

<p>1 Thursday, 24 May 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Yes, Mr Barr.</p> <p>4 MR BARR: Sir, good morning. Our first witness today is</p> <p>5 Lord Brooke.</p> <p>6 LORD JUSTICE LEVESON: Thank you.</p> <p>7 LORD BROOKE (sworn)</p> <p>8 Questions by MR BARR</p> <p>9 MR BARR: Lord Brooke, could you confirm to the Inquiry,</p> <p>10 please, your full name?</p> <p>11 A. I am Peter Leonard, Lord Brooke of Sutton Mandeville.</p> <p>12 Q. I understand there are some corrections and additions</p> <p>13 that you would like to make to your witness statement</p> <p>14 before confirming its truth and accuracy. Can we turn</p> <p>15 first of all to page 5?</p> <p>16 Looking at the bottom of the page at</p> <p>17 subparagraph (xix), am I right that you would like to</p> <p>18 insert between the words "of" and "EDH" on the first</p> <p>19 line the words "selected ministers from"?</p> <p>20 A. That is correct.</p> <p>21 Q. And that you would like to correct the date at the start</p> <p>22 of the second line from July 6 to July 8?</p> <p>23 A. I would like to do that too.</p> <p>24 Q. We move now to page 10 and to subparagraph -- do I have</p> <p>25 this right? Page 10, is there a correction you wish to</p> <p style="text-align: center;">Page 1</p>	<p>1 in the period 9 to 15 July 1993, did you also wish to</p> <p>2 make reference to a meeting on 28 July?</p> <p>3 A. Yes, I did, because it -- I indicate that I was not</p> <p>4 quite clear what was happening. It was quite clear that</p> <p>5 the meeting which the Prime Minister and I should have</p> <p>6 had on July 21 got moved to the 28th and the Home</p> <p>7 Secretary joined it, and it was quite clearly by that</p> <p>8 stage Parliament had risen and we were elided into the</p> <p>9 recess and we were therefore discussing how we would</p> <p>10 take matters further in the recess. I did actually cite</p> <p>11 four -- there was an agenda of four items which we were</p> <p>12 going to cover, which I can let you have afterwards, if</p> <p>13 you wish.</p> <p>14 Q. Thank you. Subject to those amendments and</p> <p>15 clarifications, are the contents of your witness</p> <p>16 statement true and correct to the best of your knowledge</p> <p>17 and belief?</p> <p>18 A. They are true and correct to the best of my knowledge</p> <p>19 and belief.</p> <p>20 LORD JUSTICE LEVESON: Lord Brooke, thank you very much.</p> <p>21 I take all that. I'm very grateful to you for going</p> <p>22 back in your memory to revisit these activities. You'll</p> <p>23 probably appreciate that we've taken you slightly out of</p> <p>24 order, so that your successor came yesterday, but we'll</p> <p>25 be able to fit it in. Thank you very much.</p> <p style="text-align: center;">Page 3</p>
<p>1 make there?</p> <p>2 A. I need to look at that.</p> <p>3 Q. Maybe I have --</p> <p>4 A. It may certainly be right.</p> <p>5 Q. Yes, paragraph (xlvi). It's in relation to the draft</p> <p>6 White Papers. You've referred in paragraph (xliii) to</p> <p>7 a revised White Paper completed on 30 June, and then</p> <p>8 again you refer to a final draft at paragraph (xlvi).</p> <p>9 Did you want to make clear that there were differences</p> <p>10 between the document of the 30th and the document of</p> <p>11 14 July?</p> <p>12 A. I think it would be helpful if I did. There were about</p> <p>13 12 paragraphs in chapter 2 and a further 12 paragraphs</p> <p>14 in chapter 4 where they were either amended or</p> <p>15 rewritten, and the order of the chapters was also</p> <p>16 reversed, so that chapter 3 on July 30 became chapter 4</p> <p>17 on 14 July and vice versa.</p> <p>18 Q. Over the page on page 11, the paragraph 2(a) to (c),</p> <p>19 a third of the way down that paragraph, did you want to</p> <p>20 replace the phrase "nearly 20 years ago" with "in 2005"?</p> <p>21 A. Yes, I would very much like to do that. I can only</p> <p>22 assume that the word 20 is the thing which has caused</p> <p>23 the error.</p> <p>24 Q. Then if we go back to page 6, subparagraph (xx), which</p> <p>25 refers to a flurry of interdepartmental correspondence</p> <p style="text-align: center;">Page 2</p>	<p>1 A. Thank you, sir.</p> <p>2 MR BARR: Lord Brooke, you were a Member of Parliament</p> <p>3 between 1977 and 2001. You were a member of the</p> <p>4 government between 1979 and 1994, with positions in the</p> <p>5 Whips office and the Departments of Education and</p> <p>6 Science, in the Treasury, in the Northern Ireland office</p> <p>7 and, of particular relevance for the Inquiry's purposes,</p> <p>8 you were Secretary of State for National Heritage</p> <p>9 between September 1992 and July 1994; is that right?</p> <p>10 A. That is accurate.</p> <p>11 Q. You then moved to the Lords in 2001 and became</p> <p>12 eventually the Chairman of the Association of</p> <p>13 Conservative Peers; is that right?</p> <p>14 A. That is also correct.</p> <p>15 Q. You've also been the Chairman of the Conservative Party</p> <p>16 between 1987 and 1989?</p> <p>17 A. Correct.</p> <p>18 Q. Can I thank you for the clear and detailed account of</p> <p>19 your consideration of events concerning the media while</p> <p>20 Secretary of State for National Heritage. It will</p> <p>21 enable me to take that as read and simply to pick up on</p> <p>22 some particular points of interest. Pursuing that</p> <p>23 approach, can we start first of all on page 2 of your</p> <p>24 witness statement. I'm looking now at subparagraphs</p> <p>25 (iii) and (iv), where you tell us that in July 1992</p> <p style="text-align: center;">Page 4</p>

<p>1 David Mellor announced the appointment of Sir David 2 Calcutt to assess the performance of self-regulation and 3 then shortly afterwards, in September, David Mellor 4 resigned and you replaced him.</p> <p>5 We know that during the intervening period, 6 Mr Mellor was the subject of very considerable press 7 attention, that ultimately the matters raised by the 8 press led to his resignation. Are you able to help us 9 one way or the other as to whether there was any feeling 10 that the press were exacting revenge because Mr Mellor 11 had asked Sir David Calcutt to review self-regulation?</p> <p>12 A. I can see that that might well have been ventilated as 13 an idea. I can't remember having had a single 14 conversation on the subject during that summer, and the 15 people who were most involved in the developments of 16 those events were, of course, the executive of the 1922 17 Committee.</p> <p>18 Q. Moving now to the response to Sir David's second report, 19 the report was published on 8 January 1993, and you made 20 a statement in the House of Commons six days later, on 21 14 January 1993. Could you help us, please, on whether 22 or not the response you produced was the subject of 23 Cabinet discussions before you made your statement?</p> <p>24 A. Yes. The report reached me on the 8th, which must have 25 been the previous Friday. I held a meeting in my own</p> <p style="text-align: center;">Page 5</p>	<p>1 like stories which had been brought out of cold storage, 2 having waited there for a suitable occasion. Whether it 3 was in fact tabloid competition or whether it was that 4 they were just sighting shots to warn everybody that 5 life might be becoming exciting, I don't know, but the 6 combination of all those events were that we wanted to 7 make a statement as early as we could.</p> <p>8 On the previous occasion in 1990, when the first 9 Calcutt 1 reported, there was about a five-week gap 10 between publication and the Home Office statement about 11 it. I'm not in any way comparing those two facts, 12 because the original report, Calcutt 1, was that of 13 a full committee under Sir David, whereas the review was 14 simply Sir David himself, but the combination of all 15 those things was why we moved as fast as we did.</p> <p>16 Q. Thank you. A feature of the statement you made to the 17 House, and we have a copy at tab 2 of your bundle, is 18 the position that the government took on the question of 19 statutory regulation of the press. I'll just read from 20 your statement:</p> <p>21 "We are conscious that action to make such a body 22 statutory would be a step of some constitutional 23 significance departing from the traditional approach to 24 press regulation in this country. In the light of those 25 considerations, the government would be extremely</p> <p style="text-align: center;">Page 7</p>
<p>1 offices on the 11th to discuss what our next actions 2 were going to be. I wrote to the Prime Minister the 3 same day, saying that I could either make a statement on 4 the 14th or the 19th, we had verified that there were 5 gaps, but I did not allude to the 19th in the witness 6 statement because the Cabinet selected the 14th as being 7 preferable.</p> <p>8 On 13 January, which would have been the Wednesday, 9 the day before Cabinet, there was a meeting of relevant 10 ministers to confirm the line I was proposing we should 11 take and which I had written to the Prime Minister in 12 the statement the following day. It was then discussed 13 again in Cabinet on the morning of the 14th and then 14 I delivered the statement in the afternoon.</p> <p>15 Q. Were there any pressures on you to get a prompt response 16 out to Sir David's report?</p> <p>17 A. I think it was reasonably well-known that his review was 18 going to be handed over to us, and he -- as he did the 19 previous week. It was subject to a leak. The Daily 20 Telegraph advised us that they had considerable detail 21 of the contents, and that put a certain degree of 22 pressure on us to advance matters.</p> <p>23 It was also the case that there were -- two stories 24 emerged in the tabloid press between the end of the 25 previous week and my giving the statement which looked</p> <p style="text-align: center;">Page 6</p>	<p>1 reluctant to pursue that route. A most persuasive case 2 for statutory regulation would need to be made out."</p> <p>3 Although the government didn't completely rule out 4 the option, it would appear that right from the very 5 outset of its consideration of Sir David's report it 6 showed extreme reluctance to pursue that route. Is that 7 fair?</p> <p>8 A. It would be very difficult for me to dissent from the 9 words that I actually used. The press has been not 10 subject to statutory interference, to choose a word at 11 random, since 1695. The first time it happens, it's 12 going to be a very significant event, and the 13 government -- any government is going to have to know 14 absolutely that that is what it wants to do at that 15 time, and we were certainly giving ourselves time to 16 allow both -- the proceedings on Mr Soley's bill, which 17 were due to start at the end of January, and also for 18 the National Heritage Select Committee to make their 19 report, which actually gave us something of a breathing 20 space for further consideration. But you're quite 21 right, we were very firm at the beginning, not least 22 because if we had not been very firm, all sorts of 23 questions would have been asked of us in the intervening 24 period before we were ready to report.</p> <p>25 Q. Would it be fair to say then that the strategy was to</p> <p style="text-align: center;">Page 8</p>

<p>1 give the press a further chance to regulate itself, but 2 not ruling out that if in the long term they failed to 3 do that, statutory regulation might be back one day on 4 the agenda?</p> <p>5 A. That would be correct. We did have the advantage -- 6 I suppose it was an advantage -- of knowing that 7 Sir David himself had found the arguments fairly evenly 8 balanced before he came to his conclusion.</p> <p>9 LORD JUSTICE LEVESON: But having said that, you did make it 10 abundantly clear that the government considered that 11 self-regulation under the Press Complaints Commission as 12 presently constituted was not satisfactory.</p> <p>13 A. That is absolutely correct, and patently it had to 14 improve.</p> <p>15 MR BARR: Could you help us, please, Lord Brooke, with why 16 the government chose to oppose Clive Soley's bill, which 17 would have introduced an independent press authority 18 with considerable power over the press?</p> <p>19 A. I think probably three reasons. Any government looks at 20 every single Private Members' Bill that comes through in 21 order to verify whether it wishes to see such a piece of 22 legislation on the statute book, and no bill -- it would 23 be very, very unusual for any Private Members' Bill to 24 get to the statute book unless the government were 25 prepared to support it.</p> <p style="text-align: center;">Page 9</p>	<p>1 end of their inquiry, and he specifically answered 2 a significant number of questions about the whole 3 concept of an ombudsman about which, in a voluntary 4 capacity, he felt would be a significant -- of 5 significant lubrication help to the Press Complaints 6 Commission in terms of doing their job, and it was on 7 the strength of that that he was himself -- the Lord 8 Chancellor was himself keen that we should in fact make 9 further progress with that idea.</p> <p>10 I have to say that there was no evidence that the 11 Press Complaints Commission themselves were excited 12 about having an ombudsman, whether statutory or 13 voluntary.</p> <p>14 Q. Can I explore a little further this concept of 15 evolutionary self-regulation. What was the thinking 16 first of all on questions of independence?</p> <p>17 A. The position both in Calcutt 1 and 2 and in the 18 government about how the Press Complaints Commission 19 should develop were, I think, fairly close together. 20 What you had to do was steadily build up, allow the 21 Press Complaints Commission to build up -- be allowed to 22 build up by the industry a whole series of different 23 instruments which they could deploy in order to be more 24 effective, but it was not a big bang solution.</p> <p>25 Q. Were you envisaging that at some stage that would</p> <p style="text-align: center;">Page 11</p>
<p>1 I think I used the word draconian in terms of my 2 description of Mr Soley's intentions, so there was 3 a view about the government, about the bill anyway. But 4 beyond that, if we were going to be responding ourselves 5 not only to Calcutt 2 but also to the National Heritage 6 Select Committee in due course, there was no sense at 7 all from our point of view in having other legislation 8 cluttering up the deck.</p> <p>9 Q. Can we move now to page 5 of your witness statement, 10 please to subparagraph (xvii). Here you're minuting the 11 Cabinet Committee on Home and Social Affairs, the 12 Chairman, about the White Paper that's being 13 investigated, and you say: 14 "... since we preferred a voluntary route, 15 self-regulation should continue to be evolutionary, and 16 a non-statutory ombudsman appointed by the newspaper 17 industry assisting in the investigation of complaints 18 would be a further step on this route."</p> <p>19 Could I ask you, please, to expand upon the thinking 20 behind an ombudsman?</p> <p>21 A. Yes, the Select Committee had raised the subject of an 22 ombudsman in the middle reaches of their own 23 deliberations and the Lord Chancellor, I'm not quite 24 sure whether they invited him or he invited himself, but 25 he did give evidence to them as a witness towards the</p> <p style="text-align: center;">Page 10</p>	<p>1 involve investigatory powers?</p> <p>2 A. I doubt it. It would, in the context of a complaint -- 3 I mean, if there was a complaint to the ombudsman, then 4 he would quite clearly have to do a certain amount of 5 investigation. We were not envisaging that he would 6 have any responsibility for fining. We were hoping that 7 the Press Complaints Commission could see their way for 8 him having access to a small sum of money, not a large 9 sum of money but a small sum of money, so that private 10 individuals who were in genuine distress about the way 11 they'd been treated by the press could, if the case was 12 found in their favour, have something to show in terms 13 of compensation for what they'd been put through.</p> <p>14 Q. Was it envisaged that the combination of the PCC and an 15 ombudsman would deliver regulation in the sense of both 16 a supervisory section and a complaints function?</p> <p>17 A. There was -- they were certainly separate. The 18 ombudsman was directed effectively towards privacy. 19 This quite separate discussion we were having about 20 criminal charges related to intrusion.</p> <p>21 Q. And if I am forgiven for dwelling on the word 22 "regulation", was it part of the government thinking 23 that the PCC would be a regulator?</p> <p>24 A. I think I'm going to give you a Delphic answer and say 25 I think we were envisaging that they were going to be</p> <p style="text-align: center;">Page 12</p>

<p>1 a self-regulator.</p> <p>2 Q. I ask you that because we've had some evidence that the</p> <p>3 PCC as it developed was not in fact a regulator. Would</p> <p>4 that be a cause for concern for you?</p> <p>5 A. I think -- now you are taking me back into waters which</p> <p>6 20 years ago are --</p> <p>7 Q. I'm not asking you about 20 years ago. I'm asking you,</p> <p>8 bearing in mind the thinking 20 years ago, does it</p> <p>9 concern you that this Inquiry has heard evidence that</p> <p>10 the position that we ended up in was a PCC which was not</p> <p>11 regulating?</p> <p>12 A. I think that is a fair comment.</p> <p>13 LORD JUSTICE LEVESON: I'm going to just pick you up on your</p> <p>14 word, Lord Brooke, if you don't mind. What did you</p> <p>15 understand by a self-regulator?</p> <p>16 A. I -- I produced a Delphic answer in order to extract</p> <p>17 myself from a position I did not particularly wish to be</p> <p>18 in.</p> <p>19 LORD JUSTICE LEVESON: All right. I won't press you if you</p> <p>20 prefer not to.</p> <p>21 A. I wouldn't go to the stake for the phrase.</p> <p>22 MR BARR: Can we move now to page 8 of your witness</p> <p>23 statement. I'm looking now at subparagraph (xxx1).</p> <p>24 This subparagraph concerns or refers to a consultation</p> <p>25 which had taken place over a number of months between</p> <p style="text-align: center;">Page 13</p>	<p>1 was no public consensus in favour of a privacy tort.</p> <p>2 Would you like to comment on the seeming significant</p> <p>3 change in position?</p> <p>4 A. I obviously don't know the background to it because</p> <p>5 I was not -- I was no longer in the government, but you</p> <p>6 could certainly defend his wording if you were to put</p> <p>7 the media responses back in, because, as I say, they</p> <p>8 were almost all opposed.</p> <p>9 My own reading of the documents, of his package, was</p> <p>10 that at a later date, after I had gone but after</p> <p>11 Lord Wakeham had become the chairman of the PCC, we</p> <p>12 achieved something else, which the Lord Chancellor had</p> <p>13 been equally enthusiastic about, which was to get the</p> <p>14 tort written into the code of practice of the Press</p> <p>15 Complaints Commission. I don't think that would --</p> <p>16 I have to say, as an individual, I don't think that</p> <p>17 would have happened unless you'd had a Parliamentary</p> <p>18 acting as Chairman of the Press Complaints Commission,</p> <p>19 who could see what the benefits were going to be if it</p> <p>20 were done, but the fact that the Press Complaints</p> <p>21 Commission were prepared to do that and to have the tort</p> <p>22 incorporated in the code would of course immediately</p> <p>23 have affected the attitude of the government to the</p> <p>24 alternative of their own action.</p> <p>25 Q. Moving to the next paragraph, subparagraph (xxx2), this</p> <p style="text-align: center;">Page 15</p>
<p>1 the summer and autumn of the previous year and you say:</p> <p>2 "The Lord Chancellor and the Secretary of State for</p> <p>3 Scotland invited EHD to agree there should be</p> <p>4 a statutory remedy for infringements of privacy, arising</p> <p>5 from their conclusions on their July consultation paper</p> <p>6 that the civil law relating to privacy should be put on</p> <p>7 a sound statutory footing."</p> <p>8 Can I take it from that that the outcome of the</p> <p>9 consultation in 1993 found that there was a public view</p> <p>10 in favour of a privacy tort?</p> <p>11 A. Overall, their consultation led, I think, to 124</p> <p>12 replies, but overall, and particularly if you took out</p> <p>13 the media responses which were not universally hostile</p> <p>14 but were substantially hostile, if you took those out,</p> <p>15 I think my recollection is that there were -- 58</p> <p>16 respondents were in favour, 29 had no clear view and 16</p> <p>17 were against. If you take out the ones who had no clear</p> <p>18 view, which was frequently because they were only</p> <p>19 looking at particular aspects of the proposition rather</p> <p>20 than the whole proposition, then the majority in favour</p> <p>21 of going ahead, leaving out the media, was something</p> <p>22 like 4 to 1.</p> <p>23 Q. Yesterday we heard evidence from Mr Dorrell about the</p> <p>24 reasons that were finally given to not proceeding with</p> <p>25 the privacy tort, and they were in substance that there</p> <p style="text-align: center;">Page 14</p>	<p>1 is 19 January 1994 and it refers to a meeting held by</p> <p>2 Lord Wakeham with the Lord Chancellor, the Home</p> <p>3 Secretary, the Solicitor General, the Deputy Government</p> <p>4 Chief Whip and yourself on Calcutt issues. Lord Wakeham</p> <p>5 reported the discussion to the Prime Minister as being:</p> <p>6 "... highly productive, with a common view on</p> <p>7 a number of key issues -- the proposed privacy tort, the</p> <p>8 criminal offence ([subject to] loose ends remaining in</p> <p>9 workability) and [press] self-regulation."</p> <p>10 Having been --</p> <p>11 LORD JUSTICE LEVESON: Press self-regulation.</p> <p>12 MR BARR: Press self-regulation.</p> <p>13 Having been through the history, this appears to me</p> <p>14 to be a high watermark in terms of a consensus to take</p> <p>15 action in relation to the tort, the criminal offence and</p> <p>16 press self-regulation; is that fair?</p> <p>17 A. I think it is fair. It was obviously -- the meeting was</p> <p>18 called because of the meeting of EDH which was going to</p> <p>19 appear on 8 February, and it was to roll the wicket in</p> <p>20 advance of that, but it also gave a green light to my</p> <p>21 department that further work on the preparation of</p> <p>22 a White Paper itself was in fact potentially -- going to</p> <p>23 be potentially productive, because agreement was</p> <p>24 breaking out.</p> <p>25 Q. If that was a high watermark, perhaps we can try and</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 trace where the tide starts to go out again. Could 2 I ask you to go over the page to page 9, please. If we 3 start at subparagraph (xxxix), there you refer to 4 Number 10 writing on 7 March 1994 " ...to say that the 5 Prime Minister wished to consider the draft White Paper 6 further before agreeing to proceed with publication." 7 Is it right that you've not in fact seen the letter? 8 A. Yes, it is right, and I had a -- there were -- I had 9 assumed that it was simply an amber light that we 10 shouldn't mount up all speed with what we were already 11 doing and that we were going to hear more thereafter. 12 There is a tinier point which is perhaps worth 13 making here, in relation to the Prime Minister's own 14 witness statement, in which he says that he wrote to me 15 in March of 1994 and asked me a number of questions 16 about the PCC and what was happening. Now, I have 17 not -- in the files that I have been exploring, in both 18 DCMS and the Cabinet Office, I have not seen a copy of 19 that letter, and I can only assume it's actually the 20 letter which I refer to as the March 7 letter, which 21 contained this other question mark as well, otherwise 22 I don't -- I'm not in any way resiling from what is said 23 in the Prime Minister's statement, it's just that it's 24 not in the documents that have been available to me. 25 If it was so, then it was so, and I'm perfectly</p> <p style="text-align: center;">Page 17</p>	<p>1 ready for March 15, into a drawer and effectively go 2 back to the drawing board. 3 Q. The new thinking appears to emerge from Number 10. Is 4 it your understanding that it was the Prime Minister 5 himself who was responsible for this change of tack? 6 A. I cannot think of anybody else who would have been 7 responsible. 8 Q. In terms of timing, the requirement to introduce draft 9 clauses into the White Paper, we see at paragraph 41 10 that the Lord Chancellor was in favour of the proposed 11 tort, but warned that the preparation of draft clauses 12 would take longer than redrafting the White Paper. So 13 is it right that that was going to set back the 14 timetable significantly? 15 A. Well, it certainly took us -- I mean, even without the 16 complication of the draft clauses, it certainly took us 17 from March 31 to June 30, which was a three-month 18 period, to produce the revised White Paper. 19 I should probably say in parentheses that if you go 20 back to paragraph 2 of my own witness statement, I do 21 say in the final sentence of that paragraph that we were 22 also preparing a White Paper on the BBC, and in 23 a department as small as DCMS, you would have had the 24 complication of -- we really got two tasks going forward 25 simultaneously. That may have slowed us down a bit.</p> <p style="text-align: center;">Page 19</p>
<p>1 happy to stand by the answer I gave to the question 2 which I still have to regard as hypothetical in the 3 correspondence, in his statement. 4 Then he wrote on the 31st and it was obviously quite 5 different. We in the meantime, as you will know, had 6 asked for permission to publish on March 15. 7 Q. It's to the 31st that I wanted to turn next, because on 8 this date Number 10 writes to enlarge on the earlier 9 letter and commend continuing pressure to improve 10 self-regulation, but it also asks that you recast the 11 draft White Paper to set out the case for legislation 12 but balancing it with the arguments against, 13 acknowledging the need for wide defence provisions 14 against charges of criminal offences, but also the 15 unworkability of the offences with such defences 16 included, and that although a privacy tort was under 17 consideration, the PCC including its provisions within 18 its own code of conduct would be even better, and in 19 both cases draft clauses should also be published. 20 Can I pick up on that, first of all by asking: this 21 does begin to mark the turning of the tide, doesn't it, 22 and a falling away from the position in January where 23 consensus appeared to be emerging? 24 A. The straightforward answer is yes. We were basically 25 being asked to put the draft White Paper, which we'd got</p> <p style="text-align: center;">Page 18</p>	<p>1 There's no question at all that the draft clauses were 2 a complication. 3 Q. Was the Lord Chancellor's concern in this regard shared 4 by the Home Secretary? 5 A. The Home Secretary -- and I know that this 6 correspondence exists, but I did not include it in my 7 witness statement because in the very considerable 8 amount of paper moving that DCMS is having to do at the 9 present time, for perfectly obviously honourable and 10 legitimate reasons, the particular correspondence became 11 mislaid, but in the beginning of June 1994, the Home 12 Secretary wrote and said that he would like to go back 13 to the idea that the White Paper might be published 14 without draft clauses. He wasn't pressing it, but he 15 was simply saying it would be much easier if we didn't 16 have to produce the draft clause, and Number 10 within 17 a week had said that this really was not the time to be 18 producing a suggestion of that sort. 19 So there's no question at all that the draft clauses 20 were a complication. 21 Q. Turning now over the page to page 10 of your statement 22 and looking at subparagraph (xlii), amongst other things 23 you tell us that Lord Ackner, the former Law Lord, 24 tabled a new clause to the Criminal Justice and Public 25 Order Bill, which would, had it been enacted, have</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

1 brought into effect the totality of Sir David Calcutt's
 2 proposals in his second report.
 3 First of all, are you able to help us at all as to
 4 why Lord Ackner felt it necessary to introduce this new
 5 clause?
 6 **A. Well, Lord Ackner was one of the comparatively few**
 7 **retired Law Lords we had in the House of Lords at that**
 8 **time. He has, of course, since died. He enjoyed**
 9 **teasing governments by introducing, particularly into**
 10 **this sort of legislation -- I won't describe them as**
 11 **mischievous, but things that were certainly going to**
 12 **make the government sit up and pay attention. I don't**
 13 **know what his precise motivation on this occasion was.**
 14 **He may have been a close personal friend of Sir David.**
 15 **There may have been a university connection, I don't**
 16 **know at all.**
 17 LORD JUSTICE LEVESON: He may even have thought it was the
 18 right answer.
 19 **A. It is perfectly true, he may well have thought it was**
 20 **the right answer. Given the speed at which the**
 21 **government were moving, it would have been a perfectly**
 22 **reasonable observation on his part that it was sensible**
 23 **to actually set the government the problem directly**
 24 **revealing why they weren't doing it.**
 25 MR BARR: In the result, though, the clause was not enacted,
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1 was it?
 2 **A. It was not enacted.**
 3 Q. A final question in relation to the whole period that
 4 you were dealing with this matter, the response to
 5 Calcutt 2: were you the subject of any lobbying by the
 6 press?
 7 **A. I certainly cannot recall any lobbying at all. I do --**
 8 **I did reveal in the third document which I submitted**
 9 **that I had had a historic relationship, going back into**
 10 **the 1960s, with Sir Frank Rogers, and I had some**
 11 **conversation with him, but he would have regarded that**
 12 **as social rather than lobbying.**
 13 Q. Looking back, would you regard the events following
 14 Sir David's second report as being a missed opportunity?
 15 **A. I personally -- I indicate my regret in the closing**
 16 **paragraphs of the witness statement. I think it was**
 17 **a great pity that we were not actually able to reach**
 18 **agreement between us, among us, and go forward, because**
 19 **although the government might have been able to sleep**
 20 **better at night because it had not crossed the Rubicon,**
 21 **the fact is it might have been a better thing if the**
 22 **Rubicon had been crossed.**
 23 Q. Moving to the present day, and of course events have
 24 moved on very considerably, do you have any views as to
 25 the shape which future regulation or self-regulation of
 Page 22

1 the press should take?
 2 **A. I find that an embarrassing question because you could**
 3 **very reasonably say I should have spent the whole of the**
 4 **last 30 days thinking about it. I'm afraid the**
 5 **examination which you set me was sufficient for a bear**
 6 **of very little brain. It was sufficient testing that**
 7 **I haven't spent as much time thinking about the future**
 8 **as I should. If you want to ask me some direct**
 9 **questions, I'll certainly try.**
 10 Q. I should say I'm certainly not going to suggest that
 11 you're a bear of little brain, on the contrary.
 12 I should also make clear that these examination
 13 questions are optional questions. But in terms of
 14 whether regulation of the press should be independent,
 15 do you have a view as to whether it should be
 16 independent of the press or not?
 17 **A. I think my answer to that would be that having**
 18 **a majority of independent participants in whatever body**
 19 **is doing it is all for the good. I can see some**
 20 **disadvantages in not having any members of the press**
 21 **because then you're actually carrying the thing too far**
 22 **in the opposition direction.**
 23 Q. Nobody is suggesting that the government should regulate
 24 the press, so I'm not going to ask you that perhaps
 25 obvious question, but there is a difficulty as to how
 Page 23

1 one devises a system which includes all of the press,
 2 because the situation at the moment is that there are
 3 elements of the press who sit outside the PCC. One
 4 mechanism for ensuring that everyone falls under
 5 a future scheme would be to have a statutory
 6 underpinning to an independent regulator. It's not the
 7 same as statutory regulation of the press, a statutory
 8 underpinning for an independent regulator. Do you have
 9 any views on that as a way forward?
 10 **A. I just want to make sure that I'm understanding**
 11 **correctly. Given the period since 1695, to what degree**
 12 **are we -- I'm sorry, I shouldn't be cross-examining you.**
 13 **I need to know to what degree we are trespassing into**
 14 **areas of statutory activity which we have otherwise**
 15 **foresworn.**
 16 Q. You're asking for a clarification of the question, which
 17 is entirely proper. We're talking about a system which
 18 in no way trespasses on the freedom of the press or the
 19 freedom of expression, but is designed to allow
 20 a regulator to enforce agreed ethical and professional
 21 standards, effectively the PCC code, but enforced by an
 22 independent regulator, which, because it has a statutory
 23 underpinning, is able to regulate all of the press.
 24 **A. I'm not sure if my answer is going to be coherent, but**
 25 **I am struck both by the way in which -- I'm now talking**
 Page 24

<p>1 about the evolution that we've been experiencing since 2 the war, though I can't help remembering the famous 3 story of the Westminster bar election in 1931, when 4 Stanley Baldwin as Prime Minister made his famous remark 5 about the press barons, which suggested that not all was 6 peace and light prior to 1939.</p> <p>7 But in the period since 1945, I observe that quite 8 extraneous events, like a Private Members' Bill, 9 actually have had the effect of moving the story on 10 quite a lot. In the case of the 1949 Royal Commission 11 under Sir William Ross, there was a proposal that the 12 press should have a general body of their own, and they 13 showed no sign at all of doing anything about that until 14 a backbench MP called Mr Simmons in 1952/53 brought in 15 a Private Members' Bill, whereupon effectively almost 16 instantly the press came around to the original 17 recommendation in the Royal Commission.</p> <p>18 In the same way, in 1989 -- I noticed the text of 19 Mr Dorrell's account of how the Calcutt 1 was set up, 20 but its actual genesis was the report stage of 21 Mr Worthington's bill entitled "Right of Reply" in 1989, 22 and the government minister responding at the dispatch 23 box on that bill basically foreshadowed Calcutt 1 in his 24 response.</p> <p>25 So these things happen as a result of different,</p> <p style="text-align: center;">Page 25</p>	<p>1 following activities would be objectionable if carried 2 out by a future regulator of the press: investigation, 3 power to fine, to award compensation, to require an 4 apology to be made, to require corrections, to handle 5 complaints in a quick, cheap and non-legalistic way?</p> <p>6 A. Again, I must ask for an explanation. Are we going back 7 to the hypothesis you put to me a moment ago?</p> <p>8 Q. Yes, a regulator of that format doing those things.</p> <p>9 A. Well, I have to say my own instinct would be reform of 10 the House of Lords also takes a very long time. 11 I wouldn't want to do a big bang. If you were going to 12 do that, I would move his powers up perhaps steadily, 13 but I wouldn't try and do it all at once.</p> <p>14 LORD JUSTICE LEVESON: When ever will there be a willingness 15 to engage with these issues again? The trouble is that 16 your history amply demonstrates that there is press 17 disaster, clamour for change, some movement forward, 18 slipping back, press disaster, clamour for change, 19 moving forward, and here we are yet again.</p> <p>20 A. I'm happy to take the rebuke, sir.</p> <p>21 LORD JUSTICE LEVESON: It's not a rebuke, it's not a rebuke.</p> <p>22 A. No, no, sorry, I'll take that back.</p> <p>23 I think, as in almost all other human affairs, it 24 depends on certain people having a lot of courage. 25 I can't help remarking that -- I make some allusion to</p> <p style="text-align: center;">Page 27</p>
<p>1 frequently unrelated episodes. The other Royal 2 Commissions and Lord Younger's Commission weren't quite 3 so fruitful, but then there wasn't a Private Member 4 around to help.</p> <p>5 In the same way, another instance which I would 6 quote from my own time, the episode of the Mirror in the 7 first week of November 1993, when the photographs were 8 taken of Princess Diana working out in a gymnasium, had 9 a very powerful effect on the behaviour of the press 10 immediately, because they had been resisting anything 11 that in any way related to -- either to Calcutt or to 12 ourselves and indeed others, and then suddenly changed 13 their minds when they realised that an episode as absurd 14 as the Mirror episode, where the chairman of the Press 15 Complaints Commission rebuked the Mirror -- the Sunday 16 Mirror, in fact -- rebuked the Sunday Mirror for their 17 behaviour, first led the Sunday Mirror to walk out of 18 the Press Complaints Commission, and then to come back, 19 and it was clear that some of the things that were being 20 said to them about the degree of control that they had 21 were actually being proved by reality.</p> <p>22 So on balance, partly because of the way in which 23 things have happened in the past, I think that the 24 suggestion you've made may well be very constructive.</p> <p>25 Q. My final question is to ask you whether any of the</p> <p style="text-align: center;">Page 26</p>	<p>1 it -- that the one person in the narrative that I lived 2 through who was absolutely clear about what he wanted to 3 do is the present Minister for Justice, and who urged on 4 those of us who were directly involved to take steps 5 which were way beyond those that the collective wills 6 wanted to do, and I don't want in any way to rewrite -- 7 well, to write the history of the period in which 8 I served in government, but I was always of the view 9 that Mrs Thatcher belonged to that school of people 10 identified by Ronnie Knox, the theologian, who said, 11 "History is changed by people who say 'I believe'", and 12 if you're going to do it in a big bang, then it's going 13 to have to be a big person to do it.</p> <p>14 LORD JUSTICE LEVESON: And you're nominating the Lord 15 Chancellor?</p> <p>16 A. I'm not nominating the Lord Chancellor, because I had 17 dinner with him not -- quite recently, and he did say he 18 was finding red boxes at night slightly more trying than 19 he had done in his youth, so how long he will be willing 20 to be in a front line political position I don't know, 21 but all I can say is he absolutely never wavered on the 22 positions that he had on these particular subjects, and 23 of course he was doing them from the difficult position 24 of being Home Secretary, which is where part of the 25 problems lie.</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 MR BARR: Thank you, Lord Brooke. Those were all my 2 questions. 3 A. Thank you so much. 4 LORD JUSTICE LEVESON: Lord Brooke, thank you very much 5 indeed. Is there anything you want to add or feel that 6 we haven't sufficiently covered? 7 A. I don't think so, sir. I think that's grand. 8 LORD JUSTICE LEVESON: Thank you very much indeed. 9 MR JAY: The next witness needs to come in, but if we could 10 rise for about a minute? 11 LORD JUSTICE LEVESON: Yes, we'll certainly rise for 12 a minute and allow Lord Brooke to leave and the next 13 witness to come in. Thank you. 14 (10.55 am) 15 (A short break) 16 (11.01 am) 17 MR JAY: Sir, the next witness is Mr Michel, please. 18 LORD JUSTICE LEVESON: Thank you. 19 MR FREDERIC MICHEL (affirmed) 20 Questions by MR JAY 21 MR JAY: Thank you, Mr Michel, make yourself comfortable. 22 A. Thank you. 23 Q. You provided us kindly with two witness statements, 24 which I'm going to ask you to bring to hand. The first 25 is dated 18 April, and the second 21 May of this year.</p> <p style="text-align: center;">Page 29</p>	<p>1 A. And weekends. 2 Q. The bid was launched in June 2010. When was it decided 3 internally to bid for the remaining publicly owned 4 shares in BSKyB? 5 A. When was it? 6 Q. Yes. 7 A. I don't know. 8 Q. Is it your evidence that it was only in June 2010 that 9 you became aware of the bid, or is it your evidence that 10 you were warned beforehand? 11 A. No, I was only aware, I think, the day before the 12 announcement. I was not part of the sort of small 13 confidentiality club that there was preparing the bid. 14 Q. So it was completely news to you, was it, when you were 15 told the day or so before that the bid was going to be 16 launched? 17 A. It was news in terms of the concrete launch. I guess 18 there had been some mentions that there was always an 19 intention from News Corp to acquire the remaining 20 shares, but ... 21 Q. When did you hear those mentions for the first time? 22 A. In the office. 23 Q. Yes, when? 24 A. Oh, when? So remind me the exact date, do you have the 25 exact date when it was announced? Because I was told</p> <p style="text-align: center;">Page 31</p>
<p>1 A. Yes. 2 Q. Are you content to attest to the truth of both of those 3 statements? There's a statement of truth over your 4 signature in each. 5 A. Yes. 6 Q. You joined News Corp in May 2009 as Director of Public 7 Affairs, Europe and were promoted in December 2011 to 8 Senior Vice-President of Government Affairs and Public 9 Policy, Europe. Can I ask you in just a few words to 10 describe the nature of your role for News Corp from May 11 2009 to December 2011, please? 12 A. I was at the time Director of Public Affairs, Europe, 13 and I represented News Corporation's operating 14 businesses in Europe, with governments across Europe, 15 European institutions, working also with each business 16 unit and their public affairs team. 17 Q. When the BSKyB bid was launched in June 2010, what 18 percentage of your time was devoted to that enterprise? 19 A. It became a very full job from probably September 2010, 20 and then it increased further and further throughout the 21 bid, especially when we entered negotiations around the 22 UIL. So I would say 80 per cent. 23 Q. So many hours a week; is that right? 24 A. Sorry? 25 Q. Many hours a week, day and night?</p> <p style="text-align: center;">Page 30</p>	<p>1 the day before. 2 Q. I think it was mid-June -- 3 A. 15th or something. So I would have been told the 14th, 4 probably. 5 Q. Yes, but I'm trying to explore when this was mentioned 6 to you before 14 June, Mr Michel. Do you understand? 7 A. Yes, but it was never mentioned to me as a sort of fait 8 accompli or something that was in -- you know, in full 9 process. I probably had discussions in sort of very 10 broad way, but that's it. 11 Q. As a burgeoning idea, when was it first mentioned to 12 you? 13 A. I think when I joined, there was always discussions, 14 either internally or in the press, that this would be 15 something that News Corp would want to contemplate. As 16 a public affairs item for me, it's never been raised -- 17 it's never been raised as a priority until it was 18 launched. 19 Q. It's just if you were going to be responsible for the 20 public affairs aspects of the bid, you would need to 21 prepare yourself to do that. It's just somewhat 22 surprising that it's the day before that you're told. 23 There must have been some preparation so that you could 24 spring into action, as we know you did. Would you 25 agree?</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 A. So the day before, when I was told, we swung into action 2 and the key thing from my point of view was to be able 3 to inform the Secretary of State for Business and 4 Industry on the morning of the announcement, and so 5 there was a bit of a panic in terms of how to reach him. 6 Q. Yes. Mr Michel, to cut to the quick, you must have had 7 a plan in place before 14 June. The basic information 8 must have been given to you before, and I think you're 9 telling me it was a matter of internal discussion since 10 May 2009; is that right? 11 A. No, this was a broad item. It was never -- we never 12 had -- I was never part of specific meetings to discuss 13 it. 14 Q. Did you have any involvement then in the timing of the 15 launch, in particular the fact that apparently 16 coincidentally, it was one month after the General 17 Election of May 2010? 18 A. No. 19 Q. Did you have any view as to whether the Conservative 20 Party or some different party might be more or less 21 favourable to the bid once it was launched? 22 A. On -- on the -- at the time of the launch? 23 Q. At any stage, Mr Michel. 24 A. No, I didn't have a particular view, because when it was 25 launched, it was very much launched as an M&A</p> <p style="text-align: center;">Page 33</p>	<p>1 Mr Michel. You were in contact, as we're about to see, 2 with the Secretary of State for Culture, you were in 3 contact with other people in government. You could work 4 out pretty quickly, with your astuteness, could you not, 5 who was on side and who was not on side; is that fair? 6 A. I was definitely able to ascertain the sort of political 7 climate when the launch was announced. 8 Q. Yes. And in the immediately succeeding period, once you 9 started to make contact with relevant people? 10 A. Yes, indeed. 11 Q. Because you no doubt saw it as your role to see who were 12 the people who you could deploy -- I don't use that word 13 disparagingly -- on your side, and those people who 14 needed to be worked on more because they were anti. 15 That was part of your assessment, wasn't it? 16 A. I think my role was to represent, as best as I could, 17 our arguments for why this bid was strong -- had 18 a strong case, and to make representations across all 19 political parties as much as I could. 20 Q. In that answer, you're ignoring from account the 21 personalities occupying ministerial or shadow 22 ministerial posts and their likely -- by their favouring 23 of the bid or disfavouring of the bid. This was 24 something you were very keen to know, weren't you? 25 A. I think given that the decision rested ultimately in the</p> <p style="text-align: center;">Page 35</p>
<p>1 announcement, and we discussed much more the sort of 2 merits of the case and how, on the regulatory front, we 3 were going to address it. The first item was very much 4 to work on the phase one in Brussels for the competition 5 side. 6 Q. Yes. You're focusing now on the legal or competition 7 law aspects of the bid, but that wasn't your role. Your 8 role was more the public affairs aspects, which involved 9 a political dimension, did they not? 10 A. Yes, yes. 11 Q. So you were well aware as to who in government and 12 opposition was likely to be favourable to the bid and 13 not favourable to the bid, weren't you? 14 A. I didn't have a specific view on it. 15 Q. Was it part of your role then, from 15 June, to 16 ascertain what Dr Cable's view might be? 17 A. Yes. 18 Q. Were there concerns internally that his view might not 19 be favourable? 20 A. I wouldn't say there was a concern from June. I think 21 the concerns started to be raised when we were worried 22 that there was no particular process in place in order 23 to make a presentation to the Secretary of State, which 24 alarmed us. 25 Q. Yes. But you were putting out feelers everywhere,</p> <p style="text-align: center;">Page 34</p>	<p>1 hands of politicians, I had, as one of the attributes of 2 my decision-making process, to try to understand what 3 their personal view could be. 4 Q. Did you understand the legal issue here, namely that the 5 Secretary of State for Business Innovations and Skills 6 had a quasi-judicial role? 7 A. I understood in broad terms. I think it was 8 something -- first of all, it's the first time I had to 9 deal with such a transaction, and I think it was the 10 case for many people in the event. I didn't have 11 a specific detailed sort of reminder of what it meant to 12 have a quasi-judicial process. 13 Q. But it is a specifically legal concept. Did any lawyer 14 explain it to you at any stage? 15 A. No. 16 LORD JUSTICE LEVESON: Did you not want to know? I mean, 17 this is stepping into deep waters, and you'd want to 18 make sure that whatever happened happened appropriately 19 and didn't give rise to potential risk to your 20 employers. 21 A. Yes. I think we had discussions on the fact that it was 22 very important that the decision rested with the 23 Secretary of State, that it was not appropriate to have 24 direct discussions with the Secretary of State unless 25 they were formal and minuted, but beyond that we were in</p> <p style="text-align: center;">Page 36</p>

<p>1 uncharted territory in terms of -- and I'm speaking in 2 hindsight as well -- in terms of the level of 3 representations that could be made below the Secretary 4 of State.</p> <p>5 LORD JUSTICE LEVESON: But presumably News Corp had lawyers 6 for whom it wasn't uncharted territory?</p> <p>7 A. We had a regulatory and strong regulatory and legal 8 team, and I think they also had assessed that the key 9 element of a quasi-judicial process was not to have 10 inappropriate contact with the Secretary of State, who 11 had to take his own view on it.</p> <p>12 MR JAY: The gist of the advice: not to have inappropriate 13 contact with the Secretary of State, is that it?</p> <p>14 A. Yes, and also -- I mean, the definition of 15 quasi-judicial process is also that the Secretary of 16 State had to take an unbiased view as to the decision 17 he's likely to make.</p> <p>18 Q. Was it explained to you that the term Secretary of State 19 included his civil servants and his special advisers?</p> <p>20 A. No.</p> <p>21 Q. Do you have a view as to whether the term Secretary of 22 State included civil servants and special advisers?</p> <p>23 A. What do you mean, do I have a view as if that's -- it 24 includes his office?</p> <p>25 Q. Yes.</p> <p style="text-align: center;">Page 37</p>	<p>1 A. No, I don't think anything inappropriate was -- never 2 took place.</p> <p>3 Q. That's a different issue. I think we're dealing with 4 the principle. As a matter of principle, there should 5 not be inappropriate contact either with the Secretary 6 of State in the person of Mr Hunt, or the Secretary of 7 State in the person of his special adviser. Are we 8 agreed?</p> <p>9 A. Yes, of course.</p> <p>10 Q. Can I ask you this other general question: given that 11 you fully appreciated that the decision resided, until 12 21 December 2010, with BIS, why did you trouble to make 13 such efforts to lobby other government departments who 14 had no role in the decision?</p> <p>15 A. Our view was that although the decision was ultimately 16 in the hands of the Secretary of State for Business and 17 Industry, we didn't have much chance to make 18 representation to him, although we did ask, and that it 19 would also be part of my work to at least air the 20 arguments of why we thought we had a very good case from 21 a plurality point of view to other departments, 22 especially if you refer to DCMS, for example, because it 23 was the department in charge of media.</p> <p>24 Q. Was it part of your aspiration that a different 25 government department who was on side, take DCMS, might</p> <p style="text-align: center;">Page 39</p>
<p>1 A. As not making representations to them?</p> <p>2 Q. Yes.</p> <p>3 A. No. I was never of the view that it was inappropriate 4 to at least try to put the argument or make 5 representations to these officers.</p> <p>6 Q. Can I just test that, Mr Michel, because you in your 7 first statement explain that references to JH in the 8 emails --</p> <p>9 A. Yes.</p> <p>10 Q. -- either include references to a special adviser or in 11 fact mean a special adviser. Do you follow me?</p> <p>12 A. Yes, for me it meant the office of the Secretary of 13 State.</p> <p>14 Q. That's right. Because in one sense there's no 15 difference between them. They are all within the 16 envelope of the Secretary of State, and the label JH 17 covers the Secretary of State personally, covers his 18 officials and it covers his special advisers?</p> <p>19 A. Yes. And for me -- yes, it's to your previous question 20 as to whether or not civil servants, officials and 21 special advisers are part of the office, yes, they are.</p> <p>22 Q. So inappropriate contact with the Secretary of State, 23 that's clearly off limits, but surely inappropriate 24 contact with the special adviser is equally off limits, 25 wouldn't you agree?</p> <p style="text-align: center;">Page 38</p>	<p>1 be able to influence the relevant government department, 2 which was BIS?</p> <p>3 A. I think the intention was that for me to put the 4 argument to them, to explain as much as I could, to even 5 also share some of the expert evidence.</p> <p>6 Q. Yes.</p> <p>7 A. And see -- and then for them to make -- to take a view 8 as to whether or not they want to represent them.</p> <p>9 Q. But you wouldn't have done it, Mr Michel, you wouldn't 10 have wasted your time, unless you thought that that 11 might happen. Would you agree?</p> <p>12 A. Yes, but this was something I did across both 13 departments and political parties as well, including the 14 opposition.</p> <p>15 Q. Yes. Because it was necessary -- there were three limbs 16 to this. There was the other limb of the Coalition, or 17 you saw there might be difficulties with the Liberal 18 Democrats, and of course there was the Labour 19 opposition, who you might not be able to win over but 20 try and do the best you could with them. Was that your 21 thinking?</p> <p>22 A. Yes. And also I have to say they were all very 23 interested in hearing our case, the details, and 24 sometimes because those issues were quite difficult to 25 understand, and they always welcome the opportunity, for</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 example, to have a debrief on the undertakings or on the 2 type of data that was used by Ofcom, things like that. 3 Q. Your first statement, between paragraphs 13 and 18, 4 which is pages 03263 and 03264, you make two points, 5 Mr Michel. The first point is that between 24 December 6 2010 and the end of July 2011 -- this is paragraph 18 -- 7 you did not have the any direct conversation with 8 Jeremy Hunt relating to the BSkyB proposal. 9 A. Yes. 10 Q. That remains your evidence? 11 A. Yes. 12 Q. The second point is that, however, there were a limited 13 number of text messages, which you list -- you provide 14 the content of in some respects between paragraphs 13 15 and 17; is that right? 16 A. Yes. 17 Q. We'll look at the text messages in due course. 18 The other point on your first statement, given 19 you've now clarified for us that JH means special 20 adviser, why didn't you make that clear in the emails 21 themselves, in other words -- 22 A. I think it's a shorthand I decided to use, both because 23 I was having a lot of conversation came the beginning of 24 January with the office of Secretary of State, but also 25 because I was probably trying to be as quick and sort of Page 41</p>	<p>1 across the policy community or with anyone, and I would 2 have to assume that a special adviser -- and there 3 aren't many around the Secretary of State, there were 4 two in that case -- always represent the view of their 5 boss. 6 Q. But they were representing their boss, that is 7 absolutely true, and constitutionally it is 8 self-evident, but I suppose I'm asking you about the 9 last part of it, "and after having conferred with him". 10 Is that just an assumption you're making or do you have 11 evidence for that? 12 A. First of all, it's a general assumption I'm making and 13 I had to make in terms of interacting with special 14 advisers. And, yes, I think there's two or three events 15 when I probably had the sort of impression that some of 16 the feedback I was being given had been discussed with 17 the Secretary of State before it was given to me. 18 Q. Okay. In order to make good that point, we're going to 19 have to look at the detail. 20 A. Sure. 21 Q. Because it's -- I don't think it can be made further as 22 a general proposition. 23 We're going to take your second statement as read, 24 but note that you were having communications until 25 21 December 2010 with SpAds and officials from other Page 43</p>
<p>1 generic as I could when I was writing those. 2 Q. Okay. Did you have any direct text or email contact 3 with any other individual or official in DCMS? I'm 4 thinking in particular the civil servant who had the 5 policy lead, Mr Jon Zeff. 6 A. During December and June? 7 Q. Yes. 8 A. Yes, I think we had one or two texts, which I think 9 we've given in evidence, which were related to 10 redactions or process -- 11 Q. We've counted less than five. 12 A. Oh. 13 Q. You think it's of that order, do you? 14 A. Yes, yes. 15 Q. The other general point on your first statement, which 16 I'll ask you to clarify: if you look at paragraph 20, on 17 page 03264, you see in the fourth line: 18 "His advisers were there to assist and advise 19 Jeremy Hunt. It was my understanding that when they 20 told me something it was always on behalf of the 21 minister, and after having conferred with him." 22 Where do you get that idea from? 23 A. I think it's -- for me it's self-evident that a special 24 adviser is someone who represents the Secretary of 25 State. That's why they're there for, when they interact Page 42</p>	<p>1 government departments, and we're going to cover that in 2 your evidence in due course. 3 The other general issue which we need to introduce 4 is the first exhibit to your first statement, you divide 5 materials up into three categories. They're largely 6 emails and text messages which preceded or sometimes 7 immediately succeeded a relevant email in the bundle 8 KRM18; is that correct? 9 A. Yes. 10 Q. So we need to examine KRM18 in the context of that, 11 where relevant. 12 Can I move on now to your communications with 13 Mr Adam Smith. Would you agree that there was a pattern 14 of very frequent text messages, telephone calls and 15 emails with Mr Smith, which certainly increased from 16 December 2010? 17 A. Yes. 18 Q. Overall, over the period June 2010 to July 2011, we have 19 counted the following: 191 telephone calls, 158 emails, 20 799 texts, of which over 90 per cent were exchanged with 21 Mr Smith. Does that feel about right? 22 A. I didn't know the quantum, but I trust your counting. 23 Q. Over the period 28 November 2010 to 11 July 2011, we 24 have counted 257 text messages sent by Mr Smith to you, 25 and given that you were more prolific in your texts to Page 44</p>

11 (Pages 41 to 44)

<p>1 him than he was to you, there would be more than that 2 which you sent. Would you agree? 3 A. I would. 4 Q. Do you think, Mr Michel, that Mr Smith was supportive of 5 the BSKyB bid? 6 A. I don't have any reason to believe either way. Whether 7 I -- I can't assess whether or not he was a supporter of 8 the bid or not. 9 Q. Well, you might be able to on the basis of what he told 10 you, but I think your evidence is that on the basis of 11 what he told you, you weren't informed one way or the 12 other whether he was supportive of the bid? 13 A. No, that's correct. 14 Q. That's a very fair answer. 15 Can I ask you generally, if you don't mind, for your 16 view of Mr Smith, his diligence, his integrity, from 17 your own dealings with him? Can you assist us with 18 that, please? 19 A. Sure. I think Adam has always been a very warm 20 professional, available adviser, and always very 21 diligent in his work with me, and any interactions I've 22 had with him were always professional and reliable. 23 Q. Do you feel in your dealings with him that he was being 24 straightforward, he was being evasive or he was being 25 something different altogether? Can you put your own Page 45</p>	<p>1 in the most favourable light, in other words what 2 Mr Smith told you, simply for the reason to provide 3 reassurance to your boss, Mr James Murdoch? 4 A. I think my memos, as they were internal emails, were an 5 accurate account of the conversations I've had. There 6 might have been some contextualisation sometimes added 7 to the feedback I would be getting. Whether there was 8 any exaggeration or -- or spin, it depends -- I would 9 say probably during the period of when we were dealing 10 with BIS, the morale was quite low, because we had not 11 much success in representation to BIS. Maybe I was 12 trying to keep the morale up internally. 13 Q. The period from 21 December 2010, you weren't trying to 14 big it up, as it were, to score points with your 15 employer because some people might say that if you were 16 giving the impression that you were working on Mr Smith 17 and that was in some way influencing the fate of the 18 bid, that would put you in a good light. You could see 19 that, at least intellectually, but can I ask you to say 20 whether you might agree with that? 21 A. No, I don't agree with that. 22 Q. Okay. 23 LORD JUSTICE LEVESON: I'd just like to ask you about 24 a statement you just made. You said, "Maybe I was 25 trying to keep the morale up internally". Doesn't that Page 47</p>
<p>1 epithet on this? 2 A. During the bid? 3 Q. Yes. During all the contacts we've been referring to, 4 at the moment only quantitatively. We're going to come 5 to the quality in a moment. 6 A. I would say he was always very straightforward, and then 7 in the analysis of whatever we were discussing, you 8 could infer whether or not he was evasive sometimes or 9 not, but overall he was very straightforward and clear 10 with me. 11 Q. Yes. I've asked you that general question of Mr Smith. 12 I'm going to ask you this general question of Mr Hunt: 13 do you think Mr Hunt was supportive of the bid? 14 A. It's something I can't say. 15 Q. There's nothing that you could point to from your own 16 dealings with him which might illuminate that question, 17 is that your evidence? 18 A. Yes. 19 Q. So is it your evidence then that Mr Hunt was keeping an 20 open mind, he was impartial and would decide the bid on 21 its merits at the appropriate time? 22 A. Yes. 23 Q. There's two more general questions. In relation to the 24 emails we see in KRM18, have you exaggerated the 25 position in this way: that you have, as it were, spun it Page 46</p>	<p>1 suggest that maybe you were trying to put the most 2 favourable gloss on what was happening in order that 3 people's morale would be kept up? 4 A. Yes, there's a distinction between whether or not I was 5 trying to big things up, as you described it, because 6 I wanted it to be seen in a positive light internally, 7 which is I think something I didn't need to do. But 8 yes, sometimes I was trying probably to energetically 9 try to convince internal audience that we needed still 10 to try to make representation for our case. 11 LORD JUSTICE LEVESON: Okay. And now you've used the word 12 "probably" as well. I'm sure you've reread and read 13 these emails many times recently. 14 A. Yes. 15 LORD JUSTICE LEVESON: Would you agree that -- well, let me 16 ask. You've said "maybe" and "probably". Do you mean 17 "Yes, that's what did happen"? 18 A. For which? 19 LORD JUSTICE LEVESON: Across these emails. 20 A. No, I think it's very few rare occasions, I would say, 21 where this happened. 22 MR JAY: Are you intending to identify the period in the 23 autumn of 2010, when things were not going too well with 24 BIS, and you were trying to lift morale, and you're 25 keeping that as one area, or are you saying the same Page 48</p>

12 (Pages 45 to 48)

<p>1 applies to the period 21 December 2010 onwards?</p> <p>2 A. Yes, I mean it's very few examples, I would say.</p> <p>3 Q. Okay. Maybe we will need to look at individual examples</p> <p>4 and see where we get. I'm going to deal with this</p> <p>5 chronologically when we look at the material, which</p> <p>6 we're now going to start to do. In June 2010 to</p> <p>7 21 December 2010, do you follow me? That's the first</p> <p>8 relevant period.</p> <p>9 A. Yes.</p> <p>10 Q. Let's look at some text messages, just a few. We can</p> <p>11 bring them up on the screen. These are all going to be</p> <p>12 MOD3 numbers. The first one is 12596.</p> <p>13 There's a technical hitch. I'm going to read it</p> <p>14 out. It will be on the transcript.</p> <p>15 Date, 27 August 2010. You sent this message to</p> <p>16 Mr Hunt and it relates to a speech Mr Mark Thompson had</p> <p>17 given about governance of the BBC. Do you remember that</p> <p>18 one, Mr Michel?</p> <p>19 A. I have it here.</p> <p>20 Q. Mr Hunt writes back by text, 012597, he says:</p> <p>21 "Thanks, I agree nothing about BBC role in</p> <p>22 competitive market."</p> <p>23 And then you express an opinion about it at 12598,</p> <p>24 28 August 2010:</p> <p>25 "My view is that MT [that's Mr Thompson's speech]</p> <p style="text-align: center;">Page 49</p>	<p>1 sent to Mr Hunt. This one says:</p> <p>2 "Shall I send Adam the briefing memo on plurality?</p> <p>3 Fred."</p> <p>4 This was an internal briefing memorandum which</p> <p>5 News Corp had prepared, which dealt with the plurality</p> <p>6 aspects of the bid; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you were asking the Secretary of State whether it</p> <p>9 should be sent to his SpAd and the Secretary of State</p> <p>10 says, "Yes please", at 12613. Do you see that in your</p> <p>11 schedule?</p> <p>12 A. Yes.</p> <p>13 Q. What was the purpose of doing that?</p> <p>14 A. We had built a memo with our arguments on the plurality</p> <p>15 aspects of the bid, which we were making available to</p> <p>16 policy-makers in order to inform them of the debate</p> <p>17 which was very much developing.</p> <p>18 Q. Did you ever hear back from Mr Smith as to what</p> <p>19 Mr Hunt's reaction was to that memo?</p> <p>20 A. I think I might have. I can't -- there may be ... I'm</p> <p>21 trying to remember that. There might be an email back</p> <p>22 from Adam on Jeremy Hunt's reaction.</p> <p>23 Q. You sent him two memoranda at this time. His reaction</p> <p>24 to one of them was persuasive, wasn't it, do you</p> <p>25 remember that?</p> <p style="text-align: center;">Page 51</p>
<p>1 was a failure, a whimper, really. It wasn't bright or</p> <p>2 inspiring in any way. The research was self-serving and</p> <p>3 laughable. He failed to respond at all to criticism</p> <p>4 that's warranted or really explain any reason why the</p> <p>5 BBC is criticised at all. He's in a trap over many</p> <p>6 things, most of all trying to whip up fears about Sky's</p> <p>7 success. I'm flying back to family in France now."</p> <p>8 And then he replies, 012599:</p> <p>9 "Because he trains his guns on you he failed to make</p> <p>10 his case to me."</p> <p>11 The purpose of these texts was to see if you could</p> <p>12 find out Mr Hunt's view in relation to the BBC and Sky,</p> <p>13 wasn't it?</p> <p>14 A. I think it was a reaction to the MacTaggart speech that</p> <p>15 Mr Thompson gave in Edinburgh, and I was just making</p> <p>16 some, I will accept, colourful comments on his speech to</p> <p>17 Mr Hunt. But as I can see, there's very few things</p> <p>18 mentioning, it was just at the end mentioning that Sky</p> <p>19 is a successful company.</p> <p>20 Q. Mm. But was this part the beginning of a campaign to</p> <p>21 (a) test out Mr Hunt's opinion and (b) to win him over</p> <p>22 in relation to the BSkyB bid, which of course by then</p> <p>23 had been launched?</p> <p>24 A. No.</p> <p>25 Q. There's a later text, 12612, 7 October 2010, which you</p> <p style="text-align: center;">Page 50</p>	<p>1 A. Yes, I do.</p> <p>2 Q. Did that message come back to you? At the time in</p> <p>3 October 2010?</p> <p>4 A. Yes, I think the email is to me?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. You would have known from that that Mr Hunt was, to put</p> <p>8 it at its lowest, reasonably favourably disposed to the</p> <p>9 bid, wouldn't you?</p> <p>10 A. I think he was just commenting on whether or not the way</p> <p>11 we were putting our arguments was convincing.</p> <p>12 Q. Yes.</p> <p>13 A. If I may add, sorry, it was something many people</p> <p>14 recognised at the time.</p> <p>15 Q. I don't think it's just a matter of the presentation of</p> <p>16 the argument. It's also the substance of the argument.</p> <p>17 A. Sure.</p> <p>18 Q. If an argument is persuasive, one has been persuaded by</p> <p>19 it. Doesn't that suggest that he might be on side?</p> <p>20 A. I wouldn't have drawn that conclusion from just that</p> <p>21 feedback.</p> <p>22 Q. Maybe not from one piece of evidence, but it's a jigsaw,</p> <p>23 or one piece of the jigsaw, isn't it?</p> <p>24 There's a later text, this is 12621, 9 November</p> <p>25 2010. This is you to Mr Hunt:</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 "Can you meet James tomorrow morning for a catch up? 2 Would be good, even early morning." 3 You remember that one? 4 A. Yes. 5 Q. And then there are various texts confirming the 6 arrangements. There was going to be a meeting on 7 Monday. But I think what happened then is that advice 8 was given that Mr Hunt could not meet you. Do you 9 remember that? 10 A. Yes. 11 Q. And that advice is contained in one of the KRM 18 emails 12 at page 016667. We're now in the proprietor bundle. 13 A. Do you know the date, Mr Jay, because I have a different 14 pagination, I think. 15 Q. On the internal numbering, page 26. 16 LORD JUSTICE LEVESON: 15 November 2010 at 11.32. 17 A. Thank you, sir. 18 MR JAY: That's the one. What exactly happened on this date 19 is not 100 per cent clear, but the email says: 20 "Jeremy tried to call you. He has received very 21 strong advice not to meet us today as the current 22 process is treated as a judicial one (not a policy one) 23 and any meeting could be referred to and jeopardise the 24 entire process. Jeremy is very frustrated about it but 25 the Permanent Secretary has now also been involved." Page 53</p>	<p>1 anything on the mobile? 2 A. So the meeting was going to be a sort of catch-up 3 meeting on a whole range of things, and at the time 4 I think we were -- we wanted to talk about intellectual 5 property issues, which was the Hargreaves review. There 6 were some items that the Secretary of State wanted to 7 mention like local TV networks, new generation access 8 networks, maybe the sort of plurality debate around the 9 bid as well. 10 I'm not sure the call was -- if it did take place, 11 would have been very long. 12 Q. You don't know one way or the other, do you? 13 A. No, no. 14 Q. It's also clear that your thinking was that a private 15 liaison with Mr Hunt's team would be fine, but what's 16 the difference between that and a face-to-face meeting, 17 apart from the fact that one is more clandestine? 18 A. What's clandestine, the mobile phone call? 19 Q. No, liaising with his team privately as well. 20 A. No, I think the word privately here is not really 21 appropriate. To reflect what I meant, it's probably 22 more liaising in order to make sure the things that 23 would have been raised at the meeting between the two 24 principals would at least be taken on at a lower level 25 between advisers, which we would have done with Adam on Page 55</p>
<p>1 So you learnt that presumably from Mr Smith, did 2 you? 3 A. Yes. 4 Q. And then you say: 5 "My advice would be not to meet him today as it 6 would be counter-productive for everyone ..." 7 Can I ask you whether that was advice which came 8 from Mr Smith or was it just your advice? 9 A. I'm sure Adam shared that view as well, but it was 10 certainly my advice, yes. 11 Q. The next bit: 12 "... but you could have a chat with him on his 13 mobile which is completely fine, and I will liaise with 14 his team privately as well." 15 Can I be clear, Mr Michel, is that your view or is 16 it a view which also came from Mr Smith? 17 A. Yes, I think we probably -- given the frustration on 18 both sides that that meeting couldn't take place -- 19 probably had the conversation about the idea that they 20 could have a quick call to the mobile to refer to the 21 fact they couldn't meet, apologise to each other, and 22 that's it. I'm not sure if the call took place. 23 Q. From a later text, which we're about to look at, it did. 24 Are you sure it's limited to an apologetic chat on the 25 mobile, or might it include a conversation about Page 54</p>	<p>1 an ongoing basis. 2 Q. The text which followed this email, 12626, 16 November, 3 15.52 and 23 seconds, you send to Mr Hunt: 4 "Thanks for the call with James today, greatly 5 appreciated. We'll work with Adam to make sure we can 6 send you helpful arguments. Warm regards, Fred." 7 The helpful arguments are relating to the BSkyB bid, 8 aren't they? 9 A. I don't know. I can't remember. 10 Q. But it is clear that you're working with Adam to send 11 Mr Hunt the helpful arguments and that Adam is closely 12 involved in the process as being the messenger? 13 A. Yes. 14 Q. That much is clear, isn't it? 15 A. Yes. He is the special adviser, so he ... I don't know 16 if "helpful arguments" were meant to be for the 17 forthcoming speech or for something related to the bid, 18 sorry. 19 Q. Mm. Mr Hunt's reply at 12627 is simply the word 20 "Pleasure". 21 A. Yes. 22 Q. If I can just complete this sheaf of texts, although it 23 does go slightly beyond the date I'd given as being the 24 cut-off point of this period. Christmas Eve 2010, 25 12630, this is a text which you sent to Mr Hunt: Page 56</p>

14 (Pages 53 to 56)

<p>1 "Hi. James has asked me to be the point of contact 2 with you and Adam throughout this process on his 3 behalf." 4 Do you see that? 5 A. Yes. 6 Q. "Glad Jon Zeff is in charge of dossier." 7 Why were you glad of that? 8 A. Because I appreciated Jon Zeff as an official, someone 9 I had worked with several times before. 10 Q. "Have a great Christmas with baby. Speak soon, Fred." 11 Your respective children were born more or less on 12 the same day, weren't they? You explain that in your 13 first witness statement. 14 A. My third child was born on the same night as -- in the 15 same hospital. 16 Q. And then Mr Hunt's reply at 12631: 17 "Thanks, Fred. All contact with me now needs to be 18 through official channels until decision made." 19 And then there's a personal greeting. What did you 20 understand that to mean, the "official channels"? 21 A. The "official channels" would be his office and not him. 22 Which is why from then on I stopped having any contact 23 with him apart from private -- a few private texts 24 during the bid. 25 Q. And then you reply to his text at 12632 with a personal Page 57</p>	<p>1 as to how I think things should be approached. 2 Q. Even if one accepts that the sentence beginning "very 3 important" is your interpretation of what should happen 4 next -- 5 A. Yes. 6 Q. -- rather than anything Mr Hunt said -- 7 A. Completely. 8 Q. -- but hadn't you in any event exaggerated what he said? 9 Because this states "said he was very happy to be the 10 point of contact"; all he said in his text was: 11 "All contact with me now needs to be through 12 official channels." 13 That's a much lower, softer light rather than the 14 very green light that this email is apparently giving us 15 the impression of. Would you accept that? 16 A. Well, the official channel would be Adam, so ... 17 Q. So you don't feel that you've exaggerated the position 18 in this email? 19 A. No. 20 Q. Okay. We're now going to look at contact you had with 21 Mr Smith over this self-same period, from June to 22 December. I think we can do most of these through KRM 23 18. If you look at 01643, which on your number is going 24 to be page 2 -- 25 LORD JUSTICE LEVESON: Just before you do, could you just Page 59</p>
<p>1 greeting relating to the Christmas period. 2 Can I ask you though in the context of those texts 3 what you said in one of the KRM 18 emails at 01683, 4 which is page 42 on the internal numbering. Are you 5 with me? 6 A. Yes. 7 Q. You say: 8 "Just spoke to JH." 9 That bit is literally JH, because we know that from 10 what we've just been looking at. 11 "Said he was very happy for me to be the point of 12 contact with him/Adam on behalf of JRM going forward. 13 Very important to avoid giving the 'anti' any 14 opportunity to attack the fairness of the process and 15 fine to liaise at that political level, while also 16 DCMS/NWS legal teams are in touch." 17 Mr Michel, that doesn't accurately reflect the texts 18 we've been looking at, does it? 19 A. I think the first line does. But the rest is my view -- 20 I'm giving my view to the rest of the team as to how 21 I think things should be taken forward. At the time 22 I was abroad, it was Christmas Eve, I was in Lanzarote, 23 and we couldn't do a conference call probably with the 24 entire team, so I reflect what I was told by Jeremy Hunt 25 and then I sort of put a caveat to the rest of the team Page 58</p>	<p>1 explain to me what you mean by "fine to liaise at that 2 political level"? 3 A. Yes. A special adviser is a political adviser. 4 Political appointee, sorry, which is different from 5 Civil Service. 6 LORD JUSTICE LEVESON: No, I understand that. 7 A. Yes. 8 LORD JUSTICE LEVESON: But are you saying to your team it's 9 fine for the team to be in touch with Mr Smith to such 10 extent as they want to be, and that's the way to 11 proceed? I'm just trying to understand. 12 A. Yeah, yeah. So first of all it wouldn't be my team. 13 I was pretty much the sole individual in this -- in the 14 role of liaising with the political level. So I was 15 indicating that it was fine for me to liaise with the 16 political level, and there was another layer, which was 17 to also make sure, because I was putting the legal team 18 on that email, to make sure that there was another level 19 of contact, which would be the one between the two legal 20 teams. 21 MR JAY: If the special adviser was in effect speaking for 22 the Secretary of State, although he's wearing 23 a political hat, and you'd been told in November that 24 a meeting with the Secretary of State was inappropriate 25 and this was in the context before the Secretary of Page 60</p>

15 (Pages 57 to 60)

<p>1 State had responsibility --</p> <p>2 A. For the bid.</p> <p>3 Q. -- as he acquired on 21 December, how and why did you</p> <p>4 think it appropriate to have political contacts with the</p> <p>5 special adviser after 21 December 2010?</p> <p>6 A. I think it was fine because I was -- it was an official</p> <p>7 channel, and a special adviser is part of the office of</p> <p>8 the Secretary of State.</p> <p>9 Q. It's your interpretation then of "official channel" in</p> <p>10 Mr Hunt's text, which gives you the --</p> <p>11 A. Yes.</p> <p>12 Q. -- go-ahead, as it were?</p> <p>13 A. And I was never told otherwise from the Secretary of</p> <p>14 State's office at any stage in the bid.</p> <p>15 Q. Can I ask you, I'm looking now at this page 01643. This</p> <p>16 is a conversation or rather an email which refers to</p> <p>17 a call from Hunt's adviser. That's Mr Smith, isn't it,</p> <p>18 Mr Michel?</p> <p>19 A. It must be, yes. Probably.</p> <p>20 Q. "Said there shouldn't be media plurality issue and</p> <p>21 believed the UK government would be supportive</p> <p>22 throughout the process."</p> <p>23 Are you sure he said that?</p> <p>24 A. I can't remember -- I mean, I can't remember precisely</p> <p>25 that conversation on the phone. It was two years ago,</p> <p style="text-align: center;">Page 61</p>	<p>1 why did you tell me earlier that you weren't aware that</p> <p>2 Mr Hunt was supportive of the bid?</p> <p>3 A. Because I was not aware that he particularly had</p> <p>4 expressed a view on whether or not he was aware --</p> <p>5 supportive --</p> <p>6 Q. But if the special adviser in Mr Hunt's department is</p> <p>7 expressing a view that the UK government would be</p> <p>8 supportive, it's a fairly obvious deduction that Mr Hunt</p> <p>9 himself would be supportive, which contradicts what you</p> <p>10 told me earlier which was in fact he was neutral. Do</p> <p>11 you see the point?</p> <p>12 A. Yes, although I think, if I may contextualise this</p> <p>13 email, Mr Jay, I think apparently we're having</p> <p>14 a conversation based on the back of a Standard article</p> <p>15 which was probably suggesting otherwise, and which led</p> <p>16 to that conversation with Adam, probably, and I would</p> <p>17 take the idea that the UK government would be supportive</p> <p>18 as a sort of very general observation, not as something</p> <p>19 which would mean that every Cabinet member or, you know,</p> <p>20 would go along those lines.</p> <p>21 Q. Isn't the truth here, Mr Michel, that this is an example</p> <p>22 of exaggeration by you to -- whether it's to boost</p> <p>23 morale or to frankly puff yourself up, it's not what</p> <p>24 happened?</p> <p>25 A. No, I don't think I need to puff myself up.</p> <p style="text-align: center;">Page 63</p>
<p>1 nearly, but I'm sure we'd had a conversation which would</p> <p>2 be about whether or not the idea overall of whether or</p> <p>3 not the bid was good for the UK economy would be</p> <p>4 supported by the government, yes.</p> <p>5 Q. But this is the special adviser apparently speaking on</p> <p>6 behalf of the whole of the UK government, which is</p> <p>7 apparently supportive of the bid. It's quite a sweeping</p> <p>8 statement for a special adviser to make at a stage at</p> <p>9 which he wouldn't know, would he?</p> <p>10 A. No, and also probably, you know, we would be having</p> <p>11 a lot of chatty conversations, if I might use that term.</p> <p>12 Q. Mm.</p> <p>13 A. And so it was probably a passing comment. But overall</p> <p>14 we were -- I would probably try to ascertain, of course,</p> <p>15 if there would be some sort of support from the UK</p> <p>16 government.</p> <p>17 Q. Yes, because part of the purpose of all these calls was</p> <p>18 to find out whether there was support for the bid,</p> <p>19 wasn't it?</p> <p>20 A. It was to check on an ongoing basis sort of temperature</p> <p>21 around the bid.</p> <p>22 Q. Precisely. Well, Mr Smith denies that he said anything</p> <p>23 of the sort, but we'll have to wait to hear his version.</p> <p>24 But if a statement was made along those lines, "UK</p> <p>25 government would be supportive throughout the process",</p> <p style="text-align: center;">Page 62</p>	<p>1 Q. Okay. Mr Smith also denies the last line:</p> <p>2 "I will be working with Jeremy/Ed [that's the</p> <p>3 Minister of State, Mr Vaizey] going forward to prepare</p> <p>4 it."</p> <p>5 Which is a speech, which is suggesting that a speech</p> <p>6 is going to be collaborated in between News Corp and</p> <p>7 government ministers, which again Mr Smith denies. Can</p> <p>8 I ask you to be clear that that's what he said?</p> <p>9 A. Probably the last line is probably me saying I will be</p> <p>10 working with those officers on going forward to help</p> <p>11 prepare it.</p> <p>12 Q. Okay. Page 5, 01646. Is the reference to Jeremy Hunt</p> <p>13 there Mr Hunt personally or Mr Smith?</p> <p>14 A. I don't know if there's been conversation or text</p> <p>15 exchanges at that time. There probably were texts I had</p> <p>16 with Jeremy Hunt, I think.</p> <p>17 Q. There is, in fact. At 12601, Mr Hunt sends a text which</p> <p>18 says:</p> <p>19 "Don't know anything."</p> <p>20 And the way you've interpreted that in the email is:</p> <p>21 "Jeremy Hunt is not aware", which is consistent with</p> <p>22 the text, "and thinks it's not credible at all", which</p> <p>23 is inconsistent with the text and is your gloss or spin</p> <p>24 on it; do you see that?</p> <p>25 A. Yes, I mean I don't know if there had been calls as well</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 with his office at the time or if -- when the piece came 2 out. I think it was on the back of a Peston piece on 3 the BBC website. 4 Q. We've seen no evidence of any telephone call. I'm just 5 politely suggesting to you that this is a piece of 6 exaggeration by you for whatever reason. Would you 7 agree or not? 8 A. No. 9 Q. Can I ask you, please, to move to page 9, 01650. You 10 referred to: 11 "Rebekah and I had a very useful meeting with 12 Jeremy Hunt today on the bid which I will debrief each 13 of you on." 14 That, I think, was at the Conservative Party 15 Conference, wasn't it? 16 A. Yes. 17 Q. Was Mr Hunt supportive on that occasion? 18 A. Supportive of? 19 Q. The bid, Mr Michel. 20 A. I think it was a meeting where, because it was 21 Rebekah Brooks holding the meeting, it was very much 22 around other issues which were related to newspapers, 23 and I think the bid was mentioned at the very end and we 24 probably discussed the state of the debate on the 25 plurality issue. I can't remember whether or not Page 65</p>	<p>1 "Jeremy has also asked me to send him relevant 2 documents privately." 3 Mr Smith disputes the adverb "privately". Why did 4 you put "privately" in? 5 A. Probably meaning "directly". Um ... 6 Q. If it's "directly", why not put in "directly"? Why did 7 you put in "privately"? 8 A. I think the -- that probably suggests I was going to 9 send the documents directly to him. I used the word 10 "privately" probably not appropriately, I don't know. 11 I can't -- 12 Q. You can't take that point any further? 13 A. No. 14 Q. 01679, page 38. Email at the bottom of the page. Do 15 you see this one? 16 A. Yes. 17 Q. The call record shows a 22-minute call you had with 18 Mr Smith before this email was sent, okay? 19 "Very good debrief with Hunt on the issues letter. 20 He's pretty amazed by its findings, methodology and 21 clear bias." 22 Well, the reference to "clear bias" is denied by 23 Mr Smith, you follow me, but are you sure about the rest 24 of what you say there, particularly the quite strong 25 language "he's pretty amazed by its findings, Page 67</p>
<p>1 anything else was expressed. 2 Q. The email does refer to the meeting on the bid, which of 3 course might include other topics as well. 4 A. Yes. 5 Q. The bid must have been discussed. The question was 6 a simple one: was Mr Hunt supportive on that occasion or 7 not? 8 A. I can't remember. I mean, the -- what I remember is 9 that we had a collection of four or five meetings that 10 day, and that there was a lot of media attention around 11 the bid, and that -- maybe there was a discussion on the 12 state of the debate. 13 Q. You don't appear very willing to tell us, Mr Michel, 14 whether Mr Hunt was supportive or not. Are you saying 15 that he maintained a studied neutrality throughout, even 16 when he wasn't responsible for carriage of the bid, or 17 are you frankly not assisting us? Can we be clear, 18 Mr Michel? 19 A. My view is that Jeremy Hunt was probably supportive of 20 some of the arguments we were putting forward, and 21 I think he's made the argument public, sometimes, on the 22 plurality concerns that had emerged on the bid. 23 Q. Okay. Your page 33, our page 01674. This is an 24 exchange or relates to an exchange you had with 25 Mr Smith. You see the sentence: Page 66</p>	<p>1 methodology"? 2 A. Yes, I think we had a long conversation at the time just 3 before I wrote that email which was on, as it says, the 4 issues letter, the metrics data used by Ofcom to measure 5 plurality, and I think there was an agreement that as 6 there was also a very strong opinion internally on this 7 as well, I think there was an agreement during that 8 conversation that the use of those metrics and of that 9 data showed some sort of bias in the way -- on the 10 analysis. 11 Q. Right, and you've written down: 12 "He very much shares our views on it." 13 Which is an inference I suppose you've drawn from 14 the tenor of the conversation; is that right? 15 A. Yes. Yes. 16 Q. You must have derived considerable reassurance from that 17 conversation, at least as regards the view of Mr Smith, 18 and possibly the view of Mr Hunt; is that correct? 19 A. Yes, and I also think it's -- at the time there were 20 many experts expressing the same view who had taken the 21 time to read very thoroughly the report itself. 22 Q. So in terms of the government departments, who were by 23 now onside, the DCMS were one of those such departments, 24 weren't they? 25 A. On side as in? Page 68</p>

17 (Pages 65 to 68)

<p>1 Q. In favour of your bid, Mr Michel.</p> <p>2 A. I think they were probably in favour of -- or in</p> <p>3 agreement with the arguments we had put forward in terms</p> <p>4 of plurality, definitely.</p> <p>5 Q. Okay. Those are the relevant pre-21 December 2010</p> <p>6 exchanges with Mr Smith. There are one or two others,</p> <p>7 though, in material which was provided to us much more</p> <p>8 recently. I hope I can find it. Bear with me, I'm in</p> <p>9 the wrong place. There are only about four or five of</p> <p>10 these. It's at page 10871. Yes. I had mentioned this</p> <p>11 earlier. We can see the reaction of relevant people.</p> <p>12 On 7 October 2010, you sent a confidential email to</p> <p>13 Mr Smith. He had two email accounts, were you aware of</p> <p>14 that, Mr Michel?</p> <p>15 A. Yes.</p> <p>16 Q. Did you see there as being any difference between the</p> <p>17 two accounts? Obviously apart from the address being</p> <p>18 different.</p> <p>19 A. No.</p> <p>20 Q. What you say in this email:</p> <p>21 "As promised, attached briefing memo for Jeremy on</p> <p>22 the transaction, including Sky News audience shares."</p> <p>23 And this was a confidential memorandum which has</p> <p>24 been redacted for the purposes of this Inquiry because</p> <p>25 it contains confidential information, commercially</p> <p style="text-align: center;">Page 69</p>	<p>1 plurality side and the competition side. Very shortly,</p> <p>2 on the plurality side it was definitely something the UK</p> <p>3 debate was focusing on; the competition side, as you</p> <p>4 know, was being dealt with in Brussels.</p> <p>5 Q. Were you doing the same sort of thing with other</p> <p>6 government departments: getting hold of the special</p> <p>7 adviser, sending that individual briefing notes and</p> <p>8 trying to find out what the boss' response was in each</p> <p>9 case?</p> <p>10 A. No, I think I was only doing it with this because they</p> <p>11 were in charge of the transaction process. And DCMS</p> <p>12 because they were in charge of media sector. I don't</p> <p>13 think I've sent it to anyone else.</p> <p>14 Q. You probably correctly had identified the second most</p> <p>15 influential department because this at least fell within</p> <p>16 the media remit?</p> <p>17 A. Yes.</p> <p>18 Q. That was your rationale, wasn't it?</p> <p>19 A. Yes, and also on the competition side, I think it was</p> <p>20 important for the UK government to know the arguments we</p> <p>21 were putting to the European institutions.</p> <p>22 Q. Thank you. Over this self-same period, there are just</p> <p>23 a few emails in KRM 18 which evidence your interactions</p> <p>24 with BIS, do you follow me, until 21 December 2010, when</p> <p>25 everything suddenly changed. We're just going to look</p> <p style="text-align: center;">Page 71</p>
<p>1 sensitive information.</p> <p>2 Later at 10875, Mr Smith emails you saying:</p> <p>3 "This is very interesting, thanks, Fred, I've passed</p> <p>4 it on to Jeremy."</p> <p>5 And you say:</p> <p>6 "Glad you find it helpful."</p> <p>7 And then on the following day you do the same thing</p> <p>8 in relation to a briefing note on competition issues.</p> <p>9 Do you remember doing that?</p> <p>10 A. No, I don't have the document in front of me.</p> <p>11 Q. 10878. It's very similar to the one on plurality</p> <p>12 issues. Or at least in terms of its form.</p> <p>13 Mr Smith then emails you back on the Monday,</p> <p>14 11 October, this is our page 10881, saying:</p> <p>15 "Jeremy's response to this persuasive."</p> <p>16 Do you recall that?</p> <p>17 A. Yes. I think it's the one you mentioned earlier.</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. And that gave you suitable reassurance, did it?</p> <p>21 A. As to?</p> <p>22 Q. As to the prevailing view on an important aspect of the</p> <p>23 bid, at least in one relevant government department; is</p> <p>24 that right?</p> <p>25 A. Yes. I mean there's two items here. There's the</p> <p style="text-align: center;">Page 70</p>	<p>1 at a few of them. The first is page 1, 01642. Do you</p> <p>2 have it there, Mr Michel?</p> <p>3 A. Yes, sorry.</p> <p>4 Q. I think we heard from Mr James Murdoch that there was</p> <p>5 a conference call -- tell me whether this chimes with</p> <p>6 your recollection. You, Mr James Murdoch, Dr Cable. Is</p> <p>7 that right?</p> <p>8 A. So I -- very early that morning when the bid was</p> <p>9 announced, I tried to get hold through his office of</p> <p>10 Mr Cable for him to speak to Mr Murdoch, but I didn't</p> <p>11 witness the call. I was debriefed afterwards by James.</p> <p>12 Q. Okay.</p> <p>13 A. And I then sent an email to the rest of the team as to</p> <p>14 what took place in the call.</p> <p>15 Q. "Vince Cable call went very well. He did say he thought</p> <p>16 there would not be policy issue in this case."</p> <p>17 And then you say, perhaps as a joke:</p> <p>18 "We should have recorded him."</p> <p>19 A. Yes, it was a joke. It was a bad joke.</p> <p>20 Q. Well, it is what happened to him later on, on</p> <p>21 21 December, as we know.</p> <p>22 Things, however, didn't go quite so well with that</p> <p>23 department subsequently. At 01649, page 8, this is</p> <p>24 a conversation I think you're having with Lord</p> <p>25 Oakeshott, is it?</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 A. I think so. I can't remember who I was speaking to 2 then. But it would have been one of ... 3 Q. It's interesting, in the second bullet point there are 4 three issues which colour in his judgment: 5 "The way Sky News handled the General Election 6 coverage and the quality of news debate; the News of the 7 World/Coulson ongoing saga, which he is being reminded 8 of on a daily basis by people like Simon Hughes and 9 Huhne, as a proof of the need to provide safeguards; and 10 a very strong pure political pressure from the Lib Dems 11 and Labour over the way the Murdoch press has treated 12 his own party/policies and Labour over last 12 months." 13 All this must have worried you somewhat, Mr Michel? 14 A. Yes. I -- it did worry me for many reasons, as you 15 could imagine, given my role. And more importantly it 16 reflected two things, that what I call here the News of 17 the World/Coulson sort of saga was going to be an issue 18 in terms of the way the Sky bid was going to be looked 19 at by the political community and the media, and 20 secondly that there might be a sort of political element 21 in a decision that the Secretary of State might take. 22 Q. But none of this is rocket science, is it? You knew all 23 of this anyway, didn't you? 24 A. You mean pre that conversation? 25 Q. Yes.</p> <p style="text-align: center;">Page 73</p>	<p>1 and try to make representation to policy-makers on the 2 bid, given that we were the biggest (inaudible) investor 3 in Scotland, and there was a relevance for the Sky 4 business in Scotland. 5 I met with the Lib Dem MP and then I met with one of 6 Alex Salmond's advisers that afternoon. 7 Q. I understand. 01663, page 22. This is a direct 8 citation of a text message you received from Dr Cable's 9 adviser: 10 "Put a very strong case which will stand you in good 11 stead on this." 12 This relates to a particular submission, doesn't it? 13 A. Sorry, I'm on the wrong page. 14 Q. 22 on your bundle. 15 A. Sorry, you said this relates to? 16 Q. A text message from Dr Cable's adviser. 00163. 17 A. Yes. I can't remember the exact text, sorry. 18 Q. 01664, however, you refer to a "private call with 19 Vince's main adviser". This is one of his SpAds, 20 Mr Michel? 21 A. Yes. It's either a call or a text or an email. I can't 22 remember. 23 Q. It refers to a conversation, "a private call", do you 24 see that? 25 A. Yes.</p> <p style="text-align: center;">Page 75</p>
<p>1 A. I don't pretend it's rocket science. I think it's 2 always good to check the temperature. I mean, as I went 3 on in September/October, it was clear that many Liberal 4 Democrats of senior position were telling me that it -- 5 and Labour, sorry, as well, were telling me that the 6 News of the World issue was an item that they considered 7 being a problem. 8 LORD JUSTICE LEVESON: We're just going to take a break for 9 the shorthand writer, Mr Michel. 10 (12.10 pm) 11 (A short break) 12 (12.16 pm) 13 MR JAY: There's 15 texts to Mr Jon Zeff, not five texts. 14 LORD JUSTICE LEVESON: Thank you. 15 MR JAY: 01659, your page 18, Mr Michel. Email 1 November 16 2010, doesn't involve Mr Smith in any way. Can we be 17 clear that you'd had a conversation with a Liberal 18 Democrat MP who was a former employee of Sky, that was 19 a direct conversation you had, and does it follow that 20 what we see in this email is correct? 21 A. Yes. 22 Q. What about the reference to Mr Alex Salmond? Can you 23 help us with the source of that information? 24 A. Yes, on that day, which explains the top line, "Mission 25 accomplished", I had taken upon myself to go to Scotland</p> <p style="text-align: center;">Page 74</p>	<p>1 Q. It's the substance which is more interesting. 2 A. Yes. 3 Q. "He said he believed there were huge risks for me to 4 meet with him to talk about anything that has to do with 5 the 'Ofcom business', which he rules out completely." 6 A. Yes. 7 Q. So any meeting with Dr Cable's special adviser is off 8 limits, is that it? 9 A. Yes. 10 Q. "Too much scrutiny. They also want to be able to say 11 they took an independent view. Asked me to be in touch 12 regularly in coming weeks, if only to provide him with 13 any evidence/materials we would like Vince/him to read." 14 He's making it clear that the limit of what you can 15 do is provide him with evidence and materials, but any 16 other form of contact is inappropriate, would you agree 17 with that? 18 A. Yes, and this was something -- a point he was making on 19 an ongoing basis throughout. Very clearly. Sometimes 20 commenting on the evidence I would send as being helpful 21 or not, but no meeting would be possible. 22 Q. Didn't you think it a bit strange then that DCMS's 23 stance was rather different, both during this period, 24 but perhaps most saliently after 21 December 2010? 25 A. No, I thought DCMS stance was more normal than the</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 stance adopted by BIS.</p> <p>2 Q. You felt DCMS's stance was a correct one and this was an</p> <p>3 obsessively incorrect stance, taking too strict a view,</p> <p>4 is that it?</p> <p>5 A. My view was that at least even though we had, of course,</p> <p>6 to respect the fact that the Secretary of State couldn't</p> <p>7 meet with anyone from News Corporation, that at least</p> <p>8 making representation to advisers or officials would be</p> <p>9 the normal way to proceed.</p> <p>10 LORD JUSTICE LEVESON: How could you conclude it was more</p> <p>11 normal if you'd never been involved in this sort of</p> <p>12 process before, the quasi-judicial process?</p> <p>13 A. Because we were internally of that view, and it was</p> <p>14 something that maybe Mr Murdoch has expressed as well in</p> <p>15 his evidence, but there was a view internally that we</p> <p>16 understood the situation in which the Secretary of State</p> <p>17 was, but that that shouldn't prevent at least for us to</p> <p>18 make recommendations, put our arguments to other</p> <p>19 advisers or officials.</p> <p>20 MR JAY: I think representations can take place in two ways.</p> <p>21 They can take place formally --</p> <p>22 A. Yes.</p> <p>23 Q. -- above board, written representations, so it can all</p> <p>24 transparently be viewed by the general public, if</p> <p>25 necessary, the administrative court on a judicial review</p> <p style="text-align: center;">Page 77</p>	<p>1 have to be disclosed?</p> <p>2 A. What do you mean, meetings with special advisers, for</p> <p>3 example?</p> <p>4 Q. All what we see and are about to look at post the</p> <p>5 21 December period, these are the fruits of text</p> <p>6 messages on mobile phones, emails which are internal</p> <p>7 emails. You wouldn't expect this to enter the public</p> <p>8 domain, would you?</p> <p>9 A. No, I -- I don't think the -- I mean, the inference from</p> <p>10 your question is that this is a clandestine sort of back</p> <p>11 channel covert communication. I wouldn't agree at all</p> <p>12 with that sort of characterisation.</p> <p>13 Q. And why not, Mr Michel?</p> <p>14 A. Because I think it was a transaction which was extremely</p> <p>15 intense and at any stage, if anyone from the Secretary</p> <p>16 of State's office thought this was an inappropriate way</p> <p>17 of working, they would have told me or us.</p> <p>18 Q. It might have been known about within the department as</p> <p>19 a whole, do you follow me, but that's a proposition</p> <p>20 we're going to have to examine with other witnesses.</p> <p>21 A. Sure.</p> <p>22 Q. If it's known about within the department as a whole,</p> <p>23 certain inferences might be drawn. But it's not known</p> <p>24 about to the world at large, is it, because it's</p> <p>25 something which is occurring privately, to use your</p> <p style="text-align: center;">Page 79</p>
<p>1 application if necessary --</p> <p>2 A. Yes.</p> <p>3 Q. -- and the other side, the Coalition, if necessary. So</p> <p>4 there's all of that activity which no one can, as it</p> <p>5 were, dispute. And then there's the more clandestine</p> <p>6 activity, which is text messages, private phone calls to</p> <p>7 special advisers, which people might not found out</p> <p>8 about. Do you see the distinction?</p> <p>9 A. Yes. There's different things you have mentioned here.</p> <p>10 The idea of a formal meeting, minuted, with an official</p> <p>11 and advisers and the Secretary of State seemed to be the</p> <p>12 normal course of action. It's the one Jeremy Hunt took.</p> <p>13 He had two of those meetings with News Corp. There was</p> <p>14 none of those meetings with BIS. Then in terms of</p> <p>15 making representation or advocating the case with</p> <p>16 special advisers or officials, I wouldn't qualify that</p> <p>17 as clandestine. I would qualify that as advocacy.</p> <p>18 Q. But this advocacy which Dr Cable's main adviser is</p> <p>19 specifically ruling out, isn't he?</p> <p>20 A. Yes, in this particular department there was definitely</p> <p>21 a view that no representation would be taken.</p> <p>22 Q. How can it be advocacy which is above board if by its</p> <p>23 very nature people would not find out about it unless</p> <p>24 there happens to be a public inquiry such as this, or</p> <p>25 possibly a judicial review application where documents</p> <p style="text-align: center;">Page 78</p>	<p>1 adverb, between you and Mr Smith, isn't it?</p> <p>2 A. Are you asking me whether or not I think this should be</p> <p>3 made more public in terms of the interactions in</p> <p>4 a future case of such -- I think there's a lot of</p> <p>5 lessons to learn from this process, and one of which is</p> <p>6 certainly that I will agree that it's probably normal --</p> <p>7 but it's not for me to say how a Secretary of State's</p> <p>8 office should work and, you know, should publish its</p> <p>9 work.</p> <p>10 Q. Yes.</p> <p>11 A. But I can understand your argument.</p> <p>12 Q. Test it this way. If you had known that the public</p> <p>13 relations advisers for the Coalition ranged against the</p> <p>14 bid were having the same sort of contacts with Mr Smith</p> <p>15 or whoever as you were having with Mr Smith, you would</p> <p>16 be concerned about that, wouldn't you?</p> <p>17 A. No, I would have thought that Mr Smith was doing his</p> <p>18 job. He was taking representations. Which is what</p> <p>19 I think a special adviser would do in that case on</p> <p>20 behalf of his Secretary of State.</p> <p>21 Q. So you wouldn't have batted an eyelid. We'll hear</p> <p>22 whether there were such communications but it would have</p> <p>23 caused you no concern one way or the other, is that so?</p> <p>24 A. No, and when BIS was in charge, I did hear that</p> <p>25 representations were being made to the Secretary of</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 State's office, but I didn't -- I just I think mentioned</p> <p>2 it once to Mr Cable's adviser to check if it was true or</p> <p>3 not, but I didn't build a whole case around that.</p> <p>4 Q. But you told us a while back that that caused low morale</p> <p>5 within your office, didn't you?</p> <p>6 A. I think we were frustrated about the fact that we</p> <p>7 couldn't put our arguments at least forward.</p> <p>8 Q. Because as it appeared to you, whether it's right or not</p> <p>9 we may have to examine, they were having more access to</p> <p>10 Dr Cable than you were and you thought that was unfair,</p> <p>11 that caused low morale. I'm just turning it around and</p> <p>12 saying imagine what the Coalition might think about what</p> <p>13 you were doing with Mr Smith, if I can put it in that</p> <p>14 way, post 21 December. They would be a little bit</p> <p>15 surprised, wouldn't they, at the level of contact?</p> <p>16 A. So I have no visibility as to how the Coalition</p> <p>17 interacted with other bits of DCMS.</p> <p>18 Q. We'll find out in due course. Look at 01665 at page 24.</p> <p>19 Just to test the source of your information here, it may</p> <p>20 be relevant in due course.</p> <p>21 A. Yes.</p> <p>22 Q. You have a meeting with Mr Rupert Harrison, who is</p> <p>23 George Osborne's special adviser; is that correct?</p> <p>24 A. Yes, his Chief of Staff.</p> <p>25 Q. Where does what we read here come from? Does it come</p> <p style="text-align: center;">Page 81</p>	<p>1 rule out, but I imagine that you chaps can think of</p> <p>2 little else right now, which leaves me puzzled."</p> <p>3 And then you recognise that. You have to go back</p> <p>4 a page, 01669, page 28, and then Mr Giles says, up the</p> <p>5 email chain:</p> <p>6 "Let us assume it is when a Google of 'Vince Cable',</p> <p>7 'News International' and 'Sky' doesn't turn anything</p> <p>8 up."</p> <p>9 So he's saying that the meeting is off until the bid</p> <p>10 has been resolved one way or the other, isn't he?</p> <p>11 A. Yes, I found this comment a bit flippant, I didn't</p> <p>12 really understand what it meant. I do understand the</p> <p>13 context of it, and I do understand that for him there</p> <p>14 was a very strong view that absolutely no representation</p> <p>15 on the Sky bid should be made.</p> <p>16 Q. And he then says, to continue, at 01668, one has to go</p> <p>17 backwards through this, your page 27, level with the</p> <p>18 lower hole punch:</p> <p>19 "I'm sure we're both equally interested in staying</p> <p>20 within the bounds of proper conduct. Forgive my</p> <p>21 caution."</p> <p>22 Couldn't be clearer, could it, Mr Michel?</p> <p>23 A. Yes. I think I reply that I am keen to make sure things</p> <p>24 are done properly from my side as well. And I think --</p> <p>25 Q. Sorry.</p> <p style="text-align: center;">Page 83</p>
<p>1 from a text? I'm not sure that it does. Or does it</p> <p>2 come from a phone call? Can you remember now?</p> <p>3 A. No, I think I had lunch with Rupert the day before.</p> <p>4 Q. Okay.</p> <p>5 A. It was a general conversation. It was actually quite</p> <p>6 a rushed lunch, as I remember.</p> <p>7 Q. And he said that there were Coalition tensions around</p> <p>8 Dr Cable and his current policy positions; is that</p> <p>9 right?</p> <p>10 A. Yes, I think it was widely reported that was the case.</p> <p>11 Q. Nearly finally, 01670, your page 29, you have another go</p> <p>12 at meeting with the special adviser Mr Wilkes, don't</p> <p>13 you?</p> <p>14 A. Yes.</p> <p>15 Q. After you'd been told that this was off limits, hadn't</p> <p>16 you?</p> <p>17 A. I, I think, raised with him the idea that maybe we could</p> <p>18 meet at least -- I don't remember the exact exchange,</p> <p>19 but I think there's also other items that I've put to</p> <p>20 him that I wanted to discuss with him at the time.</p> <p>21 Q. Because you'd been warned off once at 01664. Mr Wilkes</p> <p>22 properly says at 01670, your page 29:</p> <p>23 "What did you have in mind as an agenda? Obviously</p> <p>24 there are huge risks in talking about anything</p> <p>25 whatsoever to do with the Ofcom business, which I would</p> <p style="text-align: center;">Page 82</p>	<p>1 A. Sorry. Just to complete, I think in that exchange of</p> <p>2 emails I also outlined the other issues I wanted to</p> <p>3 discuss with him, which were related to skills and other</p> <p>4 matters.</p> <p>5 Q. Mm. Did you take this message back internally and ask</p> <p>6 for a high-powered legal view as to whether Mr Wilkes</p> <p>7 was correct?</p> <p>8 A. There was always, as you probably noticed in KRM 18,</p> <p>9 I was always informing everyone internally of whatever</p> <p>10 conversation I would be having.</p> <p>11 Q. I'm sure you were doing that, but he was giving you</p> <p>12 a very clear warning, saying it was the wrong thing to</p> <p>13 do, inappropriate, don't do it. Either you say to</p> <p>14 yourself, "Fine, I accept that, he's got legal advice</p> <p>15 after all", or you say, "He's wrong, we need to test</p> <p>16 this". Which of the two steps did you take?</p> <p>17 A. The latter. The latter. I wouldn't have taken the view</p> <p>18 whether it was right or wrong, but I think I would have</p> <p>19 taken the view that -- yes, it deserved to be tested.</p> <p>20 Q. And did you?</p> <p>21 A. Internally.</p> <p>22 Q. Mm?</p> <p>23 A. Yes. I think there was a strong view internally</p> <p>24 about -- to understand why representation was not</p> <p>25 possible.</p> <p style="text-align: center;">Page 84</p>

<p>1 Q. Okay. 01677 now. Your page --</p> <p>2 LORD JUSTICE LEVESON: But actually that's the same day --</p> <p>3 this is 15 November -- it's exactly the same day when</p> <p>4 you're receiving information from Mr Hunt or Jeremy that</p> <p>5 he's received very strong legal advice not to meet,</p> <p>6 because it's a process that's judicial, not a policy</p> <p>7 one. It's the same day, 15 November. 1667.</p> <p>8 MR JAY: You have a convergence of view, haven't you,</p> <p>9 Mr Michel, from two government departments. Do you see</p> <p>10 that?</p> <p>11 A. Yes, I think the reaction from the Secretary of State's</p> <p>12 office at DCMS was very much frustration as to the</p> <p>13 impossibility to make their representation.</p> <p>14 Q. That may be right, indeed it is right, but what is also</p> <p>15 right is the legal advice within the department seems to</p> <p>16 be convergent?</p> <p>17 A. Yes, I mean it's a very -- it's a very different</p> <p>18 behaviour from one department to another, as you can</p> <p>19 observe, between that period when BIS was in charge and</p> <p>20 when DCMS were in charge. I've noted when the bid</p> <p>21 switched to DCMS that there was much more openness and</p> <p>22 willingness to at least hear the view and the arguments</p> <p>23 that could meet the plurality concerns.</p> <p>24 Q. That's certainly correct.</p> <p>25 A. And that was not the case at BIS.</p> <p style="text-align: center;">Page 85</p>	<p>1 submissions and other things, we were also told by</p> <p>2 people around Mr Cable that that decision would be</p> <p>3 political. So I guess me trying to make representations</p> <p>4 or at least create an opportunity to do so was borne out</p> <p>5 of the fact that we were worried that this was not going</p> <p>6 to be solely based on the merits of the case.</p> <p>7 Q. That bit is understood, but I'm not quite sure I got the</p> <p>8 answer to my question.</p> <p>9 A. Sorry.</p> <p>10 Q. Did I, which is the value of human interaction, whether</p> <p>11 it's by jokey text message, warm text message, mobile</p> <p>12 conversation or face-to-face meeting. You understand</p> <p>13 that because amongst other things you're very good at</p> <p>14 that, aren't you?</p> <p>15 A. I don't know if I'm good at it. I do accept that it's</p> <p>16 part of any sectors where probably people would rather</p> <p>17 have interaction and talk things through rather than</p> <p>18 just correspond through letters and emails.</p> <p>19 Q. Okay.</p> <p>20 A. And I apologise if my texts are too jokey sometimes.</p> <p>21 Q. It's not a question of apology. These are private texts</p> <p>22 and it's for you to decide the appropriate tone. These</p> <p>23 texts were never designed to enter the public domain,</p> <p>24 were they?</p> <p>25 A. They were not.</p> <p style="text-align: center;">Page 87</p>
<p>1 LORD JUSTICE LEVESON: You could send any document in to</p> <p>2 them, couldn't you, you could make written submissions?</p> <p>3 A. You can, but I think there's a view that probably there</p> <p>4 is some relevance in trying to have a discussion about</p> <p>5 it, rather than correspond through legal documents,</p> <p>6 especially when it's to explain a remedy, a structural</p> <p>7 solution to a plurality concern, which was the case.</p> <p>8 MR JAY: This is a point I made in a different context with</p> <p>9 a different witness, Mr Michel, namely the value of</p> <p>10 human interaction. You understand in your job that</p> <p>11 there's one thing sending in legal submissions and</p> <p>12 briefing notes, they have their utility, they appeal at</p> <p>13 a cerebral level, I suppose, but you're very good at the</p> <p>14 text message, the chat on the mobile phone, the personal</p> <p>15 interaction, one-to-one, face-to-face, preferably.</p> <p>16 That's what you're great at and that's why they employ</p> <p>17 you, in effect, and that's what you want to open up and</p> <p>18 achieve, isn't it?</p> <p>19 A. I hope that's not the only reason why they employ me.</p> <p>20 Q. No, I don't suggest exclusively.</p> <p>21 A. I am a compulsive texter, I will accept, but also can</p> <p>22 I just contextualise this? We were at a time in</p> <p>23 November where we were hearing very strongly that this</p> <p>24 matter was being looked at from a political prism by the</p> <p>25 Secretary of State, and although we were sending legal</p> <p style="text-align: center;">Page 86</p>	<p>1 Q. 01677. This refers to two meetings or conversations you</p> <p>2 had with advisers to the Deputy Prime Minister and the</p> <p>3 Prime Minister. Do you see that?</p> <p>4 A. Which --</p> <p>5 Q. Page 36.</p> <p>6 A. Thank you. Yes.</p> <p>7 Q. Nick's adviser is Tim Colbourne, isn't he?</p> <p>8 A. Yes.</p> <p>9 Q. You sent him an email, I've seen a witness statement</p> <p>10 which contains it, saying this:</p> <p>11 "It would be good to discuss the current agenda</p> <p>12 around the creative industry."</p> <p>13 Do you remember that?</p> <p>14 A. Yes. Sorry.</p> <p>15 Q. He has made a note of the meeting, which again is</p> <p>16 annexed to his witness statement, and it says this:</p> <p>17 "Frederic Michel IP [which is intellectual property]</p> <p>18 speech DEA [Digital Economy Act], B SkyB, Ofcom looking</p> <p>19 at plurality, not competition, Ofcom report to News Corp</p> <p>20 with questions, Ofcom report to Vince, Vince decides</p> <p>21 whether to go to Competition Commission."</p> <p>22 If you look at your email, which sets out or</p> <p>23 purports to set out what was discussed with the special</p> <p>24 adviser, it's not reflected by the note. For example</p> <p>25 where did you get the bit "honest discussion on the</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 importance for us of getting Labour on board, 2 comfortable with the transaction as it will influence 3 Cable a lot"?</p> <p>4 A. Well, if I put it in the memo, it's because it was 5 discussed at the meeting. I understand that from 6 a Liberal Democrat adviser it might not be comfortable 7 to be reminded that it was discussed, but we definitely 8 discussed this.</p> <p>9 Q. And then: 10 "He will insist on the need for Vince to meet with 11 us once Ofcom report published." 12 Again that is not in the contemporaneous note that 13 was taken. Are you sure about that?</p> <p>14 A. Yes, so we -- I remember that we discussed and I made 15 the plea, if I may use that term, for trying -- first of 16 all, for the inadequacy of the process, that I thought 17 that at least we could try to have some representation 18 at some stage, and I think because of the time of the 19 meeting, which was beginning of December, I suggested 20 that once the Ofcom report is published, it would be 21 relevant for us to have a meeting with the Secretary of 22 State and that I was asking him to maybe put the case to 23 his counterpart at the Secretary of State's office, and 24 I think we had an agreement that that was a good idea. 25 That's what I remember.</p> <p style="text-align: center;">Page 89</p>	<p>1 discussing with you", and I think he asked me how the 2 process was going and I said the debate was very much 3 around plurality, and I think he probably said seems the 4 right thing. But that's it. It was a very short 5 exchange, it was not with Rohan, it was actually with 6 Steve.</p> <p>7 Q. There's no issue there. 01681, page 40, the discussion 8 you had with the Chief of Staff to the Deputy Prime 9 Minister, who is Mr Jeremy Oates.</p> <p>10 A. Jonny Oates.</p> <p>11 Q. Jonny Oates, pardon me. 12 "Everything you say here I'm sure is 100 per cent 13 agreed because it's made absolutely clear that Dr Cable 14 will make up his own mind, not be influenced by anyone 15 and will take the decision on its merits in accordance 16 with his statutory obligations." 17 And then you say: 18 "I told him it was hard to believe, given all the 19 feedback we're getting." 20 So I'm sure no one's going to dispute anything you 21 say there.</p> <p>22 A. Can I contextualise this?</p> <p>23 Q. Yes, if you wish.</p> <p>24 A. If I may. This was an exchange that I had with the 25 Deputy Prime Minister's office where I was reporting the</p> <p style="text-align: center;">Page 91</p>
<p>1 Q. But in any event, even if you're right that the topic 2 was discussed, you've put it much too high because even 3 if the SpAd is speaking on behalf of Mr Clegg, the 4 Deputy Prime Minister, query whether it would have been 5 possible for him to insist on the need for you to meet 6 with Dr Cable, given that it was Dr Cable's decision. 7 It wasn't Mr Clegg's decision. Do you see that?</p> <p>8 A. I see that completely, but I think we agreed in the 9 meeting that it would be a good idea for us to be able 10 to meet with Mr Cable.</p> <p>11 Q. Okay. David's adviser now on this page. This is 12 Mr Rohan Silva. There's a witness statement from him. 13 Less of an issue, though, between you about this. Do 14 you see at the bottom of your page 26, 01677: 15 "On Sky transaction: recognised need to look at it 16 only from a plurality point of view." 17 His evidence is that he made it clear on behalf of 18 the Prime Minister that the Prime Minister wanted to see 19 plurality in media ownership and the SpAd also explained 20 that the bid process was nothing to do with Number 10?</p> <p>21 A. I don't think it contradicts at all what I've put. What 22 happened, I think, is actually Steve Hilton was also in 23 the room, and as a marker from the meeting I remember 24 saying in a flippant way, you know, "We're not going to 25 discuss Sky because it's not something I should be</p> <p style="text-align: center;">Page 90</p>	<p>1 feedback I was getting from senior Lib Dems around 2 Vince Cable, and I was also putting to him the sort of 3 things I was being told that would trigger the decision, 4 which were very political and nothing to do with the 5 merits of the case, and I think he came back to me in 6 a formal way to reassure me on 19 December, the date is 7 important, that this was only going to be looked at the 8 merits and I shouldn't at all have any qualms, if I can 9 use that term, that this decision wouldn't be made in 10 any other way.</p> <p>11 Q. But your worst suspicions were borne out within a couple 12 of days, weren't they?</p> <p>13 A. This happened the day before the famous Cable tape.</p> <p>14 Q. And therefore that wasn't a surprise to you because it 15 chimed with your antecedent suspicions and the feedback 16 you'd been receiving; is that correct?</p> <p>17 A. Very much so.</p> <p>18 Q. And when DCMS acquired carriage of the bid, I think 19 you've already told us this, there was a change of 20 style, of tone and of access, wasn't there?</p> <p>21 A. I think there was a process. I think there was 22 a process which the view from the department that had 23 been given the responsibility, it was that there was 24 a need to have the right legal process, but also a very 25 diligent way of receiving representation but also</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 organise consultations publicly on any -- at any stage</p> <p>2 of the process.</p> <p>3 Q. Yes.</p> <p>4 A. It was a very, very different approach.</p> <p>5 Q. It was much more open, it was much more accessible, and</p> <p>6 if you needed information, you could ask Mr Smith and he</p> <p>7 would provide it to you; is that right?</p> <p>8 A. I think it was an approach based on transparency and to</p> <p>9 give people, not just me as News Corp, but everyone, the</p> <p>10 chance to argue, debate on any part of that process.</p> <p>11 Any remedy, any solutions, any issues raised by</p> <p>12 regulators or by us, could be put in the public domain.</p> <p>13 Q. Do you feel that Mr Smith gave you a running commentary</p> <p>14 on the bid?</p> <p>15 A. Overall?</p> <p>16 Q. Mm.</p> <p>17 A. No. I think Mr Smith gave me updates on timing, on</p> <p>18 process, on the atmospherics of the day. I mean, I have</p> <p>19 to say we were, as you pointed out at the outset, we</p> <p>20 were in contact a lot. There were a lot of things to</p> <p>21 get on with and to decide upon, and I guess he was both</p> <p>22 being helpful on the process but also, you know, for</p> <p>23 example, when there was the question of publishing</p> <p>24 a report or preparing a consultation, he was giving me</p> <p>25 the sort of support so that we could help the department</p> <p style="text-align: center;">Page 93</p>	<p>1 a while, and I was just making a personal private</p> <p>2 reference to -- to our kids. There's nothing relating</p> <p>3 here that helps my -- or has anything to do with my</p> <p>4 work.</p> <p>5 I understand your point about human interaction.</p> <p>6 Q. Yes. And then the next page, 12634, his reply:</p> <p>7 "Good to see you too. Hope you understand why we</p> <p>8 have to have the long process. Let's meet up when</p> <p>9 things are resolved."</p> <p>10 Did you understand why "we have to have the long</p> <p>11 process"?</p> <p>12 A. Sorry, I don't have the text in front of me, so I've</p> <p>13 just --</p> <p>14 Q. Is it in your schedule, there?</p> <p>15 A. Yes, I've just got it.</p> <p>16 Q. It's a quarter to midnight on 20 January.</p> <p>17 A. Yes.</p> <p>18 Q. "Hope you understand why we have to have the long</p> <p>19 process."</p> <p>20 Did you understand that?</p> <p>21 A. Yes. I think he referred to the need -- that was after</p> <p>22 the meeting -- the second meeting was the meeting where</p> <p>23 we presented the structural remedy, which was going to</p> <p>24 trigger entire process of consultation and debate back</p> <p>25 and forth, and I think that's what he was referring to.</p> <p style="text-align: center;">Page 95</p>
<p>1 as well.</p> <p>2 Q. Well, we're going to look at some of the emails. Were</p> <p>3 your lawyers aware of the sort of level of contact you</p> <p>4 were having with Mr Smith?</p> <p>5 A. Yes. As you know, I was always copying everyone on any</p> <p>6 representation I would have made and received.</p> <p>7 Q. We're now looking at the period 21 December 2010. First</p> <p>8 of all, the contact which you had with Mr Hunt, which</p> <p>9 I said earlier we were going to look at quite quickly.</p> <p>10 This is page 12633 in the MOD3 file. 20 January 2011,</p> <p>11 which was the evening after the second meeting you had</p> <p>12 with the Secretary of State's office. Actually, I don't</p> <p>13 think you were there, Mr Michel, but News Corp had --</p> <p>14 A. No, I was.</p> <p>15 Q. You were there?</p> <p>16 A. I was. That was one of the two minuted formal meetings.</p> <p>17 Q. It was a formal meeting. You say:</p> <p>18 "Great to see you today. We should get little [it's</p> <p>19 the name of a child so it's been redacted] together in</p> <p>20 the future to socialise! Nearly born the same day at</p> <p>21 the same place. Warm regards, Fred."</p> <p>22 This was a bit of a warm interaction after the</p> <p>23 formal meeting to touch base, is that it?</p> <p>24 A. First of all, I didn't expect this to become as public</p> <p>25 as it is now, and secondly, I hadn't seen him for quite</p> <p style="text-align: center;">Page 94</p>	<p>1 Q. You didn't reply immediately. At 12635, it was two</p> <p>2 minutes to seven in the morning, you say:</p> <p>3 "We do, and we'll do our very best to be</p> <p>4 constructive and helpful throughout. You were very</p> <p>5 impressive yesterday."</p> <p>6 That's a reference to his performance at the formal</p> <p>7 meeting, isn't it?</p> <p>8 A. Yes. I thought he had a very good grasp of the -- if</p> <p>9 I may just say this, that he had a very good grasp of</p> <p>10 the technicalities of the remedy, which I still consider</p> <p>11 that I have completely. There were a lot of issues</p> <p>12 being discussed at that meeting, and I thought he was</p> <p>13 technically very aware.</p> <p>14 Q. Yes. And then you say:</p> <p>15 "... and let's meet up when it's all done."</p> <p>16 A. Yes.</p> <p>17 Q. I suppose one way or another, you would say?</p> <p>18 A. Yeah.</p> <p>19 Q. "Warmest regards."</p> <p>20 The next one, 12636, 3 March. This is a significant</p> <p>21 date because, as we'll see later, it was the date the</p> <p>22 Secretary of State said he was accepting UILs following</p> <p>23 the OFT report. Are you with me?</p> <p>24 A. Yes.</p> <p>25 Q. You say:</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 "You were great at the Commons today. Hope all 2 well. Warm regards, Fred." 3 And he replies: 4 "Merci. Large drink tonight." 5 What was the purpose of these exchanges, Mr Michel? 6 A. Friendly. Not more than that. I don't drink myself, 7 but I thought it was a very tense day for him. As you 8 probably gathered from the evidence we provided, it was 9 a lot of work to get to that stage, and it was just the 10 fact that he had to go through quite a heavy debate in 11 the Commons. 12 Q. Just a few more. 12639, 13 March, you say: 13 "Very good on Marr." 14 That's, of course -- is that the Andrew Marr 15 breakfast show on Sundays, probably? 16 A. Yes. 17 Q. "As always" you say and then he says: 18 "Merci. Hopefully when consultation over we can 19 have a coffee like the old days!" 20 And then there's some later exchanges in July, when 21 I think you're supporting Nadal against Andy Murray, 22 rather treacherously, but let's gloss over that. 23 A. My wife is English and Spanish, so I -- 24 Q. Is this an example of, to use the vernacular, a form of 25 schmoozing, Mr Michel? <p style="text-align: center;">Page 97</p></p>	<p>1 Q. So by that are you referring to the sort of 2 representations which you were endeavouring to have with 3 him, indeed were successful in having with him over the 4 succeeding months, or were you referring to more formal 5 representations? 6 A. Yes, I think it -- I was suggesting -- this is between 7 the first formal meeting, which took place on the 4th -- 8 Q. The 6th. 9 A. The 6th, sorry, pardon me -- and the second on the 20th. 10 At the first formal meeting, the Secretary of State 11 asked us to come back with an appropriate solution, 12 otherwise he was minded to refer to the Competition 13 Commission, and I think internally we were keen to be 14 able to not just send the structural remedy but also 15 present it and discuss it with him and the officials. 16 Q. Right. Emails which are in dispute, okay. Can we start 17 off, please, at 01684. This is in the proprietor's 18 bundles, this is KRM 18. It's going to be your page 43. 19 A. Thank you. 20 Q. This one may not be the biggest point. It's New Year's 21 Eve 2010. 22 "Jeremy Hunt and his team have not received it yet." 23 This is the Ofcom report. 24 A. Yes. 25 Q. Which is favourable, isn't it, to my recollection? <p style="text-align: center;">Page 99</p></p>
<p>1 A. No, it's a friendly text. I think, as you've referred 2 to, I think it's one text every three months. It refers 3 to specific items. I think I spotted him on the TV 4 watching the game when I was watching Nadal, that's all. 5 Q. Hm. Well, that's the limit, I think, of your 6 interaction. 7 A. Yes. 8 Q. Because your interaction really over this period 9 substantively is with Mr Smith. In relation to KRM 18, 10 which are the emails, I think it's going to be most 11 helpful to focus on where you are in disagreement with 12 Mr Smith in terms of the substance. Do you follow me? 13 Because where you're in agreement, you won't necessarily 14 need to look at the email, for obvious reasons. 15 Before I start, there's one text that we need to 16 look at. Bear with me. 12651. 17 A. Yes. 18 Q. 13 January 2011, you to Mr Smith. You say this: 19 "It would be good if you could push the point with 20 the media that it's absolutely normal and legal for 21 Jeremy to take representations while he is considering 22 his decision." 23 A. Sorry, which day is it? I missed it, sorry. 24 Q. 13 January 2011, 15.32 in the afternoon. 25 A. Thank you. <p style="text-align: center;">Page 98</p></p>	<p>1 A. No, it's not. 2 Q. Oh, it's not? I've got the wrong one. 3 A. I wish it had been. 4 Q. "We'll let you know if they do today. We already know 5 privately. Jeremy will not look at it before next 6 Wednesday." 7 Presumably you say because you had a conversation 8 with Mr Smith along those lines, is that it? 9 A. Yes, I think I referred to the same thing on Christmas 10 Eve where I said to the team that he won't be back 11 before 5 January. 12 Q. Yes, I see. 13 A. And I wanted to make sure that information was not 14 communicated externally because it was for no one to 15 know. 16 Q. That may be the explanation. You're referring back to 17 the Christmas Eve conversation, because there's no 18 evidence of any call or text message relevant to 19 31 December, although Mr Smith would say in fact the 20 report was received that day in the post, but of course 21 you wouldn't have known that. It might have arrived 22 after 11.35 am. But I understand the issue now on that 23 one. As I said, it's not the biggest point. 24 Can I move on to 01687, page 46. We're Monday, 25 10 January. I'm not sure that there are any relevant <p style="text-align: center;">Page 100</p></p>

<p>1 text messages or mobile phone calls here, but what is 2 disputed, do you see the line "He saw Ed Richards 3 today"?</p> <p>4 A. Yes.</p> <p>5 Q. "He challenged Ed on the 'may be' rationale. Ed was 6 adamant that the threshold was very low."</p> <p>7 Is "he" there reference to Mr Hunt personally or 8 Mr Smith?</p> <p>9 A. It would be Mr Hunt.</p> <p>10 Q. Mr Smith says that the minutes of the meeting with 11 Mr Richards were put on the DCMS website and therefore 12 would be known about. But it might be said that they 13 are unlikely to have been put on the website that day. 14 Do you happen to know whether they were or were not?</p> <p>15 A. No, I'm sorry.</p> <p>16 Q. Are you clear in your mind that Mr Smith is 17 communicating to you sort of ahead of the game, as it 18 were, the conversation he had with Mr Richards before 19 that conversation was made public?</p> <p>20 A. Yes.</p> <p>21 Q. Did you take a note of the meeting before you wrote this 22 email?</p> <p>23 A. Of the conversation, you mean?</p> <p>24 Q. Yes.</p> <p>25 A. I think what I tended to do is just write the Page 101</p>	<p>1 A. He could probably say -- a plea was probably too strong 2 a word. Probably encouragement or encouraged me. 3 I remember that we discussed the report itself and the 4 fact that we were internally looking at finding some 5 inaccuracies on it and also we needed to come up with 6 a very strong and impactful remedy, as it's mentioned.</p> <p>7 Q. Anybody reading this would say to themselves: if this 8 was an accurate insight into Mr Smith's mindset, he was 9 on your side, okay? It's not possible to read this 10 email in a different way. But I come back to what you 11 told me earlier where you said to me at the start of 12 your evidence that you thought Mr Smith was neutral and 13 impartial. I think I'd like to know what is your 14 evidence about this? Is the truth emerging from what 15 might be inferred from this email, or do you adhere to 16 what you told us earlier? Do you see the point?</p> <p>17 A. I do see the point, and I would say that on this 18 particular part and subject of the Ofcom report you 19 could say that he was probably agreeing with me on the 20 fact that there were areas where we could find some -- 21 where we could justifiably raise some criticism.</p> <p>22 Q. Are you agreeing or disagreeing with me that the tenor 23 of this email, which after all you're refracting 24 Mr Smith's view or commenting on it, is indicative of 25 him supporting you at least in the important context of Page 103</p>
<p>1 conversation quickly on my computer or -- as we were 2 speaking. That's what I would tend to do. I'd check my 3 notes, and I didn't tend to take notes of those 4 conversations. I would, I think, just type them 5 straight away. Very often those memos are sent 6 internally very few minutes after I have the 7 conversation.</p> <p>8 Q. Yes, I've misled you, Mr Michel. There were three calls 9 which lasted in all 27.5 minutes that day between you 10 and Mr Smith.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So when I said earlier no communication, I was 13 wrong there. There was communication, and it follows 14 that you might say, well, what we see here are the 15 fruits of that communication; is that right?</p> <p>16 A. Yes. And I have it here, as you said, we had two calls, 17 the last one must have ended half an hour before I wrote 18 that email. So it's just the timing for me to write it 19 and send it around.</p> <p>20 Q. Okay. Thank you. The other point which is disputed, at 21 the end you see:</p> <p>22 "He made again a plea to try to find as many legal 23 errors as we can in the Ofcom report."</p> <p>24 That sounds rather tendentious, Mr Michel. Are you 25 clear that that's what Mr Smith said? Page 102</p>	<p>1 the Ofcom report?</p> <p>2 A. Yes. I think the context here, if I may, is that there 3 was a very strong debate then as to how we could, as 4 News Corp, put our points across on our dissatisfaction 5 on the report, and I think he was listening to that and 6 probably understanding why we wanted to do that.</p> <p>7 MR JAY: Okay. Sir, is that a convenient moment?</p> <p>8 LORD JUSTICE LEVESON: Yes, certainly. 2 o'clock. Thank 9 you. 10 (1.01 pm) 11 (The luncheon adjournment)</p> <p>12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 104</p>

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