

<p>1 Monday, 23 July 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Yes, Mr Jay?</p> <p>4 MR JAY: Sir, first of all, we're going to have an update</p> <p>5 from DAC Akers, please.</p> <p>6 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>7 DAC SUE AKERS (recalled)</p> <p>8 Questions by MR JAY</p> <p>9 LORD JUSTICE LEVESON: You've twice given evidence before,</p> <p>10 Deputy Assistant Commissioner, I'd be grateful if you</p> <p>11 bear in mind you're still subject to the oath you took</p> <p>12 at the beginning.</p> <p>13 <b>A. Yes, sir.</b></p> <p>14 MR JAY: Deputy Assistant Commissioner, you've kindly</p> <p>15 provided the Inquiry with a further witness statement</p> <p>16 dated 20 July under the standard statement of truth; is</p> <p>17 that right?</p> <p>18 <b>A. Yes.</b></p> <p>19 LORD JUSTICE LEVESON: So that it's quite clear, this</p> <p>20 statement, as indeed each of the others, has been</p> <p>21 provided following notice issued under Section 21 of the</p> <p>22 Inquiries Act.</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 LORD JUSTICE LEVESON: Thank you.</p> <p>25 MR JAY: Paragraph 4 of the statement, first of all. You</p> <p style="text-align: center;">Page 1</p>	<p>1 <b>Then Mr Lewis and Mr Greenberg were introduced to help</b></p> <p>2 <b>facilitate the co-operation, which they did. And in</b></p> <p>3 <b>mid-May this year, following a development in our</b></p> <p>4 <b>investigation, it caused the MSC to reconsider their</b></p> <p>5 <b>position and they decided that they would prefer the</b></p> <p>6 <b>meetings to be on a more formal basis with lawyers only.</b></p> <p>7 <b>I should say, that hasn't affected the co-operation,</b></p> <p>8 <b>which is still very good.</b></p> <p>9 Q. Thank you. You explain in paragraph 9 in mid-May of</p> <p>10 this year there was a development in your investigation,</p> <p>11 which appears to have caused the MSC to reconsider their</p> <p>12 relationship with you. And there was a pause for</p> <p>13 several weeks in the voluntary disclosure material to</p> <p>14 you. But a meeting took place on 1 June, Lord Grabiner</p> <p>15 and other lawyers acting for the MSC, and voluntary</p> <p>16 disclosure resumed. So the pause was for two or three</p> <p>17 weeks; is that right?</p> <p>18 <b>A. Yes. The pause was from the middle of May until --</b></p> <p>19 <b>I think we then got more disclosure in the middle</b></p> <p>20 <b>of June. 14 June, I think, was when we got our next</b></p> <p>21 <b>disclosure. And it's continued since that date.</b></p> <p>22 Q. In terms of the resources, you observe in paragraph 10</p> <p>23 that the Management Standards Committee have committed</p> <p>24 significant resources to assist these investigations,</p> <p>25 continuing to co-operation and disclose documentation;</p> <p style="text-align: center;">Page 3</p>
<p>1 continue to lead all the operations. These, of course,</p> <p>2 are Operations Weeting, Elveden and Tuleta; is that</p> <p>3 right?</p> <p>4 <b>A. That's correct.</b></p> <p>5 Q. Paragraph 5, could I ask you to speak to that, please?</p> <p>6 <b>A. Investigating all of these investigations -- and they're</b></p> <p>7 <b>numerous -- we've worked obviously closely with the CPS,</b></p> <p>8 <b>and they have advised us regarding potential offences.</b></p> <p>9 <b>We've sought legal advice and in respect of both</b></p> <p>10 <b>individual and corporate offences, and also in relation</b></p> <p>11 <b>to our police powers and our options for investigating.</b></p> <p>12 Q. Thank you. To date, as you explain in paragraph 6,</p> <p>13 you've primarily been seeking the co-operation of</p> <p>14 News International. Indeed the subsidiary company, NGN</p> <p>15 as well, I suppose. But your dealings with the</p> <p>16 Management Standards Committee, you explain that at the</p> <p>17 end of June of this year, a Mr Zweifach replaced</p> <p>18 Mr Klein; is that right?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. Can you help us with paragraph 8. Mr Lewis and</p> <p>21 Mr Greenberg no longer attend the regular meetings. Can</p> <p>22 you remember about when that change took place?</p> <p>23 <b>A. It took place fairly recently. At the beginning, when</b></p> <p>24 <b>we began the enquiries, all contact was through the</b></p> <p>25 <b>lawyers; then these were other lawyers, Burton Copeland.</b></p> <p style="text-align: center;">Page 2</p>	<p>1 a professional and productive relationship and not</p> <p>2 without its challenges.</p> <p>3 Operation Weeting now, paragraph 12. You explain</p> <p>4 the background. In paragraph 13, could you sum up the</p> <p>5 position there as to the number of people who have been</p> <p>6 arrested and when the bail has to be renewed or</p> <p>7 reconsidered?</p> <p>8 <b>A. Yes. 15 current and former journalists have been</b></p> <p>9 <b>arrested and interviewed in relation to conspiracy to</b></p> <p>10 <b>intercept communications. 12 of those remain on</b></p> <p>11 <b>pre-charge bail, 11 of whom are due to return to various</b></p> <p>12 <b>police stations tomorrow, 24 July, other than one</b></p> <p>13 <b>individual who has been bailed to 2 August. One</b></p> <p>14 <b>non-journalist has also been bailed to tomorrow,</b></p> <p>15 <b>24 July.</b></p> <p>16 <b>Files in respect of all of these individuals are</b></p> <p>17 <b>currently with the CPS for advice as to potential</b></p> <p>18 <b>charges.</b></p> <p>19 Q. Thank you. The perverting the course of justice matter,</p> <p>20 I think we all understand what that relates to and who</p> <p>21 the individuals are, but you've been careful not to name</p> <p>22 them. It's summarised in paragraph 14; is that right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. We can just note that.</p> <p>25 Paragraph 15, the non-journalist; you want to change</p> <p style="text-align: center;">Page 4</p>

<p>1 paragraph 14 to paragraph 13?</p> <p>2 <b>A. Yes, the re-numbering has caused us to miss that. That</b></p> <p>3 <b>should read "the non-journalist referred to at</b></p> <p>4 <b>paragraph 13".</b></p> <p>5 Q. You make it clear there that the alleged offence relates</p> <p>6 to money-laundering matters, and the bail has been</p> <p>7 extended to tomorrow's date.</p> <p>8 Paragraphs 16 and 17, I think you've already covered</p> <p>9 that satisfactorily?</p> <p>10 <b>A. I think I have.</b></p> <p>11 Q. Unless there's anything else you'd like to add?</p> <p>12 <b>A. No.</b></p> <p>13 Q. We're moving forward to Operation Elveden, which starts</p> <p>14 at paragraph 18 of your statement. May I invite you,</p> <p>15 please, to sum up the position there. It's</p> <p>16 paragraph 19.</p> <p>17 <b>A. Yes. Elveden to date has conducted 41 arrests. Broken</b></p> <p>18 <b>down, that's 23 current or former journalists, four</b></p> <p>19 <b>police officers, nine current or former public officials</b></p> <p>20 <b>and five individuals who acted as conduits for corrupt</b></p> <p>21 <b>payments. There are currently files at the CPS for</b></p> <p>22 <b>three police officers and one journalist. And we're</b></p> <p>23 <b>continuing to supply the CPS with files as we get them</b></p> <p>24 <b>ready.</b></p> <p>25 Q. The CPS are continuing to advise. There's a range of</p> <p style="text-align: center;">Page 5</p>	<p>1 stories were published.</p> <p>2 <b>In this case, the individual's former partner has</b></p> <p>3 <b>acted as the conduit and facilitated the payments into</b></p> <p>4 <b>their bank account. And that bank account, from the</b></p> <p>5 <b>former partner, reveals numerous payments from</b></p> <p>6 <b>News International, Trinity Mirror and Express</b></p> <p>7 <b>Newspapers between April 2010 and June 2011. And those</b></p> <p>8 <b>payments total nearly £35,000.</b></p> <p>9 <b>There were in fact further payments after the prison</b></p> <p>10 <b>officer retired, which he did in June last year. The</b></p> <p>11 <b>last of which was made by Express Newspapers in February</b></p> <p>12 <b>this year.</b></p> <p>13 Q. Thank you. And paragraph 23, you say that co-operation</p> <p>14 from the MSC has enabled you to identify the stories to</p> <p>15 which the News International payments related, and</p> <p>16 further investigation has enabled you to identify</p> <p>17 stories in the Daily Mirror, the Sunday Mirror, the</p> <p>18 Daily Star and the Sunday Star that are suspected to be</p> <p>19 linked to the payments?</p> <p>20 <b>A. Yes, that's right, sir.</b></p> <p>21 Q. Again, in the same way as you carefully dealt with</p> <p>22 paragraph 22, can you do the same, please, for</p> <p>23 paragraph 24?</p> <p>24 <b>A. Yes. This describes another case we're investigating,</b></p> <p>25 <b>where again the public official is a prison officer at</b></p> <p style="text-align: center;">Page 7</p>
<p>1 offences there, which of course will be familiar to the</p> <p>2 Inquiry and to criminal lawyers, but the</p> <p>3 money-laundering, apart from the well-known corruption</p> <p>4 offences and new Bribery Act offences, and before the</p> <p>5 Bribery Act, it was of course the Prevention of</p> <p>6 Corruption Act.</p> <p>7 Can I ask you, please, about paragraph 21, if</p> <p>8 I could ask you to summarise that?</p> <p>9 <b>A. Yes. Before I do, when I go on to talk about</b></p> <p>10 <b>developments in our investigation, I have in some cases</b></p> <p>11 <b>used the word "alleged" but I haven't repeated it</b></p> <p>12 <b>throughout. I think I said this on a previous occasion</b></p> <p>13 <b>when I gave evidence. Where I talk about these</b></p> <p>14 <b>developments, what I say is a matter of allegation and</b></p> <p>15 <b>not established fact.</b></p> <p>16 <b>In relation to Elveden then, our ongoing</b></p> <p>17 <b>investigation has recently revealed that in some cases</b></p> <p>18 <b>where we've identified a public official who's received</b></p> <p>19 <b>payments from News International, we've also established</b></p> <p>20 <b>that they have received payments from other newspapers.</b></p> <p>21 Q. Thank you. I'm going to ask you now to deal with</p> <p>22 paragraph 22 in some detail.</p> <p>23 <b>A. This relates to one case where the public official was</b></p> <p>24 <b>a prison officer at a high security prison during the</b></p> <p>25 <b>periods when the payments were made and the related</b></p> <p style="text-align: center;">Page 6</p>	<p>1 <b>a different high security prison. And again, that</b></p> <p>2 <b>individual's partners has facilitated the payments into</b></p> <p>3 <b>their account. These payments are from Trinity Mirror.</b></p> <p>4 <b>They were made between February 2006 and January 2012,</b></p> <p>5 <b>and the total amount in this case was in excess of</b></p> <p>6 <b>£14,000. Again, further investigation has enabled us to</b></p> <p>7 <b>identify stories in the Daily Mirror which we think are</b></p> <p>8 <b>linked to those payments.</b></p> <p>9 Q. Thank you. In paragraph 25, the assessments you've made</p> <p>10 to date, could you explain those to us, in particular</p> <p>11 the public interest aspect?</p> <p>12 <b>A. Yes. As I say, ultimately the public interest test is</b></p> <p>13 <b>a matter for the CPS, but we make an assessment</b></p> <p>14 <b>ourselves as well around public interest as to whether</b></p> <p>15 <b>the alleged criminal conduct can be justified as being</b></p> <p>16 <b>in the public interest, as well as whether there are</b></p> <p>17 <b>grounds to suspect offences.</b></p> <p>18 <b>It's our assessment that there are reasonable</b></p> <p>19 <b>grounds to suspect that offences have been committed and</b></p> <p>20 <b>that the majority of these stories reveal very limited</b></p> <p>21 <b>material of genuine public interest.</b></p> <p>22 Q. Thank you. On 11 July -- obviously only two weeks ago</p> <p>23 or slightly less -- following the arrests of one</p> <p>24 employee of Trinity Mirror and one employee of Express</p> <p>25 News Group, letters were served on the head of legal for</p> <p style="text-align: center;">Page 8</p>

<p>1 those newspapers requesting specific evidential 2 material. Can I ask you, please, to explain what has 3 happened and to update us as to progress and 4 co-operation with those companies?</p> <p>5 <b>A. Yes. We've -- we asked for a response by 18 July to our 6 request for evidential material, which we think are in 7 the possession and control of both Trinity Mirror and 8 Express News Group. We've had those responses.</b></p> <p>9 Trinity Mirror Group have asked us to obtain 10 a production order and indicated that they won't oppose 11 that. Express Newspapers have taken a slightly 12 different stance. They wish to proceed by way of 13 voluntary protocol, which would be more akin to how 14 we've co-operated with News International. And at the 15 moment we're in the process of drafting that voluntary 16 protocol.</p> <p>17 Q. Thank you. In paragraph 27, further lines of inquiry 18 may result in further arrests.</p> <p>19 In paragraph 28 now, Deputy Assistant Commissioner, 20 can you explain what's happening with Elveden and the 21 MSC, in particular the Sun newspaper?</p> <p>22 <b>A. Yes. These paragraphs I'm attempting to explain, as 23 asked in my Section 21, how co-operation has worked.</b></p> <p>24 We opened our investigation, as we say, on the basis 25 of full co-operation, and the MSC then conducted their</p> <p style="text-align: center;">Page 9</p>	<p>1 <b>that, despite challenges, quite correct and proper 2 challenges, the co-operation continues and we have 3 recently received a substantial amount of material.</b></p> <p>4 Q. Thank you. In paragraph 31 you refer to an internal 5 review the MSC have conducted of their own volition, but 6 that has yielded no further evidence for you; is that 7 right?</p> <p>8 <b>A. Well, the MSC would say the result of the review was the 9 material that they had disclosed to us, but we haven't 10 received or -- I understand there is no formal report as 11 a result of their review.</b></p> <p>12 Q. Okay. May we move forward to Operation Tuleta, and 13 I ask you, please, first of all in paragraph 33 to 14 summarise where we are. It's paragraphs 33 and 34.</p> <p>15 <b>A. Yes. "Tuleta" is a kind of over-arching name for 16 a number of discrete investigations. We're conducting 17 an assessment of 101 separate allegations of data 18 intrusion. These include allegations of phone hacking, 19 computer hacking, improper access to medical, banking 20 and other personal records.</b></p> <p>21 In order to undertake this assessment, we've 22 collated relevant documentation from previous inquiries 23 and looked at electronic storage devices which had been 24 previously seized in other inquiries. And we're 25 gathered between 8 and 12 terabytes of data across 70</p> <p style="text-align: center;">Page 11</p>
<p>1 own internal review of the Sun, which was not a request 2 made by us, but they did it nevertheless.</p> <p>3 As a result of that, they voluntary provided a lot 4 of documentation, which evidenced suspected criminality 5 and which led to a couple of individual arrests and then 6 to very substantial arrest days, which were highly 7 publicised. They were on 28 January this year and then 8 again on 11 February, and involved the Sun newspaper.</p> <p>9 Following that, those two arrest days, there was 10 considerable adverse publicity of both the MPS, the 11 police and the MSC, including threats of legal action 12 against the MSC.</p> <p>13 Following that, there was a change in the nature of 14 the co-operation. We were being asked perhaps to 15 justify our requests to a degree that we perhaps 16 formerly hadn't been, and the material that we were 17 requesting was slower in being forthcoming.</p> <p>18 The MSC were obviously very conscious to protect 19 legitimate journalistic sources, and of course the law 20 places very strict restrictions on the police obtaining 21 such material.</p> <p>22 The comments are we started on the basis of full 23 co-operation, so any change in that co-operation could 24 adversely affect initial decisions that we'd made and 25 arrests that were made as well. But I should stress</p> <p style="text-align: center;">Page 10</p>	<p>1 storage devices, which we're searching for evidence to 2 either support or contradict the allegations that have 3 been made by these 101 individuals. That's a very 4 substantial amount of documentation and data.</p> <p>5 I know the last time I was here I was hopeless in 6 answering your question as to what that might amount to, 7 so I've done some homework and a terabyte, if downloaded 8 in the form of a kind of normal-size paperback, which is 9 then piled on top of one another, I'm told the terabyte 10 amounts to three and a half times the height of Everest. 11 So between 8 and 12 terabytes, whilst leaving rather 12 a large margin of error, I agree, it's still 13 a substantial amount of documentation.</p> <p>14 LORD JUSTICE LEVESON: It creates its own problems for 15 analysis and research?</p> <p>16 <b>A. It absolutely does, because we can't look at every piece 17 of documentation. We have to be careful about how we 18 search it and what criteria we put in that -- in our 19 questions of the data.</b></p> <p>20 LORD JUSTICE LEVESON: Yes.</p> <p>21 <b>A. But continuing on, sir, to date we've made six arrests 22 under the Computer Misuse Act and/or in respect of 23 offences of handling stolen goods, subjects of which are 24 all on police bail pending completion of the arrest 25 phase and further investigation. As in the other cases,</b></p> <p style="text-align: center;">Page 12</p>

<p>1 <b>in due course files will be submitted to the CPS for</b></p> <p>2 <b>charging advice.</b></p> <p>3 MR JAY: Thank you. The MSC have been one of the sources of</p> <p>4 material for Operation Tuleta purposes. Then</p> <p>5 paragraph 36, you explain what happened in April of this</p> <p>6 year. Can I ask you, please, to tell us about that?</p> <p>7 <b>A. Yes. As a result of the material that we've had</b></p> <p>8 <b>provided to us from the MSC, it seems that on occasions</b></p> <p>9 <b>we've found that material has been downloaded from and</b></p> <p>10 <b>is in possession of News International titles which</b></p> <p>11 <b>appear to have come from stolen mobile telephones.</b></p> <p>12 <b>It appears from some of the documentation, and</b></p> <p>13 <b>that's dated around late 2010, that one of the mobile</b></p> <p>14 <b>phones has been examined with a view to breaking its</b></p> <p>15 <b>code, its security code, so that the contents can be</b></p> <p>16 <b>downloaded by experts. And obviously a significant and</b></p> <p>17 <b>important line of inquiry for us is to identify the</b></p> <p>18 <b>experts that have been used.</b></p> <p>19 Q. At the moment, as you say, their identities are unknown</p> <p>20 to you but they're likely to exist in different parts of</p> <p>21 the country.</p> <p>22 Paragraph 38, tell us about that, please, and then</p> <p>23 lead into paragraph 39.</p> <p>24 <b>A. We'll obviously request now further documentation from</b></p> <p>25 <b>the MSC as a result of what we've discovered in respect</b></p> <p style="text-align: center;">Page 13</p>	<p>1 you last gave evidence. Can I ask you, please, to</p> <p>2 summarise paragraphs 42 to 46?</p> <p>3 <b>A. Yes. I think the last time I gave evidence we were</b></p> <p>4 <b>still in the process of notifying victims and potential</b></p> <p>5 <b>victims of phone hacking. We've completed that process</b></p> <p>6 <b>now as far as we can insofar as we could identify the</b></p> <p>7 <b>victims who we think have been likely to have been</b></p> <p>8 <b>subjected to phone hacking. And so we've notified</b></p> <p>9 <b>a total of 2,615, of which 702 we think are likely to</b></p> <p>10 <b>have been victims.</b></p> <p>11 Q. Mm.</p> <p>12 <b>A. We have a figure above 702 who we think are likely to</b></p> <p>13 <b>have been victims but, for one reason or another, we're</b></p> <p>14 <b>unable to contact those people. That's why there's</b></p> <p>15 <b>a discrepancy in the figures between paragraphs 44 and</b></p> <p>16 <b>45.</b></p> <p>17 MR JAY: Great, that's very clear. Thank you very much,</p> <p>18 Deputy Assistant Commissioner.</p> <p>19 LORD JUSTICE LEVESON: Ms Akers, I received evidence of the</p> <p>20 response which the police received when they visited</p> <p>21 News International in 2006. Would it be right for me to</p> <p>22 conclude at this stage that whatever might have happened</p> <p>23 in the past at News International titles, the senior</p> <p>24 management and corporate approach now has been to assist</p> <p>25 and come clean, from which I might be able to draw the</p> <p style="text-align: center;">Page 15</p>
<p>1 <b>of the stolen mobile phones, and we're hopeful that that</b></p> <p>2 <b>will produce further relevant information which will</b></p> <p>3 <b>then lead us to the expert services, and when we reach</b></p> <p>4 <b>them, at that point we hope to establish whether in fact</b></p> <p>5 <b>these are just isolated incidents or just the tip of an</b></p> <p>6 <b>iceberg.</b></p> <p>7 Q. Mm. Thank you.</p> <p>8 Paragraph 40, one mobile telephone theft took place</p> <p>9 in Manchester and another in South West London, and this</p> <p>10 may suggest that this is more than an isolated local</p> <p>11 issue, but as you're careful to say, you're at a very</p> <p>12 early stage in the investigation.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Paragraph 41, please, it's a similar pattern, I think,</p> <p>15 with the co-operation of the MSC. It's now only lawyers</p> <p>16 who --</p> <p>17 <b>A. Yes. The co-operation is exactly the same in terms of</b></p> <p>18 <b>the make-up of the MSC team that deals with our offices,</b></p> <p>19 <b>and now we deal entirely through the lawyers.</b></p> <p>20 Q. You say that initially there was a challenge to</p> <p>21 Operation Tuleta's request for information about the</p> <p>22 apparent handling of the stolen phones and subsequent</p> <p>23 downgrades, but now there's a willingness to assist.</p> <p>24 <b>A. Yes, there is.</b></p> <p>25 Q. Victims next. You're taking the story forward from when</p> <p style="text-align: center;">Page 14</p>	<p>1 inference that there is a change in culture, practice</p> <p>2 and approach?</p> <p>3 <b>A. Yes, sir. I don't disagree with any of that.</b></p> <p>4 LORD JUSTICE LEVESON: Thank you.</p> <p>5 It is obviously very important that when I report,</p> <p>6 and the exercise of this Inquiry will come to an end, as</p> <p>7 I'm sure at some stage so will your operations, it has</p> <p>8 the benefit of absolutely up-to-date information.</p> <p>9 Of course, I am not concerned about individuals at</p> <p>10 this stage, I am merely concerned with what's gone on in</p> <p>11 the past and what I might derive from that as to</p> <p>12 culture, practice and ethics, and what impact that might</p> <p>13 have on the future. But in order that I am absolutely</p> <p>14 up-to-date as far as is possible, I would be grateful if</p> <p>15 you would be prepared to return in the autumn so that</p> <p>16 I know what the position is -- it's obviously</p> <p>17 fast-moving -- and in that way at least can give those</p> <p>18 who read my report the benefit of what that up-to-date</p> <p>19 position is. I hope that won't cause you too much</p> <p>20 inconvenience.</p> <p>21 <b>A. No, sir, I'd be very happy to do so.</b></p> <p>22 LORD JUSTICE LEVESON: Thank you very much indeed. Thank</p> <p>23 you.</p> <p>24 Right.</p> <p>25 MR JAY: Now 81 statements which we were planning to read in</p> <p style="text-align: center;">Page 16</p>

<p>1 today, but we've had a request from at least one core  2 participant that that be delayed until tomorrow on the  3 basis that they say there wasn't time to read them all.  4 LORD JUSTICE LEVESON: All right.  5 MR JAY: We can do that first thing tomorrow.  6 LORD JUSTICE LEVESON: All right. Does that prejudice  7 proceeding with the submissions that people want to make  8 at this stage?  9 MR JAY: (shakes head).  10 LORD JUSTICE LEVESON: They've all seen the statements, and  11 therefore, to such extent as they wish to, as that might  12 affect their submissions, then their submissions with be  13 tailored accordingly.  14 MR JAY: Yes. I imagine the submissions are going to be at  15 a higher level of generality. I don't know that, having  16 had no idea what topics are going to be addressed  17 orally, but I suspect it's going to make no difference  18 whatsoever.  19 LORD JUSTICE LEVESON: All right.  20 Before commencing the oral submissions that I have  21 invited at the end of this module, it is sensible if  22 I deal with the future progress of the Inquiry, and I do  23 so under three headings, that is to say: issues that  24 presently remain outstanding, the impact of Rule 13 of  25 the Inquiry Rules 2006 ("the Rules") and any further</p> <p style="text-align: center;">Page 17</p>	<p>1 present day can be established, they should do that  2 without further delay and in witness statement form.  3 Any other core participant will then be able to submit  4 a short statement in response, either from the title or  5 the journalist concerned. The purpose of this exercise  6 is necessarily limited. It would not be to require  7 titles to list when each journalist who made a request  8 to Mr Whittamore left the paper; it is only intended to  9 address the specific journalists that Mr Sherborne's  10 clients have identified who are still in their  11 employment. Nor would it be to require titles to prove  12 in general terms the history of their retention or  13 destruction of information acquired from Mr Whittamore,  14 in the absence of specific and recent evidence of use.  15 I am not in any event requiring that any of this be done  16 either by Mr Sherborne or the individual titles but  17 I will, of course, consider anything that emerges from  18 the exercise (in addition to the information which  19 Mr Dacre for Associated Newspapers Limited offered to  20 provide in writing) and it will form part of the  21 evidence."  22 As I understand it, that information has not yet  23 been provided to the Inquiry but is being pursued. It  24 only seems fair to put a deadline on it: if any other  25 core participant is able to deal with it, the evidence</p> <p style="text-align: center;">Page 19</p>
<p>1 developments.  2 Outstanding issues.  3 As I have just made clear to deputy Assistant  4 Commissioner Akers, it is important that my report is  5 based on what is then the most up-to-date information  6 about the progress of the criminal investigation. Thus,  7 without descending into who did what to whom or  8 offending the self-denying ordinance on the detail, the  9 extent of that investigation -- including how widely it  10 then ranges and what it has excluded -- may inform my  11 view about the culture, practice and ethics of at least  12 a section of the press. It is in those circumstances  13 that I make clear that I will issue another request  14 under Section 21 of the Inquiries Act 2005 ("the Act")  15 returnable on a date probably in September. Notice of  16 a hearing will be provided in good time to all core  17 participants to Modules 1 and 2, and they will have the  18 opportunity of submitting any evidence they wish to deal  19 with what is then reported.  20 There are three remaining issues in relation to  21 Operation Motorman. The first two arise from my ruling  22 on 11 June 2012, paragraph 11 of which reads:  23 "If Mr Sherborne's clients wish to provide the  24 Inquiry with such information as they have collated from  25 the Whittamore records where a continuous link to the</p> <p style="text-align: center;">Page 18</p>	<p>1 should be provided by the end of this month with  2 a response by any relevant newspaper by 10 September.  3 So as to ensure that there is no risk of work having to  4 be done twice, I also identify that date for the other  5 information that Mr Dacre offered to supply to which  6 I also refer in that ruling.  7 I do not anticipate that this evidence will require  8 oral elaboration and I anticipate that I will make it  9 part of the formal record of the Inquiry, along with  10 other statements that are being read into the record  11 when DAC Akers or whomsoever is then in charge of the  12 police inquiry provides the further update.  13 The third remaining issue arising out of Operation  14 Motorman flows from my ruling of 10 July 2012 concerning  15 the attitude of Associated Newspapers Limited to the  16 evidence revealed in the documentation seized from the  17 private detective Steve Whittamore. In short, I had  18 been concerned to learn whether any core participant  19 wished to argue that I could not use the Motorman  20 material to reach generic adverse conclusions about the  21 practice in general of the press perhaps because it was  22 be wrong to conclude, even on the balance of  23 probability, that breaches of Section 55 of the Data  24 Protection Act 1998 could have been established against  25 journalists. I then postulated three possible</p> <p style="text-align: center;">Page 20</p>

<p>1 approaches namely, first, that it is conceded that there 2 is prima facie evidence that journalists did act in 3 breach of Section 55 by seeking information which, prima 4 facie, could not be justified in the public interest. 5 The second position is that the core participant does 6 not want to advance a positive case contradicting the 7 first position. The third was that it is, in fact, 8 challenged that there is a prima facie case against 9 journalists that they acted in breach of the law. 10 Associated Newspapers Limited has now responded to that 11 ruling and made it clear that it adopts the second of 12 the three approaches: the open letter from its 13 solicitors to the Inquiry to that effect will be 14 published as part of the record. 15 Apart from the police investigations and Operation 16 Motorman, I recognise that there is real potential for 17 other evidence to be forthcoming. In a number of the 18 closing submissions, it has been suggested that one of 19 the consequences of the fast-moving nature of this 20 Inquiry has been an inability to challenge material 21 particularly where relevant witnesses have already given 22 evidence prior to new allegations being made. 23 That is to misunderstand how the Inquiry has 24 proceeded. It has always been open to core participants 25 (and others) to submit evidence to the Inquiry to answer</p> <p style="text-align: center;">Page 21</p>	<p>1 dealing with the position of the Metropolitan Police. 2 I did so specifically so that any challenge to that 3 approach could be tested by way of judicial review in 4 good time and without disrupting the timetable: see 5 paragraph 64 of the ruling of 1 May 2012. There has 6 been none and I intend to proceed accordingly. It is, 7 however, important to make public certain aspects of 8 this procedure. 9 First, Rule 13 provides that I may send a warning 10 letter to any person who I consider may be the subject 11 of criticism in my report and, by Rule 13(3), must not 12 include any explicit or significant criticism of 13 a person in the report unless I have sent such a letter 14 and provided the recipient with a reasonable opportunity 15 to respond. In the circumstances, I intend to send 16 letters under Rule 13 setting out criticisms which may 17 be made on the basis of what is considered to be 18 reasonably arguable on the facts and evidence canvassed 19 over the course of the Inquiry to date, the purpose 20 being to alert the recipients to the full range of 21 matters in respect of which further representations may 22 be made. What it is critical to appreciate, however, is 23 that it should not be thought by any recipient that the 24 specific criticisms which I consider to be reasonably 25 arguable will necessarily appear in that form (or,</p> <p style="text-align: center;">Page 23</p>
<p>1 allegations that have been made and, in appropriate 2 cases where the interests of fairness require, that 3 evidence will be published as part of the record of the 4 Inquiry. There have been a number of examples where 5 this has already happened and I am prepared for that 6 type of material to be provided to the Inquiry over the 7 weeks to come (albeit no later than the end of August 8 2012 in respect of evidence prior thereto). 9 One example will suffice. The Inquiry only learnt 10 of the existence of Matthew Sprake very recently, but 11 I am conscious that his evidence last week concerned, in 12 large part, the work which he had been employed to carry 13 out for The People. Further, it raised issues relating 14 to the responsibilities for the ethical decisions in 15 connection with its commissioning. Although I recognise 16 that it is now too late to serve a notice under Section 17 21 of the Act on the editor, Mr Lloyd Embley (who gave 18 evidence during the course of Module 1), should he wish 19 to provide his account of that relationship, dealing 20 with what Mr Sprake has said, I will, of course, 21 consider it. 22 Rule 13 of the rules. 23 On 1 May 2012, I handed down a ruling dealing with 24 my approach to Rule 13 of the rules, which 25 I supplemented three days later with a further ruling</p> <p style="text-align: center;">Page 22</p>	<p>1 indeed, necessarily at all) in the final report. 2 Warning letters are an inherent part of conducting 3 the Inquiry fairly and constitute the process of 4 ensuring that all those potentially subject to possible 5 criticism have the opportunity to respond. It may be 6 that it will be thought that submissions that have 7 already been made deal with the possible criticisms and 8 it will be sufficient either not to respond or simply to 9 refer to those submissions. At the other end of the 10 spectrum, representations can include the provision of 11 further evidence and I am prepared to consider the 12 possibility that I may have to reconvene oral hearings 13 to allow an appropriate response: see Beer, Public 14 Inquiries, paragraph 9.41. Having said that, however, 15 bearing in mind the approach which I have made clear 16 that I intend to adopt to the facts, it should only be 17 in the clearest of cases that the submission of further 18 evidence should be contemplated. I ought to add that 19 although further evidence might be read into the Inquiry 20 record, I anticipate that the likelihood of 21 consequential oral hearings to be comparatively remote. 22 The second point to be made about the Rule 13 23 letters is to underline that responses will only be of 24 value if they address the possible criticism. As 25 foreshadowed in my ruling, I will shortly be issuing</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 Rule 13 letters of a generic nature relating to the 2 culture, practises and ethics of the press referring 3 either to the press as a whole or to a part of or 4 section within the press. I appreciate that it will be 5 tempting for companies to respond by reference only to 6 their own practices; each, however, has read or heard 7 the evidence that has been put before the Inquiry and 8 I expect responses which address the wider issues about 9 the conclusions that I may reach generically. 10 A response that says no more than, "Not me", will be of 11 little, if any, value. Obviously, other letters may 12 address possible individual criticisms: they will 13 require an individual response. 14 Finally, I wish to say something about the 15 confidentiality of these letters. Rule 14 makes it 16 clear that the contents of a warning letter are to be 17 treated as subject to an obligation of confidence owed 18 by each member of the Inquiry Team to the recipient and 19 by both the recipient and the recipient's recognised 20 legal representative to me. The purpose is not to keep 21 the workings of the Inquiry secret: indeed, in relation 22 to the recipients of any letter, the duty of confidence 23 lapses when the Inquiry report is published. Rather, it 24 is to recognise that which is set out in paragraph 10 25 above, namely that the criticisms outlined in the letter</p> <p style="text-align: center;">Page 25</p>	<p>1 in different ways. The Inquiry has clearly attracted 2 considerable public interest which itself has generated 3 additional lines of inquiry beyond those initially 4 identified. In addition, the Inquiry has been subject 5 to a great deal of commentary. I have previously 6 directed that the press cuttings in relation to the 7 Inquiry will form part of its record. Without 8 necessarily dealing with any explicitly, I will consider 9 reports that in my view either support or undermine 10 concerns that have been expressed in evidence; I will 11 equally consider the validity of the comments that are 12 critical of the direction or approach of the Inquiry. 13 I add only that the collection of cuttings will continue 14 until the Inquiry reports. 15 Right. We were to start with Mr Sherborne, but 16 I understand that he's suffered a family bereavement and 17 in those circumstances we'll take a slightly different 18 order. Do the core participants, Mr Jay, understand the 19 order in which they are to speak and does it cause them 20 any embarrassment? 21 MR JAY: I haven't checked with all of them. 22 LORD JUSTICE LEVESON: I'll rise for a few minutes for you 23 to do that. 24 (10.45 am) 25 (A short break)</p> <p style="text-align: center;">Page 27</p>
<p>1 do not represent my concluded view. Thus to publish 2 them as my view or as "emerging thoughts" (as some of 3 the challenges which have I asked about during the 4 hearings have been reported) would be to misunderstand 5 the purpose of the exercise and misrepresent the 6 position of the Inquiry. I hope that the duty of 7 confidence will be observed by all. I will, however, 8 wait to see. 9 Further developments. 10 In the ten months during which the Inquiry has 11 received briefings, held seminars and been taking 12 evidence, much has happened which is relevant to 13 conclusions that may be reached as to the culture, 14 practices and ethics of the press, and as to many 15 aspects of the terms of reference. Events have 16 transpired which have been reported and reports have 17 given rise to complaint: a good example can be found in 18 the evidence of Giles Crown dealing with the tragic 19 death of an 11-year-old boy. In the same way that 20 I wish to be kept informed about the progress of the 21 police investigations encompassed by Operations Weeting, 22 Elveden and Tuleta, so if there are further incidents 23 that cause concern about the press that I can consider 24 before issuing my report, I shall do so. 25 Concerns have come to the attention of the Inquiry</p> <p style="text-align: center;">Page 26</p>	<p>1 (10.35 am) 2 LORD JUSTICE LEVESON: Mr Jay, I gather that arrangements 3 have been made for those core participants who were due 4 to speak this afternoon for representatives from their 5 clients to attend. I don't want to disrupt those 6 arrangements, so I'll hear Mr Garnham, who was due to 7 speak this morning, and then we'll have an early break 8 and resume this afternoon. 9 MR JAY: Yes. 10 LORD JUSTICE LEVESON: Right. Yes, Mr Garnham. 11 Closing submissions by MR GARNHAM 12 MR GARNHAM: Sir, at the beginning of this Inquiry, the MPS 13 emphasised that it came here to assist not obstruct, to 14 self-criticise and not to justify, and to try and 15 improve rather than to hide. The MPS has done 16 everything it can to be open and transparent, willing to 17 acknowledge mistakes and learn from the errors which the 18 Inquiry exposes. 19 In our written closing submissions for Module 2 of 20 11 May 2012 and our closing submissions for Module 3 of 21 17 July, the MPS attempted to summarise the evidence 22 heard by you and the Inquiry insofar as it was relevant 23 to the MPS or the relationships between the MPS and the 24 press. 25 We frankly admit that there have been incidents</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 which have led to a plain perception of cosiness between 2 particular senior MPS officers and particular 3 journalists. The MPS also acknowledge that the 4 decisions in July 2009 and September 2010 not to reopen 5 the phone hacking investigation were taken too quickly 6 and with a defensive and closed mindset.</p> <p>7 However, the MPS also submits that it's clear from 8 the evidence you've heard that the vast majority of 9 contact between the police and the media has been and 10 continues to be sensible, constructive and proper. 11 There has been nothing to suggest corruption on anything 12 other than the rarest of occasions, and those rare 13 occasions have been the subject of proper investigation 14 and proper sanction.</p> <p>15 The evidence received by the Inquiry unequivocally 16 demonstrates, we submit, that there was no relationship 17 between senior officers and journalists that was in fact 18 corrupt. There was no cosiness or inappropriately close 19 relationships that in fact tainted police 20 decision-making. More specifically, we say, the 21 evidence has demonstrated that the phone hacking 22 investigation was not at any stage limited because of 23 pressure from or fear of the media, whether 24 News International or the press more broadly.</p> <p>25 Similarly, we submit, the evidence has demonstrated</p> <p style="text-align: center;">Page 29</p>	<p>1 At paragraph 2 of their submissions, the CPVs say 2 that: 3 "Perception is as important as reality." 4 With respect, that cannot be correct. A perception 5 that senior officers are too close to journalists is 6 indeed a source for concern. The MPS well recognises 7 the damage that such a perception has caused and 8 acknowledges the importance of ensuring that it doesn't 9 arise in the future. However, had the Inquiry uncovered 10 evidence of actual corruption of senior police officers 11 or of inappropriate relationships with journalists 12 actually causing different operational decisions to be 13 made, it would, we submit, rightly be even more 14 concerned about this than about the perception that some 15 relationships were unduly close.</p> <p>16 Saying that, sir, is not to downplay the importance 17 of perception. It simply recognises the obvious truth 18 that actual corruption or relationships which actually 19 affect police decision-making would be worse. To say 20 that the perception of corruption and real corruption 21 are equally important is simply not valid.</p> <p>22 The CPVs say perception is so important because 23 perception that the police are corrupt can lead to 24 a loss of public confidence in the police and 25 a perception that the press can act with impunity, which</p> <p style="text-align: center;">Page 31</p>
<p>1 that the decisions in 2009 and 2010 not to reopen the 2 investigation were not in fact influenced by 3 relationships between senior officers and 4 News International.</p> <p>5 The MPS has addressed these points in detail in its 6 written submissions and I will not repeat those 7 submissions here. However, we are grateful for the 8 opportunity briefly to address orally some assertions 9 and criticisms made by other core participants in their 10 written submissions. In particular, sir, I want to deal 11 today with two issues, which we say are critical to any 12 proper analysis of the evidence.</p> <p>13 First, the danger of conflating the perception of 14 wrongdoing with its reality, and secondly, inaccuracy 15 concerning the current work of the MPS to implement 16 changes to its media relations, policy and practice.</p> <p>17 The written submissions of the core participant 18 victims in relation to Module 2 of 28 May cover much of 19 the same ground as our submissions. Like us, the CPVs 20 make a distinction between the perception that there 21 were corrupt or inappropriate relationships between the 22 police and the press and the reality of such 23 relationships. However, in our submission the CPVs have 24 at numerous points conflated or confused the two. That, 25 we submit, is both unhelpful and potentially dangerous.</p> <p style="text-align: center;">Page 30</p>	<p>1 can lead to a worsening behaviour by the press. We 2 agree. The same point has been made by many witnesses 3 to this Inquiry.</p> <p>4 However, asserting that there is widespread 5 corruption in the police and that inappropriate 6 relationships between police and press have compromised 7 police independence when the evidence doesn't 8 demonstrate that is unjust and simply serves to worsen 9 the perception. In short, it creates the very problem 10 that the CPVs are so keen to avoid.</p> <p>11 That, we submit with respect, is precisely what the 12 CPVs have done on a number of occasions in their 13 submissions.</p> <p>14 Having recognised the distinction between perception 15 and reality, and, we say, wrongly asserted that 16 perception is just as important, the CPVs then assert 17 that a number of senior police officers did in fact 18 become too close to reporters and failed as 19 a consequence of that closeness fully to investigate or 20 disclose evidence of media wrongdoing. In particular, 21 they assert that in 2006, 2009 and 2010 close 22 relationships with News International journalists and 23 editors actually affected police decisions.</p> <p>24 In doing so, the CPVs are eliding the perception of 25 police independence being compromised with the reality</p> <p style="text-align: center;">Page 32</p>



<p>1 of such compromise. That's clear from phrases such as                  2 "independence or at least the appearance of independence                  3 was compromised", paragraph 32 of the CPVs' submission.                  4 They have conflated the two and asserted that                  5 because there may have been occasions when it appeared                  6 that certain senior police officers' independence was                  7 affected, it was in fact affected. That plainly doesn't                  8 follow.                  9 LORD JUSTICE LEVESON: No, the question is whether it's an                  10 inference that can be drawn.                  11 MR GARNHAM: Absolutely. Sir, you anticipate precisely the                  12 next clause of the sentence, which is: and there is                  13 nothing to support so serious an inference.                  14 The CPVs are not the only core participants to have                  15 conflated perception with reality. Guardian News and                  16 Media Limited have done the same in their Module 2                  17 submissions. They assert at paragraph 10(1) that there                  18 was "cosiness between senior MPS officers and                  19 News International executives". At paragraph 12 they                  20 state that there is "real force in the view that an                  21 excessive close relationship developed between NI                  22 executives and senior police officers such as to                  23 materially influence the MPS response to the phone                  24 hacking investigation".                  25 But the evidence they point to, primarily the Filkin                  Page 33</p>	<p>1 this dinner, DCS Phil Williams had sought and been given                  2 additional resources for Operation Caryatid. On                  3 26 April, the day after the dinner, the decision was                  4 made to proceed with the investigation.                  5 Those actions are suggestive, we submit, of                  6 a robust, independent police force, not one whose                  7 independence was compromised.                  8 LORD JUSTICE LEVESON: But could it ever have been sensible                  9 for the police -- for particularly a very, very senior                  10 ranking officer -- to have dinner with an organisation                  11 that one of his officers was then investigating?                  12 MR GARNHAM: That, with respect, is a separate question. It                  13 may well be, sir -- I'm going to make no concession --                  14 you will decide that it was not. But that is not -- and                  15 this is the critical point -- evidence of corruption in                  16 fact.                  17 LORD JUSTICE LEVESON: No, I understand the point that                  18 you're making, but the trouble is that this is where                  19 perception does become extremely important. If, as was                  20 the event, that investigation was limited, no doubt for                  21 different reasons, it doesn't require a very suspicious                  22 mind to join the dots together.                  23 MR GARNHAM: I absolutely agree and concede that, sir. Of                  24 course that's right. And the which of such a dinner                  25 happening at such a time is plainly something which can                  Page 35</p>
<p>1 report, is about a perception of inappropriate                  2 relationships, not actual compromise of independence,                  3 and that flawed analysis, we submit, needs to be                  4 exposed.                  5 I'm going to concentrate for the main part in these                  6 short oral submissions on the core participant victims'                  7 submissions, as they're the most extensive, but the                  8 points could equally be made towards the Guardian's                  9 submissions.                  10 There are several points in the CPVs' submissions                  11 where the evidence referred to may justifiably be said                  12 to demonstrate a perception or appearance of unduly                  13 close relationships, but cannot be said to show that                  14 there was compromise of police independence in reality,                  15 yet the CPVs do assert such actual compromise.                  16 I deal with it by just three examples. At                  17 paragraph 48, the CPVs refer to a dinner hosted by the                  18 News of the World, which Andy Hayman and Dick Fedorcio                  19 attended on 25 April 2006. They note that this was at                  20 a crucial time in Operation Caryatid and assert that                  21 "the possibility of inappropriate conversation cannot be                  22 excluded".                  23 But in fact the timings suggest that such                  24 hospitality could have had no effect whatsoever on                  25 operational decisions. On 18 April, a few days before                  Page 34</p>	<p>1 be the subject of comment. But it's a huge jump to say                  2 that you can proceed from that to a conclusion that in                  3 fact at that dinner they got around the table and said,                  4 "Tell you what, we'll just go through the motions". And                  5 that is, in our submission, at the root of the error of                  6 the analysis that's been put forward by some.                  7 The CPVs severely criticise DSC Williams for failing                  8 to widen the scope of Caryatid in 2006. They conclude                  9 at paragraph 82 that there remains in relation to DCS                  10 Williams a strong inference that he was fearful of the                  11 influence of the powerful media friends of his                  12 superiors. There is simply not the evidence to support                  13 such an inference. I will deal with these criticisms at                  14 little length because they're more extensive and haven't                  15 been specifically covered in our written submissions.                  16 In our submission, the Inquiry has heard compelling                  17 evidence from all the officers involved in the                  18 investigation about the overwhelming pressure on the MPS                  19 from the terrorist threat in 2006 and the absolute                  20 priority that had to be given to counter-terrorist                  21 operations. As Peter Clarke said in a memorable phrase:                  22 "Invasions of privacy are odious. They can be                  23 extraordinarily distressing and at times they can be                  24 illegal, but to put it bluntly: they don't kill you."                  25 The CPVs, in their analysis, skip lightly over this                  Page 36</p>

<p>1 crucially important factor in a single sentence at                  2 paragraph 75. They say:                  3 "Be that as it may, it doesn't explain the                  4 reluctance of DC Williams to reveal the full extent and                  5 nature of the evidence to the CPS or pursue the agreed                  6 strategy of informing victims."                  7 We submit that that is wildly to underappreciate the                  8 nature and significance of the evidence about terrorist                  9 threats.                  10 There's no need to drive that point home, I suspect,                  11 sir. We deal with it in our written submissions and I'm                  12 not going to labour it.                  13 The Inquiry has heard no evidence that DCS Williams                  14 himself had any relationship with the media which could                  15 conceivably be perceived as overly close, let alone                  16 actually corrupt. Moreover, as the CPVs acknowledge,                  17 there is no evidence that he made any conscious decision                  18 to suppress evidence. Nonetheless, the CPVs feel able                  19 to assert, paragraph 76, that he would no doubt have                  20 been aware that his superiors in the MPS hierarchy                  21 enjoyed extremely close relationships with those he was                  22 investigating and therefore that it was:                  23 "Inevitable that the relationships between very                  24 senior MPS officers and the media exerted some influence                  25 on his decision-making."                  Page 37</p>	<p>1 because of counts 15 to 20. The CPS knew about the                  2 corner names. They had a copy of the Blue Book.                  3 Second, DCS Williams was working on the                  4 understanding that the evidential requirement to prove                  5 unlawful interception of voicemail was that it had to                  6 take place before it was accessed by the intended                  7 recipient.                  8 Now, sir, you may decide he was wrong about that.                  9 You may conclude that he was taking too narrow a view of                  10 the legal requirements to make out his case. But there                  11 is nothing to support a case that DCS Williams was there                  12 actively or intentionally misleading anyone.                  13 LORD JUSTICE LEVESON: It's not just a question of my                  14 construction of the statute, is it? Because at the time                  15 charges were pursued on the basis of the wider view, and                  16 in any event, he, like any experienced detective, would                  17 well have understood the reach of the law of conspiracy.                  18 MR GARNHAM: Absolutely, absolutely. But he was guided in                  19 the decisions he made -- and it may be he got it wrong.                  20 But he was guided by the advice he'd received. And it                  21 is an enormous jump, and one which we would suggest the                  22 Inquiry would not be justified in taking, between saying                  23 he got it wrong on these points and saying, as the core                  24 participant victims do, that he was misleading in some                  25 active sense anybody, whether counsel or CPS or his                  Page 39</p>
<p>1 With respect, that's nonsense.                  2 First, there's no evidence to suggest that DCS                  3 Williams had any knowledge at all about the                  4 relationships between other officers and particular                  5 journalists at particular newspapers, and that point was                  6 never put to him.                  7 Second, that assertion assumes what it seeks to                  8 prove, that DCS Williams was making not just incorrect                  9 decisions, but decisions motivated by improper                  10 considerations.                  11 And third, it ignores the fact that DCS Williams's                  12 superior was Peter Clarke, an officer whom, as the                  13 Inquiry has repeatedly heard, is held in the highest                  14 regard by everyone who's ever worked with him. Even the                  15 CPVs accept that Mr Clarke did not accept much                  16 hospitality at all, and what he did accept was                  17 even-handed as to his relationship with the media.                  18 The CPVs make their inference about DCS Williams on                  19 the basis that he knew there was evidence of journalists                  20 other than Clive Goodman being involved but "misled" the                  21 CPS prosecuting counsel and AC Clarke by saying there                  22 was no such evidence. We've addressed that in our                  23 submissions and I just make three short points.                  24 First, CPS and counsel were plainly aware that the                  25 evidence implicated journalists other than Goodman                  Page 38</p>	<p>1 superiors. We say the evidence simply doesn't support                  2 such a conclusion.                  3 It is also, in our submission, significant that it                  4 became clear from DCS Williams's evidence that he was                  5 applying a restrictive view of what constituted                  6 evidence. He appears to have believed that he had to                  7 obtain concrete, forensically irresistible proof. His                  8 whole approach, it emerged, was that it wouldn't be                  9 sufficient to rely on inference, however powerful                  10 a lawyer might think the inference to be drawn was.                  11 He might be wrong about that, but the idea that he                  12 was actively misleading anyone is, in our submission,                  13 farfetched.                  14 The CPVs also base their inference about DCS                  15 Williams on the assumption that the MPS was in                  16 possession of all the evidence in 2006 necessary to                  17 realise that phone hacking was as extensive as it's                  18 turned out to be seen to be. But that, in our                  19 submission, is to fall into the obvious trap of viewing                  20 this through the wrong end of the telescope. It wholly                  21 fails to take into account the hugely time-consuming and                  22 resource-intensive nature of the work that would have                  23 been needed to be carried out in order properly to                  24 investigate these affairs.                  25 It is, in our submission, sufficient to look at the                  Page 40</p>

<p>1 extent and nature of Operation Weeting to see the 2 quantity of work involved. DAC Akers reminded the 3 Inquiry this morning about the volume of material 4 involved in some of these operations. 5 The CPVs point to a failure to seek a production 6 order against News International as a further reason to 7 draw inferences against DCS Williams. We've made 8 separate submissions on this issue in relation to 9 Module 4. You have written evidence from the Deputy 10 Commissioner on that topic, and we would respectfully 11 refer you to that in this context. 12 LORD JUSTICE LEVESON: Yes. What he's saying is that 13 actually it becomes almost impossible because merely to 14 assert, "We'll co-operate", makes it extremely difficult 15 to satisfy the engagement criteria for a production 16 order. 17 MR GARNHAM: Yes. 18 LORD JUSTICE LEVESON: Because you can't prove that they 19 haven't co-operated. So the co-operation might be 20 a fig-leaf for doing not very much, and there's nothing 21 very much the police can do about it. 22 MR GARNHAM: It's seen as a self-justifying, self-fulfilling 23 assertion when police are met with that sort of 24 response. 25 LORD JUSTICE LEVESON: But on the other hand, of course, one</p> <p style="text-align: center;">Page 41</p>	<p>1 strategy for informing potential victims as evidence 2 from which inferences can be drawn against DCS Williams 3 that his independence was compromised. Again, we say 4 the scattergun nature of the CPVs' analysis is evident. 5 The MPS has acknowledged that the victim strategy 6 was not properly implemented. It's done so both in its 7 submission to this Inquiry and in the judicial review 8 proceedings, but the reasons for that were various: lack 9 of resources, competing demands, failure to follow-up 10 a process that was believed to be working properly. 11 But there's no evidence that you've heard at any 12 stage to suggest that it was fear of News International, 13 whether on the part of DCS Williams or anyone else in 14 the investigation team, which caused the failure of the 15 victim strategy. 16 We say that for the CPVs to assert to that effect is 17 another example of conflating perception and reality. 18 CPVs summarise their allegations at paragraph 108. 19 They say that the failures in the investigation are so 20 significant that an inference can be drawn that police 21 officers deliberately sought to downplay the evidence 22 out of fear of News International. 23 Hindsight is a dangerous device in an Inquiry of 24 this sort. Nowhere, we say, is it capable of greater 25 mischief than here. No one concerned with this Inquiry</p> <p style="text-align: center;">Page 43</p>
<p>1 has to be very careful to respect journalistic sources, 2 for all the reasons that we've discussed during the 3 course of the Inquiry. 4 MR GARNHAM: Absolutely. And that's the nature of the 5 problem that we have sought to address in Deputy 6 Commissioner Mackey's submission. 7 LORD JUSTICE LEVESON: Yes. 8 MR GARNHAM: But it suffices for present purposes to observe 9 that the Operation Caryatid team found 10 News International's lack of co-operation back in 2006 11 frustrating in the extreme. You'll remember in answer 12 to a question from you this morning, sir, DAC Akers drew 13 a sharp distinction between that level of co-operation 14 and what she has received in more recent months. 15 The criticism faced by the police when journalists 16 are investigated or searched is apparent from Module 2, 17 written submissions from the NUJ, which I'll come back 18 to in a moment. But we say the CPVs' attack is 19 indiscriminating when it fails to recognise that 20 whatever criticisms might be made of the law relating to 21 production orders in cases involving newspapers, DCS 22 Williams and the rest of the Operation Caryatid team was 23 having to work with the law as it was then, not as it 24 might be at some future day. 25 Finally, sir, the CPVs point to the failure of the</p> <p style="text-align: center;">Page 42</p>	<p>1 can wholly exclude from their minds knowledge of the 2 significance of the material which subsequent events 3 have demonstrated. The potential significance of first 4 names scribbled across the corner of a piece of paper is 5 now patent, but it's a long way from providing a ground 6 for criticising those who at the time regarded this not 7 as evidence of complicity in wrongdoing by journalists 8 but as no more than a potential lead, which with a great 9 deal of further work might lead to evidence, which might 10 justify the arrest of an as yet unidentified individual. 11 Still less, we say, is it grounds for inferring that 12 operational decisions were made because of fear of 13 News International. 14 LORD JUSTICE LEVESON: But the police certainly had got to 15 grips with the Mulcaire documentation, hadn't they? 16 MR GARNHAM: Yes. 17 LORD JUSTICE LEVESON: Because they sought to interview -- 18 I think it was Mr Mulcaire about these very topics, and 19 also identified other names and the material which 20 included PIN numbers and the like, which suggested, at 21 any rate, that this was very much more extensive than 22 that which eventually emerged as the prosecution case. 23 MR GARNHAM: They had begun to get to grips with it, 24 I readily concede, and they had started to detect what 25 that evidence might suggest, yes. But it's a long way</p> <p style="text-align: center;">Page 44</p>

<p>1 from that to putting together a case that was sufficient 2 to be taken to court.</p> <p>3 LORD JUSTICE LEVESON: I understand that, but that's not the 4 charge specifically. The charge might just as easily 5 be, as I read the submission, that you never went 6 further. And another example that might be given of 7 that could be -- and I ask you to deal with it -- the 8 failure to deal with the much enunciated "rogue 9 journalist" theory, where certainly the police had the 10 very gravest concerns, it seems to me, that this wasn't 11 one rogue journalist, and yet -- I mean, normally, if 12 the police fear that there may be other criminal conduct 13 which they can't prove, I think the phrase is they "warn 14 people as to their conduct".</p> <p>15 MR GARNHAM: Yes.</p> <p>16 LORD JUSTICE LEVESON: Rather than caution them, because 17 they can only caution somebody who admits it. Because 18 it was nothing like that.</p> <p>19 MR GARNHAM: Two points in the observations you've made, 20 sir. As to the second, about the good sense of giving 21 such a warning, that was addressed by senior officers, 22 more recently-appointed senior officers, in answers to 23 questions from you, and they agreed.</p> <p>24 Mr Peter Clarke agreed that although it would be 25 difficult sometimes for him to go into the office of</p> <p style="text-align: center;">Page 45</p>	<p>1 that the evidence surrounding 2009 and 2010 could give 2 rise to a perception or suspicion of cosiness 3 influencing decision-making, but it's simply not valid, 4 I would submit, to assert that the MPS were involved in 5 a cover-up, intentionally or otherwise. Indeed, I'm not 6 entirely clear how one can unintentionally cover up 7 anything, since the verb "cover-up" in this context 8 necessarily involves some deliberate action.</p> <p>9 LORD JUSTICE LEVESON: I think I agree with that.</p> <p>10 MR GARNHAM: It's right to acknowledge that the decisions 11 were probably taken too quickly and with a defensive 12 mindset that may not have asked the right questions.</p> <p>13 That was conceded by Sir Paul Stephenson and by 14 others subsequent to him, and we respectfully urge you 15 to adopt that. But there is absolutely nothing by way 16 of hard evidence which calls into question the integrity 17 of John Yates when he made those decisions. There's 18 nothing to show that he was in fact swayed in his 19 decision-making by his friendship with Neil Wallis or 20 his relationships with News International more 21 generally. There's nothing to show that he deliberately 22 misled the Select Committee, the DPP or the victims, and 23 again we say that to confuse legitimate criticisms that 24 can be made about perception with reality is wholly 25 unwarranted.</p> <p style="text-align: center;">Page 47</p>
<p>1 a managing director of a large organisation and read the 2 riot act in the way you've suggested, there were 3 occasions when that would be sensible, and I don't 4 attempt to dissent from that.</p> <p>5 LORD JUSTICE LEVESON: I can't immediately see that an 6 officer as senior as Mr Clarke would have very much 7 difficulty in making his views very clear to whomsoever 8 he wished to make his views clear, however unhappy the 9 response he might receive.</p> <p>10 MR GARNHAM: I don't attempt to dissuade you from that view, 11 sir. That was put perfectly fairly to Mr Clarke and he 12 dealt with it. But what I do attempt to respond to is 13 the suggestion that there is in that some evidence which 14 founds an inference that DCS Williams was either 15 cowardly in his approach to police officers [sic] or was 16 positively corrupt. Those are huge jumps, which I say 17 are simply not justified on the evidence.</p> <p>18 The final example of CPVs conflating perception and 19 reality relates to the decisions in 2009 and 2010 not to 20 reopen the phone hacking investigation. Paragraph 109 21 of the CPVs' submissions read:</p> <p>22 "Intentionally or not, the MPS supported and 23 participated in a cover-up of the facts, which has led 24 to suspicions of corruption."</p> <p>25 Sir, in our submission it may be valid to consider</p> <p style="text-align: center;">Page 46</p>	<p>1 LORD JUSTICE LEVESON: Mr Yates certainly didn't do himself 2 any favours, did he?</p> <p>3 MR GARNHAM: And fortunately that's not the case I'm having 4 to make out, sir.</p> <p>5 LORD JUSTICE LEVESON: No.</p> <p>6 MR GARNHAM: We would urge you not to make the same mistake 7 as the CPVs and others.</p> <p>8 Some of the evidence heard over the course of the 9 last nine months could give rise to criticisms based on 10 perception, but the evidence goes nowhere near to 11 establishing that corruption or actual compromise of 12 police independence occurred. And to slide from 13 perception to fact is an easy move to make, but would 14 not be remotely justifiable on the evidence you've 15 heard.</p> <p>16 LORD JUSTICE LEVESON: What about this, Mr Garnham -- and it 17 may be that it doesn't take any matters any further, and 18 I'm not saying that I've reached this conclusion, I say 19 immediately. But in connection with the decision in 20 2009, could it be said certainly approached too 21 defensively, but also approached on the basis that very 22 senior officers knew and understood the leaders of this 23 organisation, and because of their personal knowledge of 24 them were therefore less prepared to think ill of what 25 they had been doing?</p> <p style="text-align: center;">Page 48</p>

<p>1 MR GARNHAM: Sir, that's somewhere between the two 2 stances --</p> <p>3 LORD JUSTICE LEVESON: That's why I asked you about it.</p> <p>4 MR GARNHAM: -- I've identified.</p> <p>5 I understand that, sir. I would submit that even 6 that would be going too far. You don't have the 7 evidence even for that. But that is some way short of 8 actual corruption or actual compromise of independence; 9 and I say you can't go even that far on what you've 10 heard, but plainly it is a gradation.</p> <p>11 It's instructive, we say, to observe that the very 12 same factual context can be perceived from very 13 different standpoints, depending on the observer.</p> <p>14 That's apparent from the NUJ's submissions on Module 2, 15 which criticise the MPS for being "interfering" and 16 "threatening" in its media relationship. And it does so 17 over precisely the same period of time during which it's 18 accused of being over-cosy by the CPVs.</p> <p>19 We submit we're trapped somewhat between a rock and 20 a hard place in trying to get this right. On the one 21 hand, we can be criticised by the NUJ for being 22 draconian. On the other, we can be criticised for being 23 overfriendly.</p> <p>24 That serves, we submit, to illustrate the difficult 25 position the police are in when it comes to dealing with</p> <p style="text-align: center;">Page 49</p>	<p>1 some legitimate grounds for criticism of MPS conduct, 2 primarily regarding the public perception created by the 3 actions of some of its officers.</p> <p>4 We submit that the MPS has demonstrated through the 5 evidence of its current senior officers an intent to 6 address and correct the errors that this Inquiry has 7 exposed. We remain ready to listen to and learn from 8 your conclusions, and we do so whether or not they 9 happen to coincide with our own analysis.</p> <p>10 LORD JUSTICE LEVESON: Mr Garnham, I'm very grateful for 11 that, but could you help me with the present position of 12 the ACPO responses, both to Sir Denis O'Connor's report 13 and I think that also encompasses what Elizabeth Filkin 14 had to say?</p> <p>15 MR GARNHAM: The honest answer to your question is: No, 16 I don't think I can. I don't act for ACPO, but I have 17 lines of communication to ACPO and I would have to take 18 instructions and respond to that --</p> <p>19 LORD JUSTICE LEVESON: I wasn't necessarily asking from an 20 ACPO perspective. Presumably your clients know where 21 they've got to in relation to the ACPO line.</p> <p>22 MR GARNHAM: Yes.</p> <p>23 LORD JUSTICE LEVESON: I think it would be useful if you 24 could just at some stage submit a very short note on it 25 so that I know.</p> <p style="text-align: center;">Page 51</p>
<p>1 an investigation of the press, and in that circumstance 2 it is, we would submit, remarkable that the Inquiry has 3 heard such a substantial body of evidence that's been 4 positive about the work of the MPS, about the 5 relationship between the MPS and the press and about the 6 work of the MPS and the press together.</p> <p>7 The second of my two issues, sir, you'll be glad to 8 know, is much more straightforward and can be dealt with 9 much more shortly.</p> <p>10 The Guardian has at paragraph 6 of their submissions 11 suggested that the MPS has adopted the recommendations 12 of the Filkin report, and they then go on to criticise 13 some of those. It's simply not correct to say that the 14 MPS has adopted the Filkin report's recommendations.</p> <p>15 As Commissioner Hogan-Howe explained, the MPS has 16 accepted her findings and the broad thrust of her 17 report, but needs to do more work on whether and how to 18 implement the recommendations. The work is being done 19 now and that's set out in our Module 2 submissions. 20 There's an update on progress at annex 1 of our Module 3 21 submissions.</p> <p>22 We submit that the overall picture that's emerged in 23 the course of your Inquiry is that relations between the 24 press and the police, whilst not perfect, have been 25 essentially sound. We recognise that there has been</p> <p style="text-align: center;">Page 50</p>	<p>1 MR GARNHAM: I will do so, sir.</p> <p>2 LORD JUSTICE LEVESON: Thank you very much indeed. Thank 3 you.</p> <p>4 Right. It's not happened many times during the 5 course of the last ten months, but in the light of the 6 fact that we can't proceed further, we'll adjourn now 7 until 2 o'clock.</p> <p>8 Thank you.</p> <p>9 (11.32 am)</p> <p>10 (The luncheon adjournment)</p> <p style="text-align: center;">Page 52</p>

<b>A</b>	<p><b>advance</b> 21:6</p> <p><b>adverse</b> 10:10 20:20</p> <p><b>adversely</b> 10:24</p> <p><b>advice</b> 2:9 4:17 13:2 39:20</p> <p><b>advise</b> 5:25</p> <p><b>advised</b> 2:8</p> <p><b>affairs</b> 40:24</p> <p><b>affect</b> 10:24 17:12 31:19</p> <p><b>afternoon</b> 28:4,8</p> <p><b>ago</b> 8:22</p> <p><b>agree</b> 12:12 32:2 35:23 47:9</p> <p><b>agreed</b> 37:5 45:23,24</p> <p><b>Akers</b> 1:5,7 15:19 18:4 20:11 41:2 42:12</p> <p><b>akin</b> 9:13</p> <p><b>albeit</b> 22:7</p> <p><b>alert</b> 23:20</p> <p><b>allegation</b> 6:14</p> <p><b>allegations</b> 11:17 11:18 12:2 21:22 22:1 43:18</p> <p><b>alleged</b> 5:5 6:11 8:15</p> <p><b>allow</b> 24:13</p> <p><b>amount</b> 8:5 11:3 12:4,6,13</p> <p><b>amounts</b> 12:10</p> <p><b>analysis</b> 12:15 30:12 34:3 36:6,25 43:4 51:9</p> <p><b>Andy</b> 34:18</p> <p><b>and/or</b> 12:22</p> <p><b>annex</b> 50:20</p> <p><b>answer</b> 21:25 42:11 51:15</p> <p><b>answering</b> 12:6</p> <p><b>answers</b> 45:22</p> <p><b>anticipate</b> 20:7,8 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