

<p>1 2 (2.00 pm) 3 MR JAY: The position of the ombudsman within your system, 4 paragraph 45 of Professor Frost's statement. We can see 5 that it's the board who's going to appoint an ombudsman. 6 He or she would be responsible for processing complaints 7 and identifying issues of concern for the board. As 8 your joint statement makes clear, cases raising points 9 of principle will then be referred up. Will the 10 ombudsman have a press background or not? 11 PROFESSOR FROST: I don't personally think that's essential, 12 although it may well be quite useful. Certainly if we 13 look at the example of the Irish Press Council, the 14 ombudsman there does have a press background and I think 15 the Irish find that very useful. But it wouldn't have 16 to be. We certainly wouldn't stipulate that that person 17 has to have a press background. 18 Q. With evidence we've received, the ombudsman, if the 19 term's going to be used in its strictest sense, should 20 be wholly independent of the regulator. Is that 21 something that you're proposing or you're not too 22 concerned about that aspect? 23 PROFESSOR FROST: I think that would work best if they were 24 independent but clearly they would have to operate to 25 the code and to the guidelines and good practice and any</p> <p style="text-align: center;">Page 1</p>	<p>1 journalism. 2 Q. Is it part of the role of this ombudsman that he or she 3 would be involved in the brokering of dispute resolution 4 in the same way as the PCC is currently engaged in, or 5 would you envisage the system working in this way: that 6 the first bite of the cherry is complaint to the 7 newspaper, and if that fails, now you're in the 8 complaints system, the ombudsman deals with it and then 9 there's a decision? How would it work? 10 PROFESSOR FROST: Certainly the latter. It seems to me the 11 appropriate place to do the negotiations or the 12 brokering is directly with the newspaper. You complain 13 to the editor or to the readers' editor and there may 14 well be a discussion about how best to approach that, 15 and whilst it seems pretty straightforward that if you 16 complain about a story, that there should be 17 a straightforward correction, it isn't always in the 18 complainant's best interests to do that, particularly in 19 the area of privacy, so there may well need to be 20 a discussion between the complainant and the editor 21 about how best to handle it. But if, at the end of the 22 day, there is no satisfaction for the complainant, then 23 they would go to the ombudsman, who would then be 24 controlled by the code and by the guidelines, and 25 I wouldn't see any mediation negotiation taking place at</p> <p style="text-align: center;">Page 3</p>
<p>1 other policy documents that came down from the board, so 2 they would end up being subservient to that. 3 Q. Is the ombudsman any different from a sort of first tier 4 of complaints-handling, just giving the chair of that 5 tier, as it were, a different label? 6 PROFESSOR FROST: Well, if you want to put it that way, 7 I think that's how it would work, that the first 8 complaints should go to the newspaper. If the 9 complainant doesn't get satisfaction there, they would 10 then go to the new body and the ombudsman would 11 investigate and come to some conclusion. If, again, the 12 person wasn't satisfied, they could then appeal to the 13 board, but I would anticipate that most complaints would 14 be fairly standard, would be dealt with measuring 15 against the code and against guidelines for good 16 practice, and the rulings handed down by the ombudsman 17 would then be appropriate and that would allow for 18 corrections, apologies, other statements to be published 19 in the newspaper. 20 MS STANISTREET: It's also a system that the members of the 21 public are really familiar with and the role of the 22 ombudsman as somebody who approaches things in a fair 23 and transparent way from the perspective of ordinary 24 members of the public. I think that would be a very 25 positive step towards rebuilding public trust in</p> <p style="text-align: center;">Page 2</p>	<p>1 that time. 2 Q. I suppose the parties would still be free to negotiate 3 a consensual solution even if the ombudsman is seized of 4 the matter. You couldn't prevent that happening? 5 PROFESSOR FROST: No. 6 Q. But then the ombudsman, if he or she were of the view 7 that the matter was serious enough, might wish to take 8 the matter to a resolution in any event because it 9 involves a code of practice breach. Yes, I see. 10 Couple of points on the conscience clause. You have 11 mentioned the clause, but there are two issues I've been 12 asked to raise with you. The first is: why is the 13 conscience clause more effective than incorporating the 14 code -- or it would be a variant of the code because you 15 would tailor-make it for journalists -- into the 16 employment contracts of journalists? 17 PROFESSOR FROST: If the contract contains the code of 18 practice, it obligates the journalist to adhere to that, 19 and we have no problem with that except of course it's 20 not necessary obligating an editor to adhere to it, and 21 we believe one of the major problems about unethical 22 behaviour, particularly in national newspapers, is 23 bullying in the newsrooms, where journalists are 24 obliged, for fear of their job, to do certain things 25 that they're not happy about. You have a decent job,</p> <p style="text-align: center;">Page 4</p>

<p>1 worked your way up through the industry, you're now 2 working for a national newspaper but every time you turn 3 around, somebody is insisting that you do things that 4 you're not necessarily happy about.</p> <p>5 Having a conscience clause which would give you the 6 ability to say, "I think this is wrong and we need to 7 discuss this", we feel shifts the balance of power 8 slightly away from a bullying editor towards the member 9 of staff.</p> <p>10 Now, I don't think any of us are naive enough to 11 believe that this is a magic wand that would absolve 12 journalists in every situation, and in any case, 13 journalists need to be involved in the ethical 14 decision-making process, but hopefully it would start to 15 switch the power a bit, make editors realise that they 16 can't just rely on bullying tactics and that there is 17 a discussion to be had around these issues on a pretty 18 regular basis.</p> <p>19 MS STANISTREET: Without the conscience clause to balance 20 the code being in a journalist's contract, it would 21 simply be putting all of the onus and responsibility on 22 that individual worker, without recognising the fact 23 that journalists don't operate in a vacuum. They report 24 and are directed to their news editor or to the editor 25 of the entire newspaper. So there needs to be that</p> <p style="text-align: center;">Page 5</p>	<p>1 to have that discussion with editors is one part of 2 that.</p> <p>3 MS STANISTREET: It would be a way -- a step in the right 4 direction and it would give journalists, hopefully, the 5 confidence to be able to challenge the situations that 6 they sometimes find themselves in when they're pressured 7 to deliver something that's unethical, to be forced into 8 kind of, because of pressure of their boss, bad 9 practice. But it is just part of the process, as Chris 10 said.</p> <p>11 One of the key things we believe -- one of the key 12 changes that would change the culture of the workplace 13 is to allow the NUJ, as an independent trade union, to 14 have collective bargaining rights for journalists in 15 their workplaces, and the lack of independent protection 16 and an independent voice in far too many newsrooms has 17 meant that journalists haven't had the confidence to 18 stand up to this.</p> <p>19 We heard Rupert Murdoch, when he was challenged 20 about one of the examples that we'd brought forward to 21 the Inquiry -- an example of a journalist who had been 22 horrendously bullied in her newsroom and his answer was 23 just to say, "Well, why didn't she resign?" 24 Unfortunately, that kind of typifies the reaction of far 25 too many proprietors and editors about this kind of an</p> <p style="text-align: center;">Page 7</p>
<p>1 balance, otherwise it would again be another way in 2 which the industry is effectively washing its hands of 3 its own responsibilities on ethics and on good practice 4 within the workplace.</p> <p>5 PROFESSOR FROST: If I may, Lord Hunt in his evidence said 6 editors set the standards and they're the leaders.</p> <p>7 Well, I have to say they've not shown a very good lead 8 over the last few years and that's partly because 9 they've been able to bully our members into doing what 10 they see as commercially appropriate rather than what it 11 necessarily good journalism.</p> <p>12 Q. The second point is: how would a conscience clause alter 13 the culture of newsrooms?</p> <p>14 PROFESSOR FROST: I'd love to say it's going to overnight 15 make things wonderful, but it obviously isn't. I'm too 16 much of a pragmatist to believe that. But as I say, it 17 would shift the balance, and I believe this should just 18 be the start of a change of cultures in newsrooms, one 19 part of the jigsaw, so that there is a better balance 20 about the way we go about our work and how we deal with 21 it. Over the last 20, 30 years, the balance has been 22 allowed to shift far too far in the direction of 23 commercial imperatives and we need to draw back and say 24 there are other things that we need to consider. Making 25 journalists responsible for their work but allowing them</p> <p style="text-align: center;">Page 6</p>	<p>1 issue, and it's almost like if a journalist can't hack 2 the culture that they're expected to work in and the 3 pressure, then they should just then leave. And 4 actually that's something that should be tackled in the 5 workplace and it should be something that editors and 6 line managers are held to account on and that doesn't 7 happen in far too many parts of the industry at the 8 moment.</p> <p>9 LORD JUSTICE LEVESON: But how helpful -- I mean, this 10 wouldn't be a hindrance -- of course it wouldn't -- but 11 how far would it truly go if there's the culture that 12 concerns you in a particular newsroom? Because the 13 journalist may well be able to say, "Hang on a minute, 14 you can't make me do this", and the editor will say, "Of 15 course I can't make you do it but I'm asking you to do 16 it. Now you decide whether you want to do it or 17 alternatively, fair enough, we'll find somebody else."</p> <p>18 MS STANISTREET: It would give them at least the protection. 19 They would know that they couldn't simply be dismissed 20 for not carrying out an instruction and that is the 21 reality of life for journalists at the moment. If you 22 add in the fact that far too many -- or increasing 23 numbers of journalists work on a casual basis without 24 any employment rights whatsoever, they can just be told: 25 "Don't come in for your shift tomorrow", even if they</p> <p style="text-align: center;">Page 8</p>

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<p>1 might have been working there for over a year and have                  2 some degree of employment rights. But the odds are                  3 stacked against them. It's very difficult for                  4 individuals --                  5 LORD JUSTICE LEVESON: That's precisely what's concerning me                  6 and I'm wondering how far this goes to meet your                  7 concern. Because as I think both you and Professor                  8 Frost have said, this is a cultural thing and you're not                  9 going to change culture with a contract, you're not                  10 going to change culture with a statute and you're not                  11 going to change culture with an employment right.                  12 That's --                  13 PROFESSOR FROST: Sorry. As I said, it's one part of                  14 a jigsaw. I wouldn't want to pretend it's a magic wand                  15 because it simply isn't.                  16 LORD JUSTICE LEVESON: But none of them are.                  17 PROFESSOR FROST: None of them are but they work together to                  18 build the confidence of the journalist that they do have                  19 a part to play in this, that it is not part of their                  20 role just to do as they're told. It is part of their                  21 role to have a discussion. One of the things I notice                  22 quite a lot is when I talk to BBC journalists, for                  23 instance, there is a real expectation that they will be                  24 involved in that discussion. Even if at the end of the                  25 day the editor says, "That's how we're going to do it",</p> <p style="text-align: center;">Page 9</p>	<p>1 I don't agree with you on this and I'm citing ..." even                  2 if they had the conscience clause in their contract.                  3 But it makes it easier if it's a group of people acting                  4 together and saying, "We think this is wrong and this                  5 needs to be tackled or something needs to be done about                  6 it."                  7 LORD JUSTICE LEVESON: This is the philosophical argument                  8 for collective bargaining throughout industry.                  9 MS STANISTREET: It's not philosophical.                  10 LORD JUSTICE LEVESON: No, I wasn't meaning that                  11 disparagingly, but what you've identified is the                  12 argument that is for trade unionism in every single                  13 workplace in the country.                  14 MS STANISTREET: Absolutely, but in the journalistic                  15 context -- and I refer to the example of when I was                  16 mother of the chapel at Express Newspapers some years                  17 ago and the chapel collectively decided to complain                  18 about the ethical approach -- the editorial line that                  19 was being taken on asylum seekers, on the coverage of                  20 gypsies, on stories about Muslims. On all of those                  21 occasions, the reason why the chapel did that, the                  22 reason why it collectively stuck its head above the                  23 parapet was because there were individual members and                  24 journalists who were coming under huge pressure and at                  25 that time, at the time of the first complaint to the</p> <p style="text-align: center;">Page 11</p>
<p>1 they will be involved. That is not something you get                  2 any longer from newspaper journalists.                  3 Looking back 20, 30 years ago when I was a father of                  4 chapel, the NUJ shop steward, it was far from unusual                  5 for journalist to come up to me and say, "I've been                  6 asked to do this, I'm really unhappy about it. Does it                  7 breach the code of conduct? Should I do it? What's                  8 going on?" And we would be able to have a discussion,                  9 I would then be able to go with that journalist and talk                  10 to the editor, who I have to say -- the editor I was                  11 working with them was a decent guy, and he would say,                  12 "I accept your point", and we could have a reasonable                  13 discussion about the appropriate way to approach it.                  14 Things have got massively worse since then, so                  15 people are scared to go to the editor and have that kind                  16 of discussion. So even if we were facilitating that                  17 discussion with this, that would be a major step                  18 forward.                  19 MS STANISTREET: Which is why collective bargaining is so                  20 important, because if you don't have an organisation                  21 within the workforce, if you don't have a union that                  22 brings the journalists together to talk about precisely                  23 those kind of quandaries and problems, it's very hard                  24 for any journalist to stand up and stick their head                  25 above the parapet and tell their editor: "Actually,</p> <p style="text-align: center;">Page 10</p>	<p>1 PCC, individual journalists were thinking about                  2 resigning and leaving their jobs because they just felt                  3 so much pressure and so much kind of bullying was going                  4 on that they felt they couldn't do anything about it on                  5 their own, but because their colleagues collectively                  6 were able to shoulder that burden, it made a huge                  7 difference and it -- and I'm not saying it transformed                  8 things at all. There were problems that we repeatedly                  9 came into, but it gave the management pause for thought                  10 when it was publicised and when there was a lot of                  11 attention focused on what the journalists had done.                  12 LORD JUSTICE LEVESON: I understand the point entirely,                  13 I really do. All I'm saying is that the problem is not                  14 a problem restricted to journalism.                  15 MS STANISTREET: No, there should be collective bargaining                  16 rights in every workplace.                  17 LORD JUSTICE LEVESON: I understand. Forgive me if I don't                  18 extend the terms of my reference to cover that. Yes.                  19 MR JAY: Thank you. I'm not going to ask you to elaborate                  20 the section on wider issues at the bottom of page 13                  21 because there isn't time, but can you just explain for                  22 us, please, the unwaivable moral rights point. I think                  23 you're seeking an amendment to the Copyrights, Designs                  24 and Patents Act of 1988. What is exactly the point                  25 here?</p> <p style="text-align: center;">Page 12</p>

<p>1 PROFESSOR FROST: I have mentioned it earlier. The                  2 Copyrights Act changed moral rights. Up until then, we                  3 had more control over what was written under our                  4 bylines, so if my byline appears at the top of an                  5 article, I have moral rights over that in terms of                  6 what's written or often, more importantly, what isn't                  7 written. There's a negative right as well. So I can                  8 prevent material being published under my byline if                  9 I disagree with it. In this instance, if I think it's                  10 unethical. Equally, I could argue about material that                  11 I had written being changed to make it unethical.                  12 That doesn't stop a newspaper publishing it without                  13 a byline or with what's known as a cod-byline, an                  14 invented byline of a fictional person, but it does mean                  15 that it wouldn't be there under my byline and that's                  16 quite important to a number of journalists who have                  17 become very upset -- quite rightly so -- when stories                  18 are changed or completely rewritten or a headline is put                  19 on the top of them which does not reflect what they                  20 wrote and what they know to be accurate and ethical.                  21 LORD JUSTICE LEVESON: Is that going to cause a problem for                  22 a different issue that I heard about some months ago                  23 about journalists having a real concern about the number                  24 of bylines they have in order to make up evidence or to                  25 have evidence of their productivity?</p> <p style="text-align: center;">Page 13</p>	<p>1 clear what the current position is? We know that in                  2 News International titles, the NUJ has no coverage, as                  3 it were, and we understand the reasons for that, but are                  4 there any other newspaper groups where the position is                  5 the same, either de jure or de facto?                  6 PROFESSOR FROST: Michelle might be better answering that.                  7 MS STANISTREET: Yes, we're blocked out of                  8 News International because Rupert Murdoch set up a staff                  9 association and because of the loophole in the                  10 legislation, that acts as a barrier to any independent                  11 trade union that members of staff might wish to                  12 represent them actually having recognition right.                  13 There are other newspaper groups that are pretty                  14 hostile to the NUJ and it acts as an effective block to                  15 entry. Associated Newspapers I think would be in that                  16 category.                  17 It's certainly the case of wherever we don't have                  18 formal recognition rights, we often have very many                  19 members, individual members of the union; it's just that                  20 they have no recourse internally to any collective                  21 bargaining and that might be because we're blocked out                  22 in the way News International has effected it, or it                  23 might be that the fear factor of being seen to be active                  24 and involved in the union is a barrier in itself.                  25 MR JAY: Thank you very much, both of you, for your</p> <p style="text-align: center;">Page 15</p>
<p>1 PROFESSOR FROST: It shouldn't do, because we were talking                  2 there about the number of stories rather than the number                  3 of bylines. The number of bylines might be an easy way                  4 to count it but to have 20 bylines on the top of 20                  5 50-word stories clearly isn't the productivity of                  6 someone who's produced two 3,000 word features.                  7 LORD JUSTICE LEVESON: No, I'm sure.                  8 PROFESSOR FROST: So I wouldn't have thought that would make                  9 any substantial difference. It's very easy for                  10 a newspaper to count up who has written what because                  11 that would appear on the computer system. We're talking                  12 about the actual byline going in the newspaper                  13 identifying who allegedly wrote the piece of material.                  14 LORD JUSTICE LEVESON: Right. Could I just put down                  15 a marker that I'd like to know -- and it can be by                  16 submission or otherwise -- the contrary argument to the                  17 argument that's just been addressed. So as long as                  18 somebody makes a note of it so that press core                  19 participants address it, I'd like to know what the                  20 argument against it is.                  21 MR JAY: The final point in your evidence, you make a plea                  22 on the last page, penultimate paragraph:                  23 "Code of conduct should require recognition of trade                  24 union rights within the workplace."                  25 You have already developed that point, but can we be</p> <p style="text-align: center;">Page 14</p>	<p>1 evidence.                  2 LORD JUSTICE LEVESON: One question before you go.                  3 Whistle-blowing. How could whistle-blowing operate in                  4 a way that didn't cause all the problems to befall upon                  5 the whistle-blower that you've identified in relation to                  6 journalists who stand up to be counted?                  7 MS STANISTREET: It could come through the NUJ. That might                  8 be one mechanism of doing it.                  9 LORD JUSTICE LEVESON: I suppose I led that.                  10 MS STANISTREET: In the way that we've been able to, within                  11 the terms of the Inquiry. It could be done with the                  12 protection of anonymity or it could be done in a direct                  13 relationship between the ombudsman and the                  14 whistle-blower. I think there would be ways in which                  15 that could be achieved.                  16 Obviously, in cases where there was an NUJ chapel,                  17 it could be something that the chapel collectively takes                  18 a decision on and then raises, rather than the                  19 individual's name.                  20 LORD JUSTICE LEVESON: Yes, my question wasn't specifically                  21 aimed at you allowing to push trade union collective                  22 bargaining further but I've got the point. Thank you                  23 both very much.                  24 MR JAY: I've been asked whether you would rise for a couple                  25 of minutes while we switch over witnesses.</p> <p style="text-align: center;">Page 16</p>

<p>1 LORD JUSTICE LEVESON: Certainly. 2 (2.24 pm) 3 (A short break) 4 (2.26 pm) 5 MR JAY: Sir, the last witness this afternoon is Dr Martin 6 Moore. Of course, he's already taken the oath or given 7 the affirmation. 8 LORD JUSTICE LEVESON: Certainly. And this is divider? 9 MR JAY: 23 in the bundle we have. 10 DR MARTIN MOORE (recalled) 11 Questions by MR JAY 12 MR JAY: We have a slight technical challenge. The version 13 Dr Moore has the same text but a slightly different 14 number of pages. 15 LORD JUSTICE LEVESON: That's fantastic. Is your copy 16 marked in any way? 17 <b>A. No.</b> 18 LORD JUSTICE LEVESON: Right. What I'm going to do is -- 19 it's much more important that you follow Mr Jay than 20 I do, so I'm going to swap with you. Thank you very 21 much. And I'll catch up. 22 <b>A. Thank you.</b> 23 LORD JUSTICE LEVESON: Dr Moore, before we start, can 24 I thank the Media Standards Trust in general and you in 25 particular for this extremely thorough piece of work,</p> <p style="text-align: center;">Page 17</p>	<p>1 <b>different proposals, suggestions and methods for reform</b> 2 <b>of press self-regulation, and we came to a conclusion,</b> 3 <b>I suppose, that was really rather simple, which was that</b> 4 <b>the real focus should be about power and the conclusion</b> 5 <b>was that with power comes responsibility and that large</b> 6 <b>news organisations ought to be accountable for what they</b> 7 <b>publish, and that the problem particularly to date has</b> 8 <b>been that there's been a bit of confusion, I think,</b> 9 <b>particularly because of the way in which regulation in</b> 10 <b>the past has been split by different platforms and</b> 11 <b>delivery mechanisms, et cetera, and we wanted to focus</b> 12 <b>on really what we thought was the root of the problem,</b> 13 <b>and so we deliberately excluded from our proposal all</b> 14 <b>those that we felt were not causing systemic and</b> 15 <b>structural damage to either individuals or the body</b> 16 <b>politic. So we deliberately excluded from any</b> 17 <b>regulatory obligations individuals, bloggers, tweeters,</b> 18 <b>small publishers, independent publishers, independent</b> 19 <b>journalists, and focused our attention on large news</b> 20 <b>corporations, particularly given that this is the</b> 21 <b>evidence that this Inquiry has heard of where the</b> 22 <b>problem has been, and that's where we think the Inquiry</b> 23 <b>should focus its efforts.</b> 24 <b>I can go into more detail about the proposals if --</b> 25 Q. Yes, we will. You divide your report into five sections</p> <p style="text-align: center;">Page 19</p>
<p>1 not merely on the effect of regulation, the future, but 2 you've provided an extremely valuable, slightly 3 different historical context and I'm very grateful to 4 you. 5 <b>A. Thank you.</b> 6 LORD JUSTICE LEVESON: To all those who have been involved, 7 please express my gratitude. 8 <b>A. I will, thank you.</b> 9 MR JAY: In terms of how this report has come together, 10 there are two main authors and you obviously are one of 11 them. There's an advisory group of seven people and you 12 list those on the first two pages. We can see that they 13 vary somewhat. There's Professor Barnett and there's 14 also David Yelland, who was editor of the Sun about 15 15 years ago. 16 The executive summary, first of all. We've read it, 17 of course, Dr Moore, but in your own words could you 18 encapsulate what you want to say? 19 <b>A. Of course. I suppose we came at it, as Lord Justice</b> 20 <b>Leveson said, with trying to think of this -- really,</b> 21 <b>I suppose, to go back to basics and fundamentals, and</b> 22 <b>not only think about the purpose of regulation but think</b> 23 <b>about the context in which this Inquiry is happening and</b> 24 <b>of the attempts to reform press regulation over the last</b> 25 <b>60 years, and we tried to do our best to review all the</b></p> <p style="text-align: center;">Page 18</p>	<p>1 and the first section deals with the history, Dr Moore. 2 You summarise it at page 13 on the internal numbering, 3 00360 on our numbering. You pick up here several common 4 themes running through fairly recent history. It goes 5 back to just after the end of the Second World War, the 6 repetitive cycle of failure. 7 The common themes you pick up -- can I invite you to 8 tell us about those? 9 <b>A. Yes. We went back and specifically looked at, as I say,</b> 10 <b>the attempts to reform the press and particularly press</b> 11 <b>self-regulation, since 1947, the first Royal Commission,</b> 12 <b>and looking at that and the subsequent Royal Commissions</b> 13 <b>and the Calcutt review, and indeed other committees like</b> 14 <b>the Younger committee, it was relatively clear that</b> 15 <b>there are some themes that were consistent.</b> 16 <b>The first was that the discussions around reform</b> 17 <b>were generally done between two groups at a very senior</b> 18 <b>level within the news organisations themselves --</b> 19 <b>editors and proprietors -- and politicians and the very</b> 20 <b>specific group that had been set up -- the Royal</b> 21 <b>Commission, et cetera -- to look at the problem, and</b> 22 <b>therefore those that were excluded were really the</b> 23 <b>general public and the working journalists, which, given</b> 24 <b>that this Inquiry has not excluded those, was</b> 25 <b>particularly striking about earlier efforts at reform.</b></p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1       <b>The second thing that becomes relatively clear is</b>  2       <b>that what starts as being almost the sole focus of the</b>  3       <b>earlier inquiries -- the concentration of ownership and</b>  4       <b>the increasing concerns about monopoly -- continues but</b>  5       <b>shifts slightly, and from the late 60s and 70s onwards,</b>  6       <b>the issue of privacy starts to become a greater catalyst</b>  7       <b>for concerns amongst the press.</b></p> <p>8       <b>The third theme is that despite what the inquiries</b>  9       <b>have said and despite what others have said, both during</b>  10       <b>and particularly immediately subsequent to the inquiry,</b>  11       <b>the industry interests -- and by that, I particularly</b>  12       <b>mean, as I say, the senior industry interests, the</b>  13       <b>editors and proprietors -- have dominated -- the</b>  14       <b>pragmatics have changed, perhaps not unsurprisingly, but</b>  15       <b>they have dictated the terms of actual change subsequent</b>  16       <b>to the inquiries themselves, and they have, in most</b>  17       <b>cases -- with some exceptions, in most cases since 1949,</b>  18       <b>chosen to make small evolutionary change rather than</b>  19       <b>substantial change, and frequently to ignore many of the</b>  20       <b>recommendations of the inquiries put before them.</b></p> <p>21       <b>So in 1949 there was a recommendation that there</b>  22       <b>should be a code of practice. That took 40 years to</b>  23       <b>happen. In 1977, there was a recommendation that there</b>  24       <b>should be prominent front page apologies. As we know,</b>  25       <b>that still hasn't yet happened.</b></p> <p style="text-align: center;">Page 21</p>	<p>1       <b>and after that time a new inquiry is set up and more</b>  2       <b>recommendations made.</b></p> <p>3       LORD JUSTICE LEVESON: I think I've made that point.</p> <p>4       <b>A. You have.</b></p> <p>5       MR JAY: The first Royal Commission, which reported in  6       1949 -- this is the middle of page 16, 00363 -- it drew  7       the conclusion that statutory regulation of the press  8       would unduly limit the free flow of information. What  9       did they have in mind when they were talking about  10       statutory regulation of the press? Were they addressing  11       the concept of statutory underpinning which has featured  12       in what we've been discussing or were they speaking in  13       terms of something more intrusive?</p> <p>14       <b>A. I think they were -- throughout these discussions and,</b>  15       <b>I suppose, over the whole historical period, there has</b>  16       <b>been an unfortunate tendency to create this sort of</b>  17       <b>dichotomy between pure voluntary self-regulation and</b>  18       <b>statutory regulation and nothing in between, and they</b>  19       <b>were talking about a statutory regulator; in other</b>  20       <b>words, a regulator that was created through primary</b>  21       <b>legislation and which was presumably appointed members</b>  22       <b>by the government and others, and that understandably</b>  23       <b>they felt, as we do, was far too far and far too</b>  24       <b>threatening of press freedom, and therefore they</b>  25       <b>accepted the predominant view, which has often been the</b></p> <p style="text-align: center;">Page 23</p>
<p>1       <b>So there is a recurrence in terms of the</b>  2       <b>recommendations of these inquiries and the decision, if</b>  3       <b>you like, of the industry to ignore them.</b></p> <p>4       Q. Thank you. Looking at the section which is entitled  5       "A brief history of self-regulation", page 15, our  6       page 00362 -- it largely speaks for itself but we're  7       going to pick up a number of points.</p> <p>8       Towards the bottom of page 15 -- this is the House  9       of Commons looking at the position in 1946. The concern  10       there was that:</p> <p>11       "Concentration of ownership and recent increases in  12       the profitability of newspapers were having a direct  13       impact on the progressive decline in the quality of  14       British journalism. It may be so obvious that it goes  15       without saying, but is that a theme that we see running  16       throughout this tapestry of events?"</p> <p>17       <b>A. Yes. Yes. I think, as I say, the catalysts do shift</b>  18       <b>slightly, so we move slightly more from concentration of</b>  19       <b>ownership towards privacy issues, but there is</b>  20       <b>consistent concern which culminates in the formation of</b>  21       <b>some sort of public inquiry. The public inquiry makes</b>  22       <b>recommendations, many of which are ignored, but enough</b>  23       <b>are taken up that -- and the political will dissipates</b>  24       <b>and then there is an interregnum of 10 to 15 years until</b>  25       <b>the public concerns and political concerns rise again,</b></p> <p style="text-align: center;">Page 22</p>	<p>1       <b>predominant view, that the only alternative was</b>  2       <b>therefore voluntary self-regulation.</b></p> <p>3       <b>What we've tried to do this time -- and I think</b>  4       <b>others have as well -- is to demonstrate that actually</b>  5       <b>there is a significant spectrum which -- if you put on</b>  6       <b>the one hand side statutory regulation, on the other</b>  7       <b>hand voluntary self-regulation, there's a significant</b>  8       <b>number of possibilities in the middle which are better</b>  9       <b>than the existing system and don't go nearly as far as</b>  10       <b>statutory regulation.</b></p> <p>11       Q. Thank you. Moving through the history, in 1952,  12       Mr Simmons MP sought to promote a private member's bill  13       proposing a statutory press council. This is page 17 on  14       the internal numbering. That didn't happen.</p> <p>15       Then you say: somewhat presciently, he spoke in  16       terms of -- this is at the end of that page:  17       "... giving a warning here and now that if it fails  18       [that's the voluntary press regulation model] some of us  19       will again have to come forward with a measure similar  20       to this bill."</p> <p>21       So we'll call that first-chance saloon, shall we?  22       Then we have a second Royal Commission which, as we  23       know, sat in 1961 to 1962. I don't think it's necessary  24       to go through its conclusions. May we move forward to  25       the 1970s. This is the Lord McGregor, third Royal</p> <p style="text-align: center;">Page 24</p>

<p>1 Commission, reporting, I think, in 1977; is that 2 correct?</p> <p>3 <b>A. Mm-hm.</b></p> <p>4 Q. It came up with 12 recommendations, the leading ones of 5 which you list in the middle of that page, page 20, our 6 page 00367.</p> <p>7 That Commission was split on the issue of voluntary 8 versus statutory intervention; is that right?</p> <p>9 <b>A. Well, there were increasing numbers of people who felt 10 that the conclusions of this inquiry did not go far 11 enough and that simply relying on the press to 12 voluntarily reform themselves did not go far enough, and 13 that was consistent with this inquiry.</b></p> <p>14 Q. Thank you. We can come slightly closer to the present 15 day by noting that in the 1980s there were a number of 16 attempts -- I think almost exclusively in private 17 members' bills, not that it often got very far -- to 18 introduce more stringent regulation of the press. All 19 of those attempts foundered, as we know.</p> <p>20 Then there was Calcutt. He was appointed -- 21 page 23 -- following a series of high-profile incidents, 22 which you itemise. The first Calcutt report was one 23 final chance to prove that voluntary self-regulation 24 could be made to work. Then, of course, the second 25 report in 1993, which was somewhat damning of the</p> <p style="text-align: center;">Page 25</p>	<p>1 self-regulation", but did anybody suggest that this 2 wasn't regulation? Because, of course, that's what I've 3 been hearing now, that actually we've never had 4 regulation of the press, it's never been that, and 5 therefore it's never been tried and therefore we ought 6 to try it. I'd just like your perspective on that.</p> <p>7 <b>A. I haven't seen it in those terms. In other words, 8 people criticised it frequently, as we can see, and 9 often, and said it was ineffective and not useful. 10 I haven't seen someone say this is not regulation.</b></p> <p>11 I think part of what we -- particularly in our first 12 report in 2009, one of the things that we did was to 13 look at lots of other sectors -- doctors and lawyers and 14 various other areas of public life -- and it was quite 15 clear that there has been a substantial change in 16 attitudes towards regulation over the last two decades 17 and that that includes many theoretical studies of what 18 regulation is and ought to be. So I think there has 19 been quite an evolution of understanding, certainly in 20 other sectors, but our belief was that there had not 21 been a similar evolution in the press.</p> <p>22 MR JAY: Thank you. Your second section, "What was wrong 23 with the previous system?" -- you helpfully, on pages 30 24 and 31, 00377 and 00378, identify the problems reform 25 needs to address and that really is a summary of some of</p> <p style="text-align: center;">Page 27</p>
<p>1 performance of the PCC over the previous two to three 2 years. Is that a reasonably fair summary?</p> <p>3 <b>A. He couldn't have been much more damning, yes. He was 4 absolutely clear that in his belief it had failed and 5 that therefore he recommended statutory solutions.</b></p> <p>6 Q. Many have said, though, that the PCC has improved in 7 a number of respects between the date those words fell 8 from Sir David Calcutt and the present date. Do you 9 feel there's any merit in that or not?</p> <p>10 <b>A. Yes, I do, and in the next section we talk about some of 11 the genuine benefits of the current system, particularly 12 with regard to the secretariat and the role they've 13 played in conciliating and mediating complaints on 14 behalf of complainants, and the very real attempt to 15 both write and evolve the code over that 20-year period. 16 The problem, as many people have already said, is that 17 that -- it didn't happen in a vacuum but certainly the 18 evolution of the code did not corresponded to the 19 evolution of behaviour. As we've particularly seen 20 between 2000 and 2006, despite multiple revisions to the 21 code, they seemed to have little if no effect on the 22 actual behaviour of certain organisations.</b></p> <p>23 LORD JUSTICE LEVESON: Before we go on to part 2, just while 24 you're thinking about the history in that section of 25 that report, you've headed it, "The history of</p> <p style="text-align: center;">Page 26</p>	<p>1 the aspects of the culture, practices and ethics of the 2 press which this Inquiry has highlighted; is that right?</p> <p>3 But of course it's not an exhaustive, all-embracing 4 summary.</p> <p>5 <b>A. It's not, and I think it's terribly important that one 6 can become quite -- well, I suppose literally academic 7 in some of these discussions about reform and it seems 8 terribly important to keep, as this Inquiry has done, 9 reminding us and people as to why we're here because it 10 can be sometimes, I think, too easy to forget certain 11 aspects of the abuse and of the nature of the 12 malpractice because one gets wrapped up in 13 discussions -- quite justifiable discussions about press 14 freedom and the issues around statutory control and 15 regulation, and sometimes we forget exactly the eventual 16 purpose of the reform.</b></p> <p>17 LORD JUSTICE LEVESON: Anybody who has forgotten need only 18 watch the first two weeks of the Inquiry.</p> <p>19 <b>A. Absolutely.</b></p> <p>20 MR JAY: At page 32, 00379, you deal with one of the 21 arguments which has been consistently advanced, which is 22 that phone hacking and similar activities are and were 23 illegal and should be dealt with by the law -- by which 24 you mean the criminal law -- and therefore reforming 25 regulation is neither necessary nor appropriate.</p> <p style="text-align: center;">Page 28</p>

<p>1 You address that argument in the next couple of 2 pages, or next page actually, but in a nutshell, why is 3 that argument, in your view, a fallacious one?</p> <p>4 <b>A. Three chief reasons. The first is that one of the 5 primary purposes of regulation is to prevent these 6 problems either happening or escalating to the stage 7 where there needs to be significant legal action, and 8 the problem particularly in the case of phone hacking, 9 as we've seen, is that because there was -- not only was 10 there not regulation but there was the impression that 11 there was regulation, some of these practices did become 12 routine and institutionalised and it got to the stage -- 13 and has got to the stage -- where the police were and 14 are going into newsrooms and arresting journalists and 15 taking material, and part of the purpose, it seems, of 16 regulation is to prevent that happening, and in that 17 sense, to protect journalism and to protect journalists 18 from the strong arm of the law.</b></p> <p>19 Another reason is that -- and it's been said before 20 at this Inquiry -- the law is a terribly blunt tool and 21 it seems as though those who are arguing these problems 22 were all illegal and ought to be dealt with by the law 23 are suggesting that actually we should come to expect 24 police to go into newsrooms on a regular basis. I think 25 that most of us would rail against that and see that as</p> <p style="text-align: center;">Page 29</p>	<p>1 <b>a regulator would be to not only make journalists 2 extremely clear of the code but of law, and part of the 3 issue here, and still the issue, is that in some cases 4 both -- in many cases, the regulator was not clear about 5 that, and in some cases there is still a lot of 6 in clarity about the law, particularly with regard to 7 data protection.</b></p> <p>8 Q. The section which begins page 34, 00381, "What was wrong 9 with the Press Complaints Commission?" -- does this 10 overlap somewhat with the evidence you gave back 11 in January?</p> <p>12 <b>A. February.</b></p> <p>13 Q. Yes, it was early February. Seems a while ago now. Are 14 there any points here which you didn't make on that 15 occasion? I must say, my somewhat poor recollection is 16 that it covers very similar ground. Is there anything 17 you want to draw to our attention specifically? Maybe 18 points about the code of practice are points which you 19 might care to develop for us.</p> <p>20 <b>A. Yes. Yes, I suppose this did develop over the course of 21 Module 1 particularly, when -- it was really to slightly 22 take issue with the impression that seems to have been 23 left that there is nothing wrong with the code of 24 practice and all that's been wrong has been the 25 application of the code.</b></p> <p style="text-align: center;">Page 31</p>
<p>1 a very bad direction for our society to go in.</p> <p>2 <b>Thirdly -- and this is relevant to many of the other 3 aspects, I think, of regulation -- the law to most 4 ordinary people is very inaccessible, both in terms of 5 money and in terms of time and in terms of complexity, 6 and the idea that most of these people would have had 7 the time and the resources to pursue their claims 8 legally I think is wrong. Part of the purpose of 9 regulation is to give people access to some sort of 10 redress, some sort of justice.</b></p> <p>11 Q. I think that third objection relates more to the civil 12 law. It might be said that if the problem is covert, as 13 it was with phone hacking, victims don't know that their 14 phones have been hacked. We don't even get to that 15 stage.</p> <p>16 But can I just raise one possible contrary argument? 17 One of the purposes of the criminal law is deterrents. 18 If the criminal law is properly publicised -- and it may 19 be that journalists didn't understand that phone hacking 20 was illegal -- then now knowing that it is, the 21 deterrent effect of the law would stop it happening. Do 22 you think there's any force in that view?</p> <p>23 <b>A. Well, again I think the regulation and particularly 24 regulatory codes ought to be both consistent with and 25 supplementary to the law and part of the purpose of</b></p> <p style="text-align: center;">Page 30</p>	<p>1 <b>If one looks carefully at the code of practice -- 2 and it's not surprising, given that it has changed 3 frequently since it was first instituted -- then there 4 are clauses which are inconsistent, there are clauses 5 which are ignored on a daily basis, there are clauses 6 which are virtually unenforceable. So therefore I would 7 say that it isn't fair to say the code of practice is 8 entirely adequate and the problem is just the 9 application; I think there are some serious problems 10 with the code. It needs to be re-looked at and 11 rethought.</b></p> <p>12 Q. We heard from Lord Hunt this morning -- and I think 13 a similar point was made by Professor Frost -- that the 14 code is largely expressed in terms of "thou shalt not do 15 this" and there's very little of "thou should be doing 16 this and that". Is that an aspect which might be 17 capable of improvement?</p> <p>18 <b>A. Certainly I think there's a very good book by Kovach and 19 Rosenstiel, US journalists, who spent a number of years 20 going to different newsrooms across America to ask 21 journalists what they believed was their 22 responsibilities and duties, and they came up with nine 23 elements of journalism, and the first was that 24 journalism's first duty is to the public, which is 25 a positive -- as you say, a reason -- I think there are</b></p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)



<p>1 <b>certainly good reasons to make certain clauses positive</b>  2 <b>because otherwise you are always trying to police the</b>  3 <b>lowest common denominator.</b>  4 LORD JUSTICE LEVESON: You need to provide an absolute  5 bottom, but try and raise the ceiling.  6 <b>A. Exactly.</b>  7 MR JAY: There's a point you also make on a slightly  8 different theme, Dr Moore, on page 38, above the  9 heading, "The code of practice", 00385. It's where you  10 raise a warning, really, about statistics in relation to  11 the Daily Mail. You say:  12 "In 2010, there were 63 substantive complaints made  13 to the PCC against the Daily Mail."  14 You're not singling them out in particular.  15 <b>A. No.</b>  16 Q. They may be illustrative of a general point you're  17 making.  18 "In 47 of these, the Mail appeared to admit a code  19 breach by correcting or apologising for the story, yet  20 in the whole of 2010 there was not one upheld complaint  21 against the Mail. In other words, even though the  22 Daily Mail may have breached the code almost on a weekly  23 basis, it looked as though it had an entirely clean  24 record."  25 So care needs to be taken with the --  Page 33</p>	<p>1 <b>the role that regulation ought to play in ruling on</b>  2 <b>breaches of the code.</b>  3 Q. Yes. Do you agree with the general thrust of the point  4 which Professor Frost made, that the first port of call  5 in relation to a complaint should be the newspaper  6 organisation concerned. If that fails, then the  7 regulator comes in. The point at which mediation should  8 be addressed is at the first port of call, directly with  9 the newspaper, but by the time the complainant, if he or  10 she hasn't got satisfaction from the newspaper, goes to  11 the regulator, the regulator shouldn't be mediating; it  12 should be ruling or deciding. Is that the basic point?  13 <b>A. That's the basic point, exactly.</b>  14 Q. I need to correct something yesterday which was pointed  15 out to me. I said words to the effect that a proper  16 regulator doesn't require complainants to go to the  17 perpetrator first. That, in fact, isn't right. If you  18 look at the Bar Standards Board, for example, I think  19 there is a provision that says if you want to complain  20 against the barrister, you should go first to the  21 barrister or his or her chambers to seek satisfaction.  22 It's only if that doesn't work that you go to the Bar  23 Standards Board. We see that idea being carried across  24 into this somewhat different domain.  25 Part three, Dr Moore, "Will any of the proposals on  Page 35</p>
<p>1 <b>A. Well, it's a rather broader point, which we might come</b>  2 <b>onto, about the difference between mediation and</b>  3 <b>regulation, and actually I was concerned yesterday in</b>  4 <b>the evidence given by Lord Black that the model that is</b>  5 <b>proposed again emphasises the overriding role of</b>  6 <b>mediation and does not seem to take into account that</b>  7 <b>a regulator will generally make a decision as to whether</b>  8 <b>or not a complaint has breached the code, and by making</b>  9 <b>a decision, it then creates a precedent -- it may be</b>  10 <b>a small precedent but it creates a precedent not only</b>  11 <b>about the particular complaint but also about the</b>  12 <b>organisation complained about, and by having those</b>  13 <b>precedents, those precedents allow the regulator to</b>  14 <b>take -- much more freedom to take future action.</b>  15 <b>So, for example, if a regulator sees that an</b>  16 <b>organisation has breached the clause on privacy seven</b>  17 <b>times in two months, then it is much more able to say,</b>  18 <b>"Actually, we need to question you about this and we</b>  19 <b>need to potentially even do an investigation, because we</b>  20 <b>have genuine concerns that you have not understood the</b>  21 <b>clause and you're breaking it on a regular basis." If it</b>  22 <b>doesn't make any ruling as to whether or not the</b>  23 <b>organisation has breached the code, it can't do that.</b>  24 <b>I think there is a very important and substantive</b>  25 <b>difference there between mediation and regulation and</b>  Page 34</p>	<p>1 the table work?", page 41. You cover a number of issues  2 here but I think the first one I'm sure you're keen to  3 address -- and we've heard the point elaborated the  4 first two witnesses of our fourth module -- is the  5 commercial contract proposal. What do you see as being  6 the problems with that, if any?  7 <b>A. Well, unfortunately -- because I was hopeful it would</b>  8 <b>work -- unfortunately, I think it's very disappointing.</b>  9 <b>I think it's insufficiently different, I think it's</b>  10 <b>insufficiently independent, I think it's insufficiently</b>  11 <b>robust, and I think that the incentives that have been</b>  12 <b>proposed are regressive and potentially, in some cases,</b>  13 <b>dangerous for journalism.</b>  14 Q. Can we deal with those points? The insufficiently  15 different point may logically be the last point, not the  16 first, not that I'm being critical. The insufficiently  17 independent point -- can you explain what the issue is  18 there?  19 <b>A. Of course. Not to put it back to you, but I thought you</b>  20 <b>did a very good job yesterday of questioning Lord Black</b>  21 <b>about the role particularly of the funding body. We</b>  22 <b>have, in the past, expressed many concerns about the</b>  23 <b>role of the Press Board of Finance and it was helpful to</b>  24 <b>hear Baroness Buscombe do the same in her evidence to</b>  25 <b>the Inquiry, and certainly our hope was that like in</b>  Page 36</p>

<p>1 many other regulators, the proposed regulator -- the                  2 situation would be entirely different, that like other                  3 regulators, the funding mechanism would be entirely                  4 transparent and easily calculable, that the funding body                  5 would, not to put to fine a point on it, essentially be                  6 an accounting body whose responsibility would be to                  7 collect the funds through that mechanism and distribute                  8 them to the regulator.                  9 But as it turns out, looking through the contract                  10 and, as you did, questioning both the contract and the                  11 witness statement, it would appear that the funding body                  12 essentially is a little bit like the statutory backstop                  13 for the proposed regulator, in the sense that it has the                  14 power of veto over various decisions. It's involved in                  15 the appointment both of the two members of the trust                  16 board, it's involved in other appointments processes as                  17 well, and all these things just -- it seems very                  18 strange. Why would the funding body have such control?                  19 Why wouldn't the funding body simply be an                  20 administrative function?                  21 Necessarily, it seems to say, both in terms of                  22 perception and, as it turns out, in reality in the past                  23 system, the funding body, which is entirely constituted                  24 by senior members of the press, still holds an awful lot                  25 of power, and therefore compromises the independence of</p> <p style="text-align: center;">Page 37</p>	<p>1 associated with particular incidents or series of                  2 incidents or, as they call it, systemic problems.                  3 For those reasons, I think it is -- there are                  4 serious question marks as to whether or not a contract                  5 is suitable and whether or not it would actually                  6 potentially be more fragile rather than less. I think                  7 that's -- I won't go into it just yet because I think we                  8 might talk about it further but I think that's                  9 exacerbated by the proposed incentives.                  10 Q. The debate about the law -- you're quite entitled to set                  11 out your view and what you've been told by others, but                  12 I am going to put that to one side because it's largely                  13 going to be addressed by legal submission from this                  14 point.                  15 But incentives. You're concerned about the weakness                  16 of those. Could you tell us about those concerns,                  17 please?                  18 LORD JUSTICE LEVESON: Before we go onto this, it is worth                  19 making this point, isn't it: that the whole need for                  20 a contract is to bind people in or out. That's not                  21 a problem that anybody really worried about in the past.                  22 I appreciate it's come up. But the real issue in                  23 relation to culture, practice and ethics of the press                  24 has been much more fundamental. It's about what happens                  25 rather than who is in or who is on you. So the contract</p> <p style="text-align: center;">Page 39</p>
<p>1 the regulator.                  2 Q. Insufficient robustness?                  3 A. I think -- we took some time to look at commercial                  4 contracts and their use in this area and talked to --                  5 I'm not a lawyer but we talked to lawyers about the use                  6 of commercial contracts. Most of them felt that the                  7 contracts were, in these circumstances, not really                  8 suitable and would necessarily need to be crowbarred, if                  9 you like, into being used in these circumstances, and                  10 that, for two reasons, they were -- it could potentially                  11 make the system more fragile. The first which was                  12 talked about this morning -- and Lord Hunt has said this                  13 himself -- that if someone chooses not to enter the                  14 system or chooses to leave the system, then it                  15 undermines the whole system.                  16 Secondly -- and I know that you asked questions                  17 about this and I've seen some of the submissions, but                  18 I'm still very unclear myself on questions regarding how                  19 one establishes the value of different breaches of                  20 contract, because the value -- partly because it's                  21 between two parties and therefore the injury has not                  22 been done to the regulator -- it's been done to                  23 a separate third party -- and partly because, as we                  24 know, it's very difficult, because each circumstance is                  25 unique, to work out exactly what value should be</p> <p style="text-align: center;">Page 38</p>	<p>1 at its highest copes with what might be considered to be                  2 a detail rather than the fundamental issue.                  3 A. Yes.                  4 LORD JUSTICE LEVESON: One of the things we have to be very                  5 careful about when we're looking at the proposed scheme                  6 and all schemes is not merely that detail which is                  7 important -- and I'm not minimising its importance, but                  8 it is the detail -- and make sure we don't forget that                  9 at the bottom of this is to try and find a way that                  10 actually will work in hopefully improving the ethical                  11 standards of that part of the press -- and of course,                  12 it's not the whole press, and I'm happy to say. I've                  13 not said it for some time; most of the press do a very                  14 good job doing what they're there to do, but there have                  15 been significant lapses, so the evidence suggests and                  16 which I will consider, and it's that that's still at the                  17 core. Is that a fair point?                  18 A. I entirely agree. It seems bizarre that we are spending                  19 so much time and so much time has been spent on thinking                  20 about this issue of who is in and who is out as opposed                  21 to: what do they do when they're in? But equally,                  22 I recognise that the whole issue of jurisdiction and the                  23 world in which -- digital world in which we are now in,                  24 who is in and who is out becomes much more of a problem.                  25 So I entirely see the point.</p> <p style="text-align: center;">Page 40</p>

<p>1 I suppose, given that and given that the contract is                  2 seen as one method of solving that problem, it seems to                  3 me that part of the difficulty is it creates potentially                  4 lots of other problems and could become a lawyer's                  5 charter, if you like, if goodwill fades and if people                  6 who are criticised because their standards have fallen                  7 choose to challenge the criticism and possibly the fines                  8 and whatever else. Then it becomes really rather                  9 a difficult and possibly an unhelpful system, despite                  10 the reasons it was set up.                  11 LORD JUSTICE LEVESON: It will get bogged down in                  12 litigation.                  13 <b>A. Yes.</b>                  14 MR JAY: Incentives now, Dr Moore. You start this at                  15 page 49, 00396. This really works on two levels,                  16 I think. First of all, you look at a series of specific                  17 incentives and say whether they work or not as a matter                  18 of practice, but then you have a wider principled                  19 objection to incentives being the appropriate way                  20 forward. We're in your hands as to which order you                  21 would wish to explain your position to us.                  22 <b>A. I suppose it's worth saying that we approached this in</b>                  23 <b>the sense that we started out from saying: how far can</b>                  24 <b>you go in terms of strengthening and making more</b>                  25 <b>effective the current system without touching any</b>                  Page 41</p>	<p>1 <b>A. Yes, yes. It took us rather longer, but we got there in</b>                  2 <b>the end.</b>                  3 The second -- with information, not only did we feel                  4 that it was impractical, but actually, I think, as                  5 I mentioned at the beginning, regressive and somewhat                  6 dangerous to try and essentially, as we saw it, licence                  7 journalists through restricting access to information.                  8 The only one, therefore, that we saw as in any way                  9 viable was legal incentives, and legal incentives,                  10 I think, are useful and helpful. The difficulty comes                  11 twofold, one of which is that you don't solve the                  12 Desmond dilemma through the legal incentives, in that                  13 whilst helpful, there is no particular reason to believe                  14 that they will bring everyone into the system or keep                  15 them there once they're in. We can look at the way in                  16 which different news organisations behaved with regards                  17 to legal action in the past and they behaved quite                  18 differently. Different organisations take a very                  19 different approach to legal action.                  20 Secondly -- and I guess this comes to your point                  21 about the principled objections -- one of our primary                  22 problems with -- it's a little bit like the contract                  23 scheme. If you start from the position of saying "How                  24 can we incentivise people to be inside this system?"                  25 then you start from the position of saying "How can we                  Page 43</p>
<p>1 statutory mechanisms? We looked very carefully at                  2 contracts and for the reasons set out here believed it                  3 was not effective enough and would not strengthen the                  4 system, and may even make it weaker.                  5 We then went on to look at incentives, and                  6 particularly the three types of incentives were: fiscal,                  7 financial incentives, like VAT exemption and other                  8 things; incentives based on privileged access to                  9 information, so whether that was press cards or PA feeds                  10 or advertising, et cetera; and then thirdly on legal                  11 incentives, which were some protection from libel or                  12 privacy, and, et cetera.                  13 Then we moved on to say: well, if these don't work                  14 and these aren't enough, what statutory mechanisms at                  15 the very minimum are necessary to make the system work?                  16 Incentives -- it was quite clear to us that fiscal                  17 incentives were very difficult and we went away and,                  18 having done the legwork -- we could probably have                  19 avoided ourselves the work but VAT clearly wouldn't                  20 work.                  21 LORD JUSTICE LEVESON: Yes, we just went straight to the                  22 revenue.                  23 <b>A. Perhaps we should have done the same.</b>                  24 LORD JUSTICE LEVESON: I have the great power of being able                  25 to require people to answer questions.                  Page 42</p>	<p>1 coax in these big players?"                  2 Having started from that position, you almost                  3 inevitably, to some degree, disadvantage members of the                  4 public and independent journalism outside some of those                  5 large organisations, and you potentially distort the                  6 market. And I think that's one of the real -- I don't                  7 think it's insurmountable in certain cases of legal                  8 incentives, but it is a problem with all incentives                  9 schemes.                  10 LORD JUSTICE LEVESON: I think I was trying to discuss that                  11 earlier today. The problem is you can't say you'll get                  12 a defence or you'll get some acknowledgment of your                  13 membership of the scheme if somebody who doesn't enter                  14 the scheme says, "Actually, my standards are just as                  15 good as theirs. I can prove it: here's what I do,                  16 here's how I do it. Therefore it's quite unfair of you                  17 to treat me differently to those who happen to be in the                  18 scheme. I have good reasons [I think I said A, B, C                  19 this morning] for not being in the scheme, but I'm just                  20 as careful about my ethical approach to journalism, as                  21 they are, even though I might have got it wrong."                  22 <b>A. One could go further than that. One could even say --</b>                  23 <b>Michelle Stanistreet was saying this morning that the</b>                  24 <b>movement of journalists particularly due to casual</b>                  25 <b>labour and freelance is such that you can imagine there</b>                  Page 44</p>

<p>1 <b>could be one or possibly even a small team of</b>                  2 <b>journalists who are working for a major organisation and</b>                  3 <b>use, say, the Ormond principles to decide whether or not</b>                  4 <b>to intrude upon someone's privacy, and they do it within</b>                  5 <b>a major organisation, but then they go off and do</b>                  6 <b>another story and they do it either freelance or for</b>                  7 <b>another small organisation, and they use exactly the</b>                  8 <b>same methods and exactly the same principles, and then</b>                  9 <b>it's very difficult to see why a court should look at</b>                  10 <b>the two and treat one different from that one simply</b>                  11 <b>because you're the member of the system.</b>                  12 LORD JUSTICE LEVESON: I think that's the same point.                  13 I understand.                  14 MR JAY: You have three points, I think, Dr Moore at                  15 page 61. You've told us about the first point and                  16 you've just finished elaborating that. The second                  17 point: it might not work anyway.                  18 There is a third point on the next page. Incentives                  19 will always be an indirect solution. I was pondering on                  20 that one. Why is that inherently a problem if otherwise                  21 effective?                  22 <b>A. Only in a sense -- and this is, I suppose, particularly</b>                  23 <b>thinking about some of the plans which suggest</b>                  24 <b>a tribunal, special court or equivalent media</b>                  25 <b>organisations. One can absolutely see why there are</b>                  Page 45</p>	<p>1 self-regulating alternatives, including Lord Black and                  2 Lord Hunt's proposal, if I can put it in these bold                  3 terms, why aren't you attracted by a fairly simple                  4 solution, namely one regulator with different arms                  5 underpinned by a statute? Your solution is, if I may                  6 say so, more complicated than that. Why have you moved                  7 towards complexity rather than simplicity?                  8 <b>A. I think, as I said at the beginning -- I think at the</b>                  9 <b>very root the system as proposed here is very simple,</b>                  10 <b>which is it says that if you are powerful -- and large</b>                  11 <b>media organisations are powerful -- then you should take</b>                  12 <b>a responsibility. The difficulty is how to ensure that</b>                  13 <b>those organisations do take responsibility, given that</b>                  14 <b>we've seen over the last 60 years that when given --</b>                  15 <b>asked to voluntarily, they failed to do so.</b>                  16 <b>So given that, we also -- given that we reviewed all</b>                  17 <b>the other possible ways in which to strengthen and make</b>                  18 <b>more effective the current system, once we thought:</b>                  19 <b>"Well, actually, we are going to have to use certain</b>                  20 <b>statutory mechanisms here", then in one sense it becomes</b>                  21 <b>simpler because you're saying certain large</b>                  22 <b>organisations ought to be obliged to self-regulate, but</b>                  23 <b>in another sense, there is the very difficult question</b>                  24 <b>of saying, "Well, how do we make sure that there is</b>                  25 <b>absolute protection from any sort of state interference</b>                  Page 47</p>
<p>1 <b>good reasons for giving ordinary members of the public</b>                  2 <b>much less expensive, much quicker access to certain</b>                  3 <b>legal benefits and similarly to giving organisations --</b>                  4 <b>but then the problem is if you piggyback lots of</b>                  5 <b>regulatory regulations on top of that, then, as I say,</b>                  6 <b>you are bringing people into the system for one reason</b>                  7 <b>and then you're piggybacking a lot of stuff onto it for</b>                  8 <b>other reasons, and that might compromise the court</b>                  9 <b>itself and also disincentivise people from joining in</b>                  10 <b>the first place.</b>                  11 Q. The next section -- you're going to tell us about the                  12 new system entirely. That's going to take some time.                  13 LORD JUSTICE LEVESON: Yes, it's probably sensible to have                  14 a break. Thank you.                  15 (3.14 pm)                  16 (A short break)                  17 (3.22 pm)                  18 MR JAY: You introduce your premise for a new system at                  19 page 64, our page 00411, and you make the point -- and                  20 you've already made it orally -- that there isn't                  21 a dichotomy between wholly free self-regulating press on                  22 the one hand and government-controlled press on the                  23 other.                  24 May I just ask you this general question, though:                  25 having rejected the pure or the largely pure                  Page 46</p>	<p>1 <b>or government interference, such that there can be no</b>                  2 <b>perception or reality of censorship or licensing or</b>                  3 <b>control?"</b>                  4 <b>For that reason, we came to the conclusion that</b>                  5 <b>actually what we really wanted here was self-regulation.</b>                  6 <b>We just wanted self-regulation that worked. And the way</b>                  7 <b>to make it work was to enable and allow and oblige</b>                  8 <b>self-regulation but to have very much in the background</b>                  9 <b>an auditor that would oversee the self-regulatory</b>                  10 <b>organisations and make sure that they were functioning</b>                  11 <b>properly and in the public interest.</b>                  12 Q. The essence of the new system is page 72, 00419, when                  13 you outline your proposals in six propositions. We'll                  14 have to look at these in more detail. The first two one                  15 can take together, that it's only organisations above                  16 a certain size who are going to fall within the                  17 regulatory net. That's correct?                  18 <b>A. May I expand upon that briefly?</b>                  19 Q. Yes.                  20 <b>A. Only because I think there's been rather an unfortunate</b>                  21 <b>elision between what Professor Onora O'Neill talks about</b>                  22 <b>as being individual speech as opposed to corporate</b>                  23 <b>speech. I think we, like her, believe that individual</b>                  24 <b>speech should be absolutely free from any regulatory</b>                  25 <b>obligations and one should be free -- individuals and</b>                  Page 48</p>

<p>1 <b>small publishers should be free to say and publish what</b>  2 <b>they like within the law.</b>  3 <b>There is a significant difference between those</b>  4 <b>individuals and small publishers and large</b>  5 <b>organisations, which she calls "corporate speech", in</b>  6 <b>the sense that those corporations speak to millions of</b>  7 <b>people. They have the ability to influence the views of</b>  8 <b>those people and to frame the views and the</b>  9 <b>understanding of those people, and as a result have an</b>  10 <b>awful lot of power -- power to do good and power to do</b>  11 <b>harm -- and therefore they have, whilst absolutely the</b>  12 <b>same -- they have the same freedom in terms of freedom</b>  13 <b>of speech as individuals, they also have some</b>  14 <b>responsibilities and need to be accountable because of</b>  15 <b>the power that they hold.</b>  16 <b>That's the distinction that we try and make by</b>  17 <b>distinguishing between small publishers, individuals and</b>  18 <b>others up to a pretty high threshold, and large media</b>  19 <b>organisations.</b>  20 Q. We're going to have to come back to that, but once you  21 are above the relevant threshold -- this is  22 paragraph 3 -- we have a system of what you continue to  23 call self-regulation, external to the large media  24 organisations, which those organisations, either  25 individually or collectively, are free to create</p> <p style="text-align: center;">Page 49</p>	<p>1 differently. Presumably they have slightly different  2 codes.  3 <b>A. Can we jump forward a few pages? Because this is</b>  4 <b>explained in terms of two things, one of which is that</b>  5 <b>there are a series of criteria that a self-regulatory</b>  6 <b>organisation has to surpass, and those criteria are set</b>  7 <b>by the independent auditor, the backstop independent</b>  8 <b>auditor.</b>  9 <b>So should an organisation -- and one of the</b>  10 <b>discussions that we had was that it should be impossible</b>  11 <b>for an individual organisation to set up its own</b>  12 <b>self-regulatory organisation. Necessarily, one has to</b>  13 <b>do it in concert with other organisations so it can't be</b>  14 <b>a single organisation, but that -- those organisations</b>  15 <b>have to put together the proposal and then, similar to</b>  16 <b>what's happened, as I understand it, in law with the</b>  17 <b>Legal Services Board and what happened previously in</b>  18 <b>financial services prior to the Financial Services Act,</b>  19 <b>they approached the independent auditor and the auditor</b>  20 <b>has to approve the regulator, and if it believes it is</b>  21 <b>insufficiently independent, if it believes it is</b>  22 <b>insufficiently effective, if it believes it has</b>  23 <b>insufficient sanctions, then it does not approve the</b>  24 <b>regulator.</b>  25 LORD JUSTICE LEVESON: Yes. I've read it. I mean,</p> <p style="text-align: center;">Page 51</p>
<p>1 themselves but nonetheless they're obliged to create  2 them because if they don't, the statutorily based  3 backstop independent auditor will force them to. Is  4 that what it amount to?  5 <b>A. They're obliged to, yes, and they're obliged to regulate</b>  6 <b>themselves. In some ways, this is, I suppose, looking</b>  7 <b>at what happens or ought to happen already. So the</b>  8 <b>internal compliance mechanisms are really, in a sense,</b>  9 <b>good housekeeping and something that some organisations</b>  10 <b>do do but quite a number of them don't, and joining an</b>  11 <b>external self-regulatory organisation -- well, one could</b>  12 <b>say that that would be the equivalent of the PCC.</b>  13 <b>So it is not, in many ways, changing aspects of the</b>  14 <b>current system in theory, but it is making sure that</b>  15 <b>they happen and making sure they happen effectively.</b>  16 LORD JUSTICE LEVESON: Why couldn't a very, very large  17 publisher simply say, "All right, we'll employ a staff  18 of four. Independently we'll set up an independent  19 company and we'll say you are all independents and you  20 are to regulate us." And each company does the same  21 because you postulate several self -- I mean,  22 self-regulatory organisations in the plural, so each of  23 the big organisations does the same, and there is  24 therefore no common standard. They each apply their own  25 standards. They interpret the rules slightly</p> <p style="text-align: center;">Page 50</p>	<p>1 I wouldn't want you to think that I'm only looking at  2 this for the first time. I've read the whole thing, but  3 it's -- the reason I ask now about it is because it  4 strikes me as a very important part of the proposal.  5 What happens if you get a large organisation who nobody  6 else is prepared to combine with?  7 <b>A. Ah, yes, we've discussed this on some bases. I think --</b>  8 <b>if I step back slightly in terms of "why not have one</b>  9 <b>self-regulatory organisation and then a backstop auditor</b>  10 <b>or some other mechanism for checking that it's working",</b>  11 <b>there were really some important reasons for that.</b>  12 <b>The first was that to have one self-regulatory</b>  13 <b>organisation, if there was statutory backstop, could,</b>  14 <b>either by reality or perception, raise questions around</b>  15 <b>press freedom, because the temptation, if there was one</b>  16 <b>organisation, would be much greater to try and pull</b>  17 <b>levers and strings to influence that organisation and</b>  18 <b>influence its decisions, especially if there was</b>  19 <b>some statutory backstop behind it.</b>  20 <b>The second reason was really much less -- much more</b>  21 <b>future-focused, which was to say that we are in a world</b>  22 <b>where the medium is atomising, where there are many</b>  23 <b>organisations which are -- where news is becoming more</b>  24 <b>difficult to define, exactly what news is and who's</b>  25 <b>producing it, and that we wanted to provide a system and</b></p> <p style="text-align: center;">Page 52</p>

<p>1 an environment, an ecology, where actually one could see</p> <p>2 this lasting for 10, 15, 20, 30 years, because it would</p> <p>3 be flexible enough to allow for other self-regulatory</p> <p>4 organisations in the future.</p> <p>5 MR JAY: That would require a flexibility in the enabling</p> <p>6 statute setting out the backstop independent auditor,</p> <p>7 would it not?</p> <p>8 <b>A. Well, to a certain extent, the statute really performs</b></p> <p>9 <b>three functions. The first is to oblige large news</b></p> <p>10 <b>organisations to have basic internal complaints and</b></p> <p>11 <b>compliance mechanisms. The second is to oblige those</b></p> <p>12 <b>same large publishing organisations to participate in</b></p> <p>13 <b>a self-regulatory organisation -- and we anticipate that</b></p> <p>14 <b>actually there will probably be one to begin with. We</b></p> <p>15 <b>should be realistic; at the moment there are not very</b></p> <p>16 <b>much large news organisations in this country and in</b></p> <p>17 <b>local news, four organisations, I think, represent</b></p> <p>18 <b>two-thirds to three-quarters of the circulation. So</b></p> <p>19 <b>it's a very small number of companies, so it would be</b></p> <p>20 <b>quite odd if there were more than one regulator to begin</b></p> <p>21 <b>with, and -- sorry, I've lost my thread, but that one</b></p> <p>22 <b>would put the mechanisms in place to also prevent the</b></p> <p>23 <b>proliferation of other self-regulatory organisations in</b></p> <p>24 <b>the same way as the Financial Services Act 1986 did,</b></p> <p>25 <b>which said that to set up a new self-regulatory</b></p> <p style="text-align: center;">Page 53</p>	<p>1 regulatory system and how it might evolve, and it</p> <p>2 certainly seems apparent to us that the current</p> <p>3 regulatory system, in terms of Ofcom and BBC Trust and</p> <p>4 others -- particularly Ofcom -- is going to need to</p> <p>5 evolve quite considerably, and that in the same way as</p> <p>6 Tim Sutor's plan suggests, that actually it is more</p> <p>7 effective to have -- he nominates Ofcom; we create an</p> <p>8 auditor, a backstop mechanism that oversees regulation</p> <p>9 rather than that regulates itself.</p> <p>10 Q. Maybe we should come to that at the relevant point in</p> <p>11 your report.</p> <p>12 Dealing with the size issue, first of all. That</p> <p>13 starts on page 73, 00420. You've developed the key</p> <p>14 points already.</p> <p>15 You would apply the principles underlying the</p> <p>16 Companies Act 2006 and the definition of the small</p> <p>17 company there as being relevant to the creation of our</p> <p>18 threshold; is that right?</p> <p>19 <b>A. Well, once we had made the decision that rather than</b></p> <p>20 <b>trying to limit the regulatory obligations by delivery</b></p> <p>21 <b>mechanism or by platform but rather to do it by size, it</b></p> <p>22 <b>was quite clear that actually there are already</b></p> <p>23 <b>mechanisms within the law to distinguish large from</b></p> <p>24 <b>small and the Companies Act was the most obvious one.</b></p> <p>25 <b>And using the Companies Act, it was clear that there was</b></p> <p style="text-align: center;">Page 55</p>
<p>1 organisation you need to have a rationale that</p> <p>2 demonstrated that it was functionally different.</p> <p>3 I'm sorry, the --</p> <p>4 Q. The third point you wanted to make?</p> <p>5 <b>A. Sorry, with regard to -- I'm sorry, go ahead.</b></p> <p>6 LORD JUSTICE LEVESON: The statute. You said the three</p> <p>7 things the statute would do ...</p> <p>8 <b>A. I'm sorry. The third is to set up a BIA and to</b></p> <p>9 <b>illustrate what it's -- to nominate its -- the</b></p> <p>10 <b>principles under which it is set up and nominate and</b></p> <p>11 <b>restrain its powers.</b></p> <p>12 LORD JUSTICE LEVESON: For those who aren't as familiar with</p> <p>13 the paper as we are, that's the backstop independent</p> <p>14 auditor?</p> <p>15 <b>A. Yes.</b></p> <p>16 MR JAY: If you wanted to have flexibility so that new</p> <p>17 entities, with technological change, were brought within</p> <p>18 the net, the statute which creates the BIA -- and</p> <p>19 currently within its reach would be these large</p> <p>20 organisations -- would have to be worded in such a way,</p> <p>21 possibly by enabling this to be done by statutory</p> <p>22 instrument, that new entities, if they arose, could, in</p> <p>23 the opinion of the BIA, be brought within the scope.</p> <p>24 <b>A. Potentially in the future. We have a section where we</b></p> <p>25 <b>talk about how the system fits within both the current</b></p> <p style="text-align: center;">Page 54</p>	<p>1 this threshold at GBP6.5 million of revenue a year or</p> <p>2 over 50 employees that -- above which almost all the</p> <p>3 major media organisations fell and below which many of</p> <p>4 the independents and other small publishers and</p> <p>5 individuals. Fell, so particularly looking at</p> <p>6 individual companies and looking at also some of the</p> <p>7 other submissions that have been made as to who would</p> <p>8 fall within and outside that threshold, it seemed like</p> <p>9 the best mechanism to use.</p> <p>10 LORD JUSTICE LEVESON: Presumably many, many newspapers</p> <p>11 would fall outside this threshold.</p> <p>12 <b>A. Local and independent newspapers, yes.</b></p> <p>13 LORD JUSTICE LEVESON: So what happens to them? That's just</p> <p>14 free --</p> <p>15 <b>A. What happens now, which is that they can voluntarily</b></p> <p>16 <b>participate in a regulatory scheme. Our view was that</b></p> <p>17 <b>not only has no evidence been presented to say that</b></p> <p>18 <b>local independent newspapers have been guilty of any of</b></p> <p>19 <b>this stuff, but that any sort of significant regulatory</b></p> <p>20 <b>obligations would be potentially dangerous -- given the</b></p> <p>21 <b>circumstances of local newspapers and others,</b></p> <p>22 <b>potentially dangerous to put on them because the</b></p> <p>23 <b>resources are such that they may not be able to</b></p> <p>24 <b>participate.</b></p> <p>25 MR JAY: But newspapers as large as Private Eye are outside</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

1 the system you postulate. If you look at the criteria  
 2 into a small company in the Companies Act, page 74,  
 3 00421, two out of three criteria have to be fulfilled.  
 4 I know they have a circulation of just over 200,000.  
 5 They may well meet the turnover and the balance sheet.  
 6 I'm not sure which ones they would fail to meet. Maybe  
 7 the 50 employees or less.

8 **A. When we looked at Companies House, it looked as though**  
 9 **Private Eye would be outside, would be below the**  
 10 **threshold.**

11 Q. Without singling them out for any particular reason, it  
 12 gives us some idea of even if you were as big as that,  
 13 you are outside the system.

14 **A. Yes.**

15 LORD JUSTICE LEVESON: You mentioned the Congleton  
 16 Chronicle, Private Eye and the Huffington Post. Why did  
 17 Congleton get mentioned?

18 **A. I met the editor and owner. Very good local paper.**

19 MR JAY: But obviously all the nationals would qualify.  
 20 I suppose some of the smaller nationals such as, with  
 21 respect to them, Morning Star, may not. I don't know.  
 22 Many of the regionals would because they're part of much  
 23 larger companies.  
 24 I just wonder whether this is a somewhat blunt  
 25 instrument and perhaps has a degree of arbitrariness

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1 inbuilt within it, depending which side of the line you  
 2 fall. You can still be quite big but you're not  
 3 regulated, or not compulsorily regulated. As you point  
 4 out, you can nonetheless agree to be part of an SRO even  
 5 on your system; is that right?

6 **A. You can voluntarily agree. I think the point we were**  
 7 **making is that -- one has to go back to the problem one**  
 8 **is trying to address and if the problem that we're**  
 9 **trying to address is systemic and structural, then all**  
 10 **the evidence that's been presented has suggested that**  
 11 **that is -- the problems have been with large news**  
 12 **corporations, not with smaller ones. That's not to say**  
 13 **that both small organisations and individuals cannot do**  
 14 **harm, but it seemed to us that part of the prime -- one**  
 15 **of the primary purposes of regulation is to deal with**  
 16 **disparities in power, and that once you get to a much**  
 17 **lower level, the disparities in power are much less and**  
 18 **therefore it's much easier to exercise free speech and**  
 19 **to respond as an individual or a small organisation to**  
 20 **things that are published about you to an individual,**  
 21 **a blogger or a tweeter, as compared to if you try to**  
 22 **respond to a very large corporation, which not only has**  
 23 **the ability to ignore you and not publish a response or**  
 24 **a correction, but if you decide to try and take action,**  
 25 **has the resources and the legal firepower to prevent you**

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1 **from getting any adequate redress.**

2 Q. I can see the power point, as it were, but if one's  
 3 looking at the Internet, one can have a small entity  
 4 with extremely large coverage, and therefore maybe not  
 5 be power, but impact, if that's the right way of looking  
 6 at it, is being disseminated across a very large  
 7 potential readership and equal potential for harm is  
 8 there. But you're not bringing that within your system  
 9 because it would be well below the small companies  
 10 threshold within the Companies Act?

11 **A. If it was a large publisher, then it would be. It**  
 12 **wouldn't matter whether it was on the Internet or on**  
 13 **television or in print. But no, I think -- one of the**  
 14 **issues around -- clearly -- and I recognise that this is**  
 15 **one of the -- not the -- the primary problem is with**  
 16 **standards, but clearly there is this extremely difficult**  
 17 **conundrum about instruction, and if you apply -- given**  
 18 **that everyone has the potential to be a publisher -- and**  
 19 **indeed many of us are -- if one applies regulation to**  
 20 **everyone, then, well, that's the law. So therefore one**  
 21 **has to draw a line and draw a line sensibly and draw**  
 22 **a line with a rationale around it and again, if you look**  
 23 **at other sectors or industries, it seems as though -- if**  
 24 **you take something like BP and the oil spill, then of**  
 25 **course one should have laws that try and protect people**

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1 **and allow them to take civil (inaudible) and everything**  
 2 **else, but I think most members of the public would**  
 3 **expect there to be regulations to try and protect things**  
 4 **like the BP oil spill from often happening again.**

5 **Similarly, institutions -- one expects large**  
 6 **institutions to have regulatory systems that prevent**  
 7 **abuse, the IPCC or others. So our conclusion was that**  
 8 **in a digital world where it is impossible to regulate**  
 9 **everyone, the law should apply and the law should --**  
 10 **certain aspects of the law ought to be reformed to**  
 11 **reflect this but regulation should focus on the problem**  
 12 **of abuse of power.**

13 LORD JUSTICE LEVESON: So the position is you had to find  
 14 somewhere that created a line. You could have chosen  
 15 eligible for VAT relief, to register for VAT, which  
 16 would have caught a lot of people and dropped out very  
 17 few. You've chosen small companies defined by the  
 18 Companies Act. One could think about different lines,  
 19 provided you have a basis for choosing one line, so that  
 20 it's bright enough to identify who is which side of it  
 21 and then you can look for the reasons. But do I gather  
 22 that the point you're making here is: "There has to be  
 23 a line --"

24 **A. Yes.**

25 LORD JUSTICE LEVESON: "We've chosen this one which we think

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1 works, but we're not suggesting for a moment that this  
 2 is the only line that works. There just has to be  
 3 a line."  
 4 **A. Yes, and indeed one of the things that we hoped that**  
 5 **this report would do for the Inquiry -- of course, we**  
 6 **think the proposal is a good one, but one of the other**  
 7 **things that we hoped to do was to try to genuinely**  
 8 **grapple with the very difficult questions, and one of**  
 9 **the extremely difficult questions was to say: what**  
 10 **should the jurisdiction be? And having given it a lot**  
 11 **of thought, exactly as you say, we decided that it was**  
 12 **better to define it by size and by power -- but using**  
 13 **size as a proxy than by any other means -- certainly**  
 14 **than by medium.**  
 15 **In a similar way, actually, I suppose as Enders**  
 16 **Analysis use revenues and share of revenues as a way of**  
 17 **determining the degree of plurality in a market, but --**  
 18 **we've used it here -- as you say, we've chosen this line**  
 19 **but the idea of choosing a line based on size we thought**  
 20 **was a helpful one.**  
 21 LORD JUSTICE LEVESON: I quite understand it, but how much  
 22 further it's worth investigating the line -- it's very  
 23 much a matter for you, Mr Jay, but I've got the point.  
 24 Don't get me wrong, I'm not criticising you for  
 25 choosing the line that way. I'm very grateful to you

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1 for making me think about where a line could be, other  
 2 than at the extremes, so as to not catch private  
 3 conversations but to catch those that really matter.  
 4 Right.  
 5 MR JAY: Once you're big enough, the obligation kicks in,  
 6 but the obligation breaks down in a number of ways, and  
 7 the first respect is the mandatory obligation to  
 8 institute minimum internal complaints and compliance  
 9 mechanisms -- because you divide it up between the  
 10 internal and the external. Internal is page 77, 00424.  
 11 What we're looking at here, by way of summary, is  
 12 proper systems of internal governance built within that  
 13 compliance, and also a proper complaints system, which  
 14 would have to meet minimum standards. Is that, broadly  
 15 speaking, the position?  
 16 **A. Yes.**  
 17 Q. We can see the various attributes of the system of  
 18 governance. One extremely important by-product: paper  
 19 trail of decision-making, greater transparency and  
 20 accountability. We can see the virtues of that. Making  
 21 clear which senior executives and editors take primary  
 22 responsibility. Again, the importance of that is well  
 23 understood, and then the outcome will be a change in  
 24 culture, one hopes or expects.  
 25 **A. One hopes. I think this is -- one can underestimate the**

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1 **potential cultural impact of this in the sense that**  
 2 **speaking to someone who was, for many years, working on**  
 3 **writing newspapers, including a tabloid newspaper, who**  
 4 **said that there is a genuinely different process by**  
 5 **which one gathers a story, in the sense that -- from**  
 6 **television and broadcast, in the sense that, as**  
 7 **described here by a number of people, there is this**  
 8 **series of checks and balances as to taking the evidence**  
 9 **forward and then saying, "Can we use these methods to**  
 10 **take it further, et cetera?" as opposed to -- the way it**  
 11 **was described to me was that if one went into the**  
 12 **editor's office in certain newspapers and said, "I'm**  
 13 **thinking about going and finding this out and doing this**  
 14 **sort of news gathering", the response would be: "Why are**  
 15 **you telling me this? Why aren't you bringing me the**  
 16 **story?" And actually what happens is that many**  
 17 **journalists will go out on their own initiative and**  
 18 **gather the information and go to the editor's office and**  
 19 **put it on the desk and say, "Here is the story. Now,**  
 20 **I think this deserves a front page, don't you?"**  
 21 **At which point the only decision the editor has to**  
 22 **make is to publish, as opposed to whether or not the**  
 23 **methods should have been used in the first place to**  
 24 **gather the information, and clearly, as we've seen in**  
 25 **the Inquiry, the methods are extremely important with**

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1 **regards to privacy.**  
 2 **So were these compliance mechanisms to genuinely be**  
 3 **instituted in other news organisations, it should have**  
 4 **a significant cultural impact over time, as well as**  
 5 **providing the regulator with a paper trail, et cetera.**  
 6 Q. It's the rationale of any good regulatory system that it  
 7 will change culture, whether it's internal regulation or  
 8 external. That's clearly established.  
 9 Can I ask you this: in relation to internal  
 10 procedures, who would be responsible for ensuring that  
 11 internal complaints and compliance mechanisms were in  
 12 place?  
 13 **A. Well, the organisation itself would have to --**  
 14 **I understand there's been lots of discussions around**  
 15 **what the terminology would be, but each organisation**  
 16 **would have to nominate an individual -- a readers'**  
 17 **editor, a compliance officer or an equivalent -- who**  
 18 **would have an adequate degree of independence to then**  
 19 **set up the structures, obviously in consultation within**  
 20 **the news organisation, to create the complaints and**  
 21 **compliance mechanisms. So I wouldn't suggest that we'd**  
 22 **worked out exactly the process by which news**  
 23 **organisations would go through to get there, but there**  
 24 **would necessarily have to be a named individual within**  
 25 **the organisation.**

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<p>1 Q. The follow on from that: what would be the consequences 2 of failing to install or inaugurate such a system?</p> <p>3 <b>A. Well, as I say the three aspects of the statutory 4 obligation -- the first is that they would be obliged to 5 do this and it would be the responsibility of the 6 self-regulatory organisation to oversee it and to report 7 back on it, and therefore if, at the end of the year, 8 the self-regulatory organisation reported that there 9 were invisible or inadequate complaints and compliance 10 mechanisms at a certain organisation, then the backstop 11 auditor would have the ability to sanction it, and that 12 could mean fines.</b></p> <p>13 Q. Thank you. Then when we come to the related issue of 14 external regulation, page 29, 00426, this is when our 15 SROs come into play.</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. These will grow up organically to meet the obligation 18 which the statute imposes on the BIA; is that right? 19 The obligation falls on the large publisher above the 20 relevant threshold, but the large publisher doesn't 21 ensure or procure that an SRO is in place then the BIA 22 will step in and enforce that obligation. Have I 23 correctly understood it?</p> <p>24 <b>A. Yes. Sorry about the acronyms. But the second 25 obligation is that large news organisations do</b></p> <p style="text-align: center;">Page 65</p>	<p>1 <b>And the third would be an independent organisation, 2 which at its minimum would be able to accept and rule on 3 complaints and would adhere to the basic good governance 4 as set out by things like the Hampton report with regard 5 to transparency, independence, consistent, 6 proportionality and targeting.</b></p> <p>7 Q. We'll come to certain aspects of that in a moment, but 8 can I understand an issue in relation to funding. 9 Page 80 or 00427.</p> <p>10 This system is self-funding, on my understanding, 11 but the amount each member organisation should pay would 12 be determined by the member's arrangements for each 13 system, under the proviso the funding has to be adequate 14 to enable the SOL to fulfil the minimum criteria. What 15 are those minimum criteria? You refer to appendix 2 but 16 it's not clear how those are going to be determined.</p> <p>17 <b>A. The criteria are as I was describing on page 84. So 18 meeting the accepted standards of self-regulation. So 19 minimum criteria would be: an acceptable code of 20 practice, a contract, an independent body that fulfilled 21 certain functions, and were it to provide those and show 22 that it was sufficiently resourced, then it would be 23 approved.</b></p> <p>24 Q. It's sometimes difficult to understand what comes first 25 here. You have a number of organisations in the first</p> <p style="text-align: center;">Page 67</p>
<p>1 <b>participate in self-regulation and they do set up 2 a self-regulatory organisation or possibly more than 3 one, if there is a good reason for doing so.</b></p> <p>4 <b>So in a very similar way to the way in which Lord 5 Black has done already for the press, organisations 6 would be expected to do exactly that, and then take it 7 to the auditor for approval but then run it themselves. 8 Or, sorry, the system would run itself.</b></p> <p>9 Q. There are certain basic criteria which have to be 10 established. So it's self-regulation, but it's also 11 independent regulation, because what the large 12 organisation could not do is fill the complaints body 13 with its own nominees, as it were. As you clearly 14 explain, there would have to be an independent forum for 15 complaint resolution; is that correct?</p> <p>16 <b>A. There are three overriding criteria that the BIA would 17 look at when -- and would be a prerequisite of any 18 self-regulatory organisation. The first would be a code 19 of practice, and the code of practice would be drawn up 20 by the large news organisations but at a basic minimum, 21 it would have to include provisions for privacy, 22 accuracy and fairness.</b></p> <p>23 <b>The second is a contract. Similar, I suppose, to 24 the contract as described by Lord Hunt, but it would set 25 out sanctions and responsibilities of the members.</b></p> <p style="text-align: center;">Page 66</p>	<p>1 instance who want to set up an SRO, and it may be in the 2 first instance that all the large publishers you've 3 identified will participate and create one SRO, because 4 that will be the default position. Then they'll decide 5 between themselves, is that right, in order to fulfil 6 the minimum criteria which you list: "We think it's 7 going to cost X amount per annum, we. Think, as there 8 are six of us, we'll divide the necessary pot up between 9 ourselves on an appropriate basis, having regard to our 10 circulations or whatever, and then we put that proposal 11 to the BIA to approve or to disapprove as it feels 12 appropriate." Is that how you see it developing?</p> <p>13 <b>A. We built on two existing models. It's different to 14 them, but as we understood it, that's very much the role 15 of the Legal Services Board as set up by the Legal 16 Services Act, that its responsibility is to approve the 17 regulators in law and to make sure that they're working 18 and functioning properly.</b></p> <p>19 <b>Similarly, I referred to the Financial Services Act 20 '86 and the setting up of the Securities Investment 21 Board, which had a very similar role and which would 22 look at and approve regulators and then check that they 23 were working properly.</b></p> <p>24 <b>So I think there are quite a number of precedents 25 for this. I think there are similar bodies in</b></p> <p style="text-align: center;">Page 68</p>

<p>1 <b>healthcare. So the process would be as you describe,</b></p> <p>2 <b>such that essentially it is self-regulation and the same</b></p> <p>3 <b>as happens now -- certain members of the industry come</b></p> <p>4 <b>together but then they have to not only exceed these</b></p> <p>5 <b>criteria but then be approved by the backstop auditor.</b></p> <p>6 Q. In the first instance, how would the backstop auditor</p> <p>7 know whether enough funds have been put in the pot to</p> <p>8 provide this basic -- it's more than basic, but to</p> <p>9 fulfil the minimum criteria it itself is setting? Given</p> <p>10 that this is a new regime, what principles does it have</p> <p>11 to go on? Is it going to say, "Well, the PCC for</p> <p>12 everyone cost nearly 2 million a year. We can see that</p> <p>13 there are X number of large organisations wanting to</p> <p>14 participate in this SRO. We think it's going to cost</p> <p>15 a proportion of the 2 million or more than the</p> <p>16 2 million." How's it going to work?</p> <p>17 A. <b>I think, as you say, I think we have past precedent to</b></p> <p>18 <b>go on. Not just in the press. What we did was look at</b></p> <p>19 <b>the cost of the Legal Services Board and the cost of</b></p> <p>20 <b>other regulators. We look at the cost of other</b></p> <p>21 <b>regulators in media, the ASA and others, and of course</b></p> <p>22 <b>Ofcom has put forward what it believes it spends on this</b></p> <p>23 <b>aspect of its role as well. So necessarily I think</b></p> <p>24 <b>initially it would be more difficult to establish</b></p> <p>25 <b>exactly what the cost would be, but I think over time it</b></p> <p style="text-align: center;">Page 69</p>	<p>1 self-regulatory organisation because they won't have</p> <p>2 me" -- it's a bit like Groucho Marx: "I don't want to be</p> <p>3 a member of a club that will have me" -- "therefore</p> <p>4 I need a new one."</p> <p>5 Each one in turn could say it has to be different</p> <p>6 and then actually you've not changed one of the</p> <p>7 fundamental problems, which I can summarise using</p> <p>8 Harriet Harman's phrase, of editors marking their own</p> <p>9 homework.</p> <p>10 A. <b>I think we have in three ways. First of all, as I say,</b></p> <p>11 <b>I don't think one should underestimate how significant</b></p> <p>12 <b>a change it would be if news organisations did have</b></p> <p>13 <b>proper internal complaints and compliance mechanisms.</b></p> <p>14 LORD JUSTICE LEVESON: I'm sure that's right. I have no</p> <p>15 problem about that at all.</p> <p>16 A. <b>The second is that I think that certainly from my own</b></p> <p>17 <b>perspective, the proposal -- neither the past PCC nor</b></p> <p>18 <b>the proposal as I've seen it and understood it as it's</b></p> <p>19 <b>on the table would pass the criteria as set out by the</b></p> <p>20 <b>BIA. I don't think, as I said earlier when we discussed</b></p> <p>21 <b>it, that it was adequately different or adequately</b></p> <p>22 <b>independent.</b></p> <p>23 <b>Thirdly -- and one of the keys to this system is to</b></p> <p>24 <b>say that -- the cycle in the past, as I described, has</b></p> <p>25 <b>been of attempts to reform and what seems like</b></p> <p style="text-align: center;">Page 71</p>
<p>1 <b>should be much easier.</b></p> <p>2 Q. You've already made the point that if we have one SRO up</p> <p>3 and running, which may be the position in the first</p> <p>4 instance, if another one wants to come along, it would</p> <p>5 need to establish an adequate rationale to the BIA of</p> <p>6 the need for a separate system and if it doesn't</p> <p>7 establish that, it's going to be stillborn. Is that how</p> <p>8 it's --</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. So it may be, in practice, that we only ever have one</p> <p>11 SRO?</p> <p>12 A. <b>It may be.</b></p> <p>13 LORD JUSTICE LEVESON: Doesn't this have a problem,</p> <p>14 Dr Moore? Because so far one could plant the present</p> <p>15 PCC into this scheme and make it the external</p> <p>16 self-regulatory organisation.</p> <p>17 A. <b>Mm-hm.</b></p> <p>18 LORD JUSTICE LEVESON: With all the flaws, if they are</p> <p>19 flaws, that people have spoken of, and dominated by</p> <p>20 a very small number of people, perhaps even fewer. Then</p> <p>21 others will say, "Well, actually, the reason I don't</p> <p>22 want to join them is because they don't want me and</p> <p>23 I don't want them", for reasons which we don't need to</p> <p>24 elaborate. Would that be a reason to say to the</p> <p>25 backstop: "Well, actually, I need a different</p> <p style="text-align: center;">Page 70</p>	<p>1 <b>a honeymoon period of good behaviour and then</b></p> <p>2 <b>a gradually decline and dissipation, and so one of the</b></p> <p>3 <b>key things that we were thinking about was: how do we</b></p> <p>4 <b>stop that cycle and create a self-correcting mechanism?</b></p> <p>5 <b>The BIA is, if you like, a self-correcting mechanism</b></p> <p>6 <b>such that the annual audits allow one to stop that</b></p> <p>7 <b>decline happening and to, if necessary, fine and make</b></p> <p>8 <b>recommendations about the self-regulation organisation</b></p> <p>9 <b>such that it doesn't follow the same pattern.</b></p> <p>10 MR JAY: It's the second of those three reasons which is</p> <p>11 likely to be the most important, Dr Moore: the minimum</p> <p>12 criteria you've referred to already. You list them at</p> <p>13 page 84, page 00431. Of course, if these criteria are</p> <p>14 not met, the BIA will not bless the SRO. There has to</p> <p>15 be an appropriate code of practice, and you list the</p> <p>16 attributes of the code. There has to be --</p> <p>17 LORD JUSTICE LEVESON: Just tell me where that is again,</p> <p>18 please.</p> <p>19 MR JAY: It's under the heading "Meeting the accepted</p> <p>20 standards of self-regulation".</p> <p>21 LORD JUSTICE LEVESON: Thank you very much indeed. It's the</p> <p>22 first time I've had to ask.</p> <p>23 MR JAY: There's certain minimum standards and they include</p> <p>24 commitments to the protection of individual privacy and</p> <p>25 obviously Article 8, promotion of accuracy, fairness.</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 Then there's a contract which sets out the rules of 2 the organisation which the members have to sign up to 3 and then there is the criterion of independence, which 4 is obviously going to be very important. Then the 5 responsibilities of each SRO should include but not be 6 restricted to -- and then you have a list of functions. 7 Are we going to see all of those in a statute? How 8 do you see the BIA, which is a statutory creation, being 9 required to check whether these minimum criteria are 10 being met in relation to any particular SRO?</p> <p>11 <b>A. No, the statute, in the same way as the Legal Services 12 Act, when it established the Legal Services Board, set 13 out a series of objectives for the Legal Services 14 Board -- similarly, we set out objectives and principles 15 by which the BIA would function and we set those out in 16 this document about what those objectives ought to be.</b> 17 <b>It would be part of the responsibility of the BIA to 18 then take those objectives and turn them into guidance 19 and turn them into exactly what it believed -- the exact 20 criteria as to what it believed a sufficient contract 21 was and what it believed sufficient threshold for the 22 code was, et cetera.</b> 23 <b>These are what we believe the responsibilities of 24 the BIA ought to be, as translated from the principles 25 and the objectives of it being set up.</b></p> <p style="text-align: center;">Page 73</p>	<p>1 up a detailed scheme under these three rubrics -- code 2 of practice, contract and independent body, et cetera -- 3 what would happen is that the BIA would have to consult 4 on any idea it came up with; is that right?</p> <p>5 <b>A. One would hope it would.</b></p> <p>6 Q. Yes. In order to meet basic standards of fairness it 7 would have to. But then wouldn't there be a series of 8 prolonged negotiation then between the BIA and the 9 various stakeholders as what the attributes of the first 10 SRO would look like? It wouldn't necessarily look like 11 that which you've come up with. The industry may come 12 up with a weaker proposal than the proposal we see here. 13 Do you see that danger?</p> <p>14 <b>A. I see that danger, but the industry has already come up 15 with a proposal and the industry's proposal is not 16 particularly -- as I say, I don't think it adhered to 17 some of these elements, but is not particularly far away 18 from this.</b></p> <p>19 Q. Hm. Don't we need a system, though, which binds all the 20 stakeholders -- of course, they all have a different 21 perspective of the industry in particular -- to adhere 22 to the three different elements which break down into 23 subcategories in such a way that there's less room for 24 debate about it? Isn't there a concern that, okay, 25 you've come up with a series of principles which look</p> <p style="text-align: center;">Page 75</p>
<p>1 Q. All right. There's nothing to stop then the BIA, acting 2 lawfully within the general parameters which would be 3 set out in the statute, coming up with a different 4 version of the three basic points here, namely 5 a different version of what the code of practice says, 6 a different version of what the contract provides for 7 and a different version of what the independent body, 8 what its functions are; is that fair?</p> <p>9 <b>A. Well, to a certain extent. I think we have to recognise 10 that not only is there precedent in other industries; 11 there is precedent in the press. And we are working 12 from the basis of experience and the basis of experience 13 of 60 years of looking at what has and what has not been 14 effective and what is agreed consensually by the 15 industry already and what is not, and we have reached a 16 point where there does appear to be a degree of 17 consensus that a code of practice is a good thing and 18 that we have, if not agreed an exact code of practice, 19 one that has been very helpful in the last 20 years; 20 that a contract, whilst only a piece of the puzzle, 21 perhaps, is a helpful piece of the puzzle and that the 22 public require an independent body which accepts and 23 resolves and offers redress for complaints.</b> 24 Q. If you have a statute which sets out very general 25 principles and the BIA is then told to go away and draw</p> <p style="text-align: center;">Page 74</p>	<p>1 good on paper -- and I'm sure most of these one can 2 agree with -- but the industry may be saying, "No, we 3 don't agree with this, we don't agree with that", and 4 the first SRO -- the first one is going to be the most 5 important -- could look weaker at the end of the day? 6 Isn't that a problem?</p> <p>7 <b>A. No. One of the keys to this -- and it is clearly 8 central, particularly given the conversation you had 9 yesterday -- is that this BIA is set up in statute and 10 therefore it has certain statutory obligations, and 11 therefore whilst obviously it should engage in 12 consultation with the industry, it has an equal 13 responsibility to consult with civil society and to 14 consult with some of the past victims of press abuse, as 15 this Inquiry has done. Therefore it seems to me that 16 the idea that it would become craven to the industry is 17 not fair, in a way, to the proposal, because the 18 proposal specifically -- it was a big step to say that 19 this ought to be set up in statute because our belief 20 was that otherwise it would not have the independence to 21 do exactly as you say. It would not have the 22 independence to define what it believed to be an 23 adequate code of practice, adequate contract and 24 adequate independent body.</b> 25 Q. Maybe part of the problem could be surmounted by the</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 statute, although it would confine itself to principles,                  2 going into a fair amount of detail in each case so that                  3 the code of practice -- the statute would say: well, the                  4 SRO must create a code of practice and the code of                  5 practice must reflect the following minimum standards.                  6 Then you would include within those standards protection                  7 of individual privacy, Article 10 rights, promotion of                  8 accuracy and the need to be generally fair.                  9 So the principles could be quite tightly drawn but                  10 still confer a substantial degree of concession to the                  11 BIA at the end of the day. Is that --                  12 <b>A. Yes, they could.</b>                  13 <b>Q.</b> In what circumstances, though, would you envisage                  14 a second SRO ever acquiring life in relation to the                  15 national press? Because it would be difficult, wouldn't                  16 it, for anyone to say, "Well, we need to, on objective                  17 grounds, establish a separate system", unless,                  18 I suppose, the SRO has failed in some way?                  19 <b>A. To give one example, let's say the regional press</b>                  20 <b>decided that it did not want to be part of the same</b>                  21 <b>self-regulatory system and said, "We don't suffer from</b>                  22 <b>any of the similar problems. We have a very different</b>                  23 <b>way in which we deal with things and we also think we</b>                  24 <b>can do it with more light touch regulation than perhaps</b>                  25 <b>the nationals can." The BIA might look at their</b>                  Page 77</p>	<p>1 <b>they would like to complain or make a correction, partly</b>                  2 <b>because if you go to most newspapers or on their</b>                  3 <b>websites, with notable exception, it's quite difficult</b>                  4 <b>to find where one ought to go.</b>                  5 <b>If this was in place and one had obligatory internal</b>                  6 <b>mechanisms and had to notify the public in the same way</b>                  7 <b>as the financial services industry had to notify the</b>                  8 <b>public about where they need to go, then there would</b>                  9 <b>always be a simple and straightforward way of seeking at</b>                  10 <b>the very first instance -- making a complaint, asking</b>                  11 <b>a question or trying to correct something via telephone</b>                  12 <b>number, email address, et cetera, and the clear</b>                  13 <b>indication of the fact that you are first going to the</b>                  14 <b>news organisation and we are regulated by X. So there</b>                  15 <b>are -- you're therefore, from the perspective of the</b>                  16 <b>public, this system would be much more accessible and</b>                  17 <b>easier to understand. If it was not possible to resolve</b>                  18 <b>it through the organisation itself, then as set out here</b>                  19 <b>it would be obligated to escalate it to the regulator or</b>                  20 <b>the individual could do that themselves.</b>                  21 <b>Q.</b> If there were more than one SRO, wouldn't the public be                  22 confused, at least as a matter of perception, wondering:                  23 why do I have to go to this SRO rather than that SRO and                  24 on the face of it that SRO looks as though it would                  25 further my interests more than the one I'm being forced                  Page 79</p>
<p>1 <b>proposal and say, "You're right, the regional press can</b>                  2 <b>do this in a very different -- in a quite different way</b>                  3 <b>and therefore there is a functional reason for having</b>                  4 <b>a separate SRO."</b>                  5 <b>Q.</b> Can I turn that on its head? Having said there may only                  6 be one SRO in the first instance, there is, I suppose,                  7 a danger, without naming particular newspaper groups,                  8 that there are fault lines between them and that two of                  9 them, say, set up their SRO, Northern &amp; Shell with                  10 reluctance -- because it would be with reluctance on                  11 past form -- sets up their SRO, and then all the others,                  12 although they're not necessarily a very happy bunch, set                  13 up their own SRO. So we could have three SROs with                  14 different standards, couldn't we? That's one                  15 possibility?                  16 <b>A. I don't think with different standards. I think the</b>                  17 <b>standards -- well, they would have to be basic minimum</b>                  18 <b>standards that they had all surpassed. So they might</b>                  19 <b>have different standards over and above a certain</b>                  20 <b>threshold, but they would all have to have met the basic</b>                  21 <b>minimum criteria and they would all have to be</b>                  22 <b>accessible in the same way.</b>                  23 <b>So, in other words, if we start from the position of</b>                  24 <b>the public again, a member of the public at the moment</b>                  25 <b>has very little awareness of where they ought to go if</b>                  Page 78</p>	<p>1 to go to?                  2 <b>A. First of all, I don't think it would be confusing and</b>                  3 <b>for exactly the reason I have expressed, in from the</b>                  4 <b>sense that -- I mean, when, as often happened, people</b>                  5 <b>were questioned about their awareness of press</b>                  6 <b>regulation, there was pretty limited awareness of press</b>                  7 <b>regulation, understandably so.</b>                  8 <b>I think from the perspective of the public, the</b>                  9 <b>system would be much easier to access, and for most of</b>                  10 <b>the public, whether it is the Press Complaints</b>                  11 <b>Commission or the Press Council or the press -- I think</b>                  12 <b>it's immaterial as long as they get satisfactory redress</b>                  13 <b>and that redress happens in a timely fashion and they</b>                  14 <b>are happy with the consequences.</b>                  15 <b>LORD JUSTICE LEVESON:</b> I can see the value of having                  16 a backstop independent auditor to keep everybody's nose                  17 to the grindstone and I can see that that might be seen                  18 as sufficiently far removed from statute not to create                  19 the concerns, which I'm sure are genuine, however they                  20 are expressed, about impact on free speech. But I am                  21 concerned and I'm testing -- I'm not deciding, I'm                  22 testing -- how the opportunity for a multiplicity of                  23 self-regulating organisations is going to help, because                  24 what might well happen is that some groups, as Mr Jay                  25 was postulating, will set up their own with their own                  Page 80</p>

<p>1 independent members, but they'll all be their own 2 independent members. They'll doubtless be selected for 3 their own independence and their ability to hold the 4 ultimate organisation, the publisher, to account, but 5 they will be different people, who were perhaps more or 6 less in tune with the fundamental ethos of the papers 7 that they are regulating, and we're dealing with some 8 very powerful people here, and the smaller the SRO, the 9 more difficult it will be for it to be muscular in the 10 exercise of its independence.</p> <p>11 I'm concerned about that feature of the plan. 12 I see -- I understand how you've got there and I'm not 13 saying anything about it at all, but I'm seeking to see 14 whether there is a way of coping with the problem, and 15 it may be that you say, "Well, we'll have a backstop 16 independent adjudicator who will then identify what the 17 minimum criteria are and then you, industry, have to get 18 together and sort one out. And if you aren't all signed 19 up, then there will be consequences because you've not 20 all signed up", so in other words, in that way you're 21 forcing people into an independent regulatory mechanism, 22 which -- but it's not the statute that's doing it, it's 23 the independent auditor.</p> <p>24 <b>A. Yes. Sorry, perhaps I didn't explain myself very well.</b> 25 <b>That in a way is essentially how it ought to work.</b></p> <p style="text-align: center;">Page 81</p>	<p>1 <b>despite the fact that some news groups have unhappy in</b> 2 <b>the past and some have left, but most have remained</b> 3 <b>despite elements of unhappiness, so I think the --</b> 4 <b>certainly going from historical precedent, the momentum</b> 5 <b>is behind a single organisation and therefore I'm not</b> 6 <b>sure that there would necessarily be a race to</b> 7 <b>proliferate. Indeed, our discussion suggested that it</b> 8 <b>would probably be the opposite, that it would be --</b> 9 <b>people would want to be members of one organisation.</b></p> <p>10 LORD JUSTICE LEVESON: But then you're going to have to make 11 requirements such as, "We don't expect editors to be on 12 this", or whatever, and then you'll be fighting about 13 that sort of detail with the independent auditor as to 14 whether that's a necessary requirement of the system. 15 Won't you?</p> <p>16 <b>A. But part of the purpose of the guideline -- go back to</b> 17 <b>the independent auditor -- are to set out exactly that</b> 18 <b>sort of thing, to say, "We would not find it acceptable</b> 19 <b>if you peopled this organisation entirely with serving</b> 20 <b>editors".</b></p> <p>21 LORD JUSTICE LEVESON: You've moved the argument then from 22 what's in the statute that sets up your independent 23 auditor to the argument with the auditor and all sorts 24 of challenges to his decision-making and his attempt to 25 sort it out, which I'm not so sure isn't what I was</p> <p style="text-align: center;">Page 83</p>
<p>1 <b>Because of the obligation to be a member of an SRO, the</b> 2 <b>auditor ought to be saying, "You need to get your act</b> 3 <b>together and get into this and this is how we recommend</b> 4 <b>you do it, and if you don't want to join this particular</b> 5 <b>SRO you have to give us an extremely good reason as to</b> 6 <b>why not and you have to be -- not only that but you have</b> 7 <b>to be extremely clear as to what the -- what you are</b> 8 <b>going to join and why it's going to be more effective."</b></p> <p>9 LORD JUSTICE LEVESON: Yes, but the problem with that is 10 then there's be a race to be the first, won't there? 11 Because some people will say, "Right, we've got one. 12 Actually, we can take down from our shelf the idea that 13 Lord Black and Lord Hunt worked on, here we have our 14 independent people, we have our organisation, we have 15 the editors involved in a way that we think is 16 appropriate, and we can tweak it a bit to fit in with 17 whatever other requirements there are, and therefore we 18 say to everybody else who's not really very happy about 19 this organisation, 'Well, that's it, you're stuck with 20 this'."</p> <p>21 <b>A. I suppose it depends if you come from the position of</b> 22 <b>saying there will almost certainly be a proliferation of</b> 23 <b>SROs or from the position where you say actually it's in</b> 24 <b>most people's interests to be a part of a shared system,</b> 25 <b>which most people believe it is in their interest,</b></p> <p style="text-align: center;">Page 82</p>	<p>1 supposed to be doing. I'm very happy to pass it on to 2 somebody else --</p> <p>3 <b>A. Sorry, I certainly wasn't meaning to tread on toes --</b></p> <p>4 LORD JUSTICE LEVESON: No, no, don't --</p> <p>5 <b>A. I was just trying to flesh out -- the points we made</b> 6 <b>about good governance and about the Hampton Report were</b> 7 <b>supposed to indicate that part of the responsibility of</b> 8 <b>the BIA would be to do exactly that, to set out what it</b> 9 <b>believed to be a transparent system, an independent</b> 10 <b>system and a consistent system and a proportionate</b> 11 <b>system.</b></p> <p>12 LORD JUSTICE LEVESON: Well, I suppose if this gets legs, 13 and we'll have to think about it, obviously, then I can 14 provide some assistance by saying what I think such 15 a system can be and then people can accept or reject it 16 as to what they think is right, which is what will 17 happen anyway. 18 All right, yes.</p> <p>19 MR JAY: If a large publisher doesn't participate in an SRO, 20 then the penalty's a fine; is that right?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. But the penalty isn't any more than that, presumably 23 because if it were, that would breach Article 10 rights?</p> <p>24 <b>A. Yes. And it would potentially start to veer into issues</b> 25 <b>around licensing and censorship.</b></p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 LORD JUSTICE LEVESON: Is that one-off?</p> <p>2 <b>A. No, cumulative.</b></p> <p>3 LORD JUSTICE LEVESON: So every day?</p> <p>4 <b>A. Well --</b></p> <p>5 LORD JUSTICE LEVESON: Every month, every year, whatever you</p> <p>6 want?</p> <p>7 <b>A. To be determined.</b></p> <p>8 LORD JUSTICE LEVESON: Yes, yes, yes.</p> <p>9 MR JAY: I suppose it would be for the BIA to determine what</p> <p>10 the fine should be or maybe even the statute to set</p> <p>11 a maximum amount of the fine.</p> <p>12 <b>A. Potentially, but the BIA ought to be the one defining</b></p> <p>13 <b>that.</b></p> <p>14 Q. What would happen if the BIA were unable to approve any</p> <p>15 self-regulatory organisations either at all or in</p> <p>16 relevant subsectors?</p> <p>17 <b>A. I think part of the responsibility of the BIA ought to</b></p> <p>18 <b>be to make sure that there are successful --</b></p> <p>19 <b>a successful or more than one successful SRO established</b></p> <p>20 <b>and it's clearly in the interests of the SRO to do that</b></p> <p>21 <b>and therefore it's in the interests of the SRO to work</b></p> <p>22 <b>with those who are setting it up to make sure that it</b></p> <p>23 <b>happens.</b></p> <p>24 Q. It may be that the BIA would need power to say that if</p> <p>25 an SRO is not created within X period of time, that</p> <p style="text-align: center;">Page 85</p>	<p>1 have to be (a) free from state interference and (b)</p> <p>2 sufficiently independent. You set out at page 91 how</p> <p>3 the BIA might look in terms of who comprises it in the</p> <p>4 first instance?</p> <p>5 <b>A. That was a suggestion for the Appointments Commission.</b></p> <p>6 Q. For the BIA?</p> <p>7 <b>A. Yes. One of the issues we grappled with at length</b></p> <p>8 <b>was -- it's the guardians going back and back, and we</b></p> <p>9 <b>felt it wasn't satisfactory simply to talk about the</b></p> <p>10 <b>establishment of a backstop auditor without bottoming</b></p> <p>11 <b>out exactly how its appointments process would work and</b></p> <p>12 <b>how it would be funded and how it itself would be</b></p> <p>13 <b>accountable because, if set up in statute, then</b></p> <p>14 <b>necessarily one would expect there to be some sort of</b></p> <p>15 <b>accountability mechanism for seeing that the BIA is</b></p> <p>16 <b>functioning properly and again we didn't want that to be</b></p> <p>17 <b>a backdoor route by which the government could have an</b></p> <p>18 <b>influence.</b></p> <p>19 Q. The same issues would arise in relation to any system</p> <p>20 with statutory underpinning. One would have to be</p> <p>21 concerned about the appointments board, accountability</p> <p>22 of the system, funding of the system.</p> <p>23 <b>A. Exactly.</b></p> <p>24 Q. So there's no problem with that. It's issues of detail</p> <p>25 which should be considered.</p> <p style="text-align: center;">Page 87</p>
<p>1 would have to be a reasonable period of time, then the</p> <p>2 fines begin to kick in.</p> <p>3 <b>A. Yes, and it would be its responsibility to give</b></p> <p>4 <b>recommendations as to what its expectations were.</b></p> <p>5 Q. The BIA would have power to strike off a poor performing</p> <p>6 SRO once created. If only one SRO existed, the</p> <p>7 constituent members would then PDQ have to set up a new</p> <p>8 one; is that right?</p> <p>9 <b>A. Yes, or join existing ones.</b></p> <p>10 Q. Depending on whether there were any existing ones.</p> <p>11 This is a mixture of a market-based system where the</p> <p>12 SROs would be competing with each other, but against</p> <p>13 a system of compulsion where the large news</p> <p>14 organisations know that if the SRO is not created within</p> <p>15 X period of time, fines are going to be slapped on but</p> <p>16 we don't know how the market's going to shape up. We</p> <p>17 could, and this is the application, have one SRO, or we</p> <p>18 could, albeit unlikely but it's possible, have a number</p> <p>19 of SROs. Is that a fair summary?</p> <p>20 <b>A. The point is to give -- is exactly that, to give the</b></p> <p>21 <b>freedom to (inaudible) to the market and to prevent any</b></p> <p>22 <b>actual or perceived influence by the state.</b></p> <p>23 Q. Within your system there's an appeal board, which you</p> <p>24 touch on at page 87, 00434. There are other points of</p> <p>25 detail in relation to the BIA itself. The BIA would</p> <p style="text-align: center;">Page 86</p>	<p>1 Can I deal finally with part five of your report,</p> <p>2 the issue of the public interest defence in law, because</p> <p>3 your viewpoint is that there should be really</p> <p>4 a statutory definition of what public interest means; is</p> <p>5 that a fair summary of it?</p> <p>6 <b>A. We believe there should be a public interest defence in</b></p> <p>7 <b>law, yes.</b></p> <p>8 Q. We're talking here not necessarily criminal law but</p> <p>9 really the law as applied by the regulator, so the</p> <p>10 internal law of your regulatory system; is that right?</p> <p>11 <b>A. No, it's --</b></p> <p>12 Q. More generally?</p> <p>13 <b>A. No, this is a law.</b></p> <p>14 LORD JUSTICE LEVESON: You are talking about the criminal</p> <p>15 law?</p> <p>16 <b>A. Yes. Well, at least referenced in things like the</b></p> <p>17 <b>Regulation Investigative Powers Act and other various</b></p> <p>18 <b>laws where there is there is not currently a public</b></p> <p>19 <b>interest defence.</b></p> <p>20 LORD JUSTICE LEVESON: Let's just talk about that for two</p> <p>21 minutes because, before I started a year ago, this was</p> <p>22 a subject I knew something about.</p> <p>23 If you follow this through, there is a risk of</p> <p>24 consequences which I'm not sure you will necessary</p> <p>25 intend. Let me tell you what they are and ask your</p> <p style="text-align: center;">Page 88</p>

<p>1 observations upon them.</p> <p>2 I am a journalist and I have a story that I want to</p> <p>3 investigate. I say to my editor, "I know that X,</p> <p>4 a prominent Cabinet Minister, is doing something which</p> <p>5 is illegal, hypocritical, whatever, because I have very</p> <p>6 good sources who tell me so and therefore I would like</p> <p>7 to tap into his telephone or hack into his email.</p> <p>8 I know it's illegal, but I have some very good</p> <p>9 information. This is the information." And the</p> <p>10 journalist tells the story.</p> <p>11 The editor says, "All right", and off he goes and</p> <p>12 does all that and doesn't reveal that story at all, but</p> <p>13 does reveal, for example, sexual misbehaviour. He then</p> <p>14 says, "Now I have a different story I've got about this</p> <p>15 sexual misbehaviour, I'd like to publish it", and there</p> <p>16 may or may not be a public interest in it, but they</p> <p>17 publish it -- let's assume there is -- but not a public</p> <p>18 interest sufficient to have justified a breach of the</p> <p>19 law.</p> <p>20 Then the police get involved and say, "We're very</p> <p>21 concerned about this. It looks as though there's been</p> <p>22 a breach of the criminal law", to which the journalist</p> <p>23 says, "Well, no, because I investigated this story with</p> <p>24 my source information that this Cabinet Minister was</p> <p>25 guilty of criminal or other misbehaviour." "Oh," say</p> <p style="text-align: center;">Page 89</p>	<p>1 to the breach of crime, and that's actually why earlier</p> <p>2 in the Inquiry I asked the DPP to consider articulating</p> <p>3 grounds whereby he would decide in the public interest</p> <p>4 whether a prosecution was appropriate. In other words,</p> <p>5 I allowed for the flexibility which wouldn't be</p> <p>6 available if it was a pure defence. Do you see the</p> <p>7 point?</p> <p>8 <b>A. I absolutely do. We met with the DPP a couple of weeks</b></p> <p>9 <b>ago to go through the proposal that the CPS had put</b></p> <p>10 <b>together with regard to what would be essentially</b></p> <p>11 <b>a definition of the public interest such that it could</b></p> <p>12 <b>offer guidance to journalists in the event of possible</b></p> <p>13 <b>prosecution, and it is, I think, a significant step</b></p> <p>14 <b>forward from where we were, partly because our concern</b></p> <p>15 <b>primarily was -- well, two concerns, one of which was</b></p> <p>16 <b>that journalists would and don't currently feel</b></p> <p>17 <b>protected because they don't know what would be or would</b></p> <p>18 <b>not be considered to be in the public interest because</b></p> <p>19 <b>there hasn't been the guidance that existed before, but</b></p> <p>20 <b>secondly, we felt that by better defining the public</b></p> <p>21 <b>interest, one necessarily draws a much clearer line</b></p> <p>22 <b>between what is the private sphere and what is the</b></p> <p>23 <b>public sphere and the points at which one is justified</b></p> <p>24 <b>intruding into a private sphere because of public</b></p> <p>25 <b>interest justifications.</b></p> <p style="text-align: center;">Page 91</p>
<p>1 the police, "you'd better let us investigate that." "Oh</p> <p>2 no," says the journalist, "I'm not prepared to reveal my</p> <p>3 sources but it's a source I've used lots of times and it</p> <p>4 was utterly reliable." How can ever the police</p> <p>5 ascertain whether there was such a source? In other</p> <p>6 words, you create a perpetual defence to any impropriety</p> <p>7 because the journalist will never reveal the source of</p> <p>8 his information.</p> <p>9 <b>A. Wouldn't one in those circumstances be able to say that</b></p> <p>10 <b>the defence is compromised by the fact the journalist,</b></p> <p>11 <b>understandably, will not reveal sources, in the sense</b></p> <p>12 <b>that if not only will the journalist not reveal sources</b></p> <p>13 <b>but will not reveal any information or evidence as to</b></p> <p>14 <b>the basis as to why they took the action in the first</b></p> <p>15 <b>place, then that surely necessarily significantly</b></p> <p>16 <b>weakens their defence that they took action in the</b></p> <p>17 <b>public interest?</b></p> <p>18 LORD JUSTICE LEVESON: They say, "I don't have to reveal my</p> <p>19 source, I have Article 10 protection, but this was</p> <p>20 absolutely genuine, and I've used this source many times</p> <p>21 and he's produced lots and lots of good stories, and the</p> <p>22 fact that it didn't this time but produced another</p> <p>23 story, well, you know, that's life."</p> <p>24 That's the problem -- I mean, I put it to you as an</p> <p>25 illustration of the problem of creating a defence in law</p> <p style="text-align: center;">Page 90</p>	<p>1 <b>So I think that the guidance that the DPP is putting</b></p> <p>2 <b>together is extremely helpful and we are just starting</b></p> <p>3 <b>a project on this. Our concern was that -- twofold, one</b></p> <p>4 <b>of which was: was it enough to have guidance and</b></p> <p>5 <b>continued discretion from the perspective of journalists</b></p> <p>6 <b>who are trying to do work which is in the public</b></p> <p>7 <b>interest, and perhaps it would be over time as</b></p> <p>8 <b>precedents built up, it certainly wouldn't be initially,</b></p> <p>9 <b>but also whether or not -- and this is I suppose a much</b></p> <p>10 <b>broader question -- having a public interest defence in</b></p> <p>11 <b>law to a certain extent clarifies and cements the</b></p> <p>12 <b>position of the semi-constitutional role of public</b></p> <p>13 <b>interest journalism in society, so it much more clearly</b></p> <p>14 <b>defines a role in a sort of -- in a very different but</b></p> <p>15 <b>a similar way to the way in which the First Amendment</b></p> <p>16 <b>does in the US, in the UK.</b></p> <p>17 LORD JUSTICE LEVESON: How have you captured, then, the</p> <p>18 journalists -- and there may be just a few -- who are</p> <p>19 prepared to be utterly cynical about this and want</p> <p>20 a specific type of story but then not be entirely</p> <p>21 truthful about where they got the information for the</p> <p>22 story from? In other words, how do you cope with the</p> <p>23 problem that I've just identified?</p> <p>24 First of all, a journalist should be very, very</p> <p>25 cautious before embarking upon a course of conduct which</p> <p style="text-align: center;">Page 92</p>

<p>1 involves breach of the criminal law. I'm sure we'd 2 agree with that.</p> <p>3 <b>A. Mm-hm.</b></p> <p>4 LORD JUSTICE LEVESON: Secondly, if he has a true public 5 interest justification, then that will come through, and 6 I hope the guidance would be sufficient. But let's 7 assume you have an extremely oppressive prosecutor who 8 then presses on regardless. There are mechanisms the 9 court has to prevent an abuse of the process.</p> <p>10 Next, fourth, there is the well-known attitude taken 11 by a jury for extremely oppressive prosecutions and 12 Mr Clive Ponting would be able to give you some evidence 13 of that, and finally, there is the judge who may very 14 well have taken a view about whether it was worthwhile 15 or not, whether this was a difficult decision or not 16 a difficult decision, and ultimately if he feels, "Well, 17 there wasn't a defence but I do think it wasn't an abuse 18 of process and the prosecutor was entitled to prosecute 19 but I don't think it was worth of punishment", he can 20 absolutely discharge the journalist.</p> <p>21 I appreciate the journalist has gone through the 22 mill, but that goes back to the very first point, that 23 he ought to be very careful before he embarks upon 24 a course of conduct which breaches the law, and it's not 25 quite the same for Section 55, because in Section 55,</p> <p style="text-align: center;">Page 93</p>	<p>1 LORD JUSTICE LEVESON: Don't tempt me, Dr Moore. I'm very 2 happy to receive anything you want to provide for me, 3 but it needs to be sooner rather than later. It's well 4 known that I hope to provide a report in the autumn at 5 some stage. It would be very upsetting if I did so and 6 six weeks later the Media Standards Trust produced 7 something which I hadn't considered.</p> <p>8 <b>A. Absolutely, I understand.</b></p> <p>9 LORD JUSTICE LEVESON: Sorry, Mr Jay, I rather took over 10 that.</p> <p>11 MR JAY: No, no, those were all the points I wanted to draw 12 out.</p> <p>13 LORD JUSTICE LEVESON: The civil law might be different, and 14 I recognise the civil law -- and indeed of course there 15 are building up defences, public interest defences, 16 within the civil law.</p> <p>17 <b>A. Absolutely, and I suppose the two key aspects, which 18 again we will go away and think much more about, is the 19 difference between a defence in the exemption and the 20 degree to which it can be a defence and not, as you say, 21 a route by which anyone can do anything. But also, 22 secondly, there is, I think, an increasing need for 23 a much better and more substantive legal definition of 24 public interest journalism, and indeed that's what the 25 New Zealand Inquiry spent much of their time doing, to</b></p> <p style="text-align: center;">Page 95</p>
<p>1 the data protection, you might have got the data, but 2 it's also an offence to publish it. So if you've only 3 got the sexual misconduct and you publish that, that can 4 be challenged as whether there's a public interest in 5 publishing it. You see the point?</p> <p>6 <b>A. Mm.</b></p> <p>7 LORD JUSTICE LEVESON: In other words, there is a way of 8 permitting the defence in Section 55 offences but not 9 for other crime.</p> <p>10 I'm very interested and if you want to come back to 11 me on that at some stage, you're very welcome, because 12 I've simply used you as the vehicle to expound this 13 problem.</p> <p>14 <b>A. I appreciate that, and as I mentioned, we have just 15 received a grant to do a project both looking at whether 16 it would be possible to have a public interest defence 17 in law, whether it would be constructive and beneficial 18 and whether it would be practical and, sorry, what the 19 consequences would be, so I would certainly like to come 20 back to you.</b></p> <p>21 LORD JUSTICE LEVESON: And when will this be done by?</p> <p>22 <b>A. Well, we can accelerate the process.</b></p> <p>23 LORD JUSTICE LEVESON: Yes. Forgive me, when will it be 24 done by?</p> <p>25 <b>A. When would you like a submission back?</b></p> <p style="text-align: center;">Page 94</p>	<p>1 <b>see how they could better define that, so that it 2 encourages the practice of journalism and encourages an 3 expansion and openness around public interest 4 journalism, which I fear otherwise may contract, and 5 some of the proposals, I think, that were put forward to 6 the Inquiry would lead to a contraction of public 7 interest journalism rather than its expansion.</b></p> <p>8 LORD JUSTICE LEVESON: I don't wish public interest 9 journalism to contract. I'm very keen to encourage the 10 best because the best is extremely good and very 11 important for our society, and I'm not suggesting that 12 journalists are looking for ways to lie and scheme and 13 be dishonest about where they get their stories from or 14 the reasons for their stories, but in the light of all 15 the circumstances and the very important provisions of 16 Article 10 in relation to sources, one has to be very 17 cautious in this area, as I'm sure you will acknowledge.</p> <p>18 <b>A. Absolutely.</b></p> <p>19 LORD JUSTICE LEVESON: Dr Moore, is there any other aspect 20 of the report that you feel we've not touched upon that 21 you would like to address?</p> <p>22 <b>A. You have gone through it very substantially and I'm very 23 grateful for that.</b></p> <p>24 LORD JUSTICE LEVESON: Thank you. We'll swap again. Thank 25 you very much indeed, Dr Moore.</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)



1 We're back on Thursday. 2 (4.45 pm) 3 (The hearing adjourned until 10 o'clock 4 on Thursday, 12 July 2012) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	
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