essentially nothing new in the story other than to place in the public domain additional material which had already been considered by both the police investigation into Goodman and Mulcaire and by the CPS and the prosecution team. There was certainly no new evidence and, in spite of a huge amount of publicity and our own request of the Guardian and others to submit to us any additional evidence, nothing has been forthcoming since."*

[601] pEv359, Q1890, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-38-Culture-Media-and-Sport-Select-Commitee-report-part-2.pdf
[602] ppEv361-362, Q1913, *ibid*

8.220 A key conclusion of the Committee was that the police had been wrong not to investigate further the contract or the "for Neville" email and that the reasons given on behalf of the MPS were not adequate:[603]

> *"In 2006 the Metropolitan Police made a considered choice, based on available resources, not to investigate either the holding contract between Greg Miskiw and Glenn Mulcaire, or the 'for Neville' email. We have been told that choice was endorsed by the CPS. Nevertheless it is our view that the decision was a wrong one. The email was a strong indication both of additional lawbreaking and of the possible involvement of others. These matters merited thorough police investigation, and the first steps to be taken seem to us to have been obvious. The Metropolitan Police's reasons for not doing so seem to us to be inadequate."*

8.221 As regard the PCC, the Committee found as follows:[604]

> *"We accept that in 2007 the PCC acted in good faith to follow up the implications of the convictions of Clive Goodman and Glenn Mulcaire. The Guardian's fresh revelations in July 2009, however, provided good reason for the PCC to be more assertive in its enquiries, rather than accepting submissions from the News of the World once again at face value. This Committee has not done so and we find the conclusions in the PCC's November report simplistic and surprising. It has certainly not fully, or forensically, considered all the evidence to this inquiry."*

9. September 2010: The New York Times

9.1 On 1 September 2010 the New York Times published an article entitled *"Tabloid Hack Attack on Royals, and Beyond"*.[605] The article reported that, in the summer of 2010, five people had issued claims alleging that the NoTW had been intercepting their voicemail messages; it also referred to the judicial review of the handling by the MPS of the investigation. The article claimed that:

> *"The litigation is beginning to expose just how far the hacking went, something that Scotland Yard did not do. In fact, an examination based on police records, court documents and interviews with investigators and reporters show that Britain's revered police agency failed to pursue leads suggesting that one of the country's most powerful newspapers was routinely listening in on its citizens.*
>
> *"The police had seized files from Mulcaire's home in 2006 that contained several thousand mobile phone numbers of potential hacking victims and 91 mobile phone PIN codes. Scotland Yard even had a recording of Mulcaire walking one journalist – who may have worked at yet another tabloid – step by step through the hacking of a soccer official's voice mail, according to a copy of the tape. But Scotland Yard focused almost exclusively on the royals case, which culminated with the imprisonment of Mulcaire and Goodman. When police officials presented evidence to prosecutors, they didn't discuss crucial clues that the two men may not have been alone in hacking the voice mail messages of story targets."*

9.2 The article also reported that *"several investigators"* had said in interviews that the MPS was reluctant to conduct a wider inquiry in part because of its close relationship with the NoTW.

[603] p108, para, 467, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-37-Culture-Media-and-Sport-Select-Commitee-Press-standards-Privacy-and-Libel-Rport-part-1.pdf
[604] p109, para 472, *ibid*
[605] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-21.pdf

It reported that during interviews with more than a dozen reporters and editors at the NoTW claims were made that voicemail interception was *"an industry-wide thing"*, that *"Every hack on every newspaper knew this was done"* and that it was pervasive at the NoTW. The article alleged that illicit methods of obtaining confidential information were known as *"the dark arts"*. The article also made the following allegations:

(a) That in the documents seized from Mr Mulcaire there were at least three names of other NoTW journalists.

(b) That the MPS had a symbiotic relationship with the NoTW: *"The police sometimes built high-profile cases out of the paper's exclusives, and News of the World reciprocated with fawning stories of arrests"*.

(c) The MPS detectives had faced pressure from within their own organisation and were reminded of the *"long-term relationship with News International"*.

(d) The MPS did not discuss certain evidence with the CPS, including the notes which suggested the involvement of other reporters.

(e) By *"sitting on"* the evidence for so long, the MPS had made it impossible to get information from phone companies, which do not keep records indefinitely.

(f) By only notifying a small proportion of those whose phones may have been illegally accessed, the MPS had effectively shielded the NoTW from a large number of civil actions.

9.3 On 3 September 2010 one of the reporters quoted in the New York Times article, Sean Hoare, was interviewed on BBC Radio 4. He repeated the expression *"the dark arts"* and said that "phone hacking" was endemic in the industry. He made clear allegations which, in order to avoid prejudice to the ongoing investigation, are not repeated here.

9.4 Given the resurgence of the allegations and the additional detail provided by the New York Times and Mr Hoare, Mr Yates should have reflected carefully on the exercise that he conducted in 2009 and reviewed, in more depth, what evidence was gathered during Operation Caryatid and what it might show. Once again, however, he failed to engage with the substance of what was alleged. He did not, as he should have done, revert to DCS Williams and DCS Surtees and ask them for full details of what the *"crucial clues"* or leads might be that indicated that Mr Goodman and Mr Mulcaire were not acting alone or ask them to explain fully what indications there might be that the three named journalists had been involved in the conspiracy. It is quite clear that having made the dogmatic and over-hasty decision on 9 July 2009, he then failed to assess anything that might conceivably challenge the correctness of his initial decision with anything approaching an open mind. It remained the case that Mr Yates was not prepared to entertain the possibility that there was anything in the vast quantity of documentation held by the police, that had not been analysed, that could itself generate lines of enquiry; he was interested only in the question of whether the New York Times could itself produce evidence.

9.5 On 5 September 2010 Mr Yates issued a press statement which included the following:[606]

> *"The New York Times contacted the MPS about their investigation. Our stance remains as before. We have repeatedly asked them for any new material that they have for us to consider. We were never made aware of the material from Sean Hoare before the article's publication. We have sought additional information from them and will*

[606] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-22.pdf

consider this material, along with Sean Hoare's recent BBC Radio interview, and will consult the CPS on how best to progress it."

9.6 Mr Yates also took the opportunity to re-state the lack of evidence that Lord Prescott had been a victim:

"Separately, we are aware of the current claims in the media from, amongst others, Lord Prescott about his view that his phone was hacked. There remains to this day no evidence that his phone was hacked by either Mulcaire or Goodman. This is a matter of public record."

9.7 On 6 September 2010 Mr Yates chaired a Gold Group meeting. Neither DCS Williams nor DCS Surtees were invited to the meeting. The terms of reference for the Gold Group[607] were stated to be: *"To provide ACPO oversight of the various MPS strands relating to 'phone hacking'"*. The strands were listed and included *"New information in the public domain by ex News of the World employees, which relates to Andy Coulson, Sean Hoare, Sharon Marshall, Ross Hall, Brendan Montague and Paul McMullan"* and *"New allegations or new material as yet unknown"*. The summary of the minutes of the meeting on 6 September 2010 stated that:[608]

"JY explained that the purpose of the actions required was to seek clarity as to whether there was any new evidence amongst the recent media reporting before making any further decision. This is not, at this stage, a further investigation. DSupt Haydon (as ACSO's former Staff Officer) will lead this separate and independent effort to clarify the above."

9.8 Action points required Detective Superintendent Haydon (who had been appointed SIO) to review the transcripts of different statements in the public domain, liaise with the CPS to discuss any new material that might come to light and consider interviewing Sharon Marshall about the statements made in her book. There was also an action point for Mr Yates to consult the DPP or an appropriate deputy. Late in the evening of 6 September 2010, Mr Yates made contact with the CPS. According to the Chief Crown Prosecutor for London, to whom he spoke, Mr Yates said that he wanted to update Mr Starmer and let him know that he (Mr Yates) did not intend to reopen the investigation but merely to clarify what had been said in the New York Times article by inviting the journalists to provide their material and by interviewing Sean Hoare; thereafter, they might then seek the advice of the CPS.

9.9 On 8 September 2010 D/Supt Haydon sent an email to the CPS setting out the action the MPS was proposing to take following the article. In his email he said that he had been asked:[609]

"to clarify the new information in the public domain (since 1st September 2010) to establish if there is any new evidence in the phone hacking case … I wish to make it clear that I am not reinvestigating the original case so knowledge of the case and retrieving case papers is not necessary."

9.10 On 9 September 2010, Mr Yates convened a Gold Group meeting to agree current actions. D/Supt Haydon was directed to define the terms of reference for the work being undertaken and extend the remit to cover additional individuals who were coming forward.[610] The exercise, although stated not to be an investigation, was subsequently given the name Operation Varec and the following terms of reference:[611]

[607] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-23.pdf
[608] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-24.pdf
[609] Not published
[610] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-26.pdf
[611] Not published

> *"To assess whether allegations being made in the media since 1st September 2010 provided any new evidence of criminal offences, namely unlawful interception of communications, at News of the World, in 2005/2006."*

9.11 At a meeting of the Gold Group on 10 September 2010, it was noted that the new witnesses, who had been identified by the New York Times article, would need to be approached as part of Operation Varec. D/Supt Haydon informed those present that the New York Times had been asked for their material.[612]

9.12 At around this time, D/Supt Haydon asked a HOLMES supervisor to carry out a search on the HOLMES database for evidence that Lord Prescott had been targeted by Mr Mulcaire. In an email dated 10 September 2010,[613] he was informed by that supervisor that the name "John Prescott" appeared on p183 of seven notepads seized from Mr Mulcaire and that word "PREZA" appeared once in handwritten notes. The references to "JLP reset PIN 3333" and "JLP" were also brought to his attention but it was suggested to him that, given the surrounding information, they related to Jamie Lowther-Pinkerton. He was also informed that there were no results for searches on popular media nick-names for Lord Prescott. It appears that Lord Prescott was not given this information, but it is right to repeat that, in December 2009, he had been informed that his name and other details appeared in the Mulcaire documents.

9.13 Reverting to the position of the CPS, following the publication of the New York Times article, Mr Starmer quickly took stock of what action he needed to take. Mr Starmer explained that:[614]

> *"Whilst respecting the views of David Perry QC and Louis Mably, I had in fact had concerns for some time about the emphatic view of the construction of sections 1 and 2 of RIPA that had been articulated by Mr Perry QC in 2009 and adopted by me in my letters and evidence to the CMS committee. I therefore decided that it would be sensible to look again at the matter, particularly since it appeared that the CPS might be required to give the MPS advice in relation to the allegations in the New York Times."*

9.14 In the result, Mr Starmer decided to commission two written advices: the first was to be from original counsel, who would be asked to consider the original papers and give a definitive view of the approach taken to s1 of RIPA in 2006 to 2007; the second advice was sought from fresh counsel, Mr Mark Heywood QC, who had had no previous connection to the case.

9.15 The DPP received the written advice from Mr Perry on 14 September 2010.[615] Having this time had the opportunity to consider the papers, Mr Perry concluded that for purposes of the 2006 prosecution it had not in fact been necessary to resolve the question of whether or not s1 of RIPA required proof that the interception had taken place before the intended recipient had accessed the message (given that Mr Mulcaire had pleaded guilty to the indictment). Having refreshed his memory from the papers, Mr Perry stated that the oral advice he gave in 2006 had been that the proper construction of RIPA was a difficult issue, with tenable arguments either way; and that a narrow approach to the construction of RIPA had not limited the scope of the police investigation.

9.16 Upon receipt of this advice Mr Starmer was naturally concerned that this did not fully correspond with what he had been told in 2009, which itself had been the basis of his letters

[612] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-27.pdf
[613] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-28.pdf
[614] p37, para 125, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[615] Not published

and evidence to the CMS committee. Mr Perry was therefore instructed to advise to whether the "for Neville" email should now be viewed in a different way in the light of his more recent advice. On 16 September 2010, Mr Perry provided a note[616] in which he confirmed that the construction of RIPA set out in his advice written 18 months earlier had been taken from the note drafted by DCS Williams. He also made it clear that his conclusions in relation to the "for Neville" email remained unchanged.

9.17 On 17 September 2010, the DPP received written advice from Mr Heywood.[617] In a sustained and sophisticated analysis of the competing legal arguments, Mr Heywood inclined to the view that the broader construction of RIPA was to be preferred, having regard to the purpose underpinning the legislation and additional materials sent to him by First Parliamentary Counsel. Mr Heywood added that, in any event, even if the narrow interpretation should turn out to be correct, it would make no difference to investigators, because the inchoate offences of conspiracy or attempt would be unaffected by a narrow construction of the legislation.

9.18 In his subsequent dealings with Parliamentary Select Committees, Mr Starmer no longer adhered to a narrow interpretation of RIPA: in essence, he indicated that the approach he intended to adopt would be to advise the police and CPS prosecutors to proceed on the assumption that a court *might* adopt a wide interpretation of sections 1 and 2 of RIPA.

9.19 On 1 October 2010, D/Supt Haydon and another officer had a meeting with Simon Clements and Asker Hussain of the CPS. D/Supt Haydon provided a detailed update on the progress of Operation Varec.[618]

9.20 On 4 October 2010, The Dispatches programme, "Tabloids, Tories and Telephone Hacking", reported allegations that the NoTW had been involved in the unlawful interception of voicemail messages. Following this programme, D/Supt Haydon wrote to Colin Myler asking him to provide relevant material including transcripts of telephone calls or emails that may be related to unlawful interception and a full list of the names of employees who worked on the 'Features' or 'News' desks for the period 2005 to 2006.[619] Mr Myler replied on 13 October 2010, stating:[620]

> *"I am aware of the allegations made in the Dispatches programme, concerning telephone voicemail accessing in 2005-2006. However, I am as sure as I can be that since I became editor of the News of the World in January 2007 neither the newspaper nor its staff have collected or obtained information by means of unlawful interception. Similarly, I am as sure as I can be that neither the newspaper nor its staff are in possession of such material whenever it may have originally been collected."*

9.21 He indicated that they were putting together a list of names which they would forward to him. That list was emailed by Tom Crone to the MPS.[621] D/Supt Haydon then drafted a letter which Mr Crone circulated on his behalf, on 22 October 2010, to 19 members of staff.[622] In that letter D/Supt Haydon explained that he was considering any new material that had come to light as a result of the Dispatches programme and said:[623]

[616] Not published
[617] Not published
[618] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-30.pdf
[619] p1, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-31.pdf
[620] p3, *ibid*
[621] pp1-4, John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-A2.pdf
[622] p5, *ibid*
[623] p6, *ibid*

> *"I understand you were employed on either the News or Features desks during the relevant period – 2005/06. If you feel you are able to assist, and I stress this is in relation to the issue of 'phone hacking' only, then I request you make contact with me on the contact details provided in this letter."*

9.22 Meanwhile, at the CPS, it appears that Mr Starmer was frustrated that the matter was not going to be investigated. Mr Clements recorded in a note of a meeting on 19 October 2010 that Mr Starmer said: *"No one wants to reopen the investigation"*.[624] Mr Starmer explained in evidence that:[625]

> *"… I honestly can't remember what I said at that meeting but I obviously said something. Mr Clements does remember it and wrote it down at the time and thought I was frustrated because it appeared to me that others wouldn't reopen the investigation.*
>
> *"I'd had the meeting back in 2009 where a course of action I thought was reasonably sensible didn't look as if it was going to find favour, and I'd been told in September 2010 that whatever else was going to happen, this was not going to be reinvestigated. I think if I was expressing any frustration, it was probably borne of these two things."*

9.23 On 12 November 2010, D/Supt Haydon submitted to the CPS an "Advice file", dated 10 November 2010, which was a formal request for advice on issues arising from Operation Varec, including whether there was evidence to justify or support a re-opening or re-investigation of Operation Caryatid and the prospects of prosecuting any individuals. He stressed in the document that his task had not been to re-open or re-investigate the cases of Mr Goodman and Mr Mulcaire, but noted that there were links and crossovers with the prosecution. He set out details of the four phases of the investigation (or scoping exercise).

9.24 The first phase had been to ask the New York Times to provide any material in support of its article. The paper had refused the request, claiming journalistic privilege. It was also reported that:

(a) The police interviewed Sean Hoare under caution in the hope that they could convert his claims and admissions into evidence, but he made no comment.

(b) The police interviewed Sharon Marshall, not under caution, but she did not disclose any new evidence.

(c) The police approached Paul McMullan, a former 'features' journalist at the NoTW, on numerous occasions in order to interview him under caution, but he declined to cooperate.

(d) The police interviewed Brendan Montague, a freelance journalist, not under caution and more as a victim, but he did not disclose any new evidence.

(e) The police interviewed under caution Ross Hall, who had authored the "for Neville" email and that he had given an account of his employment at the NoTW as a runner in 2005/6 but made no disclosures relating to voicemail interception.

(f) The police interviewed Andy Coulson in the presence of his solicitor, who denied any involvement with or knowledge of phone hacking.

9.25 D/Supt Haydon noted that there were no communications data that would support a criminal investigation or prosecution.

[624] p40, lines 3-20, Keir Starmer, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf
[625] p41, lines 9-21, *ibid*

9.26 During phase two the police approached Mr Goodman and Mr Mulcaire but both declined to assist the investigation. Neville Thurlbeck was interviewed under caution. Mr Thurlbeck produced a pre-prepared statement and denied knowledge of ever receiving the "for Neville" email. He also denied any involvement in voicemail interception and refused to answer any further questions. Greg Miskiw was interviewed under caution. He produced a pre-prepared statement in which he outlined his dealings with Mr Mulcaire but refused to answer any further questions. Matt Driscoll was interviewed. He was employed at the NoTW as a sports reporter but was dismissed in 2007 for supposed inaccurate reporting. He said in interview that he knew that voicemail interception was used as a technique but never used the technique himself and that it was not one used on the sports desk where he was employed. The police also sent letters to three supervisors employed by the NoTW who had been named in an anonymous letter. The police did not receive any responses to the letters.

9.27 During phase three, the police wrote to the Producer of the Dispatches programme "Tabloid, Tories and Telephone hacking". In a letter to the MPS dated 22 October 2010, the Controller of legal and compliance for Channel 4 wrote:

> *"Having discussed the matter further with the producers who have direct dealings with the 13 individuals, they do not believe that any of the individuals would be prepared to assist your investigation. I also confirm that having spoken with the producers they do not have any additional evidence that was not included in the broadcast programme that could assist the MPS and that is not already in the public domain."*

9.28 The MPS also wrote to the editor of the Guardian, the Daily Telegraph, the Independent and the NoTW seeking any new or additional material they held that could assist in the MPS investigation. No new material was forthcoming.

9.29 Finally, phase four involved writing to 19 members of staff still employed by the NoTW (paragraph 9.21 above refers) to establish if any could assist or provide any information relating to voicemail interception. No response was received from any of them.

9.30 D/Supt Haydon then set out the following under the heading 'Conclusion':

> *"1. Has the current MPS investigation revealed any further evidence relating to unlawful interception of communications, namely mobile telephone voicemails, involving The News of the World?*
>
> *"It is my view that there remains a vast amount of press and media coverage, claims and allegations but with no substantive 'evidence' in support. There is some possible circumstantial evidence but in the absence of any communications data and any other supporting evidence, this cannot be progressed.*
>
> *"I accept that the evidential position does not meet the threshold for a referral to the CPS but in view of the vast media, public and political scrutiny in this case and due to both the MPS and CPS involvement to date, I consider a referral is appropriate in order to agree a joint current and future position in this case …"*

9.31 On 10 December 2010 Mr Clements advised on Operation Varec on behalf of the CPS.[626] He concluded that the case did not pass the evidential stage of the test contained in the Code for Crown Prosecutors, namely that there must be sufficient evidence to establish that there is a realistic prospect of conviction. He added that he considered that the available evidence in fact fell "well below" the evidential threshold for prosecution. Given the on-going police investigation, it would be inappropriate for me to identify precisely what material had formed

[626] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-E.pdf

part of the papers submitted to the CPS or to consider any analysis of the underlying material. Mr Clements also stated in the advice document that:

> *"I have agreed with Detective Superintendent Haydon that in the future if any revelations come to the attention of the Metropolitan police that he considers could properly be said to constitute new and substantial evidence of offending that we will meet together as a panel and conduct a joint assessment of the material and decide whether further assessment or investigation is likely to provide evidence to support criminal proceedings."*

9.32 The DPP announced the conclusions reached by Mr Clements in a press statement that day.

9.33 Based on Operation Varec, Mr Yates has claimed that the issues raised by the New York Times article were properly scoped in collaboration with the CPS.[627] I do not agree. What Mr Yates scoped was a consideration of the material that had been put in the public domain by the New York Times and the Dispatches programme which itself involved a number of requests and interviews; having regard to the circumstances, it is not surprising that these were unrevealing. What he did not do was go back to the original allegation both in the Guardian and the New York Times, namely, that there was information in the documents seized from Mr Mulcaire which incriminated others at the NoTW. This was the reason for the allegation that was so potentially damaging to the MPS that it was engaged in a cover up. The answer to this allegation was straightforward: without deciding to re-open Operation Caryatid, look at the material to find out if there is anything in it which bears out what has been alleged.

10. December 2010: The Guardian article and the aftermath

10.1 On 15 December 2010, the allegations were provided with a fresh impetus when the Guardian published allegations made by Sienna Miller in her civil claim against NGN and Mr Mulcaire. The article, entitled *"Phone hacking approved by top News of the World executive – new files"* reported that Particulars of Claim filed by Ms Miller alleged that the interception of voicemail messages on phones belonging to members of the Royal Household: *"was part of a scheme commissioned by the [News of the World] and not simply the unauthorised work of its former royal correspondent, Clive Goodman, acting as a 'rogue reporter' as it [had] previously claimed."*

10.2 The Particulars of Claim were based upon documents disclosed to her legal advisers by the MPS following a disclosure application to the High Court. The Guardian article alleged that one of the documents disclosed implied that Mr Mulcaire had been instructed to intercept voicemail messages received by Ms Miller and also by her mother, her publicist, one of her closest friends, as well as Jude Law, her former partner, and his personal assistant. The article also reported that:

> *"The document, which has been released to the Guardian by the high court, suggests that the hacking of the two actors was part of a wider scheme, hatched early in 2005, when Mulcaire agreed to use 'electronic intelligence and eavesdropping" to supply the paper with daily transcripts of the messages of a list of named targets from the worlds of politics, royalty and entertainment."*
>
> *…*

[627] p36, para 115, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf

> *"The document is gravely embarrassing for Scotland Yard, which has held the information about the two actors in a large cache of evidence for more than four years and repeatedly failed to investigate it…*
>
> *"The new evidence implies that the targeting of the royal household, which led to the original police inquiry, was specifically commissioned by the paper.*
>
> *"In or about January 2005 the News of the World agreed a scheme with Glenn Mulcaire whereby he would, on their behalf, obtain information on individuals relating to the following: 'political, royal and showbiz/entertainment'; and that he would use electronic intelligence and eavesdropping in order to obtain this information. He also agreed to provide daily transcripts."*

10.3 The article also alleged that the police had failed to interview four journalists who were implicated by the material already in police possession.

10.4 On 6 January 2011, the Guardian asked the CPS a series of detailed questions about whether or not the CPS had been aware, in 2006, of the evidence that was emerging from the civil action brought by Ms Miller. Mr Starmer explained, frankly, that these were not easy questions to answer given that there was no one to hand within the CPS who had first-hand knowledge of the investigation and prosecution in 2006. Having said that, however, Mr Starmer was becoming increasingly concerned by the evidence emerging from the civil claim and he decided that the time had come for a much fuller exercise. At that stage, what he wanted was an examination of all material available at that time, whether in the possession of the police or the CPS, and for some further assistance to be given to him about what consideration was given to it at the time. He explained: [628]

> *"What then happened … was that as I understood it, some of the information that was emerging from the Sienna Miller civil action I was told had in fact been amongst the unused material. Now, this was the second time this had occurred. The first time was in relation to the Neville email, and now it was happening again in relation to the Sienna Miller material. And I'm afraid at that stage I thought nothing less than a root and branch review of all the material that we have and the police had is now going to satisfy me about this case. And that's why I indicated in fact to Tim Godwin, who I think was then Acting Commissioner, that I had for my part reached the view that we could no longer approach this on a piecemeal basis looking at bits of material and we really had to roll our sleeves up and look at everything."*

10.5 In that context, a meeting took place on Friday 14 January 2011 attended by Mr Starmer, Mr Yates and various other officials and police officers. Mr Starmer opened the meeting by stating that in view of recent events the time may well have come to reconsider everything that is or was available thereby enabling the CPS, if asked, to give comprehensive answers to current and future questions. The immediate riposte of Mr Yates was to assert that if new evidence were available he would examine it but that he did not believe this to be the position. The following appeared in notes of the meeting:[629]

> *"DH [a police officer]: Op Varec is the only new material in terms of G/M. There is nothing new – all the stuff is on the system.*
>
> *"JY: puts both organisations in difficult position: what did we do in 2009?*

[628] pp45-46, lines 16-8, Keir Starmer QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf
[629] Not published

> *"DPP: looked at G/M and the decisions made and whether they were correct. This is a broader examination to go before panel (2006 and subsequent)."*

10.6 In answer to the question whether the mood of the meeting was "all sweetness and light", Mr Starmer stated the following in evidence: [630]

> *"I was absolutely clear in my mind at the beginning of that meeting I was going to settle for nothing less than a full review of all this material unless somebody blocked me access to it, and I approached it in that way. To be fair to Mr Yates, who did not seek to block that approach, and in the end agreed to it, but I have to say but by then I had reached the stage where I really was not in the mood for being dissuaded from my then course of action, I am afraid."*

10.7 Mr Starmer also said that Mr Yates had a number of concerns about how the review would be handled, but did not resist his proposal that there be a root and branch review.[631] Mr Starmer highlighted that Mr Yates was keen that the MPS should request the review rather than having it imposed on them. They therefore agreed that Mr Yates would formally invite the DPP to conduct a review. After the meeting Mr Starmer decided that his Principal Legal Adviser, Ms Alison Levitt QC, should carry it out.

10.8 The account given by Mr Yates of this meeting had a different emphasis, and suggested that he was, indeed, concerned about how matters had been dealt with and did not simply adopt a refrain that he would act if there were new evidence. He stated as follows in his witness statement:[632]

> *"In early January 2011, my level of concern as to how matters had been dealt with to date caused me to formally request the DPP to undertake a review of all the material in police possession. This he agreed to do and he tasked Alison Levitt, QC to undertake this task on his behalf."*

10.9 It should be noted that Mr Yates was not questioned about this meeting or asked if he agreed that he said that both organisations had been put in a difficult position, and if so, what he meant by it.

10.10 That same day Mr Yates wrote to the DPP in the following terms, acknowledging, apparently for the first time, the possibility that there might be evidence in the existing material which would warrant further investigation:[633]

> *"We are both aware that there remain outstanding public, legal and political concerns. This is particularly so in relation to the various and recently reported high profile civil cases …*
>
> *"As a result, I consider it would be wise to invite you to further re-examine all the material collected in this matter. This would also enable you to advise me and assure yourself as to whether there is any existing material which could now form evidence in any future criminal prosecution relating to phone hacking."*

[630] p53, lines 2-10, Keir Starmer QC, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-4-April-2012.pdf
[631] p45, para 151, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Keir-Starmer-QC.pdf
[632] p36, para 117, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf
[633] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY3B-G.pdf

10.11 Also on 14 January 2011 the CPS and the MPS issued a joint press statement to that effect.[634]

10.12 On 26 January 2011, NI provided the MPS with significant new information relating to allegations of voicemail interception at the NoTW in 2005 to 2006, which had apparently been discovered whilst NI was dealing with requests for disclosure in the civil actions. NI had found three key emails implicating an employee other than Mr Goodman. That same day the MPS announced that it was re-opening its investigation into allegations of unlawful voicemail interception at the NoTW. Mr Yates claimed that it was this new evidence that brought about his decision to reopen the investigation.[635]

10.13 Once NI decided to cooperate, the evidential flood gates opened, providing material that had not been made available to the police by Burton Copeland. I can only repeat that it is impossible to ascertain to what material Burton Copeland had access or what advice they provided.

10.14 To complete the chronology, on 4 July 2011, the Guardian reported that the NoTW had "hacked" the mobile phone belonging to Milly Dowler. On 7 July 2011 the final edition of the NoTW was published, with the editorial admitting:

> *"Quite simply, we lost our way … Phones were hacked, and for that this newspaper is truly sorry."*

10.15 On 17 July 2011, for reasons not connected with this investigation but in the light of further allegations relating to his conduct,[636] Sir Paul Stephenson resigned and, on 18 July 2011, Mr Yates also resigned.[637]

10.16 On 20 July 2011 the Home Affairs Committee published its report: *"Unauthorised tapping into or hacking of mobile communications"*. The Committee expressed the following view of the exercise conducted by Mr Yates:[638]

> *"Although what Mr Yates was tasked to do was not a review in the proper police use of the term, the public was allowed to form the impression that the material seized from Mr Mulcaire in 2006 was being re-examined to identify any other potential victims and perpetrators. Instead, the process was more in the nature of a check as to whether a narrowly-defined inquiry had been done properly and whether any new information was sufficient to lead to that inquiry being re-opened or a new one instigated. It is clear that the officers consulted about the earlier investigation were not asked the right questions, otherwise we assume it would have been obvious that there was the potential to identify far more possible perpetrators in the material seized from Mr Mulcaire ..."*

[634] http://www.cps.gov.uk/news/press_releases/102_11/
[635] para 118, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf
[636] These are considered at Part G Chapter 3
[637] John Yates, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY6.pdf
[638] pp45-46, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-43-House-of-Commons-Home-Affairs-Commitee-report-on-unauthorised-tapping-part-1.pdf

11. The past unravels

The civil proceedings before Vos J and the disclosure process

11.1 The civil litigation has attracted extensive public interest and attention. It has also had wider consequences beyond the confines of the claims for damages themselves. In order to understand the full extent of the interception, recording and use of their voicemail messages, so that they could properly present their claims, the claimants made disclosure applications which required NGN and the MPS[639] to disclose various documents.

11.2 By way of example, on 6 December 2010 Vos J ordered the MPS to disclose the following classes of documents to Skylet Andrew:[640]

(a) Telephone records used by Mr Muclaire relating to the accessing of Mr Andrew's voicemail messages.

(b) Documents evidencing communications between Mr Mulcaire and another person concerning the interception activities of Mr Mulcaire in relation to Mr Andrew's voicemail messages.

(c) Documents evidencing communications between Mr Mulcaire and employees of NGN concerning information about Mr Andrew.

(d) Documents concerning payments for information made by NGN to Mr Mulcaire.

(e) Transcripts of Mr Andrew's voicemail messages obtained from Mr Mulcaire.

(f) Documents found during the MPS investigation referring to Mr Andrew or his mobile phone.

11.3 On 17 January 2011, Mr Mulcaire provided information to Mr Andrew indicating that he had supplied information from voicemail messages belonging to Mr Andrew to the news desk at the NoTW, identifying the name of the person whom he alleged had asked him to intercept the voicemail messages.

11.4 As a further example, on 20 July 2011, Hugh Grant and Jemima Khan obtained an order, with the consent of the MPS, for the disclosure of documents concerning the voicemail messages allegedly intercepted by Mr Mulcaire and forming the subject of newspaper articles about them in the NoTW and other newspapers.

11.5 As a result of the claim brought by Lord Prescott, the following statement entered the public domain,[641] on 19 January 2012:

> *"On 3 December 2011 [NGN] admitted a list of matters including that it had entered into an agreement with [Mr Mulcaire] and paid him hundreds of thousands of pounds to obtain information about specific individuals for use by the News of the World journalists and publication in the newspaper. It is admitted that certain of its employees were aware of, sanctioned and requested the methods used by [Mr Mulcaire] which included the unlawful interception of mobile phone messages and obtaining call and*

[639] By way of provisions that enable a party to litigation to obtain disclosure from a person or body that is not a party to that litigation

[640] *Skylet Andrew v News Group Newspapers Ltd and another* [2011] EWHC 734

[641] Admissions made by NGN for the purposes of civil litigation may be relevant in relation to a general consideration of the practices of the press but do not constitute any form of admission on behalf of any individual employee and cannot be assumed to be directed to any individual employee

> *text data (which methods are known as "phone hacking"; obtaining information by "blagging": and, in one case, unlawfully accessing emails). It is also admitted that [Mr Mulcaire] had provided journalists at The News of the World with information to enable the said journalists themselves to intercept voicemail messages, [NGN] accepted that some information unlawfully obtained by [Mr Mulcaire] was used to enable private investigators employed by the News of the World, including Derek Webb, to monitor, locate and track individuals and place them under surveillance."*

11.6 By January 2012, a large number of claims had been settled. NGN consented to the assessment of aggravated damages on the basis that there were those at NGN who knew about its wrongdoing and sought to conceal it by putting out public statements they knew to be false, deliberately failing to provide the police with all facts of which they were aware, deliberately deceiving the police in respect of the purpose of payments to Mr Mulcaire and destroying evidence of wrongdoing.[642]

The judicial review of the actions of the MPS

11.7 The July 2009 Guardian article prompted a number of individuals to question whether their voicemail messages had been intercepted. Four such individuals were Chris Bryant, MP for the Rhondda, Brendan Montague, Brian Paddick and Lord Prescott. All four contacted the MPS asking whether this was the case.

11.8 Mr Bryant was informed that his name and telephone number appeared in the material retrieved during the investigation. Mr Bryant said that the information provided was *"vague and incomplete"*. By letter dated 25 February 2010, he requested further details having received information from his service provider to the effect that, in about December 2003, there had been three unlawful attempts to intercept his communications. He said that he was told by the MPS *"informally in a telephone conversation that he would not be given any further information without a court order."*[643]

11.9 Mr Paddick was told that there was no information to suggest that he had been subject to unlawful monitoring or interception of his telephone. His solicitors enquired again and the MPS then reported that, in fact, his name and occupation did appear in the documents obtained during the investigation.

11.10 As regards Lord Prescott, as set out above, initially, Mr Yates personally assured him that there was no evidence to suggest that his voicemail messages had been intercepted; he was not told about the references to his adviser and her telephone numbers and pass codes. The first intimation that this was not the case came in December 2009.

11.11 So far as Mr Montague was concerned, there was no evidence at the time the proceedings were instituted that his name appeared in the documentary material recovered during the investigation. His concerns were generalised, rather than being based upon any specific incident or report. Ultimately, he did not dispute that no evidence had emerged that his name or details featured in any of the materials seized from Mr Mulcaire in 2006.

11.12 The claim for judicial review was issued on or around 14 September 2010. Lord Prescott was added to the proceedings in November 2010. The claimants challenged the decisions of the MPS as to the scope of Operation Caryatid and the decision not to inform every person whose voicemail messages had or may have been intercepted that this had or may have occurred.

[642] *ibid*

[643] *R (Bryant, Montague, Paddick and Prescott) v Commissioner of Police of the Metropolis* [2011] EWHC 1314 (Admin)

11.13 On 9 February 2011, the Directorate of Legal Services at the MPS wrote to Lord Prescott and informed him that in *"recent material supplied … by News International"* there was an email (from an email address associated with Mr Mulcaire) dated 28 April 2006 which appeared to contain the details of the mobile telephone number and PIN number of the adviser to Lord Prescott and that there was reference to 45 messages.

11.14 On 10 March 2011, Mr Bryant was shown facing pages in a notebook seized from Mr Mulcaire which contained telephone numbers which would have dialled his phone and very probably left voicemails messages, various addresses where he has lived, the names of his partners, his constituency, his home telephone numbers and other personal information.

11.15 On 15 March 2011, Mr Paddick was shown three documents obtained by the police in 2006. The information included his police mobile phone number, the mobile phone number of his then partner and his former partner, the addresses and telephone numbers of numerous other associates, his own landline number and landline numbers of others. There was also a print out from the electronic records held by Mr Mulcaire which described Mr Paddick as a "project".

11.16 On 23 May 2011 the application for permission to proceed with a claim by way of judicial review came before the Administrative Court.[644] Mr Justice Foskett considered the facts set out above and decided that in relation to the cases of Mr Bryant, Mr Paddick and Lord Prescott, each raised a claim worthy of consideration at a full hearing.[645] Ultimately the claim for judicial review was compromised, with admissions being made by the MPS. The following declaration was agreed between the parties:

> *"In breach of its duties under Article 8 of the European Convention on Human Rights, in circumstances where the interference with the individuals' right to respect for their private lives may have amounted to the commission of a criminal offence, the defendant failed to take prompt, reasonable and proportionate steps to ensure that those identified as potential victims of voicemail interceptions were made aware of:*
>
> *"The interference with their right to respect for private life that may have occurred;*
>
> *"The possibility of continuing threats, where such threats had been identified;*
>
> *"The steps they might take to protect their privacy; and*
>
> *"Following the conclusion of the criminal proceedings against Glenn Mulcaire and Clive Goodman, the identity of those whom the police believed to be primarily responsible for the interception.*
>
> *"Such steps should have included informing the public generally, by announcements in the media, through the mobile telephone companies, or otherwise (and should have included, where appropriate, individual notification."*

11.17 The declaration came before the court (Gross LJ and Irwin J) for approval. Given the circumstances (namely a desire by both parties, for their own reasons, to settle the claim, together with the absence of argument as to the law), the Court made the agreed declaration but, at the same time, directed that it had no value as a precedent for future cases.

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[644] A claim for judicial review cannot proceed unless the Administrative court grants permission to proceed. Permission will only be granted where the claimants are able to demonstrate that they have an arguable case for seeking relief by way of judicial review

[645] *R (Bryant, Montague, Paddick and Prescott) v Commissioner of Police of the Metropolis* [2011] EWHC 1314 (Admin)

12. Conclusions: the police and the CPS

2006 to 2007

The police

12.1 I am entirely satisfied that the officers who worked on Operation Caryatid approached their task with complete integrity and that each of the decisions taken during the investigation and prosecution was appropriate, justified and in keeping with the operational imperatives of the police at that time. I have no doubt that neither Peter Clarke nor any of the other officers were or would have been affected by any relationships between some senior officers and NI personnel. There is no evidence that the relevant officers approached the task from the standpoint of seeking to deal with any alleged wrongdoers other than properly and so as to bring the force of the law to bear.

12.2 Furthermore, I find no evidence of compromise to the independence of the police officers engaged on Operation Caryatid who were prepared to follow evidence as far as it went but were equally mindful of other operational imperatives. Given how little was known about voicemail interception when the investigation began in December 2005 and the challenges involved in understanding how the interceptions were taking place and then proving the interceptions, it could only have been (and was) a robust, tenacious, well-motivated and skilful team that achieved such extensive evidence that Clive Goodman and Glenn Mulcaire were driven to admit their guilt. Important convictions followed, this criminality was brought to the attention of the public and mobile phone companies were prompted to improve their security systems.

12.3 There is equally no doubt that the decision made in or around late September 2006 by Peter Clarke not to expand the investigation was wholly justified given the threat from terrorism and the enormous counter terrorism operations then in play (to say nothing of other serious crime the investigation of which would be under-staffed because of the demands of such investigations). In my judgment, there is simply no scope for concluding that the decision was in any way influenced by pressure from, fear of, or any personal relationships with, employees of NI or the NoTW.

12.4 That is, however, only the start of the matter. Having decided, albeit for irreproachable reasons, not to investigate journalists other than Clive Goodman, it was imperative that the reasons for the decision were fully and accurately recorded and, furthermore, that the police devise, institute and execute a suitable strategy to deal with the many unresolved issues surrounding the investigation. It is unnecessary to say more about the former (although it might have assisted years later when the Operation came to be revisited). As to the latter, the police rightly identified that potential victims of voicemail interception needed to be informed and it was intended to devise a proportionate and cost-effective strategy. Unfortunately, at almost every turn, the strategy devised was not fit for purpose; neither did it succeed.

12.5 First, the strategy was insufficiently thought out. Its formulation did not even encompass everyone identified in the blue book. It was intended that those whose voicemail boxes had been rung by the "suspect numbers" would be informed. The strategy therefore overlooked those identified in the blue book whose voicemail boxes may have been infiltrated by a journalist other than Mr Goodman. It also overlooked those whose voicemail boxes had been

accessed by the suspect numbers but at such an early date that the phone companies no longer retained the relevant records.

12.6 Second, the police did not make the phone companies aware (sufficiently or, probably at all) of the role that it was intended for them to play; neither did the police obtain their agreement to undertake such a role. It was simply assumed that, having been asked to identify any customers whose voicemail boxes had been called by the suspect numbers, the phone companies would naturally inform all those that they identified. Further, despite proceeding on this assumption, no steps at all appear to have been taken to check that the phone companies had carried out the task as anticipated. Although the investigating officers knew that there was an enormous body of material seized from Glenn Mulcaire which pointed towards large scale collection of information about mobile phones, PINs and other personal details, no sufficient thought was given to what impact that material had on the issue of warning victims or potential victims.

12.7 It is entirely understandable that, as more and more has emerged, concern has been increasingly expressed that the MPS was protecting the NoTW for it was the reputation of that paper that benefited from the targeted focus of the investigation and the fact that only a small number of potential victims were notified of the facts. In the same way that I have no doubt that the decision to limit the scope of the investigation was not linked to any relationship with NI, I am similarly sure that the failure either to devise or to execute an appropriate strategy was not influenced in any way by, or connected to, any inappropriate relationship between the MPS and NI.

12.8 Third, the exit strategy ought also to have given some thought to advising senior management at the NoTW and NI, about their position and the reasons for the curtailment of the investigation not least so that management could consider whether (and if so, what) steps should be taken to improve corporate governance in this area. In truth, in the light of the stance taken by the NoTW over a period of years, it is likely that nothing would have been done and police concern would have been dismissed. When NI and the NoTW declared that there was just "one rogue reporter", however, consideration should have been given to the extent to which silence on the part of the MPS provided implicit support for the claim. At this distance of time and with so much more now known, it is difficult to know what could or should have been done. As it was, the issue was not even considered.

The response of NI to the prosecution and allegations of widespread criminality within the News of the World

12.9 NI failed to carry out a proper internal investigation into what had emerged from the prosecution or into the allegations made by Mr Goodman when appealing against his dismissal. Apart from a review of emails sent or received by the individuals named by Mr Goodman, the investigation was limited to Mr Cloke and Mr Myler asking the individuals concerned whether there was any substance to the allegations and accepting at face value their denials. There was no detailed analysis of precisely what Mr Mulcaire had done to justify the enormous sums that he had been paid and no sign that the NoTW was concerned with anything other than further damage to its reputation or that it regarded the fact that criminal conduct may have flourished as a significant risk either from a corporate governance or operational perspective.

12.10 Despite the inadequacy of the internal enquiries that were conducted and despite the belief held by Mr Crone that it was inaccurate to assert the "one rogue reporter" defence, NI maintained publicly that Mr Goodman acted alone. The episode was viewed as an aberration,

involving one journalist and it was maintained that a *"full, rigorous internal inquiry"* was being carried out. Rather than face and tackle the problem, the title followed its wish simply to *"draw a line"* under it the entire affair and hope that it all went away.

12.11 Even when Mr Silverleaf QC advised that there was powerful evidence of a culture of illegal information access used to produce stories for publication, there was no internal investigation. Rupert and James Murdoch claimed that there had been a cover up to which senior management had been victim. If that was right, then the accountability and governance systems at NI would have to be considered to have broken down in an extremely serious respect. Both Mr Myler and Mr Crone strongly denied that there had been a cover up. Whatever the truth, there was serious failure of governance within the NoTW. Given the criminal investigation and what are now the impending prosecutions, it is simply not possible to go further at this stage. In any event, what can be said is that there was a failure on the part of the management at the NoTW to drill down into the facts to answer the myriad of questions that could have been asked and which could be encompassed by the all embracing question (whether or not it was in fact asked) *"what the hell was going on?"* This is a significant finding in the context of the practices of this newspaper at least; whether it can now be said by the press generally that it was a case of 'one rogue newspaper' is another matter.

2009 to 2011

News International

12.12 NI, through Colin Myler, reacted to the Guardian article by going on the attack, labelling the allegations in a letter to the PCC to be unsubstantiated, irresponsible and wholly false. Before the PCC and the CMS Committee, NI maintained the stance that there was no evidence that any member of staff at the NoTW had been involved in voicemail interception other than Mr Goodman. The determination of NI to maintain a line that, at the very least, the legal director believed was not true (and in which, at the very least, the editor, Mr Myler could not be said to have had confidence) in the face of two investigations by the CMS Committee and two investigations by the PCC is extraordinary and, at the very least, a demonstration of loyalty to the NoTW and its reputation which says a great deal about the culture of the paper (to say nothing of its practices and its approach to ethical propriety). In fact, the NoTW maintained the "one rogue reporter" defence until the Spring of 2011 when three NoTW journalists were arrested as part of Operation Weeting.

Police

12.13 Between July 2009 and January 2011, the failure to reopen Operation Caryatid (or at the very least to conduct a proper scoping exercise to decide whether it should be reopened) can be reduced into five overlapping errors. These are:

(a) In reality, Mr Yates failed adequately to address any question other than whether there was anything in the newspaper reports that constituted "new evidence". This was notwithstanding the fact that a vast amount of documentation available from the August 2006 seizures had not been fully analysed by the MPS itself; very little of it had been considered (let alone reviewed) by the CPS, save only for the very limited exercise of disclosure of unused material.

(b) There was a failure correctly to assimilate the admittedly nuanced advice given by counsel in August 2006 as to the likely interpretation of s1 of RIPA, and, probably

because of a misunderstanding, it was later misrepresented.

(c) There was a mischaracterisation of the evidence which had been provisionally reviewed in August/September 2006 as amounting to "no evidence" either of other criminal offences or as implicating other potential defendants or, alternatively, if it was thought that there was evidence but only insufficient to prosecute, to consider whether, in the light of the Guardian's article, that approach continued to be correct.

(d) There was a failure to appreciate that the determinative reason for closing the investigation down in September 2006 was not the quality of the evidence but an operational assessment of competing demands on the resources of SO13 and the impact of counter terrorism generally and the limited comparative value in further pursuing the matter compared to the input that would have been required.

(e) No assessment was made of the impact of the revelations emanating from the Guardian and the New York Times other than in a defensive frame of mind that the decisions taken in 2006 had to be correct (not least because Peter Clarke had made them).

12.14 I am not in doubt that the reaction of the MPS to the Guardian article published on 8 and 9 July 2009 was wholly inadequate. For Mr Yates to treat this well-researched piece as 'just another newspaper article' is wholly at odds with the immediate reaction of others; outside the police service, they included the Home Secretary, Parliament, the DPP and, incidentally, the PCC. Whereas I do not believe that Mr Yates was, in fact, influenced in his decision-making by his friendship with Mr Wallis, given the reference to *"suppressed evidence"*, the fact that the MPS had not alerted all those whose phones were targeted and the fact that a targeted (albeit comparatively limited) prosecution had been pursued, it was a serious misjudgement to accept responsibility for making a decision affecting the NoTW (particularly one in favour of doing nothing) knowing he was a personal friend of the deputy editor. It did not need to be him who considered the allegations: it could have been any senior officer.

12.15 To make matters worse, Mr Yates dismissed the allegations made by the Guardian in a matter of hours. He did not give DCS Williams any real opportunity to refresh his memory as to the nuances of what had been a comparatively complex investigation which had concluded just short of three years beforehand. Neither did he wait for the documents to be retrieved from storage. Further, he did not engage with the substance of the allegations or scrutinise the information he was given. At the very least, he accepted at face value that there had been "no evidence" that journalists other than Mr Goodman had been involved in the criminality and that what leads there might have been were no longer viable. This approach is explained entirely by the inappropriately dismissive, defensive and closed-minded attitude he adopted from the outset.

12.16 Then, having reached his dogmatic conclusion on 9 July 2009, he closed his mind to the question of whether there might be material in police possession that could justify reopening the investigation and clung over-tenaciously to the shibboleth "no new evidence". Operation Varec in 2010, (following the article in the New York Times) took the same path. The only steps taken were aimed at obtaining "new evidence", including seeking interviews with those to whom the article referred, requesting material from the New York Times and other titles and information from NoTW reporters: there was no question even of scoping the exercise of looking at the material that had been in the possession of the police for four years. Even as late as January 2011, Mr Yates was warning the DPP of the risk of presentational embarrassment to both the MPS and the CPS if matters were re-opened. Unfairly and tendentiously he was placing both organisations in the same boat, when plainly they were occupying different vessels. Even to this day, Mr Yates maintains that it was the provision of new information by NI in January 2011 which warranted the reopening of the investigation and nothing before.

12.17 The judgment of DCS Williams was also clouded by his defensiveness. He did not see beyond the need to rebut the suggestion of a police cover-up. Rather than conducting a thorough review of his decision-making, DCS Williams simply adopted the position that there was "no evidence" to implicate any other journalists without making clear that although there had not been sufficient evidence to charge any other journalists, there was circumstantial evidence that had generated further lines of enquiry and therefore that the Guardian was right to the extent that there was material in police possession that could have been acted upon. There was simply no reason for not, at any time, providing the explanation that this additional work was not undertaken because of an operational decision essentially consequent upon intense counter terrorism duties.

12.18 Having said that, I must make it clear that I accept entirely that DCS Williams was acting entirely in good faith; he did not hide evidence or intend to mislead Mr Yates. At its highest, he mischaracterised what was available and mis-recollected or misunderstood the effect of the legal advice which had been received. Furthermore, although he secured the documents from storage and reviewed the position over the following days, after the press announcement which Mr Yates made on the day of the Guardian report, in reality, a defensive mindset had been engaged and there was no prospect of that decision being revisited.

12.19 I must also make clear that I find no evidence to suggest that DCS Williams was influenced in any way by the fact that the object of this investigation had been the NoTW. As he had done in 2006, if required, he would have been fully prepared to pursue any investigation as far as it could be taken. Neither is there any question of his seeking to curry favour with the press or of him having regard to what might have been considered the overly close social relationships of some senior officers with senior members of the press. Having acquitted Mr Yates of being affected by the relationship, there is nothing even to base an allegation of that nature against DCS Williams: I do not impugn the integrity of DCS Williams in any way.

12.20 There is no doubt that the manner in which the MPS remained implacable in the face of increasingly strident allegations in the press and demonstrated an unwillingness to revisit the investigation fuelled a legitimate concern that influence was at work. It is not surprising that in the years that have followed there should have developed a belief that relationships between NI and senior figures within the MPS had become so inappropriately close that the integrity of decision-making by the MPS could not be trusted. Public concern would have been reinforced by the ill-judged article written by Mr Hayman and published in the Times on 11 July 2009. He gave the impression, no doubt inadvertently but undeniably, that he was being deployed by NI to give support to the police line which, itself, was in support of NI. It was also not surprising that the claim for judicial review should follow.

The CPS

12.21 The conduct of the CPS and counsel in relation to the prosecution of Clive Goodman and Glenn Mulcaire cannot be criticised. In the light of the material provided by the police, they advised on an entirely appropriate strategy of targeted prosecution which was pursued effectively to conviction. Analysis of unused material for the purposes of disclosure in that case did not involve any assessment of whether others at the NoTW should be investigated or prosecuted and there is no suggestion that they were asked to review the Mulcaire material to advise on whether further investigations should be pursued. That, as I have made clear, was an operational decision for the police.

12.22 Between July 2009 and January 2011, the DPP approached successive revelations in the media with an ever open mind and ever-increasing frustration. Quite properly, he took the

Guardian article of July 2009 seriously and commissioned appropriate internal enquiries. Given the allegation that the CPS had not pursued all possible charges those enquiries naturally focused on the material with which the CPS had been provided and the decisions that prosecutors had been required to make. Going further, however, the CPS in general and the DPP in particular were hampered by the fact that all relevant key personnel had since left the CPS. The inevitable diminution of memories by the lapse of time, not surprisingly made them reliant on briefing notes from the MPS and the review was not assisted by the failure to examine witness statements and exhibits from the prosecution. It was, however, correct to conclude that the original prosecution had been conducted properly.

12.23 It was difficult for the DPP to go behind the note prepared by counsel that they were told that there was no evidence connecting Glenn Mulcaire to other journalists but the press release (*"I am not in a position to say whether the police had any information on any other victims or suspects that was not passed to the CPS"*) was entirely fair. He reacted to the "for Neville" email swiftly and, in the circumstances, reviewing the matter on 20/21 July 2009, it is not surprising that Mr Starmer needed urgent advice from Mr Perry. In that regard, it is unfortunate that Mr Perry did not request further time in order to re-acquaint himself with the relevant facts and law before advising, and that the resultant product did not accurately reflect the advice he had given in August 2006. In reality, however, this made little or no difference to the subsequent course of events.

12.24 The further allegations in the New York Times caused the DPP to re-evaluate the legal advice: he was then put on the right track. Given what the police placed before the CPS in relation to Operation Varec, the decision as to prosecution was inevitable. In January 2011, following the revelations arising from the civil claim brought by Sienna Miller, Mr Starmer reached the point where nothing less than a full review would reassure him that all relevant evidence had been acted on appropriately: that, again, was entirely the correct approach.

12.25 I conclude by endorsing the position as articulated by Mr Godwin during his evidence:[646]

> *"… the police are in a unique position because they're an institution that can be called upon to investigate any other part of the establishment machinery, if you like, at any time, so in a sense they have to stand slightly apart, and that psychological distance between other institutions and the police.*
>
> *"That doesn't mean to say you can't have completely cordial relations and high quality engagement with other professions or institutions, but at the same time I think the police are that organisation who can sometimes be called upon to investigate, and therefore the need for transparency, the need for accountability, is very high, quite properly, and I wasn't entirely convinced some of those risks were identified …"*

[646] pp44-45, lines 18-6, Tim Godwin, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf

CHAPTER 5
A NEW APPROACH TO THE ALLEGATIONS

1. Police Inquiries: Operations Weeting, Elveden and Tuleta

Introduction

1.1 Operation Weeting commenced on 26 January 2011. Its immediate spur was the provision to the Metropolitan Police Service (MPS) by News International (NI) of what the MPS has characterised as significant new information relating to allegations of phone hacking at the News of the World (NoTW) in 2005-2006.[1] Its remit was initially to investigate these allegations, but evidence relating to other dates and print titles is now being considered. The operation falls under the aegis of the Specialist Crime Directorate (SCD) of the MPS, and at all material times until 31 October 2012 has been headed by DAC Sue Akers, head of organised crime and criminal networks with the SCD, who has received universal praise for her work. DAC Akers also headed Operations Elveden and Tuleta.

1.2 Operation Elveden began on 20 June 2011 following the MPS being handed by NI a number of documents containing evidence relating to alleged inappropriate payments to a small number of police officers by journalists at the NoTW in exchange for confidential information.[2] Since its early stages however, the ambit of Operation Elveden has widened significantly: additional print titles are now being investigated, as well as a range of public officials.[3]

1.3 Operation Tuleta commenced as a scoping exercise in June 2011 to consider the possibility of investigating allegations of computer hacking at the NoTW falling outside the remit of Operations Elveden and Tuleta.[4] In due course it became a fully-fledged investigation, and again its scope has broadened considerably.

1.4 DAC Akers attended the Inquiry on 6 and 27 February, and 23 July 2012, to provide updates as to the current status of these three operations. On each occasion she helpfully provided a witness statement which she elaborated in oral evidence.[5] On 31 October 2012 DAC Akers filed a fourth witness statement which brings the position as up to date as it can be.[6] She was not asked to give oral evidence in line with that statement. This section of the Report is heavily based on her evidence, as well as other material which is in the public domain.

[1] pp4-5, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DAC-Sue-Akers.pdf
[2] p1, para 2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf
[3] pp2-3, para 5, *ibid*
[4] p9, para 32, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[5] http://www.levesoninquiry.org.uk/evidence/?witness=dac-sue-akers
[6] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf

Operation Weeting

1.5 As at 6 February 2012 there were 90 officers including support staff dedicated to Operation Weeting; of these, approximately 35 worked full time in relation to notifying and supporting the victims.[7] As DAC Akers has explained in evidence, in its initial phases Operation Weeting focused on seeking to notify the victims and on analysing the numerous pages of the Mulcaire notebooks,[8] which had been seized as part of Operation Caryatid on 8 August 2006.[9] Subsequently, however, Operation Weeting acquired possession of substantial quantities of email data from a variety of sources.[10] In due course, the MPS was provided with the content of NI's main server from 2005, containing a vast number of permanently deleted emails.[11] Officers working on Operation Weeting have been able to complete the reconstruction of these deleted emails recovered from storage devices obtained from NI, restoring three hundred million emails. DAC Akers has informed the Inquiry that:[12]

> *"…we've rebuilt – experts have rebuilt material that we thought had been lost, and that was completed towards the end of November last year. So we're now going through that material."*

1.6 The first arrest carried out under Operation Weeting was in April 2011, and the last (to date) at the end of August 2012. So far, 25 people[13] have been arrested in connection with phone hacking, ten of whom are non-journalists. 17 individuals have been arrested for conspiring to intercept communications and/or in relation to the substantive offence. Of these, seven former NoTW employees have been charged with an overarching, general offence of conspiracy to intercept communications, and an additional former employee has also been charged with a number of date-specific substantive offences. A provisional court date has been fixed for 9 September 2013. Of the 17 arrested, six individuals have been released from police bail with no further action taken; the remaining three individuals remain on police bail for conspiracy offences.[14]

1.7 It is clear that Operation Weeting has expended a considerable amount of police manpower and resource. It is also clear that its work has not finished.

1.8 Eight individuals have been arrested for perverting the course of justice: this operation has been named Operation Sacha. Seven of these have been charged with conspiring to commit that offence, and have been sent to the Crown Court for trial. A hearing for the defendants' applications to dismiss is scheduled for 12 and 13 December 2012.[15]

[7] p11, lines 6-10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf
[8] approximately 11,000 pages covering the period January 2001-August 2006: p11, para 32(i), http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DAC-Sue-Akers.pdf
[9] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-DAC-Sue-Akers.pdf; *passim*
[10] p14, para 39(i), *ibid*
[11] p15, para 39(iv), *ibid*
[12] p9, lines 19-22, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf
[13] p2, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf
[14] pp2-3, paras 7-8, *ibid*
[15] p3, para 9, *ibid*

Operation Elveden

1.9 In February 2012 there were 40 police officers and staff working on Operation Elveden and the MPS was in the process of increasing this to 61.[16] The investigation has entailed going through large quantities of NI business records and emails, seeking evidence relevant to suspicious payments. As of 26 October 2012 a total of 52 individuals had been arrested by officers working on Operation Elveden; of these, 25 are current and former journalists (including journalists from The Sun; the Daily Mirror and its sister paper, the Sunday Mirror; and the Daily Star Sunday).[17] The arrests made thus far under Operation Elveden are for offences under the Prevention of Corruption Act 1906, misconduct in a public office and conspiracy to commit these offences, aiding and abetting misconduct in a public office, money laundering contrary to s328 of the Proceeds of Crime Act 2002, and bribery contrary to s1 of the Bribery Act 2010;[18] the gravamen of the allegations being that they offered money to public officials in exchange for stories. As at 26 October 2012 files had been submitted to the CPS to advise on appropriate charges for three public officials and four current and former journalists.[19]

1.10 In an important piece of evidence, DAC Akers pointed out that offences[20] of this nature are suspected to have been committed in at least three separate newspaper titles right up to early 2012.[21] DAC Akers expects further arrests to be made in due course.[22]

Operation Tuleta

1.11 Operation Tuleta began with an investigation into the circumstances surrounding the hacking into computers of Ian Hurst by or at the instigation of NoTW journalists in 2006.[23] As at October 2012, Operation Tuleta was undertaking an assessment of 142 separate allegations of data intrusion, including allegations of phone hacking, computer hacking, and improper access to banking, medical and other personal records.[24] This has entailed interrogating between 8-12 terabytes of data across 70 different storage devices; a vast undertaking.[25]

1.12 In April 2012, officers working on Operation Tuleta discovered inconsistencies with regard to the origin of material they had received from the Management Standards Committee (MSC).[26] Some of the information provided by the MSC had been traced to material which appears to have been obtained from two stolen mobile phone devices. DAC Akers has said that:[27]

[16] p3, para 6, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf
[17] pp5-8, paras 19-27, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC- Sue-Akers.pdf; p5, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf
[18] p5, para 20, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[19] p5, para 15, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf
[20] On 20 November 2012 five individuals were charged with two conspiracies relating to the receipt and authorisation of payments to public officials
[21] pp6-7, paras 22 and 24, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[22] p8, para 27, *ibid*
[23] http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Ian-Hurst.pdf
[24] p9, para 25, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf
[25] p10, para 34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[26] p10, para 36, *ibid*
[27] p13, lines 8-18, DAC Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf

> *"…it seems that on occasions we've found that material has been downloaded from and is in possession of News International titles which appear to have come from stolen mobile telephones. It appears from some of the documentation, and that's dated around late 2010, that one of the mobile phones has been examined with a view to breaking its code, its security code, so that the contents can be downloaded by experts."*

1.13 Officers working on Operation Tuleta are anticipating the identification of the individuals responsible for the download of the content of these stolen devices, and are also seeking to establish whether the downloading of stolen data may have been a common practice at the other NI titles. DAC Akers has told the Inquiry that it is her firm intention to request further documentation from the MSC in respect of this discovery, with the purpose of establishing:[28]

> *"…whether in fact these are just isolated incidents or just the tip of an iceberg."*

1.14 As at 31 October 2012, 17 arrests had been made under the Computer Misuse Act 1990, and/or in respect of offences of handling stolen goods, by officers working on Operation Tuleta.[29] This figure includes a former Times journalist who, on 29 August 2012, was arrested by Operation Tuleta officers on suspicion of offences under the Computer Misuse Act 1990 and conspiracy to pervert to course of justice.[30] All these individuals are on police bail pending completion of the arrest phase and CPS advice on charging.[31]

1.15 As with Operations Weeting and Elveden, it is clear that there is considerable potential for further arrests of journalists, and not merely those previously employed by the NoTW.

2. The Management and Standards Committee

2.1 Between 2007 and 2011, the approach to the containment of the issue of what had happened at the NoTW gradually unravelled. Payments to Clive Goodman and Glenn Mulcaire might have ensured their silence but a number of the victims were prepared to invest in legal proceedings both to learn precisely what had happened and to obtain redress. Very substantial further payments in settlement did not stem the tide and, although most of the press was entirely silent on the subject, the effect of the July 2009 story in the Guardian (quite apart from the approach of the police) was to generate enquiry in Parliament, press coverage in the New York Times and the fact (and yet further risk) of an exponential rise in litigation.

2.2 In the circumstances that have been described, the MPS grasped the nettle and re-opened the investigation; from the perspective of NI, containment was no longer an option because the reputational risk to News Corporation (News Corp) (let alone NI) required a complete change of direction. That came in the form of the Management and Standards Committee (MSC) and in July 2011, the board of News Corp appointed the distinguished UK commercial lawyer, Lord Grabiner QC, to the role of Chairman.

2.3 Lord Grabiner's appointment was made, at least in part, to help ensure the effective exchange of information between NI and the MPS, particularly with regard to the inquiry into alleged

[28] p14, lines 4-6, DAC Akers, *ibid*
[29] p10, para 28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf
[30] http://www.independent.co.ui/news/uk/crime/former-times-reporter-patrick-foster-held-over-hacking-8092900.html
[31] p10, para 28, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf)

police payments at the NoTW, as part of Operation Elveden.[32] Lord Grabiner reports to Gerson Zweifach, Senior Executive Vice President and Group General Counsel of News Corp, who was himself appointed to that role in June 2012, taking over that previously held by Joel Klein, formerly Assistant Attorney General of the United States.[33] Gerson Zweifach in turn reports to the independent directors on the News Corp Board through Professor Viet Dinh, an independent Director and Chairman of News Corp's Nominating and Corporate Governance Committee, and also a former Assistant Attorney General.[34]

2.4 In July 2011, two further NI executives (Will Lewis, formally editor-in-chief of the Telegraph Media Group and previously group General Manager at NI, and Simon Greenberg, previously Head of Corporate Affairs) resigned from their positions with NI in order to take up posts with the MSC. They have been appointed as full time MSC executive members. News Corp's General Counsel for Europe and Asia, Jeff Palker, was appointed to the MSC as a part-time legal executive.[35]

2.5 The independence of the MSC from both NI and News Corp is one of its defining characteristics. This independence is ensured by requiring the MSC to operate its own governance structure, separate to that of News Corp. The MSC is housed and operates from a secure unit on NI's Wapping site in London, located at a physical distance from the main NI building.[36] This independence, both in physical and figurative forms, is critical to the MSC's ability independently to investigate the allegations of wrongdoing at the NoTW, as well as at NI.

Terms of reference and remit

2.6 The MSC was established by News Corp with a role and remit to investigate allegations of criminality relating to phone hacking at the NoTW and other NI titles. Specifically, the MSC has been set up to investigate a number of matters including: allegations of phone hacking at the NoTW; allegations of illegal payments made by NI employees to public officials, including police officers; and all other related issues with regard to NI (including this Inquiry).[37] The Committee has therefore played a role of fundamental importance to the ongoing criminal and other investigations into the allegations of wrongdoing at NI. The reason for this new approach is clear. Quite apart from issues concerned with reputation, the United States' Foreign Corrupt Practices Act makes it illegal for any US company to pay bribes to overseas officials and News Corp (the corporate parent of News International) is incorporated in the USA. In the light of what had emerged in the UK, it is not surprising that while NI (and, to a lesser extent, News Corp) is subject to investigation in the UK, government and regulators in the USA have also been concerned to look at what had been happening. Rupert Murdoch told the Inquiry that News Corp (through the MSC) was therefore cooperating fully with the US Department of Justice.[38]

2.7 The UK investigations into allegations of phone hacking and payments to public officials are being led by the MPS. Operation Elveden, investigating the allegations of police corruption, has been operating under the supervision of the Independent Police Complaints Commission

[32] http://www.newscorp.com/news/bunews_452.html#top, http://www.newsint.co.uk/press_releases/management_and_standards.html
[33] http://online.wsj.com/article/BT-CO-20120618-711154.html
[34] http://www.newscorp.com/corp_gov/MSC_faqs.html#05
[35] p9, para 6.2, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf; http://www.newscorp.com/news/bunews_452.html#top
[36] http://www.newscorp.com/news/news_499.html
[37] http://www.newscorp.com/corp_gov/msc.html
[38] p42, para 179, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Keith-Rupert-Murdoch2.pdf

(IPCC).[39] The MPS investigations have focused on the UK subsidiary, NI, and although the MSC is cooperating with enforcement agencies in both the USA and the UK, the investigatory remit of the MSC is restricted to only NI titles and matters in the UK.[40] The MSC has been authorised by the News Corp board to investigate practices through a process of internal review at the NI titles, namely The Sun, The Times and The Sunday Times. It has also assisted in relation to the evidence gathering related to the NoTW.

2.8 As well as the Committee's investigatory functions, the MSC is also responsible for recommending and overseeing the implementation of new policies and systems at NI titles. According to representatives of the MSC, the purpose of this role is to ensure that the highest standards of editorial practices are upheld in future at NI. This includes ensuring business at the newspaper titles, The Sun, The Times and The Sunday Times, are underpinned by robust systems of governance and compliance, as well as a legal structure.[41] The Inquiry has not heard any evidence in relation to such recommendations made by the MSC.

2.9 In addition, the MSC has also been given the authority to negotiate and settle any civil litigation in relation to phone hacking. As such it oversees the News International Compensation Scheme for victims in relation to voicemail hacking by the NoTW and it is right that full mention should be made of this willingness by NI to provide informal redress. The Scheme was announced by NI on 8 April 2011, following a public apology from the newspaper, their publishing company News Group Newspapers (NGN) as well as NI itself, for the actions of journalists involved in phone hacking at the NoTW.[42] The Scheme was launched on 4 November 2011, with the solicitors, Olswang, being appointed to handle all victim-driven civil litigation in relation to voicemail hacking at the NoTW, along with administrative responsibilities in relation to the Scheme.[43] Sir Charles Gray (formerly a High Court Judge and a very experienced media lawyer) was appointed as the adjudicator of the Scheme. As such, he has provided an independent assessment of any applications received for compensation claims made against NGN by those whose voicemails had allegedly been intercepted.[44]

2.10 According to NI, the purpose of the Scheme is to offer an accessible and streamlined process for the victims of voicemail hacking, in order that they might obtain remedial action without the complexities that can be involved in the court process. The Scheme has also promised an uplift of 10% in respect of potential payments, based on what victims might expect if they successfully settled in the courts. The Scheme has advised potential victims of alleged voicemail hacking to contact the police team in Operation Weeting before applying to join the Scheme, so that the police can identify whether they have been revealed to have been a victim as part of the investigation, thereby justifying a claim. NGN is responsible for reimbursing the costs incurred by the MPS in providing those who apply with appropriate disclosure; it also meets the legal advisory costs of any alleged victims joining the Scheme.[45]

[39] p7, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jane-Furniss.pdf; p9, para 41, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Deborah-Glass.pdf

[40] http://www.newscorp.com/corp_gov/MSC_faqs.html#11

[41] http://www.newscorp.com/corp_gov/msc.html

[42] http://www.newscorp.com/corp_gov/MSC_faqs.html#02; http://www.newsint.co.uk/compensationscheme/index.html

[43] http://www.newscorp.com/corp_gov/MSC_news_003.html

[44] http://www.newsint.co.uk/compensationscheme/index.html

[45] http://www.newsint.co.uk/compensationscheme/index.html

Cooperation with the police

2.11 The autonomy of the MSC has been the cornerstone of the collaboration between the MSC and all those working on the ongoing investigations into the allegations of wrongdoing at NI.[46] In addition to the three overarching investigations being undertaken by the MPS, namely Operations Weeting, Elveden (under the supervision of the IPCC) and Tuleta, along with the subsidiary operations that are derived from those, there are the ongoing civil proceedings relating to phone hacking and data hacking and the Parliamentary hearings of the Culture, Media and Sport Select Committee.[47] In this regard, in its 11th Report of Session 2010-12, that Committee commented on the cooperation of the MSC at the time of the Parliamentary investigation, praising:[48]

> *"…the willingness of the newly-established Management and Standards Committee to provide the Committee with unsolicited copies of recently unearthed e-mail exchanges that are of relevance to the events under investigation".*

2.12 Deputy Assistant Commissioner Sue Akers has sought to explain to the Inquiry the nature and reality of the relationship between the MPS and the MSC. In particular, DAC Akers has praised the levels of assistance and cooperation demonstrated by the MSC, as well as its cooperation in providing information which has been requested by officers conducting the three MPS investigations. As an example of the cooperative approach of the MSC toward the MPS investigations, this has included the voluntary disclosure of potential evidence to Operation Elveden, gathered as part of the MSC's internal review of The Sun.[49] It is also perhaps illustrative of the MSC's approach to the matters of investigation, that the Committee initiated internal reviews of The Sun, The Times and The Sunday Times without specific requests from the MPS.

2.13 To a certain extent, the MPS has been dependent on the cooperation of the MSC in relation to the disclosure of information; although cooperation is exactly what the police would expect from any corporate body where evidence of criminality has been revealed. As DAC Akers explained to the Inquiry, however, because of the terms of the Police and Criminal Evidence Act 1984 (PACE) (as to which the Deputy Commissioner of the MPS has made submissions to the Inquiry), the MPS has not been in a position to force compliance. She stated that:[50]

> *"…the legal advice that we've had has told us that whilst you have the co-operation of News International, as it is in this case, we must proceed by the way of protocol, and that's what we're doing. So it's voluntary disclosure as opposed to applying for a production order through PACE".*

2.14 To date, pursuant to requests and otherwise, the MSC has disclosed large amounts of documentation to Operation Elveden. Evidence obtained through the analysis of some of this documentation has already led to a number of arrests of journalists, as well as other

[46] pp41-42, lines 25-7, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf; 11th Report - News International and Phone-Hacking, Volume II, ev24, http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcumeds/903/903ii.pdf
[47] http://www.newscorp.com/corp_gov/msc.html
[48] p13, para 30, 11th Report - News International and Phone-Hacking, Volume I, http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcumeds/903/903i.pdf
[49] p13, lines 2-8, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf
[50] p16, lines 18-23, DAC Sue Akers, *ibid*

staff at The Sun, on 28 January 2012 and 11 February 2012.[51] These (and other) arrests since November 2011 have been highly publicised. Indeed, some of this coverage has led to complaints from current journalists at The Sun, particularly concerning the circumstances and scale of the arrests. By way of example, following the arrests on 11 February 2012, the associate editor of The Sun, Trevor Kavanagh, claimed that a disproportionately large number of police officers had been involved in the dawn arrests of journalists at their homes and in The Sun offices, representing a witch hunt and an attack on press freedom.[52]

2.15 In response, Ms Akers explained that the fact that the arrests were carried out without warning was in line with protocols for such investigations, with the primary goal being to secure evidence and prevent suspects from conferring or disposing of evidential material.[53] She also suggested that arrests had been carried out in a manner intended to minimise business disruption to the newspaper, noting that searches of The Sun offices were conducted on a Saturday, outside of business hours. She went on to state that:[54]

> *"The purpose of police action to date has been proactively to investigate the alleged criminality which has been identified. The aim has never been to threaten the existence of The Sun. To this end there has been liaison with the MSC to take account of business risk to The Sun newspaper hence searches being made at The Sun offices on a Saturday when the office would be empty".*

DAC Akers has acknowledged that this approach to the conduct of searches has since been changed, following the launch of The Sun on Sunday.

2.16 DAC Akers has also told the Inquiry that there was a time when the attitude of the MSC to the MPS changed somewhat. Following the arrests of 28 January 2012 and 11 February 2012, DAC Akers said that the approach of the MSC to the disclosure of evidence was different: [55]

> *"We were being asked perhaps to justify our requests to a degree that we perhaps formerly hadn't been, and the material that we were requesting was slower in being forthcoming".*

2.17 This change of behaviour occurred at a time of increased publicity for both the MPS and the MSC, against a backdrop of threats of legal action against the MSC and also when changes were made to the senior personnel at the MSC,[56] which might themselves have contributed to the different relationship between the MSC and the MPS. In this regard, she observed:[57]

> *"…those two arrest days, there was considerable adverse publicity of both the MPS, the police and the MSC, including threats of legal action against the MSC."*

[51] pp9-10, lines 22-12, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[52] http://www.thesun.co.uk/sol/homepage/news/4124870/The-Suns-Trevor-Kavanagh-Witch-hunt-puts-us-behind-ex-Soviet-states-on-Press-freedom.html. It might also be said to be an attempt to enforce the criminal law which other commentators have complained is the true reason (rather than press misconduct) for the present Inquiry.
[53] pp5-6, para 13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf. In the light of the experience that officers had of journalists when seeking to execute a search warrant during the course of Operation Caryatid, this may not be as surprising as otherwise it might seem.
[54] p6, para 14, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf
[55] p10, lines 13-17, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[56] para 2.3 above
[57] p10, lines 9-12, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf

2.18 More specifically, DAC Akers has referred to a period in May 2012 when, for a number of weeks, the MSC temporarily halted the voluntary disclosure of material to the MPS.[58] She reported to the Inquiry her understanding that the MSC had been considering their position in relation to the MPS operations during this hiatus[59] and went on:[60]

> *"At the beginning, when we began the enquiries, all contact was through the lawyers; then these were other lawyers, Burton Copeland. Then Mr Lewis and Mr Greenberg were introduced to help facilitate the co-operation, which they did. And in mid-May this year, following a development in our investigation, it caused the MSC to reconsider their position and they decided that they would prefer the meetings to be on a more formal basis with lawyers only".*

2.19 DAC Akers stressed the importance of full cooperation by the MSC to police operations, and commented that any change in the approach of the voluntary disclosure of evidence would: *"…adversely affect initial decisions that we'd made and arrests that were made as well"*.[61] The disclosure of documentation by the MSC resumed in mid-June, following discussion between the MPS with Lord Grabiner and the legal team representing the MSC.[62] Such consequences would undeniably have affected the extent to which NI could have argued that it had adopted a new approach to compliance with the criminal law.

2.20 At that same meeting, a new framework was agreed in relation to communication. This has involved a changed format to meetings between the MSC and MPS teams, and, notably, the insistence on legal representation by the MSC while liaising with officers from the MPS operations.[63] Further, a number of executive members of the MSC, including Will Lewis and Simon Greenberg, have been stood down from attending regular briefings between the two parties.[64] Despite the change in process, DAC Akers was keen to make clear in evidence to the Inquiry that the professional approach of the MSC towards the MPS has been maintained and that the change *"…hasn't affected the co-operation, which is still very good"*.[65]

2.21 Since DAC Akers gave evidence in July, it is clear that some tensions have become apparent about the way in which the relationship between the MSC and the MPS has developed. I cannot resolve this issue and, for good reason, I am satisfied that it is not appropriate to elaborate or even to set out the respective positions. In the circumstances, I leave the matter there.

[58] p3, lines 9-21, DAC Sue Akers, *ibid*
[59] pp2-3, paras 7-10, 16-17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[60] pp2-3, lines 23-6, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[61] p10, lines 22-25, DAC Sue Akers, *ibid*; pp8-9, paras 28-31, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[62] p3, lines 9-21, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf; p2, paras 9, 16-17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[63] p3, lines 9-21, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf; pp2-3, paras 9, 17, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[64] pp2-3, lines 20-8, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf; p2, para 8, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[65] pp3, 10-11, lines 7-8, 25-3, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf; p3, para 10, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf

The approach of the MSC to disclosure

2.22 Material provided by the MSC is for the MPS to assess, evaluate and follow up as appropriate. The MSC has made clear that it has a duty to protect journalistic sources used by the NI titles and it is careful to ensure that these are not compromised through disclosure.[66] Where disclosed material might enable the identification of confidential but legitimate sources of information, the MSC has provided such documentation in redacted form. All such material has been categorised in order to determine whether and what redactions should apply.

2.23 To this end, DAC Akers has explained the detail of the process of receiving documents relating to the allegations of alleged payments to public officials. In such circumstances, documents which, in the first instance, have been redacted to remove confidential material, are provided to officers working on Operation Elveden. However, if, following this disclosure, the assessment of the evidence by the MPS provides a proper justification for identifying the source, the MSC will provide the information, this time in an unredacted form.[67]

2.24 In response to questions from Mr Jay, DAC Akers has sought to provide a sense of the scale and scope of the material disclosed by the MSC. She noted that this material related to allegations of data intrusion, including phone hacking, computer hacking and the illegal accessing of other personal data. Separately, it also contains material relevant to Operation Tuleta, which is now investigating over 100 separate allegations of data intrusion. The documentation provided has been sourced from previous inquiries, as well as the review of 70 electronic storage devices which were seized during both Operations Weeting and Elveden.[68] Ms Akers has said that the evidence gathered amounted to between eight and twelve terabytes of data.[69]

2.25 Material of real significance has also been disclosed by the MSC to officers working on Operation Elveden, which appears to indicate that not only were routine payments made to public officials by some journalists working at the NoTW but that similar payments had also been made by the employees of The Sun. These payments are alleged to have occurred on multiple occasions and included large payments in figures of thousands of pounds. In her oral evidence, DAC Akers said that:[70]

> *"There also appears to have been a culture at the Sun of illegal payments, and systems have been created to facilitate those payments, whilst hiding the identity of the officials receiving the money. The emails indicate that payments to sources were openly referred to within the Sun, in which case the source is not named, but rather the category "public official" is identified, rather than the name".*

2.26 The consequence of this disclosure by the MSC has led the police to the investigation of those to whom payments were made. This has revealed evidence to suggest that the practice of payments to public officials, including police officers, may have taken place at other titles outside the NI titles.[71] In her evidence to the Inquiry in July 2012, Ms Akers said that the MPS

[66] p44, lines 3-4, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf
[67] p3, para 7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf
[68] pp9-10, paras 32-34, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[69] To provide context, Ms Akers described a terabyte of data, in terms that *"…if downloaded in the form of a kind of normal-size paperback, which is then piled on top of one another, I'm told the terabyte amounts to three and a half times the height of Everest".* p12, lines 9-13, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[70] p48, lines 12-19, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf
[71] p6, para 21, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf

had identified potential payments to individuals related to prison officials, made by staff at both Trinity Mirror Group (TMG) and the Express News Group (the Express). The MPS now believes that a number of stories published in the Daily Mirror, the Sunday Mirror, the Daily Star and the Star on Sunday, were obtained through such payments.[72] As a consequence of this disclosure, an employee of TMG and an employee of the Express were arrested by officers working on Operation Elveden. This has led the police to seek the assistance of both those groups, requesting evidential material relating to these arrests.[73]

2.27 Although not relevant to the MSC, it is appropriate here to note that TMG and the Express have taken different approaches to the requests for information requests from the MPS. Specifically, TMG has asked the MPS to obtain a production pursuant to PACE which it is said will not be opposed; the Express has stated that the company would be prepared voluntarily to share documents through an agreed system, similar to that operated by the MSC; at the time of Ms Akers' evidence, no such protocol had been put in place.[74]

A critical view of the MSC

2.28 Although the MSC operates independently of NI and News Corp, its independence has not gone unchallenged by some witnesses to the Inquiry. Brian Paddick, a former Deputy Assistant Commissioner of the MPS, has raised doubts over the ability of the MSC to conduct an impartial and transparent investigation. The fact that News Corp was responsible for the establishment of the MSC has led Mr Paddick to believe that the MSC was potentially susceptible to the influence of News Corp executives and staff, and that this alleged influence may have an impact on both its investigations and cooperation with the MPS.[75]

2.29 Mr Paddick also explained his lack of faith in the credibility in the system of disclosure. He expressed concerns that the MSC might withhold potential evidence from the MPS, particularly as the disclosure of material is voluntary, noting that reliance has been placed on cooperation rather than a production order sought pursuant to the legislative powers set out in PACE.[76] Commenting specifically on the disclosure of evidence by the MSC in relation to the internal review of the practices at The Sun, Mr Paddick said that:[77]

> *"The difficulty is – and as she (Sue Akers) is saying, for example, all the issues that we've had around the Sun newspaper she never asked for. It's been volunteered by this committee. What information are they not volunteering that Sue Akers is not aware of?"*

He also suggested that the MSC had an advantage in so far that it was potentially able to withhold material from the MPS investigations, by claiming journalistic privilege:[78]

[72] pp6-7, paras 23-24, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf
[73] p7, para 26, *ibid*
[74] p9, lines 9-16, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[75] p20, lines 13-20, Brian Paddick, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212pm.pdf; pp23-24, para 63, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Brian-Paddick1.pdf
[76] pp22-23, lines 19-3, Brian Paddick, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212pm.pdf
[77] p21, lines 21-25, Brian Paddick, *ibid*
[78] pp20-21, lines 17-1, Brian Paddick, *ibid*

> *"...whilst it's maybe ... it is independent of News International, it's not independent of the parent company, as it were… …requests are put in to this committee by the police. If that committee decides that actually, as far as they're concerned, there's no criminal implications, that it is subject to journalistic privilege, then that committee does not reveal the information that the police are asking for."*

2.30 Mr Paddick has also criticised the lead role of the MPS in the investigations of allegations of corrupt payments made to police officers, as well as public officials. He expressed reservations at the putative neutrality of the MPS, explaining that he feared that public perceptions risked becoming skewed by the fact that the investigation into the alleged corruption of MPS officers was being conducted by the very police force under investigation. Although Mr Paddick made specific acknowledgement of the integrity of both DAC Akers and the Commissioner of the MPS, Mr Paddick has made clear that he remained concerned that the MPS could not objectively investigate alleged corruption within their own force. He has suggested that an external police force, one which was not implicated in the current investigations, should have been appointed independently to investigate the alleged wrongdoing which has taken place. He told the Inquiry that:[79]

> *"…some people may not be convinced by the current arrangements and it may be better if it was an outside force who were investigating, purely from a public perception point of view. But I am not in any way casting doubt on either Sue Akers' integrity, nor the head of the MSC…"*

2.31 The suggestion was also raised during Mr Paddick's oral evidence that it would be difficult to find an independent force with senior officers who did not have previous experience at the MPS, but Mr Paddick maintained that this could be achieved, and that it would be better in terms of public perception if the MPS were unaffiliated with the investigation. He said:[80]

> *"…it is possible to find ACPO officers who have no previous history with the Metropolitan Police who could lead up this investigation. Whether they would be better at it, I don't know, but in terms of public perception, I'm saying that it might be better."*

2.32 Mr Paddick has also voiced concerns at the risk of collusive behaviour between the MPS and NI. Specifically, he was concerned at what could happen should the MPS investigations, or the MSC reviews of the NI titles, uncover evidence which placed either party in an unfavourable position in the public eye. He explained his concerns using a hypothetical example:[81]

> *"…perhaps somebody very senior in the Metropolitan Police is seen to be having received inappropriate payments from somebody very senior in News International, how it might be in the interests of Rupert Murdoch or News Corp and in the interests of the Metropolitan Police for that not to be made public."*

2.33 Mr Paddick suggested that it may be possible for the MPS and NI to work together to disguise or hide incriminating evidence in order to protect the reputation of either organisation. In his response to questions from Counsel to the MPS, Neil Garnham QC, Mr Paddick remained of the view that he had *"…difficulty in having complete confidence"* in the MPS investigations for the reasons he has elucidated.[82] Although Mr Garnham was at pains to address a number of

[79] pp22-23, lines 25-4, Brian Paddick, *ibid*
[80] p23, lines 15-20, Brian Paddick, *ibid*
[81] p21, lines 10-15, Brian Paddick, *ibid*
[82] p36, line 18, Brian Paddick, *ibid*

external factors which would prevent such collusion, including oversight of Operation Elveden by the IPCC, Mr Paddick insisted that the investigation:[83]

> *"…should be led by a senior office from another force who has had no previous service with the Metropolitan Police."*

He also expressed his concerns about the independence of the IPCC but did not elaborate further.

2.34 DAC Akers has also addressed the concerns raised by Mr Paddick, by emphasising the fundamental importance of the professional and productive relationship the MPS has built with the MSC. She stressed that the independence of the MSC from NI and the structure it operates within:[84]

> *"…goes a long way to allay some criticisms that have been made about how it's perceived that it can't be necessarily an independent inquiry. The fact that we are dealing with the MSC directly and not News International I think should make any contention that it isn't independent without foundation."*

2.35 As testament to the important contribution that the MSC has made to the investigation, DAC Akers noted that, as at the date of her fourth witness statement, namely 31 October 2012, the disclosure of material to Operation Elveden had led to the arrest of 25 journalists out of a total of 52 arrests; this was in addition to 25 arrests made as part of Operation Weeting and 17 arrests as part of Operation Tuleta.[85]

2.36 In forming a view about these matters, I am primarily reliant on the evidence provided by DAC Akers (about whom nobody has spoken other than in terms of the highest praise) although I also have professional experience of Lord Grabiner and knowledge of his high standing as an independent barrister in England and Wales. Furthermore, I am able to draw inferences from the nature and extent of what has happened as events have unfolded. On the other hand, there has been no evidence to support the concerns raised by Mr Paddick, either as to the independence of the MSC or to the impartiality and integrity of the MPS officers responsible for the conduct of its investigation into alleged police corruption and other crime.

2.37 The purpose of the MSC has been to re-establish (or establish) a reputation in NI as a company that takes its obligations to the law very seriously and is determined to root out criminality wherever it has existed and whomever it has involved, albeit recognising that some difficult decisions might have to be made in relation to journalistic privilege. In the light of events, neither News Corp nor NI can do less if the purpose is to be achieved. It is obviously important that News Corp, NI and the MSC continue in the resolve that has now been shown.

2.38 I ought to make it clear that I am not at all critical of Mr Paddick for raising these concerns which I have no doubt are legitimate and ventilated in good faith, based on the history of this investigation and seared by his own experience both of NI and the MPS. For my part, however, I am fully satisfied as to the way in which the police are now conducting this investigation (to which considerable resources have been devoted doubtless because of the reputational damage that the MPS has suffered) and as to the integrity of the officers involved.

[83] p37, lines 21-23, Brian Paddick, *ibid*

[84] pp41-42, lines 25-7, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf; p2, para 4, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf

[85] pp4, 5, 12-13, lines 8-15, 17-24, 21-2, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf

2.39 Equally, albeit without resolving the present differences between the MPS and the MSC, I have seen no evidence to undermine the view expressed by DAC Akers as to the independence of the MSC and its effectiveness as an independent arbiter in accordance with its remit. I am satisfied that sufficient safeguards (by way of protocols and otherwise) have been put in place to dispel legitimate concerns along the lines that he has raised.

Findings and progress of the MSC

2.40 On 1 May 2012, the MSC announced the completion of its internal reviews of the three NI titles, that is to say The Times, The Sunday Times and The Sun.[86] Rupert Murdoch, in an address to NI staff, has been quoted in relation to the findings of the reviews of The Times and The Sunday Times, saying there was:[87]

> *"…no evidence of illegal conduct other than a single incident reported months ago".*

This single incident is thought to refer to the activities of the former Times journalist in relation to gaining unlawful access to one or more personal emails.

2.41 No further details have been announced in relation to findings of the internal review of The Sun. Neither has the MSC released further documentation to the MPS following the completion of its review of The Sun. DAC Akers put the matter in this way:[88]

> *"…the MSC would say the result of the review was the material that they had disclosed to us, but we haven't received or -- I understand there is no formal report as a result of their review."*

Neither has the Inquiry heard any evidence in relation to the findings of the reviews conducted by the MSC. In the light of the quantity of evidence that has emerged from these titles and the evidence of DAC Akers, no further information has been sought.

2.42 In the meantime, the MSC has also begun to implement governance reforms in the newspaper titles at NI. These reforms include improving policies relating to anti-bribery, whistleblowing and payments. These changes have been implemented through the office of Gerson Zweifach and appropriate information relating to them has been disseminated to employees and staff at NI.[89] The Inquiry has not heard any evidence relating to these specific reforms by the MSC, although Thomas Mockridge, Chief Executive Officer of NI, informed the Inquiry in October 2011 that:[90]

> *"…it is appropriate that compliance within NI be strengthened immediately. I have therefore not waited for the output of the reviews... I have implemented, or am in the process of implementing, new policies… Current policies, practices and systems may be adjusted later in line with the findings of the reviews."*

2.43 Finally, it is worth noting the costs of the MSC to NI have been borne by the UK subsidiary rather than by News Corp. From the Group Report and Financial Statement, as at 8 May 2012,

[86] http://www.guardian.co.uk/media/2012/may/02/news-corp-standards-committee
[87] http://www.guardian.co.uk/media/greenslade/2012/may/01/rupert-murdoch-newsinternational
[88] p11, lines 8-11, DAC Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-23-July-20121.pdf
[89] p6, NI Group Limited Report and Financial Statement for 03 July 2011; http://www.guardian.co.uk/media/2012/may/02/news-corp-standards-committee
[90] p10, para 6.7, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf

excluding any costs relating to the News International Compensation Scheme or ongoing civil litigation, the MSC has cost NI £53.2 million. These costs have been accrued primarily in legal and professional fees since July 2011.[91] It is likely that, by the time of publication, these costs will have increased further.

[91] p4, NI Group Limited Report and Financial Statement for 03 July 2011

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