

Leveson Inquiry

Sixth Witness Statement of Richard Thomas CBE

1. This Witness Statement is intended to assist the Inquiry by trying to shed more light on the reasons why the ICO did not prosecute any journalists as a result of Operation Motorman. It elaborates what I have said on this matter in my 2nd, 3rd and 4th Witness Statements, although I am not aware of any inaccuracy in any of those Statements.
2. This Statement is however made after sight of the bundle of legal and related papers which were sent by the ICO to the Inquiry on 22 November 2011 (MOD100048708 to MOD100048827). I did not receive these papers until 26 November. This Statement is also made after the oral evidence of Alec Owens (30th November and 5th December) and Francis Aldhouse.
3. The oral evidence prompted me to review my personal notebooks for 2003. Those notebooks do not contain any reference to Operation Motorman apart from those mentioned below. I have not been able to locate my diary for 2003.
4. I need to start by repeating two key points which I have made previously:
 - I do not have any recollection or awareness whatsoever of preventing any Investigating Officer, or anyone else, from interviewing any journalist or not allowing such interviews or further investigations.
 - I cannot recall any discussion about the actual possibility of prosecuting any journalists.
5. It is now possible however to put forward the following sequence of events.
6. My personal notebook shows an undated entry (between dated entries for 3rd and 10th March) which reads "Francis – Newspapers / s.55". This is attached as **Exhibit RJT51**. The entry is part of a "to do" list and has been crossed out as done. The visit to Mr Whittamore's house took place on Saturday 8th March 2003, and the entry was therefore probably made on Monday 10th March. The entry suggests that I had a conversation with Francis Aldhouse, but does not indicate its substance, nor whether the informal meeting took place that day, nor whether Mr Aldhouse attended the meeting.
7. The next relevant entry from my personal notebooks is also undated, but is seven pages after an entry for 9 June 2009 and three pages before an entry relating to a conference in Cambridge which takes place every year in the first week of July. This entry, now attached as **Exhibit RJT 52**, refers to a meeting at the Newspaper Society, probably with David Newell (Director General). The note covers three main issues: DPA, FoI and

Section 55. Under that third heading, my notes read “Enforce law vigorously. s55; Br. of confidentiality. No new laws”. Without reading too much into that note, it does at least suggest that at that time the prospect of prosecuting journalists was in my mind.

8. The next relevant entry from my personal notebooks, now attached as **Exhibit RJT 53**, records various “update” points made around the table in October 2003 by about 11 members of the ICO’s Senior Management Group which then met monthly. The seventh entry reads “JL – Motorman. Publicity soon”. I do not know what that entry means but it may suggest that she (Jean Lockett) wished to share with other senior managers that the case was under active consideration and would lead to good publicity for the Office.
9. That SMG meeting almost certainly took place soon after the conference with counsel which I now know took place on 3rd October. It is worth highlighting that the Attendance Note records Bernard Thorogood advising (MOD100048711) “*With regard to prosecution of the press. Although there is evidence to support a prosecution, a prosecution would not be considered favourable because of the financial aspect.*” The note later records “*The Met have a second phase in their minds which may involve prosecuting of reporters. This would be solely in relation to the criminal record checks.*” (MOD100048712)
10. The next written record is the Attendance note made by Karen Nolan of her discussion with counsel on 20th October. Bernard Thorogood is recorded as advising
“Prosecution of the Press – the scale of the case requires substantial manpower. Several cases and the cost would be excessive both to investigate and prosecute.
It would have to be that there was a good purpose to be served in prosecuting the Press.”
11. My letter to Sir Christopher Meyer at the PCC (**Exhibit RJT 3**) was sent on 4th November. I have no recollection of any meeting or discussion, but I suspect that I was orally briefed by Karen Nolan around this time. It now seems probable that my letter was prompted by the outcome of the 3rd October conference and the 20th October discussion. I think it is likely that at least the first draft of the letter was prepared for me, but I cannot be sure. Nor can I recall whether the decision to approach the PCC was put to me or was my own idea, faced with the prospect of not being able to prosecute journalists. It may well have been the latter as (in my previous career) I had had good experiences with the Advertising Standards Authority and I was aware of what the Select Committee had said about the need for the PCC Code to be amended.
12. My meeting with Sir Christopher Meyer took place on 27th November. My personal notebook contains my own notes from that meeting, now attached as **Exhibit RJT 54**, which drew upon my speaking note (**Exhibit RJT 5**) and led to my report-back e-mail (**Exhibit RJT 6**).

13. My second meeting with Sir Christopher Meyer took place on 2nd December. There is no record of that meeting in my personal notebook.
14. The Opening Advice from Counsel is dated 22nd December. It seems clear from paragraph 5 that Counsel had been told about the approach to the PCC and probably about the outcome of the two meetings.
15. I do not recall any sight or knowledge of that Opinion and do not fully understand the reference to “policy considerations”. But, although I cannot recall any discussion, it seems likely that this was the time (as set out in para. 7 of my 4th Witness Statement) that:

“.....a more general understanding developed that the Office would see how the case against the investigators and public officials turned out before actively considering any further enforcement action. I was also conscious that any action against journalists would be a major logistical, evidential and legal challenge, would almost certainly be strongly resisted and would be very expensive for an Office with very limited resources.”

Evidence from Mr Owens

16. Although it is not complete, I suggest that the sequence of events set out above is sufficient to cast substantial doubt over the very damaging allegations made by Mr Owens. In particular:
- the evidence is inconsistent with his claim that “within weeks of commencing our work [we] were informed not to make contact with any of the newspapers [or]... interview any journalists”;
 - the gap of almost 9 months is likewise inconsistent with his claim that he was “within weeks” told that “this was the decision of Richard Thomas and that he would deal with the press involvement by way of the Press Complaints Council”;
 - Mr Owens had attended the conference with Counsel in Birmingham on 3rd October at which the possibility of prosecuting journalists was discussed and advice received that “a prosecution would not be considered favourable because of the financial aspect”. The PCC was not mentioned at the conference.
 - He was a copy recipient of my e-mails of 14 November (RJT 4) and 27th November (RJT 5) which followed my meetings with Lord Filkin (the LCD Minister) and Sir Christopher Meyer.
 - I do not know if he saw Counsel’s Advice of 22nd December, but it would be strange if not.

I believe the facts in this Witness Statement are true,

Richard Thomas CBE, 6th December 2011