

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Yes. 4 MR BARR: Thank you, sir. 5 Moving on to the question of complaints, your 6 complaints policy has the virtue of transparency in that 7 you state, without any hesitation, that it's an 8 arbitrary and inconsistent policy about a section of 9 your website. It seems in practice that what you do is 10 consider complaints on their merits, according to the 11 merits as you see them; is that right? 12 <b>A. That's right. So with Twitter and email and the comment</b> 13 <b>system we have, almost hourly we get complaints, most of</b> 14 <b>which we ignore, but some of them, when they're of</b> 15 <b>substance or particularly when they're from the person</b> 16 <b>who the story is about, we consider.</b> 17 LORD JUSTICE LEVESON: I wonder whether you're teasing 18 yourself a bit, Mr Staines. It's not that you have an 19 inconsistent policy. Your policy is consistent: if you 20 think there's something in it, you'll look at it. 21 However, your default position may be: 95 per cent of 22 the time there's nothing in it. 23 <b>A. Correct. So we're consistent in our arbitrary</b> 24 <b>inconsistency or --</b> 25 LORD JUSTICE LEVESON: No, I am not so sure that's right.</p> <p style="text-align: center;">Page 1</p>	<p>1 regulation more formally, you're not a member of the 2 PCC, although I understand that you have spoken to 3 Lord Hunt on that subject? 4 <b>A. Lord Hunt is very silky in his wooing of me to join some</b> 5 <b>kind of kitemark system and I don't think that's a road</b> 6 <b>that I want to go down.</b> 7 Q. Could you explain to the Inquiry why it is that you wish 8 to shy away from any formal regulatory body? 9 <b>A. I think if you join -- if I joined any regulatory body,</b> 10 <b>I would end up in a system where I'm going to have to</b> 11 <b>self-censor, and I don't want to do that. I also don't</b> 12 <b>want to have an editorial product that is politically</b> 13 <b>correct and I don't want to have to adhere to standards</b> 14 <b>that Harriet Harman would approve of.</b> 15 <b>I don't think there are many publishers around now,</b> 16 <b>not even Private Eye, who are still politically</b> 17 <b>incorrect in the way that we are.</b> 18 Q. Would you, on that subject, have the same concern that 19 Mr Hislop expressed to the Inquiry, namely that if you 20 were to be the member of an industry regulatory body, 21 you might find yourself being judged by the very people 22 who you had been critical of or exposing in your 23 publications? 24 <b>A. Yeah, that is a very real point. I think it's</b> 25 <b>ridiculous that Tina Weaver, somebody who -- from the</b></p> <p style="text-align: center;">Page 3</p>
<p>1 <b>A. Okay.</b> 2 LORD JUSTICE LEVESON: But if you think there's something in 3 it, you'll pay attention to it? 4 <b>A. That broadly is the position.</b> 5 LORD JUSTICE LEVESON: Yes. 6 MR BARR: The way you put it in your statement is: 7 "If on reflection we think it is possibly untrue or 8 defamatory, we take it down." 9 I'm interested in your use of the word "possibly 10 untrue". Is that meant to signal that you actually set 11 quite a low threshold for intervention and taking 12 a story down? 13 <b>A. I think earlier on I said that there are different types</b> 14 <b>of stories. There are trivial, gossipy kinds of stories</b> 15 <b>that aren't going to be remembered in a few days' time,</b> 16 <b>so we have a lower threshold for those, you know,</b> 17 <b>checking them out. If it's a major substantive story</b> 18 <b>that is going to affect, you know, the newspapers the</b> 19 <b>next day, it's going to change someone's career, then we</b> 20 <b>have a higher threshold.</b> 21 <b>If someone complains about a trivial story and makes</b> 22 <b>lots of trouble, then we probably don't even bother</b> 23 <b>thinking about it; we'll just take it down to get them</b> 24 <b>to go away.</b> 25 Q. Moving now from your approach to complaints to</p> <p style="text-align: center;">Page 2</p>	<p>1 <b>Sunday Mirror, somebody who two journalists have told me</b> 2 <b>has personally authorised and told them to hack, blag,</b> 3 <b>and do all that kind of stuff, sits on not just the</b> 4 <b>Press Complaints Commission, but on the Ethics</b> 5 <b>Committee, the Editorial Standards Committee. She knows</b> 6 <b>all the bad things that have gone on under her rule.</b> 7 <b>It's ridiculous.</b> 8 Q. I'll be coming back to Ms Weaver in due course, but it's 9 right that even though you stand outside the formal 10 regulatory systems that exist in the ways that you would 11 describe, you do in fact self-censor, at least to the 12 point that if you think you've got it wrong, you'll take 13 things down? 14 <b>A. Well, that's pursuit of accuracy rather than censorship,</b> 15 <b>and is slightly different and I distinguish the two</b> 16 <b>things. If we've got it wrong, we're not censoring</b> 17 <b>ourselves, we're correcting ourselves.</b> 18 Q. You express in your witness statement your commitment to 19 the freedom of expression, but you would accept, 20 wouldn't you, that the freedom of expression is 21 a qualified right in that it doesn't give a person 22 licence, for example, to take an extreme example, 23 knowingly to publish false facts about somebody? 24 <b>A. Well, we used to have an offence of malicious libel.</b> 25 <b>I think that was a mistake to take that offence away.</b></p> <p style="text-align: center;">Page 4</p>

<p>1 <b>A classic example of limitations on freedom of</b>                  2 <b>speech is of course shouting "fire" in a crowded</b>                  3 <b>theatre. Obviously there are limitations and I'm not</b>                  4 <b>a complete absolutist, but I think us something that's</b>                  5 <b>been lost currently in the troubles the media are having</b>                  6 <b>is the need for freedom of speech and freedom of the</b>                  7 <b>press.</b>                  8 Q. You raise quite an interesting economic argument on the                  9 third page of your witness statement right at the bottom                  10 of the page, and you argue that any legal or                  11 technological method of censorship will have an economic                  12 cost. If I've understood you correctly, the point                  13 you're making is that as soon as this country imposes                  14 a regulatory system which goes beyond that of, say,                  15 America, with its First Amendment rights, then                  16 businesses will be attracted to the country with the                  17 less intrusive regulation if they want to publish                  18 content over new media, and that is why so much of the                  19 new media is based in America?                  20 <b>A. I think that's part of it. Obviously a lot of it starts</b>                  21 <b>in America, so she -- most of the companies start in</b>                  22 <b>America anyway and they have the advantage of the First</b>                  23 <b>Amendment protections, but you can see a situation now</b>                  24 <b>where countries like Sweden and Ireland are actually</b>                  25 <b>pushing the fact that they have a regulatory and legal</b>                  Page 5</p>	<p>1 going to put the United Kingdom at a competitive                  2 disadvantage?                  3 <b>A. If YouTube, Google become criminally liable for</b>                  4 <b>everything that's put on their website, it's going to be</b>                  5 <b>difficult for them, and I think companies like Twitter</b>                  6 <b>have been sued by people for stuff that was done by</b>                  7 <b>Twitter's customers. So I think the liability of those</b>                  8 <b>kind of social media networks should be very, very</b>                  9 <b>limited and they should have an absolute defence of, "We</b>                  10 <b>removed it as soon as we were informed of the problem".</b>                  11 Q. How do you balance the need to maintain a competitive                  12 advantage against the need to protect people from the                  13 sort of media excesses that we've heard about at the                  14 start of this Inquiry, and with the need to have an                  15 ethical approach to reporting?                  16 <b>A. Well, those weren't social media networks hacking</b>                  17 <b>voicemails, et cetera. That was the traditional media.</b>                  18 <b>There are criminal sanctions, and there are criminal</b>                  19 <b>processes that are in play at this moment. So we don't</b>                  20 <b>need any extra regulation. We already have crimes on</b>                  21 <b>the statute that cover those eventualities.</b>                  22 Q. Isn't the difficulty with placing the burden exclusively                  23 on the law enforcement agencies to deal with that sort                  24 of behaviour that they simply don't have the resources                  25 to deal with an unregulated industry, or at least, if                  Page 7</p>
<p>1 <b>environment which is favourable to social media</b>                  2 <b>enterprises, and Britain will be at a competitive</b>                  3 <b>disadvantage if we have laws that penalise the networked</b>                  4 <b>businesses of the future in such a way that they are</b>                  5 <b>responsible for what thousands of their customers do.</b>                  6 <b>So it's equivalent to making phone companies</b>                  7 <b>responsible for what people say on the phone, so I don't</b>                  8 <b>think that's a healthy or sensible way to proceed.</b>                  9 LORD JUSTICE LEVESON: Do you approve of the model that the                  10 Irish have developed in relation to this area?                  11 <b>A. I think it has advantages over the direction we seem to</b>                  12 <b>be going. I mean, for instance, I think the woman from</b>                  13 <b>HuffPo mentioned that actually if we pre-moderate</b>                  14 <b>comments on our website, we become legally liable for</b>                  15 <b>them. So the perversity of the law is that if we</b>                  16 <b>intervene and moderate comments, then we assume some</b>                  17 <b>liability. If we do nothing, we're not liable. That's</b>                  18 <b>from a case, I think Hilton versus Cashgill(?).</b>                  19 MR BARR: There may be a difference to be had between                  20 a person who's held liable simply for the transmission                  21 of material and somebody who actually has editorial                  22 control of material.                  23 <b>A. Of course.</b>                  24 Q. Are you suggesting that applying a set of ethical                  25 standards to published content in the United Kingdom is                  Page 6</p>	<p>1 they were to deploy the sufficient resource to deal with                  2 it, then they would be distracted from other very                  3 pressing policing concerns?                  4 <b>A. Just because it's difficult to enforce doesn't mean it</b>                  5 <b>should -- you should shift the burden of enforcement to</b>                  6 <b>someone else.</b>                  7 Q. You provide in your statement your thoughts on                  8 a voluntary basis in relation to a number of issues                  9 which are of interest to the Inquiry. The first of                  10 these is on the relationships between national                  11 newspapers and politicians, and you tell us that you                  12 think that the relationship between the press and                  13 politicians is symbiotic, and there are a number of                  14 things that you tell us about the lobby system in                  15 Westminster that I would like to explore further with                  16 you.                  17 First of all, you say that there is effectively                  18 a lobby club with implicit rules which discourage                  19 journalists from rocking the boat too much. Could you                  20 tell us more about what in your view those implicit                  21 rules are?                  22 <b>A. Well, there is a phrase that's used, "lobby terms",</b>                  23 <b>which means -- it doesn't mean just off the record, it's</b>                  24 <b>beyond off the record. If a politician tells a lobby</b>                  25 <b>journalist on lobby terms that he believes the sky is</b>                  Page 8</p>

<p>1 blue and then goes on Newsnight later on to say that he 2 believes the sky is red, the journalist cannot report 3 that actually he's lying to the public on Newsnight. So 4 you have not just off the record, you have journalists 5 complicit in politicians' lying, when they could reveal 6 the truth, but under the terms of trade that the lobby 7 has, they can't say anything.</p> <p>8 Q. Why do journalists enter into this Faustian pact? 9 A. Well, it's a cartel, because the authorities in 10 Parliament won't give you access to the parliamentary 11 estate unless you're on the lobby list, so I have to go 12 in to Parliament as a visitor rather than show 13 a security pass. It makes it difficult for me to get 14 access to the main players if I'm not part of the lobby, 15 but I don't want to be in the lobby because I don't 16 think it's a very healthy system.</p> <p>17 This is not just me saying this as an outsider. 18 A former chairman of the lobby has said it's antiquated. 19 It was set up in the 1870s. It isn't healthy to have 20 politicians talking to journalists in private on terms 21 that aren't open and transparent to the public.</p> <p>22 Q. And so what is a solution? 23 A. I think for a start they could televise the lobby 24 briefings. There's nothing magical about them and 25 I think people might find them a bit dull, but "Downing Page 9</p>	<p>1 interviewing the politician, they are not given any 2 access to the politicians for, you know, six months, 3 a year, 12 months, whatever it is. So if you're 4 a broadcaster, if you don't have interviews with the 5 principals, you have very boring television because 6 there's no access -- because the public only get to see 7 your talking head rather than you interrogating the 8 politician. So that way, because of the requirement for 9 access and interviews, the broadcasters are brought to 10 heel.</p> <p>11 Q. Can you give us any examples of that? 12 A. I think I did this in a programme for Newsnight a few 13 years ago. Sky News had -- a junior reporter on Sky 14 News aggressively questioned the then opposition leader, 15 David Cameron, and David Cameron lost his temper and it 16 was broadcast. As a result, Sky News were kept out of 17 interviews and access for a period of months as 18 a punishment.</p> <p>19 Q. You hold up the example of the expenses scandal as 20 something which in your view is evidence of failure by 21 journalists to report on wrongdoing, because you say 22 that lobby journalists knew about the abuse of expenses 23 long before the story became public. 24 A. Lobby journalists are aware of the system, and perfectly 25 understood what was going on, but they just accepted it. Page 11</p>
<p>1 Street sources" usually means the journalist was sat in 2 a briefing room being fed the line from the press -- the 3 Prime Minister's spokesman. We can just put it on TV 4 and see that.</p> <p>5 The access -- I think it's unhealthy full stop to 6 have lobby terms. Journalists shouldn't accept 7 anonymous briefing from the Prime Minister's spokesman 8 or from other players because most of the time it's used 9 by politicians to besmirch other politicians without 10 getting their fingerprints on it.</p> <p>11 Q. You also talk about a trade in favours. Could you 12 expand upon that, please? 13 A. It's a standard technique for press officers to give 14 titbits to their favoured journalists. So if 15 a journalist has written favourable stories about their 16 principal, whether it's a minister or the 17 Prime Minister, they will give them a titbit and give 18 them an advantage. In that way, they bring the 19 journalist to heel. So the lobby functions like an 20 obedience school for journalists: if you play the game, 21 we'll reward you; rock the boat and you won't get any 22 access.</p> <p>23 There's well-documented cases of broadcast 24 journalists having aggressive interviews with 25 politicians and as a punishment for aggressively Page 10</p>	<p>1 The only reason that the expenses scandal came out was 2 because Heather Brooke, a freedom of information 3 campaigner, spent, you know, two years pursuing it 4 through the courts until the authorities had to produce 5 a disk, which the Daily Telegraph got hold of, but it 6 wasn't really down to investigative journalism on the 7 part of the Daily Telegraph, it was down to the efforts 8 of a freedom of information campaigner.</p> <p>9 Q. What evidence do you have that lobby journalists did in 10 fact know about the expenses scandal -- 11 A. Well, if you read the articles they wrote after the 12 expenses scandal broke, came out, you'll see lots of 13 them say they knew all about it. Similarly, when 14 Damian McBride resigned after -- you know, as a result 15 of Smeargate, you'll read a lot of journalists writing 16 that they knew what he was like and how he did all this 17 vilification and how his nickname was McPoison and how 18 they knew his methods, yet they never said it 19 beforehand.</p> <p>20 Q. You tell us that in your experience newspapers do 21 favours for their political allies, beyond just slanting 22 their coverage into a favourable light. You say they 23 will suppress the truth, rubbish political opponents and 24 buy up stories never to be printed which might embarrass 25 their political allies. Are you able to give us from Page 12</p>

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<p>1 your knowledge any examples of stories being bought up 2 in order to bury them?</p> <p>3 <b>A. I can't definitively say that this was bought to bury 4 it, but it is the case that we broke a story about 5 William Hague sharing a hotel room with his special 6 adviser. We also had pictures of the special adviser in 7 a gay bar. Now, that story that we broke on I think 8 a Thursday caused uproar, and there was trouble afoot. 9 We took the photos to the News of the World. They 10 bought them for £20,000 and never published them. 11 I don't know very much but I know you don't pay £20,000 12 for photos not to publish.</b></p> <p>13 <b>At the time that was happening, it was at the height 14 of the building tension between Downing Street, 15 Andy Coulson, and matters that were about to come out in 16 a major way, and it's clear to me that the News of the 17 World was in regular contact with Downing Street, and 18 perhaps to curry favour or for whatever reasons, they 19 chose to buy up those pictures and take them off the 20 market.</b></p> <p>21 Q. Is there any possibility that the reason they didn't 22 publish them was because of the public statement which 23 Mr Hague put out about the story?</p> <p>24 <b>A. If I recall correctly, they bought the pictures after 25 the public statement.</b></p> <p style="text-align: center;">Page 13</p>	<p>1 enforcement of existing civil and criminal laws. 2 Doesn't such an approach leave a gap into which victims 3 of press misconduct, such as Christopher Jefferies or 4 the McCanns, would still be able to fall in the future?</p> <p>5 <b>A. I don't see how you can avoid the necessity of going to 6 law. I mean, we're a nation of law, so that is going to 7 have to be the ultimate route that people go to.</b></p> <p>8 <b>It's a problem for victims of these kind of criminal 9 acts if they don't know about it, so I think, in the 10 case of the Operation Motorman investigation, we have 11 hundreds of invoices with people's names on which 12 haven't been -- the people who were the victims of 13 blagging and illegal data protection haven't been 14 identified -- haven't been told --</b></p> <p>15 Q. If I may stop you there, that's not quite an answer to 16 the question I was putting. If you have an unregulated 17 free press, that still leaves a gap, doesn't it, into 18 which people like the McCanns and Mr Jefferies could 19 fall in the future?</p> <p>20 <b>A. I think it's been difficult and, you know, hard on the 21 McCanns and Mr Jefferies, but ultimately they have 22 managed to get reparations through legal channels. If 23 you have -- if the victims have access to the courts, 24 they can do that.</b></p> <p>25 Q. But isn't there a need to stop these abuses happening in</p> <p style="text-align: center;">Page 15</p>
<p>1 Q. You say that in your experience investigative 2 journalists have no respect for the Data Protection Act, 3 even if they are aware of it. What's the evidence for 4 that?</p> <p>5 <b>A. I once had a negative story about me written up by the 6 Daily Telegraph, Gordon Rayner, I think he's been 7 covering this, and he identified where I live in London, 8 and I said, "How did you do that? There's no records, 9 I'm not on the electoral roll there, I don't have any 10 bank accounts, you couldn't get me by that", and he told 11 me to my face that he had done a name search on the Land 12 Registry. Now, people might not realise it, but the 13 Land Registry is not searchable by name. You can only 14 search that by address. You can put the postcode in or 15 the map co-ordinates and find out who owns it. You 16 cannot go to the Land Registry and give a name and then 17 find out all the properties that person owns unless you 18 know someone in the Land Registry.</b></p> <p>19 <b>Gordon Rayner appears in the Operation Motorman 20 records 335 times making requests to Whittamore. 185 of 21 those have been identified as illegal, you know, getting 22 number plates checked out. How can that be?</b></p> <p>23 Q. Moving now to the question of future regulation, you 24 tell us that the public interest is best served in your 25 view by an unregulated free press and the better</p> <p style="text-align: center;">Page 14</p>	<p>1 the first place?</p> <p>2 <b>A. Then you'll lose the freedom of the press and I think 3 that's a price too high to pay.</b></p> <p>4 <b>On the Motorman position, though, the victims of 5 Mr Whittamore don't know how they came to appear in the 6 papers and how their private details were discovered, so 7 I think the -- it's beholden on the Information 8 Commissioner or the authorities, whoever it is, to 9 inform the victims of Mr Whittamore that they have 10 been -- had their information illegally procured on the 11 behalf of journalists.</b></p> <p>12 LORD JUSTICE LEVESON: Does this really work, Mr Staines?</p> <p>13 Let me just test it with you. It so happened that 14 because of some information, I think about DVLA 15 impropriety, the police and the Information Commissioner 16 went into Mr Whittamore's home and then obtained this 17 treasure trove of material. I take your point that then 18 those who have been the subject of unlawful access, if 19 they're told, can pursue remedies. But let's assume 20 that Mr Whittamore had been rather less careful about 21 his record-keeping, so that they didn't recover this 22 treasure trove of material, yet it had all happened. 23 Doesn't there have to be a system that keeps some 24 semblance of attention to the way in which people can be 25 invaded in their privacy by things like that?</p> <p style="text-align: center;">Page 16</p>

<p>1 So it's not good enough to say, "Well, the criminal 2 law can cope with it, there was all the Whittamore 3 stuff, it was all available". That might then identify 4 Whittamore. It wouldn't necessarily identify the person 5 who had encouraged him -- assuming it to be the case, 6 which I am not deciding, of course -- deliberately and 7 illegally to break the law, and he would say, "Well, I'm 8 not prepared to say who instructed me", or even if he 9 was, that wouldn't necessarily be evidence.</p> <p>10 Don't you need a regime that actually does ensure 11 that there are systems in place, perhaps within the 12 press themselves, to make people careful about this type 13 of thing?</p> <p>14 <b>A. I think the editors perhaps should have, you know, 15 a legal responsibility of some kind, ie like we have 16 a corporate manslaughter. But at the very least, with 17 the evidence we already have of criminal behaviour by 18 journalists, we should follow that up. We shouldn't 19 just ignore it. We have a huge body of evidence from 20 that investigation. 389 journalists are on the records, 21 yet nothing is happening. Nobody is pursuing them. 22 Instead -- I presume this Inquiry has those records. If 23 this Inquiry doesn't act as a catalyst for criminal 24 prosecution for those journalists who have invaded 25 people's privacy, on an industrial scale, I think you</b></p> <p style="text-align: center;">Page 17</p>	<p>1 police operations.</p> <p>2 <b>A. Bus it seems to me the proper place to test this is in 3 the courts. So if you don't inform the alleged or 4 possible victims that their names are on these records 5 that arose from Operation Motorman, then we're not going 6 to get that tested in court.</b></p> <p>7 LORD JUSTICE LEVESON: That may indeed be happening, but --</p> <p>8 <b>A. We have manifest prima facie evidence of crimes. It 9 shouldn't be ignored.</b></p> <p>10 LORD JUSTICE LEVESON: There are lots of things that people 11 can accuse me of doing, but ignoring it isn't one of 12 them.</p> <p>13 <b>A. Good to hear it.</b></p> <p>14 MR BARR: Can we go now to page 5 of your statement, bottom 15 hole punch, where you draw the Inquiry's attention to 16 a real difficulty with the domestic regulatory scheme. 17 You say: 18 "The reality of convergence and cross-border 19 broadcasting via the Internet of all forms of content 20 will mean that any regulatory regime will be porous." 21 Do you mean by that that these days any of us can 22 log on, sitting here in London, read a newspaper, listen 23 to the radio or watch the television using sources from 24 all over the world?</p> <p>25 <b>A. Yeah, without limit. You know, I can watch French TV,</b></p> <p style="text-align: center;">Page 19</p>
<p>1 <b>have failed.</b></p> <p>2 LORD JUSTICE LEVESON: Well, I think it's quite difficult to 3 now say, nine years on, that this or that should happen, 4 and that the resources that are available to protect 5 information and data should be devoted to this operation 6 nine years ago. That something perhaps should have 7 happened nine years ago is a different issue and 8 I recognise that and one of the things I'm thinking 9 about, obviously, is what's gone wrong with all that, 10 that's within my terms of reference.</p> <p>11 So I'm not prepared to define failure as not 12 prosecuting people for what they may or may not have 13 done ten years ago.</p> <p>14 <b>A. I'm not aware -- I bow to your superior knowledge, but 15 is there a statute of limitations on those crimes?</b></p> <p>16 LORD JUSTICE LEVESON: With respect, Mr Staines, that's not 17 quite the point. There may or may not be. But even if 18 there isn't, there's a question of proof of not merely 19 the title but the name of the journalist doing whatever 20 he's supposed to have done. There's also an evidential 21 issue about the acceptability of simply an entry of 22 a name in a book as demonstrating the fact. So it's an 23 enormous exercise. As indeed is actually happening in 24 relation to the investigations which we heard about 25 yesterday, Weeting, Elveden, Tuleta. These are enormous</p> <p style="text-align: center;">Page 18</p>	<p>1 <b>American TV on my phone, never mind via terrestrial 2 broadcasters or satellite broadcasters. So I don't see, 3 unless we're going to have some kind of global Ofcom, 4 how you can have a regulatory regime that's going to 5 have the same standards all over the world.</b></p> <p>6 Q. Dealing now very briefly with some of the articles 7 you've published about phone hacking, first of all 8 Ms Weaver. I don't want you to reveal any sources not 9 already in the public domain, and I simply ask you this 10 question which I'd like you to answer succinctly, 11 please: does your evidence go any further than what you 12 have already posted on your blog or not?</p> <p>13 <b>A. If I have -- if -- I can't be quite certain from memory. 14 If on the blog I have said that journalists have told me 15 that they were told by Ms Weaver to spin a phone, then 16 that's what I'm attesting to now.</b></p> <p>17 LORD JUSTICE LEVESON: All right.</p> <p>18 MR BARR: And exactly the same question in relation to 19 Mr Morgan and again --</p> <p>20 LORD JUSTICE LEVESON: I don't think it's necessary to do 21 that.</p> <p>22 <b>A. No, Mr Morgan is circumstantial from his books.</b></p> <p>23 LORD JUSTICE LEVESON: Sorry?</p> <p>24 <b>A. What we've published about Mr Morgan we have derived 25 from his own writing.</b></p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 MR BARR: A question I've been asked to put to you from 2 somebody else, it's about how you obtained the draft of 3 Alastair Campbell's witness statement to this Inquiry, 4 and the question is: do you know how your source 5 obtained it?</p> <p>6 <b>A. I don't know the exact mechanics how my source obtained 7 it, but I think -- my source was a journalist, I think 8 I say that in my first witness statement, and I believe 9 that he obtained it from another journalist.</b></p> <p>10 Q. My final question in relation to the story which has 11 become known as Smeargate, exposing the activities of 12 certain Labour Party activists, you came into possession 13 of some emails which were the evidence for the story. 14 I don't want you to name your source, but do you know 15 how your source obtained those emails?</p> <p>16 <b>A. First of all, no one has ever suggested that that story 17 wasn't in the public interest. Like every other media 18 organisation, we're not going to reveal our sources or 19 speculate as to how the source came about the 20 information.</b></p> <p>21 MR BARR: Thank you very much. Those were all my questions.</p> <p>22 LORD JUSTICE LEVESON: I have one question only, Mr Staines. 23 You said rather early in your evidence that journalists 24 have thin skins, people are reluctant to say what's 25 going on, and that's one of the reasons why journalists</p> <p style="text-align: center;">Page 21</p>	<p>1 I thank you. During the course of the Inquiry, it was 2 said by more than one or two of those who have given 3 evidence that the law should be changed to permit 4 defences in certain circumstances, and having had 5 experience over a number of years of the criminal law 6 myself, it struck me that there was a fundamental 7 misunderstanding as to the way in which prosecution 8 policy operated in this country, and it is for that 9 reason that I invited you or indeed required you to 10 provide an analysis of that and invited to you consider 11 whether it was appropriate to enunciate a policy, 12 leaving it of course to you, because it's your 13 responsibility, absolutely not mine, to determine 14 whether or not you wish to do so.</p> <p>15 As we start, I just want to express my gratitude to 16 you for taking up that particular request and acting on 17 it so expeditiously.</p> <p>18 <b>A. Not at all.</b></p> <p>19 MR JAY: Thank you. You are the Director of Public 20 Prosecutions and have been since 1 November 2008; is 21 that right?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. The general approach, the basic principles you set out 24 in your statement at paragraphs 6 to 10, and that brings 25 in the code for Crown prosecutors and the two-stage test</p> <p style="text-align: center;">Page 23</p>
<p>1 don't write about other journalists and other papers, 2 because they may want to go and work there. Do you 3 think that's the four corners of it or do you think, as 4 somebody else has said to me, that there is an unwritten 5 rule that the papers really don't talk about each other?</p> <p>6 <b>A. I think that's true, that the papers don't like talking 7 about each other, and my direct competitors in the 8 papers are probably the diary columns and there's an 9 understanding amongst us that we don't do each other 10 over, so it applies to everyone. It's just normal in 11 any trade.</b></p> <p>12 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>13 MR JAY: The next witness is Mr Keir Starmer, please. 14 MR KEIR STARMER (affirmed) 15 Questions by MR JAY</p> <p>16 MR JAY: Thank you. Your full name first of all for the 17 Inquiry?</p> <p>18 <b>A. Keir Starmer.</b></p> <p>19 Q. Thank you very much. You've provided us with a witness 20 statement dated 7 February, together with four exhibits. 21 Is this your formal evidence to the Inquiry for module 22 one, Mr Starmer?</p> <p>23 <b>A. Yes, it is.</b></p> <p>24 MR JAY: Thank you very much.</p> <p>25 LORD JUSTICE LEVESON: Mr Starmer, before Mr Jay starts, can</p> <p style="text-align: center;">Page 22</p>	<p>1 in relation to all prosecutions, the evidential stage, 2 and then the public interest stage; is that right?</p> <p>3 <b>A. Yes, that's right.</b></p> <p>4 Q. Can I look at paragraph 11 where you say in the first 5 sentence:</p> <p>6 "At present, the CPS has no explicit policy or 7 guidance relating to the prosecution of journalists." 8 And you make the point that such prosecutions in 9 relation to journalists who commit offences in the 10 course of their work as journalists are extremely rare. 11 I think you do wish to clarify the last sentence of 12 paragraph 11; is that right?</p> <p>13 <b>A. Yes. In paragraph 11 I am dealing with the fact that we 14 rarely consider prosecutions of journalists acting in 15 the course of their work as journalists. What I intend 16 to convey at paragraph 11 is that although there are no 17 precise figures available, I'm only aware of a handful 18 of cases in which we have considered prosecutions that 19 touch on or concern journalists working in the course of 20 their work as journalists, not that in fact there have 21 been a handful of such cases.</b></p> <p>22 Q. Thank you. Your office has supplied guidance, KS2, 23 which relates to prosecuting public servants who 24 disclose confidential information to journalists?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 Q. Which is an example of guidance which is of tangential 2 relevance to this Inquiry, but it's useful because it is 3 an example, and you have provided us with a more 4 specific case, the decision not to charge Mr Green in 5 April 2009, and that's your KS3; is that correct? 6 <b>A. That's right, yes.</b> 7 Q. In relation to that issue, if I can deal with it very 8 generally, there are considerations in the Human Rights 9 Act and Article 10 of the Convention which are obviously 10 highly relevant, and deal with it at a very high level 11 of generality? 12 <b>A. Yes.</b> 13 Q. Can I move to paragraph 19, which is, of course, 14 directly relevant to the Inquiry's concerns: "The CPS 15 approach to the public interest in cases involving 16 journalists." 17 You rightly point out that the approach you adopt, 18 which varies on a case-by-case basis, varies 19 additionally according to the statutory context. Could 20 you elaborate what you mean by the statutory context, 21 Mr Starmer? 22 <b>A. Yes. There are essentially three types of statutory 23 provision. There are the statutory provisions which 24 provide an express defence, that someone was actually in 25 the public interest -- in this field. So the first</b> Page 25</p>	<p>1 does have under Section 55, I think it's (2)(d), that in 2 the particular circumstances the obtaining, disclosing 3 or procuring was justified as being in the public 4 interest; so that's a category 1 example? 5 <b>A. That's a category 1 example, express defence provided 6 for.</b> 7 Q. Thank you. The category 2 implied example, implied by 8 the route of the Human Rights Act in section 3, would 9 the Computer Misuse Act of 1990 fall into that category? 10 <b>A. Yes, it would and so, I should add, do common law 11 offences such as misconduct in public office.</b> 12 Q. Thank you. What are the differences in relation to the 13 public interest, if any, between category 1 and category 14 2? Category 1 is express, category 2 is implied, but 15 does it follow because it's implied that the public 16 interest is a weaker consideration? 17 <b>A. No, I don't think it does. It seems to me that if the 18 distinction matters at all, it's probably between the 19 stage at which we look at the public interest. For an 20 express defence we're required to consider it at the 21 evidential stage, it's centrally at the evidential 22 stage. Where it's implied, I think it's arguably at the 23 public interest stage, although it could be at the 24 evidential stage. I'm sorry to put that in a confusing 25 way, but nobody has clearly articulated this. We have</b> Page 27</p>
<p>1 <b>statutory context is those offences where an express 2 defence is provided.</b> 3 <b>In relation to those, as prosecutors, we have to 4 consider at the evidential stage, so before we get to 5 the second stage of the code test, what evidence we have 6 to meet any public interest defence.</b> 7 <b>The second category of statutes are the statutes 8 where there's an offence and there's an implied defence 9 of acting in the public interest, implied usually 10 through the Human Rights Act and the requirement to 11 interpret in accordance with Article 10. So that's the 12 second group of statutory provisions.</b> 13 <b>The third group are really those such as some 14 provisions within the Official Secrets Act, where the 15 courts have indicated that there's no room, really, for 16 any implication of the public interest, and the classic 17 exposition of the law there is that set out in the case 18 of Shayler, by the House of Lords, which I quote in 19 paragraph 27, and as prosecutors, we recognise that in 20 those types of cases there's very little room, if any, 21 for us to consider the public interest.</b> 22 <b>So it's those three categories which dictate the 23 approach.</b> 24 Q. Thank you. Is an example of a case which falls into 25 category 1 Section 55 of the Data Protection Act, which Page 26</p>	<p>1 <b>to act compatibly with the Human Rights Act --</b> 2 LORD JUSTICE LEVESON: Is it possible to do it this way: in 3 relation to the category 1, where there's a statutory 4 defence, you have to be satisfied to the code's standard 5 that you could rebut the statutory defence? 6 <b>A. Yes.</b> 7 LORD JUSTICE LEVESON: And if you don't feel you can do 8 that, that's the end of the game? 9 <b>A. Yes.</b> 10 LORD JUSTICE LEVESON: Category 2, it's a wider issue. It 11 may involve the same considerations as to the general 12 discretion that still vests in the prosecutor. But the 13 other difference is that in relation to category 1, 14 assuming you've jumped over that hurdle, then that issue 15 would be ventilated in court, or could be, as 16 a defence, whereas in relation to your category 2 cases 17 that would never be a defence, that's the exercise of 18 your residual discretion? 19 <b>A. I would agree with that analysis and that neatly 20 distinguishes between the two. The only footnote I have 21 is that in the Shayler case where the House of Lords was 22 saying there's no room for the public interest, they 23 were asking themselves: is there an implied defence? 24 Unresolved for the moment and to be resolved at some 25 stage, but arguably, therefore, what they were</b> Page 28</p>

7 (Pages 25 to 28)

<p>1 <b>considering or contemplating was whether it's an implied</b>  2 <b>defence rather than simply the exercise of the</b>  3 <b>prosecutor's discretion.</b>  4 LORD JUSTICE LEVESON: Yes. Shayler I think I was in in the  5 lower court.  6 <b>A. You were. And if that is right, for some or all of that</b>  7 <b>second category of statute, as a matter of fact, the</b>  8 <b>exercise falls to be done at the evidential stage.</b>  9 <b>The reality is nobody has gone through this analysis</b>  10 <b>because until we began to do so for the purposes of this</b>  11 <b>exercise, this has not been pulled together in one</b>  12 <b>place, and that's why I think at the moment there's some</b>  13 <b>ambiguity as to whether it's stage 1 or stage 2, but the</b>  14 <b>factors that are likely to be relevant are pretty much</b>  15 <b>the same for both stages.</b>  16 MR JAY: Thank you. In paragraph 23, you point out in view  17 of the very low number of prosecutions the cases have  18 tended to be resolved on a case-by-case basis. You list  19 the public interest factors which in your view are  20 likely in practice to have some relevance to the  21 assessment of whether prosecution is required in the  22 public interest. These are listed in paragraph 24. You  23 provide us there with six bullet points.  24 <b>A. Yes. What we have is general guidance as to the</b>  25 <b>approach to be taken under Article 10. We then have</b>  Page 29</p>	<p>1 <b>threats or intimidation.</b>  2 <b>"The impact, if any, of the conduct on any course of</b>  3 <b>justice, for example whether the conduct may have put</b>  4 <b>criminal proceedings in jeopardy.</b>  5 <b>"Whether the public interest in question could have</b>  6 <b>been served by lawful means.</b>  7 <b>"The impact on the victim or victims of the conduct</b>  8 <b>in question."</b>  9 <b>So they're the broad categories.</b>  10 LORD JUSTICE LEVESON: And you make it clear that this isn't  11 a comprehensive or exhaustive list.  12 <b>A. Exactly. These are some of the factors. It's not all</b>  13 <b>of them. And as with all public factors, they're to be</b>  14 <b>approached on the basis that we don't simply add up the</b>  15 <b>number that might tend in favour of prosecution and the</b>  16 <b>factors that might tend against prosecution and look at</b>  17 <b>which is the highest. We have to look at each case on</b>  18 <b>its own facts.</b>  19 MR JAY: Thank you. At paragraph 28 you move to the issue  20 as to whether there should be a specific policy.  21 <b>A. Yes. Well, paragraph 25 was -- just if I might mention</b>  22 <b>that -- to draw attention to the fact that in the</b>  23 <b>guidance that we have on disclosure, we do advise</b>  24 <b>prosecutors to look at the factors that are set out</b>  25 <b>under the Public Interest Disclosure Act to assist them</b>  Page 31</p>
<p>1 <b>specific guidance for a number of offences. What we</b>  2 <b>haven't done yet is to bring that together in one place</b>  3 <b>and set out in some sort of list or set of factors what</b>  4 <b>would be relevant to the public interest assessment in</b>  5 <b>cases involving journalists in one place.</b>  6 <b>What I've attempted to do in paragraph 24, pulling</b>  7 <b>together the various bits of policy and guidance we</b>  8 <b>have, is to indicate the factors that in my view would</b>  9 <b>have some relevance in the assessment which the</b>  10 <b>prosecutor would be required to carry out when</b>  11 <b>considering the public interest, and then to list them</b>  12 <b>as six bullet points.</b>  13 Q. To take your evidence forward to --  14 LORD JUSTICE LEVESON: Before you do, it might be just  15 helpful for those who aren't going to access this  16 statement on the Internet if you just read those six  17 bullet points in.  18 <b>A. Yes. The factors which would be of some relevance to</b>  19 <b>the assessment are first:</b>  20 <b>"The relative gravity of any potential offence</b>  21 <b>committed and/or harm caused compared to the public</b>  22 <b>interest in the publication in question.</b>  23 <b>"Whether there was any element of corruption in the</b>  24 <b>commission of the offence.</b>  25 <b>"Whether the conduct in question included the use of</b>  Page 30</p>	<p>1 <b>in carrying out the assessment of the first of the</b>  2 <b>bullet points in the previous paragraph, namely when</b>  3 <b>considering the relative gravity of the offence compared</b>  4 <b>with the public interest. We give some guidance as to</b>  5 <b>how prosecutors are to undertake that task, which is</b>  6 <b>quite a difficult task. That is within specific</b>  7 <b>guidance, but it seems to me that it's quite a useful</b>  8 <b>starting point for the general exercise.</b>  9 Q. Yes, I understand.  10 Moving towards a specific policy, paragraph 28 now  11 at page 14, you explain what the practice of the CPS has  12 been in recent years in relation to the issuing of  13 policy and guidance in certain areas, and you make it  14 clear that particularly you do so where the law is  15 complicated, involves sensitive issues or has given rise  16 to public concern?  17 <b>A. Yes.</b>  18 Q. What is your approach now going to be in relation to the  19 issue which concerns us, namely the prosecution of  20 journalists or the possible prosecution of journalists,  21 because, to make it clear, this issue has only very  22 rarely arisen?  23 <b>A. Having reflected on the comments made in this Inquiry</b>  24 <b>and having reflected on our policy and guidance in the</b>  25 <b>preparation of my witness statement, it seems to me that</b>  Page 32</p>



<p>1 <b>it would be prudent to have a policy that sets out in</b>  2 <b>one place the factors that prosecutors will take into</b>  3 <b>account when considering whether or not to prosecute</b>  4 <b>journalists acting in the course of their work as</b>  5 <b>journalists. Therefore, what I propose is that an</b>  6 <b>interim policy will be drafted. That interim policy</b>  7 <b>will draw on the existing principles and reflect the</b>  8 <b>existing approach, but put it in one place. That will</b>  9 <b>make things clearer.</b></p> <p>10 <b>My intention then is that we will consult on that</b>  11 <b>interim policy for a period of 12 weeks, which is our</b>  12 <b>usual consultation period, at the end of which we'll</b>  13 <b>take into account the responses and adjust the policy if</b>  14 <b>necessary.</b></p> <p>15 Q. Yes, and the specific offences which are relevant in our  16 context, namely the possible prosecution of journalists,  17 are to be found in paragraph 33 and of course will be  18 well familiar to lawyers in this area, but they range  19 from offences under the Official Secrets Act, misconduct  20 in a public office -- which I think is an offence of  21 common law?</p> <p>22 <b>A. It is, yes.</b></p> <p>23 Q. Offences under RIPA, which of course we're well  24 conversant with; offences contrary to the Computer  25 Misuse Act, where there isn't a public interest offence;</p> <p style="text-align: center;">Page 33</p>	<p>1 <b>A. In practice, the factors that are likely to be</b>  2 <b>considered are going to be the same, whichever it is.</b>  3 <b>There may be a slightly different approach, but the</b>  4 <b>guidance will have to distinguish between those</b>  5 <b>categories and will also have to identify those cases,</b>  6 <b>such as the Official Secrets Act, where there's little</b>  7 <b>or no room for the exercise at all.</b></p> <p>8 Q. Thank you. In trying to be too succinct, I think  9 I oversimplified the position in relation to implied  10 defences, and you've clarified that.</p> <p>11 So the normal approach is a 12-week consultation  12 period and, pending that, there will be an interim  13 policy; is that right?</p> <p>14 <b>A. The interim policy reflects current practice. It comes</b>  15 <b>into force with immediate effect. I hope to have that</b>  16 <b>ready within a matter of weeks, and we will operate that</b>  17 <b>interim policy for the 12-week period of the</b>  18 <b>consultation. End of that exercise, we will look at the</b>  19 <b>responses that we've had and adjust the policy in</b>  20 <b>accordance with the responses as necessary.</b></p> <p>21 <b>I've given consideration to the position should</b>  22 <b>anybody fail to be considered for prosecution during the</b>  23 <b>period of consultation and before the final policy is</b>  24 <b>published and it seems to me they would fall to be</b>  25 <b>considered under the interim policy, but as a safeguard,</b></p> <p style="text-align: center;">Page 35</p>
<p>1 bribery, this is the new 2010 Act, well it's relatively  2 new; corruption, maybe as well a common law offence  3 there; Data Protection Act offences.</p> <p>4 To be clear the DPP, do you have jurisdiction in  5 relation to Section 55 of the Data Protection Act?  6 Because we heard a lot about the Information  7 Commissioner.</p> <p>8 <b>A. I'm pretty sure I have jurisdiction in relation to</b>  9 <b>Section 55.</b></p> <p>10 Q. Right, and then perverting the course of justice, which  11 I believe as well is another offence under common law?  12 <b>A. Yes.</b></p> <p>13 Q. Will the guidance differentiate or would it be likely to  14 differentiate between these offences where there is  15 a public interest defence and where there isn't?  16 I suppose you would say the second category, save for  17 the Official Secrets Act, they're all implied public  18 interest defences; is that right?  19 <b>A. They may be implied.</b></p> <p>20 Q. Yes.</p> <p>21 <b>A. And we'll have to give careful thought to whether</b>  22 <b>they're implied defences or whether or not what is</b>  23 <b>required is simply the exercise by the prosecutor of the</b>  24 <b>discretion at the second stage.</b></p> <p>25 Q. Yes?</p> <p style="text-align: center;">Page 34</p>	<p>1 <b>I would want us to look again at any decisions made once</b>  2 <b>the final policy was in place to ensure that decisions</b>  3 <b>were consistent with the final policy.</b></p> <p>4 MR JAY: Thank you. Those were all the questions I had for  5 you.</p> <p>6 LORD JUSTICE LEVESON: Mr Starmer, thank you very much.  7 I think you will agree but I hope you will agree that  8 the concerns that some have expressed about the  9 operation of the criminal law and its impact on  10 journalism have failed to reflect the very important  11 public interest considerations that you and your  12 predecessors have always brought to bear in this area of  13 the law.</p> <p>14 <b>A. Yes, I think so.</b></p> <p>15 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>16 <b>A. Thank you.</b></p> <p>17 LORD JUSTICE LEVESON: I'm afraid that in due course you're  18 likely to be returning.</p> <p>19 <b>A. I understand. Thank you.</b></p> <p>20 MR JAY: Sir, may we take the next witness and then have our  21 break?</p> <p>22 LORD JUSTICE LEVESON: Yes.</p> <p>23 MR JAY: Helen Belcher, please.</p> <p>24 MS HELEN CLARE BELCHER (affirmed)</p> <p>25 Questions by MR JAY</p> <p style="text-align: center;">Page 36</p>

<p>1 MR JAY: Make yourself comfortable and first of all your 2 full name. 3 <b>A. Helen Clare Belcher.</b> 4 Q. Thank you. You provided the Inquiry, for which we're 5 grateful, a submission on behalf of Trans Media Watch. 6 The first page, I believe, ends with our numbers 58510. 7 First of all, may I ask you to explain Trans Media 8 Watch? It's page 4, please, on the internal numbering. 9 LORD JUSTICE LEVESON: Hang on. Before you do, this 10 document I don't think bears a name, does it? 11 <b>A. We called it the British Press and the Transgender 12 Community Submissions --</b> 13 LORD JUSTICE LEVESON: Yes, but I meant it didn't bear 14 a human name. 15 <b>A. No, no.</b> 16 LORD JUSTICE LEVESON: This constitutes your evidence as 17 part of the evidence to the Inquiry? 18 <b>A. This is the submission by Trans Media Watch and I'm the 19 representative.</b> 20 LORD JUSTICE LEVESON: But you're content that it be put as 21 part of the record of the Inquiry as effectively your 22 evidence? 23 <b>A. Yes.</b> 24 LORD JUSTICE LEVESON: Representing Trans Media Watch? 25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 37</p>	<p>1 <b>woman will be someone who was recorded as male at birth 2 but identifies as female. That may mean -- may not mean 3 living full-time in role as a woman. It may not 4 necessarily mean that there is any medical intervention, 5 but it is where there is sufficient discomfort or 6 dysphoria living as the gender assigned to you at birth 7 to cause significant problems.</b> 8 <b>Intersex is where the physical biology is in between 9 or has aspects of both genders.</b> 10 Q. Thank you. Under the Gender Recognition Act of 2004, 11 which I think was brought into effect with Royal Assent 12 on 1 July 2004, there is a specific procedure by which 13 an application is made to change gender; is that 14 correct? 15 <b>A. There is, that is correct. There are a large number of 16 trans people who have transitioned who are -- who have 17 chosen not to apply for gender recognition certificates 18 for a variety of reasons. There are people who are 19 unwilling to dissolve existing marriages. There are 20 people who are suspicious about being recorded on what 21 they would see as a central government register of trans 22 people, and there are people who inevitably will not 23 know about the legislation.</b> 24 Q. Yes. The effect of acquiring the certificate under 25 Section 9 is that the person's gender becomes for all</p> <p style="text-align: center;">Page 39</p>
<p>1 LORD JUSTICE LEVESON: Thank you. 2 MR JAY: Thank you very much. 3 Sorry, I omitted that, but all our evidence has to 4 be formally committed. 5 Page 4 please on the internal numbering you tell us 6 about Trans Media Watch, but in your own words, please? 7 <b>A. A small group of us formed Trans Media Watch in relation 8 to a series of concerns over the representation of trans 9 and intersex people throughout the British media. We 10 formed in 2009. We incorporated as a charity at the end 11 of 2010. We aim to work constructively with 12 broadcasters, regulators and members of the press in 13 order to educate them about trans and intersex issues 14 but we also assist trans and intersex people with 15 complaints about the media and how to present that 16 effectively to regulators or to newspapers or 17 broadcasters.</b> 18 Q. Thank you very much. At page 5 you define two terms 19 or concepts. The first term is transgender, the second 20 term is intersex. In your own words, please, 21 transgender? 22 <b>A. Transgender -- I'll use trans if you don't mind, under 23 the document it goes through transgender -- basically is 24 the group of people who will identify with the gender 25 opposite to the one recorded at their birth. So a trans</b></p> <p style="text-align: center;">Page 38</p>	<p>1 purposes the acquired gender? 2 <b>A. Correct.</b> 3 Q. There are also some other consequences which are 4 slightly more complex. Section 22, prohibition on 5 disclosure of information. There is certainly protected 6 information which relates to the person's gender before 7 it becomes the acquired gender. There are certain 8 entities acting in an official capacity who cannot 9 disseminate that protected information. That would 10 include the press under section 22(3)(c) on my 11 understanding, but there are certain exceptions under 12 section 23(4); is that right? 13 <b>A. There are, yes.</b> 14 Q. I don't think it's going to be necessary to go into all 15 of those exceptions, but it sets out a basic statutory 16 framework which is important. 17 There's another important aspect which should be 18 drawn attention to, that the PCC's code of practice, 19 clause 12, says: 20 "The press must avoid prejudicial or pejorative 21 reference to an individual's race, colour, religion, 22 gender, sexual orientation ..." and then other matters 23 which we needn't be concerned about today. It's the 24 reference to gender which I think is important. I think 25 it was changed from sex to gender in 2005?</p> <p style="text-align: center;">Page 40</p>

<p>1 <b>A. That is correct.</b></p> <p>2 Q. And you've also drawn attention to a guidance note by</p> <p>3 either the PCC or the Code of Practice Committee,</p> <p>4 I think it's likely to be probably the PCC, issued in</p> <p>5 2005, which makes it clear that gender includes gender</p> <p>6 identity, is that so?</p> <p>7 <b>A. It's actually the Editors' Code of Practice Committee</b></p> <p>8 <b>released a press release on 5 May 2005 where they</b></p> <p>9 <b>specifically -- if I may quote:</b></p> <p>10 <b>"Individuals who are undergoing or have undergone</b></p> <p>11 <b>treatment for gender reassignment will be included in</b></p> <p>12 <b>the categories offered protection from prejudicial or</b></p> <p>13 <b>pejorative references."</b></p> <p>14 <b>Further down it says:</b></p> <p>15 <b>"It has decided that the word 'gender' will replace</b></p> <p>16 <b>'sex' in subclause 12(1), thus widening its scope to</b></p> <p>17 <b>include transgender individuals."</b></p> <p>18 <b>And further down again:</b></p> <p>19 <b>"The committee decided against a change to the</b></p> <p>20 <b>accompanying subclause 12(2) which covers publication of</b></p> <p>21 <b>discriminatory details that aren't relevant to a story</b></p> <p>22 <b>because trans individuals would be covered under the</b></p> <p>23 <b>existing rules."</b></p> <p>24 Q. Thank you, that's clear. Page 6, please, of your</p> <p>25 submission. There are four general points here which</p> <p style="text-align: center;">Page 41</p>	<p>1 <b>depression and stress. Their family life is likely to</b></p> <p>2 <b>be completely chaotic. If they are married, their</b></p> <p>3 <b>spouses may well struggle to come to terms with what is</b></p> <p>4 <b>going on. Children often get caught up in the</b></p> <p>5 <b>crossfire, as it were.</b></p> <p>6 <b>At that point, a lot of people are -- may not look</b></p> <p>7 <b>particularly convincing as members of the gender they</b></p> <p>8 <b>believe themselves to be.</b></p> <p>9 <b>Now, the NHS guidelines require that trans people</b></p> <p>10 <b>transition before receiving hormonal treatment. People</b></p> <p>11 <b>who go through a private path may receive hormonal</b></p> <p>12 <b>treatment before a public transition, that can often</b></p> <p>13 <b>make a significant difference to people in the way that</b></p> <p>14 <b>they are perceived. But the combination of social and</b></p> <p>15 <b>domestic upheaval, pressures around work, the whole</b></p> <p>16 <b>journey, if you like, of coming to terms with who you</b></p> <p>17 <b>are and what you need to do makes it an incredibly</b></p> <p>18 <b>stressful time.</b></p> <p>19 Q. Thank you. Section C please at page 7. You say, this</p> <p>20 is the fourth line down:</p> <p>21 "The media and the tabloid press in particular has</p> <p>22 played a powerful role in creating and sustaining a</p> <p>23 climate of prejudice against transgender people."</p> <p>24 There are some detailed case studies which in fact</p> <p>25 are not supplied in your official evidence for various</p> <p style="text-align: center;">Page 43</p>
<p>1 I'm sure you wish to make. The first is transsexualism</p> <p>2 is not a lifestyle choice. Indeed, many transsexual</p> <p>3 people fight this aspect of their nature for many years</p> <p>4 because of prevailing societal attitudes. So that's the</p> <p>5 first point?</p> <p>6 <b>A. I would actually expand on that and say actually most</b></p> <p>7 <b>people do not choose to be transsexual. They try and</b></p> <p>8 <b>choose not to be transsexual.</b></p> <p>9 Q. Thank you. Secondly, that the right for transgender</p> <p>10 people to access medical treatment under the National</p> <p>11 Health Service has been enshrined in law since December</p> <p>12 1998. You refer there to a particular case which was</p> <p>13 decided in that year which established that principle?</p> <p>14 <b>A. Correct, yes.</b></p> <p>15 Q. Thirdly, you refer to the Equality Act 2010, which gives</p> <p>16 full protection within the terms of that Act to</p> <p>17 transgender people, and then fourthly you make the point</p> <p>18 transsexual people are particularly vulnerable. Maybe</p> <p>19 you would like to expand on that point as well for us,</p> <p>20 please Ms Belcher.</p> <p>21 <b>A. A lot of transsexual people at the point they transition</b></p> <p>22 <b>to what is known as their acquired sex or the sex that</b></p> <p>23 <b>they believe themselves to be will have gone through</b></p> <p>24 <b>a substantial period of heart searching. They will</b></p> <p>25 <b>have -- they may well be suffering from aspects of</b></p> <p style="text-align: center;">Page 42</p>	<p>1 reasons, but there are some examples we're going to come</p> <p>2 to within the main body of this submission.</p> <p>3 You say at the end of that paragraph:</p> <p>4 "Entirely innocent individuals have been forced out</p> <p>5 of jobs and homes, even received death threats, on the</p> <p>6 basis of coverage in the British press."</p> <p>7 How many examples of that are you able to provide us</p> <p>8 with?</p> <p>9 <b>A. The honest answer is I don't know, but we have got</b></p> <p>10 <b>examples of those things happening. There are cases</b></p> <p>11 <b>where families have had to relocate. There are examples</b></p> <p>12 <b>where families get -- trans people get death threats</b></p> <p>13 <b>written and pushed on envelopes through doors. It is --</b></p> <p>14 <b>I don't know how common it is, but it happens.</b></p> <p>15 Q. Certainly. Then you say in the next paragraph:</p> <p>16 "The Press Complaints Commission is widely regarded</p> <p>17 as an ineffective joke by the transgender community."</p> <p>18 May I ask you, please, to elaborate on that</p> <p>19 statement?</p> <p>20 <b>A. Most trans people now when they're the subject of an</b></p> <p>21 <b>article which they would deem worthy of a complaint</b></p> <p>22 <b>don't bother, because the PCC has received a number of</b></p> <p>23 <b>complaints and it appears that nothing ever changes as</b></p> <p>24 <b>a result of those complaints.</b></p> <p>25 <b>There was one example where a trans person was</b></p> <p style="text-align: center;">Page 44</p>

<p>1 effectively forced out of her job on the basis of</p> <p>2 a newspaper article. There was a whole raft of</p> <p>3 implications. The PCC found that one particular word</p> <p>4 had been pejorative, and in the light of that, amongst</p> <p>5 other attempts to complain, the trans community has more</p> <p>6 or less walked away from the PCC.</p> <p>7 In 1996, there was a pressure group -- still is</p> <p>8 a pressure group called Press for Change, who did</p> <p>9 a presentation to the Press Complaints Commission about</p> <p>10 trans issues. They met -- they got met with a number of</p> <p>11 concerned looks, but nothing changed.</p> <p>12 Q. Thank you. Various research was done in 2010, which</p> <p>13 I think you commissioned. Page 8. An online</p> <p>14 questionnaire on a self-completion basis was filled in</p> <p>15 I think by 250 people, and the picture which is painted,</p> <p>16 we can see the statistics here: 95 per cent of</p> <p>17 respondents said they did not believe the media cared</p> <p>18 how transgender people were portrayed. 78 per cent</p> <p>19 believed portrayals of transgender people were either</p> <p>20 inaccurate or very inaccurate. 70 per cent said that</p> <p>21 portrayals of transgender people in the media were</p> <p>22 either negative or very negative, and then there are</p> <p>23 various responses from angry, unhappy, excluded and</p> <p>24 frightened where the percentages are listed.</p> <p>25 Can I ask you to look at section D, the impact of</p> <p style="text-align: center;">Page 45</p>	<p>1 A. Yes.</p> <p>2 Q. Page 12, the first of these examples, one which I put to</p> <p>3 Mr Mohan yesterday, Ms Belcher. The Sun, 24 October</p> <p>4 2009:</p> <p>5 "Dad of two driver changes gear in sex swap."</p> <p>6 So we have first of all, if I may say so, a juvenile</p> <p>7 joke, is that right?</p> <p>8 A. Yes, it's juvenile. "Sex swap" also is a term which</p> <p>9 a lot of people find offensive. It seems to indicate</p> <p>10 some kind of immediate transference from one gender to</p> <p>11 the other. It's -- yes.</p> <p>12 Q. In this case, because we looked at it yesterday, I can</p> <p>13 take it reasonably succinctly, we have the use of the</p> <p>14 adverb "burly", which is a consistent term. We have the</p> <p>15 wrong use of the personal pronoun. Then we have the</p> <p>16 before and after photographs.</p> <p>17 I think you're in a position, Ms Belcher, to tell us</p> <p>18 more background in relation to this case, of course</p> <p>19 preserving the anonymity of the subject of the article?</p> <p>20 A. The subject has talked to us since we made the</p> <p>21 submission and it has transpired that the ex-partner of</p> <p>22 the subject sold the story to a weekly magazine and they</p> <p>23 had published the story about the subject a few weeks</p> <p>24 earlier. The picture was sold to the magazine without</p> <p>25 the subject's permission, and it was also associated</p> <p style="text-align: center;">Page 47</p>
<p>1 the press on public perception. There are two respects</p> <p>2 here which are important. One you say is general, one</p> <p>3 is specific. The first one, the general one, is (a):</p> <p>4 "The creation and sustainment of a climate of</p> <p>5 ridicule and humiliation."</p> <p>6 Can I ask you to elaborate on that issue?</p> <p>7 A. There are -- it's really to do with the type of</p> <p>8 reporting. Trans people -- on the next page in the</p> <p>9 submission we detail a number of different ways in which</p> <p>10 the press routinely misgenders people, concentrates on</p> <p>11 the use of a former name, using before and after</p> <p>12 photographs to graphically indicate some astounding</p> <p>13 physical transitions. There is often some kind of</p> <p>14 comedic or demeaning or ridiculing language used within</p> <p>15 articles, specifically headlines, and a lot of trans</p> <p>16 people find some of those words incredibly offensive.</p> <p>17 So -- I mean, it's routine. It happens today in the</p> <p>18 press, despite the editors' protestations that</p> <p>19 everything is sorted out.</p> <p>20 Q. We're going to come to one example which is very recent</p> <p>21 in a moment. Point (b) at page 10:</p> <p>22 "Singling out individual transgender people and</p> <p>23 their families for sustained personal intrusion."</p> <p>24 That point I think may be best illustrated by</p> <p>25 looking at some of the examples you have provided us.</p> <p style="text-align: center;">Page 46</p>	<p>1 with that original article.</p> <p>2 It appears that the Sun got it from there. The</p> <p>3 piece was then rewritten, so it looked as though the</p> <p>4 subject had colluded with the Sun. The first the</p> <p>5 subject knew was when the Sun published it.</p> <p>6 It caused her immense distress. It also caused her</p> <p>7 children huge distress, because they thought that she</p> <p>8 had sold her story or was behind her story in some way,</p> <p>9 and she had nothing to do with the story whatsoever. It</p> <p>10 is a pure expose. There is no public interest.</p> <p>11 Q. Thank you. The Scottish Sun, next page, 15 December</p> <p>12 2010. We have a photograph. We have "burly" and we</p> <p>13 have the same "sex swap" in the headline; is that right?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. And another silly joke, but this time relates to</p> <p>16 mechanics, I think, with the nuts -- or maybe not.</p> <p>17 A. May be male genitalia, yes.</p> <p>18 Q. Sorry I was being a little bit naive there, I'm afraid.</p> <p>19 Page 14, please, Ms Belcher, 24 February 2011. I took</p> <p>20 this one to Mr Mohan yesterday. Use of the term "tran",</p> <p>21 what's your comment on that?</p> <p>22 A. It is making somebody an object rather than a person.</p> <p>23 It is dehumanising an individual. Trans people are not</p> <p>24 solely trans. They have other interests, they do other</p> <p>25 things. They go down to the supermarket and buy milk.</p> <p style="text-align: center;">Page 48</p>

<p>1 They have different categories. And to constantly                  2 reduce trans people to one label is incredibly                  3 objectifying and dehumanising.                  4 I saw Mr Mohan's evidence yesterday where he tried                  5 to tape this article to the broadcast of the programme                  6 "There's something about Miriam". The article is dated                  7 25 February 2011. The programme "Something about                  8 Miriam" was broadcast in February 2004. So there is                  9 a seven-year delay between trying to associate the                  10 programme to the article.                  11 The programme itself came under huge condemnation                  12 from the trans community. If I can read a couple of                  13 quotes, one was from Petra Boynton:                  14 "The whole premise of 'There's something about                  15 Miriam' was not a celebration of transgendered life. It                  16 was designed to elicit horror from the winning                  17 contestant discovering that his dream date had a penis."                  18 And the second quote is from a writer called                  19 Julia Serano:                  20 "Programmes like 'There's something about Miriam'                  21 reinforce the stereotype that trans people's birth sex                  22 is somehow real and our identities or lived sex is                  23 false, but they perpetuate the myth of deception and                  24 thus enable violence against us."                  25 That is the reaction of the trans community to the                  Page 49</p>	<p>1 else in the study -- it might have been something we                  2 took out -- where there is a common theme, because                  3 transgender people are portrayed as fraudulent, there is                  4 this constant debate over then why should the state pay                  5 for any treatment of trans people? And somehow we're                  6 portrayed as hoovering up massive amounts of public                  7 money, whereas actually if somebody is on oestrogen, it                  8 is actually quite likely they are subsidising the NHS,                  9 because of the extremely low cost of the tablets.                  10 The NHS, as we pointed out earlier, has a legal duty                  11 to support trans people on the basis that it is not                  12 a lifestyle choice, it is something that people are born                  13 with.                  14 Q. There are other points which can be made about this                  15 piece, which you do make, but which are, I think, fairly                  16 clear.                  17 Can I move to page 16 in the Daily Mail,                  18 19 September 2011. I think you believe this was Mail                  19 Online rather than the Daily Mail, although you're not                  20 sure; is that right?                  21 A. It's definitely on Mail Online. We don't know whether                  22 it appeared in the print version of the day.                  23 Q. Yes, that's an issue which has affected the Inquiry from                  24 time to time to work out whether Mail Online also covers                  25 the print edition or not. Of course, it would depend,                  Page 51</p>
<p>1 programme. By conflating this article with the                  2 programme, the Sun is basically saying trans people                  3 elicit horror, trans people are frauds.                  4 Q. Thank you. Page 15 now. The Daily Express, New Year's                  5 Day 2011:                  6 "Half man' gets new breasts and guess who's paying                  7 the £78,000."                  8 There are a number of points which you clearly make                  9 about this article, but the real concern of the Daily                  10 Express is to emphasise that the taxpayer is having to                  11 pay £78,000. Is that fair?                  12 A. That appears part of it. I mean, the £78,000 seems to                  13 be made up of two figures, which is a £60,000 and an                  14 £18,000. The 60,000 is an oft-quoted figure for genital                  15 reassignment surgery. The figure is completely                  16 fictitious, as far as we can ascertain. The study                  17 relating to a submission to the Inquiry has determined                  18 that the average cost of male-to-female genital surgery                  19 on the NHS is somewhere between £10,000 and £15,000.                  20 When papers are challenged or have been challenged                  21 about this £60,000 figure, they are extremely reluctant                  22 to change it, claiming that we don't know what the case                  23 was or the amount was on that particular case, but then,                  24 I suggest, neither do they.                  25 I'm trying to find if -- I think we wrote somewhere                  Page 50</p>	<p>1 I think, is the true answer.                  2 A. But it's still published by the same organisation.                  3 Q. In terms of the interests of the Inquiry, looking at the                  4 culture, practice and ethics of the press as a whole, of                  5 course, it makes no difference.                  6 The headline:                  7 "The gender-free British passport: UK travellers may                  8 no longer have to declare their sex to spare feelings of                  9 'transgender people'.                  10 There are a number of points to be made about that.                  11 Maybe I can leave it to you make them?                  12 A. The first and most obvious point is why is "transgender                  13 people" in quotes? That headline seems to indicate that                  14 the Mail, in whatever guise, does not believe that trans                  15 people should exist.                  16 There has been a series of calls for reviewing the                  17 existence of gender markers on UK passports, but however                  18 they have also come from intersex people and actually                  19 also some feminist groups as well, but that is just not                  20 referenced in the article. Once again it's these pesky                  21 trans people who are causing problems and why don't they                  22 just go away and leave us to live our lives in peace?                  23 Q. Thank you. Page 17, the same day. Again, possibly the                  24 Daily Mail, certainly the Mail Online. The headline                  25 here:                  Page 52</p>

1 "Sex change man named [and then obviously you've  
 2 redacted it out] becomes Britain's Olympic ambassador  
 3 for transsexuals."  
 4 Could you talk us through this particular piece,  
 5 please, and also I think there's an underlying story you  
 6 want to cross-reference?  
 7 **A. Indeed. The idea that we would need an Olympic  
 8 ambassador for transsexuals is itself mainly absurd.  
 9 She has a role as an Olympic ambassador to meet  
 10 a variety of different VIPs. The subject is misgendered  
 11 again throughout the piece, beginning in the headline  
 12 with "Sex change man". "Sex change" is also a term that  
 13 a lot of trans people find offensive for the basic  
 14 reason, actually, that trans people often don't believe  
 15 they're changing their sex. They are who they are, and  
 16 they have been from birth. They are merely changing  
 17 their presentation.**  
 18 **The subject's previous name appears prominently  
 19 throughout the article. Again, the subject has been in  
 20 touch with Trans Media Watch for quite some time. She  
 21 tells us that the story originally appeared in her local  
 22 paper. They still use the sex change line, but  
 23 throughout the original article the subject is correctly  
 24 gendered and there's very little reference to any  
 25 previous name.**

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1 **The Daily Mail ambushed her, in her words. They got  
 2 hold of a photographer and one of the other pictures,  
 3 without the subject's permission. The Mail then rewrote  
 4 the article, replacing all the "she's" with "he's".  
 5 They contacted her two days before they were going to  
 6 publish the article. She refused permission for her  
 7 photograph to be used, but as you can see, it's still in  
 8 the paper.**  
 9 **The local paper journalist was extremely upset and  
 10 the quote that I have is, "They bastardised my piece."**  
 11 **The subject felt that as a result of this article  
 12 that her job had become under threat and untenable.  
 13 However, LOCOG have been supportive of her.**  
 14 **I think that's probably all I need to say on that  
 15 one.**  
 16 Q. I'm not going to cover each and every one of these, but  
 17 there's one I'm sure you wish to cover. Page 18,  
 18 Daily Mail early 2009, and a piece you refer to in the  
 19 local paper which was extremely supportive.  
 20 **A. Again I think I'd like to reference this in terms of the  
 21 evidence Mr Dacre gave on Monday where he alluded to his  
 22 organisation pursuing some kind of moral crusade and he  
 23 felt it completely appropriate to expose people who  
 24 were, in his terms, immoral. I struggle to see what is  
 25 immoral about being trans. The Mail publishes, either**

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1 **Mail Online or in the Daily Mail, six times more trans  
 2 stories than any other paper in this country. In terms  
 3 of this, this basically proves that the Mail was trying  
 4 to create an issue for a local support group, but the  
 5 local community did not actually find the issue and in  
 6 fact were incredibly supportive of that group.**  
 7 Q. Thank you.  
 8 **A. The organisers of the group were then quoted in the  
 9 local paper as saying that the Daily Mail's piece had  
 10 ruined their lives and the local paper actually also  
 11 received many expressions of support for the local  
 12 group, which appears to entirely undermine the  
 13 Daily Mail's stance.**  
 14 Q. Thank you. You give two other Daily Mail or Mail Online  
 15 examples. Each of them is different in its way, but  
 16 we've read and considered those. I would like to cover  
 17 the Sun example of 31 December of last year. It's quite  
 18 recent:  
 19 "Operation sex swap, MoD paying for troops' gender  
 20 surgery."  
 21 This is page 21 of the submission on the internal  
 22 numbering. The point that was being made here is this  
 23 time it's not the NHS but it's the Ministry of Defence  
 24 who has spent thousands of pounds to help troops have  
 25 and then in capitals "sex changes". I think some

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1 figures are given a little bit later on. From April  
 2 2009 to date, the cost to the MoD is £7,440 for minor  
 3 surgical procedures relating to gender reassignment.  
 4 **A. It is extremely unlikely, given that the average cost,  
 5 as I alluded to before, for male-to-female genital  
 6 reassignment is between 10 and 15,000, that for five  
 7 people you could get those kind of surgical procedures  
 8 for £7,440. Also, that is from April 2009 to the end of  
 9 2011, so that's two and a half years.**  
 10 **The point I would make is that when newspapers out  
 11 public servants for doing their duty just simply because  
 12 they are trans, in almost all cases senior management is  
 13 involved to manage the press fallout, to make sure that  
 14 the individual concerned is secure and is able to  
 15 continue doing their job. Each one of those will cost  
 16 many thousands of pounds out of the public purse. So  
 17 for the Sun to indicate that it is disgraceful for the  
 18 Ministry of Defence to pay £7,440 over a period of 30  
 19 months when they themselves are inflicting thousands of  
 20 pounds for each outing of a public servant, this appears  
 21 incredibly disingenuous.**  
 22 Q. Thank you. Section E, dealing with impact, it should be  
 23 stated that you provided the Inquiry on a confidential  
 24 basis with a number of case studies. You point out in  
 25 the middle of page 23 -- this is the part in bold

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<p>1 type -- that each is confidential to the Inquiry, as                  2 each subject has expressed grave fears about further                  3 invasions of privacy and harassments by the press should                  4 it become known that their story is in our submission,                  5 and for that reason, after consideration, you decided                  6 not to publish the case studies or permit the Inquiry to                  7 do so, so that has not happened. But you do find some                  8 common themes, and these are the four bullet points                  9 which you list:                  10 "In each case, the subject of the story had their                  11 right to privacy grossly breached, often at a very                  12 vulnerable time, with no public interest being served                  13 whatsoever.                  14 "Was put in danger of public abuse and/or violence.                  15 "Is left with candid details of their personal                  16 affairs, including previous names, pictures, home or                  17 work, available on the Internet.                  18 "Often these details, including photographs, were                  19 acquired without the subject's permission.                  20 "Had to fight the press to force them to exercise                  21 restraint -- often with no effect."                  22 So those are the common themes which again we're not                  23 going to look at in detail for the reasons that you have                  24 given.                  25 Page 26 now and section F, "Press and regulator                  Page 57</p>	<p>1 <b>the time we just get complete incomprehension as to why</b>                  2 <b>is this possibly a problem, what are you complaining</b>                  3 <b>about, but some we get some level of traction.</b>                  4 <b>So we find that individuals rarely want to pursue</b>                  5 <b>the case because they then become afraid of future</b>                  6 <b>harassment. The view tends to be: it's safer to let the</b>                  7 <b>hornet's nest lie undisturbed. But the implication is</b>                  8 <b>because these articles remain online, you can still find</b>                  9 <b>them years and years later, often when the individual</b>                  10 <b>wants to move on, trying to really distance themselves</b>                  11 <b>from a previous -- their previous life, and they can't</b>                  12 <b>do so.</b>                  13 LORD JUSTICE LEVESON: To what extent would this be solved                  14 by a complaint mechanism that permitted legitimate                  15 representative complaint? I say legitimate                  16 representative complaint obviously to stop anybody                  17 saying, "Well, I want to complain", if possible, perhaps                  18 just to make trouble, but what about that?                  19 <b>A. I think that would go quite a long way. The other</b>                  20 <b>aspect, I think, is the lack of real teeth from the PCC.</b>                  21 LORD JUSTICE LEVESON: Yes, well, I've heard about that.                  22 <b>A. I know. I think the issue -- people often appreciate</b>                  23 <b>the level of support that we can give, but they're</b>                  24 <b>reluctant to really push anything because they don't</b>                  25 <b>really see that there is any sanction to rectify the</b>                  Page 59</p>
<p>1 response". Has the PCC in your view been supportive?                  2 We know that the Editors' Code of Practice Committee as                  3 you've told us has amended clause 12 to substitute                  4 "gender" for "sex" and the reason for doing that you                  5 have explained and there's also some guidance, so that                  6 might be said to indicate a measure of support.                  7 <b>A. (Nods head).</b>                  8 Q. But elsewhere has the PCC been supportive?                  9 <b>A. The PCC has, I think, wanted to express support, but for</b>                  10 <b>whatever reason is unable to actually deliver on that</b>                  11 <b>support.</b>                  12 <b>In the meetings that we've had with the PCC, it's</b>                  13 <b>almost a bit like Pontius Pilate, washing their hands</b>                  14 <b>with a sense of woe that there's nothing that they can</b>                  15 <b>do.</b>                  16 <b>The code is used as a barrier in many instances to</b>                  17 <b>prevent people from complaining. Trans people -- as</b>                  18 <b>I said earlier -- often feel extremely vulnerable at the</b>                  19 <b>point of transitioning. The idea that they then want to</b>                  20 <b>fight through some kind of judicial or quasi judicial</b>                  21 <b>process with a track record of really not getting any</b>                  22 <b>results at the end is extremely off-putting, and so</b>                  23 <b>people are reluctant to go down that path.</b>                  24 <b>We try to talk to newspapers, but a third of the</b>                  25 <b>time you just get no response at all, about a third of</b>                  Page 58</p>	<p>1 <b>situation.</b>                  2 MR JAY: Thank you. I would like to ask you, though -- and                  3 maybe I'm at fault for not putting this to                  4 Baroness Buscombe yesterday, probably should have done                  5 really -- page 27 in the middle of the page, you refer                  6 to a meeting with Baroness Buscombe, Mr Abell, who was                  7 the then director, and it was Jennie Kermode, I don't                  8 believe yourself, on 15 September 2010. I'm right in                  9 saying you didn't attend?                  10 <b>A. I wasn't, no. That was a meeting up in Edinburgh.</b>                  11 Q. You say in your submission:                  12 "Both Baroness Buscombe and Ms Robertson expressed                  13 their belief that changes in the Editors' Code would be                  14 of benefit in helping the PCC to challenge instances of                  15 overt prejudice against transgender people and other                  16 minority groups, but did not feel it would be easy to                  17 engineer such changes because of the influence of                  18 newspaper editors over the Commission."                  19 Is there a note of that remark?                  20 <b>A. I don't know. The person who wrote this particular</b>                  21 <b>section was Jennie Kermode, so we can check with her to</b>                  22 <b>see what documentation she actually has.</b>                  23 Q. Thank you. Before I come to your recommendations, I had                  24 passed over the recent piece in the Sun, Scottish Sun,                  25 I think it's called. Very recent, which you drew to my                  Page 60</p>

<p>1 attention earlier.</p> <p>2 <b>A. Well, I noticed that -- I mean, there's a number of</b></p> <p>3 <b>things on the -- Mr Mohan was quite insistent that the</b></p> <p>4 <b>Sun had mended its ways and no longer abused trans</b></p> <p>5 <b>people, yet on 3 January there was an article in the</b></p> <p>6 <b>printed Sun with the headline, "Tranosauras", about</b></p> <p>7 <b>a very tall trans woman, simply attributed to "staff</b></p> <p>8 <b>reporter".</b></p> <p>9 <b>And yesterday, while he was giving evidence, there's</b></p> <p>10 <b>an article written by Stuart MacDonald up on the</b></p> <p>11 <b>Scottish Sun, which is actually still under the Sun's</b></p> <p>12 <b>website. The headline is, "Tranny granny raids three</b></p> <p>13 <b>banks", where it talks actually about somebody who</b></p> <p>14 <b>appears to be a con artist and not trans at all, so</b></p> <p>15 <b>simply conflating the idea that somebody just dressing</b></p> <p>16 <b>up in women's clothes to commit a crime must therefore</b></p> <p>17 <b>be trans in some way and yet still using the pejorative</b></p> <p>18 <b>term "tranny" in order to describe that. I struggle to</b></p> <p>19 <b>see how that kind of article with that kind of headline</b></p> <p>20 <b>is mending their ways.</b></p> <p>21 <b>LORD JUSTICE LEVESON: Mm.</b></p> <p>22 MR JAY: We'll need to check, but it may well be, I suspect</p> <p>23 it is the case, that the Scottish Sun has a separate</p> <p>24 editor.</p> <p>25 LORD JUSTICE LEVESON: I think it does, but the point is</p> <p style="text-align: center;">Page 61</p>	<p>1 the law of defamation which, in my understanding of the</p> <p>2 width and breadth of the terms of reference, probably --</p> <p>3</p> <p>4 LORD JUSTICE LEVESON: You'll appreciate, I'm sure -- I'm</p> <p>5 not critical of you mentioning this, but I'm sure you'll</p> <p>6 appreciate that there are all sorts of issues about</p> <p>7 defaming the dead, the prospect of somebody saying</p> <p>8 something about somebody who is long, long dead, and --</p> <p>9 well, you don't need me to articulate the problems.</p> <p>10 <b>A. No. I think the point that we'd like to have put on</b></p> <p>11 <b>record, as we have done, is made in the submission in</b></p> <p>12 <b>terms of being able to be able to challenge the</b></p> <p>13 <b>representation of the recently departed, because again</b></p> <p>14 <b>of the standard connotations of trans with all sorts of</b></p> <p>15 <b>things. If a trans person is murdered, there is usually</b></p> <p>16 <b>some kind of conflation with sex work that goes on,</b></p> <p>17 <b>irrespective of whether that actually is found to be</b></p> <p>18 <b>true or not.</b></p> <p>19 LORD JUSTICE LEVESON: It's not just a problem in this area.</p> <p>20 The constant criticism I have heard in relation to</p> <p>21 victims of homicide is that they can't answer the</p> <p>22 allegations made about those who have killed them, which</p> <p>23 are then put out in public, and insufficiently rebutted.</p> <p>24 So I understand the problem. Solving it, however, is</p> <p>25 a slightly different issue.</p> <p style="text-align: center;">Page 63</p>
<p>1 made.</p> <p>2 MR JAY: Yes. The point remains valid.</p> <p>3 LORD JUSTICE LEVESON: Generally, if not specifically about</p> <p>4 Mr Mohan. Yes.</p> <p>5 MR JAY: Your recommendations, Ms Belcher, page 29 under</p> <p>6 section G.</p> <p>7 <b>A. The first one is really the point that Lord Leveson has</b></p> <p>8 <b>just tried to draw out in terms of enabling vulnerable</b></p> <p>9 <b>groups or representatives from those vulnerable groups</b></p> <p>10 <b>to be able to make complaints on behalf of individuals.</b></p> <p>11 <b>There are a number of articles though in the first part</b></p> <p>12 <b>of our submission where there is no individual named and</b></p> <p>13 <b>therefore there is no individual under the current code</b></p> <p>14 <b>who can complain. When we met with the Press Complaints</b></p> <p>15 <b>Commission, the only grounds for complaint on such</b></p> <p>16 <b>articles would be on the grounds of accuracy.</b></p> <p>17 <b>When people complain on the grounds of accuracy, the</b></p> <p>18 <b>PCC tends to then go onto a very rigorous dictionary</b></p> <p>19 <b>definition of words, rather than necessarily being able</b></p> <p>20 <b>to interpret the underlying meaning of the article.</b></p> <p>21 <b>So in those instances, being able to --</b></p> <p>22 <b>Trans Media Watch, for example, being able to complain</b></p> <p>23 <b>on behalf of the trans and intersex community about such</b></p> <p>24 <b>articles would be immensely valuable.</b></p> <p>25 Q. Thank you. Protection for the dead. This deals with</p> <p style="text-align: center;">Page 62</p>	<p>1 <b>A. (Nods head).</b></p> <p>2 MR JAY: Thank you. The third point, protected</p> <p>3 characteristics, substituting "gender identity" in</p> <p>4 clause 12 for "gender" or maybe including "gender</p> <p>5 identity". It may well be that this is adequately</p> <p>6 catered for by what happened in 2005, but your point may</p> <p>7 be it should be made more express so there's no doubt</p> <p>8 about it?</p> <p>9 <b>A. Exactly. The explicit nature of it. Again because it</b></p> <p>10 <b>appears that very often the press tends to look at the</b></p> <p>11 <b>individual words, so because gender identity is not</b></p> <p>12 <b>explicitly mentioned, it gets overlooked, even though</b></p> <p>13 <b>it's implicitly.</b></p> <p>14 Q. Then anonymity. This divides into two points. First,</p> <p>15 the PCC or whoever it is should have the power under</p> <p>16 clause 12 to penalise the outing of transgender or</p> <p>17 intersex individuals by the press. Then you make the</p> <p>18 additional point that where an individual holds the</p> <p>19 relevant certificate which makes it illegal for a public</p> <p>20 servant to disclose their gender history, the press</p> <p>21 should be permitted to disclose elements of their</p> <p>22 history only where they existed to the (inaudible)</p> <p>23 multiple case if this is in the public interest -- which</p> <p>24 the title in question should be compelled to give.</p> <p>25 If the case falls within the Act and the press are</p> <p style="text-align: center;">Page 64</p>



<p>1 covered by section 22(3)(c), unless it falls within one                  2 of the exceptions, I think it is an offence, is that not                  3 right, punishable on summary conviction to a fine at                  4 level 5. Have I correctly understood it?                  5 <b>A. I mean I haven't -- you have my copy of the Act there,</b>                  6 <b>Mr Jay.</b>                  7 Q. I'm sorry.                  8 <b>A. It's all right. My understanding is the same.</b>                  9 Q. I'm not sure there's a public interest defence in the                  10 Act at all, but you are generously saying that the press                  11 might have one, are you?                  12 <b>A. No, I'm not. The press will print these articles</b>                  13 <b>stating on the loosest possible claim that there is</b>                  14 <b>a public interest. I think very often they get confused</b>                  15 <b>with their belief that the public might be interested in</b>                  16 <b>an article. I can see no -- again, if we go back to the</b>                  17 <b>first article that we looked at in some detail, what was</b>                  18 <b>the public interest in disclosing the gender transition</b>                  19 <b>of that lorry driver? I struggle to find it, and</b>                  20 <b>I would love to hear the Sun's justification for doing</b>                  21 <b>that. So in those instances, where there is no public</b>                  22 <b>interest defence, that poor lady, her details are --</b>                  23 <b>whether she gets a gender recognition certificate or not</b>                  24 <b>now, it's just there on the public record, which kind of</b>                  25 <b>makes the provisions of the Act rather redundant.</b>                  Page 65</p>	<p>1 difficulties about libel proceedings as well, but                  2 I understand it. Yes.                  3 MR JAY: Press agencies, the sixth point. You believe the                  4 press regulator should have the power to regulate those.                  5 <b>A. We heard on Monday that "a Daily Mail reporter" is</b>                  6 <b>usually a byline for a story received from a press</b>                  7 <b>agency. Yet our experience is when we challenge such</b>                  8 <b>stories, suddenly the paper denies any liability because</b>                  9 <b>they didn't source it themselves, and that causes</b>                  10 <b>massive problems in a number of cases, and there are</b>                  11 <b>a large number of these articles which are given bylines</b>                  12 <b>similar to that.</b>                  13 Q. Yes. I think your point is that both the newspaper who                  14 would be liable or responsible under the code,                  15 regardless of the source, and the agency who supplied                  16 the story should both be caught by the provisions of the                  17 code and by regulation.                  18 <b>A. It's rather like the broadcast rules. If a broadcaster</b>                  19 <b>was to broadcast a programme which was then found in</b>                  20 <b>breach, they would then have to share the liability for</b>                  21 <b>that, irrespective of whether they produced the</b>                  22 <b>programme in the first place.</b>                  23 Q. Then your last point is a plea for a fast and relatively                  24 cheap or preferably entirely cheap complaints process.                  25 <b>A. By "entirely cheap", I'm hoping you mean free.</b>                  Page 67</p>
<p>1 Q. Thank you. Then your second point is that the regulator                  2 should automatically grant anonymity to any person                  3 pursuing a claim against a newspaper for breaching the                  4 above guidelines. I'm sure that point will be taken on                  5 board.                  6 <b>A. My own personal situation, I would like to broaden out</b>                  7 <b>the discussion from just simply the Gender Recognition</b>                  8 <b>Act, because as I said earlier there are a significant</b>                  9 <b>number of trans people who, for whatever reason, do not</b>                  10 <b>have a gender recognition certificate. Trans people are</b>                  11 <b>not able to apply for a gender recognition certificate</b>                  12 <b>until two years have elapsed, so there is -- since their</b>                  13 <b>transition, so there is a significant period of time</b>                  14 <b>when they are most vulnerable, when they appear most</b>                  15 <b>newsworthy, when the Gender Recognition Act would not</b>                  16 <b>apply. We don't believe that such people should be</b>                  17 <b>exempt from any protections which are given to them</b>                  18 <b>purely on the basis of an existence of a piece of paper</b>                  19 <b>or the elapsement of a period of time.</b>                  20 Q. Then there's the issue of penalties, which others have,                  21 of course, made similar points.                  22 LORD JUSTICE LEVESON: And the point you make -- one of the                  23 points you make, which is a very valid one, is that                  24 apologies and the like might only draw attention to the                  25 issue rather than solve the problem. That's one of the                  Page 66</p>	<p>1 Q. Yes.                  2 <b>A. Yes. Because of the position that trans people find</b>                  3 <b>themselves, the -- there's a lot of stigma. A lot of</b>                  4 <b>trans people lose jobs, find it difficult to get jobs.</b>                  5 <b>There is evidence that the earnings of a trans person is</b>                  6 <b>significantly lower than they could expect if they</b>                  7 <b>weren't trans. That is a further deterrent for them to</b>                  8 <b>seek any recompense. It actually pretty much prevents</b>                  9 <b>any trans person from pursuing any action against</b>                  10 <b>a newspaper in the courts. So the idea that the law</b>                  11 <b>currently covers trans people or people in this</b>                  12 <b>situation in theory is correct, assuming access to the</b>                  13 <b>law is free, but it rarely is, and especially when you</b>                  14 <b>are attempting to challenge very well-funded media</b>                  15 <b>companies on the grounds of what they have printed, it</b>                  16 <b>becomes almost impossible.</b>                  17 LORD JUSTICE LEVESON: That's not a point limited to your                  18 group at all.                  19 <b>A. Absolutely not, no.</b>                  20 LORD JUSTICE LEVESON: It is all those who simply don't have                  21 the means to pursue expensive remedies.                  22 <b>A. Yes.</b>                  23 LORD JUSTICE LEVESON: Yes.                  24 MR JAY: Thank you. Are there any other points you would                  25 like to make, Ms Belcher, or do you feel we've covered                  Page 68</p>

1 the evidence you would like to give?  
 2 **A. I think we've covered the -- we've drawn out the main**  
 3 **points. I think the press has shown an alarming lack of**  
 4 **respect for trans people for many decades. It has shown**  
 5 **an alarming lack of alacrity to try and learn about the**  
 6 **issues. We noted Mr Mohan's suggestion that groups like**  
 7 **us come and train their journalists in issues, but it's**  
 8 **basic human decency and respect, and that's actually all**  
 9 **we're asking for. We're not asking for special**  
 10 **treatment; we're asking for the same treatment as**  
 11 **everybody else.**  
 12 MR JAY: Thank you.  
 13 LORD JUSTICE LEVESON: Thank you very much indeed. Thank  
 14 you, we'll take a break.  
 15 (3.49 pm)  
 16 (A short break)  
 17 (4.08 pm)  
 18 MR JAY: The next witness is Pamela Surphlis and I need to  
 19 check, however, that our system is working. Could you  
 20 confirm, please, Mrs Surphlis, that you can hear or see  
 21 me?  
 22 **A. Yes, I can.**  
 23 LORD JUSTICE LEVESON: Thank you very much, Ms Surphlis, for  
 24 providing this information about SAMM in Northern  
 25 Ireland and for taking part in these arrangements for us

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1 to receive your evidence.  
 2 MR JAY: Ah, we've lost the sound.  
 3 **A. I'm here.**  
 4 MR JAY: Thank you. First of all, may I invite you to take  
 5 the oath, please.  
 6 MRS PAMELA SURPHLIS (sworn)  
 7 Evidence by videolink  
 8 Questions by MR JAY  
 9 MR JAY: May I ask you for your full name?  
 10 LORD JUSTICE LEVESON: I think you've lost it.  
 11 **A. Hello?**  
 12 MR JAY: Sorry. Your full name, please, Mrs Surphlis.  
 13 **A. It's Pamela Surphlis.**  
 14 Q. Thank you very much. You've provided us with two  
 15 documents. First of all a short submission, which is  
 16 your evidence to the Inquiry; is that right?  
 17 **A. That is correct.**  
 18 Q. And secondly, a research report which you referred to,  
 19 "An exploration of media reporting of victims of murder  
 20 and manslaughter in Northern Ireland". It was  
 21 commissioned by you in 2010 and provided by the  
 22 University of Ulster, is that also right?  
 23 **A. That is correct.**  
 24 Q. I'm going to ask you first of all, please, to tell us  
 25 about your personal experience, and the relationship

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1 between that and the setting up of the organisation  
 2 Support After Murder and Manslaughter Northern Ireland,  
 3 please.  
 4 **A. Okay. 19 years ago, my father, who was a retired**  
 5 **clergyman, and my sister who murdered ... (break in**  
 6 **signal) my son's 10th birthday. My interaction with the**  
 7 **media over the subsequent years was very intrusive. It**  
 8 **was disrespectful. But I found that there was**  
 9 **a newspaper report 17 years after the event still**  
 10 **sensationalising their deaths.**  
 11 **I became extremely angry. I had already ... (break**  
 12 **in signal) in 2006. We support families right across**  
 13 **Northern Ireland, both inside the conflict and outside**  
 14 **the conflict ... (break in signal).**  
 15 LORD JUSTICE LEVESON: Pause a moment, please, because I'm  
 16 afraid you're breaking up. Not physically, but audibly.  
 17 All right.  
 18 MR JAY: I just wonder whether the microphone is close  
 19 enough to you, Mrs Surphlis. Is it possible to --  
 20 I don't quite know how the sound is coming to us, but  
 21 you are going in and out of audibility.  
 22 **A. Can you hear me now?**  
 23 LORD JUSTICE LEVESON: Much better.  
 24 **A. Thank you.**  
 25 MR JAY: Thank you. I think you were telling us about the

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1 foundation of Support After Murder and Manslaughter  
 2 Northern Ireland in 2006.  
 3 **A. That's correct.**  
 4 **We set up primarily as a support group but we were**  
 5 **hearing constant themes of challenges to the families**  
 6 **that they were finding difficult to deal with on top of**  
 7 **the trauma that they were already going through.**  
 8 **The personal experience of finding a piece of**  
 9 **salacious gossip and really nonsense story about my dad**  
 10 **and my sister 17 years after the event, I decided when**  
 11 **I tried to correct what the editor had put in, I phoned**  
 12 **them and I felt I lost my temper and I could see him in**  
 13 **my mind's eye just holding the phone and letting me**  
 14 **rant. So I looked to the university to see if it would**  
 15 **be possible to do a research study on the families that**  
 16 **we support. At the time we had 52 families on our**  
 17 **database. Each family was contacted and 20 responses**  
 18 **came in for the report.**  
 19 **Now, I passed those details to the university and**  
 20 **they then made the contact with the families that were**  
 21 **still willing to take part. So that's where the report**  
 22 **came from.**  
 23 Q. Thank you very much. When we look at the report itself,  
 24 on the internal numbering, please, page 7, we can see  
 25 that the study has investigated two key issues. First

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<p>1 of all, it identifies and examines the relationship 2 between newspaper journalists and the victims' families. 3 Secondly, it explores the impact of media reporting on 4 family members of those bereaved through murder and 5 manslaughter in Northern Ireland. And then we can see 6 the key objectives listed, which were consistent with 7 the two key issues, and what the researchers did was to 8 conduct a literature review, to undertake a thematic 9 content analysis of newspaper articles, and then, 10 finally, semi-structured interviews with a sample of the 11 victims' families, and the report is a collation, 12 really, of those three separate sources.</p> <p>13 Can I ask you, please, to look at substantive 14 themes, page 9. I'm just going to pick out the 15 headlines here, Ms Surphlis, not read all of it out. 16 Under the heading "Initial contact the family had with 17 journalists":</p> <p>18 "This theme is concerned with how the journalists 19 initiated contact with the families. Overall the 20 participants felt that the media were intrusive and 21 insensitive in their approach, which exacerbated the 22 trauma felt by the families of losing a loved one. How 23 the journalists made contact with the families was 24 a fundamental issue that emerged from the interview 25 findings and one that each of the families had various</p> <p style="text-align: center;">Page 73</p>	<p>1 reports", which subdivides into what they call 2 subthemes. The first of those is "Sensationalism": 3 "Many of the families voiced their shock and 4 embarrassment at how the circumstances of such a tragedy 5 could be sensationalised ... the most commonly expressed 6 words were 'salacious' and 'cheap'. 7 In the italicised parts we see examples of that. 8 Again, the same general question. Presumably consistent 9 with the sort of things people have told you directly; 10 is that right?</p> <p>11 <b>A. Absolutely. Lots -- in one particular case and 12 something that was printed was a young man who had been 13 murdered at the age of 15(?) was a heroin addict. He 14 wasn't. He was diabetic. He'd been seen injecting 15 himself. Now plastered all over the newspapers in 16 Northern Ireland, and Northern Ireland is an extremely 17 small place. Once it goes in, whether right or wrong, 18 it becomes fact.</b></p> <p>19 <b>Q.</b> Thank you. The next subheading is "Inaccuracies", or 20 subtheme, page 11: 21 "Overall there were some discrepancies between the 22 families on how accurately the media reported on the 23 death of their family member. Generally families either 24 thought that the media reporting was fairly accurate or 25 a completely inaccurate portrayal."</p> <p style="text-align: center;">Page 75</p>
<p>1 experiences of. Some respondents noted that the 2 journalists were extremely persistent; some felt that 3 they had been deceived while other respondents noted the 4 journalists were just ruthless in their approach to 5 them."</p> <p>6 Then in the italicised part lower down the page, we 7 have some quotes, really, from the semi-structured 8 interviews. We can see that. The sort of material we 9 read here, is this consistent with what you have been 10 told by people who have approached you?</p> <p>11 <b>A. Yes. Very much so. We've had journalists pretending to 12 be friends of other members of a family just to get 13 in-depth interviews. We've had families who have stated 14 they particularly wanted no press intrusion, that they 15 did not want to give interviews. The press have not 16 obeyed that. They have tried every opportunity to go to 17 the person's place of work, where they use to work, 18 contacted friends and neighbours just to get an inside 19 story.</b></p> <p>20 <b>Q.</b> Thank you. 21 <b>A. Which is extremely distressing.</b> 22 <b>Q.</b> Then the next page, page 10, there's reference to the 23 PCC guidelines. I'm going to come back to those 24 somewhat later, if you don't mind, Mrs Surphlis. Then 25 the next subheading is "The content of newspaper</p> <p style="text-align: center;">Page 74</p>	<p>1 So you can see the divergence of view there. Again, 2 we have examples of that in the italicised parts. On 3 this occasion there's a degree of inconsistency, but one 4 can see how perceptions might vary. Does it chime with 5 your experience of what people have told you?</p> <p>6 <b>A. It seems to depend on the person who has been murdered. 7 In a recent case, a high profile one in Northern Ireland 8 last year, the lady who was murdered was an elderly 9 lady, so she was respected, so the press treated the 10 family with respect.</b></p> <p>11 <b>Other cases, it's as if the press is trying to find 12 a reason to criticise them, to blame them for being 13 murdered in the first place, and that's what families 14 are telling us. They seem to be extremely judgmental in 15 picking up as to whether the person had an alcohol 16 problem or whether the person was working, and it seems 17 to be more judgmental, which is actually nothing to do 18 with why the person has been murdered. And those sorts 19 of issues for families is deeply, deeply distressing.</b></p> <p>20 <b>Q.</b> Thank you. "Images" now, page 12 on the internal 21 numbering: 22 "The main areas of contention reported by the family 23 members was the harassment they suffered in the 24 journalists' quest to obtain pictures of the grieving 25 family; the lack of permission to publish pictures, or</p> <p style="text-align: center;">Page 76</p>

<p>1 awareness that the pictures were going to be published 2 in the papers and the upset that this caused." 3 And then again some examples are given. One 4 example, the first relates to taking a photograph at the 5 grave. The second: 6 "Even whenever the church doors opened there was 7 a mass of snapping went on." 8 And then similar examples further on. 9 "Experiences", now, page 13: 10 "The families reported feeling a variety of emotions 11 stemming from their experiences with the news media. 12 Overall these emotions had quite negative connotations, 13 with the families reporting feel used, powerless, and 14 with some more extreme descriptions of feeling besieged 15 and neglected." 16 Again does that chime with your experience? 17 <b>A. From a personal point of view, this is going back to the 18 images one, families do provide photographs. I provided 19 ones for my father and sister, which were ignored. 20 Every time the case was mentioned or came into the 21 press, it is always a photograph of my sister in her 22 wedding dress, which I find deeply offensive, due to the 23 nature of the domestic abuse that she suffered through 24 the 11 years of her marriage. 25 Those sort of photographs are really really nasty.</b> Page 77</p>	<p>1 <b>having the Editors' Code with you to read. Families are 2 in distress. Families don't want to know how to handle 3 the media because they don't want the media in the first 4 place. So it's -- yes, it's an improvement, but it 5 needs to look and have consultations with those who are 6 involved, with organisations, to see what is more 7 relevant for what are the needs of those particular 8 families.</b> 9 Q. Thank you. This leads us now to your submission, at the 10 bottom of the first page of the submission, where you 11 make it clear that your organisation is calling for 12 "a code which will see journalists", and then there are 13 a number of actions or inactions from journalists which 14 you are recommending. Would you like to read those out, 15 please, to the Inquiry? 16 <b>A. The first one would be to recognise a family's fears 17 that speaking to the media might prejudice a legal case. 18 At the beginning, just after the murder, they are 19 bombarded by journalists wanting to know what happened, 20 and in most cases they're not aware, because that's part 21 of an ongoing investigation, and they are so scared of 22 prejudicing a future criminal case. So they are so ... 23 (break in signal) letting anything slip that they're not 24 supposed to slip, not being told -- and that puts an 25 extra stress and strain on the families.</b> Page 79</p>
<p>1 <b>From the experiences of the other families, I think 2 a lot of families give interviews in the hope that it 3 will stop the intrusion, but then they're deeply 4 disappointed when they see inaccuracies such as -- it 5 may seem very simple to anybody else about age or where 6 the person worked or various bits and pieces like that, 7 but to families, they're not stars, they're not 8 celebrities, they're ordinary people who have been 9 thrown into the media glare as well as into a very 10 distressing criminal justice process. So anything that 11 adds to the trauma that they're already suffering is 12 extremely negative.</b> 13 Q. Thank you. Then in the University of Ulster's report, 14 there's reference to the Press Complaints Commission 15 guidance. This is the guidance "Media attention 16 following a death", which I think you have a copy of 17 available; is that right? 18 <b>A. Yes.</b> 19 Q. Do you have any observations to make about it? 20 <b>A. On initial looking at it, it is an improvement from what 21 was nothing before. People in Northern Ireland do not 22 recognise the Press Complaints Authority as standing up 23 for them. We feel very isolated over here. Through my 24 work I will say make a complaint. My initial looking at 25 it is it is not user friendly. It's talking about</b> Page 78</p>	<p>1 LORD JUSTICE LEVESON: Do you have in Northern Ireland 2 family liaison officers from the police to help you on 3 this? 4 <b>A. Yes, we do.</b> 5 LORD JUSTICE LEVESON: And does that help? 6 <b>A. If the press goes through the family liaison officer, 7 yes, it does. To some extent, but not always.</b> 8 LORD JUSTICE LEVESON: All right. 9 MR JAY: Thank you. Your second bullet point now, 10 Mrs Surphlis: 11 "Refrain from intrusion at funerals ..." 12 <b>A. "Refrain from intrusion at funerals, or 'doorstepping' 13 family members for information or interviews." 14 My own experience at the funeral was when I came out 15 of the church door, the road was lined with very, very 16 respectful members of the public, and all you could hear 17 was just the click click click clicking of cameras. 18 Luckily enough the church where the funeral was taking 19 place had banned the press from stepping onto the 20 property, but that doesn't always happen. 21 Families are finding journalists at their door. One 22 family, again that young man that was killed that they 23 thought was the heroin addict, after that there happened 24 to be another murder in that area and the journalists 25 called on the mother's doorstep saying, "I was in the</b> Page 80</p>

20 (Pages 77 to 80)

1 area and I thought you might want to give an interview".  
 2 So these sort of things are not suitable for families.  
 3 One family issued a statement through a solicitor  
 4 that they were not willing to speak to the press. But  
 5 that's been ignored.  
 6 I think photographing the families close up,  
 7 I managed to avoid that by not walking behind the  
 8 hearse, which I did want to do, but when I saw the long  
 9 lenses, I couldn't do it and I hid in the car, which  
 10 I -- it's not what I wanted to do, but I did not want to  
 11 be -- as the sole surviving member of the family, have  
 12 my photograph spread all over every newspaper that was  
 13 there.  
 14 "Be honest and not mislead anyone in pursuit of an  
 15 interview with a family member."  
 16 This is where we have families who have, as I said  
 17 earlier, been told that they are friends of the family,  
 18 trying to pressurise vulnerable members of the family  
 19 into giving interviews by subterfuge. That's all we can  
 20 say on that one.  
 21 Q. Thank you.  
 22 A. "Acknowledge it is not appropriate to attempt direct  
 23 contact with families, but to use the official  
 24 intermediaries, such as police Family Liaison Officers."  
 25 We've had families who have been harassed with phone

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1 calls, they've had to go ex-directory, they've had to  
 2 ... (break in signal). In one case, one family had to  
 3 move house because they were so scared. None of the ...  
 4 (break in signal) the press.  
 5 I have another lady who will not answer unknown  
 6 phone numbers on her mobile in case it is the press.  
 7 So going through the family liaison officer as  
 8 a conduit to the family as being able to pass on their  
 9 wishes.  
 10 Q. Thank you.  
 11 A. "Refrain from publishing unsubstantiated rumour and  
 12 stick to known facts."  
 13 That is, I think, more relevant when interviewing  
 14 neighbours or trying to get stories from people who  
 15 really didn't know the person who has gone, but there  
 16 have always been sort of rumours and gossipmongers, but  
 17 there's no impetus to check the facts of that, and that  
 18 is extremely distressing. One of our families, her  
 19 father was a recovering alcoholic and it was reported in  
 20 the press that he was a down and out drunk, his home was  
 21 a drinking den. That's unacceptable as well as  
 22 inappropriate. It wasn't fact. It was somebody  
 23 surmising. That's what it was.  
 24 Also, within the criminal trials, allegations can be  
 25 made that are not substantiated by the defence. In my

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1 own personal case, which was very stressing, my father  
 2 was a healer and the defence suggested he was involved  
 3 in witchcraft. And you can guess the headlines, huge  
 4 letters: "Witchcraft clergyman". My children never knew  
 5 about that. My son is sitting beside me and he did not  
 6 know all of this.  
 7 Keeping to the facts within newspapers is vital,  
 8 because young people go to school, other people -- other  
 9 family members in the neighbourhood can be talking about  
 10 it. Those children are then saying to my children what  
 11 they had heard. I hadn't told them because I hadn't  
 12 known. And this is one of the major, major problems of  
 13 distressing unsolicited rumours and (inaudible) which  
 14 causes so much hurt to us.  
 15 Q. Thank you. Your sixth point I think now, ensure the  
 16 families have an opportunity?  
 17 A. Yeah:  
 18 "If families do grant an interview, ensure that they  
 19 have an opportunity to see the publication to satisfy  
 20 themselves only of the factual accuracy, without  
 21 prejudice to the editorial independence of the  
 22 publication."  
 23 SAMP now recommends that the family -- what we do,  
 24 if they can get sight of the copy, that is very --  
 25 advantage to them so they can check that it's factually

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1 correct.  
 2 In one instance recently in regard to that, a family  
 3 raised a considerable amount of money for our  
 4 organisation and a particular newspaper ... (break in  
 5 signal) wanted to run a story on it. They interviewed  
 6 myself and two other members. I asked to see the copy.  
 7 It was sent to me. It was so inaccurate it was  
 8 unbelievable. I sent back the corrections. That piece  
 9 of copy went back three times and it still did not go in  
 10 in an accurate way. It was sensationalised to the point  
 11 that my father's house burnt down, which was rubbish.  
 12 So what's the point if when you provide them with the  
 13 factual evidence, factual information, why is that not  
 14 accepted? Why has it to be written in such a way that  
 15 is distressing?  
 16 Q. The last three points relate to photography, don't they?  
 17 A. Yes:  
 18 "Seek approval for the use of all photography  
 19 relating to the loved one and the circumstances of their  
 20 death."  
 21 And I go back to the photograph of my sister. And:  
 22 "Not publish distressing photographs, such as the  
 23 removal of a loved one's remains in a body bag."  
 24 Which has happened here in Northern Ireland. Also  
 25 the fact that journalists seem obsessed on taking

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<p>1 photographs of blood splattered on pavements. That is                  2 somebody's blood, it's a loved one has lost their                  3 lifeblood, and to see that in newspapers or on                  4 television or whatever is also extremely distressing.                  5 I think we would all look at 9/11 and the plane going                  6 into the towers. We see that as something for us. But                  7 for every family that lost somebody there, that's                  8 a murder scene.                  9 "Warn families if there's an intention to run                  10 stories or photography relating to the death of their                  11 loved one, weeks, months and years later."                  12 I think making families aware if at all -- I know                  13 it's not always going to be possible, but it should make                  14 some attempt. When I phoned the editor in regards to                  15 the article about my dad and Judith, I was told                  16 "I didn't know there was anybody left", and I said,                  17 "That is strange, because I did an interview for your                  18 paper six months beforehand."                  19 I think it's important that people are forewarned if                  20 something is coming in ... (break in signal) I've just                  21 stopped buying papers. Up until 15 December 1992,                  22 I believed everything I read in the press. Now I don't.                  23 All of our families are in the same boat.                  24 Q. Thank you.                  25 In terms of further recommendations, you suggest</p> <p style="text-align: center;">Page 85</p>	<p>1 Some of the experiences our families have met has been                  2 unethical, persistent, abusive, bullying and it has to                  3 change for them. And for those unfortunately following                  4 us who find themselves in our situation.                  5 Q. Finally, Mrs Surphlis, you wanted to talk about in                  6 general terms the reaction your submission to this                  7 Inquiry has excited in Northern Ireland. Do you want to                  8 address that.                  9 A. Yes, I do. Because we as an organisation have the                  10 audacity, I think, to make this submission on behalf of                  11 our families, we have been ridiculed by the press,                  12 certain sections of the press, by a particular                  13 journalist on the television and then through a blog on                  14 the Guardian. I was accused of jumping on the Leveson                  15 bandwagon, which I take deep exception to, because                  16 I instigated this report in 2010, I was handed the                  17 report two days before the hacking scandal broke.                  18 I didn't know what to do with the report, and am                  19 immensely grateful to the Inquiry being set up, that we                  20 at least have a voice somewhere that somebody is                  21 prepared to listen to bereaved families.                  22 LORD JUSTICE LEVESON: Mrs Surphlis, I wonder whether you                  23 could send the Inquiry either copies of the newspaper                  24 articles to which you refer or references to the url of                  25 any website that criticises your participation in the</p> <p style="text-align: center;">Page 87</p>
<p>1 more accessible information on handling the media and                  2 how to complain be included in bereavement guides given                  3 to families after a murder.                  4 A. Yes.                  5 Q. That's obviously, if I may say so, an extremely clear                  6 and sensible recommendation. You express your reasons                  7 why.                  8 Can I ask you about your belief there should be                  9 a regional press ombudsman for Northern Ireland. Can                  10 you explain the reasons for that, please?                  11 A. People here in Northern Ireland see anything based on                  12 the mainland as being "over there". It's to have                  13 something that they can relate to here in Northern                  14 Ireland that is looking after the issues in a more local                  15 way and in the papers here.                  16 We have always recommended that families do make                  17 complaints to the Press Complaints Authority but they                  18 don't have the heart, the strength, the emotional                  19 whereby -- or sometimes the financial means of fighting.                  20 Something more regional I think is -- and independent,                  21 I think it's the independence that makes it more                  22 appropriate here.                  23 Q. Thank you. And you would also welcome ethics training                  24 for journalists, which the ombudsman could organise?                  25 A. Yes. I know ethics and this is all dealing with ethics.</p> <p style="text-align: center;">Page 86</p>	<p>1 Inquiry. Could you do that, please?                  2 A. I certainly will. No problem.                  3 LORD JUSTICE LEVESON: For the avoidance of all doubt,                  4 I entirely welcome your participation in this work.                  5 I think that the perspective that you bring is extremely                  6 important. Others have criticised the over-emphasis on                  7 celebrity. The one word that could not be used to                  8 describe you and your group is that. You are victims,                  9 pure and simple, and therefore I entirely repudiate any                  10 suggestion that this perspective is not extremely                  11 important and valuable as providing an insight on the                  12 customs, practices and ethics of the press.                  13 Let me just make it clear that I don't just include                  14 Northern Ireland in this. I know of SAMM. I know                  15 there's a SAMM in Merseyside.                  16 A. Yes.                  17 LORD JUSTICE LEVESON: And I'm sure that you have met other                  18 support groups around the UK --                  19 A. Yes.                  20 LORD JUSTICE LEVESON: -- whose members have similar                  21 experiences to yours, but let me ask you this: would it                  22 be right to say that although you have given me the                  23 Northern Irish perspective, what you are saying broadly                  24 could be replicated from SAMM groups in other parts of                  25 the UK?</p> <p style="text-align: center;">Page 88</p>

<p>1 <b>A. I can't speak for them, but I know Louise Casey did</b>  2 <b>a report on (inaudible), so at that time families had</b>  3 <b>not had a negative experience with the media. We did.</b>  4 <b>That's not to say I cannot speak for other areas.</b>  5 <b>I have spoken --</b>  6 LORD JUSTICE LEVESON: Yes, I wasn't suggesting that you  7 were speaking for them. I was asking a slightly  8 different question. Is what you have told us similar to  9 experiences that you've been told by people in other  10 parts of the UK?  11 <b>A. Absolutely. And can I just add that -- can I just add</b>  12 <b>that I have spoken with a victims group in the South of</b>  13 <b>Ireland, and I'm very interested in their perspective</b>  14 <b>from the way the press is regulated down south, which is</b>  15 <b>very positive, extremely positive from them.</b>  16 LORD JUSTICE LEVESON: All right. That is interesting,  17 because I'm looking at the Southern Irish model, so if  18 they've had a positive experience, that's quite  19 valuable. But I'm obviously not expecting you to speak  20 for other victims, but having spoken to them, if you'd  21 had a very different experience, I would have wanted to  22 know, but you say you haven't.  23 <b>A. No.</b>  24 MR JAY: Thank you very much, Mrs Surphlis. Thank you.  25 LORD JUSTICE LEVESON: Thank you. Is there anything else</p> <p style="text-align: center;">Page 89</p>	
<p>1 that you want to add?  2 <b>A. No, nothing, thank you. Thank you for the opportunity.</b>  3 LORD JUSTICE LEVESON: Thank you very much.  4 MR JAY: That concludes our evidence for today.  5 I think there was one statement I needed to read in,  6 but I've lost the yellow tag with the name. Hold on,  7 I have it here. Yes, Mr Francis Fitzgibbon.  8 LORD JUSTICE LEVESON: Thank you very much indeed. Thank  9 you to those who have soldiered through the day and are  10 still with us. Thank you very much.  11 MR JAY: Tomorrow morning is of course 9.30.  12 LORD JUSTICE LEVESON: 9.30 tomorrow morning because of  13 a video-link with Australia. Thank you.  14 (4.42 pm)  15 (The hearing journalisted until 9.30 am the following day)  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">Page 90</p>	

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