

<p>1 Friday, 4 May 2012</p> <p>2 (2.00 pm)</p> <p>3 LORD JUSTICE LEVESON: Mr Eadie.</p> <p>4 Application by MR EADIE</p> <p>5 MR EADIE: My Lord, yes. My Lord, first of all I'm very,</p> <p>6 very grateful that you've agreed to sit at such short</p> <p>7 notice on a Friday afternoon. That's made lives very</p> <p>8 much easier. You're aware, I think, of the nature of</p> <p>9 the application that we're making?</p> <p>10 LORD JUSTICE LEVESON: Yes. Thank you very much for the</p> <p>11 skeleton or detail. I entirely understand the reason,</p> <p>12 and, indeed, have expressed concern about the impact of</p> <p>13 evidence coming to those who might be affected entirely</p> <p>14 unsighted. So I understand that, but I'm not quite sure</p> <p>15 how that brings you within the legislation. I'm sorry</p> <p>16 to be tediously legal about it, but that's my</p> <p>17 touchstone.</p> <p>18 MR EADIE: My Lord, yes. I think you're referring to the</p> <p>19 issue as to whether or not the core participant which</p> <p>20 requires, in order to comply with the rules, a core</p> <p>21 participant to be a person, whether or not that concept</p> <p>22 can be applied to government more generally.</p> <p>23 LORD JUSTICE LEVESON: It's a constitutional question, which</p> <p>24 I would have thought has been troubling people for 700</p> <p>25 or 800 years.</p> <p style="text-align: center;">Page 1</p>	<p>1 LORD JUSTICE LEVESON: Yes.</p> <p>2 MR EADIE: Which is why we cast the thing in reverse in the</p> <p>3 written argument, because once those are satisfied, then</p> <p>4 it may just be a question, if the alternative is named</p> <p>5 people, of us identifying the named people and then,</p> <p>6 I think it sounds a bit as though it's going to happen</p> <p>7 rather more behind the scenes than in public, those who</p> <p>8 would need to provide advice for them would therefore be</p> <p>9 included.</p> <p>10 LORD JUSTICE LEVESON: There are a number of issues to</p> <p>11 unpick there. First of all, whether I'm enamoured of</p> <p>12 a submission or not is neither here nor there. The</p> <p>13 question is: as a matter of pure law, can you advance an</p> <p>14 argument that the government does in fact fall within</p> <p>15 the definition of a person? If you can, I'll be very</p> <p>16 happy to listen to it. If you can't, it's not</p> <p>17 a question of being enamoured by it; I just can't do it.</p> <p>18 Q. My Lord, I understand there is a choice. After three</p> <p>19 years doing this job, I can argue almost anything, so</p> <p>20 I could mount an argument that government constituted</p> <p>21 a person, but I'm instructed, given the preliminary</p> <p>22 indications you've given, that however interesting that</p> <p>23 argument might be, I'm not going to trouble you with</p> <p>24 that this afternoon. It is a question of those who are</p> <p>25 to be core participants and their advisers.</p> <p style="text-align: center;">Page 3</p>
<p>1 MR EADIE: My Lord, yes, or possibly not on the basis that</p> <p>2 most of the caselaw in other contexts makes it tolerably</p> <p>3 clear, as I hope in fairness we pointed out in the</p> <p>4 skeleton submissions in writing, that government does</p> <p>5 not actually have a separate legal personality itself;</p> <p>6 it acts through a succession of ministers and</p> <p>7 secretaries of state, some of whom and some of whom are</p> <p>8 not bodies corporate, others of whom are individual</p> <p>9 people. So we fully accept --</p> <p>10 LORD JUSTICE LEVESON: Yes, you've identified the problem,</p> <p>11 but, Mr Eadie, you haven't identified a solution. I've</p> <p>12 had that problem for six months. People are very</p> <p>13 pleased to tell me what the problems are, but they get</p> <p>14 much cover about the solution.</p> <p>15 MR EADIE: My Lord, my instructions are that if my Lord is,</p> <p>16 as it were, if I can put it this way, not enamoured of</p> <p>17 the prospect of finding the government is a person, then</p> <p>18 I'm instructed not to push that point. The important</p> <p>19 thing, as you know from the written submission, is those</p> <p>20 who need to have advance sight of relevant material have</p> <p>21 advance sight of relevant material and that you, as the</p> <p>22 chairman of the Inquiry, have sufficient confidence that</p> <p>23 the confidentiality that the Inquiry is entitled to</p> <p>24 expect in relation to that material, which is accorded</p> <p>25 on a privileged basis, is actually properly respected.</p> <p style="text-align: center;">Page 2</p>	<p>1 LORD JUSTICE LEVESON: Right. I understand that entirely.</p> <p>2 Forgive me for teasing you a little bit about it,</p> <p>3 Mr Eadie. It is actually the subject of a ruling which</p> <p>4 I handed down earlier this week, because I had to define</p> <p>5 the word "person" for purposes of Rule 13 of the Inquiry</p> <p>6 Rules 2006.</p> <p>7 Right. So is there anything you want to say beyond</p> <p>8 that which you've included in writing -- which is</p> <p>9 helpful and I'm grateful -- about the merits? We'll</p> <p>10 come then on to the practicalities, but if you would</p> <p>11 like to say anything about the merits, then I'm happy to</p> <p>12 listen to you about it.</p> <p>13 MR EADIE: My Lord, I don't want to say anything more than</p> <p>14 is in writing. You've seen from the written</p> <p>15 submissions -- and it may be that if others haven't seen</p> <p>16 the written submissions I ought to briefly summarise</p> <p>17 them -- that we put the application on two bases.</p> <p>18 Firstly, that the government ministers concerned</p> <p>19 have been asked to give evidence, I think in the case of</p> <p>20 at least one case -- that is the Chancellor of the</p> <p>21 Exchequer -- at present that invitation is to give</p> <p>22 evidence in writing, but the others in the group have</p> <p>23 been asked at this stage to be prepared to give evidence</p> <p>24 orally. The application is therefore made first on the</p> <p>25 basis that the central theme of this Inquiry is -- of</p> <p style="text-align: center;">Page 4</p>

<p>1 this module is to look at the press and the impact and 2 effect that the press has had on the public, the police 3 and politicians, and it's in those circumstances fair 4 and proper that these witnesses should have access on 5 the same basis as other witnesses who are directly 6 concerned with those issues. That's the first basis. 7 The second basis is that, more generally, government 8 as a group -- and this group of individuals, this group 9 of ministers, can be taken as fairly representative of 10 government for this purpose -- also have a clear, as it 11 were, public interest in the proceedings because they 12 will be responsible for the policy matters, they have 13 carriage of the policy. 14 Those are the twin bases on which the application is 15 put. 16 LORD JUSTICE LEVESON: I understand. In the normal course 17 of events, recommendations come out of an Inquiry which 18 then the government consider. Would it be -- and 19 I appreciate that you don't intend or the government 20 don't intend to play a full role in the Inquiry in the 21 sense of offering questions or attending to ask 22 questions or necessarily make opening or closing 23 submissions. That's what I gather from your 24 application. For those who haven't read it, I will 25 summarise bits of it when I come to give judgment.</p> <p style="text-align: center;">Page 5</p>	<p>1 participants and those who are advising them, in respect 2 of which I insisted that I involved the number and 3 identity of the people who were being put forward as 4 within the club, but also the entire Inquiry team and 5 counsel to the Inquiry and those who place the documents 6 on the document management system, the outside 7 contractors. So it's not that I challenged the 8 integrity of anyone, I make that very, very clear, but 9 I was very keen to ensure that I could do no more to 10 ensure the integrity of my process. 11 So against that background, whereas I of course 12 accept that a minister wouldn't breach an undertaking 13 that he'd given, even if not formally, can you 14 understand why I am not prepared to make an exception if 15 you make a submission in that regard? 16 MR EADIE: My Lord, I can. You've seen from our written 17 submissions that the suggestion that we had made in 18 writing, and I've made it clear I've taken some 19 instructions anticipating that my Lord might raise this 20 with me, but the position that we've taken in our 21 written submissions is to indicate that we entirely 22 understand the very good reasons that my Lord has for 23 wishing to provide as full a protection of 24 confidentiality as humanly possible. We have fully 25 accepted that those who might fall within the group of</p> <p style="text-align: center;">Page 7</p>
<p>1 MR EADIE: I'm grateful. 2 LORD JUSTICE LEVESON: Is there something to be said for the 3 argument that the profile of this Inquiry -- and I'm not 4 claiming any credit for that -- is such, and the 5 necessity to move with some degree of speed means that 6 there may be some value in the government being prepared 7 to, as it were, share policy objectives to such extent 8 as they have them so that I can at least consider them 9 in the context of making recommendations? In other 10 words, to speed up the process? 11 MR EADIE: My Lord, yes. I don't have formal instructions 12 on the extent to which they could or would be prepared 13 to engage in that process, but that is precisely what 14 I had in mind by my second basis, that the Inquiry might 15 well be assisted in that way, as has occurred in other 16 inquiries. So I'm certainly not ruling that out. 17 LORD JUSTICE LEVESON: All right. Let's think about the 18 mechanics. I'm very conscious that you haven't had the 19 advantage, if advantage it be, of listening to this 20 Inquiry over the last six months, but there have been 21 a number of occasions in which the confidentiality that 22 I have required has not always been honoured, and the 23 result is that I got to the stage of requiring 24 everybody, and I do mean everybody, to sign a fresh 25 undertaking that includes not merely the core</p> <p style="text-align: center;">Page 6</p>	<p>1 advisers to these ministers would have to give an 2 undertaking. The question that we raised in the written 3 submissions, given the unusualness of ministers signing 4 undertakings of this kind, is whether the Inquiry 5 considered it necessary for them to do so, but as 6 I indicated, I have taken instructions on that and if -- 7 it's a bit like government and persons. 8 LORD JUSTICE LEVESON: Yes. 9 MR EADIE: If you indicate to me that that is your view, I'm 10 instructed that they are prepared to sign that. 11 LORD JUSTICE LEVESON: If I've required leading counsel to 12 the Inquiry, in whom I have complete, total and absolute 13 confidence, to sign an undertaking, it's quite difficult 14 that I should exclude anybody else, isn't it? 15 MR EADIE: My Lord, that's entirely a view for you. I'm not 16 going to try and draw a distinction between a minister 17 and Mr Jay. 18 LORD JUSTICE LEVESON: No, I wouldn't if I were you. 19 I think that's very sensible. 20 Let me just see if there's anything else. 21 MR EADIE: My Lord, I should perhaps tell you, on the basis 22 that it's people who are being named, who those people 23 are, but we can perhaps come to that at the end. 24 LORD JUSTICE LEVESON: Oh, you have some names? 25 MR EADIE: We have.</p> <p style="text-align: center;">Page 8</p>

<p>1 LORD JUSTICE LEVESON: Oh, right. 2 MR EADIE: Of people we ask to be core participants. 3 LORD JUSTICE LEVESON: Right. That's useful. Can I make 4 this clear before you tell me who they are: first of 5 all, so that everybody understands, I have been very 6 impressed by the arrangements that I know have been put 7 into place to ensure that ministers and those from whom 8 I have requested evidence provide it independently, and 9 I know that arrangements have been put into place to 10 ensure that's so, and I am happy to acknowledge that. 11 Equally, I would not want it to be thought, and 12 I will make this clear, that the application has 13 a subtext that any minister wants to see what others 14 have said before committing themselves in writing. 15 I have received the written evidence of the two persons 16 who have most been concerned in recent days, the 17 Prime Minister and the Secretary of State for Culture 18 and Media, Olympics and Sport, already. 19 MR EADIE: We're very grateful for that indication. 20 LORD JUSTICE LEVESON: That should not be misunderstood. 21 MR EADIE: Yes. We're very grateful. We, as you know, have 22 taken serious steps to ensure the independence of those 23 statements so that's helpful. 24 LORD JUSTICE LEVESON: I acknowledge it and I say it before 25 you tell me and without knowing who you would want to</p> <p style="text-align: center;">Page 9</p>	<p>1 that they have in some way been singled out. They have 2 been asked to provide evidence to the Inquiry to assist 3 the Inquiry and they're only too happy to help on that 4 basis, but they make an application, as I indicate, both 5 in their capacity as witnesses and as representative of 6 the government. 7 LORD JUSTICE LEVESON: I understand that. Mr Eadie, thank 8 you very much. 9 I'm going to take just ten minutes to -- 10 MR EADIE: My Lord, can I just add one more thing? 11 LORD JUSTICE LEVESON: Yes. 12 MR EADIE: As I understand it, once the information is 13 shared with those individuals, as was always the case 14 with ministers, they will have advisers to assist them, 15 and as I understand it, as it were, rather more behind 16 the scenes, that confidentiality circle can be dealt 17 with, as can the ability of lawyers who will also no 18 doubt have to sign confidentiality -- 19 LORD JUSTICE LEVESON: I'm afraid so. 20 MR EADIE: Yes. 21 LORD JUSTICE LEVESON: We're very used to that and the team 22 has a system that has worked many times and I'm sure 23 that other core participants will tell you that it has 24 operated, and I believe operated effectively, and it 25 certainly can be done behind the scenes. I don't</p> <p style="text-align: center;">Page 11</p>
<p>1 name. So tell me who you would like to name. 2 MR EADIE: My Lord, the Prime Minister. 3 LORD JUSTICE LEVESON: Yes. 4 MR EADIE: The Deputy Prime Minister. 5 LORD JUSTICE LEVESON: Yes. 6 MR EADIE: The Secretary of State for Business, Innovation 7 and Skills. The Secretary of State for Culture, Media 8 and Sport. 9 LORD JUSTICE LEVESON: Is he not also Olympics? Or is he 10 not? 11 MR EADIE: Yes, he is. The Secretary of State for 12 Education. 13 LORD JUSTICE LEVESON: Yes. 14 MR EADIE: The Lord Chancellor and Secretary of State for 15 Justice. 16 LORD JUSTICE LEVESON: Yes. 17 MR EADIE: The Home Secretary. 18 LORD JUSTICE LEVESON: Yes. 19 MR EADIE: And the Chancellor of the Exchequer. 20 My Lord, perhaps I should make it clear, now that 21 list has been read out, the point that I made in 22 writing, which is to emphasise, as it were, the basis on 23 which the application is made on their behalf. It's not 24 made, in case anyone thinks it is, on the basis that 25 there is some degree of concern about giving evidence or</p> <p style="text-align: center;">Page 10</p>	<p>1 require names of those who are in the club. I know that 2 the team will require names, because we monitor it. 3 MR EADIE: Understood. 4 LORD JUSTICE LEVESON: I just need names of core 5 participants, and I anticipate that we're likely 6 generically to call them "government core participants" 7 rather than anything else, to make the point that you 8 would like to make, had the law permitted it. I think 9 I'll think about it for just ten minutes. 10 Ten minutes. 11 (2.29 pm) 12 (A short break) 13 (2.31 pm) 14 Ruling 15 LORD JUSTICE LEVESON: This is an application under Rule 5 16 of the Inquiry Rules 2006 (the Rules) by Mr James Eadie 17 Queen's Counsel on behalf of the government for core 18 participant status in relation to Module 3 of Part 1 of 19 the Inquiry, which is concerned with the relationship 20 between the press and politicians. 21 In my ruling of 5 April 2012, I made it clear that 22 it covered "the relationship between national newspapers 23 and politicians, along with its impact on media policy, 24 cross-media ownership" and as being "concerned with any 25 consequences of the relationship on the creation or</p> <p style="text-align: center;">Page 12</p>

<p>1 implementation of policy at the highest level", see 2 paragraph 2.</p> <p>3 The module is due formally to start next week, 4 although some evidence which crosses each of the modules 5 was heard last week, including the evidence of Rupert 6 and James Murdoch.</p> <p>7 I requested applications for core participant status 8 for this module some considerable time ago, and 9 following a hearing, that ruling dealt with those that 10 I had received. This application is, therefore, late, 11 but given that I have previously heard late 12 applications, see the ruling in relation to Module 1 13 dated 2 November 2011, following earlier rulings on 14 14 September and 4 October, and on the basis that here, 15 as in those cases, the module has not formally been 16 opened, I am prepared to address it on its merits.</p> <p>17 In reality, it is an application somewhat unusual in 18 form. The advantages of core participant status include 19 the right to make an opening and closing statement, see 20 Rule 11, and the right to suggest questions to counsel 21 to the Inquiry, or if he declines to do so, to make 22 application for permission to ask such questions, 23 Rules 10(1) and (3).</p> <p>24 In fact, Mr Eadie does not currently seek to take 25 advantage of these rights in the Inquiry, but the reason</p> <p style="text-align: center;">Page 13</p>	<p>1 The purpose of such meetings is to put witnesses at 2 their ease, but also to permit them to familiarise 3 themselves with a document they may or may not have seen 4 and prepare to deal with it. This is not only a matter 5 of fairness to the witness, but in addition to underline 6 that the process of giving evidence is neither a test of 7 memory nor an attempt to trick or trap.</p> <p>8 As far as I am aware, the practice has worked well. 9 Usually these meetings have been on the morning of the 10 hearing, but they have occasionally taken place the day 11 or a few days before the evidence is due to be given. 12 The evidence is then given, although its presentation 13 has not, in a few cases, been without difficulty.</p> <p>14 Inevitably in a fast-moving Inquiry, witnesses must 15 attend out of order, and it has occurred that some 16 witnesses have given evidence before the Inquiry has 17 received evidence from another witness yet to come, so 18 that it has not been possible to put allegations not 19 then known to the Inquiry, let alone warn about 20 questions. This has led to come complaints that 21 allegations made by a later witness cannot be challenged 22 and have led to unfairness.</p> <p>23 Generally, it has been possible to arrange for the 24 complaining witness to provide a further statement, 25 which has then been put into the record, so that the</p> <p style="text-align: center;">Page 15</p>
<p>1 for his application is to be found in the way in which 2 the Inquiry facilitates core participants to exercise 3 their rights that the Rules provide by making available 4 in advance, under strict rules of confidentiality, 5 copies of statements that witnesses have provided and 6 which will form the basis of their evidence.</p> <p>7 For those who are not core participants, the witness 8 statements only become available when published on the 9 Inquiry website after the conclusion of the evidence of 10 the witness, and because of the enormity of the task, 11 some exhibits have not yet been posted, thus those who 12 are not core participants simply do not know what 13 a witness is about to say until he or she says it and it 14 is streamed live. Although, as I shall explain, this 15 has caused some difficulties, until recently they have 16 not been serious.</p> <p>17 At this stage, it is appropriate to explain the 18 approach of the Inquiry to those who are giving 19 evidence. In order that witnesses can be prepared for 20 matters that might be raised during the course of oral 21 evidence, it has been the practice of counsel to the 22 Inquiry to meet witnesses before they give evidence, 23 both to identify areas of questioning and to provide 24 sight of any document, whether produced by another 25 witness or obtained from a publicly available source.</p> <p style="text-align: center;">Page 14</p>	<p>1 challenge becomes public knowledge and can be referred 2 to.</p> <p>3 On at least one occasion, with a particularly public 4 figure who has not yet given evidence, I accepted that 5 this was not sufficient, and although I have encouraged 6 witnesses to include rebuttal in any statement being 7 prepared or to supplement that statement, if already 8 served, I have recognised that the lapse of time before 9 correction can itself cause injustice. I therefore 10 publicly referred to the challenge to the evidence 11 pending the rebutting evidence.</p> <p>12 Again, in the main, adopting a pragmatic solution to 13 ensure as fair a representation of the evidence as 14 possible, I believe that an appropriate balance has been 15 kept, and it has not been necessary to interpose 16 witnesses early or to take other steps to preserve their 17 position.</p> <p>18 On Tuesday, 24 April 2012, James Murdoch gave 19 evidence and produced a series of emails passing between 20 him and a public affairs employee of News Corporation 21 named Frederic Michel. In accordance with the usual 22 procedure and subject to the confidentiality 23 undertaking, core participants had seen the statement 24 and the emails in advance. They had not been seen in 25 advance by the Secretary of State for Culture, Media,</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 Olympics and Sport, the Right Honourable Jeremy Hunt MP, 2 who was directly affected by them. He is not a core 3 participant and thus was not entitled to sight of them. 4 As soon as the evidence was given, however, the 5 emails were published on the Inquiry website and the 6 confidentiality undertaking lapsed. Newspaper core 7 participants with journalists within the confidentiality 8 circle had obviously been alert to the nature of the 9 evidence that might be given, and I have noted, and 10 I say no more, that articles quoting parts of the emails 11 and passing comment on their contents appeared very 12 quickly after they became public. In any event, within 13 minutes the emails were the subject of massive 14 publicity. There were immediate calls for the Secretary 15 of State to answer questions surrounding them, although 16 he was neither the author nor the recipient and the 17 writer had made it clear that, although he referred to 18 Mr Hunt by name, his contact was in fact with one of his 19 special advisers. 20 I do not pass comment on the content of the 21 articles, the nature of the media reporting or the 22 subsequent parliamentary exchanges, although I was 23 sufficiently concerned about what had happened overnight 24 to make a statement at the opening of the Inquiry on the 25 following morning prior to the matter being raised in Page 17</p>	<p>1 observed. 2 It has not only been the press. It has happened 3 that a core participant who is a politician has used 4 material from the disclosed evidence, which was in fact 5 later corrected, publicly to challenge the 6 Prime Minister. An apology has been received by the 7 Inquiry for what was in that case a total disregard of 8 the terms of the confidentiality agreement, but even if 9 the question had been withheld until the statement was 10 published, there was almost no time for the information, 11 wrong as it turned out to be, to be checked and the 12 question dealt with. 13 I said once that it seems to me to be wrong and 14 unfair to allow issues such as this to be dealt with in 15 this way. I have observed that core participant status 16 is not intended to provide an advantage to core 17 participants, and so permit them to analyse material 18 before it is available for publication, and publish 19 articles and comment after the information has become 20 public but before those who are not core participants 21 have had the opportunity to assimilate what has 22 happened. I could equally have said that it is not 23 intended to represent a trap for unsighted witnesses who 24 are not core participants and will not have had the same 25 advantage of forewarning. Page 19</p>
<p>1 Parliament. I said this: 2 "I understand entirely the reason for some of the 3 reaction to the evidence yesterday and, in particular, 4 to the emails about which Mr Murdoch was asked, but I am 5 acutely aware from considerable experience that 6 documents such as these cannot always be taken at face 7 value and can frequently bear more than one 8 interpretation. I am absolutely not taking sides or 9 expressing any opinion, but I am prepared to say that it 10 is very important to hear every side of a story before 11 drawing conclusions. In due course, we will hear all 12 the relevant evidence from all the relevant witnesses, 13 and when I report, I will then make the findings that 14 are necessary for me to fulfil the terms of reference." 15 It is clear from what happened on that occasion that 16 the module that concerns the press and politicians 17 contains a new dynamic that the Inquiry has not 18 previously experienced. To such extent as issues of 19 contemporary politics are raised, it is obviously 20 unrealistic to expect political and press reaction not 21 to be immediate, particularly where the press have had 22 legitimate forewarning of the evidence, even if that 23 forewarning was for the different purpose of preparing 24 to assist the Inquiry and the terms of the 25 confidentiality undertaking were being scrupulously Page 18</p>	<p>1 It seems to me that a witness who is likely to be 2 the subject of potentially damaging evidence, which will 3 generate what may well be legitimate public commentary, 4 ought also to be aware of the broad nature of that 5 evidence in advance of it being given, so that if 6 questions are asked and it is necessary and appropriate 7 that answers be provided before the witness himself or 8 herself gives evidence, at the very least the witness 9 will have been in the same position as those who have 10 been given sight of the material because of their core 11 participant status, albeit that the information can only 12 be used after it has entered the public domain. 13 That brings me to this application. What Mr Eadie 14 seeks is legitimately to achieve some degree of notice. 15 He puts the matter in this way: 16 "Recent events have underlined and brought into 17 sharp focus the desirability of the government in 18 fairness to those who are to give evidence having 19 advance sight of evidence submitted to the Inquiry. 20 That is not merely a matter of fairness to them, 21 ensuring that they are not disadvantaged as compared to 22 other witnesses; it is hoped that it may assist the 23 Inquiry by providing the witnesses with at least some 24 time in their busy schedules to consider the materials 25 and evidence of others on similar or related topics to Page 20</p>

5 (Pages 17 to 20)

<p>1 those on which they will be giving evidence. 2 "Further, ministers and, ultimately, the 3 Prime Minister as the head of the government are 4 accountable to the public and to Parliament. Again, 5 recent events have served to highlight the need on 6 occasions for the government to respond very quickly to 7 material which has been released. Both the Secretary of 8 State for Culture, Media and Sport and the 9 Prime Minister have been required to respond urgently in 10 the House of Commons to concerns over matters raised by 11 the Inquiry. That process will be assisted by the sort 12 of access to the materials that core participant status 13 would involve." 14 It follows from what I have said that I have 15 sympathy with the broad thrust of this submission, but 16 before moving to deal with the application in the 17 context of the legal framework, it would be remiss if 18 I did not deal with the suggestion that might otherwise 19 be made that this application is made in order to assist 20 in the preparation of evidence. 21 So that it is entirely clear, within the slightly 22 extended deadline which I have allowed some witnesses, 23 from whatever corner, both the Prime Minister and the 24 Secretary of State for Culture, Media and Sport have 25 today submitted their primary statements to the Inquiry.</p> <p style="text-align: center;">Page 21</p>	<p>1 The first question is whether the application can be 2 made by the government. Albeit in the different context 3 of a different rule, I have recently given a ruling on 4 the meaning of the word "person" in these regulations. 5 I have no reason to believe that the same analysis does 6 not apply to Rule 5. 7 I then said: 8 "I have no doubt, and the contrary was not 9 suggested, that the concept of a person in Rule 13 of 10 the 2006 Rules includes both an individual and a body 11 corporate or unincorporate. Although there is no 12 definition within the 2005 Act or the 2006 Rules, 13 a proper reading of the Interpretation Act 1978 makes it 14 clear that 'In any act, unless the contrary appears', 15 section 5, 'person includes a body of persons corporate 16 or unincorporated', schedule 1. The Interpretation Act 17 1978 applies to subordinate legislation, including the 18 2006 Rules, by virtue of Section 11." 19 As Mr Eadie frankly concedes, by our unwritten 20 constitution, the government of the United Kingdom has 21 no independent existence in law. It operates through 22 a number of persons, no doubt including both individuals 23 and other legal entities. He argues, however: 24 "There is clearly a very considerable degree of 25 common interest amongst those who lead the government,</p> <p style="text-align: center;">Page 23</p>
<p>1 Indeed, save in one case, all the other ministers who 2 Mr Eadie has now named have provided a statement. The 3 last such statement is due this afternoon. Although 4 supplementary statements may be necessary, there can be 5 no question of access being sought for the purpose of 6 preparing evidence. 7 Whatever my views on the fairness of the matter, 8 I must, however, address the question of law, that is to 9 say: whether the application which Mr Eadie makes is 10 within Rule 5 of the Inquiry Rules. 11 The rule provides: 12 "1. The chairman may designate a person as a core 13 participant at any time during the course of the 14 inquiry, provided that person consents to being so 15 designated. 16 "2. In deciding whether to designate a person as 17 a core participant, the chairman must in particular 18 consider whether (a) the person played or may have 19 played a direct and significant role in relation to the 20 matters to which the inquiry relates, (b) the person has 21 a significant interest in an important aspect of the 22 matters to which the inquiry relates or (c) the person 23 may be subject to explicit or significant criticism 24 during the inquiry proceedings or in the report or in 25 any interim report."</p> <p style="text-align: center;">Page 22</p>	<p>1 namely the Prime Minister, Deputy Prime Minister and 2 other senior ministers. Further, the concern of 3 government is that there is a real potential for 4 misunderstanding and presentational issues in relation 5 to core participant status with risks of unfair or 6 inaccurate singling out of those individually 7 identified. It is thus made explicitly clear that the 8 purpose of this application in substance on behalf of 9 government is solely to ensure that fair and appropriate 10 access is secured to the relevant materials for the 11 reasons set out above. It reflects no other concern on 12 the part of any of those ministers who are to assist the 13 Inquiry with their evidence." 14 I accept this submission in its entirety, but with 15 respect, it misses the point. In this regard, the 16 legislation does not provide me with a discretion to 17 grant core participant status outside the terms of the 18 regulations and I will not do so. In the same way that 19 I required applications from each person who sought core 20 participant status as someone who complained that they 21 were the victims of press, illegal or unethical conduct 22 and required that they be listed, so it appears to me 23 that I must do the same in this case. 24 Before coming to who that should be, however, it is 25 worth considering the purposes within the Rules.</p> <p style="text-align: center;">Page 24</p>

<p>1 Mr Eadie refers to my ruling of 5 April 2012 when 2 I spoke of Module 3 at paragraph 2 as covering "the 3 relationship between national newspapers and politicians 4 along with its impact on media policy, cross-media 5 ownership" and as being "concerned with any consequences 6 of the relationship on the creation or implementation of 7 policy at the highest level", and at paragraph 5, of 8 core participant status being "only for those far more 9 involved in or responsible for the subject matter of the 10 module than as a witness to specific events", which he 11 submits must include government ministers responsible 12 for policy, particularly where, as here, the most senior 13 ministers are seeking to assist the Inquiry with their 14 evidence.</p> <p>15 He also makes the submission: 16 "It is the government that bears ultimate 17 responsibility at the highest level for policy on, among 18 other things, media ownership and regulation. This 19 includes its role to date in framing and applying 20 policy, including the taking of individual decisions 21 under the existing legislative framework. It includes 22 questions of how these matters are handled within 23 government, the allocation of responsibilities and the 24 processes and procedures which apply. It also includes 25 the government's role in the creation or implementation</p> <p style="text-align: center;">Page 25</p>	<p>1 wrong for anyone to seek to identify other motives for 2 the application being made. Having said that, I have no 3 doubt that I cannot accede to an application made by 4 "the government".</p> <p>5 Anticipating that decision and not seeking to 6 persuade me that it is incorrect in law, Mr Eadie has 7 identified the applicants as: the Prime Minister, the 8 Deputy Prime Minister, the Secretary of State for 9 Business, Innovation and Skills, the Secretary of State 10 for Culture, Media, Olympics and Sport, the Secretary of 11 State for Education, the Lord Chancellor and the 12 Secretary of State for Justice, the Home Secretary and 13 the Chancellor of the Exchequer. No significance is to 14 be attached to the order of that list, which was that 15 provided to me by Mr Eadie.</p> <p>16 I grant their applications. They will collectively 17 be known as government core participants.</p> <p>18 I move on to the control of access to the material 19 that is placed on the document management system and 20 made available to core participants. With appropriate 21 tact, Mr Eadie observes that it will be for the Inquiry 22 to decide whether it considers it necessary for 23 Ministers of the Crown personally to provide 24 confidentiality undertakings, and submits that it is not 25 necessary, given that they clearly understand the need</p> <p style="text-align: center;">Page 27</p>
<p>1 of policy for the future."</p> <p>2 I see force in both these arguments, although in the 3 normal course of events it is usual for ministers to 4 await the recommendations of an inquiry such as this and 5 then to determine the appropriate policy to pursue. In 6 other words, I am prepared to recognise that the profile 7 of this Inquiry and the timeframe within which it and 8 any subsequent policy decisions have to be considered 9 and taken might be such that there would be value in 10 expressing policy objectives rather more fully than 11 would usually be the case, thereby entirely properly 12 providing me with some of the insight which they bring 13 to the issues in order to assist my considerations of 14 the recommendations I shall make.</p> <p>15 I appreciate that Mr Eadie does not presently 16 visualise assuming this responsibility, but it would 17 remain open for him or any core participant to do so.</p> <p>18 In the circumstances, I am entirely content that the 19 application falls within Rule 5, which in any event does 20 not provide an exhaustive list of the relevant 21 considerations, and which it seems to me can also 22 encompass the other features to which I have referred.</p> <p>23 Reverting to the identity of the applicant or 24 applicants, in the light of the way in which the 25 application is put and these reasons, it would be quite</p> <p style="text-align: center;">Page 26</p>	<p>1 for confidentiality and are content to maintain it.</p> <p>2 What Mr Eadie may not have appreciated is that there 3 have been real issues about loss of confidentiality and 4 on more than one occasion I have had to address the 5 issue publicly. On 12 March 2012 I dealt with it in 6 this way:</p> <p>7 "It is important to emphasise that early sight of 8 these statements is subject to the strict conditions of 9 confidentiality that I imposed using the powers set out 10 in Section 19 of the Inquiries Act 2005. Further, all 11 those within the core participants and their legal 12 representatives who have access to documents on the 13 Inquiry's document management system, Lextranet, have 14 signed confidentiality undertakings.</p> <p>15 "Against that background, therefore, any leak is 16 very disappointing and a matter of concern. Everyone 17 has spoken about the difficulty of pursuing an 18 investigation aimed at identifying who is responsible 19 for the leaks that have occurred, but unless it stops, 20 I shall consider restricting the ways in which the 21 statements are made available. This could include 22 requiring anyone who wishes to read statements in 23 advance for the purpose of suggesting lines of enquiry 24 for counsel to pursue to do so in the Inquiry offices 25 rather than by having access to the Lextranet system.</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 "In the meantime, I require all those who have been 2 authorised to access the Lextranet to sign a declaration 3 in standard form that the requirement of confidentiality 4 is understood and that the signatory has not been 5 responsible for passing any information contained within 6 any statement to anyone who has not signed the 7 confidentiality agreement. 8 "I appreciate the limitations of this step, and 9 recognise that it might be considered somewhat offensive 10 by 99 per cent of those who are following faithfully the 11 requirements of the Inquiry, but it is the least that 12 I can do to bring home how seriously I view unauthorised 13 disclosure of information and how much more seriously 14 I shall view it as the Inquiry proceeds. The Inquiry 15 team is itself perfectly prepared to lead the way in 16 signing such a declaration, although I do not believe 17 for one moment that that is where the problem lies. 18 "In addition, should any core participant wish to 19 add a person to the confidentiality circle, agreement 20 must be obtained from the Inquiry solicitor before 21 a confidentiality undertaking is signed and approved." 22 Confidentiality undertakings were signed by all 23 those within core participant teams who have any access 24 to the Lextranet system. They were signed by every 25 member of the Inquiry team, including counsel. They</p> <p style="text-align: center;">Page 29</p>	<p>1 Thank you all very much for coming at such short 2 notice. 3 (3.03 pm) 4 (The hearing adjourned until Wednesday, 9 May 2012) 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 31</p>
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<p>1 were signed by those in the company responsible for 2 managing the system who place documents upon it. In the 3 same way that I do not believe for a moment that my team 4 have leaked documents, I do not believe that a Minister 5 for the Crown would do so, and I am sure that to such 6 extent as they entrust others to assist them, they will 7 also be reliable. 8 It is not, however, the point. As I have approved 9 the identity of everyone who wishes to have access to 10 the system and required each to sign an undertaking, 11 I see no basis for treating anyone else differently. 12 I mean absolutely no discourtesy to ministers or those 13 who will have to assist them, but the rule must apply to 14 everyone. 15 Thank you. 16 An unexpected opportunity. Is there anything else? 17 MR SPEKER: Sir, just one point. We've asked for the 18 written submissions (inaudible) the government's written 19 submissions on core participant status. 20 LORD JUSTICE LEVESON: I don't see any reason why not, but 21 I'll think about it. I don't know yet where we are in 22 relation to the publication of all submissions. I'm not 23 minded to treat this submission any differently to any 24 other, but you can be assured I faithfully quoted from 25 it.</p> <p style="text-align: center;">Page 30</p>	<p>1 2 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;">I N D E X</p> <p>Application by MR EADIE 1</p> <p>Ruling 12</p> <p style="text-align: center;">Page 32</p>
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A	27:5 ability 11:17 absolute 8:12 absolutely 18:8 30:12 accede 27:3 accept 2:9 7:12 24:14 accepted 7:25 16:4 access 5:4 21:12 22:5 24:10 27:18 28:12,25 29:2,23 30:9 accorded 2:24 accountable 21:4 achieve 20:14 acknowledge 9:10,24 act 23:12,13,14 23:16 28:10 acts 2:6 acutely 18:5 add 11:10 29:19 addition 15:5 29:18 address 13:16 22:8 28:4 adjourned 31:4 adopting 16:12 advance 2:20,21 3:13 14:4 16:24,25 20:5 20:19 28:23 advantage 6:19 6:19 13:25 19:16,25 advantages 13:18 advice 3:8 advisers 3:25 8:1 11:14 17:19 advising 7:1 affairs 16:20 afraid 11:19 afternoon 1:7 3:24 22:3 ago 13:8 agreed 1:6 agreement 19:8 29:7,19 aimed 28:18 albeit 20:11 23:2 alert 17:8 allegations 15:18 15:21 allocation 25:23 allow 19:14 allowed 21:22 alternative 3:4 analyse 19:17 analysis 23:5 answer 17:15 answers 20:7 anticipate 12:5 anticipating 7:19	27:5 anybody 8:14 apology 19:6 appeared 17:11 appears 23:14 24:22 applicant 26:23 applicants 26:24 27:7 application 1:4,9 4:17,24 5:14 5:24 9:12 10:23 11:4 12:15 13:10,17 13:22 14:1 20:13 21:16,19 22:9 23:1 24:8 26:19,25 27:2 27:3 32:3 applications 13:7,12 24:19 27:16 applied 1:22 applies 23:17 apply 23:6 25:24 30:13 applying 25:19 appreciate 5:19 26:15 29:8 appreciated 28:2 approach 14:18 appropriate 14:17 16:14 20:6 24:9 26:5 27:20 approved 29:21 30:8 April 12:21 16:18 25:1 areas 14:23 argue 3:19 argues 23:23 argument 3:3,14 3:20,23 6:3 arguments 26:2 arrange 15:23 arrangements 9:6,9 articles 17:10,21 19:19 asked 4:19,23 11:2 18:4 20:6 30:17 aspect 22:21 assimilate 19:21 assist 11:2,14 18:24 20:22 21:19 24:12 25:13 26:13 30:6,13 assisted 6:15 21:11 assuming 26:16 assured 30:24 attached 27:14 attempt 15:7	attend 15:15 attending 5:21 author 17:16 authorised 29:2 available 14:3,8 14:25 19:18 27:20 28:21 await 26:4 aware 1:8 15:8 18:5 20:4	B	b 22:20 background 7:11 28:15 balance 16:14 bases 4:17 5:14 basis 2:1,25 4:25 5:5,6,7 6:14 8:21 10:22,24 11:4 13:14 14:6 30:11 bear 18:7 bears 25:16 behalf 10:23 12:17 24:8 believe 11:24 16:14 23:5 29:16 30:3,4 beyond 4:7 bit 3:6 4:2 8:7 bits 5:25 bodies 2:8 body 23:10,15 breach 7:12 break 12:12 briefly 4:16 bring 26:12 29:12 brings 1:15 20:13 broad 20:4 21:15 brought 20:16 Business 10:6 27:9 busy 20:24	C	c 22:22 call 12:6 calls 17:14 capacity 11:5 carriage 5:13 case 4:19,20 10:24 11:13 19:7 22:1 24:23 26:11 caselaw 2:2 cases 13:15 15:13 cast 3:2 cause 16:9 caused 14:15 cent 29:10 central 4:25 certainly 6:16	11:25 chairman 2:22 22:12,17 challenge 16:1 16:10 19:5 challenged 7:7 15:21 Chancellor 4:20 10:14,19 27:11 27:13 checked 19:11 choice 3:18 circle 11:16 17:8 29:19 circumstances 5:3 26:18 claiming 6:4 clear 2:3 5:10 7:8,18 9:4,12 10:20 12:21 17:17 18:15 21:21 23:14 24:7 clearly 23:24 27:25 closing 5:22 13:19 club 7:4 12:1 collectively 27:16 come 4:10 5:17 5:25 8:23 15:17,20 coming 1:13 24:24 31:1 comment 17:11 17:20 19:19 commentary 20:3 committing 9:14 common 23:25 Commons 21:10 company 30:1 compared 20:21 complained 24:20 complaining 15:24 complaints 15:20 complete 8:12 comply 1:20 concedes 23:19 concept 1:21 23:9 concern 1:12 10:25 24:2,11 28:16 concerned 4:18 5:6 9:16 12:19 12:24 17:23 25:5 concerns 18:16 21:10 conclusion 14:9 conclusions	18:11 conditions 28:8 conduct 24:21 confidence 2:22 8:13 confidentiality 2:23 6:21 7:24 11:16,18 14:4 16:22 17:6,7 18:25 19:8 27:24 28:1,3,9 28:14 29:3,7 29:19,21,22 conscious 6:18 consents 22:14 consequences 12:25 25:5 consider 5:18 6:8 20:24 22:18 28:20 considerable 13:8 18:5 23:24 considerations 26:13,21 considered 8:5 26:8 29:9 considering 24:25 considers 27:22 constituted 3:20 constitution 23:20 constitutional 1:23 contact 17:18 contained 29:5 contains 18:17 contemporary 18:19 content 17:20 26:18 28:1 contents 17:11 context 6:9 21:17 23:2 contexts 2:2 contractors 7:7 contrary 23:8,14 control 27:18 copies 14:5 core 1:19,20 3:25 6:25 9:2 11:23 12:4,6,17 13:7 13:18 14:2,7 14:12 16:23 17:2,6 19:3,15 19:16,20,24 20:10 21:12 22:12,17 24:5 24:17,19 25:8 26:17 27:17,20 28:11 29:18,23 30:19 corner 21:23 corporate 2:8 23:11,15	Corporation 16:20 corrected 19:5 correction 16:9 counsel 7:5 8:11 12:17 13:20 14:21 28:24 29:25 course 5:16 7:11 14:20 18:11 22:13 26:3 covered 12:22 covering 25:2 coyer 2:14 creation 12:25 25:6,25 credit 6:4 criticism 22:23 crosses 13:4 cross-media 12:24 25:4 Crown 27:23 30:5 Culture 9:17 10:7 16:25 21:8,24 27:10 currently 13:24	D	D 32:2 damaging 20:2 date 25:19 dated 13:13 day 15:10 days 9:16 15:11 deadline 21:22 deal 15:4 21:16 21:18 dealt 11:16 13:9 19:12,14 28:5 decide 27:22 deciding 22:16 decision 27:5 decisions 25:20 26:8 declaration 29:2 29:16 declines 13:21 define 4:4 definition 3:15 23:12 degree 6:5 10:25 20:14 23:24 Deputy 10:4 24:1 27:8 designate 22:12 22:16 designated 22:15 desirability 20:17 detail 1:11 determine 26:5 different 18:23 23:2,3 differently 30:11 30:23	difficult 8:13 difficulties 14:15 difficulty 15:13 28:17 direct 22:19 directly 5:5 17:2 disadvantaged 20:21 disappointing 28:16 disclosed 19:4 disclosure 29:13 discourtesy 30:12 discretion 24:16 disregard 19:7 distinction 8:16 document 7:6 14:24 15:3 27:19 28:13 documents 7:5 18:6 28:12 30:2,4 doing 3:19 domain 20:12 doubt 11:18 23:8 23:22 27:3 draw 8:16 drawing 18:11 due 13:3 15:11 18:11 22:3 dynamic 18:17	E	E 32:2 Eadie 1:3,4,5,18 2:1,11,15 3:2 4:3,13 6:1,11 7:16 8:9,15,21 8:25 9:2,19,21 10:2,4,6,11,14 10:17,19 11:7 11:10,12,20 12:3,16 13:24 20:13 22:2,9 23:19 25:1 26:15 27:6,15 27:21 28:2 32:3 earlier 4:4 13:13 early 16:16 28:7 ease 15:2 easier 1:8 Education 10:12 27:11 effect 5:2 effectively 11:24 emails 16:19,24 17:5,10,13 18:4 emphasise 10:22 28:7 employee 16:20 enamoured 2:16 3:11,17 encompass 26:22
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<p>encouraged 16:5 engage 6:13 enormity 14:10 enquiry 28:23 ensure 7:9,10 9:7 9:10,22 16:13 24:9 ensuring 20:21 entered 20:12 entire 7:4 entirely 1:11,13 4:1 7:21 8:15 18:2 21:21 26:11,18 entirety 24:14 entities 23:23 entitled 2:23 17:3 entrust 30:6 equally 9:11 19:22 event 17:12 26:19 events 5:17 20:16 21:5 25:10 26:3 everybody 6:24 6:24 9:5 evidence 1:13 4:19,22,23 9:8 9:15 10:25 11:2 13:4,5 14:6,9,19,21 14:22 15:6,11 15:12,16,17 16:4,10,11,13 16:19 17:4,9 18:3,12,22 19:4 20:2,5,8 20:18,19,25 21:1,20 22:6 24:13 25:14 exception 7:14 exchanges 17:22 Exchequer 4:21 10:19 27:13 exclude 8:14 exercise 14:2 exhaustive 26:20 exhibits 14:11 existence 23:21 existing 25:21 expect 2:24 18:20 experience 18:5 experienced 18:18 explain 14:14,17 explicit 22:23 explicitly 24:7 expressed 1:12 expressing 18:9 26:10 extended 21:22 extent 6:7,12 18:18 30:6</p>	<p style="text-align: center;">F</p> <p>face 18:6 facilitates 14:2 fact 3:14 13:24 17:18 19:4 fair 5:3 16:13 24:9 fairly 5:9 fairness 2:3 15:5 20:18,20 22:7 faithfully 29:10 30:24 fall 3:14 7:25 falls 26:19 familiarise 15:2 far 15:8 25:8 fast-moving 15:14 features 26:22 figure 16:4 finding 2:17 findings 18:13 first 1:5 3:11 4:24 5:6 9:4 23:1 Firstly 4:18 focus 20:17 following 13:9 13:13 17:25 29:10 follows 21:14 force 26:2 forewarning 18:22,23 19:25 Forgive 4:2 form 13:18 14:6 29:3 formal 6:11 formally 7:13 13:3,15 forward 7:3 found 14:1 framework 21:17 25:21 framing 25:19 frankly 23:19 Frederic 16:21 frequently 18:7 fresh 6:24 Friday 1:1,7 fulfil 18:14 full 5:20 7:23 fully 2:9 7:24 26:10 further 15:24 21:2 24:2 28:10 future 26:1</p> <p style="text-align: center;">G</p> <p>gather 5:23 generally 1:22 5:7 15:23 generate 20:3 generically 12:6 give 4:19,21,23</p>	<p>5:25 8:1 14:22 20:18 given 3:21,22 7:13 8:3 13:11 15:11,12,16 16:4 17:4,9 20:5,10 23:3 27:25 gives 20:8 giving 10:25 14:18 15:6 21:1 going 3:6,23 8:16 11:9 good 7:22 government 1:22 2:4,17 3:14,20 4:18 5:7,10,18 5:19 6:6 8:7 11:6 12:6,17 20:17 21:3,6 23:2,20,25 24:3,9 25:11 25:16,23 27:4 27:17 government's 25:25 30:18 grant 24:17 27:16 grateful 1:6 4:9 6:1 9:19,21 group 4:22 5:8,8 5:8 7:25</p> <p style="text-align: center;">H</p> <p>handed 4:4 handled 25:22 happen 3:6 happened 17:23 18:15 19:2,22 happy 3:16 4:11 9:10 11:3 head 21:3 hear 18:10,11 heard 13:5,11 hearing 13:9 15:10 31:4 help 11:3 helpful 4:9 9:23 highest 13:1 25:7 25:17 highlight 21:5 home 10:17 27:12 29:12 Honourable 17:1 honoured 6:22 hope 2:3 hoped 20:22 House 21:10 humanly 7:24 Hunt 17:1,18</p> <p style="text-align: center;">I</p> <p>identified 2:10 2:11 24:7 27:7 identify 14:23</p>	<p>27:1 identifying 3:5 28:18 identity 7:3 26:23 30:9 illegal 24:21 immediate 17:14 18:21 impact 1:12 5:1 12:23 25:4 implementation 13:1 25:6,25 important 2:18 18:10 22:21 28:7 imposed 28:9 impressed 9:6 inaccurate 24:6 inaudible 30:18 include 13:18 16:6 25:11 28:21 included 3:9 4:8 includes 6:25 23:10,15 25:19 25:21,24 including 13:5 23:17,22 25:20 29:25 incorrect 27:6 independence 9:22 independent 23:21 independently 9:8 indicate 7:21 8:9 11:4 indicated 8:6 indication 9:19 indications 3:22 individual 2:8 23:10 25:20 individually 24:6 individuals 5:8 11:13 23:22 Inevitably 15:14 information 11:12 19:10,19 20:11 29:5,13 injustice 16:9 Innovation 10:6 27:9 inquiries 6:16 28:10 inquiry 2:22,23 4:5,25 5:17,20 6:3,14,20 7:4,5 8:4,12 11:2,3 12:16,19 13:21 13:25 14:2,9 14:18,22 15:14 15:16,19 17:5 17:24 18:17,24 19:7 20:19,23 21:11,25 22:10</p>	<p>22:14,20,22,24 24:13 25:13 26:4,7 27:21 28:24 29:11,14 29:14,20,25 Inquiry's 28:13 insight 26:12 insisted 7:2 instructed 2:18 3:21 8:10 instructions 2:15 6:11 7:19 8:6 integrity 7:8,10 intend 5:19,20 intended 19:16 19:23 interest 5:11 22:21 23:25 interesting 3:22 interim 22:25 interpose 16:15 interpretation 18:8 23:13,16 investigation 28:18 invitation 4:21 involve 21:13 involved 7:2 25:9 issue 1:19 28:5 issues 3:10 5:6 18:18 19:14 24:4 26:13 28:3</p> <p style="text-align: center;">J</p> <p>James 12:16 13:6 16:18 Jay 8:17 Jeremy 17:1 job 3:19 journalists 17:7 judgment 5:25 Justice 1:3,10,23 2:10 3:1,10 4:1 5:16 6:2,17 8:8 8:11,18,24 9:1 9:3,20,24 10:3 10:5,9,13,15 10:16,18 11:7 11:11,19,21 12:4,15 27:12 30:20</p> <p style="text-align: center;">K</p> <p>keen 7:9 kept 16:15 kind 8:4 Kingdom 23:20 know 2:19 9:6,9 9:21 12:1 14:12 30:21 knowing 9:25 knowledge 16:1 known 15:19 27:17</p>	<p style="text-align: center;">L</p> <p>lapse 16:8 lapsed 17:6 late 13:10,11 law 3:13 12:8 22:8 23:21 27:6 lawyers 11:17 lead 23:25 29:15 leading 8:11 leak 28:15 leaked 30:4 leaks 28:19 led 15:20,22 legal 1:16 2:5 21:17 23:23 28:11 legislation 1:15 23:17 24:16 legislative 25:21 legitimate 18:22 20:3 legitimately 20:14 Let's 6:17 level 13:1 25:7 25:17 LEVESON 1:3 1:10,23 2:10 3:1,10 4:1 5:16 6:2,17 8:8,11 8:18,24 9:1,3 9:20,24 10:3,5 10:9,13,16,18 11:7,11,19,21 12:4,15 30:20 Lextranet 28:13 28:25 29:2,24 lies 29:17 light 26:24 limitations 29:8 lines 28:23 list 10:21 26:20 27:14 listed 24:22 listen 3:16 4:12 listening 6:19 little 4:2 live 14:14 lives 1:7 look 5:1 Lord 1:3,5,5,10 1:18,23 2:1,10 2:15,15 3:1,10 3:18 4:1,13 5:16 6:2,11,17 7:16,19,22 8:8 8:11,15,18,21 8:24 9:1,3,20 9:24 10:2,3,5,9 10:13,14,16,18 10:20 11:7,10 11:11,19,21 12:4,15 27:11 30:20 loss 28:3</p>	<p style="text-align: center;">M</p> <p>main 16:12 maintain 28:1 making 1:9 6:9 14:3 management 7:6 27:19 28:13 managing 30:2 March 28:5 massive 17:13 material 2:20,21 2:24 19:4,17 20:10 21:7 27:18 materials 20:24 21:12 24:10 matter 3:13 15:4 17:25 20:15,20 22:7 25:9 28:16 matters 5:12 14:20 21:10 22:20,22 25:22 mean 6:24 30:12 meaning 23:4 means 6:5 mechanics 6:18 media 9:18 10:7 12:23 16:25 17:21 21:8,24 25:4,18 27:10 meet 14:22 meetings 15:1,9 member 29:25 memory 15:7 merely 6:25 20:20 merits 4:9,11 13:16 Michel 16:21 mind 6:14 minded 30:23 minister 7:12 8:16 9:13,17 10:2,4 19:6 21:3,9,23 24:1 24:1 27:7,8 30:4 ministers 2:6 4:18 5:9 8:1,3 9:7 11:14 21:2 22:1 24:2,12 25:11,13 26:3 27:23 30:12 minutes 11:9 12:9,10 17:13 misses 24:15 misunderstand... 24:4 misunderstood 9:20 module 5:1 12:18 13:3,8 13:12,15 18:16 25:2,10 modules 13:4</p>
---	--	--	---	---	---	--

moment 29:17 30:3	21:6	people 1:24 2:9 2:12 3:5,5 7:3 8:22,22 9:2	14:19 16:7 18:9 26:6 29:15	publish 19:18 published 14:8 17:5 19:10	26:14	Reverting 26:23 right 4:1,7 6:17 9:1,3 13:19,20 17:1
months 2:12 6:20	occurred 6:15 15:15 28:19	perfectly 29:15	preparing 18:23 22:6	pure 3:13	reference 15:25 referred 16:1,10 17:17 26:22	rights 13:25 14:3 risks 24:5
morning 15:9 17:25	October 13:14	permission 13:22	present 4:21	purpose 5:10 15:1 18:23 22:5 24:8 28:23	referring 1:18	role 5:20 22:19 25:19,25
motives 27:1	offensive 29:9	permit 15:2 19:17	presentation 15:12	purposes 4:5 24:25	refers 25:1	rule 4:5 12:15 13:20 22:10,11 23:3,6,9 26:19 30:13
mount 3:20	offerings 5:21	permitted 12:8	presentational 24:4	pursue 26:5 28:24	regard 7:15 24:15	rules 1:20 4:6 12:16,16 13:23 14:3,4 22:10 23:10,12,18 24:25
move 6:5 27:18	offices 28:24	person 1:21 2:17 3:15,21 4:5 22:12,14,16,18 22:20,22 23:4 23:9,15 24:19 29:19	preserve 16:16	put 2:16 4:17 5:15 7:3 9:6,9 15:1,18,25 26:25	regulation 25:18 regulations 23:4 24:18	ruling 4:3 6:16 12:14,21 13:9 13:12 23:3 25:1 32:4
moving 21:16	Oh 8:24 9:1	personality 2:5	press 5:1,2 12:20 18:16,20,21 19:2 24:21	puts 20:15	relates 22:20,22	Rupert 13:5
MP 17:1	Olympics 9:18 10:9 17:1 27:10	personally 27:23	previously 13:11 18:18		relation 2:24 12:18 13:12 22:19 24:4 30:22	
Murdoch 13:6 16:18 18:4	once 3:3 11:12 19:13	persons 8:7 9:15 23:15,22	primary 21:25	Q	relationship 12:19,22,25 25:3,6	
N	open 26:17	persuade 27:6	Prime 9:17 10:2 10:4 19:6 21:3 21:9,23 24:1,1 27:7,8	Queen's 12:17	relevant 2:20,21 18:12,12 24:10 26:20	S
N 32:2	opened 13:16	place 7:5 9:7,9 15:10 30:2	pro 17:25	question 1:23 3:4 3:13,17,24 8:2 19:9,12 22:5,8 23:1	reliable 30:7 remain 26:17 remiss 21:17 report 18:13 22:24,25 reporting 17:21 represent 19:23 representation 16:13 representative 5:9 11:5 representatives 28:12	satisfied 3:3 save 22:1 says 14:13 scenes 3:7 11:16 11:25 schedule 23:16 schedules 20:24 scrupulously 18:25 second 5:7 6:14 secretaries 2:7 Secretary 9:17 10:6,7,11,14 10:17 16:25 17:14 21:7,24 27:8,9,10,12 27:12 section 23:15,18 28:10 secured 24:10 see 8:20 9:13 13:1,12,19 26:2 30:11,20 seek 13:24 27:1 seeking 25:13 27:5 seeks 20:14 seen 4:14,15 7:16 15:3 16:23,24 senior 24:2 25:12 sense 5:21 sensible 8:19 separate 2:5 September 13:14 series 16:19 serious 9:22 14:16 seriously 29:12 29:13 served 16:8 21:5 set 24:11 28:9
name 10:1,1 17:18	operates 23:21	played 27:19 play 5:20	privileged 2:25	questioning 14:23	reputation 21:7 18:12,12 24:10 26:20	
named 3:4,5 8:22 16:21 22:2	opinion 18:9	played 22:18,19 pleased 2:13	problem 2:10,12 29:17	questions 5:21 5:22 13:20,22 15:20 17:15 20:6 25:22	quite 1:14 8:13 26:25	
names 8:24 12:1 12:2,4	opportunity 19:21 30:16	pm 1:2 12:11,13 31:3	problems 2:13	quickly 17:12 21:6	quoted 30:24 quoting 17:10	
national 12:22 25:3	oral 14:20	point 2:18 10:21 12:7 24:15 30:8,17	procedure 16:22 procedures 25:24	quoting 17:12		
nature 1:8 17:8 17:21 20:4	orally 4:24	pointed 2:3	proceeds 29:14	quite 1:14 8:13 26:25	R	
necessarily 5:22	order 1:20 14:19 15:15 21:19 26:13 27:14	police 5:2	process 6:10,13 7:10 15:6 21:11	raise 7:19 raised 8:2 14:20 17:25 18:19 21:10	raise 7:19 raised 8:2 14:20 17:25 18:19 21:10	
necessary 8:5 16:15 18:14 20:6 22:4 27:22,25	ought 4:16 20:4 outside 7:6 24:17	policy 5:12,13 6:7 12:23 13:1 25:4,7,12,17 25:20 26:1,5,8 26:10	proceedings 5:11 22:24	reaction 18:3,20 read 5:24 10:21 28:22	reaction 18:3,20 read 5:24 10:21 28:22	
necessity 6:5	overnight 17:23	political 18:20	produced 14:24 16:19	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	required 6:22 8:11 21:9 24:19,22 30:10 requirement 29:3 requirements 29:11 requires 1:20 requiring 6:23 28:22	
need 2:20 3:8 12:4 21:5 27:25	ownership 12:24 25:5,18	politician 19:3	processes 25:24	read 5:24 10:21 28:22	requiring 6:23 28:22	
neither 3:12 15:6 17:16		politicians 5:3 12:20,23 18:16 25:3	produced 14:24 16:19	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
new 18:17		politics 18:19	profile 6:3 26:6	reaction 18:3,20 read 5:24 10:21 28:22	requiring 6:23 28:22	
News 16:20	P	position 7:20 16:17 20:9	proper 5:4 23:13	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
Newspaper 17:6	paragraph 13:2 25:2,7	possibly 7:24 15:18,23 16:14	properly 2:25 26:11	reaction 18:3,20 read 5:24 10:21 28:22	requiring 6:23 28:22	
Newspapers 12:22 25:3	Parliament 18:1 21:4	potentially 20:2	prospect 2:17	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
normal 5:16 26:3	parliamentary 17:22	powers 28:9	protection 7:23	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
noted 17:9	part 12:18 24:12	practicalities 4:10	provide 3:8 7:23 9:8 11:2 14:3 14:23 15:24 19:16 24:16 26:20 27:23	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
notice 1:7 20:14 31:2	participant 1:19 1:21 12:18 13:7,18 17:3 19:3,15 20:11 21:12 22:13,17 24:5,17,20 25:8 26:17 29:18,23 30:19	pragmatic 16:12	provided 14:5 20:7 22:2,14 27:15	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
November 13:13	participants 3:25 7:1 9:2 11:23 12:5,6 14:2,7,12 16:23 17:7 19:17,20,24 27:17,20 28:11	pragmatic 16:12 precisely 6:13	properly 2:25 26:11	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
number 3:10 6:21 7:2 23:22	particular 18:3 22:17	preliminary 3:21	properly 2:25 26:11	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
O	particularly 16:3 18:21 25:12	preparation 21:20	produced 14:24 16:19	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
objectives 6:7 26:10	parts 17:10	prepare 15:4	profile 6:3 26:6	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
observed 19:1,15	pass 17:20	prepared 4:23 6:6,12 7:14 8:10 13:16	proper 5:4 23:13	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
observes 27:21	passing 16:19 17:11 29:5		properly 2:25 26:11	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
obtained 14:25 29:20	pending 16:11		prospect 2:17	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
obviously 17:8 18:19			protection 7:23	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
occasion 16:3 18:15 28:4			provide 3:8 7:23 9:8 11:2 14:3 14:23 15:24 19:16 24:16 26:20 27:23	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
occasionally 15:10			provided 14:5 20:7 22:2,14 27:15	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	
occasions 6:21			properly 2:25 26:11	reading 23:13 real 24:3 28:3 reality 13:17 reason 1:11 13:25 18:2 23:5 30:20	requiring 6:23 28:22	

share 6:7	19:9 22:2,3	16:16	11:7,12,15	we've 7:20 30:17	24 16:18
shared 11:13	29:6	taken 5:9 7:18	18:2 27:25	wish 29:18	<hr/>
sharp 20:17	statements 9:23	7:20 8:6 9:22	understands 9:5	wishes 28:22	3
short 1:6 12:12	14:5,8 21:25	15:10 18:6	understood 12:3	30:9	3 12:18 13:23
31:1	22:4 28:8,21	26:9	29:4	wishing 7:23	25:2
side 18:10	28:22	task 14:10	undertaking	withheld 19:9	3.03 31:3
sides 18:8	status 12:18 13:7	team 7:4 11:21	6:25 7:12 8:2	witness 14:7,10	<hr/>
sight 2:20,21	13:18 19:15	12:2 29:15,25	8:13 16:23	14:13,25 15:5	4
14:24 17:3	20:11 21:12	30:3	17:6 18:25	15:17,21,24	4 1:1 13:14
20:10,19 28:7	24:5,17,20	teams 29:23	29:21 30:10	20:1,7,8 25:10	<hr/>
sign 6:24 8:10,13	25:8 30:19	teasing 4:2	undertakings	witnesses 5:4,5	5
11:18 29:2	step 29:8	tediously 1:16	8:4 27:24	11:5 14:5,19	5 12:15,21 22:10
30:10	steps 9:22 16:16	tell 2:13 8:21 9:4	28:14 29:22	14:22 15:1,14	23:6,15 25:1,7
signatory 29:4	stops 28:19	9:25 10:1	unethical 24:21	15:16 16:6,16	26:19
signed 28:14	story 18:10	11:23	unexpected	18:12 19:23	<hr/>
29:6,21,22,24	streamed 14:14	ten 11:9 12:9,10	30:16	20:22,23 21:22	7
30:1	strict 14:4 28:8	terms 18:14,24	unfair 19:14	word 4:5 23:4	700 1:24
significance	subject 4:3 16:22	19:8 24:17	24:5	words 6:10 26:6	<hr/>
27:13	17:13 20:2	test 15:6	unfairness 15:22	worked 11:22	8
significant 22:19	22:23 25:9	thank 1:10 11:7	unincorporate	15:8	800 1:25
22:21,23	28:8	30:15 31:1	23:11	worth 24:25	<hr/>
signing 8:3 29:16	submission 2:19	theme 4:25	unincorporated	wouldn't 7:12	9
similar 20:25	3:12 7:15	thing 2:19 3:2	23:16	8:18	9 31:4
simply 14:12	21:15 24:14	11:10	United 23:20	writer 17:17	99 29:10
singled 11:1	25:15 30:23	things 25:18	unpick 3:11	writing 2:4 4:8	
singling 24:6	submissions 2:4	think 1:8,18 3:6	unrealistic 18:20	4:14,22 7:18	
Sir 30:17	4:15,16 5:23	4:19 6:17 8:19	unsighted 1:14	9:14 10:22	
sit 1:6	7:17,21 8:3	12:8,9 30:21	19:23	written 2:19 3:3	
six 2:12 6:20	30:18,19,22	thinks 10:24	unusual 13:17	4:14,16 7:16	
skeleton 1:11 2:4	submits 25:11	thought 1:24	unusualness 8:3	7:21 8:2 9:15	
Skills 10:7 27:9	27:24	9:11	unwritten 23:19	30:18,18	
slightly 21:21	submitted 20:19	three 3:18	urgently 21:9	wrong 19:11,13	
solely 24:9	21:25	thrust 21:15	useful 9:3	27:1	
solicitor 29:20	subordinate	time 13:8 16:8	usual 16:21 26:3	<hr/>	
solution 2:11,14	23:17	19:10 20:24	usually 15:9	X	
16:12	subsequent	22:13	26:11	X 32:2	
somewhat 13:17	17:22 26:8	timeframe 26:7	<hr/>	<hr/>	
29:9	substance 24:8	times 11:22	V	Y	
soon 17:4	subtext 9:13	today 21:25	value 6:6 18:7	years 1:25 3:19	
sorry 1:15	succession 2:6	tolerably 2:2	26:9	yesterday 18:3	
sort 21:11	sufficient 2:22	topics 20:25	victims 24:21	<hr/>	
sought 22:5	16:5	total 8:12 19:7	view 8:9,15	1	
24:19	sufficiently	touchstone 1:17	29:12,14	1 12:18 13:12	
sounds 3:6	17:23	trap 15:7 19:23	views 22:7	22:12 23:16	
source 14:25	suggest 13:20	treat 30:23	virtue 23:18	32:3	
special 17:19	suggested 23:9	treating 30:11	visualise 26:16	10(1) 13:23	
specific 25:10	suggesting 28:23	trick 15:7	<hr/>	11 13:20 23:18	
speed 6:5,10	suggestion 7:17	trouble 3:23	W	12 28:5 32:4	
SPEKER 30:17	21:18	troubling 1:24	want 4:7,13 9:11	13 4:5 23:9	
spoke 25:2	summarise 4:16	try 8:16	9:25	14 13:14	
spoken 28:17	5:25	Tuesday 16:18	wants 9:13	19 28:10	
Sport 9:18 10:8	supplement 16:7	turned 19:11	warn 15:19	1978 23:13,17	
17:1 21:8,24	supplementary	twin 5:14	way 2:16 6:15	<hr/>	
27:10	22:4	two 4:17 9:15	11:1 14:1	2	
stage 4:23 6:23	sure 1:14 11:22	<hr/>	19:15 20:15	2 13:2,13 22:16	
14:17	30:5	U	24:18 26:24	25:2	
standard 29:3	surrounding	ultimate 25:16	28:6 29:15	2.00 1:2	
start 13:3	17:15	ultimately 21:2	30:3	2.29 12:11	
state 2:7 9:17	sympathy 21:15	unauthorised	ways 28:20	2.31 12:13	
10:6,7,11,14	system 7:6 11:22	29:12	website 14:9	2005 23:12 28:10	
16:25 17:15	27:19 28:13,25	underline 15:5	17:5	2006 4:6 12:16	
21:8,24 27:8,9	29:24 30:2,10	underlined	Wednesday 31:4	23:10,12,18	
27:11,12	<hr/>	20:16	week 4:4 13:3,5	2011 13:13	
statement 13:19	T	understand 1:11	We'll 4:9	2012 1:1 12:21	
15:24 16:6,7	tact 27:21	1:14 3:18 4:1	we're 1:9 9:19,21	16:18 25:1	
16:23 17:24	take 11:9 13:24	5:16 7:14,22	11:21 12:5	28:5 31:4	