WITNESS STATEMENT FOR THE LEVERSON INQUIRY

By

Lord Brooke of Sutton Mandeville CH, PC

1. I am Peter Leonard, Lord Brooke of Sutton Mandeville. I was born in 1934, both my parents much later receiving life peerages, in my father's case after a decade as a Minister, of which seven years were in Cabinet. I was educated at Marlborough, Balliol College, Oxford and the Harvard Business School, where I held a Commonwealth Fund Fellowship. I was the first headhunter in the UK, as now defined, and spent 18 years with Spencer Stuart and Associates, in London, New York and Brussels, culminating in being worldwide chairman of the firm for five years, before leaving to join the first Thatcher administration as its most junior member. I was MP for the Cities of London and Westminster from 1977 to 2001, including under its predecessor title: the constituency had by far the largest employed population in the country. I served in Government from 1979 to 1994: in the Whips Office, in the Department of Education and Science, in the Treasury, in the Northern Ireland Office and in what was then the Department of National Heritage (now DCMS). I went to the Lords in 2001, where I was later chairman of the Association of Conservative Peers. I had been Chairman of the Conservative Party from 1987 to 1989 while still a Treasury Minister. I attended Cabinet in that period, and my last two Government posts were in Cabinet. I was Pro-Chancellor of the University of London from 2002 to 2006.

2. In providing a chronological account of the Government's response to Sir David Calcutt's second report ("the Report") published in January 1993, I should stress that my involvement in that response was my principal media responsibility during my 22 months as Secretary of State for what was then DNH (Department of National Heritage): overall, we were launching an effectively brand new Department, drawing staff and responsibilities from six prior Departments, each of which had a different ethos and atmosphere, and drawing them together into a single body. We also handled the BBC White Paper in 1994.

To provide continuity, I begin briefly with events under my predecessor, David Mellor.

i) April 9th 1992. David Mellor, as the first Secretary of State of the new Department of National Heritage (DNH), took over media policy from the Home Office.

ii) June 10th 1992. Clive Soley, a Labour MP, published his Freedom and Responsibility of the Press Bill, which sought to enforce balance in press reporting and to limit cross-media ownership.

iii) July 9th 1992. David Mellor announced the appointment of Sir David Calcutt, QC, to assess the performance of the self-regulatory regime, which the first Calcutt (Committee) Report had ushered in by recommending the abolition of the Press Council and the setting up of a Press Complaints Commission.

iv) September 25th 1992. David Mellor resigned as Heritage Secretary and was replaced by myself.

v) October 1992. The Commons Select Committee on National Heritage launched its inquiry into "Privacy and Media Intrusion."

vi) January 8th 1993. Sir David Calcutt's "Review of Press Self-Regulation" was delivered to me. Calcutt argued that the PCC "is not, in my view, an effective regulator of the press ..... it is, in essence a body set up by the industry, and operating a code of practice which is devised by the industry and which is over-favourable to the industry". He recommended the establishment of a statutory Press Tribunal, with the power to impose fines, restrain publication and require the printing of apologies, corrections and replies. He again recommended laws against press intrusion.

vii) January 14th 1993. On official publication of the Review, I made an oral statement to the House of Commons. Early publication was partly prompted by leaks, partly by the need to have made an initial response prior to the Second Reading of Mr. Soley's Bill on January 29th: I had made a request to the Prime Minister to proceed in this way on January 11th, but the subject was also discussed in a relevant Ministerial Group on January 13th and in Cabinet on January 14th. The substance of the response is contained in my oral statement [***Document 1***] indicating the Government's broad conclusions on its recommendations. The statement responded positively to the general recommendations relating to privacy. On the central proposal that the Government should establish a statutory regime for dealing with complaints against the press, the statement indicated that further reflection would need to take place, not simply to take account of proceedings on Mr. Soley's Bill but also of the Select Committee

on National Heritage's ongoing report on Privacy and Media Intrusion due in the spring. In the event the Speaker called twenty eight MPs to respond and ask questions, including of course the shadow Opposition spokeswoman, Mrs. Ann Clwyd.

viii) January 29th 1993. Proceedings on the Soley Bill followed from the Second Reading on January 29th. The Bill sought to establish a publicly-funded Independent Press Authority with draconian powers to order corrections of "factual inaccuracy" in any part of a newspaper or periodical save cartoons and advertisements, while giving the same Authority vague duties to promote ethical and professional standards, including respect for privacy, among journalists. I had on January 14th indicated the Government could not support the Bill, but I did appear for the Government at the Committee Stage. The Bill was talked out at Report Stage on 23rd April 1993.

ix) I met the Prime Minister and Damian Green of the Policy Unit at No. 10 (who was our direct contact there) on February 25th 1993, on these and other DNH matters.

x) The next chronological trigger was the publication on March 24th 1993, of the Report of the National Heritage Select Committee of the Commons on "Privacy and Media Intrusion", which ran to 43 recommendations, the Committee having sat since October 1992. Neither DCMS nor the House of Commons Library could produce a copy of the Report, but I ran one to earth in the House of Lords Library and have extracted a copy of its first section together with the 43 recommendations. (***Document 2***).

It had always been envisaged, given the time foreshadowed in the January 14th oral Commons statement that we would not fulfil the usual two monthly deadline for responses to a Select Committee Report, which would on this occasion be followed by a White Paper, and I wrote to the Rt. Hon. Gerald Kaufman MP, Chairman of the Select Committee, to this effect at the moment of the usual deadline, in this case 25th May 1993. I undertook that DNH would use its best efforts to publish its response as a White Paper before the Summer Recess.

xi) An undated preparatory Confidential note was circulated thereafter on Press Regulation and Privacy by DNH for consideration by other Ministers, setting out White Paper factors. The Home and

Social Affairs Committee of the Cabinet (curiously shortened to EDH) was due to meet on June 24th 1993, and DNH was proposing to circulate the first draft of the White Paper in the week beginning 5th July. Ministerial clearance would be sought in correspondence during the following week, with publication taking place later that week or early in the week beginning July 19th. Any slippage in the date of the meeting for the Cabinet Committee due on June 24th would cost us pre-summer recess publication. There were seven key issues identified for Ministerial decision.

xii) There were also undated documents, one at least addressed to myself though anonymous, on both timetabling for material preparation, and also a document in typescript both unaddressed and anonymous entitled ACTION PLAN ON CALCUTT RECOMMENDATIONS THE GOVERNMENT HAS ACCEPTED on the responsibilities of other Departments re Calcutt recommendations 2, 3 and 4. This typescript note was already showing signs of timetable slippage in manuscript.

xiii) There was also a manuscript note of briefing to me for the Cabinet meeting on 29th April 1993 concerning legislation on Calcutt offences which DNH was seeking to get included in the Criminal Justice Bill proposed by the Home Office for the 1993-94 session.

xiv) There was an exchange of correspondence between myself and the Home Secretary (then Kenneth Clarke) in May 1993 seeking support for White Paper deliberation at the Cabinet Committee meeting June 24th, though a significant number of the Select Committee's recommendations were not addressed to the Government. By the time of Mr. Clarke's reply, the Cabinet had agreed that the 1993-94 Criminal Justice Bill should include provisions on intrusion. Simultaneously the Prime Minister approved the drive to secure White Paper publication before the summer recess. He evinced interest in seeing criminal offences details prior to the Cabinet Committee meeting on June 24th, with which he was content.

xv) June 15th 1993. I minuted the Prime Minister in response, [**Document 3**] copied to other interested Ministers, in the aftermath of (unusually) a full day's Commons debate on the Select Committee Report prior to our own response. The climate of the debate had been very much looking to the Government for further action "beyond the concessions the Press had already made since

January". The crux was the Select Committee's liking for a Statutory Ombudsman, which was Calcutt's Statutory Tribunal by another name, on which I dilated. The markings on Document 3 date from 1993, and are not contemporaneous.

xvi) June 24th 1993. The outcome of the Cabinet Committee meeting, after a very full discussion, was for me to reflect on it, especially in relation to the introduction of some form of Ombudsman, and to circulate a paper for further discussion as soon as possible, given the timing imperatives for the White Paper, while the Lord Chancellor (Lord Mackay of Clashfern, who had given evidence about Ombudsmen to the Select Committee) should prepare a consultation paper on the proposed privacy tort.

xvii) June 28th 1993. I minuted the Chairman of the Cabinet Committee on Home and Social Affairs (the Lord Privy Seal, Lord Wakeham) that the White Paper should acknowledge the steps already taken to meet some of the Calcutt and Select Committee criticisms, but, since we preferred a voluntary route, self-regulation should continue to be evolutionary, and a non-statutory ombudsman appointed by the newspaper industry assisting in the investigation of complaints would be a further step on this route. Details could always be discussed with the Lord Chancellor, and the Ombudsman would be a new backstop in the context of the proposals for a tort of privacy.

xviii) Criminal offences had been discussed on June 24th in terms of Parliamentary handling. I sought to reach agreement with the Home Secretary, and that the offences should apply to those who profited from, or even used without profit, the results of illegal intrusion. The intrusion and the use of the material should thus be separate offences. The offences should only apply to personal information but the offences should be in the 1993/4 session of legislation, having been accepted by the Government as far back as 1990.

As to immediate timing, there would be a preliminary meeting the following week before EDH on July 6th, which could confirm the conclusions of the preliminary meeting taking place on July 1st.

xix) The minutes of EDH on July 1st provided the agenda for EDH on July 6th, and the Home Secretary and I received instructions in the light of the meeting's discussion. Both the Departments believed it

was still possible to meet the timetable for publication before the recess, though it would be a close run thing, as the rising of the House was on July 7th believed to be between July 26th and July 29th. But there did remain some overall problems as to which year the legislation would fall into, and the precise standing and competence of the Ombudsman.

xx) Between July 9th and July 15th there was a flurry of inter-Departmental correspondence, which led to a complete White Paper draft by the latter date, and a revised draft on July 21st, which must have been regarded as too late for timely publication, though there is no documentary evidence, or alternatively still less than total agreement, and certainly no memory on my part. I will seek to find out from contemporary civil servants if their memory is better.

xxi) Activity continued in the recess. The Lord Chancellor's Department (LCD), in conjunction with the Scottish Office, published their consultation paper on 29th July 1993, proposing the introduction of a civil remedy for infringement of privacy. Comments were requested by October 15th.

xxii) August 11th 1993. There was correspondence between DNH and the Cabinet office on the ways in which the Home Office proposals for criminal offences differed from Calcutt's. It alludes to other correspondence and meeting notes I have not seen, which on the Home Office's part went beyond what I have described in para xix, and beyond Calcutt without agreed Ministerial approval. I have however seen a contemporaneous letter sent by the Home Office the same day (vide supra) to the Cabinet Office commenting on a meeting on August 6th and on why they were rejecting the defence proposed by Calcutt relating to "seriously anti-social conduct".

xxiii) 18th August 1993. A Cabinet Office note on possible criminal offences on intrusion concluded by saying the aim was to publish the White Paper in September, following a discussion at the first meeting of the Cabinet after the summer break, and therefore the Cabinet Office needed to know by 31st august if Ministers were content with the approach proposed in the note.

xxiv) 15th August 1993. My private secretary at DNH replied on my behalf without comment on the elements of the offence which the note proposed, except for those which diverged from Calcutt and

had not been agreed by EDH. I considered that there were real objections of practice and principle to dropping the "seriously anti-social conduct" and (to a lesser extent) the "misleading statement" defences. The letter than expanded on these objections at some length.

xxv) The ambition to publish the White Paper in September was not fulfilled, but DNH had agreed to defer it to re-examine the criminal charges after we had formed conclusions on the Lord Chancellor's consultation. The Lord Chancellor was known to believe that his tort might make criminal changes unnecessary. My own speech at the Conservative Party conference in Blackpool had referred to "a civil or criminal remedy or a balance between the two", as well as to the concept of a voluntary Ombudsman being within the PCC.

xxvi) 18th October 1993. In a mild case of the law of unintended consequences, when DNH were urged, with other Departments, to send in comments to the Lord Chancellor's Department on the consultation paper, we had not seen any submissions from press and broadcasting organisations, none of which had replied to the LCD, probably owing partly to the fact that they were expecting the White Paper to be issued about then, and had intended to submit a combined response to the White and Consultation Papers. We were expecting hostility to the proposed tort, despite what we believed were adequate safeguards for journalists and thus misplaced fears. Subject to this lacuna, we replied co-operatively.

xxvii) 1st November 1993. I wrote to Lord Wakeham on matters of timing, but again co-operatively.

xxviii) 8th November 1993. There was an exchange with the Prime Minister's Principal Private Secretary on the line to take on the Sunday Mirror's photographs of the Princess of Wales, which the Press Complaints Commission had condemned as a clear breach of the industry's own code of practice.

xxix) 10th November 1993. There were fragmentary and incomplete faxes between No 10 (again, from the Prime Minister's Principal Private Secretary) and DNH on the text of a speech I was due to make that evening to the Institute of Public Relations, in which I called on the press to establish a voluntary ombudsman much along the lines advocated in the July 29th consultation paper issued by LCD and the Scottish Office.

xxx) 12th January 1994. I returned to the subject in the New Year with two circulated documents, one on the Ombudsman principle and the other on the issues which still required resolution.

xxxi) January 1994 (but unspecifically dated). The Lord Chancellor and the Secretary of State for Scotland invited EHD to agree there should be a statutory remedy for infringements of privacy, arising from their conclusions on their July consultation paper that the civil law relating to privacy should be put on a sound statutory footing.

xxxii) 19th January 1994. Lord Wakeham held a meeting with the Lord Chancellor, the Home Secretary (by then Michael Howard), the Solicitor General (Derek Spencer), the Deputy Government Chief Whip (Greg Knight) and myself on Calcutt issues. He reported the discussion to the Prime Minister as highly productive, with a common view on a number of key issues – the proposed privacy tort, the criminal offence (loose ends remaining in relation to workability) and press self-regulation. DNH were again deputed to pull this together for EDH, including relevant sections of the draft White Paper. The aim would be to publish the latter before the first anniversary of the National Heritage Committee's report in late March.

xxxiii) 18th January 1994. The Prime Minister, in responding to the Lord Privy Seal (LPS), said he would like to consider the timing of the White Paper after EDH.

xxxiv) 2nd February 1994. I submitted my Memorandum for EDH.

xxxv) 7th February 1994. The Chancellor of the Exchequer (Mr. Clarke), with whom I had been corresponding as far back as November 1992 (i.e. pre Calcutt's Review publication), was supportive of both myself and the Lord Chancellor from outside EDH.

xxxvi) 8th February 1994. Discussion at EDH after I had introduced my paper was summed up by the LPS (in the chair) that the weight of opinion was in favour of the main proposals – on self-regulation and the tort, while making clear the Government were minded to introduce it. Again, the balance of opinion was in favour of the proposed criminal offence, while excluding the "for

gain" test. The defence of exposing seriously anti-social behaviour would be dropped from both the criminal offence and the tort. Subject to the Prime Minister's views, I was to circulate a complete text of the White Paper for comment, with a planning assumption of publication around mid-March.

xxxvii) 3rd March 1994, which was co-incidentally my 60th birthday. I sent the Prime Minister the complete draft of the White Paper, reflecting the decisions reached at the EDH on 8th February, and sought authority to publish on March 15th from the Prime Minister and colleagues.

xxxviii) March 4th to 8th 1994. Comments from colleagues were largely re-runs of the EDH discussion, but the Lord Chancellor wanted a clear timetable for our decisions on the civil tort and also that the White Paper should give a commitment to publishing draft clauses for the criminal offences and the civil remedy. He also suggested, on the defence of exposing seriously anti-social behaviour, that the White Paper should say it was not to be included rather than it had been excluded, and that the same logic should apply to the tort, as the list of matters which were in the public interest for the purposes of the tort was not to be exhaustive.

xxxix) March 7th 1994. No. 10 wrote to say that the Prime Minister wished to consider the draft White Paper further before agreeing to proceed with publication.

xl) March 31st 1994. No. 10 wrote to enlarge on the letter of March 7th, commending continuing pressure to improve self-regulation. In the meantime I was to recast the draft paper to set out the case for legislation, but balancing it with the arguments against, acknowledging the need for wide defence provisions against charges of criminal offences but also the unworkability of the offences with such defences included: and that, although a privacy tort was under consideration, the PCC including its provisions within its own code of conduct would be even better; and, in both cases, draft clauses should also be published. The White Paper would then review the PCC's working, especially in relation to privacy, at a specified date.

xli) 22nd April 1994. The LCD wrote in support of the inclusion of the proposed privacy tort in the PCC's code of conduct before

legislation might be introduced, but warning that the preparation of draft clauses would take longer than redrafting the White Paper.

xlii) Spring and Summer 1994. There was a flurry of legislation in the House of Lords which occasioned the need for decisions on the Government's reaction. The Photography and Films Bill was launched privately, but Lord Ackner, the former Law Lord, tabled a new clause to the Criminal Justice and Public Order Bill. Baroness Trumpington dealt with the first, Earl Ferrers with the second. Lord Ackner's new clause would have enacted in their totality the proposals in Sir David Calcutt's Review of January 1993.

xliii) June 30th 1994. In line with the Prime Minister's request of March 31, the revised draft White Paper was completed. We had already sought a date in the Parliamentary diary for publication of the BBC White Paper (vide supra, the introduction to Section 2 of this Witness Statement) but now sought White Paper publication on July 14th from the LPS and colleagues. No draft clauses were then available, but if they were to be so by July 8th they could still be included. The minute to LPS invited comments by July 8th.

xliv) July 1994. The Lord Chancellor, whose chapter had been delivered in full in good time for all other Departments to clear it, wrote approving the introduction of a hotline, but raising one problem about the new civil remedy and legal aid, recommending we indicate we were considering it: the issue would be academic for at least 15 months.

xlv) 11th-17th July 1994. Further comments came in: disappointment from the Chancellor of the Exchequer that we had retreated from criminal offences into giving self regulation another year and an intelligent debate about whether or not to wait for draft clauses.

xlvi) 14th July 1994. All this however became, like legal aid two paragraphs back, academic. A final draft was available for Cabinet on July 14th, but was not discussed, and my final minute to the Prime Minister delivering it was sent the same day, concentrating on alternative plans for publication in the recess and the pros and cons for doing so. I did dwell on how we had given effect to his requests of March 31st, so, despite what became an elegiac note, we were still working on it constructively till the final moment. I imagine he had already determined I would be leaving

the Cabinet before the recess: in the event, I handed over to Stephen Dorrell on July 20th, who in turn handed over to Virginia Bottomley on July 5th 1995, the publication of the White Paper following on July 17th 1995; but that is another story.

2 a) to c) I began this exercise with a largely blank mind as to what had been involved in the narrative which is recorded above, some of it being over twenty years old. I did take part in a CCBH Witness Seminar on "Regulating the Press: The Calcutt Report and the establishment of The Press Complaints Commission" at the University of London nearly 20 years ago: I was not strictly relevant to it, since the subject of its title had occurred two years before I arrived at the Department of National Heritage, and I can still recall how hazy my recollections were even then, but I will seek to recover a transcript of it in the hope that it will stimulate better recollections of that period. I hope my narrative has given implicit if not explicit response to some of your supplementary questions, and I shall genuinely seek to provide fuller answers to some of them, for I do understand why you are asking them.

2 (h). As to what is perhaps still your central question, about why there was no formal Government response to the Report during my time as Secretary of State, the chronological narrative indicates how not once but twice in those two years we ran out of time to settle the genuine Departmental differences on policy between us.

I was brought up, including in business, to seek to avoid questioning the motivations of others in any human group in which I was involved, and I hope I did this in this instance; in so far as I did speculate in an introvert manner, I hope it was only to seek ways to overcome any problems both constructively and honourably, but, since I was also part of the group, only historians can fully determine how, where and why we failed, which of course I regard as an embarrassment.

I am of course also concerned as to how the Department I led might have failed our colleagues. Because of the circumstances I inherited and was involved in, I am wholly ready to concede I may not have been able to give as much time to this issue as I might have done, but what I am entirely clear about is the devotion of civil servants in my Department, again and again and again, in returning to the task of drafting and redrafting – and securing drafts

and redrafts from others – when Ministers failed to agree; it was a task they accomplished without complaint but with inveterate punctuality. But at the end of the day (to recall an answer I once gave to Mr. Gerald Kaufman and his National Heritage committee when they were exploring the British Library saga) the Secretary of State is responsible.