

Ruling on Future Direction

Lord Justice Leveson:

1. Before commencing the oral submissions that I have invited at the end of this module, it is sensible if I deal with the future progress of the Inquiry and I do so under three headings, that is to say, issues that presently remain outstanding, the impact of Rule 13 of the Inquiry Rules 2006 ('the Rules') and any further developments.

Outstanding Issues

2. As I have just made clear to DAC Akers, it is important that my report is based on what is then the most up to date information about the progress of the criminal investigation. Thus, without descending into who did what to whom or offending the self-denying ordinance on the detail, the extent of that investigation – including how widely it then ranges and what is and what it has excluded – may inform my view about the culture, practices and ethics of at least a section of the press. It is in those circumstances that I make clear that I will issue another request under s. 21 of the Inquiries Act 2005 ('the Act') returnable on a date probably in September. Notice of a hearing will be provided in good time to all core participants to Modules 1 and 2 and they will have the opportunity of submitting any evidence they wish to deal with what is then reported.
3. There are three remaining issues in relation to Operation Motorman. The first two arise from my Ruling on 11 June 2012, paragraph 11 of which reads:

“If Mr Sherborne’s clients wish to provide the Inquiry with such information as they have collated from the Whittamore records where a continuous link to the present day can be established, they should do that without further delay and in witness statement form. Any other core participant will then be able to submit a short statement in response, either from the title or the journalist concerned. The purpose of this exercise is necessarily limited. It would not be to require titles to list when each journalist who made a request to Mr Whittamore left the paper: it is only intended to address the specific journalists that Mr Sherborne’s clients have identified who are still in their employment. Nor would it be to require titles to prove in general terms the history of their retention or destruction of information acquired from Mr Whittamore, in the absence of specific and recent evidence of use. I am not in any

event requiring that any of this be done either by Mr Sherborne or the individual titles but I will, of course, consider anything that emerges from the exercise (in addition to the information which Mr Dacre for Associated Newspapers Ltd offered to provide in writing) and it will form part of the evidence.”

4. As I understand it, that information has not yet been provided to the Inquiry but is being pursued. It only seems fair to put a deadline on it: if any other core participant is to be able to deal with it, the evidence should be provided by the end of this month with a response by any relevant newspaper by 10 September. So as to ensure that there is no risk of work having to be done twice, I also identify that date for the other information that Mr Dacre offered to supply to which I also refer in that ruling.
5. I do not anticipate that this evidence will require oral elaboration and I anticipate that I will make it part of the formal record of the Inquiry, along with other statements that are being read into the record when DAC Akers or whomsoever is then in charge of the police inquiry provides the further update.
6. The third remaining issue arising out of Operation Motorman flows from my Ruling of 10 July 2012 concerning the attitude of Associated Newspapers Ltd to the evidence revealed in the documentation seized from the private detective Steve Whittamore. In short, I had been concerned to learn whether any core participant wished to argue that I could not use the Motorman material to reach generic adverse conclusions about the practice in general of the press perhaps because it would be wrong to conclude, even on the balance of probability, that breaches of s. 55 of the Data Protection Act 1998 could have been established against journalists. I then postulated three possible approaches namely, first, that it is conceded that there is prima facie evidence that journalists did act in breach of s. 55 by seeking information which, prima facie, could not be justified in the public interest. The second position is that the core participant does not want to advance a positive case contradicting the first position. The third was that it is, in fact, challenged that there is a prima facie case against journalists that they acted in breach of the law. Associated Newspapers Ltd has now responded to that ruling and made it clear that it adopts the second of the three approaches: the open letter from its solicitors to the Inquiry to that effect will be published as part of the record.
7. Apart from the police investigations and Operation Motorman, I recognise that there is real potential for other evidence to be forthcoming. In a number of the closing submissions, it has been suggested that one of the consequences of the fast moving nature of this Inquiry has been an inability to challenge material particularly where relevant witnesses have already given evidence prior to new allegations being made. That is to misunderstand how the Inquiry has proceeded. It has always been open to core participants (and others) to submit evidence to the Inquiry to answer allegations that have been made and, in appropriate cases where the interests of fairness require, that evidence will be published as part of the record of the Inquiry. There have been a number of examples where this has already happened and I am prepared for that type of

material to be provided to the Inquiry over the weeks to come (albeit no later than the end of August 2012) in respect of evidence prior thereto.

8. One example will suffice. The Inquiry only learnt of the existence of Matthew Sprake very recently but I am conscious that his evidence last week concerned, in large part, the work which he had been employed to carry out for *The People*. Further, it raised issues relating to the responsibilities for the ethical decisions in connection with its commissioning. Although I recognise that it is now too late to serve a notice under s. 21 of the Act on the then editor, Mr Lloyd Embley (who gave evidence during the course of module 1), should he wish to provide his account of that relationship, dealing with what Mr Sprake has said, I will, of course, consider it.

Rule 13 of the Rules

9. On 1 May 2012, I handed down a ruling dealing with my approach to Rule 13 of the Rules, which I supplemented three days later with a further ruling dealing with the position of the Metropolitan Police. I did so specifically so that any challenge to that approach could be tested by way of judicial review in good time and without disrupting the timetable: see para. 64 of the ruling of 1 May 2012. There has been none and I intend to proceed accordingly. It is however, important to make public certain aspects of this procedure.
10. First, Rule 13 provides that I may send a warning letter to any person who I consider may be the subject of criticism in my Report and, by Rule 13(3) must not include any explicit or significant criticism of a person in the report unless I have sent such a letter and provided the recipient with a reasonable opportunity to respond. In the circumstances, I intend to send letters under Rule 13 setting out criticisms which may be made on the basis of what is considered to be reasonably arguable on the facts and evidence canvassed over the course of the Inquiry to date, the purpose being to alert the recipients to the full range of matters in respect of which further representations may be made. What it is critical to appreciate, however, is that it should not be thought by any recipient that the specific criticisms which I consider to be reasonably arguable will necessarily appear in that form (or, indeed, necessarily at all) in the final Report.
11. Warning letters are an inherent part of conducting the Inquiry fairly and constitute the process of ensuring that all those potentially subject to possible criticism have the opportunity to respond. It may be that it will be thought that submissions that have already been made deal with the possible criticisms and it will be sufficient either not to respond or simply to refer to those submissions. At the other end of the spectrum, representations can include the provision of further evidence and I am prepared to consider the possibility that I may have to reconvene oral hearings to allow an appropriate response: see Beer, *Public Inquiries*, para 9.41. Having said that, however, bearing in mind the approach which I have made clear that I intend to adopt to the facts, it should only be in the clearest of cases that the submission of further evidence should be contemplated. I ought to add that although further evidence might be read into the Inquiry record, I anticipate that the likelihood of consequential oral hearings to be comparatively remote.

12. The second point to be made about the Rule 13 letters is to underline that responses will only be of value if they address the possible criticism. As foreshadowed in my ruling, I will shortly be issuing rule 13 letters of a generic nature relating to the culture practices and ethics of the press referring either to the press as a whole or to a part of or section within the press. I appreciate that it will be tempting for companies to respond by reference only to their own practices; each, however, has read or heard the evidence that has been put before the Inquiry and I expect responses which address the wider issues about the conclusions that I may reach generically. A response that says no more than 'not me' will be of little, if any, value. Obviously, other letters may address possible individual criticisms: they will require an individual response.
13. Finally, I wish to say something about the confidentiality of these letters. Rule 14 makes it clear that the contents of a warning letter are to be treated as subject to an obligation of confidence owed by each member of the Inquiry team to the recipient and by both the recipient and the recipient's recognised legal representative to me. The purpose is not to keep the workings of the Inquiry secret: indeed, in relation to the recipients of any letter, the duty of confidence lapses when the Inquiry Report is published. Rather, it is to recognise that which is set out in para. 10 above, namely, that the criticisms outlined in the letter do not represent my concluded view. Thus to publish them as my view or as 'emerging thoughts' (as some of the challenges which I have asked about during the hearings have been reported) would be to misunderstand the purpose of the exercise and misrepresent the position of the Inquiry. I hope that the duty of confidence will be observed by all: I will, however, wait to see.

Further Developments

14. In the ten months during which the Inquiry has received briefings, held seminars and been taking evidence, much has happened which is relevant to conclusions that may be reached as to the culture, practices and ethics of the press, and as to many aspects of the Terms of Reference. Events have transpired which have been reported and reports have given rise to complaint: a good example can be found in the evidence of Giles Crown dealing with the tragic death of an 11 year old boy. In the same way that I wish to be kept informed about the progress of the police investigations encompassed by Operations Weeting, Elveden and Tuleta, so if there are further incidents that cause concern about the press that I can consider before issuing my Report, I shall do so.
15. Concerns have come to the attention of the Inquiry in different ways. The Inquiry has clearly attracted considerable public interest which itself has generated additional lines of enquiry beyond those initially identified. In addition, the Inquiry has been the subject of a great deal of commentary. I have previously directed that the press cuttings in relation to the Inquiry will form part of its record. Without necessarily dealing with any explicitly, I will consider reports that in my view either support or undermine concerns that have been expressed in evidence; I will equally consider the validity of the comments that are critical of the direction or approach of the Inquiry. I add only that the collection of cuttings will continue until the Inquiry reports.

