**Day 39 - PM**  
**Leveson Inquiry**  
8 February 2012

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| 1 A. Okay.  
2 LORD JUSTICE LEVESON: But if you think there's something in it, you'll pay attention to it?  
3 A. That broadly is the position.  
4 LORD JUSTICE LEVESON: Yes.  
5 MR BARR: The way you put it in your statement is:  
6 "If on reflection we think it is possibly untrue or defamatory, we take it down."
7 I'm interested in your use of the word "possibly untrue". Is that meant to signal that you actually set a low threshold for intervention and taking a story down?  
8 A. I think earlier on I said that there are different types of stories. There are trivial, gossip kind of stories that aren't going to be remembered in a few days' time, so we have a lower threshold for those, you know, checking them out. If it's a major substantive story that is going to affect, you know, the newspapers the next day, it's going to change someone's career, then we have a higher threshold.  
9 If someone complains about a trivial story and makes lots of trouble, then we probably don't even bother thinking about it; we'll just take it down to get them to go away.  
10 Q. Moving now from your approach to complaints to regulation more formally, you're not a member of the PCC, although I understand that you have spoken to Lord Hunt on that subject?  
11 A. Lord Hunt is very silky in his wooing of me to join some kind of kitemark system and I don't think that's a road that I want to go down.  
12 Q. Could you explain to the Inquiry why it is that you wish to shy away from any formal regulatory body?  
13 A. I think if you join -- if I joined any regulatory body, I would end up in a system where I'm going to have to self-censor, and I don't want to do that. I also don't want to have an editorial product that is politically correct and I don't want to have to adhere to standards that Harriet Harman would approve of. I don't think there are many publishers around now, not even Private Eye, who are still politically incorrect in the way that we are.  
14 Q. Would you, on that subject, have the same concern that Mr Hislop expressed to the Inquiry, namely that if you were to be the member of an industry regulatory body, you might find yourself being judged by the very people who you had been critical of or exposing in your publications?  
15 A. Yeah, that is a very real point. I think it's ridiculous that Tina Weaver, somebody who -- from the Sunday Mirror, somebody who two journalists have told me has personally authorised and told them to hack, blag, and do all that kind of stuff, sits on not just the Press Complaints Commission, but on the Ethics Committee, the Editorial Standards Committee. She knows all the bad things that have gone on under her rule. It's ridiculous.  
16 Q. I'll be coming back to Ms Weaver in due course, but it's right that even though you stand outside the formal regulatory systems that exist in the ways that you would describe, you do in fact self-censor, at least to the point that if you think you've got it wrong, you'll take things down?  
17 A. Well, that's pursuit of accuracy rather than censorship, and is slightly different and I distinguish the two things. If we've got it wrong, we're not censoring ourselves, we're correcting ourselves.  
18 Q. You express in your witness statement your commitment to the freedom of expression, but you would accept, wouldn't you, that the freedom of expression is a qualified right in that it doesn't give a person licence, for example, to take an extreme example, knowingly to publish false facts about somebody?  
19 A. Well, we used to have an offence of malicious libel. I think that was a mistake to take that offence away.  |
A classic example of limitations on freedom of speech is of course shouting "fire" in a crowded theatre. Obviously there are limitations and I’m not a complete absolutist, but I think something that’s been lost currently in the troubles the media are having is the need for freedom of speech and freedom of the press.

Q. You raise quite an interesting economic argument on the third page of your witness statement right at the bottom of the page, and you argue that any legal or technological method of censorship will have an economic cost. If I’ve understood you correctly, the point you’re making is that as soon as this country imposes a regulatory system which goes beyond that of, say, America, with its First Amendment rights, then businesses will be attracted to the country with the less intrusive regulation if they want to publish content over new media, and that is why so much of the new media is based in America?

A. I think that’s part of it. Obviously a lot of it starts in America, so she -- most of the companies start in America anyway and they have the advantage of the First Amendment protections, but you can see a situation now where countries like Sweden and Ireland are actually pushing the fact that they have a regulatory and legal environment which is favourable to social media enterprises, and Britain will be at a disadvantage if we have laws that penalise the networked businesses of the future in such a way that they are responsible for what thousands of their customers do. So it’s equivalent to making phone companies responsible for what people say on the phone, so I don’t think that’s a healthy or sensible way to proceed.

LORD JUSTICE LEVESON: Do you approve of the model that the Irish have developed in relation to this area?

A. I think it has advantages over the direction we seem to be going. I mean, for instance, I think the woman from HuffPost mentioned that actually if we pre-moderate comments on our website, we become legally liable for them. So the perversity of the law is that if we intervene and moderate comments, then we assume some liability. If we do nothing, we’re not liable. That’s from a case, I think Hilton versus Cashill(?)

MR BARR: There may be a difference to be had between a person who’s held liable simply for the transmission of material and somebody who actually has editorial control of material.

A. Of course.

Q. Are you suggesting that applying a set of ethical standards to published content in the United Kingdom is going to put the United Kingdom at a competitive disadvantage?

A. If YouTube, Google become criminally liable for everything that’s put on their website, it’s going to be difficult for them, and I think companies like Twitter have been sued by people for stuff that was done by Twitter’s customers. So I think the liability of those kind of social media networks should be very, very limited and they should have an absolute defence of, “We removed it as soon as we were informed of the problem”.

Q. How do you balance the need to maintain a competitive advantage against the need to protect people from the sort of media excesses that we’ve heard about at the start of this Inquiry, and with the need to have an ethical approach to reporting?

A. Well, those weren’t social media networks hacking voicemails, etcetera. That was the traditional media. There are criminal sanctions, and there are criminal processes that are in play at this moment. So we don’t need any extra regulation. We already have crimes on the statute that cover those eventualities.

Q. Isn't the difficulty with placing the burden exclusively on the law enforcement agencies to deal with that sort of behaviour that they simply don't have the resources to deal with an unregulated industry, or at least, if they were to deploy the sufficient resource to deal with it, then they would be distracted from other very pressing policing concerns?

A. Just because it’s difficult to enforce doesn’t mean it should -- you should shift the burden of enforcement to someone else.

Q. You provide in your statement your thoughts on a voluntary basis in relation to a number of issues which are of interest to the Inquiry. The first of these is on the relationships between national newspapers and politicians, and you tell us that you think that the relationship between the press and politicians is symbiotic, and there are a number of things that you tell us about the lobby system in Westminster that I would like to explore further with you.

First of all, you say that there is effectively a lobby club with implicit rules which discourage journalists from rocking the boat too much. Could you tell us more about what in your view those implicit rules are?

A. Well, there is a phrase that’s used, "lobby terms", which means -- it doesn’t mean just off the record, it’s beyond off the record. If a politician tells a lobby journalist on lobby terms that he believes the sky is
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1. blue and then goes on Newsnight later on to say that he believes the sky is red, the journalist cannot report that actually he's lying to the public on Newsnight. So you have not just off the record, you have journalists complicit in politicians' lying, when they could reveal the truth, but under the terms of trade that the lobby has, they can't say anything.

2. Q. Why do journalists enter into this Faustian pact?

3. A. Well, it's a cartel, because the authorities in Parliament won't give you access to the parliamentary estate unless you're on the lobby list, so I have to go in to Parliament as a visitor rather than show a security pass. It makes it difficult for me to get access to the main players if I'm not part of the lobby, but I don't want to be in the lobby because I don't think it's a very healthy system.

4. This is not just me saying this as an outsider. A former chairman of the lobby has said it's antiquated. It was set up in the 1870s. It isn't healthy to have politicians talking to journalists in private on terms that aren't open and transparent to the public.

5. Q. And so what is a solution?

6. A. I think for a start they could televise the lobby briefings. There's nothing magical about them and I think people might find them a bit dull, but "Downing Street sources" usually means the journalist was sat in a briefing room being fed the line from the press -- the Prime Minister's spokesman. We can just put it on TV and see that.

7. The access -- I think it's unhealthy full stop to have lobby terms. Journalists shouldn't accept anonymous briefing from the Prime Minister's spokesman or from other players because most of the time it's used by politicians to besmirch other politicians without getting their fingerprints on it.

8. Q. You also talk about a trade in favours. Could you expand upon that, please?

9. A. It's a standard technique for press officers to give titbits to their favoured journalists. So if a journalist has written favourable stories about their principal, whether it's a minister or the Prime Minister, they will give them a titbit and give them an advantage. In that way, they bring the journalist to heel. So the lobby functions like an obedience school for journalists: if you play the game, we'll reward you; rock the boat and you won't get any access.

10. There's well-documented cases of broadcast journalists having aggressive interviews with politicians and as a punishment for aggressively interviewing the politician, they are not given any access to the politicians for, you know, six months, a year, 12 months, whatever it is. So if you're a broadcaster, if you don't have interviews with the principals, you have very boring television because there's no access -- because the public only get to see your talking head rather than you interrogating the politician. So that way, because of the requirement for access and interviews, the broadcasters are brought to heel.

11. Q. Can you give us any examples of that?

12. A. I think I did this in a programme for Newsnight a few years ago. Sky News had -- a junior reporter on Sky News aggressively questioned the then opposition leader, David Cameron, and David Cameron lost his temper and it was broadcast. As a result, Sky News were kept out of interviews and access for a period of months as a punishment.

13. Q. You hold up the example of the expenses scandal as something which in your view is evidence of failure by journalists to report on wrongdoing, because you say that lobby journalists knew about the abuse of expenses long before the story became public.

14. A. Lobby journalists are aware of the system, and perfectly understood what was going on, but they just accepted it.

15. The only reason that the expenses scandal came out was because Heather Brooke, a freedom of information campaigner, spent, you know, two years pursuing it through the courts until the authorities had to produce a disk, which the Daily Telegraph got hold of, but it wasn't really down to investigative journalism on the part of the Daily Telegraph, it was down to the efforts of a freedom of information campaigner.

16. Q. What evidence do you have that lobby journalists did in fact know about the expenses scandal --

17. A. Well, if you read the articles they wrote after the expenses scandal broke, came out, you'll see lots of them say they knew all about it. Similarly, when Damian McBride resigned after -- you know, as a result of Smeargate, you'll read a lot of journalists writing that they knew what he was like and how he did all this vilification and how his nickname was McPoison and how they knew his methods, yet they never said it beforehand.

18. Q. You tell us that in your experience newspapers do favours for their political allies, beyond just slanting their coverage into a favourable light. You say they will suppress the truth, rubbish political opponents and buy up stories never to be printed which might embarrass their political allies. Are you able to give us from
Q. You say that in your experience investigative journalists have no respect for the Data Protection Act, even if they are aware of it. What's the evidence for that?

A. I once had a negative story about me written up by the Daily Telegraph, Gordon Rayner, I think he's been covering this, and he identified where I live in London, and I said, "How did you do that? There's no records, I'm not on the electoral roll there, I don't have any bank accounts, you couldn't get me by that", and he told me to my face that he had done a name search on the Land Registry. Now, people might not realise it, but the Land Registry is not searchable by name. You can only search that by address. You can put the postcode in or the map co-ordinates and find out who owns it. You cannot go to the Land Registry and give a name and then find out all the properties that person owns unless you know someone in the Land Registry. Gordon Rayner appears in the Operation Motorman records 335 times making requests to Whittamore. 185 of those have been identified as illegal, you know, getting number plates checked out. How can that be?

Q. Moving now to the question of future regulation, you tell us that the public interest is best served in your view by an unregulated free press and the better enforcement of existing civil and criminal laws.

A. I don't see how you can avoid the necessity of going to law. I mean, we're a nation of law, so that is going to have to be the ultimate route that people go to. It's a problem for victims of these kind of criminal acts if they don't know about it, so I think, in the case of the Operation Motorman investigation, we have hundreds of invoices with people's names on which haven't been — the people who were the victims of blagging and illegal data protection haven't been identified -- haven't been told --

Q. If I may stop you there, that's not quite an answer to the question I was putting. If you have an unregulated free press, that still leaves a gap, doesn't it, into which people like the McCanns and Mr Jefferies could fall in the future?

A. I think it's been difficult and, you know, hard on the McCanns and Mr Jefferies, but ultimately they have managed to get reparations through legal channels. If you have -- if the victims have access to the courts, they can do that.

Q. But isn't there a need to stop these abuses happening in the first place?

A. Then you'll lose the freedom of the press and I think that's a price too high to pay.

On the Motorman position, though, the victims of Mr Whittamore don't know how they came to appear in the papers and how their private details were discovered, so I think the -- it's beholden on the Information Commissioner or the authorities, whoever it is, to inform the victims of Mr Whittamore that they have been -- had their information illegally procured on the behest of journalists.

LORD JUSTICE LEVESON: Does this really work, Mr Staines?

Let me just test it with you. It so happened that because of some information, I think about DVLA impropriety, the police and the Information Commissioner went into Mr Whittamore's home and then obtained this treasure trove of material. I take your point that then those who have been the subject of unlawful access, if they're told, can pursue remedies. But let's assume that Mr Whittamore had been rather less careful about his record-keeping, so that they didn't recover this treasure trove of material, yet it had all happened. Doesn't there have to be a system that keeps some semblance of attention to the way in which people can be invaded in their privacy by things like that?
A. I think the editors perhaps should have, you know, a legal responsibility of some kind, ie like we have a corporate manslaughter. But at the very least, with the evidence we already have of criminal behaviour by journalists, we should follow that up. We shouldn’t just ignore it. We have a huge body of evidence from that investigation. 389 journalists are on the records, yet nothing is happening. Nobody is pursuing them. Instead – I presume this Inquiry has those records. If this Inquiry doesn’t act as a catalyst for criminal prosecution for those journalists who have invaded people's privacy, on an industrial scale, I think you have failed.

Lord Justice Leveson: Well, I think it's quite difficult to say, "Well, the criminal law can cope with it, there was all the Whittamore stuff, it was all available". That might then identify Whittamore. It wouldn't necessarily identify the person who had encouraged him -- assuming it to be the case, which I am not deciding, of course -- deliberately and illegally to break the law, and he would say, "Well, I'm not prepared to say who instructed me", or even if he was, that wouldn't necessarily be evidence. Don't you need a regime that actually does ensure that there are systems in place, perhaps within the press themselves, to make people careful about this type of thing?

A. Yeah, without limit. You know, I can watch French TV, American TV on my phone, never mind via terrestrial broadcasters or satellite broadcasters. So I don’t see, unless we're going to have some kind of global Ofcom, how you can have a regulatory regime that's going to have the same standards all over the world.

Q. Dealing now very briefly with some of the articles you've published about phone hacking, first of all Ms Weaver. I don't want you to reveal any sources not already in the public domain, and I simply ask you this question which I'd like you to answer succinctly, please: does your evidence go any further than what you have already posted on your blog or not?

A. If I have -- if -- I can't be quite certain from memory. If on the blog I have said that journalists have told me that they were told by Ms Weaver to spin a phone, then that's what I'm attesting to now.

Lord Justice Leveson: All right. Mr Barr: And exactly the same question in relation to Mr Morgan and again -- Lord Justice Leveson: I don't think it's necessary to do that.

A. No, Mr Morgan is circumstantial from his books.

Lord Justice Leveson: Sorry?

A. What we've published about Mr Morgan we have derived from his own writing.
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1 I thank you. During the course of the Inquiry, it was said by more than one or two of those who have given evidence that the law should be changed to permit defences in certain circumstances, and having had experience over a number of years of the criminal law myself, it struck me that there was a fundamental misunderstanding as to the way in which prosecution policy operated in this country, and it is for that reason that I invited you or indeed required you to provide an analysis of that and invited you consider whether it was appropriate to enunciate a policy, leaving it of course to you, because it's your responsibility, absolutely not mine, to determine whether or not you wish to do so.

A. Not at all.

MR JAY: Thank you. You are the Director of Public Prosecutions and have been since 1 November 2008; is that right?

A. That's right.

Q. The general approach, the basic principles you set out in your statement at paragraphs 6 to 10, and that brings in the code for Crown prosecutors and the two-stage test

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1 don't write about other journalists and other papers, because they may want to go and work there. Do you think that's the four corners of it or do you think, as somebody else has said to me, that there is an unwritten rule that the papers really don't talk about each other?

6 A. I don't know the exact mechanics how my source obtained it, but I think -- my source was a journalist, I think I say that in my first witness statement, and I believe that he obtained it from another journalist.

10 Q. My final question in relation to the story which has become known as Smeargate, exposing the activities of certain Labour Party activists, you came into possession of some emails which were the evidence for the story. I don't want you to name your source, but do you know how your source obtained those emails?

16 A. First of all, no one has ever suggested that that story wasn't in the public interest. Like every other media organisation, we're not going to reveal our sources or speculate as to how the source came about the information.

21 MR BARR: Thank you very much. Those were all my questions.

22 LORD JUSTICE LEVESON: I have one question only, Mr Staines. You said rather early in your evidence that journalists have thin skins, people are reluctant to say what's going on, and that's one of the reasons why journalists don't write about other journalists and other papers, because they may want to go and work there. Do you think that's the four corners of it or do you think, as somebody else has said to me, that there is an unwritten rule that the papers really don't talk about each other?

26 A. I think that's true, that the papers don't like talking about each other, and my direct competitors in the papers are probably the diary columns and there's an understanding amongst us that we don't do each other over, so it applies to everyone. It's just normal in any trade.

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1 in relation to all prosecutions, the evidential stage, and then the public interest stage; is that right?

3 A. Yes, that's right.

4 Q. Can I look at paragraph 11 where you say in the first sentence: "At present, the CPS has no explicit policy or guidance relating to the prosecution of journalists."

7 And you make the point that such prosecutions in relation to journalists who commit offences in the course of their work as journalists are extremely rare.

8 A. Yes. In paragraph 11 I am dealing with the fact that we rarely consider prosecutions of journalists acting in the course of their work as journalists. What I intend to convey at paragraph 11 is that although there are no precise figures available, I'm only aware of a handful of cases in which we have considered prosecutions that touch on or concern journalists working in the course of their work as journalists, not that in fact there have been a handful of such cases.

13 I think you do wish to clarify the last sentence of paragraph 11; is that right?

15 A. Yes.

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1 LORD JUSTICE LEVESON: A question I've been asked to put to you from somebody else, it's about how you obtained the draft of Alastair Campbell's witness statement to this Inquiry, and the question is: do you know how your source obtained it?

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15 A. Yes.
Q. Which is an example of guidance which is of tangential relevance to this Inquiry, but it’s useful because it is an example, and you have provided us with a more specific case, the decision not to charge Mr Green in April 2009, and that's your KS3; is that correct?

A. That's right, yes.

Q. In relation to that issue, if I can deal with it very generally, there are considerations in the Human Rights Act and Article 10 of the Convention which are obviously highly relevant, and deal with it at a very high level of generality?

A. Yes.

Q. Can I move to paragraph 19, which is, of course, directly relevant to the Inquiry's concerns: "The CPS approach to the public interest in cases involving journalists."

You rightly point out that the approach you adopt, which varies on a case-by-case basis, varies additionally according to the statutory context. Could you elaborate what you mean by the statutory context, Mr Starmer?

A. Yes. There are essentially three types of statutory provision. There are the statutory provisions which provide an express defence, that someone was actually in the public interest -- in this field. So the first statutory context is those offences where an express defence is provided.

In relation to those, as prosecutors, we have to consider at the evidential stage, so before we get to the second stage of the code test, what evidence we have to meet any public interest defence.

The second category of statutes are the statutes where there's an offence and there's an implied defence of acting in the public interest, implied usually through the Human Rights Act and the requirement to interpret in accordance with Article 10. So that's the second group of statutory provisions.

The third group are really those such as some provisions within the Official Secrets Act, where the courts have indicated that there's no room, really, for any implication of the public interest, and the classic exposition of the law there is that set out in the case of Shayler, by the House of Lords, which I quote in paragraph 27, and as prosecutors, we recognise that in those types of cases there's very little room, if any, for us to consider the public interest.

So it's those three categories which dictate the approach.

Q. Thank you. Is an example of a case which falls into category 1 Section 55 of the Data Protection Act, which does have under Section 55, I think it's (2)(d), that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest; so that's a category 1 example?

A. That's a category 1 example, express defence provided for.

Q. Thank you. The category 2 implied example, implied by the route of the Human Rights Act in section 3, would the Computer Misuse Act of 1990 fall into that category?

A. Yes, it would and so, I should add, do common law offences such as misconduct in public office.

Q. Thank you. What are the differences in relation to the public interest, if any, between category 1 and category 2?

Category 1 is express, category 2 is implied, but does it follow because it's implied that the public interest is a weaker consideration?

A. No, I don't think it does. It seems to me that if the distinction matters at all, it's probably between the stage at which we look at the public interest. For an express defence we're required to consider it at the evidential stage, it's centrally at the evidential stage. Where it's implied, I think it's arguably at the public interest stage, although it could be at the evidential stage. I'm sorry to put that in a confusing way, but nobody has clearly articulated this. We have...
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considering or contemplating was whether it’s an implied defence rather than simply the exercise of the prosecutor’s discretion.

A. You were. And if that is right, for some or all of that second category of statute, as a matter of fact, the exercise falls to be done at the evidential stage.

The reality is nobody has gone through this analysis because until we began to do so for the purposes of this exercise, this has not been pulled together in one place, and that’s why I think at the moment there’s some ambiguity as to whether it’s stage 1 or stage 2, but the factors that are likely to be relevant are pretty much the same for both stages.

MR JAY: Thank you. In paragraph 23, you point out in view of the very low number of prosecutions the cases have tended to be resolved on a case-by-case basis. You list the public interest factors which in your view are likely in practice to have some relevance to the assessment of whether prosecution is required in the public interest. These are listed in paragraph 24. You provide us there with six bullet points.

A. Yes. What we have is general guidance as to the approach to be taken under Article 10. We then have specific guidance for a number of offences. What we haven’t done yet is to bring that together in one place and set out in some sort of list or set of factors what would be relevant to the public interest assessment in cases involving journalists in one place.

What I’ve attempted to do in paragraph 24, pulling together the various bits of policy and guidance we have, is to indicate the factors that in my view would have some relevance in the assessment which the prosecutor would be required to carry out when considering the public interest, and then to list them as six bullet points.

Q. To take your evidence forward to --

LORD JUSTICE LEVESON: Before you do, it might be just helpful for those who aren’t going to access this statement on the Internet if you just read those six bullet points.

A. Yes. The factors which would be of some relevance to the assessment are first:

"The relative gravity of any potential offence committed and/or harm caused compared to the public interest in the publication in question."

"Whether there was any element of corruption in the commission of the offence."

"Whether the conduct in question included the use of threats or intimidation."

"The impact, if any, of the conduct on any course of justice, for example whether the conduct may have put criminal proceedings in jeopardy."

"Whether the public interest in question could have been served by lawful means."

"The impact on the victim or victims of the conduct in question."

So they’re the broad categories.

LORD JUSTICE LEVESON: And you make it clear that this isn’t a comprehensive or exhaustive list.

A. Exactly. These are some of the factors. It’s not all of them. And as with all public factors, they’re to be approached on the basis that we don’t simply add up the number that might tend in favour of prosecution and the factors that might tend against prosecution and look at which is the highest. We have to look at each case on its own facts.

MR JAY: Thank you. At paragraph 28 you move to the issue as to whether there should be a specific policy.

A. Yes. Well, paragraph 25 was -- just if I might mention that -- to draw attention to the fact that in the guidance that we have on disclosure, we do advise prosecutors to look at the factors that are set out under the Public Interest Disclosure Act to assist them in carrying out the assessment of the first of the bullet points in the previous paragraph, namely when considering the relative gravity of the offence compared with the public interest. We give some guidance as to how prosecutors are to undertake that task, which is a quite a difficult task. That is within specific guidance, but it seems to me that it’s quite a useful starting point for the general exercise.

Q. Yes, I understand.

Moving towards a specific policy, paragraph 28 now at page 14, you explain what the practice of the CPS has been in recent years in relation to the issuing of policy and guidance in certain areas, and you make it clear that particularly you do so where the law is complicated, involves sensitive issues or has given rise to public concern?

A. Yes.

Q. What is your approach now going to be in relation to the issue which concerns us, namely the prosecution of journalists or the possible prosecution of journalists, because, to make it clear, this issue has only very rarely arisen?

A. Having reflected on the comments made in this Inquiry and having reflected on our policy and guidance in the preparation of my witness statement, it seems to me that...
A. It is, yes.
Q. Offences under RIPA, which of course we're well conversant with; offences contrary to the Computer Misuse Act, where there isn't a public interest offence; paragraphs 33 and of course will be context, namely the possible prosecution of journalists, to be found in paragraph 33 and of course will be well familiar to lawyers in this area, but they range from offences under the Official Secrets Act, misconduct in a public office -- which I think is an offence of common law?

A. They may be implied.
Q. Offences under RIPA, which of course we're well conversant with; offences contrary to the Computer Misuse Act, where there isn't a public interest offence; paragraphs 33 and of course will be context, namely the possible prosecution of journalists, to be found in paragraph 33 and of course will be well familiar to lawyers in this area, but they range from offences under the Official Secrets Act, misconduct in a public office -- which I think is an offence of common law?

A. Yes.
Q. Will the guidance differentiate or would it be likely to differentiate between these offences where there is a public interest defence and where there isn't? I suppose you would say the second category, save for the Official Secrets Act, they're all implied public interest defences; is that right?

A. Yes, I think so.

MR JAY: Thank you. Those were all the questions I had for you.

LORD JUSTICE LEVESON: Mr Starmer, thank you very much.
I think you will agree but I hope you will agree that the concerns that some have expressed about the operation of the criminal law and its impact on journalism have failed to reflect the very important public interest considerations that you and your predecessors have always brought to bear in this area of the law.

A. Yes, I think so.

LORD JUSTICE LEVESON: Thank you very much indeed.

A. Thank you.

LORD JUSTICE LEVESON: I'm afraid that in due course you're likely to be returning.

A. I understand. Thank you.

MR JAY: Sir, may we take the next witness and then have our break?

LORD JUSTICE LEVESON: Yes.

MR JAY: Helen Belcher, please.

MS HELEN CLARE BELCHER (affirmed)

Questions by MR JAY

A. In practice, the factors that are likely to be considered are going to be the same, whichever it is. There may be a slightly different approach, but the guidance will have to distinguish between those categories and will also have to identify those cases, such as the Official Secrets Act, where there's little or no room for the exercise at all.

Q. Thank you. In trying to be too succinct, I think I oversimplified the position in relation to implied defences, and you've clarified that.

So the normal approach is a 12-week consultation period and, pending that, there will be an interim policy, is that right?

A. The interim policy reflects current practice. It comes into force with immediate effect. I hope to have that ready within a matter of weeks, and we will operate that interim policy for the 12-week period of the consultation. End of that exercise, we will look at the responses that we've had and adjust the policy in accordance with the responses as necessary.

I've given consideration to the position should anybody fall to be considered for prosecution during the period of consultation and before the final policy is published and it seems to me they would fall to be considered under the interim policy, but as a safeguard, I would want us to look again at any decisions made once the final policy was in place to ensure that decisions were consistent with the final policy.

MR JAY: Thank you. Those were all the questions I had for you.

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LORD JUSTICE LEVESON: Yes.

MR JAY: Helen Belcher, please.

MS HELEN CLARE BELCHER (affirmed)

Questions by MR JAY
MR JAY: Make yourself comfortable and first of all your full name.

A. Helen Clare Belcher.

Q. Thank you. You provided the Inquiry, for which we're grateful, a submission on behalf of Trans Media Watch.

The first page, I believe, ends with our numbers 58510. First of all, may I ask you to explain Trans Media Watch? It's page 4, please, on the internal numbering.

LORD JUSTICE LEVESON: Hang on. Before you do, this document I don't think bears a name, does it?

A. We called it the British Press and the Transgender Community Submissions --

LORD JUSTICE LEVESON: Yes, but I meant it didn't bear a human name.

A. No, no.

LORD JUSTICE LEVESON: This constitutes your evidence as part of the evidence to the Inquiry?

A. This is the submission by Trans Media Watch and I'm the representative.

LORD JUSTICE LEVESON: But you're content that it be put as part of the record of the Inquiry as effectively your evidence?

A. Yes.

LORD JUSTICE LEVESON: Representing Trans Media Watch?

A. Yes.

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LORD JUSTICE LEVESON: Thank you.

MR JAY: Thank you very much.

Sorry, I omitted that, but all our evidence has to be formally committed. Page 4 please on the internal numbering you tell us about Trans Media Watch, but in your own words, please?

A. A small group of us formed Trans Media Watch in relation to a series of concerns over the representation of trans and intersex people throughout the British media. We formed in 2009. We incorporated as a charity at the end of 2010. We aim to work constructively with broadcasters, regulators and members of the press in order to educate them about trans and intersex issues but we also assist trans and intersex people with complaints about the media and how to present that effectively to regulators or to newspapers or broadcasters.

Q. Thank you very much. At page 5 you define two terms or concepts. The first term is transgender, the second term is intersex. In your own words, please, transgender?

A. Transgender -- I'll use trans if you don't mind, under the document it goes through transgender -- basically is the group of people who will identify with the gender opposite to the one recorded at their birth. So a trans woman will be someone who was recorded as male at birth but identifies as female. That may mean -- may not mean living full-time in role as a woman. It may not necessarily mean that there is any medical intervention, but it is where there is sufficient discomfort or dysphoria living as the gender assigned to you at birth to cause significant problems.

Intersex is where the physical biology is in between or has aspects of both genders.

Q. Thank you. Under the Gender Recognition Act of 2004, which I think was brought into effect with Royal Assent on 1 July 2004, there is a specific procedure by which an application is made to change gender, is that correct?

A. There is, that is correct. There are a large number of trans people who have transitioned who are -- who have chosen not to apply for gender recognition certificates for a variety of reasons. There are people who are unwilling to dissolve existing marriages. There are people who are suspicious about being recorded on what they would see as a central government register of trans people, and there are people who inevitably will not know about the legislation.

Q. Yes. The effect of acquiring the certificate under Section 9 is that the person's gender becomes for all purposes the acquired gender?

A. Correct.

Q. There are also some other consequences which are slightly more complex. Section 22, prohibition on disclosure of information. There is certainly protected information which relates to the person's gender before it becomes the acquired gender. There are certain entities acting in an official capacity who cannot disseminate that protected information. That would include the press under section 22(3)(c) on my understanding, but there are certain exceptions under section 23(4); is that right?

A. There are, yes.

Q. I don't think it's going to be necessary to go into all of those exceptions, but it sets out a basic statutory framework which is important.

There's another important aspect which should be drawn attention to, that the PCC's code of practice, clause 12, says:

"The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation ..." and then other matters which we needn't be concerned about today. It's the reference to gender which I think is important. I think it was changed from sex to gender in 2005?
A. That is correct.

Q. And you've also drawn attention to a guidance note by either the PCC or the Code of Practice Committee, I think it's likely to be probably the PCC, issued in 2005, which makes it clear that gender includes gender identity, is that so?

A. It's actually the Editors' Code of Practice Committee released a press release on 5 May 2005 where they specifically -- if I may quote: "Individuals who are undergoing or have undergone treatment for gender reassignment will be included in the categories offered protection from prejudicial or pejorative references."

Further down it says: "It has decided that the word 'gender' will replace 'sex' in subclause 12(1), thus widening its scope to include transgender individuals."

And further down again: "The committee decided against a change to the accompanying subclause 12(2) which covers publication of discriminatory details that aren't relevant to a story because trans individuals would be covered under the existing rules."

Q. Thank you, that's clear. Page 6, please, of your submission. There are four general points here which I'm sure you wish to make. The first is transsexualism is not a lifestyle choice. Indeed, many transsexual people fight this aspect of their nature for many years because of prevailing societal attitudes. So that's the first point?

A. I would actually expand on that and say actually most people do not choose to be transsexual. They try and choose not to be transsexual.

Q. Thank you. Secondly, that the right for transgender people to access medical treatment under the National Health Service has been enshrined in law since December 1998. You refer there to a particular case which was decided in that year which established that principle?

A. Correct, yes.

Q. Thirdly, you refer to the Equality Act 2010, which gives full protection within the terms of that Act to transgender people, and then fourthly you make the point transsexual people are particularly vulnerable. Maybe you would like to expand on that point as well for us, please Ms Belcher.

A. A lot of transsexual people at the point they transition to what is known as their acquired sex or the sex that they believe themselves to be will have gone through a substantial period of heart searching. They will have -- they may well be suffering from aspects of depression and stress. Their family life is likely to be completely chaotic. If they are married, their spouses may well struggle to come to terms with what is going on. Children often get caught up in the crossfire, as it were.

At that point, a lot of people are -- may not look particularly convincing as members of the gender they believe themselves to be.

Now, the NHS guidelines require that trans people transition before receiving hormonal treatment. People who go through a private path may receive hormonal treatment before a public transition, that can often make a significant difference to people in the way that they are perceived. But the combination of social and domestic upheaval, pressures around work, the whole journey, if you like, of coming to terms with who you are and what you need to do makes it an incredibly stressful time.

Q. Thank you. Section C please at page 7. You say, this is the fourth line down: "The media and the tabloid press in particular has played a powerful role in creating and sustaining a climate of prejudice against transgender people."

There are some detailed case studies which in fact are not supplied in your official evidence for various reasons, but there are some examples we're going to come to within the main body of this submission.

You say at the end of that paragraph: "Entirely innocent individuals have been forced out of jobs and homes, even received death threats, on the basis of coverage in the British press."

How many examples of that are you able to provide us with?

A. The honest answer is I don't know, but we have got examples of those things happening. There are cases where families have had to relocate. There are examples where families get -- trans people get death threats written and pushed on envelopes through doors. It is -- I don't know how common it is, but it happens.

Q. Certainly. Then you say in the next paragraph: "The Press Complaints Commission is widely regarded as an ineffective joke by the transgender community."

May I ask you, please, to elaborate on that statement?

A. Most trans people now when they're the subject of an article which they would deem worthy of a complaint don't bother, because the PCC has received a number of complaints and it appears that nothing ever changes as a result of those complaints.

There was one example where a trans person was released a press release on 5 May 2005 where they didn't bother, because the PCC has received a number of complaints and it appears that nothing ever changes as a result of those complaints.
A. Yes.

Q. Page 12, the first of these examples, one which I put to Mr Mohan yesterday, Ms Belcher. The Sun, 24 October 2009:

"Dad of two driver changes gear in sex swap."

A. Yes, it's juvenile. "Sex swap" also is a term which a lot of people find offensive. It seems to indicate something kind of immediate transference from one gender to the other. It's -- yes.

Q. In this case, because we looked at it yesterday, I can take it reasonably succinctly, we have the use of the adverb "burly", which is a consistent term. We have the wrong use of the personal pronoun. Then we have the before and after photographs.

I think you're in a position, Ms Belcher, to tell us more background in relation to this case, of course preserving the anonymity of the subject of the article?

A. The subject has talked to us since we made the submission and it has transpired that the ex-partner of the subject sold the story to a weekly magazine and they had published the story about the subject a few weeks earlier. The picture was sold to the magazine without the subject's permission, and it was also associated with that original article.

It appears that the Sun got it from there. The piece was then rewritten, so it looked as though the subject had colluded with the Sun. The first the subject knew was when the Sun published it.

It caused her immense distress. It also caused her children huge distress, because they thought that she had sold her story or was behind her story in some way, and she had nothing to do with the story whatsoever. It is a pure expose. There is no public interest.

Q. Thank you. The Scottish Sun, next page, 15 December 2010. We have a photograph. We have "burly" and we have the same "sex swap" in the headline; is that right?

A. Yes, that's correct.

Q. And another silly joke, but this time relates to mechanics, I think, with the nuts -- or maybe not.

A. May be male genitalia, yes.

Q. Sorry I was being a little bit naive there, I'm afraid.

Page 14, please, Ms Belcher, 24 February 2011. I took this one to Mr Mohan yesterday. Use of the term "tran", what's your comment on that?

A. It is making somebody an object rather than a person. It is dehumanising an individual. Trans people are not solely trans. They have other interests, they do other things. They go down to the supermarket and buy milk.

Page 44

1. Looking at some of the examples you have provided us.

2. That point I think may be best illustrated by their families for sustained personal intrusion.

3. Singling out individual transgender people and in a moment. Point (b) at page 10:

4. "Singling out individual transgender people and their families for sustained personal intrusion."

5. "Dad of two driver changes gear in sex swap."

6. So we have first of all, if I may say so, a juvenile joke, is that right?

7. "Sex swap" also is a term which a lot of people find offensive. It seems to indicate something kind of immediate transference from one gender to the other. It's -- yes.

8. "Dad of two driver changes gear in sex swap."

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10. "Singling out individual transgender people and in a moment."

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Page 45

1. Effective forced out of her job on the basis of a newspaper article. There was a whole raft of implications. The PCC found that one particular word had been pejorative, and in the light of that, amongst other attempts to complain, the trans community has more or less walked away from the PCC.

2. In 1996, there was a pressure group -- still is a pressure group called Press for Change, who did a presentation to the Press Complaints Commission about trans issues. They met -- they got met with a number of

3. portrayals of transgender people in the media were inaccurate or very inaccurate. 70 per cent said that believed portrayals of transgender people were either inaccurate or very inaccurate. 70 per cent said that portrayals of transgender people in the media were either negative or very negative, and then there are various responses from angry, unhappy, excluded and frightened where the percentages are listed.

4. Can I ask you to look at section D, the impact of looking at some of the examples you have provided us.

5. A. Yes.

Page 46

1. the press on public perception. There are two respects here which are important. One you say is general, one is specific. The first one, the general one, is (a):

6. "The creation and sustainment of a climate of ridicule and humiliation."

7. Can I ask you to elaborate on that issue?

8. A. There are -- it's really to do with the type of reporting. Trans people -- on the next page in the submission we detail a number of different ways in which the press routinely misgenders people, concentrates on the use of a former name, using before and after photographs to graphically indicate some astounding physical transitions. There is often some kind of comedic or demeaning or ridiculing language used within articles, specifically headlines, and a lot of trans people find some of those words incredibly offensive.

9. So -- I mean, it's routine. It happens today in the press, despite the editors' protestations that everything is sorted out.

10. Can you give an example?

Page 47

1. Various research was done in 2010, which I think you commissioned. Page 8. An online questionnaire on a self-completion basis was filled in by 250 people, and the picture which is painted, we can see the statistics here: 95 per cent of respondents said they did not believe the media cared how transgender people were portrayed. 78 per cent believed portrayals of transgender people were either inaccurate or very inaccurate. 70 per cent said that portrayals of transgender people in the media were either negative or very negative, and then there are various responses from angry, unhappy, excluded and frightened where the percentages are listed.

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Page 48

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| They have different categories. And to constantly reduce trans people to one label is incredibly objectifying and dehumanising. I saw Mr Mohan's evidence yesterday where he tried to tape this article to the broadcast of the programme "There's something about Miriam". The article is dated 25 February 2011. The programme "Something about Miriam" was broadcast in February 2004. So there is a seven-year delay between trying to associate the programme to the article. The programme itself came under huge condemnation from the trans community. If I can read a couple of quotes, one was from Petra Boynton:

"The whole premise of 'There's something about Miriam' was not a celebration of transgendered life. It was designed to elicit horror from the winning contestant discovering that his dream date had a penis."

And the second quote is from a writer called Julia Serano:

"Programmes like 'There's something about Miriam' reinforce the stereotype that trans people's birth sex is somehow real and our identities or lived sex is false, but they perpetuate the myth of deception and thus enable violence against us."

That is the reaction of the trans community to the programme. By conflating this article with the programme, the Sun is basically saying trans people elicit horror, trans people are frauds.

Q. Thank you. Page 15 now. The Daily Express, New Year's Day 2011:

"'Half man' gets new breasts and guess who's paying the £78,000."

There are a number of points which you clearly make about this article, but the real concern of the Daily Express is to emphasise that the taxpayer is having to pay £78,000. Is that fair?

A. That appears part of it. I mean, the £78,000 seems to be made up of two figures, which is a £60,000 and an £18,000. The 60,000 is an oft-quoted figure for genital reassignment surgery. The figure is completely fictitious, as far as we can ascertain. The study relating to a submission to the Inquiry has determined that the average cost of male-to-female genital surgery on the NHS is somewhere between £10,000 and £15,000. When papers are challenged or have been challenged about this £60,000 figure, they are extremely reluctant to change it, claiming that we don't know what the case was or the amount was on that particular case, but then, I suggest, neither do they.

I'm trying to find if -- I think we wrote somewhere else in the study -- it might have been something we took out -- where there is a common theme, because transgender people are portrayed as fraudulent, there is this constant debate over then why should the state pay for any treatment of trans people? And somehow we're portrayed as hoovering up massive amounts of public money, whereas actually if somebody is on oestrogen, it is actually quite likely they are subsidising the NHS, because of the extremely low cost of the tablets.

The NHS, as we pointed out earlier, has a legal duty to support trans people on the basis that it is not a lifestyle choice, it is something that people are born with.

Q. There are other points which can be made about this piece, which you do make, but which are, I think, fairly clear.

Can I move to page 16 in the Daily Mail, 19 September 2011. I think you believe this was Mail Online rather than the Daily Mail, although you're not sure; is that right?

A. It's definitely on Mail Online. We don't know whether it appeared in the print version of the day.

Q. Yes, that's an issue which has affected the Inquiry from time to time to work out whether Mail Online also covers the print edition or not. Of course, it would depend.

I think, is the true answer.

A. But it's still published by the same organisation.

Q. In terms of the interests of the Inquiry, looking at the culture, practice and ethics of the press as a whole, of course, it makes no difference.

The headline:

"The gender-free British passport: UK travellers may no longer have to declare their sex to spare feelings of 'transgender people'."

There are a number of points to be made about that. Maybe I can leave it to you make them?

A. The first and most obvious point is why is "transgender people" in quotes? That headline seems to indicate that the Mail, in whatever guise, does not believe that trans people should exist.

There has been a series of calls for reviewing the existence of gender markers on UK passports, but however they have also come from intersex people and actually also some feminist groups as well, but that is just not referenced in the article. Once again it's these pesky trans people who are causing problems and why don't they just go away and leave us to live our lives in peace?

Q. Thank you. Page 17, the same day. Again, possibly the Daily Mail, certainly the Mail Online. The headline here:
"Sex change man named [and then obviously you've redacted it out] becomes Britain's Olympic ambassador for transsexuals."

Could you talk us through this particular piece, please, and also I think there's an underlying story you want to cross-reference?

A. Indeed. The idea that we would need an Olympic ambassador for transsexuals is itself mainly absurd. She has a role as an Olympic ambassador to meet a variety of different VIPs. The subject is misgendered again throughout the piece, beginning in the headline with "Sex change man". "Sex change" is also a term that a lot of trans people find offensive for the basic reason, actually, that trans people often don't believe they're changing their sex. They are who they are, and they have been from birth. They are merely changing their presentation.

The subject's previous name appears prominently throughout the article. Again, the subject has been in touch with Trans Media Watch for quite some time. She tells us that the story originally appeared in her local paper. They still use the sex change line, but they have been from birth. They are merely changing their presentation.

The local paper journalist was extremely upset and photographed to be used, but as you can see, it's still in the paper.

The local community did not actually find the issue and in fact were incredibly supportive of that group.

Q. Thank you.

A. The organisers of the group were then quoted in the local paper as saying that the Daily Mail's piece had ruined their lives and the local paper actually also received many expressions of support for the local group, which appears to entirely undermine the Daily Mail's stance.

Q. Thank you. You give two other Daily Mail or Mail Online examples. Each of them is different in its way, but we've read and considered those. I would like to cover the Sun example of 31 December of last year. It's quite recent:

"Operation sex swap, MoD paying for troops' gender surgery."

This is page 21 of the submission on the internal numbering. The point that was being made here is this time it's not the NHS but it's the Ministry of Defence who has spent thousands of pounds to help troops have then and in capitals "sex changes". I think some figures are given a little bit later on. From April 2009 to date, the cost to the MoD is £7,440 for minor surgical procedures relating to gender reassignment.

A. It is extremely unlikely, given that the average cost, as I alluded to before, for male-to-female genital reassignment is between 10 and 15,000, that for five people you could get those kind of surgical procedures for £7,440. Also, that is from April 2009 to the end of 2011, so that's two and a half years.

The point I would make is that when newspapers out public servants for doing their duty just simply because they are trans, in almost all cases senior management is involved to manage the press fallout, to make sure that the individual concerned is secure and is able to continue doing their job. Each one of those will cost many thousands of pounds out of the public purse. So for the Sun to indicate that it is disgraceful for the Ministry of Defence to pay £7,440 over a period of 30 months when they themselves are inflicting thousands of pounds for each outing of a public servant, this appears incredibly disingenuous.

Q. Thank you. Section E, dealing with impact, it should be stated that you provided the Inquiry on a confidential basis with a number of case studies. You point out in the middle of page 23 -- this is the part in bold
A. (Nods head).

Q. But elsewhere has the PCC been supportive?

A. The PCC has, I think, wanted to express support, but for whatever reason is unable to actually deliver on that support.

In the meetings that we've had with the PCC, it's almost a bit like Pontius Pilate, washing their hands with a sense of woe that there's nothing that they can do.

The code is used as a barrier in many instances to prevent people from complaining. Trans people -- as I said earlier -- often feel extremely vulnerable at the point of transitioning. The idea that they then want to fight through some kind of judicial or quasi judicial process with a track record of really not getting any results at the end is extremely off-putting, and so people are reluctant to go down that path.

We try to talk to newspapers, but a third of the time we just get complete incomprehension as to why the time we just get complete incomprehension as to why this possibly is a problem, what are you complaining about, but some we get some level of traction.

So we find that individuals rarely want to pursue the case because they then become afraid of future harassment. The view tends to be: it's safer to let the hornet's nest lie undisturbed. But the implication is because these articles remain online, you can still find them years and years later, often when the individual wants to move on, trying to really distance themselves from a previous -- their previous life, and they can't do so.

Lord Justice Leveson: To what extent would this be solved by a complaint mechanism that permitted legitimate representative complaint? I say legitimate representative complaint obviously to stop anybody saying, "Well, I want to complain", if possible, perhaps just to make trouble, but what about that?

A. I think that would go quite a long way. The other aspect, I think, is the lack of real teeth from the PCC.

Lord Justice Leveson: Yes, well, I've heard about that.

A. I know. I think the issue -- people often appreciate the level of support that we can give, but they're reluctant to really push anything because they don't really see that there is any sanction to rectify the situation.

Mr Jay: Thank you. I would like to ask you, though -- and maybe I'm at fault for not putting this to Baroness Buscombe yesterday, probably should have done really -- page 27 in the middle of the page, you refer to a meeting with Baroness Buscombe, Mr Abell, who was the then director, and it was Jennie Kermode, I don't believe yourself, on 15 September 2010. I'm right in saying you didn't attend?

A. I wasn't, no. That was a meeting up in Edinburgh.

Q. You say in your submission:

"Both Baroness Buscombe and Ms Roberton expressed their belief that changes in the Editors' Code would be of benefit in helping the PCC to challenge instances of overt prejudice against transgender people and other minority groups, but did not feel it would be easy to engineer such changes because of the influence of newspaper editors over the Commission."

Is there a note of that remark?

A. I don't know. The person who wrote this particular section was Jennie Kermode, so we can check with her to see what documentation she actually has.

Q. Thank you. Before I come to your recommendations, I had passed over the recent piece in the Sun, Scottish Sun,

I think it's called. Very recent, which you drew to my attention, which you list:

1. common themes, and these are the four bullet points you have given.

Page 26 now and section F, "Press and regulator response". Has the PCC in your view been supportive?

We know that the Editors' Code of Practice Committee as you've told us has amended clause 12 to substitute "gender" for "sex" and the reason for doing that you have explained and there's also some guidance, so that might be said to indicate a measure of support.

A. (Nods head).

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We try to talk to newspapers, but a third of the time you just get no response at all, about a third of the people are reluctant to go down that path.
A. Well, I noticed that -- I mean, there's a number of things on the -- Mr Mohan was quite insistent that the Sun had mended its ways and no longer abused trans people, yet on 3 January there was an article in the printed Sun with the headline, "Transaurus", about a very tall trans woman, simply attributed to "staff reporter".

And yesterday, while he was giving evidence, there's an article written by Stuart MacDonald up on the Scottish Sun, which is actually still under the Sun's website. The headline is, "Tranny granny raids three banks", where it talks actually about somebody who appears to be a con artist and not trans at all, so simply conflating the idea that somebody just dressing up in women's clothes to commit a crime must therefore be trans in some way and yet still using the pejorative term "tranny" in order to describe that. I struggle to see how that kind of article with that kind of headline is mending their ways.

LORD JUSTICE LEVESON: Mm.

MR JAY: We'll need to check, but it may well be, I suspect, it is the case, that the Scottish Sun has a separate section.

LORD JUSTICE LEVESON: I think it does, but the point is made.

MR JAY: Yes. The point remains valid.

LORD JUSTICE LEVESON: Generally, if not specifically about Mr Mohan. Yes.

MR JAY: Your recommendations, Ms Belcher, page 29 under section G.

A. The first one is really the point that Lord Leveson has just tried to draw out in terms of enabling vulnerable groups or representatives from those vulnerable groups to be able to make complaints on behalf of individuals. There are a number of articles though in the first part of our submission where there is no individual named and therefore there is no individual under the current code who can complain. When we met with the Press Complaints Commission, the only grounds for complaint on such articles would be on the grounds of accuracy.

When people complain on the grounds of accuracy, the PCC tends to then go onto a very rigorous dictionary definition of words, rather than necessarily being able to interpret the underlying meaning of the article.

So in those instances, being able to -- Trans Media Watch, for example, being able to complain on behalf of the trans and intersex community about such articles would be immensely valuable.

Q. Thank you. Protection for the dead. This deals with the law of defamation which, in my understanding of the width and breadth of the terms of reference, probably --

LORD JUSTICE LEVESON: You'll appreciate, I'm sure -- I'm not critical of you mentioning this, but I'm sure you'll appreciate that there are all sorts of issues about defaming the dead, the prospect of somebody saying something about somebody who is long, long dead, and -- well, you don't need me to articulate the problems.

A. No. I think the point that we'd like to have put on record, as we have done, is made in the submission in terms of being able to be able to challenge the representation of the recently departed, because again of the standard conflations of trans with all sorts of things. If a trans person is murdered, there is usually some kind of conflation with sex work that goes on, irrespective of whether that actually is found to be true or not.

LORD JUSTICE LEVESON: It's not just a problem in this area.

The constant criticism I have heard in relation to victims of homicide is that they can't answer the allegations made about those who have killed them, which are then put out in public, and insufficiently rebutted. So I understand the problem. Solving it, however, is a slightly different issue.
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Q. Thank you. Then your second point is that the regulator should automatically grant anonymity to any person pursuing a claim against a newspaper for breaching the above guidelines. I'm sure that point will be taken on board.

A. My own personal situation, I would like to broaden out the discussion from simply the Gender Recognition Act, because as I said earlier there are a significant number of trans people who, for whatever reason, do not have a gender recognition certificate. Trans people are not able to apply for a gender recognition certificate until two years have elapsed, so there is -- since their transition, so there is a significant period of time when they are most vulnerable, when they appear most newsworthy, when the Gender Recognition Act would not apply. We don't believe that such people should be exempt from any protections which are given to them purely on the basis of an existence of a piece of paper or the elapse of a period of time.

Q. Then there's the issue of penalties, which others have, of course, made similar points.

A. LORD JUSTICE LEVESON: And the point you make -- one of the points you make, which is a very valid one, is that apologies and the like might only draw attention to the issue rather than solve the problem. That's one of the difficulties about libel proceedings as well, but I understand it. Yes.

Q. Yes. Because of the position that trans people find themselves, the -- there's a lot of stigma. A lot of trans people lose jobs, find it difficult to get jobs. There is evidence that the earnings of a trans person is significantly lower than they could expect if they weren't trans. That is a further deterrent for them to seek any recompense. It actually pretty much prevents any trans person from pursuing any action against a newspaper in the courts. So the idea that the law currently covers trans people or people in this situation in theory is correct, assuming access to the law is free, but it rarely is, and especially when you are attempting to challenge very well-funded media companies on the grounds of what they have printed, it becomes almost impossible.

A. Absolutely not, no.

Q. LORD JUSTICE LEVESON: It is all those who simply don't have the means to pursue expensive remedies.

A. Yes.

Q. MR JAY: Thank you. Are there any other points you would like to make, Ms Belcher, or do you feel we've covered

A. By "entirely cheap", I'm hoping you mean free.
the evidence you would like to give?

A. I think we've covered the -- we've drawn out the main points. I think the press has shown an alarming lack of respect for trans people for many decades. It has shown an alarming lack of alacrity to try and learn about the issues. We noted Mr Mohan's suggestion that groups like us come and train their journalists in issues, but it's basic human decency and respect, and that's actually all we're asking for. We're not asking for special treatment; we're asking for the same treatment as everybody else.

MR JAY: Thank you.

LORD JUSTICE LEVESON: Thank you very much indeed. Thank you, you'll take a break.

(3.49 pm)

(A short break)

(4.08 pm)

MR JAY: The next witness is Pamela Surphlis and I need to check, however, that our system is working. Could you confirm, please, Mrs Surphlis, that you can hear or see me?

A. Yes, I can.

LORD JUSTICE LEVESON: Thank you very much, Ms Surphlis, for providing this information about SAMM in Northern Ireland and for taking part in these arrangements for us.

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to receive your evidence.

MR JAY: Ah, we've lost the sound.

A. I'm here.

MR JAY: Thank you. First of all, may I invite you to take the oath, please.

MRS PAMELA SURPHLIS (sworn)

Evidence by videolink

Questions by MR JAY

MR JAY: May I ask you for your full name?

LORD JUSTICE LEVESON: I think you've lost it.

A. Hello?

MR JAY: Sorry. Your full name, please, Mrs Surphlis.

A. It's Pamela Surphlis.

Q. Thank you very much. You've provided us with two documents. First of all a short submission, which is your evidence to the Inquiry; is that right?

A. That is correct.

Q. And secondly, a research report which you referred to, "An exploration of media reporting of victims of murder and manslaughter in Northern Ireland". It was commissioned by you in 2010 and provided by the University of Ulster, is that also right?

A. That is correct.

Q. I'm going to ask you first of all, please, to tell us about your personal experience, and the relationship between that and the setting up of the organisation Support After Murder and Manslaughter Northern Ireland, please.

A. Okay. 19 years ago, my father, who was a retired clergyman, and my sister who murdered ... (break in signal) my son's 10th birthday. My interaction with the media over the subsequent years was very intrusive. It was disrespectful. But I found that there was a newspaper report 17 years after the event still sensationalising their deaths.

I became extremely angry. I had already ... (break in signal) in 2006. We support families right across Northern Ireland, both inside the conflict and outside the conflict ... (break in signal),

LORD JUSTICE LEVESON: Pause a moment, please, because I'm afraid you're breaking up. Not physically, but audibly.

All right.

MR JAY: I just wonder whether the microphone is close enough to you, Mrs Surphlis. Is it possible to --

I don't quite know how the sound is coming to us, but you are going in and out of audibility. A. Can you hear me now?

LORD JUSTICE LEVESON: Much better.

A. Thank you.

MR JAY: Thank you. I think you were telling us about the foundation of Support After Murder and Manslaughter Northern Ireland in 2006.

A. That's correct.

We set up primarily as a support group but we were hearing constant themes of challenges to the families that they were finding difficult to deal with on top of the trauma that they were already going through.

The personal experience of finding a piece of salacious gossip and really nonsense story about my dad and my sister 17 years after the event, I decided when I tried to correct what the editor had put in, I phoned them and I felt I lost my temper and I could see him in my mind's eye just holding the phone and letting me rant. So I looked to the university to see if it would be possible to do a research study on the families that we support. At the time we had 52 families on our database. Each family was contacted and 20 responses came in for the report.

Now, I passed those details to the university and they then made the contact with the families that were still willing to take part. So that's where the report came from.

Q. Thank you very much. When we look at the report itself, on the internal numbering, please, page 7, we can see that the study has investigated two key issues. First
of all, it identifies and examines the relationship between newspaper journalists and the victims' families. Secondly, it explores the impact of media reporting on family members of those bereaved through murder and manslaughter in Northern Ireland. And then we can see the key objectives listed, which were consistent with the two key issues, and what the researchers did was to conduct a literature review, to undertake a thematic content analysis of newspaper articles, and then, finally, semi-structured interviews with a sample of the victims' families, and the report is a collation, really, of those three separate sources.

<table>
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<th>experiences of. Some respondents noted that the journalists were extremely persistent; some felt that they had been deceived while other respondents noted the journalists were just ruthless in their approach to them.”</th>
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<td>Then in the italicised part lower down the page, we have some quotes, really, from the semi-structured interviews. We can see that. The sort of material we read here, is this consistent with what you have been told by people who have approached you?</td>
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<td>3</td>
<td>A. Yes. Very much so. We've had journalists pretending to be friends of other members of a family just to get in-depth interviews. We've had families who have stated they particularly wanted no press intrusion, that they did not want to give interviews. The press have not obeyed that. They have tried every opportunity to go to the person's place of work, where they use to work, contacted friends and neighbours just to get an inside story.</td>
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<td>Q. Thank you.</td>
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<td>A. Which is extremely distressing.</td>
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<td>Q. Then the next page, page 10, there's reference to the PCC guidelines. I'm going to come back to those somewhat later, if you don't mind, Mrs Surphlis. Then the next subheading is &quot;The content of newspaper reports&quot;, which subdivides into what they call subthemes. The first of those is &quot;Sensationalism&quot;:</td>
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<td>&quot;Many of the families voiced their shock and embarrassment at how the circumstances of such a tragedy could be sensationalised ... the most commonly expressed words were 'salacious' and 'cheap'.”</td>
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<td>8</td>
<td>In the italicised parts we see examples of that.</td>
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<td>9</td>
<td>A. Absolutely. Lots – in one particular case and something that was printed was a young man who had been murdered at the age of 15(?)) was a heroin addict. He wasn't. He was diabetic. He'd been seen injecting himself. Now plastered all over the newspapers in Northern Ireland, and Northern Ireland is an extremely small place. Once it goes in, whether right or wrong, it becomes fact.</td>
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<td>Q. Thank you. The next subheading is &quot;Inaccuracies&quot;, or subtheme, page 11:</td>
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<td>&quot;Overall there were some discrepancies between the families on how accurately the media reported on the death of their family member. Generally families either thought that the media reporting was fairly accurate or a completely inaccurate portrayal.&quot;</td>
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<td>12</td>
<td>So you can see the divergence of view there. Again, we have examples of that in the italicised parts. On this occasion there's a degree of inconsistency, but one can see how perceptions might vary. Does it chime with your experience of what people have told you?</td>
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<td>A. It seems to depend on the person who has been murdered. In a recent case, a high profile one in Northern Ireland last year, the lady who was murdered was an elderly lady, so she was respected, so the press treated the family with respect. Other cases, it's as if the press is trying to find a reason to criticise them, to blame them for being murdered in the first place, and that's what families are telling us. They seem to be extremely judgmental in picking up as to whether the person had an alcohol problem or whether the person was working, and it seems to be more judgmental, which is actually nothing to do with why the person has been murdered. And those sorts of issues for families is deeply, deeply distressing.</td>
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<td>16</td>
<td>Q. Thank you. &quot;Images&quot; now, page 12 on the internal numbering:</td>
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| 17 | "The main areas of contention reported by the family members was the harassment they suffered in the journalists' quest to obtain pictures of the grieving family; the lack of permission to publish pictures, or
From the experiences of the other families, I think it's a lot of families give interviews in the hope that it will stop the intrusion, but then they're deeply disappointed when they see inaccuracies such as -- it may seem very simple to anybody else about age or where the person worked or various bits and pieces that, but to families, they're not stars, they're not celebrities, they're ordinary people who have been thrown into the media glare as well as into a very distressing criminal justice process. So anything that adds to the trauma that they're already suffering is extremely negative.

Q. Thank you. Then in the University of Ulster's report, there's reference to the Press Complaints Commission guidance. This is the guidance "Media attention following a death", which I think you have a copy of available; is that right?

A. Yes.

Q. Do you have any observations to make about it?

A. On initial looking at it, it is an improvement from what was nothing before. People in Northern Ireland do not recognise the Press Complaints Authority as standing up for them. We feel very isolated over here. Through my work I will say make a complaint. My initial looking at it is it is not user friendly. It's talking about

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LORD JUSTICE LEVESON: Do you have in Northern Ireland family liaison officers from the police to help you on this?

A. Yes, we do.

LORD JUSTICE LEVESON: And does that help?

A. If the press goes through the family liaison officer, yes, it does. To some extent, but not always.

LORD JUSTICE LEVESON: All right.

MR JAY: Thank you. Your second bullet point now, Mrs Surphlis:

"Refrain from intrusion at funerals..."

A. "Refrain from intrusion at funerals, or 'doorstepping' family members for information or interviews."

My own experience at the funeral was when I came out of the church door, the road was lined with very, very respectful members of the public, and all you could hear was just the click click clicking of cameras. Luckily enough the church where the funeral was taking place had banned the press from stepping onto the property, but that doesn't always happen.

Families are finding journalists at their door. One family, again that young man that was killed that they thought was the heroin addict, after that there happened to be another murder in that area and the journalists called on the mother's doorstep saying, "I was in the day 39 - PM Leveson Inquiry 8 February 2012

awareness that the pictures were going to be published in the papers and the upset that this caused."

And then again some examples are given. One example, the first relates to taking a photograph at the grave. The second:

"Even whenever the church doors opened there was a mass of snapping went on."

And then similar examples further on.

"Experiences", now, page 13:

"The families reported feeling a variety of emotions stemming from their experiences with the news media. Overall these emotions had quite negative connotations, with the families reporting feel used, powerless, and with some more extreme descriptions of feeling besieged and neglected."

Again does that chime with your experience?

A. From a personal point of view, this is going back to the images one, families do provide photographs. I provided ones for my father and sister, which were ignored.

Every time the case was mentioned or came into the press, it is always a photograph of my sister in her wedding dress, which I find deeply offensive, due to the nature of the domestic abuse that she suffered through the 11 years of her marriage.

Those sort of photographs are really really nasty.

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20 (Pages 77 to 80)
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1. area and I thought you might want to give an interview".
2. So these sort of things are not suitable for families.
3. One family issued a statement through a solicitor
4. that they were not willing to speak to the press. But
5. that's been ignored.
6. I think photographing the families close up,
7. I managed to avoid that by not walking behind the
8. hearse, which I did want to do, but when I saw the long
9. lenses, I couldn’t do it and I hid in the car, which
10. I -- it's not what I wanted to do, but I did not want to
11. be -- as the sole surviving member of the family, have
12. my photograph spread all over every newspaper that was
13. there.
14. "Be honest and not mislead anyone in pursuit of an
15. interview with a family member."
16. This is where we have families who have, as I said
17. earlier, been told that they are friends of the family,
18. trying to pressurise vulnerable members of the family
19. into giving interviews by subterfuge. That's all we can
20. say on that one.
21. Q. Thank you.
22. A. "Acknowledge it is not appropriate to attempt direct
23. contact with families, but to use the official
24. intermediaries, such as police Family Liaison Officers."
25. We've had families who have been harassed with phone

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1. calls, they've had to go ex-directory, they've had to
2. ... (break in signal). In one case, one family had to
3. move house because they were so scared. None of the ...
4. (break in signal) the press.
5. I have another lady who will not answer unknown
6. phone numbers on her mobile in case it is the press.
7. So going through the family liaison officer as
8. a conduit to the family as being able to pass on their
9. wishes.
10. Q. Thank you.
11. A. "Refrain from publishing unsubstantiated rumour and
12. stick to known facts."
13. That is, I think, more relevant when interviewing
14. neighbours or trying to get stories from people who
15. really didn't know the person who has gone, but there
16. have always been sort of rumours and gossipmongers, but
17. there's no impetus to check the facts of that, and that
18. is extremely distressing. One of our families, her
19. father was a recovering alcoholic and it was reported in
20. the press that he was a down and drunk, his home was
21. a drinking den. That's unacceptable as well as
22. inappropriate. It wasn't fact. It was somebody
23. surmising. That's what it was.
24. Also, within the criminal trials, allegations can be
25. made that are not substantiated by the defence. In my

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1. own personal case, which was very stressing, my father
2. was a healer and the defence suggested he was involved
3. in witchcraft. And you can guess the headlines, huge
4. letters: "Witchcraft clergyman". My children never knew
5. about that. My son is sitting beside me and he did not
6. know all of this.
7. Keeping to the facts within newspapers is vital,
8. because young people go to school, other people -- other
9. family members in the neighbourhood can be talking about
10. it. Those children are then saying to my children what
11. they had heard. I hadn't told them because I hadn't
12. known. And this is one of the major, major problems of
13. distressing unsolicited rumours and (inaudible) which
14. causes so much hurt to us.
15. Q. Thank you. Your sixth point I think now, ensure the
16. families have an opportunity?
17. A. Yeah:
18. "If families do grant an interview, ensure that they
19. have an opportunity to see the publication to satisfy
20. themselves only of the factual accuracy, without
21. prejudice to the editorial independence of the
22. publication."
23. SAMM now recommends that the family -- what we do,
24. if they can get sight of the copy, that is very --
25. advantage to them so they can check that it's factually

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1. correct.
2. In one instance recently in regard to that, a family
3. raised a considerable amount of money for our
4. organisation and a particular newspaper ... (break in
5. signal) wanted to run a story on it. They interviewed
6. myself and two other members. I asked to see the copy.
7. It was sent to me. It was so inaccurate it was
8. unbelievable. I sent back the corrections. That piece
9. of copy went back three times and it still did not go in
10. in an accurate way. It was sensationalised to the point
11. that my father's house burnt down, which was rubbish.
12. So what's the point if when you provide them with the
13. factual evidence, factual information, why is that not
14. accepted? Why has it to be written in such a way that
15. is disturbing?
16. Q. The last three points relate to photography, don't they?
17. A. Yes:
18. "Seek approval for the use of all photography
19. relating to the loved one and the circumstances of their
20. death."
21. And I go back to the photograph of my sister. And:
22. "Not publish distressing photographs, such as the
23. removal of a loved one's remains in a body bag."
24. Which has happened here in Northern Ireland. Also
25. the fact that journalists seem obsessed on taking

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In terms of further recommendations, you suggest:  

A. Yes. I know ethics and this is all dealing with ethics.

In terms of further recommendations, you suggest:  

A. Yes. I certainly will. No problem.
A. I can’t speak for them, but I know Louise Casey did a report on (inaudible), so at that time families had not had a negative experience with the media. We did. That's not to say I cannot speak for other areas.

I have spoken --

LORD JUSTICE LEVESON: Yes, I wasn't suggesting that you were speaking for them. I was asking a slightly different question. Is what you have told us similar to experiences that you've been told by people in other parts of the UK?

A. Absolutely. And can I just add that -- can I just add that I have spoken with a victims group in the South of Ireland, and I'm very interested in their perspective from the way the press is regulated down south, which is very positive, extremely positive from them.

LORD JUSTICE LEVESON: All right. That is interesting, because I'm looking at the Southern Irish model, so if they've had a positive experience, that's quite valuable. But I'm obviously not expecting you to speak for other victims, but having spoken to them, if you'd had a very different experience, I would have wanted to know, but you say you haven't.

A. No.

MR JAY: Thank you very much, Mrs Surphlis. Thank you.

LORD JUSTICE LEVESON: Thank you. Is there anything else that you want to add?

A. No, nothing, thank you. Thank you for the opportunity.

LORD JUSTICE LEVESON: Thank you very much.

MR JAY: That concludes our evidence for today.

I think there was one statement I needed to read in, but I've lost the yellow tag with the name. Hold on, I have it here. Yes, Mr Francis Fitzgibbon.

LORD JUSTICE LEVESON: Thank you very much indeed. Thank you to those who have soldiered through the day and are still with us. Thank you very much.

MR JAY: Tomorrow morning is of course 9.30.

LORD JUSTICE LEVESON: 9.30 tomorrow morning because of a video-link with Australia. Thank you.

(4.42 pm)

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