The Leveson Inquiry

culture, practices and ethics of the press

PUBLICATION OF STATEMENTS

Lord Justice Leveson:

1. Some three or four days before Mr Alastair Campbell was due to give evidence to the Inquiry, what purported to be the statement which he had prepared for that purpose was published on the internet by Mr Paul Staines as 'Guido Fawkes'. Having been notified of this publication, I was concerned to ensure that its source was not from within the Inquiry (by which term I encompass the Assessors, the Inquiry team, the core participants and their lawyers). It was in those circumstances that on Monday 28 November, I made an order under s. 21 of the Inquiries Act 2005 ('the 2005 Act') directed to Mr Staines seeking to identify the source (which I recognised he was unlikely to identify) and the circumstances in which he came about the document. Whether or not the way in which the statement had been obtained or its publication were in breach of any duty in confidence or otherwise, however, I was conscious that the publication of the statement itself was not caught by any specific prohibition so that if lawfully obtained, there was then no basis for criticising its publication.

2. In the circumstances, in order to protect the Inquiry from further such disclosures, I made an order in the following terms:

> "1. No witness statement provided to the Inquiry whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry shall be published or disclosed, whether in whole or in part, outside the confidentiality circle comprising of the Chairman, his assessors, the Inquiry Team, the Core Participants and their legal representatives prior to the maker of the statement giving oral evidence to the Inquiry or the statement being read into evidence, or summarised into evidence by a member of the Inquiry Team as the case may be without the express permission of the Chairman.
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> 2. This order is made under s. 19(2)(b) Inquiries Act 2005 and binds all persons including witnesses and core participants to the Inquiry and their legal representatives and companies whether acting personally or through their servants, agents, directors or officers or in any other way.

> 3. Any person (including any company) affected by this order may apply for it to be varied pursuant to s.20 Inquiries Act 2005.
>
> 4. In the case of any public authority restrictions specified in this order take effect."

3. In the event, during the ensuring 48 hours, it was established that the statement which was published was a version of the statement that had been prepared earlier in time to the version that was, in fact, provided to the Inquiry with the result that the procedures and security of the Inquiry and all those who are participating within it could not be impugned. Thus, there was no 'leak' within the processes for which I am responsible with the result that, when that fact was confirmed by Mr Staines, I was not concerned to pursue the matter. It simply was no longer my business.

4. As I visualised as a possibility, however, what it did mean was that Mr Staines was perfectly entitled to publish what came into his possession whatever the impact that might have had on the Inquiry or its process: I am happy to acknowledge this fact. Thus, for the future, the question of restriction of prior publication remained of importance not only to the Inquiry but also to core participants. The point, quite simply, is that if evidence is published prior to the maker of the statement attending the Inquiry, those affected by that evidence will understandably wish to respond immediately and the issues facing the Inquiry could be argued out in public before being explored within the Inquiry itself. No submission was made to me by any of the core participants that I should discharge the order that I had made, although on 30 November 2011 Mr Staines indicated that he would be applying to me to vary or discharge my order, seeking public funding in order to do so. Having made it clear to him that his application for public funding fell outside the Rules and the protocol, no formal application from him has been received.

5. On 2 December 2011, an independent fact-checking organisation which works to promote the availability of trustworthy information for public debate ('Full Fact') made a written submission to the effect that, pursuant to s. 20(4) of the 2005 Act, I should revoke the order on the grounds that it hindered the ability of interested parties such as Full Fact (who are not core participants with the advantage of prior disclosure of statements) effectively to participate by suggesting lines of questions designed to provide insight into the nature and extent of press inaccuracy, the relationship between politicians and the press and the workings of the Press Complaints Commission. The argument goes on:

> "As matters stand, the Inquiry is trying to do its work with the majority of the few informed contributors, the press, representing only one interest in the debate – the press. In light of that … Full Fact do <u>not</u> feel that it is in the public interest for witness statements to be withheld before they are put into evidence. On the contrary, it contributes to the impression of a lack of transparency in what is akin to a policy process. It is in contrast to the 'spirit of complete transparency' that in the opening remarks the Chairman said 'should be one of the principal objectives of all [the inquiry's] work' and it hinders the goal, also expressed by the Chairman, of trying to ensure that 'all the evidence <u>and all views upon that evidence</u> have been taken into account' (emphasis added)."

6. It is further submitted that public trust in the process is essential to getting the Inquiry's recommendations taken seriously by the necessary decision makers and that the more open the Inquiry can be, the less its work will be misunderstood by the public only through the way it is mediated and presented by the press. Finally, Full Fact wishes to share their submissions privately with others and with interested parliamentarians. The point is well made:

> "It is felt that newspapers may be doing their best to soften this ground ahead of the Inquiry's recommendations: through, for example, Op Ed pieces that play down the scale and nature of the problems the Inquiry is considering. … The press has an immensely powerful platform from which to propagate a partial view of the Inquiry, and the ability to use that platform in its own commercial interests, day after day. It is counter-productive to restrict what other, relevant, groups can do."

7. There is much in these submissions with which I entirely agree. What is obvious, however, is that the ambit of the order is not as clear as I intended it to be. First, the order is intended only to cover material prepared for and provided to the Inquiry which it is intended should be put into evidence, that is to say, in relation to which a witness will speak. It is not intended to restrict publication of material which is already in the public domain (such as press articles, speeches or newspaper reports) that some of the witnesses have annexed to their statements. It is only intended to cover formal witness statements and annexes to such statements not presently publicly available. Second, unsolicited correspondence to the Inquiry is not covered by the restriction unless and until it is becomes a signed witness statement on the basis that a decision has been made that the writer of the letter should be called as a witness.

8. Third, the order is not intended to affect the disclosure of submissions or arguments of any sort. Thus, Full Fact is fully entitled to place into the public domain their submission in support of this application: there will never be a time when it becomes evidence although some of the facts asserted might later be included in a witness statement (should one be forthcoming). Although I have been careful to ensure that witnesses have the opportunity to advance suggested approaches for the future (so that nobody can say they have not had the opportunity), my aim in so doing is to encourage debate within the newspaper industry, the academic world and all those concerned with the subject matter of the Inquiry so as to ensure that every potential solution is properly tested. My ultimate conclusions as to the way forward will be particularly affected by the submissions that I hear during the course of the Inquiry which are likely to be tested by further seminars on emerging findings. Thus, I do not intend to restrict what other relevant groups can do by way of identifying or discussing possible approaches.

9. What is intended, however, is that witness statements prepared for the Inquiry should not be publicly available until the witness gives evidence and I recognise that organisations such as Full Fact will be disadvantaged if they wish to suggest lines of questions to counsel to the Inquiry. As Mr Caplan Q.C. submitted, the difficulty with doing so is that it permits of the possibility that those affected by direct evidence will seek to rebut it in the press before the witness gives evidence and the issue will not be joined at the Inquiry but rather in advance and in a less ordered fashion. Further, as Mr Garnham Q.C. for the Metropolitan Police made clear, one of the purposes of early disclosure is to allow the core participants to consider the extent to which statements should be redacted so as to avoid prejudicing the criminal investigation: it

is difficult enough to ensure that sufficient time is allowed for that purpose and if statements are also to be published in advance, that exercise can only be undertaken after redactions have been considered and so the statements will have to be published to core participants even earlier.

10. What can Full Fact do in order fully to contribute to the work of the Inquiry? In my judgment, two steps are open to them. First, in relation to certain witnesses (such as those from the Press Complaints Commission), I am sure that Full Fact has a body of material that can be submitted to the Inquiry without it being known precisely what those witnesses say in their statements. The identity of the intended witnesses is published well in advance and I would be surprised if Full Fact was taken by surprise by the broad thrust of the evidence to be anticipated from the witnesses. Second, when a witness has given evidence, if there is any material in particular that Full Fact believe has been mis-stated, it is open to the organisation then to submit evidence to contradict that which has been said. If I consider that it may make a material difference to any aspect of the Inquiry, it may well be that I will require that evidence formally to be given to the Inquiry and, if necessary, it will always be open to me to require a witness to return to provide further evidence (as has already happened on one occasion).

11. I reiterate that it is my intention that the work of the Inquiry be as open and transparent as possible. All the evidence is transcribed and available on the web-site and, with very few exceptions, it can be watched as well. Full Fact will have every opportunity to challenge the evidence and every opportunity to make whatever submissions thought appropriate: I fully encourage such an approach. Further, to such extent as there is concern about the power of the press to propagate a partial view day after day, it should not be assumed that I am not looking at press cuttings each day to gauge the extent to which the reporting is fair or that I will not be prepared to challenge that which goes beyond fair comment.

12. The restriction order falls fair and square within the terms of s. 19 of the 2005 Act. In my judgment, it is conducive to the Inquiry fulfilling its terms of reference (which must include the broad time frame within which I have been asked to report) and is in the public interest having regard in particular to the extent to which not imposing the restriction would be likely to cause delay or to impair the efficiency of the Inquiry (see s. 19(3)(b) and (4)(d)(i) of the 2005 Act). Given the doubt that Full Fact have expressed, however, I am prepared to modify the first paragraph of the Order so that it reads:

> "No witness statement provided to the Inquiry whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry as part of the evidence of the witness (not otherwise previously in the public domain) shall be published or disclosed, whether in whole or in part, outside the confidentiality circle …"

13. I ought to add that I do not take the concerns expressed by Full Fact lightly and I am alert to the concerns that have been expressed in the cogent written argument. I have no doubt that I will be able to receive the views of this organisation (and other organisations interested in this vital aspect of the work of the fourth estate) both in the form of evidence dealing with the terms of reference and by way of submission on the entirety of the material that is put before me.

14. Save for the slight amendment to the restriction order to which I have referred, this application under s. 20(4) to revoke the restriction notice is refused.

7 December 2011