

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: After the conclusion of Module 3 of 4 this Inquiry, we shall turn our attention to Module 4, 5 which is the future. Any application for core 6 participant status for Module 4 should be made in 7 writing by 4 pm on Friday, 15 June. I emphasise that, 8 unlike the previous applications, I do insist that these 9 are in writing. Furthermore, I do not anticipate that 10 it will be necessary to hold an oral hearing in relation 11 to the applications, and I am likely to rule upon them 12 in writing only. 13 Thank you. 14 MR JAY: Sir, this afternoon's witness is the Right 15 Honourable Kenneth Clarke, please. 16 MR KENNETH CLARKE (sworn) 17 Questions by MR JAY 18 MR JAY: Thank you, Mr Clarke. Your full name, please? 19 A. Kenneth Clarke. 20 Q. Thank you. You've provided us with a witness statement. 21 If we check the date on that, I think it's 30 April of 22 this year. 23 LORD JUSTICE LEVESON: Is it 34 pages in length? 24 MR JAY: It's 26 pages plus several annexes. 25 LORD JUSTICE LEVESON: Oh, I see.</p> <p style="text-align: center;">Page 1</p>	<p>1 shadow positions in the Shadow Cabinet. Is that in 2 a nutshell correct? 3 A. Yes. A much reshuffled career. I first entered a 4 government 40 years ago, but we will draw a veil over my 5 various junior activities. 6 Q. You've also had a limited association with Independent 7 Newspapers Limited, which you identify in paragraph 3 of 8 your statement? 9 A. As a non-executive director, first of the British 10 company and then of the international company, which is 11 based in Dublin, whilst we were in opposition, 12 between -- after we lost office in 1997 -- I've given 13 the dates in my evidence, but it was Independent News 14 and Media, dominant shareholders the O'Reilly family, 15 and I was one of the non-executive directors. 16 Q. Thank you. In terms of the areas of your 17 responsibilities, you cover that in paragraphs 4 and 5 18 of your statement, and further detail is furnished by 19 the two annexes. We're going to take those as read, 20 Mr Clarke. 21 Can I touch on the issue of conditional fee 22 agreements first of all, page 6, our page 01116. You 23 have followed the main recommendations of Lord Justice 24 Jackson's Review of Civil Litigation Costs. First of 25 all, please, is there a difference between defamation</p> <p style="text-align: center;">Page 3</p>
<p>1 MR JAY: I don't have a date on mine, I'm not sure that's 2 going to be that critical. 3 A. I'm afraid I can't claim that I remember the precise 4 date time, but I probably did it about five or six weeks 5 ago, something like that. 6 Q. Thank you. You're content to confirm the truth of this 7 statement? 8 A. Oh yes, I reread it and that is certainly my statement, 9 assuming you have the same copy as me, 26 pages with two 10 annexes. 11 LORD JUSTICE LEVESON: Yes. Mr Clarke, thank you very much 12 indeed for the statement and for the obvious work that 13 you, and I have no doubt others, have had to put into 14 it. 15 A. Yes. My officials and my advisers have actually 16 worked -- particularly, as you see, I have had checked 17 the detailed explanations for the legal position for 18 various things I am responsible for. If there are 19 errors, they are not solely my own, but I have 20 a confident belief that they're correct as they stand. 21 MR JAY: In terms of your career and current position, as we 22 all know you are Lord Chancellor and Secretary of State 23 for Justice. You have been since May 2010. In previous 24 administrations you occupied various positions in 25 Cabinet between 1985 and 1997, and thereafter various</p> <p style="text-align: center;">Page 2</p>	<p>1 and privacy cases in the context of CFA and the 2 generality of other cases? And then secondly, why have 3 the success fees been capped as a matter of policy in 4 the way in which there has been? 5 A. The report, as you say, came from Sir Rupert Jackson, 6 Lord Justice Jackson, and was delivered to the previous 7 government and challenged the way in which no win no fee 8 cases were being conducted on the basis they were far 9 too costly for all the parties, and in particular for 10 defendants. 11 The previous government had proposed to act on 12 Sir Rupert's recommendations so far as defamation and 13 privacy only was concerned. They'd announced that just 14 before the election, in what seemed to me a blatant way 15 to win favour with the media and were only interested in 16 reducing the costs for cases which involved the media. 17 What I did when I came in, I was very attracted by 18 Sir Rupert's proposals. I think justice in this country 19 has got too expensive for all parties and that no win no 20 fee, which had been quite a good idea when it started, 21 and still is, had been made extraordinarily profitable 22 by the changes made in 1991, 1992. So I proposed to act 23 on it, but I applied it to all actions, and with the 24 result that it of course will have an effect in reducing 25 costs for defendants of all kinds who are unsuccessful,</p> <p style="text-align: center;">Page 4</p>

<p>1 and probably will have an effect in reducing the costs 2 for plaintiffs as well, because there will be some 3 constraint on the running-up of costs which did not 4 exist under the previous thing. 5 So I went ahead with the recommendations in full, 6 I didn't just concentrate on defamation and privacy, as 7 my predecessor had proposed. 8 Q. To be fair to your predecessor, defamation and privacy 9 had been accorded a special status by the European Court 10 of Human Rights, in a case I think called MGN v United 11 Kingdom where a breach of Article 10 was established in 12 view of the problems with the CFA regime which you 13 described. 14 A. A punitive level of success fees, yes. But it didn't 15 seem to me that the argument applied solely to 16 defamation and privacy, and the idea that punitive costs 17 were being imposed to an excessive level on defendants 18 applied to all other defendants as well. 19 Q. It may be that the policy decision is already writ in 20 stone, Mr Clarke, but might it be said that the balance 21 of power has shifted too far the other way, and when you 22 say in paragraph 9, "Nothing in these reforms will 23 prevent CFAs continuing to be available for strong 24 cases", by that you mean very strong cases, because it's 25 only in such cases that a solicitor would take the risk,</p> <p style="text-align: center;">Page 5</p>	<p>1 of the general regulatory framework at the conclusion, 2 rather than to do it piecemeal. 3 MR JAY: Mr Clarke, the next topic is reporting 4 restrictions, paragraph 10 of your statement. I think 5 the general point here, aside from the merits of the 6 individual policies -- and we can include broadcasting 7 in courts under that rubric -- is whether media pressure 8 or influence has borne on the policy decision or whether 9 the policy decision has happened to be coincident with 10 a particular view within the media. Can you assist us 11 with that? 12 A. I think you would have to move to particular, to give 13 a precise answer. This is obviously an area in which 14 the media has a perfectly legitimate interest, so if 15 anybody starts proposing that activities are closed and 16 withdrawn from scrutiny, I would expect the media to 17 react and to resist that, but that's no different from 18 any other lobby. The manufacturers of Cornish pasties 19 are in exactly the same position as the owners of 20 newspapers; they will react. 21 If you're suggesting withdrawing -- as you probably 22 know if you read this morning's newspaper, if you had 23 the time, I'm involved in just such an exchange at the 24 moment about how far you retreat from otherwise what is 25 a highly desirable principle of open justice in</p> <p style="text-align: center;">Page 7</p>
<p>1 given that his or her success fee is capped at 2 25 per cent? 3 A. I don't think it's shifted the balance too far the other 4 way, myself. It does, of course, alter the assessment 5 of risks from the point of view of the solicitor 6 involved. He has to bear in mind that when he does -- 7 he or she does win a case, it's not likely to be quite 8 so profitable as it was under the previous regime, and 9 that will affect the assessment of the cases, but 10 I think that is a perfectly reasonable thing to do. 11 The no win no fee was introduced, as I recall, in 12 the mid-1990s, and it worked perfectly satisfactorily 13 until we got -- the reforms were made in the early part 14 of the 2000s, and this suddenly much higher tariff for 15 success fees and insurance reimbursements was 16 introduced, and that has made no win no fee litigation 17 an extremely profitable area of activity for those that 18 specialise in it. It will still be profitable, still be 19 reasonable, but a proper assessment of the risks 20 involved will have to be made. 21 LORD JUSTICE LEVESON: There is a general topic here on 22 costs, which I would like to ask you about, Lord 23 Chancellor, which really touches upon Mr Jay's point 24 about moving the boot from one foot onto the other and 25 then back again. It may be better to do in the context</p> <p style="text-align: center;">Page 6</p>	<p>1 a particular case about intelligence evidence affecting 2 national security. It doesn't surprise me that the 3 media are on the whole extremely cautious, shall we say, 4 about that being accepted, indeed I'd be rather shocked 5 if they weren't. 6 So most of three these things are subject to quite 7 a lot of lobbying from media interests. Politicians are 8 conscious of that lobbying. I don't think it's an area 9 in which you can really be very critical of the media 10 for having a legitimate interest in it. 11 Q. No, I'm sure that's right, but the issue is whether the 12 lobbying might have caused you to take a position other 13 than that which you would have been minded to take? 14 A. Some of these issues but not the ones I -- sort of 15 mention here, that I recall. There certainly are cases 16 in a slightly wider area where policy decisions are 17 taken primarily because people -- the politicians and 18 ministers responsible are fearful of the media reaction. 19 Most of those are not things that directly concern the 20 media, it's just fear of the media reporting, fear of 21 the media reaction that causes people to sometimes be 22 overinfluenced by media campaigning. 23 But the ones cited in paragraph 10 are not areas 24 where I can recall the media being excessively 25 influential.</p> <p style="text-align: center;">Page 8</p>

<p>1 We've had an ongoing discussion about family courts 2 and whether they should be opened up to reporting, which 3 has gone a certain way, and I think most people now 4 accept that's fine, but only in terms of anonymised 5 reports, and we've paused slightly to review it. There 6 remains a general feeling that family courts can't be 7 opened up in the normal way, where you can name all the 8 witnesses, identify the children, this kind of thing, 9 although there's a section of the media that I'm sure 10 wants to open up the family courts so they can get 11 stories about the children of celebrities, but they're 12 never going to get that. The public pressure, the 13 policy-making is going to be very, very cautious. 14 But to give the public a little more understanding 15 of what kind of things are being heard and what kind of 16 things are being decided in the family court is very 17 cautiously being undertaken and I'm sure the media will 18 continue to press us to review it and perhaps take it 19 further eventually. 20 Q. The areas in which the weight of opinion is expressed 21 through the press may have an influence on government 22 policy. I'll come to those at the appropriate stage in 23 your evidence where you actually address those areas. 24 A. Sure. 25 Q. I move on to the functions --</p> <p style="text-align: center;">Page 9</p>	<p>1 kind of begs the question: disproportionately, you say? 2 The history of politics is a love-hate relationship 3 between journalists and politicians, and that's how it 4 should be. Politicians constantly need to try and 5 persuade the public, including persuading journalists 6 that it helps them. The journalists are there to 7 challenge and to question and to bring down to earth the 8 politicians. So there's always been that tension. 9 In recent years it's got noisier and noisier, more 10 and more professionalised on both sides, so modern 11 politics is mass media dominated. And then you get the 12 area where policymaking is almost overwhelmingly 13 influenced by PR people on each side trying to decide 14 what the government can do that either avoids the 15 retribution of the press or wins the favour of the 16 press, and that has been a growing thing in my lifetime 17 and it's -- the power of the press is now far greater 18 than the power of Parliament. 19 When I entered Parliament, the power of Parliament 20 was far greater than that of the press. 21 LORD JUSTICE LEVESON: You say that it's far noisier and 22 more professional. How about more personal? 23 A. Yes, totally. My memory of politics -- I don't go back 24 quite to the Ice Age -- goes back to when I was a very 25 active student politician and I knew, only as</p> <p style="text-align: center;">Page 11</p>
<p>1 A. Sorry, but I draw a distinction between where the media 2 have an influence on media-based policy -- we're perhaps 3 going to go on to defamation. If you're in the media 4 industry, the law of defamation is something in which 5 you have a very, very considerable legitimate interest. 6 That's going to affect the way you do your job. So that 7 kind of lobbying I regard as legitimate lobbying by 8 a group that has direct interest and perhaps slightly 9 better knowledge than most people. 10 What you're talking about, the broad issue is the 11 influence of the press on big political issues and what 12 the editors and proprietors of the press are mainly 13 interested in is exerting influence on big non-media 14 type political issues, where they can certainly drive 15 a weak government like a flock of sheep before them 16 sometimes in some areas. 17 Q. Isn't there a link between those two areas? I'm just 18 dealing with it as a reasonably high level of generality 19 inasmuch as the media voice may be said to be 20 disproportionately loud in both areas, even in areas 21 where, on your analysis, they have a legitimate lobbying 22 concern because of the very nature of their business and 23 the amplification that they're able to provide to that 24 voice through the organs they print. 25 A. It sometimes seems that way to me, but your question</p> <p style="text-align: center;">Page 10</p>	<p>1 a respectful student inviting them to meetings, 2 Harold Macmillan and most of his ministers, and I became 3 a Parliamentary candidate when the political leader of 4 my party was Harold Macmillan. 5 Everybody in politics, even a minor Parliamentary 6 candidate, knew that the then Prime Minister's wife had 7 been having a torrid affair with a backbencher for at 8 least the previous 30 years. Not a word of this ever 9 appeared in public print. Everybody in the press lobby 10 knew it, everybody in politics knew it. It's been 11 written up, if you're interested, in "The History of 12 Modern England", it appears in all the books now, only 13 posthumously when they'd died, but the convention of the 14 time was that not a word of this sort of thing could 15 possibly be produced in a newspaper, however popular or 16 broad street, and it remained known to the political 17 bubble but carried to the grave by all the participants. 18 Nowadays, I don't know how long the Prime Minister 19 would stay in office once the first journalist produced 20 the story, but it wouldn't be more than two or three 21 days, I would guess, before he would be removed. 22 Indeed, even on the limited knowledge I had as a student 23 at the time, about a third of the then Cabinet probably 24 would have been removed for one reason or another. 25 LORD JUSTICE LEVESON: I don't want to go into too much</p> <p style="text-align: center;">Page 12</p>

<p>1 detail about this.</p> <p>2 A. But those personalities were not regarded as</p> <p>3 a legitimate thing for the public -- not necessary for</p> <p>4 the public to know, they weren't regarded as the</p> <p>5 business of newspapers and broadcasters to comment upon,</p> <p>6 and I will leave you to draw the contrast with the</p> <p>7 present day, which is quite extreme. We're now in the</p> <p>8 celebrity culture. The celebrity culture has as one of</p> <p>9 its branches the government and the politics of the</p> <p>10 country.</p> <p>11 LORD JUSTICE LEVESON: I think probably people would accept</p> <p>12 that the extreme to which you have just referred is one</p> <p>13 end of the pendulum. The question is whether the</p> <p>14 present position of the pendulum has gone too far and</p> <p>15 made it therefore much more difficult, perhaps, to</p> <p>16 attract capable, able people into politics or whatever.</p> <p>17 A. Yes, I think a lot of people are driven away from</p> <p>18 politics by the fact they don't want to accept the level</p> <p>19 of exposure. I suspect that's true of professional</p> <p>20 sport, quite a lot of showbusiness. The same thing</p> <p>21 applies there.</p> <p>22 But it's all a matter of judgment. What is too</p> <p>23 much? I'm a child of the 60s, almost. I'm not -- the</p> <p>24 age of deference, I think I'm glad to say, is very much</p> <p>25 behind us. I think a certain amount of irreverence and</p> <p style="text-align: center;">Page 13</p>	<p>1 every case in the end requires, I don't know,</p> <p>2 a collective judgment, really, as to where you draw</p> <p>3 lines.</p> <p>4 But some lines should be drawn and at times we've</p> <p>5 got very near to no lines being drawn at all, I think.</p> <p>6 LORD JUSTICE LEVESON: And that's the issue. Ultimately,</p> <p>7 the first person to draw the line will be presumably the</p> <p>8 editor of a newspaper. Is he going to print this or is</p> <p>9 he not?</p> <p>10 A. And they still do, I think, but some editors draw</p> <p>11 different lines from others.</p> <p>12 LORD JUSTICE LEVESON: And then the question arises -- and</p> <p>13 we're getting a long way ahead of ourselves, but again</p> <p>14 just to foreshadow, one of the questions is whether</p> <p>15 there should be anybody else who is prepared, whether</p> <p>16 you call it a regulator or an ombudsman or a judge, or</p> <p>17 whatever, on behalf of society to draw that line in</p> <p>18 a slightly different place.</p> <p>19 A. That is the key question. I think the answer is</p> <p>20 obviously yes. I think we decided yes quite a long time</p> <p>21 ago, when the Press Complaints Commission was first</p> <p>22 drawn up, and that hasn't worked, and that is -- I look</p> <p>23 forward to your recommendations because that's one of</p> <p>24 the key things we're looking at here.</p> <p>25 Also, the other question: does the law have a role</p> <p style="text-align: center;">Page 15</p>
<p>1 a certain amount of exposure is all right so long as</p> <p>2 it's combined with tolerance and good judgment.</p> <p>3 All I can say is that I think politics now is a mass</p> <p>4 media dominated activity. So is government. I'm not</p> <p>5 sure we've totally learned how to handle that. I don't</p> <p>6 think you can reverse it. I think that's the way we're</p> <p>7 going to go. But we do have to address exactly how you</p> <p>8 keep going a proper system of decision-making and the</p> <p>9 good governance of the country against these sorts of</p> <p>10 extraordinary pressures, which are quite different to</p> <p>11 those, say, up to 20, 25 years ago.</p> <p>12 LORD JUSTICE LEVESON: I understand, but therefore the</p> <p>13 important words in your last answer were: tolerance and</p> <p>14 good judgment.</p> <p>15 A. Surely. Yes, I believe in those in all things,</p> <p>16 obviously it's a platitude to say so, but yes. The</p> <p>17 trouble with all these things is they are matters of</p> <p>18 personal judgment where somehow as a society we have to</p> <p>19 take a collective view.</p> <p>20 I mean the big issue in this age is what is the</p> <p>21 public interest? What is the need to know? What is</p> <p>22 there no right to conceal? How much confidentiality is</p> <p>23 required for decision-making? What becomes mere</p> <p>24 secrecy? When does the individual private life of an</p> <p>25 individual become a matter of public concern? Each and</p> <p style="text-align: center;">Page 14</p>	<p>1 in this, apart from just the regulator? Where's the</p> <p>2 legal line? At what point does an attack on reputation,</p> <p>3 at what point does an invasion of privacy actually</p> <p>4 justify legal intervention?</p> <p>5 Now, I think you're charged with both those enormous</p> <p>6 questions.</p> <p>7 LORD JUSTICE LEVESON: Yes.</p> <p>8 A. And whatever you come up with will be wildly</p> <p>9 controversial, but my answer to the question is: yes, we</p> <p>10 do need a regulator. Yes, there must be a legal line</p> <p>11 somewhere. And again I'm back into platitudes again.</p> <p>12 It has to respect the undoubted need to have a free</p> <p>13 press on the one hand, and the undoubted need not to</p> <p>14 allow people's lives to be destroyed through malice on</p> <p>15 the other. We obviously have to address both all over</p> <p>16 again.</p> <p>17 LORD JUSTICE LEVESON: Yes. The reason that we will come</p> <p>18 back to discuss it again is as I said to a number of</p> <p>19 people, I'm in charge of making recommendations in this</p> <p>20 area, but I'm very conscious that, as a lawyer, I've</p> <p>21 spent my life looking backwards to decide what has</p> <p>22 happened rather than looking forwards as to what we</p> <p>23 should do in the future, therefore any input, even</p> <p>24 though ultimately you will be part of the</p> <p>25 decision-making body that decides how far whatever I say</p> <p style="text-align: center;">Page 16</p>

<p>1 might be taken, any input that you will be able to 2 provide, which we'll come on to, will be very welcome. 3 A. Sure. I think, unlike the judgments you give, which 4 close a matter, having to make recommendations will 5 undoubtedly not lead to universal acceptance. 6 One thing I could give you but it would take me far 7 outside here is what the reactions of each side of the 8 argument will be to whatever you decide. The 9 conclusions will be criticised from one side and from 10 the other wherever you put the line, but you have the 11 advantage of being in a position to put the line forward 12 with some authority and people will have a job moving it 13 once you've laid it down. 14 LORD JUSTICE LEVESON: Lord Chancellor, that whatever 15 I suggest will be criticised is a feature of life of 16 which I've been aware since I was asked by the Lord 17 Chief Justice to undertake this responsibility. 18 A. An extraordinary number of members of the legal 19 profession and the business world don't seem to be aware 20 of that until it hits them, but I'm sure in your case, 21 Lord Justice Leveson, you are. 22 MR JAY: May I move off that high ground, Mr Clarke, to the 23 Information Commissioner's office, which is paragraph 19 24 of your statement. You deal with this quite succinctly. 25 Under European law it is autonomous of government, but</p> <p style="text-align: center;">Page 17</p>	<p>1 and functions. Notably, the EU proposals do not require 2 Member States to implement a notification system and 3 this is a key mechanism by which the Information 4 Commissioner's data protection work is currently 5 funded." 6 Could you explain that for us, please? 7 A. Well, all the people who hold data pay a fee to the 8 office, and the European proposals may change that. The 9 whole thing is slightly up in the air at the moment 10 because we're having a post legislative scrutiny carried 11 out, it was as a review, which is now looking at how the 12 Act has been enforced since 2005. 13 We're having this -- it's quite early stages of this 14 discussion inside the Council of Ministers of the 15 European Union about data protection law across the 16 union. We've had a data protection law for quite a long 17 time across the Union but it's by everybody's agreement 18 out of date now and needs to be brought up to date, and 19 the current draft, for the reason explained in that 20 paragraph, doesn't contemplate the way in which we're 21 mainly at the moment financing the Commissioner's 22 office, but that doesn't mean we'll cease to finance it, 23 it just means the whole thing is slightly, as said, up 24 in the air at the moment. 25 Obviously at the moment, if the money raised in that</p> <p style="text-align: center;">Page 19</p>
<p>1 government funds it. That's in a nutshell the position. 2 A. Yes, my department does pay in rations, but we also are 3 the responsible department for policy in this area and 4 for the Commissioner's office. 5 Q. In terms of resourcing, how is a judgment made as to the 6 appropriate level of funding in a given year in view of 7 the size of the ICO and the panoply of functions which 8 it needs to discharge? 9 A. It's one of several features of the ICO which we're 10 having to address at the moment because the underlying 11 funding structure will need to be readdressed and it 12 will need to be readdressed certainly in the light of 13 whatever comes out of the current European proposals for 14 the law in this area, but of course funding in the end 15 is decided by the department on the basis of 16 a negotiated assessment of the necessary budget. But we 17 pay in rations, there's no policy position behind the 18 funding of it. 19 Q. You pick up on recent changes in European law in 20 paragraphs 51 and following of your statement, our 21 page 01132, on the internal numbering page 19. You 22 explain in paragraph 53 that: 23 "The European Commissioner published proposals 24 earlier this year on data protection which will involve 25 consideration of the Information Commissioner's powers</p> <p style="text-align: center;">Page 18</p>	<p>1 way can't meet the workload, we raise the level of the 2 payments, but it may be we'll have to go to a different 3 method of financing. It's far too early to foresee the 4 outcome of what will be quite a complicated negotiation 5 on new European data protection arrangements. We don't 6 even know for sure yet whether it will be a regulation 7 with a general European pattern or, as we would probably 8 prefer, a directive within which each member state will 9 respond as it best wishes. 10 Q. Is the current position, so we correctly understand it, 11 in relation to the data protection as opposed to the FOI 12 function of the ICO office, that the data protection 13 part is completely funded by the fee paid by the data 14 controllers? 15 A. Surely. I think that's right. 16 Q. So if the position were that the ICO's role in any new 17 regulatory framework for the press were to be expanded 18 or enhanced, pursuant possibly to any recommendations 19 this Inquiry would make, it's self-evident that 20 additional funding streams would have to be made 21 available by you. Is that right? 22 A. If that were to happen, yes. If that were to happen, 23 you could be expanding the remit quite significantly, 24 and as it's at the moment set up, I don't think the ICO 25 could take that on, myself. Couldn't take it on full</p> <p style="text-align: center;">Page 20</p>

<p>1 stop, but certainly the financial problems would have to 2 be addressed. They wouldn't be enormous in the great 3 order of things in public expenditure, but yes. 4 Q. Aside from the fact that currently there's not 5 sufficient money available with £20 million, are there 6 any structural or other aspects of the ICO's office 7 which would suggest to you that any expanded role for 8 them would be inappropriate or impracticable? 9 A. Well, I prefer to think that the workload it's carrying 10 at the moment, which is a kind of slightly complaints 11 based service which it is doing, is satisfying. But it 12 doesn't have great scope at the moment to go further, 13 but could, I suppose, if you financed it. 14 The other thing is, as I think the Commissioner has 15 taken you through in his evidence, the legislative 16 powers he has at the moment greatly confine his ability 17 to take on very much responsibility towards the press. 18 The legislation is torturously drafted to try to 19 minimise the prospect of his taking any very great role 20 vis-a-vis the press. 21 Q. There's a big debate, if I can put it as neutrally as 22 that, as to the reach of section 32 of the Data 23 Protection Act and really the strength of the press 24 exemption. I don't think it's necessary to say more 25 about that.</p> <p style="text-align: center;">Page 21</p>	<p>1 MR JAY: Although the criminal offence under Section 55 is 2 not subject to the Section 32 exemption, and the matters 3 you've been referring generally to may have arisen for 4 other reasons, Mr Clarke, but on the topic of 5 Section 55, it's not your current intention to activate 6 either Section 77 or 78 of the Criminal Justice and 7 Immigration Act of 2008 -- 8 A. Well, now I'm in the happy position of waiting for 9 Lord Justice Leveson's comments, if he's going to make 10 any on it. 11 That did come to me. Came to me quite early on. 12 Everybody seemed quite in a hurry to get to me about 13 Section 55 and they questioned as to whether I should 14 accede to the request to introduce custodial penalties, 15 prison sentences, for Section 55, which was linked in 16 everybody's mind with the enhanced public interest 17 defence which had been offered to the press. A few 18 years before it seemed to me they'd been given as 19 a trade off, one against the other, and then never 20 implemented. 21 So it fell to me, and I certainly wasn't going to be 22 rushed into it, but it wasn't just that. It was quite 23 early on. I was not minded to create any more 24 imprisonable offences because I was rather alarmed about 25 the size of the prison population and we had gone</p> <p style="text-align: center;">Page 23</p>
<p>1 A. I was not involved in the drafting, the legislating. 2 I took no parts in the debates at the time. It does 3 look to me as though it was torturously drafted to make 4 sure the press would not be excessively troubled by the 5 creation of the new office. 6 LORD JUSTICE LEVESON: One of the issues I suppose we're 7 going to have to think about is whether they ought to be 8 a bit more troubled. 9 A. Well, if not by the Information Commissioner, by whom, 10 yes. But I don't know. I really am an observer reading 11 the evidence that's been given to this Inquiry and 12 otherwise just a general member of the public, because 13 I wasn't about at the time. But they produced startling 14 reports about things which I think is out of a sense of 15 exasperation, because they couldn't actually do anything 16 about them, but then nobody else did anything about 17 them. That does seem to me the problem, but it's 18 entirely for you to judge, not me, whether the 19 Information Commissioners involved adequately explained 20 what their problems were in not being able to do more 21 about it themselves, and I do think whoever drafted the 22 legislation was instructed to put in just about every 23 possible constraint once you started getting anywhere 24 near giving him much control over the activities of the 25 press.</p> <p style="text-align: center;">Page 22</p>	<p>1 through several years when new prison sentences and 2 criminal offences had been created as a fairly brisk 3 rate, so I was resistant to that. 4 I was not attracted by the enhanced public interest 5 defence, I'm not very keen on public interest defences 6 at all, and I think there is a public interest defence 7 in the sense that you don't get prosecuted if the CPS 8 decide there isn't a public interest in prosecuting you. 9 So I left it all alone because then I found there was 10 a triennial review of the arrangements altogether. 11 There was this European negotiation coming under way and 12 hence you're reading I'm sure in my formal statement in 13 a letter, I can't remember to whom, that the government 14 had no present intention of addressing these issues. 15 The Leveson Inquiry gets set up and my present 16 position is I shall wait to see what the Leveson Inquiry 17 says on the subject. 18 LORD JUSTICE LEVESON: The issue, so that it's quite clear 19 in relation to the possibility of a custodial sentence, 20 is not, I think, from the perspective of the Information 21 Commissioner that he wants to lock journalists up -- 22 A. No, it's a deterrent, yes. 23 LORD JUSTICE LEVESON: It's rather that at the moment, with 24 the only penalty being financial and the obligation on 25 all courts to have regard to the means of the offender,</p> <p style="text-align: center;">Page 24</p>

<p>1 the result is that the potential penalties available to 2 court, applying general sentencing principles, might be 3 thought to be derisory and well worth the risk. That's 4 the point. 5 A. I understand that is the argument. Of course, there are 6 constraints on the size of fines that can be imposed, 7 which actually for quite different reasons we're about 8 to lift, so a lot of the present restrictions on fines 9 to be imposed are being lifted. 10 LORD JUSTICE LEVESON: I don't think the constraints have 11 been by reference to the maximum. It's by reference 12 to -- 13 A. The means of the defendant. 14 LORD JUSTICE LEVESON: -- the means of the defendant. 15 A. The means of the defendant always has to be taken 16 account of in financial penalties and that is obviously 17 a constraint in what they can do, but for some of these 18 firms of private investigators and some of these media 19 organisations that wouldn't be too great a constraint, 20 I think. I think the Information Commissioner is really 21 complaining that these cases are not being taken 22 seriously enough when they appear before the courts, but 23 in response to that it could be said that hardly any 24 really serious case has ever been taken to the court in 25 the first place.</p> <p style="text-align: center;">Page 25</p>	<p>1 about it? 2 A. Well, it's no good mentioning my pet theories because 3 I don't know for sure, but what this Inquiry is looking 4 into, how far was it a desire, for one reason or 5 another, not to upset the people who were happily 6 indulging in all this? I won't go further. 7 It's not totally new, all this. When I was first 8 appointed Chancellor of the Exchequer, I had to move my 9 bank account because my bank complained to me that 10 journalists were trying to bribe the staff of the 11 village branch where I had my bank account. It would 12 have been regarded as perfectly customary in those days, 13 I think particularly as the Chancellor of the Exchequer 14 who had been appointed had views which weren't shared by 15 some the editors of the more vigorous newspapers. So 16 that and various other things happened. 17 And in business everybody was perfectly well aware 18 that if you wanted to engage in these sort of practices, 19 it was terrible easy to get details of the private 20 information of your competitors or rivals, and 21 journalists joined in the same thing. 22 The scale of it appears to become startling. 23 Motorman sort of made people aware this had now grown to 24 a very profitable and large industry, and even following 25 through the newspapers the evidence given to this</p> <p style="text-align: center;">Page 27</p>
<p>1 LORD JUSTICE LEVESON: There have been some. 2 A. So they do tend to have what appear to be fairly trivial 3 breaches presented to them at magistrate's benches and 4 the like. 5 LORD JUSTICE LEVESON: I'm not so sure that people would say 6 that Motorman and the prosecutions arising out of that 7 were not terribly serious but I understand the point and 8 judges pass sentences that they think are appropriate 9 and that could easily come back to me in a different 10 guise. 11 A. There weren't many prosecutions following Motorman. 12 LORD JUSTICE LEVESON: No. 13 A. That was the startling thing, but I don't think you can 14 put that down to the Information Commissioner. The 15 Motorman reports were pretty startling, and rather going 16 back to what I said before, what is known in the bubble 17 and what's known outside, I think every knew that 18 private and confidential information was fairly readily 19 available in the outside world as long as you were 20 prepared to pay for it, and the Commissioner produced 21 these two reports and not much was done about it, but it 22 goes beyond, I think, just the penalties and the powers 23 of the Information Commissioner. 24 MR JAY: You say not much was done about it. What other 25 reasons do you think exist for why not much was done</p> <p style="text-align: center;">Page 26</p>	<p>1 Inquiry, the scale has certainly shocked me, when 2 I would have thought I was fairly worldly wise on the 3 subject in previous years, but I had no idea it was 4 going on on this monumental scale. 5 Going back to the question of fines, some of the 6 people responsible have made very considerable amounts 7 of money and could certainly pay a very considerable 8 fine. 9 Q. Thank you. May I move forward now in your statement, 10 we're off the ICO's office to more general matters. 11 Section 3 of your statement I think we've covered. You 12 deal there with the role of your press office, which we 13 understand. 14 In paragraph 24, page 01122, page 9 on the internal 15 numbering, you explain that you engage in various ways 16 with the media where they have an interest or are 17 affected by the department's policies. Do you ever 18 brief the media in advance as to likely direction of 19 policy? 20 A. Yes. There are all kinds of -- as a politician, you 21 increasingly develop strong links with quite a lot of 22 the media. You have to. And anyway, you work together, 23 so you're bound to. And as a pretty obscure 24 backbencher, you soon get to know members of the lobby 25 in the House of Commons.</p> <p style="text-align: center;">Page 28</p>

<p>1 Now dealing with general politics, things where they 2 have a particular interest like defamation, I think you 3 should engage with them like any other legitimate 4 interest that wants to give you its views. 5 But in general politics, yes, most of the time the 6 reason you're doing about other things is to try to 7 persuade, try to argue a point, try to explain what 8 you're doing, and everybody knows in the lobby that 9 there is a difference between on-the-record and 10 off-the-record conversations, and I wouldn't deny 11 off-the-record conversations sometimes involve giving 12 a much stronger steer about where you think you're 13 likely to go than you would on the record. 14 And the last 15 years, since the whole PR got more 15 professionalised after 1997, it's become positively part 16 of the system that once the government has decided what 17 it's going to do, it starts pre-briefing it all out. To 18 my slightly old fogey horror, this happens to budgets, 19 let alone other pieces of legislation, and that has 20 steadily grown over the years. 21 Now, I am a 20th century politician as much as 22 a 21st century politician so I haven't quite got into 23 all that, but certainly occasionally giving an 24 off-the-record briefing to somebody who you hope will be 25 supportive, or you're trying to persuade him or her to</p> <p style="text-align: center;">Page 29</p>	<p>1 case -- the new Parliament, whoever won office, 2 actually, needed to have a defamation bill. That there 3 was now enough doubt about the law. I mentioned in my 4 evidence that this new problem had sprung up about 5 scientific publications and various interest groups 6 trying to stifle what they regarded as critical academic 7 comment and so on. There was a lot of fuss about libel 8 tourism, with people coming into this country to bring 9 defamation actions about publications in foreign 10 languages which were not widely available here, so that 11 we're going to reform it on that. 12 I then set out what I think most people still accept 13 are the two things that have to be balanced to get 14 legitimate freedom of speech on the one hand and 15 protection of responsible journalism, but then also the 16 protection of reputation, which can sometimes be of 17 a destructive quality if a totally untrue defamatory 18 step is taken. 19 But then the actual detail, you know, the drafting 20 of it and all the rest of it, involved consulting with 21 a lot of people. The media had a very legitimate 22 interest in all that, and so both I and my officials and 23 everybody else involved the media in just the same way 24 I would have expected to involve any other interest 25 group outside if you were legislating an area which was</p> <p style="text-align: center;">Page 31</p>
<p>1 stop being critical, give them some advance preparation 2 of what you're proposing to do, that has always gone on 3 in politics, and always will. Except on the question of 4 the budget. When I was chancellor, we had an absolutely 5 rigid rule about budget secrecy. We would have had 6 criminal police investigations if it ever got breached. 7 Of course, all the leaks in the budget are of great 8 financial value to someone who knows what he's doing in 9 the City. 10 Q. Yes. You were asked to -- this is question 5 now, 11 Mr Clarke, paragraph 32 -- to consider the manner in 12 which you have engaged with media interests in relation 13 to a number of policy matters. I think we can take 14 these reasonably economically because we've already 15 touched on them. 16 The draft defamation bill -- page 13 or 01126 -- you 17 inform us that there was an informal consultation with 18 media representatives in the summer of 2010, then there 19 were informal discussions with other parties, but the 20 basic point you make, paragraph 37, that you had arrived 21 at a fairly settled view on the matter before you 22 returned to office in May 2010. So are you suggesting 23 there that what you may have been told by media 24 lobbyists in fact had no material impact on the result? 25 A. No, no, I'm not saying that. I arrived believing the</p> <p style="text-align: center;">Page 30</p>	<p>1 a central feature of their way of making a living and 2 their life. 3 LORD JUSTICE LEVESON: Was the consultation sufficiently 4 broad as to include those who might represent potential 5 claimants? 6 A. Yes, it was. I mean, particularly -- I mean, there are 7 lawyers who -- most defamation lawyers tend to 8 specialise on one side or the other so obviously there 9 are people who were normally plaintiffs' lawyers who 10 could consult, just as defendants and actually there had 11 already been an attempt to reform the law put forward in 12 the private bill by Lord Lester, in which half these 13 things had been canvassed already. Although we didn't 14 follow Lord Lester's bill in all respects, Lord Lester's 15 bill was a very good starting point, so when we started 16 consulting all these interests, they mainly were 17 referring to Lord Lester's first stab at modernising the 18 law. 19 So it was a perfectly ordinary consultation, and the 20 media representations I got were not outside the kind of 21 representations I'd have expected for any other interest 22 group. 23 But I mean nefarious things, like promising support, 24 withholding support, personal support or attack, I have 25 to say to be absolutely fair did not come into it. My</p> <p style="text-align: center;">Page 32</p>

<p>1 discussions with people from media interests were 2 perfectly normal discussions about what a defamation law 3 should contain.</p> <p>4 Q. You say the lobbying was based solely on the extent of 5 the argument really?</p> <p>6 A. Sure.</p> <p>7 Q. There weren't any ad hominem attacks on --</p> <p>8 A. There were no ad hominem attacks because, you know, it 9 was perfectly reasonable -- it came -- I'm tempting 10 fate, we're about to introduce the bill. We came to 11 almost -- you never get to a consensus in the 12 conclusion, so I shall be commending the actual bill as 13 a reasonably well accepted solution. I may find it all 14 gets reopened again, as is the way of things, but no, it 15 was a perfectly ordinary consultation.</p> <p>16 Q. It is also legislation, but the same pattern, I think, 17 comes out of your evidence in relation to CFA reform, 18 paragraph 39 and following, where it's lobbying of 19 a similar nature, but again based on the merits of the 20 case and not any extraneous considerations. Is that 21 a fair summary?</p> <p>22 A. That is a fair summary, yes.</p> <p>23 Q. We covered the attempts made or the consideration given 24 to activate section 77 and/or 78 of the 2008 Act, that's 25 paragraph 44, but can I ask you about the Bribery Act,</p> <p style="text-align: center;">Page 33</p>	<p>1 expense, then I do accept the argument of journalists 2 that they don't all stay within the law when exploring 3 those cases.</p> <p>4 I remember saying as much to the Society of Editors 5 when I was at the meeting with them, but the protection 6 to the journalist is -- I think this case today has 7 illustrated it. A prosecutor will not prosecute -- and 8 in the case of the Bribery Act, you need the DPP's 9 consent or the head of the SFO's, I think, consent -- 10 will not prosecute unless there's a public interest in 11 prosecuting. For example, if, and I don't know, the 12 Daily Telegraph used bribery to obtain evidence of MPs 13 cheating on their Parliamentary expenses, I would be 14 deeply shocked if anybody had prosecuted the journalist 15 for using bribery.</p> <p>16 LORD JUSTICE LEVESON: Two points. First of all, I think we 17 heard evidence from I think it was Mr Lewis to the 18 effect that they did not, so --</p> <p>19 A. Sure. I remember it was alleged at the time by some 20 indignant members of Parliament, but I did not join 21 them.</p> <p>22 LORD JUSTICE LEVESON: Secondly, in the light of both this 23 answer and your last answer, you may be aware that 24 earlier on in the Inquiry when the Director of Public 25 Prosecutions first gave evidence, I invited him to give</p> <p style="text-align: center;">Page 35</p>
<p>1 which is paragraph 45, 01129 of your statement, 2 Mr Clarke.</p> <p>3 A. Sure.</p> <p>4 Q. The desirability or otherwise of a general public 5 interest defence within the statute itself, which of 6 course we know doesn't exist. And the extent to which 7 you were lobbied on that point by the Society of 8 Editors, Mr Dacre and others. Could you help us with 9 that, please?</p> <p>10 A. Yes, there were discussions and I was lobbied on the 11 basis it needed to have a public interest defence put 12 into it. Of course this had become an Act of Parliament 13 just before the General Election and so it was now an 14 Act. I was being asked to name a date for implementing 15 it to bring it into effect. So to put in a public 16 interest defence at this stage would have involved 17 having to find Parliamentary time for a bill to amend 18 the Act of Parliament we had on the statute book, so 19 that was a very good reason for not doing it, but I also 20 said in answer I think to an earlier question I was not 21 an enthusiast for public interest defences of this kind. 22 I do think journalists are entitled to bribe in an 23 extreme case if it's the only way in which they can get 24 information about some major public scandal. If you 25 have some outrage that's taking place at the public</p> <p style="text-align: center;">Page 34</p>	<p>1 consideration to publishing a policy on public interest 2 issues that he would take into account when journalism 3 was affected, and he acceded to that suggestion and 4 indeed has published a draft public interest test in 5 relation to the media, on which he's consulting. Do 6 I gather from what you're saying that that approach 7 accords with your view?</p> <p>8 A. I didn't know we'd reached that stage, and with respect, 9 yes, I think that is in my opinion precisely the right 10 road to go down. I think it worked very well in the 11 case of mercy killings recently, and I think -- perhaps 12 a rather wide analogy, but it's a similar sort of point, 13 that if the prosecutor is going to have a policy when he 14 prosecutes, it should be publicly available, the 15 principles being applied, and I think here it is correct 16 that a prosecutor should apply a public interest test 17 before prosecuting, and if that is being formulated and 18 put into writing, I look forward to seeing what the 19 outcome is.</p> <p>20 That is better than having different phrasings of 21 public interest tests in different bits of legislation 22 on different things, and particularly as nobody finds it 23 very easy to agree as to what the public interest is 24 I would protect the journalist who disclosed criminal 25 wrongdoing by Members of Parliament, but I'm not quite</p> <p style="text-align: center;">Page 36</p>

9 (Pages 33 to 36)

<p>1 sure I feel the public interest is so strong if it's the 2 sex life of a footballer that is being obtained by some 3 illegal means, and I wish every joy to whoever is 4 drafting the public interest consideration to get the 5 line right in that case as well. 6 LORD JUSTICE LEVESON: I think, Lord Chancellor, you'll find 7 there is in fact a consultation paper out in existence 8 at the moment on this very issue. It's probably 9 residing in some red box somewhere. 10 A. It probably is. I must obviously catch up on that. 11 MR JAY: Mr Clarke, you referred to a meeting with the 12 Society of Editors. We have evidence of that meeting in 13 the bundle here. Look under tab 4 -- 14 A. It was a pretty public meeting. So when you say you 15 have evidence, I don't think it was necessary to wire 16 trap it or anything. 17 Q. No, no, I'm not suggesting -- we can see the nature of 18 the evidence in a few seconds. Under tab 4, there's an 19 exhibit which contains a list of all your meetings, 20 calls and correspondence with media proprietors, 21 et cetera. On the first page of that, 01056, you see 22 the way this schedule operates. On 24 June 2010, you 23 were in power now for five or six weeks, you were 24 invited to a meeting by the Society of Editors and there 25 is an email record of it. That record is at 01066 in Page 37</p>	<p>1 proposals for that at the time of the Bill passing 2 through Parliament, and noted that he had been very 3 supportive of it getting through, overdue as it was. He 4 said, in general, that he needed to get fully up to 5 speed with the Act, as Mr Djanogly had handled it in 6 opposition, and he was happy to look at the idea of 7 a public interest defence but it would have to be a 8 proper test, and not one drawn widely to protect greased 9 fishing expeditions." 10 So you were making your position without committing 11 yourself reasonably clear? 12 A. Of course. The post I now have in government was not 13 one I expected to hold when I was in opposition, it 14 isn't the one I was shadowing. Six weeks into a new 15 job, I have long ago learnt it was best to be 16 exceedingly cautious, hence I always listened to what 17 they said in getting myself up to speed on the Bribery 18 Act, as you say. 19 Q. You had a general sense though of the public interest 20 with a reference to the protection or the non-protection 21 of "greased fishing expeditions". It sounds as though 22 that might be your turn of phrase. 23 A. Yes, there was a plain public interest in exposing 24 a corrupt public contract, or private one, probably. 25 I'm not so sure there's so much public interest in the Page 39</p>
<p>1 this bundle. 2 A. Same bundle? 3 Q. It is, under the same tab. It look as if it's -- 4 A. It's the minutes of the meeting? 5 Q. Yes, prepared within your office; is that right? 6 A. Yes. 7 Q. For the interests of transparency, we can see how your 8 office conducts itself in this sort of situation and the 9 nature of the record. On 01066, it says this: 10 "At the outset, SoS was clear that he could offer 11 views but was not making any commitments. SoE made a 12 pointed comment upfront about promises made to them and 13 not kept by HMG." 14 That may or may not relate to the current 15 administration, but possibly not. 16 A. I don't think in six weeks it can possibly have done so. 17 Q. No. 18 A. But I'm sure it can apply to any administration at some 19 time. I try to avoid it myself. 20 Q. Under the Bribery Act on the next page, it's clear that 21 you didn't give any commitments. They were asking you 22 to consider the introduction of a general public 23 interest defence. You accepted in the third line that: 24 "... in general it was better to have a public 25 interest enshrined in legislation -- he was not aware of Page 38</p>	<p>1 sex life of some soap opera celebrity. 2 Q. In terms generally of your interactions with media 3 proprietors, editors, et cetera, you tend to see 4 people -- you do see people across the board. There are 5 quite a few meetings with the Daily Mail and Mr Dacre. 6 Is that a fair picture? 7 A. Yes. I get on pretty well with Mr Dacre. I don't see 8 him that often. The reason I saw -- but we don't agree 9 on a very great deal, but we have quite a good mutual 10 respect, I think. But on this occasion I was meeting 11 him frequently because of course the previous 12 government, again with a certain lack of subtlety, 13 I think, had invited him to chair a committee to 14 consider the future of the 30-year rule for the 15 disclosure of documents, and he was the chairman and 16 I was discussing our reaction to that with him, and so 17 that gave rise to rather more meetings with Paul Dacre 18 than otherwise might, although I have over the years had 19 a few meetings with Paul Dacre, but that's -- I think 20 you'll find the particular subject that kept coming up 21 was that, because obviously I was discussing it with him 22 because he was the author of the advice to the 23 government, which we were considering, and actually it 24 was very valuable advice on the 30-year rule and on the 25 retention of documents and disclosure of documents, Page 40</p>

<p>1 where, not surprisingly, he was in favour of easing the</p> <p>2 rule and going to more openness. We didn't accept every</p> <p>3 recommendation, but reached a reasonable change in the</p> <p>4 arrangements with which I think he was broadly content.</p> <p>5 Q. The general pattern which emerges of you seeing</p> <p>6 everybody across the newspaper spectrum, does that arise</p> <p>7 as a matter of policy on your part, is it accidental?</p> <p>8 A. I've been doing that the best part of 40 years, really.</p> <p>9 It's all the way from having a drink with somebody in</p> <p>10 the House of Commons, which we don't have time to do any</p> <p>11 more so they don't appear in the register, to going out</p> <p>12 to lunch with a journalist who invites me. There are</p> <p>13 some journalists I won't go and have lunch with, but</p> <p>14 some I will. It's part of political discussion and</p> <p>15 political persuasion or attempted persuasion in the life</p> <p>16 of Parliament and the life of politics.</p> <p>17 I don't think any of those concerned, apart from</p> <p>18 things like the effects on the media of no win no fee</p> <p>19 costs, I didn't have discussions about media matters or</p> <p>20 matters which touched on the business.</p> <p>21 Apart from that I had a couple of dinners with</p> <p>22 Mr Lebedev, who I hadn't previously known, who now runs</p> <p>23 the Independent. I got on very well with him. But</p> <p>24 although we talked about politics generally, I think one</p> <p>25 reason he invited me is because I used to be a director</p> <p style="text-align: center;">Page 41</p>	<p>1 outnumbered by the number of Members of Parliament who</p> <p>2 would be terrified of annoying the newspapers. If the</p> <p>3 two sides fell to lobbying against each other, I would</p> <p>4 expect the newspapers to win when it came to lobbying</p> <p>5 the modern Parliament.</p> <p>6 With any luck, there's quite a broad body of Members</p> <p>7 of Parliament who believe extremely strongly in the</p> <p>8 freedom of the press and also believe extremely strongly</p> <p>9 in sensible regulation, so I think it stands quite good</p> <p>10 chance of being seriously considered.</p> <p>11 You're looking surprised by that.</p> <p>12 LORD JUSTICE LEVESON: No, actually, not surprised at all.</p> <p>13 Rather more optimistic about that answer than I might</p> <p>14 have been had I only relied on some of the other things</p> <p>15 that I've heard.</p> <p>16 MR JAY: The point you make in paragraph 50 we're going to</p> <p>17 pick up later, when you bring in the Society of Editors</p> <p>18 speech in November 2011. It's perhaps a freestanding</p> <p>19 point which locks in with the future.</p> <p>20 Question 8 now, page 01134.</p> <p>21 A. What paragraph?</p> <p>22 Q. Paragraph 56, page 21.</p> <p>23 A. Thank you very much.</p> <p>24 Q. Where you deal with your own interactions. You covered</p> <p>25 this already to some extent. But can I ask you to deal</p> <p style="text-align: center;">Page 43</p>
<p>1 of the newspapers for which he -- which he know owns, so</p> <p>2 I think he was quite interested in talking to me about</p> <p>3 those newspapers and about the business model for</p> <p>4 newspapers and so on. So I seem to recall we on both</p> <p>5 occasions talked about that quite a lot, as well as</p> <p>6 a bit of general politics, but that's why I met Lebedev,</p> <p>7 because I think he just was rather interested to</p> <p>8 discover that I'd previously been the director of the</p> <p>9 newspapers he now owned.</p> <p>10 Q. Thank you. There are no other points on that particular</p> <p>11 exhibit. May I move on to question 6, which is</p> <p>12 page 01131, on the internal numbering page 18. You were</p> <p>13 asked about whether there was a risk that the measure</p> <p>14 introduced into Parliament to effect government policy</p> <p>15 on press regulation would in itself provide an</p> <p>16 unwarranted opportunity to Parliamentarians to restrict</p> <p>17 the freedom of the press contrary to the public</p> <p>18 interest. There was a particular reason for asking that</p> <p>19 question. There was a piece of evidence we received</p> <p>20 which indicated that there was such a risk, but you have</p> <p>21 stated that you don't think there is?</p> <p>22 A. No, the idea that the media might be hurt by introducing</p> <p>23 it because certain Members of Parliament would swoop in</p> <p>24 to take further revenge on the media -- there are some</p> <p>25 who might try to do that. I think they're greatly</p> <p style="text-align: center;">Page 42</p>	<p>1 with the matter again at a level of some generality? Do</p> <p>2 you feel that the relationship between politicians and</p> <p>3 individual journalists can fairly be characterised as</p> <p>4 transactional, as one witness has told us?</p> <p>5 A. I'm not quite sure what he means by transactional. Each</p> <p>6 one needs the other, and it's a kind of love/hate</p> <p>7 relationship, really, although actually perfectly good</p> <p>8 friendships can spring up between some politicians, some</p> <p>9 journalists over the years. It's inevitable if you work</p> <p>10 with people, even on this basis, after a bit there are</p> <p>11 some for whom you require high regard, high respect, and</p> <p>12 so on.</p> <p>13 It's always a mistake, as I think I've said</p> <p>14 somewhere in here, to think that thereby you will in the</p> <p>15 end curry favour. One always hopes that the people you</p> <p>16 get on well with are good journalists, and a good</p> <p>17 journalist will not let you off lightly if in his</p> <p>18 opinion you've made a mistake or he disagrees with you,</p> <p>19 so the idea of just currying favour with the press is</p> <p>20 something which many politicians do, which is a bit of</p> <p>21 a waste of time, in my opinion, from their point of</p> <p>22 view.</p> <p>23 But otherwise, the journalist needs the contacts,</p> <p>24 particularly a political Parliamentary journalist needs</p> <p>25 the contacts with the politician at least as much as the</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

1 **politician needs the contacts with the journalist, but**
 2 **that's the ordinary timeless relationship that's bound**
 3 **to take place in a democracy between the politicians and**
 4 **two professions. They're bound to work together.**
 5 **What sprang up alongside it is a highly professional**
 6 **PR operation for those leading the political parties and**
 7 **the political machines, highly professional political**
 8 **operations on behalf of the proprietors of the great**
 9 **newspapers, and the engagement between them is certainly**
 10 **transactional and I'm slightly describing the more cosy**
 11 **world of Westminster and Whitehall, where journalists**
 12 **and politicians still interact with each other.**
 13 Q. I'm looking at this at a micro level, not a macro level.
 14 **A. Sure.**
 15 Q. We'll come to the macro level. I've been asked to
 16 suggest this to you, that by giving a journalist a story
 17 ahead of their competitors, as I'm sure sometimes
 18 happens, the politician is able to dictate or better
 19 dictate how that story may be used. Is that a better
 20 hypothesis?
 21 **A. I don't do it myself, but it is done. I have to admit,**
 22 **I think, it's plainly true, it would be naive to deny**
 23 **it, and the political parties' governments have in**
 24 **recent years increasingly given advance notice to**
 25 **particular journalists of cases -- this all started**
 Page 45

1 **after 1997 when I think Labour came in and thought we'd**
 2 **all been terrible amateurs and introduced people with**
 3 **these sort of skills, and they gave stories to**
 4 **journalists who they thought would be sympathetic and**
 5 **they gave them more stories if they were indeed**
 6 **sympathetic when they wrote up the story. If the story**
 7 **trailed was not written up properly, no more stories**
 8 **were given, and somebody else would receive trail of the**
 9 **next story. And that entered into British politics and**
 10 **introduced what had been a standard American technique**
 11 **for some time, and it's not gone away.**
 12 Q. Is there anything you want to say about it?
 13 **A. You may gather I'm not overenthused about it.**
 14 LORD JUSTICE LEVESON: I certainly did.
 15 **A. I know of at least one journalist who was just barred**
 16 **from the Treasury and told she would not be let in again**
 17 **because of the stories she'd written.**
 18 **I think it's slightly eased. It was the early**
 19 **enthusiastic days of New Labour when control freakery**
 20 **was being introduced into Westminster and Whitehall on**
 21 **quite a scale.**
 22 LORD JUSTICE LEVESON: We've heard some evidence on the
 23 topic. I think Mr Campbell gave evidence to the effect
 24 that they carried into office some relationships with
 25 journalists that were certainly appropriate while in
 Page 46

1 opposition, and they would have done better to leave
 2 them at the front door of Number 10 Downing Street.
 3 I think that's how he put it. And he was recognising
 4 that they got that wrong.
 5 **A. Well, I regard that as a considerable mitigation from**
 6 **Mr Campbell, who was one of the people who came in in**
 7 **1997. I've always got so perfectly well with**
 8 **Mr Campbell in the way it's easy to get on with one's**
 9 **political opponents, but yes. I'm very relieved to hear**
 10 **he said that.**
 11 LORD JUSTICE LEVESON: I have got that right, haven't I?
 12 MR JAY: (Nods head).
 13 LORD JUSTICE LEVESON: The question then arises whether
 14 that's not carried on and continued, and led to a real
 15 interest in the political parties obtaining access to
 16 a Director of Communications with tabloid journalistic
 17 experience.
 18 **A. Well, the Major government was one which all the press**
 19 **officers and the press consider were civil servants,**
 20 **which I think was a perfectly satisfactory situation.**
 21 **We had some very good press officers. You had some very**
 22 **weak ones but that was just a question of appointing**
 23 **a civil servant who did have the kind of qualities that**
 24 **could adjust to being a press officer. And I never**
 25 **questioned that.**
 Page 47

1 **In my last office at the Treasury, it seemed to be**
 2 **obvious you had to have a Treasury official as press**
 3 **officer because one of the main duties was actually**
 4 **being able to engage with financial journalists, which**
 5 **involved some understanding of the complexities of**
 6 **economic policy and tax law.**
 7 **I remember being told that the incomers decided this**
 8 **was all naive and amateur-ish and a whole lot of**
 9 **political appointments swept in and Alastair Campbell**
 10 **was a tabloid editor and it was thought appropriate to**
 11 **make him the Director of Communications. Well, that was**
 12 **a -- I don't want to exaggerate the suddenness of the**
 13 **change of culture, but it was a pretty marked change of**
 14 **culture, and it -- all kinds of things went on and**
 15 **they've not gone away. It is now thought necessary to**
 16 **have similar people about. And it does affect the way**
 17 **in which governments interact with these services.**
 18 **Also, it's led -- I always thought 21st century**
 19 **governments have been totally obsessed with newspapers**
 20 **and totally exaggerated the importance of this daily 24**
 21 **hour a day sort of interaction with what the newspapers**
 22 **are saying and writing about the government. I mean you**
 23 **don't go to the other extreme, you don't ignore**
 24 **newspapers, they have quite a major effect. They don't**
 25 **have the same effect as broadcasters have on public**
 Page 48

<p>1 opinion, nor do the week by week incidents reported by 2 newspapers have much effect on the voting practices of 3 the public when it comes to the point. But, you know, 4 certainly in the last 15, 20 years, there has been an 5 obsession with newspapers which was not there before. 6 Although there always was an interaction with 7 newspapers, let me not be naive. A relationship with 8 newspapers was always there, but we didn't campaign 24 9 hours of the day, seven days a week anyway before that, 10 and although previous governments certainly had their 11 excitements with Lord Northcliffe, Lord Rothermere, 12 Lord Beaverbrook and others over the years, so there's 13 nothing totally new, but the present incestuous 14 relationship between the two is quite peculiar and all 15 based by both sides believing that the daily headlines 16 really matter to an extraordinary extent, which I don't 17 believe for one moment they do so far as real people in 18 the real world outside Westminster and Whitehall are 19 concerned. 20 LORD JUSTICE LEVESON: The inference from what you've just 21 said might be that there has been a cultural shift. 22 A. A marked cultural shift, yes. 23 LORD JUSTICE LEVESON: And if that is right, and given that 24 again I go back to my terms of reference, the 25 relationship between the press and politicians is</p> <p style="text-align: center;">Page 49</p>	<p>1 ethics of the press including contacts, the relationship 2 between national newspapers and politicians and the 3 conduct of each, and I'm required to make 4 recommendations for the future conduct of relations 5 between politicians and the press. So that's why I ask 6 the question, what would you do about it? 7 A. Excellent. Well, in my opinion the power of the media 8 has grown, is excessive, and ought to be diminished, 9 although I think the remedy is as much in the hands of 10 the politicians as others. On the other hand, I still 11 want to have a free media, an aggressive media, an 12 irreverent media, and one that continually questions the 13 government's own estimate of itself, so you have to get 14 the balance right between those two. 15 LORD JUSTICE LEVESON: I agree with all that, but I repeat 16 my question, and I think you're right that it is 17 directed to politicians as much as to the press: how do 18 you shift the culture so that the pendulum swings a bit 19 more the other way? It may be that it's a question 20 that's impossible of answer, it's just got to be 21 accepted by political leaders generally. 22 A. I think politicians have to ask themselves how far 23 they're able to adjust. I think -- ask themselves how 24 far the culture of the last 15 years has been terribly 25 successful for the elected politicians concerned, and</p> <p style="text-align: center;">Page 51</p>
<p>1 something that does fall within my remit, how would you 2 address that? 3 A. Well, what falls in force with your remit is as it were 4 the proprietors of it, isn't it? I mean, how far is 5 undue influence being exercised for commercial, well, 6 political, other reasons? 7 The politics are quite difficult because in the end 8 it is for the politicians to decide how far they're 9 going to allow a particular powerful group to influence 10 policy. If I'm sounding -- every democratically elected 11 politician in every part of the world I've ever known 12 easily falls to criticising the press, so if I sound as 13 if I'm criticising the press, my criticisms are actually 14 aimed equally at the ministers. 15 LORD JUSTICE LEVESON: I understand that. 16 A. When taken to excess, this terror of the tabloids and 17 this subservience to the media doesn't give any success 18 to the politician who does it. You may win some 19 temporary praise, but you make stupid decisions in 20 government and they turn on you eventually when it 21 starts to fall apart. You still come to the same ruin 22 in the end unless you actually make a decent fist of the 23 good governance of the country. 24 LORD JUSTICE LEVESON: Just so that it's clear, the terms of 25 reference are to inquire into the culture, practice and</p> <p style="text-align: center;">Page 50</p>	<p>1 get back to -- ask themselves what's the balance between 2 good governance of the country and good communications 3 via the media with the general public. I don't envy you 4 putting any recommendations of any action that in 5 practice is going to affect that. 6 Politics usually ends in tears. I've seen -- most 7 great men find in the end they skulk from office, 8 rejected by the public that hailed them when they 9 arrived. As Enoch Powell said, it always ends in tears. 10 But actually the ones who have practised this 11 extraordinary relationship with the media seem to come 12 to be worst croppers than most. 13 Tony Blair spent a very great deal of time doing 14 this, he had a good long run, partly helped by his 15 opponents, which is how Margaret lasted so long; and 16 Gordon Brown, who was utterly obsessed with 17 relationships with the media, had a spectacularly 18 unsuccessful time, didn't do him any good at all. If 19 I'd been in Gordon Brown's entourage, I'd have tried to 20 stop him reading any newspapers and get back to the 21 business of what they were going to do. 22 My advice to some my colleagues of the past has been 23 to stop reading them when I found colleagues were being 24 upset by the newspapers, quite inordinately. I don't 25 read them all myself, and I never understood why</p> <p style="text-align: center;">Page 52</p>

<p>1 politicians do. Margaret Thatcher never read 2 a newspaper from one week to the next. 3 LORD JUSTICE LEVESON: Well, I think that's probably 4 a convenient moment to take a few moments for the 5 shorthand writer. 6 (3.20 pm) 7 (A short break) 8 (3.30 pm) 9 MR JAY: Mr Clarke, we were discussing the term 10 "transactional" on the micro level. Can I raise this to 11 the macro level, relations between politicians and media 12 proprietors. Is the term "transactional" appropriate in 13 that context or not? 14 A. A bit broad. I hope not is the answer I was going to 15 give, but I immediately go on to say it depends what you 16 mean by transactional. You have great masses of 17 evidence before you of that, and it probably hasn't -- 18 there's always been something of that there. 19 For some peculiar reason, the politics of the last 20 15 years have been dominated by competition for the 21 support of the Sun newspaper. Once we have the evidence 22 out of this Inquiry, we shall know quite how people set 23 about that and what they did to achieve that. 24 I personally do not think the Sun as a newspaper has 25 ever had any great significant effect on the outcome of</p> <p style="text-align: center;">Page 53</p>	<p>1 was utterly obsessed about whether the Sun newspaper was 2 going to endorse him. He was meant to be governing the 3 country. 4 Q. Whether there is an implied term of the support that 5 a favour might be offered or rather government would 6 keep off the obvious commercial interests of 7 particularly powerful media organisations, do you have 8 a view about that? 9 A. The answer is I don't know. I hope not. I don't know 10 if you're exploring that. 11 Q. Thank you. May I deal more generally now with the issue 12 of the media on certain aspects of government policy, 13 which are sort of outwith media policy, which you've 14 already fully discussed. A recent piece, very recent, 15 in the Independent, which we have here under tab 8, 16 23 May 2012, you're reporting as blaming the popular 17 press for putting thousands of criminals in jail who 18 need not be there. What's the evidential basis for 19 that, Mr Clarke? 20 A. I think a lot of the criminal justice legislation of 21 recent years has been a response to popular newspaper 22 complaints. It's not wholly new, and the popular press 23 have always tended to be -- made a great virtue of ever 24 tougher policies on law and order, and I don't know 25 a politician who isn't in favour of tough policies on</p> <p style="text-align: center;">Page 55</p>
<p>1 any election in my lifetime, but obviously it was 2 thought by some to be terribly important, and desperate 3 lengths were gone to, to try to fight over its support. 4 The Inquiry has much better witnesses to know what 5 all went around that. 6 I share the rather more jaundiced view which has 7 been expressed by many people, including some 8 journalists, that what Mr Murdoch and the Sun newspaper 9 are very good at doing is changing sides when it's 10 obvious that the horse they're riding is about to 11 collapse, and that they anticipate when the change of 12 power is coming. When it was perfectly obvious to 13 a 5-year-old that the Major government couldn't survive 14 the 1997 election, they transferred support to the 15 Labour government. When it was obvious that 16 Gordon Brown was completely and utterly unelectable 17 against anybody, they transferred their support to us. 18 Unfortunately, I don't actually blame the Sun for this, 19 we didn't actually win the election despite that. 20 So I remain much more laid-back about all of this. 21 I cannot understand the excitement that appears to have 22 been demonstrated over the years about the support of 23 the Sun newspaper. 24 I get on quite well with Gordon Brown, I'm not 25 citing him, but I think Gordon more than anybody else</p> <p style="text-align: center;">Page 54</p>	<p>1 law and order, but there has been a wave of ever more 2 noisy campaigns, either following high profile criminal 3 cases or whatever, demanding ever tougher sentences from 4 an ever wider range of crimes, to which government and 5 Parliament seems to me to have most readily conceded. 6 Part of what I asked myself when I got back in 7 charge of prisons again, after an interval of 20 years: 8 why do we now have double the prison population? Why 9 are all the sentences longer than they used to be when 10 I was led to believe as a member of the public that 11 crime had actually fallen in the intervening time? Some 12 would say it's cause and effect, but it plainly is not 13 because the longer sentences are for one type of crime 14 and the fall in crime has been in other types of crime, 15 mainly crime against property which sentences 16 (inaudible) fall, but not much. The answer is really 17 a series of tabloid newspaper campaigns responded to 18 eagerly by government and Parliament and a series of 19 criminal justice bills. 20 Actually, it's quite a lot of my officials and 21 people in the criminal justice system, not just me as 22 a politician, that even the courts respond to this 23 strident demand all the time for ever longer sentences, 24 ever tougher penalties, and you can see the judiciary 25 and the magistrates, if you like, responding to the</p> <p style="text-align: center;">Page 56</p>

<p>1 criticism they would otherwise come under in individual 2 cases if they don't keep imposing stiff penalties.</p> <p>3 Obviously as a politician I disapprove of that. I'm 4 not sure it really does represent a genuine public 5 feeling. There are some people who think you would 6 somehow get rid of crime if you just made the prisons 7 nastier and the sentences longer, but it's not the 8 prevailing public view, and the newspaper campaigns are 9 usually based on a very, very partial account of some 10 very shocking high-profile case.</p> <p>11 When I have constituents lobbying me, I always say 12 that you shouldn't wholly rely on the newspapers for 13 a full account of every feature of this case, because 14 it's been written with a view to shocking you with the 15 apparent lightness of the sentence, and the facts as 16 presented in the newspaper may somewhat overestimate the 17 full gravity of the case if you'd had the chance of 18 listening to hours of evidence in the court.</p> <p>19 I won't go back, I'm dilating on again, but I just 20 think the clamour from particular newspapers for tougher 21 and tougher Criminal Justice Acts has been responded to. 22 I think prison requires tens of thousands of people in, 23 there are serious criminals who should be punished 24 severely and need to be put away to stop them committing 25 more crimes, but I don't think you should add people who</p> <p style="text-align: center;">Page 57</p>	<p>1 on how strongly the person holds that opinion or whether 2 they would hold the same opinion if for five minutes you 3 explained the competing arguments.</p> <p>4 I therefore -- perhaps because of my own bias -- 5 think some of the newspapers, not all of them, present 6 a kind of frenzied version of what they believe to be 7 the opinion of their readers. The moment you doubt it, 8 they rush out and hold some slightly unscientific 9 opinion poll saying, "95 per cent of the Bugle's readers 10 agree with this" and all the rest of it. I personally 11 don't believe it. You don't need them.</p> <p>12 Also, the proportion of the population that still 13 reads newspapers is not very high. Far more people 14 watch broadcasting than read the newspapers.</p> <p>15 Q. You wrote a piece as recently as yesterday, Mr Clarke, 16 in the Daily Mail, change of policy in relation to what 17 was described as secret justice. That's in national 18 security cases.</p> <p>19 A. Yes.</p> <p>20 Q. Why, out of interest, did you publish your recantation 21 or change your view in the Daily Mail?</p> <p>22 A. Because the Daily Mail had been leading a campaign 23 against my bill, rather to my surprise. When 24 I announced the policy, it was no opposition worth 25 talking about, but quite rapidly the civil liberties</p> <p style="text-align: center;">Page 59</p>
<p>1 are really an extremely annoying nuisance and people who 2 really you could get them to stop being criminals if you 3 dealt with them in some other way. Because the prisons 4 are so overcrowded and so difficult to do anything 5 there, we are steadily toughening up an underclass of 6 criminals who keep going round and round in the cycle, 7 in and out, and I blame the newspapers for that.</p> <p>8 If the tone of the newspapers had been different for 9 the last 15 years, we'd probably have 20,000 fewer 10 prisoners in prison. I hasten to add that's not a 11 scientific estimate, it's just a way of illustrating my 12 opinion.</p> <p>13 Q. Implicit in that you reject the argument which has been 14 advanced by some that the newspapers are simply a proxy 15 for the aggregate of their readers' views? Is that 16 correct?</p> <p>17 A. Yes, I do. To be fair, if I was to have this discussion 18 with a journalist, and I have had this discussion with 19 journalists, with the editor of a tabloid or something, 20 they pay a very great deal of attention to their 21 readers' views and I think that most of them do believe 22 that they represent them, but it's at a level of first 23 reaction. It's not at a level of sensible discussion. 24 That's the problem with all opinion polls. You can get 25 a yes/no answer to things, but you don't get an answer</p> <p style="text-align: center;">Page 58</p>	<p>1 organisations, who I expected to be quite difficult to 2 persuade, began to oppose, and still are, and then a few 3 weeks ago the Daily Mail suddenly mounted their sort of 4 tremendous attack on the policy. And as the Daily Mail 5 readers have been given the benefit of the Daily Mail's 6 campaign, I wished to put my response to it in the 7 Daily Mail, so that the same readers could see where we 8 now were.</p> <p>9 Q. You describe the Daily Mail as a newspaper known for its 10 robust defence of civil liberties?</p> <p>11 A. The first time -- I told you I get on quite well with 12 Paul Dacre, although the two of us would fence to say 13 the least on many political issues, so I'd given an 14 interview about a week ago paying credit to the 15 Daily Mail for highlighting the rather broad 16 interpretation that can be put on things and getting me 17 to go back and address some of this and narrow it, and 18 they wrote an editorial ticking me off for trying to 19 butter them up, which plainly was what I was trying to 20 do and they were very alert to that, and they still had 21 big reservations about the policy.</p> <p>22 So, I mean this is -- the Daily Mail does -- it gets 23 very strong campaigns. I mean, I don't agree with the 24 Daily Mail on very many issues, but it isn't as 25 predictable as the other right wing popular press.</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 The last time I found myself firmly and surprisingly 2 in alliance with the Daily Mail on a major political 3 issue was on the Iraq war. It may normally be regarded 4 as a far right wing middle of the market newspaper -- 5 not far right wing, but right wing middle of the way 6 newspaper, but it was as opposed to the Iraq war as 7 I was, and occasionally I found myself a bed fellow with 8 the political writers of the Daily Mail, and they do 9 have a slightly maverick and radical view on things 10 sometimes, and they got very excited about secret courts 11 and I still think they're wrong about -- well, I tried 12 to persuade them, and they accepted it to an extent, 13 that in the case of spies, national security, damaging 14 evidence and so on, you cannot just have open justice. 15 Tried to respond to their claims that the way we were 16 setting about it was going to lead to the exclusion of 17 the press and the public from all sorts of things which 18 ministers found embarrassing. Well, I'm not in favour 19 of that, so I've tried to respond to that and make it 20 clear I'm not. 21 Where we are now is very close to where I would have 22 liked to have been when we started the whole 23 consultation process, so the Mail and myself are getting 24 closer. 25 Q. So you weren't as it were succumbing to their campaign,</p> <p style="text-align: center;">Page 61</p>	<p>1 I put an op-ed in explaining where I now was, because -- 2 and I genuinely think it was quite helpful of the 3 Daily Mail, because it got me and my colleagues to 4 concentrate our minds on exactly what we were going to 5 make the case for and why we were proposing to retreat 6 from the normal principle of open justice in this very 7 limited number of cases. 8 Q. The other article we've collected here is under tab 9, 9 which is the speech you gave in November of last year 10 when you were expressing some general views. This is 11 the Society of Editors annual conference in Surrey. 12 A. Yes. 13 Q. You backed self-regulation. A totally free press is 14 crucial to a freedom -- democratic society but on the 15 other hand there should be a new regulator which must 16 have some force, more convincing teeth, but you warned 17 against paranoia and overreaction. 18 Can we be clear, Mr Clarke, what do you mean by 19 self-regulation, in particular whether you're ruling out 20 of account by the use of that term some sort of 21 statutory architecture? 22 A. Well, again I await the recommendation, actually, of 23 this Inquiry. I'm deeply suspicious at the idea that 24 the state or the government should as it were be in 25 control of the regulatory system. On the other hand, if</p> <p style="text-align: center;">Page 63</p>
<p>1 you were merely accepting the force of the argument 2 which they put forward, is that -- 3 A. Well, I did respond to their campaign, yes. They are 4 a formidable opponent when suddenly -- again, it was the 5 unexpected -- although the sentence you read to me 6 acknowledges it wasn't so unexpected when you thought 7 about it. Did I expect to be attacked by the organised 8 civil liberties groups with whom I actually tend to 9 agree on nine out of ten subjects? Yes, I thought 10 they'd be highly critical. Very difficult to sell to 11 small "I" liberal opinion in the country and in the 12 House of Lords, as I normally am part of that small "I" 13 opinion, I set about trying to tackle them, and suddenly 14 the Daily Mail is coming out with a blazing campaign on 15 the same subject, and well, it's the political impact, 16 really, it wasn't just because it's the Daily Mail. 17 I don't usually read the Daily Mail, actually. But 18 we're getting into trouble here. I am being fired at 19 from another direction. 20 I still think that they were attacking me by putting 21 an interpretation on the original proposals which I can 22 see could have been put upon them, although it was never 23 the interpretation that I was proposing to put upon them 24 myself. And as I'd responded to the Daily Mail's 25 arguments as well as the arguments of other people,</p> <p style="text-align: center;">Page 62</p>	<p>1 you just invite the press to create their own, you do 2 have to ask, well, what happens if it turns out to start 3 failing again? 4 I think we're all agreed, I don't know, you've had 5 many witnesses now, that whoever the regulator is must 6 be totally independent of both government and press in 7 their activities, that they should have some authority, 8 and the ability to require the relevant media 9 organisations to subject themselves to the authority, 10 and that they should have the power to impose penalties 11 so there is some practical effect. Financial penalties, 12 I imagine, the most part. It's when they break the 13 criminal law, it should go off to other courts and other 14 jurisdictions to deal with that. 15 If that needs statutory underpinning because you 16 won't get everybody to produce something like that and 17 join something like that, submit to something like that 18 and comply with something like that, then you're going 19 to need statutory underpinning, and -- 20 LORD JUSTICE LEVESON: But would it all -- 21 A. -- I haven't tried to draft anything or even draw up 22 a document which specifies exactly what this beast would 23 look like that has all those attributes I have just 24 described. 25 The Press Complaints Commission I always thought was</p> <p style="text-align: center;">Page 64</p>

<p>1 a joke, although I had some very good friends who were 2 on it who tried to persuade me otherwise. Completely 3 useless. And I think we need a very much stronger body. 4 LORD JUSTICE LEVESON: The issue may be that there has to be 5 some mechanism not merely to require people to join, 6 because that's a separate question in itself. 7 A. Sure. 8 LORD JUSTICE LEVESON: But to allow the body that comes out 9 of it to be able to enforce its borders, rather than 10 have to commence civil proceedings for damages. 11 A. No, I can see that, and there will be (inaudibles) 12 depending on what is -- and I do think it is orders as 13 well. I've touched on the easy bit, like financial 14 penalties. The difficult bit is retraction, apology, 15 that kind of thing. Perfectly responsible journalists 16 would agree with everything I've said so far. Take off 17 if you say the body should have the power to stipulate 18 the form of apology and retraction and where it is 19 printed in the newspaper. 20 I know people who would otherwise get very, very 21 excited saying no one is going to start telling me what 22 I put where in my newspaper and so on. I'm afraid it is 23 necessary, because certainly in the past I know people 24 who have had favourable adjudications at the PCC perhaps 25 which have simply been ignored by newspapers. I also Page 65</p>	<p>1 A. Yes. 2 LORD JUSTICE LEVESON: But as regards freedom of expression 3 and a free press, I have to say at least twice a day 4 that I am absolutely with you and with -- I'm not sure 5 it's not higher than 99 per cent of the population. 6 A. Surely. 7 LORD JUSTICE LEVESON: The other issues which we'll talk 8 about in relation to what such a body might be able to 9 do or what additional powers it has I would like to 10 raise with you because I want to come back to the 11 business of privacy and defamation, but I'll take my 12 time -- if that's convenient, let's do that now. 13 The issue that I'd be interested for your view upon 14 is this. If I go back to your comment about CFAs, which 15 I understand, and you will know that at the end of last 16 year a number of the witnesses came and expressed real 17 concern that they'd only been able to obtain redress 18 through the mechanism of CFAs. 19 A. (Nods head). 20 LORD JUSTICE LEVESON: And were very concerned about the 21 proposal to adopt what Lord Justice Jackson has said, 22 and it might be articulated in this way, that 20 years 23 ago the power in relation to libel resided with the 24 press. They were the wealthy ones, you couldn't get 25 legal aid to sue for libel. It was a very expensive Page 67</p>
<p>1 know people who an apology has been invited, have found 2 the apology is tucked away in three or four little lines 3 in some completely obscure and unreadable part of the 4 newspaper. 5 So the more you start setting out the specific 6 powers, you are undoubtedly going to have people 7 refusing to comply with its orders, probably, unless it 8 has some statutory underpinning. 9 But then you have to be careful what penalties you 10 then impose for refusal to comply then. The last thing 11 we want -- I do think 99 per cent of people in this 12 country genuinely believe in a free press. The 13 journalists are getting almost as sensitive as the 14 politicians in believing nobody loves them any more. 15 Nobody minds an irreverent, noisy and critical press. 16 Once you start imposing severe penalties on someone 17 who owns a newspaper for not doing what you want him to 18 do, you have to be extremely careful, but otherwise the 19 history I think shows that without teeth in the end 20 you're wasting your time, and in my opinion we'll be 21 completely wasting our time if some section of the 22 printed media just refuse to join it and won't submit 23 anyway. 24 LORD JUSTICE LEVESON: Yes. The compulsion element creates 25 other problems. Page 66</p>	<p>1 business, always had to be commenced in the High Court, 2 with great risk as to cost. So therefore anybody 3 without means simply couldn't do it. 4 A. Yes. 5 LORD JUSTICE LEVESON: And in that way, the number of 6 actions could be minimised. CFAs put the boot on the 7 other foot because now, if the lawyers assessed the case 8 at a high enough prospect of success, they can get after 9 the event insurance, they can mount the claim with 10 prospects of recovery and then very, very high costs, 11 and I well understand the argument, I don't need to be 12 persuaded about that, which therefore led to the 13 argument is a chilling effect on the press because now 14 they were no longer in the powerful financial position 15 that they had been in 20 years before, now the risk to 16 them was of enormous cost at a time when their financial 17 position was rather more parlous than it had been. 18 So I understand the argument. Of course, the 19 concern that's been expressed in the Inquiry is that by 20 changing the rules of CFAs, you may have had the 21 consequence of moving the boot back onto the other foot 22 again. 23 A. (Nods head). 24 LORD JUSTICE LEVESON: And one of the concerns that I've 25 been interested to raise with people is to suggest that Page 68</p>

<p>1 a system might also have as a third arm, that is the 2 first arm being a mediation arm, the second arm being an 3 adjudicative arm, but the third -- in relation to 4 standards, whether you call it an ombudsman or whatever 5 you call either of those two, but the third, an 6 adjudicative arm in relation to, if you like, small 7 claim privacy libel type actions which could be 8 conducted on an inquisitorial basis without cost, or 9 very limited cost, and therefore be much more available 10 for everybody. 11 I'm concerned about proliferation of specialist 12 tribunals. I can understand the risk of that. But if 13 you have a view on that sort of idea, I'd be very 14 grateful to receive it. 15 The idea would be to discourage, except in very 16 large scale cases, this High Court litigation, but to 17 encourage everybody to be able to get a speedier, 18 swifter solution using whether it's libel silks or 19 retired judges who are used to the law in the area, to 20 obtain swift and effective redress at little cost. 21 Now, the effect of that might be that it would 22 create a cost which might mean there would be somebody 23 knocking at your door -- 24 A. For public funding. 25 LORD JUSTICE LEVESON: -- for public funding, because after Page 69</p>	<p>1 take a success fee, it will be taken out of the 2 plaintiff's damages, everybody will start thinking 3 a little more about what costs they're incurring. 4 I don't know what the figures are in litigation, but 5 certainly in the CFA cases against the National Health 6 Service, lawyers and expert witnesses who appear for 7 plaintiffs tend to be paid four or five times as much as 8 lawyers and expert witnesses who appear for the 9 defendant, who knows he's going to have to pay it. 10 I still think you will have people of ordinary means 11 having good cases brought under our modified CFA with 12 less reward to those who act for them. 13 Then people argue we should have qualified cost 14 shifting, which in other areas, particularly personal 15 injury claims, is what we propose, where you can't get 16 legal aid and where you are taking on a big employer, 17 big company, that in certain cases you can shift the 18 cost burden so the plaintiff is at much less risk. I'm 19 reluctant to do that in the case of defamation, although 20 we'll have a look at it, because I think it would 21 produce a flood of claims if you were not careful. 22 People are very sensitive to things they don't like 23 written about them in the newspapers and in the media, 24 and once you start popularising the idea that anybody 25 can go along and have a go in court without too much Page 71</p>
<p>1 all it would be creating a mechanism for the resolution 2 of disputes, which is the responsibility of the state. 3 But the idea and the value of it, because in that 4 way it might encourage the press to feel actually this 5 whole system is one that we can gain benefit from, is 6 one that I would welcome your view on. 7 A. Well, if I may, Lord Leveson, I'll go away perhaps to 8 consider it and submit something too, but I find your 9 idea very attractive. Because when we went in for the 10 Jackson reforms, of course in this area and several 11 others people argued that I was barring access to 12 justice for people of low means because no longer would 13 lawyers take them on. I have tended to answer that by 14 saying the main difference actually is your lawyer will 15 not make as much money as he did before if you're 16 successful, but I conceded I think earlier on that the 17 lawyer will make a more careful assessment of risk. At 18 the moment he expects to make a lot of money when he 19 wins one case and that makes up for the couple he's 20 prepared to take on and lose because in the long run he 21 will have a very successful practice, and therefore you 22 have to be -- the lawyers will have to be very much more 23 careful about the risk they're incurring. 24 Also, because we're going back to the old system 25 whereby any success fee, if the plaintiff allows you to Page 70</p>	<p>1 financial risk in circumstances where the CFA-based 2 lawyer is no longer bringing his careful judgment to 3 bear even, you might produce a great rash of defamation 4 cases, and I'm not attracted by the idea of producing 5 a litigious society in this particular area. 6 Going back to the regulator, I think the idea that 7 the regulator might answer all our prayers and be 8 a regulator, a mediator of disputes proposing a remedy 9 and, in certain cases, actually adjudicating and giving 10 a modest award is quite attractive. 11 In most of these cases I don't think finance should 12 play a large part in it. I don't think great sums of 13 damages are very often appropriate unless somebody can 14 demonstrate they have indeed suffered a substantial 15 financial loss in the course of their career and their 16 business. 17 LORD JUSTICE LEVESON: One of the reasons -- 18 A. But it is the prominent apology. It's sometimes just 19 the agreement that you're not going to do it again, 20 which will be quite a valuable remedy if we could find 21 some cheap and efficacious way of providing it. 22 So far as public funding is concerned, I owe it to 23 my Treasury colleagues to say that the government has no 24 money, which it certainly doesn't, but it is an 25 interesting proposition, as long as we don't produce Page 72</p>

1 **thousands and thousands of trivial small complaints.**
 2 LORD JUSTICE LEVESON: One of the reasons for suggesting an
 3 inquisitorial system, just as I've thought about it over
 4 the months, is so that somebody who really does
 5 understand the area will be able to see a claim form in
 6 a defence, in other words just the documents, and say
 7 this has legs or this doesn't have legs, so people will
 8 learn very, very quickly what is sustainable and what
 9 isn't, without it necessarily costing very much money to
 10 get to that position.
 11 **A. Yes. They get a small claims procedure. I think the**
 12 **media would rightly complain they'd have to employ quite**
 13 **a few people if there were lots of these coming in all**
 14 **the time, if there was a weekly intake of these which**
 15 **they were being asked to respond to, but in principle**
 16 **I find it attractive.**
 17 **My one worry is that some people are so sensitive to**
 18 **these things that you would produce, as I said a moment**
 19 **ago, thousands and thousands of people seeking a remedy.**
 20 **Politicians have to get used to all kind of bizarre**
 21 **things being said about them day by day if they're**
 22 **prepared to go to their newspaper cutting service and**
 23 **look for them, and I'm afraid it's necessary in a modern**
 24 **democracy for a politician to acquire a kind of**
 25 **pachyderm skin.**

Page 73

1 **Most of the population who are not used to it are**
 2 **not, so they react with ferocious grief, anger, to**
 3 **things which are just not expressed in a way which they**
 4 **would like. So I think the average local newspaper, let**
 5 **alone the nationals, could find themselves bombarded**
 6 **with complaints if you made the hurdle too low, too**
 7 **easy, and became a kind of routine office for**
 8 **complaints.**
 9 LORD JUSTICE LEVESON: Well, I understand that, and
 10 obviously it has to be appropriately calibrated, but as
 11 I said to you earlier in your evidence and I've said to
 12 a number of people, as a lawyer I'm very used to looking
 13 backwards and reaching decisions. Planning for the
 14 future is something which doesn't come naturally within
 15 the expertise that I have previously demonstrated, if
 16 any, and therefore to have the advantage of observations
 17 to such extent as anybody feels it appropriate to
 18 provide them is valuable, if only so that they can be --
 19 the very -- for example, the very concern you've
 20 mentioned can be fed into the balance, because
 21 ultimately it will all come back to the government to
 22 deal with, as you correctly identified before.
 23 **A. Yes. I will go away and consider it, if I may, and**
 24 **discuss it with my department as well, because I'm**
 25 **trying to think of analogies across, as it were,**

Page 74

1 **equivalent small claims processes. I can't think of any**
 2 **very exact ones we've set up anywhere else.**
 3 LORD JUSTICE LEVESON: One that does exist is in relation to
 4 National House Builders.
 5 **A. Yes.**
 6 LORD JUSTICE LEVESON: They have a mechanism to resolve
 7 building disputes. I'm not saying the analogy is
 8 perfect, it isn't, and to some extent it may not matter
 9 because the entry qualification can be described, the --
 10 on any showing the ingredients of libel still have to be
 11 established, and if the primary requirement is that
 12 people get an apology, then that's what the mediation
 13 service does in any event, or seeks to do.
 14 **A. Mm.**
 15 LORD JUSTICE LEVESON: So I hope the risk that you've
 16 identified wouldn't be there, but it's very important to
 17 mention that and indeed any other risk, and it all has
 18 to be read of course in the context first of all of
 19 ensuring that individual rights are protected, and
 20 secondly -- and I might put them the other way around --
 21 that free speech is not imperilled.
 22 **A. Yes.**
 23 LORD JUSTICE LEVESON: I readily accept --
 24 **A. And being imperilled involves not just the penalties,**
 25 **but actually -- it's a terrible current fashionable**

Page 75

1 **phrase is the chilling effect. The disincentive effect**
 2 **of facing up to constant complaints all the time so you**
 3 **become risk averse in what you write because frankly you**
 4 **cannot cope with the bombardment you're getting of**
 5 **people trying to go off and seek a remedy against you,**
 6 **if one is so readily available.**
 7 LORD JUSTICE LEVESON: Yes, that might also work in another
 8 way as well. It might mean that what is put in the
 9 newspaper is thought about just a little bit more.
 10 **A. Surely. At the moment, they obviously think what they**
 11 **put about a celebrity, because the only people who can**
 12 **take the newspaper to court are rich celebrities, and**
 13 **the ordinary person can't, for various reasons, as you**
 14 **say, and it would -- it certainly would require the same**
 15 **care, but no, at the moment it can have a chilling**
 16 **effect if the newspaper is writing about somebody who is**
 17 **known to be highly litigious and with a great deal of**
 18 **money.**
 19 **Robert Maxwell died leaving something like 150 writs**
 20 **behind him alleging defamation by people who had**
 21 **suggested that he'd behaved somewhat improperly in his**
 22 **business affairs. He never took any of them to court.**
 23 **I got threatened with one at one point. Nevertheless,**
 24 **the people did not repeat them, because as Robert**
 25 **Maxwell said to me when he rang me on one occasion, "Of**

Page 76

<p>1 course for me it's just petty cash, Kenneth, but you'd 2 be betting the ranch, you know, if you fought it", and 3 I denied his allegation. The so-called gagging writ. 4 So that is usually against the ordinary person and 5 what you're suggesting would be a remedy against that. 6 It would be very difficult to devise. 7 LORD JUSTICE LEVESON: But if that were -- 8 A. If Mr Maxwell was not threatening to run up tens of 9 thousands pounds worth of costs which you'd have to 10 stake against him. 11 LORD JUSTICE LEVESON: Correct. If you have a mechanism 12 which prevents that, first of all because little if any 13 cost would shift in the system I'm suggesting, and 14 secondly because somebody would be able to take a very 15 early view, and whether it's strike-out or whatever, or 16 put it forward, then it may be you might find the remedy 17 for that sort of approach. I'm not saying you would. 18 I haven't fully -- obviously I haven't decided anything 19 and I'm not committed to any idea. But these concepts 20 have been there or thereabouts during the course of the 21 last few months and I'm obviously anxious to get as much 22 assistance -- 23 A. What I had in mind was at the moment the newspapers do 24 employ lawyers, and if there's a contentious story about 25 some powerful organisation or some powerful person, the Page 77</p>	<p>1 I have not raised with you. 2 A. That's another issue, yes. 3 LORD JUSTICE LEVESON: I don't feel it's necessary to at 4 this stage. I'm receptive to the very sort of concerns 5 that you express, because I have no intention of seeking 6 to break the rule of unintended consequences. 7 A. Mm. Because in the less serious case, once you start 8 raising the issue well is this mere abuse or have you 9 done damage to this man, then you raise the question is 10 he going to be able to demonstrate that it's untrue or 11 can we demonstrate that it is true, and then you get on 12 to what remedy are we going to give this man; almost 13 immediately you're plunging into areas which are a bit 14 beyond the retired judge with two pieces of paper, 15 you're getting all the time nearer to some process of 16 litigation then there's going to be an argument of 17 appealing and lawyers will pile until saying that you do 18 need advice on all this. 19 LORD JUSTICE LEVESON: I understand that, but actually much 20 of what you've just said is part of the mediation 21 process at the moment. 22 A. Yes. 23 LORD JUSTICE LEVESON: When people -- 24 A. Run by the Press Complaints Commission. 25 LORD JUSTICE LEVESON: -- complain to the PCC and the PCC Page 79</p>
<p>1 lawyer advises the proprietor whether you can do that. 2 And they won't print if the lawyer says, "You're at 3 serious risk here, you're not going to be able to 4 justify this". 5 What we don't want is for the ordinary Joe to impose 6 on the journalist the same obligation. If it's Robert 7 Maxwell threatening to sue you, it probably costs quite 8 a lot to work out whether it's worth the candle of 9 persisting with the story. If you have half a dozen 10 people a week alleging that, are you going to hire more 11 lawyers or is the remedy going to be so slight, the 12 process so informal, that the lawyers are not really 13 needed? I'm not sure. 14 LORD JUSTICE LEVESON: I think it rather depends what you're 15 going to say about the ordinary Joe. If you're going to 16 say something that may be characterised as mildly 17 abusive, then that's one thing. If you're going to say 18 something about them that actually might have a very 19 real impact on them, that may be something else. 20 A. Sure. 21 LORD JUSTICE LEVESON: It also allows the press a mechanism 22 perhaps if appropriate to take advice on things like 23 pre-notification. 24 A. Mm. 25 LORD JUSTICE LEVESON: Which itself is another issue, which Page 78</p>	<p>1 consider the complaint and they reach a view and try and 2 negotiate a settlement, and I see no reason why that 3 shouldn't carry on. Obviously it's much better for 4 people who have concerns to have them addressed, and I 5 have no doubt that those who wish to complain would be 6 very happy to see a correction the following day rather 7 than something six months down the track. 8 So I take all you've said on board, but the 9 alternative is that you don't cope with the problems of 10 those who can't afford to litigate, because the risk is 11 too great, the financial consequences, however modest, 12 are too much on top of what they're already going 13 through. 14 I mean, you will have seen -- 15 A. But your tougher PCC surely is able to listen to the 16 complaint of the man with no money. 17 LORD JUSTICE LEVESON: Absolutely. 18 A. And can impose penalties on the newspaper. 19 LORD JUSTICE LEVESON: Potentially. 20 A. And I would suggest it's worth considering could order 21 the newspaper to publish a swift and appropriately 22 prominent apology or retraction. 23 LORD JUSTICE LEVESON: Potentially. I agree. 24 A. They don't need any other process than that. But there 25 will be many fewer cases than if you start setting up Page 80</p>

<p>1 some small claims process in addition to the mediation</p> <p>2 which is kind of handing out remedies beyond that for</p> <p>3 less serious cases.</p> <p>4 LORD JUSTICE LEVESON: The question is providing some</p> <p>5 compensation for less serious cases.</p> <p>6 A. Yes.</p> <p>7 LORD JUSTICE LEVESON: I see the point, and I'm not saying</p> <p>8 that each leg depends upon the other. I am seeking to</p> <p>9 find reasons why the press might actually see the value</p> <p>10 of a swifter, cheaper, effective resolution rather than</p> <p>11 the sort of litigation by attrition that is sometimes</p> <p>12 fought out in court and of which you are well aware.</p> <p>13 A. I make the mistake of giving a sort of first reaction</p> <p>14 slightly if I hadn't faced the question quite so</p> <p>15 directly as you put it. I will go away and think about</p> <p>16 it and if I have any worthwhile thoughts, perhaps submit</p> <p>17 them in a written form suggesting how we might develop</p> <p>18 it. Otherwise I shall just go over in mind and keep</p> <p>19 thinking of possible reservations, which is a bad thing</p> <p>20 to do, and in principle it sounds an attractive avenue</p> <p>21 to go down if we can find a solution.</p> <p>22 LORD JUSTICE LEVESON: Nothing that I will do will change</p> <p>23 anything, so this will in some form or other come back</p> <p>24 to you and your colleagues in any event.</p> <p>25 A. And nothing I say personally off-the-cuff will affect</p> <p style="text-align: center;">Page 81</p>	<p>1 MR JAY: The concern, Mr Clarke, that a number of witnesses</p> <p>2 have expressed, Mr Blair amongst others, the fusion of</p> <p>3 news and comment, whether that's a concern you share,</p> <p>4 and if so, what might be done about it.</p> <p>5 A. I share it to the full. But quite who has the authority</p> <p>6 to order the newspapers to go back to the objective</p> <p>7 factual reporting of news reporting and making it</p> <p>8 distinct from comment I do not know. Again, it's not</p> <p>9 exaggerated but it is a marked change.</p> <p>10 Nowadays, in sections of the press, the popular</p> <p>11 press, the reporting of events makes no attempt to be an</p> <p>12 objective account of the facts at any stage of the</p> <p>13 piece. It is from the word go a campaigning description</p> <p>14 of an event being used to further a campaign, which is</p> <p>15 of course exceedingly irritating if you don't have</p> <p>16 a newspaper which writes things up to suit your view of</p> <p>17 things and you don't have a newspaper reporter on your</p> <p>18 side, which my well-known views on Europe, I've always</p> <p>19 had this problem. There has been no such thing as</p> <p>20 a Conservative pro-European newspaper in this country</p> <p>21 for a quarter of a century, which I think slightly</p> <p>22 explains the present state of opinion on the subject.</p> <p>23 There is no newspaper that will report my views on</p> <p>24 Europe accurately, factually, objectively. The general</p> <p>25 context, the adjectives, the description of what I'm</p> <p style="text-align: center;">Page 83</p>
<p>1 what my colleagues and I will eventually collectively</p> <p>2 decide, nor can I make any remote offer of bringing any</p> <p>3 Treasury money to pay for it, but we'll go away and</p> <p>4 think about it, and if I have any personal contribution</p> <p>5 or government contribution to come back to you with,</p> <p>6 I will. If it's personal not governmental, I will draw</p> <p>7 a clear distinction.</p> <p>8 LORD JUSTICE LEVESON: Yes. I don't think it's appropriate</p> <p>9 for me to ask for a government response.</p> <p>10 A. No, sure.</p> <p>11 LORD JUSTICE LEVESON: Because the government will</p> <p>12 respond --</p> <p>13 A. The government is waiting for your report.</p> <p>14 LORD JUSTICE LEVESON: -- in due course to me. I'm really</p> <p>15 asking you not merely based upon your experience as Home</p> <p>16 Secretary and as Lord Chancellor, and as a practitioner</p> <p>17 of the law for many years, who has a great deal of</p> <p>18 experience of thinking about policy and legislation and</p> <p>19 regulation, to test the ideas so that I can have regard</p> <p>20 to concerns that might not otherwise have occurred to</p> <p>21 me.</p> <p>22 A. Well, if I can help, I will, yes. Surely.</p> <p>23 LORD JUSTICE LEVESON: I'm very grateful.</p> <p>24 MR JAY: I've been asked to raise one additional point.</p> <p>25 LORD JUSTICE LEVESON: Yes?</p> <p style="text-align: center;">Page 82</p>	<p>1 supposed to have been doing will be entirely coloured by</p> <p>2 the campaigning position of a newspaper.</p> <p>3 I'm sure Tony found that very frequently probably on</p> <p>4 that subject as well as others, but there are Labour</p> <p>5 pro-European newspapers, but they only report Michael</p> <p>6 Heseltine and myself as evidence that the Conservative</p> <p>7 Party is divided, so you don't get -- Labour</p> <p>8 pro-European newspapers don't report one's views, what</p> <p>9 you actually said, but that's just a politician's moan.</p> <p>10 The answer in my opinion is to go on the radio and the</p> <p>11 television and to stop reading the newspapers.</p> <p>12 LORD JUSTICE LEVESON: Although the Press Complaints</p> <p>13 Commission does in fact -- the code of practice, the</p> <p>14 Editors' Code does in fact require a distinction between</p> <p>15 fact and comment.</p> <p>16 A. Well, if we had the time, I'm sure, I haven't read all</p> <p>17 this, I have actually looked at two or three of this</p> <p>18 morning's newspapers in which I appear generously, but</p> <p>19 if we went through this morning's newspapers, I think</p> <p>20 I could rapidly persuade you this is a complete fiction,</p> <p>21 which has the entertaining effect that the version of</p> <p>22 events depends on the newspaper you read. Most people,</p> <p>23 I think, choose the newspaper which matches their own</p> <p>24 views, although fortunately an astonishing proportion of</p> <p>25 them take a newspaper which still doesn't affect their</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

1 **views when they're finished.**
2 MR JAY: Thank you.
3 LORD JUSTICE LEVESON: Thank you very much indeed,
4 Mr Clarke.
5 **A. Thank you.**
6 LORD JUSTICE LEVESON: Right. Tomorrow morning, 10 o'clock.
7 (4.20 pm)
8 (The hearing adjourned until 10 o'clock the following day)
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A	67:9 82:24	alarmed 23:24	71:6,8 84:18	30:10 34:14	72:6 74:21	Blair 52:13 83:2
ability 21:16	address 9:23	Alastair 48:9	appeared 12:9	42:13 45:15	81:23 82:5	blame 54:18 58:7
64:8	14:7 16:15	alert 60:20	appears 12:12	56:6 73:15	83:6	blaming 55:16
able 10:23 13:16	18:10 50:2	allegation 77:3	27:22 54:21	82:24	backbencher	blatant 4:14
17:1 22:20	60:17	alleged 35:19	application 1:5	asking 38:21	12:7 28:24	blazing 62:14
45:18 48:4	addressed 21:2	alleging 76:20	applications 1:8	42:18 82:15	backed 63:13	board 40:4 80:8
51:23 65:9	80:4	78:10	1:11	aspects 21:6	backwards	body 16:25 43:6
67:8,17 69:17	addressing 24:14	alliance 61:2	applied 4:23	55:12	16:21 74:13	65:3,8,17 67:8
73:5 77:14	adequately	allow 16:14 50:9	5:15,18 36:15	assessed 68:7	bad 81:19	bombarded 74:5
78:3 79:10	22:19	65:8	applies 13:21	assessment 6:4,9	balance 5:20 6:3	bombardment
80:15	adjectives 83:25	allows 70:25	apply 36:16	6:19 18:16	51:14 52:1	76:4
absolutely 30:4	adjourned 85:8	78:21	38:18	70:17	74:20	book 34:18
32:25 67:4	adjudicating	alongside 45:5	applying 25:2	assist 7:10	balanced 31:13	books 12:12
80:17	72:9	alter 6:4	appointed 27:8	assistance 77:22	bank 27:9,9,11	boot 6:24 68:6
abuse 79:8	adjudications	alternative 80:9	27:14	association 3:6	barred 46:15	68:21
abusive 78:17	65:24	altogether 24:10	appointing 47:22	assuming 2:9	barring 70:11	borders 65:9
academic 31:6	adjudicative	amateurs 46:2	appointments	astonishing	based 3:11 21:11	borne 7:8
accede 23:14	69:3,6	amateur-ish	48:9	84:24	33:4,19 49:15	bound 28:23
acceded 36:3	adjust 47:24	48:8	approach 36:6	attack 16:2	57:9 82:15	45:2,4
accept 9:4 13:11	51:23	amend 34:17	77:17	32:24 60:4	basic 30:20	box 37:9
13:18 31:12	administration	American 46:10	appropriate 9:22	attacked 62:7	basis 4:8 18:15	branch 27:11
35:1 41:2	38:15,18	amount 13:25	18:6 26:8	attacking 62:20	34:11 44:10	branches 13:9
75:23	administrations	14:1	46:25 48:10	attacks 33:7,8	55:18 69:8	breach 5:11
acceptance 17:5	2:24	amounts 28:6	53:12 72:13	attempt 32:11	bear 6:6 72:3	breached 30:6
accepted 8:4	admit 45:21	amplification	74:17 78:22	83:11	beast 64:22	breaches 26:3
33:13 38:23	adopt 67:21	10:23	82:8	attempted 41:15	Beaverbrook	break 53:7 64:12
51:21 61:12	advance 28:18	analogies 74:25	appropriately	attempts 33:23	49:12	79:6
accepting 62:1	30:1 45:24	analogy 36:12	74:10 80:21	attention 1:4	bed 61:7	bribe 27:10
access 47:15	advanced 58:14	75:7	April 1:21	58:20	begun 60:2	34:22
70:11	advantage 17:11	analysis 10:21	architecture	attract 13:16	begs 11:1	bribery 33:25
accidental 41:7	74:16	and/or 33:24	63:21	attracted 4:17	behalf 15:17	35:8,12,15
accorded 5:9	advice 40:22,24	anger 74:2	area 6:17 7:13	24:4 72:4	45:8	38:20 39:17
accords 36:7	52:22 78:22	annexes 1:24	8:8,16 11:12	attractive 70:9	behaved 76:21	brief 28:18
account 25:16	79:18	2:10 3:19	16:20 18:3,14	72:10 73:16	belief 2:20	briefing 29:24
27:9,11 36:2	advisers 2:15	announced 4:13	31:25 69:19	81:20	believe 14:15	bring 11:7 31:8
57:9,13 63:20	advises 78:1	59:24	70:10 72:5	attributes 64:23	43:7,8 49:17	34:15 43:17
83:12	affair 12:7	annoying 43:2	73:5	attrition 81:11	56:10 58:21	bringing 72:2
accurately 83:24	affairs 76:22	58:1	areas 3:16 8:23	author 40:22	59:6,11 66:12	82:2
achieve 53:23	affect 6:9 10:6	annual 63:11	9:20,23 10:16	authority 17:12	believing 30:25	brisk 24:2
acknowledges	48:16 52:5	anonymised 9:4	10:17,20,20	64:7,9 83:5	49:15 66:14	British 3:9 46:9
62:6	81:25 84:25	answer 7:13	71:14 79:13	autonomous	benches 26:3	broad 10:10
acquire 73:24	afford 80:10	14:13 15:19	argue 29:7 71:13	17:25	benefit 60:5 70:5	12:16 32:4
act 4:11,22 19:12	afraid 2:3 65:22	16:9 34:20	argued 70:11	available 5:23	best 20:9 39:15	43:6 53:14
21:23 23:7	73:23	35:23,23 43:13	argument 5:15	20:21 21:5	41:8	60:15
33:24,25 34:12	afternoon's 1:14	51:20 53:14	17:8 25:5 33:5	25:1 26:19	better 6:25 10:9	broadcasters
34:14,18 35:8	age 11:24 13:24	55:9 56:16	35:1 58:13	31:10 36:14	36:20 38:24	13:5 48:25
38:20 39:5,18	14:20	58:25,25 70:13	62:1 68:11,13	69:9 76:6	45:18,19 47:1	broadcasting 7:6
71:12	aggregate 58:15	72:7 84:10	68:18 79:16	avenue 81:20	54:4 80:3	59:14
action 52:4	aggressive 51:11	anticipate 1:9	arguments 59:3	average 74:4	betting 77:2	broadly 41:4
actions 4:23 31:9	ago 2:5 3:4 14:11	54:11	62:25,25	averse 76:3	beyond 26:22	brought 19:18
68:6 69:7	15:21 39:15	anxious 77:21	arisen 23:3	avoid 38:19	79:14 81:2	71:11
activate 23:5	60:3,14 67:23	anybody 7:15	arises 15:12	avoids 11:14	bias 59:4	Brown 52:16
33:24	73:19	15:15 35:14	47:13	await 63:22	big 10:11,13	54:16,24
active 11:25	agree 36:23 40:8	54:17,25 68:2	arising 26:6	award 72:10	14:20 21:21	Brown's 52:19
activities 3:5	51:15 59:10	71:24 74:17	arm 69:1,2,2,3	aware 17:16,19	60:21 71:16,17	bubble 12:17
7:15 22:24	60:23 62:9	anyway 28:22	69:6	27:17,23 35:23	bill 30:16 31:2	26:16
64:7	65:16 80:23	49:9 66:23	arrangements	38:25 81:12	32:12,14,15	budget 18:16
activity 6:17	agreed 64:4	apart 16:1 41:17	20:5 24:10		33:10,12 34:17	30:4,5,7
14:4	agreement 19:17	41:21 50:21	41:4	B	39:1 59:23	budgets 29:18
Acts 57:21	72:19	apology 65:14,18	arrived 30:20,25	back 6:25 11:23	bills 56:19	Bugle's 59:9
actual 31:19	agreements 3:22	66:1,2 72:18	52:9	11:24 16:11,18	bit 22:8 42:6	Builders 75:4
33:12	ahead 5:5 15:13	75:12 80:22	article 5:11 63:8	26:9,16 28:5	44:10,20 51:18	building 75:7
ad 33:7,8	45:17	apparent 57:15	articulated	49:24 52:1,20	53:14 65:13,14	bundle 37:13
add 57:25 58:10	aid 67:25 71:16	appealing 79:17	67:22	56:6 57:19	76:9 79:13	38:1,2
addition 81:1	aimed 50:14	appear 25:22	aside 7:5 21:4	60:17 67:10,14	bits 36:21	burden 71:18
additional 20:20	air 19:9,24	26:2 41:11	asked 17:16	68:21 70:24	bizarre 73:20	business 10:22

13:5 17:19 27:17 41:20 42:3 52:21 67:11 68:1 72:16 76:22 butter 60:19	causes 8:21 cautious 8:3 9:13 39:16 cautiously 9:17 cease 19:22 celebrities 9:11 76:12 celebrity 13:8,8 40:1 76:11 cent 6:2 59:9 66:11 67:5 central 32:1 century 29:21,22 48:18 83:21 certain 9:3 13:25 14:1 40:12 42:23 55:12 71:17 72:9 certainly 2:8 8:15 10:14 18:12 21:1 23:21 28:1,7 29:23 45:9 46:14,25 49:4 49:10 65:23 71:5 72:24 76:14 cetera 37:21 40:3 CFA 4:1 5:12 33:17 71:5,11 CFAs 5:23 67:14 67:18 68:6,20 CFA-based 72:1 chair 40:13 chairman 40:15 challenge 11:7 challenged 4:7 chance 43:10 57:17 chancellor 2:22 6:23 17:14 27:8,13 30:4 37:6 82:16 change 19:8 41:3 48:13,13 54:11 59:16,21 81:22 83:9 changes 4:22 18:19 changing 54:9 68:20 characterised 44:3 78:16 charge 16:19 56:7 charged 16:5 cheap 72:21 cheaper 81:10 cheating 35:13 check 1:21 checked 2:16 Chief 17:17 child 13:23 children 9:8,11 chilling 68:13 76:1,15	choose 84:23 circumstances 72:1 cited 8:23 citing 54:25 City 30:9 civil 3:24 47:19 47:23 59:25 60:10 62:8 65:10 claim 2:3 68:9 69:7 73:5 claimants 32:5 claims 61:15 71:15,21 73:11 75:1 81:1 clamour 57:20 Clarke 1:15,16 1:18,19 2:11 3:20 5:20 7:3 17:22 23:4 30:11 34:2 37:11 53:9 55:19 59:15 63:18 83:1 85:4 clear 24:18 38:10 38:20 39:11 50:24 61:20 63:18 82:7 close 17:4 61:21 closed 7:15 closer 61:24 code 84:13,14 coincident 7:9 collapse 54:11 colleagues 52:22 52:23 63:3 72:23 81:24 82:1 collected 63:8 collective 14:19 15:2 collectively 82:1 coloured 84:1 combined 14:2 come 9:22 16:8 16:17 17:2 23:11 26:9 32:25 45:15 50:21 52:11 57:1 67:10 74:14,21 81:23 82:5 comes 18:13 33:17 49:3 65:8 coming 24:11 31:8 40:20 54:12 62:14 73:13 commence 65:10 commenced 68:1 commending 33:12 comment 13:5	31:7 38:12 67:14 83:3,8 84:15 comments 23:9 commercial 50:5 55:6 Commission 15:21 64:25 79:24 84:13 Commissioner 18:23 21:14 22:9 24:21 25:20 26:14,20 26:23 Commissioners 22:19 Commissioner's 17:23 18:4,25 19:4,21 commitments 38:11,21 committed 77:19 committee 40:13 committing 39:10 57:24 Commons 28:25 41:10 communications 47:16 48:11 52:2 company 3:10,10 71:17 compensation 81:5 competing 59:3 competition 53:20 competitors 27:20 45:17 complain 73:12 79:25 80:5 complained 27:9 complaining 25:21 complaint 80:1 80:16 complaints 15:21 21:10 55:22 64:25 73:1 74:6,8 76:2 79:24 84:12 complete 84:20 completely 20:13 54:16 65:2 66:3,21 complexities 48:5 complicated 20:4 comply 64:18 66:7,10 compulsion 66:24 conceal 14:22 conceded 56:5	70:16 concentrate 5:6 63:4 concepts 77:19 concern 8:19 10:22 14:25 67:17 68:19 74:19 83:1,3 concerned 4:13 41:17 49:19 51:25 67:20 69:11 72:22 concerns 68:24 79:4 80:4 82:20 conclusion 1:3 7:1 33:12 conclusions 17:9 conditional 3:21 conduct 51:3,4 conducted 4:8 69:8 conducts 38:8 conference 63:11 confident 2:20 confidential 26:18 confidentiality 14:22 confine 21:16 confirm 2:6 conscious 8:8 16:20 consensus 33:11 consent 35:9,9 consequence 68:21 consequences 79:6 80:11 Conservative 83:20 84:6 consider 30:11 38:22 40:14 47:19 70:8 74:23 80:1 considerable 10:5 28:6,7 47:5 consideration 18:25 33:23 36:1 37:4 considerations 33:20 considered 43:10 considering 40:23 80:20 constant 76:2 constantly 11:4 constituents 57:11 constraint 5:3 22:23 25:17,19 constraints 25:6 25:10 consult 32:10 consultation	30:17 32:3,19 33:15 37:7 61:23 consulting 31:20 32:16 36:5 contacts 44:23 44:25 45:1 51:1 contain 33:3 contains 37:19 contemplate 19:20 content 2:6 41:4 contentious 77:24 context 4:1 6:25 53:13 75:18 83:25 continually 51:12 continue 9:18 continued 47:14 continuing 5:23 contract 39:24 contrary 42:17 contrast 13:6 contribution 82:4,5 control 22:24 46:19 63:25 controllers 20:14 controversial 16:9 convenient 53:4 67:12 convention 12:13 conversations 29:10,11 convincing 63:16 cope 76:4 80:9 copy 2:9 core 1:5 Cornish 7:18 correct 2:20 3:2 36:15 58:16 77:11 correction 80:6 correctly 20:10 74:22 correspondence 37:20 corrupt 39:24 cost 68:2,16 69:8 69:9,20,22 71:13,18 77:13 costing 73:9 costly 4:9 costs 3:24 4:16 4:25 5:1,3,16 6:22 41:19 68:10 71:3 77:9 78:7 cosy 45:10 Council 19:14 country 4:18	13:10 14:9 31:8 50:23 52:2 55:3 62:11 66:12 83:20 couple 41:21 70:19 course 4:24 6:4 18:14 25:5 30:7 34:6,12 39:12 40:11 68:18 70:10 72:15 75:18 77:1,20 82:14 83:15 court 5:9 9:16 25:2,24 57:18 68:1 69:16 71:25 76:12,22 81:12 courts 7:7 9:1,6 9:10 24:25 25:22 56:22 61:10 64:13 cover 3:17 covered 28:11 33:23 43:24 CPS 24:7 create 23:23 64:1 69:22 created 24:2 creates 66:24 creating 70:1 creation 22:5 credit 60:14 crime 56:11,13 56:14,14,15 57:6 crimes 56:4 57:25 criminal 23:1,6 24:2 30:6 36:24 55:20 56:2,19,21 57:21 64:13 criminals 55:17 57:23 58:2,6 critical 2:2 8:9 30:1 31:6 62:10 66:15 criticised 17:9,15 criticising 50:12 50:13 criticism 57:1 criticisms 50:13 crucial 52:12 crucial 63:14 cultural 49:21,22 culture 13:8,8 48:13,14 50:25 51:18,24 current 2:21 18:13 19:19 20:10 23:5 38:14 75:25 currently 19:4
---	---	---	--	---	---	--

21:4	4:12 5:6,8,16	81:17	66:17 84:1	effective 69:20	20:5,7 24:11	62:7
curry 44:15	10:3,4 29:2	devise 77:6	dominant 3:14	81:10	event 68:9 75:13	expected 31:24
currying 44:19	30:16 31:2,9	dictate 45:18,19	dominated 11:11	effects 41:18	81:24 83:14	32:21 39:13
custodial 23:14	32:7 33:2	died 12:13 76:19	14:4 53:20	efficacious 72:21	events 83:11	60:1
24:19	67:11 71:19	difference 3:25	door 47:2 69:23	either 11:14 23:6	84:22	expects 70:18
customary 27:12	72:3 76:20	29:9 70:14	double 56:8	56:2 69:5	eventually 9:19	expeditions 39:9
cutting 73:22	defamatory	different 7:17	doubt 2:13 31:3	elected 50:10	50:20 82:1	39:21
cycle 58:6	31:17	14:10 15:11,18	59:7 80:5	51:25	everybody 12:5	expenditure 21:3
<hr/>	defence 23:17	20:2 25:7 26:9	Downing 47:2	election 4:14	12:9,10 23:12	expense 35:1
D	24:5,6 34:5,11	36:20,21,22	dozen 78:9	34:13 54:1,14	27:17 29:8	expenses 35:13
Dacre 34:8 40:5	34:16 38:23	58:8	DPP's 35:8	54:19	31:23 41:6	expensive 4:19
40:7,17,19	39:7 60:10	difficult 13:15	draft 19:19	element 66:24	64:16 69:10,17	67:25
60:12	73:6	50:7 58:4 60:1	30:16 36:4	email 37:25	71:2	experience 47:17
daily 35:12 40:5	defences 24:5	62:10 65:14	64:21	embarrassing	everybody's	82:15,18
48:20 49:15	34:21	77:6	drafted 21:18	61:18	19:17 23:16	expert 71:6,8
59:16,21,22	defendant 25:13	dilating 57:19	22:3,21	emerges 41:5	evidence 3:13	expertise 74:15
60:3,4,5,7,9,15	25:14,15 71:9	diminished 51:8	drafting 22:1	emphasise 1:7	8:1 9:23 21:15	explain 18:22
60:22,24 61:2	defendants 4:10	dinners 41:21	31:19 37:4	employ 73:12	22:11 27:25	19:6 28:15
61:8 62:14,16	4:25 5:17,18	direct 10:8	draw 3:4 10:1	77:24	31:4 33:17	29:7
62:17,24 63:3	32:10	directed 51:17	13:6 15:2,7,10	employer 71:16	35:12,17,25	explained 19:19
damage 79:9	deference 13:24	direction 28:18	15:17 64:21	encourage 69:17	37:12,15,18	22:19 59:3
damages 65:10	delivered 4:6	62:19	82:6	70:4	42:19 46:22,23	explaining 63:1
71:2 72:13	demand 56:23	directive 20:8	drawn 15:4,5,22	endorse 55:2	53:17,21 57:18	explains 83:22
damaging 61:13	demanding 56:3	directly 8:19	39:8	ends 52:6,9	61:14 74:11	explanations
data 18:24 19:4	democracy 45:3	81:15	drink 41:9	enforce 65:9	84:6	2:17
19:7,15,16	73:24	director 3:9	drive 10:14	enforced 19:12	evidential 55:18	exploring 35:2
20:5,11,12,13	democratic	35:24 41:25	driven 13:17	engage 27:18	exact 75:2	55:10
21:22	63:14	42:8 47:16	Dublin 3:11	28:15 29:3	exactly 7:19 14:7	exposing 39:23
date 1:21 2:1,4	democratically	48:11	due 82:14	48:4	63:4 64:22	exposure 13:19
19:18,18 34:14	50:10	directors 3:15	duties 48:3	engaged 30:12	exaggerate 48:12	14:1
dates 3:13	demonstrate	disagrees 44:18	<hr/>	engagement 45:9	exaggerated	express 79:5
day 13:7 48:21	72:14 79:10,11	disapprove 57:3	E	England 12:12	48:20 83:9	expressed 9:20
49:9 67:3	demonstrated	discharge 18:8	eagerly 56:18	enhanced 20:18	example 35:11	54:7 67:16
73:21,21 80:6	54:22 74:15	disclosed 36:24	earlier 18:24	23:16 24:4	74:19	68:19 74:3
85:8	denied 77:3	disclosure 40:15	34:20 35:24	Enoch 52:9	exasperation	83:2
days 12:21 27:12	deny 29:10 45:22	40:25	70:16 74:11	enormous 16:5	22:15	expressing 63:10
46:19 49:9	department 18:2	discourage 69:15	early 6:13 19:13	21:2 68:16	exceedingly	expression 67:2
deal 17:24 28:12	18:3,15 74:24	discover 42:8	20:3 23:11,23	enshrined 38:25	39:16 83:15	extent 33:4 34:6
40:9 43:24,25	department's	discuss 16:18	46:18 77:15	ensuring 75:19	Excellent 51:7	43:25 49:16
52:13 55:11	28:17	74:24	earth 11:7	entered 3:3	excess 50:16	61:12 74:17
58:20 64:14	depending 65:12	discussed 55:14	eased 46:18	11:19 46:9	excessive 5:17	75:8
74:22 76:17	depends 53:15	discussing 40:16	easily 26:9 50:12	entertaining	51:8	extraneous
82:17	78:14 81:8	40:21 53:9	easing 41:1	84:21	excessively 8:24	33:20
dealing 10:18	84:22	discussion 9:1	easy 27:19 36:23	enthusiast 34:21	22:4	extraordinarily
29:1	derisory 25:3	19:14 41:14	47:8 65:13	enthusiastic	exchange 7:23	4:21
dealt 58:3	describe 60:9	58:17,18,23	74:7	46:19	Exchequer 27:8	extraordinary
debate 21:21	described 5:13	discussions	economic 48:6	entirely 22:18	27:13	14:10 17:18
debates 22:2	59:17 64:24	30:19 33:1,2	economically	84:1	excited 61:10	49:16 52:11
decent 50:22	75:9	34:10 41:19	30:14	entitled 34:22	65:21	extreme 13:7,12
decide 11:13	describing 45:10	disincentive 76:1	editor 15:8 48:10	entourage 52:19	excitement 54:21	34:23 48:23
16:21 17:8	description	disproportiona...	58:19	entry 75:9	excitements	extremely 6:17
24:8 50:8 82:2	83:13,25	10:20 11:1	editorial 60:18	envy 52:3	49:11	8:3 43:7,8 58:1
decided 9:16	desirability 34:4	disputes 70:2	editors 10:12	equally 50:14	exclusion 61:16	66:18
15:20 18:15	desirable 7:25	72:8 75:7	15:10 27:15	equivalent 75:1	exemption 21:24	<hr/>
29:16 48:7	desire 27:4	distinct 83:8	34:8 35:4	errors 2:19	23:2	F
77:18	desperate 54:2	distinction 10:1	37:12,24 40:3	established 5:11	exercised 50:5	faced 81:14
decides 16:25	despite 54:19	82:7 84:14	43:17 63:11	75:11	exerting 10:13	facing 76:2
decision 5:19 7:8	destroyed 16:14	divided 84:7	84:14	estimate 51:13	exhibit 37:19	fact 13:18 21:4
7:9	destructive	Djanogly 39:5	effect 4:24 5:1	58:11	42:11	30:24 37:7
decisions 8:16	31:17	document 64:22	34:15 35:18	et 37:21 40:3	exist 5:4 26:25	84:13,14,15
50:19 74:13	detail 3:18 13:1	documents 40:15	42:14 46:23	ethics 51:1	34:6 75:3	facts 57:15 83:12
decision-making	31:19	40:25,25 73:6	48:24,25 49:2	EU 19:1	existence 37:7	factual 83:7
14:8,23 16:25	detailed 2:17	doing 21:11 29:6	53:25 56:12	Europe 83:18,24	expanded 20:17	factually 83:24
deeply 35:14	details 27:19	29:8 30:8	64:11 68:13	European 5:9	21:7	failing 64:3
63:23	deterrent 24:22	34:19 41:8	69:21 76:1,1	17:25 18:13,19	expanding 20:23	fair 5:8 32:25
defamation 3:25	develop 28:21	52:13 54:9	76:16 84:21	18:23 19:8,15	expect 7:16 43:4	33:21,22 40:6

58:17	74:5 77:16	42:17 43:8	38:21 50:17	54:13,15 55:5	hearing 1:10	illustrating
fairly 24:2 26:2	81:9,21	63:14 67:2	53:15 79:12	55:12 56:4,18	85:8	58:11
26:18 28:2	fine 36:22	freestanding	given 3:12 6:1	63:24 64:6	help 34:8 82:22	imagine 64:12
30:21 44:3	fine 9:4 28:8	43:18	18:6 22:11	72:23 74:21	helped 52:14	immediately
fall 50:1,21	finer 25:6,8 28:5	frenzied 59:6	23:18 27:25	82:5,9,11,13	helpful 63:2	53:15 79:13
56:14,16	finished 85:1	frequently 40:11	33:23 45:24	governmental	helps 11:6	Immigration
fallen 56:11	fired 62:18	84:3	46:8 49:23	82:6	Heseltine 84:6	23:7
falls 50:3,12	firmly 61:1	Friday 1:7	60:5,13	governments	high 10:18 17:22	impact 30:24
family 3:14 9:1,6	firms 25:18	friends 65:1	giving 22:24	45:23 48:17,19	44:11,11 56:2	62:15 78:19
9:10,16	first 3:3,9,22,24	friendships 44:8	29:11,23 45:16	49:10	59:13 68:1,8	imperilled 75:21
far 4:8,12 5:21	12:19 15:7,21	front 47:2	72:9 81:13	government's	68:10 69:16	75:24
6:3 7:24 11:17	25:25 27:7	full 1:18 5:5	glad 13:24	51:13	higher 6:14 67:5	implement 19:2
11:20,21 13:14	32:17 35:16,25	20:25 57:13,17	go 10:3 11:23	grateful 69:14	highlighting	implemented
16:25 17:6	37:21 58:22	83:5	12:25 14:7	82:23	60:15	23:20
20:3 27:4	60:11 69:2	fully 39:4 55:14	20:2 21:12	grave 12:17	highly 7:25 45:5	implementing
49:17 50:4,8	75:18 77:12	77:18	27:6 29:13	gravity 57:17	45:7 62:10	34:14
51:22,24 59:13	81:13	function 20:12	36:10 41:13	greased 39:8,21	76:17	Implicit 58:13
61:4,5 65:16	fishing 39:9,21	functions 9:25	48:23 49:24	great 21:2,12,19	high-profile	implied 55:4
72:22	fist 50:22	18:7 19:1	53:15 57:19	25:19 30:7	57:10	importance
fashionable	five 2:4 37:23	funded 19:5	60:17 64:13	40:9 45:8 52:7	hire 78:10	48:20
75:25	59:2 71:7	20:13	67:14 70:7	52:13 53:16,25	history 11:2	important 14:13
fate 33:10	flock 10:15	funding 18:6,11	71:25,25 73:22	55:23 58:20	12:11 66:19	54:2 75:16
favour 4:15	flood 71:21	18:14,18 20:20	74:23 76:5	68:2 72:3,12	hits 17:20	impose 64:10
11:15 41:1	foggy 29:18	69:24,25 72:22	81:15,18,21	76:17 80:11	HMG 38:13	66:10 78:5
44:15,19 55:5	FOI 20:11	funds 18:1	82:3 83:6,13	82:17	hold 1:10 19:7	80:18
55:25 61:18	follow 32:14	furnished 3:18	84:10	greater 11:17,20	39:13 59:2,8	imposed 5:17
favourable 65:24	followed 3:23	further 3:18 9:19	goes 11:24 26:22	greatly 21:16	holds 59:1	25:6,9
fear 8:20,20	following 18:20	21:12 27:6	going 2:2 3:19	42:25	Home 82:15	imposing 57:2
fearful 8:18	26:11 27:24	42:24 83:14	9:12,13 10:3,6	grief 74:2	hominem 33:7,8	66:16
feature 17:15	33:18 56:2	Furthermore 1:9	14:7,8 15:8	ground 17:22	Honourable 1:15	impossible 51:20
32:1 57:13	80:6 85:8	fusion 83:2	22:7 23:9,21	group 10:8 31:25	hope 29:24 53:14	impracticable
features 18:9	foot 6:24 68:7,21	fuss 31:7	26:15 28:4,5	32:22 50:9	55:9 75:15	21:8
fed 74:20	footballer 37:2	future 1:5 16:23	29:17 31:11	groups 31:5 62:8	hopes 44:15	imprisonable
fee 3:21 4:7,20	force 50:3 62:1	40:14 43:19	36:13 41:2,11	growing 11:16	horror 29:18	23:24
6:1,11,16 19:7	63:16	51:4 74:14	43:16 50:9	grown 27:23	horse 54:10	improperly
20:13 41:18	foresee 31:9		52:5,21 53:14	29:20 51:8	hour 48:21	76:21
70:25 71:1	foreshadow	G	55:2 58:6	guess 12:21	hours 49:9 57:18	inappropriate
feel 37:1 44:2	15:14	gagging 77:3	61:16 63:4	guise 26:10	House 28:25	21:8
70:4 79:3	form 65:18 73:5	gain 70:5	64:18 65:21		41:10 62:12	inasmuch 10:19
feeling 9:6 57:5	81:17,23	gather 36:6	66:6 70:24	H	75:4	inaudible 56:16
feels 74:17	formal 24:12	46:13	71:9 72:6,19	hailed 52:8	Human 5:10	inaudibles 65:11
fees 4:3 5:14	formidable 62:4	general 6:21 7:1	78:3,10,11,15	half 32:12 78:9	hurdle 74:6	incestuous 49:13
6:15	formulated	7:5 9:6 20:7	78:15,17 79:10	hand 16:13	hurry 23:12	incidents 49:1
fell 23:21 43:3	36:17	22:12 25:2	79:12,16 80:12	31:14 51:10	hurt 42:22	include 7:6 32:4
fellow 61:7	fortunately	28:10 29:1,5	good 4:20 14:2,9	63:15,25	hypothesis 45:20	including 11:5
fence 60:12	84:24	34:4,13 38:22	14:14 27:2	handing 81:2		51:1 54:7
ferocious 74:2	forward 15:23	38:24 39:4,19	32:15 34:19	handle 14:5	I	incomers 48:7
fewer 58:9 80:25	17:11 28:9	41:5 42:6 52:3	40:9 43:9 44:7	handled 39:5	Ice 11:24	increasingly
fiction 84:20	32:11 36:18	63:10 83:24	44:16,16 47:21	hands 51:9	ICO 18:7,9	28:21 45:24
fight 54:3	62:2 77:16	generality 4:2	50:23 52:2,2	happen 20:22,22	20:12,24	incurring 70:23
figures 71:4	forwards 16:22	10:18 44:1	52:14,18 54:9	happened 7:9	ICO's 20:16 21:6	71:3
finance 19:22	fought 77:2	generally 23:3	65:1 71:11	16:22 27:16	28:10	independent 3:6
72:11	81:12	40:2 41:24	Gordon 52:16,19	happens 29:18	idea 4:20 5:16	3:13 41:23
financed 21:13	found 24:9 52:23	51:21 55:11	54:16,24,25	45:18 64:2	28:3 39:6	55:15 64:6
financial 21:1	61:1,7,18 66:1	generously 84:18	governance 14:9	happily 27:5	42:22 44:19	indicated 42:20
24:24 25:16	84:3	genuine 57:4	50:23 52:2	happy 23:8 39:6	63:23 69:13,15	indignant 35:20
30:8 48:4	four 66:2 71:7	genuinely 63:2	governing 55:2	80:6	70:3,9 71:24	individual 7:6
64:11 65:13	framework 7:1	66:12	government 3:4	Harold 12:2,4	72:4,6 77:19	14:24,25 44:3
68:14,16 72:1	20:17	getting 15:13	4:7,11 9:21	hasten 58:10	ideas 82:19	57:1 75:19
72:15 80:11	frankly 76:3	22:23 39:3,17	10:15 11:14	head 35:9 47:12	identified 74:22	indulging 27:6
financing 19:21	freakery 46:19	60:16 61:23	13:9 14:4	67:19 68:23	75:16	industry 10:4
20:3	free 16:12 51:11	62:18 66:13	17:25 18:1	headlines 49:15	identify 3:7 9:8	27:24
find 33:13 34:17	63:13 66:12	76:4 79:15	24:13 29:16	Health 71:5	ignore 48:23	inevitable 44:9
37:6 40:20	67:3 75:21	give 7:12 9:14	39:12 40:12,23	hear 47:9	ignored 65:25	inference 49:20
52:7 70:8	freedom 31:14	17:3,6 29:4	42:14 47:18	heard 9:15 35:17	illegal 37:3	influence 7:8
72:20 73:16		30:1 35:25	48:22 50:20	43:15 46:22	illustrated 35:7	9:21 10:2,11

10:13 50:59 influenced 11:13 influential 8:25 inform 30:17 informal 30:17 30:19 78:12 information 17:23 18:25 19:3 22:9,19 24:20 25:20 26:14,18,23 27:20 34:24 ingredients 75:10 injury 71:15 inordinately 52:24 input 16:23 17:1 inquire 50:25 Inquiry 1:4 20:19 22:11 24:15,16 27:3 28:1 35:24 53:22 54:4 63:23 68:19 inquisitorial 69:8 73:3 inside 19:14 insist 1:8 instructed 22:22 insurance 6:15 68:9 intake 73:14 intelligence 8:1 intention 23:5 24:14 79:5 interact 45:12 48:17 interaction 48:21 49:6 interactions 40:2 43:24 interest 7:14 8:10 10:5,8 14:21 23:16 24:4,5,6,8 28:16 29:2,4 31:5,22,24 32:21 34:5,11 34:16,21 35:10 36:1,4,16,21 36:23 37:1,4 38:23,25 39:7 39:19,23,25 42:18 47:15 59:20 interested 4:15 10:13 12:11 42:2,7 67:13 68:25 interesting 72:25 interests 8:7 30:12 32:16 33:1 38:7 55:6 internal 18:21 28:14 42:12	international 3:10 interpretation 60:16 62:21,23 interval 56:7 intervening 56:11 intervention 16:4 interview 60:14 introduce 23:14 33:10 introduced 6:11 6:16 42:14 46:2,10,20 introducing 42:22 introduction 38:22 invasion 16:3 investigations 30:6 investigators 25:18 invite 64:1 invited 35:25 37:24 40:13 41:25 66:1 invites 41:12 inviting 12:1 involve 18:24 29:11 31:24 involved 4:16 6:6 6:20 7:23 22:1 22:19 31:20,23 34:16 48:5 involves 75:24 Iraq 61:3,6 irreverence 13:25 irreverent 51:12 66:15 irritating 83:15 issue 3:21 8:11 10:10 14:20 15:6 24:18 37:8 55:11 61:3 65:4 67:13 78:25 79:2,8 issues 8:14 10:11 10:14 22:6 24:14 36:2 60:13,24 67:7	53:9 82:24 83:1 85:2 Jay's 6:23 job 10:6 17:12 39:15 Joe 78:5,15 join 35:20 64:17 65:5 66:22 joined 27:21 joke 65:1 journalism 31:15 36:2 journalist 12:19 35:6,14 36:24 41:12 44:17,23 44:24 45:1,16 46:15 58:18 78:6 journalistic 47:16 journalists 11:3 11:5,6 24:21 27:10,21 34:22 35:1 41:13 44:3,9,16 45:11,25 46:4 46:25 48:4 54:8 58:19 65:15 66:13 joy 37:3 judge 15:16 22:18 79:14 judges 26:8 69:19 judgment 13:22 14:2,14,18 15:2 18:5 72:2 judgments 17:3 judiciary 56:24 June 1:7 37:22 junior 3:5 jurisdictions 64:14 justice 1:3,23,25 2:11,23 3:23 4:6,18 6:21 7:25 11:21 12:25 13:11 14:12 15:6,12 16:7,17 17:14 17:17,21 22:6 23:6,9 24:18 24:23 25:10,14 26:1,5,12 32:3 35:16,22 37:6 43:12 46:14,22 47:11,13 49:20 49:23 50:15,24 51:15 53:3 55:20 56:19,21 57:21 59:17 61:14 63:6 64:20 65:4,8 66:24 67:2,7 67:20,21 68:5 68:24 69:25	70:12 72:17 73:2 74:9 75:3 75:6,15,23 76:7 77:7,11 78:14,21,25 79:3,19,23,25 80:17,19,23 81:4,7,22 82:8 82:11,14,23,25 84:12 85:3,6 justify 16:4 78:4	K keen 24:5 keep 14:8 55:6 57:2 58:6 81:18 Kenneth 1:15,16 1:19 77:1 kept 38:13 40:20 key 15:19,24 19:3 killings 36:11 kind 9:8,15,15 10:7 11:1 21:10 32:20 34:21 44:6 47:23 59:6 65:15 73:20,24 74:7 81:2 kinds 4:25 28:20 48:14 Kingdom 5:11 knew 11:25 12:6 12:10,10 26:17 knocking 69:23 know 2:22 7:22 12:18 13:4 14:21 15:1 20:6 22:10 27:3 28:24 31:19 33:8 34:6 35:11 36:8 42:1 46:15 49:3 53:22 54:4 55:9,9,24 64:4 65:20,23 66:1 67:15 71:4 77:2 83:8 knowledge 10:9 12:22 known 12:16 26:16,17 41:22 50:11 60:9 76:17 knows 29:8 30:8 71:9	languages 31:10 large 27:24 69:16 72:12 lasted 52:15 law 10:4 15:25 17:25 18:14,19 19:15,16 31:3 32:11,18 33:2 35:2 48:6 55:24 56:1 64:13 69:19 82:17 lawyer 16:20 70:14,17 72:2 74:12 78:1,2 lawyers 32:7,7,9 68:7 70:13,22 71:6,8 77:24 78:11,12 79:17 lead 17:5 61:16 leader 12:3 leaders 51:21 leading 45:6 59:22 leaks 30:7 learn 73:8 learned 14:5 learnt 39:15 leave 13:6 47:1 leaving 76:19 Lebedev 41:22 42:6 led 47:14 48:18 56:10 68:12 left 24:9 leg 81:8 legal 2:17 16:2,4 16:10 17:18 67:25 71:16 legislating 22:1 31:25 legislation 21:18 22:22 29:19 33:16 36:21 38:25 55:20 82:18 legislative 19:10 21:15 legitimate 7:14 8:10 10:5,7,21 13:3 29:3 31:14,21 legs 73:7,7 length 1:23 lengths 54:3 lengths 32:12 Lester's 32:14,14 32:17 letter 24:13 let's 67:12 level 5:14,17 10:18 13:18 18:6 20:1 44:1 45:13,13,15 53:10,11 58:22 58:23	Leveson 1:3,23 1:25 2:11 6:21 11:21 12:25 13:11 14:12 15:6,12 16:7 16:17 17:14,21 22:6 24:15,16 24:18,23 25:10 25:14 26:1,5 26:12 32:3 35:16,22 37:6 43:12 46:14,22 47:11,13 49:20 49:23 50:15,24 51:15 53:3 64:20 65:4,8 66:24 67:2,7 67:20 68:5,24 69:25 70:7 72:17 73:2 74:9 75:3,6,15 75:23 76:7 77:7,11 78:14 78:21,25 79:3 79:19,23,25 80:17,19,23 81:4,7,22 82:8 82:11,14,23,25 84:12 85:3,6 Leveson's 23:9 Lewis 35:17 libel 31:7 67:23 67:25 69:7,18 75:10 liberal 62:11 liberties 59:25 60:10 62:8 life 14:24 16:21 17:15 32:2 37:2 40:1 41:15,16 lifetime 11:16 54:1 lift 25:8 lifted 25:9 light 18:12 35:22 lightly 44:17 lightness 57:15 liked 61:22 limited 3:6,7 12:22 63:7 69:9 line 15:7,17 16:2 16:10 17:10,11 37:5 38:23 lines 15:3,4,5,11 66:2 link 10:17 linked 23:15 links 28:21 list 37:19 listen 80:15 listened 39:16 listening 57:18 litigate 80:10 litigation 3:24	6:16 69:16 71:4 79:16 81:11 litigious 72:5 76:17 little 9:14 66:2 69:20 71:3 76:9 77:12 lives 16:14 living 32:1 lobbied 34:7,10 lobby 7:18 12:9 28:24 29:8 lobbying 8:7,8 8:12 10:7,7,21 33:4,18 43:3,4 57:11 lobbyists 30:24 local 74:4 lock 24:21 locks 43:19 long 12:18 14:1 15:13,20 19:16 26:19 39:15 52:14,15 70:20 72:25 longer 56:9,13 56:23 57:7 68:14 70:12 72:2 look 15:22 22:3 36:18 37:13 38:3 39:6 64:23 71:20 73:23 looking 84:17 looking 15:24 16:21,22 19:11 27:3 43:11 45:13 74:12 Lord 1:3,23,25 2:11,22 3:23 4:6 6:21,22 11:21 12:25 13:11 14:12 15:6,12 16:7 16:17 17:14,14 17:16,21 22:6 23:9 24:18,23 25:10,14 26:1 26:5,12 32:3 32:12,14,14,17 35:16,22 37:6 37:6 43:12 46:14,22 47:11 47:13 49:11,11 49:12,20,23 50:15,24 51:15 53:3 64:20 65:4,8 66:24 67:2,7,20,21 68:5,24 69:25 70:7 72:17 73:2 74:9 75:3 75:6,15,23 76:7 77:7,11
---	--	--	--	--	--	---	---

78:14,21,25 79:3,19,23,25 80:17,19,23 81:4,7,22 82:8 82:11,14,16,23 82:25 84:12 85:3,6 Lords 62:12 lose 70:20 loss 72:15 lost 3:12 lot 8:7 13:17,20 25:8 28:21 31:7,21 42:5 48:8 55:20 56:20 70:18 78:8 lots 73:13 loud 10:20 loves 66:14 love-hate 11:2 love/hate 44:6 low 70:12 74:6 luck 43:6 lunch 41:12,13	material 30:24 matter 4:3 13:22 14:25 17:4 30:21 41:7 44:1 49:16 75:8 matters 14:17 23:2 28:10 30:13 41:19,20 maverick 61:9 maximum 25:11 Maxwell 76:19 76:25 77:8 78:7 mean 5:24 14:20 19:22 32:6,6 32:23 48:22 50:4 53:16 60:22,23 63:18 69:22 76:8 80:14 means 19:23 24:25 25:13,14 25:15 37:3 44:5 68:3 70:12 71:10 meant 55:2 measure 42:13 mechanism 19:3 65:5 67:18 70:1 75:6 77:11 78:21 media 3:14 4:15 4:16 7:7,10,14 7:16 8:3,7,9,18 8:20,20,21,22 8:24 9:9,17 10:1,3,19 11:11 14:4 25:18 28:16,18 28:22 30:12,18 30:23 31:21,23 32:20 33:1 36:5 37:20 40:2 41:18,19 42:22,24 50:17 51:7,11,11,12 52:3,11,17 53:11 55:7,12 55:13 64:8 66:22 71:23 73:12 mediation 69:2 75:12 79:20 81:1 mediator 72:8 media-based 10:2 meet 20:1 meeting 35:5 37:11,12,14,24 38:4 40:10 meetings 12:1 37:19 40:5,17 40:19 member 19:2	20:8 22:12 56:10 members 17:18 28:24 35:20 36:25 42:23 43:1,6 memory 11:23 men 52:7 mention 8:15 75:17 mentioned 31:3 74:20 mentioning 27:2 mercy 36:11 mere 14:23 79:8 merely 62:1 65:5 82:15 merits 7:5 33:19 met 42:6 method 20:3 MGN 5:10 Michael 84:5 micro 45:13 53:10 middle 61:4,5 mid-1990s 6:12 mildly 78:16 million 21:5 mind 6:6 23:16 77:23 81:18 minded 8:13 23:23 minds 63:4 66:15 mine 2:1 minimise 21:19 minimised 68:6 Minister 12:18 ministers 8:18 12:2 19:14 50:14 61:18 Minister's 12:6 minor 12:5 minutes 38:4 59:2 mistake 44:13,18 81:13 mitigation 47:5 Mm 75:14 78:24 79:7 moan 84:9 model 42:3 modern 11:10 12:12 43:5 73:23 modernising 32:17 modest 72:10 80:11 modified 71:11 Module 1:3,4,6 moment 7:24 18:10 19:9,21 19:24,25 20:24 21:10,12,16 24:23 37:8 49:17 53:4	59:7 70:18 73:18 76:10,15 77:23 79:21 moments 53:4 money 19:25 21:5 28:7 70:15,18 72:24 73:9 76:18 80:16 82:3 months 73:4 77:21 80:7 monumental 28:4 morning 85:6 morning's 7:22 84:18,19 Motorman 26:6 26:11,15 27:23 mount 68:9 mounted 60:3 move 7:12 9:25 17:22 27:8 28:9 42:11 moving 6:24 17:12 68:21 MPs 35:12 Murdoch 54:8 mutual 40:9	negotiate 80:2 negotiated 18:16 negotiation 20:4 24:11 neutrally 21:21 never 9:12 23:19 33:11 47:24 52:25 53:1 62:22 76:22 Nevertheless 76:23 new 20:5,16 22:5 24:1 27:7 31:1 31:4 39:14 46:19 49:13 55:22 63:15 news 3:13 83:3,7 newspaper 7:22 12:15 15:8 41:6 53:2,21 53:24 54:8,23 55:1,21 56:17 57:8,16 60:9 61:4,6 65:19 65:22 66:4,17 73:22 74:4 76:9,12,16 80:18,21 83:16 83:17,20,23 84:2,22,23,25 newspapers 3:7 7:20 13:5 27:15,25 42:1 42:3,4,9 43:2,4 45:9 48:19,21 48:24 49:2,5,7 49:8 51:2 52:20,24 57:12 57:20 58:7,8 58:14 59:5,13 59:14 65:25 71:23 77:23 83:6 84:5,8,11 84:18,19 nine 62:9 Nods 47:12 67:19 68:23 noisier 11:9,9,21 noisy 56:2 66:15 non-executive 3:9,15 non-media 10:13 non-protection 39:20 normal 9:7 33:2 63:6 normally 32:9 61:3 62:12 Northcliffe 49:11 Notably 19:1 noted 39:2 notice 45:24 notification 19:2 November 43:18 63:9	Nowadays 12:18 83:10 nuisance 58:1 number 16:18 17:18 30:13 43:1 47:2 63:7 67:16 68:5 74:12 83:1 numbering 18:21 28:15 42:12 nutshell 3:2 18:1	official 48:2 officials 2:15 31:22 56:20 off-the-cuff 81:25 off-the-record 29:10,11,24 Oh 1:25 2:8 old 29:18 70:24 ombudsman 15:16 69:4 once 12:19 17:13 22:23 29:16 53:21 66:16 71:24 79:7 ones 8:14,23 47:22 52:10 67:24 75:2 one's 47:8 84:8 ongoing 9:1 on-the-record 29:9 open 7:25 9:10 61:14 63:6 opened 9:2,7 openness 41:2 opera 40:1 operates 37:22 operation 45:6 operations 45:8 opinion 9:20 36:9 44:18,21 49:1 51:7 58:12,24 59:1 59:2,7,9 62:11 62:13 66:20 83:22 84:10 opponent 62:4 opponents 47:9 52:15 opportunity 42:16 oppose 60:2 opposed 20:11 61:6 opposition 3:11 39:6,13 47:1 59:24 optimistic 43:13 op-ed 63:1 oral 1:10 order 21:3 55:24 56:1 80:20 83:6 orders 65:12 66:7 ordinary 32:19 33:15 45:2 71:10 76:13 77:4 78:5,15 organisation 77:25 organisations 25:19 55:7 60:1 64:9 organised 62:7
M				naive 45:22 48:8 49:7 name 1:18 9:7 34:14 narrow 60:17 nastier 57:7 national 8:2 51:2 59:17 61:13 71:5 75:4 nationals 74:5 naturally 74:14 nature 10:22 33:19 37:17 38:9 near 15:5 22:24 nearer 79:15 necessarily 73:9 necessary 1:10 13:3 18:16 21:24 37:15 48:15 65:23 73:23 79:3 need 11:4 14:21 16:10,12,13 18:11,12 35:8 55:18 57:24 59:11 64:19 65:3 68:11 79:18 80:24 needed 31:2 34:11 39:4 78:13 needs 18:8 19:18 44:6,23,24 45:1 64:15 nefarious 32:23	O objective 83:6,12 objectively 83:24 obligation 24:24 78:6 obscure 28:23 66:3 observations 74:16 observer 22:10 obsessed 48:19 52:16 55:1 obsession 49:5 obtain 35:12 67:17 69:20 obtained 37:2 obtaining 47:15 obvious 2:12 48:2 54:10,12 54:15 55:6 obviously 7:13 14:16 15:20 16:15 19:25 25:16 32:8 37:10 40:21 54:1 57:3 74:10 76:10 77:18,21 80:3 occasion 40:10 76:25 occasionally 29:23 61:7 occasions 42:5 occupied 2:24 occurred 82:20 offence 23:1 offences 23:24 24:2 offender 24:25 offer 38:10 82:2 offered 23:17 55:5 office 3:12 12:19 17:23 18:4 19:8,22 20:12 21:6 22:5 28:10,12 30:22 31:1 38:5,8 46:24 48:1 52:7 74:7 officer 47:24 48:3 officers 47:19,21	

organs 10:24	Parliamentary	40:4 44:10,15	plaintiffs 5:2	14:3 29:1,5	5:8	66:22
original 62:21	12:3,5 34:17	46:2 47:6	32:9 71:7	30:3 41:16,24	predictable	prison 23:15,25
ought 22:7 51:8	35:13 44:24	48:16 49:17	plaintiff's 71:2	42:6 46:9 50:7	60:25	24:1 56:8
outcome 20:4	parlous 68:17	53:22 54:7	Planning 74:13	52:6 53:19	prefer 20:8 21:9	57:22 58:10
36:19 53:25	part 6:13 16:24	56:21 57:5,22	platitude 14:16	poll 59:9	preparation 30:1	prisoners 58:10
outnumbered	20:13 29:15	57:25 58:1	platitudes 16:11	polls 58:24	prepared 15:15	prisons 56:7 57:6
43:1	41:7,8,14	59:13 62:25	play 72:12	popular 12:15	26:20 38:5	58:3
outrage 34:25	50:11 56:6	65:5,20,23	please 1:15,18	55:16,21,22	70:20 73:22	privacy 4:1,13
outset 38:10	62:12 64:12	66:1,6,11	3:25 19:6 34:9	60:25 83:10	present 13:7,14	5:6,8,16 16:3
outside 17:7	66:3 72:12	68:25 70:11,12	plunging 79:13	popularising	24:14,15 25:8	67:11 69:7
26:17,19 31:25	79:20	71:10,13,22	plus 1:24	71:24	49:13 59:5	private 14:24
32:20 49:18	partial 57:9	73:7,13,17,19	pm 1:2,7 53:6,8	population 23:25	83:22	25:18 26:18
outwith 55:13	participant 1:6	74:12 75:12	85:7	56:8 59:12	presented 26:3	27:19 32:12
overcrowded	participants	76:5,11,20,24	point 6:5,23 7:5	67:5 74:1	57:16	39:24
58:4	12:17	78:10 79:23	16:2,3 25:4	position 2:17,21	press 9:18,21	probably 2:4 5:1
overdue 39:3	particular 4:9	80:4 84:22	26:7 29:7	7:19 8:12	10:11,12 11:15	7:21 12:23
overenthused	7:10,12 8:1	people's 16:14	30:20 32:15	13:14 17:11	11:16,17,20	13:11 20:7
46:13	29:2 40:20	perfect 75:8	34:7 36:12	18:1,17 20:10	12:9 15:21	37:8,10 39:24
overestimate	42:10,18 45:25	perfectly 6:10,12	43:16,19 44:21	20:16 23:8	16:13 20:17	53:3,17 58:9
57:16	50:9 57:20	7:14 27:12,17	49:3 76:23	24:16 39:10	21:17,20,23	66:7 78:7 84:3
overinfluenced	63:19 72:5	32:19 33:2,9	81:7 82:24	68:14,17 73:10	22:4,25 23:17	problem 22:17
8:22	particularly 2:16	33:15 44:7	pointed 38:12	84:2	28:12 42:15,17	31:4 58:24
overreaction	27:13 32:6	47:7,20 54:12	points 35:16	positions 2:24	43:8 44:19	83:19
63:17	36:22 44:24	65:15	42:10	3:1	47:18,19,21,24	problems 5:12
overwhelmingly	55:7 71:14	persisting 78:9	police 30:6	positively 29:15	48:2 49:25	21:1 22:20
11:12	parties 4:9,19	person 15:7 59:1	policies 7:6	possibility 24:19	50:12,13 51:1	66:25 80:9
owe 72:22	30:19 45:6,23	76:13 77:4,25	28:17 55:24,25	possible 22:23	51:5,17 55:17	procedure 73:11
owned 42:9	47:15	personal 11:22	policy 4:3 5:19	81:19	55:22 60:25	proceedings
owners 7:19	partly 52:14	14:18 32:24	7:8,9 8:16 9:22	possibly 12:15	61:17 63:13	65:10
owns 42:1 66:17	parts 22:2	71:14 82:4,6	10:2 18:3,17	post 19:10 39:12	64:1,6,25	process 61:23
o'clock 85:6,8	party 12:4 84:7	personalities	28:19 30:13	posthumously	66:12,15 67:3	78:12 79:15,21
O'Reilly 3:14	pass 26:8	13:2	36:1,13 41:7	12:13	67:24 68:13	80:24 81:1
	passing 39:1	personally 53:24	42:14 48:6	potential 25:1	70:4 78:21	processes 75:1
	pasties 7:18	59:10 81:25	50:10 55:12,13	32:4	79:24 81:9	produce 64:16
P	pattern 20:7	perspective	59:16,24 60:4	Potentially 80:19	83:10,11 84:12	71:21 72:3,25
pachyderm	Paul 40:17,19	24:20	60:21 82:18	80:23	pressure 7:7	73:18
73:25	60:12	persuade 11:5	polycymaking	pounds 77:9	9:12	produced 12:15
page 3:22,22	paused 9:5	29:7,25 60:2	11:12	Powell 52:9	pressures 14:10	12:19 22:13
18:21,21 28:14	pay 18:2,17 19:7	61:12 65:2	policy-making	power 5:21	presumably 15:7	26:20
28:14 30:16	26:20 28:7	84:20	9:13	11:17,18,19	pretty 26:15	producing 72:4
37:21 38:20	58:20 71:9	persuaded 68:12	political 10:11	37:23 51:7	28:23 37:14	profession 17:19
42:12,12 43:20	82:3	persuading 11:5	10:14 12:3,16	54:12 64:10	40:7 48:13	professional
43:22	paying 60:14	persuasion 41:15	41:14,15 44:24	65:17 67:23	prevailing 57:8	11:22 13:19
pages 1:23,24	payments 20:2	41:15	45:6,7,7,23	powerful 50:9	prevent 5:23	45:5,7
2:9	PCC 65:24 79:25	pet 27:2	47:9,15 48:9	55:7 68:14	prevents 77:12	professionalised
paid 20:13 71:7	79:25 80:15	petty 77:1	50:6 51:21	77:25,25	previous 1:8	11:10 29:15
panoply 18:7	peculiar 49:14	phrase 39:22	60:13 61:2,8	powers 18:25	2:23 4:6,11 5:4	professions 45:4
paper 37:7 79:14	53:19	phrasings 36:20	62:15	21:16 26:22	6:8 12:8 28:3	profile 56:2
paragraph 3:7	penalties 23:14	pick 18:19 43:17	politician 11:25	66:6 67:9	40:11 49:10	profitable 4:21
5:22 7:4 8:23	25:1,16 26:22	picture 40:6	28:20 29:21,22	PR 11:13 29:14	previously 41:22	6:8,17,18
17:23 18:22	56:24 57:2	piece 42:19	44:25 45:1,18	45:6	42:8 74:15	27:24
19:20 28:14	64:10,11 65:14	55:14 59:15	50:11,18 55:25	practical 64:11	pre-briefing	proliferation
30:11,20 33:18	66:9,16 75:24	83:13	56:22 57:3	64:11	29:17	69:11
33:25 34:1	80:18	piecemeal 7:2	73:24	practice 50:25	pre-notification	prominent 72:18
43:16,21,22	penalty 24:24	pieces 29:19	politicians 8:7,17	52:5 70:21	78:23	80:22
paragraphs 3:17	pendulum 13:13	79:14	11:3,4,8 44:2,8	84:13	primarily 8:17	promises 38:12
18:20	13:14 51:18	pile 79:17	44:20 45:3,12	practices 27:18	primary 75:11	promising 32:23
paranoia 63:17	people 8:17,21	place 15:18	49:25 50:8	49:2	Prime 12:6,18	proper 6:19 14:8
Parliament	9:3 10:9 11:13	25:25 34:25	51:2,5,10,17	practised 52:10	principle 7:25	39:8
11:18,19,19	13:11,16,17	45:3	51:22,25 53:1	practitioner	63:6 73:15	properly 46:7
31:1 34:12,18	16:19 17:12	plain 39:23	53:11 66:14	82:16	81:20	property 56:15
35:20 36:25	19:7 26:5 27:5	plainly 45:22	73:20	praise 50:19	principles 25:2	proportion
39:2 41:16	27:23 28:6	56:12 60:19	politician's 84:9	prayers 72:7	36:15	59:12 84:24
42:14,23 43:1	31:8,12,21	plaintiff 70:25	politics 11:2,11	precise 2:3 7:13	print 10:24 12:9	proposal 67:21
43:5,7 56:5,18	32:9 33:1 40:4	71:18	11:23 12:5,10	precisely 36:9	15:8 78:2	proposals 4:18
Parliamentari...			13:9,16,18	predecessor 5:7	printed 65:19	18:13,23 19:1
42:16						

19:8 39:1 62:21 propose 71:15 proposed 4:11 4:22 5:7 proposing 7:15 30:2 62:23 63:5 72:8 proposition 72:25 proprietor 78:1 proprietors 10:12 37:20 40:3 45:8 50:4 53:12 prosecute 35:7 35:10 prosecuted 24:7 35:14 prosecutes 36:14 prosecuting 24:8 35:11 36:17 prosecutions 26:6,11 35:25 prosecutor 35:7 36:13,16 prospect 21:19 68:8 prospects 68:10 protect 36:24 39:8 protected 75:19 protection 18:24 19:4,15,16 20:5,11,12 21:23 31:15,16 35:5 39:20 provide 10:23 17:2 42:15 74:18 provided 1:20 providing 72:21 81:4 proxy 58:14 pro-European 83:20 84:5,8 public 9:12,14 11:5 12:9 13:3 13:4 14:21,25 20:23 22:12 23:16 24:4,5,6 24:8 34:4,11 34:15,21,24,25 35:10,24 36:1 36:4,16,21,23 37:1,4,14 38:22,24 39:7 39:19,23,24,25 42:17 48:25 49:3 52:3,8 56:10 57:4,8 61:17 69:24,25 72:22 publications 31:5,9 publicly 36:14	publish 59:20 80:21 published 18:23 36:4 publishing 36:1 punished 57:23 punitive 5:14,16 pursuant 20:18 put 2:13 17:10 17:11 21:21 22:22 26:14 32:11 34:11,15 36:18 47:3 57:24 60:6,16 62:2,22,23 63:1 65:22 68:6 75:20 76:8,11 77:16 81:15 putting 52:4 55:17 62:20 <hr/> Q <hr/> qualification 75:9 qualified 71:13 qualities 47:23 quality 31:17 quarter 83:21 question 10:25 11:1,7 13:13 15:12,19,25 16:9 28:5 30:3 30:10 34:20 42:11,19 43:20 47:13,22 51:6 51:16,19 65:6 79:9 81:4,14 questioned 23:13 47:25 questions 1:17 15:14 16:6 51:12 quickly 73:8 quite 4:20 6:7 8:6 11:24 13:7 13:20 14:10 15:20 17:24 19:13,16 20:4 20:23 23:11,12 23:22 24:18 25:7 28:21 29:22 36:25 40:5,9 42:2,5 43:6,9 44:5 46:21 48:24 49:14 50:7 52:24 53:22 54:24 56:20 59:25 60:1,11 63:2 72:10,20 73:12 78:7 81:14 83:5 <hr/> R <hr/> radical 61:9	radio 84:10 raise 20:1 53:10 67:10 68:25 79:9 82:24 raised 19:25 79:1 raising 79:8 ranch 77:2 rang 76:25 range 56:4 rapidly 59:25 84:20 rash 72:3 rate 24:3 rations 18:2,17 reach 21:22 80:1 reached 36:8 41:3 reaching 74:13 react 7:17,20 74:2 reaction 8:18,21 40:16 58:23 81:13 reactions 17:7 read 3:19 7:22 52:25 53:1 59:14 62:5,17 75:18 84:16,22 readdressed 18:11,12 readers 58:15,21 59:7,9 60:5,7 readily 26:18 56:5 75:23 76:6 reading 22:10 24:12 52:20,23 84:11 reads 59:13 real 47:14 49:17 49:18 67:16 78:19 really 6:23 8:9 15:2 21:23 22:10 25:20,24 33:5 41:8 44:7 49:16 56:16 57:4 58:1,2 62:16 73:4 78:12 82:14 reason 12:24 16:17 19:19 27:4 29:6 34:19 40:8 41:25 42:18 53:19 80:2 reasonable 6:10 6:19 33:9 41:3 reasonably 10:18 30:14 33:13 39:11 reasons 23:4 25:7 26:25 50:6 72:17 73:2 76:13 81:9	recall 6:11 8:15 8:24 42:4 recantation 59:20 receive 46:8 69:14 received 42:19 receptive 79:4 recognising 47:3 recommendati... 41:3 63:22 recommendati... 3:23 4:12 5:5 15:23 16:19 17:4 20:18 51:4 52:4 record 29:13 37:25,25 38:9 recovery 68:10 red 37:9 redress 67:17 69:20 reducing 4:16,24 5:1 reference 25:11 25:11 39:20 49:24 50:25 referred 13:12 37:11 referring 23:3 32:17 reform 31:11 32:11 33:17 reforms 5:22 6:13 70:10 refusal 66:10 refuse 66:22 refusing 66:7 regard 10:7 24:25 44:11 47:5 82:19 regarded 13:2,4 27:12 31:6 61:3 regards 67:2 regime 5:12 6:8 register 41:11 regulation 20:6 42:15 43:9 82:19 regulator 15:16 16:1,10 63:15 64:5 72:6,7,8 regulatory 7:1 20:17 63:25 reimbursements 6:15 reject 58:13 rejected 52:8 relate 38:14 relation 1:10 20:11 24:19 30:12 33:17 36:5 59:16 67:8,23 69:3,6 75:3	relations 51:4 53:11 relationship 11:2 44:2,7 45:2 49:7,14,25 51:1 52:11 relationships 46:24 52:17 relevant 64:8 relied 43:14 relieved 47:9 reluctant 71:19 rely 57:12 remain 54:20 remained 12:16 remains 9:6 remedies 81:2 remedy 51:9 72:8,20 73:19 76:5 77:5,16 78:11 79:12 remember 2:3 24:13 35:4,19 48:7 remit 20:23 50:1 50:3 remote 82:2 removed 12:21 12:24 reopened 33:14 repeat 51:15 76:24 report 4:5 82:13 83:23 84:5,8 reported 49:1 reporter 83:17 reporting 7:3 8:20 9:2 55:16 83:7,7,11 reports 9:5 22:14 26:15,21 represent 32:4 57:4 58:22 representations 32:20,21 representatives 30:18 reputation 16:2 31:16 request 23:14 require 19:1 44:11 64:8 65:5 76:14 84:14 required 14:23 51:3 requirement 75:11 requires 15:1 57:22 reread 2:8 reservations 60:21 81:19 reshuffled 3:3 resided 67:23 residing 37:9	resist 7:17 resistant 24:3 resolution 70:1 81:10 resolve 75:6 resourcing 18:5 respect 16:12 36:8 40:10 44:11 respectful 12:1 respectful 32:14 respond 20:9 56:22 61:15,19 62:3 73:15 82:12 responded 56:17 57:21 62:24 responding 56:25 response 25:23 55:21 60:6 82:9 responsibilities 3:17 responsibility 17:17 21:17 70:2 responsible 2:18 8:18 18:3 28:6 31:15 65:15 rest 31:20 59:10 restrict 42:16 restrictions 7:4 25:8 result 4:24 25:1 30:24 retention 40:25 retired 69:19 79:14 retraction 65:14 65:18 80:22 retreat 7:24 63:5 retribution 11:15 returned 30:22 revenge 42:24 reverse 14:6 review 3:24 9:5 9:18 19:11 24:10 reward 71:12 rich 76:12 rid 57:6 riding 54:10 right 1:14 8:11 14:1,22 20:15 20:21 36:9 37:5 38:5 47:11 49:23 51:14,16 60:25 61:4,5,5 85:6 rightly 73:12 rights 5:10 75:19 rigid 30:5 rise 40:17 risk 5:25 25:3	42:13,20 68:2 68:15 69:12 70:17,23 71:18 72:1 75:15,17 76:3 78:3 80:10 risks 6:5,19 rivals 27:20 road 36:10 Robert 76:19,24 78:6 robust 60:10 role 15:25 20:16 21:7,19 28:12 Rothermere 49:11 round 58:6,6 routine 74:7 rubric 7:7 ruin 50:21 rule 1:11 30:5 40:14,24 41:2 79:6 rules 68:20 ruling 63:19 run 52:14 70:20 77:8 79:24 running-up 5:3 runs 41:22 Rupert 4:5 Rupert's 4:12,18 rush 59:8 rushed 23:22 <hr/> S <hr/> satisfactorily 6:12 satisfactory 47:20 satisfying 21:11 saw 40:8 saying 30:25 35:4 36:6 48:22 59:9 65:21 70:14 75:7 77:17 79:17 81:7 says 24:17 38:9 78:2 scale 27:22 28:1 28:4 46:21 69:16 scandal 34:24 schedule 37:22 scientific 31:5 58:11 scope 21:12 scrutiny 7:16 19:10 second 69:2 secondly 4:2 35:22 75:20 77:14 seconds 37:18 secrecy 14:24 30:5
---	--	---	---	--	---	--

secret 59:17 61:10	sex 37:2 40:1 SFO's 35:9 shadow 3:1,1 shadowing 39:14 share 54:6 83:3,5 shared 27:14 shareholders 3:14 sheep 10:15 she'd 46:17 shift 49:21,22 51:18 71:17 77:13 shifted 5:21 6:3 shifting 71:14 shocked 8:4 28:1 35:14 shocking 57:10 57:14 short 53:7 shorthand 53:5 showbusiness 13:20 showing 75:10 shows 66:19 side 11:13 17:7,9 32:8 83:18 sides 11:10 43:3 49:15 54:9 significant 53:25 significantly 20:23 silks 69:18 similar 33:19 36:12 48:16 simply 58:14 65:25 68:3 Sir 1:14 4:5,12 4:18 situation 38:8 47:20 six 2:4 37:23 38:16 39:14 80:7 size 18:7 23:25 25:6 skills 46:3 skin 73:25 skulk 52:7 slight 78:11 slightly 8:16 9:5 10:8 15:18 19:9,23 21:10 29:18 45:10 46:18 59:8 61:9 81:14 83:21 small 62:11,12 69:6 73:1,11 75:1 81:1 soap 40:1 society 14:18 15:17 34:7 35:4 37:12,24 43:17 63:11,14 72:5	SoE 38:11 solely 2:19 5:15 33:4 solicitor 5:25 6:5 solution 33:13 69:18 81:21 somebody 29:24 41:9 46:8 69:22 72:13 73:4 76:16 77:14 somewhat 57:16 76:21 soon 28:24 Sorry 10:1 sort 8:14 12:14 27:18,23 36:12 38:8 46:3 48:21 55:13 60:3 63:20 69:13 77:17 79:4 81:11,13 sorts 14:9 61:17 SoS 38:10 sound 50:12 sounding 50:10 sounds 39:21 81:20 so-called 77:3 special 5:9 specialise 6:18 32:8 specialist 69:11 specific 66:5 specifies 64:22 spectacularly 52:17 spectrum 41:6 speech 31:14 43:18 63:9 75:21 speed 39:5,17 speedier 69:17 spent 16:21 52:13 spies 61:13 sport 13:20 sprang 45:5 sprung 31:4 stab 32:17 staff 27:10 stage 9:22 34:16 36:8 79:4 83:12 stages 19:13 stake 77:10 stand 2:20 standard 46:10 standards 69:4 stands 43:9 start 64:2 65:21 66:5,16 71:2 71:24 79:7 80:25 started 4:20	22:23 32:15 45:25 61:22 starting 32:15 startling 22:13 26:13,15 27:22 starts 7:15 29:17 50:21 state 2:22 20:8 63:24 70:2 83:22 stated 42:21 statement 1:20 2:7,8,12 3:8,18 7:4 17:24 18:20 24:12 28:9,11 34:1 States 19:2 status 1:6 5:9 statute 34:5,18 statutory 63:21 64:15,19 66:8 stay 12:19 35:2 steadily 29:20 58:5 steer 29:12 step 31:18 stiff 57:2 stifle 31:6 stipulate 65:17 stone 5:20 stop 21:1 30:1 52:20,23 57:24 58:2 84:11 stories 9:11 46:3 46:5,7,17 story 12:20 45:16,19 46:6 46:6,9 77:24 78:9 streams 20:20 street 12:16 47:2 strength 21:23 strident 56:23 strike-out 77:15 strong 5:23,24 28:21 37:1 60:23 stronger 29:12 65:3 strongly 43:7,8 59:1 structural 21:6 structure 18:11 student 11:25 12:1,22 stupid 50:19 subject 8:6 23:2 24:17 28:3 40:20 62:15 64:9 83:22 84:4 subjects 62:9 submit 64:17 66:22 70:8 81:16 subservience	50:17 substantial 72:14 subtlety 40:12 success 4:3 5:14 6:1,15 50:17 68:8 70:25 71:1 successful 51:25 70:16,21 succinctly 17:24 succumbing 61:25 suddenly 6:14 60:3 62:4,13 suddenness 48:12 sue 67:25 78:7 suffered 72:14 sufficient 21:5 sufficiently 32:3 suggest 17:15 21:7 45:16 68:25 80:20 suggested 76:21 suggesting 7:21 30:22 37:17 73:2 77:5,13 81:17 suggestion 36:3 suit 83:16 summary 33:21 33:22 summer 30:18 sums 72:12 Sun 53:21,24 54:8,18,23 55:1 support 32:23,24 32:24 53:21 54:3,14,17,22 55:4 supportive 29:25 39:3 suppose 21:13 22:6 supposed 84:1 sure 2:1 8:11 9:9 9:17,24 14:5 17:3,20 20:6 22:4 24:12 26:5 27:3 33:6 34:3 35:19 37:1 38:18 39:25 44:5 45:14,17 57:4 65:7 67:4 78:13,20 82:10 84:3,16 surely 14:15 20:15 67:6 76:10 80:15 82:22 surprise 8:2 59:23 surprised 43:11	43:12 surprisingly 41:1 61:1 Surrey 63:11 survive 54:13 suspect 13:19 suspicious 63:23 sustainable 73:8 swept 48:9 swift 69:20 80:21 swifter 69:18 81:10 swings 51:18 swoop 42:23 sworn 1:16 sympathetic 46:4,6 system 14:8 19:2 29:16 56:21 63:25 69:1 70:5,24 73:3 77:13	70:13 tens 57:22 77:8 tension 11:8 term 53:9,12 55:4 63:20 terms 2:21 3:16 9:4 18:5 40:2 49:24 50:24 terrible 27:19 46:2 75:25 terribly 26:7 51:24 54:2 terrified 43:2 terror 50:16 test 36:4,16 39:8 82:19 tests 36:21 thank 1:13,18,20 2:6,11 3:16 28:9 42:10 43:23 55:11 85:2,3,5 Thatcher 53:1 theories 27:2 thereabouts 77:20 they'd 4:13 12:13 23:18 62:10 67:17 73:12 thing 5:4 6:10 9:8 11:16 12:14 13:3,20 17:6 19:9,23 21:14 26:13 27:21 65:15 66:10 78:17 81:19 83:19 things 2:18 8:6 8:19 9:15,16 14:15,17 15:24 21:3 22:14 27:16 29:1,6 31:13 32:13,23 33:14 36:22 41:18 43:14 48:14 58:25 60:16 61:9,17 71:22 73:18,21 74:3 78:22 83:16,17 think 1:21 4:18 5:10 6:3,10 7:4 7:12 8:8 9:3 13:11,17,24,25 14:3,6,6 15:5 15:10,19,20 16:5 17:3 20:15,24 21:9 21:14,24 22:7 22:14,21 24:6 24:20 25:10,20 25:20 26:8,13 26:17,22,25 27:13 28:11 29:2,12 30:13
------------------------------	---	--	--	--	---	--

31:12 33:16	Tomorrow 85:6	two 2:9 3:19	<hr/> V <hr/>	72:21 74:3	wished 60:6	40:18 41:8
34:20,22 35:6	tone 58:8	10:17 12:20	v 5:10	75:20 76:8	wishes 20:9	44:9 45:24
35:9,16,17	Tony 52:13 84:3	26:21 31:13	valuable 40:24	ways 28:15	withdrawing	49:4,12 51:24
36:9,10,11,15	top 80:12	35:16 43:3	72:20 74:18	weak 10:15	7:21	53:20 54:22
37:6,15 38:16	topic 6:21 7:3	45:4 49:14	value 30:8 70:3	47:22	withdrawn 7:16	55:21 56:7
40:10,13,19	23:4 46:23	51:14 60:12	81:9	wealthy 67:24	withholding	58:9 67:22
41:4,17,24	torrid 12:7	69:5 79:14	various 2:18,24	week 49:1,1,9	32:24	68:15 82:17
42:2,7,21,25	torturously	84:17	2:25 3:5 27:16	53:2 60:14	witness 1:14,20	yesterday 59:15
43:9 44:13,14	21:18 22:3	type 10:14 56:13	28:15 31:5	78:10	44:4	yes/no 58:25
45:22 46:1,18	totally 11:23	69:7	76:13	weekly 73:14	witnesses 9:8	<hr/> 0 <hr/>
46:23 47:3,20	14:5 27:7	types 56:14	veil 3:4	weeks 2:4 37:23	54:4 64:5	01056 37:21
51:9,16,22,23	31:17 48:19,20	<hr/> U <hr/>	version 59:6	38:16 39:14	67:16 71:6,8	01066 37:25 38:9
53:3,24 54:25	49:13 63:13	ultimately 15:6	84:21	60:3	83:1	01116 3:22
55:20 57:5,20	64:6	16:24 74:21	view 5:12 6:5	weight 9:20	won 31:1	01122 28:14
57:22,25 58:21	touch 3:21	underclass 58:5	7:10 14:19	welcome 17:2	word 12:8,14	01126 30:16
59:5 61:11	touched 30:15	underlying	18:6 30:21	70:6	83:13	01129 34:1
62:20 63:2	41:20 65:13	18:10	36:7 44:22	well-known	words 14:13 73:6	01131 42:12
64:4 65:3,12	touches 6:23	underpinning	54:6 55:8 57:8	83:18	work 2:12 19:4	01132 18:21
66:11,19 70:16	tough 55:25	64:15,19 66:8	57:14 59:21	went 5:5 48:14	28:22 44:9	01134 43:20
71:10,20 72:6	toughening 58:5	understand	61:9 67:13	54:5 70:9	45:4 76:7 78:8	<hr/> 1 <hr/>
72:11,12 73:11	tougher 55:24	14:12 20:10	69:13 70:6	84:19	worked 2:16	10 5:11 7:4 8:23
74:4,25 75:1	56:3,24 57:20	25:5 26:7	77:15 80:1	weren't 8:5 13:4	6:12 15:22	47:2 85:6,8
76:10 78:14	57:21 80:15	28:13 50:15	83:16	26:11 27:14	36:10	13 30:16
81:15 82:4,8	tourism 31:8	54:21 67:15	views 27:14 29:4	33:7 61:25	workload 20:1	15 1:7 29:14 49:4
83:21 84:19,23	track 80:7	68:11,18 69:12	38:11 58:15,21	Westminster	21:9	51:24 53:20
thinking 71:2	trade 23:19	73:5 74:9	63:10 83:18,23	45:11 46:20	world 17:19	58:9
81:19 82:18	trail 46:8	79:19	84:8,24 85:1	49:18	26:19 45:11	150 76:19
third 12:23	trailed 46:7	understanding	vigorous 27:15	we'll 17:2 19:22	49:18 50:11	18 12:12
38:23 69:1,3,5	transactional	9:14 48:5	village 27:11	20:2 45:15	worldly 28:2	19 47:23 18:21
thought 25:3	44:4,5 45:10	understood	virtue 55:23	66:20 67:7	worry 73:17	1985 2:25
28:2 46:1,4	53:10,12,16	52:25	vis-a-vis 21:20	71:20 82:3	worst 52:12	1991 4:22
48:10,15,18	transferred	undertake 17:17	voice 10:19,24	we're 3:19 10:2	worth 25:3 59:24	1992 4:22
54:2 62:6,9	54:14,17	undertaken 9:17	voting 49:2	13:7 14:6	77:9 78:8	1997 2:25 3:12
64:25 73:3	transparency	undoubtedly 16:13	<hr/> W <hr/>	15:13,24 18:9	80:20	29:15 46:1
76:9	38:7	16:13	wait 24:16	19:10,13,20	worthwhile	47:7 54:14
thoughts 81:16	trap 37:16	undoubtedly	waiting 23:8	22:6 25:7	81:16	<hr/> 2 <hr/>
thousands 55:17	Treasury 46:16	17:5 66:6	82:13	28:10 31:11	wouldn't 12:20	2.00 1:2
57:22 73:1,1	48:1,2 72:23	undue 50:5	want 12:25 13:18	33:10 43:16	21:2 25:19	20 14:11 21:5
73:19,19 77:9	82:3	unelectable	46:12 48:12	62:18 64:4	29:10 75:16	49:4 56:7
threatened 76:23	tremendous 60:4	54:16	51:11 66:11,17	70:24	writ 5:19 77:3	67:22 68:15
threatening 77:8	tribunals 69:12	unexpected 62:5	67:10 78:5	we've 9:1,5 14:5	write 76:3	20th 29:21
78:7	tried 52:19 61:11	62:6	wanted 27:18	15:4 19:16	writer 53:5	20,000 58:9
three 8:6 12:20	61:15,19 64:21	Unfortunately	wants 9:10 24:21	28:11 30:14	writers 61:8	2000s 6:14
66:2 84:17	65:2	54:18	29:4	46:22 63:8	writes 83:16	2005 19:12
ticking 60:18	triennial 24:10	unintended 79:6	war 61:3,6	75:2	writing 1:7,9,12	2008 23:7 33:24
time 2:4 7:23	trivial 26:2 73:1	union 19:15,16	warned 63:16	whilst 3:11	36:18 48:22	2010 2:23 30:18
12:14,23 15:20	trouble 14:17	19:17	wasn't 22:13	Whitehall 45:11	76:16	30:22 37:22
19:17 22:2,13	62:18	United 5:10	23:21,22 62:6	46:20 49:18	writs 76:19	2011 43:18
29:5 34:17	troubled 22:4,8	universal 17:5	62:16	wholly 55:22	written 12:11	2012 55:16
35:19 38:19	true 13:19 45:22	unreadable 66:3	waste 44:21	57:12	46:7,17 57:14	21 43:22
39:1 41:10	79:11	unscientific 59:8	wasting 66:20,21	wide 36:12	71:23 81:17	21st 29:22 48:18
44:21 46:11	truth 2:6	unsuccessful	watch 59:14	widely 31:10	wrong 47:4	23 55:16
52:13,18 56:11	try 11:4 21:18	4:25 52:18	wave 56:1	39:8	61:11	24 28:14 37:22
56:23 60:11	29:6,7,7 38:19	untrue 31:17	way 4:4,7,14	wider 8:16 56:4	wrongdoing	25 6:2 14:11
61:1 66:20,21	42:25 54:3	79:10	5:21 6:4 9:3,7	wife 12:6	36:25	26 1:24 2:9
67:12 68:16	80:1	unwarranted	10:6,25 14:6	wildly 16:8	wrote 46:6 59:15	<hr/> 3 <hr/>
73:14 76:2	trying 11:13	42:16	15:13 19:20	wife 12:6	60:18	3 1:3 3:7 28:11
79:15 84:16	27:10 29:25	upfront 38:12	20:1 24:11	win 4:7,15,19 6:7	years 3:4 11:9	3.20 53:6
timeless 45:2	31:6 60:18,19	upset 27:5 52:24	31:23 32:1	6:11,16 41:18	12:8 14:11	3.30 53:8
times 15:4 71:7	62:13 74:25	use 63:20	33:14 34:23	43:4 50:18	23:18 24:1	30 1:21 12:8
today 35:6	76:5	useless 65:3	37:22 41:9	54:19	28:3 29:14,20	30-year 40:14,24
told 30:23 44:4	tucked 66:2	usually 52:6 57:9	47:8 48:16	wing 60:25 61:4	<hr/> Y <hr/>	
46:16 48:7	turn 1:4 39:22	62:17 77:4	51:19 58:3,11	61:5,5	year 1:22 18:6	
60:11	50:20	utterly 52:16	61:5,15 67:22	wins 11:15 70:19	18:24 63:9	
tolerance 14:2	turns 64:2	54:16 55:1	68:5 70:4	wire 37:15	67:16	
14:13	twice 67:3			wise 28:2	years 3:4 11:9	
				wish 37:3 80:5	12:8 14:11	
					23:18 24:1	
					28:3 29:14,20	

32 21:22 23:2
30:11

34 1:23

37 30:20

39 33:18

4

4 1:4,6,7 3:17
37:13,18

4.20 85:7

40 3:4 41:8

44 33:25

45 34:1

5

5 3:17 30:10

5-year-old 54:13

50 43:16

51 18:20

53 18:22

55 23:1,5,13,15

56 43:22

6

6 3:22 42:11

60s 13:23

7

77 23:6 33:24

78 23:6 33:24

8

8 43:20 55:15

9

9 5:22 28:14 63:8

95 59:9

99 66:11 67:5