

<p>1 Thursday, 12 July 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Yes, Mr Jay.</p> <p>4 MR JAY: We have six witnesses today. The first is</p> <p>5 Professor Greenslade, please.</p> <p>6 LORD JUSTICE LEVESON: Thank you.</p> <p>7 PROFESSOR ROY GREENSLADE (affirmed)</p> <p>8 Questions by MR JAY</p> <p>9 MR JAY: Thank you, Professor Greenslade. Your statement,</p> <p>10 please. It's not dated, but it starts at page 00276 of</p> <p>11 our bundle.</p> <p>12 <b>A. I have no bundle.</b></p> <p>13 Q. Do you have your statement?</p> <p>14 <b>A. No.</b></p> <p>15 LORD JUSTICE LEVESON: You haven't got your statement</p> <p>16 either?</p> <p>17 <b>A. It's in here, but not here.</b></p> <p>18 MR JAY: I think out of fairness to you --</p> <p>19 LORD JUSTICE LEVESON: We'll get you a copy. Somebody will</p> <p>20 bring it to you.</p> <p>21 MR JAY: I'd just like to ask you to attest to the truth of</p> <p>22 this statement, please.</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. About yourself, you're a Professor of Journalism at City</p> <p>25 University London. As we know, you write a daily blog</p> <p style="text-align: center;">Page 1</p>	<p>1 "Flaws within the PCC". First of all, to be clear, are</p> <p>2 the flaws that you identify here flaws which you've</p> <p>3 only, as it were, conceived of in and since July 2011 or</p> <p>4 are they flaws which you had in mind consistently over</p> <p>5 the last 20 years?</p> <p>6 <b>A. No, the corpus of my work as a media commentator would</b></p> <p>7 <b>show that I've illustrated that it was flawed many times</b></p> <p>8 <b>over before that. However, I ought to say in fairness</b></p> <p>9 <b>that it changed and it improved, sometimes I guess</b></p> <p>10 <b>because of my goading, by the goading of other people,</b></p> <p>11 <b>but I had many debates with the different chairmen and</b></p> <p>12 <b>directors of the PCC over the years in which I would</b></p> <p>13 <b>point out what was wrong. The most obvious thing that</b></p> <p>14 <b>was wrong was that I was consistently saying this is not</b></p> <p>15 <b>a regulator, and suddenly, from July 2011 onwards,</b></p> <p>16 <b>everybody now seems to agree with what I've been saying</b></p> <p>17 <b>for 20 years.</b></p> <p>18 LORD JUSTICE LEVESON: But you do agree that nobody had said</p> <p>19 it before?</p> <p>20 <b>A. No. No one had -- I mean if you go back through the</b></p> <p>21 <b>speeches, and I looked back to every chairman, they talk</b></p> <p>22 <b>about self-regulation and the word regulation comes up</b></p> <p>23 <b>in what directors say, too, and so I had assumed that</b></p> <p>24 <b>they thought and conceived of it as being regulation.</b></p> <p>25 <b>To hear Lord Hunt say, as he did in an interview with me</b></p> <p style="text-align: center;">Page 3</p>
<p>1 for the Guardian and a weekly media column for the</p> <p>2 London Evening Standard. You've been a journalist for</p> <p>3 many years and in the past you've been assistant editor</p> <p>4 of the Sun, you worked on the Sunday Times, you were</p> <p>5 editor of the Daily Mirror for quite a short period, it</p> <p>6 seems, in 1990, but you've been working freelance,</p> <p>7 really, for 20 years. Is that in a nutshell the</p> <p>8 position?</p> <p>9 <b>A. That's true. I ought to make it clear that of course</b></p> <p>10 <b>I'm here as a freelance journalist, in a sense. I'm not</b></p> <p>11 <b>representing the Guardian. I haven't been party to any</b></p> <p>12 <b>discussions that have taken place at the Guardian, so</b></p> <p>13 <b>I am a lone voice in that sense.</b></p> <p>14 LORD JUSTICE LEVESON: Professor Greenslade, thank you very</p> <p>15 much, and thank you very much for the obvious interest</p> <p>16 you've taken in the work of the Inquiry from its outset.</p> <p>17 I'm not sure that I should be happy that you have</p> <p>18 encouraged everybody to reserve their ammunition until</p> <p>19 they see the report.</p> <p>20 <b>A. Gosh, I'm well read. Well, I think they should do it</b></p> <p>21 <b>then, rather than before, anyway.</b></p> <p>22 LORD JUSTICE LEVESON: Yes, I was just proving that you are</p> <p>23 read.</p> <p>24 <b>A. Yes.</b></p> <p>25 MR JAY: Thank you. The first rubric of your statement,</p> <p style="text-align: center;">Page 2</p>	<p>1 <b>when he was first appointed, "We of course are not</b></p> <p>2 <b>a regulator", was a little eye opener to me. Suddenly</b></p> <p>3 <b>we are in a state of denial, I realised.</b></p> <p>4 MR JAY: May we focus on what you believe to be the systemic</p> <p>5 flaws? We've received a block of evidence about that</p> <p>6 already, but could you give us the headline points?</p> <p>7 <b>A. Firstly, I think in the setting up of the Press</b></p> <p>8 <b>Complaints Commission there was a feeling that the Press</b></p> <p>9 <b>Council had largely failed, which preceded it, mainly</b></p> <p>10 <b>because the Press Council had fallen into disrepute. It</b></p> <p>11 <b>had fallen into disrepute not in my view because it had</b></p> <p>12 <b>done just a poor job -- I've been critical of that</b></p> <p>13 <b>too -- but mainly because newspapers, publishers and</b></p> <p>14 <b>editors treated it with utter contempt. Whenever the</b></p> <p>15 <b>Press Council issued an adjudication which newspapers</b></p> <p>16 <b>didn't like, they would publish the adjudication, which</b></p> <p>17 <b>they were bound to do, but in large headlines</b></p> <p>18 <b>underneath, they would say why they thought that</b></p> <p>19 <b>adjudication was wrong.</b></p> <p>20 <b>That, of course, was a nonsense, and they openly</b></p> <p>21 <b>attacked the chairman at the time, Louis Blom-Cooper, so</b></p> <p>22 <b>it was quite clear to me that that had fallen into</b></p> <p>23 <b>disrepute. There was a crisis in the 1980s, a sort of</b></p> <p>24 <b>Wild West show in terms of tabloid newspaper behaviour,</b></p> <p>25 <b>and that's what created that crisis, a crisis which you</b></p> <p style="text-align: center;">Page 4</p>

<p>1 can see has happened over phone hacking, although this                  2 is obviously on a far worse basis, but it was clear to                  3 me that that was the first major failure of the PCC,                  4 what is -- in a sense it was set up in order to overcome                  5 the problems of the Press Council, had to say, "We want                  6 to be inclusive, we want to make sure that we aren't                  7 critical", but at the same time the PCC, in having been                  8 set up in that way, was bound to say one of the reasons                  9 that the Press Council was treated so badly was that it                  10 adjudicated so often against newspapers.                  11 So there's the first systemic problem. They were                  12 obviously going to ensure that adjudications for                  13 breaches of a code were kept to a minimum.                  14 I think the other problem was, of course, that it                  15 was really still in the hands of the employers, the                  16 owners, and that meant that whoever was contracted to be                  17 chairman, director, the rest of the staff were very                  18 aware of who their employers were.                  19 I am not saying, and don't wish my statement to be                  20 seen in this light, that -- I'm not impugning the                  21 directors or the chairmen or the secretariat who had to                  22 do that work, but I am saying that it must weigh heavily                  23 in people's minds as to what happened before and who                  24 their employers were at the time, making it difficult to                  25 believe all along that they were being entirely</p> <p style="text-align: center;">Page 5</p>	<p>1 opinion, opinion from within the media sometimes and                  2 various critics, did attempt on lots of occasions to                  3 improve itself. Obviously it made great changes to the                  4 code after Princess Diana's death. It has taken on                  5 board difficulties facing financial journalism in                  6 relation to editors following the City Slickers affair,                  7 so it has -- and of course one of the interesting things                  8 about the code and the development of the code is that                  9 you are constantly facing new problems you couldn't                  10 think of in advance. No one thought an editor would buy                  11 shares, for instance, so that's why it didn't say                  12 specifically in the code, "Don't buy shares if you're an                  13 editor", so you have to think of these things after the                  14 event. And when you do, that obviously means that                  15 injunction will be understood by people and it won't                  16 happen. The same on bugging and so on.                  17 Q. One of the key failings you've identified in relation to                  18 the PCC is that it keeps adjudications to a minimum.                  19 The PCC might say -- and we've heard this from Lord Hunt                  20 a couple of days ago -- that that's one of its                  21 strengths, that it has been successful in acting as                  22 a conciliator between complainants and the press, and                  23 after all, when asked to fill in the consumer                  24 satisfaction survey after the event, many complainants                  25 are very satisfied with what's been achieved.</p> <p style="text-align: center;">Page 7</p>
<p>1 independent.                  2 Q. A couple of points there, Professor Greenslade. You                  3 refer to a Wild West show in the 1980s in relation to                  4 the behaviour of the tabloid press in your perception.                  5 You've been observing the behaviour of the press as                  6 a whole over 48 years, that's the timescale you identify                  7 in your statement. To the extent it's possible to                  8 generalise, how has the behaviour of the press                  9 improved/deteriorated say since 1980? Has it been                  10 a constant tale of improvement since that Wild West show                  11 or has it stayed constant? How would you define it?                  12 A. It's really difficult. It's a fantastically difficult                  13 question to answer. There are periods, periodic                  14 moments, when the press misbehaves on a grand scale. It                  15 is fair to say that in the immediate succession to the                  16 Calcutt Committee's findings and report that the press                  17 cleaned up for a while. However, there was a persistent                  18 pursuit of the Royal Family, mainly Princess Diana,                  19 which led to periods of bad behaviour, but there is no                  20 doubt that the press can go for a couple of years at                  21 a time and not do anything too outrageous, and then                  22 suddenly there can be a feeding frenzy. The McCanns is                  23 a terrific example of that.                  24 It would also be fair to say that the PCC under                  25 pressure, I think, from public opinion, political</p> <p style="text-align: center;">Page 6</p>	<p>1 A. That's perfectly true, but I think people who complain,                  2 the average number of people who complain, who are not,                  3 say, in public life, are so absolutely astonished that                  4 they get anything positive from a complaint to the PCC                  5 that they respond by saying, well, you know, it was                  6 resolved to my satisfaction, so I think that's why that                  7 happens.                  8 You wouldn't get many politicians taking that view                  9 or people in public life, as you've heard in earlier                  10 testimony over the months. They're not so satisfied                  11 with the service.                  12 It has to be said, by the way, that the secretariat                  13 over the years built up a very sophisticated way of                  14 dealing with complainants. There is no doubt that they                  15 were -- that many complainants thought that they'd                  16 received excellent service from the secretariat and                  17 I also think that conciliation and arbitration has                  18 a very large part to play in how we should deal with                  19 many complaints.                  20 My problem was that obvious breaches of the code,                  21 blatant breaches of the code, could still be sorted out                  22 by conciliation rather than adjudication. It meant, for                  23 instance, that you couldn't build up a pattern in which                  24 you said -- I pluck the Daily Mail from the back of my                  25 mind, not the forefront, but let me use the Daily Mail</p> <p style="text-align: center;">Page 8</p>

<p>1 as an example. When it breaches the code over a number                  2 of periods and it sorts those out by conciliation, then                  3 we are not getting a picture of a paper which has                  4 created a series of breaches. I'm not saying the Mail                  5 is the worst of newspapers in that sense.                  6 I'm using that as an example to show that without                  7 adjudications you are not punishing, even -- and many                  8 people don't think it's punishment anyway to have an                  9 adjudication, we can move on to that -- but the point is                  10 you are not showing that a newspaper over a period of                  11 time has been responsible for breaching the code.                  12 Q. The point you make in your statement but haven't yet                  13 developed orally, at the fourth page, page 00279, you                  14 point out correctly that there are more complaints from                  15 the public about regional and local newspapers than the                  16 nationals.                  17 A. Yes.                  18 Q. What conclusions, if any, may we draw from that? The                  19 Inquiry has had little or no evidence of systemic or                  20 generic problems within the regional press. Is it your                  21 view that although numerically greater, the complaints                  22 from the regional press are just examples of the                  23 isolated factual, accuracy errors which, human nature                  24 being as it is, one would naturally see, one might be                  25 afraid to say, in any event?</p> <p style="text-align: center;">Page 9</p>	<p>1 on board, but what they've tended to do with the                  2 creation of the Press Complaints Commission is push                  3 those on, is encourage people to go right to, as it                  4 were, the last resort rather than going to the first                  5 resort.                  6 LORD JUSTICE LEVESON: Does that run slightly into your                  7 concern that the Press Complaints Commission is keen to                  8 conciliate and therefore remove, as it were, exposure of                  9 issues, or is that merely a reflection of the order of                  10 complaint, if you see what I mean?                  11 A. I'm not entirely grasping your point, but I think it is                  12 quite clear that the Press Complaints Commission enjoy                  13 dealing in a sense with the regional press. First of                  14 all, these are easily dealt with. It also makes their                  15 figures look terribly good, to be absolutely honest.                  16 They build up this huge file of, "Oh, we've got all                  17 these complaints, we've dealt with them all very well",                  18 but the truth is this is -- we're not, with respect,                  19 sir, holding this Inquiry because Mrs Smith of Wigan                  20 complained that somebody knocked on the door when her                  21 husband died. That whole business is a really                  22 interesting subject and I think you'll probably be                  23 addressed on it some time, but it is not the major                  24 reason for this Inquiry, and therefore not a major                  25 reason -- well, I'm telling you what the Inquiry is</p> <p style="text-align: center;">Page 11</p>
<p>1 A. Yes. Look, the regional press in my view do their best                  2 to try and tell the truth. They're less biased, they're                  3 less politically involved. They are not interfering,                  4 usually, in the private lives of celebrities. But they                  5 naturally intrude into people's privacy. They can't                  6 help it. It's part of the job, in a sense. And I think                  7 also they have to deal with matters of accuracy.                  8 There are many more regional papers than there are                  9 national papers, so naturally that would lead to                  10 breaches, but these are largely almost totally really                  11 minor breaches. I think one of the things I say later                  12 is about appointing readers' editors in newspapers.                  13 I think one of the things regional papers have done is                  14 carried in their newspapers and on their websites: "If                  15 you think there's something wrong in this newspaper, go                  16 to the Press Complaints Commission".                  17 I would rather see dialogues opening up between                  18 readers and editors through a readers' editor which                  19 meant that all these relatively minor but sincerely held                  20 complaints by people were dealt with without the                  21 recourse of a regulator or non-regulator, in which they                  22 could simply have that dealt with immediately by the                  23 newspaper.                  24 If you complain to a regional newspaper editor, most                  25 of the time the editor, in my experience, will take that</p> <p style="text-align: center;">Page 10</p>	<p>1 for -- not a major reason for worry about the regulator.                  2 LORD JUSTICE LEVESON: That's actually the point that I was                  3 seeking to make, that there is a level of complaint                  4 which can and should be dealt with at the very, very                  5 bottom of the pyramid, straight to the newspaper, but                  6 your concern is that lots of complaints which are above                  7 the very, very base, which should just be resolved                  8 quickly, are being massaged away out of the system, so                  9 that we don't get a picture of what actually has been                  10 going on through the PCC, and that's a national problem,                  11 not a regional problem?                  12 A. It is. That's exactly the point.                  13 MR JAY: Thank you. And then the point about group                  14 complaints is at page 6, 00281. You make the point                  15 fairly that the PCC has improved its approach, really,                  16 to accepting these complaints over the years, but what                  17 in your view is the importance, in terms of setting                  18 standards and acting as a regulator, of a regulator                  19 properly so-called dealing with group complaints?                  20 A. I think that they were forced in the end to deal with                  21 group complaints because people did feel that there had                  22 been ill treatment, particularly of people seeking                  23 asylum, particularly of immigrants generally, and they                  24 did come forward with guidance. And I understand that                  25 third-party complaints are a real problem. Obviously if</p> <p style="text-align: center;">Page 12</p>

<p>1 the person who's been upset doesn't wish to complain, 2 then you can do nothing about it.</p> <p>3 I remember a Labour MP who had quite clearly 4 suffered from intrusion into her privacy, a picture on 5 a beach, and I tried to encourage her to complain, but 6 she said "No, this will only attract yet more hostility 7 from the press, and therefore I won't complain". 8 I couldn't have a third-party complaint launched. In 9 those circumstances I could understand why you couldn't 10 go forward with that complaint.</p> <p>11 Another very high-profile figure, a female, was 12 outed as being gay and I encouraged her to complain, but 13 she also felt for similar reasons that she wouldn't 14 complain.</p> <p>15 You can't have third-party complaints, in my view, 16 in those circumstances, although I think those people 17 might have taken different decisions.</p> <p>18 When it comes to groups of people, when we start 19 saying that East European asylum seekers are eating 20 swans from the Thames, a Sun story of the past, then 21 I think it's right that they should accept third-party 22 complaints in those circumstances.</p> <p>23 LORD JUSTICE LEVESON: On your first example, does that 24 itself reveal a justifiable reaction from the individual 25 or is it evidence of the culture of the press? The</p> <p style="text-align: center;">Page 13</p>	<p>1 I think it would be the role of a regulator to say 2 to newspapers, "This person's complained, we've upheld 3 their complaint in this situation; we're watching you. 4 We're keeping our eye on you." I think that would be 5 a very fair thing for a new regulator to do.</p> <p>6 MR JAY: The code of practice, Professor Greenslade, bottom 7 of page 00281. Can I just ask you to develop your point 8 about the inclusion of a conscience clause? You stand 9 in a similar position to the NUJ. Are you also 10 suggesting that there be a tailor-made code for 11 journalists, which is slightly different from the 12 Editors' Code?</p> <p>13 A. I'm not talking about a separate code. I'm thinking, 14 really, that we have an Editors' Code. It's not a bad 15 code. I was surprised that Dr Moore in evidence the 16 other day thought that it was contradictory in places. 17 Maybe it is. I can't see that. But I think we have the 18 basis of a decent code. But I think this is an 19 opportunity to take another look at that but to make it 20 into a journalists' code, not just one drawn up by 21 editors, and I think that it seems to me that as part of 22 that code it would be a terribly good idea to have 23 a conscience clause for the reasons outlined by 24 Ms Stanistreet, which is that it -- okay, we're not -- 25 even if you didn't have the conscience clause,</p> <p style="text-align: center;">Page 15</p>
<p>1 reaction being: I'm not going to go there because I will 2 suffer. They will come back at me again and again, and 3 therefore in the long run I'd better just lie down and 4 allow my privacy to be invaded.</p> <p>5 A. Exactly that. I think that you've had evidence, I think 6 Hugh Grant was good on this, on the fact that if you 7 stick your head above the parapet and complain, you will 8 only attract yet more hostility. You are not protected. 9 The opposite is the case. So a lot of people have taken 10 on the nose, as it were, bad behaviour by the press on 11 the understanding that the behaviour would be worse 12 still if they dared to complain.</p> <p>13 LORD JUSTICE LEVESON: Of course, one wants to encourage and 14 applaud free speech and the right of freedom of 15 expression so that the newspapers can do whatever they 16 want in that regard, but is there some way of coping 17 with that, or not?</p> <p>18 A. Well, I think the way of coping with that quite clearly 19 is if people had faith in the ability of a regulator to 20 prevent further intrusion and exposure by a newspaper. 21 In other words, if they -- in both those cases that 22 I quoted, they said, "No, the PCC will not satisfy us 23 because they can't protect us after we've made 24 a complaint", and that's perfectly true. There was 25 nothing that could be done.</p> <p style="text-align: center;">Page 14</p>	<p>1 presumably if it's in your contract of employment, you 2 can say, "Look, don't do that", but I think the addition 3 of a conscience clause would trigger a certain kind of 4 mechanism within the office and perhaps it would be 5 reported to the regulator too that this conscience 6 clause had be triggered, had been invoked, and therefore 7 that it was a standback situation and it was probably 8 requiring of a little investigation by the regulator as 9 to whether that was a valid reason for refusing to do 10 the assignment.</p> <p>11 Q. Thank you. Now, the --</p> <p>12 A. I mean, I do think we should -- you know, the code has 13 been improved over time. I don't think we should throw 14 out that code completely, but I think it provides 15 a decent basis for a code.</p> <p>16 LORD JUSTICE LEVESON: Do you think it's better for being 17 expressed in the negative as opposed to the positive? 18 Just a question.</p> <p>19 A. I know. We mustn't forget that the Ten Commandants are 20 full of "thou shalt not do".</p> <p>21 LORD JUSTICE LEVESON: I think there are positives too.</p> <p>22 A. But there are positives, praise the Lord, and I don't 23 think you can say praise the journalists in the code. 24 We who teach journalism are teaching people what they 25 should be doing, but I think when they get to work, it</p> <p style="text-align: center;">Page 16</p>

<p>1 <b>is only fair that they should know also what they</b>  2 <b>shouldn't be doing and that this should be codified, and</b>  3 <b>I can't imagine a code, except for that preamble quoted</b>  4 <b>several times over in evidence by Lord Hunt in which he</b>  5 <b>talks about attaining high standards, is a good enough</b>  6 <b>praise the Lord at the beginning.</b>  7 LORD JUSTICE LEVESON: All right.  8 MR JAY: We'll look at the constitution of the committee  9 under your proposal in a moment, but may we look at the  10 point about the public interest and defining it in the  11 code, it's the bottom of page 00282.  12 <b>A. Yes.</b>  13 Q. You feel that much of the definition within the code of  14 practice is acceptable, but there are difficulties with  15 the third element because of its subjectivity:  16 preventing the public from being misled by an action or  17 statement of a individual or organisation. Is that a  18 fair summary of where you're coming from?  19 <b>A. It is. I mean, it is fair to say that one of the</b>  20 <b>reasons for much of tabloid intrusion is that particular</b>  21 <b>part of the public interest clause in which you say, as</b>  22 <b>an editor: this footballer is married or engaged and we</b>  23 <b>have evidence, supposed evidence, to show that this</b>  24 <b>footballer is in fact philandering. This footballer is</b>  25 <b>a public figure. This footballer has on perhaps two</b>  Page 17</p>	<p>1 <b>is about intention of editors and about the culture of</b>  2 <b>newspapers, and it is really difficult to see how in --</b>  3 <b>we do wish, if a politician, if a public figure is</b>  4 <b>clearly misleading the public in some way, we must be</b>  5 <b>able to expose that person, so we do need something</b>  6 <b>which allows that to happen.</b>  7 <b>It is in the end a really very difficult subject,</b>  8 <b>this one.</b>  9 LORD JUSTICE LEVESON: I'm not sure I should be reassured by  10 that answer.  11 <b>A. No, you'd best behave, sir. They will be at you.</b>  12 LORD JUSTICE LEVESON: No, I wasn't thinking about my  13 personal conduct, but about how to address the issue.  14 <b>A. Ah, right, I'm not helping you enough, you mean?</b>  15 <b>Well --</b>  16 LORD JUSTICE LEVESON: Maybe you can't. I'm not being  17 critical of you.  18 <b>A. No. I mean, I think that -- I think that there could be</b>  19 <b>an extra injunction added to that, which made it clear</b>  20 <b>that this part of the public interest defence needed to</b>  21 <b>be -- there needed to be an overriding reason for it.</b>  22 <b>In other words, that it needed to be a substantial</b>  23 <b>example of the public being misled.</b>  24 LORD JUSTICE LEVESON: That might work but does it deal with  25 the problem of your two presses? If one goes back to  Page 19</p>
<p>1 <b>occasions said how much he loves his wife and so on and</b>  2 <b>so that's reason enough to expose that person under that</b>  3 <b>particular clause. You know, I have a problem with</b>  4 <b>that, but I think it goes to the heart of the problem</b>  5 <b>that I outlined in that first seminar -- how long ago</b>  6 <b>was that? -- in which I said that we have two presses in</b>  7 <b>this country, and the two presses mean that we have</b>  8 <b>a press which is dedicated to acting in the public</b>  9 <b>interest and a press which is dedicated to publishing</b>  10 <b>material interesting to the public.</b>  11 <b>I don't think that every bit of material in</b>  12 <b>a newspaper could or should be in the public interest.</b>  13 <b>We wish to engage the public in all sorts of ways and</b>  14 <b>entertainment is a part of the package. But I think in</b>  15 <b>interesting the public, much of that or a great deal of</b>  16 <b>that material is intrusive and it's this clause which</b>  17 <b>enables that to be published.</b>  18 Q. Various suggestions have been put to the Inquiry in  19 evidence we'll be receiving in the next two or three  20 days about how that provision of the code in particular  21 can be tightened up. Is that what you would be arguing  22 for or are you in resigned fashion accepting the status  23 quo?  24 <b>A. I've tried myself to imagine how I could tighten it up</b>  25 <b>at various stages. It is a real problem. In the end it</b>  Page 18</p>	<p>1 last September and the great criticism: how could  2 I possibly conduct this Inquiry without tabloid advice,  3 because I could never understand the mentality of  4 a tabloid editor unless I had such advice, I look to you  5 because you've done both of them, you've been involved  6 in both types of newspapers, and therefore I ask you: do  7 you think you were two different people as you were  8 running these papers? Or do you think you could carry  9 the judgments that were proper in your head, you might  10 apply them slightly differently, but consistently,  11 whether you were working in a tabloid newspaper or  12 a broadsheet or on any other type of paper?  13 <b>A. No, I mean there is an element about me, as you'll</b>  14 <b>realise, of poacher turned gamekeeper, and that's</b>  15 <b>a constant criticism of me and I can't avoid that, but</b>  16 <b>the truth is that I think I regret one or two of the</b>  17 <b>things I did when I was a tabloid editor that were,</b>  18 <b>I think, overly intrusive, and on reflection I shouldn't</b>  19 <b>have done them, but it does strike me that what we're</b>  20 <b>trying to do here is to raise standards and that we</b>  21 <b>should in that case not look back, but look forward.</b>  22 <b>Can I just say, by the way, that when we talk about</b>  23 <b>this particular clause, it is impossible not to notice</b>  24 <b>that since July last year, that kiss-and-tell stories,</b>  25 <b>which this was largely the public interest justification</b>  Page 20</p>

5 (Pages 17 to 20)

<p>1 for, have virtually disappeared from tabloid newspapers.  2 So the beneficial effects of the launching of this  3 Inquiry, of editors having second thoughts following the  4 phone hacking saga, have already had a terrifically  5 positive effect on the conduct of tabloid journalism.  6 Now, can that be maintained after? Well, if you  7 adopt my very wise recipe for doing so, then I think so.  8 LORD JUSTICE LEVESON: Of course, the alternative view would  9 be that the Inquiry has chilled free speech.  10 A. Well, if you think --  11 LORD JUSTICE LEVESON: Different side of the same coin.  12 A. Yes. I think that there will be people who will and do  13 argue that, but the freedom to expose philandering  14 footballers seem to me not a good reason to raise the  15 banner of press freedom.  16 MR JAY: I've been asked to put this to you, Professor.  17 Wouldn't your substantial public interest test kill the  18 kind of entertaining stories which the section of the  19 press you're referring to depend on?  20 A. To an extent, it would. Yes.  21 There's no doubt -- look, if you say that there was  22 an audience for young women being paid money to tell  23 stories about what happened in the bedroom and that this  24 has disappeared, we have already removed a degree of  25 entertainment from those newspapers. That's perfectly</p> <p style="text-align: center;">Page 21</p>	<p>1 everyone on board, not going to be able to levy  2 sanctions against them, unless there's a method of  3 compulsion.  4 I have tried to devise a way in which this is as far  5 away from state intervention as it can be. We don't  6 think that the state intervenes in the work of the  7 judiciary, which manages to annoy the state quite often,  8 annoy governments quite often, and it seems to me that  9 if we can have the judiciary at arm's length from the  10 executive, then we can devise a way of getting press  11 regulation in a similar manner, at arm's length from the  12 executive, too, and that was the basis of my submission.  13 Q. Thank you. In terms of the structure of the new  14 regulator regime, we're going to have at the centre an  15 entity you're going to call the press regulation board,  16 and it's appointed by a body analogous to the Judicial  17 Appointments Commission. We understand how that works.  18 A. Yes.  19 Q. The PRB appoints the senior regulator, which we're going  20 to call the press standards ombudsman, and then in  21 consultation with the ombudsman the chairperson of the  22 Press Standards Commission, and it's the Press Standards  23 Commission which has the primary functions in relation  24 to setting standards and adjudication?  25 A. And dealing with that arbitration and conciliation</p> <p style="text-align: center;">Page 23</p>
<p>1 true. And a good thing, too.  2 Q. Professor Greenslade, I'm going to, if you don't mind,  3 pass over the issue you deal with in the sixth chapter  4 of your evidence, defining the public interest in law  5 and having a general public interest defence, since  6 we've debated that with other witnesses.  7 A. Sure.  8 Q. And the merits of that idea are being considered, but  9 can I ask you, please, to develop your new system of  10 regulation? In particular, what you see the need for,  11 namely some sort of statutory underpinning for an  12 independent system and how you differentiate that from  13 what you call state regulation?  14 A. Yes. This is the toughest task you/we all face, is to  15 devise this idea of having independent regulation,  16 independent from the state, but at the same time relying  17 on the state in order to ensure that we all stay on  18 board, that it works, that it's comprehensive, and what  19 strikes me is that we will need statute in all sorts of  20 ways, I guess. I haven't, for instance, in my  21 submission haven't mentioned alternative dispute  22 resolution and so on. I could have done so. That  23 probably would need a regulatory framework too, but in  24 just sticking to the press regulator itself, in my view  25 it is quite clear that you are not going to keep</p> <p style="text-align: center;">Page 22</p>	<p>1 service that we still believe is reasonable in the  2 general run of things, although I believe its work would  3 be less onerous if at the same time newspapers, as I'd  4 previously mentioned, were to deal with complaints  5 themselves and that there should be as part of this deal  6 a way of setting up readers' editors in every major  7 office. In the case of regional press, it obviously  8 could be a readers' editor who operated for a whole  9 range of newspapers and so on, I think one needs to  10 think a little bit more about that, but the point being  11 that we want to encourage people to engage with their  12 own newspaper as often as possible.  13 The Press Standards Commission will then deal with  14 appeals against that, or if they don't feel they're  15 being dealt with right by their newspaper and it can  16 resolve complaints, but at the same time it can see this  17 complaint, this breach is blatant, this breach needs to  18 be dealt with by adjudication, then it deals with that  19 and calls on the ombudsman in those very special, but at  20 least, it has to be said, rare events, when something  21 really untoward occurs. McCanns, example.  22 Q. Does each of the elements of your system, the PRB, the  23 PSO and the PSC -- each has a statutory underpinning, is  24 that correct?  25 A. I think the statutory underpinning comes from the</p> <p style="text-align: center;">Page 24</p>

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<p>1 <b>creation of the PRB itself, that underpinning, but</b>  2 <b>I mean, yes, the whole system is underpinned by statute.</b>  3 <b>I think that's fair enough.</b>  4 <b>The important thing is that the state, however, has</b>  5 <b>no input into the appointments and to the workings of</b>  6 <b>that organisation. It just is completely at arm's</b>  7 <b>length.</b>  8 Q. Is the ombudsman part of the system or is it independent  9 of it? Since the advice we've received from others is  10 that for an ombudsman properly to be so-called, he or  11 she needs to be independent; is that how you see it or  12 not?  13 <b>A. I'm not quite certain I follow you there. The</b>  14 <b>ombudsman -- independent of whom and where?</b>  15 Q. Obviously independent of the entity regulated, but also  16 independent of the regulator. In other words, separate  17 from it.  18 <b>A. Yes, I think so. I think that's really what I mean,</b>  19 <b>yes. This ombudsman has to be brought in only on</b>  20 <b>special occasions and therefore stands apart from the</b>  21 <b>PSC, but is the auditor and monitor of that body.</b>  22 Q. But the PSC comes in, as you've explained, as a Court of  23 Appeal, as it were, and to deal with particularly  24 serious cases; is that right?  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 25</p>	<p>1 it's an independent or lay person. There will be 14  2 additional members, 10 of them will be lay or  3 independent, and four will be editors, but why continue  4 to have serving editors? A number of people have said  5 that in order for such a body properly to be  6 independent, they should be retired editors.  7 <b>A. Yes, the retired editors, I think, is a non-starter, to</b>  8 <b>be honest. No editor comes without baggage, and retired</b>  9 <b>editors are no different. At least with working</b>  10 <b>editors, you know where they're coming from. You know</b>  11 <b>that they're also steeped in the contemporaneous</b>  12 <b>business of journalism, which develops fast.</b>  13 <b>I absolutely take Lord Black's point on that.</b>  14 <b>If you go for retired editors, don't think for one</b>  15 <b>minute that they don't have agendas. They surely will.</b>  16 <b>And I don't think that -- if memory serves me, the Press</b>  17 <b>Council did this, co-opted former editors, and I didn't</b>  18 <b>think it was hugely successful. No one -- I can't think</b>  19 <b>of a single editor, with perhaps the exception of the</b>  20 <b>Standard and the Guardian, for whom I work, who would</b>  21 <b>like to see me appointed, for instance, so I'm not</b>  22 <b>certain that that would work. And I'm not angling for</b>  23 <b>a job, by the way.</b>  24 LORD JUSTICE LEVESON: But is there a problem with serving  25 editors that you will inevitably get the most powerful</p> <p style="text-align: center;">Page 27</p>
<p>1 Q. In terms of sanctions, the ombudsman has power to levy  2 fines but only in what you describe as very serious,  3 blatant or persistent code breaches; is that right?  4 <b>A. Yes. There are all sorts of problems I've not explored</b>  5 <b>here about fines, to be honest. It's very difficult to</b>  6 <b>know what would be an appropriate fine for companies</b>  7 <b>that are -- you have the problem that either companies</b>  8 <b>are losing loads of money, so does the fine make that</b>  9 <b>really difficult for them, or companies that are making</b>  10 <b>a great deal of money and therefore the fine is not big</b>  11 <b>enough to be a decent punishment. This is hugely</b>  12 <b>problematic.</b>  13 <b>I think the fine in a sense is about a public</b>  14 <b>statement of this newspaper having misbehaved to such an</b>  15 <b>extent that we felt it necessary to fine it, rather than</b>  16 <b>the level of fine being so punishing that it would make</b>  17 <b>a difference to the economic fortunes of that newspaper.</b>  18 LORD JUSTICE LEVESON: Professor Greenslade, what you've  19 identified is the perennial problem of the imposition of  20 financial penalties in the criminal law in any event, so  21 that's not new.  22 <b>A. Well, I wouldn't -- fine. Yes.</b>  23 MR JAY: The constitution of the Press Standards Commission,  24 this is section 10 of your evidence: chair will be  25 appointed through open competition. No formal link, so</p> <p style="text-align: center;">Page 26</p>	<p>1 people in the business, who will then have or be  2 perceived to have an overwhelming influence on everybody  3 else?  4 <b>A. Well, no. If you say that we're looking at</b>  5 <b>a composition here of 15 people and only two of them</b>  6 <b>would be national newspaper editors, and although I've</b>  7 <b>not put this, they could be appointed on a rota basis,</b>  8 <b>there are only in the national sector, what, 20</b>  9 <b>newspapers to choose from. Some are powerful, some are</b>  10 <b>less powerful, but I think if you did it on a rolling</b>  11 <b>rota then you wouldn't face that problem.</b>  12 MR JAY: You envisage a continuing conciliation or mediation  13 role for the PSC?  14 <b>A. I do.</b>  15 Q. But isn't that in danger of perpetuating one of the core  16 defects of the PCC, that it spends too much time  17 mediating and not enough time making binding decisions  18 or adjudications which will set standards for future  19 behaviour?  20 <b>A. It would look like that, wouldn't it, but I think that</b>  21 <b>what we need to do is to impose the kind of rigour on</b>  22 <b>each case that is not there at the moment, and that is:</b>  23 <b>is this a minor breach, an accidental breach, an</b>  24 <b>oversight, a mistake, which could be dealt with by</b>  25 <b>conciliation? Is it an unusual breach, in the sense</b></p> <p style="text-align: center;">Page 28</p>

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<p>1 <b>that these never happened to that particular magazine or</b>  2 <b>newspaper before, and therefore again let's deal with</b>  3 <b>it? Is it part of a pattern? Is it a breach that</b>  4 <b>really shouldn't have happened at all? That then should</b>  5 <b>go up to adjudication.</b>  6 <b>So I think there's a crucial set of decisions to</b>  7 <b>make at the point when the complaint is made, and it's</b>  8 <b>for the PSC to work out, along with the ombudsman, a way</b>  9 <b>of making that -- of creating a mechanism, an</b>  10 <b>understanding, a rule or whatever, to make that happen.</b>  11 Q. So there's a filtering process?  12 <b>A. A filtering process.</b>  13 Q. The run-of-the-mill category, having been filtered, fit  14 for mediation in the first instance, but those which  15 look potentially at least worse, either because they're  16 systemic or because inherently they're more serious,  17 they're not fit for mediation, they go straight into the  18 adjudication track. Is that how you see it?  19 <b>A. Yes, that's exactly how I see it.</b>  20 Q. Otherwise, in terms of the mechanics, editors are  21 required to publish the decisions and presumably, indeed  22 you say it, the PSC can state exactly where the  23 publication of the decision should be; is that right?  24 <b>A. Yes. Prominence is important. Again it has to be said</b>  25 <b>the PCC has improved that matter over the years, but we</b>  Page 29</p>	<p>1 Q. You explain how it should be composed. You'd like to  2 see the ombudsman on it, three public members of the PSC  3 and eight serving editors and two nominees from the NUJ,  4 so in all we're going to have 14, I think, are we? If  5 my arithmetic is correct.  6 <b>A. Yes.</b>  7 Q. But a majority of serving editors. Is the thinking  8 behind that that only they will know sufficient of  9 what's occurring at grass-roots level to be attuned to  10 current standards and the application of those  11 standards?  12 <b>A. I think one of the things I've noticed in the criticism</b>  13 <b>of the current system is that people are really confused</b>  14 <b>about the role of the Code Committee. Mainly, for</b>  15 <b>instance, people will simply say and have said over the</b>  16 <b>years: Paul Dacre, the editor of the Daily Mail, runs</b>  17 <b>the PCC because he happens to chair the Code Committee.</b>  18 <b>This is a libel on my dear friend Paul Dacre. I mean,</b>  19 <b>the truth is the Code Committee does straightforward</b>  20 <b>work. It's been non-controversial. It has responded to</b>  21 <b>public pressure over the years. I don't feel that this</b>  22 <b>criticism is valid.</b>  23 <b>So I think that the -- my only desire with creating</b>  24 <b>a new journalists' code and a new committee is to ensure</b>  25 <b>that we get some working journalists onto it who aren't</b>  Page 31</p>
<p>1 <b>still feel, I think, that a front page -- an</b>  2 <b>adjudication against a story on the front page should</b>  3 <b>result in some kind of front page apology and prominence</b>  4 <b>it is hugely important and the ombudsman must have</b>  5 <b>a right to impose the prominence on a publication.</b>  6 Q. In terms of appeal rights, you've already explained that  7 the ombudsman is effectively the appeal body, but will  8 the newspaper have a right of appeal or is this only  9 left to the complainant?  10 <b>A. I hadn't thought about that, to be honest, I just</b>  11 <b>hadn't. Newspapers will probably be able to -- yes.</b>  12 <b>I mean, for the purposes of the argument, I'm sure</b>  13 <b>newspapers could appeal to the ombudsman too.</b>  14 Q. There could be certain filters as regards the  15 ombudsman's powers, whether it has a full appeal  16 jurisdiction, in other words will entertain or rehear  17 all the facts, or whether it will only review the  18 decision of the PSC, but further thought can be given to  19 that.  20 <b>A. (Nods head).</b>  21 Q. Can I ask you about the journalists' code, which is  22 section 12. In particular, the committee. The  23 committee is effectively a subcommittee of the PSC; is  24 that correct?  25 <b>A. That's correct, yes.</b>  Page 30</p>	<p>1 <b>editors. It would be unpopular to choose the NUJ, but</b>  2 <b>the NUJ is the -- I think has 65, 70 per cent of the</b>  3 <b>journalists working across Britain, more than any other</b>  4 <b>group representing them, so I think it's fair to choose</b>  5 <b>them, but I don't think this is a matter of -- it's</b>  6 <b>needless controversy to say the code -- the Code</b>  7 <b>Committee is a very, very straightforward matter, not</b>  8 <b>problematic in my view, and working editors on it makes</b>  9 <b>sense.</b>  10 <b>It's not as if they've designed the code in private</b>  11 <b>to favour themselves. The code has, in fact,</b>  12 <b>constrained them, and so -- you pointed out that it's</b>  13 <b>largely very negative in that sense. So I would have</b>  14 <b>thought the code is an example of the editors having</b>  15 <b>behaved rather well.</b>  16 Q. Okay. Within the individual newspapers, you recommend  17 or propose a readers' editor, who will be the first port  18 of call for complaints.  19 <b>A. Yes.</b>  20 Q. Is it anticipated that the majority of complaints will  21 be dealt with internally, and only the minority will  22 ever have to see the light of day before the PSC in any  23 event?  24 <b>A. I think that what I'd like to imagine is that readers'</b>  25 <b>editors satisfy complainants well enough, that if</b>  Page 32</p>

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<p>1 complainants -- what complainants need to know from the 2 readers' editor is: if you're not satisfied with what 3 I'm doing on your behalf and the result, then you have 4 the right to go to the PSC. So that's, I think, 5 a straightforward matter.</p> <p>6 LORD JUSTICE LEVESON: And the readers' editor would have to 7 have sufficient clout to make sure or at least to carry 8 the authority that avoided the risk of further 9 retaliation.</p> <p>10 <b>A. Yes. I mean the role of the readers' editor -- and lots 11 of papers have appointed readers' editors or internal 12 ombudsmen in the past -- I'm talking about tabloids -- 13 they've tended not to be really interventionist in the 14 office. I think we'd have to conceive of a readers' 15 editor having sufficient power and influence within the 16 office to ensure that his or her writ runs properly, 17 that there can't be retaliation against those who 18 complain, and that also the readers' editor can bring 19 pressure to bear in order to ensure that corrections, 20 clarifications, apologies are given due weight in the 21 way that you'd expect the PSC to be able to do at its 22 remove.</b></p> <p>23 <b>So you're hoping to create -- this might be a bit 24 idealistic, but I think this is the moment for idealism. 25 We want to, I think, create a situation in which there</b></p> <p style="text-align: center;">Page 33</p>	<p>1 really carefully. I'm not against the contract idea in 2 theory, you know, his theory of the contract idea.</p> <p>3 I have other problems which we might discuss in a second 4 about it, but the point is that this is a similar idea 5 of having a contract, and it would be voluntary, and so 6 you would need to ensure that you want to make sure that 7 as many people -- indeed, everyone volunteers.</p> <p>8 <b>That having been said, the subtlety of Dr Moore's 9 Media Standards Trust argument about who should be 10 compelled to be inside and not -- I think I merely said, 11 oh, Guido Fawkes and Private Eye could be outside and we 12 should live with that, but his formula was, I thought, 13 wonderfully elegant, I think that was really clever, 14 that really we're dealing in the end -- what we are 15 dealing with when we're dealing with the press is power 16 and dominance. What his group have clearly seen is that 17 if you are not a dominating and influential publication 18 in which you're bringing people into the public arena 19 and belittling them, ruining their reputation, making 20 their life difficult, if you're not one of those, then 21 it's fair enough for you to stand outside the system. 22 So I hadn't -- obviously I hadn't seen his decision 23 either, before mine.</b></p> <p>24 <b>So I would take that on board in what I say here 25 about how we create a voluntary way in, because</b></p> <p style="text-align: center;">Page 35</p>
<p>1 is much more internal accounting for mistakes, and the 2 readers' editor is a mechanism for doing so.</p> <p>3 LORD JUSTICE LEVESON: Is this a job that can be combined 4 with some other job? Because one of the things that 5 I heard about from some editors was: well, if you impose 6 this additional financial strain on me, then that's 7 going to cause me enormous problems because of my 8 precarious financial position.</p> <p>9 <b>A. Well, tough. I think they just have to take that on 10 board, to be absolutely honest. No, I think a readers' 11 editor has to be separate from the daily run of things. 12 It seems to me, going on the level and number of 13 complaints that go in at the present, that the readers' 14 editor will have a lot of work to do anyway.</b></p> <p>15 LORD JUSTICE LEVESON: Okay.</p> <p>16 MR JAY: Sections 13 and 14 we can take together, it's the 17 issue of funding and the issue of compulsion. My 18 understanding of your proposal is that this is 19 a voluntary system. It's going to be contract based, 20 but there's going to be no statutory obligation to join 21 in. Have I correctly understood where you're coming 22 from?</p> <p>23 <b>A. Yes. I ought to say that of course I made my submission 24 in advance of reading Lord Black's contract, which 25 I only saw a couple of days after, going through it</b></p> <p style="text-align: center;">Page 34</p>	<p>1 obviously after that we need sanctions against those or 2 whatever to ensure that they do come in.</p> <p>3 LORD JUSTICE LEVESON: As I understand the Media Standards 4 Trust view, large companies within the Companies Act 5 would have to be in.</p> <p>6 <b>A. Yes. Large companies would have to be in. That's true. 7 But they are -- they're the dominant, powerful, 8 influential press in our country.</b></p> <p>9 LORD JUSTICE LEVESON: And you're content with that 10 approach?</p> <p>11 <b>A. I am content with that approach. I wish I'd seen it in 12 advance. But yes, I'm content with that.</b></p> <p>13 MR JAY: So the --</p> <p>14 <b>A. Although there is an arbitrary business about where you 15 make the split, but I think that can be talked about.</b></p> <p>16 LORD JUSTICE LEVESON: There is always going to be a line.</p> <p>17 <b>A. Yes.</b></p> <p>18 LORD JUSTICE LEVESON: The question is, and this is one of 19 the fundamental issues in this, whether there can or 20 should be any compulsion for anyone, or whether you've 21 just got to do it with carrots and sticks. If there are 22 sufficient carrots and if there are sufficient sticks.</p> <p>23 <b>A. Yes. And that is where the whole set of problems lie, 24 in whether we can -- whether people are going to say 25 this is clearly such a fantastic idea, we're going to</b></p> <p style="text-align: center;">Page 36</p>

<p>1 sign up to it, we're going to be involved, or whether</p> <p>2 they say, no, I'm not going for that. More</p> <p>3 particularly, I think everyone will sign up initially,</p> <p>4 but will they be back sliding and how do you prevent</p> <p>5 back sliding? That's where we get into penalties for</p> <p>6 those who don't -- the unvolunteered volunteers.</p> <p>7 LORD JUSTICE LEVESON: But do you think it is a matter of</p> <p>8 philosophical obligation that one doesn't compel anybody</p> <p>9 to be in? Because that's what I heard from some people.</p> <p>10 A. Yes.</p> <p>11 LORD JUSTICE LEVESON: I'm interested in your view.</p> <p>12 A. No, I think the truth is that since we're dealing with</p> <p>13 people who exercise power which has caused this crisis</p> <p>14 in the first place, that there has to be compulsion and</p> <p>15 I don't see that that is an inhibition of press freedom</p> <p>16 to -- you know, we don't set up separate courts in this</p> <p>17 country.</p> <p>18 MR JAY: So you wouldn't need fines, then, if we're talking</p> <p>19 about compulsion for the larger bodies, and you wouldn't</p> <p>20 need them for the smaller bodies because the smaller</p> <p>21 bodies would be participating voluntarily in any event.</p> <p>22 A. Yes.</p> <p>23 Q. But you're proposing a series of incentives, as it were,</p> <p>24 which would encourage the smaller bodies at least to</p> <p>25 consider joining it?</p> <p style="text-align: center;">Page 37</p>	<p>1 that that's been explored sufficiently.</p> <p>2 LORD JUSTICE LEVESON: Who runs those organisations?</p> <p>3 A. The publishers. So advertisers, magazines, newspapers</p> <p>4 form a collective council at the audit bureau of</p> <p>5 circulation, and so they can decide their own fate. So</p> <p>6 if one of their members is not part of the regulatory,</p> <p>7 they can say, "Right, you're out of the ABC, you're not</p> <p>8 getting audited", and similarly the same thing could</p> <p>9 happen at the national readership survey, also run in</p> <p>10 a similar fashion.</p> <p>11 I am told, in discussion with Lord Black, he said</p> <p>12 this one couldn't run, but with the greatest of respect</p> <p>13 to him, I don't know if it's really been explored</p> <p>14 sufficiently. It seems to me that that is better than</p> <p>15 fines, really. It's so self-evident to me that that</p> <p>16 would really be a very clever way of compulsion.</p> <p>17 LORD JUSTICE LEVESON: The advantage or one advantage of it</p> <p>18 might be that it removes any risk of criticism that it</p> <p>19 is interfering with free speech. This business about</p> <p>20 the suggestion of press cards has --</p> <p>21 A. Of which I'm not in favour, yes.</p> <p>22 LORD JUSTICE LEVESON: -- all sorts of free speech issues it</p> <p>23 seems to me, I know that it's Mr Dacre who's suggested</p> <p>24 it, but it seems to me has real problems in that regard,</p> <p>25 and this doesn't.</p> <p style="text-align: center;">Page 39</p>
<p>1 A. Sure. I think that obviously we'd -- obviously I think</p> <p>2 there would be, for small publications, there would be</p> <p>3 this point that they would be able to say, "We have the</p> <p>4 kite mark, we are regulated, we have gone into this</p> <p>5 voluntarily, and we like what it means in terms of</p> <p>6 showing the public that the public can have trust in</p> <p>7 us."</p> <p>8 Q. The incentives you propose are not dissimilar from many</p> <p>9 others that have been suggested to the Inquiry.</p> <p>10 Unfortunately, the VAT one doesn't work.</p> <p>11 A. The VAT one doesn't work, but others have come forward</p> <p>12 since then, such as the removal of the Press Association</p> <p>13 service. That strikes me as very harsh indeed. I'm not</p> <p>14 certain about where we stand on freedom on that one</p> <p>15 either.</p> <p>16 To be honest, I can't think of a sufficient range of</p> <p>17 sanctions that would be absolutely cast-iron guarantees</p> <p>18 that the publisher would give in, but I think if you</p> <p>19 remove the currency -- if we say newspapers have only</p> <p>20 two forms of income, which is sales revenue and</p> <p>21 advertising revenue, if you remove the currency which</p> <p>22 enables them to get advertising, you remove their</p> <p>23 membership of the national readership survey and the ABC</p> <p>24 auditing, you take those away, then I think that that is</p> <p>25 a pretty harsh form of compulsion, and I don't think</p> <p style="text-align: center;">Page 38</p>	<p>1 A. No. I'm not keen on the press cards. I've read what</p> <p>2 Paul has had to say about it but I'm not keen on it.</p> <p>3 I'm not keen on anything which inhibits free speech,</p> <p>4 which means that free floating journalists can't</p> <p>5 operate, and so on. So this is hitting publishers where</p> <p>6 it hurts, in terms of revenue.</p> <p>7 MR JAY: I think the issue there is likely to be one of</p> <p>8 competition law and Section 9 of the Act and public</p> <p>9 interest, about which we're going to get further</p> <p>10 submissions.</p> <p>11 LORD JUSTICE LEVESON: If there had been an easy solution,</p> <p>12 we'd have found it a long time ago.</p> <p>13 A. Yes. That's also true. And I'm sure Guy will have</p> <p>14 already had that advice and that's the reason he felt</p> <p>15 confident in saying it wouldn't fly, but I'd hope that</p> <p>16 we could make it fly.</p> <p>17 MR JAY: You wanted to comment, though, on Lord Hunt's</p> <p>18 proposals, Professor Greenslade. You let that slip five</p> <p>19 minutes ago.</p> <p>20 A. Oh, did I?</p> <p>21 Q. I'll let you do that, if you wish.</p> <p>22 LORD JUSTICE LEVESON: It's really Lord Black's. We have to</p> <p>23 be rather careful about that.</p> <p>24 A. Yes, Lord Black's.</p> <p>25 MR JAY: That's true.</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 <b>A. Having been through the contract, and I had to do it two</b>  2 <b>or three times, but anyway, when I -- the key to me is</b>  3 <b>this little diagram. I think you used this.</b>  4 Q. Appendix 2, yes.  5 <b>A. Appendix 2. It's great, isn't it, because the really</b>  6 <b>thick outline is the trust board at the heart, but it's</b>  7 <b>these little bodies feeding into it which struck me as</b>  8 <b>being problematic. The industry funding body and the</b>  9 <b>appointment panel for the chairman's appointment and so</b>  10 <b>on.</b>  11 <b>I don't want to be rude about -- they've obviously</b>  12 <b>spent a huge amount of time trying to do this and so on,</b>  13 <b>but it struck me that it's a sort of bureaucratic</b>  14 <b>spider's web, and the spider is the industry still at</b>  15 <b>the centre of the web, controlling everything, and it</b>  16 <b>seemed that they still had far too much control in order</b>  17 <b>to, I think, alleviate public disquiet that this is</b>  18 <b>still an industry -- this is still an industry</b>  19 <b>organisation in which they still have too many levers of</b>  20 <b>influence.</b>  21 <b>If you just take funding, for a start. Funding is</b>  22 <b>not a sort of joke thing. If you pull that lever, you</b>  23 <b>constrain that lever, you control. And so I would be</b>  24 <b>really worried about the industry funding board aspect.</b>  25 <b>It seems to me it's PressBoF reborn, and I think that's</b></p> <p style="text-align: center;">Page 41</p>	<p>1 anything else you wanted to say about the proposition  2 put forward by the Press Standards Board of Finance?  3 You mentioned the appointment process.  4 <b>A. Well, yes. That was somewhat -- one of my criticisms of</b>  5 <b>the Press Complaints Commission and PressBoF over the</b>  6 <b>years has been it being too opaque a process. We want</b>  7 <b>transparency, and it seems to me that this is also</b>  8 <b>rather opaque, about how you would appoint.</b>  9 <b>Mine is really an open example of how that could be</b>  10 <b>overcome, and I'm not saying -- you know, I can see Guy</b>  11 <b>said several times over, "This is an iterative process",</b>  12 <b>and I can see that they've moved already as they're</b>  13 <b>going on, and I think they will take on board other</b>  14 <b>things, and perhaps they'll obviously take on board that</b>  15 <b>the appointments need to be totally at arm's length.</b>  16 <b>I'm just keen for them to -- if we go the contract</b>  17 <b>route, which I don't think is necessarily a bad thing,</b>  18 <b>I'm still very keen for them to remove any aspect of the</b>  19 <b>industry pulling strings, whether it's about</b>  20 <b>appointments or funding.</b>  21 MR JAY: Thank you. Any final thoughts, Professor  22 Greenslade? You've developed one or two on the final  23 page of your statement, but particularly in the light of  24 anything which has come to mind since or anything which  25 has specifically been thrown up by this Inquiry,</p> <p style="text-align: center;">Page 43</p>
<p>1 <b>that's a problem.</b>  2 <b>I thought his phrase about independently led</b>  3 <b>self-regulation was beautifully put. It's actually in</b>  4 <b>his submission too. But what we're really aiming for,</b>  5 <b>are we not, is independently led independent regulation.</b>  6 <b>We still -- you know, we want regulation, is really what</b>  7 <b>we want, and it seems that this was too convoluted, to</b>  8 <b>bureaucratic, too vague a process, and although I share</b>  9 <b>Lord Black's philosophical objections to state</b>  10 <b>involvement, even his schema seems to me that at some</b>  11 <b>stage there would need to be some statutory</b>  12 <b>underpinning, and that really is no different from my</b>  13 <b>view and no different in some respects to Dr Moore's</b>  14 <b>view.</b>  15 Q. In terms of the Internet, Professor Greenslade, is the  16 position this: with the smaller entities, they would be  17 outside the system, or rather their participation would  18 be voluntary --  19 <b>A. Voluntary.</b>  20 Q. -- but the larger ones would be compelled?  21 <b>A. Yes.</b>  22 Q. Can I ask you, please, to develop your final personal  23 observation, perhaps adding to it any thoughts which  24 have come to mind since?  25 LORD JUSTICE LEVESON: Before you do that, was there</p> <p style="text-align: center;">Page 42</p>	<p>1 perhaps?  2 <b>A. As you probably see, I write endlessly about it. It's</b>  3 <b>been my interest and passion for 20 years, this whole</b>  4 <b>business, and I have been a critic and commentator all</b>  5 <b>that time, so I could spend hours here, but I'll just do</b>  6 <b>it in one sentence: we have this chance, I think, to</b>  7 <b>improve the standards and ethics of our profession,</b>  8 <b>trade, craft, whatever you care to call it, and I think</b>  9 <b>that we've had periodic bouts of bad behaviour and we</b>  10 <b>need to devise a final system that for the present, for</b>  11 <b>the moment, while we still have print, can actually stop</b>  12 <b>the dominance and power of large organisations to make</b>  13 <b>life incredibly miserable for other people.</b>  14 LORD JUSTICE LEVESON: That's not necessarily restricted to  15 print, is it?  16 <b>A. Well, we're only dealing with print here. I mean --</b>  17 LORD JUSTICE LEVESON: But print that goes into digital.  18 The problem -- I'm not suggesting there is a problem  19 with the Huffington Post, but the difference is not that  20 it's the Huffington Post as opposed to a printed  21 document; it is the way in which we collect our material  22 and then present it to the public, whether in paper form  23 or digitally, isn't it?  24 <b>A. Yes. However -- and this is a much wider argument --</b>  25 <b>for me, still, print sets the national conversation, not</b></p> <p style="text-align: center;">Page 44</p>

<p>1 <b>what appears on the screen. What appears on screen is</b>                  2 <b>a repeat of that, but what we don't know is -- and yet</b>                  3 <b>not enough work has been done on this -- as to whether,</b>                  4 <b>when we move to a screen base, that the level of</b>                  5 <b>influence that comes from the printed word and the</b>                  6 <b>totality of newspapers working together to create</b>                  7 <b>a feeding frenzy in the manner of the poor parents of</b>                  8 <b>Madeleine McCann, what we don't know and what we can't</b>                  9 <b>know is whether, when we move to a screen-based --</b>                  10 <b>totally screen-based news outlets, whether that kind of</b>                  11 <b>feeding frenzy can occur.</b>                  12 <b>I think it's the power of print that has made that</b>                  13 <b>happen. It's a different argument, but I am more</b>                  14 <b>relaxed about the digital world than I am about the</b>                  15 <b>print world.</b>                  16 LORD JUSTICE LEVESON: One of the concerns that have been                  17 addressed to me is that I have to make sure that I am                  18 not simply focusing on yesterday's technology, but that                  19 I should think about things in a way that encompasses                  20 what tomorrow's might be. I've actually found it quite                  21 difficult to visualise what tomorrow's might be, but                  22 I have an idea what today's is. That's not therefore                  23 a concern which really troubles you for the reason                  24 you've just given.                  25 <b>A. No. Let's deal with print.</b>                  Page 45</p>	<p>1 the statement, to confirm that it's true to the best of                  2 your belief; is that right?                  3 <b>A. Yes.</b>                  4 Q. Can you explain first of all, Mr Suter, who you are and                  5 what Perspective Associates is?                  6 <b>A. Certainly. I run a small advisory company, we advise</b>                  7 <b>around media policy and regulatory strategy. Before</b>                  8 <b>that, I was a partner at Ofcom. I was the founding</b>                  9 <b>partner at Ofcom for content and standards, which was</b>                  10 <b>the bit of Ofcom that was responsible for the regulation</b>                  11 <b>of content, primarily broadcast but also addressing</b>                  12 <b>other non-linear types of content.</b>                  13 Q. Thank you. First of all, please, this is the                  14 introduction to your statement, can I ask you to                  15 summarise what you're proposing and where you're coming                  16 from?                  17 <b>A. It seems to me that -- building on what</b>                  18 <b>Professor Greenslade has just said, this is an</b>                  19 <b>opportunity not just to address print, which clearly he</b>                  20 <b>sees as the priority, but I think it's an opportunity to</b>                  21 <b>update the way we address content regulation for the</b>                  22 <b>future as well. Because it will change, media will</b>                  23 <b>change, the types of information people are getting will</b>                  24 <b>change, and the regulatory framework needs to adapt with</b>                  25 <b>it, and I think there's an opportunity here to think</b>                  Page 47</p>
<p>1 MR JAY: Thank you very much, Professor Greenslade.                  2 LORD JUSTICE LEVESON: Professor, I hope that your MA                  3 student, whose comment you observed, did well in her                  4 exam. It seems a very pithy way of putting it.                  5 <b>A. Yes, she got a good mark. Thank you.</b>                  6 LORD JUSTICE LEVESON: For those who don't have it in front                  7 of them:                  8 "Most ethical dilemmas in the media are a struggle                  9 between conscience and revenue."                  10 Thank you very much indeed.                  11 MR JAY: May we move on to our next witness and break after                  12 about 15 minutes?                  13 LORD JUSTICE LEVESON: Certainly.                  14 MR JAY: Is Mr Suter here?                  15 MR TIMOTHY JOHN SUTER (sworn)                  16 Questions by MR JAY                  17 MR JAY: Your full name, please?                  18 <b>A. Timothy John Suter.</b>                  19 MR JAY: You've kindly provided us with a witness statement                  20 under tab 38, sir, of your bundle.                  21 LORD JUSTICE LEVESON: Thank you very much indeed.                  22 Mr Suter, thank you very much for stepping into this                  23 area and providing us with the benefit of your views.                  24 Thank you.                  25 MR JAY: I want to ask you first of all, having identified                  Page 46</p>	<p>1 <b>about the nature of the statutory underpinning that will</b>                  2 <b>apply across different kinds of media to the press but</b>                  3 <b>also to other kinds of media that will deliver I think</b>                  4 <b>a more flexible, a more effective and a more</b>                  5 <b>forward-looking type of regulation, and in the process,</b>                  6 <b>I think, has the opportunity to address the central</b>                  7 <b>concern, as I see it, which is of whether there should</b>                  8 <b>be a statutory underpinning to press regulation, and if</b>                  9 <b>so, how to achieve it.</b>                  10 Q. Your introduction makes it clear that you share the                  11 abhorrence expressed by every witness to the Inquiry of                  12 state control of the press, you're not therefore                  13 advocating that, but you're advocating a form of                  14 statutory underpinning. What's the difference between                  15 statutory underpinning and state control?                  16 <b>A. By state control I think everybody has set up this</b>                  17 <b>dangerous notion that the state would dictate what the</b>                  18 <b>press could do, would dictate the standards by which the</b>                  19 <b>press had to operate and would form judgments as to what</b>                  20 <b>was or was not acceptable. I see statutory underpinning</b>                  21 <b>as being further removed from that, or setting</b>                  22 <b>a framework within which the regulation happens, but</b>                  23 <b>where the regulation itself is carried out by</b>                  24 <b>independent bodies dealing directly with the press and</b>                  25 <b>the regulated entities.</b>                  Page 48</p>

<p>1 Q. The four core principles which you're outlining -- this 2 is at page 00759, the second page of your statement -- 3 could you explain those to us, please, and the role of 4 Ofcom within that framework?</p> <p>5 <b>A. It seems to me that what -- a number of people, the 6 Media Standards Trust and Professor Greenslade as well, 7 have come up with, devised a way of creating a link 8 between the state and the system of regulation. What 9 I'm proposing is that that link already exists, it 10 exists in the shape of Ofcom, and that what you could 11 therefore do is require Ofcom to do two very specific 12 things.</b></p> <p>13 In the first instance, it could identify the core 14 standards that it expects media to uphold, and it could 15 identify the characteristics of the types of media 16 service that should be submitted to some form of 17 regulation. That would be Ofcom's primary job, to set 18 out at a very high level what those core standards 19 should be, and to set out the characteristics of 20 services that should be regulated. If you like, it's 21 asking Ofcom to do what Dr Moore did with his definition 22 of the types of services that should be subjected to 23 regulation, but in a slightly more flexible way. It's 24 giving Ofcom the opportunity to determine for itself 25 what are those characteristics.</p> <p style="text-align: center;">Page 49</p>	<p>1 <b>So I think you would ask Ofcom to make those 2 determinations and to define the characteristics of 3 services that should therefore be regulated.</b></p> <p>4 Q. But would Ofcom then be given considerable discretion in 5 particular cases or would you be expecting it to say in 6 relation to the printed media: okay, they don't meet the 7 public policy limb because that's to do with 8 broadcasting, which is publicly funded, but they 9 probably meet the practicability limb and certainly the 10 proportionality limb if you're talking about newspapers 11 which are large enough; is that it?</p> <p>12 <b>A. Yes, that's exactly right, whereas there might be other 13 print publications that would not meet the 14 proportionality test, might well meet the practicability 15 test but would not meet the proportionality test. 16 They're too small, they're too specialised, they're 17 unlikely to trigger that degree of potential concern.</b></p> <p>18 Q. Is there a danger, though, that Ofcom may make the wrong 19 decision in relation to the press? Okay, we can argue 20 about size, and we saw Dr Moore's approach, let's take 21 the definition of small company in the Companies Act, 22 but that's an objective measure, we could put forward 23 different measures, but on practicability, is there 24 a risk that certain entities may fall outside the net or 25 not?</p> <p style="text-align: center;">Page 51</p>
<p>1 Q. Dr Moore's -- I think he called it the backstop 2 independent auditor who had statutory underpinning. 3 Ofcom is going to be undertaking that function?</p> <p>4 <b>A. Ofcom will undertake that function.</b></p> <p>5 Q. But in a slightly different way, we pick this up at 6 paragraph 8 of your statement: 7 "Ofcom should define the characteristics of media 8 services that should be regulated and they'll take into 9 account three issues." 10 Could you explain that for us in somewhat more 11 detail? What do you mean by that?</p> <p>12 <b>A. What I envisage is that Ofcom has to make a decision 13 about the types of services, broadcast, non-broadcast, 14 press, online, that require some form of regulation, and 15 I think there are certain characteristics that are 16 likely to be taken into account. They may be requiring 17 some form of regulation because they are the creatures 18 of some kind of public policy, public broadcasters. 19 They may require some form of regulation -- you may want 20 to take into account the practicability of enforcing 21 some regulation against them, if it's feasible and 22 possible to regulate them, and you'd also want to take 23 account of proportionality. Actually, what is the 24 nature of the harm that these services might do and is 25 it proportionate therefore to regulate them?</b></p> <p style="text-align: center;">Page 50</p>	<p>1 <b>A. I think if you're asking the practicability question, 2 I suspect Ofcom is as well, if not better, placed than 3 anybody to be able to judge that in relation to its 4 knowledge of media and the way it is developing. 5 I suspect on practicability, it's going to be pretty 6 close.</b></p> <p>7 <b>Clearly there is one approach that says you create 8 a bright line and you use that, it's very clear, 9 everybody knows exactly where they are, and that's what 10 Dr Moore's solution would give you. This is suggesting 11 that you might want a more flexible approach. You would 12 give a body like Ofcom the responsibility to take 13 a flexible approach.</b></p> <p>14 Q. And Ofcom, having made the decision, wouldn't issue 15 a licence as such but would issue a general 16 authorisation and it would be unlawful, is that right, 17 to continue to publish your newspaper if you didn't have 18 that authorisation?</p> <p>19 <b>A. Yes. That's right. It's not a licensing regime, but if 20 you fall within those characteristics then it is 21 a requirement that you should be subject to some form of 22 independent external regulation.</b></p> <p>23 Q. In terms of over-arching principles, we've dealt with 24 characteristics, you also deal in paragraph 10 with the 25 outcomes, again at a high level. You see four</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 principles. We don't see the freedom of the press there 2 or the need in a democratic society for the press to 3 express themselves as freely as they might as part of 4 your four core principles. Have I overlooked something 5 or is there a reason for that?</p> <p>6 <b>A. No, it is included in paragraph 12. It's actually that 7 included within shall be a clear and unambiguous 8 statement of the importance of a free and vigorous 9 press.</b></p> <p>10 Q. So that would be as it were freestanding?</p> <p>11 <b>A. So it's freestanding, I think it's a freestanding 12 statement of intent.</b></p> <p>13 Q. Can I ask you about the specific content requirements in 14 paragraph 11. These are I suppose at a greater level of 15 particularity than the four over-arching principles, but 16 for broadcast news you would have an impartiality 17 requirement but for print news, you wouldn't.</p> <p>18 <b>A. Exactly. Given that the framework I've suggested here 19 goes beyond simply the regulation of the press, it's 20 also trying to look at what are the other kinds of 21 content requirements that Ofcom might seek or be 22 required to impose, and at the moment there is an 23 obligation on broadcast journalism that it should be 24 both accurate and impartial, that is clearly something 25 that Ofcom would therefore require.</b></p> <p style="text-align: center;">Page 53</p>	<p>1 which are independent, adequate regulatory scope and 2 adequate operational funding arrangements?</p> <p>3 <b>A. Yes, under paragraph 16, yes. That's right. So that is 4 the process of authorisation of the regulatory body 5 itself.</b></p> <p>6 LORD JUSTICE LEVESON: You'd better explain the difference 7 between Ofcom generically and the content board, because 8 that's a further distance, isn't it, from government?</p> <p>9 <b>A. Yes, and that was the reason for suggesting that you 10 would give this particular role to, in a sense, 11 a separate entity, which is the content board, which 12 already exists within Ofcom, has specific roles in 13 relation to the regulation of broadcast content. 14 The reason for giving it a role here is that it 15 takes the relationship between the regulatory authority 16 and Ofcom itself, it puts one more bit of distinction 17 between it. It gives a separate body there, whose job 18 it is to authorise the regulatory bodies.</b></p> <p>19 MR JAY: Would the content board, you explain in 20 paragraph 16 that it's going to be appointed directly by 21 Ofcom. Would there be a requirement for an appropriate 22 mix of lay or public representation and press 23 representation on the board or how is it going to work?</p> <p>24 <b>A. The content board is already appointed by Ofcom and has 25 requirements to meet certain -- I think I'm right in</b></p> <p style="text-align: center;">Page 55</p>
<p>1 Q. Once Ofcom has made the decision that a particular press 2 entity is within scope, you're then -- this is your 3 second main theme, which is between paragraphs 12 and 13 4 of your statement -- you're expecting that independent 5 but industry-led regulators will grow up to meet the 6 requirement imposed by Ofcom. How is that going to 7 happen in practice? How is it going to start?</p> <p>8 <b>A. Well, I think it will start happening by building on 9 what we already have. We already have a PCC, we will 10 have a replacement body for the PCC. There are lots of 11 ideas around as to what that will be. That is precisely 12 the sort of process that I would imagine would happen 13 here. The press, those parts of the press that would 14 require to be regulated, it would be in their interests 15 to create a body that would meet the requirements of 16 Ofcom in terms of independence and operational capacity, 17 in order to get the necessary authorisation. 18 What I would envisage happening is the process 19 that's actually been happening over the course of the 20 last year.</b></p> <p>21 Q. But Ofcom's content board -- well, Ofcom having given 22 the general authorisation, there would then be 23 authorisation which addressed three essential criteria 24 and that's the box under paragraph 11, I think; is that 25 right? They have to be adequate governance arrangements</p> <p style="text-align: center;">Page 54</p>	<p>1 <b>saying that it only has some specific obligations to 2 have members who represent the nations. Its requirement 3 is that it should be able to carry out the functions 4 that are given to it by the main board, and clearly if 5 this was one of the functions that it had to fulfil, 6 then you would expect the main board to appoint 7 accordingly.</b></p> <p>8 Q. There would have to be an amendment of the enabling 9 statute, whether it be the Communications Act of 2003 or 10 the Broadcasting Act of 1996, I have to check, which 11 would bring press, as it were, within the scope of Ofcom 12 and the content board, is that how you see it?</p> <p>13 <b>A. Yes. In order to create this kind of authorisation 14 regime, I'm sure you would need to amend the act.</b></p> <p>15 Q. The other attribute of the system, paragraph 14, is that 16 the independent regulator, which is blessed, as it were, 17 by the content board, will then have responsibility for 18 all the services operated by the participating members, 19 so that if you have, for example, a press entity which 20 is in the realm of printing newspapers publishing online 21 and audiovisual content, it would all be dealt with by 22 one regulator who deals with all three aspects?</p> <p>23 <b>A. Yes. I think we are already seeing the potential 24 fragmentation of regulatory bodies, dealing with 25 different kinds of distribution systems and different</b></p> <p style="text-align: center;">Page 56</p>

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<p>1 <b>kinds of content. That is entirely understandable, but</b>  2 <b>it doesn't seem to me necessarily wholly desirable if</b>  3 <b>you wish to have a body like, for instance, the body</b>  4 <b>that's dealing with the press that could cover all of</b>  5 <b>the services that the press are themselves offering.</b>  6 <b>Last year there was a little bit of a spat as to whether</b>  7 <b>the press could come under -- the audiovisual services</b>  8 <b>offered by the press should be regulated by ATVOD or not</b>  9 <b>and Ofcom on appeal determined that they shouldn't, but</b>  10 <b>there is nevertheless a danger that you will end up with</b>  11 <b>a range of different regulatory bodies and this may be</b>  12 <b>a way to solve that.</b>  13 MR JAY: Is that a convenient moment?  14 LORD JUSTICE LEVESON: Certainly. We'll take a short break.  15 Thank you, Mr Suter.  16 (11.27 am)  17 (A short break)  18 (11.36 am)  19 MR JAY: Mr Suter, in paragraph 17 you begin to pick up the  20 three essential criteria which we'd seen in the box  21 below paragraph 16. Can I ask you to explain each of  22 those separately. First, the point of independence or  23 degree of independence guaranteed by governance  24 arrangements, how is that going to work in your view?  25 <b>A. Well, if you were to play back the conversation that you</b>  Page 57</p>	<p>1 <b>opportunity to assess whether the individual proposals</b>  2 <b>did indeed meet them or not. And that would be</b>  3 <b>a condition of authorisation.</b>  4 Q. The second element, this is the next bullet point:  5 adequate regulatory scope, industry coverage and powers.  6 The content board would look at the regulatory outcomes  7 and service characteristics and again assess whether the  8 authority had adequately drawn its remit. In other  9 words, it would look at the proposal on offer and say  10 "yes" or "no" or, more likely, "This has to be tweaked  11 in order to satisfy us"?  12 <b>A. Exactly. It would have as a requirement those</b>  13 <b>characteristics that Ofcom had itself determined, for</b>  14 <b>instance in relation to the press or a broadcast</b>  15 <b>service, so it would ensure that those were adequately</b>  16 <b>reflected in the code in front of it, and it would also</b>  17 <b>ensure that the powers that the regulatory body was</b>  18 <b>taking to itself to investigate and to impose sanctions,</b>  19 <b>where necessary, were sufficient actually to do the job</b>  20 <b>that it was claiming it was going to do.</b>  21 Q. You define the minimum characteristics as: complaints  22 handling resolution, the power to investigate broad or  23 systemic problems, et cetera.  24 <b>A. Yes.</b>  25 Q. The source of power, though, of the regulator which is  Page 59</p>
<p>1 <b>were having with Professor Greenslade towards the end of</b>  2 <b>the session there where you were discussing the</b>  3 <b>appropriate means of securing independence in relation</b>  4 <b>to the appointment of the chairman, the appointment of</b>  5 <b>the board, the role of the funding body in those</b>  6 <b>appointments, it will be exactly around those sorts of</b>  7 <b>criteria that I would expect Ofcom and the content board</b>  8 <b>to develop its thinking and to assess the proposals that</b>  9 <b>were coming forward, so that if there are legitimate</b>  10 <b>concerns about, for instance, the role of the funding</b>  11 <b>body in determining the nature or composition of the</b>  12 <b>regulatory board, that would be the moment that they</b>  13 <b>could be addressed, and if necessary rectified.</b>  14 Q. Thank you, but the content board itself would be  15 developing criteria, and these are sort of at lower  16 level or a greater degree of specificity than the  17 over-arching criteria that you mentioned earlier in your  18 statement, is that it?  19 <b>A. They would be developing criteria against which the</b>  20 <b>individual bodies would come forward and put their</b>  21 <b>proposals, so I don't think you would be wanting the</b>  22 <b>content board to be prescriptive about what different</b>  23 <b>governance arrangements there should be, but it would</b>  24 <b>set out the principles that those governance</b>  25 <b>arrangements should meet, and it would have the</b>  Page 58</p>	<p>1 putting itself forward for approval by the contents  2 board will be contractual, I think, will it not?  3 <b>A. Almost certainly I would imagine that it would be</b>  4 <b>contractual, but it is underpinned, which I suspect we</b>  5 <b>shall come on to in a minute, by the degree of</b>  6 <b>compulsion that this process requires, so the nature of</b>  7 <b>association that the industry bodies come to is for them</b>  8 <b>to determine, but what they won't be able to do is to</b>  9 <b>duck out of being regulated.</b>  10 Q. Can I just understand that last point? It's the  11 paragraph at the end of the second bullet point. You  12 say:  13 "The content board would note the degree to which  14 the authority had secured acceptance among the entities  15 it proposed to regulate. It would be for the services  16 themselves to join a relevant regulatory scheme rather  17 than a requirement on the independent regulator to  18 secure their membership."  19 I think you pick that up again in paragraph 22.  20 <b>A. Yes.</b>  21 Q. This is leaving or indeed declining to join. Can you  22 explain, please, how the individual entities being  23 regulated are being bound to this system?  24 <b>A. Well, they are bound to the system first of all by</b>  25 <b>virtue of the fact that they fall into the category of</b>  Page 60</p>

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<p>1 service which Ofcom has determined should be regulated, 2 so that means that they have to find for themselves an 3 independent regulator. You would assume that what they 4 will do is to create one that has sufficient coverage 5 and deals with a sufficiently broad number of 6 institutions of like kind, but the compulsion doesn't 7 rest on the regulator to secure their membership. The 8 compulsion falls on them to be part of an appropriate 9 scheme. And if they decide that actually they don't 10 want to be part of a scheme, if you have -- to confront, 11 if you like, the Northern &amp; Shell issue, they can't 12 avoid being part of the scheme, and if they decide 13 they're definitely not going to enter into any contract 14 and join in, then it remains for Ofcom to apply what it 15 considers to be the most relevant code of any of those 16 that it has authorised to them itself.</p> <p>17 Q. Ah, so the backstop power would reside in Ofcom. It 18 wouldn't be Ofcom's role to withdraw the general 19 authorisation and make it unlawful, as it were, to 20 trade, but Ofcom would say, "You're not agreeing to 21 participate in this system, you must participate in our 22 system", Ofcom's system?</p> <p>23 A. Yes. So the -- an organisation says, "We don't want to 24 join under the authority of that particular group", for 25 whatever reason it might be. Ofcom says, "Well, in our</p> <p style="text-align: center;">Page 61</p>	<p>1 A. Yes, I suspect it is. I know there are terms of art 2 around self and co-regulation, but I think this is 3 co-regulation in that it envisages a framework of 4 regulation which is determined by Ofcom and where Ofcom 5 remains as the batsman.</p> <p>6 Q. The third bullet point we can touch on lightly because 7 it's self-explanatory, but "Ofcom's content board should 8 be required to assess the accuracy of operational and 9 budgetary plans". Isn't there a danger, though, with 10 this system that Ofcom will be tending to look at 11 proposals which have come out of the industry and then 12 there will be a sort of negotiation between Ofcom and 13 the industry, the industry wanting to put forward the 14 most lenient proposal it might wish for, and it becomes 15 a form of negotiation and in the end you get something 16 which is not necessarily wholly in the public interest 17 because the public interest won't have contributed to 18 the debate in what the industry is putting forward; it 19 will be a dialogue only between Ofcom and the industry?</p> <p>20 A. But I think that's why it's important that you do at 21 least have some organisation like Ofcom, through its 22 content board, whose sole job is to represent the 23 interests of the public. At least there is some degree 24 of negotiation on behalf the public as to what the 25 powers, the competence, the funding, the operational</p> <p style="text-align: center;">Page 63</p>
<p>1 view you still remain a service that ought to be 2 regulated and therefore, even though you don't want to 3 belong to that scheme, we will apply its code to you, 4 because it is a code we have authorised for services 5 like yours."</p> <p>6 LORD JUSTICE LEVESON: And "we" is Ofcom --</p> <p>7 A. "We" is Ofcom.</p> <p>8 LORD JUSTICE LEVESON: -- with its regulatory power 9 available to it?</p> <p>10 A. Yes.</p> <p>11 LORD JUSTICE LEVESON: Presumably exercised in a way that 12 encourages those who actually fall back to Ofcom to have 13 it regulated in that way to think twice about going back 14 to the body that they should be party of?</p> <p>15 A. I'm sure Ofcom wouldn't want to do it in such a way as 16 to encourage everybody to come and be regulated by them, 17 but nor should it do it in a way which is 18 discriminatory, but you would hope that in regulating it 19 by the industry code it would ensure that it continued 20 to be regulated, continued to be regulated in an 21 appropriate way and you would hope in a way that 22 encourages it to go back and join in.</p> <p>23 MR JAY: So Ofcom is backstop or last resort regulator, so 24 this on analysis is a form of co-regulation, I think, is 25 it not? Your proposal?</p> <p style="text-align: center;">Page 62</p>	<p>1 capacity of that body should be.</p> <p>2 It may not be possible for the public directly to 3 engage in that conversation, but it is not impossible to 4 have a body whose sole purpose is to represent their 5 interests in ensuring that there is an adequacy of 6 operational resource.</p> <p>7 Q. In paragraph 18 you say: 8 "Where the content board believes an independent 9 regulator is deficient against these criteria its 10 authorisation should be withheld until those concerns 11 are addressed." 12 In the interregnum are you proposing that Ofcom is 13 the direct regulator?</p> <p>14 A. Where there is a code that it can use, yes, and as 15 I think I say further on in relation to where a set of 16 services emerge where there is not yet a code or where 17 there is a gap, then Ofcom would have to fill that gap, 18 yes.</p> <p>19 Q. I suppose if we're looking at the future here, what the 20 content board would be likely to do would be to say to 21 the press, "Well, the independent regulator you're 22 putting forward looks deficient to us, you've run out of 23 time" -- because there would have to be a time period 24 for this to develop, maybe six months or a year, 25 a matter of debate.</p> <p style="text-align: center;">Page 64</p>

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<p>1 <b>A. Yes.</b></p> <p>2 Q. "While you sort yourselves out, you must apply the</p> <p>3 current PCC code."</p> <p>4 <b>A. Precisely, yes, something like that.</b></p> <p>5 Q. As you say in paragraph 23, Mr Suter, it would be open</p> <p>6 to the content board, looking at the Editors' Code of</p> <p>7 Practice, to say, "Apply that with these amendments,</p> <p>8 because we think in our judgment that that's</p> <p>9 appropriate", because that's implicit, I think, in the</p> <p>10 last clause, isn't it, of paragraph 23? Or have</p> <p>11 I misunderstood it?</p> <p>12 <b>A. Well, in paragraph 23 I was trying to address where you</b></p> <p>13 <b>might in future have services that emerge of</b></p> <p>14 <b>a particular nature or characteristic such that there is</b></p> <p>15 <b>as yet no industry body created, and it's going to take</b></p> <p>16 <b>them time to get themselves together to create such</b></p> <p>17 <b>a body, and in those circumstances Ofcom would have to</b></p> <p>18 <b>devise an appropriate code against which they should be</b></p> <p>19 <b>regulated.</b></p> <p>20 Q. Yes --</p> <p>21 <b>A. Pending the creation of an appropriate body.</b></p> <p>22 Q. So paragraph 23 is to do with new technology, new</p> <p>23 services?</p> <p>24 <b>A. Exactly.</b></p> <p>25 Q. Ofcom using its experience would say, "We're not quite</p> <p style="text-align: center;">Page 65</p>	<p>1 <b>Dr Moore's proposal is that the backstop regulator</b></p> <p>2 <b>should be able to regulate services that either choose</b></p> <p>3 <b>not to put themselves under an independent regulator or</b></p> <p>4 <b>for whom there is as yet no appropriate body to take on</b></p> <p>5 <b>the role.</b></p> <p>6 <b>So I think it differs in those two respects, but in</b></p> <p>7 <b>the middle I think they're very similar.</b></p> <p>8 Q. In chapter 2 of your statement, paragraph 34 and</p> <p>9 following, our page 00763, you apply these principles to</p> <p>10 the press and you explain how the regulatory body would</p> <p>11 achieve its genesis and then develop. You're</p> <p>12 contemplating the likelihood of a contractual system.</p> <p>13 In paragraph 25:</p> <p>14 "The arrangements put forward would have to be</p> <p>15 authorised by the content board using the framework set</p> <p>16 by Ofcom" and as you've explained earlier we're looking</p> <p>17 at the characteristics and the three subprinciples</p> <p>18 you've identified there, the general regulatory outcomes</p> <p>19 and then the definition of the public interest, the --</p> <p>20 I may have missed this one -- where is the public</p> <p>21 interest coming into the over-arching system? Where did</p> <p>22 you deal with that?</p> <p>23 <b>A. I think I deal with that effectively --</b></p> <p>24 Q. It's paragraph 12.</p> <p>25 <b>A. Paragraph 12.</b></p> <p style="text-align: center;">Page 67</p>
<p>1 sure what the independent regulator is going to do, but</p> <p>2 we think, drawing from various codes which apply to</p> <p>3 analogous services, in the interim these are the</p> <p>4 standards you should be applying?"</p> <p>5 <b>A. Yes. And what might emerge would be either a body that</b></p> <p>6 <b>was wholly focused on those kinds of services or that</b></p> <p>7 <b>you would find existing independent regulatory bodies</b></p> <p>8 <b>would absorb those principles and take those new</b></p> <p>9 <b>services under their wing.</b></p> <p>10 Q. Can I just understand the difference between your</p> <p>11 proposal and Dr Moore's proposal, speaking for the Media</p> <p>12 Standards Trust. If instead of Ofcom we were to have</p> <p>13 his statutory entity, which is the BIA, which of course</p> <p>14 has statutory powers and statutory underpinning, your</p> <p>15 proposal is very similar, isn't it? Or if I've</p> <p>16 misunderstood it, where are the differences?</p> <p>17 <b>A. Yes, I'm sure it's possible for two people to arrive at</b></p> <p>18 <b>a very similar solution from different points of view,</b></p> <p>19 <b>but I think there are some differences. As I understand</b></p> <p>20 <b>Dr Moore's proposal, first of all his is more limited in</b></p> <p>21 <b>its scope in the number of organisations that it deals</b></p> <p>22 <b>with, whereas what I'm suggesting is a reformulation of</b></p> <p>23 <b>Ofcom's existing role covering a much wider range of</b></p> <p>24 <b>media services.</b></p> <p>25 <b>Secondly, what I don't think is present in</b></p> <p style="text-align: center;">Page 66</p>	<p>1 Q. Yes, I see.</p> <p>2 <b>A. Yes. The definition of the public interest that you</b></p> <p>3 <b>would expect to see applied.</b></p> <p>4 Q. Thank you. And then you've touched on this earlier.</p> <p>5 Paragraph 26, the characteristics. You're looking not</p> <p>6 just at size, you're looking at scope and coverage, but</p> <p>7 I think you're effectively saying that if you're too</p> <p>8 small in all the senses of the term, you don't need to</p> <p>9 be regulated?</p> <p>10 <b>A. Yes. It really -- I think fundamentally it is not</b></p> <p>11 <b>appropriate to try to devise a regulatory system that is</b></p> <p>12 <b>going to catch everything. That would be inappropriate,</b></p> <p>13 <b>impossible and disproportionate. I think you need an</b></p> <p>14 <b>organisation -- and I would say Ofcom is well placed to</b></p> <p>15 <b>do this -- to determine the proportionality of</b></p> <p>16 <b>regulation and the potential for harm or detriment that</b></p> <p>17 <b>might occur from those services, and to develop its</b></p> <p>18 <b>criteria as to how it's going to do that I think in</b></p> <p>19 <b>a very similar way to the way that it's proposing to</b></p> <p>20 <b>develop criteria around the public interest in terms of</b></p> <p>21 <b>plurality investigations. So there will be some sort of</b></p> <p>22 <b>proportionality test that it will apply.</b></p> <p>23 Q. Out of interest, have you found out informally from</p> <p>24 Ofcom whether they are delighted or otherwise with what</p> <p>25 you're proposing might be their role? It's quite</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 a heavy and large hot potato, isn't it?</p> <p>2 <b>A. I've scrupulously avoided inviting any views from them</b></p> <p>3 <b>on that. No doubt they'll share them with you.</b></p> <p>4 LORD JUSTICE LEVESON: I think they probably will.</p> <p>5 MR JAY: In terms of regulatory outcomes, I think this is --</p> <p>6 indeed I know it's clear from the principles that you've</p> <p>7 explained earlier, the fifth point, you've touched on</p> <p>8 the AVMS directive, adherence to international</p> <p>9 obligations, which is currently, I think, ATVOD, if I've</p> <p>10 got the acronym correct. Can you explain for us again</p> <p>11 how that's working in the framework of regulatory</p> <p>12 outcomes?</p> <p>13 <b>A. Well, there is a requirement already through this new</b></p> <p>14 <b>European directive that audiovisual services that meet</b></p> <p>15 <b>certain characteristics will need to be independently</b></p> <p>16 <b>regulated, and there was, as I said earlier, there was</b></p> <p>17 <b>a discussion last year between the press and the</b></p> <p>18 <b>industry regulator ATVOD as to whether some of the</b></p> <p>19 <b>services they offered did indeed meet those</b></p> <p>20 <b>characteristics or not. Ofcom on appeal decided that</b></p> <p>21 <b>they didn't, but that's not to say that in future some</b></p> <p>22 <b>services won't meet those criteria as being a separate</b></p> <p>23 <b>television-like service that is being offered by the</b></p> <p>24 <b>press in an on-demand delivery mode, and therefore --</b></p> <p>25 LORD JUSTICE LEVESON: So let me see if I understand that.</p> <p style="text-align: center;">Page 69</p>	<p>1 <b>I suspect it probably will emerge. So the purpose of</b></p> <p>2 <b>this is to be ready for that moment.</b></p> <p>3 MR JAY: We'll have to look again at the DCMS module 4</p> <p>4 submission in the light of what we have just heard.</p> <p>5 LORD JUSTICE LEVESON: Yes, we might ask Ofcom about it as</p> <p>6 well.</p> <p>7 MR JAY: Paragraph 28 again is self-explanatory really, you</p> <p>8 having now clearly explained how this works in terms of</p> <p>9 the three elements of governance and powers and</p> <p>10 financing, this is what will happen, and then there will</p> <p>11 be an auditing process which your statement also deals</p> <p>12 with. Can I ask you though, in the context of</p> <p>13 independence from the state, that the one area which may</p> <p>14 be slightly controversial is this, that Ofcom is in one</p> <p>15 sense an emanation of the state. The relevant officials</p> <p>16 are appointed by ministers, you remind us. Not</p> <p>17 everybody, of course. The content board is appointed by</p> <p>18 Ofcom, and the content board is responsible for</p> <p>19 providing the general authorisation and then the more</p> <p>20 specific authorisations. Could it be said that in the</p> <p>21 light of that matrix there is at least the appearance of</p> <p>22 quite a lot of state -- not so much intervention, but</p> <p>23 influence, if I can put it in those terms?</p> <p>24 <b>A. I think if you're going to have statutory underpinning,</b></p> <p>25 <b>there is going to be an engagement with the state</b></p> <p style="text-align: center;">Page 71</p>
<p>1 Does that mean that if the BBC have a video clip which</p> <p>2 they put online, that's obviously covered within the</p> <p>3 Ofcom code and the regulatory framework of broadcasters?</p> <p>4 <b>A. I suspect it probably isn't, in that if it's the BBC</b></p> <p>5 <b>iPlayer that you are talking about, which is clearly</b></p> <p>6 <b>delivering television-like services, I think it would be</b></p> <p>7 <b>covered by ATVOD if it was covered at all. I'm not sure</b></p> <p>8 <b>whether ATVOD's writ does extend to the BBC iPlayer,</b></p> <p>9 <b>I think it does.</b></p> <p>10 LORD JUSTICE LEVESON: And the bits of video that go or are</p> <p>11 embedded in news items on BBC Online?</p> <p>12 <b>A. Would be subject to regulation by the BBC Trust but not</b></p> <p>13 <b>by Ofcom.</b></p> <p>14 LORD JUSTICE LEVESON: So to that extent it's the same as</p> <p>15 the press using video clips on their digital platform?</p> <p>16 <b>A. Yes, and I think that was the issue that was being</b></p> <p>17 <b>tackled last year as to whether the inclusion of video</b></p> <p>18 <b>clips within a press website constituted a separate</b></p> <p>19 <b>television-like service, such that it would then fall to</b></p> <p>20 <b>be regulated by the video on demand regulator, and</b></p> <p>21 <b>Ofcom's conclusion was that it didn't, but it clearly</b></p> <p>22 <b>left open the possibility that the press would develop</b></p> <p>23 <b>services that would more closely resemble</b></p> <p>24 <b>television-like services that would have to be regulated</b></p> <p>25 <b>by virtue of the European regulation, so it may emerge.</b></p> <p style="text-align: center;">Page 70</p>	<p>1 <b>somewhere. There is going to be some hook that gives</b></p> <p>2 <b>the state some degree of purchase and oversight of the</b></p> <p>3 <b>system.</b></p> <p>4 <b>The reason for inserting the content board's role in</b></p> <p>5 <b>there is to create an additional layer between those who</b></p> <p>6 <b>are directly appointed by government and the regulatory</b></p> <p>7 <b>bodies who are charged with regulating the press, and</b></p> <p>8 <b>that was indeed the reason for putting the content board</b></p> <p>9 <b>into that role.</b></p> <p>10 Q. I understand. In the next section you measure or</p> <p>11 calibrate your proposal against the Inquiry's draft</p> <p>12 criteria and that's all fully understood, but can you</p> <p>13 explain your long-term vision, which is section 3,</p> <p>14 paragraphs 40 to 45, and how this is going to pan out in</p> <p>15 future, please, in your own words?</p> <p>16 <b>A. Yes. It does seem to me that we are in danger of having</b></p> <p>17 <b>different kinds of services that develop in different</b></p> <p>18 <b>kinds of ways, that attract different kinds of</b></p> <p>19 <b>regulatory oversight, and that we could have real</b></p> <p>20 <b>fragmentation of an approach here, and that citizens</b></p> <p>21 <b>will not be necessarily well served in understanding</b></p> <p>22 <b>exactly where they should go for regulatory redress. If</b></p> <p>23 <b>it's a printed publication, then I go to the PCC or</b></p> <p>24 <b>whatever replaces it, but if it's one of their</b></p> <p>25 <b>television-like services, I go to ATVOD, unless it is</b></p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 actually -- it has changed and it is genuinely a local 2 television service that they're running in which case 3 I'm going to go to Ofcom. 4 This doesn't seem to me in future to be necessarily 5 desirable, nor do I think it's desirable to have 6 a single regulator who is going to regulate absolutely 7 everything. What I do think will be helpful is for 8 there to be a single framework within which all of the 9 content that we as a public believe needs to be 10 regulated, that that framework can encompass everything 11 and can authorise the necessary regulatory bodies who 12 will be able to carry that out in a way that is 13 responsive to the way that industry is developing, the 14 way that audiences are consuming content, but that is 15 still rooted in what the public believes should be 16 delivered in terms of safeguarding our standards. 17 Q. Thank you. Are there any other points you would like to 18 bring out orally from your statement or do you feel, 19 Mr Suter, we've covered the ground? 20 A. No, I think we've covered the ground. I'm very happy. 21 LORD JUSTICE LEVESON: Mr Suter, thank you very, very much. 22 You're very welcome to stay and see what Ofcom think of 23 your idea. 24 A. Thank you. 25 LORD JUSTICE LEVESON: Seriously, I'm very grateful, because</p> <p style="text-align: center;">Page 73</p>	<p>1 MR RICHARDS: Yes. 2 MR JAY: There's also a letter addressed to the secretary of 3 the Inquiry dated 6 June in which you comment on the 4 Inquiry's draft criteria, and we can take that into 5 account as well. That's under tab 30. 6 The separate section on plurality is not being dealt 7 with today. 8 DR BOWE: Could we just mention one housekeeping point, 9 which is we don't have any bundles, so when you mention 10 tabs, you will find us looking through our own papers to 11 find what you're talking about. 12 MR JAY: Yes. The only people who have tabs are me and 13 Lord Justice Leveson. Everybody else is just working 14 from the statement. 15 LORD JUSTICE LEVESON: The material that we've had on this 16 module covers five lever arch files, and to give 17 everybody everything would have been unnecessarily 18 burdensome. We've trespassed on people's goodwill 19 sufficiently, but where there are ideas that we're keen 20 you comment on then I hope you've been provided with the 21 papers. 22 MR JAY: First of all, may I ask one of you -- I am going to 23 be in your hands as to who develops each point, but 24 obviously we would like to hear from each of you 25 approximately the same amount of time -- to develop</p> <p style="text-align: center;">Page 75</p>
<p>1 unless those who have knowledge and experience of this 2 world help with ideas and suggestions and challenges, an 3 ultimate solution will be much more difficult to come 4 by. 5 A. Thank you. 6 MR JAY: We move on now to Colette Bowe and Ed Richards, 7 please. 8 DR COLETTE BOWE (recalled) 9 MR ED RICHARDS (recalled) 10 Questions by MR JAY 11 LORD JUSTICE LEVESON: Thank you both. You've both 12 previously affirmed or taken the oath and I'm very 13 content to just proceed. I hope you've had the 14 opportunity of seeing Mr Suter's paper before just 15 listening to him in the last three-quarters of an hour. 16 It would be rather unfortunate, if you've only just 17 heard it, if we then ask you to comment on it. 18 DR BOWE: We have indeed seen it, thank you. 19 MR JAY: First of all, we have a submission which you've put 20 to us dated 2 April of this year, which is primary 21 evidence for this module. It's under tab 45. 22 LORD JUSTICE LEVESON: Thank you very much, yes. 23 MR JAY: Insofar as it contains statements of fact, are you 24 content to attest to the truth of this statement? 25 DR BOWE: Yes.</p> <p style="text-align: center;">Page 74</p>	<p>1 orally the overview, which is the second page of the 2 main submission, our page 00848. 3 MR RICHARDS: So the second page, I think marked page 3, as 4 in the possible public purposes? Is that where you are? 5 MR JAY: No, the previous page. We're very soon going to 6 come to the possible public purposes, but the overview, 7 which is the previous page. 8 LORD JUSTICE LEVESON: The only important point to make out 9 of that is that you are not seeking to regulate the 10 press? 11 MR RICHARDS: I think that's the principal point that we 12 don't seek to take on additional regulatory burdens. 13 We've had additional regulatory responsibilities placed 14 upon us in the last couple of years in other areas, none 15 of which we've sought, so we do what Parliament asks us 16 to do, ultimately. 17 I guess the only other point to draw out from that 18 is the importance which everybody has already emphasised 19 but which we would certainly agree with, which is that 20 a crucial starting point is protecting the rights of 21 free expression and then we move from that into what the 22 appropriate regulatory environment is. 23 MR JAY: Thank you. Your evidence divides into six chapters 24 or sections. The first one, which is page 3 on your 25 internal numbering, our page 00849, is the possible</p> <p style="text-align: center;">Page 76</p>

<p>1 public purposes of press regulation. Can I ask you 2 please to summarise that and then we'll pick up some 3 points? 4 MR RICHARDS: Yes. I think the key point we're starting 5 with here is that in any regulatory environment for any 6 purpose of regulation it's crucial to start with clarity 7 about purposes and objectives, and if you don't have 8 that, then I think inevitably you will struggle. 9 Ours are set out very clearly in statute. That 10 means that we have a very clear sense of what we are 11 there to do, and that is what we will typically fall 12 back on. 13 I think the context for that, which we pick up 14 towards the bottom of the page, is the broader 15 environment in which regulating the media is -- the 16 broader relevant environment, which is that the media in 17 this country are very, very powerful, exercise enormous 18 influence, and that therefore it's right that there is 19 a notion of both an ethical and a legal backdrop to 20 that, and I think that is what is a part of the 21 regulatory environment that we operate and which we 22 suggest is potentially relevant in this -- to this 23 Inquiry as well. 24 Q. Thank you. If we can collect together the points which 25 appear in paragraph 1.11, these are the over-arching Page 77</p>	<p>1 MR RICHARDS: What we're mainly concerned with there is that 2 broadcasters can -- in programmes can -- okay, those 3 programmes can involve individuals and the preparation 4 or portrayal of individuals, and I think what we're 5 concerned about there is that individuals portrayed or 6 affected by programmes are treated fairly, and given the 7 power of the media, particularly in our context the 8 broadcast media, that does seem to be a very important 9 principle. 10 Q. Under the Broadcasting Act I think you can make 11 a complaint to Ofcom on fairness grounds as 12 a separate -- 13 MR RICHARDS: Yes, that's right. It's precisely for those 14 reasons. If somebody feels they have been 15 misrepresented, portrayed in an unfair way, it's very 16 difficult for a private individual, particularly 17 ordinary people, to stand up to that or correct the 18 position or feel that they have been given fair 19 treatment and that is precisely why that is there. 20 So when we deal with fairness issues, we are dealing 21 with people who have been affected by a programme, who 22 have been portrayed in a programme or who are involved 23 in a particular programme. It's about their particular 24 circumstances rather than a broader set of concerns 25 about the impact of that programme on society more Page 79</p>
<p>1 requirements or key elements, however you wish to 2 describe them. The first -- and everybody has spoken to 3 this -- the "requirement to protect the rights of the 4 press in relation to freedom of expression". Would you 5 expect to see that as a statutory requirement? 6 MR RICHARDS: I think statutory -- or freedom of expression, 7 the right to freedom of expression is clearly derived 8 from the ECHR, so in that sense it is statutory and 9 that's how we think of it and our entire approach to it 10 derived from that framework, so we think of it -- that 11 as the backdrop. But I think we think of it more -- 12 I wouldn't want to give you the impression that we are 13 sitting there thinking about law and statute in that 14 context primarily. That's the backdrop and it's 15 important, but we think about it I would say more 16 importantly as a very important principle. 17 Q. Thank you. And then the second principle or 18 requirement: "to protect the right of individuals by 19 giving prompt and effective rights of redress in 20 relation to privacy, fairness and defamation". 21 It's self-evident that the first and second 22 requirements might be in conflict with each other so 23 there's a degree of balance. Can I ask you about the 24 fairness requirement, though? Why are we including 25 fairness? We understand privacy and defamation. Page 78</p>	<p>1 generally, for example. 2 LORD JUSTICE LEVESON: Does that also mean fair as a matter 3 of process as well? So that if a broadcaster wants to 4 invite somebody onto the programme, they should have 5 some time at least to understand what that programme is 6 about? 7 MR RICHARDS: Yes. 8 DR BOWE: Yes. 9 MR RICHARDS: When we look at a fairness case, we would look 10 at how the broadcaster treated the individual in advance 11 of the broadcast, and were they given -- were they 12 involved in it with their consent, with informed 13 consent? Were they given, if appropriate, an 14 opportunity to respond to allegations in the programme? 15 Things of that kind would be part of what we'd look at 16 in a fairness complaint. 17 LORD JUSTICE LEVESON: So that might include issues which 18 have certainly come up in connection with the Inquiry 19 about prior notification, so that if you wanted to 20 expose on the television somebody for what were believed 21 to be illegal activity, if you tell him too much in 22 advance, he simply won't come along to the studio and 23 therefore there's a balance in each case -- 24 MR RICHARDS: Exactly, exactly. Normally we would expect 25 allegations to be put to the party to give them an Page 80</p>

<p>1 opportunity to respond, but there are circumstances that</p> <p>2 one can conceive of, and which I think have taken place</p> <p>3 although I can't recall a good example right now, where</p> <p>4 that is more difficult because of the nature of the</p> <p>5 allegation and the response, but that is generally the</p> <p>6 approach we would expect to see, that's right.</p> <p>7 LORD JUSTICE LEVESON: So that's exactly the same as a prior</p> <p>8 notification type issue of the sort that we've heard in</p> <p>9 the press?</p> <p>10 DR BOWE: Yes.</p> <p>11 MR RICHARDS: It is.</p> <p>12 MR JAY: The fairness obligation on broadcasters would not</p> <p>13 arise unless statute imposed it. Am I correct in saying</p> <p>14 it arises solely by virtue of the Broadcasting Act 1996?</p> <p>15 MR RICHARDS: Yes. It's in the 2003 Act and I think the</p> <p>16 origin of that is the 1996 Act. That's right. It is</p> <p>17 then given form in our Broadcasting Code.</p> <p>18 Q. I understand the position in relation to the</p> <p>19 broadcasters, but are you advocating or perhaps</p> <p>20 suggesting that a similar obligation should apply to the</p> <p>21 press as well, an obligation to act fairly, which may</p> <p>22 have two components. It may have a process or</p> <p>23 procedural component, which Lord Justice Leveson</p> <p>24 referred to, but it might also have an impact on the</p> <p>25 need to attain a degree of balance, which at the moment</p> <p style="text-align: center;">Page 81</p>	<p>1 regulation. Some of this is not altogether dissimilar</p> <p>2 from Mr Suter's evidence and there may be reasons for</p> <p>3 that, given where he comes from, as it were, but can we</p> <p>4 see where we are? Under section (a), which is between</p> <p>5 paragraphs 2.2 and 2.3, these are the principles which</p> <p>6 relate to the governance and accountability of the</p> <p>7 regulatory body, and then (b) is operational</p> <p>8 independence, so what you are looking for here is a sort</p> <p>9 of subset of second order principles. Looking on the</p> <p>10 first order of principles we looked at on the previous</p> <p>11 page: independence governance and decision-making, clear</p> <p>12 public accountability, clear regulatory objectives and</p> <p>13 clear and transparent processes.</p> <p>14 All of this is relatively uncontroversial and</p> <p>15 plainly right, if I may say so, but is there anything</p> <p>16 which you would wish to draw out, either collectively or</p> <p>17 individually?</p> <p>18 DR BOWE: I'm interested that you say this is all relatively</p> <p>19 uncontroversial, because it does seem to me that what is</p> <p>20 said at paragraph 2.3, first bullet point, is something</p> <p>21 on which there has been a very great deal of discussion.</p> <p>22 It may well be that what you mean by saying this is</p> <p>23 relatively uncontroversial is that the words on the page</p> <p>24 look as if they are words that most people could agree</p> <p>25 with, but the putting into practice of these principles</p> <p style="text-align: center;">Page 83</p>
<p>1 the press are not obliged to achieve?</p> <p>2 MR RICHARDS: Well, I think there's a difference between</p> <p>3 fairness as conceived in the way that I've described it</p> <p>4 and balance. We generally think about balance in the</p> <p>5 context of impartiality and accuracy, which is obviously</p> <p>6 specific to broadcasting. I think fairness can involve</p> <p>7 different things, for example the kind of procedural</p> <p>8 fairness that you are alluding to, and I think if you</p> <p>9 think -- if I think about our reasons for having that</p> <p>10 and why we have those, it is because, as I mentioned</p> <p>11 a few minutes ago, the importance and the power of the</p> <p>12 media, in particular in relation to any single</p> <p>13 individual and allegations or the treatment of any</p> <p>14 individual in a particular case, I think it's reasonable</p> <p>15 to say that all powerful media have that -- are in that</p> <p>16 relationship and therefore I think fairness is an</p> <p>17 important dimension to how we think about powerful</p> <p>18 media.</p> <p>19 Q. Do you wish to add to that.?</p> <p>20 DR BOWE: No, I just wish to underline that and take you</p> <p>21 back to the text. We've said key elements of the public</p> <p>22 purpose of press regulation could include, and this is</p> <p>23 where this comes up, so yes, we've thought carefully</p> <p>24 about this and we wish to give you this advice.</p> <p>25 Q. Thank you. Section 2, the principles of effective</p> <p style="text-align: center;">Page 82</p>	<p>1 is where the controversy arises.</p> <p>2 Q. Mm.?</p> <p>3 DR BOWE: We wanted to raise this because we do feel that</p> <p>4 a clear acknowledgement of the importance of the</p> <p>5 independence of the governance is of the utmost</p> <p>6 importance. We spoke about this last time we gave</p> <p>7 evidence to the Inquiry, and I don't want to reiterate</p> <p>8 what we said there to explain how the Ofcom system of</p> <p>9 independent governance works, but I think I would just</p> <p>10 like to emphasise that I think ensuring that</p> <p>11 something -- the governance arrangements put in place</p> <p>12 are seen to be independent and are demonstrably</p> <p>13 independent is something to which we would respectfully</p> <p>14 suggest the future principles should attach the most</p> <p>15 weight.</p> <p>16 LORD JUSTICE LEVESON: Your point is extremely well made,</p> <p>17 and of course it is the words on the page that are not</p> <p>18 controversial. Putting them into effect is an entirely</p> <p>19 different matter.</p> <p>20 DR BOWE: Yes.</p> <p>21 MR JAY: If I can correct myself slightly, what may be</p> <p>22 slightly more controversial may be degree of</p> <p>23 independence from the industry which is being regulated,</p> <p>24 because you refer -- and I'm looking at the words on the</p> <p>25 page as you're asking me -- to "inappropriate influence</p> <p style="text-align: center;">Page 84</p>

<p>1 over decision-making by third parties", but one of the                  2 issues that is concerning the Inquiry is degree of                  3 independence from the industry and that may or may not                  4 be a matter which arises in relation to the Lord Black                  5 proposals. Do you have a viewpoint on that?                  6 DR BOWE: I think you've discussed with Lord Black at                  7 considerable length the detailed arrangements that might                  8 be made in terms of numbers of people and their                  9 provenance, as it were, in order to try to deliver                  10 independence. I think what one always has to have                  11 regard to is that the arrangements you put in place for                  12 governance, as I've said, are able to demonstrate                  13 visible independence, and this has to have to do not                  14 just with a counting of numbers, how many lay, how many                  15 industry, et cetera, but also the ability of all of                  16 those people when they meet around a table to be able to                  17 come together to fulfil the common purposes of the                  18 regulatory body.                  19 LORD JUSTICE LEVESON: The relevant word in the sentence                  20 there is the word "inappropriate".                  21 DR BOWE: Yes, exactly, and I'm trying to sort of unpack                  22 what I mean by that word.                  23 LORD JUSTICE LEVESON: I understand.                  24 MR JAY: Thank you. The second category, (b) on the next                  25 page, page 6, 00852, "Principles which relate to the                  Page 85</p>	<p>1 You can't have an in perpetuity arrangement, and                  2 I think we suggest a multi-year period, I think we might                  3 mention somewhere three or four years, such that there                  4 is a moment when a proper exercise takes place which                  5 asks what is the necessary funding for the body? And                  6 that's about efficiency and value for money. But after                  7 that, there should not be interference with that budget,                  8 to ensure that the operational daily decision-making is                  9 not subject to any risk, any risk of threat or                  10 intimidation or anything of that kind. It's slightly                  11 strong words, but I think you understand what I mean.                  12 So that is a very important building block in                  13 independence and effectiveness.                  14 In terms of membership, incentives and obligations,                  15 I think as we go on to observe in the paper, this is                  16 more difficult, and this is again an issue which many                  17 people have discussed: how do you make sure that                  18 everybody relevant is inside the regulatory regime?                  19 It's obviously crucial that that is the case. It's not                  20 going to work very well if significant parties are not                  21 inside the regulatory regime and therefore we have to                  22 think about making sure that there are workable -- is                  23 the word we use -- incentives or obligations to ensure                  24 that the relevant people are included.                  25 We go on to discuss that, but perhaps I'll pause at                  Page 87</p>
<p>1 operational independence and capability of the                  2 regulatory body", and there are five principles here.                  3 I'm not going to say they're self-explanatory or                  4 uncontroversial this time. "Workable membership                  5 incentives/obligations", you explain that. "Independent                  6 funding and budget control, accessibility, genuine                  7 powers of investigation and effective powers of                  8 enforcement and sanction".                  9 Maybe I should ask you to develop the first and                  10 second of those points, because I'm sure we understand                  11 the third, and fifth?                  12 MR RICHARDS: May I do them the other way round? I think                  13 the second is the easier one.                  14 The second is very straightforward. If you have                  15 established to public satisfaction, as it were, all of                  16 the things that Colette was talking about a few moments                  17 ago, in other words your governance and independence                  18 framework, that in reality is not going to go very far                  19 if actually someone is controlling the purse strings on                  20 a regular basis and in effect can infer or imply that                  21 resourcing or money may be withheld or changed in one                  22 form or another should decisions be made which are not                  23 the ones that may be preferred, and I think this is                  24 extremely important. I think a very important dimension                  25 of independence and effectiveness is financial security.                  Page 86</p>	<p>1 that point to emphasise that I think that is obviously                  2 a crucial, crucial factor.                  3 Q. Thank you. The third section, please, page 7, 00853.                  4 You speak to models of self-regulation, co-regulation                  5 and statutory regulation. For those of us who still                  6 recall this, you gave slides which explain the three                  7 categories early in October of last year. That's some                  8 time ago now. Some of us may have forgotten that or                  9 never heard it first time around, but there is a very                  10 helpful tripartite distinction between the pure                  11 self-regulatory model on the one hand, co-regulation in                  12 the middle and statutory regulation on the other, and                  13 it's the degree of coincidence between the commercial                  14 interests of those being regulated and the public                  15 interest which may determine to which of those three                  16 categories one falls without prejudice to forming any                  17 judgment where the press might fall in this system.                  18 Can I ask you, please, to develop, though, 3.3,                  19 which looks back at 3.2, which I should refer to:                  20 "The starting point for consideration of a future                  21 model of press regulation would be balancing the central                  22 importance of protecting the independence of the press                  23 against creating an effective model of regulation ..."                  24 which would have the trust of the public.                  25 But you say two questions suggest themselves. May                  Page 88</p>

<p>1 I ask you, why are we still looking at retaining 2 a self-regulatory framework rather than co-regulatory or 3 statutory regulatory framework? 4 MR RICHARDS: The way we thought about this is to say that 5 in a sense, as everybody knows, there is a tension 6 between the absolutely -- the freedom of the press on 7 one hand and any constraints on that which people have 8 argued is a restriction of freedom of expression, and at 9 the other end an effective regulatory environment, 10 effective regulatory settlement. And what we thought 11 would be a helpful way to think about it would be to 12 say: all right, let's start at this end, let's recognise 13 the importance of an independent and free press, and 14 then say to ourselves: how far can one travel towards 15 what we, I think, recognise as the criteria for 16 effective regulation before you leave the world of 17 self-regulation? In a sense, that struck us as the test 18 to start with. 19 What we try and do in the note is to say, well, 20 actually you can travel -- if the industry is willing, 21 you can travel quite a long way on that continuum before 22 you end into -- you are in the territory of statute. 23 And that seemed to us to be quite a constructive way of 24 testing or investigating a question. 25 Q. It might be argued, though, if I can put this forward</p> <p style="text-align: center;">Page 89</p>	<p>1 have a monopoly position, that is clearly not aligned 2 with the public interest and therefore you typically 3 will see statutory regulation. 4 I think in this area, one of the challenges that 5 emerges from our treatment of the issue is clearly the 6 extent to which -- where one places the press in that -- 7 between those two points, and when we develop the 8 argument and discuss the -- some of the more difficult 9 issues such as membership incentives and obligations 10 I think that's precisely the issue you're dealing with. 11 LORD JUSTICE LEVESON: There's an extra layer on it, isn't 12 there, Mr Richards, in this form, that one can talk 13 about it theoretically and consider at a high level the 14 ultimate interests of the press and the competition 15 among them and the need to inform and all the high level 16 issues, but then there are practical implications that 17 some organs of the press aren't very comfortable with 18 other organs of the press and therefore they're not very 19 pleased to be in the same tent with them, yet we need to 20 cope with both sets of problems in a way that prohibits, 21 discourages, dissuades, whatever word you want to use, 22 one from saying, "Well, I'm very sorry, this doesn't 23 work for me", and is then able simply to walk away at 24 the loss for the public of an over-arching broadcast 25 regulatory regime.</p> <p style="text-align: center;">Page 91</p>
<p>1 quite tentatively, that if you look at your definition 2 of the self-regulatory model and you identify there 3 a strong alignment between the incentives of 4 participants and the wider public interest, some would 5 say that isn't really present here in relation to the 6 press, particularly where we are now, that immediately 7 therefore makes us look further down the page, whether 8 it be to the co-regulatory or the statutory regulatory 9 model. Is there any merit in that approach or not? Or 10 is it too cynical or too -- 11 MR RICHARDS: No, no. The observation is at the heart of 12 the dilemma here, the heart of the challenge. In our 13 discussion of co-regulation and self-regulation, we 14 observe again two end points to help frame that 15 discussion, and I think one we refer to is advertising, 16 where you have, I think, broad alignment between the 17 industry and the public interest. The industry -- it's 18 very, very important to the advertising industry that 19 there is trust in advertising because otherwise their 20 product is in essence undermined, and therefore they 21 have a strong interest in there being an effective 22 regulatory environment to ensure that trust pertains. 23 The other example we gave was a situation of 24 economic regulation where you have a company that wants 25 to make as much profit as possible, that is where they</p> <p style="text-align: center;">Page 90</p>	<p>1 DR BOWE: Yes. 2 MR RICHARDS: Absolutely, and that characterisation is not 3 one I think we witnessed in advertising, where pretty 4 much everybody, to my knowledge, feels there is an 5 interest in being part of that environment. And that is 6 I think why co-regulation and indeed self-regulation in 7 advertising has broadly worked quite successfully for 8 many years. 9 DR BOWE: And that is why, if I may just come back to -- 10 I think the question you were asking in a way was why 11 are you even bothering to start at the self-regulatory 12 end of the spectrum in the analysis we've offered? 13 I think it is worth looking at what we say here about 14 actually how could the self-regulatory regime work? 15 What does it take? And as Ed has said, we can see it 16 working in the advertising industry. So I do think it's 17 quite important that one just doesn't -- and I'm not 18 suggesting you're doing this, but that one doesn't just 19 rather cynically jump over the possibilities of 20 self-regulation. 21 LORD JUSTICE LEVESON: No, I'm very pleased that you do 22 this, because the constant challenge for the Inquiry is 23 to test -- 24 DR BOWE: Exactly. 25 LORD JUSTICE LEVESON: -- is really to tense the</p> <p style="text-align: center;">Page 92</p>

<p>1 self-regulatory ideas which have come out to see, well, 2 can they really work? 3 DR BOWE: Yes. 4 LORD JUSTICE LEVESON: It may be that they can work on 5 12 July 2012, because of everything that's gone on and 6 everything that is now going on. 7 DR BOWE: Yes. 8 LORD JUSTICE LEVESON: Professor Greenslade earlier today 9 said yes, the Inquiry has changed what people may be 10 reporting today, I'm pleased he thought for the better, 11 but other people may think for the worse, but this is 12 not a long-term responsibility. 13 DR BOWE: No. 14 LORD JUSTICE LEVESON: At least, for me. 15 DR BOWE: You hope. 16 MR JAY: Certainly theoretically, and perhaps more than 17 theoretically, in paragraph 4.3 you say that there 18 really is no reason why significant progress couldn't be 19 made in relation to the various core regulatory elements 20 or functions you'd earlier identified. You did heavily 21 caveat it by saying in 4.1 that you would need 22 "genuinely willing participants in such an enterprise" 23 which I suppose it would be for the Inquiry to judge, 24 having heard all the evidence, whether we're in that 25 position or not, but then you say on the next page that</p> <p style="text-align: center;">Page 93</p>	<p>1 So I think we start at a different point in 2 broadcasting and observe that freedom of expression 3 therefore operates in broadcasting in a slightly 4 different way. The most manifest example of that is 5 that we have impartiality rules for broadcasters and 6 that clearly places broadcasters in a different context 7 vis-a-vis freedom of expression. 8 Our starting point therefore was to say that is the 9 broadcasting environment. Freedom of expression works 10 in a different way and in a more unqualified way for the 11 press, and let's see how far we can go before one needed 12 to create a licensing regime, given that a licensing 13 regime has those kinds of risks and effects. 14 Now, what we then did was try to develop the 15 potential incentives that might make membership work, 16 and we set some of those out. I wouldn't pretend that 17 we've done an exhaustive study of that. We certainly 18 didn't have time or the resources to do that. But we 19 set out what we felt were interesting ideas. And as 20 you'll note at the end, we couldn't conclude in all 21 honesty by saying we thought with any real confidence 22 that these would necessarily guarantee or ensure that 23 everybody who you wanted inside the tent would indeed be 24 inside the tent, so we qualify our advice or view at the 25 end quite carefully.</p> <p style="text-align: center;">Page 95</p>
<p>1 one can analyse it is in more detail: 2 "All of this can be said to rely on the successful 3 establishment of three further core building blocks of 4 effective regulation." 5 And then you look at each of them. 6 DR BOWE: Yes. 7 Q. The first one is membership, because if we don't have 8 everybody signed up, then we have an obvious flaw as 9 well as lack of public confidence but can I ask you, 10 please, in your own way to develop the point on 11 membership and in particular why you feel that 12 a licensing system is inappropriate in this domain? 13 MR RICHARDS: Again I think we're back to some of the 14 principles that we started with and the way we've tried 15 to test these questions, so we have tried to ask 16 ourselves what is necessary beginning with that free and 17 independent press and we'll move away from that so we 18 therefore don't start with a licensing regime because 19 self-evidently a full licensing regime is a significant 20 change to -- or significant challenge to that context of 21 freedom of expression. 22 Its origins in broadcasting are very, very 23 different, we set those out, and those origins which are 24 technological, really, have been underpinned over many, 25 many years by public understanding, public perception.</p> <p style="text-align: center;">Page 94</p>	<p>1 Q. Certainly. The incentives you mention there, they don't 2 differ greatly from those others have put forward.? 3 DR BOWE: No. 4 Q. And they speak for themselves. Journalistic 5 accreditation, though, how does that differ from 6 licensing? 7 MR RICHARDS: I think that's one of the issues with it, and 8 we note at the tail end of that bullet point that an 9 accreditation system could potentially have 10 a restrictive effect on rights of freedom of expression. 11 It is a paradox, that point, that it seems like quite 12 a potentially attractive device to incentivise 13 membership; on the other hand, you are automatically 14 thereby saying: somehow, if you don't have the 15 accreditation, your freedom of expression is 16 circumscribed. 17 LORD JUSTICE LEVESON: There is no doubt that's been 18 articulated in very great detail in relation to 19 Mr Dacre's idea on press cards and the response from 20 Northern &amp; Shell, which we saw the day before yesterday, 21 which spoke about it being anti-competitive and contrary 22 to the law; is that right? 23 MR RICHARDS: Yes, there is certainly an interesting 24 competition dimension to it as well as the freedom of 25 expression dimension to it, I agree.</p> <p style="text-align: center;">Page 96</p>

<p>1 DR BOWE: There's also a small clarificatory point to make 2 which is the Ofcom licensing regime doesn't licence 3 individuals, doesn't bear on individuals. We licence 4 companies. As I understand it, the debate around 5 journalistic accreditation, press cards, et cetera, is 6 about individuals and their freedom or not to 7 participate in the industry. It bites in a different 8 way.</p> <p>9 MR JAY: This does lead you to conclude in the bold print 10 between 4.15 and 4.16 on our page 00857, page 11, you 11 think this is quite a challenge and difficult at the end 12 of the day to establish a voluntary self-regulatory 13 incentive, so you're looking for incentives which might 14 be created by a statute, but how does that differ from 15 a co-regulatory or statutory regulatory regime?</p> <p>16 MR RICHARDS: Well, by degree, I think is the answer to 17 that, in I think once there is a -- what we were trying 18 to do here was again to start from the -- with the 19 objective of having as little -- going as -- keeping as 20 close to the principle of an independent free press as 21 possible and travelling as short a distance as possible 22 consistent with the kind of effective regulation which 23 I think everybody recognises is necessary.</p> <p>24 But once one is in the recognition in statute 25 territory, you are obviously technically in that</p> <p style="text-align: center;">Page 97</p>	<p>1 LORD JUSTICE LEVESON: What you have done -- it's very 2 important this is understood particularly in the light 3 of the suggestions that we just had -- is respond to the 4 invitation that I issued to you to help me from your 5 experience across the range of the work you do at Ofcom 6 of the types of traps that there are for each of the 7 possible solutions.</p> <p>8 MR RICHARDS: That's right.</p> <p>9 DR BOWE: Yes.</p> <p>10 LORD JUSTICE LEVESON: And you have not tried to do anything 11 else. Now, we will ask you to cope with what other 12 people have suggested, because you may have pluses and 13 minuses for them, but this paper -- and I'm just 14 emphasising it so there is no doubt about it at all -- 15 is not a position paper as to where you are.</p> <p>16 DR BOWE: Yes.</p> <p>17 LORD JUSTICE LEVESON: This is an over-arching view of the 18 issues that we have to address with the benefit of your 19 experience of where the problems are likely to arise.</p> <p>20 DR BOWE: Exactly.</p> <p>21 LORD JUSTICE LEVESON: Is that fair?</p> <p>22 DR BOWE: That's exactly right.</p> <p>23 MR JAY: In terms of the incentives, you outline these at 24 paragraph 4.16. Indeed, these are not unfamiliar to us: 25 statutory powers to operate a complaints handling</p> <p style="text-align: center;">Page 99</p>
<p>1 co-regulatory type environment to a degree, although you 2 wouldn't necessarily be co-regulatory in the sense that 3 you wouldn't necessarily have to have another body 4 awarding the status to a -- it could be stand-alone, 5 with a minimalist statutory underpinning, which I think 6 we note.</p> <p>7 MR JAY: I think we are sliding, if that's the right word, 8 maybe it isn't, to what is beginning to look like your 9 preferred position, which is a minimal degree of 10 statutory underpinning. What label you apply to that 11 system within your labels at the beginning -- 12 self-regulation, co-regulation and statutory 13 regulation -- may not matter too much but have 14 I correctly understood where you're coming from because 15 we can see it beginning to be articulated at 4.16 and 16 following?</p> <p>17 DR BOWE: Could I just inject a small note here, which is we 18 don't have a preferred position, and what we think we 19 are doing is advising the Inquiry about what we think 20 works.</p> <p>21 LORD JUSTICE LEVESON: Dr Bowe, you're --</p> <p>22 DR BOWE: I'm sorry to make a slight meal of that.</p> <p>23 LORD JUSTICE LEVESON: No, as soon as Mr Jay said the word 24 "preferred", the point had occurred to me.</p> <p>25 DR BOWE: Okay.</p> <p style="text-align: center;">Page 98</p>	<p>1 process, amending laws and procedures to give the court 2 power to penalise parties who don't go through the 3 complaints handling system, again, statutory changes to 4 the defamation laws, we've seen that in Ireland in their 5 2009 Act, and a similar approach to privacy.</p> <p>6 May we look at the second issue of independent 7 governance, where you really undertake the same sort of 8 analysis, if I correctly understand you, so you say 9 let's start with the position of self-regulation, let's 10 see how far we can move with that.</p> <p>11 DR BOWE: Yes.</p> <p>12 Q. And then see where, if any, the problems are, and at 13 4.22, you identify that there are significant steps 14 a self-regulatory model could take, and again in terms 15 of what you articulate, if I can put it in those terms, 16 they are self-explanatory, and commend themselves for 17 that reason. For example, not having serving newspaper 18 editors, management or proprietors on the board are able 19 to influence the board and then transparent appointment 20 processes, et cetera.</p> <p>21 Can I ask you to deal with one point where the 22 Inquiry has received conflicting evidence: serving 23 newspaper editors on the board, whether it's the board 24 of the regulator or on the relevant Code Committee. 25 Many people have said there are advantages in having</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 that because you're drawing on a repository of 2 experience. Although maybe the principle of 3 independence is being undermined, you're gaining 4 elsewhere. In terms of the advice that you can give the 5 Inquiry, do you have a position on that which you could 6 express? 7 MR RICHARDS: Yes, I think we would draw a very very strong 8 and clear distinction between advice which I think it is 9 very important to take from those with experience and 10 ideally recent experience of the relevant industry in 11 which we do our sales, and the precedents on 12 decision-making or determinative functions of the 13 regulator of participants and active -- people actively 14 involved in the industry at present. I think that is 15 quite the wrong thing to do and makes effective and 16 reliable independent decision-making extremely 17 difficult, and to be honest in our context is 18 unimaginable. 19 The idea that we would have and we could stand up in 20 public and defend decisions we made if we had serving 21 broadcasters on our decision-making bodies or on our 22 code-setting bodies, I think is -- 23 LORD JUSTICE LEVESON: Even on the code-setting body? 24 MR RICHARDS: Yes. 25 DR BOWE: Yes.</p> <p style="text-align: center;">Page 101</p>	<p>1 it's done in an open, transparent way as part of 2 a consultation. But the decision-making stays within 3 Ofcom. Sorry Colette, did you want -- 4 DR BOWE: No, I just wanted to add one little further note 5 on that. The main place where this happens in Ofcom is 6 the content board, about which Tim Suter spoke to you at 7 length earlier this morning. The content board is both 8 chaired by and comprises people with very substantial 9 experience of the broadcasting industry but who are not 10 currently working actively in it, and I think that's 11 another important point to take here as well. Ed is 12 absolutely right about the strong, clear line between 13 existing practitioners and those who actually make the 14 decisions. 15 To my mind, it's equally important that the people 16 who are making the decisions are people who have had 17 very substantial relevant experience and that they are 18 bringing a lot from that to bear on this. 19 LORD JUSTICE LEVESON: That's going to create a problem 20 because if I go back not just one witness but two 21 witnesses, Professor Greenslade said: don't think that 22 the fact that an editor is no longer an editor means 23 that he doesn't have an agenda. 24 DR BOWE: I think probably everybody in this room has got an 25 agenda, actually, if I could treat that point a little</p> <p style="text-align: center;">Page 103</p>
<p>1 MR RICHARDS: Yes, absolutely. And I will say in terms of 2 code setting, in terms of sanctions, in terms of 3 corrections or anything of that kind and in terms of 4 policy making overall, you need to have a bright line 5 separation between those who are regulating and making 6 decisions and those who are regulated, and I think any 7 breach of that in my view, in our experience, means that 8 you will immediately undermine the perception and indeed 9 in all reality the actuality of your independence. 10 LORD JUSTICE LEVESON: So what you could do is this: you 11 could have an advisory board? 12 MR RICHARDS: Yes. 13 DR BOWE: Yes. 14 LORD JUSTICE LEVESON: And bring serving editors or whatever 15 onto an advisory board to deal with issues that have 16 arisen and whether there needs to be a change in the 17 code, but then their advice, all being transparent and 18 open, should go to a decision-maker which does not 19 comprise or comprehend a serving member of the industry. 20 MR RICHARDS: Yes. Let me just enlarge upon the advisory 21 point. When we revise our code, which we do from time 22 to time, one of the most important things that we do is 23 put it out for consultation with the industry, so we 24 actively seek that feedback and that input that you're 25 describing from working members of the industry, but</p> <p style="text-align: center;">Page 102</p>	<p>1 bit lightly, perhaps. But if by that he means that, let 2 us say, the person who currently chairs the Ofcom 3 content board, who was formerly the director of 4 programmes at Channel 4, before that edited Panorama and 5 edited Newsnight, if by that Professor Greenslade would 6 mean that person was in some way bringing a bias from 7 those previous jobs to his exercise of his regulatory 8 functions, I think I would want to take very strong 9 issue with that. 10 LORD JUSTICE LEVESON: Yes. 11 DR BOWE: I think it's a rather light remark to make. 12 LORD JUSTICE LEVESON: I'm not so sure. It might be 13 slightly more serious than that because the gentleman 14 you've just described has grown up with the requirement 15 for impartiality. 16 DR BOWE: Indeed. 17 LORD JUSTICE LEVESON: And therefore can bring that in-built 18 impartiality to every single decision he makes now. 19 DR BOWE: Yes. 20 LORD JUSTICE LEVESON: Whereas, if you haven't grown up with 21 that fundamental part of your DNA, indeed your DNA is 22 different, for reasons which we all understand, then the 23 point may not be entirely light. There is something 24 a bit more there, isn't there? 25 DR BOWE: There is, and if we could just spend one more</p> <p style="text-align: center;">Page 104</p>

<p>1 minute on this --</p> <p>2 LORD JUSTICE LEVESON: Please.</p> <p>3 DR BOWE: -- you'll recall I said a few minutes ago, when we</p> <p>4 were talking about governance, the important thing that</p> <p>5 the people who come in to sit on the board of the</p> <p>6 regulator, wherever they have come from, come and</p> <p>7 exercise that role with commitment to the public</p> <p>8 purposes of the regulator.</p> <p>9 So in challenging, I suppose, the proposition that</p> <p>10 everybody is going to bring an agenda into this future</p> <p>11 press regulator which they are somehow incapable of</p> <p>12 leaving at the door, I would say that is an important --</p> <p>13 a very important point for the future chairman of this</p> <p>14 regulator to have regard to, that -- I completely see</p> <p>15 your point. One doesn't want to be naive about this,</p> <p>16 but people who take on serious roles in public life have</p> <p>17 to know that they do so in the full knowledge that they</p> <p>18 are not going to be acting in a sectional way in so</p> <p>19 doing.</p> <p>20 LORD JUSTICE LEVESON: Let me take it one stage further,</p> <p>21 because I wasn't suggesting, and I don't think</p> <p>22 Professor Greenslade was suggesting -- I didn't ask</p> <p>23 him -- that a retired editor would say, "Right, here is</p> <p>24 my opportunity to get at my previous competing titles".</p> <p>25 I don't think that was the point. What I took from what</p> <p style="text-align: center;">Page 105</p>	<p>1 about how this is going to work.</p> <p>2 LORD JUSTICE LEVESON: That's fair enough. So what that</p> <p>3 would mean is that you would need to encourage that</p> <p>4 particular board, however it's constituted, not merely</p> <p>5 to have an ex-editor or ex-somebody from a business, but</p> <p>6 a number of people from different parts --</p> <p>7 DR BOWE: Exactly.</p> <p>8 LORD JUSTICE LEVESON: -- of the business who will bring</p> <p>9 their different DNA into the discussion?</p> <p>10 DR BOWE: Yes, yes, yes, yes, that's exactly how I would see</p> <p>11 it. I'm sorry, Ed, I --</p> <p>12 MR RICHARDS: Just one small elaboration. I think the point</p> <p>13 about DNA is definitely important. I can't speak for</p> <p>14 editors and the press on this, but it is definitely true</p> <p>15 to say that the former broadcasters who Colette has been</p> <p>16 referring to, one of the reasons that we feel very</p> <p>17 comfortable with those individuals and I think it's</p> <p>18 worked well is because they come into Ofcom and their</p> <p>19 DNA and their attitude to it is that they respect the</p> <p>20 regulatory regime that's been in place for many years,</p> <p>21 that they actually feel as a matter of principle that</p> <p>22 their purpose is to uphold its principles and its</p> <p>23 objectives, and therefore what we find is that there is</p> <p>24 really no risk whatever of them being somehow proxies</p> <p>25 for the broadcaster or those who are being regulated.</p> <p style="text-align: center;">Page 107</p>
<p>1 he was saying was something rather different, which was</p> <p>2 I come into the role with a fundamental view about</p> <p>3 freedom of speech, which balances the other interests to</p> <p>4 which we have spoken, privacy, fairness, the others, in</p> <p>5 a different way to the way that another editor from</p> <p>6 another type of journal or paper might approach the</p> <p>7 problem. So it's not that he's deliberately being</p> <p>8 partial, it's that his perception of the public interest</p> <p>9 is actually different.</p> <p>10 DR BOWE: I completely see -- sorry, Ed, I know you want to</p> <p>11 say something here, but I just want to -- this seems to</p> <p>12 me to go absolutely to the role of how the chairman of</p> <p>13 this body will perform, because on any board people</p> <p>14 bring into that board a range of different experience,</p> <p>15 perspectives, agendas, if you will, and I think part of</p> <p>16 this -- part of the richness of the debate of this</p> <p>17 future regulatory board will be because people are</p> <p>18 bringing their different views about where one strikes</p> <p>19 these difficult balances between different freedoms, and</p> <p>20 the effective working of this board will be tested by,</p> <p>21 amongst many other things, the skill of the chairman in</p> <p>22 welding together these different perceptions, these</p> <p>23 different balances people are going to make to get</p> <p>24 a good result. You would not want a board where</p> <p>25 everybody who came into it had pretty much the same view</p> <p style="text-align: center;">Page 106</p>	<p>1 What they actually tend to do is come and says, "I spent</p> <p>2 30 years working to these standards and I'm determined</p> <p>3 to uphold them in the future".</p> <p>4 So I think your point about DNA and attitude and</p> <p>5 experience from the past is very important, because what</p> <p>6 you wouldn't want is somebody with industry experience</p> <p>7 coming in and then seeking to fight a battle of the past</p> <p>8 in the new regulatory regulator.</p> <p>9 LORD JUSTICE LEVESON: Why we need a regulator at all.</p> <p>10 MR RICHARDS: Indeed. We don't have that problem. We have</p> <p>11 people who respect the regulatory environment and want</p> <p>12 to uphold it, and if you have industry practitioners who</p> <p>13 did not hold that view, I think that would be</p> <p>14 a challenge, would be a serious issue.</p> <p>15 MR JAY: I've been asked to clarify this with you, that is</p> <p>16 this right, for the same reason that you would exclude</p> <p>17 serving editors from your regulatory board, would you</p> <p>18 also exclude serving journalists?</p> <p>19 MR RICHARDS: Yes. Absolutely. Serving journalists,</p> <p>20 broadcast journalists, yes. Again, we would quite</p> <p>21 happily talk to and consult with serving journalists in</p> <p>22 revising our code, but I can't see any way they could</p> <p>23 possibly be part of our decision-making process, no.</p> <p>24 Q. The conclusion you reach on this area, the bold type</p> <p>25 between paragraphs 4.23 and 4.24 in terms of the advice</p> <p style="text-align: center;">Page 108</p>

<p>1 you give:</p> <p>2 "Because governance arrangements go to the heart of</p> <p>3 the legitimacy and authority of the new body,</p> <p>4 recognition in statute could be needed to establish the</p> <p>5 most important features."</p> <p>6 And then you go on to outline how that would work</p> <p>7 and we understand that, but you make one very important</p> <p>8 point which I think should be emphasised in the light of</p> <p>9 some evidence we've heard, 4.26:</p> <p>10 "Recognition in statute for governance would also</p> <p>11 change the view of those appointed to the most senior</p> <p>12 posts about the source of their authority. It would be</p> <p>13 clear that their authority was embedded in law and not</p> <p>14 derived from industry and its representatives."?</p> <p>15 DR BOWE: Yes.</p> <p>16 MR RICHARDS: I think that goes right back to one of the</p> <p>17 remarks that we began with when you asked me about our</p> <p>18 overall purposes and we are very, very clear that our</p> <p>19 purposes derive from Parliament and who we are here to</p> <p>20 serve, so when I come in every day, I know that I am</p> <p>21 there to serve the citizens and consumers of the United</p> <p>22 Kingdom, not the industry, and that is actually a very</p> <p>23 fundamental point.</p> <p>24 Q. But your point on accountability is one I think that can</p> <p>25 be shortly made because it is clearly understood, that</p> <p style="text-align: center;">Page 109</p>	<p>1 some ways it's theoretical in the sense that we have</p> <p>2 never felt that -- we have never felt in broadcasting</p> <p>3 that that has been a particular problem, but I think the</p> <p>4 point we made earlier is that it's slightly dangerous to</p> <p>5 draw too close a -- too strong a conclusion from our</p> <p>6 experience in broadcasting and the reason for that is</p> <p>7 that impartiality rules govern what broadcasters -- how</p> <p>8 broadcasters portray the world and report the world,</p> <p>9 whereas newspapers are partial and as we all know they</p> <p>10 are highly partial on a whole variety of things and</p> <p>11 therefore I think the point we make earlier is that the</p> <p>12 temptation for politicians to interfere could be greater</p> <p>13 because of that partiality.</p> <p>14 LORD JUSTICE LEVESON: I understand the point that's made</p> <p>15 here, and it may be I'm being naive, but in the same way</p> <p>16 that legislation could be amended, so a new statute can</p> <p>17 always be introduced?</p> <p>18 MR RICHARDS: Yes.</p> <p>19 DR BOWE: Indeed.</p> <p>20 LORD JUSTICE LEVESON: It can be just as difficult to do the</p> <p>21 former as the latter, and it's one of the reasons why</p> <p>22 I've spoken about enshrining the independence of the</p> <p>23 press, the freedom of expression, into the sort of</p> <p>24 language that's been used for the judiciary. The point</p> <p>25 was made, well, yes, but that doesn't mean ministers do</p> <p style="text-align: center;">Page 111</p>
<p>1 you are proposing, at least as a possibility, a periodic</p> <p>2 review in statute, and that, I think --</p> <p>3 MR RICHARDS: I think we say a periodic review, whether one</p> <p>4 ends up in statute or not, is very important. So even</p> <p>5 if one could devise or the final proposals did not</p> <p>6 involve statute because people were satisfied that a</p> <p>7 self-regulatory version was good enough, you would still</p> <p>8 have to have a periodic review and that is because</p> <p>9 I think that's the only way you can test and make sure</p> <p>10 that the body is performing effectively. If you don't</p> <p>11 do that, I don't think you should expect it necessarily</p> <p>12 to perform effectively over a sustained period. So it's</p> <p>13 important under all scenarios, in our view.</p> <p>14 Q. Before we break for lunch, the summary between 4.31 and</p> <p>15 4.33 we're not going to cover because your evidence is</p> <p>16 very clear, but 4.34, please. You do feel that there's</p> <p>17 a risk that a statute once in place could be amended in</p> <p>18 a deleterious way?</p> <p>19 DR BOWE: Yes.</p> <p>20 Q. That's something which I think the Inquiry would like to</p> <p>21 hear you develop. Do you have practical experience of</p> <p>22 that as a theoretical concern? Why do you feel this is</p> <p>23 an issue?</p> <p>24 MR RICHARDS: In some ways it's a statement of the obvious.</p> <p>25 Once legislation is in place, it can be amended. In</p> <p style="text-align: center;">Page 110</p>	<p>1 respect the opinions of the judiciary, but that's what</p> <p>2 free speech is all about. Ultimately then somebody has</p> <p>3 to say hang on a minute, you have a duty to be</p> <p>4 independent. We have a duty to be independent and you</p> <p>5 have to uphold our independence.</p> <p>6 MR RICHARDS: Yes.</p> <p>7 LORD JUSTICE LEVESON: I'm just not sure why the risks of</p> <p>8 amending a statute are any greater than the risks of</p> <p>9 there being a new statute if somebody is so minded to do</p> <p>10 it?</p> <p>11 DR BOWE: I don't think we think that they are. To be</p> <p>12 honest we're just making this point here because we know</p> <p>13 it's a point which concerns a large number of people and</p> <p>14 we're adding it to our advice in the interests of</p> <p>15 completeness.</p> <p>16 LORD JUSTICE LEVESON: I've understood that. Right, is that</p> <p>17 convenient?</p> <p>18 MR JAY: Yes.</p> <p>19 LORD JUSTICE LEVESON: Could you make sure that -- I am not</p> <p>20 trying to give them homework, but that you check that</p> <p>21 Dr Bowe and Mr Richards know about the other ideas that</p> <p>22 you want to ask them about.</p> <p>23 MR JAY: Yes.</p> <p>24 LORD JUSTICE LEVESON: Maybe they do already. Good. Thank</p> <p>25 you very much, 2 o'clock.</p> <p style="text-align: center;">Page 112</p>

<p>1 (1.01 pm) 2 (The luncheon adjournment) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 113</p>	

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