

Tim Bratton, First
Financial Times Limited
September 2011
Exhibits: TB1 – TB13

IN THE MATTER OF AN INQUIRY UNDER THE INQUIRIES ACT 2005
INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

**WITNESS STATEMENT OF
TIM BRATTON**

I, **TIMOTHY BRATTON**, Solicitor, of 1 Southwark Bridge, London SE1 9HL **WILL SAY AS FOLLOWS:**

1. I am a Solicitor of the Superior Courts of England and Wales and am employed by The Financial Times Limited ("FTL") as its General Counsel.
2. I make this statement in compliance with a Notice sent to FTL's "Head of Legal Group" on 8 August 2011 pursuant to section 21(2) of the Inquiries Act 2005.
3. I have answered the questions raised in the Notice in good faith and to the best of my recollection. I believe my answers to be true. I am happy to expand on any answer if required to do so.
4. Nothing in this witness statement should be taken to waive legal privilege. Whilst not waiving privilege, I have tried to give as helpful an account as possible to the questions raised in order to assist the Inquiry.

Question 1: Who you are and a brief summary of your career history in the media and as a lawyer.

5. I qualified as a Solicitor in 1998 and worked at a law firm then known as Denton Wilde Sapte (now SNR Denton) until 2000 where my practice area was primarily intellectual property, information technology and digital media law.
6. I have been an employee of the Financial Times since April 2000 when I joined the legal team of FT.com, the website of the Financial Times and at that time owned by Financial Times Information Limited, as a junior in-house lawyer. In or around summer 2003, the legal teams of FT.com and the Financial Times newspaper were combined and I joined the combined team as a Legal Manager for FTL. In or around November 2003 I was promoted to the role of Head of Legal Affairs for FTL and in November 2006 my job title was changed to General Counsel to reflect the remit of my role.

Question 2: What your responsibilities as in house legal adviser are?

7. I am currently responsible for the legal affairs of FTL (including the Financial Times newspaper and website) and certain of its subsidiary/affiliate businesses (including those subsidiaries' print and online publications).
8. I manage the 'Legal and Company Secretariat' team which is made up of 8 full time equivalent solicitors (including myself) and four company secretariat staff, including FTL's Company Secretary. The solicitors are primarily commercial lawyers. We have one full-time lawyer (equivalent) who provides legal advice to the FT's editorial team and who is physically located in the FT's newsroom in our London office. That media lawyer role is fulfilled by solicitor(s) with media law expertise and experience and reports directly to me. They sit in the newsroom to assist with this in-house role being embedded in the editorial process.
9. Part of my role involves the management of external counsel, and since February 2009 FTL has retained the law firm Reynolds Porter Chamberlain LLP (RPC) as its preferred external provider of media law advice. FTL outsources certain work to RPC such as overflow work, out-of-hours support work and advice where necessary in resolving post-publication issues to the extent that they arise. We may also outsource other ad hoc work, for example where the media lawyer requires a second opinion on a particular issue.
10. For the purposes of this witness statement, where I refer to the "media lawyer" I refer to whichever of the above media lawyers (internal or external) might be providing advice to the FT's editorial team on a particular day.

11. Most day-to-day queries from editorial staff will be directed to the media lawyer rather than to me directly. Non-routine questions or concerns, for example details of complaints received, would generally be reported to me by the media lawyer for information purposes and/or discussion. It is not documented as to what matters will be reported upwards to me by the media lawyer (or indeed any member of my team) because I rely on common-sense and good judgment that my team will report to me issues that are material to the business. I am confident that any member of my team would report to me if they had been asked to provide advice on anything that may be unethical or unlawful.
12. Occasionally I work directly with the Editor or another member of editorial staff on any material issues which might arise, for example complaints handling, but for the most part my liaison with the FT's editorial team is through the experienced media lawyer we engage specifically to fulfil that role.

Question 3: Whether you have ever been asked to advise upon the legality of methods of obtaining information including (but not limited to) phone hacking, computer hacking and "blagging"? If so, please give the best particulars that you can about who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).

13. I have been asked to give advice, or been involved in advice provided, on things like the legal status of leaked documents (and related confidentiality issues). I have also advised editorial staff on certain of our titles (although not insofar as I can recall the Financial Times newspaper or FT.com website) on the law regarding the recording of telephone calls conducted by editorial staff. I have never been asked to advise, and nor to the best of my knowledge has my team, on the law regarding computer hacking, blagging nor on what is now commonly regarded as phone hacking i.e. the interception of voicemails.

Question 4: What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise upon the legality of methods of obtaining information (including keeping up to date)? Do you consider that it has been adequate?

14. As General Counsel I would not regard it as incumbent on my employer to provide me with training or guidance upon the legality of methods of obtaining information. It is my responsibility to ensure that I can obtain advice or training either directly or on behalf of the legal team more generally. I have the autonomy and budget to do so. There are a variety of methods by which in-house counsel can ensure they remain up-to-date on legal issues

– including seminars hosted by law firms, conferences hosted by external providers, legal updates published by law firms, other generally available legal updates, legal publications and so on. The Financial Times makes funds available to the Legal Team to spend on training.

Question 5: Whether you have ever been asked to advise upon the legality of paying public servants (including police constables) for information either in cash or kind. If so, please give the best particulars that you can about who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).

15. To the best of my recollection, I have not been asked to advise upon the legality of paying public servants for information either in cash or in kind and I am not aware of my team having advised on these subjects either.

Question 6: What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise on issues of bribery and corruption? Do you consider that it has been adequate?

16. See my answer to Q4 above which applies equally to training required about bribery and corruption. FTL's ultimate parent company, Pearson plc, has assisted FTL in establishing an anti-bribery programme to ensure compliance with the requirements of the Bribery Act 2010. I assisted in the drafting of Pearson's Anti-Bribery and Corruption Policy ("ABC Policy") (see Exhibit TB1) and in its roll-out and its ongoing implementation within FTL. I or members of my team have liaised with Pearson's General Counsel and Head of Group Internal Audit as necessary regarding the policy and the related compliance programme. FTL's CEO announced the ABC Policy in an email to all staff on 1 July 2011 (Exhibit TB2). Bribery was unlawful prior to the implementation of the new Act and FTL therefore previously had its own "FT Gifts, Corporate Hospitality, Freelancing and Anti-Bribery Policy" (which is attached at Exhibit TB3). In addition, Pearson publishes a set of business principles which it expects its employees to comply with in the Pearson Code of Business Conduct (Exhibit TB4). As such, I consider that my role and work within FTL and its parent company leave me well equipped to accurately advise the company on issues of bribery and corruption.

Question 7: Have you had input into any internal inquiry into phone hacking, computer hacking, "blagging" or bribery or corruption? If so, please describe the same, setting out your role and the outcome?

17. I have not had any input into any internal inquiry into phone hacking, computer hacking, blagging or bribery. Insofar as I know, there have not been any such inquiries at the Financial Times during my tenure as head of the legal function. I almost certainly will have provided legal advice over the years on issues involving dishonesty - for example, occasional dishonesty by employees (for their own personal gain, not the benefit of the company, I can only recall a small handful of examples) or by third parties (again, for their own benefit, not the benefit of the company) – but I do not recall any such incident relating to journalists within our organisation.

Question 8: How you understand the system of corporate governance to work in practice at the above newspaper owned by your company with particular emphasis on systems to ensure lawful, professional and ethical conduct;

Question 9: What your role is in ensuring that the system of corporate governance and all relevant policies are adhered to in practice. If you do not consider yourself to have any responsibility for this, please tell us who you consider to hold that responsibility;

Question 10: Whether the documents and policies referred to above are adhered to in practice, to the best of your knowledge;

18. Corporate governance is not a single responsibility. It is a joint responsibility of everyone who works within a company, and should be led from the top-down by a company's CEO, Board of Directors and other members of senior management within an organisation. Although systems and policies are important, and I will come onto those, I believe that the culture of an organisation is equally important. At the Financial Times, employees are aware of and appreciative of the history and strength of the Financial Times and FT brands and what they stand for. Similarly, employees are aware of the importance of editorial independence by which I mean that the editorial division of the newspaper operates independently of the commercial division – in no circumstances would the editorial integrity of the newspaper be influenced by pressures from the commercial side of the business. To put this in context by way of example, the FT's biggest and best advertising clients know that their business with the Financial Times will in no way affect the FT's reporting of its corporate activities – as the newspaper's leader page states, the FT reports "Without Fear and Without Favour". These cultural realities permeate the Financial Times organisation and influence the behaviour of its employees. I believe the FT to be an extremely ethical organisation in the way it conducts business.
19. In order to be effective, such a culture must be led from the top down, and it is, from the Pearson Code of Conduct which is ultimately mandated by Pearson's own Chief

Executive, from the conduct of the Financial Times board of directors, and – importantly - from the editorial line taken by the FT's publications. Employees in this organisation know what is expected of them and the FT's Managing Editor, Lisa MacLeod, has referred in her witness statement to the incorporation of the FT Editorial Code of Practice ("FT Code") into staff's employment agreements.

20. Of course, good cultural governance is not enough and must be supplemented with policies and my colleagues Lionel Barber, Lisa MacLeod and Scott Henderson will append or refer to such policies of which I am also aware as Exhibits to their own witness statements. The business employs other policies too, one which is of most relevance to my own department (but not, I think, to the Inquiry) is the FT's Contract Sign-off Policy, which is designed to ensure a degree of rigour and appropriate approval of contracts with third parties. For completeness to supplement the policies provided to the Inquiry by my colleagues I attach the FT's Contract Sign-off Policy as Exhibit TB5. The ongoing compliance with policies is audited and the FT's CFO, Scott Henderson, has described the internal audit processes which the Financial Times is subject to.
21. No single person is responsible for ensuring that the FT's system of corporate governance and relevant policies are adhered to in practice. Responsibility is divided across the business. For example:
 - a. The FT's Finance team are primarily responsible for ensuring that the FT's processes are followed on issues such as the claiming and reimbursement of expenses, or payment of invoices.
 - b. Editorial management are primarily responsible for ensuring that editorial staff are aware of their contractual obligation to comply with the PCC Code of Practice which the FT incorporates by reference into its contracts with editorial employees and freelancers. I attach the FT Code at Exhibit TB6 (which applies broadly to editorial staff working for the newspaper and FT.com). I also attach the FTB Editorial Code at Exhibit TB7 which applies to editorial staff working for FTL's business publications division known as FT Business – like the FT Code, it incorporates the PCC Code of Practice.
 - c. The Company Secretariat team are responsible for keeping other policies under review, such as the company's anti-bribery policy.

22. Although responsibility for particular policies sits naturally with particular areas of the business, no area of the business works in isolation from the others in considering and achieving compliance. Whilst I would not necessarily be expected to be notified of every breach of a policy – for example a failure by an employee to follow the company's Travel and Expenses policy – I would generally expect to be notified of any material failures of a serious nature, particularly any which may put the reputation of the business at risk.
23. Whilst I am aware of instances where individuals may have breached policies, I cannot recall any instance since I have been head of FTL's legal function of a material failure which involved an individual from the newspaper's editorial department.
24. As a caveat to this answer, I would like to make clear that the FT's Legal Team does not advise on employee disputes, for example disciplinary hearings, and it is not customary for me to be made aware of the outcome of employee disciplinary proceedings. I have however for the purpose of assisting FTL and its officers with our response to the Inquiry asked FT's Global HR Director to assist with our response and have been assured that any relevant employee issues pertaining to questions asked by the Inquiry have been disclosed to me. I am aware of one instance of disciplinary action relating to a member of editorial staff which I refer to further in paragraph 35 of my witness statement.

Question 11: Whether these practices have changed, either recently as a result of the phone hacking media interest or prior to that point, and if so, what the reasons for the change were;

25. The FT's practices have not changed in any material way recently, other than to review policies and provide training to ensure compliance with the UK Bribery Act, but this is more education to staff about the ABC Policy and the reasons for it, rather than a change in practice. FTL's practices have not been influenced in any way by the phone hacking issues which have arisen at other organisations. I am aware that the Editorial department intends to require all staff to sign up to the FT Code on an annual basis, although this is not something that I am directly involved with.

Question 12: Where the responsibility for checking sources of information (including the method by which the information was obtained) lies: from reporter to news editor to editor, and how this is done in practice (with some representative examples to add clarity);

Question 13: To what extent an editor is aware, and should be aware, of the sources of the information which make up the central stories featured in the above newspaper each day (including the method by which the information was obtained);

26. The questions directed to me regarding the responsibility for checking sources and the extent to which the editor should be aware of them are a matter for the Editor. I would expect any lawyer advising the FT, whether in-house or otherwise, to highlight to a journalist if he/she had concerns about the integrity, identity or possibly even motivations of a source, particularly if we were looking to rely on a Reynolds defence to a defamation claim, but I would regard primary responsibility for the checking of sources to lie with editorial staff. I would not ordinarily expect the FT's lawyers to need to know the actual identity of a source and even in circumstances where legal issues have arisen regarding a story FTL has published, I have not felt the need to ask editorial staff the identity of a source. In extreme circumstances I expect it is appropriate for a lawyer to ask that question but I do not recall such circumstances at FTL.

Question 14: The extent to which you consider that ethics can and should play a role in the print media, and what you consider 'ethics' to mean in this context;

27. Ethics should play a role in any organisation, not simply the print media. By ethics in this context I mean that a news organisation should behave legally, decently and honestly. Although the Press Complaints Commission has been criticised for its handling of the phone hacking scandal, those are criticisms levelled at the operational effectiveness of the PCC as an organisation. I think it is appropriate to distinguish that criticism from the actual principles of the PCC Code which set out a very good description of what ethics mean in this context – for example, by imposing an obligation on news organisations to be accurate, to give third parties an opportunity to respond to inaccuracies, to respect privacy, not to harass individuals, to treat children with caution and appropriately and so on.
28. To understand why ethics should have a role in the print media, one needs to understand the purpose of publishing a newspaper. I have referred earlier to the one of the FT's guiding principles – to publish "Without Fear and Without Favour" – the FT brand stands for credible, trustworthy journalism. In the absence of such journalism our brand integrity would be weakened and so therefore would the product. If a news organisation behaves unethically then it is doing a disservice to its readers and other customers such as advertisers. Although at times news organisations must behave robustly and diligently in uncovering and reporting on newsworthy information, this does not mean that they must act unethically when doing so.

Question 15: The extent to which you, as a legal adviser, felt any financial and/or commercial pressure from the proprietors of the above newspaper or anyone else,

and whether any such pressure affected any of the decisions you made as legal adviser (such evidence to be limited to matters covered by the Terms of Reference);

Question 16: The extent (if any) to which you, as a legal adviser, had a financial incentive in the above newspaper printing exclusive stories (NB. It is not necessary to state your precise earnings);

29. As General Counsel I am obviously subjected to commercial pressure to help the business deliver on its financial targets but at the same time in-house lawyers also have a responsibility to manage or mitigate risk. The business will always want projects delivered or contracts negotiated within certain timescales and commercial colleagues do at times seek to expedite advice or may even challenge advice which means a particular agreement or project may take more time than it would otherwise have done or may not even be feasible at all. I regard these as normal business pressures prevalent in any business and which are felt by any in-house legal function within a business. I have never been subjected to what I would consider any undue or inappropriate commercial pressure from anybody regarding the decisions I have had to make on any issue and as a lawyer my role in the organisation is respected, in that my commercial and editorial colleagues realise that I am required to take an objective view on particular issues, irrespective of financial targets. This principle applies equally in terms of stories the FT might publish, which it is important to emphasise in any event is not within the remit of any lawyer at the FT. Lawyers do not decide what stories are published, they advise on the risks associated with publishing stories. My remuneration is not linked in any way to what may or may not be published by the Financial Times. I can also confirm the same applies for all members of the in-house legal team.

Question 17: Whether, to the best of your knowledge, the above newspaper used, paid or had any connection with private investigators in order to source stories or information and/or paid or received payments in kind for such information from the police, public officials, mobile phone companies or others with access to the same: if so, please provide details of the numbers of occasions on which such investigators or other external providers of information were used and of the amounts paid to them (NB. You are not required to identify individuals, either within the above newspaper or otherwise);

Question 18: What your role was in instructing, paying, advising on, or having any other contact with such private investigators and/or other external providers of information including advising on any of these activities;

Question 19: If such investigators or other external providers of information were used, what policy/protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on);

Question 20: If there was such a policy/protocol, whether it was followed, and if not, what practice was followed in respect of all these matters;

Question 21: Whether there are any situations in which neither the existing protocol/policy nor the practice were followed and what precisely happened/failed to happen in those situations. What factors were in play in deciding to depart from the protocol or practice?

Question 22: The extent to which you are aware of protocols or policies operating at the above newspaper in relation to expenses or remuneration paid to other external sources of information (whether actually commissioned by the above newspaper or not). There is no need for you to cover 'official' sources, such as the Press Association;

30. To the best of my knowledge, the newspaper/FT website does not pay for private investigators, the police, public officials or mobile phone companies in order to source stories. Indeed as far as I am aware (and I have never been asked to advise on this), the Financial Times does not pay sources of any nature, although these are issues which the Editor can comment on.
31. I would like to disclose that I am aware of an occasion where FTL engaged one firm and considered engaging another firm of outside investigators to assist the FT in assessing its ability to defend a potential libel claim. I was involved in preliminary meetings with one of those agencies to discuss the scope of services they may be able to provide and to the best of my recollection the agency was not engaged. On the same matter, an overseas agency was engaged on behalf of FTL by a well known external law firm for the same purpose. The latter agency was engaged and paid by way of a disbursement on an invoice we received from that firm. Both engagements were discussed with our external lawyers. I would like to emphasise that these discussions were completely related to considering how best to resolve a post-publication complaint. They in no way related to the sourcing of a story by the Financial Times through an investigative agency.

Question 23: Whether you, or the above newspaper (to the best of your knowledge) ever used or commissioned anyone who used 'computer hacking' in order to source stories, or for any other reason.

32. To the best of my knowledge, no. My understanding is that the Financial Times does not commission stories from individuals who use computer hacking to source them.

Other matters

33. In conclusion, I believe the Financial Times is an ethical organisation and its culture is an influencing factor in why I have chosen to spend a substantial part of my career with the FT. I have known and worked with the Editor for over five years on a number of difficult issues and he at all times displays leadership based on sound principles. This principles based approach informs the FT's editorial line on difficult issues, for example its editorial line on phone hacking has been consistent and was in the public domain far earlier than most other publications (for example see the copy article at Exhibit TB8), as was the FT's editorial view on the future of the Press Complaints Commission (see the article at Exhibit TB9). It is the FT's willingness to publish editorial leaders such as these which in my view does more than any policy or procedure to ensure that its newsroom and journalists know that only the highest ethical standards are acceptable within the Financial Times organisation.
34. As FTL's Chief Executive has made clear in a letter to the Inquiry accompanying our various submissions, FTL is the publisher of the Financial Times and the FT.com website. Since most of the Inquiry's questions to me have focussed on the newspaper, I have concentrated on answering questions and collating evidence relating to the newspaper and website. FTL also publishes a range of other titles, for example a number of business magazines for the institutional finance industry. If the Inquiry would like further information from FTL regarding any other parts of our business which is not already covered in our responses, please let me know.

Documents

35. The Section 21 Notice requests five categories of document from me.
- a. Please see paragraph 36 below.
 - b. My role has changed enormously in the eight years I have been doing it and therefore any job description that may have existed 8 years ago will no longer be relevant to the role. There has been no need to produce an up-to-date job description in the interim and so none exists.
 - c. These documents (relating to the facts referred to in paragraph 31) are subject to litigation privilege.

- d. I have tried to make clear in my answer in paragraph 13 above the kind of issues that I may have advised on and which I have not advised on. The details of that advice are subject to legal professional privilege.
- e. I do not have any documents falling within Request (e). Please see my answer in paragraph 30 above.

Document Requests of FTL's Company Secretary

36. The Inquiry made a series of document requests of FTL's Company Secretary via a Notice sent to FTL's "Company Secretary" on 8 August 2011 pursuant to section 21(2) of the Inquiries Act 2005 and which I have agreed by telephone with the Solicitor to the Inquiry may be provided by other witnesses from the Financial Times in our respective witness statements. I refer below sequentially to those document requests to which I am responding in lieu of the Company Secretary.

Any (a) current and (b) past (you need not go back before 1 January 2005) training materials, guidance, practices, codes of practice, code of conduct, handbooks or policies on, or bearing upon, any of the following:

a. Regulation of Investigatory Powers Act 2000;

None (save for one guidance note which is covered by legal professional privilege).

b. Data Protection Act 1998;

Exhibit TB10. The policy is reviewed periodically and changes made as necessary. It was last updated in January 2009. The last review took place in 2010 when it was decided that no changes were required. I would particularly like to draw the inquiry's attention to the slides for and a narrative relating to a training session designed for and provided to certain FT Editorial staff in 2007 in response to the ICO's report "What Price Privacy?" and Clive Goodman's arrest.

c. Computer Misuse Act 1990;

None.

d. Compliance (limited to matters within the scope of the inquiry);

We consider the heading of "Compliance" to be a generic heading covering all aspects of the information request and so no documents are being provided specifically in response to this request.

e. Risk register (limited to matters within the scope of the inquiry);

I attach as Exhibit TBX11 copies of Editorial Risk Registers compiled over 2006 to 2009.

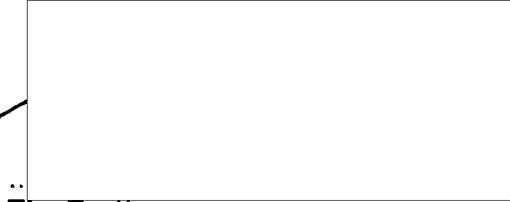
I also attach as Exhibit TB12 an extract from FTL's Social, Environmental and Ethical ("SEE") Risks return for April 2011 to Pearson plc insofar as it relates to Editorial issues within the scope of the Inquiry. FTL's SEE return for the period November 2007 to November 2009 are materially similar to this return insofar as they relate to matters within the scope of the Inquiry, copies of such other returns can be provided upon request.

(b) Any disciplinary action taken by or on behalf of the company in the period 1 January 2005 to the date of this notice to enforce the company's ethical and/or professional standards in relation to journalism and/or editing and/or use of sources of information.

Disciplinary action has been taken in one instance I am aware of in respect of an individual who worked within FTL's business titles division known as FT Business (separate to the Financial Times newspaper or FT.com website) for failing to have an article properly checked by a lawyer prior to publication. This relates to issues of defamation. The employee in question appealed against the process successfully, meaning that disciplinary action was not pursued. Given this, I do not propose providing documents relating to this incident unless the Inquiry is satisfied that it needs them.

(c) Any minutes of board meetings at which matters within the scope of this inquiry were discussed in the period from 1 January 2005 up to the date of this notice.

I attach as Exhibit TB13 extracts from Board minutes which we believe are within the scope of the Inquiry taken from the relevant period. Irrelevant material or privileged legal advice has been redacted from the minutes.



Tim Bratton
15 September 2011