

<p>1 Tuesday, 7 February 2012 2 (10.00 am) 3 Discussion 4 LORD JUSTICE LEVESON: Good morning. 5 Before we start, I want to say that I am extremely 6 unhappy about the way in which yesterday afternoon did 7 what I perceived to be damage to the appropriate flow of 8 this Inquiry. I am not willing to allow what is an 9 obvious conflict between one of the core participants 10 and another to divert attention from my concern about 11 the customs, practices and ethics of the press. To some 12 extent, that conflict may evidence customs, practices 13 and ethics, but there is a limit. 14 I am not entirely happy that the Inquiry was 15 bombarded, on Friday, with a variety of statements 16 dealing with historical and other issues going to the 17 conflict, albeit that I understand why the relevant 18 participants feel that what has been said requires them 19 to answer by way of defence. 20 I will allow, given all the circumstances, some 21 further time to this issue, not because it necessarily 22 illuminates my understanding of the fundamental issues 23 which I have to address, but more because I believe that 24 in the interests of fairness I must allow the matter to 25 be ventilated for a little additional time. I won't</p> <p style="text-align: center;">Page 1</p>	<p>1 was covered yesterday afternoon but I simply do not see 2 how it is fair to the balance of the material that's 3 gone into the Inquiry not to permit these questions to 4 be asked. When this all arose, at the very beginning of 5 the Inquiry, I did not visualise that we would end up 6 where we have, and had I visualised it, I might have 7 taken different steps, but, Mr Caplan, we are where we 8 are. 9 MR CAPLAN: I understand that, but could I make a very, very 10 brief submission? I don't want to take up your time, 11 but this is an important point, if I may say so. 12 Sir, we are where we are, and there seems to be an 13 imbalance in relation to the way in which the remaining 14 issues which Mr Sherborne wants to put to Mr Dacre, 15 namely about the plummy-voiced exclusive story and the 16 circumstances surrounding the birth of his daughter, are 17 going to be treated. There have been many, many, many 18 pieces of evidence given by Richard Peppiatt, Chris 19 Atkins, James Hipwell and others making serious 20 allegations about a number of papers, a number of 21 stories, but it hasn't been the case that editors have 22 been recalled to deal with them. 23 The fact of the matter is that Mr Grant's statement 24 was not seen by Mr Dacre on Friday night. He was 25 inundated with material from the Inquiry which counsel</p> <p style="text-align: center;">Page 3</p>
<p>1 allow this type of situation to develop again, but in 2 the circumstances of the events that have transpired, as 3 I say, I feel that fairness requires me to allow some 4 further time to the issue. That will be this week. 5 That's not negotiable. 6 In the circumstances, I will allow until 2 o'clock 7 this afternoon for consideration to be given to how best 8 this can be arranged to cause minimum inconvenience to 9 everybody, including the Inquiry. 10 Right. 11 MR CAPLAN: Can I just seek clarification in relation to 12 that? 13 LORD JUSTICE LEVESON: Yes. 14 MR CAPLAN: Are you, sir, inviting further oral evidence -- 15 not inviting but requiring -- or are you in fact 16 contemplating, which is what I was suggesting yesterday, 17 that the remaining matters -- not the "mendacious 18 smear", which has already been raised in evidence 19 yesterday by counsel for the Inquiry in the way that all 20 other issues have been raised through him -- whether you 21 are agreeing that those other matters can be dealt with 22 by written submissions. 23 LORD JUSTICE LEVESON: No, they can't be dealt with in 24 writing. I'm afraid I am requiring Mr Dacre to return 25 for a short period of time, not to go over material that</p> <p style="text-align: center;">Page 2</p>	<p>1 to the Inquiry quite properly wanted him to deal with 2 and he spent the time over the weekend dealing with 3 those issues and general issues of importance concerning 4 your terms of reference and the way forward. 5 So the two remaining matters, two individual 6 stories -- the plummy-voiced executive was a Mail on 7 Sunday story. Liz Hartley has conducted an examination 8 into that and put in evidence and, if it's absolutely 9 necessary, I suppose could come back. 10 The Tinglan Hong matter is a matter which we 11 volunteered to put into evidence just to show the way in 12 which the practices worked, because I wasn't being 13 allowed and wasn't suggesting that I should be to 14 cross-examine Mr Grant about it. I knew what he was 15 going to say. I thought the best way was to put in 16 written evidence for it to be dealt with in this way. 17 So the concern is that recalling Mr Dacre and 18 allowing Mr Sherborne to cross-examine him on these two 19 individual stories is going to create an imbalance and 20 divert, if I may respectfully say so, from the way in 21 which this Inquiry has been conducted with all other 22 witnesses, putting in questions through Inquiry counsel, 23 allowing them to deal with the matter and only 24 exceptionally, if there is a matter within your terms of 25 reference, seeking your exceptional leave to</p> <p style="text-align: center;">Page 4</p>

<p>1 cross-examine.</p> <p>2 Mr Dacre has given evidence yesterday for four</p> <p>3 hours. He's attended, obviously, a seminar. He's</p> <p>4 co-operated fully but I do respectfully apply that it</p> <p>5 would not be right to ask him to be recalled.</p> <p>6 LORD JUSTICE LEVESON: A quarter of an hour yesterday</p> <p>7 afternoon was lost because of the technical problems.</p> <p>8 A quarter of an hour was also lost because on one issue,</p> <p>9 on a topic which I would have expected he would have</p> <p>10 been briefed, it clearly appeared to me that he hadn't</p> <p>11 and I uniquely said he should take advantage of the</p> <p>12 break to take some advice. So I don't accept</p> <p>13 responsibility for that.</p> <p>14 We, of course, as you know, fitted in to Mr Dacre's</p> <p>15 timetable. He was always going to be a very, very</p> <p>16 important witness to the Inquiry.</p> <p>17 The difficulty that I visualise and that I have</p> <p>18 seen, as I reflected upon it last night, is the extent</p> <p>19 of the significance attached to the "mendacious smear",</p> <p>20 which does link in to the incident involving the</p> <p>21 American lady. That's the one that it seems to me has</p> <p>22 to be addressed. As regards Mr Grant's child, I am less</p> <p>23 convinced of the need for oral evidence on that topic.</p> <p>24 MR CAPLAN: May I just say this. I don't obviously wish to</p> <p>25 prolong the debate. The "mendacious smear" matter has</p> <p style="text-align: center;">Page 5</p>	<p>1 it: on behalf of the core participant victims, not</p> <p>2 because of some personal vendetta on the part of</p> <p>3 Mr Grant himself.</p> <p>4 There were a number of attempts, as you'll recall,</p> <p>5 by me to deal with this last year and I was told to wait</p> <p>6 until Mr Caplan had had sufficient time to put in his</p> <p>7 response. We received that seven weeks after the event</p> <p>8 and it was put in too late, through the mouth of</p> <p>9 Ms Hartley, for me even to deal with it with her, and at</p> <p>10 that stage, as you'll recall, on 11 January, I put down</p> <p>11 the marker that I would therefore need to deal with it</p> <p>12 with Mr Dacre.</p> <p>13 Mr Jay deliberately left various matters, he said,</p> <p>14 for others to deal with, and, sir, as you are well aware</p> <p>15 and as the core participants were told on the weekend,</p> <p>16 that was after I had sent an email to Mr Jay notifying</p> <p>17 him in advance of the lines of questions that I was</p> <p>18 going to put and those were passed on to the core</p> <p>19 participant counsel, as I've been assured. Those</p> <p>20 matters were therefore left for me to deal with.</p> <p>21 Yesterday Mr Dacre chose to go further than simply</p> <p>22 say that Mr Grant was lying. He said it was</p> <p>23 "a deliberate attempt to wound" his company and</p> <p>24 "hijacking of the Inquiry" for his purposes. Again, we</p> <p>25 say, illustrative of the behaviour of the press as</p> <p style="text-align: center;">Page 7</p>
<p>1 been dealt with. The Mail on Sunday story, the</p> <p>2 plummy-voiced executive, has been put to the editor of</p> <p>3 the Mail on Sunday. Ms Hartley has dealt with it.</p> <p>4 Mr Dacre was not concerned in the publication of that</p> <p>5 story. He was concerned, obviously, in -- and has given</p> <p>6 evidence about -- what the Daily Mail said</p> <p>7 on November 22, and has answered questions about it</p> <p>8 through Inquiry counsel. So for Mr Sherborne to pursue</p> <p>9 the matter seems, in our respectful submission,</p> <p>10 redundant.</p> <p>11 LORD JUSTICE LEVESON: Well, I hear what you say.</p> <p>12 Mr Sherborne?</p> <p>13 MR SHERBORNE: I'll keep it brief, sir.</p> <p>14 LORD JUSTICE LEVESON: You shall.</p> <p>15 MR SHERBORNE: I will. We are where we are purely because</p> <p>16 of the public statement that was put out on 22 November</p> <p>17 by Associated Newspapers with the approval of the</p> <p>18 editor-in-chief. It was a statement attacking one of</p> <p>19 the witnesses who gave evidence to this Inquiry and</p> <p>20 accusing him of perjury. It is a matter that is of more</p> <p>21 importance and relevance to this Inquiry than purely the</p> <p>22 personal considerations of Mr Grant.</p> <p>23 LORD JUSTICE LEVESON: That's why I've reached the</p> <p>24 conclusion I've reached.</p> <p>25 MR SHERBORNE: Indeed, sir, and that is why I am pursuing</p> <p style="text-align: center;">Page 6</p>	<p>1 a whole and not simply a matter that is personal to</p> <p>2 Mr Grant and Mr Dacre. It is for those reasons that</p> <p>3 I would sit that we do need this extra time. I'm more</p> <p>4 than happy to focus it on the issues, sir, that you've</p> <p>5 just mentioned, but that can only be dealt with orally</p> <p>6 as, sir, as you appreciate.</p> <p>7 LORD JUSTICE LEVESON: Right.</p> <p>8 MR CAPLAN: I should say, sorry, that the email did not</p> <p>9 disclose lines of questioning. There were four bullet</p> <p>10 points just describing four topics.</p> <p>11 LORD JUSTICE LEVESON: Right.</p> <p>12 MR JAY: I passed on precisely what had come to me from</p> <p>13 Mr Sherborne.</p> <p>14 LORD JUSTICE LEVESON: Yes, right. I remain of the view</p> <p>15 I reached before he. We will find some short period of</p> <p>16 time for this to be the subject of further evidence and</p> <p>17 we shall do that this week. And there it is.</p> <p>18 MR CAPLAN: Sir, I obviously will have to make enquiries</p> <p>19 of --</p> <p>20 LORD JUSTICE LEVESON: Yes.</p> <p>21 MR CAPLAN: I have no idea of Mr Dacre's whereabouts.</p> <p>22 LORD JUSTICE LEVESON: Mr Caplan, I'm very sorry. I know</p> <p>23 that Mr Dacre is busy. We have worked very hard to fit</p> <p>24 ourselves around his commitments. I cannot believe that</p> <p>25 in the next three days it is not possible to find a few</p> <p style="text-align: center;">Page 8</p>

<p>1 minutes. We shall fit ourselves around him to such 2 extent as we can but I beg you not to ask me to go 3 further. 4 MR CAPLAN: Can I just ask, please, just for assistance, how 5 long it's envisaged on Thursday that you will be 6 allowing for this? 7 LORD JUSTICE LEVESON: Well, Mr Sherborne, you said you 8 wanted 30 minutes yesterday. 9 MR SHERBORNE: Sir, yes. Given that I will be focusing on 10 that particular issue you've raised -- we all know what 11 that issue involves. I'm not sure Mr Caplan is really 12 asking me to send the actual questions I want to ask 13 Mr Dacre. 14 LORD JUSTICE LEVESON: No. I think we understand what the 15 issues are. 16 MR SHERBORNE: I'm more than happy with 30 minutes, sir. 17 LORD JUSTICE LEVESON: I think you're more than happy with 18 rather less than that, because you've dealt with some of 19 it. You can ask some further questions. I think that 20 we'll deal with it in rather less than 30 minutes. I'm 21 not going to put a number of minutes down, but I'm 22 saying it is going to be a short period of time. 23 MR SHERBORNE: Sir, I understand. 24 LORD JUSTICE LEVESON: Right. Thank you. Right. 25 MR BARR: Sir, our first witness this morning is Mr Zink.</p> <p style="text-align: center;">Page 9</p>	<p>1 regulatory issues across Europe, Middle East and Africa. 2 LORD JUSTICE LEVESON: So you've come from Paris for these 3 purposes? Thank you very much indeed. I'm very 4 grateful. 5 A. Thanks. 6 LORD JUSTICE LEVESON: I'm usually much less aggressive. 7 MR BARR: You've told us what you're presently doing. Could 8 you give us a very quick summary of your professional 9 background before your present post? 10 A. Sure. I've been at Microsoft 16 years, so I've had 11 a number of different positions within the company, and 12 also before that I was a lawyer at a law firm in 13 Seattle, focusing on intellectual property issues. 14 Q. Thank you. Moving now just to very briefly get clear in 15 our minds the corporate structure that we're dealing 16 with, am I right to understand that Microsoft's 17 corporate presence in the United Kingdom is in the form 18 of Microsoft Limited, which is essentially a sales and 19 marketing organisation? 20 A. Yes, that's correct. 21 Q. But that the ultimate holding company is Microsoft 22 Corporation, a United States company incorporated in 23 Washington? 24 A. Yes. 25 Q. If I could now ask you a little bit about the Bing</p> <p style="text-align: center;">Page 11</p>
<p>1 MR RONALD ZINK (affirmed) 2 Questions by MR BARR 3 MR BARR: If you could take a seat. 4 LORD JUSTICE LEVESON: Just before you start, I have 5 determined to admit the evidence offered by the National 6 Union of Journalists. A full ruling will be available 7 to all core participants and others immediately. Thank 8 you. 9 MR BARR: Mr Zink, you are here today to give evidence about 10 Bing and you're employed by Microsoft Corporation; is 11 that right? 12 A. Yes, that's correct. 13 Q. Although you are not the person who made the witness 14 statement which has been provided to the Inquiry by 15 Microsoft Limited, or indeed Microsoft Corporation, are 16 you able to confirm that the contents of those documents 17 are true and correct to the best of your knowledge and 18 belief? 19 A. Yes, I am, sir. 20 LORD JUSTICE LEVESON: Could you tell me your position in 21 this organisation? 22 A. Yes. I'm the chief operating officer for EU affairs. 23 I'm based in Paris, where Europe, Middle East and Africa 24 headquarters is for Microsoft and I'm also an associate 25 general counsel. That means I work on policy and</p> <p style="text-align: center;">Page 10</p>	<p>1 search engine. Is it right that, as we heard from 2 Google last week, the way in which the search engine 3 operates is by crawling the Internet to compile an 4 index, which can then be readily accessed using 5 a computer algorithm to respond to search requests? 6 A. Yeah, that sounds accurate. 7 Q. What Bing then does, when a search is executed, is to 8 display the results with snippets of information from 9 the websites which are thrown up by the search? 10 A. Yes. 11 Q. So does it follow that Bing is not a publisher of 12 information on the Internet; it is merely a mechanism 13 for finding information which is already out there on 14 the Internet? 15 A. Yes, that's accurate. 16 Q. Would it also be fair to say that, given the amount of 17 material which is now available on the World Wide Web, 18 that what it does is effectively help the user to find 19 a needle a haystack? 20 A. I think you could say that. 21 Q. Bing News. Again, is it right that that is a service 22 which works through a search engine and is not an 23 independent news organisation? 24 A. Yeah, that's accurate. Bing News is, if you will, 25 a subset of the index because the way Microsoft does it</p> <p style="text-align: center;">Page 12</p>

<p>1 at least, we choose different sources for that news.                  2 It's not the entirety of what we can find across the                  3 world; it's various sources that we've chosen, and then                  4 you do the indexing based on those sources alone.                  5 Q. It's right, isn't it, that there's no journalistic input                  6 at all by Microsoft; is that correct?                  7 A. Yeah, that is correct.                  8 Q. And there's no editorial function either, other than                  9 setting the parameters of the search?                  10 A. Right. There's no editorial function other than --                  11 again, it's a subset of sources, so that's not                  12 necessarily editorial but does limit what you'll find in                  13 Bing News, based on those sources that have been                  14 specified in advance. After that, it's all the machine                  15 that's creating the index for that set of results.                  16 Q. Your servers, as I understand it, for Bing are                  17 predominantly in the United States?                  18 A. Right. We have servers around the world. The Bing                  19 servers that do the bulk of gathering the information                  20 from the Internet and creating an index are based in the                  21 US, although we do have a server in Dublin that will                  22 cache some of that information, so if you are doing a                  23 search from, for example, the United Kingdom, it may go                  24 to Dublin to get the result from the work that's been                  25 done in the United States.</p> <p style="text-align: center;">Page 13</p>	<p>1 is the webmaster, to try and get the material taken off                  2 the Internet altogether; is that right?                  3 A. Yes. If you can remove the creator of the content, then                  4 that eliminates the problem across the entire web. So                  5 that, I think, is a first course of action.                  6 Q. There might, though, be difficulties with that in                  7 practice though, mightn't there? First of all,                  8 identifying the publisher of the information, that can                  9 be difficult, can't it?                  10 A. Yes, I think it can, and that's why, if you look at the                  11 way the Internet law has developed over the years, it                  12 contemplated other avenues to try and remove things                  13 beyond just going to the person who was the original                  14 author or the original person putting it up onto the                  15 website.                  16 Q. Because it goes further than that. Even if you can                  17 identify the person concerned, he or she may well be in                  18 another jurisdiction altogether?                  19 A. Yeah, that's correct.                  20 Q. The second route you identify for us is the hosting                  21 service provider. Could you perhaps help us a little                  22 bit to distinguish a hosting service provider from an                  23 Internet service provider so that we clearly understand                  24 the difference?                  25 A. Sure. The hosting service provider is the entity or</p> <p style="text-align: center;">Page 15</p>
<p>1 Q. And the way it operates is you have a service tailored                  2 for a country or a region. In this country, you would                  3 encourage somebody to use Bing.co.uk to get a search                  4 result that was tailored for a British user; is that                  5 right?                  6 A. Yes, we'd tailor it to what we think British citizens                  7 would want to see when they do a search. So it's                  8 tailored to that group.                  9 Q. But a user here could equal little access Bing.com,                  10 which is the American results?                  11 A. Yes.                  12 Q. I'd like to move now to the topic of the removal of                  13 problematic content. I understand that Microsoft deals                  14 with all sorts of problematic content. The sort of                  15 content that I would like to focus on for these                  16 questions is defamatory material or material which                  17 amounts to an unjustified invasion of a person's                  18 privacy.                  19 A. Understood.                  20 Q. You point out in your witness statement that you are, as                  21 a search engine, probably not the best target for                  22 remedial action, and you tell us about three courses of                  23 action which you would recommend in preference to                  24 seeking assistance from a search engine.                  25 First of all, you say the best target for a remedy</p> <p style="text-align: center;">Page 14</p>	<p>1 person who is actually putting the content on the                  2 website for everyone to see worldwide. The Internet                  3 service provider, we sometimes talk about -- in terms of                  4 "last mile" but that's how you connect to the Internet.                  5 Your ISP connects you to the Internet so you can see                  6 different things there. So the web hoster will be kind                  7 of a worldwide element. The ISP, Internet service                  8 provider, will be directed towards a particular group of                  9 people or individuals, maybe in a country, for example.                  10 Q. Focusing on the hosting service provider then for                  11 a moment, might there be problems for the individual                  12 victim in locating and identifying the hosting service                  13 provider?                  14 A. There should be mechanisms to find the hosting service                  15 provider based on where the content is originating, so                  16 I think typically you should be able to find where that                  17 material is located.                  18 Q. So easier than identifying the individual who's posted                  19 the material, in many cases?                  20 A. It depends on the case, but it can be.                  21 LORD JUSTICE LEVESON: That also could be anywhere in the                  22 world?                  23 A. Yes.                  24 MR BARR: So that may prove to be an insuperable problem to                  25 that avenue. The third avenue of redress you identify</p> <p style="text-align: center;">Page 16</p>

<p>1 for us is to go to the Internet service provider. Now,  2 the ISP is the part of the system which connects the  3 user to the specific website; is that right?  4 A. The ISPs, we think of them as connecting the user to the  5 Internet from a global level, and then it's up to that  6 particular user as to where they want to go and what  7 they want to view on the Internet.  8 Q. What limitations might there be on the ISP's ability to  9 deliver a remedy to the victim?  10 A. There's a whole set of laws that were developed under  11 the E-Commerce Directive that came out in 2000 and was  12 formed into a regulation in the UK in 2002, that relate  13 to how you think about the Internet and liability around  14 the Internet and who has what obligations, and that gets  15 you into a notice and takedown system where you can  16 notify the ISP if there's something on the Internet that  17 you'd prefer to have taken town, and based on those sets  18 of rules and obligations, they'll go ahead and act  19 accordingly.  20 Q. So what is it, from a technical point of view, they are  21 able to do if they have decided to to something about  22 some offending content? They can prevent it being  23 accessed, can they?  24 A. Right, for an ISP in particular, if they were to prevent  25 access to that content, it would apply across all the</p> <p style="text-align: center;">Page 17</p>	<p>1 LORD JUSTICE LEVESON: But would you not have to have  2 a precise url so that if somebody had put the same  3 material up with different urls or it's accessible in  4 different ways, you'd have to identify each one, each  5 variable?  6 A. Yes, that's generally correct.  7 LORD JUSTICE LEVESON: Yes.  8 MR BARR: So having explored the alternatives and the pros  9 and cons of each of them in at least summary terms, can  10 we move to what Bing might be able to do by way of  11 removal of material from its index. I'd like to do this  12 by looking at defamation and privacy separately, because  13 they are dealt with separately in your policies. It  14 might be useful to look at the policies at tab 6 of the  15 bundle.  16 Before we go to the defamation section, can I touch  17 first on part of the very first paragraph, which is  18 under the heading "How Bing delivers search results".  19 I'm looking now at the last five lines of that section,  20 which says:  21 "We might remove particular resources from the index  22 of available information. In each case, where we are  23 required to do so by law, we try to limit our removal of  24 search results to a narrow set of circumstances so as to  25 comply with applicable law but not to overly restrict</p> <p style="text-align: center;">Page 19</p>
<p>1 consumers and businesses that use that ISP to connect to  2 the Internet.  3 Q. But if one ISP does something about the material, you  4 could access it through another ISP; is that correct?  5 A. I think that's fair to say, yeah.  6 Q. So if you are trying to seek a remedy against material  7 which is still actually on the Internet, you would have  8 to seek redress from every ISP through which the  9 offending material might be viewed?  10 A. Yeah, which gets you back to things like the web host or  11 creator of the content. That's a more elegant solution,  12 a more comprehensive solution.  13 LORD JUSTICE LEVESON: It's absolutely elegant if it works,  14 in the sense that you find out who he is, where he is  15 and he's amenable to the jurisdiction.  16 A. Yes, sir, I think that's correct.  17 LORD JUSTICE LEVESON: But your last example rather strikes  18 me like a sledgehammer to crack a nut and there's lots  19 of collateral damage with that as well, isn't there? In  20 other words you're going to impact on perfectly  21 legitimate material.  22 A. With the example the ISP? I think that would be  23 narrowly tailored to precisely that content, so I don't  24 think that would impact beyond the precise thing you're  25 really trying to take down.</p> <p style="text-align: center;">Page 18</p>	<p>1 access of Bing users to relevant information."  2 So can I take it that Bing's approach in principle  3 to removals is to remove the minimum necessary in order  4 to comply with the law?  5 A. Generally, I would say yes, but it does depend on the --  6 if you look at this tab, there are three different  7 scenarios. There's child sexual abuse content, there's  8 intellectual property and then there's defamation and  9 invasion of privacy, and for some of those the standards  10 are a little bit different. For example, in child  11 sexual abuse content, there's been a worldwide view,  12 through the Internet Watch Foundation, which is based in  13 the UK, that this is such egregious material and there's  14 agreement kind of on a worldwide basis that that should  15 be taken down, that we have a higher methodology for  16 removing that content from the Internet. So that isn't  17 the minimum; that actually is a very robust mechanism  18 for bringing things down.  19 If you go to defamation, invasion of privacy, we do  20 insist on a specific url for that content in order to  21 remove it.  22 LORD JUSTICE LEVESON: By "remove it", you don't actually  23 mean remove it. All you mean is take it out of your  24 index?  25 A. Yeah, that's precisely correct, sir. We actually -- to</p> <p style="text-align: center;">Page 20</p>

<p>1 be real technical, we block that particular url from 2 showing up in the jurisdiction in which we're talking 3 about. In this case, it would be the UK. 4 LORD JUSTICE LEVESON: Yes, but you can't take it out of the 5 Internet because it's there, and the same problems that 6 you've identified earlier on would hit you as well. 7 A. That's exactly right. 8 LORD JUSTICE LEVESON: Yes. 9 MR BARR: So let's look in a little bit more detail about 10 the libel and defamation approach taken by Bing. It's 11 at the bottom of the first page of the policy. It says 12 it recognises that there are different laws in different 13 countries and it says: 14 "We do not remove resources containing allegedly 15 defamatory content from our index without a court order 16 indicating that a particular link has been found to be 17 defamatory. When we do receive a valid court order, we 18 remove those links from our index permanently." 19 You're an American corporation in an American 20 jurisdiction, so my first question is: does the system 21 permit for a victim in the United Kingdom to obtain 22 a British court order -- or to be very correct, an order 23 of the court of England and Wales, if we're someone here 24 in London -- and then to send that to Microsoft in 25 Washington, USA? Is that enough or does it have to go Page 21</p>	<p>1 for this testimony, and I was asking her about what sort 2 of priority does this take, and I was relieved to hear 3 it is a business priority. But beyond that, she said 4 she drops everything and just deals with these when they 5 come in. 6 Q. Is there material available to the user in this country 7 which would make that avenue clear to them? Because 8 it's not clear, certainly, from the policy that we have 9 here that that is an option available to an individual. 10 A. I'm not aware of material available in the UK that could 11 soften the stance we have in this document. 12 LORD JUSTICE LEVESON: The stance identified at the bottom 13 of this page: 14 "We do not remove resources containing allegedly 15 defamatory content from our index without a court order 16 indicating that a particular link has been found to be 17 defamatory. When we do receive a valid court order, we 18 remove those links to our index permanently." 19 But do I gather that you're prepared to look even if 20 you don't have a an order? 21 A. Yes, we are. In fact, in the memorandum we attached, we 22 actually -- if you refer to that, we do go further than 23 that statement to say that we'll look at things on 24 a case-by-case basis. 25 LORD JUSTICE LEVESON: But it's quite difficult to judge, Page 23</p>
<p>1 through the American court system as well? 2 A. No, that would be enough. I mean, just from a mechanism 3 standpoint, there's a couple of ways you can do that, or 4 more. We're not prescriptive on how we get such 5 a notice, but one way is there's a feedback section. If 6 you go to Microsoft.co.uk, on the lower right you can 7 click that and send a notice to Microsoft saying you'd 8 like something taken down. You can also just contact 9 either Microsoft Limited here in the UK or 10 Microsoft Corporation in America with your issue and 11 we'll take a look at that. So we're not prescriptive on 12 how we would receive that information. 13 Q. What I'd just like to explore there is: should we 14 understand that answer as meaning you're still requiring 15 a court order, or are you saying that Microsoft would 16 consider a complaint by a private individual that 17 something was defamatory and make its own judgment as to 18 whether or not it was? 19 A. Yes, we would. This is a global statement, and maybe in 20 some ways you might look at it as setting a minimum bar 21 for how we were going to conduct such activities. If 22 you think about the UK and how our practice is today, we 23 have, in the past, looked at less than a court order on 24 taking things down from a defamation standpoint. 25 I was talking to a colleague about this in preparing Page 22</p>	<p>1 because somebody may say, "This is defamatory", and then 2 the person who wrote it may say, "No, it's not, it's 3 entirely true", and you can't really set yourself up as 4 the judge. Or maybe you do? 5 A. That's absolutely right, sir; we do not want to be the 6 judge. What happens is -- of course you look at it on 7 a case-by-case basis. Is it particular to what they're 8 trying to accomplish? Is there a court order? If there 9 is, you know, we would abide by that. If there isn't, 10 we'll take a look and try and see what makes the most 11 sense. 12 Of course, I'm not a UK lawyer, I'm an American 13 lawyer, but this would be for our team here based in 14 London to take a look at this and give us what they 15 think the appropriate remedy should be, and then that 16 instruction would go to Microsoft Corporation based in 17 Seattle for the technical aspects if we wanted to block 18 that material. 19 LORD JUSTICE LEVESON: So if there was a direction from some 20 sort of regulatory body, even a self-regulatory body, to 21 the effect that this was defamatory or in breach of 22 privacy -- we'll deal with privacy in a moment -- then 23 Microsoft would be prepared to look at that? 24 A. Yeah, we would be willing to consider that. 25 LORD JUSTICE LEVESON: All right. Page 24</p>

6 (Pages 21 to 24)

<p>1 MR BARR: I think that does take us to privacy. If we 2 follow your policy, we're now on page 2 of tab 6. The 3 policy acknowledges that there might be sometimes 4 occasions where material is posted which invades 5 privacy. It gives examples. The examples are: 6 inadvertent posting of public record, private phone 7 numbers, identification numbers and the like, or 8 intentional posting of email passwords, log-in 9 credentials, credit card numbers or other data that is 10 intended to be used for fraud or hacking. 11 Then it goes on to say what is done or not done, as 12 in fact the case is. It says: 13 "Bing doesn't control the sites that publish this 14 information or what they publish. Most of the time the 15 website is in the best position to address any privacy 16 concerns about the information it publishes. As long as 17 a website continues to make the information available on 18 the web, the information will be available to others. 19 Once the website has removed the information and we have 20 crawled the site again, it will no longer appear in our 21 results. If the information has already been removed 22 from that website but is still showing up in Bing's 23 search results, you can request that we remove the 24 information by using our content removal request form." 25 So on the wording of that policy, it appears that</p> <p style="text-align: center;">Page 25</p>	<p>1 we need is there, but we would endeavour to remove it as 2 well, based on that court order. 3 Q. Are we talking about removal just from Bing.co.uk 4 searches? 5 A. Yes. 6 Q. But still be available on a Bing.com search? 7 A. That's correct. 8 Q. It would appear then that effectively the victim of an 9 invasion of privacy has in fact very little redress, 10 doesn't he, from an invasion of privacy which has gone 11 viral on the Internet. If we could perhaps think 12 through what happens if someone is the subject of an 13 unlawful breach of privacy which then goes viral on the 14 Internet. If it ends up being posted on several 15 different web pages by different people in different 16 jurisdictions, finding the individual publishers may 17 become effectively impossible, mightn't it? 18 A. I think it's conflicted, and that does get back to the 19 ecosystem and how you think about the various avenues by 20 which you might try to remove this material. It would 21 probably be the case that you would look at a number of 22 different avenues, not just one and not just search 23 engines and not just Microsoft's but -- 24 Q. You'd probably try them all. We've had evidence from 25 one witness who was in just that position and has made</p> <p style="text-align: center;">Page 27</p>
<p>1 Bing isn't offering to do anything about removing a link 2 from or a result from a search if it invades privacy. 3 The victim is left to go direct to the publisher and the 4 only circumstance in which Bing intervenes is if the 5 material has been removed from the website but remains 6 in your index. You will, in those circumstances, remove 7 it from the index; is that right? 8 A. From a question standpoint and from a reading of this, 9 I think that's probably accurate, but if you look at 10 page 3 of the memorandum that we submitted, we actually 11 don't differentiate defamatory material from 12 privacy-invading material. I can tell you our practice 13 in the UK would be the same for invasions of privacy as 14 it would be for defamation. We would take a look at 15 those on a case-by-case basis. 16 Q. Are you saying that if someone has a court order with 17 a decision of the court saying that a publication has 18 unlawfully violated someone's privacy, that you would 19 accept that as sufficient to cause that material to be 20 removed from your search results? 21 A. I think largely that would be the case. Certainly if 22 Microsoft is a party to that court order, we would 23 absolutely remove it. If Microsoft wasn't -- or is not 24 a party to that court order, we would look at it and 25 make sure the specificity is there and the information</p> <p style="text-align: center;">Page 26</p>	<p>1 very extensive international efforts to have material 2 removed or made inaccessible, but it can still be found. 3 Is the position this: that in the current state of 4 affairs, someone who is the subject of an unlawful 5 invasion of privacy which goes viral has, in practical 6 terms, very little prospect of having it completely 7 removed from the Internet? 8 A. That's probably a little beyond my knowledge of UK law 9 and how I think about the -- my background, if you will. 10 I think it's complicated. 11 Q. If we stick to just from Bing, you're telling us what 12 you'd require really is a court order or some very 13 strong alternative evidence to get it removed simply 14 from Bing.co.uk but it would remain available to 15 Bing.com. 16 A. That's correct. We'd look at it from a case-by-case 17 basis, so the standard -- I'm not sure I quite agree how 18 strong it has to be. It has to be credible and 19 particular. It doesn't have to be a court order, just 20 to be completely clear, but it would come off of the 21 Bing.co.uk. It would still be available to Bing.com. 22 Q. In the light of the evidence you've given us, which goes 23 further than your written policies, do you think there 24 might be a case for Microsoft making clearer to UK users 25 that there are avenues of redress which require less</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 than a formal court order?</p> <p>2 A. Yeah, I think we could take a closer look at our global</p> <p>3 statement that we're looking at and see if there might</p> <p>4 be some modifications for UK users.</p> <p>5 Q. The final area I want to ask you about -- I appreciate</p> <p>6 it's not about Bing, it's about another Microsoft</p> <p>7 product, and I readily accept that you may not be able</p> <p>8 to help us instantly, in which case if Microsoft can</p> <p>9 help us in writing afterwards, we would be very</p> <p>10 grateful. It's about your web browser, Internet</p> <p>11 Explorer.</p> <p>12 If offending content has been successfully removed</p> <p>13 from search engine results but somebody wants to access</p> <p>14 the material and still knows the url, you can type the</p> <p>15 url straight into the browser and it will find the web</p> <p>16 page for you, won't it?</p> <p>17 A. Yeah. A browser really is just a mechanism to find</p> <p>18 a resource on the Internet. That's the primary function</p> <p>19 of a browser, is to find what you're looking for through</p> <p>20 a url.</p> <p>21 Q. The first question is: is it technically possible for</p> <p>22 the browser to be set by Microsoft so that if somebody</p> <p>23 types in the offending url, the browser will not connect</p> <p>24 them to the web page?</p> <p>25 A. There you're getting beyond my technical background.</p> <p style="text-align: center;">Page 29</p>	<p>1 sites for people to go to and have their information</p> <p>2 tracked, and so you can subscribe to that list and if</p> <p>3 you go to those websites, the cookies are shot off and</p> <p>4 it won't track your information on those sites. I think</p> <p>5 that's a pretty compelling technology and it's a way to</p> <p>6 think about privacy, where if you don't collect</p> <p>7 information in the first place then you don't have to</p> <p>8 worry about what you do with it afterwards.</p> <p>9 Q. So those are technologies for protecting your privacy</p> <p>10 when you are online. The sort of protection that I'm</p> <p>11 asking about is: once there is problematic material on</p> <p>12 the web, how do you prevent others from seeing it? Is</p> <p>13 that something that you would need to look into and get</p> <p>14 back to us in writing about it?</p> <p>15 A. Yes. That would be my preference on that question.</p> <p>16 MR BARR: Thank you very much.</p> <p>17 LORD JUSTICE LEVESON: That's entirely fair enough.</p> <p>18 I understand the position that Microsoft adopts, and</p> <p>19 it's not perhaps surprising that what might not be</p> <p>20 lawful in this country could be lawful somewhere else,</p> <p>21 and you're obviously not going to take steps which would</p> <p>22 not comply with the law in another place.</p> <p>23 If there is a solution to the problem -- and I'm not</p> <p>24 sure there is -- of replication of defamatory or breach</p> <p>25 of privacy material going viral, as Mr Barr described</p> <p style="text-align: center;">Page 31</p>
<p>1 Q. If that could be answered in writing, we would be very</p> <p>2 grateful.</p> <p>3 A. Yeah.</p> <p>4 Q. The second question -- again, it may be that it has to</p> <p>5 be followed up in writing: does Microsoft have a policy</p> <p>6 as to privacy and protecting the sort of privacy</p> <p>7 invasions that I've been talking about in the use of</p> <p>8 Internet Explorer?</p> <p>9 A. We actually do. We've put a lot of thought into</p> <p>10 privacy-enhancing features. In fact, we just celebrated</p> <p>11 our 10-year anniversary for Trustworthy Computing, which</p> <p>12 is the group that looks at: how do we build privacy and</p> <p>13 security into our products at the beginning so they make</p> <p>14 sense as you go forward instead of looking at it after</p> <p>15 it's all done. So I'm pretty proud that Microsoft's</p> <p>16 done that. I think it was very much a leader in this</p> <p>17 area.</p> <p>18 And a more recent thing, if you think about Internet</p> <p>19 Explorer, is around how do you figure out behavioural</p> <p>20 advertising and cookies on the Internet, if you're</p> <p>21 familiar with that, but the information that's collected</p> <p>22 about you, and we recently worked with Privacy</p> <p>23 International to create a tracking protection list</p> <p>24 where, if you subscribe to Privacy International's list,</p> <p>25 it has websites they consider to be maybe not the best</p> <p style="text-align: center;">Page 30</p>	<p>1 it, with different urls, I apprehend you'll say that</p> <p>2 whereas a search engine might pick up the general words</p> <p>3 and block them, going beyond that, you'd have to go to</p> <p>4 the original webmaster each time, each one, one by one?</p> <p>5 A. I think that's right. We have the technology when it</p> <p>6 comes to images, like sexual abuse content or images, to</p> <p>7 go further, but there's -- and part of that is -- you</p> <p>8 might be familiar with photo DNA, which we put in Bing,</p> <p>9 we put in Hotmail, we put in our Skydrive product and</p> <p>10 also licence or work with Facebook on to try and remove</p> <p>11 that type of content. So that's available and is</p> <p>12 working well. Not 100 per cent but works well. To go</p> <p>13 further though when it comes to other things gets much</p> <p>14 more technically complicated, and not something that</p> <p>15 currently we can do.</p> <p>16 LORD JUSTICE LEVESON: I don't want to ask you in this</p> <p>17 public forum how you identify pornographic photographs,</p> <p>18 because I don't want to encourage those who might want</p> <p>19 to put that material online to think of ways of</p> <p>20 defeating what you're doing, but if those to whom you</p> <p>21 are speaking can see any way of using that approach to</p> <p>22 deal with material that is recognised by a court to be</p> <p>23 defamatory or in breach of privacy, I'd be very grateful</p> <p>24 if you'd let us know.</p> <p>25 A. Thank you, sir. I'll take that back with me.</p> <p style="text-align: center;">Page 32</p>



<p>1 LORD JUSTICE LEVESON: Thank you very much, and thank you 2 for coming from Paris to give evidence. 3 A. You're welcome. Thanks. 4 MR BARR: Sir, might I ask that we have a few minutes to 5 prepare for the next witness, because I think material 6 has to be brought in. 7 LORD JUSTICE LEVESON: Material has to be brought in? 8 MR BARR: I think Mr Jay has rather more bundles to deal 9 with the next witness than I've had with Mr Zink. 10 LORD JUSTICE LEVESON: All right. 11 (10.55 am) 12 (A short break) 13 (11.03 am) 14 MR JAY: Sir, the next witness is Baroness Buscombe, please. 15 LORD JUSTICE LEVESON: Very good. 16 BARONESS PETA JANE BUSCOMBE (sworn) 17 Questions by MR JAY 18 MR JAY: Make yourself comfortable and your full name, 19 please, for the Inquiry. 20 A. Peta Jane Buscombe. 21 Q. Thank you very much. You have provided the Inquiry with 22 a witness statement dated 16 September of last year, 23 which should be in bundle A in the substantial number of 24 files which are in front of you. You've signed this 25 statement.</p> <p style="text-align: center;">Page 33</p>	<p>1 2007, and you became chair of the PCC in April 2009, 2 upon the retirement of Sir Christopher Meyer. Is all 3 that correct? 4 A. That's right. 5 Q. Can I ask you about the process of selection and 6 interview? During the course of your interview, if you 7 can recall it, were you asked about your commitment to 8 self-regulation and freedom of the press? 9 A. Yes. I was, as I recall, and I had just come from being 10 chief executive of the Advertising Association, where, 11 of course, I was playing a very different role in terms 12 of championing the industry, in terms of responsible 13 advertising, but I'd brought with me strong experience 14 in terms of the ASA and also as being a director of 15 ASBoF and BASBoF, which are the funding mechanisms for 16 the Advertising Standards Authority, and so therefore 17 I had experience of that self-regulatory system. 18 I'd also had experience of the self-regulatory 19 system through my work on the communications bill back 20 in 2003, and I'd actually worked previously, back in the 21 1980s, in the advertising industry, so I was and am 22 still to some degree very supportive of the principles 23 of self-regulation, and actually -- so I -- it was one 24 of the things that attracted me to the role. 25 Q. And was it one of the things, do you think, which</p> <p style="text-align: center;">Page 35</p>
<p>1 A. Mm-hm. 2 Q. Is this your formal evidence to the Inquiry, 3 Baroness Buscombe? 4 A. It is. There is just one mistake in it, which I've only 5 noticed in the last couple of days, if I may. 6 LORD JUSTICE LEVESON: Please. 7 A. It's where I refer to there not -- I think I say 8 somewhere -- forgive me, I can't remember where -- I say 9 somewhere that the industry had not changed its 10 membership, in terms of the editorial membership of the 11 Commission, during my time at the PCC and that's 12 incorrect. There were two editors who came on to the 13 Commission when I was chairman under the old appointment 14 system, one regional and one local. 15 MR JAY: Thank you very much. 16 A. I think it's because my focus was on the national press 17 at that point. 18 LORD JUSTICE LEVESON: Thank you. 19 MR JAY: Baroness Buscombe, in terms of your background, you 20 are trained as a barrister. You worked first of all as 21 legal adviser and counsel to various organisations. You 22 then, in due course, became chief executive of the 23 Advertising Association. You were made a life peer in 24 1998, took the Conservative whip and you had various 25 shadow briefs, I think seven of them, between 1997 and</p> <p style="text-align: center;">Page 34</p>	<p>1 attracted those who were interviewing you to you? 2 A. Probably. Probably. 3 Q. Was the chair of PressBoF on the interviewing committee? 4 A. Yes, I think he was. Tim Bowdler. 5 Q. Thank you. I've asked others this. There's at least 6 the appearance or perhaps even the reality of 7 a preponderance of Conservative peers either in the PCC 8 or PressBoF, and you're another Conservative peer. Why 9 do you think that's the case? 10 A. I think it's not really for me to ask. I think that's 11 one for the industry. Personally, I think it's -- 12 I think for me it was irrelevant. My view is that I was 13 somebody who had the requisite skills and experience for 14 the job. It didn't concern me that I was a Tory peer, 15 and I would have been furious if I'd thought there was 16 any issue of parti pris, not least because in my 17 previous role, working for the advertising industry, 18 again, I was as Tory peer and for my view I was fiercely 19 apolitical in that role, which I found very liberating, 20 actually. 21 Q. Do you think they were looking for someone who would 22 take on the press or for someone who would be more 23 compliant? 24 A. They were looking for someone, I assume -- and I can't 25 speak for them again, but I'm assuming and I would like</p> <p style="text-align: center;">Page 36</p>

<p>1 to think they were looking for someone who was                  2 supportive of the system and with whom they could build                  3 trust in the system, to work together, because the whole                  4 point about self-regulation, in my view, is it's only as                  5 good as the people who sign up to it and who are                  6 involved with the system itself, and therefore if you                  7 have somebody who is chairing that part of the system,                  8 ie the "regulator", if we can call it in that way --                  9 because I know there's an issue over regulator and                  10 non-regulator -- but if you have someone who doesn't                  11 even trust the system at the outset I think there's                  12 a problem. It doesn't mean that person doesn't want to                  13 test the system if one feels, further down the line,                  14 that there are issues.                  15 Q. Thank you. We're going to take most of your statement                  16 as read, but it's right that we look at your views as to                  17 the strengths of the current system, which start really                  18 at paragraph 23 at page 01929. You refer to a number of                  19 matters which others have also spoken to:                  20 pre-publication work.                  21 A. Yeah.                  22 Q. The anti-harassment work, the desist notices, and also                  23 the very hard work done by a small team in resolving                  24 complaints. That summarises the strengths of the                  25 current system. Is that fair?                  Page 37</p>	<p>1 So if you have a guy in prison who's read something                  2 in the press that's really upset him, for him to have                  3 the courage, or her to have the courage, to actually                  4 make a complaint is fairly massive, but they're then in                  5 touch with this individual who can work with them and                  6 build a relationship with them and build trust with                  7 them, and I think that's very attractive, and it's away                  8 from the glare of the court, the law and so on.                  9 Q. Thank you.                  10 A. But the only other thing I would like -- perhaps you're                  11 going to ask me a bit more about pre-publication work?                  12 Q. We've heard a lot about that from three other witnesses,                  13 Lady Buscombe. May I can you just to look at the                  14 section which deals with weaknesses in the current                  15 system. First of all, 01931, the issue of lack of                  16 independence, where you say:                  17 "It's hard to argue that we're entirely independent                  18 from those whom we oversee."                  19 Was that an issue which concerned you at the time                  20 when you were chairman of the PCC, namely between April                  21 2009 and October of last year?                  22 A. My view changed, to some degree, in that I realised                  23 fairly soon after I arrived that of course I was in                  24 a very different world in terms of the self-regulatory                  25 system as it applies within the press and magazine                  Page 39</p>
<p>1 A. Yes, it does. It's also -- I mean, one of the issues                  2 which I've always felt quite strongly -- and maybe it                  3 comes from my background, having qualified as                  4 a barrister and worked in different ways with law. It's                  5 fast, comparatively, it's flexible and at the forefront                  6 of my mind has always been how to minimise the harm and                  7 the hurt, because the reality is I think there are very                  8 few people who leave a court of law happy, even if                  9 they've won the case. For me, this system works to --                  10 in every -- in many ways to minimise the harm and the                  11 hurt. It's free to the applicant so that access to                  12 justice is really respected. The way that the                  13 complaints team dealt -- and I'm sure still deal with --                  14 those who come to them is amazing, and I think if you                  15 were to look at any of the files, as I'm sure you have,                  16 in relation to how each of the complaints officers                  17 communicate with the complainant, you can see from the                  18 conversation the relationship, that there is                  19 a remarkable degree of support for that complainant,                  20 often who may not have the confidence to go to law, and                  21 I think that's something that we -- if we lost this                  22 system, we would lose at our peril, one of the reasons                  23 being every case it is bespoke. It's given, as it comes                  24 through on the system, to an individual complaints                  25 officer. It remains with that complaints officer.                  Page 38</p>	<p>1 industry than as it applies with the ASA in -- shall we                  2 call it a more commercial environment? In the ASA                  3 environment, there was no micro-managing. The role of                  4 the equivalent to PressBoF was very much hands off,                  5 except for being a funding mechanism and being there to                  6 be supportive to the ASA system.                  7 In this system, I realised that it was terribly                  8 important that people could misconceive what                  9 independence meant and means in terms of the                  10 relationship between the Commission doing its job and                  11 the press itself, not least because of all the                  12 commentators who are continually saying that somehow,                  13 for example, Paul Dacre was running the PCC, which of                  14 course is a nonsense. The Code Committee is a separate                  15 arm, as we know, from the regulator itself, if we can                  16 call the PCC a regulator for the moment.                  17 It was terribly important for us to demonstrate --                  18 seek to continually demonstrate to the world that                  19 actually this Commission, this 17 good people and true,                  20 as it were, were an entirely separate part of the                  21 industry. But I also -- to be honest, I found in                  22 practice it was difficult to be independent when                  23 I realised that in order to improve our credibility, to                  24 continue what Christopher Meyer I know has called an                  25 evolution -- I wanted a bit more of a permanent                  Page 40</p>

<p>1 revolution, actually, to really improve the governance 2 and structures of the organisation and to try and put 3 pressure, if I could, with the permission and blessing 4 of the Commission, on the industry to accept that that 5 we needed to up our game in terms of our remit, our 6 sanctions and very much our funding. This is where my 7 view of independence changed.</p> <p>8 Q. So is the gist of your evidence this, Lady Buscombe: 9 that you were keen for more dramatic change, 10 revolutionary change, but you were facing resistance 11 from the industry against such change?</p> <p>12 A. Yes, and that was not at the outset. That was really -- 13 it's -- I spent the first two or three months learning, 14 listening, doing a lot of travelling around the country, 15 getting to know the industry, and realising, by the way, 16 that in large part we're talking about an industry which 17 is made up of amazing people doing a brilliant job on 18 a day-to-day basis. My issue was with the -- those who 19 were in charge of giving us permission, as it were, 20 where we sought it, to try and improve our funding, 21 improve our resource overall so we could do a better 22 job.</p> <p>23 Q. Yes, thank you. You point to lack of resources.</p> <p>24 A. Yes.</p> <p>25 Q. You also point to inadequate political support. This is Page 41</p>	<p>1 regulation and how we deal with it in this -- if I can 2 call it Internet age, et cetera.</p> <p>3 But it's that marvellous phrase, isn't it? It's not 4 what you say; it's what people want to hear.</p> <p>5 Q. Are you saying that the lack of or the withdrawal of 6 political support for the PCC, which we all know about 7 and saw in July of last year, was unjustified or unfair? 8 Because, after all, it was closely allied to your 9 handling of the phone-hacking scandal, in particular 10 the November 2009 report, wasn't it?</p> <p>11 A. I think, to be honest, we felt very much that we had 12 been used as a scapegoat.</p> <p>13 Q. Can I ask you to consider that in the context of the 14 phone-hacking report --</p> <p>15 LORD JUSTICE LEVESON: Before you go to the phone-hacking 16 report, I just wonder whether we can pursue one aspect 17 of this just a little further. You said, rather 18 intriguingly, Lady Buscombe, just earlier -- I'm just 19 going to quote you. You said, about the question of 20 self-regulation: 21 "I was and am still, to some degree, very supportive 22 of the principles of self-regulation." 23 So you've certainly qualified that original 24 enthusiasm and I'd be very grateful for you to give me 25 your perspective about the degree of qualification and Page 43</p>
<p>1 paragraph 42.</p> <p>2 A. Yes.</p> <p>3 Q. You're suggesting there that politicians blame the PCC 4 as a proxy for blaming the press. Is that the purport 5 of paragraph 42?</p> <p>6 A. Yes. If I may be so bold, sir, one of the issues with 7 this is that it's always been so much easier to attack 8 the PCC than actually have the courage to take on those 9 who've actually got the power to make a difference, 10 which is the industry, and politicians are in that 11 quarter.</p> <p>12 We had opportunities -- for example, I felt, and so 13 did my director feel, it was terrible important to have 14 strong engagement with politicians. We were always 15 talking to politicians, inviting them in, going to see 16 them, in order to explain to them the system. We 17 actually had a meeting one day set up with the Media 18 Select Committee to come in and see us and look at our 19 work and understand what we did. Unfortunately, even 20 though there was a lot of notice and they all accepted, 21 only two turned up.</p> <p>22 We would brief politicians regularly as to the -- 23 how the system worked, what we did, all the frankly good 24 things that the staff did and do in terms of training 25 journalists, in terms of thinking about the future of Page 42</p>	<p>1 where it should lead.</p> <p>2 Now, I appreciate that you've given me a window on 3 it in what you thereafter said about the interaction 4 with the source of funding and the consequences of that. 5 So I've got that, but before we go on to the detail, I'd 6 be very interested to hear the extent to which you lost 7 faith with it and where you think it ought to be now.</p> <p>8 I appreciate that normally we do this at the end, 9 but before we got tied into the phone-hacking and the 10 specific decisions, that part of your evidence, to my 11 mind, is by far and away the most important.</p> <p>12 A. For me it's the most important too, sir, because the 13 reality is I want to support the self-regulatory system 14 because I believe there is a real problem with the 15 alternative, in terms of -- ie state regulation, but 16 this demands a degree of trust, and the issue for me 17 became a problem of trust.</p> <p>18 I remember towards the end of my time there, one of 19 the editors asked me: "Peta, don't you trust us?" and 20 I said, with an incredibly heavy heart, "How can I?" And 21 this is because we felt that we hadn't been told the 22 truth, and when I say "we", of course, I'm thinking of 23 myself and the Commission. I did not work in isolation. 24 I had the tremendous support of the Commission and 25 particularly the lay commissioners -- and of course, Page 44</p>

<p>1 that's another issue too, because -- I'm slightly                  2 jumping here, but there came a time when I had to                  3 question the editors on the Commission in my head, which                  4 was very, very difficult, because these are people that                  5 I have worked with, debated with, discussed with and so                  6 on at great length over the two and a half years that                  7 I was there.                  8 But there was something that was continually                  9 disturbing me, and that is that you have this slightly                  10 obscure body in some ways, PressBoF, who are supposed to                  11 be the sort of funding mechanism in charge of remit,                  12 sanctions. Basically the guys who make the rules are                  13 the industry -- and yet of course it was the industry                  14 that was attacking the PCC in the media, both broadcast                  15 and non-broadcast media -- but there's an over-arching                  16 body which I couldn't seem to get to, which was the                  17 Newspaper Publishers Association, which is the NPA, and                  18 the Newspaper Society, who have been silent in all of                  19 this, and I'm slightly amazed that they're not being                  20 called, if I may, sir, with great respect, to give                  21 evidence, because it's really important to question                  22 oneself. You know, where does the power lie in all                  23 this, to make this and underpin this system? To make it                  24 credible, to ensure -- or to ensure its credibility?                  25 Because I felt all along that, you know, it's the</p> <p style="text-align: center;">Page 45</p>	<p>1 don't have it in your bundles -- saying, "This is really                  2 important. This is too important to get wrong. We need                  3 to find a way to show that this system can work, can be                  4 trusted." And he said he would talk to the now                  5 chairman -- I assume he's now chairman -- but again                  6 I don't think that happened.                  7 And I talked to that chairman also more recently,                  8 when I was still in the job, and again nothing happened,                  9 and this is one of the reasons why I felt it was so                  10 important to send a letter in April of last year to the                  11 publishers and proprietors to spell out my concern that                  12 there was a real issue of trust in the system now and                  13 that it was terribly important that we actually look and                  14 share with the proprietors and publishers the whole                  15 issue of governance within news organisations, but also                  16 look at what we can do to actually introduce much                  17 stronger protocols and develop a different kind of                  18 relationship with the industry itself.                  19 And I still think that's doable, but it's a tough                  20 call.                  21 MR JAY: I'm going to come back to those issues in due                  22 course, Lady Buscombe. On phone hacking, though, if you                  23 look at file B4, tab 67, please. You'll find the report                  24 on phone message tapping allegations dated 9 November,                  25 2009. It's our page 41333. Let's just be clear about</p> <p style="text-align: center;">Page 47</p>
<p>1 right system in terms of a democratic society to have                  2 a free press that is not in any way shackled by the                  3 state, but when you have an over-arching body that is                  4 not there to support -- I remember the -- at one point,                  5 the outgoing chairman of the NPA, which is the                  6 over-arching body, who was then managing director of the                  7 Guardian Media Group, came in to see me -- and I say                  8 this with some care because it was a private meeting,                  9 but I think it speaks volumes -- who was asking me why                  10 doesn't the PCC do more in terms of its remit,                  11 sanctions, rules, et cetera, when we didn't have that                  12 locus, and I remember saying to him: "But you have been                  13 the chairman of the over-arching body. You could make                  14 a difference. And also you have been managing director                  15 of Guardian Media Group, who have been attacking us.                  16 Why did you do nothing?"                  17 LORD JUSTICE LEVESON: We may not have had the Association                  18 but I think we've had the editors, and we'll have to see                  19 how much further we should go. Thank you.                  20 A. I think I should say also that this year -- sorry,                  21 towards the end of last year -- no, hang on, the middle                  22 of last year -- it's very difficult to think about                  23 timing. I, last Easter, was in touch with the guy who                  24 runs the NPA, Newspaper Society, David Newell, and I was                  25 pleading with him, on a telephone conversation -- so you</p> <p style="text-align: center;">Page 46</p>	<p>1 the conclusions, which start at 41341.                  2 A. Not sure I'm in the right place here, actually. I'm                  3 looking at the PCC report on phone message tapping                  4 allegations.                  5 Q. You're in the right place.                  6 A. Yes?                  7 Q. The conclusion -- if you look at the numbers on the                  8 bottom right, you'll see 41341.                  9 A. Yes, sorry, I have it now.                  10 Q. 13. Mr Toulmin made it clear that those were the                  11 conclusions of the Commission rather than his                  12 conclusions. Is that correct?                  13 A. Yes. I mean, Mr Toulmin was the -- he drafted the                  14 report and we had -- I think we met on two or three                  15 occasions to debate and discuss this, think hard about                  16 what we were writing and -- or what he had written and                  17 agree with whether we were comfortable with this report                  18 going out.                  19 Q. It's clear from the documents we've seen that the first                  20 draft stopped at the end of paragraph 12. There was                  21 then a discussion about the conclusions. There was                  22 a second draft, which included some draft wording, which                  23 we see substantially in the same form as we're looking                  24 at now, and that draft wording was approved by the                  25 Commission. Does that accord with your recollection?</p> <p style="text-align: center;">Page 48</p>

<p>1 A. Yes. If it was the wording that went out in the end, it 2 did -- it was approved by the Commission.</p> <p>3 Q. So you were presumably comfortable with paragraph 13.2, 4 and in particular 13.3, the line:</p> <p>5 "Indeed, having reviewed the matter, the Commission 6 could not help but conclude that the Guardian's stories 7 did not quite live up to the dramatic billing they were 8 initially given."</p> <p>9 You put your name to that, didn't you?</p> <p>10 A. I put my name to it. I have to say, though, I was never 11 comfortable with it. The reason being was that again, 12 we didn't have the locus, we didn't have the powers, the 13 structure, the processes in order to seriously consider 14 this whole issue. But I mean, I have to say --</p> <p>15 Q. But if you weren't comfortable with it, why was it 16 included?</p> <p>17 A. No, I'm not saying I wasn't comfortable -- I meant the 18 whole report, in the sense that -- you know, one again 19 has to think about this in context. This is a report 20 which, of course, you know, with hindsight and so on, 21 I regret. But I think -- you know, I regret this in the 22 same way that I regret that I was clearly misled by 23 News International, that I accepted what they had told 24 me. I felt all through the process somewhat hands tied 25 by merely being able to ask questions, write letters to</p> <p style="text-align: center;">Page 49</p>	<p>1 other hand, if we'd done nothing, we would have been 2 accused of being useless for doing nothing. It's very, 3 very difficult.</p> <p>4 LORD JUSTICE LEVESON: Well, you might have said, "This is 5 really only a complaints mechanism. This is nothing 6 about regulation."</p> <p>7 A. But at the time we felt that we did have a regulatory 8 role, in a sense, to perform. There was nothing else. 9 There were no other layers that were, at the time, 10 coming into play, and that's why I was determined then 11 to -- when we were going through this whole issue in the 12 summer, I realised that we needed to really rethink this 13 system and that's why I started where I knew I could 14 begin, which was with a really -- as strong as possible 15 independent review of our governance and structures. 16 I felt if we started from within and actually opened up 17 and gave this organisation itself more confidence, then 18 we could go forward -- this was a stepping stone to 19 a much more, shall I say, hopeful -- hopefully a much 20 stronger debate with the industry about the future of 21 the system.</p> <p>22 MR JAY: But at the time -- and we know what you were 23 thinking at the time because you gave a speech to the 24 annual conference of the Society of Editors, which is at 25 tab 69 of the same bundle.</p> <p style="text-align: center;">Page 51</p>
<p>1 editors and so on. Indeed, one or two editors didn't 2 even bother to reply. This is when I --</p> <p>3 Q. I'm on this report at the moment.</p> <p>4 A. Okay, but I think it's important to understand that, 5 yes, I mean, I, with the Commission -- this was the 6 Commission as a whole accepted this wording.</p> <p>7 Q. And at the time when you were having frank discussions 8 about the conclusions in particular, did you express any 9 disquiet about these conclusions?</p> <p>10 A. I can't remember. To be honest, I can't remember what 11 I said at the meeting.</p> <p>12 Q. Did you have any --</p> <p>13 A. I've tried to remember. I have tried to remember.</p> <p>14 Q. Did you discuss any disquiet about the fact that the 15 Commission might be going too far, namely carrying out 16 an investigation or inquiry, when it didn't have the 17 ability to do that?</p> <p>18 A. That's really where I was uncomfortable because what 19 could we do? If we'd done nothing, which is perhaps -- 20 I mean -- and I know some have said we should have just 21 said, "Sorry, we can't do anything." I've tried to 22 imagine the reaction if we'd said that and we're calling 23 ourselves the PCC and we're trying to be credible.</p> <p>24 I thought -- unless we can probably investigate, 25 perhaps we shouldn't have done anything, but on the</p> <p style="text-align: center;">Page 50</p>	<p>1 A. Yes.</p> <p>2 Q. In the speech you gave, only a few days after the 3 publication of the report we've just been looking at -- 4 because you gave it on 15 November 2009 -- it might be 5 said that you were expressing views which were ones of 6 satisfaction with the status quo. Would you accept 7 that?</p> <p>8 A. No. Because look at the final paragraph.</p> <p>9 Q. Let's look at what you did say. Under tab 69 at 10 page 41347, "Self-regulation of the press", you rightly 11 point out that self-regulation demands a degree of trust 12 and integrity from all those who buy into it:</p> <p>13 "It works on the basis of good old-fashioned common 14 sense."</p> <p>15 Were you intending to suggest there that there was 16 a lack of trust and integrity from those who bought into 17 it?</p> <p>18 A. What I was really wanting to express, and I -- it 19 remains my belief, is that it's as very fragile system, 20 and I think I've already alluded --</p> <p>21 Q. Sorry, Lady Buscombe, just indulge me. Is it "yes" or 22 "no", and then qualify it as you feel --</p> <p>23 A. Sorry, if you could repeat --</p> <p>24 Q. Were you intending to suggest that there was a lack of 25 trust and integrity from all those who bought into it?</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 You don't say that, do you?</p> <p>2 A. I don't say that because -- one of the reasons I don't</p> <p>3 say that is because I'm talking to the industry which,</p> <p>4 in large part, seriously supports the system, and</p> <p>5 I think this is really important. When you're talking</p> <p>6 to the Society of Editors and so on, you're actually</p> <p>7 talking to a body of people from all over the United</p> <p>8 Kingdom. Actually, it's mostly regional and local</p> <p>9 editors and so on --</p> <p>10 Q. We understand all of that. Can we just move on --</p> <p>11 A. No, but it's important, if I may -- if I may, Mr Jay,</p> <p>12 it's actually quite important because, your know,</p> <p>13 a large part of this industry actually I think is -- you</p> <p>14 know, is -- it's a shame that we are where we are,</p> <p>15 because they do support the system and they do --</p> <p>16 I trust them to be --</p> <p>17 Q. The point I'm making is that you were supporting the</p> <p>18 same system, and if people use words like "good</p> <p>19 old-fashioned common sense", there's nothing wrong with</p> <p>20 that --</p> <p>21 A. No.</p> <p>22 Q. -- but it does suggest a measure of support because one</p> <p>23 often hears people invoking common sense as</p> <p>24 justification for their position.</p> <p>25 A. Yeah.</p> <p style="text-align: center;">Page 53</p>	<p>1 So again, there's no suggestion there, is there, of</p> <p>2 any concern with lack of independence in the PCC or its</p> <p>3 relationship with the funders, PressBoF. That's right,</p> <p>4 isn't it?</p> <p>5 A. In terms of this speech, no, but that's with this really</p> <p>6 important -- maybe I was being too subtle -- proviso</p> <p>7 which I put at the end.</p> <p>8 Q. Yes. Are we looking at the last paragraph?</p> <p>9 A. Where I say:</p> <p>10 "In return, I will expect the industry to give the</p> <p>11 PCC the freedom to develop rapidly ..."</p> <p>12 Q. Yes, but read on.</p> <p>13 A. "... if necessary, to exploit the opportunities</p> <p>14 presented by media convergence. We've shown that we can</p> <p>15 be trusted with the freedom we have enjoyed from the</p> <p>16 state and from the industry over the last two decades.</p> <p>17 Now is our chance to show how our model can be trusted</p> <p>18 in future."</p> <p>19 And that, to me -- again, perhaps I was being too</p> <p>20 subtle --</p> <p>21 Q. Well, maybe you were.</p> <p>22 A. But you have to remember that also -- you know, I'm</p> <p>23 talking to the press. I'm talking to people who will</p> <p>24 mischief-make. Particularly as chairman of the PCC --</p> <p>25 you know, there are always going to be mischief-makers</p> <p style="text-align: center;">Page 55</p>
<p>1 Q. That's what you were doing here, weren't you?</p> <p>2 A. Yeah, yeah.</p> <p>3 Q. Then, on the next page, 41348, three lines down, you</p> <p>4 point out a general proposition:</p> <p>5 "We live in an overregulated world."</p> <p>6 A. Yes.</p> <p>7 Q. A bit later on, fourth paragraph:</p> <p>8 "Such overregulation is in danger of deterring the</p> <p>9 best people."</p> <p>10 A. Yes.</p> <p>11 Q. And then, even later on, level with the lower hole</p> <p>12 punch:</p> <p>13 "We have our critics, some with their own agenda and</p> <p>14 some who genuinely don't understand what we do. I have</p> <p>15 yet to hear of a constructive alternative that might</p> <p>16 preserve press freedom and keep standards high."</p> <p>17 A. Yes.</p> <p>18 Q. All of this is strongly supportive of the status quo,</p> <p>19 isn't it?</p> <p>20 A. Yes.</p> <p>21 Q. Then on the next page, 41349, eight lines down:</p> <p>22 "The press do not regulate themselves. The PCC is</p> <p>23 funded by the newspaper and magazine industry but</p> <p>24 operates independently of them. Its independence is</p> <p>25 guaranteed by a majority of lay members."</p> <p style="text-align: center;">Page 54</p>	<p>1 and they're going to read one thing or another depending</p> <p>2 on --</p> <p>3 Q. There are two possibilities here. The first is that</p> <p>4 this was a clear message of support for the status quo.</p> <p>5 The second possibility is that you were giving a very</p> <p>6 subtle, sophisticated, coded message to your audience</p> <p>7 that unless they buck their ideas up and agree to</p> <p>8 radical change, the writing was on the wall. Are you</p> <p>9 suggesting that you were giving the second message</p> <p>10 rather than the first?</p> <p>11 A. To a degree, yes, I was. Because the thing is I had --</p> <p>12 I'd been talking about the writing on the wall probably</p> <p>13 from very early on in private meetings, as it were, with</p> <p>14 PressBoF because -- for lots of reasons and very</p> <p>15 constructive reasons. I mean, for example, take</p> <p>16 pre-publication. I thought it was absolutely brilliant</p> <p>17 but I knew nothing about it until I joined the PCC and</p> <p>18 I felt the industry was underselling itself in terms of</p> <p>19 what the PCC did and does in terms of stopping and</p> <p>20 preventing the hurt and the harm, and I thought it was</p> <p>21 important that the PCC really up its game in terms of</p> <p>22 awareness, encouraging the public to come to the PCC</p> <p>23 through a new advertising campaign that we set up and so</p> <p>24 on.</p> <p>25 This was a call to the press to say: this is a great</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

<p>1 system but if we stand still, we're going backwards.  2 Q. You weren't suggesting here, were you, that there needed  3 to be a fundamental reshaping of the constitution of the  4 PCC; is that right?  5 A. By that stage, I was beginning to feel less and less  6 comfortable with the -- put it this way: I wanted very  7 much for there to be a good relationship and trust  8 between the industry and the lay commissioners and  9 myself, but I was becoming more and more frustrated with  10 our inability to up our game because of lack of resource  11 and lack of support.  12 Q. You weren't suggesting --  13 A. The attitude, if I may, from the industry: "Oh, well,  14 we've all been here before, Peta. It's perfectly all  15 right. It will be fine, and by the way, we don't have  16 the money so we can't --"  17 Q. You weren't suggesting here that the PCC needed wider  18 sanctions, such as the ability to fine editors, were  19 you?  20 A. We constantly thought about that in discussions with  21 ourselves, at the PCC, we --  22 Q. I'm sure you did, but you weren't suggesting it here,  23 were you?  24 A. No, I wasn't, no.  25 Q. And in answer to the independent review, which you</p> <p style="text-align: center;">Page 57</p>	<p>1 Q. I'm not asking you --  2 A. But it's one that, for example, the politicians are  3 always saying is the quick fix, and -- you know, I'm  4 sorry, but when the BBC people are fined, who pays?  5 It's you and me, the licence fee payer. It's not  6 Jonathan Ross. You know, it has to hurt the right  7 person. It's the same in the public sector.  8 Q. I think everybody would agree that without prejudice to  9 the merits of bringing in financial sanctions, it would  10 be the press, who, after all, are private or public  11 companies, who would have to pay. It wouldn't be the  12 taxpayer, would it?  13 A. No, it wouldn't, as long as the press pay for their own  14 system, which I think they should. But what I'm saying  15 is it's got to hurt in terms of -- you know, if it's  16 a sanction, it has to hit. It has to hit the right  17 spot.  18 Q. In answer to the Select Committee's February 2010  19 report, the Commission took the view that  20 notwithstanding the criticisms in that report, which  21 you're aware of, the status quo should be maintained.  22 That's right, isn't it?  23 A. Sorry, who took the view?  24 Q. You did. We can see that from the --  25 A. Oh, in terms of fines.</p> <p style="text-align: center;">Page 59</p>
<p>1 initiated in August 2009 and reported in July 2010,  2 there was no suggestion that the powers of sanction  3 should be widened to include a fine, were there?  4 A. For what I felt -- and to some degree I still feel and  5 I think, you know, as I make clear in my statement --  6 the whole issue with fines is quite fraught, one of the  7 reasons being it has the risk of turning the system from  8 one that is collaborative -- which is really important  9 on a Saturday night at 1 in the morning when you have  10 the managing editor of the Sun or the Mail or -- it  11 doesn't matter who it is -- discussing with the director  12 whether or not something should be run. That's  13 really -- it's hard to explain, if I may, to lawyers.  14 I have a hard time with lawyers I know understanding  15 that actually it's a system where the collaborative can  16 actually produce very good results as opposed to  17 adversarial, and when you introduce a system of fines,  18 there is a concern that that might break down that  19 collaborative relationship.  20 One always has that focus: what is the end -- what  21 is the outcome? The outcome is perhaps a less --  22 a lesser service for the public.  23 There is another issue, if I may --  24 Q. The question was quite a simple one --  25 A. I know, but I think --</p> <p style="text-align: center;">Page 58</p>	<p>1 Q. Well, generally. If you go to bundle B, section 1,  2 tab 48. It's the PCC response to the Select Committee  3 report.  4 A. Yes. Let me just -- I have two 1B2s here. Sorry, what  5 number is it?  6 Q. 48, our page 45703. It's draft by Mr Abell. No doubt  7 you saw this before it went out?  8 A. Oh God, yes. Yeah, this is -- no, no, what we were  9 doing here was not accepting the status quo by any means  10 but what was important for us was not to pre-empt our  11 independent review of our governance and structures. So  12 we weren't meaning in any way to diminish or  13 compromise -- that's the wrong word but diminish the  14 report of the Media Select Committee. What we were  15 trying to say: look, it's really important here, if we  16 may, to await -- before we respond and decide some of  17 these issues, to await the outcome of the independent  18 review of our governance and structures.  19 Q. I think that may be referred to, but you're not saying  20 in this reply that you don't wish to comment in the  21 light of that review. Look at 45703, level with the  22 lower hole punch. You do say in that paragraph:  23 "It's important the PCC does not prejudice the  24 outcome of the government review. We are not yet in  25 position to respond to all the of the Select</p> <p style="text-align: center;">Page 60</p>

<p>1 Committee's views and recommendations."</p> <p>2 But then you went on to give responses in certain</p> <p>3 areas, didn't you?</p> <p>4 A. Well, also to make clear -- and this is what was quite</p> <p>5 frustrating, actually, was that this -- the Media Select</p> <p>6 Committee had carried out this extensive review, but it</p> <p>7 clearly didn't -- still didn't appreciate that quite</p> <p>8 a lot of what they were recommending was without our</p> <p>9 locus. We couldn't make it -- we couldn't -- the PCC</p> <p>10 itself wasn't responsible for sanctions, remit, funding.</p> <p>11 That was PressBof and, of course, the NPA. And that was</p> <p>12 why we were, you know, constrained in what we could say.</p> <p>13 You know, a lot of this related to the role of the</p> <p>14 industry, not the PCC.</p> <p>15 Q. Notwithstanding that, it's clear, for example, that</p> <p>16 views are expressed on the strength of the current</p> <p>17 system. For example, at 45706, the paragraph which</p> <p>18 begins level with the lower hole punch, you say:</p> <p>19 "At present, the Commission believes its powers are</p> <p>20 effective and can point to a culture in which its</p> <p>21 sanctions have real impact and led last year to a record</p> <p>22 number of settled complaints. However, it welcomes the</p> <p>23 fact that the issue of sanctions can be re-examined, and</p> <p>24 will be talking to the industry on this point."</p> <p>25 A. I think -- yes. I think what is important here is a lot</p> <p style="text-align: center;">Page 61</p>	<p>1 actually saying that a complaint has been resolved</p> <p>2 between X -- actually, it's the FT -- and the</p> <p>3 complainant and -- which we thought was rather good</p> <p>4 news, actually.</p> <p>5 MR JAY: What's more, I think a number of editors threatened</p> <p>6 to leave the PCC --</p> <p>7 A. Yes, yes.</p> <p>8 Q. -- as a result of adverse adjudications. Three</p> <p>9 newspapers. Are you prepared to name them?</p> <p>10 A. The FT, the Guardian, the Mirror.</p> <p>11 Q. Doesn't that suggest, though, that the dynamic between</p> <p>12 you -- that you have the nerve, the audacity, to publish</p> <p>13 or require the publication of an adverse adjudication</p> <p>14 against them -- suggests that the balance of power may</p> <p>15 be in the wrong place?</p> <p>16 A. Well, this is -- I mean -- but this is where one has to</p> <p>17 think about the system. You know, there's no question</p> <p>18 that actually when you issue a critical adjudication you</p> <p>19 are -- you know, it really hurts. The point is: do they</p> <p>20 respect it? Do they accept it? Because my view is the</p> <p>21 editors -- the newspapers as a whole have an</p> <p>22 extraordinary privilege here at the moment, in that they</p> <p>23 have a system where getting a telling-off, in a sense,</p> <p>24 from the regulator is hoped -- it's hoped that that is</p> <p>25 effective.</p> <p style="text-align: center;">Page 63</p>
<p>1 of people assume because there is no fine, then there</p> <p>2 isn't really a sanction. I have to tell you, when I was</p> <p>3 chairman of the PCC, I have to say -- I'd love you to</p> <p>4 have been at the end of the phone, as I was sometimes,</p> <p>5 when we had issued a critical adjudication. The end of</p> <p>6 the phone from some of the editors, and their reaction,</p> <p>7 their fury, their anger that we had issued a critical</p> <p>8 adjudication.</p> <p>9 This I found one of the hardest things to persuade,</p> <p>10 whether it's politicians or the public, that the true</p> <p>11 effect upon editors when you issue a critical</p> <p>12 adjudication is massive. You know, these are people who</p> <p>13 are writing about other people's lives all the time with</p> <p>14 alacrity, but if you --</p> <p>15 Q. I think you're giving us here another reason for</p> <p>16 supporting the status quo, which we understand --</p> <p>17 A. No, no, I'm not at all.</p> <p>18 LORD JUSTICE LEVESON: But don't you think the anger might</p> <p>19 be that the PCC have had the nerve to criticise their</p> <p>20 judgment?</p> <p>21 A. Oh yes, yes! That's exactly it, sir. That's exactly</p> <p>22 it, sir. We have had the audacity -- in fact,</p> <p>23 I remember one editor who rang me up and was fairly</p> <p>24 abusive because we'd had the audacity to name his</p> <p>25 newspaper on our website, and all we were doing was</p> <p style="text-align: center;">Page 62</p>	<p>1 The reality is I think the rest of the world would</p> <p>2 kill for such a system.</p> <p>3 LORD JUSTICE LEVESON: Yes, but the point is it's not that</p> <p>4 their anger is: "How can we change our system to reflect</p> <p>5 the fact that our fellow professionals have criticised</p> <p>6 us?" It's: "What are you doing criticising me?" And</p> <p>7 that actually is rather significant, isn't it?</p> <p>8 A. It is significant. It's very significant. It's very</p> <p>9 important in all of this, because at the end of the day,</p> <p>10 whatever system is put in place, it has to build trust</p> <p>11 between it and the public, and I can say, as a member of</p> <p>12 the public now, that will matter to me very much.</p> <p>13 LORD JUSTICE LEVESON: But isn't that the risk, that what's</p> <p>14 happened, for whatever reason -- and we'll carry on</p> <p>15 going through it -- is that actually there is now no</p> <p>16 public trust?</p> <p>17 A. That is a problem. That is a problem. But -- so how</p> <p>18 does one rebuild that trust? How does one rebuild that</p> <p>19 trust? That, sir, is a tough call for you.</p> <p>20 LORD JUSTICE LEVESON: Thank you.</p> <p>21 A. If I may --</p> <p>22 MR JAY: Yes, but that aspect --</p> <p>23 A. But I think there are ways -- and if I may --</p> <p>24 Q. Can we come back to that because I'm trying to deal with</p> <p>25 the chronology and I'm pointing out, quite gently, that</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)



<p>1 a year into your post, you were effectively saying to 2 the parliamentary committee, in a public response to it, 3 that the existing system and the existing culture is 4 satisfactory. Isn't that what you were saying here? 5 A. I was saying that, but I was saying that pending -- 6 and I -- you know, I genuinely say -- I was saying that 7 pending the outcome of the governance review. 8 Q. Okay. 9 A. Which I know sounds, you know -- but it's true. And 10 remember I went into this totally supportive of 11 self-regulation and wanting it to work. You know, as 12 chairman, it's really important that you are supporting 13 this system, supporting your staff, and also looking to 14 your lay commission as well. And I'm very proud of the 15 lay commission as it is now. You know, that was all 16 part of my -- 17 Q. I understand all of that, I'm just trying to go into 18 what the mindset was in March 2010. If we turn back 19 a page to 45705, you will recall that the Select 20 Committee chose to characterise the November 2009 report 21 as simplistic and surprising. 22 A. Mm. 23 Q. But you came back fighting. If you look at the upper 24 hole punch, just below it: 25 "The Commission also wish to comment on the Select Page 65</p>	<p>1 A. But the difficulty -- one has to remember what the 2 situation was then. I didn't realise I was being lied 3 to. I was taking on trust when the police had told us. 4 You know, there was a very, very different climate then 5 to what we know now. 6 Q. That may be correct, but all I'm saying is that you did 7 choose to put your head above the parapet and delve into 8 areas where perhaps you shouldn't -- 9 A. Well, as I think I explained before, if I may, Mr Jay, 10 we were dealing only with allegations from a newspaper, 11 which we certainly didn't dismiss and we actually -- you 12 know, there was -- we thought about this long and hard, 13 but our difficulty was we were so constrained in terms 14 of our locus, and as I've said to you before, you know, 15 if only I hadn't taken at face value what people told 16 me. But again, that's -- you know, one didn't want, at 17 that stage, to mistrust what one was being told, and 18 certainly not mistrust what one was being told by the 19 police. 20 Q. Then -- 21 A. That's why, if I may say so, I'm really glad this 22 Inquiry is going to, at another stage, look at the role 23 of the press and the politicians, role of the press and 24 the police. It's very important. 25 Q. Later on on that page, you refer to remarks you made at Page 67</p>
<p>1 Committee's remarks on phone message hacking and the 2 PCC's work in this area. It believes that your report 3 mischaracterises what the PCC actually sought to do, 4 which was not to duplicate the police investigation but 5 to seek to ensure a change in practice at the 6 News of the World, as well as to confirm best practice 7 within the industry as a whole." 8 Well, that wasn't clear from the November 2009 9 report, was it? 10 A. Sorry, where are you at the moment? I'm so sorry. 11 Q. Just level with the upper hole punch. 12 A. On which page? 13 Q. 45705. 14 A. Yes. Sorry, can we do that bit again? I'm just -- 15 because I missed it. 16 Q. Just skim-read the paragraph which begins "The 17 Commission also wished to comment". Are you with me? 18 A. Yeah. (Pause). Yes: 19 "... as well as to confirm best practice within the 20 industry as a whole." 21 And your question on that was? 22 Q. We've seen from the conclusions at paragraphs 13.2 and 23 13.3 that you chose to go further than that and express 24 a view about the Guardian's claims, for example, didn't 25 you? Page 66</p>	<p>1 the same speech we were looking at earlier, the 2 15 November 2009 speech -- 3 A. Right. 4 Q. -- which led to defamation proceedings brought by 5 Mr Mark Lewis over something you said, and there had to 6 be a libel settlement. Isn't that correct? 7 A. Yes. I mean, that's all on the record and frankly, 8 I did what I did in good faith. I regret it, just as 9 I regret believing what I was told by 10 News International. 11 Q. I'm dealing with this chronologically. The issue of 12 phone hacking. The matter became even more contentious 13 in 2010. If you could go back, please, to the B bundle, 14 section 4, tab 75, which might be in the second file. 15 A. It's not in that one. Am I on 1B or am I on -- 16 Q. 4B, I think. 17 A. Oh, 4. So it's bundle 4. 18 Q. Tab 75. 19 LORD JUSTICE LEVESON: It's the same one that the PCC reform 20 is in. 21 A. Right, so it must be somewhere here. I don't know where 22 it's gone. Bundle 10, bundle 2, bundle 3, bundle 5 to 23 9, bundle 1B, bundle 1A, bundle 1B. That's very 24 peculiar. Ah, it's on the floor. Sorry. 25 LORD JUSTICE LEVESON: Very good. Page 68</p>

17 (Pages 65 to 68)

<p>1 A. Thank you.  2 LORD JUSTICE LEVESON: Tab 75.  3 A. Okay.  4 MR JAY: There isn't a date on this, but it must have been  5 after a letter that Mr Rusbridger wrote in September  6 2010. If you could look, please, at page 41466. This  7 is an internal PCC document, which we think the director  8 probably wrote.  9 A. Oh dear. Oh, 41466.  10 Q. Do you have that?  11 A. Nearly there. Okay, here, "Validity of the 2009 report,  12 reopening the inquiry".  13 Q. That's right. The point has already been made in  14 relation to whether this was an inquiry. You can see in  15 the middle of that paragraph:  16 "It is, of course, wrong and mischievous to suggest  17 that we instigated an inquiry into the practice itself  18 and somehow exonerated the News of the World."  19 Well, the reasonable person applying his or her  20 common sense, to use your test, might be forgiven for  21 thinking that, don't you think?  22 A. Which bit of it are you on? I'm so sorry.  23 Q. Paragraph 39.  24 A. Oh, 39, okay.  25 Q. This is the mischievous bit.</p> <p style="text-align: center;">Page 69</p>	<p>1 A. We could ask people to attend, but then what? What  2 could we do with it? We could be hostages to fortune.  3 We could raise expectations that we couldn't meet. It  4 was rather one of those: you're damned if you do and  5 you're damned if you don't. It was very, very  6 difficult.  7 MR JAY: It's recognised in paragraph 43, halfway through  8 that paragraph:  9 "One problem for the Commission is that the 2009  10 report is not a systematic investigation into possible  11 evidence of phone message hacking but it does express a  12 qualitative view of the merits of certain specific  13 pieces of evidence. The criticism of the Guardian is  14 easily recast as a defence of the News of the World."  15 That's true, isn't it?  16 A. That's true, yeah.  17 Q. At paragraph 52, this quite frank paragraph:  18 "It is not clear how the PCC can offer a public  19 response at this time that would be of benefit. Our  20 current strategy has been not to speak publicly or  21 accept interview requests, because it is not clear what  22 we can reasonably add to the story. There is no doubt  23 that the breadth of the allegations is damaging to the  24 PCC, in that it will suggest to people that a system  25 that allows such behaviour to take place is no fit</p> <p style="text-align: center;">Page 71</p>
<p>1 A. So you're saying ...? I'm so sorry.  2 Q. The reasonable person applying his or her common sense  3 might be forgiven for thinking that it was an inquiry  4 you were conducting, in view of the conclusions you  5 expressed. Would you agree?  6 A. No, actually I wouldn't. With great respect, I actually  7 wouldn't agree with that, because I think it was quite  8 clear from our initial report there was only so much we  9 could do. We were actually trying to look at whether  10 the industry had done what it said it would do back in  11 2007. We were tremendously constrained in this.  12 I mean, this is -- you know, this was -- I have to tell  13 you, all of this was very, very difficult for us. There  14 wasn't a day that went by at the PCC where we weren't  15 troubled by this. So none of what we wrote and was  16 written here, for example, was done flippantly or  17 without great care.  18 The reality was we were just terribly frustrated by  19 our position. We didn't have the processes, we didn't  20 have the -- I mean, how could we investigate? And  21 indeed, should we investigate? Should we -- could we  22 ask for people to attend on oath? No. You know, it's  23 very, very difficult.  24 LORD JUSTICE LEVESON: Well, you could have asked people to  25 attend, couldn't you?</p> <p style="text-align: center;">Page 70</p>	<p>1 system at all."  2 Well, that was probably Mr Abell speaking, not you,  3 but do you --  4 A. One of the issues about all this is it was a criminal  5 act and no regulator -- I mean, Ofcom can't deal with  6 crime, nor should it. But the commentators -- what we  7 were writing here, in a sense, was post a lot of  8 discussion, deliberation, thought among the Commission.  9 The reality was -- and is, if I may -- that whatever we  10 said, there was -- people were misconstruing our role,  11 and also, bearing in mind context, you know, we were  12 trying to consider something that had happened --  13 you know, we thought, back in the beginning of the  14 century, nearly ten years earlier. Two people had gone  15 to jail when we wrote that report in 2009. We were  16 agonising right from the start as to what to do about  17 this.  18 Q. I think what's being said here -- I may be wrong, but  19 what's being said in this last sentence is that the  20 existing system is inadequate because it's the  21 inadequacy in that system which permitted such behaviour  22 to take place and demonstrates that the system was  23 unfit.  24 A. Yes.  25 Q. Isn't that the only fair reading of it?</p> <p style="text-align: center;">Page 72</p>

<p>1 A. Well, the difficulty is you could make a system that 2 looks super-fit on the surface -- and I think this is 3 what we were thinking -- you know, talking about 4 earlier, but the reality is it's actually about culture 5 within news organisations, newsrooms. Can you have 6 a system that changes the culture within news 7 organisations? And that -- so --</p> <p>8 Q. In any of your public pronouncements or any of the 9 documents, which I know you've had the chance to look at 10 in the bundle, did you ever say that the real problem 11 lies with newsroom culture?</p> <p>12 A. I think I maybe just alluded to it, sorry. Slightly -- 13 maybe -- I found it very difficult to write that report 14 in September, and I think if I was writing it now 15 I would have been more expansive in terms of what 16 I meant in the closing -- if I may return to that, the 17 closing paragraphs of that report -- sorry, of that 18 witness statement, I'm sorry, I'm referring to. You'll 19 see where I --</p> <p>20 Q. That's your evidence to the Inquiry?</p> <p>21 A. Yes.</p> <p>22 Q. I understand that your evidence to the Inquiry might 23 take a certain line and that's perfectly reasonable. 24 What I'm referring to is any of the documents or any of 25 your public pronouncements as chair of the PCC. Did you</p> <p style="text-align: center;">Page 73</p>	<p>1 we go. I have it here. I wrote to the Secretary of 2 State.</p> <p>3 Q. 12 April, page 39691.</p> <p>4 A. Yeah.</p> <p>5 Q. And what you were telling him here -- this is the right 6 honourable Jeremy Hunt, Secretary of State for Culture, 7 Olympics, Media and Sport. You were saying the existing 8 system is fine and you were trying to persuade 9 government to maintain the status quo --</p> <p>10 A. No, I --</p> <p>11 Q. -- and the system of self-regulation, weren't you?</p> <p>12 A. No.</p> <p>13 Q. You weren't?</p> <p>14 A. No. If I may, no, I wasn't saying the system was fine.</p> <p>15 Q. Where does it say, save in relation to phone hacking, 16 that the system was other than fine?</p> <p>17 A. I'm saying: 18 "The Issue of phone hacking remains a serious 19 concern, both to me personally and the Commission as 20 a whole. Following the statement from 21 News International last Friday in which it apologised 22 for its actions and accepted its internal investigations 23 had not been sufficiently robust, the phone-hacking 24 review committee of the PCC issued a clear statement in 25 which it stated that it will be holding the</p> <p style="text-align: center;">Page 75</p>
<p>1 ever say, "The really problem here is a newsroom culture 2 which is problematic", or whatever epithet you chose to 3 apply --</p> <p>4 A. That was what is I was referring to when I wrote the 5 letter in mid-April to the publishers and proprietors, 6 which -- I can't remember where it is. Somewhere here.</p> <p>7 Q. Can I tell me which year?</p> <p>8 A. Yes, April 2011. I think it's either 11 April or 9 15 April 2011 when I wrote -- what happened was we'd set 10 up this review of phone hacking -- or I set it up 11 in January of 2011. I decided, along with my 12 director --</p> <p>13 Q. I have the letters.</p> <p>14 A. Good.</p> <p>15 Q. Can we just have a look at them. Sorry to cut you 16 short, but --</p> <p>17 A. That's all right. Where is it?</p> <p>18 Q. It's in the same bundle as the one we've been looking 19 at.</p> <p>20 A. Okay.</p> <p>21 Q. Tab 95. This is bundle B4, the second part of it.</p> <p>22 A. Ah.</p> <p>23 Q. You wrote first of all to the Secretary of State on 24 12 April and then you wrote to some proprietors.</p> <p>25 A. That's right. I can almost remember that. Yeah, here</p> <p style="text-align: center;">Page 74</p>	<p>1 News of the World to account for its actions and public 2 statements."</p> <p>3 And I go on to say I'm keen to ensure we follow due 4 process here. I'm not saying the status quo --</p> <p>5 Q. But were you recommending changes in the existing regime 6 in order to deal, for example, with the issue of phone 7 hacking?</p> <p>8 A. Not at that stage, no, because what I wanted to do was 9 first meet with the proprietors and publishers just to 10 see, just to see, before slightly screaming with 11 frustration, what could be done. Because this is about 12 the time, also -- I can't remember when April -- when 13 Easter was last year, but this is also about the time 14 when I was also speaking informally to the industry, to 15 the NPA, to say: what can we do here? This is real. 16 There is an opportunity here now for the government to 17 introduce state regulation. It's called convergence. 18 It's called the next communications bill ...</p> <p>19 Q. What has happened here is that the Secretary of State, 20 giving evidence to the Select Committee, called into 21 question public confidence in the PCC --</p> <p>22 A. Yes.</p> <p>23 Q. -- and possibly raised the spectre of a different 24 regime.</p> <p>25 A. Mm.</p> <p style="text-align: center;">Page 76</p>

<p>1 Q. The purpose of this letter was to seek to persuade the 2 Secretary of State that the existing regime, a regime of 3 self-regulation, was perfectly satisfactory. Isn't that 4 the truth?</p> <p>5 A. No. Not -- with respect, I'm not saying it's 6 satisfactory. What I was trying to say was, in a sense: 7 be careful what you wish for, that -- in a sense, 8 I wanted this letter to go to the Secretary of State to 9 say that I was concerned that suggestions had been made 10 that maybe there should be a statutory PCC, which 11 I would find very difficult to accept before having the 12 opportunity to resolve some serious issues within the 13 system itself in debate and discussion with the 14 industry.</p> <p>15 But also, in a sense, this letter will have followed 16 on or be probably close to meetings with the industry 17 where I'll be saying to the industry as well: "Guys, you 18 have to understand that this system is more and more -- 19 becoming more and more fragile." We have -- and it is 20 on record in the House of Lords --</p> <p>21 Q. Yes, but where are you saying that in -- for example, if 22 you look at the letter to Mr James Murdoch on 14 April 23 2011, 41939, which is under your tab 98. You wrote 24 similar letters to others.</p> <p>25 A. Yeah.</p> <p style="text-align: center;">Page 77</p>	<p>1 chairman of the PCC to formally write to all of the 2 publishers and proprietors, actually at the 3 suggestion -- and a very good suggestion, I thought -- 4 of the independent reviewer -- review body I'd set up 5 for phone hacking.</p> <p>6 We decided that it was really important to turn to 7 the publishers and proprietors to discuss these issues 8 with them, and actually to say to them: "Do you know 9 what? The system is now in peril." And if I may, 10 that's not something I would ever put in writing to 11 these people.</p> <p>12 Q. But is it your evidence that you told them that?</p> <p>13 A. Yes!</p> <p>14 Q. And what was their reaction then?</p> <p>15 A. "Peta, we've been here before." For some of them. But 16 what was interesting was some absolutely got it and 17 absolutely understood why I was very happy for the 18 Financial Times to write this up as a story, because it 19 was important for the public, for people beyond the 20 press to understand that we were doing our utmost to 21 underpin the credibility of the system, and I very much 22 stand by that. To me, this was really an important 23 stepping stone in our relationship, and actually, I have 24 to say, it was -- it struck me that it was particularly 25 the PLC, if I can call them that, the PLC guys</p> <p style="text-align: center;">Page 79</p>
<p>1 Q. I just ask you to skim-read that. You weren't warning 2 him that unless the industry bucked their ideas up, the 3 writing was on the wall. What you were seeking was 4 their commitment to the existing system of 5 self-regulation, weren't you?</p> <p>6 A. I was thinking carefully about what I put in writing. 7 When I'm approaching publishers and proprietors, I'm 8 thinking with great care about what I write. These are 9 very powerful people, who have a view about their -- 10 about where the system is. These are people who, in one 11 instance -- and it's not James Murdoch -- in another 12 instance, I don't think the publisher has ever forgiven 13 me, simply because I wrote, as chairman of the PCC, to 14 say how appalling I thought it was that one of their 15 editors had named three victims of sexual assault and so 16 on in a newspaper. These are people that you -- where 17 you have to tread -- let's put it this way. You have to 18 tread carefully to gain access.</p> <p>19 Q. Was this a coded message --</p> <p>20 A. Yes, in a sense, it was a coded message to say --</p> <p>21 Q. -- or did it reflect the balance of power, which was: 22 here were you, effectively unable to deal with very 23 powerful individuals who you knew you couldn't really 24 influence?</p> <p>25 A. Not unable to deal with, but I think I was the first</p> <p style="text-align: center;">Page 78</p>	<p>1 involved -- so for example, when I spoke to the chairman 2 of Trinity Mirror Group, when I spoke to the chief 3 executive of the FT, I very much felt they understood 4 why I was doing this and they were incredibly 5 supportive. But other parts of the industry, I learnt, 6 were deeply unhappy that I had gone public in this way.</p> <p>7 Q. By the time you left in October of last year -- and we 8 know that you tendered your resignation, I think 9 in July --</p> <p>10 A. Yes.</p> <p>11 Q. -- no changes to the system had been introduced of any 12 substance, had they?</p> <p>13 A. Well, a number of changes had been introduced. 14 I mean -- well, a lot of changes. I mean, when I -- as 15 a result of the review of our governance and structures, 16 we introduced 75 changes to just our internal --</p> <p>17 Q. But these are all minor cosmetic changes.</p> <p>18 A. No, no, no.</p> <p>19 Q. No changes of any significance were introduced. We had 20 the same system with the same balance of power, the same 21 lack of independence and the same inability, it might be 22 said, to impose any proper sanctions. That's the truth, 23 isn't it?</p> <p>24 A. I don't think that is true. I think the governance 25 review body -- the governance review itself actually</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 made a huge amount of difference in terms of our 2 governance and our structures. We changed really 3 important things, like, for example, the appointments 4 process. We became much more transparent, much more 5 accountable, which was quite right. We actually 6 introduced a number of new processes within the 7 organisation.</p> <p>8 I think we gave overall, which I'm really proud 9 of -- we have the organisation more confidence. Even 10 though we were, to some degree, being a bit battered and 11 beaten by the outside world, as an organisation we 12 really gained in confidence.</p> <p>13 Q. One thing --</p> <p>14 A. And also, can I just -- sorry, because it's so 15 important. One thing also which I think is -- I think 16 is a really important part of the matrix here, if I can 17 call it that, and that is the Commission, the lay 18 commission. You know, I'm really proud of the lay 19 commissioners that we -- you know, we brought on board 20 through a proper, independent, if I can call it that, 21 a proper process of appointments, with an independent 22 assessor. We had over 3,000 applicants back in 2010, 23 which is amazing, and if you look at the individuals 24 involved, I would say they're just the sort of 25 individuals you would want to have as the -- if you have</p> <p style="text-align: center;">Page 81</p>	<p>1 really wasn't my role to go and do that. That was 2 actually the role of PressBoF. But I felt very strongly 3 that the system wasn't credible unless there was almost 4 universal buy-in from the major players, and the fact 5 that somebody who had -- I think it's about a fifth of 6 the titles -- was outside the system for me compromised 7 the credibility of the system overall.</p> <p>8 Q. Mm.</p> <p>9 A. So we went -- sorry, I went as an individual, but with 10 the blessings of the Commission to bring them in.</p> <p>11 Q. To try and bring him back, didn't you?</p> <p>12 A. No, this was the first time. The second time I didn't 13 because I realised that if I was -- I had enough battles 14 on my plate, probably, in terms of my relationship with 15 the industry. For all, I hope, the best reasons, 16 because I just wanted to help to underpin the system, to 17 improve the system, but to step over the line in terms 18 of my role again wouldn't have been helpful, wouldn't 19 have been right.</p> <p>20 Q. Can I ask for your view on Lord Hunt's contract 21 proposal, about which there was evidence last week. How 22 is everyone going to be brought into this contract, in 23 particular Mr Desmond?</p> <p>24 LORD JUSTICE LEVESON: Have you been involved in this at 25 all?</p> <p style="text-align: center;">Page 83</p>
<p>1 a new regulator and it remains a self-regulatory system. 2 You know, chief of police, ex-High Court judge, 3 et cetera, et cetera. You couldn't -- in fact, there 4 were plenty that we had to turn away which I was sad 5 about. Brilliant applicants.</p> <p>6 Q. Just two other matters I'd like to deal with, if I may. 7 The first is Mr Desmond.</p> <p>8 A. Yes.</p> <p>9 Q. Can I deal with it shortly in this way: you were 10 successful in bringing Mr Desmond back into the fold on 11 the departure of Sir Christopher Meyer when you arrived; 12 is that right?</p> <p>13 A. Yes. It wasn't immediate.</p> <p>14 Q. I think if we just have "yes" or "no" and then I'll move 15 on because we know he came back.</p> <p>16 A. Okay.</p> <p>17 Q. But when he left again in January of 2011, presumably 18 you tried to bring him back in but did not succeed; is 19 that right?</p> <p>20 A. I didn't try the second time, for very good reason. 21 When I did it -- very much not me on my own -- I mean, 22 yes, I went to see him on my own and we had an 23 interesting hour's conversation -- I very much went with 24 the blessing of the Commission. But I knew then I was 25 overstepping the mark in terms of the system, because it</p> <p style="text-align: center;">Page 82</p>	<p>1 A. Well, actually not in this -- what I did was before 2 I left the PCC, sir, I set up the reform committee and 3 I know they have been working very hard, the lay 4 commissioners, and I'm sure have been extraordinarily 5 helpful to Lord Hunt because they have, you know, now 6 some experience. They have, you know, knowledge of the 7 system, how it might work, and a lot to bring to the 8 party, as it were. So I hope and trust that he's 9 working closely with the lay commissioners on this.</p> <p>10 There are one or two things in it which we were 11 already on that road following the government's review. 12 For example, a new independent assessor. We already had 13 introduced an independent reviewer to replace the 14 chartered commissioner -- same person, but with 15 additional powers -- and also we had interviewed and 16 retained a review panel. Sadly I don't think they've 17 actually started their work, but the whole point of 18 their work was to actually look and spot-check the 19 system within the PCC, but I think the point of going 20 into newsrooms, of course, is -- would be 21 extraordinarily helpful.</p> <p>22 MR JAY: I'm looking at the future now. It was a very 23 simple question: how does one bind everybody to the 24 contract, including Mr Desmond?</p> <p>25 A. I think it's very difficult. That's not to say</p> <p style="text-align: center;">Page 84</p>

<p>1 I denigrate the proposal, because I think it's the right 2 thing to do, but you'll notice with my witness statement 3 I suggest, with some enormous regret, because I don't -- 4 I mean, I don't regret saying what I say, but with some 5 sadness I suggest that there may have to be some sort of 6 backstop power for compliance with the system. 7 Q. Does that mean, so we're clear about it, that there is 8 a piece of legislation which compels people to join? 9 A. In a sense, yes, it does, but for me that's very 10 difficult because of course, you can't -- when looking 11 at all of this, we're talking about a global industry 12 now and you can't make the Huffington Post or anybody 13 beyond our shores sign up to something. Do you include 14 all the bloggers who hold themselves out and maybe are 15 journalists? I think this whole thing -- you know, it's 16 a good start. Let's put it that way. Again, I don't 17 mean to denigrate it, but I think a lot of thought has 18 to be given -- and I'm sure the reform committee are 19 giving thought -- to how you encourage all those to come 20 on board. 21 I mean, kite mark, if I may say so, is something 22 which I introduced as an idea and we were encouraging 23 the industry to introduce and a lot have taken it on 24 board on their websites, because my view is that if you 25 have a kite mark at the top of a website which says,</p> <p style="text-align: center;">Page 85</p>	<p>1 The upside, if at all possible, is to create 2 a system which can rebuild trust between the press and 3 the public, which of course is paramount, but which 4 allows freedom of expression, and all I would say -- 5 because it looks as though you're closing your file, if 6 I may -- 7 Q. Yes, you're right. 8 A. For the most part, we're talking about an industry where 9 people have and continue to play by the rules. So how 10 do you change the culture -- because I think that's 11 where it starts: governance, leadership at the top -- to 12 actually encourage these guys to accept that change must 13 take place. This isn't something which can be 14 a quick fix, whereby okay, business can be back to 15 usual, back to normal within a few weeks or months from 16 now. There has to be -- 17 LORD JUSTICE LEVESON: Lady Buscombe, what you've just 18 identified is the history of attempts to revisit this 19 topic since the last war. 20 A. I've been reading -- re-reading Scoop!, sir, which just 21 about sums it all up. I suggest it's not far from 22 where -- you know, yes. The inbuilt culture of 23 newsrooms is something which has to be thought through, 24 and that's one of the reasons, by the way, sir, why 25 I suggest a whistle-blowing -- a system of</p> <p style="text-align: center;">Page 87</p>
<p>1 "This is regulated by the PCC", it gives it a sense of 2 trust. You know, I'm much happier, if I go on a site, 3 if I feel there's some oversight of that the site. 4 I made a speech recently in the city, actually, on this 5 subject, saying that it would be very good if we could 6 encourage some sort of international collaboration on 7 this with other press councils and so on. 8 Q. Do you -- 9 A. It's a big issue but it's important. 10 Q. Do you share Lord Hunt's view that we should be 11 concerned about those in Parliament, whether it's 12 Commons or the Lords -- and you're far more familiar 13 with the Lords -- who might seek to use the legislation, 14 which on the face of it was fairly innocuous, as a means 15 of settling old scores against the press and introducing 16 more Draconian statutory powers? 17 A. There is that -- there's always that question mark, of 18 course. There's always the issue, which I used to find 19 deeply frustrating as a shadow minister, that of course 20 regulation doesn't stop rogue players. So regulation 21 itself doesn't always -- isn't always a solution, but 22 also there's always an issue here of unintended 23 consequences. By introducing statute to underpin 24 compliance with the system, there will be downside, or 25 there would be downside.</p> <p style="text-align: center;">Page 86</p>	<p>1 whistle-blowing in every organisation, because one has 2 to question who might have known what about what was 3 going on in some of these newsrooms but dare not speak 4 out. 5 LORD JUSTICE LEVESON: One of the issues that we've had to 6 address in the Inquiry, of course, is people who want to 7 give evidence but are concerned about their positions. 8 A. Absolutely. 9 LORD JUSTICE LEVESON: But in relation to this topic that 10 you've just mentioned, it's not entirely a favourable 11 omen if your experience of editors has been not to say, 12 "The PCC have criticised something we've done, we must 13 make sure we get it right", but rather to say, "The PCC 14 have criticised something we've done; how dare they?" 15 That's a problem in itself, isn't it? 16 A. It is a problem in itself, and that's why I emphasise 17 the fact that this is a minority. 18 LORD JUSTICE LEVESON: Oh yes. 19 A. Absolutely. 20 LORD JUSTICE LEVESON: I've no doubt about that, and I don't 21 say that it's once a week, but it's extremely common 22 that I have uttered the words in this Inquiry that the 23 greater majority of the press are hard-working, 24 enthusiastic, working absolutely for the public good and 25 doing a wonderful job.</p> <p style="text-align: center;">Page 88</p>

<p>1 A. Yes.                  2 COURT: But the whole question of regulation, whether it's                  3 self-regulation or whatever sort of regulation you're                  4 talking about, has to cope with everybody, and in                  5 particular it has to cope with those who don't fall into                  6 that category.                  7 A. Absolutely.                  8 MR JAY: Thank you very much, Baroness Buscombe.                  9 A. Thank you.                  10 LORD JUSTICE LEVESON: Baroness Buscombe, thank you very                  11 much.                  12 MS PHILLIPS: I'm sorry, could I just raise one point by way                  13 of clarification. I'm from the Guardian and you said                  14 that the Guardian threatened to resign over a critical                  15 adjudication.                  16 A. Actually it wasn't over -- I'm glad you put me right.                  17 It wasn't over a critical adjudication. It was actually                  18 over the phone hacking. There was a telephone                  19 conversation between myself and the then managing                  20 director of Guardian Media Group where that was                  21 suggested that they may not need us.                  22 MS PHILLIPS: And I think historically, just for the record,                  23 there was a previous incident in 2003 where the Guardian                  24 did threaten to resign, but not over a critical                  25 adjudication. Are you aware of that?</p> <p style="text-align: center;">Page 89</p>	<p>1 Q. You are the head of global public policy for Twitter                  2 Incorporated, aren't you?                  3 A. Correct.                  4 Q. That role involves you overseeing Twitter's efforts to                  5 educate policy-makers on Twitter's services and to                  6 manage the company's public policy agenda on a host of                  7 high-tech issues in Washington DC and internationally?                  8 A. Correct.                  9 LORD JUSTICE LEVESON: So you're based in America?                  10 A. I'm based in Washington DC.                  11 LORD JUSTICE LEVESON: I hope you've not just had to come                  12 for me.                  13 A. I was happy to do so.                  14 LORD JUSTICE LEVESON: I'm very, very grateful to you for                  15 assisting in what is a tangential area but, to my mind,                  16 an extremely important one in the context of the way in                  17 which the approach to the world develops in the Internet                  18 age.                  19 A. Right.                  20 MR BARR: You tell us that your background was working for                  21 over 20 years as a telecommunications and Internet                  22 staffer to US representative Edward J. Markey, who is                  23 a long time chairman and ranking Democrat on the house                  24 telecommunications and Internet subcommittee and that                  25 after working on Capitol Hill, you were the senior</p> <p style="text-align: center;">Page 91</p>
<p>1 A. No, I don't know the details of that.                  2 MS PHILLIPS: Thank you.                  3 LORD JUSTICE LEVESON: Ms Phillips, thank you very much.                  4 A. But my answer to that would be: it doesn't matter what                  5 the reason is; the threat is there, and that shows                  6 a reflection of respect for the system.                  7 LORD JUSTICE LEVESON: Well, it actually identifies part of                  8 the problem, doesn't it?                  9 A. Yes, it does.                  10 LORD JUSTICE LEVESON: Thank you. Thank you very much.                  11 A. Thank you.                  12 LORD JUSTICE LEVESON: Right. Somebody else will look after                  13 all those for you.                  14 A. Thank you.                  15 MR BARR: Sir, the next witness is Mr Crowell.                  16 MR COLIN CROWELL (affirmed)                  17 Questions by MR BARR                  18 MR BARR: Mr Crowell, if you could take a seat and make                  19 yourself comfortable, please. We have a statement from                  20 Twitter Information Network Limited, and then                  21 a voluntary statement from Twitter Incorporated. I know                  22 that you're not the author of those statements, but are                  23 you able to confirm that they're true and correct to the                  24 best of your knowledge and belief?                  25 A. Yes.</p> <p style="text-align: center;">Page 90</p>	<p>1 councillor to the Federal Communications Commission                  2 chairman, Julius Genachowski, if I'm pronouncing it                  3 correct.                  4 A. Well done.                  5 Q. You were assisting in the development of the national                  6 broadband plan and serving as the chairman's strategic                  7 adviser on a wide range of policy and legal matters.                  8 Against that background, now, can I confirm that, as                  9 with the other large American companies that we've dealt                  10 with -- and we'll come to the size of Twitter in                  11 a moment, but as with Google and Microsoft, Twitter's                  12 policy is to have a small corporate footprint in the                  13 United Kingdom, Twitter Information Network Limited, but                  14 the main operation is based, in Twitter's case, in                  15 San Francisco in the United States?                  16 A. That's correct.                  17 Q. Unlike Google and Microsoft, Twitter is a much smaller                  18 company in terms of personnel, isn't it?                  19 A. Correct.                  20 Q. Approximately how many employees does Twitter employ?                  21 A. I think roughly right now we have 700 employees.                  22 Q. But in terms of the number of users, Twitter is anything                  23 but small. Can you tell us how many users use the                  24 Twitter service?                  25 A. On a monthly basis, we have over 100 million active</p> <p style="text-align: center;">Page 92</p>

<p>1 users. 70 per cent of our users are now outside of the                  2 United States, and by way of volume, the service has                  3 obviously grown enormously over the last several years.                  4 Twitter will turn six years old this coming May, and to                  5 give you a sense of the magnitude of the volume of the                  6 service, it took three years and two months to go from                  7 the very first tweet to the one billionth tweet. Three                  8 years and two months. We now serve a billion tweets                  9 every four days. So that's how quickly it has grown.                  10 Q. Is it right that you operate not quite in every country                  11 in the world but in almost every country?                  12 A. Obviously our corporate goal is to reach everybody on                  13 the planet. We are in most countries in the world. We                  14 are notably not in China, where we are blocked.                  15 Q. Moving on to the service, with which many will be                  16 familiar, a tweet is a message up to 140 characters                  17 long?                  18 A. Correct.                  19 Q. A user has a profile and the user can opt to put up in                  20 his or her profile a picture and select a background as                  21 a minimum, and then can choose to add a short biography                  22 section and to give his or her location and also a url                  23 if so desired?                  24 A. Yes.                  25 Q. The system allows for anonymous use, doesn't it?                  Page 93</p>	<p>1 tweets, if you so choose.                  2 Q. Because it's only by opting out of the default been                  3 setting that you get the private setting?                  4 A. Correcting.                  5 Q. And on the private setting, you choose who may and who                  6 may not read your tweets?                  7 A. Correct.                  8 Q. As for content, your terms of service are clear, that                  9 Twitter's position is that the user is responsible for                  10 the content that he or she tweets?                  11 A. Correct.                  12 Q. We see that set outright at the start of your terms of                  13 service. Can we come now to the question of removals,                  14 please. Again, your terms of service expressly reserve                  15 a right to remove content. So that is a mechanism, is                  16 it, by which Twitter has a contractual right to take                  17 material down?                  18 A. That's right.                  19 Q. There is a set of rules, the Twitter rules. Perhaps we                  20 could turn to those. They're at tab 5 of the bundle.                  21 There is a subheading, "Content boundaries and use of                  22 Twitter", and there, rather succinctly, are various                  23 boundaries delineated.                  24 First of all, impersonation, which is prohibited.                  25 Various matters on trademark, which we need not go to,                  Page 95</p>
<p>1 A. Correct.                  2 Q. Obviously anonymity has both pros and cons. One of the                  3 cons is that it is easier, isn't it, for someone                  4 anonymously to send abusive messages or defamatory                  5 messages?                  6 A. Certainly users can send such messages and they                  7 certainly can do that in pseudonymous or anonymous form.                  8 As you mentioned, there are two sides to that coin.                  9 I think most countries in the world recognise freedom of                  10 expression as a human right. Depending on the subject                  11 matter and to whom you're trying to speak or the                  12 particular jurisdiction you may find yourself, your                  13 freedom of expression and your ability to exercise it                  14 may hinge, in certain times, on your ability to speak                  15 fearlessly, and that often is anonymously or with                  16 a pseudonym.                  17 Q. As for privacy settings, if I've understood it                  18 correctly, the default position is that a person who                  19 tweets is effectively tweeting instantly to an almost                  20 global audience?                  21 A. Correct. The nature of Twitter's service is inherently                  22 public. People go to Twitter to tweet public messages                  23 and also to consume messages from others publicly. So                  24 that is an inherent characteristic of the service. You                  25 can, as you noted, change that setting to have private                  Page 94</p>	<p>1 and if we can pause at privacy. The rule on privacy is:                  2 "You may not publish or post other people's private                  3 and confidential information, such as credit card                  4 numbers, street address or social security/national                  5 identity numbers, without their express authorisation                  6 and permission."                  7 If I may say so, that's a rather limited and narrow                  8 definition of privacy. Does that reflect the fact that                  9 Twitter is essentially an American enterprise and to                  10 reflect American privacy laws?                  11 A. I think what this reflects -- and again, the list there                  12 of credit card numbers, street address, social security                  13 numbers and the like is an illustrative list. There may                  14 be other -- this, for example, doesn't include private                  15 phone numbers and others which might also be included.                  16 But it is generally designed to capture information that                  17 is private that would have the ability to identify an                  18 individual person, and so it does reflect that American                  19 sort of legal sort of privacy tradition.                  20 Q. If we go to the bottom of the page, we see "Unlawful                  21 use":                  22 "You may not use our service for any unlawful                  23 purposes or in furtherance of illegal activities.                  24 International users agree to comply with all local laws                  25 regarding online conduct and acceptable content."                  Page 96</p>



<p>1 So is this where we see other national laws 2 appearing -- 3 A. Correct. 4 Q. -- in the rules? Does that mean that a British tweeter 5 needs to tweet content which is legal in Britain? 6 A. Well, that would be a determination for British policy 7 makers and British courts. 8 Q. That takes us to what happens if someone in Britain does 9 tweet something which falls on the wrong side of our 10 defamation laws or on the wrong side of our privacy 11 laws. Can we deal first of all with something which was 12 contrary to our defamation laws? What can the victim of 13 such a tweet do to have the tweet removed? 14 A. Presumably under the British system, if they were 15 seeking recourse, they would go to a British legal 16 authority. The British system has a mutual legal 17 assistance treaty with the United States, and we could 18 go then to the US jurisdiction. Twitter UK doesn't deal 19 with content issues. That's within the purview of the 20 US jurisdiction. 21 So in that scenario, if we receive a duly served 22 notice from an authorised entity in the UK dealing with 23 something which has been deemed in the UK to be an 24 "illegal tweet", then we will deal with that in the US 25 on a case-by-case basis.</p> <p style="text-align: center;">Page 97</p>	<p>1 if somebody is tweeting something that was unlawful or 2 clearly defamatory on any jurisdictional basis, and you 3 agreed that it was, so took it down, there would be 4 nothing to stop that person setting up another account 5 tomorrow in another name and doing exactly the same 6 thing. 7 A. Correct. 8 LORD JUSTICE LEVESON: You don't need to persuade me that 9 your 700 people can't read a billion tweets every four 10 days, or indeed any of them. 11 A. We don't -- they certainly read some of them just out of 12 sheer curiosity, but we wouldn't have the ability to 13 mediate the content or filter it ahead of time. We 14 cannot do that. 15 LORD JUSTICE LEVESON: Of course. So the only limiting 16 feature is your 140 characters? 17 A. That is a limiting feature, yes. 18 MR BARR: Can you tweet a link? 19 A. Yes, and often Twitter is used as precisely that, sort 20 of a pointer device where Twitter users will say, "Check 21 out this website", and provide the link to content that 22 is then hosted elsewhere on some other site. 23 Q. Am I right that, unlike the evidence we've heard from 24 both Microsoft and from Google, your policy is strictly 25 to work only in response to legal process, that you are</p> <p style="text-align: center;">Page 99</p>
<p>1 LORD JUSTICE LEVESON: There's a problem with that, isn't 2 there, Mr Crowell, because if you can tweet anonymously, 3 then I'm struggling to see how somebody who had been 4 adversely affected by a tweet could do anything about 5 it. 6 A. You have two separate issues. One is to deal with the 7 tweet itself and whether or not that tweet should be 8 subsequently withheld and grey-boxed out and indicated 9 to users in the UK that the content has been withheld. 10 In the US, under US law, which is our jurisdiction, 11 we require a court order in order to turn over personal 12 information about a Twitter account, and so that 13 information could be sought but it would have to be 14 through a court order pursuant to US law. 15 LORD JUSTICE LEVESON: But when you say you can tweet 16 anonymously, do you know the name of the person who is 17 in fact tweeting, even if he tweets in an anonymous 18 name? 19 A. We have whatever account information that they have 20 given us. So that account information is the 21 information that can be sought. 22 LORD JUSTICE LEVESON: But it needn't be genuine? 23 A. It need not be verified; correct. Genuine. 24 LORD JUSTICE LEVESON: So in other words -- I'm sorry, 25 Mr Barr, but let me think it through. In other words,</p> <p style="text-align: center;">Page 98</p>	<p>1 not in a position to moderate a complaint which is 2 submitted privately? 3 A. Correct. We would not want to put ourselves in the 4 position of trying to adjudicate ourselves what is or 5 what is not defamatory and so we would rely on legal 6 process to determine that. 7 Q. Which obviously takes some time, during which time the 8 tweet remains posted? 9 A. Correct. 10 Q. If a court order is obtained, is it right that that 11 would be sufficient for you to take down the offending 12 tweet and any exact retweets of the offending tweet? 13 A. Yes. As we -- when we receive that, we will address 14 those on a case-by-case basis and then promptly take 15 down the tweet or the account, and I think in tab 11, 16 the second page, you see how the tweets would be 17 withheld or the account withheld. So we do not simply 18 make it disappear, but for purposes of transparency, we 19 would indicate that the tweet had been withheld. It 20 would be grey-boxed out, so to speak, so that other 21 users would know within that jurisdiction that the tweet 22 had been withheld. 23 Q. It's only grey-boxed within the jurisdiction in 24 question? 25 A. Correct.</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 Q. So the tweet is still out there in the rest of the 2 world?</p> <p>3 A. Correct. Where the tweet is not illegal, it is 4 available to other users worldwide.</p> <p>5 Q. And if it's one which is illegal in many jurisdictions, 6 the victim, if I use that pejorative term, has to go and 7 get legal process in every jurisdiction, does he?</p> <p>8 A. If the tweet were -- yes, we would need something from 9 each jurisdiction to affirm that it is illegal in each 10 of those jurisdictions.</p> <p>11 Q. And if it was an anonymous tweet, effectively are you 12 saying that the person would have to launch legal 13 proceedings to try and get an order against the 14 anonymous tweeter and the order would be sent to you, 15 and even if you didn't know the name of the anonymous 16 tweeter, you would have the account details so you could 17 still grey-box the anonymous tweet?</p> <p>18 A. Right. We would deal with the tweet at the tweet level. 19 So if the tweet itself, regardless of whether the user 20 is a verified user or using a pseudonym or is anonymous, 21 and if the content of the tweet in a jurisdiction is 22 determined to be illegal and through due process we're 23 able to inform the user, provide transparency, we can 24 grey-box out that tweet in that jurisdiction.</p> <p>25 The question of the disclosure of the personal Page 101</p>	<p>1 if it's been retweeted by hundreds of users and also 2 tweeted separately by other users and tweeted out of the 3 jurisdiction, that tweet will effectively be in the 4 public domain.</p> <p>5 Q. Just to come on to the system you've got of withholding 6 tweets within a jurisdiction, that's a very new 7 development, isn't it?</p> <p>8 A. Yeah, we announced this not yet two weeks ago.</p> <p>9 Q. Has it been used yet?</p> <p>10 A. Not yet.</p> <p>11 LORD JUSTICE LEVESON: That's the one that requires the 12 court order?</p> <p>13 A. We've always required a court order for disclosing 14 personal information, and we obviously have dealt with 15 law enforcement in other countries. We deal with law 16 enforcement in the UK, and so they -- the law 17 enforcement entities here know the process in the US. 18 For emergency purposes, we also have a process for UK 19 law enforcement as well. But the process of withholding 20 content that has already been tweeted and doing that in 21 particular jurisdictions is new and reflects the fact 22 that Twitter is now, from a corporate standpoint, 23 growing internationally, and recognising that the 24 contours of freedom of expression may differ from 25 country to country. This gives us the ability to deal Page 103</p>
<p>1 information that we may possess about the tweeter, 2 again, goes through a US court order in the 3 United States, and we have been served those and we have 4 complied with those.</p> <p>5 Q. If a story spreads on Twitter and there are multiple 6 people tweeting about it, you would require a court 7 order in respect of each tweeting person before you 8 would remove the content?</p> <p>9 A. If there were individual unique tweets from those users, 10 we would need -- and we would give due process to each 11 of those users, yes.</p> <p>12 Q. So does that, in practice, mean that if there is a story 13 which is tweeted by many people, or a story which goes 14 viral, to use the parlance, then the subject of that 15 story, in effect, is going to find it impossible to 16 prevent it being disseminated?</p> <p>17 A. We only deal with the issues reactively, so, by 18 definition, the tweets have already been posted. So 19 this isn't something where ahead of time we're able to 20 see the tweet, filter the tweet, mediate the tweet; the 21 tweets flow, and so they're already out, and so 22 everything we're talking about here is reactive to that.</p> <p>23 And so, yeah, if you're dealing with a single tweet 24 that is on our service and that is the offending tweet 25 at that point in time, we can deal with it. Obviously, Page 102</p>	<p>1 with those differences on a per-country basis. If we 2 had not done this, we would be dealing everything out of 3 the US jurisdiction and wouldn't be able to take into 4 account the slightly different legal issues in other 5 jurisdictions.</p> <p>6 MR BARR: Could I ask about the speed of propagation? If 7 a matter is going viral on the World Wide Web by being 8 posted on differently urls, that's one thing, isn't it, 9 but if something goes viral on Twitter, where people are 10 communicating by very short messages, no more than 140 11 characters, perhaps with reference to an Internet link, 12 just how quickly can a story go viral?</p> <p>13 A. It depends on the subject, it depends on who's tweeting 14 it and retweeting it. I mentioned that we now serve 250 15 million tweets a day, roughly. During major events, you 16 know, the earthquake in Japan, tweets can propagate very 17 quickly out of a particular jurisdiction, and often 18 those tweets now today, because of instantaneous 19 communication, are the first way in which people learn 20 about events, including news organisations.</p> <p>21 We had one of the major events in the United States 22 this past Sunday with the Superbowl, and leaving aside 23 the fact that the wrong team prevailed in that game, we 24 had a situation where if you go back to 2008, so four 25 years ago, four years ago at the Superbowl, we reached Page 104</p>

<p>1 a peak of tweets per second of 27 tweets per second                  2 during the Superbowl in 2008. In past Sunday, we                  3 reached a peak of more than 12,000 tweets per second                  4 during the game.                  5 LORD JUSTICE LEVESON: All on the subject of the game?                  6 A. It was a very important game.                  7 So issues like that, that have national significance                  8 and have captured the attention of the population,                  9 obviously can propagate much faster than things that may                  10 be more localised.                  11 MR BARR: Can I now come to a question about future                  12 regulation of the press in this jurisdiction? If                  13 a future regulator makes decisions about what stories                  14 are or are not legal or are or are not in compliance                  15 with a code of practice, what is Twitter's approach                  16 likely to be in relation to such decisions? Perhaps                  17 I can start exploring this subject by asking you what                  18 are the touchstones that Twitter would use to decide                  19 whether or not a decision of such a regulator would be                  20 sufficient to cause it to take down a tweet?                  21 A. I think the way we would look at it is whether or not                  22 the regulator is for that country, that jurisdiction,                  23 the entity which has the legal authority to effectuate                  24 it. For us there would be a difference between an                  25 organisation that might urge entities to adopt voluntary</p> <p style="text-align: center;">Page 105</p>	<p>1 served on us to compel that information, we'll obviously                  2 comply with that.                  3 Q. And if it was an anonymous tweet, then although you                  4 wouldn't be able to provide the name, there would be                  5 information that you would have?                  6 A. The Twitter may be anonymous to other Twitter users.                  7 Whether they have given us personal information, or                  8 whatever personal information we may have, a contact                  9 email, whatever it may be, that's the personal                  10 information, and whatever personal information we have                  11 and are served to and are compelled to turn over, then                  12 we will obviously do that.                  13 MR BARR: Thank you. Those were all my questions.                  14 LORD JUSTICE LEVESON: Can I ask one more question? How                  15 long do tweets survive?                  16 A. How long do they exist?                  17 LORD JUSTICE LEVESON: In other words, do they remain on the                  18 system forever, or do they drop off?                  19 A. Eventually they will drop off, simply due to server                  20 capacity, but I can't tell you how long exactly they                  21 last.                  22 I would also suggest that some people post tweets to                  23 other websites, and obviously if people took                  24 a screenshot of it or embedded that tweet and posted it                  25 to another website --</p> <p style="text-align: center;">Page 107</p>
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<p>1 codes of best practices, engage in hortatory rhetoric                  2 towards industry participants or an entity that actually                  3 had legal authority with teeth to effectuate something                  4 that was binding within, say, the UK in this case.                  5 The policy that we announced two weeks ago was to                  6 essentially generically deal with these issues on                  7 a per-country basis in many countries around the world,                  8 and the way we described it was that when an authorised                  9 entity were to convey through proper legal channels to                  10 us in the United States, then we would deal with that on                  11 a case-by-case basis, informing the users, being                  12 transparent about it, and so it would really be up to                  13 British policy-makers and British courts to determine                  14 what the authorised entity would be here.                  15 Q. Finally, on the question of the breach by tweeters of                  16 injunctions in this jurisdiction, is it right that if                  17 a person commits contempt of court by breaching an                  18 injunction in this jurisdiction, that the authorities                  19 here can apply via a US court to Twitter to obtain the                  20 identity of the person, where it's known, who has made                  21 the tweet?                  22 A. We have a requirement under US law, before we turn over                  23 any personal information on the users, to do so only                  24 pursuant to a court order. So to the extent to which                  25 a British court ruling leads to a US court order that is</p> <p style="text-align: center;">Page 106</p>	<p>1 LORD JUSTICE LEVESON: Then it's there forever?                  2 A. Correct.                  3 LORD JUSTICE LEVESON: Yes, I understand that. I understand                  4 that. All right. Mr Crowell, thank you very much                  5 indeed. That's fascinating and a very interesting                  6 illustration of the impact of new methods of                  7 communication. The numbers are, quite frankly,                  8 bewildering. Thank you very much indeed for coming.                  9 A. Sure thing.                  10 LORD JUSTICE LEVESON: And for taking the trip.                  11 A. Thank you.                  12 LORD JUSTICE LEVESON: Right. Rather than start the next                  13 witness now, can we start at 1.55 pm. I hope that's not                  14 inconvenient. Thank you.                  15 (12.57 pm)                  16 (The luncheon adjournment)                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 108</p>
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