

NI Group Limited
J. Harding
Second Statement
"JH1 to JH4"
6 February 2012

**IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND
ETHICS OF THE PRESS**

**SECOND WITNESS STATEMENT
OF
JAMES HARDING**

1. This statement responds to a section 21 notice sent to me on 27 January 2012 (the "Inquiry Notice") and is my second statement to the Inquiry. It is concerned with The Times' handling of an article published in The Times on 17 June 2009, which I will refer to as the "NightJack story". A copy of this article appears at page 1 of Exhibit JH1.
2. The Times did not, unfortunately, conduct a full internal investigation at the time. This statement therefore draws from my memory of what happened and the accounts of colleagues. The key people I have spoken to are Martin Barrow, the then Home News Editor, David Chappell, the then Managing Editor, and Keith Blackmore, the Deputy Editor. On my behalf, Linklaters LLP ("Linklaters") has also spoken with Alastair Brett, the former legal manager for The Times and The Sunday Times. I have also drawn on The Times' own recent reporting of the incident (set out at page 2 of Exhibit JH1) and I have been shown copies of emails and paperwork relating to the matter.
3. I set out the Inquiry's questions and my answers below.
 - 1 ***A full account of the hacking itself, covering:***
 - (a) ***The name, position and experience of the hacker and how long he had then been employed by The Times for.***
 4. The reporter in question, Patrick Foster, was a staff reporter, aged 24 at the time of the incident. He applied for a graduate trainee scheme with The Times in 2006 and joined the paper as a junior reporter in August that year.
 - (b) ***Whose email account he is believed to have hacked and, if it is known, particulars of the email account.***
 - (c) ***When the email account was hacked, including, if known, the date/s on which the account was accessed.***

(d) ***The emails from the hacked account which were accessed and/or read and/or copied and/or printed out by the hacker (or anyone else at The Times).***

5. I understand that in May 2009 Mr Foster set out, on his own initiative, to identify NightJack, a police officer who was blogging anonymously about crime, policing and the justice system. Early on in his investigations, it appears that Mr Foster, again on his own initiative, sought unauthorised access to NightJack's email account. I do not know the details of the account. Nor do I know the date or dates on which it was accessed other than that I believe it was probably in May 2009.

6. I do not have and have never seen copies of any emails from the account. I am told by Linklaters that no such emails have been found amongst Mr Foster's emails from this period. I do not believe that anyone other than Mr Foster accessed the email account or that anyone else at The Times knew that Mr Foster was intending to access the account, or saw any information from the account.

(e) ***Whether any information accessed by the hacker in emails stored in the account was such as to identify the anonymous blogger known as NightJack.***

(f) ***Whether any information accessed by the hacker in emails stored in the account was such as to assist the hacker or any other person in any way whatsoever to identify NightJack. For the avoidance of doubt, any clue contained in, or line of inquiry inspired by, the material which was accessed when the account was hacked should be included.***

7. I do not know what information Mr Foster gleaned from access to Mr Horton's email account, but I understand that the information enabled Mr Foster to identify Mr Horton as NightJack.

2 ***An explanation as to when, how and in what circumstances managers at The Times came to learn about the occurrence of hacking.***

(g) ***When, how and in what circumstances did managers at The Times first learn of, or suspect that, a journalist had accessed another person's email account without authority? Please name the managers.***

(h) ***When, how and in what circumstances did you personally first hear about the matter?***

8. It appears that Mr Foster first told Martin Barrow, the then Home News Editor to whom Mr Foster reported, that he had been able to access NightJack's email account and had thereby been able to identify NightJack as Mr Horton. I believe this conversation took place on 19 May 2009 (see the email from Mr Foster to Mr Barrow dated 19 May 2009, a copy of which appears at page 1 of Exhibit JH4).

9. Mr Foster also informed Alastair Brett, the then legal manager for The Times and The Sunday Times. From the documents, it looks as though Mr Foster told Mr Brett on 20 May 2009 (see the email from Mr Foster to Mr Barrow dated 20 May 2009 and the email from Mr Foster to Mr Brett of the same date, copies of which appear at pages 2 to 4 of Exhibit JH4).
10. On 27 May 2009, the News Desk raised the prospect of a story with me in passing (see the email from Mr Barrow to Mr Foster dated 27 May 2009, a copy of which appears at page 7 of Exhibit JH4). On the same day, I also received an email raising the possibility of an injunction. I forwarded this email to Mr Barrow and Keith Blackmore, the Deputy Editor (see the emails at pages 10 to 11 of Exhibit JH4). At this stage, I was wholly unaware of Mr Foster's behaviour.
11. I understand that David Chappell, the then Managing Editor, learned of the existence of the litigation late on 3 June 2009 (see the email exchange between Mr Foster and Mr Chappell dated 4 June 2009, a copy of which appears at page 21 of Exhibit JH4). Mr Chappell's recollection is that he then spoke briefly with Mr Brett on the morning of 4 June 2009 (the day of the hearing), and that Mr Brett then came to see Mr Chappell later in the day following the hearing. Mr Chappell believes that it was at this meeting in the afternoon of 4 June 2009 that he was first informed by Mr Brett that there was a concern that Mr Foster had gained unauthorised access to an email account and that Mr Chappell was first briefed by Mr Brett on the litigation.
12. Following the hearing on the evening of 4 June 2009, Mr Brett sent a memo in an email to Mr Chappell, copied to me, which noted that Mr Foster had gained unauthorised access to NightJack's email account and also explained the litigation. A copy of this email appears at pages 23 and 24 of Exhibit JH4. I do not believe I read that email but I understand that Mr Chappell did.
13. I personally first came to hear about the matter the following day, i.e. 5 June 2009, when Mr Chappell raised the matter with me in a meeting. At this meeting, Mr Chappell told me about the story and that there was a concern that Mr Foster had accessed Mr Horton's email account. At that time, it was not clear to Mr Chappell or to me exactly what Mr Foster had done, but the suggestion that he had accessed someone's email account was a matter of great concern to both of us. It was clear that we had to deal with Mr Foster's behaviour and we agreed that we would await Mr Justice Eady's judgment before doing that.
14. The decision to take the matter to court was Mr Brett's. I was not informed of the instruction of counsel, any communications with Mr Horton's lawyers, or the decision as to what material to put before the Court. I do not recall any discussion with Mr Chappell at the 5 June meeting about what the Court had been told; at this point I did not know what our counsel or the Court had been told.

15. Mr Brett was a very experienced legal manager. I was deeply frustrated that he had not consulted with me on the decision to take legal action, but, in any event, I would have left the conduct of the litigation, including what material was put before the court, to him.
- 3 ***An explanation as to the action which was taken in relation to the NightJack story once the unauthorised access to email became known to management, including:***
- (i) ***Whether the hacker and/or any other journalist working on the story by then knew NightJack's identity.***
- (j) ***Whether the hacker and/or any other journalist working on the story by then correctly suspected NightJack's real identity.***
16. I do not know what information Mr Foster gleaned from the email account, but it is my understanding that by the time Mr Foster told Mr Brett and Mr Barrow about the unauthorised access, he already knew or at least strongly suspected NightJack's identity.
- (k) ***Whether, and if so what, advice or instructions were given by management to the journalist about the use which he could make of information which had already been obtained through the unauthorised email access.***
- (l) ***What instructions were given to the hacker about the future conduct of his work on the NightJack story, when and by whom.***
17. It is my understanding that Mr Brett told Mr Foster that if he wanted to publish a story about NightJack's identity, he would have to identify him through legal means. Following this, Mr Foster appears to have sought to do that. I understand that Mr Barrow was aware that Mr Foster was continuing to pursue the story in this way.
- 4 ***An explanation of the decision to publish the story which identified the blogger NightJack.***
- (a) ***Who decided that the allegation that Mr Horton was NightJack should be put to Mr Horton, when and in what circumstances. In particular, the Inquiry wishes to know whether it was a decision taken by the journalist alone or whether there was any managerial involvement.***
18. The decision to put the claim to Mr Horton on 27 May 2009 appears to have been Mr Foster's, although Mr Barrow was clearly aware that the claim had been put to him (see the email exchange between Mr Foster and Mr Barrow dated 27 May 2009, a copy of which appears at page 7 of Exhibit JH4). There was no managerial involvement to my knowledge, but it is standard practice for journalists on The Times to give prior notification before putting a story forward to be considered for publication and I understand that Mr Brett had told Mr Foster that he expected him to put the story to Mr Horton prior to doing that.

(b) *If there was any managerial involvement in the decision to put the allegation to Mr Horton, what consideration, if any, was given to the fact that the journalist working on the story had, without authorisation, accessed email?*

19. Not applicable.

(c) *In deciding to resist the application which Mr Horton subsequently made for an injunction, what consideration (if any) was given by The Times to the fact of the use of unauthorised email access in pursuit of the story?*

20. Mr Brett took the decision to resist the injunction. I do not know exactly what consideration Mr Brett gave to the fact that Mr Foster had gained unauthorised access to an email account, but I understand that Mr Brett told Linklaters on 2 February 2012 that he decided not to inform leading counsel for The Times, Antony White QC, or the Court about the issue because he took the view that this information provided to him by Mr Foster was confidential and privileged, that it would incriminate Mr Foster, and that in any event Mr Foster had been able to identify Mr Horton through legitimate means. At the time, I did not know that Mr Brett had taken this decision.

21. I understand that Mr Brett has told Linklaters that he did not believe at the time, and still does not believe, that the decision he took resulted in the Court being misled.

(d) *Was the Court which considered the injunction proceedings informed about the unauthorised access to the email account? If not, why not?*

22. The Court was not informed about the unauthorised access to the email account, even though Mr Horton's lawyers made the allegation that this had happened. The case was defended on the basis that Mr Foster had identified Mr Horton using legitimate means. I have explained my lack of knowledge of this at paragraph 14 above.

(e) *Who made the final decision to publish the story which named NightJack?*

(f) *In deciding to publish the story, what consideration, if any, was given to the fact of the unauthorised email access? If the issue was considered, what was the resultant thinking?*

23. On 12 June 2009, Mr Justice Eady's judgment was made available to the parties in draft. I did not read the judgment at the time but he found in favour of The Times. Specifically, Mr Justice Eady decided that Mr Horton could not reasonably expect his identity as the anonymous blogger, NightJack, to be kept private, and that, in any event, the privacy/public interest balance came down in favour of publication because of the public interest in disclosing that Mr Horton, a serving police officer, appeared to be disclosing confidential information in breach of his duties.

24. On 15 June 2009, a meeting was held in my office between Mr Chappell, Mr Blackmore and me to discuss publication. Discussion at that meeting focussed on whether publishing

a story identifying NightJack was in the public interest. We debated the arguments for and against. We also discussed whether in effect we had little option but to publish because The Times had pursued High Court action and the injunction had been lifted. In these circumstances, I decided to publish.

25. At 9.30am on 16 June 2009, Mr Justice Eady handed down judgment in the case. A copy of the judgment appears at pages 172 to 180 of Exhibit JH3. The following day, The Times published an article on pages 16 and 17 revealing NightJack's identity. A copy of the published article appears at page 1 of Exhibit JH1.

26. I can now see that we gave insufficient consideration to the fact of the unauthorised email access in deciding whether or not to publish.

5 ***An explanation of the disciplinary action which was taken by The Times against Mr Foster.***

(a) ***When, how and in what circumstances did The Times discover evidence indicating that Mr Foster (if it was him, or the person concerned if it was not him – this also applies to the questions below about Mr Foster) had accessed an email account without authority?***

27. See my answers to question 2 above.

(b) ***Did Mr Foster at any time deny that he had accessed an email account without authority?***

28. Not to my knowledge. As I note below, he wrote an email of apology to me and to Mr Chappell following his disciplinary meeting with Mr Chappell.

(c) ***When was disciplinary action initiated and whose decision was it to take such action?***

29. At the 15 June meeting, I instructed the Managing Editor to take disciplinary action against Mr Foster. He had undertaken a highly intrusive act without seeking prior approval. We discussed dismissing him, but we decided to issue him with a formal warning – a clear statement, given verbally and in writing, that if he was found guilty of the smallest misdemeanour over the following six months, he would be dismissed immediately. Mr Chappell held a meeting with Mr Foster and delivered the verbal warning the following day. Mr Foster subsequently wrote to me, to apologise, saying that he offered no defence for his actions. A copy of his email appears at page 55 of Exhibit JH4. Mr Chappell sent him the formal warning, in writing, the following week. A copy of the formal warning sent to him appears at pages 59 to 60 of Exhibit JH4. (You will see that it refers to a hearing on 9 June 2009. This must be an error and refer to the hearing of 4 June 2009.)

(d) ***Was the disciplinary action taken against Mr Foster formal or informal? Insofar as it is necessary to put this answer in context, please briefly explain the disciplinary process/processes in place at The Times.***

30. See above.

(e) ***Was the resultant warning written or oral?***

31. See above.

(f) ***Was the resultant warning time limited (i.e. was there a period of time after which it would be removed from his file)?***

32. It was noted on the face of the formal warning that it would expire after six months – in other words that it would thereafter be disregarded in deciding the outcome of any future disciplinary proceedings, but it remained on his file until his subsequent dismissal for unrelated reasons.

(g) ***For what reasons and in what circumstances was a warning considered to be the appropriate sanction.***

33. A formal warning is the most serious sanction short of dismissal. I chose that course of action because, at the time, I believed it was firm and proportionate. Mr Foster was a young reporter. He had done the wrong thing. He had not tried to hide it. He appeared to have been advised by the company's legal manager and followed that advice. A formal warning was a clear signal to Mr Foster that his career at The Times was at risk. He was on probation. Mr Foster was subsequently dismissed on an unrelated matter in 2011.

(h) ***Was Mr Foster asked whether his unauthorised access of an email account was a one off occurrence or whether he had used the technique on other occasions and/or in pursuit of other stories?***

(i) ***What assurance does The Times have (if any) that this was an isolated incident?***

34. As I have said, we did not run an internal investigation at the time. Mr Foster has since left the paper, but I note that on the one occasion we know that Mr Foster did seek to gain unauthorised access to an e-mail account while at The Times, he chose to raise the issue. As the Inquiry is aware, the Management and Standards Committee of News Corporation (the "MSC") has retained Linklaters to carry out a review of journalistic practices across The Times and other News International titles. That review is continuing but I am not aware that any issues have yet been identified concerning The Times. In addition, in February 2011, Anoushka Healy, the current Managing Editor of the paper, sat down with each of the paper's relevant department heads individually in an effort to identify any issues or concerns about the sourcing of stories. That exercise did not identify any concerns. For these reasons, as I wrote to Lord Justice Leveson, I have had no evidence or reason to

believe that any other such incident or anything like it has happened during my time at The Times. A copy of my letter to Lord Justice Leveson is set out at page 1 of JH2.

6 An explanation of the state of knowledge of more senior executives about the unauthorised email access.

(a) ***When, how in what circumstances and in what terms (if at all) did you first inform Mr Mockridge of the fact of the unauthorised access?***

35. I informed Mr Mockridge in July 2011 (shortly following his appointment as Chief Executive of News International) of the concern that a journalist on The Times had, of his own initiative, gained unauthorised access to an email account. I explained that the individual had been disciplined and subsequently dismissed on an unrelated matter. We did not discuss the circumstances of the litigation.

(b) ***When, how, in what circumstances and in what terms (if at all) did you first inform Mr James Murdoch of the fact of the unauthorised access?***

36. As far as I can remember, I have never discussed it with James Murdoch.

(c) ***When, how in what circumstances and in what terms (if at all) did you first inform Mr Rupert Murdoch of the fact of the unauthorised access?***

37. Following the publication of a Times report into the issue on 19 January 2012 (see page 2 of Exhibit JH1), Rupert Murdoch mentioned to me in passing that he had seen the report. We have not otherwise discussed it.

(d) ***If and insofar as you personally have not spoken to one or more of the persons referred to in (a) to (c) above, if you otherwise have knowledge which would assist us as to whether and when they became aware of the issue, please explain your understanding of the position.***

38. In 2009, I discussed with the former chief executive of News International, Rebekah Brooks, my concerns with Mr Brett's performance and I believe I may have raised in that context the concern that a reporter had gained unauthorised access to an email account. Mr Brett was an employee of News International and he did not work only for The Times. For that reason, it was not up to me to dismiss him. To be clear, my concern at that time with Mr Brett was that he had pursued litigation on behalf of The Times without informing me.

39. In July 2011 I also informed the MSC, who are charged with investigating concerns at the News International titles and passing relevant information onto the police. I told them and Linklaters the information reflected in my first statement to the Inquiry - that there was a concern that there had been an isolated incident of a journalist at The Times gaining unauthorised access to an email account and that he had been disciplined as a result.

40. I also brought the incident of unauthorised access to an email account to the attention of all heads of department at The Times in December 2011, ahead of my giving evidence to the Inquiry. I wanted to make clear what had happened and, for the avoidance of doubt, that such behaviour was unacceptable at The Times.
41. In retrospect, I regret that I did not initiate a full investigation into exactly what happened. It is easy, with the benefit of hindsight, to ask why there was not a thorough examination of who said what to whom and when back in 2009. At the time, we believed we had squared up to the mistake and dealt with it: we had not commissioned it; we had not condoned it; the journalist in question had been disciplined (and later dismissed); and the legal manager was replaced.
42. As Editor, I am responsible for the paper and what its journalists do. I want to say, therefore, that I sorely regret the intrusion into Mr Horton's email account by a journalist then in our newsroom. On behalf of the paper, I apologise. Although I am not responsible as Editor for the company's handling of legal affairs, I am deeply embarrassed that this information was not disclosed to the Court. I have written to Mr Justice Eady to apologise. A copy of my letter to him appears at page 2 of Exhibit JH2.
43. I have been asked to provide the following documents to the Inquiry:
- (i) ***Documents relating to the unauthorised access of email by Mr Foster, including any notes, print outs or other documents containing or recording information which was obtained without authority.***

As I noted above, we are not aware of any such documents.
 - (ii) ***Documents relating to the discovery of the unauthorised access by The Times including (without prejudice to the generality of this request) and any documents containing communications between Mr Foster and managers at The Times which touch upon the issue.***

Copies of these documents are included in Exhibit JH4.
 - (iii) ***Documents relating to any investigation by The Times of Mr Foster's unauthorised access of email and to the disciplinary proceedings taken against Mr Foster.***

Copies of these documents are included in Exhibit JH4.
 - (iv) ***Documents relating to the decision to publish the story about NightJack's real identity.***

There is no record of our meeting on 15 June 2009, but copies of emails exchanged prior to this meeting which touch on the issues surrounding publication are included in Exhibit JH4.

- (v) ***Documents relating to the legal proceedings between Mr Horton and The Times in which Mr Horton sought injunctive relief. Without prejudice to the generality of this request, the Inquiry particularly wishes to see Mr Foster's witness statement.***

Copies of the court documents and inter-partes correspondence relating to the proceedings which were found in Mr Brett's legal files and his emails are set out in Exhibit JH3. I understand that certain documents, and in particular various enclosures or attachments, have not been located by Linklaters, which is why they are missing. Mr Foster's witness statement can be found at pages 54 to 61 of Exhibit JH3.

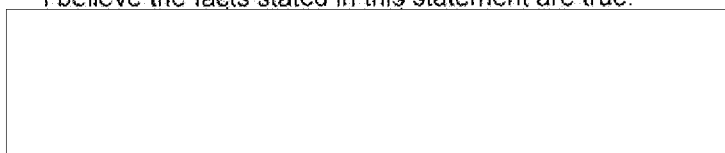
- (vi) ***Documents relating to any checks which were made in 2009 to establish whether or not Mr Foster's unauthorised access of an email account was an isolated occurrence.***

There are no such documents because there was no internal inquiry at the time.

- (vii) ***Documents relating to communications up the management chain about this incident. Without prejudice to the generality of this request, the Inquiry is particularly interested in any documents in this category to the editor, or from anyone at The Times to News International and/or News Corporation.***

Copies of these documents are included in the Exhibit JH4.

I believe the facts stated in this statement are true.



James Harding

6 February 2012