

The Leveson Inquiry

Response by Associated Newspapers to the Inquiry's request for further information about three particular matters

1. Following Mr Dacre's appearances before the Inquiry on 6 and 9 of February 2012, the Inquiry has requested written responses on the following matters:

1.1 The submission provided by Neil Morrissey included at tab 34 of the witness bundle given to Mr Dacre by the Inquiry in advance of his first appearance;



1.3 Certain further questions the Inquiry has in relation to an article (a story entitled "*Cancer danger of that night-time trip to the toilet*") published in the Daily Mail on 12 April 2010) on which Mr Dacre was questioned during his first appearance.

2. These matters are dealt with in turn below.

(A) Neil Morrissey

3. The actor Neil Morrissey has provided to the Inquiry a written submission on his libel complaint against Associated Newspapers over an article in the Daily Mail on 1 March 2011. The submission is a lengthy document with various attachments. It was provided to Associated Newspapers the week before Paul Dacre gave evidence. Mr Dacre was asked a number of questions about the submission when he gave oral evidence on 6 February 2012. As he was largely unacquainted with the details of the case, he said Associated would provide in writing answers to such of the questions as he was unable to deal with orally. Before we supply the answers to those specific questions, we offer below a summary of the case in an attempt to correct and balance the tendentious version of events provided by Mr Morrissey in his own submission.

Summary of case

4. The actor Neil Morrissey complained about an article on page 19 of the Daily Mail of 1 March 2011. The article said he had been banned from a bar near his French home because his rowdy and drunken behaviour had alienated locals.
5. Through his solicitors NM complained about the article both before and after it was published.
6. ANL responded to NM's solicitors' letter of complaint of 23 March 2011 on 21 April 2011. The complaint was rejected on the grounds the article was true and/or it portrayed him in a sympathetic light and/or NM was well-known as someone who liked a drink.
7. Proceedings for libel were issued on 21 June 2011. On 5 August 2011, after it had become apparent that it would be impossible to stand the story up, ANL made an unqualified offer of amends pursuant to s 2 of the Defamation Act 1996. That offer was initially rejected, so ANL filed a defence on 12 August. Later, on 31 August, having put ANL to the unnecessary expense of putting in a defence, NM decided to accept the offer of amends, thereby bringing the proceedings to a close subject to agreement on or determination of a suitable apology and damages.
8. It proved impossible to reach agreement on the terms of a published apology as NM's demands were unrealistic. He originally requested a 160-word apology bearing the headline "Mail behaving badly" with a sub-headline "Apology to TV star Neil Morrissey for 'binge-drinking' ban story". Negotiations on wording took place over six weeks. Eventually, the Mail published a unilateral apology on page 2 in its clarifications and corrections column.
9. On 8 September NM offered to accept damages of £45,000. On 21 September 2011 ANL counter-offered £10,000. On 29 September NM reduced his demand to £30,000. On 1 November ANL increased its offer to £15,000 and that sum was accepted by NM on 2 December.
10. In the meantime, on 2 November 2011, NM applied to the court for permission to make a unilateral statement in open court. The court refused the application on the ground it was premature and ordered NM to pay ANL's costs of successfully opposing the application.

11. Following settlement, NM sought permission to make a unilateral statement in open court. ANL did not oppose that application. Following the reading of the statement in open court, ANL published a short report of the outcome of the proceedings – so the Mail in effect recorded its apology to NM on two separate occasions.

Summary of Neil Morrissey's complaints to the Inquiry

12. NM's complaints against the Mail (as extrapolated from his submission) are as follows:
 - (a) The Mail published a story that was untrue.
 - (b) It ignored his warnings before publication that the story was untrue and failed to include his denial.
 - (c) The story was "highly damaging, extremely insulting and hurtful".
 - (d) The story was of no public interest.
 - (e) The position of the apology bore no relation to the prominence of the offending article and detracted from NM's vindication by claiming that the Mail had had grounds to believe the article was true. NM complains that the clarifications and corrections column is no place for apologies.
13. As well as complaining specifically about the Mail's behaviour towards him, NM makes a number of complaints about features of the law he considers unfair based on his experience in this case:
 - (f) The offer of amends regime gives defendants a "very powerful bargaining tool" against claimants.
 - (g) The Part 36 rule, when combined with the offer of amends regime, gives rich newspaper defendants an unfair ability to buy their way out of libel claims cheaply.
 - (h) Abolition of the existing CFA regime would cause injustice to victims of the press and the press have shown "no convincing, evidenced case that the existing CFA structure has in fact been abused by claimants or their lawyers."

ANL's response to NM's complaints

14. Using the numbering above:
 - (a) *The Mail published a story that was untrue.*

Correct. The Mail accepted this following an investigation into the facts. Once it had established that the story did not stand up, it made an offer of amends which involved a published correction and apology, payment of damages (to be assessed by the court if not agreed) and costs which are still to be assessed.

15. (b) *The Mail ignored his warnings before publication that the story was untrue and failed to include his denial.*

Incorrect. There was a dispute about what NM's representatives told the Mail before publication. He originally denied having ever visited the bar, which he subsequently accepted was untrue. The Mail did not include his denial because at the time it did not find such denial as he had made to be credible.

16. The story was based on sources in the community who were personally interviewed by an experienced journalist on the ground with further checks being made by a journalist based in London.

17. (c) *The story was "highly damaging, extremely insulting and hurtful".*

The Mail felt that these claims were exaggerated. NM has a reputation for heavy drinking. In November 2010 the Sun published an article about NM getting drunk on a BA flight from Australia and being warned about his rowdy behaviour. He did not complain about this article, which is still online.

18. (d) *The story was of no public interest.*

NM is a well-known TV actor best known for playing a laddish sitcom character who drinks a lot. He is familiar to people of all ages. He used to own a pub and has given interviews about his love of drinking. The public is interested in stories about NM, including his drinking, and the Mail is entitled to report his activities whether they suit his public image or not, including when they might reflect poorly on him. As a celebrity appearing in public who markets himself to children and adults, he carries a weight of public expectation about his personal behaviour. The story also concerned cultural differences between expats, including NM, and locals in a heavily Anglicised part of rural France.

19. (e) *Position of apology*

The article complained of was on page 19. The apology was on page 2 in a column dedicated to corrections.

20. (f) *The offer of amends regime*

This is a statutory regime introduced to stop libel claimants holding defendants over a barrel when they are willing to accept they have made a mistake. It has been recognised by the Court of Appeal as a sensible and constructive measure that enables parties to settle libel cases more effectively than used to be the case.

21. (g) *Part 36 offers*

It is not only defendants who can make Part 36 offers: claimants can make them too. NM himself made a Part 36 offer in this case – at twice the level of damages he later agreed to accept (having previously demanded three times that amount).

22. (h) *CFAs*

This case is a good example of the abuse of CFAs. NM's lawyers (Stitt & Co and Harvey Starte) are claiming costs of £130,000 which includes success fees of £34,000 for his solicitors and £17,000 for his barrister (excluding VAT). The sum of £130,000 is a remarkable level of costs in a case in which the defendant admitted liability within a few weeks of proceedings being issued, but is typical of the excessive costs charged by CFA-assisted lawyers in cases against newspapers. A further contemporaneous example is a CFA-assisted claimant who claimed a total of £230,000 against three national newspapers and eventually conceded at the doors of the Senior Courts Costs Office on 2 February 2012 that her lawyers were only entitled to some 55% of those costs. (ANL will be happy to provide further information about this case if required.)

23. In his submission NM posed the following specific questions:

24. *Why ask NM for comment if you're going to ignore him?*

Answer: His answers were not "ignored". They were taken into account in preparing the story. The subject of a story cannot expect everything he says to be included, particularly when – as here – he had provided false information (untrue statements that (a) he had never visited the bar and (b) had an unpaid bar bill). Initially NM's agent said the story was "fucking shit"; later she conceded he had visited the bar three times and, as the proprietors told the Mail's reporter, had once left without paying for his drinks. His representative declined to provide any on-the-record comment.

25. *How were Mail readers served by the "suppression" of the response?*

Answer: This is a variation of Q1 above.

26. *How did the suppression of NM's response comply with clause 2 of the Code (fair opportunity to reply to inaccuracies)?*

Answer: NM's lawyers have misunderstood clause 2 – it concerns fair opportunity to reply following publication. After the story was published, NM put his lawyers on the case and the case was therefore dealt with by the legal department.

How did "ignoring" his response comply with clause 1 (take care not to publish inaccurate information)?

27. *How did "ignoring" his response comply with clause 1 (take care not to publish inaccurate information)?*

Answer: This is a variation of Q1 above.

28. *Why did the Mail not publish an immediate apology when (a) it had had a month to consider the complaint and (b) did not maintain it was true he had been banned from the bar for drunken behaviour?*

Answer: This appears to misunderstand the nature of ANL's response to the complaint. The complaint was rejected on 21 April 2011 on the grounds the article was true and/or it portrayed him in a sympathetic light and/or NM was well-known as someone who liked a drink.

29. *How could Mail Online justify continuing publication of the "inaccurate and misleading" article?*

Answer: The article was kept online for as long as it was believed to be fair and accurate. When the Mail accepted that it could not stand up its allegations, the article was removed from Mail Online.

30. When Mr Dacre appeared before the Inquiry on 6 February 2012, Mr Jay asked the following questions to which Mr Dacre said ANL would respond in writing as he was personally unfamiliar with the details of the case:

31. *Do you accept that Mr Morrissey's denial of the allegation was not included in the article?*

Answer: NM did not deny the allegation. His PR advisers made a number of statements which they later retracted or amended but the allegation was never denied and they

expressly declined to provide an on-the-record denial or other response or comment for publication. NM's solicitors said the day before publication that NM "had no means of knowing whether the allegation [that he had been banned from the bar] is true". There was no denial.

NM's submission conveys the impression that the piece contained no balancing material. This is incorrect. The article contained a number of statements in support of NM, for example a statement by the bar owner that he would be welcomed back: 'But of course – he can be very charming'.

32. *Was it right that the letter before action [dated 23 March 2011] made it clear that if a retraction and apology were given promptly, NM would forgo any claim to damages?*

Answer: Yes, although he did seek recovery of his legal costs. The offer to forgo damages was withdrawn six days later on 29 March (before ANL had responded to the letter of 23 March).

33. *Is it typical that the letter should have gone unanswered for a month?*

Answer: Mr Dacre said in his evidence that it was untypical (as it is) but he would check if that was indeed the case here. It is true that no substantive response to NM's solicitors' letters of 23 and 29 March was sent until 21 April. In their letter of 21 April the legal department apologised for the delay. As the letter explained, the delay had arisen while the reporter had gone back to the area to question his sources not just about what they had told him originally, but what NM's solicitors told ANL in their letter of 29 March the bar owners had told those solicitors (which was inconsistent with what they had told the reporter).

34. *Was it fair to say the article had portrayed NM in a sympathetic light?*

That statement was made in ANL's initial response to the complaint and should be seen in context. It was one of a number of points made in defence of the article (at a time the newspaper believed it could show the article was true). There were elements of the article that were sympathetic to NM: a drop-quote noted 'He can be very charming'; he was described as the 'fall guy'; and the article quoted an observer saying the controversy had 'far more to do with the petty attitude of some French to the British than anything Neil had done'.

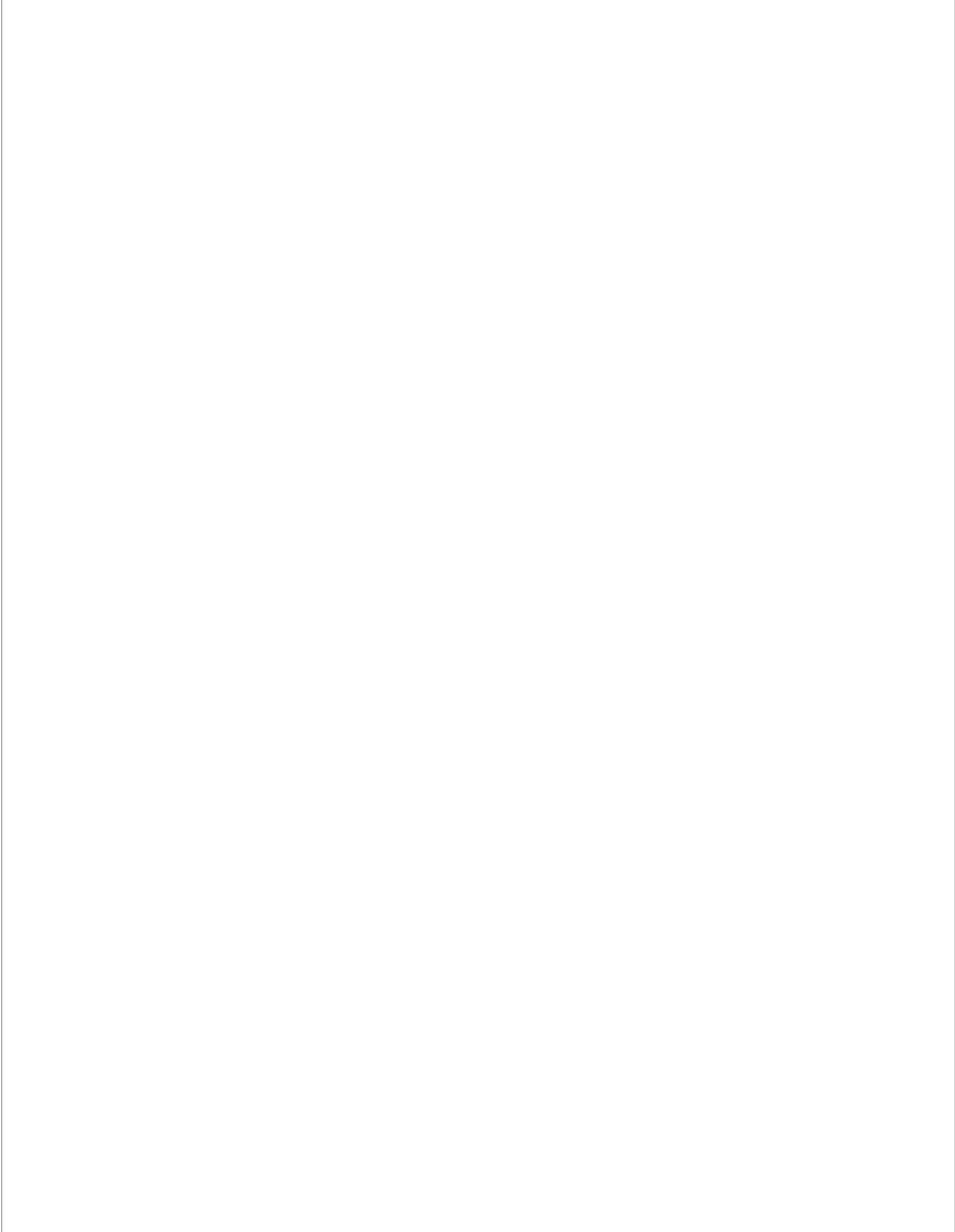
35. *Is it right that the letter responding to the complaint did not suggest the allegations of rowdy behaviour or being banned from the bar were true?*

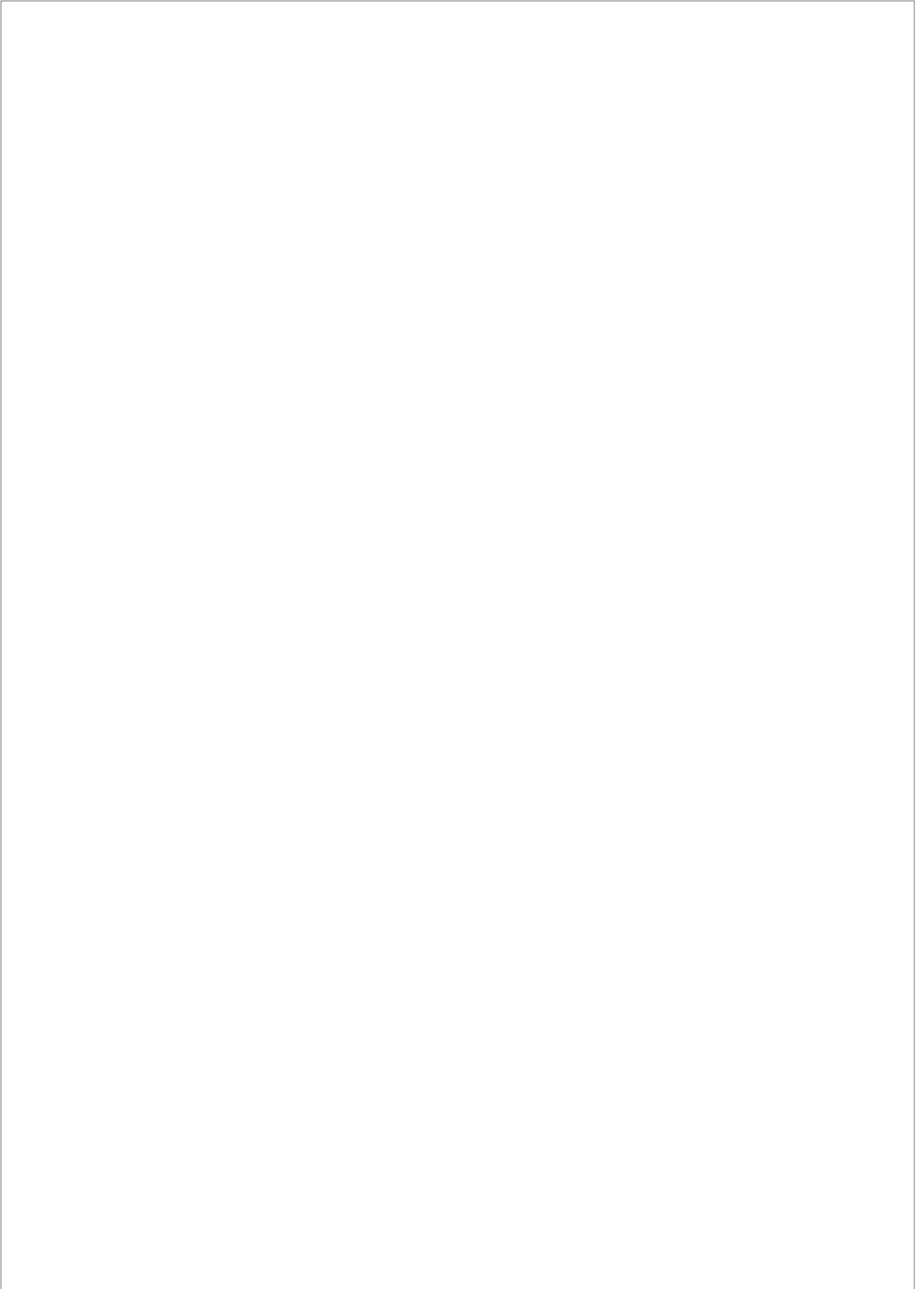
No. The implication of the letter was that the Mail stood by its story.

36. *Is it right that the apology was published without reference to NM?*

No. The wording of a proposed apology was put to NM for agreement. He declined to agree it, proposing instead that an unfeasibly long apology should be published. In order to avoid being blamed later for not having apologised for a story after making an offer of amends, the Mail therefore decided to publish an apology unilaterally. NM's solicitors were notified of this the day before publication. NM was not consulted about or informed of the position. The apology was put into the page 2 clarifications and corrections section, which appeared for the first time on the day the apology was published. That section has now become an established feature of the paper.

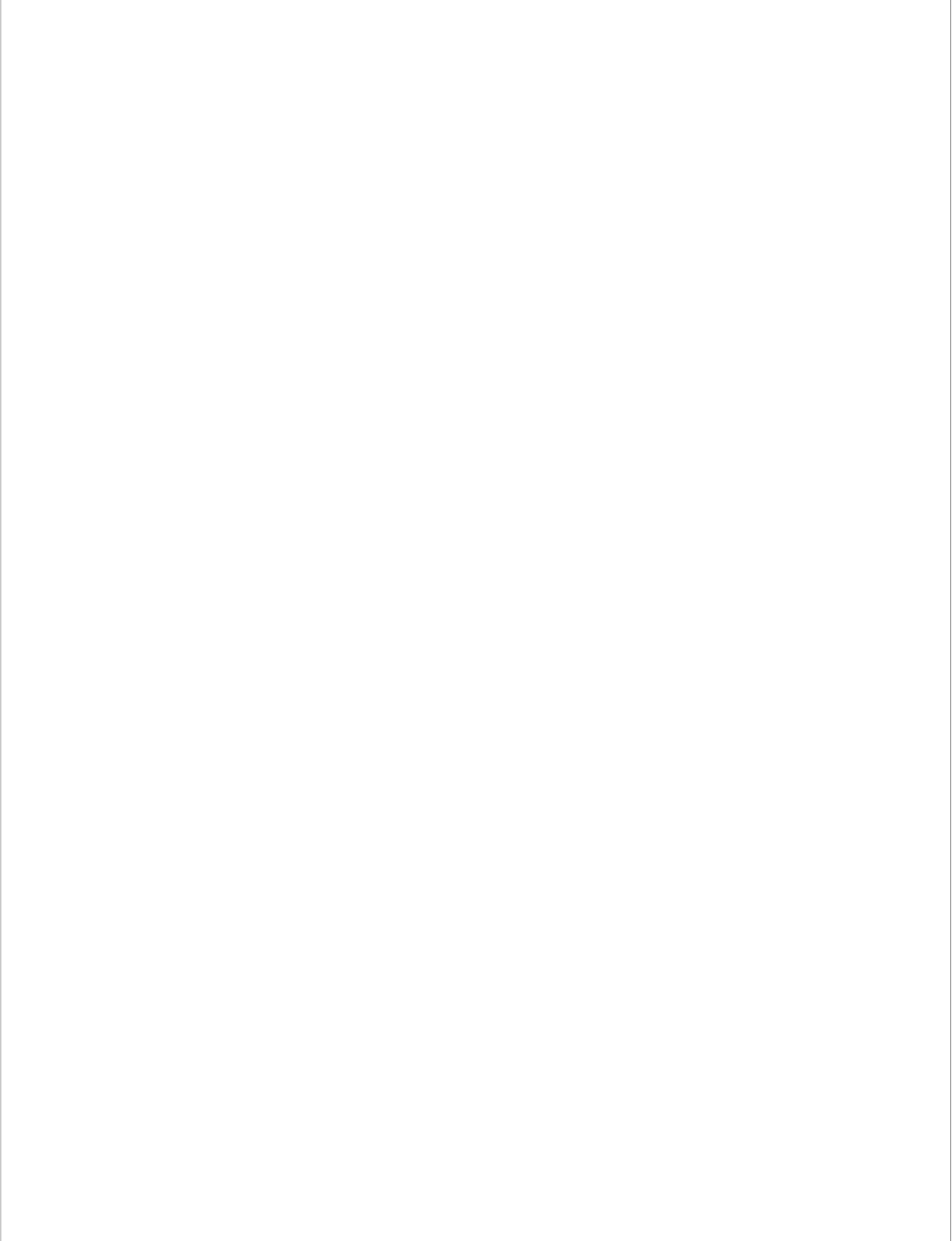














(C) Article dated 12 April 2010

66. ANL has been asked to deal with some further questions relating to a story entitled "*Cancer danger of that night-time trip to the toilet*" published in the Daily Mail on 12 April 2010. Paul Dacre was asked a number of questions about this article when he appeared before the Inquiry. On 16 February 2012 the Inquiry sent an email with some follow up questions on the matter:

"The Inquiry has been giving further consideration to Mr Dacre's evidence on the 'Cancer Danger of that Night-Time trip to the Toilet' piece... During the course of his

evidence Mr Dacre quoted from a Press release from the University of Haifa which stated:-

"Just one pulse of artificial light at night disrupts circadian cell division... damage to cell division is characteristic of cancer."

This was in apparent support of his assertion that the piece in the Daily Mail was justified by the available evidence.

However, what Mr Dacre did not make clear, as does the full terms of the Press release, that the 'pulse' referred to lasted one full hour – far longer than any nocturnal trip to the lavatory might take. The full terms of the Press release (see <http://newmedia-eng.haifa.ac.il/?p=2875>) were not available to Counsel to the Inquiry in advance of Mr Dacre's questioning, as would have been helpful.

In these circumstances, the Inquiry requests that Mr Dacre provide a statement, verified by a statement of truth, which answers the following questions:-

- 1. Is it accepted that the mice in the Haifa study were subjected to pulses of light which lasted one hour?*
- 2. If not, why not?*
- 3. If so, why was the fact that the press release expressly stated this was not drawn to the attention of the Inquiry when Mr Dacre gave his evidence on 6th February?*

There are other aspects of the Daily Mail piece which might well be considered to be 'bad science', e.g. that the mice in the Haifa study did not in fact develop cancer, and that one cannot extrapolate from one animal study to risk to human beings, but these are matters which do not require further exploration through the evidence."

67. Dealing with the Inquiry's points in turn:

68. *Did the press release make it clear that the "pulse" lasted a full hour?*

No. The relevant parts of the press release state that:

"Just one 'pulse' of artificial light at night disrupts circadian cell division, reveals a new study... Damage to cell division is characteristic of cancer, and it is therefore important to understand the causes of this damage... The current research was carried out by placing lab mice into an environment where they were exposed to

light for 12 hours and dark for 12 hours. During the dark hours, one group of mice was given artificial light for one hour. Changes in the expression of genes in the rodents' brain cells were then examined... in the present research [Dr Ben-Shlomo] revealed that the mode of cell division is also harmed and that the transcription of a large number of genes is affected." (emphasis added)

69. By definition, a pulse of light means a very short burst or even a flash of light much shorter than an hour.³ Given this, it is entirely reasonable to take the reference to a "pulse of light" in the first sentence on face value, as a conclusion reached by the researchers, which they have extrapolated from the results of their experiment, rather than meaning a minimum period of at least one hour.
70. Such a reading accords with the common practice in scientific studies of reaching hypothetical conclusions on the basis of observed evidence. In other words, given the wording used, it would be wholly reasonable to understand the press release to be saying: "a study has found that the mode of cell division in rodents' brain cells was harmed when they were exposed to artificial light for one hour each night. On this basis, scientists think it possible that just one short pulse of light at night may be enough to disrupt cell division."
71. The inquiry is wrong to say it is "clear" that the pulse referred to in the first sentence lasted one hour. In fact, the wording used makes this far from clear. If the authors of the press release had wished to state that what they were referring to in the first sentence was actually an hour long exposure to light, they should not have used the term pulse.
72. That a reasonable interpretation of the words "Just one pulse of artificial light" is a short burst or flash is supported by the fact that (i) the University of Haifa itself has published an article on its website reporting the outcome of the study headed "One flash of light: Artificial light at night disrupts cell division"⁴ – no-one would understand the word "flash" here to mean a constant hour of light as the Inquiry contends; and (ii) The comments made by Dr Ben-Schlomo in a telephone interview with the news agency involved, as set out in part 5 below, where amongst other things she said "*We believe that any turning on of artificial light in the night has an impact on the body clock*".
73. *Was Mr Dacre being unhelpful by failing to provide the press release to Counsel to the Inquiry before he gave evidence on 6 February 2012?*

³ For example the Concise Oxford English Dictionary defines a pulse as "a single vibration or short burst of sound, electric current, light, or other wave."

⁴ <http://newmedia-eng.haifa.ac.il/?p=2911>

No. Mr Dacre was only given notice that he was to be referred to this matter at all on the evening of Thursday 2 February 2012, i.e. the penultimate working day prior to his appearance at the Inquiry. It was one of a significant number of articles, blogs, youtube clips, witness statements and other documents of which Mr Dacre was only given notice that evening. Furthermore, Counsel to the Inquiry only provided a copy of the scientific study itself to ANL's counsel by an email sent at 4.30pm on Saturday, 4 February 2012.

74. The Inquiry team has made it clear it will not accept documents after 5pm on the working day before a witness appears. In this case, therefore, if Mr Dacre was expected to play by the Inquiry's rules, he would have had to provide the press release no later than 24 hours after he had been told the article would be referred to (i.e. by 5 pm on Friday 3 February) when he had not even been supplied with the scientific paper until the following afternoon (which was of course a Saturday).
75. When Mr Jay sent the scientific paper to ANL's counsel on Saturday afternoon, he provided the web address for a press release published by the University of Leicester.⁵ At the bottom of the University of Leicester's press release there was a clear reference and hyper-link to the press release he now criticised Mr Dacre for not telling him about.
76. *Does the Mail accept that the mice in the Haifa study were subjected to pulses of light which lasted one hour? If not, why not?*

It is accepted that during the experiment the mice in the Haifa study were given artificial light for an hour (as is stated in the Mail article). However, for the reasons given in the answer to question 1 above, it is not accepted that the "pulse of light" mentioned in the first sentence of the press release was to be read as a reference to the hour of light described in the experiment. It could just as well have been understood to be an inductive conclusion based on the results of the experiment; particularly given the reference to a "flash" of light on the University of Haifa's own website (<http://newmedia-eng.haifa.ac.il/?p=2911>) and Dr Ben-Schlomo's subsequent comments (set out below).

77. *If so, why was the fact that the press release expressly stated that the mice in the Haifa study were subjected to pulses of light which lasted one hour not drawn to the attention of the Inquiry when Mr Dacre gave his evidence on 6 February 2012?*
78. For the same reasons as those articulated in the response to questions 1 and 3 above.

⁵ <http://www2.le.ac.uk/news/blog/2010-archive/april-2010/turning-on-the-light-to-go-to-the-toilet-does-not-give-you-cancer>

79. 'Bad science'?

The Inquiry has now accused the Mail of 'bad science' but asked it to say nothing further as 'these are matters which do not require further exploration through the evidence'. ANL would nonetheless like to make some brief points as follows.

80. First, at no point does the Daily Mail article say that mice in the Haifa study developed cancer. All it says is that "*During the trial, a group of mice were exposed to a light for one hour. When compared with mice who had been kept in the dark, changes were found in cells in the brain responsible for the circadian clock which controls body function*". This accords entirely with what is stated in the study.

81. Second, the Inquiry's statement that one cannot extrapolate from one animal study a risk to human beings would seem to be contradicted by what is said in the Haifa study's report. For example, the report ends by stating:

"Our results suggest that chrono-disruption by light alters the expression of genes important for cancer growth and tumor progression, so enhancing our understanding of this processes can illuminate the link between the regulation circadian rhythms and cell cycle homeostasis. In addition, these results suggest possible avenues for chronotherapeutic approaches to cancer prevention and management".

In this way, the researchers in this case appear to be extrapolating, from their study on mice, possible insights into cancer in humans; indeed that was presumably the whole point of the experiment. If the Inquiry is in a position to establish that such an extrapolation is unwarranted, it is a matter to take up with the researchers concerned. Equally, if having studied the original research Counsel to the Inquiry is of the view that the original research is not fairly and accurately summarised in the University of Haifa's press release, it is a matter to take up with the author of the press release.

82. Finally, the whole thrust of Tabloid Watch's complaint about this article and its supposed 'bad science' is that nowhere in the scientific paper does it mention the trips to the toilet. The statement about trips to the toilet was based on a subsequent quote that Dr Ben-Schlomo gave to the news agency (Metro News and Features Agency) during a telephone interview. This quote is cited in the news agency's copy on which the Daily Mail article was based and states:

"Dr Rachel Ben-Schlomo of the University of Haifa, who co-wrote the study in the journal Cancer Genetics and Cytogenetics, said people waking in the night would be best advised not to turn on the light.

"We believe that any turning on of artificial light in the night has an impact on the body clock. It's a very sensitive mechanism which can be quite easily influenced by changes.

"So if you want to get up to go to the toilet for instance you should avoid reaching for the light switch. There are some plug in lights that – that just glow – that are safe that you could use as an alternative. These latest findings are preliminary research and we are now looking into this area in more detail." (emphasis added)

83. This quote was published in full in the Daily Mail article.
84. Regrettably, the article in the Daily Mail was subbed so that in the published version it looked like this line was actually in the original research rather than a supplemental quote from the researcher. However, the news agency has assured ANL that they did obtain the quote referring to night time trips to the toilet from the researcher herself. As a result, it would be harsh to criticise ANL for including the quote in the article and summarising her findings to be a claim that *"Simply turning on a light at night for a few seconds to go to the toilet can cause changes that might lead to cancer. ...when a light is turned on at night, it triggers an 'over-expression' of cells linked to the formation of cancer."*

RPC

27 February 2012