The Leveson Inquiry

culture, practices and ethics of the press

RULING ON THE ROLE OF THE ASSESSORS TO THE INQUIRY

The Rt Hon Lord Justice Leveson:

1. Having announced my appointment to the House of Commons on 13th July 2011, it was on 20th July 2011 that the Prime Minister announced the appointment of what he described as "a panel of experts" to assist the judicial inquiry. He identified them by name and observed (Hansard, 20 July 2011, column 918):

> "These people have been chosen not only for their expertise in the media, broadcasting, regulation and policing, but for their complete independence from the interested parties."

The Leader of the Opposition welcomed the Inquiry, the terms of reference "and, indeed, the panel members chosen by the Prime Minister for that purpose" (ibid, column 922). In answer to further questions, the Prime Minister later referred to cross party agreement which had "worked well over the judicial inquiry, the panel, the terms of reference ..." (ibid, column 941) and spoke of "a good mixture of experts to help advise Lord Justice Leveson to ensure that we get the balance right between appropriate legislation and – yes – a free and vibrant press" (ibid, column 944).

2. Although the Prime Minister made these announcements, my appointment under ss. 4 and 5 of the Inquiries Act 2005 ("the Act") and the appointment of the six assessors under s. 11 of the Act was formalised by letters dated 28th July 2011 signed by the Secretary of State for Culture Media and Sports and on behalf of the Home Secretary. On the same day, I held an opening session; I described the six as a "panel of assessors" and went on to say that:

> "I intend that each should have a central role in the work and that the final report will be a collaborative effort. I will strive for unanimity; if any particular recommendation is not unanimous, I shall make the contrary view clear."

3. I also made clear:

> "In order to start from the right place, ... I intend to hold a series of seminars in October so that we can focus on the perspective of all those involved: these seminars will include, among other topics, the law, the ethics of journalism, the

> practice and pressures of investigative journalism both from the broadsheet and tabloid perspective and issues of regulation all in the context of supporting the integrity, freedom and independence of the press, while ensuring the highest ethical and professional standards. At some stage, there needs to be a discussion of what amounts to the public good, to what extent the public interest should be taken into account and by whom. I hope that an appropriate cross section of the entire profession (including those from the broadcast media) will be involved in each discussion, their purpose being to ensure that the Inquiry can begin to concentrate on the principal concerns. As soon as possible thereafter, the Inquiry will hear evidence from those best placed to assist it on each of these matters."

4. I also drew attention to section 38 of the Act which limits the time within which an application for judicial review of a decision made by the Minister in relation to an Inquiry or by a member of the Inquiry (that is to say, in the context of this Inquiry, any decision of mine) to 14 days after the day on which any applicant becomes aware of that decision. As I understand the position, no such application was made either within 14 days or, indeed, has one since been made.

5. On 26th August, RPC, acting on behalf of Associated Newspapers Ltd, sought clarification of the basis on which the panel would be assisting me and submitted that the Assessors did not appear to be "ordinary assessors" because I said that I would strive for unanimity of view and I would make any contrary view clear. It was suggested that they were more akin to panel members. It was also submitted that if they had been members of the panel, appointed under s. 4 of the Act, s. 8 required that they be balanced which, given the absence of anyone from what RPC described as 'red top tabloid' and 'mid-market titles', these assessors were not. The letter specifically goes on to deal with the experiences and expertise of Sir David Bell, Mr George Jones and Ms Elinor Goodman, arguing that they were unrepresentative of the newspaper industry as a whole.

6. A response to this letter was overtaken by the first directions hearing of the Inquiry which I conducted (for the avoidance of doubt without the involvement of any assessor) on 6th September 2011. Primarily, this hearing was concerned with applications for core participant status but, again, I identified how I intended to proceed. I said:

> "Again subject to representations to the contrary, I am presently minded to proceed by holding a series of what might be described as teaching sessions to provide to me and to the assessors key factual material on matters that are relevant to the issues which the Inquiry will be considering. Two will be held in public and concern the existing legal framework governing the operation of the media, including the relationship between Articles 8 and 10 of the ECHR, data

protection, freedom of information, along with the law relating to broadcasting both at UK and applicable European law. This will cover both criminal and civil law."

Another teaching session is likely to provide the factual material that identifies the relevant regulatory models; the structures and concepts as well as dealing with Ofcom and broadcasting regulation including models such as the Advertising Standards Agency, the Information Commissioner, the Financial Services Ombudsman and any other relevant model. These are not intended to start the debate but merely to provide the present starting point.

The third teaching session is the only session that I am presently minded to order be held in private and that is to provide information as to the technicalities of interception both of mobile and other phone calls, e mails and other forms of covert surveillance. Again, it is simply so that I along with my assessors can learn what can be achieved albeit in disregard of the law in order that we can better understand the issues.

These sessions are not intended to deal with matters of opinion or potential solutions but are factual in content only. Save in relation to the third, they will be held in public and I hope that they will be available either visually or at least in transcript form to the wider public. That is not to say that anyone else will be invited to participate in these sessions.

From the teaching sessions, I am presently minded to proceed to a series of seminars of the type that I mentioned on 28 July and for this purpose I would focus initially only on the first module of part 1 of the Inquiry to which I have just referred, that is to say, the relationship between the press and the public. At the moment, I have three such seminars in mind and in each case their purpose is very different to the teaching sessions. They will deal with broad public policy issues and provide an opportunity for experts to make their thinking available to the Inquiry. We will invite experts to present papers to spark debate which will inform me, the assessors and, additionally, the public. Without presently seeking to draft the questions, the first is likely to concern the competitive pressures on journalists or what might be described as the market economics of the mainstream news media. There has been some criticism of the fact that none of the assessors has tabloid experience and I intend that this seminar should make good any deficiency in knowledge or understanding of the pressures facing such media outlets not

least following the growth of social media and the internet. I would also wish to deal with issues such as the structures in place that provide oversight to the means whereby stories are obtained and a check on the legality and ethical propriety of the way in which it has happened. In that regard, the extent to which money changes hands and the oversight of such payments is also highly material.

The second such seminar is likely to be concerned with press ethics and the law or, to put the same point another way, what is the balance between press freedom and the rights of privacy and what is the role of the law or regulation in maintaining standards on the one hand and defending the freedom of the press on the other. Are ethical principles common to all or are there differences? To what extent should journalists, or their editors, be held accountable for their decisions about what is perceived to be in the public interest.

The third seminar will cover regulatory structures and examine the advantages and disadvantages of different regulatory approaches including self regulation. This issue extends to consideration of what a different system might look like, whether it could provide a reasonable system of remedies for those whose rights have been impugned; it will obviously include the risks of a chilling effect on the press. Who should take the decision as to the balance to be struck between competing public interests and to whom are such people accountable?

I hope that these seminars, which again will be open to the public and all concerned with the Inquiry, will generate public debate. Again subject to argument, I am minded to seek to use them to encourage not only interested professional parties but also members of the public to provide the Inquiry with evidence of their views and I intend to look for ways in which I might achieve that end. It is only after these seminars that we shall be ready to take evidence and seek to provide the narrative both for the thrust of what has been happening but also for the wider recommendations that I have to make. Furthermore, after the evidence has been concluded, it is probable that I will seek to embark on a further series of seminars."

7. It is not irrelevant to note that, at that hearing, Mr Mathieson of RPC repeated his position, identified in correspondence, that Associated Newspapers Ltd were minded to ask for core participant status but said that he was not in a position to do so in the absence of the Editor in Chief. On other issues, he was without instructions. The application followed shortly thereafter and was granted.

8. A response to the letter of 26th August came from the Secretary to the Inquiry on 12th September 2011 and made the point that the Assessors had each been appointed under s. 11(2)(a) of the Act and that there was a discretion available to me to ensure that the assistance and expertise of the Assessors could be secured for the benefit of an Inquiry in the way that best met its needs. It went on to say that the collaborative effort was a statement of the manner in which I intended to discharge my functions and was entirely consistent with my retaining clarity about my sole responsibility under the Act. It continued:

> "As you are aware [Lord Justice Leveson] has stated clearly that the conclusions of the report will be his and that, if there is not unanimity, he would publish opposing views."

9. As for the absence of tabloid experience, in addition to what I had said on 6th September, the letter went on to make the point:

> "But the assessors' role is by no means intended to exhaust the availability of expert resources to the Inquiry. …. Leveson LJ has made clear that not only will he expect to have the benefit of expertise and experience in the form of witness evidence – not least from owners, editors, journalists and others associated with the 'red top' tabloids – which can be tested and analysed in the usual ways, but he also intends to hold a series of seminars as part of the conduct of the Inquiry as another way in which expert knowledge and opinion, including from a tabloid perspective, can be received and debated in open forum. The present views of both the Secretaries of State and Leveson LJ is that the appointment of further assessors is not necessary or desirable at this stage in order to enable the discharge of the Inquiry's functions."

10. The correspondence continued with two further letters (dated 20th September 2011) from RPC suggesting that the conclusions would be the Chairman's and those of the assessors who agreed with him, and that the role of the assessors was closer to that of panel members. It goes on to state that, as the Assessors will collaborate and be involved in the preparation of the report, they would be influential in the recommendations that I make. Thus the route is hybrid, not envisaged by the Act and suffers the disadvantage of a lack of balance.

11. The second of the letters expresses concern about the teaching sessions arguing that the "existing legal framework" and "regulatory models" topics are "intrinsically political" and that specialists in the field are often partisan, so even if "factual in content only" (as I made clear) it would be difficult to separate matters of opinion from fact. The example given concerned the merits of the current system of self regulation. In reality, and by definition, the question of merits would not be factual. In the same letter, RPC express concern about the seminars and the process for selecting experts to address the seminars. It asks whether, and if so, why, the assessors would be attending the seminars bearing in mind they are supposed to be

experts in the field and should not be participating in any part of the Inquiry that does not relate to their area of expertise.

12. The Secretary to the Inquiry responded on 23rd September, by way of two separate letters. As to the briefings, she explained that independent leading counsel would identify the main elements of the law currently governing media activities including freedom of expression and privacy, data protection, freedom of information and additional law applying to broadcasting, and that the remaining briefing would be dedicated to current regulatory systems and frameworks with an overview of the range of regulatory approaches. It was made clear that if Associated Newspapers wished to make submissions that these briefings were incomplete or presented an unfair picture, it would be open to them to do so. The letter went on:

> "Their purpose is to ensure that the Inquiry (and those interested in following the Inquiry) can approach the issues which have to be determined against the background of the present framework of law and regulation. They are specifically not intended to be controversial."

13. As to the seminars, it was explained that these would be recorded and made available on line; core participants would be able to attend and suggestions as to who might participate would be welcome. A response to further correspondence made it clear that I intended to ensure that the Inquiry was conducted in a manner which fully respected the legal framework within which it had been commissioned and pointed to the fact that their letter crossed with an invitation to the Editor in Chief of Associated Newspapers Ltd to speak at the first seminar; when it was appreciated that he was unable to attend on the day of the seminar, an invitation was extended to him to speak at the following seminar (which, albeit outside the context of this summary, it is appropriate to record that he not only accepted but used to provide an important contribution to the seminar which itself has promoted a wider debate).

14. Reverting to the chronological analysis of events, on the same day, presumably before the letters from the Secretary to the Inquiry had been received, RPC wrote a further letter. This requested that the issues raised by their previous correspondence be dealt with by way of a preliminary hearing in the week commencing 26th September on the basis that by 4th October (the date set for the next preliminary hearing) "the important issues we have raised ... [would have been] overtaken by events", the first seminar being scheduled for the 6th October.

15. On 26th September, I acceded to this request, and indicated that I would hear submissions on the issues on Wednesday 28th September. The relevant correspondence was circulated to all core participants and representations were invited. On the same day, a draft Assessors' Protocol, drafted by Counsel to the Inquiry, was also circulated. Representations were also invited, the intention being that the draft Protocol would be considered at a further preliminary hearing on 4th October 2011.

16. On 27th September, I received written submissions from RPC, Herbert Smith on behalf of Trinity Mirror PLC (who are not core participants) and Guardian News and Media Limited.

17. Paragraph 3 of the submissions on behalf of Associated Newspapers indicated that I was being asked:

    (a) to ensure that the role of the assessors be confined within the limits of their statutory functions as envisaged by the Inquiries Act 2005; and

    (b) to appoint, as soon as possible, further assessors pursuant to section 11(2)(b) of the Act and paragraph 8 of the Assessor Protocol to include expertise from across the newspaper industry.

18. However, the written submissions (paragraph 6.3 and Appendices 1 and 2) appeared to go on to raise significant concerns about the appointment of Sir David Bell as an assessor, and asserted that it would be inappropriate for any of the assessors to chair any of the proposed seminars, regardless of their expertise.

19. The submissions on behalf of Trinity Mirror raised many of the same concerns, and requested both that I appoint further assessors and clarify the role of the existing assessors. The submissions on behalf of Guardian News and Media Limited noted that "the Inquiry might gain" from input from at least one assessor with direct experience of how the tabloid and/or mid-market press operates, and that there "did appear to be uncertainty" as to the precise role of the existing assessors.

20. Against that background, I heard the application on behalf of Associated Newspapers on 28th September. In oral submissions, Mr. Caplan QC, on behalf of Associated Newspapers, made it clear that he was not challenging Sir David's position as an assessor, explaining that he did not do so because there was no statutory requirement that an assessor be impartial. Essentially, however, he advanced the same concerns, and made the same requests. I also heard shortly from other core participants. I shall consider each of the two requests made of me in turn.

Timeliness

21. Before dealing with the merits of the submissions made by Mr Caplan, it is right to say something of the timeliness of the applications, particularly because complaint was made that I was initially only minded to hear this application on the date fixed for the next directions hearing which was 4th October, a date on which Mr Caplan had professional commitments out of the country and which, he submitted, was in any event far too late to prevent what he argued was a misconceived approach.

22. Whether or not there is room for confusion in describing the assessors as panellists, there is not and, as far as I am aware, never has been any doubt that each of the six was appointed under s. 11 of the Act by the relevant Ministers: I specifically referred to that provision in my opening remarks on 28thJuly. As I then made clear, any challenge to those appointments (which would be, of course, addressed to the Ministers and not to me) should have been made within 14 days of that date. Such a

challenge could have covered either the appointment or the basis on which the assessors would work. Similarly, I also announced my intention to conduct seminars. Although a challenge to that decision might well have been premature, on 6th September, I made it clear that I was prepared to receive representations both in relation to the briefings and the seminars. None was made by any party. Neither could anyone have thought that I was dealing only with core participant status: I was happy to deal with other issues at the conclusion of those applications (as I did in relation to material that had been disclosed in proceedings being conducted by Vos J).

23. Furthermore, the point about timeliness is not only of technical significance. I have repeated more than once the very tight time frame within which this part of the Inquiry must be conducted and underlined the rigour with which I shall require all those involved to work in order to achieve a conclusion broadly within the 12 months identified by the Prime Minister. In this case, the summer has allowed time for challenges (if any) to be commenced and concluded and, for my part, I would not consider that by making applications at this stage, the very strict 14 days permitted by s. 38 of the Act simply starts again: that is not, however, a matter for me. All that I say about the merits of each of these applications is, however, without prejudice to any argument about timeliness that might subsequently be deployed.

The Assessors

24. To such extent as it remains a matter of concern, I must make it clear that I do not accept that the assessors are in some way a hybrid between assessors (within the meaning of s. 11 of the 2005 Act) and members of the determining panel (as set out in s. 4). Mr. Caplan noted, in making his submissions, that some of the terminology used to describe the Assessors in the past may have created some confusion.

25. However, the appointment of the assessors under s. 11 of the Act is clear and there is no doubt that the conclusions that this Inquiry reaches will be mine and mine alone. They will be reached on the basis of the evidence that I hear and my views as to the legal and ethical framework within which the press, the police and the politicians must operate. This point has been made in correspondence, as set out above, and the draft Assessor Protocol also makes this explicit.

Role of the Assessors

26. What then is the role of the assessors? By reason of s. 11(4) of the 2005 Act, it is clear that the Ministers considered that each had expertise that made him or her a suitable person to provide assistance to the Inquiry panel. In my judgment, in relation to Sir David, to Ms Elinor Goodman and to Mr George Jones, that expertise is in the profession (or business) that is journalism which concerns the identification of a potential story, the appropriate collection and, if necessary, verification of facts and the subsequent composition of that story all within a time frame and against the prospect of competitive pressure. Sir David also has the experience and expertise of editing and subsequently managing a daily (albeit specialised) newspaper.

27. As I said at the hearing, I am very conscious that in chairing this Inquiry, I am stepping into a profession that is not the one in which I have spent 40 years of life. It is obviously desirable (as the Prime Minister and others have identified) that I obtain advice and assistance from those who have made their lives and careers in the various areas covered by the Inquiry, in particular in relation to dealings between the press and the public, the press and politicians and the propriety of press contact with the police. Not least, this is because I would be keen to understand any flaws or unintended consequences that might flow from suggestions that are advanced that my lack of experience would not otherwise identify. That is not to make the assessors advocates for any particular cause and that is not how I (or they) see their role.

28. The assessors bring their expertise to bear in a number of ways. First and foremost, on pre-reading evidence which has been submitted to the Inquiry, they may suggest additional lines of investigation or potential lines for questioning; essentially, these would not be for me to receive or to act upon but, rather, will be considered by Counsel to the Inquiry who may take them up or not as they consider appropriate. In relation to any area or lines of questioning, however, I will not be interested whether it came from a statement, counsels' own analysis or through an assessor; I will only be interested in the evidence as it emerges.

29. It is also clear from the Protocol that if an assessor prepares a report for me which I intend to take into account, it shall be disclosed to the core participants and will form part of the Inquiry record: there will then be an opportunity for representations to be made upon it (see para 4 of the Protocol). Further, if I receive any advice not contained within a report but which I intend to take into account, to such extent as it is necessary for the fair and proportionate conduct of the Inquiry, I will similarly disclose it and allow observations to be made upon it (see para. 5).

30. The assessors also bring an understanding of the practical implications of potential ways forward – what may, or may not, work in the fields of their respective expertise. It is that to which I refer when I speak of being collaborative and 'striving for unanimity'. There is absolutely no point in my suggesting a way forward (if different from the present system) that everyone decries as unworkable; if that were my provisional view, I would want to be told. The process I envisage would entail, amongst other things, seeking the assistance and advice of my assessors but, as I have also explained, I may also test out possible solutions in further seminars. Again, with fairness as my touchstone, if I believe that new material is generated, that material will be shared so that all can make submissions upon it.

31. Ultimately, however, as I have made very clear, my conclusions shall be solely my conclusions. There is no question of publishing concurring views. In the spirit of openness and transparency, however, I shall identify the fact that one or more of the assessors disagrees with my conclusions and I shall explain the nature of the disagreement: in that way, those who read my report will be able to make up their own minds. That approach does not make the assessors members of a panel within s. 4 of the Act and I have no intention of treating them as if they were so appointed.

The Teaching Sessions and Seminars

32. I turn to the challenge advanced by Mr Caplan in relation to the teaching sessions and seminars. I indicated at the conclusion of the hearing on 28th September that I was satisfied that these events should go ahead in the form proposed. As previously indicated in correspondence, teaching sessions were intended to be wholly factual and descriptive in content, and although brief questions could be asked, they were not intended to form part of the evidence base from which I shall draw my conclusions. Since the hearing on 28th September, these sessions have now taken place, attended by a number of core participants. I hope that the format and content of these exercises has assuaged any remaining concerns: I am satisfied that there could not possibly be any prejudice arising from what was then put before me.

33. The seminars have also taken place and, as I anticipated in my ruling of 28th September, they have been chaired and facilitated entirely appropriately. I was present at each seminar and the assessors guided discussion and brought their expertise to bear to ensure that views were expressed from widely ranging perspectives and focussed on the issues. Thus, all those engaged provided me with valuable assistance by ensuring that all sections of the press and other interested parties were able to contribute to the debates which took place and that a balanced expression of views was achieved. In that regard, I am very pleased to record the very real contribution made by editors from every section of the press and media both by way of presentation and in the subsequent discussions. Neither was the role of the assessors of limited importance for I remain keen that these seminars act as a 'springboard' for others who did not participate to express views to the Inquiry on the issues that arise.

34. Mr. Caplan emphasised that consideration would have to be given in relation to each seminar as to the relevant expertise of each assessor before appointing them as Chair, or requesting their assistance in any other way. It is sufficient for me to indicate that I always had in mind the relevant expertise of an assessor before asking for assistance of any kind, and that this will continue. Indeed, the draft Assessor Protocol also makes this clear, but I have amended paragraph 3(b) of the draft Protocol to ensure that this was further clarified in relation to the seminars.

35. Before leaving the role of the assessors, it is right for me to say a few words about their impartiality. Still focussing on what assessors could do, Mr. Caplan's written submissions indicated, quite correctly, that assessors are not subject to the express requirement of impartiality which applies to panellists under section 9 of the 2005 Act. It was for this reason, he submitted, that it was particularly important to ensure that the role of assessors was confined to their area of expertise.

36. However, although assessors are not required by virtue of section 9 to be impartial, it is important to note that section 17(3) of the 2005 Act requires me to act fairly in making any decision as to the procedure or conduct of the Inquiry and I am determined that the Inquiry should be seen as fair and transparent. It is for that reason that at the start of the Inquiry, together with each of the assessors, I made declarations of interest and dealt with possible suggestions of conflict. I do not

therefore consider that it would be open to me either to appoint an assessor or to permit a role to an appointed assessor that would fail the common law and/or Article 6 ECHR tests of apparent bias.

Appointment of Further Assessor(s)

37. What of the complaint that there is no assessor with tabloid experience? In oral argument Mr. Caplan appeared to suggest that several further assessors might need to be appointed. This could include an assessor who had worked at senior editorial level within a tabloid newspaper, an assessor who had experience of the regional press, and perhaps an assessor who had experience of 'news-gathering'. Others have suggested that I might benefit from the inclusion of a 'new media' assessor and/or a 'blogger' assessor.

38. Although this is a matter which I shall be considering, I asked Mr Caplan to explain whether his clients took the view that different ethical standards should apply to journalists working in the traditional broadsheet press and those working in the tabloid press. Mr. Caplan confirmed that his client did not take that view: I indicated at the time that I did not find this approach surprising.

39. The approach of the Prime Minister or the appointing Ministers under s. 11(2)(a) of the 2005 Act clearly did not consider that the absence of a journalist with tabloid experience was fatal or undermined the Inquiry and nothing has occurred since their appointment to alter the position. I am conscious, however, that I must exercise my own discretion under s. 11(2)(b). Thus, I have carefully considered the submissions on behalf of Associated Newspapers, as well as those on behalf of Guardian Media, Trinity Mirror and others.

40. The fundamental point on which I take issue with these submissions concerns the reason for the appointment of assessors, their value and input. In relation to the three journalists appointed by the Ministers, in my judgment, they are not delegates for, or representative of, the sections of press for which they once worked: so much is clear from what the Prime Minister said. As I have explained, I consider their expertise to be in the area of journalism generally, and that it is inappropriate to attempt to sub-divide the work of journalists in the manner contended for by Mr Caplan. It may be that none has worked for a tabloid or mid-market newspaper and that their experience of a regional newspaper is dated. I do not understand that any has experience of working on a specialist Sunday newspaper (of whatever type) or on magazines and periodicals. The differences (to such extent as they exist) of working on these different formats will, however, be explored in evidence and I will make up my mind about the impact that a different format might have on the underlying issues. The assessors are not appointed to provide me with the facts, but rather their expertise.

41. In that regard, although I continue to approach the issue with an open mind, in line with Mr. Caplan's submission, I do not presently understand why the ethical approach that a journalist brings to his or her work should vary depending upon whether that journalist is employed by a broadsheet, mid-market or tabloid

newspaper; neither do I immediately see why there should be a different approach to the concept of public interest – the public embraces readers of each type of newspaper to which I have referred. I accept that the time and commercial pressures may well be different across the market-place and I bear in mind that the focus for stories in, say, a tabloid, is likely to be different to the focus in a broadsheet but that is something that can be addressed in the evidence and which I can evaluate in due course. The same is so for the argument about investigative journalism: the object of the investigation might be different as might the approach to what is perceived to be in the public interest but, at first blush and equally consistent with what Mr Caplan said, it seems to me that the question about what should be considered when deciding to engage intrusive or potentially unethical techniques to pursue the story (and who balances whatever Article 8 interests might arise against Article 10 rights of free expression) is unlikely to be different; if it is, I shall require evidence and explanation by way of justification.

42. Further, if (contrary to my view) the relevant assessors were delegates or representatives of the section of the press of which they have experience, I would need a bewildering array of those with different experiences as journalists to those presently appointed and there is no reason why it should end there. Mr. Sherborne (for those who complain about the conduct of the press) made the point that it could also be said that the assessors do not include a victim of unethical or illegal behaviour at the hands of the press or someone who will address the issues from that standpoint. There is also no assessor who approaches the issue of relationships with the press from the standpoint of a politician. The number of assessors would grow and become potentially unwieldy. Balance could become more and not less difficult.

43. As valuable as the assessors will undoubtedly be, their assistance will necessarily be specific to their expertise. As I said in the opening session on 28th July, it is clear that the bulk of the materials I require to consider the wide-ranging issues within the Terms of Reference and to prepare my report will be contained in the substantial evidence I will come to read and hear. The tabloid press, the mid-market press, the regional press, those involved in news-gathering, politicians, victims and many other interested parties and individuals will be afforded every opportunity to provide me with that evidence, which will doubtless not be limited to fact and will include opinion, comment, advice and assistance. In other inquiries, such as the *Baha Mousa* inquiry conducted by Sir William Gage, no assessors were appointed at any stage and all evidence was gathered, presented and evaluated in this way. I have said on many occasions now that I will expect all parties to assist me as fully as possible in order to ensure that I am as fully informed as I can be. I was particularly grateful for Mr. Caplan's indication, both at the outset of his submissions, and at the conclusion of them, that Associated Newspapers has no desire to be confrontational and wished to assist the Inquiry. To this end, I re-iterated a request made in correspondence to provide the Inquiry with a list of persons from whom I should hear and who could deal with the issues about which he expresses concern.

44. In those circumstances, and weighing up all these considerations, I do not consider it desirable at this stage to appoint any further assessors. At present, I am satisfied

that I can, and will, obtain a very full range of evidence which will assist me in addressing the Terms of Reference and making my recommendations. If any core participant or indeed any interested party or individual identifies any 'gap' in my knowledge, or the evidence I am hearing, it is incumbent upon them to identify it, and to ensure that suggestions are made to the Inquiry as to how those gaps can be filled. I am of course prepared to reconsider this position in the future if necessary.

45. Finally, as a check to the conclusion that I have reached, I note no legislative requirement that assessors should represent each and every interest at an Inquiry, or indeed that they represent even the most important interests at an Inquiry. The Explanatory Notes to the 2005 Act make it quite clear that even a panel, appointed under s. 4 of the Act and subject to the s. 8 need for balance, need not represent all the possible interests which might arise; the position of assessors under s.11 must be even clearer. The fact that there is no need for all interests or 'constituencies' to be represented in the context of appointing assessors must be because the scheme of the Act is such that most of the factual information and expertise required by an inquiry can and should be obtained by way of the presentation of evidence (written or oral), submissions from core participants and others, and by other participation in the inquiry by a wide range of interested parties. It is to that part of the Inquiry that I shall shortly turn.

17th October 2011