

## The Leveson Inquiry

### Witness Statement for Part 1, Module 1

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#### WITNESS STATEMENT OF MARK THOMSON

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I, Mark Thomson of Atkins Thomson, 41 Maiden Lane, London, WC2E 7LJ, solicitor and Advocate of the Senior Courts, will say as follows:

1. I make this statement in connection with my role as a Core Participant in the Leveson Inquiry.
2. A paginated bundle has been prepared of the documents which I refer to in this statement, marked "MT1". Where I refer to page numbers in this statement, I am referring to pages in "MT1". I exhibit confidential documents at MT2.

#### Introduction

3. I am a solicitor advocate of the Senior Courts. I graduated from Cambridge University in Natural Sciences in 1981. I studied law at the College of Law in Chancery Lane, was articulated at McKenna and Co and at Schilling and Lom and qualified in 1988. I became a partner at Schilling and Lom in 1992 and worked there until I left to join Carter-Ruck in 2002. Most of the work undertaken was media law, but I also did other types of litigation and occasionally some criminal law. I did similar work at Carter-Ruck and worked there until June 2009 when I joined Graham Atkins to set up our firm Atkins Thomson. All in all, therefore, I have been a media lawyer for well over 20 years.

4. I have acted for numerous politicians, actors, singers, businessmen and companies mainly representing them in complaints about media publications or threatened media publications. However I have also acted for journalists, publishers/broadcasters such as Private Eye (when I worked with Keith Schilling at Schilling and Lom), Oxford University Press, Carlton Books, Penguin Books, Carlton TV, and briefly for *OK!* Magazine. I also acted for the gym in the Princess Diana gym photo case.
5. I have also advised the Labour Party about media issues and regulation as well as senior Labour politicians such as Lord Waheed Alli, Baron Sawyer, and Lady MacDonagh.
6. In the course of my work as a civil litigator, I have dealt with media regulation as well. A good example of this is that in about 2000 Lord Alli, then a director of Carlton TV, asked me to advise Carlton TV about defamatory allegations made by the News of the World in relation to some of its programs. Proceedings were issued for libel and the News of the World eventually apologised and withdrew the allegations. At the same time, I also had to deal with an extensive and extremely time consuming investigation by the TV regulator the ITC into Carlton TV programmes, caused as a result of the News of the World complaining to the ITC. This was a few years after the ITC had investigated the Carlton programme "The Connection" which resulted in a £2million fine. The ITC investigation was detailed and thorough and they demanded and were given access to not only the programmes themselves but all relevant rushes and unbroadcast material. The ITC cleared Carlton.
7. I have also dealt with other regulators such as the General Medical Council, OFCOM, and the PCC. I will explain my experience and views of the PCC in more detail below and also with specific reference to the example which Hugh Grant gives in his evidence of his complaint about the Daily Mirror publication of medical information, and the PCC handling of that complaint and the subsequent legal action. I acted for Hugh Grant in those complaints.

8. Although I have acted for clients against magazine publications, broadcasters and broadsheets newspapers, most of my work has involved complaints against tabloid/popular newspapers such as The Mirror, The Mail and the Express, The Star and their Sunday counterparts as well as The Sun and the News of the World.
9. In 2002, I contributed to the book "*Privacy and the Media: the developing law*" edited by Hugh Tomlinson QC, and have written numerous articles about libel privacy and media regulation. Exhibited at **Tab 1 of MT1**, is a copy of Chapter 6 of the book.
10. At the moment, I am (and have been) heavily involved in representing numerous victims of voicemail interception including Kelly Hoppen, Joan Hammell, Guy Pelly, Jude Law, Sienna Miller, Hugh Grant, Simon Hughes MP, Ben Jackson, and Ciara Parkes, the last five of whom are Core Participants in this inquiry.

#### **Breach of confidence actions**

11. Whilst at Schilling and Lom, I was involved in a number of actions for breach of confidence. One very relevant example is that I acted for Hugh Grant in 1996 – 1997, in respect of his complaint against the Mirror initially in the form of his complaint to the PCC and then subsequently his legal action. I have also recently reacquainted myself with some of the papers and pleadings and the original article which is now the subject of a permanent undertaking to the Court. The original article referred to a leak of medical information from a nurse at a London hospital and gave rise to a detailed Hospital investigation into the nursing staff and also concerns from Hugh Grant about the security of his doctor.
12. After the extremely lengthy and unsatisfactory dealings with the PCC, legal proceedings were issued for breach of confidence against the Daily Mirror. The Mirror sought to defend the claim for breach of confidence despite the PCC adjudication and subsequently an application was made for summary judgment which was resisted by the Daily Mirror. The Mirror acknowledged that the information had not in fact come from a nurse, but some other hospital employee. I recall that in the course of the

hearing the Mirror abandoned their defence offered wide permanent undertakings to the Court and submitted to a Court order providing for damages and costs.

13. I recall that in the 1990s, I was involved in a number of similar such actions for breach of confidence including applications for prior restraint injunctions. The subject matter normally concerned personal relationships, and/or sexual and medical matters and in one case was in respect of an intrusive street photograph taken by paparazzi of a client who had a serious medical condition.
14. Even before the Human Rights Act, the equitable law of confidence was developing considerably under the common law to protect individuals from threatened intrusive publications. In nearly all cases, at that time, prior notification was given by the newspaper and, where interlocutory injunctions were applied for and granted, such actions generally settled quickly with permanent undertakings to the court being given. Critically, in most cases, the orders or undertakings to the court were respected and the matter was concluded. I do not recall that any of the actions were defended on the basis of iniquity or that publication was in the public interest.
15. However, from about 2002, I began to notice that in the case of really intrusive stories, the popular press would more often than before give no prior notice of stories, which meant that the victim would often not pursue any complaint after the event since the damage was already done. Occasionally a client would want to apply for an interim injunction to remove the continuing publication on the internet or prevent repetition but this was by no means common since the time and expense of doing so was so considerable.

#### **Media and Paparazzi Harassment - Sienna Miller**

16. One of the clients whom I have acted for over recent years is Sienna Miller. From about 2004 until 2008 the popular press published hundreds of intrusive and/or inaccurate articles about her normally without any prior notice. Throughout that whole period it appeared to Sienna and her family at the time that she was under constant surveillance because journalists and paparazzi photographers would appear

without warning at her home or her mother's home, would follow her in fast cars around London or to her sister's home in the country. I have personally witnessed a number of car chases when photographers have jumped red lights or driven dangerously to pursue her. It is terrifying.

17. At that time the PCC did assist and sent out warnings to the media as a result of concerns raised by me. I exhibit at **Tab 1** of confidential exhibit **MT2** a copy of an email I sent to the PCC which was circulated by the PCC. However the intrusive tabloid articles continued, as did the frenzied pursuit by paparazzi who were providing pictures to the newspapers. I have numerous photographs and/or videos of paparazzi pursuit of Sienna Miller. The PCC was not able to stop publication of such articles and also had no jurisdiction over freelancers and photographers, or photographic agencies. A substantial number of these articles were highly intrusive, included pictures taken by paparazzi photographers in circumstances of blatant harassment, and contained a number of inaccurate statements.
18. One particularly bad incident was in October 2007 when The News of the World published without any prior warning naked pictures taken of Sienna Miller whilst on the secret closed set of a film. The photographer must have hidden on set and taken a series of intimate photographs and the unknown photographer. Proceedings were issued and an injunction was obtained against the photo agency concerned. There were similar publications and similar actions taken over the next 12 months which culminated in two actions, one against the News of the World, The Sun and Big Pictures and the Second action for harassment against Big Pictures and their owner Darryn Lyons. It was only after the consent order was made by the High Court in this harassment action and a substantial award of damages, that the repeated and intense campaign of harassment, including intrusive media stories, ceased.
19. Although the PCC also assisted in relation to the harassment activity, it was clear that they were powerless to stop the reporting of such frenzied media activities and also powerless to stop the activities of paparazzi. It was only as a result of the court orders, legal actions and substantial awards of damages that the media were finally

deterred. She became well-known for enforcing her rights legally and so the press largely moved on to another (less risky) target. I believe that similar such activity stills occurs today so that individuals are targeted, followed and harassed when there is no possible public interest and that this happens because no one stops it happening.

#### **2009 Evidence before the Culture, Media and Sport Select Committee**

20. In early 2009 I gave written and oral evidence before the Culture Media and Sport Select Committee (the "CMS") regarding their investigation into Press Standards. The CMS report was published in early 2010. I exhibit at **Tab 2** of **MT1** the official transcript of my written evidence. I rely on this written evidence and would add two points to those mentioned in my written evidence.

21. First that the McCann cases and those brought by Robert Murat and Chris Jefferies, are indeed powerful examples showing that press standards have fallen in the last 10-15 years and that in the current 24 hours news and internet media age the human effect of such activity by the media on their victims can be and has been devastating. Based on these examples, my own experience and points raised in my evidence to the Culture Media and Sport Committee it is my strong view that the PCC has failed to improve or enforce improved press standards. From the point of view of my clients, the PCC does not provide any adequate remedy to prevent inaccuracy, unfairness or intrusion.

22. Second my opinion has changed and I now consider that exemplary damages in actions for invasion of privacy and/or breach of confidence are appropriate and necessary in exceptional circumstances, notwithstanding the first instance decision of the Court in the *Mosley v News Group Newspapers* action in 2008.

#### **Prior Restraint as the Prime remedy and Press Regulation**

23. As I explained in the chapter 6 of the book *"Privacy and the Media"* in 2002, the major flaw in regulators like the PCC is that they do not have power to prevent a threatened publication or broadcast. This is not just an academic legal point but in the case of Sienna Miller (and another client of mine, Lily Allen, who was also the victim of this

kind of aggressive media behaviour) the PCC were and are powerless to stop or deter the popular press from publishing intrusive articles, including paparazzi photographs.

24. As the Courts have recognised in numerous decisions such as in the Mosley case and in *Douglas v Hello!* (the first post Human Rights Act privacy case), the primary, and actually, the only real, remedy for an invasion of privacy is to stop it happening in the first place, whether by injunction or some other way. Once private information about someone is made public, its private nature is gone forever. Worse still, it is likely to be repeated on the internet and available for ever.
25. With only a few exceptions, I have not advised clients to make privacy complaints to the PCC unless it involved media scrums, harassment or the paparazzi. Their prepublication harassment notification service has however been at times useful especially since they now notify photographic agencies about areas of concern as well as the national media. However, there are some clients for whom the only effective media deterrent will be a court order.

#### **Human Rights Act (HRA) and the PCC**

26. Another related problem of the PCC is that on many occasions they appear to represent and speak for the press which has always appeared to me to be inconsistent with their role as impartial mediator and adjudicator of complaints against the media. One example of this is when Lord Wakeham, then Chairman of the PCC, in the committee stage of the Human Rights Bill in 1997, sought initially to propose, on behalf of the media, that the media should be immune from the Human Rights Act in order to prevent any privacy law affecting the media. As an alternative Lord Wakeham agreed to what is now section 12 of the HRA, with a view to get special protection for the media. Indeed it is clear from his recent evidence to the Joint Parliamentary Committee on Privacy, that Lord Wakeham was hoping that section 12 HRA would seek to prevent privacy actions coming to court, but instead to the PCC.
27. It is important to note that section 12 of the HRA has made the threshold tests for interim injunction harder to obtain than before – in effect, a potential claimant has to

show that he or she would be more likely than not to succeed at trial on proving the threatened publication is unlawful. Despite what the press say, for an interim court measure, that is a high threshold, and one which is meant to reflect the importance of freedom of speech. This point was recognised by Jack Straw and Professor Phillipson in their evidence before the Select Committee. A copy of their evidence to the Joint Committee is exhibited at **Tab 3 of MT1**. I also exhibit at **Tab 4 of MT1** a copy of Jack Straw's recent speech on this topic.

28. The problem recently appears to be that having failed to lobby for immunity from the HRA, the media has sought to get round privacy laws by a number of other means, ranging from simply denigrating privacy claimants such as in the Naomi Campbell case or subsequently in the cases brought by Loreena McKennitt, Max Mosley and Sienna Miller cases; or circumventing the law or avoiding injunctions by deliberately not giving notice (as famously happened in Mr Mosley's case) or by using the social media or the internet to break the stories or frustrate injunctions by disclosing the identities of people whom the Court has decided it is right to grant orders to protect their privacy. Furthermore, as is clear from the unlawful trade in personal information, and in particular 'hacking', some sections of the press have just ignored the law altogether.

#### **Phone hacking**

29. I confirm that I am acting for numerous victims of mobile phone interception including Sienna Miller, Ben Jackson, Simon Hughes, Ciara Parkes and Hugh Grant, who are Core Participants.
30. In respect of the Sienna Miller case, on 1<sup>st</sup> June 2010, we applied to Mr Justice Sweeney for Norwich Pharmacal disclosure of documents from the Metropolitan Police. At that time the hearing was in private, and the Sienna Miller' name was anonymised to AZP, because she wanted time to consider the evidence before making the decision to take legal action. After considering the considerable evidence available proceedings were issued in October 2010. A copy of her Re-amended Particulars of Claim is exhibited at **Tab 2** of my confidential Exhibit **MT2**.

31. Newsgroup Newspapers Limited ("Newsgroup") eventually admitted unconditionally all liability in her claim and as a result agreed to a statement in open court, a copy of which is at exhibited at **Tab 5 of MT1**. Newsgroup admitted that Sienna Miller's mobile telephone messages had been intercepted and the information obtained as a result of the hacking was used for articles and that she and her friends had been targeted for over a 12 month period. They also admitted that she had been put under surveillance and harassed as well as hacking her email account in 2008. A copy of her Re-amended Particulars of Claim is exhibited at **Tab 2 of MT2**.
32. I also exhibit in a confidential exhibit at **Tab 3 of MT2** the re-amended Particulars of Claim in the Ben Jackson action. The document, like the Sienna Miller Particulars, is detailed and refers to a number of names of former employees of NGN/News International and this document therefore may need to be ciphered in order to allay concerns from the MPS concerning their investigations. However, in summary, there is clear evidence and/or clear inferences to be drawn from evidence that:
- (a) Voicemail interception in the News of the World was endemic from about 2000 and there was a widespread and pervasive culture of illegal accessing private information in order to produce stories for publication;
  - (b) Numerous journalists were in almost constant contact with and commissioned Glenn Mulcaire (one of a number of such private investigators) to undertake phone interception and other unlawful activities of many hundreds of victims and these victims included politicians, victims of crime, sportsmen, actors, actresses, TV presenters and members of the Royal Family;
  - (c) The News of the World investigators also procured, by corrupt or unlawful means, disclosure from telephone companies or other related companies, highly confidential information including mobile telephone call data, billing data, text data and location data;
  - (d) Such activity was not only practised at all levels by journalists but it was also condoned and encouraged by others at the News of the World;

- (e) On occasion Glenn Mulcaire conducted such activity for other newspapers;
- (f) Newsgroup Newspapers and News International conspired to conceal and lie about the true extent of telephone hacking. As has been confirmed in evidence by Julian Pike, their former solicitor, the Culture Media and Sports Select Committee were misled by representative of News International in 2009:
- (g) News International and News Group newspapers allowed and/or permitted destruction of a vast amount of relevant evidence including the journalists' computers and emails.

33. It also apparent from an analysis produced by the Metropolitan Police in third party disclosure from call data to and from a private investigator Glenn Mulcaire from January 2005 to August 2006 that he was in almost constant telephone communication with at least [ ] journalists and others from News International.

34. In addition it is apparent from a separate call data analysis produced by the police that Glenn Mulcaire and [ ] News of the World journalists were undertaking telephone interception during the period where they had call data, from January 2005 up to August 2006.

35. I am also aware that in May 2010, News International lawyers planned to and did put some of the claimant lawyers under surveillance for a considerable period of time. It is possible that I was also put under surveillance and I am about to meet the police to consider these matters. Such actions are in my view not only intrusive and unlawful but also a blatant interference with officers of the Court.

36. It is clear that from the evidence that has been disclosed and/or the evidence that I have obtained in the phone hacking litigation, this activity was not confined to one newspaper or one newspaper group but common industry practice. Paul McMullan

admitted as much in his meeting with Hugh Grant, which was the subject to matter of an article a copy of which is exhibited at **Tab 6 of MT1**.

## **PCC**

37. In over 20 years of working in this field, I have met or been involved with a number of the people working for the PCC. I like and respect them as professionals. However in my view they simply do not have the tools to act effectively. They cannot fine, or investigate properly press misbehaviour; and they generally do not become involved prior to publication. I believe the PCC has hopelessly failed as a regulator in maintaining standards or protecting privacy of the victims of the media excesses. Unfortunately, the examples of such failure speak for themselves.
38. I agree with the severe and detailed criticisms in chapter 14 of the book "*Media Law*" by Geoffrey Robertson QC and Andrew Nicol QC (now Mr Justice Nicol), in particular the passage entitled "*Does The PCC Work*"(at section 14-036), that the current PCC is a publicity stunt/fig leaf brought in to placate politicians and prevent them from bringing in a statutory regulator and a statutory privacy law, and the PCC has failed to protect individuals' privacy, raise standards and provide proper remedies. It is because this has been maintained and accepted by Politicians that there still remains no serious independent media regulator which has the power to maintain press standards, investigate of its own initiative and protect victims. A copy of the relevant extract of Chapter 14 is exhibited at **Tab 7 of MT1**.
39. Despite the media attempts to gain immunity from the HRA, the law has now developed so that there is a now comprehensive and detailed protection of individuals privacy rights in this jurisdiction, including the law of breach of confidence, misuse of private information, the Protection from Harassment Act and the Data Protection Act. The problem is that the tabloid media have tried to get round the law and in some cases have thought they are above the law.

## **Conclusion**

40. Based on my professional experience, going back to the late 1980's, I have no doubt that there is a widespread culture of the illegal obtaining and use of private information by popular newspapers. On numerous occasions, my clients have been photographed and/or followed and stories have been published or threatened in circumstances where information as to their movements or private lives could not have been obtained legally. I strongly believe that blagging, bribery and unlawful interception of voicemail messages has been widespread for many years. The PCC has no proper powers to investigate such wrongdoing and no ability to deal with those who are responsible.

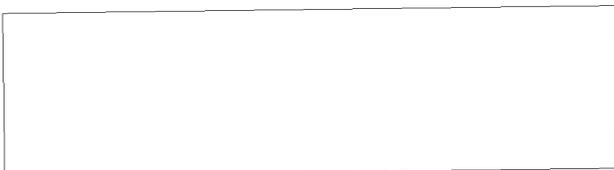
41. There needs to be an effective regulator, who would not only adjudicate on complaints, but be able also to instigate investigations into breaches and where necessary fine transgressors and issue pre-publication warnings for threatened invasions of privacy. There also needs to be effective remedies and sanctions under civil and criminal law so that the tabloid media do not continue to trade unlawfully in private information with impunity.

**Statement of Truth**

I believe that the facts stated in this witness statement are true.

DATED the 7th day of November 2011

SIGNED:



Mark Thomson