

<p>1 Wednesday, 9 May 2012 2 (10.00 am) 3 Statement by LORD JUSTICE LEVESON 4 LORD JUSTICE LEVESON: Full Fact, English PEN, the Media 5 Standards Trust and Index on Censorship, none of whom 6 are core participants in this Inquiry, although 7 unsuccessful applications were made by English PEN and 8 Index on Censorship at its commencement, have made 9 a written application for directions regarding the 10 ruling that I made on Friday last week concerning an 11 application by the government for core participant 12 status. Before giving me the opportunity of dealing 13 with it, the application has been placed in the public 14 domain. In the circumstances, although I believe the 15 answer to be clear, and I have not found it necessary to 16 seek the assistance of any core participant, I shall 17 deal with it in public. 18 Let me start by saying something of the way in which 19 the Inquiry has dealt with requests addressed to it. On 20 a very frequent basis, applications or requests of one 21 sort or another are received at the Inquiry, both by 22 post and email. In most cases, they can be dealt with 23 administratively, either by a lawyer working as 24 a solicitor to the Inquiry or by another member of the 25 team. When it is necessary, requests are referred to me</p> <p style="text-align: center;">Page 1</p>	<p>1 ruling, I also decided under rule 7 of the Inquiry Rules 2 2006 that collectively they should be represented by the 3 Treasury Solicitor. Three questions have been raised. 4 These concern the position of special advisers within 5 the confidentiality circle, the anonymity of ministerial 6 staff within the confidentiality circle (which issues 7 are both related to the purpose of the included group) 8 and the question of redaction. 9 The confidentiality circle. 10 The first point to make is that core participant 11 status and membership of the confidentiality circle is 12 conferred for the purpose of assisting the Inquiry while 13 at the same time ensuring fair treatment for those 14 likely to be affected. What is important is the fact 15 that everyone who is within the confidentiality circle 16 understands the obligation to preserve the confidence of 17 the information being shared, and not to reveal that 18 information until it has been published on the Inquiry 19 website. The terms of the undertaking and the order 20 under Section 19 of the Inquiries Act 2005 (the Act) 21 make that absolutely clear. 22 I expect each core participant, including government 23 core participants, to restrict the confidentiality 24 circle to the minimum number necessary to participate 25 fairly and effectively in the Inquiry. This group will</p> <p style="text-align: center;">Page 3</p>
<p>1 and my decision is then passed back to the solicitor for 2 onward transmission. None of this is or need be in 3 public. Very occasionally I have felt it necessary to 4 say something more formally, in which event I have 5 usually done so at the beginning of a hearing prior to 6 the evidence being called. Examples of my taking this 7 course will be obvious to anyone watching the 8 proceedings or considering the transcript. 9 I do not intend to alter that approach, and, before 10 considering this request, wish to underline that the 11 mere fact that it has been published has not caused me 12 to do so. I am not prepared to allow the Inquiry to be 13 diverted from the business of the day simply by the fact 14 of publication of a request. I respond to Full Fact and 15 others first because of the respect which I attach to 16 their organisations and secondly because they raise 17 issues that are potentially significant, not least 18 because the implications of the consequences of my 19 ruling have been misunderstood and so misrepresented in 20 certain reports. 21 In a ruling on Friday, 4 May, I refused to allow the 22 government to have core participant status but I did 23 grant such status to certain named ministers, who 24 I determined should collectively be known as government 25 core participants. Although not then stated in the</p> <p style="text-align: center;">Page 2</p>	<p>1 usually involve legal advisers and those persons whose 2 assistance is essential to ensure that the core 3 participant can produce accurate and properly researched 4 material for the Inquiry. For a newspaper core 5 participant it might involve the editor and one or more 6 reporter ready to undertake any necessary research. 7 Government ministers will no doubt need further 8 assistance, if only from those able to marshal the 9 documents and to consider whether there is any point 10 that should be advanced through counsel to the Inquiry. 11 In addition, it was also a core part of the 12 reasoning in my ruling last Friday that government 13 ministers ought not to have to deal with demands for 14 information about evidence emerging from the Inquiry 15 without any prior notice about that evidence. In that 16 regard I also implicitly recognised that there could be 17 a number of persons who would need to be brought into 18 the confidentiality circle for just this purpose. 19 Indeed, for whatever purpose, given that ministers have 20 been asked questions both as holders of public office, 21 in which capacity they can be assisted by civil 22 servants, including government lawyers, and as senior 23 party leaders, in which capacity civil servants cannot 24 be involved, it should not be surprising if requests for 25 membership of the confidentiality circle are made for</p> <p style="text-align: center;">Page 4</p>

<p>1 both civil servants and special advisers. In any event, 2 whether such persons are civil servants, subject to an 3 obligation to act with political neutrality, or special 4 advisers not so restricted does not matter. I repeat 5 that what is critical is that everyone who signs the 6 confidentiality undertaking is absolutely bound by it. 7 Neither is compliance merely a matter for exhortation. 8 Breach of a notice under Section 19 of the Act can be 9 certified to the High Court and the subject of such 10 order by way of enforcement or otherwise as could be 11 made if the matter had arisen in proceedings before the 12 court, see section 36 of the Act.</p> <p>13 It has not been the practice of the Inquiry to 14 publish the names of those who have signed the 15 confidentiality undertaking. In some cases, it involves 16 a large number. In others, few are involved. It is an 17 administrative matter, albeit an important one, which 18 has been addressed by the solicitor to the Inquiry and 19 her team. The fact of the undertakings has been made 20 public, but to go further and publish the names is, in 21 my view, unnecessary. It would divert resource to do so 22 and would identify all those who are privy to sensitive 23 information. This may not itself be desirable because 24 to do so might expose them to pressure to reveal 25 confidential information. It is important to appreciate</p> <p style="text-align: center;">Page 5</p>	<p>1 This submission fundamentally misunderstands 2 Section 19 of the 2005 Act. This provision describes 3 the circumstances in which material may be restricted or 4 redacted in these terms: 5 "(1) Restrictions may, in accordance with this 6 section, be imposed on -- 7 "(a) attendance at an inquiry, or at any particular 8 part of an inquiry; 9 "(b) disclosure or publication of any evidence or 10 documents given, produced or provided to an inquiry. 11 "(2) Restrictions may be imposed in either or both 12 the following ways -- 13 "(a) by being specified in a notice (a 'restriction 14 notice') given by the Minister to the chairman at any 15 time before the end of the inquiry; 16 "(b) by being specified in an order (a 'restriction 17 order') made by the chairman during the course of the 18 inquiry. 19 "(3) A restriction notice or restriction order must 20 specify only such restrictions -- 21 "(a) as are required by any statutory provision, 22 enforceable Community obligation or rule of law, or 23 "(b) as the Minister or chairman considers to be 24 conducive to the inquiry fulfilling its terms of 25 reference or to be necessary in the public interest,</p> <p style="text-align: center;">Page 7</p>
<p>1 that all who have become core participants have already 2 submitted signed statements. What matters is that 3 whoever has access to statements before the witnesses 4 give evidence keeps what they read confidential prior to 5 the Inquiry making it public after the witness has given 6 evidence. It must be understood that within days of 7 statements being made available to core participants, 8 the statement is in fact adduced in evidence and then 9 published on the Inquiry website.</p> <p>10 Redaction.</p> <p>11 The concern expressed in relation to redaction is 12 that in addition to the privilege of seeing evidence in 13 advance, government core participants have the ability 14 to suggest redactions before that material is placed 15 into the public domain, with the result that where there 16 is discretion to hide things from the public, there will 17 be "worries about abuse among the public". It is 18 submitted that the twin track procedure for redaction 19 should be modified to require the publication of 20 schedules in the public domain seeking to justify 21 redaction, whether or not the proposed redactions are 22 agreed. It is said that this would create an incentive 23 for the government core participants to adopt a measured 24 approach to its requests. No such concern has been 25 expressed in relation to other core participants.</p> <p style="text-align: center;">Page 6</p>	<p>1 having regard in particular to the matters mentioned in 2 subsection (4). 3 "(4) Those matters are -- 4 "(a) the extent to which any restriction on 5 attendance, disclosure or publication might inhibit the 6 allaying of public concern; 7 "(b) any risk of harm or damage that could be 8 avoided or reduced by any such restriction; 9 "(c) any conditions as to confidentiality subject to 10 which a person acquired information that he is to give, 11 or has given, to the inquiry; 12 "(d) the extent to which not imposing any particular 13 restriction would be likely -- 14 "(i) to cause delay or impair the efficiency or 15 effectiveness of the inquiry, or. 16 "(ii) otherwise to result in additional cost 17 (whether to public funds or to witnesses or others). 18 "(5) In subsection (4)(b) 'harm or damage' includes 19 in particular -- 20 "(a) death or injury; 21 "(b) damage to national security or international 22 relations; 23 "(c) damage to the economic interests of the United 24 Kingdom or any part of the United Kingdom; 25 "(d) damage caused by disclosure of commercially</p> <p style="text-align: center;">Page 8</p>

<p>1 sensitive information." 2 End of the citation of the statute. 3 The only grounds for redaction are those set out in 4 Section 19 of the Act or irrelevance. Although 5 Section 19(4) is not determinative, but only exemplifies 6 the potential grounds, for the purposes of this Inquiry 7 the term "harm or damage" has only narrow ramifications. 8 Where there are redactions, they are generally visible 9 on the page for all to see, or alternatively it is 10 apparent where they have been made. The situations so 11 far experienced revolve around personal details such as 12 signatures, private addresses and information such as 13 telephone numbers, the identity, where it is material, 14 of those who are under investigation by the police or 15 who come within the umbrella which I've referred to as 16 the self-denying ordinance, details which can properly 17 be described as commercially confidential and, on 18 occasion, material that is truly irrelevant to the 19 Inquiry. Nobody has sought to challenge decisions made 20 by the team as to redaction, and although I would be 21 entirely prepared to do so, I do not believe that I have 22 had formally to rule on any dispute. On occasion, 23 redactions have preceded disclosure to core participants 24 where the position is obvious and clear. In any event, 25 I have no doubt that core participants such as the</p> <p style="text-align: center;">Page 9</p>	<p>1 Furthermore, it would be unreasonably burdensome on 2 this fast-moving Inquiry to make public, as we progress, 3 workings of the redaction exercise conducted by the 4 Inquiry itself. It would more importantly give rise to 5 a heightened risk of material which rightly deserved 6 redaction being inadvertently disclosed into the public 7 domain. I am, however, happy to add that if I became 8 concerned that any core participant was trying to abuse 9 the process to hide matters that were merely 10 embarrassing rather than properly deserving redaction, 11 I would consider making public information about that 12 particular attempt. I do not anticipate that such 13 circumstances will arise, and continue to expect all 14 core participants to seek redactions only where they are 15 justified in accordance with the tests set out in the 16 legislation and which I have sought to explain. 17 I do not doubt the good faith of those who have 18 raised these issues, although in the light of the way 19 that I have tried to conduct this Inquiry throughout, 20 I am somewhat concerned that it is thought that I might 21 be party to reducing its transparency. Suffice to say 22 I will not, and I would be surprised if I were asked to 23 be. 24 Thank you. 25 MR BARR: Sir, good morning.</p> <p style="text-align: center;">Page 11</p>
<p>1 Guardian as well as other press interests, who will see 2 unredacted or partially redacted material, will be 3 particularly sensitive in relation to attempts to redact 4 which stray outside the limits of what has been done to 5 date or cause any concern. To follow the quotation from 6 Baroness Onora O'Neill, other core participants will 7 actively inquire and will not blindly accept. If the 8 minister himself seeks to provide a restriction notice, 9 that will itself be the subject of discussion within the 10 Inquiry. 11 Quite apart from the submissions that might be made 12 by other core participants, there is the principled and 13 strictly impartial approach for the redaction of 14 documents submitted to the Inquiry, which is in place in 15 relation to evidence submitted by government core 16 participants, as it has been in relation to others. 17 That procedure is wholly controlled by the Inquiry and 18 taken very seriously. A protocol for the process was 19 published by the Inquiry at the outset. I repeat that 20 redactions of any sort by the government will be 21 approached in the same way as redactions sought by other 22 core participants. The practices adopted by the Inquiry 23 have worked well with other core participants thus far 24 and I see no reason to take a different approach in 25 relation to government core participants.</p> <p style="text-align: center;">Page 10</p>	<p>1 LORD JUSTICE LEVESON: Yes, Mr Barr. 2 MR BARR: We start with two pieces of evidence which revisit 3 an issue which the Inquiry first considered in December 4 of last year. That is to say, the interception of 5 Milly Dowler's voicemails. 6 The first piece of evidence is going to be 7 a statement updating us about the Metropolitan Police's 8 investigation, produced by DCI John MacDonald. 9 I understand that he has had the benefit of assistance 10 from both Surrey Police and the mobile phone company 11 Everything Everywhere in preparing that statement, and 12 might I ask my learned friend Mr Garnham to read 13 DCI MacDonald's statement? 14 LORD JUSTICE LEVESON: Yes. It ought to be clear that the 15 circumstances surrounding the entire experience with the 16 voicemail of Milly Dowler, whether by listening to it or 17 doing anything else, have been the subject of evidence, 18 and were obviously an important part in the background 19 to the Inquiry. Therefore, it's right that this 20 evidence should be given, but I think it is also right 21 to make it clear that the precise detail of the extent 22 to which there was such interference is probably not 23 going to inform my overall view as to the culture, 24 practices and ethics of the press. I am not merely 25 content, but happy that this evidence be read, because</p> <p style="text-align: center;">Page 12</p>

<p>1 it's part of the overall picture, but I would not want 2 its significance in the context of the Inquiry rather 3 than the overall pattern of evidence to be 4 misunderstood. 5 Yes, Mr Garnham? 6 Reading of evidence of DCI JOHN MACDONALD 7 MR GARNHAM: Sir, thank you. This is a statement of 8 Detective Chief Inspector John MacDonald of the 9 Metropolitan Police. Sir, I will read it in its 10 entirety. 11 "Introduction. 12 "Operation Weeting has been asked by the Leveson 13 Inquiry for an update as to the current state of the 14 investigation into the hacking of Milly Dowler's 15 voicemail. 16 "This is a complex enquiry, which is taking some 17 considerable time to complete. To hope to reach 18 a position of clarity, the MPS have had to carry out an 19 hour by hour inquiry into the events of 24 March 2002, 20 when Mrs Dowler was able to leave a message on Milly's 21 answerphone, and into the events surrounding a saved 22 message left on 26 March 2002. 23 "I have summarised these inquiries below. 24 "The original request from the Inquiry. 25 "In her statement to the Leveson Inquiry, Mrs Dowler</p> <p style="text-align: center;">Page 13</p>	<p>1 their Inquiry statement. As noted above, they dated the 2 'false hope moment' to April or May 2002. 3 "The MPS's investigations caused them to doubt 4 whether that date, or the interpretation of events 5 provided by the Guardian newspaper, could be accurate. 6 They sought to meet the Dowlers to discuss their 7 concerns. At the time, Mrs Dowler was unwell and was 8 not able to meet the police. 9 "MPS counsel [namely I] made a statement on the 10 subject to the Inquiry, and it is understood that this 11 caused Mr and Mrs Dowler considerable distress. 12 Accordingly, the MPS arranged to speak to the Dowlers at 13 their solicitor's office. During the course of that 14 conversation Mr Dowler queried the date of the visit to 15 the Birdseye Building and the MPS undertook to check the 16 available material to seek clarity on that point. 17 "The family liaison officer's logs. 18 "The MPS reviewed the Surrey Police FLO's daily log. 19 The log dated 24 March 2002 has the following entries: 20 "After 18.00 hours on 24 March 2002 Mr and 21 Mrs Dowler attended the Birdseye Building to view CCTV 22 recorded at 16.21 hours on 21 March 2002. 23 "At 18.55 hours, Mr and Mrs Dowler confirmed that 24 the girl seen on the 21 March 2002 CCTV footage was not 25 Milly.</p> <p style="text-align: center;">Page 15</p>
<p>1 describes a 'false hope moment', when she heard Milly's 2 voicemail message and believed that that meant that 3 Milly was alive. She dated this to April or May 2002. 4 "The MPS were asked by the Inquiry to carry out 5 further inquiries with a view to explaining how the 6 family had been able to leave a message and how the 7 deletion of previous messages might have allowed this to 8 happen. 9 "The MPS commenced an investigation into how 10 a message had been able to be left, whether space had 11 been freed up due to deletion of previous messages and 12 why the automated voicemail greeting that was played 13 when her mailbox became full might have reverted back to 14 Milly's personal voice message. 15 "This report into the findings of the MPS 16 investigation does not go into detail about Milly's 17 phone being hacked. It is public knowledge that this is 18 the case and I can confirm that there is evidence to 19 support the fact that it happened. I would not wish to 20 go into further detail because this is an ongoing 21 investigation which could be undermined by the release 22 of additional information. 23 "The evidence. 24 "The Dowlers' account. 25 "Mr and Mrs Dowler's first account is set out in</p> <p style="text-align: center;">Page 14</p>	<p>1 "At 19.10 hours Mr and Mrs Dowler were taken home by 2 the FLO. Whilst at home, Mrs Dowler rang Milly's 3 mobile. The log records that Mrs Dowler 'became 4 distressed as Milly's voicemail was now on the recorded 5 message whereas previously there was a recorded 6 voicemail message (automated)'. This call was from 7 Mrs Dowler's mobile number. (These timings are from 8 Surrey's FLO log.) It is not known what time the FLO 9 notes were made and the timing in those notes does 10 contradict the call data which indicates that the call 11 Mrs Dowler made was at 18.32 hours. It is believed more 12 likely that the call data is accurate and the notes were 13 possibly completed retrospectively. The call data shows 14 that there was an additional call from Mrs Dowler to 15 Milly's phone at 20.32 hours, however the FLO had left 16 the family home by that stage. 17 "There is no other documentation in the possession 18 of Surrey Police that would suggest that Mr and 19 Mrs Dowler visited the Birdseye Building on any other 20 occasion. 21 "News International. 22 "There is no evidence at present to support 23 a suggestion that any journalist attempted to hack into 24 Milly's phone prior to 26 March 2002. 25 "Mercury one2one (now T-Mobile).</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 "On 26 March 2002 there was a voicemail platform 2 migration by Mercury one2one. That migration included 3 Milly Dowler's voicemail box. It would have had the 4 effect of resetting Milly's personal voicemail greeting 5 to an automated generic voicemail message. That 6 automated message would have remained until changed by 7 the owner of the phone. It should be noted, however, 8 that this voicemail migration occurred after 24 March 9 (when Mrs Dowler called Milly's phone and was able to 10 leave a message) and therefore had no impact on the 11 'false hope moment'. 12 "Call data. 13 "There is complete call data covering a period up to 14 23.59 hours on 24 March 2002. We say this because the 15 call data appears extensive and likely to reflect the 16 amount of calls made when Milly went missing. 17 Thereafter the call data is far less in volume, and does 18 not reflect calls that are known to have actually been 19 made. For instance, a message left on Milly's phone at 20 14.10 hours on the 26th is not shown on the call data 21 and neither is the call made by Surrey Police on that 22 date to facilitate a recording of Milly's voicemail. Of 23 the voicemail messages recorded by Surrey Police on 24 17 April, a number of the corresponding calls are not 25 shown in the call data.</p> <p style="text-align: center;">Page 17</p>	<p>1 data indicates that at that time there was only one call 2 in the recent history that could have resulted in 3 a voicemail being left and this call was at 16.40 hours 4 on the 20th. 5 "At 19.46 hours on 21 March 2002 there is a call 6 into Milly's voicemail from a friend's phone that lasts 7 24 seconds. That suggests a voicemail message was left. 8 The phone provider has confirmed that the voicemail 9 system allows a maximum of 10 messages to be left, 10 before reaching capacity. Once 10 messages are left, 11 the mailbox becomes full and a generic message would be 12 played to the caller advising that no new messages can 13 be left (rather than a personal greeting). 14 Operation Weeting have reviewed Milly's call data for 15 the days leading up to that time. It would appear that 16 this call is the 10th voicemail message left over the 17 period 16.40 hours 20 March to 19.46 hours 21 March, 18 therefore her voicemail would be full at that stage and 19 an automated message would be activated. 20 "At 18.32 hours on 24 March 2002 there is a call 21 from Mrs Dowler's mobile number that lasts for 28 22 seconds which suggests a voicemail message has been left 23 again. 24 "These events support the suggestion that the 25 voicemail box was full with the 10 messages that could</p> <p style="text-align: center;">Page 19</p>
<p>1 "The following two points should be noted about the 2 call data: 3 "First, it would appear that the call duration would 4 have to be over 16 seconds in length in order to be able 5 to get past the greeting and to leave a message. 6 Therefore any call duration greater than this has been 7 researched. 8 "Second, the phone provider states that there was 9 a purge point at an unknown time during each day when 10 groups of messages over 72 hours old were deleted. 11 However phone analysts from Operation Weeting believe 12 that the data appears to indicate that there was in fact 13 an automatic deletion of individual voicemails once 72 14 hours had been reached. If the latter explanation is 15 correct this would support the explanation as to why 16 Mrs Dowler got access to Milly's personal message. 17 There needs to be an awareness that this interpretation 18 about the automatic 72-hour deletion of voicemail is by 19 officers from Operation Weeting. The phone provider's 20 explanation is different and does not appear to fit 21 smoothly with the call data. 22 "Bearing that in mind, the call at that time shows 23 the following: 24 "The last time Milly called her voicemail is shown 25 at 17.07 hours on 20 March. An assessment of the call</p> <p style="text-align: center;">Page 18</p>	<p>1 be left, and that on 24 March, some 72 hours after 2 Milly's last sighting, messages could be left again. 3 Mrs Dowler's call is likely to have been made when one 4 of the previous messages from 21 March had been 5 automatically deleted. 6 "The phone provider has also confirmed that when the 7 voicemail box was full the automated message would be 8 heard, and once messages had started to drop off, the 9 personal voicemail greeting that Mrs Dowler heard would 10 again have come into effect. 11 "The saved message of 26 March. 12 "It was noted that there was one saved message 13 present on Milly's voicemail on 26 March 2002 when 14 Surrey Police, under the production order, first 15 accessed Milly's voicemail and recorded any content. 16 "A voicemail message is marked as being 'saved' even 17 if it has only been listened to and not manually saved. 18 It is important to note that a message must be played in 19 its entirety in order to be marked as saved. 20 Terminating a call mid-way through retrieving a message 21 will still show the message as being 'new' as opposed to 22 'saved'. Any messages which have not been listened to 23 would be marked as being 'new'. 24 "The fact that this message was marked as saved 25 could mean that someone had listened to Milly's</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 voicemail after her disappearance and prior to police 2 obtaining access to her voicemail facility later on 3 26 March 2002.</p> <p>4 "The following chronology has been evidenced: 5 "25 March 2002.</p> <p>6 "At 16.02 hours on 25 March a notice of production 7 order was served on Mercury one2one.</p> <p>8 "Voicemails would have been preserved at this point 9 and the number of messages able to be left would have 10 increased from 10 to 50. It is noted however that the 11 records available up until 17 April indicate that at no 12 stage were this amount of messages ever stored.</p> <p>13 "26 March 2002.</p> <p>14 "On 26 March Mercury one2one were in the process of 15 changing the voicemail platforms used to store messages. 16 Platform 19 (Milly's platform) was being shut down, and 17 platform 51 was to be her new one. As part of the 18 voicemail platform migration, any existing messages on 19 the voicemail account could not be moved to the new 20 platform. These messages were not deleted. They were 21 still available to be listened to on the old platform by 22 exercising an option to 'listen to your old messages' 23 when accessing the mailbox. This connected the customer 24 back to the old voicemail platform. It would also 25 change the voicemail greeting to factory automated</p> <p style="text-align: center;">Page 21</p>	<p>1 recalls it occurred late one evening. He states that 2 no follow-up call was made in any event, and so no 3 action taken.</p> <p>4 "DC Bonilla downloaded one saved voicemail message 5 and exhibited the download. The phone provider has 6 suggested that had DC Bonilla listened to the complete 7 options he could have downloaded messages on the old 8 platform (if they existed) using option 8 ('listen to 9 your old messages') when accessing the mailbox. This 10 was not done; however it is believed that Surrey Police 11 were not aware of the voicemail platform migration or 12 the fact that any messages left up to that point in time 13 were still available to be listened to on the old 14 platform using option 8. Further to this, the 15 Surrey Police verbatim transcript of their voicemail 16 download does not record that option being available 17 (and neither does their later download on 17 April). It 18 should be noted that the recording on 26 March is 19 terminated before all the options are relayed to the 20 caller.</p> <p>21 "The phone provider has confirmed that the reason 22 for the option to listen to old messages not being 23 available when Surrey Police conducted their download on 24 17 April is that this option was automatically removed 25 21 days after mailboxes were migrated to the new</p> <p style="text-align: center;">Page 23</p>
<p>1 settings (rather than Milly's personal voicemail 2 greeting).</p> <p>3 "At about 9.45 hours on 26 March a special procedure 4 production order was applied for by DC John.</p> <p>5 "DC John says he liaised with DC Bonilla about 6 downloading of voicemails.</p> <p>7 "10.47 hours the production order was faxed to 8 Mercury one2one.</p> <p>9 "10.57 hours the voicemail pin reset by Mercury 10 one2one.</p> <p>11 "14.10 hours a voicemail message left on Milly's 12 mobile telephone.</p> <p>13 "15.19 hours voicemail pin reset by Mercury one2one.</p> <p>14 "15.25 hours voicemail download conducted by 15 DC Bonilla.</p> <p>16 "Surrey Police records indicate that at some point 17 on 26 March an independent company specialising in 18 forensic analysis of phone data was commissioned to 19 download Milly's messages. Their attempt to do so is 20 documented as being unsuccessful. The MPS have made 21 contact with the head of a private telecommunications 22 company who recalls being called by Surrey Police and 23 asked whether they would record some voicemails. He 24 cannot remember whether this was in relation to the 25 Milly Dowler case or the year it occurred, however he</p> <p style="text-align: center;">Page 22</p>	<p>1 platforms. This applied to all customer mailboxes as 2 part of the migration. Milly's mailbox was migrated on 3 26 March, so the option to listen to old messages (i.e. 4 on the old platform) would have been removed on 5 16 April.</p> <p>6 "In line with one2one's own procedures they would 7 have expected to have conducted the download themselves, 8 as they do for all law enforcement agencies, and then 9 provide the recordings to Surrey Police. Had they done 10 this, they say they are likely to have been able to 11 recover any messages that existed. Surrey Police's 12 position is that technical support unit specialist 13 officers did perform mobile phone voicemail downloads 14 in-house pursuant to production orders in 2002 and that 15 to this day Surrey Police continue to do so with respect 16 to voicemail accounts of customers of two other major 17 mobile phone network providers who do not download 18 voicemail messages themselves for law enforcement 19 agencies.</p> <p>20 "MPS analysis in respect of the saved call.</p> <p>21 "We have considered why, when Surrey downloaded 22 Milly's phone at 15.25 hours on 26 March 2002, the 23 voicemail message left at 14.10 hours was found as 24 a saved message. It appears to indicate that in the 25 1 hour 15 minutes between those two events, someone has</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 accessed Milly's voicemail and listened to it. The MPS 2 cannot rule out that someone has illegally accessed 3 Milly's voicemail on 26 March 2002. However the call 4 data for 26 March is incomplete and we are therefore 5 unable conclusively to establish the accuracy of this 6 theory.</p> <p>7 "The information we now have about the activities 8 carried out on 26 March 2002 do not help to give a clear 9 picture of what has happened that day in relation to 10 Milly's phone.</p> <p>11 "There were a number of technical matters being 12 carried out on that day. The voicemail platform 13 migration was under way, but T-Mobile has confirmed that 14 this migration would have had no impact on why the 15 message was marked as 'saved' or on the 'false hope 16 moment'. There were two pin resets to Milly's phone; it 17 is believed this was in order to ensure the police could 18 get access to the voicemails, although it is not clear 19 why the second one was required. There was the 20 independent phone company commissioned by Surrey Police 21 who the police say made an attempt to download, whereas 22 the company says they took no action (therefore retain 23 no records).</p> <p>24 "There are some further enquiries being undertaken 25 in order to try and seek as full an explanation as</p> <p style="text-align: center;">Page 25</p>	<p>1 accessed Milly's voicemail for the second time under 2 a production order on 17 April.</p> <p>3 "The saved message of 26 March, left at 14.10 hours, 4 was no longer present when Surrey Police performed its 5 second download on 17 April. Neither was a message that 6 the investigation team believe was left on 1 April at 7 14.16 hours.</p> <p>8 "There are limitations in interpreting the data, as 9 previously set out in this report, ie the call data 10 appears to be incomplete. It is not anticipated that 11 any further clarity will be obtained on this issue.</p> <p>12 "It should be noted that the Guardian newspaper's 13 16 July 2011 story and the Dowlers' witness evidence to 14 the Leveson Inquiry were not the only occasions during 15 which the issue of manual voicemail deletions was 16 raised. A note of 23 April 2002 of DC John Lyndon 17 (during the original investigation into Milly's 18 disappearance) records his suspicion as follows:</p> <p>19 "As per previous report, the reason why there was 20 no voicemail present is unknown. I have liaised with 21 [redacted name] at Mercury Police Liaison and they are 22 unable to explain why this is the case. In light of the 23 News of the World's revelation that they or a third 24 party has accessed the voicemail it is possible that the 25 messages had previously been listened to by unknown</p> <p style="text-align: center;">Page 27</p>
<p>1 possible as to what else occurred on that day that could 2 have affected the data on Milly's phone, specifically 3 the 'saved message' issue. However, it should be made 4 clear that it is currently the assessment of the Inquiry 5 team that no further clarity is likely to be provided, 6 and that primarily because of the lack of a full set of 7 call data and the fact that ten years have elapsed since 8 that time, we will not be able to obtain a definitive 9 explanation as to why the message at 14.10 hours was 10 shown as saved.</p> <p>11 "Manual voicemail deletions.</p> <p>12 "The whole issue of whether any voicemails were 13 manually deleted (rather than being deleted 14 automatically) has been considered. In summary we 15 cannot conclusively say whether any voicemails were or 16 were not manually deleted, however there do appear to 17 have been two messages missing that should have been 18 present when Surrey Police carried out their second 19 recorded download on 17 April. It is not known why that 20 happened and it will not now be possible to provide an 21 explanation.</p> <p>22 "It must be remembered that Milly's voicemail was 23 placed into a preserved state on 25 March, thus 24 preventing any automatic deletion of messages. It was 25 still in that preserved state when Surrey Police</p> <p style="text-align: center;">Page 26</p>	<p>1 persons and deleted.'</p> <p>2 "This note was disclosed by Surrey Police to the MPS 3 in 2011 when Operation Weeting asked Surrey Police for 4 the original Operation Ruby documents and (in redacted 5 form, and on a confidential basis) on 8 December 2011 to 6 the parties in the Mobile Phone Voicemail Interception 7 Litigation pursuant to the order of Mr Justice Vos dated 8 18 November 2011.</p> <p>9 "Furthermore the possibility of manual deletion 10 being the cause of the 'false hope moment' was 11 speculated upon during meetings between the Dowlers and 12 the police in 2011. On 1 April 2011, following an 13 explanation of the hacking of Milly's phone by MPS, 14 Mr and Mrs Dowler described Mrs Dowler's 'false hope 15 moment' and wondered whether this could have been 16 attributed to a manual deletion. The MPS also explained 17 to the Dowlers how a victim of voicemail hacking may 18 learn of the fact that they had been hacked by messages 19 being moved from 'new' to 'saved' or by way of deletion. 20 However, there was nothing in the possession of the MPS 21 which suggested any deletions had taken place in respect 22 of Milly's phone. Mr and Mrs Dowler's concerns were 23 discussed further. Because the MPS did not know 24 precisely what had happened to Milly's phone, they did 25 not attempt to proffer alternative views or seek to</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 dissuade Mr and Mrs Dowler from their belief that 2 Milly's voicemail messages could have been deleted. At 3 no time during this meeting did MPS police officers tell 4 Mr and Mrs Dowler that messages had been deleted from 5 Milly's phone. This was not something of which the MPS 6 police officers were aware (either from their own 7 investigations or from the information provided by 8 Surrey Police).</p> <p>9 "On 21 July 2011 in a meeting between Surrey Police 10 and the Dowlers there was also a discussion about 11 whether voicemails were deleted. Surrey Police did not 12 (and was not even in a position to) confirm whether 13 Milly's voicemails have been deleted or not. However, 14 it was noted that Mrs Dowler was:</p> <p>15 "reassured that her thoughts that messages were 16 being deleted were completely reasonable and absolutely 17 possible given that she was able to leave messages one 18 day but not the previous day. [The MPS senior 19 investigating officer] had told them that it was 20 a technique used by News of the World to delete messages 21 they had listened to so that the owner of the phone did 22 not know that they had been listened to. So again, she 23 was justified in her view that they could have done 24 this, but they did not delete the recruitment agency 25 message -- or we have no evidence that supports that</p> <p style="text-align: center;">Page 29</p>	<p>1 possibility is that it was subject to an illegal 2 intercept in that 75-minute period. However we should 3 also consider the lack of a complete set of call data 4 for that time when trying to interpret what happened.</p> <p>5 "Taking all the relevant information into account it 6 is not possible to state with any certainty whether 7 Milly's voicemails were or were not deleted. When 8 Surrey Police conducted a download of her messages on 9 17 April there are believed to have been two messages 10 that were missing. As previously stated, when trying to 11 interpret the evidence and establish what did or didn't 12 occur, it is necessary to consider the lack of 13 a complete set of call data. Given this situation, 14 whilst a reasonable understanding of the issues and 15 events has been developed as a result of the MPS 16 investigation, reaching a definitive conclusion is not, 17 and may never be possible."</p> <p>18 And DCI MacDonald signs that statement indicating he 19 believes the facts stated in his witness statement are 20 true.</p> <p>21 LORD JUSTICE LEVESON: Thank you very much, Mr Garnham. 22 Yes, Mr Barr?</p> <p>23 MR BARR: Sir, I should make clear the status of that 24 evidence. It has been seen by but is not agreed by 25 other core participants other than as between the police</p> <p style="text-align: center;">Page 31</p>
<p>1 they did or did not delete messages from Milly's 2 voicemail.'</p> <p>3 "Conclusions.</p> <p>4 "The MPS are now able to say with some confidence 5 that Mrs Dowler's 'false hope moment' occurred on 6 24 March 2002.</p> <p>7 "The primary basis for this conclusion is that the 8 FLO logs show the meeting at the Birdseye Building, as 9 mentioned in Mrs Dowler's statement, occurred on 10 24 March 2002. It is logged there that Mrs Dowler had 11 got through to her daughter's voicemail and heard her 12 voice.</p> <p>13 "Furthermore, call data shows that at 18.32 hours on 14 24 March 2002 Mrs Dowler's mobile phone made a call 15 lasting 28 seconds. This call is of a duration that 16 supports the assertion that Mrs Dowler had got through 17 to the voicemail of Milly. She made a further call to 18 Milly's phone at 20.32 hours and that call lasted 27 19 seconds. It would appear that the reason she was able 20 to do this is because voicemails previously left, that 21 had hitherto filled up Milly's message storage facility, 22 had started to drop off after 72 hours.</p> <p>23 "It is not possible to state why the message left at 24 14.10 hours on 26 March was shown as a saved message 25 when Surrey Police listened to it at 15.25 hours. One</p> <p style="text-align: center;">Page 30</p>	<p>1 core participants themselves.</p> <p>2 The Guardian has helpfully produced a timeline 3 setting out its understanding of the material events, 4 and that timeline is going to be posted onto the 5 Inquiry's website together with MacDonald's witness 6 statement.</p> <p>7 It is perhaps obvious, but I should make clear for 8 the avoidance of doubt that neither of the police core 9 participants agrees the Guardian's timeline.</p> <p>10 Finally on this issue, I've been notified by my 11 learned friends Mr White, Mr Sherborne and Ms Phillips 12 that each would like to say a few words briefly about 13 this issue.</p> <p>14 LORD JUSTICE LEVESON: Right. Let's do it in this order. 15 Ms Phillips, this has obviously been an issue that has 16 materially impacted on the Guardian story and therefore 17 if you want to say something at this stage, you may do 18 so. You don't wish to read the timeline which I've had 19 the chance of seeing?</p> <p>20 MS PHILLIPS: No, sir, we don't.</p> <p>21 LORD JUSTICE LEVESON: Well, as long as it's available for 22 all who wish to see it, that's fine.</p> <p>23 MS PHILLIPS: My understanding is it will go up on the 24 Inquiry website at the same time.</p> <p>25 LORD JUSTICE LEVESON: Thank you very much. Yes?</p> <p style="text-align: center;">Page 32</p>

<p>1 Statement by MS PHILLIPS 2 MS PHILLIPS: Thank you. The Guardian welcomes the fact 3 that the Metropolitan Police has modified its statement 4 from last December. The Guardian has, as we've heard, 5 prepared its own timeline for the Inquiry which reflects 6 its understanding of the relevant events, which it 7 believes to be accurate. The Guardian has no wish to 8 cause any distress to the Dowler familiar. We also 9 recognise the continuing need for care in reporting this 10 matter, given the ongoing criminal investigation. 11 What DCI MacDonald's statement makes clear is that 12 the following facts are not now in dispute: 13 Paragraph 7: the News of the World hacked into the 14 voice messages of Milly Dowler after she disappeared in 15 March 2002. 16 Paragraph 27: the police have found evidence to 17 suggest that somebody may have manually deleted two of 18 Milly's messages, but they have been unable to identify 19 the person responsible. They have also found evidence 20 which suggests automatic deletion. 21 Paragraph 31: in April 2002, Surrey Police made 22 a connection between the apparent deletion of Milly's 23 messages and the News of the World. 24 Paragraph 32 and paragraph 33 and 34: the manual 25 deletion of the messages was discussed by Sally and Page 33</p>	<p>1 News International notes from paragraphs 13, 35 and 2 37 of DCI MacDonald's witness statement that the view of 3 the Metropolitan Police Service is that there is no 4 evidence that any journalist attempted to access 5 Milly Dowler's voicemail messages prior to the awful 6 moment of false hope described by Mr and Mrs Dowler in 7 their evidence to this Inquiry, and that this moment of 8 false hope resulted from the voicemail messages dropping 9 off the voicemail message storage facility after 72 10 hours. 11 LORD JUSTICE LEVESON: Thank you very much. Mr Sherborne? 12 Statement by MR SHERBORNE 13 MR SHERBORNE: Sir, as Mr Barr says, I'd like to make 14 a short statement, and especially in view of the way 15 this matter was reported back in December of last year 16 when the Metropolitan Police first mentioned that they 17 were looking into how Sally Dowler had managed to get 18 through to her daughter's voicemail, as we heard so 19 vividly in evidence, and what may be said in the press 20 now. 21 As part of what I'm going to say this morning, there 22 is a brief statement, sir, as you're aware, which the 23 Dowler family has asked me to read out on their behalf. 24 As you can imagine, they are anxious to reach closure on 25 this issue for obvious reasons, but at the same time Page 35</p>
<p>1 Bob Dowler and the police during meetings in 2011. The 2 Dowlers speculated to the police that their 'false hope 3 moment' was due to such manual deletion. Surrey Police 4 continued to regard this link as "completely reasonable 5 and absolutely possible", and the Metropolitan Police 6 did not seek to dissuade Mr and Mrs Dowler from this 7 belief. 8 The Guardian story of 4 July 2011 was based on 9 multiple sources and their state of knowledge at the 10 time. Our error, as we acknowledged and corrected last 11 December, was to have written about the cause of the 12 deletions as a fact rather than as the belief of several 13 people involved in the case. We regret that. 14 After five more months of intensive inquiry, the 15 police have found that the passage of time and the loss 16 of evidence means that "reaching a definitive conclusion 17 is not and may never be possible". 18 Thank you. 19 LORD JUSTICE LEVESON: Thank you very much. Right, well, 20 I think next Mr White. 21 Statement by MR WHITE 22 MR WHITE: Thank you. News International would like to take 23 the opportunity to repeat its apology to the Dowler 24 family for the fact that Milly Dowler's voicemail 25 messages were accessed by the News of the World. Page 34</p>	<p>1 they accept that there are some things to which we still 2 don't know and will never know the answer. 3 Whilst Detective Chief Inspector MacDonald's 4 statement concludes that the 'false hope moment' was 5 likely to have been caused by an automatic deletion of 6 messages 72 hours after they were recorded, there are 7 a number of equally important questions here which 8 remain unanswered. In particular, despite the fact that 9 other subsequent messages were deleted, and it appears 10 that they may not have been the result of any automatic 11 deletion process but rather at some later stage and by 12 some human intervention, there is no clear answer as to 13 who was responsible. 14 There are, I would suggest, only a very limited 15 number of potential suspects, but there is still no 16 answer. 17 The reason why there is no answer is a lethal 18 cocktail of three potential ingredients. The first is 19 the Surrey Police's utter failure in 2002 to investigate 20 what they discovered about the News of the World's 21 activities at the time in hacking into Milly's phone. 22 On that subject, whilst we are currently in the dark as 23 to the reasons why Surrey Police failed to hold News of 24 the World or their journalists to account, much of what 25 we've heard in Module 2 concerning the dysfunctional Page 36</p>

<p>1 relationship between the police and the media may help 2 inform our understanding. It is fair to say, perhaps, 3 as I understand it, that the Surrey Police are still 4 investigating this failure some ten years after the 5 event.</p> <p>6 The second ingredient is the decision by the 7 Metropolitan Police in 2006, despite having stumbled 8 upon an Aladdin's cave of material indicating wholesale 9 unlawful activity in relation to hundreds of victims, 10 instead to close up the entrance and to tell no one 11 about what they'd seen, and certainly not the victims, 12 and instead to charge a single journalist and a private 13 detective with only a handful of counts.</p> <p>14 And finally, the last but by no means least noxious 15 of these ingredients was the deliberate concealment by 16 the News of the World's senior staff of the scale of 17 this illegal practice, concealment achieved by the 18 deletion of documents and the peddling of that now 19 infamous lie: that this was just the work of one rogue 20 reporter, a lie which was not, as we've heard, even 21 challenged by the Metropolitan Police at the time, even 22 though they must have known, to quote the words of 23 Colin Myler, the editor of the News of the World at the 24 time, that there were "bombs under the newsroom 25 floorboards" in this, the best-selling newspaper in the</p> <p style="text-align: center;">Page 37</p>	<p>1 this, this Inquiry, investigating as it has done the 2 practice, culture and ethics of the press as a whole, 3 would have happened regardless of the suggestion which 4 arose at the start of the evidence that Sally Dowler's 5 'false hope moment' may have been the activity of 6 someone at or working for the newspaper. As students of 7 what was said at the time will know, and those who study 8 transcripts of the Inquiry's proceedings can also 9 confirm, the 'false hope moment' and the News of the 10 World's potential responsibility for this was not part 11 of the decision to set up this Inquiry in the first 12 place.</p> <p>13 Whether News of the World were responsible for later 14 deletions or not, it was the work of an investigative 15 journalist prepared to get to the truth and the public 16 outcry at what this ugly truth looked like which 17 generated this Inquiry, and particularly the fact that 18 a certain newspaper thought it right, without any 19 compunction, to access the messages of a missing 20 teenager, which showed the depths to which certain 21 sections of the press were prepared to go. No one who 22 sat through Module 1, and particularly the first few 23 weeks of evidence given by my clients, could possibly 24 argue that this Inquiry was not entirely justified.</p> <p>25 Finally, before we hear again the wild suggestions</p> <p style="text-align: center;">Page 39</p>
<p>1 country.</p> <p>2 It is worth adding that if only Mr Murdoch senior 3 had done what he sat over there last week and said he 4 wished he'd done from the start, ignoring the lawyers, 5 and had ripped the place apart, then maybe things would 6 have been very different, but he didn't, and here we are 7 several years later, despite the police's best of 8 intentions, unable through the passing of time and the 9 loss of vital call data to uncover the precise extent of 10 what dark deeds were done.</p> <p>11 While some questions stay and may always remain 12 unanswered, there are some to which we do very clearly 13 know the answer, and I mention three very briefly in 14 this context.</p> <p>15 First and perhaps most importantly, the News of the 16 World did hack into Milly Dowler's phone, searching for 17 a scoop, and at a time when, as we know, she had already 18 been murdered. That fact alone is horrifying enough.</p> <p>19 But secondly, as the Surrey Police's report has 20 plainly documented, we also know that the newspaper 21 interfered seriously with the police investigation at 22 the time, trying to use the information they had 23 illegally obtained to get an exclusive on Milly's 24 movements.</p> <p>25 And thirdly, and so there is no confusion about</p> <p style="text-align: center;">Page 38</p>	<p>1 that because the newspaper was not responsible for the 2 'false hope moment' means that it should never have been 3 shut down, one should remember the industrial scale upon 4 which it has been revealed that such hacking took place 5 and how it pervaded like a cancer through the newsroom 6 and other floors of the News of the World as 7 a demonstration of the sad but inevitable truth, namely 8 that this newspaper was rotten to its core. That is why 9 Mr Murdoch cut it out and you heard him last week say 10 that he wished he had done so sooner.</p> <p>11 And now, sir, on behalf of the Dowler family, I'd 12 like to read a very short statement, if I may.</p> <p>13 The family would like to thank Detective Chief 14 Inspector John MacDonald and his team for their efforts 15 to get to the bottom of this issue, even if there remain 16 a number of unanswered questions.</p> <p>17 If Surrey Police had prosecuted this activity in 18 2002 then the position would have been very different 19 and perhaps countless others might also have avoided 20 having their private messages hacked into by the News of 21 the World.</p> <p>22 Police neglect and deference meant that it took the 23 relentless efforts of one journalist to uncover what the 24 police knew had gone on, and whilst we would never have 25 wished to have been thrust into the middle of this</p> <p style="text-align: center;">Page 40</p>

<p>1 extraordinary scandal on top of what we have already had 2 to deal with as a family, we continue to have faith that 3 his efforts and the efforts of the Inquiry and 4 Operation Weeting will have a lasting positive impact. 5 Thank you. That's all I wish to say, sir. 6 LORD JUSTICE LEVESON: Thank you very much. 7 Well, that deals, I hope, in as much detail as we 8 can possibly seek to request, with that aspect of the 9 history, so we'll now go on. 10 MR BARR: Sir, my learned friend Mr Jay is going to take the 11 next witness. 12 LORD JUSTICE LEVESON: Thank you very much. 13 MR JAY: Sir, we need a couple of minutes to sort out one or 14 two technical arrangements. 15 LORD JUSTICE LEVESON: Right, we'll do that. We'll give the 16 shorthand writer a break from what has been solid 17 speaking. Thank you. 18 (11.02 am) 19 (A short break) 20 (11.15 am) 21 LORD JUSTICE LEVESON: The next witness? 22 MR EADIE: Mr Brendan Gilmour, please. 23 LORD JUSTICE LEVESON: And he is to be the subject of 24 a restriction? 25 MR EADIE: Indeed.</p> <p style="text-align: center;">Page 41</p>	<p>1 Q. And the reason why we're asking you to give evidence 2 today is to enlighten us in relation to Operation Glade, 3 which I'm going to ask you about in a moment, which 4 started in 2003, but in order to understand some 5 background, I've been asked to put to you this general 6 question: had you experience of dealing with the press 7 in relation to operations before Operation Glade? 8 A. Not in the context of the press potentially being 9 suspects, only in the normal context of using the media 10 for information appeals. 11 Q. Of course, the standard work which you were undertaking 12 between 2002 and 2005 was in relation to police 13 corruption; is that right? 14 A. Yes, it was, sir, that's correct. 15 Q. So in that context were you previously aware of 16 a practice of disclosing information gained from the 17 Police National Computer or the CRO to private 18 investigators? 19 A. I was generally aware of possibly one other 20 investigation that had been going on or maybe was going 21 on at the time that involved private investigators 22 acting or using police staff to gain information, but 23 not specifically from the PNC, and I'm not sure of the 24 specifics of the information that they were actually 25 requiring, but it's not an investigation I personally</p> <p style="text-align: center;">Page 43</p>
<p>1 LORD JUSTICE LEVESON: For reasons which have been fully 2 explained and in respect of which I am entirely 3 satisfied, this witness will not be visually available, 4 either within the annex or online. His evidence will, 5 however, be carried live and be available orally. Thank 6 you. 7 MR EADIE: Thank you. 8 MR BRENDAN GILMOUR (sworn) 9 Questions by MR JAY 10 MR JAY: Your full name, please, Mr Gilmour? 11 A. Brendan Gilmour. 12 Q. I would ask you, please, to turn up your witness 13 statement which you made on 23 March of this year. It 14 has five exhibits, a standard statement of truth, and 15 it's signed and dated by you. Is this your formal 16 evidence to this Inquiry? 17 A. Yes, it is, sir. 18 Q. Mr Gilmour, you are currently a Detective Chief 19 Inspector. You've been in the Metropolitan Police 20 Service now for nearly 21 years. The time which we're 21 looking at, that's between 2002 and 2005, you were 22 serving on the DPS, which is, of course, the Directorate 23 of Professional Standards, and your rank, I believe, was 24 Detective Inspector; is that right? 25 A. That's correct, sir.</p> <p style="text-align: center;">Page 42</p>	<p>1 was involved in, it's just one that I was generally 2 aware of. 3 Q. Can I ask you generally about the Police National 4 Computer? Was it seen by you to be a general problem, 5 namely a source of corruption, or was it something more 6 isolated and sporadic? 7 A. Personally, I think it was more isolated and sporadic. 8 Q. Okay. So we understand the Police National Computer and 9 how it works, it contains Criminal Record Office 10 information; is that right? And it also contains 11 material such as registered keeper details of privately 12 owned vehicles? 13 A. Yes, it does, that's correct. 14 Q. And presumably a range of other sensitive information, 15 some of which you wouldn't wish to discuss today. 16 A. That's correct, sir, yes. 17 Q. Can I ask you, please, about the background to 18 Operation Glade and its commencement? This is 19 paragraph 7 of your statement and following. You tell 20 us it started in August 2003. In your own words, 21 please, how did it originate? 22 A. From memory, and from the documents that I've seen, sir, 23 it -- the investigation emanated from an inquiry that 24 Devon and Cornwall Police had conducted, which I think 25 was code named Operation Reproof, and at some point</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 Devon and Cornwall linked in with the Information 2 Commissioners who ran an operation called Operation 3 Motorman, I believe, looking at the activities of 4 private investigators potentially using police employees 5 or accessing the information on the PNC, which was in 6 turn then passed out to various journalists. 7 During the course of Reproof and Motorman, or 8 Motorman, investigators established that a Metropolitan 9 Police employee, a civilian employee, called 10 Paul Marshall, was conducting checks on the PNC and the 11 information from those checks was subsequently ending up 12 in various newspaper articles. So we have the wider 13 Operation Motorman investigation going on, and from that 14 Paul Marshall was identified, a Metropolitan Police 15 employee, and because of that the Information 16 Commissioners came to the Metropolitan Police with that 17 information and then it was briefed into the Directorate 18 of Professional Standards, the command that I was 19 attached to, initially into the Intelligence Development 20 Group, and one of their roles was to scope any 21 information coming in to see if it required an 22 operational response, for instance an investigation to 23 be conducted on that information. 24 Q. Thank you. In terms of the chain of dissemination of 25 information, Mr Marshall was the starting point working</p> <p style="text-align: center;">Page 45</p>	<p>1 A. Yes. That was a decision that I took. It's not unusual 2 in these circumstances, depending on the level of risk 3 that the employee poses, to leave them in post to allow 4 the investigating team to covertly do what they need to 5 do, so to evaluate, assess any information that we're 6 already in possession of or to retrieve any information 7 that we need to. It frequently can prevent the disposal 8 of evidence by remaining covert in our investigation. 9 I recall reviewing Marshall's position and the risk 10 that he represented, and given the nature of what he was 11 doing, it was a relatively low risk. We would always 12 consider risk to life and various other factors, but 13 predominantly risk to life, and clearly there wasn't 14 a risk to life here and there was more benefit in 15 leaving him where he was in order for us to obtain the 16 information. 17 Q. The other general question is: you mentioned a few 18 moments ago that the information that was provided to 19 the private detectives eventually found its way into 20 newspapers, so it was plain that the ultimate consumer 21 or customer was a journalist. When you were scoping 22 this exercise, was the sensitivity of investigating 23 journalists discussed? 24 A. I can't recall specifically. I would imagine it was. 25 We were certainly alive to the sensitivities of</p> <p style="text-align: center;">Page 47</p>
<p>1 in south London, I understand? 2 A. Yes, in Tooting police station. 3 Q. In Tooting. Did he provide information to Mr King, who 4 was an ex-police officer, and then Mr King in turn 5 furnished the information on to private detectives, 6 Messrs Whittamore and Boyall? 7 A. That's correct. 8 Q. The company you refer to, Data Research Ltd based in 9 Surrey, was that connected with Whittamore and Boyall? 10 A. I can't remember which one of those persons it was 11 connected with, but yes it was. I believe there were 12 two companies, JJ Services, which I think may have been 13 Mr Whittamore's company. 14 Q. I think you're right, and Mr Boyall therefore would 15 be -- 16 A. Mr Boyall's was Data Research. 17 Q. Thank you. You explain in paragraph 13 that the inquiry 18 was then scoped, as you explain, and we have the 19 evidence of that. I don't think it's necessary to look 20 at it in any particular detail. I've been asked to put 21 to you a couple of points arising. We know Mr Marshall, 22 who was the civilian communications officer at Tooting, 23 remained in post. Do you know why that was so, given 24 that there was an obvious risk of future disclosures by 25 him?</p> <p style="text-align: center;">Page 46</p>	<p>1 investigating journalists and the significance of that. 2 But I can't recall specific discussions. 3 Q. Did that for you create any particular fears or trap 4 falls or was it something that you would simply take in 5 your stride, in the context of the work you were doing? 6 A. Well, considering the work that we were doing, 7 investigating corrupt police employees, police officers 8 and members of the civilian staff, investigating 9 journalists didn't present any fear. There wasn't any 10 fear involved at all. But we did recognise the 11 significance of what we were doing and the attention 12 that that would attract and that would obviously shape 13 how we approached that, but it certainly wouldn't have 14 stopped us doing it and there was no trepidation around 15 it. 16 Q. Can I put it in a slightly different way, that there 17 would be resource implications in taking on journalists 18 and powerful newspapers, some might say. They would 19 have access to sophisticated legal advice. Would those 20 matters be a factor in your decision-making? 21 A. In terms of operational activity and our response? No. 22 That wouldn't stop us doing what we needed to do. You 23 can imagine that some the investigations that we were 24 conducting at the time were relatively high profile and, 25 no, that wouldn't have stopped us doing what we were</p> <p style="text-align: center;">Page 48</p>

<p>1 doing.</p> <p>2 Q. Thank you. I'm going to take as read quite a lot of the</p> <p>3 early part of your statement. We're going to note at</p> <p>4 paragraph 16 what the terms of reference of the inquiry,</p> <p>5 which was then I think code-named Operation Glade by</p> <p>6 that point, were:</p> <p>7 "To investigate (covertly) at this time the</p> <p>8 allegations against Marshall in order to prove or</p> <p>9 disprove his involvement in the offences alleged. The</p> <p>10 parameter of the investigation at this time will include</p> <p>11 Marshall himself, John Boyall and possibly Stephen</p> <p>12 Whittamore. It appears to be clear evidence Marshall is</p> <p>13 conducting illegal PNC or CRO checks on behalf of John</p> <p>14 Boyall at the request of a number of reporters. The aim</p> <p>15 of the investigation will be to gather evidence of</p> <p>16 Marshall, Boyall and Whittamore's involvement in the</p> <p>17 misuse of the PNC or CRO systems with a view to</p> <p>18 prosecuting them for any offences disclosed or to</p> <p>19 prevent further misuse. Early consultation will take</p> <p>20 place with the CPS regarding appropriate charges should</p> <p>21 sufficient evidence be obtained."</p> <p>22 From the way in which the terms of reference are set</p> <p>23 out, it's clear that charges of conspiracy might be</p> <p>24 under contemplation. Have I correctly understood it?</p> <p>25 A. Yes, that's correct, sir.</p> <p style="text-align: center;">Page 49</p>	<p>1 tab 3 in the bundle which has been provided. Go to</p> <p>2 decision 20 on 10 November 2003, which is page 16094.</p> <p>3 The decision was taken to arrest Mr King, do you see</p> <p>4 that?</p> <p>5 A. Yes, I do, sir.</p> <p>6 Q. In your own words, why was the decision taken to arrest</p> <p>7 him?</p> <p>8 A. I seem to recall that we had arrested Paul Marshall and</p> <p>9 we were analysing a lot of telecommunications evidence</p> <p>10 that we had taken from his telephones and from his</p> <p>11 premises, telephone bills and the results of billing</p> <p>12 requests and subscriber requests, and from that we</p> <p>13 identified another link in the chain that we had</p> <p>14 previously not realised was there, and that was</p> <p>15 Alan King, a former police sergeant, I believe, who used</p> <p>16 to work in the same area as Marshall, and we saw</p> <p>17 a series of contacts between those two, which indicated</p> <p>18 that he was part of that chain. So on that basis he was</p> <p>19 then deemed to be a suspect involved in that, and I made</p> <p>20 a decision that he should be arrested on that basis.</p> <p>21 Q. On the same day, you make another decision, number 21,</p> <p>22 page 16095. You cross out the words "arrest the</p> <p>23 journalists". The decision was to:</p> <p>24 "... interview under caution the journalists who are</p> <p>25 suspected of being concerned in the offence of</p> <p style="text-align: center;">Page 51</p>
<p>1 Q. The possible conspiracies might be conspiracy to</p> <p>2 corrupt, which at that point would probably be under the</p> <p>3 1906 and 1916 Prevention of Corruption Acts, or the</p> <p>4 common law offence of misfeasance in public office or</p> <p>5 the secondary offences in relation to that common law</p> <p>6 offence. Did you see any difference between the two?</p> <p>7 A. I initially made reference to the fact that I was</p> <p>8 considering conspiracy to corrupt, and I think I made</p> <p>9 a note of that in my decision log. That really was</p> <p>10 a label that I gave the general activity at that time.</p> <p>11 Clearly the indictment subsequently read different, but</p> <p>12 that's not unusual when it's referred to the CPS and</p> <p>13 then obviously counsel have a view on that and they</p> <p>14 would choose the most appropriate charges. So</p> <p>15 conspiracy to corrupt was a general term applied to it</p> <p>16 because that's what we thought it was at the time, but</p> <p>17 the most appropriate charge was obviously decided by</p> <p>18 counsel.</p> <p>19 I believe that was conspiracy to commit misconduct</p> <p>20 in the end.</p> <p>21 Q. I think it became conspiracy to commit -- what was</p> <p>22 described as misfeasance, it's the same as misconduct in</p> <p>23 public office.</p> <p>24 Can we look at a few of the decision logs to see how</p> <p>25 your thinking may have evolved? This is under BG2,</p> <p style="text-align: center;">Page 50</p>	<p>1 conspiracy to corrupt."</p> <p>2 First of all, why weren't the journalists arrested</p> <p>3 in the same way as Mr King was?</p> <p>4 A. The default position isn't always to arrest in the first</p> <p>5 instance. My consideration then were what is it that</p> <p>6 I was hoping to achieve and what I wanted to achieve was</p> <p>7 to interview the journalists under caution. I, through</p> <p>8 the legal departments of the various newspapers, was</p> <p>9 able to access and secure the attendance of the</p> <p>10 journalists, and that was relatively straightforward,</p> <p>11 I think, without any complication. Whereas King,</p> <p>12 I didn't have that access to King and it was necessary</p> <p>13 to secure him by arresting -- to secure his attendance</p> <p>14 at the police station for investigation interview by</p> <p>15 arresting him. But it was always a -- for each of the</p> <p>16 suspects and for every suspect, it's a consideration as</p> <p>17 to whether or not they need to be arrested in order to</p> <p>18 achieve what it is you want to achieve.</p> <p>19 Q. But we know that you arrested seven journalists --</p> <p>20 A. Interviewed.</p> <p>21 Q. Interviewed, pardon me, seven journalists. How were</p> <p>22 they identified?</p> <p>23 A. From the ledgers that Stephen Whittamore had as part of</p> <p>24 his business.</p> <p>25 Q. There may be a misunderstanding about this, but how many</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 journalists in all have been identified in 2 Mr Whittamore's ledgers insofar as concerns this 3 operation, Operation Glade, in contradistinction to 4 Operation Motorman? 5 A. Seven. 6 Q. So you arrested the whole lot? 7 A. We interviewed all of them. 8 Q. Sorry, you interviewed the whole lot, you never arrested 9 them. 10 Can I ask you this: the quality of the evidence you 11 had in documentary form -- you touch on this in decision 12 21, 16094, you said: 13 "Evidence exists which implicates a number of 14 journalists in the offence of conspiracy to corrupt. In 15 some circumstances newspaper articles and invoices from 16 Whittamore show that PNC data has been requested and 17 acquired." 18 Pausing there, you obviously had the newspaper 19 article, which contains the source information; is that 20 correct? 21 A. Yes, we did. 22 Q. And you had an audit trail of requests from the 23 journalists to Whittamore, but in your own words, to do 24 what? 25 A. Whittamore kept very detailed ledgers of his business Page 53</p>	<p>1 interview, that they couldn't reasonably -- when they 2 were being interviewed, quite a few of them said they 3 thought the information was coming from the courts 4 because they thought CRO stood for court record office, 5 and we put it to them that they couldn't possibly -- 6 they couldn't possibly accept or assume that that 7 information would get turned around so quickly, I think 8 a matter of hours in some cases, two or three hours, and 9 I think without exception, from memory, they all said 10 that that is genuinely where they thought it was from, 11 regardless of our suspicions. Really because we were 12 putting to them that the turnaround was so quick, it 13 couldn't be from there, we didn't accept what they were 14 saying, but they stuck with that line and all of them 15 stated that they would not have used Whittamore or any 16 other agency if they had known the information was being 17 accessed or obtained illegally. 18 Q. About the price or the level of consideration, could any 19 inferences be drawn from that? 20 A. I seem to recall that they were paying perhaps £200, 21 £300, and maybe a bit more on occasions, for the 22 information. I'm not sure that you could draw an 23 inference from that. I think the information was of 24 value to them, not necessarily the quick turnaround, but 25 I'm sure that was a factor in their using Whittamore Page 55</p>
<p>1 and he had invoices in there to -- going out to the 2 various newspapers and named individuals within those 3 newspapers. And that's where the seven names came from. 4 On the actual invoices it could show CRO and I think 5 vehicle check, but it was quite clear that they were 6 asking for CRO details or vehicle checks, registered 7 keeper details, and on those invoices would be a price 8 as well. So we had the invoice, which to us was the 9 acknowledgment, and obviously the PNC audit trail showed 10 that the checks had been done, and that the invoices had 11 gone out to the various newspapers. 12 So we already had very good evidence that that link 13 between the journalists did exist evidentially, that 14 they were requesting or that everything indicated they 15 were requesting the information, and obviously we had 16 the audit trail which showed that Marshall had conducted 17 the checks and fed them back through the chain into 18 Whittamore. 19 Q. Are there any inferences to be drawn, possibly from a 20 few matters: first of all, the speed or otherwise with 21 which Whittamore was able to obtain this information for 22 journalists; was it slow or fast? 23 A. It was fast. And during the interviews of the 24 journalists, we put that to them on a number of 25 occasions, to each of them during the course of the Page 54</p>	<p>1 because he provided such good service. 2 Q. Were the words PNC or Police National Computer on any of 3 the invoices you saw? 4 A. I don't recall, but I couldn't say for sure. I would 5 have to have a look at them again. Certainly CRO was 6 written on the invoices. 7 Q. The information itself included information as to 8 previous convictions of a target; is that right? 9 A. A target for the newspapers? 10 Q. Yes. 11 A. Yes. Individuals that were of interest to newspapers. 12 Registered keeper details for their vehicles, presumably 13 to find out where they lived, or previous convictions 14 that they may have had. 15 Q. In that interview was it put to the journalists: well, 16 information as to previous criminal convictions is not 17 in the public domain, almost by definition it must be 18 obtained illegally? 19 A. Yes, it was. It was specifically put to them, and they 20 pleaded ignorance around how the information would have 21 been obtained illegally. They just said they wouldn't 22 have used Whittamore if they had have known it was being 23 obtained illegally. 24 Q. Did you conduct any of these interviews yourself, 25 Mr Gilmour? Page 56</p>

14 (Pages 53 to 56)

<p>1 A. No, I didn't.</p> <p>2 Q. You obviously reviewed the records of the interview,</p> <p>3 which we don't have. The CPS, we know, took a view</p> <p>4 about it. Did you take a view as to the plausibility or</p> <p>5 otherwise of the defences which were being maintained at</p> <p>6 interview?</p> <p>7 A. I did take a view. As I said earlier, it was put to the</p> <p>8 journalists that the speed with which the checks were</p> <p>9 being turned around would suggest they weren't being</p> <p>10 obtained through courts or court records, but that said,</p> <p>11 we couldn't establish guilty knowledge on the part of</p> <p>12 the journalists as to where the information was coming</p> <p>13 from.</p> <p>14 LORD JUSTICE LEVESON: Well, at highest, it would be an</p> <p>15 inference, wouldn't it?</p> <p>16 A. Yes, sir.</p> <p>17 LORD JUSTICE LEVESON: At its highest.</p> <p>18 A. At its highest.</p> <p>19 The other difficulty that we had, sir, and this came</p> <p>20 out during the course of the interviews, was that all</p> <p>21 the journalists accepted that they used Whittamore to</p> <p>22 obtain the information, and obviously they all denied</p> <p>23 knowing that it was coming from the PNC, but frequently</p> <p>24 they would say, "Yes, I accept I asked for that</p> <p>25 information, but that piece of information I didn't ask</p> <p style="text-align: center;">Page 57</p>	<p>1 linked with your decision not to arrest the journalists</p> <p>2 but instead to invite them for interview?</p> <p>3 A. No. There would have been a press strategy in any case.</p> <p>4 Q. It's clear from the next decision that you weren't going</p> <p>5 to interview the journalists until you had arrested and</p> <p>6 interviewed Marshall and King. That presumably was for</p> <p>7 sound operational reasons. You wanted to have the best</p> <p>8 available evidence to be able to put to the journalists</p> <p>9 as and when the need arose?</p> <p>10 A. That's correct.</p> <p>11 Q. Decision number 24. The decision is to meet with the</p> <p>12 CPS after reviewing King's computers. The reason:</p> <p>13 "To assess and evaluate all evidence gathered to</p> <p>14 date, to assess the strength of evidence against all</p> <p>15 suspects, to decide if interview under caution for</p> <p>16 journalists should proceed."</p> <p>17 I've been asked to put this to you, so you can deal</p> <p>18 with it: does this decision demonstrate a diminishing</p> <p>19 will to interview the journalists?</p> <p>20 A. No. In my opinion, no, because we did interview the</p> <p>21 journalists.</p> <p>22 Q. And the decision -- just bear with me -- there was</p> <p>23 a further review, decision 27, which starts at 16101.</p> <p>24 We're now on 19 December 2003. King's computer has been</p> <p>25 fully reviewed.</p> <p style="text-align: center;">Page 59</p>
<p>1 for, it could have been any other journalist within the</p> <p>2 newsroom using my name when they contacted Whittamore",</p> <p>3 so even attributing all the checks to a specific</p> <p>4 journalist would have been difficult.</p> <p>5 LORD JUSTICE LEVESON: I see.</p> <p>6 MR JAY: Or maybe not on a conspiracy charge, Mr Gilmour,</p> <p>7 but let's not investigate that.</p> <p>8 Can we look at one or two other decision logs, just</p> <p>9 to see how this evolved. Decision 22, page 16096,</p> <p>10 you're thinking now about the need to devise a press</p> <p>11 strategy for the proposed interview of journalists?</p> <p>12 A. Yes, sir. That's standard for all investigations of</p> <p>13 this nature, and any other investigation which is going</p> <p>14 to attract media attention.</p> <p>15 Q. Did you fear a press backlash to an investigation of</p> <p>16 journalists?</p> <p>17 A. No. We didn't fear a backlash. We were aware that it</p> <p>18 would cause a reaction. The reason for having a media</p> <p>19 strategy was to deal with the enquiries that we would</p> <p>20 expect to come from dealing with the media. It wasn't</p> <p>21 that we feared a backlash, we just knew that this would</p> <p>22 attract a lot of attention and we needed to have</p> <p>23 a process in place to manage the questions that would</p> <p>24 come in.</p> <p>25 Q. Was the need to devise a press strategy in any way</p> <p style="text-align: center;">Page 58</p>	<p>1 Then on the next page, 16102, you say:</p> <p>2 "I reviewed this case, which is the subject of CPS</p> <p>3 advice. It's likely that the advice will be to charge</p> <p>4 all subjects on 14 January 2004. Careful consideration</p> <p>5 needs to be given to the interviewing of the journalists</p> <p>6 who it would appear have required the checks."</p> <p>7 I've been asked to put this to you: why was careful</p> <p>8 consideration required in relation to the journalists</p> <p>9 over and above any consideration you gave to the other</p> <p>10 suspects?</p> <p>11 A. Sir, I should point out that this isn't my entry. I do</p> <p>12 recognise the signature, I believe it's Detective</p> <p>13 Superintendent Tony Fuller. So I don't think I'm in</p> <p>14 a position to answer that. I can give a view, if you</p> <p>15 wish.</p> <p>16 I think it's because of the significance of what we</p> <p>17 were dealing with and recognising that significance and</p> <p>18 just giving it due consideration to be able to manage</p> <p>19 the consequences of what we were doing, or the fallout</p> <p>20 from what we were doing.</p> <p>21 Q. Because the record reads on:</p> <p>22 "Clearly there would be huge press interest when</p> <p>23 this happens which would need to be very carefully</p> <p>24 managed."</p> <p>25 Out of interest, was there huge press interest?</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 A. I don't believe there was. I don't recall that much 2 press interest. 3 Q. Then you say: 4 "I will therefore arrange a Gold Group to take place 5 before 14 January 2004 involving ..." 6 That's a Deputy Assistant Commissioner, isn't it? 7 A. Yes, it is sir. 8 Q. So you're taking it to a high level. Then that's 9 Mr Fuller, he's the superintendent or the chief 10 superintendent, and then you and then other officers, 11 and then Mr Fedorcio is involved as well. Do you know 12 why he was going to be involved? 13 A. I think I should say that I don't believe this meeting 14 took place. I haven't seen any record of this meeting 15 taking place and to the best of my recollection I didn't 16 attend a Gold Group. I'm not entirely sure there was 17 a Gold Group. 18 Just to help everybody understand, a Gold Group is 19 called to review a significant event, it could be an 20 investigation, it could be some other event. So as the 21 organisation can properly manage that and co-ordinate 22 a response to it, members of the Gold Group would 23 generally be the heads from particular units or other 24 people who can bring specific skills or support or 25 arrests which could assist the investigation or the</p> <p style="text-align: center;">Page 61</p>	<p>1 ledgers, the information within the ledgers and the 2 telecommunications data. As that assessment went on 3 over a period of weeks and months, I realised that we 4 actually had significant evidence to show that 5 connection between the journalists and Whittamore, and 6 in fact everybody within the chain, to the point that -- 7 taking you back to the question around arrests, I then 8 reconsidered the need to have to arrest the journalists 9 and to conduct any searches because in reality I already 10 had what I assessed to be significant evidence showing 11 that link, so in my view the need to arrest diminished 12 and I didn't need to do that and secured their 13 attendance through invitation. 14 LORD JUSTICE LEVESON: So it's not just a question of arrest 15 that's concerned, it's whether you need to effect 16 a search, because arrest carries with it, under PACE, 17 certain rights of search? 18 A. Yes, correct, sir. They can obviously be two operate 19 issues. 20 LORD JUSTICE LEVESON: Of course. 21 A. But on this occasion there wasn't -- I decided there 22 wasn't a need to go and search premises used by the 23 journalists because we had a proof of that relationship 24 and the information requests already within the ledgers. 25 LORD JUSTICE LEVESON: This was before they were interviewed</p> <p style="text-align: center;">Page 63</p>
<p>1 event. So in answer to your question, sir, I would 2 assume that would be why Dick Fedorcio would have been 3 included on that, because from recollection I think he 4 was head of the media section or media department within 5 the MPS at that time, but I can't specifically recall -- 6 Q. He was. 7 A. And that would have been why he would have been there. 8 Q. Well, at all events, the decision to interview the 9 journalists is decision 28, taken by you on 16 January 10 2004. We'll come to the upshot of that decision. 11 Can I go back to paragraph 33 of your statement. 12 You point out at paragraph 33, this is at a meeting 13 which took place in November 2003, you were in fact of 14 the view that the journalists should be arrested before 15 they were interviewed; is that right? 16 A. Yes. That's correct, sir. 17 Q. Can you explain why you were overruled or did you change 18 your mind? 19 A. I wasn't overruled, sir. That was an opinion that I had 20 formed at that point. The investigation stopped -- 21 well, from the operation's point of view started in 22 August. As you can imagine, there was quite a large 23 quantity of material that we needed to go through, we 24 were constantly doing that, so the evidence was being 25 updated almost on a daily basis, particularly from the</p> <p style="text-align: center;">Page 62</p>	<p>1 and before they were saying, "I might be responsible for 2 this bit but not that bit"? 3 A. Yes, sir. 4 LORD JUSTICE LEVESON: Had you understood that earlier, then 5 that might have itself impact on your decision whether 6 a search would have been of assistance? 7 A. Yes, sir. 8 MR JAY: But we know that the decision to interview was made 9 on 16 January. The actual interviews took place between 10 19 January and 31 January 2004. This is paragraph 39 of 11 your statement. 12 A. Yes, sir. 13 Q. And the journalists co-operated, they responded to 14 written invitations to attend police stations to be 15 interviewed under caution and they had legal advice. Is 16 that broadly speaking correct? 17 A. That's correct, sir. 18 Q. Might it be said that you, rightly or wrongly, deprived 19 yourself of the element of surprise? The journalists 20 would know full well what you were going to ask them, 21 and any line they might take in defence could be, as it 22 were, orchestrated? 23 A. I certainly couldn't discount that. And equally, the 24 need to search the premises may not have delivered 25 anything for exactly the same reasons because Motorman</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 and Reproof had already, for want of a better word, let 2 the cat out of the bag. So yes, they would have been 3 forearmed in advance of the interviews, but I can't say 4 that for sure.</p> <p>5 Q. I think you have told us that there was a consistency 6 between the journalists and the lines they did take in 7 answer to your questions. Is that fair?</p> <p>8 A. Generally speaking it was along the same lines, yes.</p> <p>9 Q. I suppose there are at least two inferences which could 10 be drawn from that. 11 Can I ask you about paragraph 41, please?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You say two-thirds of the way down that paragraph, our 14 page 18584: 15 "All of the journalists accepted that they had used 16 Whittamore to obtain information but denied knowing that 17 a corrupt police employee or unlawful methods were being 18 used to access the information." 19 You told us that you had evidence from King and from 20 Marshall. Did you have evidence from Whittamore which 21 would enable you to complete the jigsaw in relation to 22 what you might put to the journalists?</p> <p>23 A. From the ledgers? Yes.</p> <p>24 Q. But beyond what the ledgers said, they spoke for 25 themselves, did you have an interview under caution</p> <p style="text-align: center;">Page 65</p>	<p>1 A. We didn't -- we never established a direct link between 2 Whittamore and Marshall. We had, obviously, the 3 indirect link. We had Marshall, King, Boyall and then 4 Whittamore.</p> <p>5 Q. Was Mr King denying that he knew the information was 6 obtained through access to the Police National Computer?</p> <p>7 A. Mr King didn't make any comment, from recollection, to 8 any of the questions put to him about that.</p> <p>9 Q. Well, what happened then, we know that the last 10 interview took place on 31 January 2004. The file was 11 then passed on to the CPS in the natural and ordinary 12 course of things and in paragraph 45 of your statement, 13 6 March 2004, CPS advised there was insufficient 14 evidence to charge any of the journalists.</p> <p>15 A. That's correct.</p> <p>16 Q. That's their decision, it's taken out of your hands by 17 then. And then letters are written to the journalists 18 explaining that state of affairs. That's right, isn't 19 it?</p> <p>20 A. Yes, sir.</p> <p>21 Q. We also know what happened at Blackfriars -- 22 LORD JUSTICE LEVESON: Before we go to Blackfriars Crown 23 Court, I think we just ought to clear something up in 24 relation to your exhibit BG5.</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 67</p>
<p>1 taken of him?</p> <p>2 A. Of Whittamore?</p> <p>3 Q. Mm.</p> <p>4 A. Yes, we did.</p> <p>5 Q. Was there any reference there to his use of the Police 6 National Computer?</p> <p>7 A. He denied using the Police National Computer to obtain 8 his information.</p> <p>9 Q. When he said "his use", I meant of course his use 10 through the agency of Mr Marshall. He denied that?</p> <p>11 A. Yes, he did, sir.</p> <p>12 Q. What did you think of that denial?</p> <p>13 A. Well, again, looking at Mr Whittamore and Mr Boyall and 14 Mr King and Mr Marshall, it was my view, a view shared 15 by companies, that given the nature of their business 16 and how prolific certainly Boyall and Whittamore were in 17 acquiring information, that it didn't wear, you know, 18 the fact that they were saying they didn't know it came 19 from the PNC. They were professional information 20 gatherers who would have recognised that you couldn't 21 get that fast turnaround from a court, even though they 22 did say that they thought it was coming from court. So 23 we didn't accept what they were saying.</p> <p>24 Q. But the link between Whittamore and Marshall was clearly 25 established, wasn't it?</p> <p style="text-align: center;">Page 66</p>	<p>1 LORD JUSTICE LEVESON: They needn't go on the screen. They 2 are copies of letters that were written to journalists 3 and the names of the journalists will be redacted, if 4 they haven't already been. But the important feature to 5 anyone reading these letters is this, isn't it: 6 Presumably you've taken these off a computer system 7 which automatically dates the letter?</p> <p>8 A. That's correct.</p> <p>9 LORD JUSTICE LEVESON: So it is wrong to read the date as 10 20 March 2012, which is presumably the date that the 11 letters were printed?</p> <p>12 A. Yes, sir.</p> <p>13 LORD JUSTICE LEVESON: Your statement makes it clear that it 14 was March 2004 that these letters were sent.</p> <p>15 A. Yes, sir.</p> <p>16 LORD JUSTICE LEVESON: So before anybody suggests that 17 you've been creating letters later on, that's just not 18 right?</p> <p>19 A. It's just the way that the computer updates them on the 20 day they were actually printed.</p> <p>21 LORD JUSTICE LEVESON: I'd understood that, but I wouldn't 22 want anybody to misunderstand it.</p> <p>23 MR JAY: Were you disappointed by the CPS decision or not?</p> <p>24 A. I accepted the decision on the basis that we couldn't 25 prove guilty knowledge. I wasn't disappointed with the</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 CPS taking that decision; I was disappointed that we 2 couldn't prove guilty knowledge. 3 Q. Well, I suppose that was nothing compared with your 4 level of disappointment with what happened at 5 Blackfriars Crown Court in April of 2005, Mr Gilmour? 6 A. That was very disappointing, the outcome of the trial. 7 Obviously the four were convicted but the sentences, in 8 my personal opinion, were lenient. 9 LORD JUSTICE LEVESON: Let's just understand this. Were 10 these different judges, Marshall and King on the one 11 hand, Whittamore and Boyall on the other? 12 A. I think it was the same one, sir. 13 LORD JUSTICE LEVESON: So they were all -- am 14 I misrecollecting that Whittamore and Boyall was 15 Judge Samuels, is that right? 16 MR JAY: Yes, it was all on the same occasion. 17 LORD JUSTICE LEVESON: Yes, I noticed that, but I thought 18 that he was referring to some earlier decision of 19 a recorder. 20 A. Sir, if I can help, Mr Marshall was found to be in 21 possession of a large quantity of property which didn't 22 belong to him, and he was charged with handling stolen 23 goods, and a different judge heard that matter, and 24 maybe that's what's being referred to. 25 LORD JUSTICE LEVESON: I see, all right. But there it was, Page 69</p>	<p>1 MR JAY: I think the rest of it speaks for itself and you've 2 covered the inferences, if any, which could be drawn 3 from the journalists' interviews. 4 The rest of the questions which I've been asked to 5 put are really just comment on the facts as they stand, 6 and I don't think it's necessary for me to ask them. 7 Thank you very much, Mr Gilmour. 8 A. Thank you. 9 LORD JUSTICE LEVESON: Mr Gilmour, thank you very much 10 indeed for the obvious work you've put into 11 reconstructing what happened a very long time ago. 12 Thank you. 13 A. Thank you. 14 LORD JUSTICE LEVESON: I'll rise so that we can reconnect 15 the bits of electrical equipment. 16 (12.02 pm) 17 (A short break) 18 (12.14 pm) 19 MR JAY: The next witness, please, is Mr Middleton. 20 MR RUSSELL CHARLES MIDDLETON (sworn) 21 Questions by MR JAY 22 MR JAY: Your full name, please? 23 A. Russell Charles Middleton. 24 Q. Thank you. You've provided us with a witness statement 25 dated 26 March of this year. You've signed and dated it Page 71</p>
<p>1 these four were all conditionally discharged, and you 2 describe the sentences as a disappointment to such 3 extent that consideration was given to referring them to 4 the Court of Appeal, but unduly lenient sentences at 5 that time, certainly, could only -- appeals could only 6 be brought in relation to indictable only and certain 7 other offences, isn't that right? 8 A. It's beyond me, sir. I wouldn't like to comment. 9 LORD JUSTICE LEVESON: All right. You're coming back into 10 my territory of the law. And the other feature is the 11 only penalty for Data Protection Act offences, am 12 I right in saying, at this time was financial and indeed 13 remains financial, so by adding Section 55.1(a) of the 14 Data Protection Act 1998 to an indictment that charged 15 conspiracy to commit misconduct in public office, which 16 of course is a common law offence and therefore 17 sentences at large, pleas were accepted to offences 18 which only carried a potential financial penalty. Do 19 you know about that? 20 A. Sir, I'm obviously aware of what happened. It was 21 a matter for the Crown Prosecution -- 22 LORD JUSTICE LEVESON: I wasn't in any sense criticising 23 you, Mr Gilmour, but do I have that right, Mr Jay? 24 MR JAY: You have. 25 LORD JUSTICE LEVESON: I thought so. Page 70</p>	<p>1 under the standard statement of truth. This is the 2 evidence you are content that this Inquiry accepts 3 formally? 4 A. That's right. 5 Q. In terms of your current rank, you were temporary 6 Assistant Chief Constable in the Devon and Cornwall 7 Police at the time you gave your statement. I think 8 you're now back to your substantive rank -- 9 A. That's correct. Please don't read anything into that. 10 Q. Detective Chief Superintendent. 11 A. Yes. 12 Q. That is what your rank always was? 13 A. Yes. I was in the temporary role for seven months, yes. 14 Q. You've been in the Police Service for 24 years, but at 15 the material time, this is 2002, you were a Detective 16 Inspector? 17 A. I was, yes, with some 14 years' service at the time. 18 Q. Thank you. What was your role in relation to 19 Operation Reproof? 20 A. I was the deputy senior investigating officer. The 21 actual senior investigating officer retired some years 22 ago. 23 Q. Can you in your own words -- you cover this in 24 paragraph 2 of your statement, 18368 -- tell us the 25 background to Operation Reproof and what it was about? Page 72</p>

18 (Pages 69 to 72)

<p>1 A. Yes. Reproof started, if I just briefly cover that 2 because I'm sure you'll ask me some further questions, 3 as a result of a blackmail investigation inquiry down in 4 Plymouth in 2001 whereby a member of the public produced 5 at a local action group meeting some previous 6 convictions of a person who was bidding for the contract 7 for a particular development in Plymouth. That 8 obviously caused some concern and led to an initial 9 investigation as to where had that individual got those 10 previous convictions from, which led to some searches of 11 various premises, which then gathered much information 12 that led to the scoping of Operation Reproof as to how 13 people had come to that information.</p> <p>14 LORD JUSTICE LEVESON: Just pause a moment. (Pause). 15 All right, carry on.</p> <p>16 MR JAY: In terms of Operation Reproof -- I will have to 17 speak up a bit, we have competition, Mr Middleton.</p> <p>18 A. Yes.</p> <p>19 Q. Who were the ultimate consumers or customers?</p> <p>20 A. There were many different consumers and customers, and 21 that was why the investigation was very extensive and 22 wide-ranging. Predominantly we were looking at members 23 of past and present police officers in Devon and 24 Cornwall accessing the initial information and that was 25 going through private investigators, private detectives,</p> <p style="text-align: center;">Page 73</p>	<p>1 who was then channelling it upwards from there.</p> <p>2 Q. Channelling upwards to whom?</p> <p>3 A. To various different people and that's why the scope and 4 the range of the investigation was very wide. As I've 5 said, on most occasions it went to ultimately three or 6 four links up the chain, national companies, insurance 7 companies, who were instructing their own investigations 8 into civil claims, accidents, that sort of thing, 9 through to on some occasion matrimonial issues with 10 a private detective only one or two links up the chain 11 from our main private investigation company locally in 12 Devon.</p> <p>13 Q. There was a link -- and this brings in, I suppose, the 14 nexus with other operations -- with a company called 15 Data Research based in Surrey; is that right?</p> <p>16 A. That's correct, yes.</p> <p>17 Q. What was the nature of the link?</p> <p>18 A. If I can start by saying once we'd commenced the 19 investigation, because of the potential scale of it 20 right from the outset we involved the as were then 21 Police Complaints Authority, the PCA, pre-IPCC, and the 22 Crown Prosecution Service were involved right at the 23 early stages, so that we had advice and guidance support 24 all the way through as a joint prosecution team, if you 25 like.</p> <p style="text-align: center;">Page 75</p>
<p>1 and on to various customers, sometimes three or four 2 links away in that chain, so customers would vary. 3 Predominantly, at the end of the inquiry, the main 4 customers were national/international sometimes 5 insurance companies, debt recovery agents and the like, 6 who had instructed private investigators, and then three 7 or four links down the chain, some of that information 8 was being obtained corruptly.</p> <p>9 Q. The direct perpetrators of the offences, or rather those 10 suspected of committing the offence, you list in 11 paragraph 5, page 18370. These were a range of serving 12 and retired police officers and support staff; is that 13 right?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. And they were obtaining information -- well, from where?</p> <p>16 A. As I said, the instructions were coming from various 17 different customers. The predominant basis of my 18 investigation was based on previous conviction 19 information, and on occasion vehicle keeper information, 20 addresses and that sort of thing, so the main areas of 21 focus were from the Department of Work and Pensions, 22 a retired police officer who worked there, and also the 23 serving or currently serving, as was then, police 24 officer in Devon and Cornwall accessing PNC information. 25 That was being passed to a particular private detective,</p> <p style="text-align: center;">Page 74</p>	<p>1 Once we'd done the initial searches, huge amounts of 2 data was recovered that had to be painstakingly gone 3 through to find the links back up through the chains.</p> <p>4 Data Research is a company in Horley, as you 5 mentioned. They featured very heavily as the third link 6 in the chain, who were instructing the Devon SAS 7 investigations, who were therefore, from that point, 8 asking the police officer or the DWP staff to do the 9 checks for them. And then it would have been 10 interpreted into reports, passed back through the 11 various private investigators, predominantly, as we 12 said, to Data Research in Horley.</p> <p>13 Q. Their premises were searched pursuant to a warrant?</p> <p>14 A. Yes. Obviously I'm aware of previous evidence that's 15 been given to this Inquiry in respect of that. Having 16 done a lot of the investigative work, and clearly 17 intending and needing to search and make arrests at 18 Data Research based on what we knew at that point, we 19 actually briefed the Information Commissioner's office 20 as to what we were doing, we were aware of an interest 21 they had in that company, we came to an agreement with 22 the Information Commissioner that they would come along 23 with us on the search so that we would deal with what we 24 were looking for, and any subsequent information that 25 would be relevant for this morning they would take away</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 and deal with themselves.</p> <p>2 Q. The search, I think, was on 8 March 2003.</p> <p>3 A. That's right.</p> <p>4 Q. Mr Owens gave us the exact date. That's the date</p> <p>5 I recall. He was there on that occasion. Your officers</p> <p>6 were also there on that occasion?</p> <p>7 A. Yes.</p> <p>8 Q. And a substantial quantity of data was recovered</p> <p>9 pursuant to that search; is that right?</p> <p>10 A. Yes. I actually went on that search myself.</p> <p>11 Q. Can I deal with this critical issue, really, in relation</p> <p>12 to the scope of Operation Reproof?</p> <p>13 A. Mm-hm.</p> <p>14 Q. Why were journalists not within scope, as it were?</p> <p>15 A. I think I need to make clear they weren't out of scope.</p> <p>16 The whole inquiry right from the outset was extremely</p> <p>17 open, an open-minded approach as to what we would</p> <p>18 discover. The initial information, as we said, linked</p> <p>19 pretty much specifically to a local investigation,</p> <p>20 detective private investigation agency in Devon and the</p> <p>21 flow of information was from the police officer and the</p> <p>22 other staff I've mentioned through to that private</p> <p>23 investigator, up one or two more chains, and we were</p> <p>24 tracking the customers each and every occasion,</p> <p>25 open-minded as to who those customers would be, and we</p> <p style="text-align: center;">Page 77</p>	<p>1 ours. I'm also aware that their investigation,</p> <p>2 Operation Motorman, then led to Operation Glade, so you</p> <p>3 could track it back and say that the seizure of that</p> <p>4 document at Data Research subsequently led to those two</p> <p>5 investigations, but we weren't involved --</p> <p>6 LORD JUSTICE LEVESON: PS28 was what generated Motorman; is</p> <p>7 that right?</p> <p>8 A. Yes.</p> <p>9 MR JAY: We recall Mr Owens' evidence about that. It was</p> <p>10 a list of vehicle registration numbers --</p> <p>11 A. That's correct, yes. We then carried on with our</p> <p>12 investigations to what we were dealing with, leaving the</p> <p>13 Information Commissioner's investigators to deal with</p> <p>14 their own matters.</p> <p>15 LORD JUSTICE LEVESON: So we've heard this evidence in</p> <p>16 absolute reverse order?</p> <p>17 A. Yes, that would appear to be the case.</p> <p>18 LORD JUSTICE LEVESON: Right.</p> <p>19 MR JAY: In paragraph 8 of your statement, 18375, you say:</p> <p>20 "There was no direct evidence found during the</p> <p>21 course of the investigation that any media organisation</p> <p>22 was involved in any way."</p> <p>23 What about indirect or inferential evidence?</p> <p>24 A. As I've said right from the outset, the mindset of</p> <p>25 myself as the senior investigating officer and my team,</p> <p style="text-align: center;">Page 79</p>
<p>1 never found any direct evidence or indirect evidence</p> <p>2 linking that information being requested by or for any</p> <p>3 part of the media or journalists.</p> <p>4 Q. Were you in liaison, though, with the ICO, who of course</p> <p>5 were undertaking their own Operation Motorman, which</p> <p>6 operation did reveal copious links with journalists?</p> <p>7 A. In liaison, yes, in the true spirit of that word.</p> <p>8 Actually what did happen is we went to them to brief</p> <p>9 them on our operation and investigation, invited them</p> <p>10 along on the search so that they could seize any</p> <p>11 information that was relevant to what they were doing,</p> <p>12 that they would then take on, and there was effectively</p> <p>13 a contract drawn up as to who would deal with what if</p> <p>14 anything particular was found.</p> <p>15 A particular document was found, I think it was PS28</p> <p>16 from recollection, that was of extreme interest to the</p> <p>17 Information Commissioner's team, that they took that</p> <p>18 away on the absolute understanding they were then going</p> <p>19 to deal with that to allow us to deal with the other</p> <p>20 wide-ranging matters that we had. They took that away.</p> <p>21 We were aware of the culmination of that inquiry but</p> <p>22 they effectively went their way and did their</p> <p>23 investigation. We carried on with ours. There was</p> <p>24 contact between disclosure packages shared et cetera but</p> <p>25 they did their investigation distinctly separate to</p> <p style="text-align: center;">Page 78</p>	<p>1 who were thoroughly professional throughout, was we were</p> <p>2 open-minded as to what we would find and we would have</p> <p>3 dealt with that and pursued that based on information or</p> <p>4 evidence that we had. We deal with information,</p> <p>5 intelligence and evidence. The CPS were working</p> <p>6 alongside us, as were the Police Complaints Authority.</p> <p>7 We did not have anything that directly or indirectly</p> <p>8 linked to journalists. Had we done so, we'd have</p> <p>9 thoroughly investigated that.</p> <p>10 Q. Can I ask you this general question, taking care not to</p> <p>11 name anybody: did part of your investigation include two</p> <p>12 senior politicians?</p> <p>13 A. It did, yes.</p> <p>14 Q. The fact that senior politicians were involved, or at</p> <p>15 least two of them, was that at least not an indicator</p> <p>16 that the press might be of interest?</p> <p>17 A. There could be and was some speculation at the time. As</p> <p>18 I've said, I was dealing with at the time, and still do</p> <p>19 now, information, intelligence and evidence. There was</p> <p>20 legislation that was investigated, and when I say</p> <p>21 investigated, when we're dealing with those particular</p> <p>22 issues, every single case was dealt with properly, from</p> <p>23 my perspective, which resulted -- in those cases there</p> <p>24 was a particular private investigation company up in</p> <p>25 Newcastle that was investigated thoroughly. That</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 individual was arrested, his premises were searched, all 2 information seized from that premises was thoroughly 3 researched with a view to trying to find who he was 4 getting that information for. We did not find that, 5 which was disappointing, but it just wasn't there. We 6 arrested that person, interviewed them thoroughly and 7 his answer to every question was "No comment", so we 8 weren't able to take that particular line any further.</p> <p>9 Q. At the hearing in the Crown Court on 17 October 2005, 10 this is the Exeter Crown Court, His Honour Judge Darlow, 11 counsel for one of the accused, Mr Stidwill -- as your 12 statement makes clear there were six accused in all?</p> <p>13 A. Yes.</p> <p>14 Q. He speculated -- there's only one copy of the transcript 15 available: 16 "Because what the inquiry has apparently shown up is 17 something which cannot be laid at the door of 18 Mr Stidwill nor indeed if there are cases, as it appears 19 there are, where somebody has been enquiring, perhaps on 20 behalf of a newspaper or elsewhere, into MPs ..." 21 So he was onto the point that newspapers might be 22 involved, particularly in the context of people of 23 political interests.</p> <p>24 A. I think the key point there, sir, is you've used the 25 words "may be" and "might". That was the point. We</p> <p style="text-align: center;">Page 81</p>	<p>1 That's not to say we weren't searching for that 2 information at the time, and every single customer -- 3 and as I said, sometimes two or three links up that 4 chain, sometimes four or five, and the further away you 5 get, the harder it is to establish what they're actually 6 requesting at the time -- every customer, through to 7 some companies that were represented by senior 8 solicitors in London, were interviewed and gave 9 statements as to what they were asking for, what they 10 expected, did they know, should they have known what 11 they were getting.</p> <p>12 And a key point in the whole of the inquiry which 13 was relevant to Data Research particularly is I would 14 use the phrase "laundered", that actually the 15 information they were getting right down at the front 16 end, CRO details, conviction details, address details 17 and the like, was then turned into a report that didn't 18 indicate where it had come from. Indeed I think it was 19 mentioned by the previous witness, if you know what date 20 and what court to go to, one can get conviction details. 21 So what certain companies were then doing, once getting 22 the PNC information, they then went to the various 23 courts and on payment of a fee were given the certified 24 copies of convictions. They then featured as part of 25 the reports that were passed on to the customers.</p> <p style="text-align: center;">Page 83</p>
<p>1 were looking for the information, we were searching for 2 the evidence, so it was part of the inquiry. We did not 3 find that as to who those customers were. The person 4 you've mentioned who was a barrister for the defence 5 raised that as a may be and a might, but there was no 6 evidence to support that. I don't know who that 7 customer was. I wish I did.</p> <p>8 Q. Page 18376 of your statement, on the internal original 9 numbering it's page 9, level with the upper hole punch, 10 you're talking here about the customers you had 11 identified rather than customers one might speculate 12 about.</p> <p>13 A. Yes.</p> <p>14 Q. You say clearly: 15 "There was no evidence that these companies were 16 aware that the people they were hiring to get the 17 information were obtaining some of the data illegally." 18 You may have been following the evidence given by 19 the previous witness?</p> <p>20 A. Yes.</p> <p>21 Q. It's perhaps a similar point?</p> <p>22 A. Yes, very.</p> <p>23 Q. Would you like to develop that for us?</p> <p>24 A. The evidence is the point as to my statement indicates 25 at the end of the inquiry we didn't have the evidence.</p> <p style="text-align: center;">Page 82</p>	<p>1 LORD JUSTICE LEVESON: But you have to identify precisely 2 what you're looking for.</p> <p>3 A. Absolutely.</p> <p>4 LORD JUSTICE LEVESON: You can't say, "Well, I'd like to see 5 every single Crown Court conviction for 30 March or for 6 the month of March.</p> <p>7 A. Absolutely. You have to go with the name, the date and 8 the court.</p> <p>9 LORD JUSTICE LEVESON: Or for the year.</p> <p>10 A. Absolutely. Name, date and court, you can then go and 11 for a fee collect that, which is what those companies 12 were doing, and turning them into certified copies of 13 convictions which they then passed on to their 14 customers.</p> <p>15 LORD JUSTICE LEVESON: So a certified copy of conviction is 16 potentially obtainable, but you only get that if you 17 know precisely what you need to know, or you only get 18 what you need to know if you do something which actually 19 you contend, and contended in that prosecution was 20 criminal.</p> <p>21 A. Absolutely. It that was entirely our case and our view, 22 that's why the individuals who were systematic in that 23 abuse were charged with the offences that they were 24 charged with.</p> <p>25 MR JAY: I've been asked to request you, Mr Middleton, if</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 you don't mind slowing down a bit. You're a very 2 articulate witness, but everything you say has to be 3 noted down. 4 A. Okay. 5 Q. What happened was that there was a hearing in Exeter on 6 19 October 2005. 7 A. Yes, there was. 8 Q. The transcript of the ruling is available under tab 2 of 9 the bundle we have. It starts at page 20013. I've read 10 the ruling twice. It's not altogether easy to follow 11 some of the reasoning, or indeed the conclusion, but the 12 conclusion appears to be that the judge was sceptical 13 that even if the facts were proven, they could as 14 a matter of law amount to the common law offence of 15 conspiracy -- 16 LORD JUSTICE LEVESON: I think you ought to expand that 17 a bit, Mr Jay. I think what he was faced with was an 18 application to stay proceedings as an abuse of process, 19 which application he roundly rejected. But in the 20 course of rejecting it, he offered his views first of 21 all as to whether the facts made out the offence, which 22 actually he was basing purely upon his study of the 23 papers, and secondly, on what he would do even if they 24 were. 25 MR JAY: Yes.</p> <p style="text-align: center;">Page 85</p>	<p>1 consequences of the judge's expression of view. 2 A. Absolutely. I met a number of times afterwards with CPS 3 and counsel, and that was the decision that was made by 4 them ultimately. 5 MR JAY: Yes. Those are all the questions I have, 6 Mr Middleton. 7 LORD JUSTICE LEVESON: Yes. Thank you very much indeed, 8 Mr Middleton. I'm very grateful to you for providing 9 the summary of what was the origin of a lot of the 10 evidence that we've heard. Thank you very much indeed. 11 A. Thank you. 12 LORD JUSTICE LEVESON: The next witness is due at 2 o'clock; 13 is that right? 14 MR JAY: Yes. I think Mr Sherborne has a short application 15 he would like to -- 16 LORD JUSTICE LEVESON: Yes. One moment, Mr Middleton. This 17 might involve you. Does it? 18 MR SHERBORNE: It doesn't, no. 19 LORD JUSTICE LEVESON: It doesn't? Thank you very much. 20 MR SHERBORNE: Sir, given the evidence of Mr Gilmour this 21 morning and what it reveals, there are a number of 22 matters that I wanted to raise with the Inquiry. 23 Mr Crossley has already sent an email to the Inquiry 24 solicitors about this. I was going to raise these 25 matters, if I may, at 2 pm, given that there are some</p> <p style="text-align: center;">Page 87</p>
<p>1 LORD JUSTICE LEVESON: And he caused the Crown Prosecution 2 Service to ask themselves: do you want to spend all this 3 time on this trial if I am of the view either (a) that 4 the facts may not make out an offence, or (b) that if 5 they do, this isn't terribly serious? And then not 6 perhaps surprisingly the CPS went away to think about 7 that. 8 Is that a fair summary of what the judge did? 9 A. That's a very fair summary. Thank you, sir. 10 LORD JUSTICE LEVESON: Yes. 11 MR JAY: Yes. It's not really necessary to look at that any 12 more. 13 LORD JUSTICE LEVESON: Sometimes my experience comes in 14 valuable, Mr Jay. Not often, but sometimes. 15 MR JAY: And that's where it ends, probably, Mr Middleton; 16 is that right? In terms of your -- you may have been 17 disappointed by the outcome, but there we were. 18 A. That's the case, sir, yes. 19 LORD JUSTICE LEVESON: And whereas now this might be 20 considered a terminating ruling, in fact it might even 21 have been capable of being fashioned as a terminating 22 ruling, there was no basis upon which that ruling could 23 be challenged in a higher court. 24 A. Yes. 25 LORD JUSTICE LEVESON: Therefore, the CPS accepted the</p> <p style="text-align: center;">Page 86</p>	<p>1 additional points that I wanted to discuss with 2 Mr Crossley and with some of my clients in the light of 3 the oral evidence that Mr Gilmour gave earlier this 4 morning. 5 I don't think it's going to take particularly long, 6 although, as I understand it, we are somewhat short of 7 evidence this afternoon. 8 LORD JUSTICE LEVESON: We're never short of evidence, and 9 I can always find something to occupy our time, 10 Mr Sherborne. 11 MR SHERBORNE: And I'm happy to assist in that. 12 LORD JUSTICE LEVESON: Yes, it's clear you are. Is it 13 sensible then to put off that which you want to make 14 submissions about until after we've heard the sole 15 witness that's available for this afternoon? 16 MR SHERBORNE: I'm happy to do that, if that assists the 17 witness. 18 LORD JUSTICE LEVESON: Yes. Is Mr Jay aware of the general 19 nature of the applications that you wish to make? 20 MR SHERBORNE: I hope that he is. I can't see from behind 21 whether he is. His face betrays the answer to that 22 question. 23 LORD JUSTICE LEVESON: I think there are sufficient nods. 24 MR SHERBORNE: I'm very grateful for nods. 25 LORD JUSTICE LEVESON: Doubtless somebody at some stage will</p> <p style="text-align: center;">Page 88</p>

<p>1 tell me. Thank you very much. 2 o'clock. 2 (12.36 pm) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 89</p>	
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A	activity 37:9 39:5 40:17 48:21 50:10 Acts 50:3 actual 54:4 64:9 72:21 add 11:7 adding 38:2 70:13 addition 4:11 6:12 additional 8:16 14:22 16:14 88:1 address 83:16 addressed 1:19 5:18 addresses 9:12 74:20 adduced 6:8 administrative 5:17 administratively 1:23 adopt 6:23 adopted 10:22 advance 6:13 65:3 advanced 4:10 advice 48:19 60:3,3 64:15 75:23 advised 67:13 advisers 3:4 4:1 5:1,4 advising 19:12 affairs 67:18 afternoon 88:7 88:15 agencies 24:8,19 agency 29:24 55:16 66:10 77:20 agents 74:5 ago 47:18 71:11 72:22 agreed 6:22 31:24 agreement 76:21 agrees 32:9 aim 49:14 Aladdin's 37:8 Alan 51:15 albeit 5:17 alive 14:3 47:25 allaying 8:6 allegations 49:8 alleged 49:9 allow 2:12,21 47:3 78:19 allowed 14:7 allows 19:9 alongside 80:6 alter 2:9 alternative 28:25 alternatively 9:9	altogether 85:10 amount 17:16 21:12 85:14 amounts 76:1 analysing 51:9 analysis 22:18 24:20 analysts 18:11 annex 42:4 anonymity 3:5 answer 1:15 36:2 36:12,16,17 38:13 60:14 62:1 65:7 81:7 88:21 answerphone 13:21 anticipate 11:12 anticipated 27:10 anxious 35:24 anybody 68:16 68:22 80:11 apart 10:11 38:5 apology 34:23 apparent 9:10 33:22 apparently 81:16 Appeal 70:4 appeals 43:10 70:5 appear 18:3,20 19:15 26:16 30:19 60:6 79:17 appears 17:15 18:12 24:24 27:10 36:9 49:12 81:18 85:12 application 1:9 1:11,13 85:18 85:19 87:14 applications 1:7 1:20 88:19 applied 22:4 24:1 50:15 appreciate 5:25 approach 2:9 6:24 10:13,24 77:17 approached 10:21 48:13 appropriate 49:20 50:14,17 April 14:3 15:2 17:24 21:11 23:17,24 24:5 26:19 27:2,5,6 27:16 28:12 31:9 33:21 69:5 area 51:16 areas 74:20 argue 39:24	arisen 5:11 arising 46:21 arose 39:4 59:9 arrange 61:4 arranged 15:12 arrangements 41:14 arrest 51:3,6,22 52:4 59:1 63:8 63:11,14,16 arrested 51:8,20 52:2,17,19 53:6,8 59:5 62:14 81:1,6 arresting 52:13 52:15 arrests 61:25 63:7 76:17 article 53:19 articles 45:12 53:15 articulate 85:2 asked 4:20 11:22 13:12 14:4 22:23 28:3 35:23 43:5 46:20 57:24 59:17 60:7 71:4 84:25 asking 43:1 54:6 76:8 83:9 aspect 41:8 assertion 30:16 assess 47:5 59:13 59:14 assessed 63:10 assessment 18:25 26:4 63:2 assist 61:25 88:11 assistance 1:16 4:2,8 12:9 64:6 Assistant 61:6 72:6 assisted 4:21 assisting 3:12 assists 88:16 assume 55:6 62:2 attach 2:15 attached 45:19 attempt 11:12 22:19 25:21 28:25 attempted 16:23 35:4 attempts 10:3 attend 61:16 64:14 attendance 7:7 8:5 52:9,13 63:13 attended 15:21 attention 48:11 58:14,22 attract 48:12	58:14,22 attributed 28:16 attributing 58:3 audit 53:22 54:9 54:16 August 44:20 62:22 Authority 75:21 80:6 automated 14:12 16:6 17:5,6 19:19 20:7 21:25 automatic 18:13 18:18 26:24 33:20 36:5,10 automatically 20:5 23:24 26:14 68:7 available 6:7 15:16 21:11,21 23:13,16,23 32:21 42:3,5 59:8 81:15 85:8 88:15 avoidance 32:8 avoided 8:8 40:19 aware 23:11 29:6 35:22 43:15,19 44:2 58:17 70:20 76:14,20 78:21 79:1 82:16 88:18 awareness 18:17 awful 35:5	Bearing 18:22 beginning 2:5 behalf 35:23 40:11 49:13 81:20 belief 29:1 34:7 34:12 believe 1:14 9:21 18:11 27:6 42:23 45:3 46:11 50:19 51:15 60:12 61:1,13 believed 14:2 16:11 23:10 25:17 31:9 believes 31:19 33:7 belong 69:22 benefit 12:9 47:14 best 38:7 59:7 61:15 best-selling 37:25 betrays 88:21 better 65:1 beyond 65:24 70:8 BG2 50:25 BG5 67:24 bidding 73:6 billing 51:11 bills 51:11 Birdseye 15:15 15:21 16:19 30:8 bit 55:21 64:2,2 73:17 85:1,17 bits 71:15 Blackfriars 67:21,22 69:5 blackmail 73:3 blindly 10:7 Bob 34:1 bombs 37:24 Bonilla 22:5,15 23:4,6 bottom 40:15 bound 5:6 box 17:3 19:25 20:7 Boyall 46:6,9,14 49:11,14,16 66:13,16 67:3 69:11,14 Boyall's 46:16 Breach 5:8 break 41:16,19 71:17 Brendan 41:22 42:8,11 brief 35:22 78:8 briefed 45:17 76:19 briefly 32:12	38:13 73:1 bring 61:24 brings 75:13 broadly 64:16 brought 4:17 70:6 Building 15:15 15:21 16:19 30:8 bundle 51:1 85:9 burdensome 11:1 business 2:13 52:24 53:25 66:15
				B	C	
				b 7:9,16,23 8:7 8:18,21 86:4 back 2:1 14:13 21:24 35:15 54:17 62:11 63:7 70:9 72:8 76:3,10 79:3 background 12:18 43:5 44:17 72:25 backlash 58:15 58:17,21 bag 65:2 Baroness 10:6 Barr 11:25 12:1 12:2 31:22,23 35:13 41:10 barrister 82:4 based 34:8 46:8 74:18 75:15 76:18 80:3 basing 85:22 basis 1:20 28:5 30:7 51:18,20 62:25 68:24 74:17 86:22 bear 59:22	c 8:9,23 call 16:6,10,10 16:12,13,14 17:12,13,15,17 17:20,21,25 18:2,3,6,21,22 19:14,16,20 20:3,20 23:2 24:20 25:3 26:7 27:9 30:13,14,15,17 30:18 31:3,13 38:9 called 2:6 17:9 18:24 22:22 45:2,9 61:19 75:14 caller 19:12 23:20 calls 17:16,18,24 cancer 40:5 capable 86:21 capacity 4:21,23 19:10 care 33:9 80:10 careful 60:4,7 carefully 60:23 carried 25:8,12 26:18 42:5 70:18 78:23 79:11 carries 63:16 carry 13:18 14:4 73:15 case 14:18 22:25 27:22 34:13 59:3 60:2 79:17 80:22 84:21 86:18 cases 1:22 5:15 55:8 80:23 81:18 cat 65:2 cause 8:14 10:5 28:10 33:8 34:11 58:18 caused 2:11 8:25 15:3,11 36:5	

73:8 86:1	46:22 48:8	companies 46:12	confidence 3:16	81:22	15:13 42:22	84:14
caution 51:24	claims 75:8	66:15 74:5	30:4	continue 11:13	43:11 45:7	cut 40:9
52:7 59:15	clarity 13:18	75:6,7 82:15	confidential 5:25	24:15 41:2	54:25 57:20	
64:15 65:25	15:16 26:5	83:7,21 84:11	6:4 9:17 28:5	continued 34:4	63:20 66:9	D
cave 37:8	27:11	company 12:10	confidentiality	continuing 33:9	67:12 70:16	d 8:12,25
CCTV 15:21,24	clear 1:15 3:21	22:17,22 25:20	3:5,6,9,11,15	contract 73:6	78:4 79:21	daily 15:18 62:25
Censorship 1:5,8	9:24 12:14,21	25:22 46:8,13	3:23 4:18,25	78:13	85:20	damage 8:7,18
certain 2:20,23	25:8,18 26:4	75:11,14 76:4	5:6,15 8:9	contradict 16:10	court 5:9,12 55:4	8:21,23,25 9:7
39:18,20 63:17	31:23 32:7	76:21 80:24	confirm 14:18	contradistincti...	57:10 66:21,22	dark 36:22 38:10
70:6 83:21	33:11 36:12	compared 69:3	29:12 39:9	53:3	67:23 69:5	Darlow 81:10
certainly 37:11	49:12,23 54:5	competition	confirmed 15:23	controlled 10:17	70:4 81:9,10	data 16:10,12,13
47:25 48:13	59:4 67:23	73:17	19:8 20:6	conversation	83:20 84:5,8	17:12,13,15,17
56:5 64:23	68:13 77:15	Complaints	23:21 25:13	15:14	84:10 86:23	17:20,25 18:2
66:16 70:5	81:12 88:12	75:21 80:6	confusion 38:25	convicted 69:7	courts 55:3	18:12,21 19:1
certainty 31:6	clearly 38:12	complete 13:17	connected 21:23	conviction 74:18	57:10 83:23	19:14 22:18
certified 5:9	47:13 50:11	17:13 23:6	46:9,11	83:16,20 84:5	cover 72:23 73:1	25:4 26:2,7
83:23 84:12,15	60:22 66:24	31:3,13 65:21	connection 33:22	84:15	covered 71:2	27:8,9 30:13
cetera 78:24	76:16 82:14	completed 16:13	63:5	convictions 56:8	covering 17:13	31:3,13 38:9
chain 45:24	clients 39:23	completely 29:16	consequences	56:13,16 73:6	covert 47:8	46:8,16 53:16
51:13,18 54:17	88:2	34:4	2:18 60:19	73:10 83:24	covertly 47:4	63:2 70:11,14
63:6 74:2,7	close 37:10	complex 13:16	87:1	84:13	49:7	75:15 76:2,4
75:6,10 76:6	closure 35:24	compliance 5:7	consider 4:9	copies 68:2 83:24	co-operated	76:12,18 77:8
83:4	cocktail 36:18	complication	11:11 31:3,12	84:12	64:13	79:4 82:17
chains 76:3	code 44:25	52:11	47:12	copious 78:6	co-ordinate	83:13
77:23	code-named	compunction	considerable	copy 81:14 84:15	61:21	date 10:5 15:4,14
chairman 7:14	49:5	39:19	13:17 15:11	core 1:6,11,16	CPS 49:20 50:12	17:22 59:14
7:17,23	Colin 37:23	computer 43:17	consideration	2:22,25 3:10	57:3 59:12	68:9,10 77:4,4
challenge 9:19	collect 84:11	44:4,8 56:2	52:5,16 55:18	3:22,23 4:2,4	60:2 67:11,13	83:19 84:7,10
challenged 37:21	collectively 2:24	59:24 66:6,7	60:4,8,9,18	4:11 6:1,7,13	68:23 69:1	dated 14:3 15:1
86:23	3:2	67:6 68:6,19	70:3	6:23,25 9:23	80:5 86:6,25	15:19 28:7
chance 32:19	come 9:15 20:10	computers 59:12	considered 12:3	9:25 10:6,12	87:2	42:15 71:25,25
change 21:25	58:20,24 62:10	concealment	24:21 26:14	10:15,22,23,25	create 6:22 48:3	dates 68:7
62:17	73:13 76:22	37:15,17	86:20	11:8,14 31:25	creating 68:17	daughter's 30:11
changed 17:6	83:18	concern 3:4 6:11	considering 2:8	32:1,8 40:8	criminal 33:10	35:18
changing 21:15	comes 86:13	6:24 8:6 10:5	2:10 48:6 50:8	Cornwall 44:24	44:9 56:16	day 2:13 18:9
channelling 75:1	coming 45:21	73:8	considers 7:23	45:1 72:6	84:20	24:15 25:9,12
75:2	55:3 57:12,23	concerned 11:8	consistency 65:5	73:24 74:24	critical 5:5 77:11	26:1 29:18,18
charge 37:12	66:22 70:9	11:20 51:25	conspiracies	correct 18:15	criticising 70:22	51:21 68:20
50:17 58:6	74:16	63:15	50:1	42:25 43:14	CRO 43:17	days 6:6 19:15
60:3 67:14	command 45:18	concerning 1:10	conspiracy 49:23	44:13,16 46:7	49:13,17 54:4	23:25
charged 69:22	commenced 14:9	36:25	50:1,8,15,19	49:25 53:20	54:6 55:4 56:5	DC 22:4,5,5,15
70:14 84:23,24	75:18	concerns 15:7	50:21 52:1	59:10 62:16	83:16	23:4,6 27:16
charges 49:20,23	commencement	28:22 53:2	53:14 58:6	63:18 64:16,17	cross 51:22	DCI 12:8,13 13:6
50:14	1:8 44:18	concludes 36:4	70:15 85:15	67:15 68:8	Crossley 87:23	31:18 33:11
Charles 71:20,23	comment 67:7	conclusion 30:7	Constable 72:6	72:9 74:14	88:2	35:2
check 15:15 54:5	70:8 71:5 81:7	31:16 34:16	constantly 62:24	75:16 79:11	Crown 67:22	deal 1:17 4:13
checks 45:10,11	commercially	85:11,12	consultation	corrected 34:10	69:5 70:21	41:2 58:19
49:13 54:6,10	8:25 9:17	Conclusions	49:19	correctly 49:24	75:22 81:9,10	59:17 76:23
54:17 57:8	commissioned	30:3	consumer 47:20	corresponding	84:5 86:1	77:1,11 78:13
58:3 60:6 76:9	22:18 25:20	conclusively	consumers 73:19	17:24	culmination	78:19,19 79:13
chief 13:8 36:3	Commissioner	25:5 26:15	73:20	corrupt 48:7	78:21	80:4
40:13 42:18	61:6 76:22	conditionally	contact 22:21	50:2,8,15 52:1	culture 12:23	dealing 1:12 43:6
61:9 72:6,10	Commissioners	70:1	78:24	53:14 65:17	39:2	58:20 60:17
choose 50:14	45:2,16	conditions 8:9	contacted 58:2	corruption 43:13	current 13:13	79:12 80:18,21
chronology 21:4	Commissioner's	conductive 7:24	contacts 51:17	44:5 50:3	72:5	deals 41:7
circle 3:5,6,9,11	76:19 78:17	conduct 11:19	contains 44:9,10	corruptly 74:8	currently 26:4	dealt 1:19,22
3:15,24 4:18	79:13	56:24 63:9	53:19	cost 8:16	36:22 42:18	80:3,22
4:25	commit 50:19,21	conducted 11:3	contemplation	counsel 4:10	74:23	death 8:20
circumstances	70:15	22:14 23:23	49:24	15:9 50:13,18	customer 21:23	debt 74:5
1:14 7:3 11:13	committing	24:7 31:8	contend 84:19	81:11 87:3	24:1 47:21	December 12:3
12:15 47:2	74:10	44:24 45:23	contended 84:19	countless 40:19	82:7 83:2,6	28:5 33:4
53:15	common 50:4,5	54:16	content 12:25	country 38:1	customers 24:16	34:11 35:15
citation 9:2	70:16 85:14	conducting	20:15 72:2	counts 37:13	73:19,20 74:1	59:24
civil 4:21,23 5:1	communications	45:10 48:24	context 13:2	couple 41:13	74:2,4,17	decide 59:15
5:2 75:8	46:22	49:13	38:14 43:8,9	46:21	77:24,25 82:3	decided 3:1
civilian 45:9	Community 7:22	conferred 3:12	43:15 48:5	course 2:7 7:17	82:10,11 83:25	50:17 63:21

decision 2:1 37:6 39:11 47:1 50:9,24 51:2,3 51:6,20,21,23 53:11 58:8,9 59:1,4,11,11 59:18,22,23 62:8,9,10 64:5 64:8 67:16 68:23,24 69:1 69:18 87:3	describes 7:2 14:1 deserved 11:5 deserving 11:10 desirable 5:23 despite 36:8 37:7 38:7 detail 12:21 14:16,20 41:7 46:20 detailed 53:25 details 9:11,16 44:11 54:6,7 56:12 83:16,16 83:16,20 detective 13:8 36:3 37:13 40:13 42:18,24 60:12 72:10,15 74:25 75:10 77:20 detectives 46:5 47:19 73:25 determinative 9:5 determined 2:24 develop 82:23 developed 31:15 development 45:19 73:7 devise 58:10,25 Devon 44:24 45:1 72:6 73:23 74:24 75:12 76:6 77:20 Dick 62:2 difference 50:6 different 10:24 18:20 38:6 40:18 48:16 50:11 69:10,23 73:20 74:17 75:3 difficult 58:4 difficulty 57:19 diminished 63:11 diminishing 59:18 direct 67:1 74:9 78:1 79:20 directions 1:9 directly 80:7 Directorate 42:22 45:17 disappearance 21:1 27:18 disappeared 33:14 disappointed 68:23,25 69:1 86:17 disappointing 69:6 81:5 disappointment	69:4 70:2 discharged 70:1 disclosed 11:6 28:2 49:18 disclosing 43:16 disclosure 7:9 8:5,25 9:23 78:24 disclosures 46:24 discount 64:23 discover 77:18 discovered 36:20 discretion 6:16 discuss 15:6 44:15 88:1 discussed 28:23 33:25 47:23 discussion 10:9 29:10 discussions 48:2 disposal 47:7 disprove 49:9 dispute 9:22 33:12 dissemination 45:24 dissuade 29:1 34:6 distinctly 78:25 distress 15:11 33:8 distressed 16:4 divert 5:21 diverted 2:13 document 78:15 79:4 documentary 53:11 documentation 16:17 documented 22:20 38:20 documents 4:9 7:10 10:14 28:4 37:18 44:22 doing 12:17 47:11 48:5,6 48:11,14,22,25 49:1 60:19,20 62:24 76:20 78:11 83:21 84:12 domain 1:14 6:15,20 11:7 56:17 door 81:17 doubt 4:7 9:25 11:17 15:3 32:8 Doubtless 88:25 Dowler 12:16 13:20,25 15:7 15:11,14,21,23 16:1,2,3,11,14	16:19 17:9 18:16 20:9 22:25 28:14 29:1,4,14 30:10,16 33:8 33:14 34:1,6 34:23 35:6,17 35:23 40:11 Dowlers 14:24 15:6,12 27:13 28:11,17 29:10 34:2 Dowler's 12:5 13:14 14:25 16:7 17:3 19:21 20:3 28:14,22 30:5 30:9,14 34:24 35:5 38:16 39:4 download 22:14 22:19 23:5,16 23:17,23 24:7 24:17 25:21 26:19 27:5 31:8 downloaded 23:4,7 24:21 downloading 22:6 downloads 24:13 DPS 42:22 draw 55:22 drawn 54:19 55:19 65:10 71:2 78:13 drop 20:8 30:22 dropping 35:8 due 14:11 34:3 60:18 87:12 duration 18:3,6 30:15 DWP 76:8 dysfunctional 36:25	29:6 42:4 86:3 elapsed 26:7 electrical 71:15 element 64:19 email 1:22 87:23 emanated 44:23 embarrassing 11:10 emerging 4:14 employee 45:9,9 45:15 47:3 65:17 employees 45:4 48:7 enable 65:21 ends 86:15 enforceable 7:22 enforcement 5:10 24:8,18 English 1:4,7 enlighten 43:2 enquiries 25:24 58:19 enquiring 81:19 enquiry 13:16 ensure 4:2 25:17 ensuring 3:13 entire 12:15 entirely 9:21 39:24 42:2 61:16 84:21 entirety 13:10 20:19 entrance 37:10 entries 15:19 entry 60:11 equally 36:7 64:23 equipment 71:15 error 34:10 especially 35:14 essential 4:2 establish 25:5 31:11 57:11 83:5 established 45:8 66:25 67:1 et 78:24 ethics 12:24 39:2 evaluate 47:5 59:13 evening 23:1 event 2:4 5:1 9:24 23:2 37:5 61:19,20 62:1 events 13:19,21 15:4 19:24 24:25 31:15 32:3 33:6 62:8 eventually 47:19 everybody 61:18 63:6 evidence 2:6 4:14,15 6:4,6,8 6:12 7:9 10:15 12:2,6,17,20	12:25 13:3,6 14:18,23 16:22 27:13 29:25 31:11,24 33:16 33:19 34:16 35:4,7,19 39:4 39:23 42:4,16 43:1 46:19 47:8 49:12,15 49:21 51:9 53:10,13 54:12 59:8,13,14 62:24 63:4,10 65:19,20 67:14 72:2 76:14 78:1,1 79:9,15 79:20,23 80:4 80:5,19 82:2,6 82:15,18,24,25 87:10,20 88:3 88:7,8 evidenced 21:4 evidentially 54:13 evolved 50:25 58:9 exact 77:4 exactly 64:25 Examples 2:6 exception 55:9 exclusive 38:23 exemplifies 9:5 exercise 11:3 47:22 exercising 21:22 Exeter 81:10 85:5 exhibit 67:24 exhibited 23:5 exhibits 42:14 exhortation 5:7 exist 54:13 existed 23:8 24:11 existing 21:18 exists 53:13 expand 85:16 expect 3:22 11:13 58:20 expected 24:7 83:10 experience 12:15 43:6 86:13 experienced 9:11 explain 11:16 27:22 46:17,18 62:17 explained 28:16 42:2 explaining 14:5 67:18 explanation 18:14,15,20 25:25 26:9,21 28:13 expose 5:24	expressed 6:11 6:25 expression 87:1 extensive 17:15 73:21 extent 8:4,12 12:21 38:9 70:3 extraordinary 41:1 extreme 78:16 extremely 77:16 ex-police 46:4
F						face 88:21 faced 85:17 facilitate 17:22 facility 21:2 30:21 35:9 fact 1:4 2:11,13 2:14 3:14 5:19 6:8 14:19 18:12 20:24 23:12 26:7 28:18 33:2 34:12,24 36:8 38:18 39:17 50:7 62:13 63:6 66:18 80:14 86:20 factor 48:20 55:25 factors 47:12 factory 21:25 facts 31:19 33:12 71:5 85:13,21 86:4 failed 36:23 failure 36:19 37:4 fair 3:13 37:2 65:7 86:8,9 fairly 3:25 faith 11:17 41:2 fallout 60:19 falls 48:4 false 14:1 15:2 17:11 25:15 28:10,14 30:5 34:2 35:6,8 36:4 39:5,9 40:2 familiar 33:8 family 14:6 15:17 16:16 34:24 35:23 40:11,13 41:2 far 9:11 10:23 17:17 fashioned 86:21 fast 54:22,23 66:21 fast-moving 11:2 faxed 22:7 fear 48:9,10

58:15,17 feared 58:21 fears 48:3 feature 68:4 70:10 featured 76:5 83:24 fed 54:17 Fedorcio 61:11 62:2 fee 83:23 84:11 felt 2:3 file 67:10 filled 30:21 finally 32:10 37:14 39:25 financial 70:12 70:13,18 find 56:13 76:3 80:2 81:3,4 82:3 88:9 findings 14:15 fine 32:22 first 2:15 3:10 12:3,6 14:25 18:3 20:14 35:16 36:18 38:15 39:11,22 52:2,4 54:20 85:20 fit 18:20 five 34:14 42:14 83:4 FLO 16:2,8,8,15 30:8 floorboards 37:25 floors 40:6 flow 77:21 FLO's 15:18 focus 74:21 follow 10:5 85:10 following 7:12 15:19 18:1,23 21:4 28:12 33:12 44:19 82:18 follows 27:18 follow-up 23:2 footage 15:24 forearmed 65:3 forensic 22:18 form 28:5 53:11 format 42:15 formally 2:4 9:22 72:3 formed 62:20 former 51:15 found 1:15 24:23 33:16,19 34:15 47:19 69:20 78:1,14,15 79:20 four 69:7 70:1 74:1,7 75:6	83:4 freed 14:11 frequent 1:20 frequently 47:7 57:23 Friday 1:10 2:21 4:12 friend 12:12 41:10 friends 32:11 friend's 19:6 front 83:15 fulfilling 7:24 full 1:4 2:14 14:13 19:11,18 19:25 20:7 25:25 26:6 42:10 64:20 71:22 Fuller 60:13 61:9 fully 42:1 59:25 fundamentally 7:1 funds 8:17 furnished 46:5 further 4:7 5:20 14:5,20 23:14 25:24 26:5 27:11 28:23 30:17 49:19 59:23 73:2 81:8 83:4 Furthermore 11:1 28:9 30:13 future 46:24	girl 15:24 give 6:4 8:10 11:4 25:8 41:15 43:1 60:14 given 4:19 6:5 7:10,14 8:11 12:20 29:17 31:13 33:10 39:23 46:23 47:10 60:5 66:15 70:3 76:15 82:18 83:23 87:20,25 giving 1:12 60:18 Glade 43:2,7 44:18 49:5 53:3 79:2 go 5:20 14:16,20 32:23 39:21 41:9 51:1 62:11,23 63:22 67:22 68:1 83:20 84:7,10 going 12:6,23 32:4 35:21 41:10 43:3,20 43:20 45:13 49:2,3 54:1 58:13 59:4 61:12 64:20 73:25 78:18 87:24 88:5 Gold 61:4,16,17 61:18,22 good 11:17,25 54:12 56:1 goods 69:23 government 1:11 2:22,24 3:22 4:7,12,22 6:13 6:23 10:15,20 10:25 grant 2:23 grateful 87:8 88:24 greater 18:6 greeting 14:12 17:4 18:5 19:13 20:9 21:25 22:2 grounds 9:3,6 group 3:7,25 45:20 61:4,16 61:17,18,22 73:5 groups 18:10 Guardian 10:1 15:5 27:12 32:2,16 33:2,4 33:7 34:8 Guardian's 32:9 guidance 75:23 guilty 57:11 68:25 69:2	H hack 16:23 38:16 hacked 14:17 28:18 33:13 40:20 hacking 13:14 28:13,17 36:21 40:4 hand 69:11 handful 37:13 handling 69:22 hands 67:16 happen 14:8 78:8 happened 14:19 25:9 26:20 28:24 31:4 39:3 67:9,21 69:4 70:20 71:11 85:5 happens 60:23 happy 11:7 12:25 88:11,16 harder 83:5 harm 8:7,18 9:7 head 22:21 62:4 heads 61:23 hear 39:25 heard 14:1 20:8 20:9 30:11 33:4 35:18 36:25 37:20 40:9 69:23 79:15 87:10 88:14 hearing 2:5 81:9 85:5 heavily 76:5 heightened 11:5 help 25:8 37:1 61:18 69:20 helpfully 32:2 hide 6:16 11:9 high 5:9 48:24 61:8 higher 86:23 highest 57:14,17 57:18 hiring 82:16 history 19:2 41:9 hitherto 30:21 hold 36:23 holders 4:20 hole 82:9 home 16:1,2,16 Honour 81:10 hope 13:17 14:1 15:2 17:11 25:15 28:10,14 30:5 34:2 35:6 35:8 36:4 39:5 39:9 40:2 41:7 88:20 hoping 52:6 Horley 76:4,12 horrifying 38:18	hour 13:19,19 24:25 hours 15:20,22 15:23 16:1,11 16:15 17:14,20 18:10,14,25 19:3,5,17,17 19:20 20:1 21:6 22:3,7,9 22:11,13,14 24:22,23 26:9 27:3,7 30:13 30:18,22,24,25 35:10 36:6 55:8,8 huge 60:22,25 76:1 human 36:12 hundreds 37:9	I ICO 78:4 identified 45:14 51:13 52:22 53:1 82:11 identify 5:22 33:18 84:1 identity 9:13 ignorance 56:20 ignoring 38:4 ii 8:16 illegal 31:1 37:17 49:13 illegally 25:2 38:23 55:17 56:18,21,23 82:17 imagine 35:24 47:24 48:23 62:22 impact 17:10 25:14 41:4 64:5 impacted 32:16 impair 8:14 impartial 10:13 implicates 53:13 implications 2:18 48:17 implicitly 4:16 important 3:14 5:17,25 12:18 20:18 36:7 68:4 importantly 11:4 38:15 imposed 7:6,11 imposing 8:12 inadvertently 11:6 incentive 6:22 include 49:10 80:11 included 3:7 17:2 56:7 62:3 includes 8:18	including 3:22 4:22 incomplete 25:4 27:10 increased 21:10 independent 22:17 25:20 Index 1:5,8 indicate 18:12 21:11 22:16 24:24 83:18 indicated 51:17 54:14 indicates 16:10 19:1 82:24 indicating 31:18 37:8 indicator 80:15 indictable 70:6 indictment 50:11 70:14 indirect 67:3 78:1 79:23 indirectly 80:7 individual 18:13 73:9 81:1 individuals 54:2 56:11 84:22 industrial 40:3 inevitable 40:7 infamous 37:19 inference 55:23 57:15 inferences 54:19 55:19 65:9 71:2 inferential 79:23 inform 12:23 37:2 information 3:17 3:18 4:14 5:23 5:25 8:10 9:1 9:12 11:11 14:22 25:7 29:7 31:5 38:22 43:10,16 43:22,24 44:10 44:14 45:1,5 45:11,15,17,21 45:23,25 46:3 46:5 47:5,6,16 47:18 53:19 54:15,21 55:3 55:7,16,22,23 56:7,7,16,20 57:12,22,25,25 63:1,24 65:16 65:18 66:8,17 66:19 67:5 73:11,13,24 74:7,15,19,19 74:24 76:19,22 76:24 77:18,21 78:2,11,17 79:13 80:3,4 80:19 81:2,4	82:1,17 83:2 83:15,22 ingredient 37:6 ingredients 36:18 37:15 inhibit 8:5 initial 73:8,24 76:1 77:18 initially 45:19 50:7 injury 8:20 inquire 10:7 inquiries 3:20 13:23 14:5 inquiry 1:6,19 1:21,24 2:12 3:1,12,18,25 4:4,10,14 5:13 5:18 6:5,9 7:7 7:8,10,15,18 7:24 8:11,15 9:6,19 10:10 10:14,17,19,22 11:2,4,19 12:3 12:19 13:2,13 13:19,24,25 14:4 15:1,10 26:4 27:14 32:24 33:5 34:14 35:7 39:1,11,17,24 41:3 42:16 44:23 46:17 49:4 72:2 73:3 74:3 76:15 77:16 78:21 81:16 82:2,25 83:12 87:22,23 Inquiry's 32:5 39:8 insofar 53:2 Inspector 13:8 36:3 40:14 42:19,24 72:16 instance 17:19 45:22 52:5 instructed 74:6 instructing 75:7 76:6 instructions 74:16 insufficient 67:13 insurance 74:5 75:6 intelligence 45:19 80:5,19 intend 2:9 intending 76:17 intensive 34:14 intentions 38:8 intercept 31:2 interception 12:4 28:6 interest 7:25 56:11 60:22,25
---	--	---	---	---	---	---	--

60:25 61:2	investigations	22:4,5 27:16	52:12 59:6	20:2 21:9	listen 21:22 23:8	33:11 35:2
76:20 78:16	15:3 29:7	40:14 49:11,13	65:19 66:14	22:11 23:12	23:22 24:3	36:3
80:16	48:23 58:12	joint 75:24	67:3,5,7 69:10	24:23 27:3,6	listened 20:17,22	mailbox 14:13
interests 8:23	75:7 76:7 79:5	journalist 16:23	Kingdom 8:24	30:20,23	20:25 21:21	19:11 21:23
10:1 81:23	79:12	35:4 37:12	8:24	legal 4:1 48:19	23:6,13 25:1	23:9 24:2
interfered 38:21	investigative	39:15 40:23	King's 59:12,24	52:8 64:15	27:25 29:21,22	mailboxes 23:25
interference	39:14 76:16	47:21 58:1,4	knew 40:24	legislation 11:16	30:25	24:1
12:22	investigator	journalists 36:24	58:21 67:5	80:20	listening 12:16	main 74:3,20
internal 82:8	77:23	45:6 47:23	76:18	length 18:4	Litigation 28:7	75:11
international	investigators	48:1,9,17	know 28:23	lenient 69:8 70:4	live 42:5	maintained 57:5
8:21 16:21	43:18,21 45:4	51:23,24 52:2	29:22 36:2,2	lethal 36:17	lived 56:13	major 24:16
34:22 35:1	45:8 73:25	52:7,10,19,21	38:13,17,20	letter 68:7	local 73:5 77:19	making 6:5
interpret 31:4,11	74:6 76:11	53:1,14,23	39:7 46:21,23	letters 67:17	locally 75:11	11:11
interpretation	79:13	54:13,22,24	52:19 57:3	68:2,5,11,14	log 15:18,19 16:3	manage 58:23
15:4 18:17	invitation 63:13	56:15 57:8,12	61:11 64:8,20	68:17	16:8 50:9	60:18 61:21
interpreted	invitations 64:14	57:21 58:11,16	66:17,18 67:9	let's 32:14 58:7	logged 30:10	managed 35:17
76:10	invite 59:2	59:1,5,8,16,19	67:21 70:19	69:9	logs 15:17 30:8	60:24
interpreting	invited 78:9	59:21 60:5,8	82:6 83:10,19	level 47:2 55:18	50:24 58:8	manual 26:11
27:8	invoice 54:8	62:9,14 63:5,8	84:17,17,18	61:8 69:4 82:9	London 46:1	27:15 28:9,16
intervention	invoices 53:15	63:23 64:13,19	knowing 57:23	Leveson 1:3,4	83:8	33:24 34:3
36:12	54:1,4,7,10	65:6,15,22	65:16	12:1,14 13:12	long 32:21 71:11	manually 20:17
interview 51:24	56:3,6	67:14,17 68:2	knowledge 14:17	13:25 27:14	88:5	26:13,16 33:17
52:7,14 55:1	involve 4:1,5	68:3 71:3	34:9 57:11	31:21 32:14,21	longer 27:4	March 13:19,22
56:15 57:2,6	87:17	77:14 78:3,6	68:25 69:2	32:25 34:19	look 46:19 50:24	15:19,20,22,24
58:11 59:2,5	involved 4:24	80:8	known 2:24 16:8	35:11 41:6,12	56:5 58:8	16:24 17:1,8
59:15,19,20	5:16 34:13	judge 69:15,23	17:18 26:19	41:15,21,23	86:11	17:14 18:25
62:8 64:8	43:21 44:1	81:10 85:12	37:22 55:16	42:1 57:14,17	looked 39:16	19:5,17,17,20
65:25 67:10	48:10 51:19	86:8	56:22 83:10	58:5 63:14,20	looking 35:17	20:1,4,11,13
interviewed	61:11,12 75:20	judges 69:10		63:25 64:4	42:21 45:3	21:3,5,6,13,14
52:20,21 53:7	75:22 79:5,22	judge's 87:1	L	67:22 68:1,9	66:13 73:22	22:3,17 23:18
53:8 55:2 59:6	80:14 81:22	July 27:13 29:9	label 50:10	68:13,16,21	76:24 82:1	24:3,22 25:3,4
62:15 63:25	involvement	34:8	lack 26:6 31:3,12	69:9,13,17,25	84:2	25:8 26:23
64:15 81:6	49:9,16	Justice 1:3,4	laid 81:17	70:9,22,25	LORD 1:3,4	27:3 30:6,10
83:8	involves 5:15	12:1,14 28:7	large 5:16 62:22	71:9,14 73:14	12:1,14 31:21	30:14,24 33:15
interviewing	involving 61:5	31:21 32:14,21	69:21 70:17	79:6,15,18	32:14,21,25	42:13 67:13
60:5	in-house 24:14	32:25 34:19	lasted 30:18	84:1,4,9,15	34:19 35:11	68:10,14 71:25
interviews 54:23	irrelevance 9:4	35:11 41:6,12	lasting 30:15	85:16 86:1,10	41:6,12,15,21	77:2 84:5,6
56:24 57:20	irrelevant 9:18	41:15,21,23	41:4	86:13,19,25	41:23 42:1	marked 20:16,19
64:9 65:3 71:3	isolated 44:6,7	42:1 57:14,17	lasts 19:6,21	87:7,12,16,19	57:14,17 58:5	20:23,24 25:15
Introduction	issue 12:3 26:3	58:5 63:14,20	late 23:1	88:8,12,18,23	63:14,20,25	marshall 4:8
13:11	26:12 27:11,15	63:25 64:4	laundered 83:14	88:25	64:4 67:22	45:10,14,25
investigate 36:19	32:10,13,15	67:22 68:1,9	law 7:22 24:8,18	liaised 22:5	68:1,9,13,16	46:21 49:8,11
49:7 58:7	35:25 40:15	68:13,16,21	50:4,5 70:10	27:20	68:21 69:9,13	49:12,16 51:8
investigated 80:9	77:11	69:9,13,17,25	70:16 85:14,14	liaison 15:17	69:17,25 70:9	51:16 54:16
80:20,21,25	issues 2:17 3:6	70:9,22,25	lawyer 1:23	27:21 78:4,7	70:22,25 71:9	59:6 65:20
investigating	11:18 31:14	71:9,14 73:14	lawyers 4:22	lie 37:19,20	71:14 73:14	66:10,14,24
29:19 37:4	63:19 75:9	79:6,15,18	38:4	life 47:12,13,14	79:6,15,18	67:2,3 69:10
39:1 47:4,22	80:22	84:1,4,9,15	leaders 4:23	light 11:18 27:22	84:1,4,9,15	69:20
48:1,7,8 72:20	i.e 24:3	85:16 86:1,10	leading 19:15	88:2	85:16 86:1,10	Marshall's 47:9
72:21 79:25	J	86:13,19,25	learn 28:18	limitations 27:8	86:13,19,25	material 4:4 6:14
investigation	January 60:4	87:7,12,16,19	learned 12:12	limited 36:14	87:7,12,16,19	7:3 9:13,18
9:14 12:8	61:5 62:9 64:9	88:8,12,18,23	32:11 41:10	limits 10:4	88:8,12,18,23	10:2 11:5
13:14 14:9,16	64:10,10 67:10	88:25	leave 13:20 14:6	line 24:6 55:14	88:25	15:16 32:3
14:21 27:6,17	Jay 41:10,13	justified 11:15	17:10 18:5	64:21 81:8	loss 34:15 38:9	37:8 44:11
31:16 33:10	42:9,10 58:6	29:23 39:24	29:17 47:3	lines 65:6,8	lot 49:2 51:9	62:23 72:15
38:21 43:20,25	64:8 68:23	justify 6:20	leaving 47:15	link 34:4 51:13	53:6,8 58:22	materially 32:16
44:23 45:13,22	69:16 70:23,24	K	79:12	54:12 63:11	76:16 87:9	matrimonial
47:8 49:10,15	71:1,19,21,22	keeper 44:11	led 73:8,10,12	66:24 67:1,3	low 47:11	75:9
52:14 58:13,15	73:16 79:9,19	54:7 56:12	79:2,4	75:13,17 76:5	Lyndon 27:16	matter 5:4,7,11
61:20,25 62:20	84:25 85:17,25	74:19	ledgers 52:23	linked 45:1 59:1		5:17 33:10
73:3,9,21	86:11,14,15	keeps 6:4	53:2,25 63:1,1	77:18 80:8	M	35:15 55:8
74:18 75:4,11	87:5,14 88:18	kept 53:25	63:24 65:23,24	linking 78:2	MacDonald 12:8	69:23 70:21
75:19 77:19,20	jigsaw 65:21	key 81:24 83:12	left 13:22 14:10	links 74:2,7 75:6	13:6,8 31:18	85:14
78:9,23,25	JJ 46:12	King 46:3,4 51:3	16:15 17:19	75:10 76:3	40:14	matters 6:2 8:1,3
79:1,21 80:11	John 12:8 13:6,8	51:15 52:3,11	19:3,7,9,10,13	78:6 83:3	MacDonald's	11:9 25:11
80:24			19:16,22 20:1	list 74:10 79:10	12:13 32:5	48:20 54:20

page 9:9 51:2,22 58:9 60:1 65:14 74:11 82:8,9 85:9	peddling 37:18 PEN 1:4,7 penalty 70:11,18 Pensions 74:21 people 34:13 61:24 73:13 75:3 81:22 82:16	platforms 21:15 24:1 plausibility 57:4 played 14:12 19:12 20:18 pleaded 56:20 pleas 70:17 please 41:22 42:10,12 44:17 44:21 65:11 71:19,22 72:9 Plymouth 73:4,7 pm 71:16,18 87:25 89:2 PNC 43:23 45:5 45:10 49:13,17 53:16 54:9 56:2 57:23 66:19 74:24 83:22	81:23 politicians 80:12 80:14 poses 47:3 position 3:4 9:24 13:18 24:12 29:12 40:18 47:9 52:4 60:14 positive 41:4 possession 16:17 28:20 47:6 69:21 possibility 28:9 31:1 possible 26:1,20 27:24 29:17 30:23 31:6,17 34:5,17 50:1 possibly 16:13 39:23 41:8 43:19 49:11 54:19 55:5,6 post 1:22 46:23 47:3 posted 32:4 potential 9:6 36:15,18 39:10 70:18 75:19 potentially 2:17 43:8 45:4 84:16 powerful 48:18 practice 5:13 37:17 39:2 43:16 practices 10:22 12:24 preceded 9:23 precise 12:21 38:9 precisely 28:24 84:1,17 predominant 74:17 predominantly 47:13 73:22 74:3 76:11 premises 51:11 63:22 64:24 73:11 76:13 81:1,2 prepared 2:12 9:21 33:5 39:15,21 preparing 12:11 present 16:22 20:13 26:18 27:4,20 48:9 73:23 preserve 3:16 preserved 21:8 26:23,25 press 10:1 12:24 35:19 39:2,21 43:6,8 58:10	58:15,25 59:3 60:22,25 61:2 80:16 pressure 5:24 presumably 44:14 56:12 59:6 68:6,10 pretty 77:19 prevent 47:7 49:19 preventing 26:24 Prevention 50:3 previous 14:7,11 20:4 27:19 29:18 56:8,13 56:16 73:5,10 74:18 76:14 82:19 83:19 previously 16:5 27:9,25 30:20 31:10 43:15 51:14 pre-IPCC 75:21 price 54:7 55:18 primarily 26:6 primary 30:7 principled 10:12 printed 68:11,20 prior 2:5 4:15 6:4 16:24 21:1 35:5 private 9:12 22:21 37:12 40:20 43:17,21 45:4 46:5 47:19 73:25,25 74:6,25 75:10 75:11 76:11 77:20,22 80:24 privately 44:11 privilege 6:12 privy 5:22 probably 12:22 50:2 86:15 problem 44:4 procedure 6:18 10:17 22:3 procedures 24:6 proceed 59:16 proceedings 2:8 5:11 39:8 85:18 process 10:18 11:9 21:14 36:11 58:23 85:18 produce 4:3 produced 7:10 12:8 32:2 73:4 production 20:14 21:6 22:4,7 24:14 27:2 professional 42:23 45:18 66:19 80:1	proffer 28:25 profile 48:24 progress 11:2 prolific 66:16 proof 63:23 properly 4:3 9:16 11:10 61:21 80:22 property 69:21 proposed 6:21 58:11 prosecuted 40:17 prosecuting 49:18 prosecution 70:21 75:22,24 84:19 86:1 Protection 70:11 70:14 protocol 10:18 prove 49:8 68:25 69:2 proven 85:13 provide 10:8 24:9 26:20 46:3 provided 7:10 15:5 26:5 29:7 47:18 51:1 56:1 71:24 provider 18:8 19:8 20:6 23:5 23:21 providers 24:17 provider's 18:19 providing 87:8 provision 7:2,21 PS28 78:15 79:6 public 1:13,17 2:3 4:20 5:20 6:5,15,16,17 6:20 7:25 8:6 8:17 11:2,6,11 14:17 39:15 50:4,23 56:17 70:15 73:4 publication 2:14 6:19 7:9 8:5 publish 5:14,20 published 2:11 3:18 6:9 10:19 punch 82:9 purely 85:22 purge 18:9 purpose 3:7,12 4:18,19 purposes 9:6 pursuant 24:14 28:7 76:13 77:9 pursued 80:3 put 43:5 46:20 48:16 54:24 55:5 56:15,19 57:7 59:8,17	60:7 65:22 67:8 71:5,10 88:13 putting 55:12
					Q	
					quality 53:10 quantity 62:23 69:21 77:8 queried 15:14 question 3:8 43:6 47:17 62:1 63:7,14 80:10 81:7 88:22 questions 3:3 4:20 36:7 38:11 40:16 42:9 58:23 65:7 67:8 71:4 71:21 73:2 87:5 quick 55:12,24 quickly 55:7 quite 10:11 49:2 54:5 55:2 62:22 quotation 10:5 quote 37:22	
					R	
					raise 2:16 87:22 87:24 raised 3:3 11:18 27:16 82:5 ramifications 9:7 ran 45:2 rang 16:2 range 44:14 74:11 75:4 rank 42:23 72:5 72:8,12 reach 13:17 35:24 reached 18:14 reaching 19:10 31:16 34:16 reaction 58:18 read 6:4 12:12 12:25 13:9 32:18 35:23 40:12 49:2 50:11 68:9 72:9 85:9 reading 13:6 68:5 reads 60:21 ready 4:6 realised 51:14 63:3 reality 63:9 really 50:9 55:11 71:5 77:11 86:11 reason 10:24 23:21 27:19	

30:19 36:17 43:1 58:18 59:12 reasonable 29:16 31:14 34:4 reasonably 55:1 reasoning 4:12 85:11 reasons 35:25 36:23 42:1 59:7 64:25 reassured 29:15 recall 47:9,24 48:2 51:8 55:20 56:4 61:1 62:5 77:5 79:9 received 1:21 recognise 33:9 48:10 60:12 recognised 4:16 66:20 recognising 60:17 recollection 61:15 62:3 67:7 78:16 recollects 22:22 23:1 reconnect 71:14 reconsidered 63:8 reconstructing 71:11 record 22:23 23:16 44:9 55:4 60:21 61:14 recorded 15:22 16:4,5 17:23 20:15 26:19 36:6 recorder 69:19 recording 17:22 23:18 recordings 24:9 records 16:3 21:11 22:16 25:23 27:18 57:2,10 recover 24:11 recovered 76:2 77:8 recovery 74:5 recruitment 29:24 redact 10:3 redacted 7:4 10:2 27:21 28:4 68:3 redaction 3:8 6:10,11,18,21 9:3,20 10:13 11:3,6,10 redactions 6:14 6:21 9:8,23	10:20,21 11:14 reduced 8:8 reducing 11:21 refer 46:8 reference 7:25 49:4,22 50:7 66:5 referred 1:25 9:15 50:12 69:24 referring 69:18 70:3 reflect 17:15,18 reflects 33:5 refused 2:21 regard 4:16 8:1 34:4 regarding 1:9 49:20 regardless 39:3 55:11 registered 44:11 54:6 56:12 registration 79:10 regret 34:13 rejected 85:19 rejecting 85:20 related 3:7 relation 6:11,25 10:3,15,16,25 22:24 25:9 37:9 43:2,7,12 50:5 60:8 70:21 67:24 77:11 relations 8:22 relationship 37:1 63:23 relatively 47:11 48:24 52:10 relayed 23:19 release 14:21 relentless 40:23 relevant 31:5 33:6 76:25 78:11 83:13 remain 36:8 38:11 40:15 remained 17:6 46:23 remaining 47:8 remains 70:13 remember 22:24 40:3 46:10 remembered 26:22 removed 23:24 24:4 repeat 5:4 10:19 34:23 report 14:15 27:9,19 38:19 83:17 reported 35:15	reporter 4:6 37:20 reporters 49:14 reporting 33:9 reports 2:20 76:10 83:25 represented 3:2 47:10 83:7 Reproof 44:25 45:7 65:1 72:19,25 73:1 73:12,16 77:12 request 2:10,14 13:24 41:8 49:14 84:25 requested 53:16 78:2 requesting 54:14 54:15 83:6 requests 1:19,20 1:25 4:24 6:24 51:12,12 53:22 63:24 require 6:19 required 7:21 25:19 45:21 60:6,8 requiring 43:25 research 4:6 46:8,16 75:15 76:4,12,18 79:4 83:13 researched 4:3 18:7 81:3 reset 22:9,13 resets 25:16 resetting 17:4 resource 5:21 48:17 respect 2:15 24:15,20 28:21 42:2 76:15 respond 2:14 responded 64:13 response 45:22 48:21 61:22 responsibility 39:10 responsible 33:19 36:13 39:13 40:1 64:1 rest 71:1,4 restrict 3:23 restricted 5:4 7:3 restriction 7:13 7:16,19,19 8:4 8:8,13 10:8 41:24 restrictions 7:5 7:11,20 result 6:15 8:16 31:15 36:10 73:3 resulted 19:2 35:8 80:23	results 51:11 retain 25:22 retired 72:21 74:12,22 retrieve 47:6 retrieving 20:20 retrospectively 16:13 reveal 3:17 5:24 78:6 revealed 40:4 reveals 87:21 revelation 27:23 reverse 79:16 reverted 14:13 review 59:23 61:19 reviewed 15:18 19:14 57:2 59:25 60:2 reviewing 47:9 59:12 revisit 12:2 revolve 9:11 right 12:19,20 32:14 34:19 39:18 41:15 42:24 43:13 44:10 46:14 56:8 62:15 67:18 68:18 69:15,25 70:7 70:9,12,23 72:4 73:15 74:13 75:15,20 75:22 77:3,9 77:16 79:7,18 79:24 83:15 86:16 87:13 rightly 11:5 64:18 rights 63:17 ripped 38:5 rise 11:4 71:14 risk 8:7 11:5 46:24 47:2,9 47:11,12,13,14 rogue 37:19 role 72:13,18 roles 45:20 rotten 40:8 roundly 85:19 Ruby 28:4 rule 3:1 7:22 9:22 25:2 Rules 3:1 ruling 1:10 2:19 2:21 3:1 4:12 85:8,10 86:20 86:22,22 Russell 71:20,23	Samuels 69:15 SAS 76:6 sat 38:3 39:22 satisfied 42:3 saved 13:21 20:11,12,16,17 20:19,22,24 23:4 24:20,24 25:15 26:3,10 27:3 28:19 30:24 saw 51:16 56:3 saying 1:18 55:14 64:1 66:18,23 70:12 75:18 says 22:5 25:22 35:13 scale 37:16 40:3 75:19 scandal 41:1 sceptical 85:12 schedules 6:20 scoop 38:17 scope 45:20 75:3 77:12,14,15 scoped 46:18 scoping 47:21 73:12 screen 68:1 search 63:16,17 63:22 64:6,24 76:17,23 77:2 77:9,10 78:10 searched 76:13 81:1 searches 63:9 73:10 76:1 searching 38:16 82:1 83:1 second 18:8 25:19 26:18 27:1,5 37:6 secondary 50:5 secondly 2:16 38:19 85:23 seconds 18:4 19:7,22 30:15 30:19 section 3:20 5:8 5:12 7:2,6 9:4 9:5 62:4 70:13 sections 39:21 secure 52:9,13 52:13 secured 63:12 security 8:21 see 5:12 9:9 10:1 10:24 32:22 45:21 50:6,24 51:3 58:5,9 69:25 84:4 88:20 seeing 6:12 32:19 seek 1:16 11:14 15:16 25:25	28:25 34:6 41:8 seeking 6:20 seeks 10:8 seen 15:24 31:24 37:11 44:4,22 61:14 seize 78:10 seized 81:2 seizure 79:3 self-denying 9:16 senior 4:22 29:18 37:16 38:2 72:20,21 79:25 80:12,14 83:7 sense 70:22 sensible 88:13 sensitive 5:22 9:1 10:3 44:14 sensitivities 47:25 sensitivity 47:22 sent 68:14 87:23 sentences 69:7 70:2,4,17 separate 78:25 sergeant 51:15 series 51:17 serious 86:5 seriously 10:18 38:21 servants 4:22,23 51:2 served 21:7 service 35:3 42:20 56:1 72:14,17 75:22 86:2 Services 46:12 servicing 42:22 74:11,23,23 set 9:3 11:15 14:25 26:6 27:9 31:3,13 39:11 49:22 setting 32:3 settings 22:1 seven 52:19,21 53:5 54:3 72:13 shape 48:12 shared 3:17 66:14 78:24 Sherborne 32:11 35:11,12,13 87:14,18,20 88:10,11,16,20 88:24 short 35:14 40:12 41:19 71:17 87:14 88:6,8 shorthand 41:16 show 20:21 30:8 53:16 54:4	63:4 showed 39:20 54:9,16 showing 63:10 shown 17:20,25 18:24 26:10 30:24 81:16 shows 16:13 18:22 30:13 shut 21:16 40:3 sighting 20:2 signature 60:12 signatures 9:12 signed 5:14 6:2 42:15 71:25 significance 13:2 48:1,11 60:16 60:17 significant 2:17 61:19 63:4,10 signs 5:5 31:18 similar 82:21 simply 2:13 48:4 single 37:12 80:22 83:2 84:5 sir 11:25 13:7,9 31:23 32:20 35:13,22 40:11 41:5,10,13 42:17,25 43:14 44:16,22 49:25 51:5 57:16,19 58:12 60:11 61:7 62:1,16 62:19 63:18 64:3,7,12,17 65:12 66:11 67:20 68:12,15 69:12,20 70:8 70:20 81:24 86:9,18 87:20 situation 31:13 situations 9:10 six 81:12 skills 61:24 slightly 48:16 slow 54:22 slowing 85:1 smoothly 18:21 sole 88:14 solicitor 1:24 2:1 3:3 5:18 solicitors 83:8 87:24 solicitor's 15:13 solid 41:16 somebody 33:17 81:19 88:25 somewhat 11:20 88:6 sooner 40:10 sophisticated 48:19 Sorry 53:8 sort 1:21 10:20
---	--	---	---	---	--	--

41:13 74:20 75:8 sought 9:19 10:21 11:16 15:6 sound 59:7 source 44:5 53:19 sources 34:9 south 46:1 space 14:10 speak 15:12 73:17 speaking 41:17 64:16 65:8 speaks 71:1 special 3:4 5:1,3 22:3 specialising 22:17 specialist 24:12 specific 48:2 58:3 61:24 specifically 26:2 43:23 47:24 56:19 62:5 77:19 specifics 43:24 specified 7:13,16 specify 7:20 speculate 82:11 speculated 28:11 34:2 81:14 speculation 80:17 speed 54:20 57:8 spend 86:2 spirit 78:7 spoke 65:24 sporadic 44:6,7 staff 3:6 37:16 43:22 48:8 74:12 76:8 77:22 stage 16:16 19:18 21:12 32:17 36:11 88:25 stages 75:23 stand 71:5 standard 42:14 43:11 58:12 72:1 Standards 1:5 42:23 45:18 start 1:18 12:2 38:4 39:4 75:18 started 20:8 30:22 43:4 44:20 62:21 73:1 starting 45:25 starts 59:23 85:9 state 13:13 26:23 26:25 30:23	31:6 34:9 67:18 stated 2:25 31:10 31:19 55:15 statement 1:3 6:8 12:7,11,13 13:7,25 15:1,9 30:9 31:18,19 32:6 33:1,3,11 34:21 35:2,12 35:14,22 36:4 40:12 42:13,14 44:19 49:3 62:11 64:11 67:12 68:13 71:24 72:1,7 72:24 79:19 81:12 82:8,24 statements 6:2,3 6:7 83:9 states 18:8 23:1 station 46:2 52:14 stations 64:14 status 1:12 2:22 2:23 3:11 31:23 statute 9:2 statutory 7:21 stay 38:11 85:18 Stephen 49:11 52:23 Stidwill 81:11,18 stolen 69:22 stood 55:4 stop 48:22 stopped 48:14,25 62:20 storage 30:21 35:9 store 21:15 stored 21:12 story 27:13 32:16 34:8 straightforward 52:10 strategy 58:11 58:19,25 59:3 stray 10:4 strength 59:14 strictly 10:13 stride 48:5 stuck 55:14 students 39:6 study 39:7 85:22 stumbled 37:7 subject 5:2,9 8:9 10:9 12:17 15:10 31:1 36:22 41:23 60:2 subjects 60:4 submission 7:1 submissions 10:11 88:14 submitted 6:2,18	10:14,15 subscriber 51:12 subsection 8:2 8:18 subsequent 36:9 76:24 subsequently 45:11 50:11 79:4 substantial 77:8 substantive 72:8 Suffice 11:21 sufficient 49:21 88:23 suggest 6:14 16:18 33:17 36:14 57:9 suggested 23:6 28:21 suggestion 16:23 19:24 39:3 suggestions 39:25 suggests 19:7,22 33:20 68:16 summarised 13:23 summary 26:14 86:8,9 87:9 superintendent 60:13 61:9,10 72:10 support 14:19 16:22 18:15 19:24 24:12 61:24 74:12 75:23 82:6 supports 29:25 30:16 suppose 65:9 69:3 75:13 sure 43:23 55:22 55:25 56:4 61:16 65:4 73:2 surprise 64:19 surprised 11:22 surprising 4:24 surprisingly 86:6 Surrey 12:10 15:18 16:18 17:21,23 20:14 22:16,22 23:10 23:15,23 24:9 24:11,15,21 25:20 26:18,25 27:4 28:2,3 29:8,9,11 30:25 31:8 33:21 34:3 36:19,23 37:3 38:19 40:17 46:9 75:15 Surrey's 16:8 surrounding	12:15 13:21 suspect 51:19 52:16 suspected 51:25 74:10 suspects 36:15 43:9 52:16 59:15 60:10 suspicion 27:18 suspicious 55:11 sworn 42:8 71:20 system 19:9 68:6 systematic 84:22 systems 49:17 <hr/> T <hr/> tab 51:1 85:8 take 10:24 34:22 41:10 48:4 49:2,19 57:4,7 61:4 64:21 65:6 76:25 78:12 81:8 88:5 taken 10:18 16:1 23:3 28:21 51:3,6,10 62:9 66:1 67:16 68:6 talking 82:10 target 56:8,9 team 1:25 5:19 9:20 26:5 27:6 40:14 47:4 75:24 78:17 79:25 technical 24:12 25:11 41:14 technique 29:20 teenager 39:20 telecommunic... 22:21 51:9 63:2 telephone 9:13 22:12 51:11 telephones 51:10 tell 29:3 37:10 44:19 72:24 89:1 temporary 72:5 72:13 ten 26:7 37:4 term 9:7 50:15 terminated 23:19 terminating 20:20 86:20,21 terms 3:19 7:4 7:24 45:24 48:21 49:4,22 72:5 73:16 86:16 terribly 86:5 territory 70:10 tests 11:15 thank 11:24 13:7	31:21 32:25 33:2 34:18,19 34:22 35:11 40:13 41:5,6 41:12,17 42:5 42:7 45:24 46:17 49:2 71:7,8,9,12,13 71:24 72:18 86:9 87:7,10 87:11,19 89:1 theory 25:6 they'd 37:11 thing 74:20 75:8 things 6:16 36:1 38:5 67:12 think 12:20 34:20 44:7,24 46:12,14,19 49:5 50:8,21 52:11 54:4 55:7,9,23 60:13,16 61:13 62:3 65:5 66:12 67:23 69:12 71:1,6 72:7 77:2,15 78:15 81:24 83:18 85:16,17 86:6 87:14 88:5,23 thinking 50:25 58:10 third 27:23 76:5 thirdly 38:25 thoroughly 80:1 80:9,25 81:2,6 thought 11:20 39:18 50:16 55:3,4,10 66:22 69:17 70:25 thoughts 29:15 three 3:3 36:18 38:13 55:8 74:1,6 75:5 83:3 thrust 40:25 time 3:13 7:15 13:17 15:7 16:8 18:9,22 18:24 19:1,15 23:12 26:8 27:1 29:3 31:4 32:24 34:10,15 35:25 36:21 37:21,24 38:8 38:17,22 39:7 42:20 43:21 48:24 49:7,10 50:10,16 62:5 70:5,12 71:11 72:7,15,17 80:17,18 83:2 83:6 86:3 88:9 timeline 32:2,4,9	32:18 33:5 times 87:2 timing 16:9 timings 16:7 today 43:2 44:15 told 29:19 65:5 65:19 Tony 60:13 Tooting 46:2,3 46:22 top 41:1 touch 53:11 track 6:18 79:3 tracking 77:24 trail 53:22 54:9 54:16 transcript 2:8 23:15 81:14 85:8 transcripts 39:8 transmission 2:2 transparency 11:21 trap 48:3 Treasury 3:3 treatment 3:13 trepidation 48:14 trial 69:6 86:3 tried 11:19 true 31:20 78:7 truly 9:18 Trust 1:5 truth 39:15,16 40:7 42:14 72:1 try 25:25 trying 11:8 31:4 31:10 38:22 81:3 turn 42:12 45:6 46:4 turnaround 55:12,24 66:21 turned 55:7 57:9 83:17 turning 84:12 twice 85:10 twin 6:18 two 12:2 18:1 24:16,25 25:16 26:17 31:9 33:17 41:14 46:12 50:6 51:17 55:8 58:8 63:18 65:9 75:10 77:23 79:4 80:11,15 83:3 two-thirds 65:13 T-Mobile 16:25 25:13 <hr/> U <hr/> ugly 39:16 ultimate 47:20	73:19 ultimately 75:5 87:4 umbrella 9:15 unable 25:5 27:22 33:18 38:8 unanswered 36:8 38:12 40:16 uncover 38:9 40:23 underline 2:10 undermined 14:21 understand 12:9 37:3 43:4 44:8 46:1 61:18 69:9 88:6 understanding 31:14 32:3,23 33:6 37:2 78:18 understands 3:16 understood 6:6 15:10 49:24 64:4 68:21 undertake 4:6 undertaken 25:24 undertaking 3:19 5:6,15 43:11 78:5 undertakings 5:19 undertook 15:15 unduly 70:4 unit 24:12 United 8:23,24 units 61:23 unknown 18:9 27:20,25 unlawful 37:9 65:17 unnecessary 5:21 unreasonably 11:1 undetected 10:2 unsuccessful 1:7 22:20 unusual 47:1 50:12 unwell 15:7 update 13:13 updated 62:25 updates 68:19 updating 12:7 upper 82:9 upshot 62:10 upwards 75:1,2 use 38:22 66:5,9 66:9 83:14 usually 2:5 4:1 utter 36:19
---	--	--	--	--	---	---

V	want 13:1 32:17 52:18 65:1 68:22 86:2 88:13 wanted 52:6 59:7 87:22 88:1 warrant 76:13 wasn't 47:13 48:9 58:20 62:19 63:21,22 66:25 68:25 70:22 81:5 watching 2:7 way 1:18 5:10 10:21 11:18 25:13 28:19 35:14 47:19 48:16 49:22 52:3 58:25 65:13 68:19 75:24 78:22 79:22 ways 7:12 wear 66:17 website 3:19 6:9 32:5,24 Wednesday 1:1 week 1:10 38:3 40:9 weeks 39:23 63:3 Weeting 13:12 18:11,19 19:14 28:3 41:4 welcomes 33:2 went 17:16 63:2 75:5 77:10 78:8,22 83:22 86:6 weren't 52:2 57:9 59:4 77:15 79:5 81:8 83:1 we'll 41:9,15,15 62:10 we're 42:20 43:1 47:5 49:3 59:24 80:21 88:8 we've 33:4 36:25 37:20 79:15 87:10 88:14 whilst 16:2 31:14 36:3,22 40:24 White 32:11 34:20,21,22 Whittamore 46:6,9 49:12 52:23 53:16,23 53:25 54:18,21 55:15,25 56:22 57:21 58:2 63:5 65:16,20 66:2,13,16,24 67:2,4 69:11 69:14 Whittamore's	46:13 49:16 53:2 wholesale 37:8 wholly 10:17 wide 75:4 wider 45:12 wide-ranging 73:22 78:20 wild 39:25 wish 2:10 14:19 32:18,22 33:7 41:5 44:15 60:15 82:7 88:19 wished 38:4 40:10,25 witness 6:5 27:13 31:19 32:5 35:2 41:11,21 42:3,12 71:19 71:24 82:19 83:19 85:2 87:12 88:15,17 witnesses 6:3 8:17 wondered 28:15 word 65:1 78:7 words 32:12 37:22 44:20 51:6,22 53:23 56:2 72:23 81:25 work 37:19 39:14 43:11 48:5,6 51:16 71:10 74:21 76:16 worked 10:23 74:22 working 1:23 39:6 45:25 80:5 workings 11:3 works 44:9 World 29:20 33:13,23 34:25 36:24 37:23 38:16 39:13 40:6,21 World's 27:23 36:20 37:16 39:10 worries 6:17 worth 38:2 wouldn't 44:15 48:13,22,25 56:21 57:15 68:21 70:8 writer 41:16 written 1:9 34:11 56:6 64:14 67:17 68:2 wrong 68:9 wrongly 64:18	Y	year 12:4 22:25 35:15 42:13 71:25 84:9 years 26:7 37:4 38:7 42:20 72:14,17,21 1 1 7:5 24:25 27:6 28:12 39:22 10 19:9,10,25 21:10 51:2 10th 19:16 10.00 1:2 10.47 22:7 10.57 22:9 11.02 41:18 11.15 41:20 12.02 71:16 12.14 71:18 12.36 89:2 13 35:1 46:17 14 60:4 61:5 72:17 14.10 17:20 22:11 24:23 26:9 27:3 30:24 14.16 27:7 15 24:25 15.19 22:13 15.25 22:14 24:22 30:25 16 18:4 24:5 27:13 49:4 62:9 64:9 16.02 21:6 16.21 15:22 16.40 19:3,17 16094 51:2 53:12 16095 51:22 16096 58:9 16101 59:23 16102 60:1 17 17:24 21:11 23:17,24 26:19 27:2,5 31:9 81:9 17.07 18:25 18 28:8 18.00 15:20 18.32 16:11 19:20 30:13 18.55 15:23 18368 72:24 18370 74:11 18375 79:19 18376 82:8 18584 65:14 19 3:20 5:8 7:2 9:4 21:16 59:24 64:10 85:6 19(4) 9:5 19.10 16:1	19.46 19:5,17 1906 50:3 1916 50:3 1998 70:14 2 2 7:11 36:25 72:24 85:8 87:12,25 89:1 20 18:25 19:17 51:2 68:10 20th 19:4 20.32 16:15 30:18 200 55:20 2001 73:4 20013 85:9 2002 13:19,22 14:3 15:2,19 15:20,22,24 16:24 17:1,14 19:5,20 20:13 21:3,5,13 24:14,22 25:3 25:8 27:16 30:6,10,14 33:15,21 36:19 40:18 42:21 43:12 72:15 2003 43:4 44:20 51:2 59:24 62:13 77:2 2004 60:4 61:5 62:10 64:10 67:10,13 68:14 2005 3:20 7:2 42:21 43:12 69:5 81:9 85:6 2006 3:2 37:7 2011 27:13 28:3 28:5,8,12,12 29:9 34:1,8 2012 1:1 68:10 21 15:22,24 19:5 19:17 20:4 23:25 29:9 42:20 51:21 53:12 22 58:9 23 27:16 42:13 23.59 17:14 24 13:19 15:19 15:20 17:8,14 19:7,20 20:1 30:6,10,14 59:11 72:14 25 21:5,6 26:23 26 13:22 16:24 17:1 20:11,13 21:3,13,14 22:3,17 23:18 24:3,22 25:3,4 25:8 27:3 30:24 71:25 26th 17:20 27 30:18 33:16	59:23 28 19:21 30:15 62:9 3 3 7:19 51:1 30 84:5 300 55:21 31 33:21 64:10 67:10 32 33:24 33 33:24 62:11 62:12 34 33:24 35 35:1 36 5:12 37 35:2 39 64:10 4 4 2:21 8:2,3,18 34:8 41 65:11 45 67:12 5 5 8:18 74:11 50 21:10 51 21:17 55.1(a) 70:13 6 6 67:13 7 7 3:1 33:13 44:19 72 18:10,13 20:1 30:22 35:9 36:6 72-hour 18:18 75-minute 31:2 8 8 23:8,14 28:5 77:2 79:19 9 9 1:1 82:9 9.45 22:3
W						