

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Mr Harding, over the short 4 adjournment, I've been thinking a little bit about your 5 concern, which you identify as a political concern 6 rather than legal concern, about amending an Act of 7 Parliament. That caused me to go back to legislation 8 with which I'm sure you're very familiar, the 9 Constitution Reform Act, which enshrines in 10 paragraph 3(1) the following: 11 "The Lord Chancellor and other ministers of the 12 Crown with responsibility for matters relating to the 13 judiciary, or otherwise to the administration of 14 justice, must uphold the continued independence of the 15 judiciary." 16 That's what the Act says, and I was thinking about 17 whether your point could not be met by seeking to 18 enshrine a series of potential principles -- and I'm not 19 seeking to define them -- in such a way that you 20 couldn't possibly tinker without running four square 21 into the over-arching principles to which I've just 22 referred. 23 I don't ask you necessarily to respond now, because 24 I've just put it to you. I don't require that you 25 respond --</p> <p style="text-align: center;">Page 1</p>	<p>1 some extent, a failure of the system, however speedy, 2 that it took Mr Hislop some months to overturn an 3 interim injunction that was granted after the original 4 injunction had been refused but pending appeal. That's 5 a problem. But I can't simply promote privacy or press 6 interest litigation above all the other types of action 7 that are being pursued in court because everybody else 8 would say, "Well, me too", and legitimately. That's the 9 pressure that we're all under. 10 A. Thank you. 11 LORD JUSTICE LEVESON: All right. I don't ask you to 12 respond further to that at this stage. 13 MR JAY: Just one final question, Mr Harding, which 14 I omitted to pose before lunch. 15 You referred to meetings that you've had with 16 Mr Cameron. Are those meetings, as it were, private 17 meetings or do others go with you? 18 A. It depends. Usually there are other people there. I'd 19 go along with our political editor, for example. 20 Q. Have you ever been along with Mr James Murdoch or 21 Mr Rupert Murdoch to any of those meetings? 22 A. No. There was a social function -- News Corporation has 23 a party in the summer and so I've attended that, and all 24 of those men were there, but when I've gone for meetings 25 at Downing Street or with the leader of the opposition</p> <p style="text-align: center;">Page 3</p>
<p>1 A. In full? 2 LORD JUSTICE LEVESON: -- with your megaphone, but if you do 3 have a view about that sort of approach or anything 4 else, I would be interested to hear it. I am entirely 5 open to sensible suggestions as to the way forward in 6 a way that most certainly does protect the independence 7 of the press and the freedom of speech, subject to law. 8 A. And what you're essentially suggesting there is that 9 First Amendment principles, or those kind of ideas, are 10 enshrined -- would be set out in any such legislation? 11 LORD JUSTICE LEVESON: Yes. I'm not suggesting a First 12 Amendment -- I think that would be a little bit 13 presumptuous of me -- but I am suggesting a mechanism 14 whereby it would not be a simple matter of political 15 expedience to put in a "not" or change a subprovision of 16 an Act, which is what concerned you. 17 Now, what I think of the concern is another matter, 18 but I'm anxious to address it, because if you're 19 thinking it, other people will be thinking it as well, 20 and I am anxious to create a system that actually does 21 what it says on the tin: encourages all that is good 22 about the press, discouraging all that you recognise 23 ought to be discouraged, and also provides a mechanism, 24 perhaps, for the very much speedier resolution of those 25 arguments that require timeous solutions. It is, to</p> <p style="text-align: center;">Page 2</p>	<p>1 or with the chancellor, it's only ever either on my own 2 or with other journalists and pursuing, as I said, 3 journalistic enquiries. 4 MR JAY: Thank you very much, Mr Harding. Those are all the 5 questions I have for you. 6 LORD JUSTICE LEVESON: Thank you very much indeed. 7 A. Thank you. 8 MR JAY: The next witness is Mr John Witherow, please. 9 MR JOHN MOORE WITHEROW (affirmed) 10 Questions by Mr Jay 11 MR JAY: Sit down and make yourself comfortable. Your full 12 name for us, please? 13 A. Is John Moore Witherow. 14 Q. Thank you very much. Under tab 2 of the second file, 15 you'll find, I think, your main witness statement dated 16 13 October 2011, signed by you and with a statement of 17 truth; is that correct? 18 A. It is. 19 Q. You've also provided us with a second witness statement 20 dealing with a discrete issue in relation to the former 21 Information Commissioner's evidence. It's under tab 3 22 and dated and signed by you on 29 November; is that 23 right? 24 A. It is. 25 Q. You are, of course, and have been since 1995, the editor</p> <p style="text-align: center;">Page 4</p>

<p>1 of the Sunday Times, so you're one of the 2 longest-serving editors in Fleet Street; is that so? 3 A. That's correct. 4 Q. I think it's only Mr Dacre who might have served longer, 5 but in terms of your journalistic career, you went first 6 to the Times in 1980 and then to the Sunday Times in 7 1983. Is that so? 8 A. That's correct. 9 Q. You tell us that you've covered stories such as the 10 Falklands war and the Iran/Iraq war. I think on both 11 occasions you went into the war zone? 12 A. Yes. 13 Q. I'm going to ask you questions first of all about your 14 first statement, if I may, alighting on a series of 15 discrete points. The rest of your statement we'll take 16 as read. 17 Paragraph 6, please, at page 7832. You say your 18 associate editor is someone who you've appointed as 19 ombudsman to take an independent view in relation to 20 complaints, and you explain what his role is: to 21 interview the writer or writers and subeditors and come 22 to a dispassionate conclusion. How is it that the 23 ombudsman can take an independent view, Mr Wit? 24 A. Technically he's quasi-independent because he works for 25 me, but he's a very senior figure on the newspaper.</p> <p style="text-align: center;">Page 5</p>	<p>1 others. Is it your practice to require more than one 2 source or will you proceed on the basis of one source 3 alone? 4 A. Generally we try and get more than one source on 5 a story. I think that's just good journalistic 6 practice. Occasionally you will only have one source, 7 and in the end you have to judge: where is that source 8 positioned? What access to the information do they 9 have? How good is it? What is their motive for telling 10 you things? And you have to weigh it up. And we will 11 publish stories on the back of one source if we judge it 12 to be reliable, but as I say, generally we will try and 13 get more. Sometimes we'll need more than two or three 14 sources, and we've even held out a story where we have 15 five sources because we're still not content that we 16 have enough, because we think it's a contentious grey 17 area where you need multiple sources. 18 Q. Yes. As you say, it depends to some extent on the 19 nature of the story and also the potential for 20 litigation, because if you look at the examples you've 21 given us under paragraph 17 -- on some of these there 22 may be a litigation risk, others there may not be, but 23 of course, notwithstanding that, you'd always wish to be 24 punctilious and careful. 25 The first story you refer to, "Gordon Brown wants Ed</p> <p style="text-align: center;">Page 7</p>
<p>1 He's effectively number three, and he has huge 2 experience. He was a former foreign editor. So we use 3 that experience for him to judge, where there is 4 a complaint, how it should be dealt with. He does take 5 a robust, independent view. 6 Q. Does he have a role before stories are printed? 7 A. Yes. Sometimes we might consult him in advance and say, 8 "We're thinking of doing this. What's your view on it, 9 with your experience?" 10 Q. Of course, with any Sunday newspaper, you tend to have 11 more time than a daily paper, self-evidently; is that 12 right? Things may reach a fever pitch on Saturdays on 13 occasion, I imagine. 14 A. Indeed. 15 Q. Can I ask you about paragraph 7, journalists being 16 written to and receiving a warning if they make 17 professional mistakes. About how often has that 18 happened in the last 16 or 17 years whilst you have been 19 editor? 20 A. That journalists have been written to? 21 Q. Yes. 22 A. I can't give you an exact figure. I would imagine maybe 23 fewer than ten times. 24 Q. Sourcing now, paragraphs 12 and 13. You explain your 25 practice, which chimes with what we've heard from</p> <p style="text-align: center;">Page 6</p>	<p>1 Balls as chancellor", 31 May 2009, is this right, you 2 proceeded on this story on the basis of only one 3 reliable source because it was not possible to 4 corroborate it? 5 A. Yes, and because that source was sufficiently reliable. 6 Q. Yes, and that was a judgment you were able to take and 7 you tell us that of course you were right. That was in 8 the last sentence of paragraph 17. 9 A. Yes. 10 Q. Another example: "SAS seized by rebel Libyans". This, 11 again, is a story where there would be next to no 12 litigation risk, is that fair, but you nonetheless 13 wanted to establish its credentials and you say -- 14 I think on that occasion you were able to substantiate 15 the story, were you not? 16 A. That's correct. 17 Q. The next example -- I'm not going to go through all of 18 these -- "Peer in flats scam fined £125,000". This 19 is October 2010. There was possibly a litigation risk 20 here, is that fair, but you were able to get the story 21 double-sourced and that presumably was from another 22 reliable source; is that correct? 23 A. It was, and it was particularly important because it was 24 a story we'd broken, so to take any development on, we 25 had to be absolutely 100 per cent certain we were right.</p> <p style="text-align: center;">Page 8</p>

<p>1 Q. Thank you. Then the cash for honours story, 2 paragraph 21, you had two sources there, I believe; is 3 that right?</p> <p>4 A. Yes.</p> <p>5 Q. Can I ask you, please, about paragraph 25, stretching 6 the rules and use of subterfuge. This is a theme you've 7 taken up in more detail in JMW1, your piece in the 8 paper. I think it was the news review section, but 9 I may be wrong, on 17 July 2011, which I borrowed from 10 for the purposes of my opening submissions, if you don't 11 mind.</p> <p>12 Of course, the rules have to be stretched, but is 13 there a principle which guides you as to how far you can 14 stretch the rules in any given case?</p> <p>15 A. Well, it is. I mean, the principle is: is it in the 16 public interest? And it's something that we think about 17 very hard and debate hard, and then look at the methods 18 we can use to -- if we decide a story is in the public 19 interest, then we consider the methods we can deploy to 20 get that story. This is when subterfuge comes into 21 play.</p> <p>22 Q. Very often when you're looking at a story in advance, 23 the assessment of the public interest is difficult 24 because you don't know what the story is going to amount 25 to. You may have fragments of a picture and you have to</p> <p style="text-align: center;">Page 9</p>	<p>1 Q. Or it doesn't work like that?</p> <p>2 A. We wouldn't do fishing. In fact, an investigation was 3 proposed to me very recently where I don't think there 4 was sufficient -- I didn't think there was sufficient 5 allegations to justify it, and I concluded it was 6 a fishing expedition --</p> <p>7 LORD JUSTICE LEVESON: I don't think you mean "allegation". 8 You mean, if the allegation is there, sufficient basis 9 to the allegation to justify it?</p> <p>10 A. Yes.</p> <p>11 LORD JUSTICE LEVESON: Is that what you mean?</p> <p>12 A. Well, the journalist had a hunch, and he didn't have the 13 allegations, and that to me seemed like a fishing 14 expedition, so we rejected it. I think you need serious 15 allegations.</p> <p>16 MR JAY: There are a number of stages, maybe. The hunch and 17 suspicion may be the first page. The allegation, 18 unsubstantiated, may be the second stage. Then the 19 allegation substantiated by some evidence may be the 20 third stage. And the stages, of course, tend to merge 21 a bit into each other.</p> <p>22 A. Yes.</p> <p>23 Q. It's on as bit of a spectrum. But in terms of the 24 subterfuge which the Sunday Times has used over the 25 years -- obviously we know about Mr Mazher Mahmood and</p> <p style="text-align: center;">Page 11</p>
<p>1 make an assessment then as to the degree of intrusion 2 which may be justified to build those fragments up into 3 a complete picture. How do you make that assessment 4 when very often little is known about the nature and 5 strength of the story?</p> <p>6 A. That can be the case. Generally, in my experience, it's 7 fairly clearcut. There's an allegation of serious 8 wrongdoing or criminality or the behaviour of 9 a politician that would seem unethical, and I think for 10 most right-minded people, their definition of public 11 interest is pretty clear. I mean, obviously we have the 12 PCC code, which has a pretty good definition, but most 13 of the time I think -- I can't think -- the cases that 14 are brought to me have already been sifted, in a sense. 15 The ones that aren't clearly, in the view of the senior 16 editors, in the public interest don't even reach me. By 17 the time they do, I think we can establish pretty 18 clearly that it would be in the public interest.</p> <p>19 Q. Are there situations where you work on a hunch because 20 your instinct points in a certain direction, and 21 therefore a degree of fishing is appropriate to 22 substantiate that hunch because you know from past 23 experience that it often is substantiated if you do go 24 fishing?</p> <p>25 A. No.</p> <p style="text-align: center;">Page 10</p>	<p>1 his methods, and I'll come back to him in a moment, if 2 I may, but it's clear from what you say in paragraph 28 3 and from other evidence which is available that the 4 Sunday Times has used blagging in the past; is that 5 right?</p> <p>6 A. Yes.</p> <p>7 Q. And it has used impersonation?</p> <p>8 A. Yes.</p> <p>9 Q. But it draws the line at phone hacking and has never 10 used that?</p> <p>11 A. Correct.</p> <p>12 Q. As a matter of principle, why?</p> <p>13 A. Well, I didn't know about it, for a start, but it's 14 illegal and it seems quite unethical.</p> <p>15 Q. Okay. May I ask you now, please, about private 16 investigators and external providers of information, 17 which is paragraph 31. We have to be careful to define 18 our terms and be clear what we mean by "private 19 investigator" and "an external provider of information". 20 An external provider of information may not go out with 21 a grey cap and start snooping, but may or may not 22 confine himself or herself to publicly available data. 23 What steps do you take to satisfy yourself that your 24 external providers of information are keeping to that 25 which is in the public domain rather than potentially</p> <p style="text-align: center;">Page 12</p>

<p>1 committing breaches of Section 55 of the Data Protection 2 Act?</p> <p>3 A. We've only used two private investigators in the past, 4 and both are well known to our journalists and there's 5 a clear understanding between the journalists who use 6 them and the investigators that they must abide both by 7 the law and the code.</p> <p>8 Q. These are private investigators properly so-called. 9 It's more the external provider of information who is 10 sitting in an office, maybe with access to various data 11 sources, some of which may be publicly available, some 12 not. It's the extent to which you can police what 13 they're doing, Mr Wit.</p> <p>14 A. Yes. One may be we've used an actor in the past, for 15 example, as part of a deception. That person is not 16 a private investigator but it's part of subterfuge. The 17 point is our journalists make sure that they behave in 18 what we regard as a proper way.</p> <p>19 Q. In relation to Operation Motorman, if I can take this 20 quite briefly -- it was under your watch, of course, but 21 I think the evidence demonstrates, after the correction 22 was made to the Information Commissioner's table, that 23 there were -- was it four taskings which one or possibly 24 two Sunday Times journalists were involved in?</p> <p>25 A. One journalist.</p> <p style="text-align: center;">Page 13</p>	<p>1 Q. But only very occasionally.</p> <p>2 A. Very occasionally.</p> <p>3 Q. You refer to it in the context of an exclusive 4 interview, but there will be occasions when a source 5 which wishes to remain anonymous comes to you with 6 a story, is this right, and they'll be paid for that 7 story?</p> <p>8 A. Yes, rarely, but we do.</p> <p>9 Q. You say: 10 "Whenever possible, we try to make the payment to 11 charity." 12 Why do you do that?</p> <p>13 A. Because there's always a suspicion that when you're 14 paying for some information it may colour the nature of 15 the information, and we try and exclude that as much as 16 possible. If the payment is made to a charity, I think 17 in some way it helps to cleanse that.</p> <p>18 Q. Does the source, out of interest, know that's where the 19 money is going to go? Otherwise it wouldn't affect the 20 integrity of his or her information.</p> <p>21 A. Well, it is agreed with the source that it would go to 22 charity.</p> <p>23 Q. Aside from the -- of course it wasn't your story, was 24 it, the Pakistani cricketing case -- that was the News 25 of the World, not the Sunday Times -- but what sort of</p> <p style="text-align: center;">Page 15</p>
<p>1 Q. Have you made any further enquiry into the 2 circumstances?</p> <p>3 A. We have. Because it's a long time ago and the 4 journalist has left, we've had some difficulty, but 5 we've established in one case that they were trying to 6 trace the phone number of a former Home Office official 7 who we couldn't obviously contact through the Home 8 Office. They acquired the number of this person and 9 telephoned him as part of a story. It was contacting 10 them to respond to a story. So in my view it was just 11 good journalistic practice to contact them.</p> <p>12 Q. I won't debate the merits of the public interest defence 13 in relation to that, but we hear your answer. 14 Can I ask you, please, about external sources of 15 information now, which is paragraph 36 and 37.</p> <p>16 LORD JUSTICE LEVESON: Just before you do that, would you 17 agree that the editor must remain responsible for the 18 conduct not only of his or her journalists, but also any 19 third party that he or she uses to obtain information?</p> <p>20 A. Yes, I think the editor is ultimately responsible.</p> <p>21 MR JAY: Thank you. Paying fees to external sources of 22 information. This occasionally, on my understanding of 23 paragraphs 36 and 37, may encompass confidential 24 sources. Is that correct, Mr Witherow?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 14</p>	<p>1 sums are we talking about here for these stories on the 2 rare occasions that sources are paid?</p> <p>3 A. Oh, very small. I mean, I don't know exactly. 1,000, 4 2,000, that sort of sum.</p> <p>5 Q. Paragraph 38, please, Mr Witherow. Just two points. 6 The first point: the code, you rightly say, notes that 7 there is a public interest in freedom of expression 8 itself. Of course, the code is clear, but it's an 9 argument which is in danger of pulling itself up by its 10 own boot straps and justifying any intrusion of privacy. 11 Is that how you interpret it or is it just one factor in 12 the balance?</p> <p>13 A. I think it's one factor.</p> <p>14 Q. How much weight do you give to it?</p> <p>15 A. I think when we look at the public interest and the use 16 of subterfuge, it's pretty clear cut that it is things 17 such as criminality and exposing wrongdoing rather than 18 a general freedom of expression argument.</p> <p>19 Q. Okay. Then you refer to the concept -- and this is one 20 which has been raised with numerous editors sitting in 21 that chair: 22 "We're not interested in the private lives of 23 individuals unless it has a bearing on their public 24 role." 25 How would you define "bearing on their public role"?</p> <p style="text-align: center;">Page 16</p>

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<p>1 A. That it would influence the way that they conducted 2 their public business, probably in a detrimental way. 3 LORD JUSTICE LEVESON: So it's not sufficient, as I think 4 one of the witnesses I've heard has suggested, that 5 because an MP is an MP, his or her private life is of 6 sufficient public interest to justify publishing details 7 about it? 8 A. I would be inclined not to do that, unless the MP had 9 become a particular exponent of a policy which exposed 10 him to hypocrisy, which would be a different argument. 11 But generally, I think, we would respect it. 12 For example, we have been given private information 13 about ministers involving their financial affairs which 14 we could see no public interest in publishing, so we 15 haven't. 16 MR JAY: Are you looking for some sort of objective factor 17 here in the context of bearing on their public role 18 rather than whether there's a perception that 19 a particular piece of private or confidential 20 information might have a bearing on their public role? 21 A. I think we veer towards being very cautious about 22 intruding into private life unless we can see a clear 23 cut public interest. 24 Q. You give some examples starting at paragraph 42 of some 25 public interest stories. First is the bribery in Page 17</p>	<p>1 accompanies you? 2 A. We will see the prime minister and the Chancellor of the 3 Exchequer and senior cabinet ministers from time to 4 time, particularly at party conferences, occasionally in 5 Downing Street. Invariably, I go with my deputy or 6 a political editor. It might be a lunch; it might just 7 be a cup of tea. 8 Q. You can obviously speak from your perspective. What is 9 your purpose in attending these meetings? 10 A. Obviously there's a mutual interest but our purpose is 11 to establish what is on the minds of the politicians. 12 The very fact of what they talk about, what's 13 preoccupying them, gives us some indication of what's 14 important in their minds, in the running of the country, 15 and what they leave out can be almost as interesting as 16 what they talk about. So it steers -- you very rarely 17 get information that you would put in the newspaper, but 18 it gives you background. 19 Q. It may be you're the wrong person to ask, but what do 20 you infer to be their purpose in wanting to meet with 21 you? 22 A. I think they want to maintain contacts with newspapers. 23 They see it in their interests to do that. They may 24 hope to argue a case about some particular issue of the 25 day and persuade us that they're doing the right thing. Page 19</p>
<p>1 relation to the World Cup and Lord Triesman, who'd made 2 some public general allegations about corruption and so 3 you decided to go undercover, and my understanding is 4 two reporters posed as acting for a US company; is that 5 right? And therefore used subterfuge? 6 A. Correct. 7 Q. You say that the justification for it was the very 8 public general allegations which Lord Triesman made and 9 which therefore were the springboard for your 10 investigation. You had an evidence base which justified 11 you proceeding? 12 A. That and there were other widespread allegations about 13 corruption within Fifa. 14 Q. Then the Baroness Uddin example. Insight, May 2009. 15 This is dealing with a main home point outside London. 16 Again, you say there was a clear public interest in 17 proceeding with that story for the reasons you give and 18 you have the evidence base. 19 A. Mm-hm. 20 Q. Unless you wish to, I'm not going to go into any of the 21 other specific matters there. Can I ask you, please, 22 some general questions before I move on. Your 23 relationships with politicians, particularly high-level 24 politicians: could you give us a thumb name sketch of 25 how often they occur, who you have them with and who Page 18</p>	<p>1 Q. The last election, the May 2010 election -- we had 2 evidence about this before lunch -- who did the 3 Sunday Times support? 4 A. The Tories. 5 Q. Yes. Why? 6 A. Because we thought they were the right party for the 7 future of the country. 8 Q. You say "we". Who is the "we" embodied in that? 9 A. The "we" is -- about four or five senior editors on the 10 paper will, in advance, sit down and discuss what we 11 think. In our reporting of politics, we're generally 12 pretty impartial, but our columnists clearly have views, 13 and then we will, in an editorial in advance of the 14 election, generally come down one side or the other. 15 Q. If we can go back a period of time, but not very long, 16 to the previous Labour government, presumably you had 17 similar interactions with the then prime minister; is 18 that right? 19 A. Correct. 20 Q. From your perspective and from his perspective, the 21 purposes of these interactions were more or less the 22 same, were they? 23 A. They were. 24 LORD JUSTICE LEVESON: You heard what I put to Mr Harding 25 before lunch -- and it may be that it is just Page 20</p>

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<p>1 a perception issue -- that the important understanding 2 of how public officials work is obviously of 3 significance to you and to other reporters, whether they 4 be politicians, generals, bishops, judges, whoever. 5 It's the question of influence on policy that is at 6 least the perception of difficulty. Do you have any 7 observations to make about that? I mean, you heard me 8 discussing it with Mr Harding. 9 A. Yes. Generally we're they're not to try and influence 10 in any way. We're there to try and get information, to 11 understand their thinking, to understand their 12 arguments, why they're pursuing certain policies in the 13 way they are, and that's valuable to us because that 14 doesn't always come out. But actually, when you meet 15 them in private, you don't often learn much more than 16 you would from their speeches or when they're giving 17 interviews on television. It's remarkable how little 18 extra information you do gather. 19 LORD JUSTICE LEVESON: Yes. 20 MR JAY: Do you ever get the feeling that they are dangling 21 ideas in front of you to see your tutored, your informed 22 reaction in order to assess whether they're palatable 23 ideas? 24 A. Not really, because most of these ideas will already be 25 in the public domain. We will have commented on them.</p> <p style="text-align: center;">Page 21</p>	<p>1 the basis of Mr Toulson's judgment to say to the 2 Information Commissioner that we didn't think it was 3 justified. There was a public interest defence in 4 running the story and they seem to have accepted that. 5 Q. They didn't have power to compel you to intend for 6 interview, of course, but you heard nothing further 7 following the solicitor's letter written on your behalf? 8 A. That's correct. 9 Q. There was a story some time ago now, obviously, in your 10 paper in which it was said that Mr Michael Foot, who 11 of course became the leader of the option but he wasn't 12 at the time, was a KGB agent; is that correct? 13 A. Yes. 14 Q. That story was incorrect, was it? 15 A. Yes, it was -- thank you for reminding me. It was very 16 early in my editorship and -- it was 1994, I think. 17 LORD JUSTICE LEVESON: It all comes out here, Mr Witherow. 18 A. It came from a very senior KGB defector, Oleg 19 Gordievsky, in a book, and I think it's fair to say 20 I overcooked it and cocked it up. 21 LORD JUSTICE LEVESON: That's not an expression which I've 22 heard often. 23 MR JAY: It may be one could turn that around in your favour 24 and say that lessons were learned from that. I don't 25 know.</p> <p style="text-align: center;">Page 23</p>
<p>1 They'll pretty well know what our position is. 2 Q. Moving off that theme on to others, we've had evidence, 3 Mr Witherow, that the Information Commissioner's office 4 wrote to you on 11 December 2002 asking you to attend 5 for interview under caution under Section 55 of the Data 6 Protection Act. Do you recall that? 7 A. Yes. 8 Q. I think it related to cases involving Lord Levy and Lord 9 Ashcroft; is that right? 10 A. It was Lord Levy, I believe. 11 Q. Not Lord Ashcroft? 12 A. Not to the best of my recollection. 13 Q. That invitation was refused through a solicitor's 14 letter. Why? 15 A. Well, this related to a story we did about the tax 16 affairs of Lord Levy and we had discovered that -- first 17 of all, Lord Levy was an immensely influential figure in 18 the country at that time. He was the chief fundraiser 19 for the Labour Party and was a close friend of the 20 prime minister, Tony Blair. We had discovered that he 21 was paying far less tax in one year than in previous 22 years. So we wrote a story saying that he was paying in 23 that year I think only £6,000 tax. We put it to him and 24 he sought an injunction, and that injunction was heard 25 by Mr Justice Toulson and he rejected it, and we used</p> <p style="text-align: center;">Page 22</p>	<p>1 A. They were. Mr Foot successfully sued us, and I believe 2 built another wing to his house on the proceeds. 3 Q. Can I ask you, please, some questions now about your 4 second exhibit, JMW2, which is under tab 2B, I hope, in 5 that bundle. Unfortunately, you're going to need quite 6 good eyesight to scrutinise these. I'm going to take 7 the second piece first, if that's okay, Mr Witherow. 8 The second piece, towards the bottom of the page, 9 concerns what happened in 2000, I think, when you 10 carried out an investigation into one property deal 11 which Mr Brown carried out; is that right? 12 A. Yes. 13 Q. Could you, in a nutshell, tell us what that was about. 14 I'll ask further questions, but just give us the 15 background. 16 A. The background to this was that Insight, our 17 investigative team, were studying a number of financial 18 arrangements of senior politicians and discovered that 19 Gordon Brown, when he was shadow chancellor, had 20 purchased a flat which came from the estate of Robert 21 Maxwell and in which Geoffrey Robinson had played a part 22 as a director. This followed -- came soon after Peter 23 Mandelson had resigned as a cabinet minister because of 24 a loan to Geoffrey Robinson, so we considered it worthy 25 of investigation. In the process of doing that, we</p> <p style="text-align: center;">Page 24</p>

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<p>1 believed Mr Brown had purchased the flat at a cheaper 2 price than valuers had put on it at the time. 3 Q. Yes? 4 A. Well, that was essentially the story, that it appeared, 5 on the face of it, that he'd purchased a flat more 6 cheaply than the market value would put. 7 Q. As this piece records in the third column -- it isn't 8 that easy to read but I was able to do so yesterday 9 evening, so I can do it again now. You say at the 10 bottom of the third column: 11 "At that time, the purchase price of the flat was 12 publicly available information, [presumably because it 13 was on the Land Registry but I think the position now 14 with the Land Registry may have changed] but it was 15 a long-winded process to get it, involving applications 16 to the Land Registry. To speed up the process, 17 a reporter asked Barry Beardall, a real businessman who 18 sometimes acted as an entirely legal front for the 19 newspaper, to check the purchase price by calling 20 Allen & Overy, who are Arthur Andersen's lawyers. 21 Beardall, using his own name, discovered that Brown had 22 paid £130,000, at least 30,000 less than the typical 23 price of flats in the area." 24 So it's right to point out that the information was 25 obtained without deception by Mr Beardall because he</p> <p style="text-align: center;">Page 25</p>	<p>1 Abbey National, which held Mr Brown's mortgage for the 2 flat, wrote to you alleging that someone had called its 3 Bradford call centre six times pretending to be Mr Brown 4 and was given information. There was never any 5 conclusive evidence to substantiate that matter; is that 6 right? 7 A. That's right. 8 Q. But from your own knowledge or your own enquiries, did 9 someone on your behalf pretend to be Mr Brown to blag 10 that information? 11 A. Yes. 12 Q. Okay. The letter only emerged the week before this 13 article, which I think was some time last year and then 14 was made available, and you say in the penultimate 15 column: 16 "The Sunday Times is still trying to establish 17 whether any journalist then on the paper sought to 18 access Brown's authority information. Even if they had, 19 such activities would have been legal, as the story was 20 clearly in the public interest." 21 So is this right: since this article was written, 22 you've been able to ascertain that someone acting on 23 your behalf blagged the information? 24 A. We're pretty certain, yes. 25 Q. But this has nothing to do with Mr Beardall; is that</p> <p style="text-align: center;">Page 27</p>
<p>1 used his own name. Is that the inference one draws? 2 A. Partially. I think there was some subterfuge there 3 because he didn't declare he was working for the 4 Sunday Times. 5 Q. No. Allen & Overy gave out the information to him in 6 any event; is that right? 7 A. Yes. 8 Q. Can we just deal with the public interest justification 9 for the slight degree of subterfuge which was involved, 10 because you say: "Well, we could have done it by 11 a long-winded process, and possibly one involving some 12 expense." Given that you could have obtained this 13 information lawfully, why use any subterfuge at all? 14 A. I can't answer that exactly. I assume they were just 15 seeking to corroborate but I don't know the absolute 16 answer. 17 Q. What happened later is that Mr Beardall acquired 18 a criminal record for smuggling alcohol into this 19 country, I think it is right to say, and I think he was 20 convicted of that in either 2001 or 2002, but the 21 Sunday Times didn't know that until after he was 22 charged, and it was at that point that the Sunday Times 23 dropped him? 24 A. Correct. 25 Q. As a separate matter -- can we understand this -- the</p> <p style="text-align: center;">Page 26</p>	<p>1 correct? It's someone else? 2 A. Correct. 3 Q. Okay, so that deals with one example of blagging in two 4 different respects, really. 5 The article on the top of the page is dealing with 6 something else altogether. It's dealing with the Sun 7 and Mr Brown and -- or Sarah Brown's child, Fraser, who 8 was born in 2006, and it covers those matters and that 9 is something entirely different. 10 Could we just look at this, though, a little bit. 11 This is really reportage on the activities of someone 12 else, not, of course, the Sunday Times. 13 A. Correct. 14 Q. But can we be clear, though, what the allegation was. 15 If you look at the third column -- 16 A. Which -- 17 Q. Sorry, it's this piece here. It's still the same 18 exhibit. 19 A. All right. 20 Q. "So bitter and so wrong". 21 LORD JUSTICE LEVESON: This is all to do with medical 22 details, isn't it, Mr Jay? 23 MR JAY: It is, which we're not going to go into, although 24 they all are in the public domain. It's what you say 25 about what the then prime minister was saying. If you</p> <p style="text-align: center;">Page 28</p>

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<p>1 look at the third column, which is quite short, perhaps 2 beginning: 3 "However, by summer 2009, Brown's leadership was 4 unravelling." 5 Do you have that? 6 A. Yes. 7 Q. "Behind the scenes, the prime minister raged at the 8 coverage he was getting in News International titles, 9 particularly over the war in Afghanistan. Eventually, 10 he could contain himself no longer and rang Murdoch to 11 remonstrate with him. Murdoch is said to have distanced 12 himself from the coverage, pointing out that it was up 13 to his editors how material was presented." 14 What was your source for that information, can you 15 recall, Mr Witherow? 16 A. No. 17 Q. It's separate, I think, from something which allegedly 18 happened later, or did not happen later at all, which is 19 the Sun switching allegiance to David Cameron, which was 20 at the Labour Party conference in 2009, which you refer 21 to in the penultimate column, don't you? 22 A. Mm-hm. 23 Q. I don't think it's suggested there that there was 24 another conversation between Mr Brown and Mr Murdoch; is 25 that correct?</p> <p style="text-align: center;">Page 29</p>	<p>1 American politics, that kind of thing. 2 Q. In relation to the eurozone, I think we know the 3 position Mr Rupert Murdoch takes, but for those who 4 don't know, what is it? 5 A. I think he shares our position, which is highly 6 sceptical of the euro and the whole concept of uniting 7 Europe. 8 Q. But that is, as it were, a coincidence? There's no 9 causal connection between the two, his having that 10 position and you having that position? 11 A. It's a coincidence. 12 Q. May I move on to another subject, if I may. 13 Mr Mazher Mahmood. Is it right that he was originally 14 employed by the Sunday Times but before you were editor? 15 A. Yes. 16 Q. Do you know the circumstances in which he and the 17 Sunday Times parted company? 18 A. I do now. 19 Q. Right. Maybe we should wait until others tell us more 20 about that, if it's relevant, but the circumstances in 21 which he was, as it were, taken back following the 22 demise of the News of the World, 10 July 2011 -- we know 23 that Mr Mahmood is now writing for the Sunday Times. 24 Why? 25 A. Because I think Mr Mahmood is an exceptional journalist.</p> <p style="text-align: center;">Page 31</p>
<p>1 A. Yes. 2 Q. Okay, well, that may tie up or not with some evidence 3 we've heard recently. 4 What influence, if any, does Mr Rupert Murdoch have 5 over what goes in your paper, particularly when it comes 6 to matters such as political allegiance? Would you help 7 us with that? 8 A. He doesn't have any. You heard from Rupert Pennant-Rea. 9 He will talk to me periodically, but I think you'll 10 discover that the Sunday Times has taken a robustly 11 independent line on political allegiance and we didn't 12 support Tony Blair's government when other 13 News International titles did. 14 Q. Yes, okay. How frequent, if at all, are your 15 conversations with him? 16 A. Well, it will vary. Sometimes I won't hear from him for 17 several weeks, and then sometimes I'll hear once a week 18 he'll call. 19 Q. Is the picture fairly similar to the evidence we've 20 received from Mr Harding, that a particular issue will 21 interest him and that will prompt his call? 22 A. Yes. I mean, in the case of the Sunday Times, he is 23 often interested to know what we're doing, what sort of 24 stories we're covering, but then the conversations will 25 often be very general about economics, the eurozone,</p> <p style="text-align: center;">Page 30</p>	<p>1 He's proved himself over many years in exposing 2 criminality and the stories already he's done for us 3 have been excellent. 4 He only really uses subterfuge. That is his 5 methodology. Through that subterfuge, already for us 6 he's exposed how people can enter this country illegally 7 using false ID. He's exposed insurance scams where 8 insurance companies are being ripped off quite 9 cynically. So all the sort of journalism he does 10 I think is absolutely justified. 11 Q. Did you receive any assurances from him as to the 12 methods he used and whether they were constrained within 13 the bounds of legality? 14 A. Yes. Obviously I asked him before he joined us was he 15 in any way involved with phone hacking. He assured me 16 he wasn't. I made independent enquiries about that and 17 got assurances there was no suspicion relating to him 18 over it. 19 Q. Your independent enquiries, were they of former 20 journalists at the News of the World or wider? 21 A. Both, and we made enquiries of the MSC, which has been 22 investigating this. 23 Q. Thank you. 24 LORD JUSTICE LEVESON: Just before you go on, were you 25 concerned about what you've now read?</p> <p style="text-align: center;">Page 32</p>

<p>1 A. I didn't know that -- I knew the broad allegation in the 2 past. I didn't know the detail until now. I think what 3 happened -- I mean, when -- this is going back to the 4 1980s. I think reading the detail now, it seems 5 incredibly trivial and I don't know why he did what he 6 did, but I think it was -- he was a young journalist who 7 panicked and did a silly thing, and I think that's what 8 he would say, but I wouldn't let it influence me now 9 because he has such a good track record since then.</p> <p>10 MR JAY: One isolated example -- it's for others to decide 11 really what significance to accord to this -- of 12 a successful complaint. Under tab 44, which is the 13 third bundle, this is a complaint to the PCC brought by 14 Ms Clare Balding, who is a well-known broadcaster. We 15 can see the circumstances. It was a piece by 16 Mr AA Gill, reviewing her television programme, "Britain 17 by Bike", and we can see the very pejorative term that 18 was used. Did you seek to defend this one, Mr Witherow?</p> <p>19 A. I did.</p> <p>20 Q. Can you explain why?</p> <p>21 A. Well, it was brought to my attention in advance. 22 I mean, this, first of all, is a comment piece, 23 a television critique by Adrian Gill, who is 24 a well-known, acerbic and quite controversial writer. 25 In the context of the piece -- it was about cycling</p> <p style="text-align: center;">Page 33</p>	<p>1 Q. What happened to the adjudication? It was naturally 2 enough published in your newspaper, no doubt. Can you 3 remember where?</p> <p>4 A. Not exactly, no.</p> <p>5 Q. Was it the subject of agreement or negotiation with 6 Ms Balding and the PCC, can you recall?</p> <p>7 A. Invariably the publication is agreed with the PCC.</p> <p>8 Q. And you accept their advice, do you, as a matter of 9 policy?</p> <p>10 A. Yes.</p> <p>11 Q. It may be an unfair question because you haven't been 12 given notice of this, but how many successful complaints 13 have there been against the Sunday Times, say, over the 14 last five years? Could you give us some steer, some 15 feel for that?</p> <p>16 A. A very small number. I couldn't give you an exact 17 figure. And many unsuccessful ones.</p> <p>18 Q. Yes. Okay. I'm in tab 47. This is a very recent piece 19 by Mr John Simpson, the extremely well-known 20 broadcaster. There are many matters of opinion here 21 which it's not necessary to go into. Naturally enough 22 we've read it, but it's the two -- well, one personal 23 example he gives and then one piece of comment at the 24 end about Watergate. The personal example is on page 2 25 of 3, level with the upper hole punch. Do you see that?</p> <p style="text-align: center;">Page 35</p>
<p>1 around Britain and in the context of the piece he was 2 very flattering about her and praised her, and the issue 3 came up: "Should we include it?" It wasn't as if he was 4 outing her. She was openly gay and that was fine but -- 5 and we thought it was a matter of freedom of speech, 6 that Adrian should be able to make a comment like that 7 because we didn't regard it as pejorative in the 8 context. There are, for example, several websites that 9 use this term by gays.</p> <p>10 Q. Is that really a good argument? Websites, unregulated, 11 can use all sorts of terms, some flattering, some 12 extremely pejorative. You wouldn't want to set them up 13 as yardstick or litmus paper test, would you?</p> <p>14 A. These are not pejorative websites. They are gay 15 websites that use that term in a positive way.</p> <p>16 Q. It's the meaning of "pejorative", whether, I suppose, 17 a right-thinking person -- but I, of course, accept that 18 that has an element of circularity in it -- would say 19 that the term "dyke" is pejorative in this context. You 20 say it isn't, but the PCC clearly thought that it was, 21 didn't they?</p> <p>22 A. That's right. They interpreted the code and concluded 23 that it was. We wanted a debate about this. We thought 24 it was worth the question of free speech. They decided 25 against it, so we have taken that into account.</p> <p style="text-align: center;">Page 34</p>	<p>1 A. Mm-hm.</p> <p>2 Q. When, to cut a long story short, half a dozen freelance 3 journalists and photographers descended on his ex-wife's 4 house to get her version of a story. Then, according to 5 Mr Simpson:</p> <p>6 "She refused, and from Thursday afternoon to the 7 following Monday morning, they besieged her, taping down 8 her bell so it rang for hours on end, phoning her in the 9 middle of the night. The police refused to intervene. 10 The entire, unpleasant exercise was mounted against an 11 uninvolved woman, solely to score points against a 12 couple of viable newspapers on a matter of no 13 conceivable public interest."</p> <p>14 We don't know anything about the newspapers 15 involved, but is this a familiar story to you or not? 16 Familiar account of the sort of things which have gone 17 on?</p> <p>18 A. Well, it's familiar in the sense that pieces like this 19 have been written, but I'm not personally familiar with 20 it.</p> <p>21 LORD JUSTICE LEVESON: I don't think it was necessarily this 22 story, but this approach, this way of dealing with 23 people.</p> <p>24 A. Personally, I think it's unacceptable.</p> <p>25 LORD JUSTICE LEVESON: Yes, I accept that answer but I think</p> <p style="text-align: center;">Page 36</p>

<p>1 the question is: is this a type of behaviour which is 2 more than just once in a blue moon? Or was more. I'm 3 not talking about since last July. 4 A. I don't know the answer to that. I mean, our 5 journalists are instructed if they go to a house, they 6 will ring the doorbell. If the person asks them to 7 leave, they will leave and that's the end of the matter. 8 Sometimes they will put a letter through the letter box. 9 But we wouldn't do this. I have no idea how much this 10 goes on. 11 LORD JUSTICE LEVESON: But the mere fact that you've had to 12 give that instruction to your journalists suggests that 13 there is an underlying concern that other editors might 14 take a slightly different view. 15 A. It's possible. 16 LORD JUSTICE LEVESON: Is that fair? 17 A. It's possible. I don't know how much of this goes on at 18 the moment. 19 MR JAY: Okay. Just one or two short points on Flat Earth 20 News, under tab 49. I hope we've had it copied for you. 21 Is it in that version of the bundle? It may not be. 22 A. No, it's not. 23 Q. We'll provide it to you. (Handed) 24 According to this, page 274, the Sunday Times hired 25 a former actor from Somerset called John Ford to work as</p> <p style="text-align: center;">Page 37</p>	<p>1 Q. Because this was the famous team, I think, who were 2 central to the thalidomide stories in the late 1960s and 3 early 1970s, wasn't it? 4 A. Yes, and then their successors have done stories such as 5 Fifa. The name continues. 6 Q. I know you wanted to tell us something about the 7 Internet and the competitive disadvantage that places 8 you in and also issues surrounding regulation. What 9 assistance can you give us? What are your views on the 10 unregulated Internet? 11 A. Well, clearly any kind of regulation that comes out of 12 this process I think has to take into account what goes 13 on on the Internet, and as we transit to digital 14 platforms, we are bound by self-regulation at the moment 15 and will continue to be so. But the great threat to us, 16 I think, is that there will be out there unregulated 17 media who can base themselves offshore and can avoid 18 regulation, and I think this is a great dilemma facing 19 us: how do we go ahead with a responsible press or 20 digital media in this country while there are those 21 rogue elements out there? 22 LORD JUSTICE LEVESON: There are two types of Internet that 23 one would have to think about. First of all, there's 24 the individual person who tweets, who has a personal 25 blog which might be followed by a few people, or it may</p> <p style="text-align: center;">Page 39</p>
<p>1 a blagger; is that right? 2 A. Yes. 3 Q. How often was he used, do you know? 4 A. I don't know precisely, but he was used by Insight on 5 various investigations. I think he was used on the Fifa 6 one, for example. 7 Q. I think it's pretty obvious from his skills, but he was 8 employed because of his skills for impersonation; is 9 that right? 10 A. Sounds like it. 11 Q. Then Mr Davies covers David Connet, who was hired on 12 a freelance basis as part of the Insight team but the 13 employment tribunal felt that that wasn't right, he 14 wasn't a casual employee, and awarded him compensation; 15 is that correct? 16 A. Yes. 17 Q. The Insight team was closed in July 2005; is that right? 18 A. It wasn't closed; it was incorporated into the newsroom. 19 It was a separate entity with a separate office and it 20 just became part of the newsroom. 21 Q. Why did that happen? 22 A. Because we thought they should be better integrated with 23 the news-gathering operation. 24 Q. It wasn't for reasons of finance, was it? 25 A. No.</p> <p style="text-align: center;">Page 38</p>	<p>1 be followed by many, but who isn't in the course of 2 a trade or business of publishing news, even if it's 3 only recycled news. Then there are those who do offer 4 a wider service, so-called, by publishing a lot of 5 material and who also seek to obtain advertising revenue 6 to make it commercial. Do you think there should be 7 a distinction between the two? 8 A. I'm not sure there should. What we can't foresee is 9 what will evolve from the Internet. You may have 10 serious publications that begin to appear that have -- 11 can afford investigative journalism, can break stories 12 and can behave maybe in a reprehensible way. There'd be 13 no particular control over them if they were based 14 offshore. 15 LORD JUSTICE LEVESON: Well, I don't know. They must be in 16 the course of a trade or business then. They're doing 17 it for money, because otherwise -- I mean, they have to 18 pay their reporters. 19 A. You would assume they would be doing it, whether it's by 20 advertising or by some means like that, yes. 21 LORD JUSTICE LEVESON: So the question then arises whether 22 there's any mechanism to bring them into a club, if they 23 are based offshore, whether consensually or otherwise. 24 A. It may be the more responsible ones might wish to be 25 part of self-regulation, because they could see</p> <p style="text-align: center;">Page 40</p>

<p>1 advantages to it, but I think there's always the danger 2 you're going to have rogue elements there that wouldn't 3 want to be part of it and would actually extol the 4 virtues of not being censored, so to speak. 5 LORD JUSTICE LEVESON: I understand that, but that's not 6 just an Internet problem. 7 A. Mm. 8 LORD JUSTICE LEVESON: People not wanting to be part of the 9 so-called club. 10 A. Yes. 11 LORD JUSTICE LEVESON: So that's the Internet. There was 12 some other matter that you wanted to -- 13 MR JAY: I think we're moving on now, Mr Witherow, to your 14 ideas for future regulation. May I take it in stages. 15 Is the answer you've given me today the same or 16 a different answer than the answer you might have given 17 me on 14 November 2011 when this Inquiry started? 18 A. No, I think we have learnt a lot from in Inquiry 19 already. Some of the practices -- we've already begun 20 to adopt certain methods which I think have emerged from 21 this. For example, we always had a rigorous process 22 over subterfuge: why should we do it? How do we justify 23 it? Are we sure it's not a fishing expedition? But 24 what we do now is we have a paper trail to ensure that 25 if we need to go back on this, we have records. So</p> <p style="text-align: center;">Page 41</p>	<p>1 A. As you've heard from James Harding, I would have very 2 serious doubts about some sort of statutory body that's 3 been set up by Parliament for some of the reasons he 4 said, but also, I think -- and I do think that in future 5 politicians would be tempted to intervene. If you just 6 think back on the BBC and the dodgy dossier, the huge 7 furore that burst out over that and the resignation of 8 the Director General. I think it was because Number 10 9 thought they had some stake and some control in the BBC, 10 and if you had, in future, a row -- and the press is far 11 more partisan and polemical than the BBC can be -- 12 I think they would be sorely tempted in a similar sort 13 of row to take some action because they already had 14 a beachhead, in a sense, and a stepping stone towards 15 amending it. So I broadly agree with that. 16 I also think that Britain, when it -- as a kind of 17 beacon for liberty and freedom of the press, has to 18 consider its position. We already know our reputation 19 because of -- our libel laws have created quite a lot of 20 controversy around the world, the fact that scientists 21 can be sued here. I think if Britain were to move 22 towards some sort of statutory body, it would send 23 a message worldwide that we were -- however much 24 well-intentioned it was, that we were prepared to take 25 a tougher line with the media.</p> <p style="text-align: center;">Page 43</p>
<p>1 whenever we discuss this, we keep minutes and we track 2 it through as the process goes on, so we have 3 a contemporaneous record of it and that's something, 4 I think, that's come out of this. 5 And I think in future if we use -- if we ever use 6 private investigators, we would need a formal agreement 7 with them rather than an understanding. 8 LORD JUSTICE LEVESON: Mr Harding was concerned -- and 9 I understand that concern -- that it could become 10 bureaucratic and take up too much time. Obviously it 11 depends upon the selection of those stories or 12 investigations that fit into the category that you do 13 that for. 14 A. Yeah, I mean -- 15 LORD JUSTICE LEVESON: Have you found that a problem? 16 A. Not a problem, because we don't do that that often, so 17 there's not much bureaucracy. It's maybe one meeting 18 a month you're minuting and then any follow-ups. So no, 19 it's not a problem. I think it's just good practice. 20 MR JAY: Looking at the bigger picture rather than the 21 particular practices you have adopted as a newspaper 22 since the Inquiry started -- turning to the bigger 23 picture of regulation and the future of the regulation, 24 what are your views, please? Can you share those with 25 us?</p> <p style="text-align: center;">Page 42</p>	<p>1 When you look at freedom of expression -- there's 2 a body called Reporters Without Borders that track 3 freedom of expression. Of the top 25 countries that are 4 most free, 21 of them have self-regulation and two have 5 the equivalent of the first amendment: the United States 6 and Jamaica, I think it is. I think only one has 7 a proper statutory control, Hungary, and I'm not sure if 8 that's the sort of message Britain wants to send out to 9 the world. 10 LORD JUSTICE LEVESON: I'm not sure that I'm thinking of 11 statutory control. You've heard the discussion this 12 morning. You've doubtless read the Times leader. The 13 fact is that it seems to me to be a concern -- and I've 14 said this to a number of people, including this 15 morning -- that over the last 40 years there have been 16 a number of instances of great concern. Reports are set 17 up, people earnestly strive to produce something, the 18 press say, "Actually, we've learnt a tremendous lesson 19 from all this and it will be much better", and so the 20 last-chance saloon came into our lexicon, and then a few 21 years later there's something else and a few years later 22 there's something else. I just ask whether there 23 doesn't have to be something else that prevents the need 24 for this sort of Inquiry again and again. 25 A. I think it's possible to come up with a tougher</p> <p style="text-align: center;">Page 44</p>

<p>1 self-regulatory system that will prevent this. I'm not 2 sure it would always prevent it. I think there is 3 always going to be controversy in the press and the 4 coverage of the freedom of speech in this country and 5 I'm not sure that's a terribly bad thing. I think there 6 should be controversial debate. 7 LORD JUSTICE LEVESON: I'm content about controversial 8 debate but I'm equally concerned that we should look 9 forward with any equanimity to the sort of Inquiry that 10 I've been charged with conducting at great public 11 expense and expense, of course, to all those who are 12 participating, particularly if there isn't an 13 understanding from everybody that they all have to be 14 involved, because if some people are out, for whatever 15 reason, then the whole thing becomes extremely 16 difficult, doesn't it? 17 A. It does, but I would have thought there are methods one 18 can use to encourage, indeed coerce people to 19 participate. Financial penalties. 20 LORD JUSTICE LEVESON: Well, now, tell me about that. 21 A. Well, if you didn't -- 22 LORD JUSTICE LEVESON: I'm not trying to sound too 23 enthusiastic. I'm just trying to learn what I can 24 learn. 25 A. I wonder if you were not part of a self-regulatory body</p> <p style="text-align: center;">Page 45</p>	<p>1 financial penalties for not being involved. 2 LORD JUSTICE LEVESON: Well, if all those who are working on 3 it have any ideas, I'll be very pleased to receive them. 4 MR JAY: You've given us some emerging ideas. Any further 5 thought you could share with us? 6 A. I think your ideas on arbitration are very interesting. 7 Or mediation. We used mediation in some defamation 8 cases. 9 LORD JUSTICE LEVESON: I think they're interesting too, but 10 more significant than that, again, if you're going to 11 require people to go down that route, there has to be 12 a framework that requires it. You'd have to set up an 13 arbitral system -- 14 A. Yes. 15 LORD JUSTICE LEVESON: -- which allows it to happen very 16 quickly, but that would be law again. 17 A. Yes, and it would replicate the courts, in a sense, 18 wouldn't it? 19 LORD JUSTICE LEVESON: In one sense, I don't mind that. 20 What bothers me is that if it is purely consensual, 21 those who have the greatest financial muscle to take on 22 the press may say, "Well, I don't want to bother with 23 that. I'd rather use my financial muscle to bludgeon 24 the paper that I want to sue into submission, because 25 I can overwhelm it", and that was a point that got</p> <p style="text-align: center;">Page 47</p>
<p>1 and you end up in court, that the courts could take 2 a particularly tough line on you for not being part of 3 regulation -- 4 LORD JUSTICE LEVESON: But that would have to be statutory. 5 Whether one likes it or not, courts are governed by the 6 operation of law, and if I sat in a -- the story that 7 it's all the length of the chancellor's foot, I'm afraid 8 is long since gone. If I sat in a court and said, 9 "Right, well, because you don't take part in the 10 regulatory system, I'm going to award exemplary damages 11 or aggravated damages", then somebody would challenge me 12 and say, "On what principle of law does that operate?" 13 and unless I can point to a statute that permits me to 14 do it -- and that might be the answer. I think there is 15 great force in the point. But unless I can point to 16 a statute that allows me to do it, then it's going to be 17 very difficult. 18 If I can point to a statute that allows me to do it, 19 I have to have set up that statute. So to some extent, 20 the answer becomes self-defeating of your ultimate aim. 21 A. Yes. 22 LORD JUSTICE LEVESON: I'm not trying to catch you out, 23 Mr Witherow. 24 A. I know. We're trying to think of ways too. VAT we've 25 explored. I would have thought there would be some</p> <p style="text-align: center;">Page 46</p>	<p>1 Mr Barber thinking and I'll doubtless hear from him at 2 some stage when he's come up with a solution. 3 A. But again, the courts can take into account if somebody 4 chose not to go to arbitration. 5 LORD JUSTICE LEVESON: Absolutely. But it would all require 6 some basis in law which permitted the judge to take that 7 course. That's my point, I think. 8 MR JAY: Are you likewise in favour, Mr Witherow, as is 9 Mr Harding, of harmonising the public interest defence 10 across all areas of the criminal law, including the 11 offence of hacking, to use the vernacular, under RIPA 12 2000? 13 A. I think we have an extraordinary anomaly now where only 14 the Data Protection Act gives us that protection. Other 15 Acts don't. So in a sense, you're challenging the press 16 periodically to break the law because they think it's in 17 the public interest. Is that a good thing? Well, then 18 the DPP would turn a blind eye because it was in the 19 public interest. Wouldn't it be better to put it into 20 the Act that there was a public interest? 21 LORD JUSTICE LEVESON: You might do it on the basis that you 22 invite the director to identify his policy on public 23 interest. So then there are lots of levels. I think 24 I've said this before. First of all, there's a decision 25 for the director to make: can I prove the offence? What</p> <p style="text-align: center;">Page 48</p>

<p>1 do I think of the public interest point? Then there are 2 potential arguments on abuse of process. Then 3 there's -- well, on the basis the judge has rejected 4 that, then there's the jury, and one doesn't have to go 5 far back in the past to see what juries have sometimes 6 made of these cases. Then actually there's another 7 protection. It's called the judge, who can decide that 8 however much this was a crime, and even though it isn't 9 quite in the public interest, because the jury obviously 10 can't say that, there is a great force in the argument 11 and therefore impose a nominal penalty. There are lots 12 of routes.</p> <p>13 A. But if you had a public interest, you could probably 14 avoid some of that. I mean, we are constantly presented 15 with the dilemma: should we break the law because we 16 believe it's in the public interest? The Bribery Act, 17 for example. If we could expose criminality by a bribe, 18 I think we'd do it and I think the point is to say we'd 19 be open about it.</p> <p>20 LORD JUSTICE LEVESON: I understand. Was there any debate 21 at the time of the Bribery Act about the problems that 22 it would throw up?</p> <p>23 A. Yes, there was. I think several newspapers made 24 representations asking for a public interest --</p> <p>25 LORD JUSTICE LEVESON: And Parliament rejected the idea?</p> <p style="text-align: center;">Page 49</p>	<p>1 your leadership?</p> <p>2 A. You have to remember the Sunday Times is a very big 3 newspaper with multiple sections. The culture might 4 vary from one to another because they're aimed at 5 different readerships, if you take style or the business 6 section, for example. The overriding culture must be 7 that we strive to produce excellent journalism with 8 integrity, accurately, and that both informs and 9 entertains people.</p> <p>10 MR JAY: Those are all the questions I have for you, 11 Mr Witherow. Thank you very much.</p> <p>12 LORD JUSTICE LEVESON: Mr Witherow, unless there's anything 13 you wish to add, thank you very much indeed.</p> <p>14 A. Thank you.</p> <p>15 MR JAY: Sir, in relation to today's witnesses, there are 16 two statements to be read. Pia Sarma and Darren Singer. 17 They will be formally incorporated into the Inquiry's 18 record and placed on the website. There may be one 19 more, but we're looking into it.</p> <p>20 LORD JUSTICE LEVESON: All right. I ought to make it clear 21 that you've said several times over the last few days 22 that we'll take this part of the statement as read or 23 you've identified the names of witnesses. I wouldn't 24 want anybody to think that by not going into evidence 25 orally, it is of less significance. It's merely</p> <p style="text-align: center;">Page 51</p>
<p>1 A. The Secretary of State did, I think.</p> <p>2 LORD JUSTICE LEVESON: Well, and then Parliament.</p> <p>3 A. Mm.</p> <p>4 LORD JUSTICE LEVESON: Do you think the climate is rather 5 better now or rather worse? You don't need to answer 6 that, Mr Witherow.</p> <p>7 A. Thank you.</p> <p>8 MR JAY: May I conclude, Mr Witherow, with two final general 9 questions: first of all, what is your vision for the 10 paper and in what way will you realise that in the way 11 you lead your organisation?</p> <p>12 A. Newspapers are caught up in an absolute revolution at 13 the moment. We've never had a challenge like this in 14 more than 200 years, far greater than radio or 15 television, because we're being challenged by the 16 printed word online, digitally, and the vision for any 17 newspaper is: how do you continue to publish in print 18 and digitally and seek to try and make enough money to 19 fund good journalism? Going forward is -- that transit 20 is: how long will print survive? How do we make digital 21 tablets and the Internet profitable? And it's one of 22 the biggest challenges facing publishing since we first 23 started.</p> <p>24 Q. Finally, in what respects does your organisation, in 25 particular the culture of your organisation, reflect</p> <p style="text-align: center;">Page 50</p>	<p>1 a consequence of the amount of material which the 2 Inquiry has to ingest and the time available within 3 which to ingest it. Thank you.</p> <p>4 MR JAY: Sir, amazingly we have overrun by only two and a 5 half minutes. May we pause now before moving seamlessly 6 or otherwise to another newspaper altogether?</p> <p>7 LORD JUSTICE LEVESON: Certainly, we'll have a break now. 8 (3.17 pm) 9 (A short break) 10 (3.25 pm)</p> <p>11 MS PATRY HOSKINS: Good afternoon, sir. The rest of this 12 afternoon will be taken up by two witnesses from the 13 Guardian newspaper, Mr Elliott and Mr Rusbridger.</p> <p>14 LORD JUSTICE LEVESON: Very good.</p> <p>15 MS PATRY HOSKINS: In advance of that, there are a number of 16 statements which need to be read in which have been 17 prepared either by the Guardian or the Observer. They 18 are witness statements from Dame Elizabeth Forgan, 19 Mr Andrew Miller, Mr Darren Singer, who was mentioned by 20 Mr Jay but is in fact a Guardian witness, Mr Phil 21 Boardman, Ms Gillian Phillips, Mr James Robinson and 22 Mr John Mulholland.</p> <p>23 LORD JUSTICE LEVESON: Thank you very much indeed. I have 24 read all those statements.</p> <p>25 MS PATRY HOSKINS: Thank you. First of all, I'm going to</p> <p style="text-align: center;">Page 52</p>

<p>1 call Mr Chris Elliott. 2 MR CHRISTOPHER MARTIN ELLIOTT (sworn) 3 Questions by MS PATRY HOSKINS 4 MS PATRY HOSKINS: Sit down and make yourself comfortable. 5 You should have with you your witness statement and some 6 exhibits that you've prepared there too. 7 A. Yes. 8 Q. Could you confirm your full name to the Inquiry? 9 A. Yes, it's Christopher Martin Elliott. 10 Q. The witness statement you've prepared is -- my version 11 is not signed. Have you signed the version you have? 12 A. I have, yes. 13 Q. Can you confirm to the Inquiry that the contents of the 14 statement are true to the best of your knowledge and 15 belief? 16 A. They are. 17 Q. I'm going to start, please, by discussing your 18 background briefly. You explain that you are the 19 reader's editor of the Guardian, a role that covers both 20 print and web. You explain your career history at 21 paragraph 3 of your statement onwards. You explain that 22 you became managing editor of the Guardian in February 23 2000. In 2007, you also became a director of Guardian 24 News and Media, but you stepped down from the board last 25 year when you also relinquished your role as managing</p> <p style="text-align: center;">Page 53</p>	<p>1 You're appointed by the Scott Trust and only they 2 can dismiss you? 3 A. Yes, that's right. 4 Q. We're going to just discuss, very briefly please, your 5 role as readers' editor, paragraph 5 and onwards. You 6 say that your role is set out in the terms of reference. 7 That is in appendix A, which we'll look at in a moment. 8 Your role is broadly to investigate and respond to 9 readers' complaints and views about Guardian journalism 10 in print and on the web? 11 A. Yes. 12 Q. Then you explain that a complaint may be a simple 13 allegation of inaccuracy or it may be more complex, such 14 as an allegation that Guardian journalists have breached 15 the principles of journalism promulgated by CP Scott. 16 Then you set out the essay prepared by CP Scott. 17 A. Yes. 18 Q. You go on at paragraph 6 to explain that each week you 19 write a column that runs at the foot of the letters 20 page in which you may report the investigation of 21 a particular complaint or discuss a particular ethical 22 issue, and that's an important way, you say, to 23 demonstrate that discussing the ethics of the way that 24 journalists works is natural and to be encouraged? 25 A. Yes.</p> <p style="text-align: center;">Page 55</p>
<p>1 editor of GNM and you successfully applied to the 2 Scott Trust for the role of readers' editor? 3 A. Yes. 4 LORD JUSTICE LEVESON: That's interesting. So it was to the 5 Scott Trust that you went to be readers' editor, not to 6 the editor? 7 A. Yes. I was interviewed by a panel of three trustees. 8 LORD JUSTICE LEVESON: Just help me, because I've not really 9 thought about this before: are the Trust responsible for 10 all staff? 11 A. No, and the point of this is to give me this measure of 12 independence within the Guardian. So my responsibility 13 is to the chair of the Scott Trust and to the Trust, and 14 I am appointed by the Trust and I can't be dismissed 15 unless it's by a vote of the entire Trust. 16 LORD JUSTICE LEVESON: So that gives you your absolute 17 independence -- 18 A. Yes. 19 LORD JUSTICE LEVESON: -- should you need it, from 20 Mr Rusbridger? 21 A. Yes. 22 MS PATRY HOSKINS: You've anticipated my next questions. 23 LORD JUSTICE LEVESON: I'm very sorry. I've done that 24 before. 25 MS PATRY HOSKINS: That's fine.</p> <p style="text-align: center;">Page 54</p>	<p>1 Q. Could we turn to the terms of reference, appendix A. 2 A. Yes. 3 Q. That sets out in some detail your role. Could we 4 look -- starting at the top, you collect, consider, 5 investigate, respond to and, where appropriate, come to 6 a conclusion about readers' comments, concerns and 7 complaints in a prompt and timely manner. But if we 8 look two-thirds of the way down, it says this, just by 9 the bottom sort of hole punch, if you see that: 10 "In consultation with the editor and/or the managing 11 editor, [you] can decide whether and when a correction 12 should be published and/or apologies tendered where 13 deemed necessary. Insofar as any correction apology is 14 not the subject of or may be prejudicial to a current 15 complaint to the PCC ..." 16 I don't need to read the rest of it. 17 A. Yes. 18 Q. So in terms of the remedy, the correction to the 19 complaint or an apology, that must be done in 20 consultation with the editor and/or managing editor? 21 A. No. The decision is mine, and occasionally there are 22 differences of opinion as to whether it is an apology or 23 an expression of regret or merely a correction or 24 a clarification, and it is my decision when it's -- our 25 process is being used as to which one of those should</p> <p style="text-align: center;">Page 56</p>

<p>1 be. But of course I do consult the managing editor and 2 the editor, and actually the journalist involved in 3 this. 4 Q. So you must consult with the editor, but the final 5 decision is yours? 6 A. Yes. 7 Q. What if the editor strongly represents to you that he 8 thinks no apology or correction should be made? 9 A. Well, I mean obviously you listen carefully to that, but 10 if, in the end, you think it's the right thing to do, 11 you can fall back on the fact that you are employed by 12 the Trust -- I'm employed by the Trust and I actually 13 think they're wrong and we go ahead and I do what I see 14 fit. 15 Q. If you move to the second-last paragraph within the 16 terms of reference, it says this: 17 "The readers' editor can refer to the external 18 ombudsman any substantial grievances or matters whereby 19 the Guardian's journalistic integrity has been called 20 into question." 21 What role does the external ombudsman have from any 22 decision that you have made? 23 A. Well, on occasion, you carry out an investigation -- 24 I carry out an investigation and no matter how much time 25 one spends on it, in the end the complainant still feels</p> <p style="text-align: center;">Page 57</p>	<p>1 an analysis of the main sorts of subjects that readers 2 raise. I just ask you to turn that up. It's one page. 3 A. Yes. My bundle is arranged slightly different so I'm 4 sorry if I'm taking a little bit longer. 5 Q. Not at all. "Readers' editor email analysis, main 6 subjects". Perhaps you could just talk us through this 7 briefly? 8 A. Yes. There are some really basic complaints around the 9 journalism and we -- spelling, grammar, factual errors, 10 fairly straightforward issues of accuracy. Graphics. 11 And then we move into things like whether a photograph 12 was tastefully used or wrong or misleading statements or 13 misrepresentation. 14 One of the things that a lot of our readers are very 15 hot on is the area in terms of whether we're 16 stereotyping, the language around things like mental 17 health, gender, et cetera. Then also things like the 18 stigmatisation of the oppressed or misunderstood 19 minorities, ethics, taste and decency and there's an 20 important one around plagiarism, which are rare but 21 potentially very damaging in a reputational way and 22 important to get right, and children. These can take 23 between a day or even a couple of weeks. 24 We did have one particular one which took -- which 25 my predecessor took about two months to do because there</p> <p style="text-align: center;">Page 59</p>
<p>1 that they have not been treated fairly or that my 2 decision is wrong. If they don't want to go to the PCC, 3 there is always the external ombudsman, and this has 4 happened a number of times over the last 14 years, 5 and -- I can refer it to the external ombudsman, they 6 can ask me to refer it to the external ombudsman, and 7 I don't think we've ever had a compelling reason not to 8 do it once an individual has us to do this. The 9 external ombudsman, a man called John Willis, who is -- 10 works for the Guardian, very much externally. He's not 11 a member of staff and he comes from a different 12 discipline. He's actually from the discipline of 13 television. But he's had very wide experience and he 14 will go into it in some detail and then he will prepare 15 a report about the way in which we've carried it out. 16 Essentially, he will look at the processes, the way 17 we've actually carried out, rather than try to 18 reinvestigate it. What he's trying to assess is whether 19 the readers' editor has done it fairly and competently. 20 Q. Leave aside the terms of reference, can you turn back to 21 your statement, please. At paragraph 7 onwards, you 22 discuss the day-to-day workings of your office. You 23 explain the type and number of complaints and queries 24 dealt with and so on. 25 Now, you've helpfully provided us at appendix E with</p> <p style="text-align: center;">Page 58</p>	<p>1 were somewhere in the region of 40 aspects to the 2 complaint, and that was extremely difficult. So that 3 is -- that's around the journalism. 4 Q. Can I pause there and ask you a question about the 5 stereotyping and stigmatisation complaints. 6 A. Yes. 7 Q. Are these the complaints by, say, groups who have 8 a particular interest in ensuring that particularly 9 a group of people or a particular minority is not 10 represented in the press? 11 A. Yes, it can come from a group or it can come from an 12 individual and I take each of those as seriously. For 13 instance, around mental ill health, it's the kind of 14 language that you use and it's -- society's changed 15 a great deal in the last 20 years and, you know, the way 16 in which we use the word "bonkers" for mental ill health 17 or describe someone as "mad" in headlines or in text has 18 completely changed, and there have been real advances in 19 actually not stigmatising people by using that kind of 20 language. But they occasionally slip in and it's for me 21 to look into whether we have misused language and what 22 we do about it: correction, apology, delete it online 23 and go from there. 24 Q. Sorry, I interrupted you while you were taking us 25 through this analysis.</p> <p style="text-align: center;">Page 60</p>

<p>1 A. Sorry, yes. Generally there are complaints about 2 overall editorial, the whole business of how the paper 3 is delivered and what it means. I mean, the paper's 4 gone through many changes over the last few years and 5 every time that happens, people are extremely wary of 6 change and they want to talk about it. Guardian readers 7 in particular feel very close to their newspaper, so 8 they feel they have a real stake in it and they want to 9 have that conversation and I spend time trying to have 10 that kind of conversation with them. 11 Then of course, if we get letters from lawyers, I am 12 able to deal with complaints which are presented by 13 lawyers, providing the lawyers actually want to use our 14 processes, but always then I would contact our in-house 15 legal department. 16 Then there are incredibly simple things that what we 17 hope will happen will very often be dealt with by our 18 automatic reply. People don't always know where to go 19 if they haven't had one of their nine sections on 20 a Saturday delivered and we give out telephone numbers 21 in our automated reply which enable people to go 22 straight to the right department. Otherwise, if that 23 doesn't work for them, then we'll talk to them and let 24 them know what it is. 25 People want to pass things on to journalists who</p> <p style="text-align: center;">Page 61</p>	<p>1 A. Well, the readers' editor's office has been in place for 2 14 years now and so people are used to dealing with it, 3 used to co-operating with it. They understand, because 4 it's in our editorial code that both staff and freelance 5 journalists are obliged to co-operate with the office, 6 and overwhelmingly we get quite a lot of support. In 7 fact, some of the errors that we've made are actually 8 referred to us by the journalists themselves. They can 9 see that they've made an error and they'll drop a line 10 to us and say, "Look, I can see from my notes I've 11 either misquoted or I've got this name wrong. We really 12 ought to do a correction." 13 So on the whole I get a great deal of support. 14 Q. On the whole. What if the system breaks down and the 15 journalist doesn't wish to co-operate? What's the 16 backstop? 17 A. The backstop would be I would go, normally quietly, 18 I hope without too much fuss, to their line manager and 19 say, "Look, we've had this complaint, I think it 20 warrants investigation but I really need to talk to X 21 and X is being really prickly about it and feels that 22 it's not worth it." I say, "Look, you know that we need 23 to talk about it, so would you have a word with him?" 24 That has happened once or twice in 18 months and on both 25 occasions that individual has come forward and we've</p> <p style="text-align: center;">Page 63</p>
<p>1 have written pieces, and one of the things which is 2 really growing is the number of people who want to 3 change stories that have already appeared online. We 4 have an extensive archive -- I think we have about 5 1.5 million pages now -- and it's quite an issue, the 6 number of people who say, "I co-operated in this story 7 seven years ago, but now I'm concerned about this 8 aspect, that aspect. Will you delete that?" That's 9 really quite a big issue for us and that's another thing 10 which takes up quite a lot of time. 11 Q. How many complaints do you deal with per year? 12 A. Last year I think it was 26,700 emails. They're not all 13 complaints, but they're complaints or queries. On any 14 day of the week, we publish three or four corrections or 15 clarifications, six days a week, in print, and since 16 we've begun a rolling corrections for online, there can 17 be anything from another four, five, six or seven on 18 there, and some of these can be done within an hour and 19 some of these take a lot longer. 20 Q. I'll come on to corrections and clarifications and where 21 they appear in your newspaper in a moment. Can I ask 22 you this: a complaint's come in. You've decided that 23 prima facie there's some merit to it. You would then 24 approach the journalist who wrote the piece, presumably. 25 To what extent do journalists co-operate in general?</p> <p style="text-align: center;">Page 62</p>	<p>1 dealt with the matter. 2 Q. Now assume the complaint has come in, you've spoken to 3 the journalist and you've decided that you do want to 4 publish a correction or clarification. You tell us that 5 the Corrections and Clarifications column appears within 6 the newspaper -- 7 A. Yes. 8 Q. -- on the letters page. 9 A. It's just moved to the letters page from the leaders 10 page. 11 Q. Can you ensure that a correction gets equal prominence 12 in terms of that? The correction or clarification may 13 not refer to a piece that appeared on the letters page; 14 it may, of course, relate to any article that's appeared 15 in the newspaper. 16 A. That's right. 17 Q. Does anyone ever say, "Look, I'm just not happy with it 18 appearing on the letters page; I'd like my clarification 19 or complaint, whatever it is, to appear with equal 20 prominence to the article I'm complaining about"? 21 A. Mostly that's lawyers who say that to us rather than 22 members of the public. Their real -- mostly, readers 23 and members of the public are just concerned to get it 24 fixed as soon as possible. That's what they want done. 25 The point about our Corrections and Clarifications</p> <p style="text-align: center;">Page 64</p>

<p>1 column is that it has been there for -- the leaders and 2 the letters page is at the heart of the newspaper, and 3 it's well established as to that's where it is, and so 4 overwhelmingly people are happy with that. They're very 5 interested in whether they're going to get the lead 6 correction or not and how that correction is going to be 7 expressed, but they're perfectly happy that it goes 8 there.</p> <p>9 Now, that's not all the time. If it's a lawyer, 10 sometimes they'll say it should be -- there should be 11 a front page sign-off or it should be somewhere else, 12 but mostly people are perfectly content that it's there. 13 We did have a bit of a boost -- it's some time ago now, 14 but in 2002, Mr Justice Morland said he felt that it was 15 a place of proper prominence when he was deciding a 16 libel case in which our readers' editor's prompt and 17 efficient work on a particular thing led to damages 18 which would have been 30,000 reduced to 10,000, and that 19 was a significant boost for our belief that it's in the 20 right place and we're doing the right thing.</p> <p>21 If the industry, at the end of this Inquiry, feels 22 differently about it and there is an industry standard, 23 I think that's a debate we'd very much like to be 24 involved in and will be perfectly happy to take part.</p> <p>25 Q. You told us briefly about your Open Door column which Page 65</p>	<p>1 office. It's a signal to everyone there that a culture 2 of discussing journalism and what goes wrong and 3 sometimes what goes right is encouraged within the 4 office and that's why we think it's a very useful thing.</p> <p>5 Q. I want to ask you about the section of your witness 6 statement which starts at paragraph 21. Here you're 7 dealing with the factors that contribute to the success 8 and those that limit the effectiveness of the role of 9 a readers' editor.</p> <p>10 A. Yes.</p> <p>11 Q. You tell us that legal costs are down significantly, 12 25 per cent, in paragraph 29.</p> <p>13 A. Yes.</p> <p>14 Q. Since the inception of the office "because we are able 15 to offer prominent redress more quickly". Is that PCC 16 complains, fewer libel privacy actions?</p> <p>17 A. Actually, some time ago -- in fairness, it is some time 18 ago since we actually did that calculation, but broadly 19 it is fewer privacy and libel actions. Especially -- 20 the web has really put a lot of pressure on people to 21 want to get things fixed quickly online and for public 22 recognition that something is wrong. If they can get 23 that within 24, 48, 72 hours -- and I would -- I think 24 we should do more detailed analysis than we've done, but 25 I would say anecdotally that most of our stuff is fixed Page 67</p>
<p>1 appears weekly at the foot of the letters page.</p> <p>2 A. Yes.</p> <p>3 Q. We can see an example of that at appendix D. We don't 4 need to turn it up.</p> <p>5 A. Good.</p> <p>6 Q. What does that add to your role?</p> <p>7 A. I think it's very important in -- again, it's on the 8 letters page so it's at the heart of the paper. It 9 shows that we're willing not only to admit that we're 10 wrong but to discuss why we've got things wrong. 11 Sometimes it really is quite difficult to unravel how 12 some things go wrong and very often it's about an awful 13 lot of people doing a thing and things slipping through 14 the cracks, and trying to explain that in a connection 15 doesn't work, but in Open Door we are able to explain: 16 "This is why we got it wrong", and very often spell out 17 what we're going to do to change it. If we found 18 a faulty or flawed process, that will often lead to 19 changes. In fact, the most recent updating of our 20 editorial code contains one or two things which had come 21 out of errors that we'd spotted.</p> <p>22 Sorry, one last thing.</p> <p>23 Q. Of course.</p> <p>24 A. I think I also ought to say -- and this was the view of 25 my colleague, Ian Mayes, who began the readers' editor's Page 66</p>	<p>1 within three or four days -- then they're much happier 2 with that than the more lengthy procedure.</p> <p>3 Although I think the PCC does have a lot of good 4 people -- whatever disagreements I may have about the 5 structure, I think it has a lot of good people -- 6 I think that it takes a bit longer when it's a PCC 7 complaint. That's nobody's fault. It's just you're 8 going to external bodies.</p> <p>9 Q. In terms of other advantages, we've discussed, of 10 course, the independence from the editor and the general 11 culture, just accepting that making mistakes is 12 something which you can deal with in this way. Can we 13 move on very briefly to disadvantages? You've told us 14 that you deal with tens of thousands of complaints, 15 requests for clarification and other issues per year. 16 Is it realistic, in your view, that the role can 17 continue to provide the fast and open remedy with this 18 number of complaints?</p> <p>19 A. It does concern me. I would like to get to things 20 faster. While I stand by what I said, that I think the 21 really significant errors are dealt with -- significant 22 errors, where everyone is happy to use our process 23 within the readers' editor's office, are dealt with 24 within three, four days. I do think there are some 25 things which take longer and that's because of the Page 68</p>

<p>1 volume.</p> <p>2 One of the things that I do is I deal with the more</p> <p>3 complicated complaints, and my colleague, Leslie</p> <p>4 Plommer, deals with the daily column and therefore the</p> <p>5 things that can be normally fixed quickly, maybe within</p> <p>6 24 to 48 hours. Of course, some of the things that</p> <p>7 I deal with are sometimes for the larger organisations,</p> <p>8 often the more aggressive organisations, and they can be</p> <p>9 very difficult to resolve and that does take longer. It</p> <p>10 also takes you away from some other stuff that, given</p> <p>11 a clear run, you might have done a bit faster.</p> <p>12 Q. Can I pick you up on something you said? You said:</p> <p>13 "I'm satisfied that we'd be able to deal with the</p> <p>14 more significant errors."</p> <p>15 A. Yes.</p> <p>16 Q. How do you judge what is a significant error?</p> <p>17 A. I think basically if you're dealing with life and</p> <p>18 limb -- for instance, someone says, "You've identified</p> <p>19 my daughter and you may not realise it but she was</p> <p>20 under 16", that's a significant error. If you have</p> <p>21 written a piece in which you have a set of statistics so</p> <p>22 badly wrong it renders the piece unreadable or useless</p> <p>23 or something, all those kind of things, they're the</p> <p>24 really significant errors, and they sort of -- they</p> <p>25 advertise themselves. If you have someone who wants to</p> <p style="text-align: center;">Page 69</p>	<p>1 relationship with the reader, the contract with the</p> <p>2 reader.</p> <p>3 So for us, it's incredibly important, if we're going</p> <p>4 to survive and move into a digital age and people are</p> <p>5 going to trust our copy, and I think that will be true</p> <p>6 of everyone who's trying to cope with an industry which,</p> <p>7 over the next three to five years, is going to diminish</p> <p>8 and consolidate and I think it's extremely important</p> <p>9 that -- I would suggest it's important for everyone to</p> <p>10 say -- you know, we no longer have this high-to-low</p> <p>11 relationship with our readers where we talk down to</p> <p>12 them, we tell them things and we allow them one or two</p> <p>13 letters in each week. Every time -- for instance, if we</p> <p>14 write about Fukushima and we get our microsieverts and</p> <p>15 our millisieverts mixed up, we have something like --</p> <p>16 within half an hour to an hour, we'll have about ten</p> <p>17 nuclear scientists on our tail online telling us that.</p> <p>18 And people say, you know: "This really matters." People</p> <p>19 regard you -- "You are the Guardian. People take you</p> <p>20 seriously. You have to get this right."</p> <p>21 So I would say that for everyone who wants to</p> <p>22 survive and thrive in journalism, which is really all</p> <p>23 about -- I think it would be -- I think it important and</p> <p>24 useful.</p> <p>25 Q. Regardless of cost?</p> <p style="text-align: center;">Page 71</p>
<p>1 talk to you about the Guardian's use of the subjunctive,</p> <p>2 I'm not saying that's not a worthy subject for</p> <p>3 discussion, but it would sit behind some of those other</p> <p>4 things, and if you've been in journalism for some time,</p> <p>5 you have a feeling -- a judgment for what is more</p> <p>6 significant.</p> <p>7 Q. I understand. Finally, can I just ask your views on</p> <p>8 this issue: there's been a lukewarm response, if I can</p> <p>9 put it this way, from editors that we've asked the</p> <p>10 question of to date -- we asked the Independent editor</p> <p>11 what he thought of a readers' editor. We asked the</p> <p>12 Financial Times editor what he thought of the concept of</p> <p>13 having a readers' editor. The issue that's come back,</p> <p>14 time and time again, is the issue of cost. Do you have</p> <p>15 any views on whether or not a reader's editor is really</p> <p>16 appropriate in all newspapers and in all publications?</p> <p>17 I'm thinking, for example, of magazines, which may have</p> <p>18 a very small staff. Do you have any views on that?</p> <p>19 A. I think that the web in particular -- I think in broad</p> <p>20 terms, if you want to build on -- build a trust with</p> <p>21 your readers, it's a very good thing and it's an</p> <p>22 important thing. I know that the CP Scott 1921 essay is</p> <p>23 brought out so often that it's dangerous -- some of the</p> <p>24 best lines have become cliches, but actually they are</p> <p>25 very good lines and a lot about that is trust and the</p> <p style="text-align: center;">Page 70</p>	<p>1 A. I think cost is a factor, which is why I wouldn't use</p> <p>2 this as a sneaky pitch in front of so many execs to try</p> <p>3 and get more resource, and you wouldn't at this</p> <p>4 particular time, but I think (a) if you do it well you</p> <p>5 can reduce your legal costs and (b) it is so important,</p> <p>6 I do think it's a commercial decision too to do it.</p> <p>7 It's not just the right thing to do -- we happen to</p> <p>8 think it is -- but it's also a commercial decision to</p> <p>9 build that trust and use that facility.</p> <p>10 MS PATRY HOSKINS: Mr Elliott, those are all my questions.</p> <p>11 Was there anything that you wanted to add?</p> <p>12 A. No, thank you.</p> <p>13 LORD JUSTICE LEVESON: Let me. You've identified how many</p> <p>14 thousand communications you have.</p> <p>15 A. Yes.</p> <p>16 LORD JUSTICE LEVESON: What proportion of those are the more</p> <p>17 serious type?</p> <p>18 A. It varies, but I would say I would say maybe one a day.</p> <p>19 That's an allegation. It's not necessarily something</p> <p>20 that will be well-founded.</p> <p>21 LORD JUSTICE LEVESON: No, I understand that entirely. It's</p> <p>22 not difficult to distinguish between incorrect use of</p> <p>23 apostrophes and substantial complaints about stories.</p> <p>24 So one a day I understand. This is a full-time job for</p> <p>25 you?</p> <p style="text-align: center;">Page 72</p>

<p>1 A. Yes.</p> <p>2 LORD JUSTICE LEVESON: I've read with interest the reports</p> <p>3 that are annexed to Mr Rusbridger's witness statement</p> <p>4 from the external ombudsman. These are very substantial</p> <p>5 pieces of work.</p> <p>6 A. Yes.</p> <p>7 LORD JUSTICE LEVESON: This isn't a one-page review. The</p> <p>8 one I've just turned up runs into six very closely small</p> <p>9 typed sheets.</p> <p>10 A. Yes.</p> <p>11 LORD JUSTICE LEVESON: So there's a lot of effort into that.</p> <p>12 How many does he see in a year?</p> <p>13 A. He doesn't see that many. I've only had to refer one to</p> <p>14 him so far in the 18 months or so that I've been doing</p> <p>15 it, and I would say overall he would get maybe one or</p> <p>16 two a year. But I would be prepared to ask him for</p> <p>17 advice. I mean, both those cases took up an enormous</p> <p>18 amount of time.</p> <p>19 LORD JUSTICE LEVESON: Well, it's quite clear that they did.</p> <p>20 A. And thankfully we don't get too many on that scale.</p> <p>21 LORD JUSTICE LEVESON: You say you have one substantial</p> <p>22 complaint that you have to look at, or concern, whether</p> <p>23 valid or not -- I'm not interested in the validity of</p> <p>24 it.</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 73</p>	<p>1 MR ALAN CHARLES RUSBRIDGER (affirmed)</p> <p>2 Questions by MS PATRY HOSKINS</p> <p>3 MS PATRY HOSKINS: Could you please state your full name to</p> <p>4 the Inquiry.</p> <p>5 A. I am Alan Charles Rusbridger.</p> <p>6 Q. At tab 8 you should find your witness statement. Could</p> <p>7 you confirm that the contents of it are true to the best</p> <p>8 of your knowledge and belief?</p> <p>9 A. Yes.</p> <p>10 Q. We only have rather a short time this afternoon, so I'd</p> <p>11 like to also remind the Inquiry of the other evidence</p> <p>12 that you have produced, which will have to be taken</p> <p>13 largely as read, and I'll take them chronologically.</p> <p>14 First of all, we had your presentation to the seminar,</p> <p>15 I believe on 6 October. It's contained at tab 10. You</p> <p>16 don't need to turn it up. Are you content for that to</p> <p>17 be formally taken as evidence to this Inquiry?</p> <p>18 A. Yes.</p> <p>19 Q. Then we had your opening submissions to the Inquiry,</p> <p>20 which have been recorded on the transcript.</p> <p>21 Then we have a skeleton argument --</p> <p>22 LORD JUSTICE LEVESON: Are you happy for that to be</p> <p>23 incorporated as evidence?</p> <p>24 A. Yes.</p> <p>25 LORD JUSTICE LEVESON: There's a difference, you'll</p> <p style="text-align: center;">Page 75</p>
<p>1 LORD JUSTICE LEVESON: I'm just trying to get a feel for</p> <p>2 what's going on, how many of a similar sort of complaint</p> <p>3 say, "No, I don't want to use your system, I'm going to</p> <p>4 go to the PCC"?</p> <p>5 A. Well, in 2011 the Guardian had 31 complaints go to the</p> <p>6 PCC.</p> <p>7 LORD JUSTICE LEVESON: Yes.</p> <p>8 A. Around 10 involved people who were not entirely happy</p> <p>9 with my findings.</p> <p>10 LORD JUSTICE LEVESON: Yes.</p> <p>11 A. Seven of which were either not proceeded with by the PCC</p> <p>12 or not upheld -- it might be eight, actually -- and</p> <p>13 I think two are outstanding.</p> <p>14 LORD JUSTICE LEVESON: All right.</p> <p>15 A. So that's the sort of order.</p> <p>16 LORD JUSTICE LEVESON: All right. Do you find that this</p> <p>17 process has reduced the number of people who go to</p> <p>18 a lawyer and then commence proceedings?</p> <p>19 A. Yes.</p> <p>20 LORD JUSTICE LEVESON: 20 per cent --</p> <p>21 A. That's the 20 per cent.</p> <p>22 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>23 MS PATRY HOSKINS: Thank you, Mr Elliott.</p> <p>24 A. Thank you.</p> <p>25 MS PATRY HOSKINS: Sir, the final witness is Mr Rusbridger.</p> <p style="text-align: center;">Page 74</p>	<p>1 appreciate.</p> <p>2 A. Yes.</p> <p>3 MS PATRY HOSKINS: There is.</p> <p>4 Thirdly, you've provided -- or the Guardian has</p> <p>5 provided -- a summary of evidence, a skeleton argument,</p> <p>6 if I can call it that, to the Inquiry, on corporate</p> <p>7 structure and so on. Yes.</p> <p>8 Then finally, you've also produced a supplementary</p> <p>9 statement dealing in some detail with the questions</p> <p>10 which the chairman asked you shortly after your opening</p> <p>11 submissions had concluded. Again, is that something</p> <p>12 that you're happy to be taken as formal evidence?</p> <p>13 A. Yes.</p> <p>14 LORD JUSTICE LEVESON: Mr Rusbridger, thank you very much</p> <p>15 indeed for that. I think I said at the moment that you</p> <p>16 were the one that got it in the neck, but you were the</p> <p>17 last of the press core participants to speak. It's</p> <p>18 actually intended to be dealt with by everyone.</p> <p>19 A. Yes.</p> <p>20 LORD JUSTICE LEVESON: I'm not sure that everyone has dealt</p> <p>21 with it.</p> <p>22 MS PATRY HOSKINS: Not yet.</p> <p>23 LORD JUSTICE LEVESON: Yet.</p> <p>24 MS PATRY HOSKINS: Mr Rusbridger, if you turn to paragraph 5</p> <p>25 of your statement, you there set out your career</p> <p style="text-align: center;">Page 76</p>

<p>1 history. It's lengthy and I'm not going to take you 2 through it all, but it's fair to say that you've been 3 a professional journalist since 1976. You've been 4 editor of the Guardian since 1995, although the precise 5 terms of that role have changed since 1995. You have 6 worked for the Guardian in a number of different guises 7 and one of the roles was writing a diary column. It's 8 probably a bit late and I know you said not to tell any 9 jokes -- that's for the chairman -- but you also seem to 10 have trodden the well-trodden path from showbiz 11 journalist to editor of a national newspaper. 12 A. My diary column wasn't that exciting. It was -- 13 Q. But so far as the Guardian has a showbiz column, that 14 was you? 15 A. It had no showbiz. Showbiz-free area. 16 Q. Both your statement and the skeleton explain how 17 corporate governance works in practice at the Guardian 18 and the Observer. I don't want to ask you much about 19 that, but at the back of the summary of evidence or the 20 skeleton, there's a helpful diagram which illustrates 21 the rather complex structure. I point that out so that 22 the chairman -- you have that, sir. 23 Can we simply summarise it in this way: ultimately, 24 the Guardian and the Observer do not have a traditional 25 proprietor?</p> <p style="text-align: center;">Page 77</p>	<p>1 A. When you're appointed, the only thing the Scott Trust 2 tells you is to carry on the paper as heretofore, and 3 it's left to you to interpret the traditions of the 4 paper in the light of the current circumstances. 5 I think it's a liberal small "L", and occasionally, 6 about once every ten years, we discuss what the meaning 7 of that is, but it's not liberal politically. It 8 doesn't mean that. 9 Q. Can I ask you about the editorial code, oversight of 10 practices and so. First of all, the Guardian code. You 11 explain at paragraph 6 of your statement that the 12 Guardian has its own editorial conduct, a code of 13 conduct, and has had since 2002. The most recent 14 version of it is dated August 2011. That's within tab 9 15 hopefully. The number at the bottom of the page should 16 be 02903. 17 A. Got it. 18 Q. The editorial code does incorporate the PCC code, but 19 goes slightly further. 20 A. Yes. 21 Q. If I can just explore some aspects of the editorial 22 code. First of all, can we look at the summary. It's 23 at the top of the second page. You explain the most 24 important currency is trust and you explain that the 25 purpose of the code is, above all, to protect and foster</p> <p style="text-align: center;">Page 79</p>
<p>1 A. That's right, yes. We're owned by a trust. 2 Q. It has no shareholders. In fact what was a Trust but is 3 now a limited company -- 4 A. Yes. 5 Q. -- with the name Trust still in it. The Scott Trust 6 owns Guardian Media Group. It doesn't pay dividends and 7 it exists solely for the purpose of securing the 8 financial and editorial independence of the Guardian in 9 perpetuity and since 1993 this has been broadly the same 10 with the Observer as well. 11 As such, the whole corporate structure is designed 12 to keep the management of the editorial and commercial 13 aspects of the group's business separate and to maintain 14 editorial independence. It's a complex structure but 15 have I accurately summarised it? 16 A. That's more or less it, yes. 17 Q. I'm right in saying the Scott Trust engages you at 18 editor and only it can fire you? 19 A. Yes. 20 Q. You've heard no doubt other editors say that although 21 they do have traditional proprietors, none of them 22 interfere in editorial matters. Let me ask you this 23 question: one of the central objectives of the Scott 24 Trust is that the Guardian has to remain faithful to the 25 liberal tradition. Is that not an agenda in itself?</p> <p style="text-align: center;">Page 78</p>	<p>1 the bond of trust between GNM and its readers. Then it 2 says this: 3 "As a set of guidelines, this will not form part of 4 a journalist's contract of employment. Nor will it form 5 part of disciplinary, promotional or recruitment 6 procedures." 7 So presumably this means that you can't be 8 disciplined for breaching the editorial code insofar as 9 the PCC code is not touched upon; is that correct? 10 A. Yes. It's supposed to be a set of guidelines about how 11 we behave, and as it says there, the PCC code is written 12 into the terms of the contract. 13 Q. So the PCC code is part of the contract? 14 A. Yes. 15 Q. This editorial code is not. Turn to the next page under 16 the heading "External assistance". 17 A. Yes. 18 Q. You've explained in your witness statement that you 19 don't use private investigators now, although people who 20 are recruited from other newspapers sometimes ask if 21 they can use private investigators. What I want to 22 understand is, under the heading "External assistance", 23 how this works: 24 "Journalists should not engage the paid services of 25 external non-journalistic agents or assistants without</p> <p style="text-align: center;">Page 80</p>

<p>1 the prior knowledge and approval of the 2 editor-in-chief." 3 Does that mean in terms that if someone wanted to 4 use a private investigator for any reason that would 5 have to be approved by you personally? 6 A. Yes. 7 Q. Turning over the page to the heading "Privacy". Again, 8 this goes beyond the PCC code. You set out, under the 9 heading "Privacy", the Omand principle, the five 10 questions you say journalists should ask themselves 11 about the situation where the journalist is considering 12 intruding on privacy. I'm not going to read them out. 13 LORD JUSTICE LEVESON: You identified them all when you 14 spoke -- 15 MS PATRY HOSKINS: Exactly, you've identified them for us in 16 any event and we have them recorded in a number of 17 places. 18 The question is this: to what extent is it rather 19 easier to comply with these principles on the basis that 20 you are the Guardian newspaper and you don't, as you 21 yourself say in the statement, publish private life 22 exposes and so on? 23 A. I think it's for every editor sort of to set the dial of 24 where they want their privacy settings to be, and we set 25 them pretty high. But I think these questions are</p> <p style="text-align: center;">Page 81</p>	<p>1 A. Well, I think there's a big difference between setting 2 in train the enquiries or activities that would bring 3 something to the public domain -- and I think we very 4 rarely do that. I can't think of an example, in nearly 5 17 years as an editor, where we have set about to expose 6 somebody's private life. We almost never do it. 7 I think that's different from reporting the world as 8 it is. So if -- let me give an example of Tiger Woods. 9 If Tiger Woods, a very famous person, engages in 10 behaviour which becomes the subject of worldwide 11 coverage, can you say -- at some point you have to say, 12 "We can't ignore this, even though we would never have 13 done it ourselves." So in the real world, you're 14 confronted endlessly with stories that are brought into 15 the public domain by other people and on which they may 16 comment on themselves and at some point you cover them. 17 I don't think that makes you a hypocrite. 18 Q. Do you have a system for recording difficult ethical 19 decisions when you're making this kind of decision? Is 20 there an audit trail? 21 A. Well, I'm going to say the same as other witnesses. 22 I think increasingly we are, and those Omand questions 23 are an example of the sort of questions that you might 24 want to note and just keep an informal note of so 25 that -- if people challenge you.</p> <p style="text-align: center;">Page 83</p>
<p>1 useful ones that any editor should be able to ask 2 themselves because I think they're pretty fundamental 3 questions. They're questions of harm versus good versus 4 proportionality versus authorisation and they deal with 5 fishing expeditions. I think they're good principles 6 and whether you worked on the News of the World or the 7 Guardian or the FT, they ought to apply. 8 Q. Can I pick you up on something you said? You said that 9 each newspaper has to decide where on the dial it is in 10 respect of privacy issues and so on. Does the Guardian 11 have no interest at all in the private lives of, say, 12 public figures? Is the dial set so high that it could 13 never justify any intrusion into someone's privacy? 14 A. No, I don't think you'd get any editor who said the dial 15 was set at nought, but I think you just have to give 16 general guidelines because you can't be there at all 17 times of day, 16 hours a day and lots of people have to 18 take general decisions without constantly referring them 19 upwards, so -- I think most people on the Guardian know 20 generally where we stand and that generally informs what 21 we think. 22 Q. Someone said, Mr Rusbridger, that you get around this 23 whole concept by publishing stories about private lives 24 once they're in the public domain. You get away with it 25 in that way. Is that something which you agree with?</p> <p style="text-align: center;">Page 82</p>	<p>1 But in some respect it's not so very different from 2 the so-called Reynolds rules which our investigative 3 journalists and other reporters have been using for a 4 long time. Because it's helpful. It's helpful to be 5 able to keep a log of what you have asked people, when 6 you put it to them, what their answers were because it 7 may give you some protection in law. 8 Q. Before I come to my final question on the editorial 9 code, let's just follow the same train. Can you answer 10 some questions about prior notification? First of all, 11 is it the Guardian's policy to notify someone in advance 12 if it was going to run -- 13 A. In general, yes. 14 Q. How do you feel about mandatory prior notification? 15 Should there be exceptions to the principle and so on? 16 A. Well, I would be against it being mandatory with the 17 state of law as it is, because there are examples where 18 you have -- it could be a vulnerable source who would be 19 put under pressure by the person you're putting it to, 20 or somebody may try and discover who your source is. 21 Somebody may go to court and injunct on a matter -- I'm 22 not talking about private lives; I'm talking about 23 matters of high public interest. People may suppress 24 the documents that you have. You're often torn between 25 a circumstance in which you want to keep documents</p> <p style="text-align: center;">Page 84</p>

<p>1 because you may need them if you're sued for libel, but 2 on the other hand, if you're going to be whipped into 3 court pre-publication by somebody who is trying to get 4 the documents back or to discover the source of the 5 documents, you may want to destroy them. 6 So there are all kinds of dilemmas pre-publication, 7 and I think having a rigid rule that said, "In all 8 circumstances, you must go to the person that you're 9 about to write about" would be difficult as the law 10 stands. 11 Q. Is there any alternative to a rigid rule, in your view? 12 A. I think a strong guideline, and I think in lots of the 13 things that we're looking at, I think it could be taken 14 into account if you didn't. So, you know, in the same 15 way that we're talking about an audit trail, if I took 16 the decision that we weren't going to go to somebody, 17 I should probably note my reasons for that and a future 18 tribunal or court could take that into account in terms 19 of any damages or any sanctions that they wanted to 20 take. 21 Q. Is there anything else you wanted to add about prior 22 notification before we move on? 23 A. No. 24 Q. Finally on the editorial code then, look at the heading, 25 "Subterfuge". It's the last page of the code before you Page 85</p>	<p>1 like that would go to the managing editor or to me as 2 well. 3 Q. Just a few additional governance questions. The 4 editorial code applies to freelancers but what oversight 5 is applied to freelancers to ensure that they do abide 6 by the code? 7 A. I think anybody who is a regular freelancer I hope would 8 be sent the code. It's on our website so anybody can 9 look at it, and I would hope and expect that anybody 10 contracted to us in any way would be aware of it. 11 Q. The Guardian does have a whistle-blowing policy. It's 12 attached to your supplementary statement. What's the 13 value in having that? We've heard some editors saying 14 that there is simply no need for a whistle-blowing 15 policy because someone can either approach them 16 personally or the HR department. Where's the value in 17 that? 18 A. I would have thought that's an old-fashioned view, and 19 that virtually all modern companies in modern life have 20 some form of whistle-blowing policy because it's so 21 difficult being a whistle-blower and you do need some 22 kind of protection. That's why they're increasingly 23 common. 24 Q. Can I ask you about conscience clauses. Are you 25 a supporter of having a conscience clause in Page 87</p>
<p>1 turn to "Personal behaviour": 2 "Journalists should generally identify themselves as 3 GNM employees when working on a story. There may be 4 instances involving stories of exceptional public 5 interest where this does not apply. That needs the 6 approval of a head of department ..." 7 And so on. What is exceptional public interest and 8 why have you chosen to put a higher test than a public 9 interest test here? 10 A. Because I think it's a serious matter. I think 11 generally you should do most of your journalism by 12 saying who you are and being transparent about it. 13 An example of where we have used subterfuge in the 14 last couple of years would be a reporter who wanted to 15 find out the truth of what the English Defence League 16 was really like, and became a member and he obviously 17 didn't announce himself as a Guardian journalist at the 18 point that he became a member, but that gave you an 19 insight into this organisation that you wouldn't have 20 been able to do had you announced yourself at the door. 21 Q. So would the wording suggest that the head of department 22 makes the decisions as to whether or not -- 23 A. Oh yes, that's a -- 24 Q. -- there is an exception of public interest? 25 A. Head of department or -- I would have thought a decision Page 86</p>	<p>1 a journalist or staff contracts? 2 A. Yes. It's a sort of continuation of the same ethos that 3 drives a whistle-blowing policy, but I think -- I think, 4 for instance, a lot of what was going on at the 5 News of the World a lot of the journalists there were 6 uneasy about, and I think it ought to be open to 7 journalists to say, "I don't think you should be asking 8 me to do that and it doesn't fit with my professional 9 code or my personal conscience to be able to do that", 10 and there ought to be some form of protection for 11 journalists who want to be able to exert that kind of -- 12 LORD JUSTICE LEVESON: It only has a very limited value, 13 hasn't it, because inevitably, once the concern is out 14 in the open, one might protect people in law but it's 15 quite difficult to protect them from insidious -- 16 A. Yes. 17 LORD JUSTICE LEVESON: -- issues. 18 A. You would hope that there is a union or, at the very 19 least, a staff association who would be able to give 20 some protection to a journalist who wanted to trigger 21 that clause. 22 LORD JUSTICE LEVESON: Yes. 23 MS PATRY HOSKINS: You will have heard a number of editors 24 being asked about the sources. Does the Guardian ever 25 publish single-source stories, and if so, in what Page 88</p>

<p>1 context?</p> <p>2 A. Yes. If the archbishop of Canterbury told me that he</p> <p>3 was about to resign, ie. a person of trust was telling</p> <p>4 you something about himself, I don't think I would go</p> <p>5 for a second source on that. If someone told you that</p> <p>6 the archbishop of Canterbury was going to resign, that's</p> <p>7 something where -- if somebody else told you, even if it</p> <p>8 was a bishop, you would want a second source on that.</p> <p>9 I am using that as an example. There are circumstances</p> <p>10 in which you're dealing with people and information</p> <p>11 which they are perfectly placed to know about, but</p> <p>12 generally I agree with my colleagues that with most</p> <p>13 information, it is better to try and get corroboration.</p> <p>14 Q. We'll come back to bishops, I promise. Readers' editor</p> <p>15 is my next topic. We have heard Mr Elliott tell us</p> <p>16 about the readers' editor and its role. You explain in</p> <p>17 your statement that both the Guardian and the Observer</p> <p>18 have readers' editors. From your point of view, why</p> <p>19 have a readers' editor? What's the main benefit for you</p> <p>20 as an editor?</p> <p>21 A. I lived in America in the mid-1980s and it was quite</p> <p>22 commonplace there. I hadn't come across it before.</p> <p>23 While I was living in America, I also came across that</p> <p>24 book by David Broder which I quoted to you, which made</p> <p>25 me think about the imperfect nature of journalism, that</p> <p style="text-align: center;">Page 89</p>	<p>1 A. In the end, if you're going to have one -- and this may</p> <p>2 explain the reluctance of some editors to go down this</p> <p>3 route -- you are giving away a significant degree of</p> <p>4 control. The moment you sign -- the moment I signed</p> <p>5 Mr Elliott's contract saying that I can't intervene in</p> <p>6 what he does, I'm giving away control over part of my</p> <p>7 newspaper, which is quite a significant thing for an</p> <p>8 editor to grant.</p> <p>9 So in the end, if he thinks we should correct or</p> <p>10 apologise for something, it doesn't matter what I think.</p> <p>11 He's going to go and do it.</p> <p>12 Q. What's the point in consulting you? Simply to take into</p> <p>13 account your view?</p> <p>14 A. I think it's partly a matter of courtesy, but I suppose</p> <p>15 it's almost like the sort of -- the prior notification</p> <p>16 business. He says, "I'm about to say this; is there</p> <p>17 anything you want to say to change my mind?" Sometimes</p> <p>18 I try and change his mind, and usually he ignores me.</p> <p>19 Q. Can I ask you some questions about the practicalities of</p> <p>20 having a readers' editor in every newspaper, every</p> <p>21 magazine, every publication? You may have heard other</p> <p>22 editors saying they simply didn't feel they needed one</p> <p>23 or some lukewarm responses from others.</p> <p>24 We haven't yet heard from the regional press, the</p> <p>25 Scottish press and so on. They may well be lukewarm</p> <p style="text-align: center;">Page 91</p>
<p>1 journalism is bound by its very nature to be imperfect</p> <p>2 and that error is implicit in journalism.</p> <p>3 I came back to the UK and when I became an editor</p> <p>4 I thought: why can't we just be honest about that and</p> <p>5 build it into what we do, that we do make errors but</p> <p>6 that it is the right thing to apologise, and to correct</p> <p>7 and to clarify? So I wanted to make it routine in the</p> <p>8 way that it is in America.</p> <p>9 I was also conscious of the power -- when you become</p> <p>10 an editor, you are conscious of the very great deal of</p> <p>11 power that you have, and I thought it was good to have</p> <p>12 a form of independent challenge so that I, as the person</p> <p>13 who was responsible for the story -- I'm not necessarily</p> <p>14 the best person to go to in order to correct that story</p> <p>15 and it's been a tremendously liberating thing to have</p> <p>16 somebody else reach an impartial view of whether</p> <p>17 something is right or wrong and deserves correction or</p> <p>18 clarification and I think it's a really good model.</p> <p>19 Q. I touched on remedies with Mr Elliott. The readers'</p> <p>20 editor can do lots of things, but the terms of reference</p> <p>21 suggest that an apology or a correction is agreed in</p> <p>22 consultation with the editor. How do you deal</p> <p>23 situations where there it is a fundamental disagreement</p> <p>24 between you and Mr Elliott or his predecessor about</p> <p>25 a story?</p> <p style="text-align: center;">Page 90</p>	<p>1 too, we simply don't know yet, but how can this work</p> <p>2 across the board in terms of cost, practical</p> <p>3 implications for magazines and so on?</p> <p>4 A. I've talked about the issue of control. If people were</p> <p>5 honest, that's one of the reasons why people are nervous</p> <p>6 about having a readers' editor, because of the loss of</p> <p>7 control.</p> <p>8 On the question of need, I don't think actually --</p> <p>9 until you have a readers' editor, you can't really tell</p> <p>10 whether you need one. I heard some editors saying, "We</p> <p>11 only publish X corrections a week", but it's only by</p> <p>12 having an independent system and encouraging people to</p> <p>13 tell you -- so I'm pretty sure that if the Guardian</p> <p>14 makes a mistake, that we're going to know about it</p> <p>15 because we are appealing for people to identify them.</p> <p>16 In terms of spotting the systemic weaknesses within the</p> <p>17 paper or of individuals, it's difficult, I think, for</p> <p>18 anybody to say they don't need that if they don't have</p> <p>19 it.</p> <p>20 In terms of cost, I've also heard my colleagues</p> <p>21 saying there's usually somebody on the paper who deals</p> <p>22 with these things. It might be part of the managing</p> <p>23 editor's office. So it's not a given that having this</p> <p>24 person is going to be an additional headcount, because</p> <p>25 somebody -- usually editors don't have the time to deal</p> <p style="text-align: center;">Page 92</p>

<p>1 with this personally. There's usually people within 2 your organisation who is dealing with this. I would say 3 I agree with what Chris Elliott said about why it is 4 good commercially in terms of building trust and in 5 reducing legal cost.</p> <p>6 In terms of the much smaller papers -- I was trying 7 to think if there was a rule of thumb. We have two 8 readers' editors per a headcount of about 600. I would 9 have thought that any paper with a staff of over 100, to 10 have one person who is doing this would not be an 11 excessive use of resource. In the case of regional 12 chains, I would have thought a group like Trinity Mirror 13 or Johnson, if they had one readers' editor who dealt 14 with five or six or maybe even 15 titles, that would be 15 a way of getting around the business of having one per 16 title.</p> <p>17 Q. Is there anything you would like to add on the equal 18 prominence argument? There have been some criticisms of 19 the fact that the Corrections and Clarifications column 20 is buried, some say, in the newspaper. Other newspapers 21 put their Corrections and Clarifications column on 22 page 2. Is there anything that you'd like to say about 23 that?</p> <p>24 A. Well, it certainly simplifies things if -- I think it's 25 good practice to have it in one place. I regard the</p> <p style="text-align: center;">Page 93</p>	<p>1 prominently there, people weren't making use of it, so 2 it seemed a bit silly to be actually trying to 3 commission these pieces, but if anybody wants to be able 4 to reply to something at about 700 words instead of the 5 average length of a letter, which would be about 150 6 words, it's there and we'll continue to use it.</p> <p>7 Q. Is it a right of reply column?</p> <p>8 A. No, it's an opportunity to reply. I think nobody has 9 the right to reply.</p> <p>10 Q. Do you edit any of its content?</p> <p>11 A. There is an editor of the column, who will edit it, yes, 12 but I mean, as to the point of it, it's to allow 13 somebody to respond. It's not edited too heavily.</p> <p>14 Q. Before I turn to the PCC and future regulation, I'd like 15 to ask you general questions which you may have heard 16 asked of others. First of all, your relationship with 17 the police and senior politicians, please. Do you meet 18 with senior political figures? Prime ministers, 19 shadow --</p> <p>20 A. Yes, we have an open editorial conference every day on 21 the Guardian. Every Wednesday, we invite somebody in to 22 come and talk to the staff as a whole and quite often 23 they're politicians. Sometimes we'll have lunches. 24 I meet them at conferences and very occasionally you'll 25 get bidden to Number 10 or Chequers to meet the</p> <p style="text-align: center;">Page 95</p>
<p>1 leader spread as a very prominent part of the Guardian, 2 and it certainly cuts out a lot of argument. If we just 3 say that that is where we correct -- because otherwise 4 it just gives lawyers more to argue about. So to 5 clarify, it helps if we can just say, "That is where, as 6 a matter of policy, we correct."</p> <p>7 We have, on one or two occasions, published -- where 8 we've got things badly wrong and where it was serious, 9 we've published a little front-page teaser to say 10 there's a correction on the readers' column, but as 11 Chris Elliott said, if the -- if there's going to be an 12 industry standard where everybody does it on page 2, 13 I don't have a problem with that either.</p> <p>14 Q. Finally on this issue, you have a readers' column at 15 present, four days a week, on the leader page. What's 16 the thinking behind that?</p> <p>17 A. The response column?</p> <p>18 Q. Yes, the readers' response column.</p> <p>19 A. It was really -- and ironically within the last week 20 we've reduced the frequency of that, but it's a chance 21 to allow people to respond at greater length than in 22 a letter, especially if it personally refers to them.</p> <p>23 The reason we reduced it was that actually we found 24 that we were having to commission it, because people 25 weren't -- although it was there every day and was quite</p> <p style="text-align: center;">Page 94</p>	<p>1 prime minister. It's only -- I've met David Cameron 2 once since he became prime minister.</p> <p>3 There's something else which has changed in the last 4 six months, which is now all cabinet ministers and 5 I think shadow cabinet ministers feel obliged to keep 6 a record of if they meet an editor. I am not convinced 7 that's necessarily a great step forward.</p> <p>8 Q. Why not?</p> <p>9 A. If we have Vince Cable to lunch -- was it Vince Cable?</p> <p>10 Yes -- to lunch a few months ago and he said, "If you're 11 here, I'm going to have to declare this. If you're not 12 here, I'm not going to have to declare it." So I'm not 13 sure what the rationale of that is, particularly --</p> <p>14 LORD JUSTICE LEVESON: Sorry?</p> <p>15 A. I'm not particularly sure why --</p> <p>16 LORD JUSTICE LEVESON: If you personally were there?</p> <p>17 A. Yes. If an editor speaks to a cabinet minister, it's 18 different from a political editor speaking to a cabinet 19 minister.</p> <p>20 LORD JUSTICE LEVESON: I see. So him coming to your office 21 where he might meet political editors and staff --</p> <p>22 A. As I understand it, that doesn't have to be declared, 23 which I think is good, because I think it would be 24 a strange world in whichever every contact between 25 politicians and journalists has to be logged.</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 LORD JUSTICE LEVESON: Well ...</p> <p>2 A. But for some reason, if an editor's there, it becomes</p> <p>3 something that is declarable.</p> <p>4 LORD JUSTICE LEVESON: I suppose the -- well, you appreciate</p> <p>5 what the concern is, I have no doubt. Let me just try</p> <p>6 and grapple with that for a moment. I tried with</p> <p>7 Mr Harding this morning.</p> <p>8 It's not surprising if you want to meet politicians,</p> <p>9 senior people from any walk of life in the country --</p> <p>10 the examples I've given are bishops, generals, judges,</p> <p>11 anybody -- merely to understand the issues which they</p> <p>12 are confronting, not to deal with specifics of any sort.</p> <p>13 The question is whether, in relation to politicians,</p> <p>14 that creates an opportunity for lobbying or abuse either</p> <p>15 way, and that's really what it's getting at. It's not</p> <p>16 to cover the general issues of the day, but rather more</p> <p>17 insidious relationships. Is that a problem, do you</p> <p>18 think, or not a problem, realistic or not realistic,</p> <p>19 something that ought to be addressed? I'm coming back</p> <p>20 to it later on in the year.</p> <p>21 A. Well, I think ... I think it would be a shame if</p> <p>22 a minister or a politician couldn't talk to an editor</p> <p>23 without that necessarily becoming a public event, but</p> <p>24 maybe that is the world in which we're living. It was</p> <p>25 certainly a surprise to me in July to see the extensive</p> <p style="text-align: center;">Page 97</p>	<p>1 road-testing policies with us. But, you know, it was</p> <p>2 useful when Labour was in power to be able to</p> <p>3 occasionally meet the prime minister and talk through</p> <p>4 our concerns over -- it could be the environment, it</p> <p>5 could be civil liberties -- to get our environment</p> <p>6 editor -- so it wasn't always political editors -- in</p> <p>7 the same room and say, "Why aren't you doing green</p> <p>8 issues more priority?" I think that's a good thing to be</p> <p>9 able to do with a prime minister.</p> <p>10 Q. You think it's important that editors, political</p> <p>11 editors, et cetera, should continue to be allowed to</p> <p>12 meet with senior politicians to --</p> <p>13 A. Certainly to meet. I suppose my only slight niggle is</p> <p>14 over whether they will have to be logged.</p> <p>15 Q. Right. Do you meet with senior police officers?</p> <p>16 A. I think all the heads of the Met bar the present one</p> <p>17 I have met over lunch or had dinner or a cup of coffee.</p> <p>18 Q. Again, what's the purpose of those meetings?</p> <p>19 A. Generally, again, they're useful meetings in which they</p> <p>20 can explain the background of what's going on on their</p> <p>21 patch or the difficulties that they're facing, and</p> <p>22 occasionally during the phone hacking saga -- I've</p> <p>23 written about this or talked about it. There were two</p> <p>24 occasions where very senior Met officers came to see me</p> <p>25 in effect to try and talk me out of the story. So that</p> <p style="text-align: center;">Page 99</p>
<p>1 contacts between David Cameron and senior editors in</p> <p>2 News International, and especially when it emerged under</p> <p>3 questioning that David Cameron had discussed the BSkyB</p> <p>4 with them, albeit, he said, in innocent terms. So I can</p> <p>5 see there is a problem there.</p> <p>6 But equally, if you make it too rigorous that you</p> <p>7 have to note every single meeting, then I think that</p> <p>8 probably militates against the flow of information</p> <p>9 between politics and the press.</p> <p>10 LORD JUSTICE LEVESON: Yes. I think therefore you're</p> <p>11 recognising there is a distinction between the two types</p> <p>12 of contact I've just mentioned.</p> <p>13 A. Yes.</p> <p>14 MS PATRY HOSKINS: When you've had these meetings with</p> <p>15 senior politicians, to what extent do the -- you've</p> <p>16 heard some editors say that the politician will run</p> <p>17 a particular policy past them with a view to</p> <p>18 ascertaining how that policy would go down with their</p> <p>19 readers. Is that your experience?</p> <p>20 A. I think it used to be far worse in the past. I mean,</p> <p>21 Alastair Hetherington, my predecessor, used to be having</p> <p>22 almost weekly meetings with Harold Wilson. Lloyd George</p> <p>23 used to run his cabinet changes past CP Scott before he</p> <p>24 did them, so I don't think this is a new problem.</p> <p>25 I don't think I -- I can't remember ministers</p> <p style="text-align: center;">Page 98</p>	<p>1 was a qualitatively different kind of meeting which had</p> <p>2 a particular purpose.</p> <p>3 Q. Okay. Did they succeed, for the record?</p> <p>4 LORD JUSTICE LEVESON: I think not.</p> <p>5 A. They didn't, and Sir Paul Stephenson, when he resigned,</p> <p>6 was gracious enough to say that he was glad I ignored</p> <p>7 his advice.</p> <p>8 Q. I said I'd come back to bishops. Do you meet with</p> <p>9 bishops, senior judges and so on? Another editor said</p> <p>10 that he did, so I'm wondering.</p> <p>11 A. Yes. We meet bishops, imams, rabbis and judges. It</p> <p>12 was -- sometimes you will be invited in to go and have</p> <p>13 lunch with the judges at the Old Bailey or the High</p> <p>14 Court. I once went to talk to -- a meeting of High</p> <p>15 Court judges and ditto the security services. I think</p> <p>16 all these things are useful.</p> <p>17 Q. Can we turn now to the role of the PCC and</p> <p>18 recommendations for future regulation. First of all,</p> <p>19 I'd like to ask you about your resignation from the Code</p> <p>20 Committee. If you turn to tab 9 in the bundle you have,</p> <p>21 you'll find the first page of that is your resignation</p> <p>22 letter. For those who don't have it, it's dated</p> <p>23 12 November 2009 and it's a short letter to</p> <p>24 Mr Paul Dacre which makes clear that you consider that</p> <p>25 the PCC performs a very valuable function and that</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 you've enjoyed sitting on it under the chairmanship of 2 Mr Dacre, and then you say this: 3 "... but I am afraid that I am personally out of 4 sympathy with the PCC at the moment. Its code is 5 excellent, its mediation work is often very valuable, 6 but to my mind, it is not suited to the task of 7 regulation as most people would understand that term." 8 Can you perhaps explain what you meant by "I am 9 personally out of sympathy with the PCC at the moment"?</p> <p>10 A. That letter was rather prescient, because it goes on to 11 say, "I don't think this is a sustainable position in 12 the long term." 13 First of all, just to correct you, I was resigning 14 from the Code Committee, not the PCC. I was never on 15 the PCC, and I think there I was saying that the PCC -- 16 that the Code Committee performed the valuable function.</p> <p>17 Q. Yes.</p> <p>18 A. I stand by that. I think the code is a perfectly good 19 code and I was impressed by the work of the Code 20 Committee and Paul Dacre was a very good chair, so 21 I didn't have a problem particularly with the Code 22 Committee. 23 But when the PCC's report into phone hacking came 24 out, I thought that it was, crudely, a whitewash. It 25 was worse than a whitewash because it not only couldn't</p> <p style="text-align: center;">Page 101</p>	<p>1 PCC constitution did permit it to do certain things 2 which might have given it rather more authority but they 3 just didn't do them. 4 A. It could certainly have done a better job than it did 5 with the powers that it had, but that was the excuse 6 that's been mounted since, that -- they've held their 7 hands up in a rather hang-wringing way to say, "We 8 didn't have the powers, we were lied to", but even when 9 they were lied to by the biggest, most powerful media 10 player in the country and the most prominent member of 11 the PCC, there was nothing they could even do about 12 that. So I think its inadequacies were fatally exposed 13 by that episode. 14 MS PATRY HOSKINS: I'd like to take you to the way forward 15 from here, if I can. Behind tab 11 you'll find a copy 16 of your Orwell lecture, a lecture on journalism and the 17 phone hacking scandal which you gave on 10 November 18 2011. The reason I take you to that is because you set 19 out in some detail your proposals for the future. If we 20 look at page 10, at the top of the page -- you should 21 find there's 20 pages internally and if you turn to 22 page 10 of 20, you'll see the first of the proposals 23 that you put forward. Do you have that? 24 A. Yes. Where it says "readers' editors"?</p> <p>25 Q. Yes. I'm going to take you through each of those in</p> <p style="text-align: center;">Page 103</p>
<p>1 find anything wrong; it was factually wrong about 2 matters that were in the public interest, and for some 3 reason whoever wrote it felt they should try and put in 4 a little sneery swipe at the Guardian's reporting and 5 I just thought that was such an inadequate way to 6 proceed and that it so undermined the principle of 7 self-regulation that I couldn't really be identified 8 with the body by actually playing any active role in it.</p> <p>9 Q. So your view, in respect of the phone hacking 10 allegations, is that the PCC failed to act as 11 a competent regulator?</p> <p>12 A. I don't think it -- I mean, we wrote an editorial at the 13 time saying it wasn't a regulator and I was interested 14 that when Lord Hunt took up his position, the first 15 thing that he said was to say that the PCC wasn't 16 a regulator.</p> <p>17 Q. All right.</p> <p>18 LORD JUSTICE LEVESON: But it's right to say that prior 19 thereto, it had always said that it was a regulator?</p> <p>20 A. It had been -- yeah, it described itself as a regulator 21 and members of the industry described it as a regulator, 22 but it plainly -- the phone hacking thing exposed the 23 fact that it had none of the powers that you would 24 expect of any regulator.</p> <p>25 LORD JUSTICE LEVESON: Did it have no power? I thought the</p> <p style="text-align: center;">Page 102</p>	<p>1 turn. I don't think we need to discuss readers' 2 editors. We've already touched on that. Is there 3 anything you wanted to add to that particular proposal? 4 A. No. 5 Q. "A regulator with teeth" is the next proposal. Without 6 reading out the entire section, it's clear that you 7 suggest that the regulator should have investigatory 8 powers, should have power to sanction, and have a 9 "polluter pays" principle. Can you talk us through that 10 particular proposal in more detail? 11 A. I gave the example there of -- in 1998, we published 12 a piece that alleged that a Carlton TV programme had 13 essentially been faked and what happened there was that 14 a very distinguished QC, Michael Beloff, went in with 15 a couple of assessors and I imagine that was quite 16 a costly inquiry in terms of getting to the bottom of 17 that. They came to the conclusion that our story was 18 right and Carlton TV paid for that inquiry. The ITC, 19 which was then the regulator of ITV, also levied a 20 £2 million fine on top of that. 21 Let's set the fine aside. I think that idea of 22 where there's prima facie evidence that something has 23 systemically badly gone wrong within a newspaper, the 24 idea of sending a figure like that in, whose credibility 25 is going to be dependent on not having the wool pulled</p> <p style="text-align: center;">Page 104</p>

<p>1 over their eyes in the way that the PCC had, is quite 2 a good one and that the organisation should bear the 3 cost of that.</p> <p>4 Q. Is there anything else you wanted to say?</p> <p>5 A. No. I think this is probably now uncontroversial. 6 I would guess that the industry -- and Paul Dacre said 7 when he gave evidence here -- he was talking about an 8 ombudsman and I think the fact that a figure like 9 Paul Dacre would come out with that is significant.</p> <p>10 Q. The third proposal, you've renamed the PCC the PSMC, 11 a one-stop shop, a Press Standards and Mediation 12 Commission. You say it should be a one-stop stop 13 disputes resolution services so that people never have 14 to go to the law to resolve their differences with 15 newspapers. It could be quick, responsive and cheap. 16 Again, could you flesh that out for us?</p> <p>17 A. This is something that's been talked about much in the 18 last couple of weeks. It's trying to work out whether 19 there's an arbitral or adjudicatory wing that could be 20 applied to the regulator that would get over some of the 21 problems that the press is always complaining about. We 22 all -- you've heard us whingeing endlessly about the 23 cost of libel and the chilling effect that libel to. 24 I thinking it would be a challenge to see whether we 25 could deal with privacy too, because none of us likes</p> <p style="text-align: center;">Page 105</p>	<p>1 "No, that's not quite right; it was set up in a piece of 2 legislation in the Defamation Act that recognised the 3 role of the regulator."</p> <p>4 So that's one bit. The second bit is this mediation 5 and adjudication role. As I understand the law, we 6 should be talking about adjudication rather than 7 arbitration, and there are parallels in law where it can 8 be compulsory to submit yourself to adjudication before 9 going to the courts. I'm told -- I'm obviously not 10 a lawyer -- that this is common place in construction 11 law.</p> <p>12 LORD JUSTICE LEVESON: That's because there is an agreement 13 to that effect.</p> <p>14 A. Yes. So I personally -- if you're saying that there 15 would need to be a statute passed in order to give that 16 force, I wouldn't be against the use of statute. If you 17 made that -- it was written into law so that the powers 18 this regulator had in order to be able to perform this 19 adjudication function -- if the law needs to be changed 20 by statute in order to do that, I would have thought 21 that is something the industry ought to welcome because 22 it's going to help us out of this problem of libel.</p> <p>23 The third bit, which is the most wriggly and 24 difficult bit, is how you deal with refuseniks and 25 whether you need a statute in order to compel everybody</p> <p style="text-align: center;">Page 107</p>
<p>1 having to submit to the courts.</p> <p>2 So if that's our stance, that we hate the way that 3 the courts deal with libel and privacy, why don't we use 4 this opportunity to show that we can do it ourselves? 5 That is what I was trying to say.</p> <p>6 LORD JUSTICE LEVESON: By "ourselves", it doesn't 7 necessarily mean editors. It may be set up, this 8 arbitral system.</p> <p>9 A. No -- yeah.</p> <p>10 LORD JUSTICE LEVESON: But you have to address the issue, 11 which you've probably also heard me talk about, that 12 it's either consensual, in which case those with the 13 money will say, "I'm not interested", or it is a part of 14 the mechanism that is provided as opposed to court to 15 resolve disputes.</p> <p>16 A. Can I break that down into three, because -- just 17 because I think it might help the discussion about this 18 use of statute. The first use of statute -- I think 19 these terms are becoming confused. There's a question 20 about whether the regulator needs to be set up by 21 statute or whether it could be something that recognises 22 the powers of the regulator. I was trying to clear my 23 own thinking on this and rang up the Irish ombudsman 24 this morning because it looked to me as though the Irish 25 Press Council had been set up by statute, and he said,</p> <p style="text-align: center;">Page 106</p>	<p>1 in in order to be able to then have the system that 2 works for everybody, and I think that's the most 3 difficult bit. In a way, it's connected with the first 4 bit, ie. do you set it up by statute or are you just 5 recognising this organisation by --</p> <p>6 LORD JUSTICE LEVESON: I agree with the analysis, but that 7 doesn't -- although in the second of your three points 8 you identified what you could find acceptable --</p> <p>9 A. Yes.</p> <p>10 LORD JUSTICE LEVESON: -- you've been remarkably coy in 11 saying so in relation to that.</p> <p>12 A. Yes.</p> <p>13 LORD JUSTICE LEVESON: So far.</p> <p>14 A. Do you want me to keep on talking?</p> <p>15 MS PATRY HOSKINS: Yes.</p> <p>16 A. To the extent that we're all talking about carrots and 17 sticks, I think if this adjudication bit could be built 18 into the role and acknowledged by law in libel -- let's 19 come back to privacy later -- and that there were 20 significant advantages in costs and in the speed and 21 ease of settling these disputes, that would be 22 a significant imperative for any publisher to come in.</p> <p>23 I was also interested, talking to the Irish 24 ombudsman, in something else I didn't know about, the 25 way they constructed this in 2009, which is that the</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 ombudsman in Ireland, as well given absolute privilege 2 in anything that he or she wants to say about the 3 members who are members of the Irish Press Council. He 4 was talking aloud to me about whether did he what he 5 wants to do is to get the doyle(?) to extend that so 6 that he could have absolute privilege in talking about 7 non-members. So I was thinking about the refuseniks 8 here and why a regulator couldn't just go ahead and 9 regulate them anyway, and if you granted them absolute 10 privilege, they could say anything they liked about the 11 refuseniks, and anybody else could correct and publish 12 about the things that were happening in the refusenik's 13 paper. 14 These are all things that are short of statute, but 15 I think they are quite significant carrots and sticks. 16 Let me pause there. 17 LORD JUSTICE LEVESON: All right. 18 MS PATRY HOSKINS: Moving on through the Orwell lecture, 19 number 4 is: 20 "Agree on what we mean by public interest and stick 21 to it." 22 You say you think that the PCC definition of public 23 interest that exists at present is actually pretty good, 24 but you say essentially what needs to happen is that 25 newspapers need to believe in it and be prepared to</p> <p style="text-align: center;">Page 109</p>	<p>1 "No". I think if we're going to have a public interest 2 clause and we're all going to sign up to it, it should 3 be something we believe in and argue for. 4 Q. The final recommendation is learning from others, and 5 you include the Omand principles. I don't think there's 6 anything we need to go back to. 7 A. No. 8 Q. Can I ask you briefly about changes to the industry, the 9 growth of online format, and so on, and whether you 10 believe that regulation will threaten or stimulate the 11 newspaper industry? 12 A. It's a fact of life that we're all on the path to being 13 increasingly digital organisations and that brings us 14 into competition with a whole digital world that didn't 15 exist ten years ago. You can't escape the fact that the 16 more regulated we are, that is going to place us at some 17 disadvantage to people who aren't, but I think I would 18 like to play up the advantages of that, because I think, 19 again, if the argument that we're making for journalism 20 is that we operate to a professional standard of -- 21 professional code of standards and ethics, that should 22 be an advantage in branding what we do and we shouldn't 23 worry too much and become too obsessed by all these 24 people who are out there who aren't -- who don't operate 25 by that kind of code.</p> <p style="text-align: center;">Page 111</p>
<p>1 argue it. 2 A. The longer this Inquiry goes on, the more public 3 interest becomes the two most common words. 4 Q. Indeed. 5 A. And you realise that public interest is at the heart of 6 everything we do believe in, we argue for and we should 7 believe in. So I think we have to have a very clear 8 idea of what we mean by those words and I think the PCC 9 code is good, or adequate, and I think the more that 10 outsiders and academics have been drawn into this 11 Inquiry, the more we've become aware that there are ways 12 in which it could be improved. I'm not saying it's the 13 final word on public interest. 14 But I think, having agreed it, particularly if we 15 want to create this kind of one-stop shop, then that 16 should become the cornerstone of what we're talking 17 about, and I think that does come into play in questions 18 of privacy, and what I think has been the case pretty 19 frequently recently in a lot of the so-called 20 super-injunction cases in the courts have involved 21 papers who go along and argue these cases, but when the 22 judge asks the papers, as he's obliged to do, he or she 23 is obliged to do under section 12, "Are you claiming 24 that this complies with the public interest section of 25 the relevant code?" the answer more often than not is,</p> <p style="text-align: center;">Page 110</p>	<p>1 Q. Finally, maybe you've heard this question asked of 2 others: what's your biggest priority for the Guardian 3 going forward from here? 4 A. Well, it is -- it's the same answer that others have 5 given, that there is this ferocious digital revolution 6 coming along and we're in the teeth of that at the time 7 of maximum economic disruption. There are huge 8 opportunities there. I made the point in my 9 supplementary statement that the Guardian is now a very 10 considerable global player, but there are huge 11 challenges in terms of making -- of finding the 12 convincing business model, so I want to see Guardian 13 journalism continue and thrive, although whether and to 14 what extent that is in print or in digital is a sort of 15 second order matter. 16 Q. I'm conscious, Mr Rusbridger, that you've produced 17 a very large amount of evidence to this Inquiry and that 18 we've not been able to touch on a very large percentage 19 of it. Is there anything that you would like to add 20 particularly? 21 A. No. 22 MS PATRY HOSKINS: Thank you very much indeed. 23 LORD JUSTICE LEVESON: Let me just ask this: in the period 24 which has elapsed since you spoke at the seminar, you've 25 made a number of speeches, you've opened this</p> <p style="text-align: center;">Page 112</p>

<p>1 submission, you've made a number of speeches, we've 2 travelled, I think, a fair distance. Ultimately I will 3 make some recommendations, but I would be grateful for 4 your view as to whether your attitude to the subject 5 matter of part 1 of this Inquiry has changed as a result 6 of the last three months, if only to give me 7 a weathervane as to the impact, which is quite important 8 for me to assess as well.</p> <p>9 A. I think there isn't a journalist in Britain who hasn't 10 found a lot of what has been heard in the last few 11 months sobering. And it's been a very -- I mean, there 12 is no industry that could -- no industry or body or 13 profession that could go through this kind of scrutiny 14 and enjoy it. But I think there have been -- it's been 15 a very harsh and uncomfortable light thrown on some 16 things, as well as the opportunity for everybody to come 17 along and talk about the good things and the realities 18 of the challenges that we face.</p> <p>19 But I think what the Inquiry has done, as well as 20 open up that light, has drawn in other voices. It's 21 brought editors out into the public in a way that 22 they're not often brought out. That's uncomfortable, 23 but I think it's also good and fits in with the age of 24 transparency that we expect of others.</p> <p>25 And I think it's drawn in useful voices from</p> <p style="text-align: center;">Page 113</p>	<p>1 most editors, most people in the industry six months 2 ago -- because of course, we all utterly reject anything 3 that looks like state licensing and we reject anything 4 that looks like politicians or the state having any kind 5 of say in the content of newspapers. So I'm not 6 surprised that --</p> <p>7 LORD JUSTICE LEVESON: I think I've made that quite clear 8 right from the very outset.</p> <p>9 A. Of course, sure. But I'm not surprised there's a kind 10 of visceral rejection of it, but I think one of the 11 things the Inquiry has done is to open this up as a more 12 nuanced question than perhaps it would have seemed to 13 us -- I include myself in that -- previously. In my 14 previous answer about these different types of what we 15 mean by "statute", I hope I've shown that I have moved 16 in my thinking and that there are significant challenges 17 to all of us to think about that if we want to reap what 18 could be the benefits of what I hope you'll propose as 19 well as -- you know, I think what -- the blunt truth 20 about our industry is that we've been underregulated and 21 overlegislated, and if we can get a better balance of 22 better legislation and better regulation as a result of 23 it, then that, to my mind, is a good thing.</p> <p>24 LORD JUSTICE LEVESON: Right.</p> <p>25 We inevitably are going to have to come back to the</p> <p style="text-align: center;">Page 115</p>
<p>1 outsiders and academics and broadcast journalists and 2 people with different kinds of experience, and I think 3 there's been a huge move within the industry -- and we 4 talked a bit about things that weren't commonly said 5 about the PCC a couple of years ago that people now 6 regard as commonplace, and there have been incredibly 7 constructive moves by people like Paul Dacre in terms of 8 what he's done in terms of corrections and 9 clarifications and what he's said about ombudsmen. So 10 I think there are voices being engaged in ways that 11 simply wouldn't have been engaged six months or a year 12 ago.</p> <p>13 I think the phone hacking saga was an uncomfortable 14 catalyst for that but if good things -- and I think good 15 things already have come out of the inquest into that, 16 that will be a good thing.</p> <p>17 LORD JUSTICE LEVESON: You will appreciate that the one 18 concern I have is that this inquiry shouldn't follow the 19 litany of other inquiries or the list of other inquiries 20 over the years where all sorts of assurances are being 21 provided and then everything just drifts away.</p> <p>22 That's quite an important part of what I have to 23 achieve. Would you agree with that?</p> <p>24 A. I agree with that, and that's why I think this debate 25 about statute is a fairly central one. Again, I think</p> <p style="text-align: center;">Page 114</p>	<p>1 whole issue of the Milly Dowler phone on the basis that 2 it's appropriate that it is resolved. I don't want to 3 ask you about that but if there's anything you want to 4 say about it, then I feel I ought to give you the 5 opportunity, considering you're sitting there.</p> <p>6 A. Yes. Well, I think from -- the fact that it's taken 7 some time to resolve indicates that it's not a simple 8 question. We've put one -- we've now put two 9 submissions in and I think the best way for this to be 10 resolved is for the various parties to be able to 11 interrogate each other, because I think there's other 12 source material which, if you really want to get to the 13 bottom of it, would help you, and I'm not sure that we 14 have yet seen all the evidence or had all the answers to 15 what is a -- is self-evidently a complex question.</p> <p>16 LORD JUSTICE LEVESON: Yes.</p> <p>17 A. Because otherwise we would have got to the bottom of it 18 already.</p> <p>19 LORD JUSTICE LEVESON: Yes. I'm sure you appreciate that 20 although I'm very keen to bring all that out into the 21 open, I don't want to get sent down a siding which 22 diverts me from the important task which I've been given 23 within the timeframe broadly that I've been given it, 24 but I am conscious of the point.</p> <p>25 A. Yes. I mean, I think it is -- to some extent, it is</p> <p style="text-align: center;">Page 116</p>

1 a siding. I think there are people who are trying to
2 elevate this into a primary issue now who didn't think
3 it was at the time, and I don't think anybody thinks
4 that -- well, I think when you track back the reasons
5 that were given for the closure of News of the World at
6 the time, they certainly weren't that.
7 LORD JUSTICE LEVESON: Well, I understand the point.
8 I think that as we're set up, I have to address it, as
9 I am trying to, but it's not a primary focus.
10 Mr Rusbridger, thank you.
11 MS PATRY HOSKINS: Sir, that does conclude the evidence for
12 today.
13 LORD JUSTICE LEVESON: Thank you very much indeed, and I'm
14 sorry to everybody, including the shorthand writer, for
15 yet another long day. Thank you very much.
16 (5.00 pm)
17 (The hearing adjourned until 10 o'clock the following day)
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