The Leveson Inquiry

culture, practices and ethics of the press

RULING ON ANONYMOUS WITNESSES

Lord Justice Leveson:

1. The Inquiry has been approached by a number of individuals all of whom describe themselves as journalists working for a newspaper or newspapers either on a casual or full time basis and who wish to provide evidence to the Inquiry on the subject of the culture, practices and ethics of the press. Each has asked to provide this evidence anonymously and with such other protection that the newspaper or newspapers for which they work or have worked cannot identify them. It is clear that the picture which they wish to paint is not entirely consistent with the picture that editors and proprietors have painted of their papers and they fear for their employment if what they say can be attributed to them.

2. It goes without saying that the best evidence is that which emanates from an identified witness that can be tested by questions and, if appropriate, considered in the light of any contrary evidence. Evidence from a witness who is anonymous could not properly be tested because the chapter and verse necessary to exemplify the evidence might identify both the newspaper and, ultimately, the source. Although counsel to the Inquiry could probe, no contrary case would be advanced. As a result, the weight that could be attributed to such evidence would be substantially diminished. But that is not the same as saying that it has no weight, particularly if it is to be considered alongside similar evidence (if such there be) from sources who are prepared to be identified and who do provide chapter and verse.

3. Into the same category of anonymous evidence must be placed two other sources of material. The first is the National Union of Journalists ("NUJ") which has recently successfully applied for core participant status at the Inquiry. The General Secretary is preparing a statement dealing with the culture and practices of the press and willing to set out detail relevant to the Inquiry which (at least in part) has been provided to her by other journalists. To such extent as the journalists are prepared to identify themselves, their statements (all the more cogent for the reasons I have identified) can be received by the Inquiry in the usual way. To those who are not prepared to be named, the fact that the General Secretary knows their identity and can confirm that what she reports is from a recognised journalist who is in a position to speak of the matters which she reports, some validation is provided but the weight which can be attached to such anonymous hearsay evidence is further reduced.

4. The same is so in relation to a second further source which comes from journalists such as Mr Nick Davies whose book 'Flat Earth News' contains the product of his research into the approach to news gathering across a number of different titles. He will give evidence before the Inquiry and makes it clear that his account relies on many journalist sources none of whom he names. His factual allegations, therefore, also constitute anonymous hearsay but, again, that does not mean that they should be considered differently than that which emanates from the NUJ. Both, however, are one further stage removed from direct (albeit anonymous) evidence.

5. Before embarking upon an analysis of the submissions that I have received in relation to anonymous evidence, it is worth reiterating the purpose of Part 1 of the Inquiry which, as far as the press is concerned, is to consider the culture, practices and ethics of the press as part of the general background which also requires me to look at specific relationships (with the politicians and the police). The facts (or narrative) provide only the starting point for the thrust of Part 1 which is to determine whether the current policy and the regulatory framework has failed and, if so, what recommendations to make. In that regard, para. 2(b) of the Terms of Reference ("how future concerns about press behaviour, … should be dealt with …") requires that I consider whether the ways in which whatever remedies might be available should be more accessible to the general public in terms of speed, cost and efficacy. Having said that, however, I ought to observe that, contrary to some publicly expressed views, I do not intend to comment on the proposals presently before Parliament to amend the law of defamation.

6. Reverting to the general background, it is also important to put the evidence that I hear about culture and practices into context. It is obvious that specific illegal or clearly unethical conduct could, indeed, exemplify culture, practices and ethics either in a particular newsroom or more widely and it is an extremely important part of the picture. It is not, however, the only evidence that may be relevant to the background. Increased pressure on newsrooms, with reducing staff and tight financial constraints, the impact of 24/7 reporting and the immediate availability of news on the internet, the use of casual or freelance staff and the pressure whether expressly thrust upon them or impliedly felt by them (to name but a few issues that have been mentioned) may all constitute important elements of the wider picture.

7. Further, although I must inevitably consider the specific in order to reach conclusions about the general, it is of critical importance that everyone understands the way in which I will approach Part 1 of the Inquiry. In the same way that it is not part of my function to rule upon whether or not the rights of any of those complaining about the conduct of the press have been infringed, I do not consider it my role, in this Part of the Inquiry, to make any findings of fact about the behaviour of any newspaper or editor in any individual case, still less about particular editorial decisions made as to the subjects which it is appropriate to report or the editorial style used to report them. The approach to evidence of witnesses who wish to remain anonymous must, therefore, be considered in that context.

8. The question which arises, therefore, is how anonymous evidence should be addressed in Part 1 of the Inquiry. When this issue was raised during the course of a directions hearing on 26 October 2011, before receiving considered submissions I suggested that thought be given to an approach broadly outlined as follows:

i) Any person who wished could provide a statement to the Inquiry and request anonymity. At no time thereafter would their identity be released without their consent.

ii) If the view was taken that the evidence of any particular witness was of sufficient importance to merit being called before the Inquiry, a discussion would take place with the provider of the statement as to the nature of any protection that he or she sought and, in particular, whether any precaution short of complete anonymity would be sufficient to deal with any concern.

iii) If I decided that the evidence, if totally anonymous, would have no real value and the provider of the statement did not consent to his or her identity being revealed, the statement would not be disclosed or used in any form. Its contents would be totally disregarded: anonymity would therefore be fully protected.

iv) If I decided that the evidence was of sufficient value to justify its forming part of the evidence before the Inquiry, a statement, appropriately redacted, would be made available to the core participants and called in the normal way. Arrangements would be made to ensure that anonymity was not breached. This could involve using a live link and sitting outside normal hours.

9. Mr Jonathan Caplan Q.C. for Associated Newspapers Ltd. has provided helpful submissions reminding me of the importance of open justice and the role that the media has in giving effect to that principle through accurate reporting. He argues that s. 19 of the Inquiries Act 2005 provides for the circumstances in which the principle of public access to inquiries can lead to privacy and, in the context of my duty pursuant to s. 17(3) to act fairly, submits that the conflict arises between the Article 8 rights of the anonymous witness on the one hand and those potentially subject to criticism on the other, along with the Article 10 rights of the press. I recognise the principle of open justice, but it is not the only consideration. Context is of critical importance and I am not proposing that the Inquiry should receive and be able to act upon evidence which is the subject of a restriction order so that neither the core participants nor the public know what that evidence is. I will only receive and act upon evidence which is given in public and which may be fully reported. What will be missing is the identity of the witness but that information will simply not be part of the evidence or form any part of my assessment of that evidence. Thus, there is no question of my taking account of any knowledge I might have of the name or employment details of any anonymous witness with the result that the press and the public can be assured that I will only act on the basis of what I (and they) have heard.

10. One of the consequences of allowing a journalist to give evidence anonymously may very well be that it would not be fair to allow the name of the title or titles about which the journalist speaks to be identified if only because fairness could then require the facility to challenge the evidence (as opposed to testing it which would be the responsibility of counsel to the Inquiry). Further, given that I do not wish to prejudice on-going police investigations and will not be seeking to make findings of fact against any current specific title or individual editors, I am presently minded to

the view that the name of the title about which the evidence relates (and, obviously, the identity of any manager who is criticised) should also be anonymised, save only where the allegations are already in the public domain. The only exception will relate to the *News of the World*. Although I do not anticipate that anonymous evidence would emerge in relation it, the *News of the World* will be an exception, not least because it is a priority for me to identify whether illegal or unethical practice (of the type that has been conceded in relation to that paper) extends beyond it. That also serves to deal with the concern expressed that there should be an opportunity for response by those who are the subject of anonymous criticism.

11. I agree with Mr Caplan's further submission that any application for anonymity must receive intense scrutiny and I can confirm that I have no intention of hearing evidence in advance. Neither do I visualise the need to hear evidence (as opposed to determining the issue on the basis of a paper application) as to whether a witness should be allowed to retain his or her anonymity. A protocol will need to be prepared to deal with these issues although the modified protocol from the *Al Sweady* Inquiry chaired by Sir Thayne Forbes does not entirely fit the rather different circumstances which I have sought to outline.

12. Although I would encourage all those who can contribute to this Inquiry to do so on an open basis, I understand the concerns expressed by journalists who fear for their continued employment if they do not follow the line being taken by their employers (whether or not their disclosures might benefit for protection pursuant to the provisions of the Public Interest Disclosure Act 1998 which inserted a new Part IVA into the Employment Rights Act 1996 and is colloquially known as the 'whistle-blowers charter'). In the circumstances, given the broad remit of this part of the Inquiry into culture, practices and ethics at a general, rather than a specific, level, subject to the controls to which I have referred, I will be prepared to receive anonymous evidence. Anyone who provides it will have to provide sufficient detail to demonstrate that he or she is speaking with first hand knowledge and must also recognise that the weight that can be attached to it will be significantly less than that from a witness who is identified.

13. I add only one further observation. Mr Neil Garnham Q.C. for the police has expressed concern that observations exculpatory of anyone suspected of crime should be disclosed. Given the circumstances in which witnesses have sought anonymity, I consider the likelihood that statements prepared by such witnesses will indeed be exculpatory of any specific individual to be low but it is sufficient if I express myself mindful of the point and, in the interests of fairness, will approach a consideration of any material with that concern in mind.

14. A draft protocol will be circulated: short written submissions can be made by core participants before it is promulgated.

9 November 2011