

<p>1 Wednesday, 26 October 2011                  2 (10.30 am)                  3 (Proceedings delayed)                  4 (10.34 am)                  5 Directions Hearing                  6 LORD JUSTICE LEVESON: Find yourself somewhere to sit,                  7 Mr Sherborne.                  8 MR SHERBORNE: I apologise, my Lord.                  9 LORD JUSTICE LEVESON: That's all right. It's an irritating                  10 habit but 10.30 normally means 10.30.                  11 MR SHERBORNE: I've been in another court unfortunately.                  12 LORD JUSTICE LEVESON: That's tough, but the perils of                  13 success.                  14 Thank you all for coming. We're not, I think, going                  15 to be able to do quite as much today as I would have                  16 wanted to do, and I'm not being critical of anybody in                  17 that regard, but there are issues which touch upon the                  18 material that will be deployed by the inquiry, which                  19 certainly create concerns, and understandable concerns                  20 within the Met Police and the Crown Prosecution Service                  21 and which therefore need resolution.                  22 But let's see how far we can get dealing with the                  23 issues that we want to raise and get some of the nuts                  24 and bolts out of the way.                  25 Right, Mr Jay, take us through where we are.</p> <p style="text-align: center;">Page 1</p>	<p>1 produce a solution, if a solution there is, to be                  2 debated by those who will debate it.                  3 MR JAY: Yes.                  4 LORD JUSTICE LEVESON: And to be acted upon expeditiously                  5 so that's the end of the line, and my concern has been                  6 and remains that every time we push back the start, the                  7 risk is that we either push back or concertina very                  8 important debates that we're going to have to have                  9 during the course of the next few months.                  10 But I accede to the overwhelming submission that                  11 everybody has made, that the 7th is just a little bit                  12 too early.                  13 MR JAY: Sir, may we look then at the first week of the                  14 inquiry and then subsequent weeks.                  15 LORD JUSTICE LEVESON: Yes.                  16 MR JAY: The first week of the inquiry will be occupied by                  17 oral opening submissions. It is conventional that                  18 counsel to the inquiry go first, and I propose, subject                  19 to your view, to open the case neutrally -- I say the                  20 case, the inquiry -- over the course of about two and                  21 a half to three hours. I will not be providing a                  22 written opening.                  23 Then it needs to be decided who will go next and how                  24 long each core participant would like in oral                  25 submissions, indeed how long you give them in oral</p> <p style="text-align: center;">Page 3</p>
<p>1 MR JAY: As you know, I've provided a note which has been                  2 circulated and has generated responses from all the core                  3 participants.                  4 Some of the core participants, as you know, are here                  5 today, some are not. Sir, the first issue is the start                  6 date. The note put forward two competing dates, 7 and                  7 14 November, and human nature being as it is, everybody                  8 has plumped for 14 November.                  9 LORD JUSTICE LEVESON: Yes, except for me. That was the                  10 problem, wasn't it? I was keen to get going as quickly                  11 as possible and everybody else is causing me to exercise                  12 caution.                  13 MR JAY: Yes. Ultimately, sir, obviously it's a matter for                  14 you.                  15 LORD JUSTICE LEVESON: Yes, yes, I have more votes than                  16 everybody else put together.                  17 MR JAY: Yes, indeed, the ace of spades, but no doubt the                  18 core participants will continue to press for                  19 14 November, which if you were to accede to that, would                  20 mean that written submissions would be lodged on the                  21 9th.                  22 LORD JUSTICE LEVESON: Yes, well, I have read everything                  23 that everybody has said, and I recognise the points                  24 made. My concern throughout has been the general                  25 timeframe within which this inquiry has to operate to</p> <p style="text-align: center;">Page 2</p>	<p>1 submissions.                  2 LORD JUSTICE LEVESON: They may not be the same thing.                  3 MR JAY: Sir, that's fully understood.                  4 It is anticipated that the first week will be over                  5 in about three days. We will hear oral submissions, and                  6 you may be asked to make rulings on issues which have                  7 arisen, if such issues arise over the next two or three                  8 weeks. It may be convenient to have half a day to tie                  9 everything up before the evidence starts the following                  10 week, 21 November.                  11 The week beginning 21 November will be a four-day                  12 week. We will hear evidence from 18 individuals, who                  13 are core participant victims and whose witness                  14 statements will be provided as soon as possible.                  15 LORD JUSTICE LEVESON: By "victim", we mean those who are                  16 either admitted to have been the subject of either                  17 illegal or --                  18 MR JAY: Yes.                  19 LORD JUSTICE LEVESON: -- potentially unethical behaviour or                  20 who contend that they have been so subject.                  21 MR JAY: Yes.                  22 Sir, the agenda for the succeeding weeks of the                  23 inquiry will be made much clearer on about next Monday                  24 when we will provide to the core participants                  25 a provisional list of witnesses and batting order. It</p> <p style="text-align: center;">Page 4</p>

<p>1 may be convenient to provide those week by week, so that                  2 witnesses will know in which week they'll be intended to                  3 be called. It may not be possible at this distance to                  4 identify the particular day.                  5 LORD JUSTICE LEVESON: Yes.                  6 MR JAY: Our current view, but it's evidently a movable                  7 feast, is that we will conclude the evidence in module 1                  8 at some stage in earlyish February, but obviously when                  9 that jumbo jet lands has to be slightly uncertain at                  10 this distance.                  11 At the moment, we have about 130 witnesses whom we                  12 intend to call but some of those witnesses will no doubt                  13 either be read or treated as read.                  14 We'll obviously have regard, in deciding in the end                  15 whether to call or to read witnesses, to the time                  16 available, because that is not the overriding                  17 consideration, but it's going to be a highly relevant                  18 consideration.                  19 The general plan, if I can set it out --                  20 LORD JUSTICE LEVESON: In that regard, Mr Jay, presumably                  21 you will be circulating the broad list as well as the                  22 more definitive week-by-week list.                  23 MR JAY: Yes.                  24 LORD JUSTICE LEVESON: So that core participants can                  25 identify, to such extent as it's appropriate, witnesses</p> <p style="text-align: center;">Page 5</p>	<p>1 a minimum.                  2 MR JAY: Yes.                  3 LORD JUSTICE LEVESON: All right.                  4 MR JAY: So those are the reasonably straightforward areas.                  5 Perhaps a less straightforward area is what I have                  6 called in the notes the interface between the inquiry                  7 and the ongoing police investigation.                  8 LORD JUSTICE LEVESON: Let's deal with that --                  9 MR JAY: Yes.                  10 LORD JUSTICE LEVESON: -- in a moment. Let's deal with the                  11 mechanics first, and discuss openings and the approach                  12 which you've identified in relation to witnesses, but                  13 before we do that, what's the position in relation to                  14 the web-based evidence availability?                  15 MR JAY: Yes. Well, as far as I'm aware, but I may need to                  16 take more detailed instructions about this, I know that                  17 documents are being uploaded on to the system daily and                  18 certainly as regards the inquiry team, 1,021 documents                  19 were uploaded as of this morning. I know that because                  20 I have read most of them now.                  21 It's also clear from the system that about 150 of                  22 those documents have been released to the core                  23 participants.                  24 LORD JUSTICE LEVESON: Okay.                  25 MR JAY: Exactly how long it will take to cause necessary</p> <p style="text-align: center;">Page 7</p>
<p>1 from whom they believe the inquiry should hear in                  2 person, as opposed to those whose evidence which they                  3 will then have read --                  4 MR JAY: Yes.                  5 LORD JUSTICE LEVESON: -- which can be simply put into the                  6 system.                  7 MR JAY: Sir, absolutely. As the protocol or the note                  8 I prepared on 4 October indicated, the core participants                  9 will always be given the opportunity to make submissions                  10 to you that a witness whom we think might be read should                  11 in fact be called.                  12 LORD JUSTICE LEVESON: Yes. But everybody has got to have                  13 to regard to the timeframe as well.                  14 MR JAY: Yes.                  15 LORD JUSTICE LEVESON: Yes.                  16 MR JAY: Sir, the issue then of sitting days: the view at                  17 the moment, having regard to the range of competing                  18 considerations, is that we will sit seven days in each                  19 ten working-day period, so some weeks will be three-day                  20 weeks, some weeks will be four-day weeks.                  21 LORD JUSTICE LEVESON: Yes. There may be occasional days                  22 that aren't Fridays that I won't be able to sit, because                  23 of other public duties.                  24 MR JAY: Yes.                  25 LORD JUSTICE LEVESON: But I hope to keep that very much to</p> <p style="text-align: center;">Page 6</p>	<p>1 redactions to take place so that documents can properly                  2 be released to the core participants, I cannot say with                  3 precision, but what I can say is it's being done as fast                  4 as it possibly can.                  5 LORD JUSTICE LEVESON: Yes. I think that -- I don't know                  6 whether there are any of the statements yet from those                  7 for whom Mr Sherborne appears, but they obviously will                  8 need to be in good time so that everybody can see                  9 them --                  10 MR JAY: Yes.                  11 LORD JUSTICE LEVESON: -- before the witnesses give                  12 evidence.                  13 MR JAY: Yes.                  14 LORD JUSTICE LEVESON: All right. Well, let's see what                  15 everybody has to say about that.                  16 If I establish a batting order which is not                  17 necessarily intended to be final, I hope everybody will                  18 understand.                  19 Mr Sherborne, thank you for your written                  20 submissions. You having joined the 14 November camp --                  21 MR SHERBORNE: Yes.                  22 LORD JUSTICE LEVESON: -- that's not a topic upon which you                  23 need to address me.                  24 I make it clear that I am very content to receive                  25 submissions in writing as substantial as anybody wishes</p> <p style="text-align: center;">Page 8</p>

<p>1 to make them, and the submissions can be uploaded on to                  2 the Internet, so that anybody else can read them and                  3 that it isn't thought there's some private communication                  4 system. The purpose of an oral opening is really, as it                  5 were, to set the stall out a little bit more but not                  6 necessarily in the detail that would be in writing. On                  7 the basis that you've heard that Mr Jay thinks of two to                  8 three hours, my own initial view, and I'm talking to you                  9 because -- but everybody is here -- is that -- there are                  10 a large number of media representatives present.                  11 I would hope, perhaps with one exception, which I shall                  12 come to, if it's made the subject of an application,                  13 they could open the case within about an hour.                  14 I am prepared to say that your brief may require                  15 a little bit more because you'll be covering the                  16 territory in a slightly different way.                  17 MR SHERBORNE: My Lord, yes.                  18 LORD JUSTICE LEVESON: But have you given thought to the                  19 length of time that you would want an opening to be?                  20 MR SHERBORNE: My Lord, yes, I have. Obviously at this                  21 stage, it's a provisional view, but I hope it's one                  22 which finds approval. I was going to suggest 90                  23 minutes.                  24 LORD JUSTICE LEVESON: I think that's entirely appropriate,                  25 and carries with it the balance that I'd been hoping to</p> <p style="text-align: center;">Page 9</p>	<p>1 LORD JUSTICE LEVESON: In other words, as and when they're                  2 available.                  3 MR SHERBORNE: As and when they're available, so I won't                  4 outline in court, given that there are a number of                  5 people who want to speak, the process that that                  6 involves. You'll have seen from my note, it's not an                  7 easy process.                  8 LORD JUSTICE LEVESON: No, I don't for a moment suggest it                  9 is, but we all have to cope with the difficulties of                  10 life. What we do need to do is make sure we've got on                  11 with it.                  12 MR SHERBORNE: Sir, absolutely, and I hope that the                  13 impression that's been received is that we are getting                  14 on with it.                  15 LORD JUSTICE LEVESON: Yes.                  16 MR SHERBORNE: Sir, we do hope to have them ready in good                  17 time, as I say, for 14 November, and certainly we'll                  18 provide those statements that are ready in advance of                  19 that as quickly as we can, and that's what we're doing.                  20 LORD JUSTICE LEVESON: I think you meant the end of October                  21 MR SHERBORNE: I am talking about in good time for                  22 14 November. In terms of the date by which they're all                  23 delivered, it is hoped that it will be by the end of                  24 this month.                  25 LORD JUSTICE LEVESON: The end of October.</p> <p style="text-align: center;">Page 11</p>
<p>1 identify. I'm just conscious of what we've got to fit                  2 in within the period that's available, and we must also                  3 have regard to those who write it all down.                  4 MR SHERBORNE: Yes, your Lordship is right to anticipate, as                  5 I think I say in my note, that will we be providing                  6 written submissions, but they will form to a large                  7 extent a slightly different purpose. The purpose of the                  8 oral submissions will be, as your Lordship says, to set                  9 the stall, to set the scene, I should say, for the core                  10 participant victims who are giving evidence; as well as                  11 more generally, the claimant position if I can put it                  12 that way, in relation to the issues your Lordship has to                  13 address.                  14 LORD JUSTICE LEVESON: I am entirely comfortable with that.                  15 Are we on course to ensure that those for whom you                  16 appear who are going to give oral evidence will have                  17 disclosed their evidence in sufficient time for us to                  18 read it, and for us to make it available to those who                  19 may be interested in it?                  20 MR SHERBORNE: Sir, given the start date of 14 November, we                  21 are on course, yes.                  22 LORD JUSTICE LEVESON: That course is aiming at what date?                  23 MR SHERBORNE: As I understand it, we are going to provide                  24 the witness statements on a rolling basis, as far as                  25 that's possible.</p> <p style="text-align: center;">Page 10</p>	<p>1 MR SHERBORNE: But certainly we will deliver, as                  2 I understand it, a sizeable number of them by the end of                  3 this month. If there are some others that may take                  4 a few days more, that's what I envisage is the worst                  5 case scenario.                  6 LORD JUSTICE LEVESON: It's becoming a moving feast,                  7 Mr Sherborne. I think you're about to get some                  8 instructions.                  9 MR SHERBORNE: Can I turn then, just to receive them?                  10 Mr Crossley says that we do hope to have more by the                  11 end of next week. What I didn't want to do is to raise                  12 expectations only for them to be, as I say --                  13 LORD JUSTICE LEVESON: You can raise expectations and then                  14 meet them.                  15 MR SHERBORNE: We certainly intend to do that. If there are                  16 one or two other statements that come after that, I hope                  17 it will be understood that it isn't through the want of                  18 us trying to provide them to the inquiry as quickly as                  19 we can.                  20 LORD JUSTICE LEVESON: I understand, and if I am pressing,                  21 it's not because I don't recognise the problems; it's                  22 because pressing is what I am going to do from first to                  23 last.                  24 MR SHERBORNE: Sir, I understand that. I'm sure it doesn't                  25 just apply to the core participants.</p> <p style="text-align: center;">Page 12</p>

<p>1 LORD JUSTICE LEVESON: It absolutely does not.                  2 MR SHERBORNE: Sir, you'll appreciate, can I just tell you                  3 that currently, as it stands, we anticipate providing 19                  4 or 20 witness statements.                  5 LORD JUSTICE LEVESON: Right. Thank you. Yes. Do you have                  6 any representations to make as to sitting times, days,                  7 and timetable?                  8 MR SHERBORNE: Sir, I don't, unless you wish me to address                  9 any particular matters? You have our submissions in the                  10 note or observations.                  11 LORD JUSTICE LEVESON: Yes, I think the problems you                  12 identify in paragraph 12 of your note --                  13 MR SHERBORNE: Sir, yes, it's the -- you'll appreciate that                  14 there is a civil trial which starts on 29 January.                  15 LORD JUSTICE LEVESON: I understand, and I recognise how                  16 real these problems are, but I'm afraid they're your                  17 problems. I can't stop and you're not suggesting I do.                  18 MR SHERBORNE: Sir, no.                  19 LORD JUSTICE LEVESON: But I can't stop while the civil                  20 litigation goes on, but I've no doubt that you will be                  21 able to be kept informed of precisely what we're doing                  22 then, and if we've -- if we can organise things in a way                  23 that least inconveniences you, then we shall do so.                  24 MR SHERBORNE: Sir, I am grateful. It may be nearer the                  25 time that obviously matters will be somewhat clearer in</p> <p style="text-align: center;">Page 13</p>	<p>1 MR DAVIES: Thank you, sir. I have very little to say on                  2 what's been discussed so far. So far as Mr Sherborne's                  3 clients are concerned, just to be precise, can I take it                  4 that we will expect the statements from his clients who                  5 are giving the evidence by 4 o'clock on Friday,                  6 4 November, I think is the point --                  7 LORD JUSTICE LEVESON: I have no doubt about that. He is                  8 hoping to be the end --                  9 MR DAVIES: That is the end of next week.                  10 LORD JUSTICE LEVESON: That is the end of the next week.                  11 That's what he hopes. That's what he hopes.                  12 And I hope so too.                  13 MR DAVIES: Yes.                  14 LORD JUSTICE LEVESON: All he said is that if there's one or                  15 two that are missing, we'll have to cope with it and we                  16 will see.                  17 MR DAVIES: Yes.                  18 LORD JUSTICE LEVESON: We'll be able to schedule the                  19 witnesses a little bit in any event. I've no doubt at                  20 all that you'll have ample opportunity to read them and                  21 to take instructions upon them, and then to feed into                  22 counsel any issues that you want raised, which I think                  23 is quite an important part of this exercise,                  24 particularly in connection with those witness                  25 statements.</p> <p style="text-align: center;">Page 15</p>
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<p>1 terms of timetabling.                  2 LORD JUSTICE LEVESON: Yes.                  3 MR SHERBORNE: That's why at this stage I'm not asking you,                  4 sir, to make any ruling.                  5 LORD JUSTICE LEVESON: No, I'm just -- you fired a warning                  6 shot over my bow and I am returning fire.                  7 MR SHERBORNE: I am very grateful for the return of fire.                  8 LORD JUSTICE LEVESON: Yes.                  9 MR SHERBORNE: Sir, is there anything I can assist you                  10 further on?                  11 LORD JUSTICE LEVESON: No, I think that's sufficient for the                  12 moment. We'll come to the other matters which are going                  13 to be more contentious in a moment. Thank you.                  14 Mr Garnham, simply on timing, do you have any                  15 submissions to make?                  16 MR GARNHAM: No, none at all on the matters Mr Jay addressed                  17 you on, sir. As to opening statements, we would                  18 certainly be less than the hour you indicated; we would                  19 think half an hour is sufficient for us.                  20 LORD JUSTICE LEVESON: That's fine. Less is always more in                  21 these circumstances, but I am just really trying to                  22 provide a parameter for everybody to work with. All                  23 right. Thank you.                  24 Right. Again -- I was about to say in no particular                  25 order but of course it's a particular order, Mr Davies.</p> <p style="text-align: center;">Page 14</p>	<p>1 MR DAVIES: Yes. It is, but we're conscious that that is                  2 a time-consuming exercise, because if one is feeding                  3 questions to someone else to ask, you have to be very                  4 precise about what the question is, and where the                  5 references are and why it would be a good idea to ask                  6 it.                  7 LORD JUSTICE LEVESON: I understand, but I'm sure that you                  8 will equally understand why, in the context of this                  9 inquiry, that approach for those witnesses is                  10 particularly important.                  11 MR DAVIES: Yes.                  12 LORD JUSTICE LEVESON: And Mr Sherborne hears it,                  13 Mr Crossley hears it. I am very keen to keep it within                  14 the bounds of what is appropriate, and we'll see how we                  15 get on.                  16 MR DAVIES: Yes. I just wanted to be clear what the target                  17 date was, and I think we are clear: it is 4 November, if                  18 at all possible.                  19 LORD JUSTICE LEVESON: I think actually --                  20 MR DAVIES: Or earlier if possible.                  21 LORD JUSTICE LEVESON: -- I think it was, wasn't it,                  22 Mr Sherborne?                  23 MR SHERBORNE: Can I just explain, I don't know whether Mr                  24 Jay is going to stand up before me, but the date                  25 I provide is the date that we supply the witness</p> <p style="text-align: center;">Page 16</p>
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<p>1 statements to the inquiry. Once we've done that, then                  2 the mechanics is really with the inquiry. That's why                  3 Mr Jay may stand up, to deal with the timing of when                  4 they're provided to all the other core participants.                  5 LORD JUSTICE LEVESON: I would hope the inquiry won't take                  6 long to join that up. You originally said the end of                  7 October.                  8 MR SHERBORNE: Sir, I did. I just wanted to be clear that                  9 the mechanics is that we provide them to the inquiry by                  10 that date. I have no control over that.                  11 LORD JUSTICE LEVESON: No, you have no control once you've                  12 handed them over, and nobody will suggest that you do.                  13 But your original target was the end of October.                  14 MR SHERBORNE: It is, sir, and it remains the target.                  15 LORD JUSTICE LEVESON: And still is, and therefore the extra                  16 days to which Mr Davies refers allow the leeway that                  17 you're just a bit concerned about, and equally time for                  18 us. I'll ask Mr Jay to deal with that point.                  19 Mr Jay, it is not going to take us long, is it?                  20 MR JAY: No, we will prioritise putting these statements on                  21 to the system. Any section 19 issues, if they arise,                  22 will have to be dealt with very speedily indeed.                  23 LORD JUSTICE LEVESON: Yes, but presumably things like                  24 addresses can be provided on a separate sheet of paper                  25 and not put in the statement at all, and in that way,</p> <p style="text-align: center;">Page 17</p>	<p>1 MR DAVIES: We will also be making a written opening, and we                  2 will try and get that in by, I think it will be the 9th                  3 now. The only other points I wanted to mention was                  4 newsroom visits, which Mr Jay raised in his note. We                  5 have no objection to you visiting a newsroom and if you                  6 would like to visit one of ours, that is The Times, The                  7 Sunday Times or The Sun, then we would be happy to                  8 arrange that, but we have no strong views.                  9 LORD JUSTICE LEVESON: We will come back to that. The                  10 reason I put it in the note is that I received a couple                  11 of invitations, and I felt it right, first of all, to                  12 share it with everybody and to identify what I would do,                  13 but secondly then to list -- we'll come back to it.                  14 MR DAVIES: Yes.                  15 LORD JUSTICE LEVESON: Right. Well, Mr Dingemans, you're                  16 next.                  17 MR DINGEMANS: Sir, just on timings of disclosure of                  18 documents to us, as I understand it, we're going to get                  19 the provisional timetable of witnesses on 31 October,                  20 but we haven't yet got a date when we're going to be                  21 given access to the documents. Obviously that's on the                  22 critical path for producing any short written                  23 submissions.                  24 LORD JUSTICE LEVESON: I understand that. Does that mean                  25 that you haven't yet had access to any documents?</p> <p style="text-align: center;">Page 19</p>
<p>1 I would anticipate that there's going to be very little                  2 by way of necessary redaction, and I would have thought                  3 that actually the point of the statements is that they                  4 should not be redacted. It's providing material. But                  5 obviously personal details which would normally go in                  6 a statement, I would be perfectly content was put on                  7 a separate schedule which then needn't be provided, just                  8 to stop somebody having to -- but if it's -- whatever                  9 way is convenient for you and Mr Sherborne, to maximise                  10 the time that everybody else has to look at these                  11 statements, because they are the first statements,                  12 aren't they? Right.                  13 MR DAVIES: Other points very briefly, sir. Oral opening,                  14 we do envisage making an oral opening; I was thinking                  15 not more than an hour and a half and very probably less.                  16 LORD JUSTICE LEVESON: I thought that if you had identified                  17 the exception that was in my mind, it was you. So                  18 I recognise the dynamic of what's going on. I'm not                  19 encouraging people to take that length of time. They'll                  20 take however little time they need, but I am going to                  21 say I don't really want it to exceed that, given the                  22 number of people who have to talk.                  23 MR DAVIES: Yes, well, on current thinking, that will be                  24 enough.                  25 LORD JUSTICE LEVESON: That's fine. Good.</p> <p style="text-align: center;">Page 18</p>	<p>1 MR DINGEMANS: My learned friend, I know has put in                  2 statements, as have I. I have not seen any of his and                  3 he won't have seen any of mine.                  4 LORD JUSTICE LEVESON: That's as may be, but I don't yet                  5 know whether the core participants have had access to                  6 anything on the system.                  7 MR DINGEMANS: No. We've no access to the system. My                  8 learned friend said we'd got 150 documents, but I                  9 anticipate they're the sort of preliminary notes,                  10 et cetera, and other documents that have been exchanged.                  11 LORD JUSTICE LEVESON: Oh, I see.                  12 MR DINGEMANS: But there's no other access and in my                  13 submission, that is very much on the critical path to                  14 producing what we hope will be useful submissions.                  15 LORD JUSTICE LEVESON: All right. Well, I agree with that,                  16 although by definition not everything will be uploaded                  17 all at once. I mean, the submissions -- the opening,                  18 really I would have thought that most of the core                  19 participants will have pretty strong views as to the                  20 direction that they think I should be taking. Nobody's                  21 being shy about making those views clear to date on                  22 specific topics, and therefore I anticipate that people                  23 will have views generically.                  24 I am not suggesting that the opening submissions                  25 will deal with the evidence that I am about to hear;</p> <p style="text-align: center;">Page 20</p>

<p>1 that would be quite unrealistic. It's really to set out                  2 your submissions on a global basis, as to how I should                  3 be approaching my task and potentially where I should be                  4 going.                  5 I've no problem about people saying where they think                  6 I should broadly be going, provided there isn't a sort                  7 of carrot and a stick involved, because I have made it                  8 very clear to those to whom I have spoken at seminars or                  9 otherwise, that the whole problem is an industry-wide                  10 problem, which has to be solved in a way that works not                  11 merely for the industry or profession, whatever word you                  12 want to call it, but also for everybody else.                  13 The one thing I do not want to do is to produce                  14 a piece of paper or a document that everybody reads and                  15 says, "Well, that's utterly unrealistic", and puts on                  16 a shelf and allows it to gather dust.                  17 My fear is that if one looks at the history of                  18 investigations into these sort of areas, over the last                  19 50 years, rather more has been put on the shelf than has                  20 been activated.                  21 So my ultimate aim, and if I am disclosing my hand,                  22 I don't mind, is to produce a system, whatever it be, if                  23 it's the same or different, that works and has the                  24 support of everybody.                  25 Now, that doesn't give the press a trump that says,</p> <p style="text-align: center;">Page 21</p>	<p>1 we can say in response to that.                  2 MR DINGEMANS: Those are my only two submissions.                  3 LORD JUSTICE LEVESON: There's one other submission that you                  4 have to deal with. I am conscious that the date that                  5 I've identified creates a potential problem for you.                  6 MR DINGEMANS: Yes, I am very sorry about that.                  7 LORD JUSTICE LEVESON: I understand professional commitments                  8 are professional commitments, and I would want to do                  9 what I could to try to fit in. I can do that -- what                  10 I don't want to do is say: right, we'll do it the                  11 following week.                  12 MR DINGEMANS: No.                  13 LORD JUSTICE LEVESON: I need the whole thing to be                  14 cohesive. What I am prepared to do is on one of the                  15 days, possibly nearer the end, to sit very early or to                  16 fit in with what's happening in the Supreme Court, if                  17 I can. But that will require you to keep us informed.                  18 MR DINGEMANS: I am very grateful. The only other                  19 possibility, and that entirely depends on your own                  20 proposals, would be whether one of the days for opening                  21 submission was on a Friday. But I'm not sure whether                  22 that's anything that is immediately attractive.                  23 LORD JUSTICE LEVESON: Well, I think that one of the                  24 suggestions was that we'd sit seven days a fortnight,                  25 and generally always have Friday off. I mean, the</p> <p style="text-align: center;">Page 23</p>
<p>1 "Well, we're going to say no to everything", because                  2 that also will be obvious.                  3 It's critical that we move forward the debate,                  4 I think.                  5 MR DINGEMANS: My only submission really is that the chances                  6 of us being able to assist you, sir, in that process,                  7 are going to be much better if we've got access to the                  8 material sooner rather than later.                  9 LORD JUSTICE LEVESON: No, I agree with that and access to                  10 the material, we'll ask Mr Jay about that, shortly.                  11 MR DINGEMANS: May I just, whilst dealing with access to the                  12 material, make one other point. Obviously some of the                  13 core participants such as the media are not publicly                  14 funded, but there are others who are, but in any event,                  15 to avoid wasting legal fees, whether for privately                  16 funded or publicly funded, in our submission it would be                  17 helpful if the inquiry was able simply just to identify,                  18 not necessarily a detailed description of the documents,                  19 what the document is, otherwise you have six sets of                  20 core participants reading documents that in fact they                  21 don't need to read, and the inquiry will have read those                  22 documents and you will otherwise end up with                  23 a duplication of legal effort that's simply not                  24 required.                  25 LORD JUSTICE LEVESON: That's a fair point. Let's see what</p> <p style="text-align: center;">Page 22</p>	<p>1 suggestion of always having Friday off --                  2 MR DINGEMANS: For good reason and everyone can then plan.                  3 LORD JUSTICE LEVESON: Everybody can then plan. My concern                  4 about making an exception is that I can readily                  5 understand that there are lots of reasons for different                  6 exceptions at different times. I don't rule it out, but                  7 I would prefer you to think about whether we couldn't                  8 start on one of the days at 9 o'clock for you to make                  9 the submission, and then go to -- I won't call it                  10 Middlesex Crown Court.                  11 MR DINGEMANS: I am very grateful, sir, and we'll try and                  12 sort that out. At the moment, all I have to say is only                  13 20 minutes, but if I look at further material, then it                  14 may extend a wee bit more.                  15 LORD JUSTICE LEVESON: That's fine. I want to help, but                  16 I don't want to start creating hostages to fortune for                  17 me later on in the process.                  18 MR DINGEMANS: I am very grateful.                  19 LORD JUSTICE LEVESON: Thank you very much.                  20 Right. Mr Glen.                  21 MR GLEN: Just in terms of start date, I don't think we have                  22 anything more to add if the 14th is settled on, and                  23 anything which is further to be said with regard to the                  24 document management system, and how that's going to                  25 operate. You've seen in our letter, we have some</p> <p style="text-align: center;">Page 24</p>

<p>1 concerns about access to documents, but it sounds like                  2 those are in hand.                  3 LORD JUSTICE LEVESON: We'll come back to document                  4 management and we'll ask Mr Jay to elaborate upon how                  5 this is going to work.                  6 MR GLEN: Sir, the only other point we have, we have                  7 indicated that we would wish to make an oral opening                  8 statement. That's unlikely to be much more than 20                  9 minutes.                  10 LORD JUSTICE LEVESON: That's fine. That's good.                  11 Right. (Pause)                  12 Is there any other core participant here who wants                  13 to say anything about any of this?                  14 MS PALIN: Sir, on behalf of Associated Newspapers, only to                  15 say that whether we make an opening statement or whether                  16 it's in writing or orally is a matter under                  17 consideration, but we're happy with the time limit that                  18 has been suggested -- indicated by the inquiry.                  19 LORD JUSTICE LEVESON: Yes. I mean, to some extent you're                  20 absolutely welcome to do so, but one of the interesting                  21 issues, which Associated Newspapers can think about, is                  22 the extent to which they wish to adopt what Mr Dacre                  23 said at the seminar. I don't -- I am not saying they                  24 should or they shouldn't. What I have said about the                  25 seminars is that they're part of the record of inquiry,</p> <p style="text-align: center;">Page 25</p>	<p>1 six to eight weeks, have been uploaded on to the system                  2 as soon as possible. Some of the documents are more                  3 important, perhaps more controversial than others.                  4 I can give you an example, our preliminary view in                  5 relation to documents which have been provided by the                  6 BBC, and I must say there are a lot of them, is that                  7 most of that material is uncontroversial, but some of it                  8 we might wish to focus on and assist you with.                  9 Now, we have prepared internally a note which                  10 summarises that material. It's worthy of further                  11 consideration, but at the moment there's no reason why                  12 that note, either in its existing or mildly edited form,                  13 is not made available to the core participants so that                  14 they don't have to read all the BBC material; they can                  15 look at the note and then decide which parts need to be                  16 read. As I've indicated, we will then proceed to call                  17 the relevant evidence.                  18 Of course, we'd need to agree that process with the                  19 BBC; they might have objection to it.                  20 But then there's other documentation, in particular                  21 witness statements and then exhibits to witness                  22 statements, for which commercial confidence has been                  23 claimed by the originators of the statement. In each                  24 case consideration needs to be given to the exercise of                  25 power under section 19, and the application of the</p> <p style="text-align: center;">Page 27</p>
<p>1 they don't constitute evidence, and the reason I said                  2 that was because I wanted to make it clear that nobody                  3 would be cross-examined on the basis of an inconsistent                  4 statement in the inquiry, based upon what they said at                  5 the seminar, because here it's a rather more measured                  6 environment.                  7 But that's not to stop anybody saying, "Well,                  8 actually, what I said is what I mean to say and I am                  9 content for that to be part of the record". I'm not                  10 saying that Mr Dacre would want to do that, but                  11 I wouldn't want him to feel that he wasn't able to if he                  12 wished to. If that makes sense?                  13 MS PALIN: Yes, sir, thank you. The only other submission                  14 I make is just to simply say that we agree with the                  15 concerns expressed by Mr Davies and Mr Dingemans in                  16 relation to timetabling, but we're conscious that the                  17 submissions have been made and that you have our                  18 concerns in mind.                  19 LORD JUSTICE LEVESON: All right. Anything else?                  20 Right, well, Mr Jay, let's deal with document                  21 management. There are documents on the system, but then                  22 documents have to be put into a place where the core                  23 participants can get them.                  24 MR JAY: Yes. Sir, I can assist you to this extent, that                  25 documents obviously have been coming in over the last</p> <p style="text-align: center;">Page 26</p>	<p>1 principles set out in the documents protocol which we                  2 finalised last time. Now, that take some time, but it                  3 involves the participation of the core participants at                  4 each stage, so that the solicitor to the inquiry knows                  5 how to proceed.                  6 I should indicate, some of the documents have                  7 already been redacted, and there may or may not be issue                  8 with that, but insofar as they have been redacted, one                  9 assumes that no further redactions need to take place.                  10 But some have been provided entirely unredacted. Now,                  11 we need to move forward as quickly as we can, so that                  12 the section 19 process, as foreshadowed in the protocol,                  13 is addressed and complied with.                  14 I can't indicate to you at this stage, but I'll                  15 discuss the matter with the solicitor over our short                  16 break, which will probably take place in about 20                  17 minutes' time, indicate perhaps in more detail to assist                  18 you as much as we can with how long we think this going                  19 to take and in what order.                  20 LORD JUSTICE LEVESON: Yes. I appreciate that there's a lot                  21 of paddling underneath the surface.                  22 MR JAY: Yes.                  23 LORD JUSTICE LEVESON: Which is not merely an assimilation                  24 of the information contained within the statements and                  25 the material with which we've been provided.</p> <p style="text-align: center;">Page 28</p>

<p>1 MR JAY: Yes.</p> <p>2 LORD JUSTICE LEVESON: But also putting it in a form where</p> <p>3 it can be disclosed and then disclosing it.</p> <p>4 MR JAY: Yes.</p> <p>5 LORD JUSTICE LEVESON: It obviously should be done on a sort</p> <p>6 of structured basis. To such extent as it is possible</p> <p>7 to provide a route map to prevent very expensive lawyers</p> <p>8 from having to spend --</p> <p>9 MR JAY: Yes.</p> <p>10 LORD JUSTICE LEVESON: -- time retreading over territory</p> <p>11 which actually has been trodden without problem, would</p> <p>12 be desirable. But I don't want to put extra burden on</p> <p>13 the inquiry lawyers, beyond that which is reasonable,</p> <p>14 bearing in mind all the other things they have to do.</p> <p>15 MR JAY: Yes, well, that might create difficulties for us.</p> <p>16 Moreover, it's to some extent subjective; what we might</p> <p>17 think is relevant and whatever summary we might provide</p> <p>18 would not necessarily --</p> <p>19 LORD JUSTICE LEVESON: I don't think it is suggested that</p> <p>20 anybody should summarise a statement. I mean, I'd have</p> <p>21 to think about whether it advances matters much, because</p> <p>22 I anticipate that the statements, people will want to</p> <p>23 read. I'd be very surprised if anybody wasn't very keen</p> <p>24 to run through what all the witnesses actually say, and</p> <p>25 then they'll very quickly pick up whether or not the</p> <p style="text-align: center;">Page 29</p>	<p>1 which are available. Of course, we have prepared</p> <p>2 various internal documents to assist us. It may or may</p> <p>3 not be possible to release those to the core</p> <p>4 participants. It probably will be.</p> <p>5 LORD JUSTICE LEVESON: You'll have to decide that on</p> <p>6 a case-by-case basis, but one thing which is important</p> <p>7 is that all those who are involved in this should be</p> <p>8 appropriately assisted on learning how to use the system</p> <p>9 that we've got in operation.</p> <p>10 MR JAY: Yes. Yes.</p> <p>11 LORD JUSTICE LEVESON: I know that one of the solicitors to</p> <p>12 the core participants has used it on a different inquiry</p> <p>13 and was helpful, and we'll just need to make sure that</p> <p>14 everybody is appropriately trained.</p> <p>15 MR JAY: I am sure that's taken place. Indeed, I know it</p> <p>16 has taken place.</p> <p>17 It's largely an intuitive system, but people's</p> <p>18 intuitions vary when it comes to this sort of</p> <p>19 technology, but the search engines are, I've found, very</p> <p>20 easy to use, and can be used either in a general way to</p> <p>21 sort documents out, according to theme, according to</p> <p>22 individual or according to newspaper, or can be used</p> <p>23 more precisely. If one keys in a particular name, for</p> <p>24 example, an alleged victim, well, then, that would throw</p> <p>25 up all references to that individual throughout the</p> <p style="text-align: center;">Page 31</p>
<p>1 exhibits to those statements justify further work. If</p> <p>2 there's a particular chunk of work that you've done on</p> <p>3 the BBC, then so be it.</p> <p>4 MR JAY: Yes.</p> <p>5 LORD JUSTICE LEVESON: I am not suggesting there should be</p> <p>6 any summary.</p> <p>7 MR JAY: No.</p> <p>8 LORD JUSTICE LEVESON: It's sufficient to identify the name</p> <p>9 of the witness, and perhaps the occupation of the</p> <p>10 witness so that you know what to go to. I am not being</p> <p>11 dogmatic about any of it, but I do think it is probably</p> <p>12 worthwhile having a discussion, so that if the system --</p> <p>13 if it's sensible to organise out work which we'd have to</p> <p>14 do anyway in a particular way that makes it easier for</p> <p>15 others, then we should do it. If not, then not. But</p> <p>16 I'm sure that the general cooperation which is apparent</p> <p>17 between those who are appearing for core participants</p> <p>18 will operate to make it as easy as possible.</p> <p>19 MR JAY: Yes. Fortunately, the system has got a very</p> <p>20 powerful and effective search engine. If, for example,</p> <p>21 one wanted to find at the click of a switch all the</p> <p>22 evidence relevant to a particular newspaper, well, then</p> <p>23 the machine will sort out all that evidence for you</p> <p>24 immediately, and will list it.</p> <p>25 So a lot of the work can be done using the powers</p> <p style="text-align: center;">Page 30</p>	<p>1 whole of the database.</p> <p>2 LORD JUSTICE LEVESON: I am sure that the technologically</p> <p>3 capable Bar and solicitors' profession is more than able</p> <p>4 to use equipment that a young relative of mine would</p> <p>5 also be able to use, but with which I would struggle.</p> <p>6 All right.</p> <p>7 MR JAY: I will come back to the section 19 redaction</p> <p>8 process, if I may, shortly after 11.45.</p> <p>9 LORD JUSTICE LEVESON: That's fine.</p> <p>10 MR JAY: Our break. Is it appropriate, sir, now to move on</p> <p>11 to the issue of the interface between the inquiry and</p> <p>12 the police prosecution?</p> <p>13 LORD JUSTICE LEVESON: Yes. I think that it is.</p> <p>14 MR JAY: I say "police prosecution"; there aren't any</p> <p>15 proceedings afoot.</p> <p>16 LORD JUSTICE LEVESON: Police investigation.</p> <p>17 MR JAY: Yes, individuals have been arrested as you know.</p> <p>18 All of this is in the public domain and the</p> <p>19 investigation continues. What has been provided --</p> <p>20 LORD JUSTICE LEVESON: Of course, the proceedings are active</p> <p>21 within the meaning of the contempt of court legislation.</p> <p>22 MR JAY: Yes.</p> <p>23 LORD JUSTICE LEVESON: In relation to those persons who have</p> <p>24 been arrested.</p> <p>25 MR JAY: That's right. My understanding of schedule 1, the</p> <p style="text-align: center;">Page 32</p>



<p>1 relevant date is the date of arrest.                  2 LORD JUSTICE LEVESON: Correct.                  3 MR JAY: Then the strict liability rule applies and                  4 everybody will understand what that means.                  5 LORD JUSTICE LEVESON: Everybody in this room should                  6 understand what it means.                  7 MR JAY: Yes. If they don't understand, I would recommend                  8 that they look PDQ as to what the Contempt of Court Act                  9 says. We haven't, as it were, reached that point,                  10 because we are still discussing how the inquiry might                  11 proceed, and as you know, joint submissions have been                  12 provided to you this morning, and furnished to the core                  13 participants and then will be made publicly available,                  14 on behalf of the CPS and the                  15 Metropolitan Police Service.                  16 LORD JUSTICE LEVESON: Yes. Well, it's not fair to anybody                  17 to ask them to deal with this on the hoof --                  18 MR JAY: No.                  19 LORD JUSTICE LEVESON: -- I don't think, although I'll                  20 listen to anything that anybody wants to say on the                  21 topic.                  22 I say immediately that it is entirely understandable                  23 that the investigation, focusing purely on the                  24 investigation, should want to minimise to the point of                  25 extinction the slightest risk and the way to do that is</p> <p style="text-align: center;">Page 33</p>	<p>1 may be that this would have to be the subject of further                  2 argument -- the risk of an eventual abuse of process                  3 argument ever succeeding would be extremely low.                  4 But these are all preliminary thoughts that need to                  5 be dwelt upon at greater leisure. The police and the                  6 Director of Public Prosecutions will need to give --                  7 have the opportunity to -- may develop submissions on                  8 those points and the other core participants may have                  9 matters to draw to your attention.                  10 LORD JUSTICE LEVESON: We're going to have to get into at                  11 least two areas of law, it seems to me. The first is                  12 we're going to have to get into the area of law that                  13 surrounds abuse of process.                  14 MR JAY: Yes.                  15 LORD JUSTICE LEVESON: The area of law that surrounds fair                  16 reporting and contempt.                  17 MR JAY: Yes.                  18 LORD JUSTICE LEVESON: Also, it would be foolish not to                  19 identify the need to look at the extent to which                  20 Parliament sets out subjudice rules.                  21 MR JAY: In relation to its own proceedings.                  22 LORD JUSTICE LEVESON: In relation to its own procedure,                  23 because it would be foolish not to recognise the risk                  24 that what is discussed here might be discussed in                  25 another place.</p> <p style="text-align: center;">Page 35</p>
<p>1 to effectively shut it all down. The problem that                  2 I have, and this is going to be the subject of -- going                  3 to have to be the subject of argument, is balancing the                  4 absolute requirement that anybody who is ultimately                  5 charged should be able to receive a fair trial, against                  6 the competing dynamic that I have to resolve the issues                  7 that I have to resolve probably well before any trial,                  8 if there is to be one, would ever take place; and I have                  9 to do it in a way that satisfies the public that I've                  10 not just walked past the problem. That's my concern.                  11 MR JAY: Yes, and part 1 of inquiry requires you, as we all                  12 know, to investigate the culture, practices and ethics                  13 of the press. And culture and practices are concerned                  14 with systems and with quantity of activity.                  15 LORD JUSTICE LEVESON: And oversight.                  16 MR JAY: And oversight.                  17 LORD JUSTICE LEVESON: System -- that comes within systems.                  18 MR JAY: Yes. So one cannot ignore that, nor can they                  19 ignore the fact that you have been set up under                  20 statutory powers, and provided that those statutory                  21 powers are exercised fairly, there's an overriding duty                  22 to act fairly under section 17 of the Inquiries Act; and                  23 provided that you keep within your terms of reference,                  24 and provided that you respect all privileges which                  25 witnesses might claim under section 22 of the Act -- it</p> <p style="text-align: center;">Page 34</p>	<p>1 MR JAY: Yes. Perhaps the fourth item would be the content                  2 and scope of the privilege against self-incrimination --                  3 LORD JUSTICE LEVESON: Yes.                  4 MR JAY: -- which in fact can be dealt with succinctly.                  5 LORD JUSTICE LEVESON: And its effect.                  6 MR JAY: And its effect.                  7 LORD JUSTICE LEVESON: Now, that's a distinct piece of work                  8 which we're going to have to do.                  9 MR JAY: Yes.                  10 LORD JUSTICE LEVESON: It seems to me that it ought to be                  11 done sooner rather than later, and doesn't need to wait                  12 for the start. We can get on with it.                  13 MR JAY: Yes. (Pause)                  14 LORD JUSTICE LEVESON: The issue may be rendered less opaque                  15 by what's in the public domain or could be in the public                  16 domain from the civil litigation; what could be, not                  17 necessarily what is at the moment, but what could be,                  18 and that involves News International.                  19 But steering a course between the need properly to                  20 address my terms of reference and the need not to cause                  21 undue risk to any other process is important.                  22 MR JAY: Sir, they're the four rubrics which you have                  23 identified. In my submission, for the smooth running of                  24 the inquiry, this needs to be sorted out, to use the                  25 vernacular, as soon as possible, but in a manner which</p> <p style="text-align: center;">Page 36</p>

<p>1 isn't too hasty so that the interested parties, by which                  2 I mean those parties most interested in this issue,                  3 which will be Mr Garnham's clients, Mr Davies' clients                  4 and obviously our team, we have sufficient time to put                  5 in proper submissions.                  6 In terms of the timetable, you may think it                  7 appropriate that there be a further preliminary hearing                  8 to address this particular and important issue as soon                  9 as possible, and perhaps early next week.                  10 LORD JUSTICE LEVESON: Well, we need to find out when people                  11 would be ready to argue it, this document only having                  12 recently come into being.                  13 But it's certainly going to have to be resolved, not                  14 merely argued but resolved, which actually means                  15 a ruling from me, as soon as possible.                  16 Right, well, let's see what everybody has to say                  17 about that.                  18 Mr Garnham, let me start with you on this topic.                  19 You understand -- I quite understand the Director's                  20 perspective. The easy answer is "nothing", and                  21 I recognise the force of the argument without                  22 necessarily feeling that it's a way that I could go,                  23 given the other pressures and the terms of reference                  24 that I have to deal with.                  25 MR GARNHAM: Sir, I should say straightaway that although</p> <p style="text-align: center;">Page 37</p>	<p>1 he faces.                  2 MR GARNHAM: Absolutely. Sir, the note that was circulated                  3 today recognises those competing imperatives.                  4 LORD JUSTICE LEVESON: Yes.                  5 MR GARNHAM: It sets out the concerns that the Director has                  6 in relation to any prosecution, and the police have in                  7 relation to the continuing investigation and those two                  8 are distinct as well. It attempts to suggest for your                  9 consideration, sir, one way in which those competing                  10 observations can be dealt with.                  11 LORD JUSTICE LEVESON: The problem with the suggestion, and                  12 of course I've only recently had the chance to read                  13 them, is that it runs a risk that we'd never end out of                  14 the Divisional Court, and I'm not prepared to have a                  15 situation which means that every three minutes --                  16 MR GARNHAM: No. We too would be anxious to avoid that,                  17 sir, but there is a problem in that the subjects which                  18 you and Mr Jay identified a moment ago are all of                  19 importance and all directly relevant, but it will be                  20 necessary on occasions to test their application by                  21 reference to particular documents.                  22 It is, we would respectfully suggest, impossible to                  23 deal with this entirely in the abstract. So whilst                  24 I respectfully agree with what Mr Jay says as to the                  25 need to address and reach resolution in respect of those</p> <p style="text-align: center;">Page 39</p>
<p>1 the Met Police and the Director have had conversations                  2 about this, and are of one mind, I, formally speaking,                  3 don't stand here representing the Director of Public                  4 Prosecutions today; I represent the Met; and there is                  5 a distinction there which is important to maintain.                  6 LORD JUSTICE LEVESON: I understand that. Does that mean                  7 that you believe that the Director of Public                  8 Prosecutions is likely to want to intervene to make                  9 submissions on this himself?                  10 MR GARNHAM: It is possible. I can say no more than that.                  11 It may be that I'll be instructed to make such                  12 submissions on his behalf. It may be not. But we would                  13 respectfully agree with Mr Jay's suggestion to you, sir,                  14 that a time is put aside to deal with this in the near                  15 future, and we will convey back to the DPP the                  16 importance that you are attaching to this, and it will                  17 be for him to decide whether he has representation                  18 separately, whether I am instructed to deal with his                  19 points as well as the Met's, or whether he chooses not                  20 to appear. I can't speak for him on that topic.                  21 LORD JUSTICE LEVESON: No, that's entirely fair enough.                  22 MR GARNHAM: Sir --                  23 LORD JUSTICE LEVESON: I understand, and I'm sure he                  24 understands the -- and you understand the issues that                  25 I face, which are slightly different to the issues that</p> <p style="text-align: center;">Page 38</p>	<p>1 points of principle, there may yet be a need to look at                  2 it against hard emails and documents. I say that merely                  3 by way of anticipation of submissions I'll make next                  4 week --                  5 LORD JUSTICE LEVESON: Yes, I understand the point. I can't                  6 stop anybody challenging a ruling of mine because the                  7 legislation provides that avenue, but if I am even to                  8 start to be able to address the issues I have to address                  9 within the timeframe, this bus will not be stopping.                  10 MR GARNHAM: Sir, no, I understand -- I respectfully                  11 recognise those points and we would say now, as we say                  12 at the end of this note, that we think it exceedingly                  13 unlikely that we will need to challenge a decision. One                  14 can never rule it out, but one hopes that it will be                  15 possible to deal with this without troubling the                  16 Divisional Court or the Administrative Court at all.                  17 But nonetheless we will be inviting you, sir, to                  18 consider the force of some of the points we make against                  19 the documents where it's at its most acute.                  20 LORD JUSTICE LEVESON: Well, we don't -- I understand the                  21 point. I understand the point.                  22 MR GARNHAM: That aside, sir, we are of course entirely                  23 content to prepare submissions as Mr Jay and you have                  24 suggested, sir.                  25 LORD JUSTICE LEVESON: Right. Who else -- I make it clear</p> <p style="text-align: center;">Page 40</p>

<p>1 that the fact that a core participant is a core                  2 participant doesn't mean that they have to take part in                  3 every single debate. It may very well be that some core                  4 participants will not feel it necessary to enter into                  5 this debate at all, this argument, and leave it to me.                  6 But does anybody have anything to say about the                  7 general topic? Let me pick up the two most obvious                  8 people. Mr Davies?                  9 MR DAVIES: Well, I don't think there's anything I want to                  10 say about the general topic now, sir. I think our                  11 position will be that we don't wish to obstruct the                  12 inquiry and we don't wish to obstruct the police                  13 investigation, not surprisingly.                  14 LORD JUSTICE LEVESON: Yes.                  15 MR DAVIES: If a modus operandi can be agreed between the                  16 inquiry on the one side and the DPP and the police on                  17 the other, I am sure we won't want to get in the way.                  18 But on the other hand, the particular matters which                  19 I suspect are going to be discussed are of close                  20 importance to us, and I think we may well have some                  21 observations to make. I don't intend to make any now.                  22 LORD JUSTICE LEVESON: No, I understand that.                  23 MR DAVIES: Particularly, if I may say, I think what Mr                  24 Garnham was saying is that in the course of the hearing                  25 which is envisaged on this subject, perhaps next week,</p> <p style="text-align: center;">Page 41</p>	<p>1 at the News of the World can't be painted in a way that                  2 doesn't require over-descent into detail. I am not                  3 saying any more than that, and I am not -- you may feel                  4 this is not somewhere you can go, or you want to go, or                  5 you're prepared to go.                  6 But there is an element of this which, in order to                  7 paint the bigger picture, requires me to paint -- may                  8 require me to look at the detail. If it doesn't require                  9 me to look at the detail, then as far as I am concerned,                  10 that's all to the good. And that's not just a point                  11 that's relevant to News International, because if one                  12 goes back to What Price Privacy? and the Information                  13 Commissioner's report and that table, which involves                  14 others.                  15 MR DAVIES: Yes.                  16 LORD JUSTICE LEVESON: Then, again, it is the overarching                  17 position I am seeking to reach for the purposes of this                  18 part of the inquiry, in order to provide a factual --                  19 a sound foundation to consider the other parts of my                  20 terms of reference. I would prefer not to get bogged                  21 down, if I can avoid it, in detail which is highly                  22 relevant to part 2, and is obviously that which the                  23 police and the CPS are focused upon; if I can avoid the                  24 detail, because I've got a sufficient substratum of                  25 fact, a narrative as I've called it, then I would be</p> <p style="text-align: center;">Page 43</p>
<p>1 it may be necessary to refer to particular documents by                  2 way of illustration of the problems which arise, both                  3 for the prosecution and for the inquiry, and if those                  4 are our documents, then that's -- or documents which                  5 concern us, then we may well be interested in that.                  6 LORD JUSTICE LEVESON: Well, we'll have to see how far we                  7 go.                  8 MR DAVIES: Yes.                  9 LORD JUSTICE LEVESON: It may be necessary to make                  10 a section 19 order in relation to -- so that I've just                  11 not, as it were, thrown the baby out before I've even                  12 decided whether the baby is going to have a bath.                  13 MR DAVIES: Yes.                  14 LORD JUSTICE LEVESON: The other aspect is this, and this                  15 does concern you, and I'm absolutely not asking you to                  16 comment upon this now but I am asking you to think about                  17 it, I am concerned with culture, practice, ethics --                  18 that's the rubric of the terms of reference -- and less                  19 on who did what to whom, which is another shorthand form                  20 of words that I've used.                  21 That's part 2.                  22 MR DAVIES: Yes.                  23 LORD JUSTICE LEVESON: For our grandchildren. What I am                  24 concerned that you think about is the extent to which,                  25 with your knowledge and your instructions, the picture</p> <p style="text-align: center;">Page 42</p>	<p>1 keen to do so because I don't want to interfere more                  2 than is absolutely necessary with an investigation or                  3 any possible prosecution, if there is to be one, and                  4 I certainly don't want to prejudice either of those.                  5 So I don't think that's too coded, but you                  6 understand the issue. It is, as I say, not just an                  7 issue for News International, but an issue for others                  8 because of What Price Privacy?                  9 MR DAVIES: Sir, we understand the point and whether we can                  10 solve it, I don't know, but we'll take it under                  11 consideration.                  12 LORD JUSTICE LEVESON: I understand and I'm not requiring --                  13 I couldn't require you to go beyond that which your                  14 instructions permit, however -- whatever advice you give                  15 to your clients. That's for you and for them --                  16 MR DAVIES: Yes.                  17 LORD JUSTICE LEVESON: -- to think about. But -- and I'm                  18 not holding a carrot out, I'm merely saying that for the                  19 purposes of part 1, I have to do what I have to do, but                  20 I don't need to go beyond that which I have to do.                  21 That's the point I am seeking to make.                  22 MR DAVIES: Well understood.                  23 LORD JUSTICE LEVESON: So you will be present, is quite                  24 clear from what you've said?                  25 MR DAVIES: Yes.</p> <p style="text-align: center;">Page 44</p>

<p>1 LORD JUSTICE LEVESON: I am going to ask you next, 2 Mr Sherborne. 3 MR SHERBORNE: Sir, yes. These are issues which we say are 4 relevant or potentially relevant to number of the core 5 participant victims who are giving evidence to this 6 inquiry in part 1, both potentially to their evidence 7 and to the submissions that I might make on their 8 behalf. 9 I mean, of course we understand the concerns about 10 creating any risk to the criminal investigation and to 11 any proceedings. It's certainly not my client's desire 12 to cause any such risk, but the phone hacking scandal is 13 part of the narrative of the very real experiences 14 a number of the core participant victims suffered, and 15 are going to give evidence about in part 1, because, as 16 you say, sir, that's part of your remit. 17 LORD JUSTICE LEVESON: No, there's no question about that 18 It's not the story from their perspective. 19 MR SHERBORNE: I understand that. It is the extent to which 20 one goes into the story and the issues which you're 21 going to decide are therefore relevant -- 22 LORD JUSTICE LEVESON: Or behind their story. 23 MR SHERBORNE: Behind their story. 24 LORD JUSTICE LEVESON: Their story. Anyway, of course 25 nothing that I do in connection with the evidence that</p> <p style="text-align: center;">Page 45</p>	<p>1 the need to have this issue resolved as soon as 2 possible. 3 LORD JUSTICE LEVESON: All right. Does anybody have any 4 objection to that? Mr Garnham, you're probably slightly 5 ahead of the game on this. 6 MR GARNHAM: Yes, we are, because we've done the work that 7 went into that note. 8 LORD JUSTICE LEVESON: Yes. 9 MR GARNHAM: I don't know whether Mr Jay is expecting us to 10 produce something further in writing or whether we can 11 proceed straight to oral submissions. 12 LORD JUSTICE LEVESON: Well, the only question is whether 13 you want to produce anything that identifies where you 14 think the law takes us, because your note doesn't 15 presently do that. 16 MR GARNHAM: No, certainly we will. The question is whether 17 we do it in writing or orally. It is often beneficial 18 to do it in writing because it speeds things up. 19 LORD JUSTICE LEVESON: Yes, and it can be pre-read. You 20 needn't worry that -- I am pretty familiar with the law 21 on abuse of process. I am pretty familiar with the law 22 of contempt. But there are obviously other things that 23 are less familiar. 24 MR GARNHAM: I am conscious of the fact that because we have 25 thus far tried to do this in concert with the DPP, and</p> <p style="text-align: center;">Page 47</p>
<p>1 I adduce or that Mr Jay adduces in front of me, I should 2 put it, in any way controls what you say or do. I can't 3 do that and I am not intending to exercise censorship 4 rights over you. You will be aware of the law, as well 5 as everybody else and I've no doubt at all that your 6 clients don't want to prejudice what is happening, 7 because in large part they are the object of the 8 exercise. 9 MR SHERBORNE: Yes. 10 LORD JUSTICE LEVESON: So -- all right. 11 MR SHERBORNE: I will be there, sir. 12 LORD JUSTICE LEVESON: Thank you. Does anybody else want to 13 say anything about that? (Pause) 14 Right. Well, as I say, nobody need feel obliged to 15 attend. I've made it clear that although I teased 16 Mr Sherborne about 10.30, the fact is nobody need be 17 here at any of these hearings unless they wish to be. 18 That's a matter for their professional judgment. 19 Right. Well, how long -- when is it appropriate to 20 set a timetable for to do this? 21 MR JAY: Well, I would have thought that the hearing would 22 take half a day. 23 LORD JUSTICE LEVESON: At least, yes? 24 MR JAY: When I suggested the beginning of next week, that 25 balances time required to prepare submissions against</p> <p style="text-align: center;">Page 46</p>	<p>1 that takes a little bit of time to organise that, but 2 we'll fit in, sir, with your timetable. 3 LORD JUSTICE LEVESON: All right. Is the beginning of next 4 week difficult for you, Mr Davies? 5 MR DAVIES: No, my Lord. 6 LORD JUSTICE LEVESON: Very good. Or anybody else that 7 might want to participate? 8 Right. Well, I think that that's a good idea, and 9 there's no reason why we shouldn't have a hearing, then, 10 next Monday to deal with this discrete issue. 11 Right, we'll have a short break and then deal with 12 what else remains. Thank you. 13 (11.45 am) 14 (A short break) 15 (11.52 am) 16 LORD JUSTICE LEVESON: Right. There is an associated topic 17 which will require consideration. It really comes up 18 under "any other business" today, because it's not 19 mentioned by Mr Jay, which concerns the fact that 20 a number of persons have expressed a real interest in 21 providing evidence to this inquiry, but wish to do so 22 under conditions of anonymity. Mr Jay, where are we on 23 that? 24 MR JAY: Sir, that is right. Sir, you would have, in 25 principle at least, power under section 19 to safeguard</p> <p style="text-align: center;">Page 48</p>

<p>1 the Article 8 concerns of witnesses, if satisfied that                  2 those concerns trumped any Article 8(2) consideration.                  3 The matter is touched on in Mr Beer's book, under                  4 the section, "Protective Measures for Witnesses",                  5 paragraph 6.92 and following.                  6 He deals, as you might expect, with the Article 2                  7 and the common-law position, but it's page 308, at                  8 paragraph 6.110. He deals with Article 8, admittedly in                  9 quite general terms, and you'll note under                  10 paragraph 6.111 that a person's professional life may                  11 come within the scope of his Article 8 rights. (Pause)                  12 There are a number of witnesses who have come                  13 forward and doubtless others might do so, who are saying                  14 that they will not give their evidence without the                  15 protection of anonymity, which is the fear presumably of                  16 losing their employment and/or their professional                  17 reputations.                  18 Now, each case would have to be considered on a, as                  19 it were, case-by-case basis, which one would need to                  20 weigh up the strength of the Article 8(1) concerns                  21 against the competing considerations in Article 8(2),                  22 which would include the desirability of public justice,                  23 as it were, that witnesses give their evidence in the                  24 full glare of publicity and not under the cloak of                  25 anonymity, and also the obvious point that if witnesses</p> <p style="text-align: center;">Page 49</p>	<p>1 Then there are ancillary or adjectival questions of                  2 how the evidence is going to be received: will screens                  3 be erected in the inquiry room, and matters of that                  4 nature; or indeed will the evidence be heard in private?                  5 So these again are all theoretical. One will need                  6 to consider the needs and demands of each individual                  7 case.                  8 LORD JUSTICE LEVESON: But it's sufficient at this stage for                  9 me to say, is it, that I am interested for the inquiry                  10 to hear from anybody, that I will respect a request for                  11 anonymity entirely and will not breach that anonymity                  12 unless I have the express approval of the person who has                  13 sought it? In other words, I will receive anything on                  14 the basis upon which it is provided and would be                  15 entirely content to allow that person to drop out of the                  16 system, as it were --                  17 MR JAY: Yes.                  18 LORD JUSTICE LEVESON: -- if I did not accede to a request                  19 for anonymity. That's the approach.                  20 MR JAY: That must be the bottom line, and the other axiom                  21 is that any core participant who wishes to make                  22 submissions to you, either that as a matter of                  23 principle, anonymity simply should not be granted, or                  24 that in a particular case anonymity is inappropriate,                  25 should have that opportunity before the evidence is ever</p> <p style="text-align: center;">Page 51</p>
<p>1 are giving evidence anonymously, that will restrict the                  2 possibility of cross-examination.                  3 LORD JUSTICE LEVESON: Yes.                  4 MR JAY: These are all obvious concerns. They can be                  5 discussed in general, but as I've indicated, one would                  6 need to delve into the facts of individual cases before                  7 you can reach a decision. What seems appropriate in the                  8 first instance is that witnesses who wish to claim                  9 anonymity may be invited to give their account to the                  10 solicitor to the inquiry, and perhaps in a separate                  11 document the reasons for the anonymity claim, but until                  12 the issue is determined by you, such witnesses will have                  13 the benefit of interim protection under section 19, but                  14 in due course, you will have to decide in each                  15 individual case whether anonymity will be granted in                  16 respect of their evidence.                  17 If you were to decide, for example, that anonymity                  18 will not be granted because the Article 8(2)                  19 considerations outweigh the Article 8(1), well, then,                  20 presumably the witness will decide not to give evidence,                  21 and that will be the end of the matter. If, on the                  22 other hand, you decide to give anonymity in an                  23 individual case, well, then, the evidence will be                  24 disseminated on the basis of whatever protections you                  25 deem appropriate.</p> <p style="text-align: center;">Page 50</p>	<p>1 given.                  2 LORD JUSTICE LEVESON: Yes.                  3 MR JAY: The exact mechanics for achieving that will need to                  4 be thought through, because there are difficulties in                  5 providing witness statements even under the protection                  6 of a confidentiality undertaking which each core                  7 participant will need to sign in any event, in a way                  8 which might disclose to a core participant the probable                  9 identity of the witness. I confess that the exact                  10 mechanics of this have not been considered.                  11 LORD JUSTICE LEVESON: Well, any statement would have to be                  12 drawn up in such a way that did not, as it were, allow                  13 a jigsaw to be put together.                  14 MR JAY: Yes.                  15 LORD JUSTICE LEVESON: Otherwise, there's no point in it.                  16 MR JAY: Absolutely.                  17 LORD JUSTICE LEVESON: But that's -- presumably whoever                  18 offered me evidence on that basis would be very mindful                  19 of that risk.                  20 MR JAY: Yes.                  21 LORD JUSTICE LEVESON: But can I reach that conclusion at                  22 this stage, and then, should it arise, allow for an                  23 argument as to whether I should admit any evidence as                  24 a result?                  25 MR JAY: Yes. Well, in my submission you can, but other</p> <p style="text-align: center;">Page 52</p>

<p>1 core participants may choose to submit now that as                  2 a matter of principle, this proposed procedure is simply                  3 wrong, that the Article 8(1) considerations I've                  4 mentioned would never override the need for public                  5 justice. So let's hear what they have to say.                  6 But --                  7 LORD JUSTICE LEVESON: But Mr Beer certainly says somewhere                  8 in relation to section 19 that it specifically covers                  9 witnesses giving evidence under a cloak of anonymity.                  10 MR JAY: Oh, yes. Yes, but the paradigm case would be an                  11 Article 2 or Article 3 consideration --                  12 LORD JUSTICE LEVESON: Yes.                  13 MR JAY: -- or similar common-law considerations. Those are                  14 in play in the Baha Mousa inquiry. The Article 8                  15 considerations are less clear-cut.                  16 LORD JUSTICE LEVESON: But again, it is important to go back                  17 to what I am trying to do, isn't it, which is not, for                  18 this part of the inquiry, cast blame or make findings of                  19 fact about specific people, but rather seeking to obtain                  20 evidence of culture, ethics, practice.                  21 MR JAY: Yes.                  22 LORD JUSTICE LEVESON: Which can be more generic than                  23 specific. Can be.                  24 MR JAY: Can be.                  25 LORD JUSTICE LEVESON: All right. Well, anything else on                  Page 53</p>	<p>1 having looked at the matter and having heard submissions                  2 from core participants, that that shouldn't be given                  3 anonymously and the person says, "I don't want now to                  4 give evidence", you still also have the power to compel                  5 a person to give evidence, and of course you may then                  6 have other core participants saying that evidence ought                  7 to be adduced, and the person contacting the inquiry may                  8 need to be made aware of that possibility, however                  9 remote it may be.                  10 LORD JUSTICE LEVESON: But it may not be, because I can                  11 say -- I mean, and help me, this is exactly the sort of                  12 issue that I wanted to think about. Why can't I say                  13 I will receive such material if I feel that no -- that                  14 it's inappropriate even, at first blush, to grant                  15 anonymity, then I can simply return the statement,                  16 because I won't have disclosed it to anybody and I won't                  17 pay any attention to it?                  18 MR DINGEMANS: Yes.                  19 LORD JUSTICE LEVESON: If I do what you suggest, then                  20 actually I am requiring whoever might have important                  21 information, one way or the other, not to provide it                  22 because I am saying: I can't even give you the warranty                  23 as you write to me that your name won't be made public                  24 because I have the power to subpoena and I have the                  25 power to do all these things. Unless I say: I will not                  Page 55</p>
<p>1 that topic?                  2 MR JAY: Sir, no.                  3 LORD JUSTICE LEVESON: Very well. All right, this is called                  4 a fast ball. Mr Sherborne, do you have anything to say                  5 on this at this stage?                  6 MR SHERBORNE: It is coming my way first. Nothing other                  7 than to endorse your approach; since we're talking in                  8 the abstract, if I can put it that way, we would endorse                  9 the approach that witnesses should be encouraged to give                  10 evidence in whatever form they can, and it's a matter                  11 then for you, sir, to decide whether or not, balancing                  12 Article 8(1) and 8(2), which is a familiar exercise                  13 certainly in other courts, as to whether or not that's                  14 appropriate. We have nothing more to say about it than                  15 that at this stage.                  16 LORD JUSTICE LEVESON: Well, I think that at the moment it                  17 is, as I say -- it's not theoretical because of the                  18 approach, but I'm not making any definitive conclusions                  19 about any person.                  20 MR SHERBORNE: I understand that.                  21 LORD JUSTICE LEVESON: All right. Does anybody else want to                  22 say anything about that?                  23 MR DINGEMANS: Just this: that although you have the power                  24 to say and order evidence to be given anonymously, if                  25 someone does contact the inquiry and you decide on --                  Page 54</p>	<p>1 exercise that power and I will be prepared to send the                  2 statement back, not deal with it in any way, unless you                  3 agree otherwise; then if I can't do that, then                  4 I effectively discourage the sort of assistance I might                  5 otherwise get.                  6 MR DINGEMANS: No, and everyone -- it's common ground that                  7 you should be encouraging that assistance, but you need                  8 to contemplate these possible steps. You receive                  9 a document, a statement, which on the face of it you                  10 think should remain anonymous. It is then circulated                  11 with that anonymity respected for the core participants                  12 to make representations as to anonymity, and                  13 representations are made which persuade you, in those                  14 specific circumstances, that there ought not to be                  15 anonymity.                  16 Then, of course, the person -- the inquiry can                  17 return the statement in that situation and say no more,                  18 but really has to make a ruling at this stage that that                  19 will be its approach, to avoid the core participants                  20 coming back and saying: and what is more, not only                  21 should you not maintain anonymity, you should also call                  22 this person.                  23 LORD JUSTICE LEVESON: You should actually call this                  24 evidence; this evidence is very important evidence.                  25 MR DINGEMANS: But of course you may take the view that to                  Page 56</p>

<p>1 encourage it in the light of the approaches you have                  2 had, that that would be a proposed way forward.                  3 LORD JUSTICE LEVESON: Yes, because if I don't say that,                  4 they'll never do it.                  5 MR DINGEMANS: Exactly, and that would be antithetical to                  6 the whole purpose of the inquiry.                  7 LORD JUSTICE LEVESON: That's the point. Thank you.                  8 Mr Davies, do you have anything to say about this?                  9 MR DAVIES: No, I don't think so, sir. The only thought                  10 that I've had -- and this is, as you said, a fast ball                  11 --                  12 LORD JUSTICE LEVESON: I'm sorry about that.                  13 MR DAVIES: Not at all. I think as Mr Jay says, the                  14 Article 8 issues could be quite difficult to balance,                  15 and I don't think we would want to get drawn into an                  16 argument in principle about that. But we certainly                  17 would want to have the right to make submissions in any                  18 particular case, and those submissions might -- you                  19 know, will very likely also embrace the principle. But                  20 I think an abstract argument would probably take a lot                  21 of everybody's time.                  22 LORD JUSTICE LEVESON: Yes. But the general principle has                  23 to be identified along the lines I've just discussed                  24 with Mr Dingemans, otherwise I don't get past the first                  25 hurdle, do I?</p> <p style="text-align: center;">Page 57</p>	<p>1 LORD JUSTICE LEVESON: I think that does raise easier                  2 issues. I don't exclude the possibility of taking                  3 evidence remotely, if it's appropriate and necessary.                  4 We'll have to see. Thank you.                  5 Does anybody else want to say anything about that?                  6 Yes, Mr Garnham?                  7 MR GARNHAM: Sir, only to add what Mr Davies has just said:                  8 you will be aware of the range of options that are open                  9 to you from an order for full anonymity with no evidence                  10 being given in public; down through anonymous evidence,                  11 given behind a screen; anonymous evidence without                  12 a screen; cipher so that only core participants know the                  13 identity of the person concerned; an order for no                  14 publication of name or appearance or addresses all the                  15 way down; and a particular solution may fit a particular                  16 set of facts.                  17 LORD JUSTICE LEVESON: I entirely agree. One size won't fit                  18 all, but the critical point that I am keen to                  19 establish -- and this is why I wanted to raise it now --                  20 was whether to make it clear that I would receive such                  21 material without prejudicing the person who provides it                  22 from withdrawing.                  23 MR GARNHAM: On that I have nothing else to say.                  24 MR GLEN: Sir, I think Mr Garnham may have pre-empted one of                  25 the things I was going to raise. It is simply to</p> <p style="text-align: center;">Page 59</p>
<p>1 MR DAVIES: Well, I don't think we would have any objection                  2 to the procedure which was debated between you and                  3 Mr Dingemans, under which you retain the right to say:                  4 all right, I am persuaded that this evidence should not                  5 be given anonymously, but in those circumstances it's                  6 not going to be given at all.                  7 LORD JUSTICE LEVESON: Unless the witness is prepared to                  8 say: all right.                  9 MR DAVIES: Unless the witness is prepared --                  10 LORD JUSTICE LEVESON: So, in other words, I give the                  11 witness the trump, if you like.                  12 MR DAVIES: Yes.                  13 LORD JUSTICE LEVESON: The ultimate decision.                  14 MR DAVIES: Yes.                  15 LORD JUSTICE LEVESON: All right. Thank you.                  16 MR DAVIES: Could I just say, this discussion I think                  17 relates to complete anonymity, and not to a slightly                  18 different question of witnesses who may wish -- not to                  19 have their appearance bandied about, because that may                  20 occur with a number of witnesses. The particular                  21 example I have in mind is Mr Mahmood, who is perhaps                  22 better known as the fake sheikh.                  23 LORD JUSTICE LEVESON: Yes.                  24 MR DAVIES: But that, I think, raises much easier issues                  25 than complete anonymity.</p> <p style="text-align: center;">Page 58</p>	<p>1 understand the process by which a witness statement that                  2 your Lordship receives and considers of interest, but                  3 the witness wants to retain anonymity. Would the                  4 witness statement, when it is passed to the core                  5 participants, be redacted to the point where the core                  6 participants at that stage wouldn't be able to discern                  7 the identity of the witness concerned?                  8 LORD JUSTICE LEVESON: Otherwise, it defeats the purpose,                  9 doesn't it?                  10 MR GLEN: I can see that, sir. That's my point really. It                  11 is quite difficult then to make submissions on whether                  12 anonymity may be justified in the abstract without                  13 knowing the identity; if, say, the witness is making                  14 allegations about newspaper X, in certain circumstances,                  15 it may be that newspaper X would like to submit evidence                  16 in response to that --                  17 LORD JUSTICE LEVESON: Yes.                  18 MR GLEN: -- but without knowing the identity.                  19 LORD JUSTICE LEVESON: I understand the point but we'll only                  20 be able to do it on a case-by-case basis, and given that                  21 I am not, as I say, here to seek to unpick one newspaper                  22 as opposed to another, this isn't going -- I am not                  23 going to produce a report that says: well, I think this                  24 newspaper has a wonderful system and that newspaper has                  25 an awful system. That's not my job. My job is to see</p> <p style="text-align: center;">Page 60</p>

<p>1 what's going on in the business and whether as a result,                  2 because it really is the follow-on, the method                  3 whereby -- the controls that are in place, the PCC or                  4 whatever, are sufficient.                  5 MR GLEN: I understand.                  6 LORD JUSTICE LEVESON: It's only to get to that last                  7 question that I've got to go through the first, isn't                  8 it?                  9 MR GLEN: I understand that, sir. It's just in terms of the                  10 wider culture or practice that's going on, it is                  11 inevitable that if evidence is put forward, either by                  12 Mr Sherborne's clients or by anonymous witnesses coming                  13 forward and contributing themselves, if that evidence is                  14 put forward, that's going to be specific examples, and                  15 one can see a situation where a misleading impression of                  16 the culture and practices and ethics of the press is                  17 created, if press are not able to answer individual                  18 allegations.                  19 LORD JUSTICE LEVESON: I take the point, and therefore                  20 that's the balance and therefore one will have to look                  21 and see what's going on and have to see whether it adds                  22 to the corpus of knowledge. I'm not saying how much                  23 weight could ever be attached to this evidence, which is                  24 an entirely different question. That's an entirely                  25 different question.</p> <p style="text-align: center;">Page 61</p>	<p>1 forward, that we could all consider this fast ball and                  2 the ramifications and the fairness of the procedure                  3 being indicated.                  4 LORD JUSTICE LEVESON: It's not too fast a ball. We won't                  5 debate it. Don't worry.                  6 I am very happy to continue to hear you on the                  7 subject, because I am conscious that it wasn't in the                  8 note that Mr Jay circulated, because this is an issue                  9 which has only comparatively recently arisen.                  10 So if on Monday you want to say something else about                  11 the subject, then you'll be absolutely at liberty to do                  12 so and I won't do anything that runs counter to that in                  13 advance of Monday.                  14 MS PALIN: I am grateful.                  15 LORD JUSTICE LEVESON: Except I might start to prepare                  16 a protocol that deals with it.                  17 MS PALIN: I think that would be --                  18 LORD JUSTICE LEVESON: When I say "I might start", I don't                  19 actually mean that. Right. Does anybody else want to                  20 say anything on this subject?                  21 Just Mr Sherborne, you ought to pick up the point                  22 that's been made, and the possibility is that you may                  23 say: well, actually, I want this person to give evidence                  24 but that might just have to be the quid pro quo.                  25 MR SHERBORNE: It may be. You'll appreciate that in</p> <p style="text-align: center;">Page 63</p>
<p>1 MR GLEN: I think that maybe is the fundamental --                  2 LORD JUSTICE LEVESON: Yes, I understand. Yes.                  3 MS PALIN: Sir, the last point your Lordship made is the key                  4 point here; this is a fast ball and I wonder whether the                  5 way forward is for us to consider what your Lordship and                  6 the inquiry have said this morning and then make further                  7 submissions on Monday, if so minded.                  8 Our concern is that in receiving the evidence -- but                  9 obviously your Lordship will need to see the application                  10 for anonymity and the reasons that lie behind it first                  11 of all, but we are concerned that while you should have                  12 to see the evidence, the anonymous evidence that the                  13 witness wishes to give at that stage, in order to --                  14 when at that stage all that needs to be considered are                  15 the reasons why the applicant wishes to have anonymity.                  16 LORD JUSTICE LEVESON: But the reasons might be balanced                  17 but the evidence potentially to be given may be of                  18 significance, even if only limited weight can be                  19 attached to it. I am not troubled about looking at                  20 material which I am later going to exclude from my mind.                  21 I spent a lifetime doing that. So nobody need have                  22 concerns about it, but I am perfectly happy if you want                  23 to say something else about this subject on Monday for                  24 you to do so.                  25 MS PALIN: I think that would be the appropriate way</p> <p style="text-align: center;">Page 62</p>	<p>1 relation to the core participants there is only one, and                  2 we've already debated this, or ventilated this --                  3 LORD JUSTICE LEVESON: Oh no, I'm not talking about the core                  4 participant who is himself or herself anonymous. That's                  5 quite different. I'm not talking about that all.                  6 MR SHERBORNE: I appreciate the point. I just wanted to be                  7 clear in case there was any suggestion it was somehow                  8 core participant victims.                  9 LORD JUSTICE LEVESON: Thank you for making that point.                  10 Right. What else am I dealing with, Mr Jay?                  11 MR JAY: The uploading of material on the system and                  12 dissemination.                  13 LORD JUSTICE LEVESON: Yes.                  14 MR JAY: The first stage, and this can be completed almost                  15 immediately, is that the core participants will be                  16 invited to sign a confidentiality undertaking. That is                  17 being prepared in draft. I have approved it. It is in                  18 a standard form. It is based on a similar undertaking                  19 given in a previous inquiry, and I imagine will be                  20 entirely uncontroversial.                  21 LORD JUSTICE LEVESON: Yes, because obviously one can't have                  22 what one is showing to core participants in advance                  23 enter the public domain.                  24 MR JAY: Yes. Sir, the most interesting evidence from the                  25 core participants' perspective, save for a category of</p> <p style="text-align: center;">Page 64</p>



<p>1 evidence I'll need to address in a moment, are the 2 witness statements from other core participants and 3 indeed from ordinary members of the public. 4 It occurs to us or appears to us that those 5 statements can probably be provided in full to the core 6 participants, save that essential personal data can be 7 redacted, and by that I mean the address at the start of 8 the statement, where it's not a professional address. 9 So that process can occur almost immediately in 10 relation to the witness statements. There are then 11 two -- 12 LORD JUSTICE LEVESON: The other one -- yes, you might -- 13 MR JAY: There are two categories of documentary evidence 14 which are slightly more tricky. The first category are 15 the exhibits to many of the press witness statements, 16 which are multifarious but many of them contain what are 17 said to be commercially sensitive material, for example 18 details of bonuses, details of disciplinary procedures, 19 the minutiae of contractual matters, et cetera, and it's 20 said that to provide that material to competitors might 21 be commercially damaging. 22 Now, the strength of that objection is difficult to 23 assess, certainly from an outsider, but what I would 24 suggest in order to accelerate the process and without 25 prejudice to the protocol is that if individual members</p> <p style="text-align: center;">Page 65</p>	<p>1 participants have very similar bonus structures. 2 LORD JUSTICE LEVESON: You had better be careful about this, 3 Mr Jay. 4 MR JAY: Perhaps I've already given away too much. It is 5 hardly of surprise, because the range of possibilities 6 here is not going to be too plentiful. The concerns 7 which have been expressed, I can see one or two 8 instances where they might have force, but generally 9 I don't see the strength of the point, but I would 10 invite the core participants in relation to these 11 exhibits just to be more specific. 12 LORD JUSTICE LEVESON: Well, you're not talking about the 13 core participants; you're talking about the witnesses. 14 MR JAY: Yes, they are -- we're talking about press 15 witnesses who are -- 16 LORD JUSTICE LEVESON: Yes, but the BBC might be in the same 17 position, I don't know. 18 MR JAY: Yes, they are. That's true. 19 LORD JUSTICE LEVESON: So you disclose the statements, you 20 disclose the exhibits about which no complaint or 21 concern has been raised by the maker of the statement, 22 and you ask the maker of the statement to identify 23 precisely how the documents which he wishes to be 24 redacted should be redacted, and then you make 25 a decision?</p> <p style="text-align: center;">Page 67</p>
<p>1 of the press can identify more precisely and as quickly 2 as possible what redactions are sought in relation to 3 what I am calling the commercially sensitive material, 4 insofar as redactions have not already been made in 5 material supplied to the inquiry, if that could be done 6 as soon as possible, well, then, rapid decisions can be 7 taken by the inquiry as to whether to accept the 8 proposed redactions or if not to accept them what -- how 9 the matter can be resolved, hopefully consensually and 10 without the need to trouble you. 11 LORD JUSTICE LEVESON: Is it possible to provide the 12 statements without those exhibits that -- 13 MR JAY: Yes. 14 LORD JUSTICE LEVESON: -- about which concern is expressed 15 by the makers of the statements? 16 MR JAY: Yes. 17 LORD JUSTICE LEVESON: And then ask the makers of the 18 statements to identify the redactions they seek, given 19 that they've asked for it to be redacted, whether in 20 whole or in part. But I would have thought that much of 21 the material to which you refer would not be of primary 22 interest to the core participants, the history of -- it 23 might be of interest. 24 MR JAY: Well, given that I, having read most of these 25 exhibits, can see that most of the press core</p> <p style="text-align: center;">Page 66</p>	<p>1 MR JAY: Yes. 2 LORD JUSTICE LEVESON: That seems eminently sensible. 3 MR JAY: There is another category of documentation, which 4 is more problematic because the issue precisely overlaps 5 with the one you're going to determine or at least hear 6 argument about next Monday. There's documentation which 7 has been provided pursuant to the order of 8 Mr Justice Vos in the civil proceedings, has been 9 provided to the inquiry either by the Met Police or by 10 the claimants to those proceedings, it matters not 11 which. Some material has been provided to the inquiry 12 in entirely unredacted form, where the police might wish 13 to say, in line with the submissions they've been 14 making, that that material should not be published in 15 that form or at all. 16 So all I can say at this stage is that that 17 material, and there isn't a huge amount of it, but 18 there's certainly a fair amount of it, the approach to 19 that material and its provision to the other core 20 participants will have to await your ruling as and when 21 you give it. 22 LORD JUSTICE LEVESON: Absolutely. That must follow. But 23 the witness that I was going to refer to and wondered 24 whether he was in one of your other groups was the 25 evidence that comes from the Information Commissioner.</p> <p style="text-align: center;">Page 68</p>

<p>1 MR JAY: Yes.                  2 LORD JUSTICE LEVESON: And his predecessors.                  3 MR JAY: Yes.                  4 LORD JUSTICE LEVESON: Has anybody sought redactions in                  5 relation to that?                  6 MR JAY: I don't believe so. I think we can provide all of                  7 that.                  8 LORD JUSTICE LEVESON: So that's a fair amount of material.                  9 MR JAY: Yes.                  10 LORD JUSTICE LEVESON: I mean, I am just concerned about the                  11 free time of the core participants.                  12 MR JAY: Yes.                  13 LORD JUSTICE LEVESON: And to use it sensibly.                  14 MR JAY: Well, the witness statements I am referring to,                  15 there are a significant number of witness statements.                  16 The redaction of the personal data can take place                  17 reasonably quickly; in most cases only a professional                  18 address has been provided. I can assure the core                  19 participants that to read all that will take just a bit                  20 of time. It's the exhibits. Most of the exhibits are,                  21 with respect, particularly interesting, need to be other                  22 than skim read.                  23 LORD JUSTICE LEVESON: You mean they're not particularly                  24 interesting.                  25 MR JAY: They're not, no. But they provide evidence of</p> <p style="text-align: center;">Page 69</p>	<p>1 argument on Monday, because it strikes us that there may                  2 be -- we haven't seen it so we don't know -- there may                  3 be material in those statements that would be                  4 prejudicial to police investigations.                  5 LORD JUSTICE LEVESON: Well, are you suggesting that I can                  6 redact things that the victims themselves wish to say?                  7 MR GARNHAM: I don't want to foreclose on the use to which                  8 those statements are made before you've heard the                  9 argument, sir.                  10 LORD JUSTICE LEVESON: Well, it may be you should have                  11 a discussion with Mr Sherborne, because I am going to                  12 require a lot of convincing to shut out those who allege                  13 that they are victims --                  14 MR GARNHAM: I understand that, sir.                  15 LORD JUSTICE LEVESON: -- from saying what they want to say.                  16 MR GARNHAM: Absolutely, and I would be slow to make the                  17 point but I don't want to make it impossible to make the                  18 point.                  19 LORD JUSTICE LEVESON: But I don't think that we'll be                  20 putting any statements -- as I understand it, we don't                  21 yet have any, have we, Mr Sherborne?                  22 MR SHERBORNE: Well, I am conscious of not taking up                  23 Mr Garnham's invitation to put back any statements any                  24 further as a result.                  25 LORD JUSTICE LEVESON: No.</p> <p style="text-align: center;">Page 71</p>
<p>1 systems and of corporate governance --                  2 LORD JUSTICE LEVESON: Well, that's important.                  3 MR JAY: -- which you do need to consider. I am not seeking                  4 to diminish their importance.                  5 LORD JUSTICE LEVESON: I think that's interesting.                  6 MR JAY: What is really interesting, and I mean it, is the                  7 material I've just been referring to; indeed I was                  8 reading some of it this morning and I am going to say                  9 nothing more about it.                  10 LORD JUSTICE LEVESON: No, I think you shouldn't. All                  11 right. Well, I understand that and there are all sorts                  12 of decisions which will have to be made before one gets                  13 down the territory of revealing anything with which                  14 we've been provided that the police or the Director is                  15 expressing concern about. That's the subject of the                  16 argument we're going to have on Monday, and will lead to                  17 a ruling and will doubtless lead to at least further                  18 consideration, or may do in any event. I'm not jumping                  19 any particular gun.                  20 So everybody will just have to wait for that.                  21 MR JAY: Yes.                  22 LORD JUSTICE LEVESON: But -- sorry, Mr Garnham.                  23 MR GARNHAM: I was only going to say in that context that we                  24 would invite the inquiry not to upload the witness                  25 statements from the "victims" until you've heard the</p> <p style="text-align: center;">Page 70</p>	<p>1 MR SHERBORNE: Can I say this: we're alive to this concern,                  2 not least because of our involvement in the civil                  3 litigation in the Chancery division. It is not the                  4 intention of any of the core participant victims who are                  5 giving evidence to prejudice the police investigation or                  6 the proceedings.                  7 I understand that's a general statement and there                  8 may be specific points that Mr Garnham wants to raise.                  9 I understand what you're saying, sir. All I can say at                  10 this stage is we're very alive to it.                  11 LORD JUSTICE LEVESON: Right. But the answer is that this                  12 isn't even going to be in the first tranche of                  13 statements to be uploaded, not least because the inquiry                  14 doesn't have them yet.                  15 MR SHERBORNE: Sir, I was trying to do that calculation                  16 whilst I was sitting here. I think it is right to say                  17 that none of us -- actually, it may not be right to say                  18 that -- I think there are statements, at least one                  19 statement in the first tranche as envisaged is going to                  20 be delivered, which will come from someone who was                  21 a victim of phone hacking. But it is something that                  22 we're very alive to.                  23 LORD JUSTICE LEVESON: Yes.                  24 MR SHERBORNE: I can have a discussion perhaps with Mr                  25 Garnham.</p> <p style="text-align: center;">Page 72</p>

<p>1 LORD JUSTICE LEVESON: You're very welcome to do that, 2 provided you make your decision about what you want to 3 put in, and then if somebody wants to rule that 4 I haven't got to hear it, then they can make an 5 application. 6 I would, for my part, be slightly surprised if 7 anything that the victims wanted to say, given that 8 they're at the very end of this process, of whatever 9 process there has been, would itself create a risk of 10 substantial prejudice to an investigation or a trial. 11 It may very well identify how significant it's been, and 12 it may very well talk about the impact that conduct has 13 had, but I don't consider that as likely to engage the 14 issues of substantial interference in the process of 15 investigation or any potential prosecution. 16 MR SHERBORNE: Sir, I agree. It's extremely unlikely, but 17 it is something that we want to reassure the police 18 about, because we have no interest at all, I think 19 that's clear from everything I've said this morning, we 20 have no interest at all in prejudicing -- 21 LORD JUSTICE LEVESON: No I understand. Right. Well, 22 that's a useful exchange of views. Does anybody else 23 want to enter into this discussion? (Pause) 24 Right. Anything else, Mr Jay? 25 MR JAY: Sir, no.</p> <p style="text-align: center;">Page 73</p>	<p>1 rooms. 2 Mr Garnham, do you see any problem with that? 3 MR GARNHAM: No. 4 LORD JUSTICE LEVESON: Well, I don't ask any of the media 5 representatives. If any feel that it would be useful 6 for me to visit them, then communicate with the inquiry. 7 I will not consider it amiss if they don't, and I will 8 not draw any inferences from that. 9 I would quite like, I think if I am going to do it, 10 to visit one at least regional newspaper. The point has 11 been made that nationals are different from regionals. 12 One of the invitations that I received was from a core 13 participant who also owns regional titles. So that's 14 not terribly difficult to work out who that is. But 15 otherwise nobody need feel it necessary to fall over 16 themselves to offer me facilities. Equally, nobody 17 should feel inhibited. All right? 18 Is there anything else that I can do to encourage 19 the process of discussion that I know has been taking 20 place, so as to ensure that we can start now on Monday, 21 I think it's 14 November, and proceed at a steady pace, 22 without interruption, hesitation or deviation 23 thereafter? 24 MR JAY: Sir, only one minor point. 25 LORD JUSTICE LEVESON: Yes, Mr Jay.</p> <p style="text-align: center;">Page 75</p>
<p>1 LORD JUSTICE LEVESON: Well, there is one and that's the 2 question of -- the final item on your note, which 3 concerned visits. 4 MR JAY: Yes. 5 LORD JUSTICE LEVESON: I've said that I've received 6 invitations, possibly because the comment has been made 7 that I don't understand the media, and I am prepared on 8 a low-key basis to accede to them, but would not accede 9 to them if there was any objection from either -- from 10 any of the core participants, and of course I am 11 particularly focused on Mr Sherborne here, because he 12 doesn't run a newsroom. 13 What I would do is arrange a visit, as I say, low 14 key with one member of the team, not one of the counsel 15 but one member of the team, and I would not listen to -- 16 I mean, I don't want presentations, I just want to see 17 -- I am happy to see how it works, which is what we're 18 talking about, and take that away. 19 Mr Sherborne, your note said you had no observations 20 to make about the proposed visit, if I believed it would 21 be of assistance. 22 MR SHERBORNE: Sir, yes, we have no objection. I am sure 23 they will look very pristine when you go. 24 LORD JUSTICE LEVESON: Yes, well, at the moment there hasn't 25 been agreement about the language that's used in these</p> <p style="text-align: center;">Page 74</p>	<p>1 MR JAY: The hearing next Monday, 31 October, I will be 2 putting in a submission in writing. I want to do so by 3 4.00 pm this Friday. It may be appropriate for you to 4 rule that anybody who wishes to put in a submission in 5 writing should do so by the same date. 6 LORD JUSTICE LEVESON: Thank you very much. That's a good 7 time. 4.00 pm Friday is a good time. Thank you for 8 arranging my weekend, Mr Jay. 9 (12.33 pm) 10 (The inquiry adjourned until 10.30 am 11 on Monday, 31 October 2011) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 76</p>

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