

The Leveson Inquiry
Witness Statement of Liz Hartley

Career history

1. I am head of editorial legal services at Associated Newspapers Limited ("ANL"). I joined ANL in 2009, having previously acted for them for many years while a partner at the solicitors Reynolds Porter Chamberlain. I qualified as a solicitor in 1982 and before I joined RPC in 1997 I was a partner and head of commercial litigation at D J Freeman.

My role and responsibilities

2. As head of editorial legal services, it is my job to advise on all legal issues arising from editorial content in the newspapers and online, pre- and post-publication. I am assisted in this task by a team of three employed solicitors and some 22 freelance lawyers. The three employed solicitors work with me in the legal department of ANL. Our freelance lawyers usually work on a rota basis on the editorial floor reading copy and dealing with requests for legal advice from editors and journalists. The freelance lawyers provide an overflow service: such is the need for legal advice at all hours of the day and night that the legal department would be unable to cope with the amount of work. As a matter of policy, all news, comment and features are read for libel and other risks by our lawyers.
3. Two of our employed solicitors gained experience in private practice; the third is a former journalist who qualified as a solicitor in 2008. We also employ a trainee solicitor who used to be a journalist. Our rota lawyers are all barristers or solicitors who are experienced in giving pre-publication advice. Many of those lawyers also provide rota advice to other national newspapers.
4. The pre-publication advice we give comprises advice on libel, privacy, contempt of court, reporting restrictions, copyright, the Editors' Code of Practice, and other legal risks arising from publication. We advise not just on copy but on news-gathering procedures, for example ensuring that stories are obtained in a manner that complies with the law, e.g. the Data Protection Act, and with the requirements of responsible journalism contained in the Editors' Code and referred to in cases such as *Jameel v Wall Street Journal Europe*. As

part of our pre-publication advice, we will wish to ensure that any stories that may be damaging to people's reputations or are otherwise potentially actionable are adequately sourced. We therefore frequently discuss the source of stories with our journalists and editors, though in cases involving confidential sources, it will often be unnecessary for us to know the precise identity of those sources.

5. Our post-publication advice concerns claims and complaints arising out of editorial material. These may be complaints to the Press Complaints Commission, threats of legal proceedings or litigation. We work closely with the Editors and Managing Editors in relation to claims and complaints. When proceedings are issued, we normally instruct our external solicitors to deal with the litigation, reporting to and taking instructions from us.
6. As will be evident from the witness statement of Paul Dacre, I was instrumental in training our journalists on compliance with the new Bribery Act. The legal department has also provided training on data protection and other legal issues for our journalists and editors. The preparation of these training sessions is of itself a valuable means for our lawyers to keep themselves up to date.
7. I do not receive any financial incentives for the publication of exclusive stories. I do receive a bonus, but it is linked to the financial performance of A&N Media as a whole.

Training

8. Our lawyers, including myself, receive training and updates on the law in a number of ways. We attend external courses and we also attend seminars and similar events run by specialist solicitors and barristers (including our own external lawyers). We also regularly invite expert speakers to our office to provide training to our lawyers (including rota lawyers) on specific topics such as contempt of court, privacy, fair comment and privilege. The solicitors in our legal department are required by the Law Society to undertake, and do undertake, a certain amount of professional legal training each year.

Corporate governance

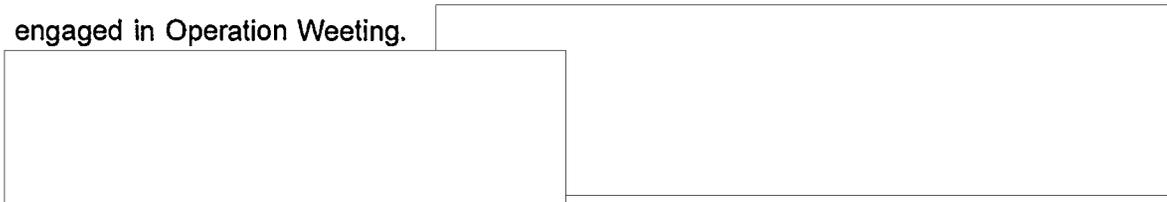
9. In relation to corporate governance, I have seen the witness statements of Paul Dacre, Peter Wright, Kevin Beatty and James Welsh and I have nothing to add. Paul Dacre has explained the steps that have been taken over the last four years to deal with concerns about data protection and to ensure that our editorial staff do not contravene the Bribery Act.

The role of ethics

10. My experience as head of editorial legal services, added to my experience as an external adviser to ANL, is that the Editors place great emphasis on ethical issues when considering what goes in the papers. Quite apart from their desire to comply with the Editors' Code, they are often driven not to publish material (and sometimes to publish material) by ethical considerations. The same goes for news and information gathering: the Editors and their staff recognise that they depend on the trust and support of the public and that trust and support will be jeopardised if they misbehave or overstep the mark of what is acceptable - as the experience of the News of the World amply demonstrates.

Phone hacking and other questionable activities

11. I have never been asked to advise on the legality of phone hacking or computer hacking. I would be very surprised indeed if any of our editorial staff had any doubts about the illegality of such activity.
12. I am unaware of any phone hacking activity having taken place within ANL and no such allegations have been made by any person. Heads of editorial departments and key journalists have denied any knowledge of phone hacking.
13. Nonetheless, in view of the public concern about phone hacking by the News of the World, we decided to search our financial records for any mention of names of companies and individuals such as Glenn Mulcaire who have been linked with allegations of phone hacking. Our accounts department has confirmed that no record exists of any payments having been made to such persons.
14. We have also conducted inquiries into the activities of Raoul Simons. Mr Simons is currently deputy football editor of the Times but between 2001 and 2009 he worked for the Evening Standard – first as a sub-editor on the sports desk, later as a sports writer and finally as sports news editor. On 7 September 2011 Mr Simons was arrested by officers engaged in Operation Weeting.



15. We have undertaken searches of (a) Evening Standard archives for articles written by Raoul Simons [redacted] (b) Evening Standard accounts for references to Glenn Mulcaire and his company; (c) records of Raoul Simons's expenses; and (d) Raoul Simons's emails. Those searches show that Mulcaire was a contact of Raoul Simons, but

they do not reveal any payments to Mulcaire nor any evidence to suggest that Raoul Simons used Mulcaire to obtain information by means of illegal interception of communications.

16. I do not recall ever being asked to advise on the legality of blagging, but I have been asked to advise on the use of subterfuge (which is of course permitted by the Editors' Code where justified in the public interest and the material cannot be obtained by other means). I do not recall the specifics of any such advice.
17. It is our editorial policy not to pay police officers for information. I have advised on whether we should pay public servants, in connection with our policy on payments for information.

The use of private investigators and inquiry agents

18. By the time I joined ANL in 2009 a ban on the use of inquiry agents had already been in force for about two years. I have no knowledge of any journalist at ANL using private investigators or inquiry agents (other than genealogists, company search agents or similar) since I have worked here. It follows that I have had no role in instructing, paying, advising on or otherwise contacting such people. So far as I know, the ban on the use of private investigators and inquiry agents has been fully observed by our journalists.

Operation Motorman

19. As Paul Dacre has explained in his witness statement, we have tried to ascertain the extent to which inquiry agents were used by ANL journalists prior to the 2007 embargo.
20. On 17 August 2011 four representatives of Associated Newspapers travelled to the office of the Information Commissioner in Wilmslow, Cheshire, to examine the records held by the ICO which related to dealings between the Daily Mail, the Mail on Sunday, Steve Whittamore and his company JJ Services. Those representatives were Ted Verity, the deputy Editor of The Mail on Sunday (who formerly held senior editorial positions on the Daily Mail), John Wellington, the Managing Editor of The Mail on Sunday, Julian Darrall, a solicitor who works with me in the legal department of Associated Newspapers, and Edward Young, also a solicitor, who was my predecessor as the senior editorial lawyer at the Daily Mail and the Mail on Sunday until he retired in 2009.
21. The visit to the ICO's office had been arranged following a meeting between representatives of the ICO and the President of the Society of Editors during which I understand the ICO had agreed to make available to any newspaper mentioned in its December 2006 *What Price Privacy Now?* report the evidence that formed the basis for that

newspaper's inclusion in the report. That evidence had never been made available to us previously, the ICO having some five or six years ago taken the decision, based on legal advice, that it was not in the public interest to bring prosecutions against journalists following the decision of the court in 2005 in the case against Mr Whittamore that a conditional discharge was the appropriate penalty for the offences he had committed. The ICO also decided not to disclose the names of the journalists who had dealt with Mr Whittamore to the public or their employers.

22. As Paul Dacre has explained in his witness statement, ANL took the ICO's report and its earlier report, *What Price Privacy?*, very seriously, as the ICO plainly intended we should. Paul Dacre has described in his witness statement the steps that were taken to avoid the risk of any future breaches of the Data Protection Act by our journalists directly or indirectly by the engagement of third party inquiry agents, including Mr Whittamore. ANL did not, however, make any investigation into what might have happened during the period investigated by Operation Motorman partly because the ICO had decided to take no action against it or any of its journalists (or any other journalists) and partly because the information contained in the table at page 9 of *What Price Privacy Now?* was insufficiently specific to permit any meaningful investigation to take place.
23. To the extent that the following account concerns the visit to the ICO on 17 August 2011, it is based on reports to me by the four individuals who made that visit. To the extent it is based on documents, I have considered those documents.
24. Our team was met by David Clancy of the ICO. He explained that the ICO had seized from Mr Whittamore certain documents consisting of (a) coloured journals; (b) invoices; (c) scrappy notes; and (d) a contacts book. It had not seized any computers or information stored in an electronic form.
25. Mr Clancy explained that Mr Whittamore used differently coloured books to distinguish between the clients he was working for. A red book apparently contained notes relating to work for News International. According to Mr Clancy, work done by Mr Whittamore for ANL was noted in a yellow book and, later, in a green book, but these books also contained notes of work done for other publishers. He said he thought the yellow book covered the period from 2000 to early 2002 and the green book the rest of 2002, but he said the books did not themselves actually contain any dates.
26. Initially, Mr Clancy declined to show our team any original documents. He offered a CD containing Excel spreadsheets prepared by the ICO which he said contained all the relevant information, comprising 1,925 enquiries ANL had allegedly asked Mr Whittamore to

make. Mr Young asked if the team might see the original documents from which the spreadsheets had been compiled, but he was told this was unnecessary as the spreadsheets were accurate and comprehensive. Mr Clancy did, however, share with the team a glimpse of the yellow book by showing them one selected page and providing copies of five other pages. He did not show the green book to the team; nor did he provide copies of any pages from that book.

27. Mr Clancy also provided to the team a number of documents which appeared to evidence payments by ANL to JJ Services. Some of these were remittance slips from ANL on its printed stationery. These started in 1998 and went into 1999. Mr Clancy said he did not have any others, but the team queried this in view of the fact that the spreadsheets, which they had by now accessed on an ICO-owned computer, referred to invoices for later years. Mr Clancy accepted that other accounting documentation must be held by the ICO. He left the room and returned later with a selection of invoices on JJ Services printed stationery. All of those invoices described their subject matter as "Confidential enquiries" with no further explanation. The team once again asked for copies but these were refused on the ground that there were too many. I understand from the team that there were indeed a lot of invoices (not necessarily all relating to ANL) and these invoices were kept in boxes in no particular order.
28. On further examination of the spreadsheets, it appeared to the team that there must be yet further invoices. This was because the "invoices" spreadsheet (as distinct from the spreadsheets for the yellow and green books) contained details of the work apparently covered by the invoices (in contrast to the invoices the team had just been shown, which did not describe the work in question and simply referred to unspecified "confidential enquiries"). Mr Clancy therefore agreed to investigate further. Having done so, he returned with a number of typed notes on JJ Services printed stationery which appeared to contain a breakdown of work done for ANL. The details included the work done (e.g. "occupant search"), the address to which the search related and the name of the journalist who had apparently requested the search. In the great majority of cases it is apparent that the information being supplied by Mr Whittamore consisted of addresses and telephone numbers. In a few cases the word "blag" was used together with a description of what the "blag" related to, e.g. "[name of subject individual] work & home blag". Some of these notes had been annotated. Mr Clancy said the annotations had been made by the ICO.
29. In the meantime, Mr Clancy himself noticed that the disk from which our team were reading the spreadsheets appeared to be an earlier, outdated version. He went off and came back

with a later version, which was indeed slightly fuller than the version the team had been using up to that point.

30. While at the ICO's office, the team took a thorough look at the spreadsheets on screen and compared them with the hard copy documentation the ICO had provided to them. It emerged from this exercise that the spreadsheets were not comprehensive as they did not include some information contained in the pages of the yellow book we had been provided with. The team also noted that while the spreadsheet for the yellow book contained a column for the "subject" of the enquiry, the spreadsheet for the green book contained no equivalent column. Mr Clancy explained that this was because the green book did not contain that information.
31. In an effort to discover whether the spreadsheets contained anything to suggest that Mr Whittamore had accessed information illegally while purportedly acting on behalf of ANL, the team asked Mr Clancy to "interrogate" the database by searching for certain terms. Those terms were "CRO", "CRB", "PNC", "medical", "DWP", "social security", "hacking" and "blag". The searches produced no results for any of these terms with the exception of "blag" which generated five results in the yellow book spreadsheet and seven results in the green book spreadsheet. The team made a note of those entries, which contained some or all of the following information: (a) the name of the publication (e.g. Evening Standard) or section (e.g. Femail) which had purportedly requested the information; (b) the names of the journalist who had purportedly requested the information (sometimes there were two journalists); (c) a description of the "blag" (e.g. "Neighbour blag"); and (d) further identifying details such as (apparently) the person who was the subject of the story in respect of which the enquiry was being made.
32. Following our visit to the ICO, we sent a letter to Mr Clancy confirming that we had received certain documents from them but had not been provided with others we had requested. We then received by recorded delivery from the ICO a further CD. This CD contained a further version of the spreadsheets, but no explanation was provided of why a further version existed when we had been assured on our visit that the spreadsheets we were then shown faithfully recorded the underlying material seized from Mr Whittamore's premises (though it turned out on that occasion, as noted in paragraph 26 above, that the first version we were given was also unreliable).
33. On receipt of the third CD, Julian Darrall undertook a search for the word "blag" which generated 17 results for the yellow book spreadsheet and 16 results for the green book spreadsheet. This compared with the previous results of five entries for the yellow book

spreadsheet and seven entries for the green book spreadsheet. Even more surprisingly, Julian discovered that the five results for the yellow book spreadsheet were different from the five results previously generated. When Mr Darrall searched the new disk for data concerning the five "blags" as those "blags" had been described in the yellow book spreadsheet examined on 17 August, he discovered that according to the data in the new disk:

- (i) the publication or section was different;
- (ii) the journalist was different; and
- (iii) miscellaneous other bits of information that had been present in the earlier results were no longer there while some data that had not previously featured in the earlier results now formed part of the new results.

34. To the extent that ANL journalists who have been named in any of the documents we have been shown by the ICO are still employed by ANL, I have arranged for Mr Young to meet them to see if they are in a position to confirm whether or not they instructed Mr Whittamore to "blag" any information from third parties and, if so, what the nature of the "blag" was, what information they were seeking to obtain and what the purpose of getting the information was. At the time of preparing this witness statement, that process is ongoing, but the evidence so far strongly suggests that the reference to "blags" in Mr Whittamore's notes should be treated with considerable caution. One of the journalists to whom Mr Young has spoken and who is said to have requested a "blag" has told him that she only ever used Mr Whittamore to obtain addresses and telephone numbers; that she never asked him to use subterfuge and never expected him to do so; that he never suggested to her that he had used such methods or intended to do so; and that she remembers that he used to press her to buy other pieces of information from him which he had already obtained for other clients. Similar accounts have been provided to Mr Young by other journalists.

35. On the basis of our current state of knowledge, I can summarise the position regarding ANL's dealings with Mr Whittamore as follows:

35.1 Until August 2011 ANL had no access to the data that formed the basis of the ICO's statement that journalists working for ANL were among those journalists "driving the illegal trade in confidential personal information" (*What Price Privacy Now?*, page 8).

- 35.2 The data that has now been supplied by the ICO has been limited to spreadsheets prepared by the ICO which purport to show what information is contained in certain documents. We have no way of assessing the accuracy and reliability of those spreadsheets without access to the underlying documents. With some very small exceptions, we have been denied that access.
- 35.3 On the basis of the documents we have seen, we have serious reservations about the reliability of the spreadsheets. For one thing, we have been supplied with three different versions of the spreadsheets, on each occasion being informed by the ICO that the version in question is accurate and up-to-date. For another, we have noted that the spreadsheets do not accurately reflect even the limited number of underlying documents we have been permitted to see.
- 35.4 It would appear from the documents we have seen, and from our own interviews with such of our journalists as once had dealings with Mr Whittamore, that ANL journalists used Mr Whittamore primarily to obtain addresses and telephone numbers that he could obtain more quickly and reliably than they were able to.
- 35.5 We have seen no evidence to suggest that any of the information Mr Whittamore may have obtained for our journalists was illegally obtained or that any of our journalists ever asked Mr Whittamore to do anything illegal or were aware that he might be obtaining information for them in an illegal manner. (The ICO has itself said it had no evidence that any journalist had ever asked Mr Whittamore to use illegal methods to obtain information for them.)
- 35.6 The Mail on Sunday has not used Mr Whittamore since 2005; the Daily Mail has not used him since early 2007; and all ANL journalists are now banned from using inquiry agents.
- 35.7 We have been unable to verify the figures for ANL titles in the table published in *What Price Privacy Now?*. Even if the figures are accurate, it seems to me that they are likely mainly to reflect inquiries that did not involve illegal activity (or, if illegal activity was involved, such activity was not the result of any request by ANL journalists).

Signed

[Redacted signature box]

Dated: 25/10/11